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# **Regulation of Professional Services: Lawyers & Notaries, Accountants, Architects & Engineers, Pharmacists**

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## **1. Background to the IHS Study**

This paper outlines a study carried out by the Institute for Advanced Studies (IHS) on behalf of the European Commission, DG Competition from April 2002 to January 2003. The project team members included Iain Paterson, Niki Graf, Helmut Berrer (all IHS), Marcel Fink (University of Vienna), Anthony Ogus (University of Manchester and METRO, Maastricht), and, additionally, case-study contributors Joachim Merz and Felix Fink (University of Lüneburg).

The study presents a comparison of the legislation, regulations and codes of practice governing the practice of a range of professional services across Member States of the European Union. The professions covered by the study are legal services (lawyers and notaries), accountancy services (accountants, auditors and tax advisers), technical services (architects and consulting engineers) as well as pharmacy services (community pharmacists).

While there is a body of theory concerning regulation, in particular concerning the self-regulation of liberal professions, most comparative empirical studies of outcomes have been carried out in the context of state comparisons in the U.S.A. We distinguish between theories that give answers to the question ‘why regulation of professional services (at all)?’ and those that offer answers to the question ‘why is there often too high a degree of regulation?’ This distinction is made because a specific regulatory base exists for all the four professional services fields in all Member States, but the range of regulatory scope and intensity varies considerably throughout the European Union.

This fact gives rise to the basic research questions posed in the study, namely whether, to what extent, and in which areas, regulation differs between European countries, and in particular to identify the economic effects of different degrees of regulation in Member States. The approach used in the study is comparative, and draws on as much information about the liberal professions in Member States as exists and has been made available for the study. No adequate knowledge base of

regulations or outcomes was previously in existence, so questionnaires were sent to professional bodies in each of the fields covered in all Member States, and additionally to European professional umbrella organisations, as well as to some relevant Government departments. The questionnaires sought details of market entry and conduct regulation, recent changes in regulations, and basic economic data of the market for each profession. In addition, detailed accounts of the regulatory features and economic outcomes of specific professions in specific Member States are contained in the 17 case studies in the report (section 2).

## 1.1 (Self-)Regulation of Professional Services

Nearly all of the professions covered – lawyers, notaries, accountants, auditors, consulting engineers, architects, and non-clinical pharmacists – are subject to degrees of (self-)regulation to a greater or lesser extent. The ‘self’ in self-regulation is not used in the literal sense, but connotes some degree of collective restriction, other than constraints emanating from the government or state, to effect outcomes that would not be obtained by individual market behaviour alone.

Although some aspects of self-regulation have their origins in spontaneous ordering from within a profession, more often it may be regarded as a deliberate delegation of the state’s law-making powers to an agency, whose membership is composed of representatives of the profession themselves. Such arrangements are particularly in evidence in EU Member States among lawyers, notaries, statutory auditors and pharmacists.

Licensing of professionals, based on laws and regulations strictly limiting the supply of services to authorised individuals, is a more stringent form of self-regulation than certification of members of a professional body, where the latter function is voluntary, and does not hinder access of non-certified individuals to the market.

### 1.1.1 Answers to the Question “Why Regulate Professional Services?”

The starting point for the pro-regulation theories is the listing of those characteristics that apply to the markets for professional services, and which differentiate these markets from the economist’s ideal conception of perfect competition. In the equilibrium predicted under unrestricted competition the welfare of producers (producer surplus) can not be increased without a detriment to consumer surplus, or vice-versa. A common feature among liberal professions is often to be found: asymmetric information between the agent (lawyer, accountant, architect, pharmacist etc.) and the less-informed principal (the customer/client). This means that consumers may not be able to assess the quality of the service provided before purchasing, or even after consumption, due to the

information/knowledge deficit, (also lack of experience in making repeat purchases).

Two aspects of information asymmetry are considered as being potentially deleterious: first, an adverse selection resulting from declining quality of services. The argument runs that the opacity of the market services to customers could result in their only being prepared to pay an average price for an unknown (hence presumed average) quality, discouraging producers of higher quality services, who expect corresponding higher prices, to exit the supply side, thus reducing average quality supplied by those remaining in the market. The net effect would be a 'downwards spiral' of quality and prices.

Secondly, professionals are said to be faced with a moral hazard problem when their own income generating goals and practices run counter to the objectives of the client, and where the asymmetry of information on the price-quality relationship stands in the way of fair bargaining. In such a situation there is a risk that the professional over-supplies the service to the client, or supplies a higher quality than necessary satisfying the client's needs, so that higher prices are charged to the customer than he/she could have achieved were he/she fully informed. This line of argument is connected to the contention that many consumers are unable to make informed decisions and need to be protected against malpractice.

Among the remedies for coping with such market deficiencies, quality control, in the form of formal qualifications is the obvious first line of defence, encompassing, e.g., degree qualifications, training periods, professional examinations, or years of experience before licensing or certification. But we may continue to ask such questions as: Are price restrictions justified?; Are advertising bans justified?; Should forms of firm organisation be restricted?; Should inter-professional cooperation not be allowed?

### 1.1.2 Answers to the Question "Why Is there too Much Regulation of Professional Services?"

Theoretical private interest approaches postulate that professional bodies will advance their (members') interests beyond the minimum level required to the detriment of consumers – i.e. rent-seeking behaviour will occur. The term 'rent' is used in the sense of microeconomics to denote the difference between revenue and cost of producing services. The existence of competition dissipates rents in general market behaviour: on the other hand a decrease in levels of competition will lead to wealth transfer from consumers to producers. Restrictions on using advertising and of the choice to set tariffs in order to attract customers are regarded as deleterious to the beneficial effects of competition for services. Restrictions on forms of association (lawyers with accountants, for example) are also seen as imposing a

burden on consumers, who might otherwise benefit from economies of scope and ‘one-stop shops’.

According to ‘public choice’ lines of argumentation professional bodies are in a strong position to lobby governments in order to influence the outcomes of regulations and statutes. Since elected politicians seek re-election they have to address the attentions of influential interest groups, particularly those composed of important opinion leaders in society. Self-regulation itself may represent the ultimate form of regulatory ‘capture’, and professional bodies can in practice be acting the part of a legitimised cartel, with wide ability to determine or influence the regulatory framework to the main benefit of producers.

Arguably the strongest single measure that can affect outcomes in professional services markets is the existence of licensing requirements from self-regulating bodies. Not only entry is directly under licensing control, but the lobby effect of a licensed profession to influence conduct regulation is greatly increased. For this reason, private interest theories would expect more favourable outcomes (here, from a consumer’s point of view) in professions following the certification model of self-organisation.

Many economists have preferred arrangements of certification to licensing systems because consumers are in the position of being able to orientate their market decisions by reference to certified producers, but may choose to purchase from non-certified practitioners, especially when lower quality needs are served by lower purchase price.

Finally, the suggestion that formation of several self-regulating bodies, in competition with each other (for professional members) has been put forward: under conditions of competition, the economic rents will be dissipated or, at least, reduced. Such a situation exists in practice in some Member States under models of certification, but not where self-regulation is conducted in a licensing mode.

## 2. Types of Regulations – Market Entry and Conduct Regulations

One may distinguish between regulation in a broad sense and regulations in the narrow sense. Regulations – in the wider sense of the word – include rules that are applicable to all participants in the economy. Such rules are, for example, general regulations on consumer protection or the general labour law. Such regulations are not part of our analysis. Here we concentrate on regulations in the narrow sense, which are rules that are directly, and in most cases solely, applicable to the liberal professions or professional services. In a first step one can differentiate in this respect between two large groups of regulations. These are:

- regulations on *market entry*
- regulations on so-called “market behaviour” or *conduct*.

## 2.1 Market Entry Regulations

There are different types of market entry regulations that can be distinguished. In the field of personal preconditions: for a long time in many professions citizenship played an important role (this has changed in the meantime due to EU-legislation). Other personal preconditions to enter a market may for example be a minimum age or good personal reputation. Typically some negative conditions apply here, e.g. not having been convicted of a criminal offence.

Preconditions in the field of qualifications are often formal certificates of qualification (i.e. university degrees), additionally with respect to practising experience or professional examinations. Some other preconditions may encompass economic needs tests (i.e. ostensibly to answer the question of whether a new entrant is required regionally or nationally), registration or membership in a professional body.

At the same time one or more areas of reserved practice for liberal professions very often exist. This means that there are exclusive rights for one (or sometimes more) professions to offer specific services or goods on the market.

These kinds of regulations lead – amongst other factors – to a certain degree of potential competition on a specific market, within the parameters set by the regulations. Together with the so-called market-behaviour or conduct regulations, they influence the actual degree of competition.

## 2.2 Conduct Regulations

Regulations on market behaviour take different forms of professional and standards quality controls. They influence price-, quality- and product-competition. Typical regulations on market-behaviour are:

- regulation of prices and fees (fixed prices, minimum and/or maximum prices etc.),
- regulation of advertising and marketing,
- regulation of location and diversification (geographical restrictions on offering services, restrictions on establishing branch offices),
- restrictions on interprofessional co-operation, restrictions on forms of business (e.g. whether incorporation is allowed and under what preconditions),
- other regulations (regulations on continuing education, rules on specialisation or a certain kind of indemnity insurance etc.).

## 2.3 Sources of Regulation

Both forms of regulation (market entry and market behaviour regulation) may derive from different sources. It is not only the provisions of (EU member) state

law that is relevant here, but also rules that are issued by professional bodies. In general the following types of regulations appear as most relevant:

- national state law
- regional state law,
- rules issued by compulsory professional bodies (licensing),
- rules issued by voluntary professional bodies (certification model),
- regulations by the European Community (treaties, directives, decisions of the European Court of Justice).

Such regulations are issued and implemented under different forms of professional organisation:

- in models with licensing via state / public authorities,
- in models with licensing via professional bodies – often with compulsory membership in a professional association,
- in models with pure certification (no licensing).

In the second case the licensing may be implemented by only one professional body, or, as is apparent for some professions in some jurisdictions, there are alternative (and therefore to some extent competing) professional bodies.

In the last case, there often exist civil law professional bodies without compulsory licensing, and professionals do not have the exclusive right to offer one or different kinds of service. Also there is no market entry regulation in the narrow sense in this case - however it very often appears that there are some basic market-behaviour regulations.

The easiest distinction in this respect – apart from the question of whether there is any binding regulation at all – is the one between self-regulation and regulation via the state/public authorities. However, it occurs relatively often that a regulatory system is in fact a hybrid between these two categories. Elements of self-regulation are mixed with elements of regulation by the state. There may be for example a public regulator but with only residual regulatory authority, overseeing the practices of the self-regulatory agency. There are also cases where representatives of other (often partly self-regulated) professions are involved in the implementation of the rules of the profession (that is not their own profession). The latter form is called interprofessional co-organisation.

## 2.4 Assessing the Degree of Regulation

In a first step we provide tables on different fields of regulation and try to distinguish different regulatory groups of countries. In a second step, several regulation indices for each profession are constructed.

An example of the data collected is shown in the “compendium table” for *Conduct Regulation in Legal Services* (lawyers) in EU-15 Member States. The dark boxes indicate where regulation exists (“Y”), or not (“N”), shaded in light grey.

Table 1: Conduct Regulation in Legal Services (Lawyers)

Country	Profession	Regulation of prices			Advertising forbidden?		Regulation on location	Regulation on diversification	Incorporation forbidden?	Interprofessional co-operation forbidden?			Computers indemnity, insurance?	Computers continuing education?
		Min. price	Max. price	Reference price	All	Most				Some	Any	Incorporation in general		
Austria	Rechtsanwalt (Lawyer)	(X)	N	Y	N	Y	N	(Y)	N	Y	Y	Y	Y	Y
Belgium	Advocaat /Advocate)	N	N	N	N	Y	N	Y	Y	N	Y	Y	Y	Y
Denmark	Advokat (Attorney Law)	N	N	Y	N	Y	N	N	Y	Y	Y	Y	Y	N
Finland	Advocate	N	N	N	N	Y	N	N	N	N	N	N	Y	Y
France	Avocat	N	N	N	N	Y	Y	(Y)	N	Y	N	Y	n.a.	Y
Germany	Rechtsanwalt (Attorney at law)	(X)	N	N	N	Y	N	Y	N	N	Y	Y	Y	Y
Greece	Dikigoros (Advocate)	Y	N	N	Y	Y	Y	Y	Y	Y	Y	N	Y	Y
Italy	Accvocato (Lawyer)	Y	N	N	N	Y	N	N?	Y	N?	Y	Y?	Y?	N
Ireland	Barrister	N	N	N	Y	Y	N	N	Y	Y	Y	Y	n.a.	Y
Luxembourg	Solicitor	N	N	N	N	Y	N	N	Y	Y	Y	Y	Y	Y
Luxembourg	Avocat (Advocate)	N	N	N	N	Y	N	Y	N	Y	Y	Y	Y	Y
Netherlands	Advocaat (Attorney Law)	N	N	N	N	Y	Y	N	N	N	Y	Y	Y	Y
Portugal	Advogado	N	N	Y	Y	Y	N	N	N?	Y	Y	Y	n.a.	n.a.
Spain	Abogado	N	N	Y	N	Y	N	N	N	Y?	Y?	Y?	n.a.	n.a.
Spain	Precursor	N	N	Y	N	Y	N	N	N	Y?	Y?	Y?	n.a.	n.a.
Sweden	Advokat (Advocate/avocat)	N	N	(X)	N	N	N	N	N	Y	N	Y	Y	N
United Kingdom	Solicitor	N	N	N	N	Y	N	N	N?	Y	N	Y	Y	Y
United Kingdom (Engl.+Wales)	Barrister	N	N	N	N	Y	N	N	Y	Y	Y	Y	Y	Y



The study uses such tables of regulation, which were distilled from the stage of empirical research (including the returns from professional bodies of the survey questionnaire), as an input for determining the degree of regulation in each profession. Indices of regulation are derived from this information, where the degree of information is assessed on a scale of 0 (no regulation) to 6 (maximum regulation), together with a weighting of the importance of each kind of regulation. Since the weightings sum to one, an overall index of regulation on a scale of 0–6 is obtained. An example of the coding process underlying the index derivation for *market entry* is shown in the following table.

*Table 2: Definition Tree for the Index of Regulation (Market Entry)*

	Category/Variables	Coding	Scale	Weighting1	Weighting2
<b>ER</b>	<b>Entry regulation (general)</b>	<b>ERLC*0.40+</b> <b>ERED*0.40+</b> <b>ERQT*0.20</b>	<b>0 to 6</b>		
<b>ERLC</b>	<b>Licensing</b> Number of exclusive and shared exclusive tasks	0 = 0 1 = 1.5 2 = 3 3 = 4.5 4 or more = 6	0 to 6		40%
<b>ERED</b>	<b>Requirements in education/does only apply in cases of licensing; if no licensing: "0"</b>	ERED1*0.30+ ERED2*0.40+ ERED3*0.20+ ERED4*0.10	0 to 6		40%
ERED1	Duration of special education/university or other higher degree	0 to ≥ 6 years	0 to 6	30%	
ERED2	Duration compulsory practising	0 to ≥ 6 years	0 to 6	40%	
ERED3	Number of professional exams	(0 to ≥ 3)*2	0 to 6	20%	
ERED4	Number of entry routes to profession (inv. scale)	(0 = 4 or more routes; 1=3 routes; 2=2 routes; 3=1 route)*2	0 to 6	10%	
<b>ERQT</b>	<b>Quotas/economic needs test</b>	0=no 6=yes	0 or 6		20%

*Note: In the above coding table it may be observed that the regulation categories are related in a tree-like-structure.*

*Source: IHS.*

Table 3: Definition Tree for the Index of Regulation (Conduct Regulation)

	Category/Variables	Coding	Scale	Weighting 1	Weighting 2
<b>CR</b>	<b>Conduct Regulation (general)</b>	<b>MCPR*0.25+ MCAD*0.15+ MCLOC*0.15+ MCDIV*0.20+ MCIC*0.25</b>	0 to 6		
<b>MCPR</b>	<b>Regulations on prices and fees</b>	0 = no regulations 1 = non binding reference prices on some services 2 = non binding reference prices on all services 3 = maximum prices on some services 4 = maximum prices on all services 5 = minimum prices on some services 6 = minimum prices on all services	0 to 6		25%
<b>MCAD</b>	<b>Regulations on advertising</b>	0 = no spec. regulations 2 = some forms forbidden (like comparative price advertising, direct mailing etc.) 4 = most forms are forbidden (advertising only in very narrow margins allowed) 6 = all forms of advertising are forbidden	0 to 6		15%
<b>MCLOC</b>	<b>Regulations on location</b>	0 = location not restricted 6 = location restricted	0 to 6		15%
<b>MCDIV</b>	<b>Regulations on diversification</b>	0 = no specific regulations 3 = diversification under specific preconditions allowed (branch office head is a professional, maximum number of branch offices etc.) 6 = diversification not allowed in any case	0 to 6		20%
<b>MCIC</b>	<b>Regulations on form of business and form of professional co-operation (general)</b>	MCIC1*0.5+ MCIC2*0.5	0 to 6		25%
<b>MCIC1</b>	<b>MCIC1 Regulations on form of business</b>	0 = all forms (incl. incorporation allowed in any case) 2 = partnership allowed, incorporation only allowed in specific cases (regulations on ownership etc.) 5 = incorporation forbidden in any case 6 = partnership and incorporation forbidden in any case; only sole practitioners etc. allowed.	0 to 6	50%	
<b>MCIC2</b>	<b>MCIC2 Regulations on interprofessional co-operation</b>	0 = all forms allowed 3 = with all professions but no incorporation; or only with comparable professions in all forms allowed etc. 4.5 = only with comparable professions and no incorporation 6 = generally forbidden	0 to 6	50%	

Source: IHS.

### 2.4.1 An Example of the Regulation Indices (Legal Services)

Table 4 shows the regulation indices that are derived for legal services (lawyers) with regards to market entry and conduct regulation. Each of these are on a scale of 0 to 6. Because the relative weightings of importance used in each both cases are considered compatible and consistent, a combined overall index of regulation is obtained by adding the market entry and conduct indices. The overall index thus appears on a scale of 0–12.

*Table 4: Regulation Indices for Legal Services (Lawyers)*

	Entry	Conduct	Total	Rank
Greece	3.5	6.0	9.5	1
Austria	4.1	3.3	7.3	2
France	3.9	2.7	6.6	3
Luxemburg	3.8	2.8	6.6	3
Germany	3.7	2.8	6.5	4
Spain	3.4	3.1	6.5	4
Italy	2.6	3.9	6.4	5
Portugal	3.5	2.2	5.7	6
Belgium	2.5	2.1	4.6	7
Ireland	2.4	2.1	4.5	8
England&Wales	2.9	1.2	4.0	9
Netherlands	2.1	1.8	3.9	10
Denmark	2.1	0.9	3.0	11
Sweden	2.0	0.4	2.4	12
Finland	0.0	0.3	0.3	13

*Note: EU-15 countries (Legal System of Scotland is not included) are ranked from highest overall regulation (Greece) to least (Finland).*

*Source: IHS.*

## 2.5 Overall Indices of Regulation

The combined market entry and conduct indices are shown in table 5 for each liberal profession and country. In order to highlight respective degrees of regulation the professions in countries with the highest relative degrees of regulation are shown in black, those with least regulation are shown in light grey, and cases in-between are in grey.

*Table 5: Overall Indices of Regulation for EU-15  
(Market Entry and Conduct)*

	Accountants & Auditors	Lawyers/ Advocates	Notaries	Architects	Engineers	Pharmacists
Austria	6.2	7.3	9,6	5.1	5.0	7.3
Belgium	6.3	4.6	9,3	3.9	1.2	5.4
Denmark	2.8	3.0		0.0	0.0	5.9
Finland	3.5	0.3		1.4	1.3	7.0
France	5.8	6.6	10.0	3.1	0.0	7.3
Germany	6.1	6.5	11.0	4.5	7.4	5.7
Greece	5.1	9.5	<i>n.a.</i>	<i>n.a.</i>	<i>n.a.</i>	8.9
Ireland	3.0	4.5		0.0	0.0	2.7
Italy	5.1	6.4	10.7	6.2	6.4	8.4
Luxembourg	5.0	6.6	<i>n.a.</i>	5.3	5.3	7.9
Netherlands	4.5	3.9	6.3	0.0	1.5	3.0
Portugal	<i>n.a.</i>	5.7	<i>n.a.</i>	2.8	<i>n.a.</i>	8.0
Spain	3.4	6.5	9.4	<i>n.a.</i>	3.2	7.5
Sweden	3.3	2.4		0.0	0.0	12.0
UK	3.0	4.0		0.0	0.0	4.1

*Source: IHS.*

Overall the spectrum of regulation intensity is broad in all professional fields. In general regulations on conduct are less restrictive than those concerning entry, and it is this former area that the most significant moves towards liberalisation have taken place in recent years. Nearly half of the Member States in the EU can be said to have very restrictive regulations governing entry and conduct to the legal professions. Accountancy services are only slightly less restrictive regarding entry in a similar number of countries, the level of conduct regulation being at a general lower level.

The general level of regulation in the technical services is lower than in legal services and accounting services, but a relatively high level still exists in nearly half of all states. In absolute terms, the pharmacy professional services are the most highly regulated of the professions covered in this study, many regulations stemming from rules made at state governmental level. Correspondingly, this profession is to a lesser extent self-regulated.

### 3. An Economic Benchmarking of Professional Services

A comparative analysis of nearly all EU Member States in terms of key economic variables and indicators was undertaken. For a few countries and professions no comparable data has been found, and for this reason they are missing from the analysis. Unfortunately from an analytical point of view, comparable data, i.e.

statistical data collected for groups of services on an identical basis, exists only, and then again sparingly, at the 4-digit level of the NACE classification system. Thus our results are grouped into four professional service areas for analysis as follows, whereby aggregated data for certain professions are included (shown in brackets):

- Legal professional services (lawyers and notaries)
- Accountancy Services (accountants, statutory, but also book-keeping\*and tax advising\*
- Technical professions (consulting engineers (various sub-classifications) and architects)
- Pharmacists

The inclusion of economic activities like book-keeping and tax-advising (marked with \*) in a 4-digit category poses a problem for the analysis: these occupations, inasmuch as they may be carried out by persons who are not included as professionals in our scope of professional services as ‘liberal professions’ also contribute to the economic statistics. Due to lack of an alternative (which would filter out these activities) the analysis of ‘accounting services’ is carried out as if the activities were within the scope of our professional definitions. The possible resulting contamination of the data and the corresponding analysis is mitigated by the observation that such activities as tax-advising are also within the domain of professional accountants. Due to the over-proportionate contribution to economic output of large and medium-sized accountancy firms, the possible distorting effect on turnover statistics is likely to be less than the effect on employment. Such observations will be true for all Member States, sometimes to slightly varying degrees. Nevertheless, within the ‘broad brush’ approach of our analysis the deleterious effects on consistency are assumed to be minimal.

### **3.1 Description of the Dataset**

Basic data on the number of firms (F), turnover of the 4-digit branch (T) and employment (E) are presented for the year 2000, or alternatively, when this data was not available, for the nearest year to 2000. At the time of the study data for 2001 was only available in a few cases, so 2000 was chosen as the base year. Employment figures include both paid employees and also ‘unpaid persons’, i.e. self-employed and assisting spouses. The definitions are based on EUROSTAT definitions, which are unified for EU Member States. Data definitions from national data which differ from the EUROSTAT definitions were taken into account: in some cases a correction to the data could be justified; in some few cases the data from the Member State statistical office could not be used to augment the dataset because of incompatibility.

Key indicators are ratios that are calculated based on the variables F, T and E, and their relation to the population (Pop) and GDP of each Member State in the survey. The following units are used:

- F: Number [Firms]
- T: Million EUR (or ECU as appropriate) [Turnover] ( - TS: Turnover Share)
- E: Number [Employment]
- Pop: Millions [Population]
- GDP: Million EUR (or ECU as appropriate) [Gross Domestic Product]

A further key variable associated with each branch is the number of practising professionals. The following definitions were used:

- Legal Professions: Total number of qualified registered lawyers, notaries in practice, excludes patent lawyers (relatively small in number)
- Accountancy Professions: Total number of professional accountants (for example registered in the ‘Chamber’ or ‘Chartered’/‘Certified’ and equivalents) and statutory auditors in public practice (note: usually qualified with academic degree but with some exceptions), auditors, but excluding ‘only tax advisors’
- Architects and Engineering Professions: Number of academic (university, polytechnic degree) practising consulting engineers and architects
- Pharmacy Profession: Academically qualified registered, non-clinical pharmacists

### 3.2 Economic Trends – Implications

The “snapshot” comparison of the branch structure of each of the four professional fields studied in or near to the year 2000 was interpreted in conjunction with the respective indices of regulation. Because data are aggregated over (related) professions, and because of existing differences in systems (and in business, governmental and professional culture) between different countries, the effects of regulation cannot be expected to be regular throughout the EU. Nevertheless it has been possible to distinguish basic trends associated with highly regulated professions in Member States, and trends associated with professions in countries that are subject to a low degree of regulation.

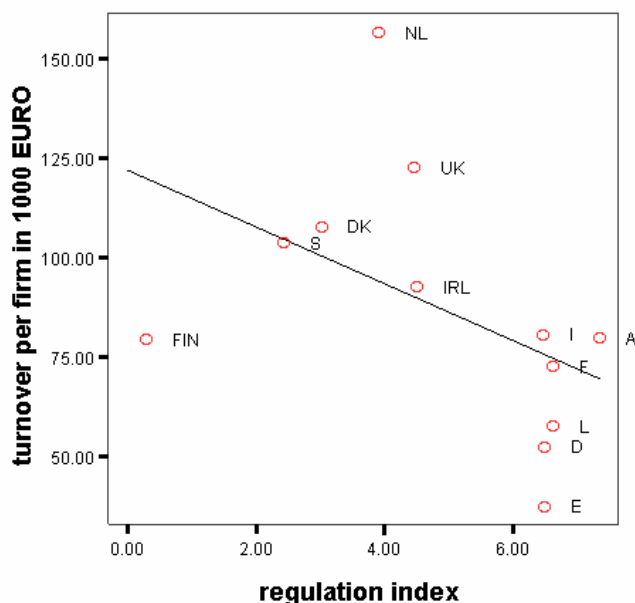
The analysis of economic data in conjunction with the regulation indices showed that there are:

- (relatively) lower numbers of practising professionals in the most regulated states; examples in the legal profession are Austria, France.
- lower levels of turnover in the most regulated states (but high turnover per professional!), and that
- productivity (volume per person employed) is negatively correlated with level of regulation in the legal profession

- market “shake-outs” – there are moderate concentration processes in countries with lower levels of conduct regulation: Legal examples – Netherlands, Denmark.

An example of the relationship between business activity (turnover volume per firm) and degree of regulation is shown in the chart: less regulation tends to be associated with relatively higher levels of business activity.

*Chart: Volume of Business vs. Degree of Regulation*



Source: IHS.

In summary the results indicate that excessive regulation in the liberal professions studied leads to lower employment and lower wealth creation.

The implications for Austria are clear: Austria scores high on the degree of regulation index for all the liberal professions studied. The adoption of reforms that would result in lower degrees of regulation would be expected to be beneficial in terms of economic welfare for consumers, in line with a previous (1998) study carried out by the IHS into liberal profession in Austria. These benefits would arise in part from easier entry to the market, with formation of some larger firms capable of taking advantage of scale economies, and partly through the potential for alternative organisational forms and innovations released in a more competitive environment.

## 4. Post-Study Developments in the EU

The results of the IHS study have been made available on the website of the Competition Directorate General since March 2003. In 2003, the EU Commission undertook a “stock-taking exercise” which invited comments from professional associations, consumer groups etc. and a round of discussions with national competition authorities on regulation of the liberal professions was initiated. The Competition Directorate-General hosted a Conference in October 2003, at which many parties aired views on regulation. In 2004 the Commission issued its Report on Professional Services.

The general principle has been enunciated that Professional Services are basically subject to general freedoms and restrictions that apply to all types of services industries, and that reasons for regulatory exceptions must be demonstrated:

*“Ultimately, in the Commission’s view, in all scrutiny of professional regulation a proportionality test should be applied. Rules must be objectively necessary to attain a clearly articulated and legitimate public interest objective and they must be the mechanism least restrictive of competition to achieve that objective. Such rules serve the interests of users and of the professionals alike.”*

At the same time responsibility for overseeing developments begins in each Member State:

*“From an enforcement perspective from May 2004 onwards, the national competition authorities and the national courts will have a more prominent role in assessing the legality of rules and regulations in the professions. To the extent that competition restrictions have their centre of gravity in a Member State, administrative enforcement of the EC competition rules in the liberal professions will then be mainly the task of national competition authorities.”*

The position outlined in the report of the Commission calls for a general removal of fixed and minimum prices for professional services, adding that function of recommended prices can also be carried out by surveys of consumer organisations. (possible exceptions here may be Latin notaries). Likewise the report favours the removal of restrictions on advertising of professional services.

The Commission believes that there is scope for reducing reserved tasks – pointing out that liberalised conveyancing among real estate agents in Australia, UK and in Netherlands led to lower prices.

Whereas non-excessive qualitative entry restrictions may be useful, if these ensure the quality of service provided, the report is generally not in favour of quantitative entry restrictions to the professions.

Regarding forms of business, the position adopted is that business structure regulations appear to be least justifiable in cases where they restrict the scope for collaboration between members of the same profession. Collaboration between



members of the same profession would appear less likely to reduce the profession's independence or ethical standards.

#### 4.1 Extension of the IHS Study to 10 New EU Member States

The EU Commission has applied the IHS regulation Indices (c.f. section 2 above) to the same set of liberal professions (accountants/auditors, lawyers/advocates, notaries, architects, engineers, pharmacists) in each of the 10 new (since 2004) Member States. The results show many similarities and some differences with the EU-15 Member States. For example, for legal professions, there are high entry requirements (education, practice, compulsory membership after examination) and price regulation is not completely free, while advertising is heavily regulated.

Table 6: Overall Indices of Regulation for EU-25

	Accountants & Auditors	Lawyers/ Advocates	Notaries	Architects	Engineers	Pharmacists	
Austria	6.2	7.3	9.6	5.1	5.0	7.3	
Belgium	6.3	4.6	9.3	3.9	1.2	5.4	
Denmark	2.8	3.0		0.0	0.0	5.9	
Finland	3.5	0.3		1.4	1.3	7.0	
France	5.8	6.6	10.0	3.1	0.0	7.3	
Germany	6.1	6.5	11.0	4.5	7.4	5.7	
Greece	5.1	9.5	n.a.	n.a.	n.a.	8.9	
Ireland	3.0	4.5		0.0	0.0	2.7	
Italy	5.1	6.4	10.7	6.2	6.4	8.4	
Luxembourg	5.0	6.6	n.a.	5.3	5.3	7.9	
Netherlands	4.5	3.9	6.3	0.0	1.5	3.0	
Portugal	n.a.	5.7	n.a.	2.8	n.a.	8.0	
Spain	3.4	6.5	9.4	n.a.	3.2	7.5	
Sweden	3.3	2.4		0.0	0.0	12.0	
UK	3.0	4.0		0.0	0.0	4.1	
Czech R.	1.4	5.4	6.2	9.0	3.7	n.a.	6.9
Cyprus	3.5		6.5			n.a.	
Estonia	0.0	3.8	6.0	10.5	3.6	3.6	5.0
Hungary	--	4.0	4.4	10.0	4.1	4.4	3.6
Latvia	0.0	3.8	7.8	8.2	4.4	3.5	2.9
Lithuania	0.0	3.8	5.0	7.9	4.1	3.8	6.2
Malta				5.4			6.4
Poland	3.3	3.9	4.9	8.8			4.9
Slovakia	3.7	4.2	5.3	11.1	4.4	3.7	5.5
Slovenia	0.0		6.1	9.2	4.0		5.2

Note: Legend for new Member States: blank fields = not received response, n.a. = missing value (answers to particular questions)

-- = accountants in Hungary do not have a professional association.

Source: IHS.

On the other hand, there are lower levels of regulation concerning business structure (opening of branch offices, creation of corporations and other types of business entity) and there are restrictions on inter-professional co-operation in only a few Member States. A comparison of overall indices is shown in the table 6.

## References

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