

Research Report

Economic impact of regulation in the field of liberal professions in different Member States

Regulation of Professional Services

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Executive Summary

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*The contents of the study do not reflect the opinion or
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Executive Summary

This 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 USA. 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 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 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 Part Two of the report.

Comparative analysis requires comparable data: regarding regulation, this was achieved by our development of special regulation indices; regarding market outcomes, the main source of data was obtained from Eurostat and, where compatible, from member states' statistical offices. The data is usually restricted to volumes of business and employment (of professionals and generally). Further relevant economic data would have included prices, costs, and earnings. Obtaining such data for even one country on these variables is fraught with difficulties, including non-availability as a time-series (or in most cases, at all) and non-disclosure policies. Nevertheless, the study has been able to demonstrate the existence of trends from the data at the level available.

The study of professional regulatory systems in member states differentiates between two large groups of regulations: regulations on market entry and regulations on “market behaviour” or conduct. Typical *market entry regulations* are qualification requirements (formal certificates of qualifications – i.e. university degrees, length of practice and/or professional examinations), registration or membership in a professional body, rules on areas of reserved practice (i.e. exclusive rights for one – or sometimes more – professions to offer specific services or goods on the market), and in some cases economic needs tests. Typical *conduct regulations* 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 or e.g. restrictions on forms of business (e.g. whether incorporation is allowed and under what preconditions).

To simplify the rather complex picture of different forms of regulations on different professions in different countries, a regulation index each for market entry and for market conduct has been computed for each profession/professional group and member state. Subsequently the respective indices for market-entry and market-conduct were combined into an overall regulation index for each profession/professional group. The table below shows figures for the overall regulation indices, for all the professions/professional fields where one has been calculated (N.B. excluding notaries).

The higher the degree of regulation (intensity), the higher the respective figure (within a range from 0 to 12). All the regulation indices with a value of 5 or higher are shown in black boxes, indices between 2.5 and 4.9 are in grey boxes, and those below 2,5 have a white background.

Countries with a high degree of regulation intensity for all professions are Austria, Italy, Luxembourg and, with some exceptions in the field of technical services, Germany as well as France (and possibly Greece). Belgium, Spain (and possibly Portugal) appear to be in the medium category, whereas UK, Sweden (with the exception of pharmacists), the Netherlands, Ireland, Finland and Denmark (the latter again with the exception of pharmacists) show rather liberal regulatory regimes (at least from a *comparative* point of view within the EU).

Total IHS regulation indices for different professions

	Accountants	Legal	Architects	Engineers	Pharmacists
Austria	6.2	7.3	5.1	5	7.3
Belgium	6.3	4.6	3.9	1.2	5.4
Denmark	2.8	3.0	0	0	5.9
Finland	3.5	0.3	1.4	1.3	7.0
France	5.8	6.6	3.1	0	7.3
Germany	6.1	6.5	4.5	7.4	5.7
Greece	5.1	9.5	n.a.	n.a.	8.9
Ireland	3.0	4.5	0	0	2.7
Italy	5.1	6.4	6.2	6.4	8.4
Luxembourg	5	6.6	5.3	5.3	7.9
Netherlands	4.5	3.9	0	1.5	3.0
Portugal	n.a.	5.7	2.8	n.a.	8
Spain	3.4	6.5	4.0	3.2	7.5
Sweden	3.3	2.4	0	0	12
UK	3.0	4.0	0	0	4.1

With regard to the various professional fields the most extensive/restrictive regulation can be found in regards of *pharmacies/pharmacists*. Only Ireland, the Netherlands and the UK show comparatively low regulation indices. In *architectural* and especially in *engineering services* the situation is rather bi-polar: in respect of market entry some countries show rather restrictive licensing models (especially Austria, Germany, Italy, Luxembourg), in others certification without or with only very limited exclusive tasks reserved to the professions is the standard model (e.g. Sweden, UK, The Netherlands, Finland, Denmark). The conduct regulations for architects and engineers are – compared to those of other professional groups – rather less restrictive in most of the countries. This applies even in those cases where high levels of regulation on market entry exist. In *legal services* (lawyers) one can observe all degrees of market entry regulation. The same is true for conduct regulation. This leads to a high level of diversification in the overall regulation indices: from very low (Sweden, Finland) to very high (Greece, Austria, France, Spain, Germany and others). For *accountancy services* market entry in all countries exhibits some type of licensing model, but the scope of exclusive rights to offer services varies considerably. The same is true – albeit to a lesser degree – regarding qualification requirements. Together with variations in the degree of conduct regulation this leads to a rather high intensity of regulation in e.g. Belgium, Austria, Germany, Italy, France, Greece and Luxembourg. In all the other countries regulation lies in the medium category. Interestingly it appears that a high degree of regulation in accounting professions very often goes hand-in-hand with similar structures in the field of legal professions (lawyers).

In addition to the general overview of the regulatory systems of liberal professions in all member states of the European Union, the study also provides detailed case studies for each profession. These include a mix of countries with low and high levels of regulation. The subset of member states includes: for legal services (lawyers, notaries): - Denmark, UK/England and Wales, Italy, Germany, and France; for accountancy services (accountants, auditors and tax advisers) - Italy, Netherlands, Germany, France; for technical services (architects and consulting engineers) - Austria, Finland, France, Spain; and for pharmacy services (community pharmacists) - Ireland, Portugal, Sweden, Germany.

The case studies aim not only to analyse the functionality of different types of regulatory regimes, but also to detect and comment on trends in regulatory reform. What is evident in this respect is a high degree of “system-stability”. In this context we did not find any complete system change (from a licensing model to certification model or in the other direction) and it only rarely occurs that exclusive tasks reserved to one or more professions are opened to other service providers. However, frequent changes in the regulatory framework can be observed in the field of conduct regulations. These changes in almost all cases have taken the form of liberalisation (e.g. in respect of price regulation, advertising, form of firm, inter-professional co-operation). Such liberalisation is *seldom* accompanied by the introduction of tighter regulation in the field of market entry. Apart from traditional, somewhat ‘defensive’ forms of regulation (on market entry and conduct) in some (but not all) countries, there is a trend to more pro-active forms of consumer protection and quality management, which implies a lower degree of anti-competitive effects. For several professions in several countries in recent years, for example, professional indemnity insurance has been made obligatory (or, if already in existence, broadened). Other examples are the introduction of obligatory continuing education, facilities for specialisation, or in some cases, specific voluntary certification and/or benchmarking systems.

The report also provides a benchmarking analysis of the professional services. Tables of distribution of key ratios (by country and by profession) professional density (per million of population), sector turnover per capita in the population and per person active in the branch (adjusted by prices and level of GDP) are evaluated to identify high, medium and low levels of relative performance. The performance levels in terms of outcomes are set against the degree of regulation in each country and professional field, as determined by the regulation indices. Some general trends have been indicated by the benchmarking and analysis of the legal, accounting, technical and pharmacy professional services, summarised as follows:

- Relatively high volumes of turnover from revenues (fees) compared to the number of practising professionals in countries with high degrees of regulation (conduct and entry). A connection may be surmised between volume of business per professional and excess profit (compared with the outcome under less restricted competition), albeit indirectly, in the absence of specific profit data. It seems unlikely that this effect

is due to differing technologies, or other factors that would engender productivity advantages.

- Lower volumes of turnover from revenues (fees) - *only in proportional relation* to the number of practising professionals - in countries with low degrees of regulation (conduct and entry). This finding applies indeed also to professions and countries where the overall level of business is in fact higher. That is, we may surmise that low regulation is not a hindrance, but rather a spur, to wealth creation.
- A tendency towards market 'shake-out' in professions and countries with a low level of regulation, allowing the formation of larger enterprise units. In the professions studied this effect is not associated with a higher than usual level of business (volume per capita), and high market concentration, except in accountancy services.
- A negative correlation between degree of regulation and productivity for the case of legal, accounting and technical services. Since the measure of volume factors out differences in price levels and overall output levels of the economies, and since neither technological differences between countries nor lower employment levels are apparently the decisive source of higher productivity here, the correlation may also indicate a shortfall in potential output among highly regulated countries and professions.

It should be borne in mind that such effects as described above are not necessarily an automatic result of regulation. However the existence of certain types of restrictive anti-competitive regulation undoubtedly lends credence to the view that such regulatory structures can, and in many cases are, used by the professions to obtain economic results that are in their favour, but contrary to the needs of, and against the interests of consumers as a whole.

These empirical findings point in the direction of effects predicted by the 'private interest' theories of regulation, particularly in those aspects that are termed by economists as being 'rent-seeking'. Whereas more detailed economic analysis would be needed to measure the strength of these effects, and establish statistical significance - the data for such an analysis simply is not available at this juncture - we may at least regard these effects as more than working hypotheses.

We are unable, from the data, to estimate the impact of the differences between regulatory regimes on the quality of services provided for consumers in detail, but there have been no apparent signs of market breakdown in those member states which we have shown to be less regulated. There is thus no basis for questioning the high quality and essential values of existing professional services, *regardless* of the presence of high or low levels of regulation.

Nevertheless, assuming a reasonable homogeneity of quality in the services we have studied and recent trends towards liberalisation notwithstanding, the available empirical evidence points in the direction of regulatory induced suboptimal outcomes from the point of view of the whole economy (and from the viewpoint of consumers in particular) being present to varying degrees in legal, accounting, technical and pharmacy fields in many member states of the European Union, particularly in those countries with restrictively regulated professional services.

We are led by this study to the overall conclusion that the lower regulation strategies which work in one Member State might be made to work in another, without decreasing the quality of professional services, and for the ultimate benefit of the consumer.

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