



EUROPEAN COMPANY LAW: The way forward

Services and company law

The perspective from Spain: the experience of the Law of Professional Companies

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I. Legal form requirements: reasons and effects

- Legal form requirements may be necessary to ensure consumer protection.
- But they also bear costs: rigidities and lost opportunities.
- A proportionate approach is to focus on:
 - **Transparency** for the consumer on who is responsible for providing the service.
 - **Simple rules** on professional liability when the service is provided through/by a legal person.

II. The Spanish experience

- The Law on Professional Companies (2007). Two different options:
 - Professional company: a “suit” for specific purposes.
 - “No professional company”: transparency and simple rules.
- Voluntary approach. The company chooses how to define itself. P.C:
 - Exercises the professional activity directly, “by itself”.
 - Acts as an intermediary between the professional and the client.
- In both cases: free to chose legal form: limited liability company, public limited company, legal partnership, cooperative...



II. The Spanish experience

Professional companies: main features 1

- P.C. only for regulated profession with compulsory membership of a professional organisation (“colegio”).
- Peculiarities:
 - Denomination: must include “professional”.
 - Exclusive corporate purpose: exercise of professional activities, one or many (if they are compatible).
 - Shareholding: property and control by a majority of professionals (50+%). CEO: professional.
 - Registry: compulsory in the “colegio”.

II. The Spanish experience

Professional companies: main features 2

- Key factor: **liability**. The company is the holder of rights and obligations of professional activity, but:
 - Individual professional remains liable for the acts in which he has taken part.
 - Both are responsible for debts arising from strictly professional acts.
 - Both the professional and the company are subject to the ethics' code of the “colegio”.
 - Breaking the code of the “colegio” could mean expulsion of the company.
 - Suspended professionals can not act as professionals in the company.
 - **Compulsory insurance** for the company.
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II. The Spanish experience

“No Professional Companies”: main features

- Many other ways of providing professional services “through” a legal person:
 - Partnerships to share resources (“Sociedades de medios”).
 - Intermediary partnerships/companies (“Sociedades de intermediación”): relation with the client is “through” the company.
- In all cases: extension of the liability regime to all forms of collective exercise of a regulated profession:
 - Whenever there is “common denomination” (invoices, documents...)
 - Even when there is no legal form of any kind (partnership or sheer collective practice).
- Both the company and the professional are liable.
- Restrictions to practice by/through legal persons only by law, not by professional rules.

II. The Spanish experience

- Real experience: between 2008 and 2010, 6.278 professional companies were created in Spain.

	2008	2009	2010	Total
Professional public limited co.	3	0	1	4
Professional limited liability co.	2.181	1.566	1.097	4.844
Professional “civil” co.	836	422	151	1.409
Limited “Nueva empresa” (new co.)	2	3	4	9
Professional collective co.	0	0	2	2
Professional cooperative	2	3	1	6
Professional limited labour co.	1	3	0	4

Source: Mercantile Registry.



III. Some conclusions

- Limiting the exercise of regulated professions to natural persons is disproportionate and worse: unworkable.
- Synergies in multiprofessional service companies are good for consumers. Size matters (positively).
- There are alternatives to guarantee transparency and high levels of protection for consumers (full liability of the individual professional).
- The Spanish experience has been real and positive: flexibility allows different forms of professional practice through legal persons.



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Thank you for your attention

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