



**DG Internal Market and Services**

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*Study to provide an Inventory  
of Reserves of Activities linked  
to professional qualifications  
requirements in 13 EU  
Member States & assessing  
their economic impact*

Final Report

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Centre for

**Strategy & Evaluation  
Services**

P O Box 159  
Sevenoaks  
Kent TN14 5WT  
United Kingdom  
[www.cses.co.uk](http://www.cses.co.uk)

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# Introduction

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## 1. Introduction

This document sets out the final report in respect of the study to ‘Provide an inventory of existing reserves of activities linked to professional qualifications requirements in 13 EU Member States, and assessing their economic impact’. The study was carried out by the Centre for Strategy & Evaluation Services (CSES) for the European Commission’s DG Internal Market and Services (DG MARKT) . The quantitative work for the economic assessment was supported by the Institute for Advanced Studies (IHS), Vienna.

### 1.1 Study aims and definitions

#### 1.1.1 Study aims

The aims of this study are to:

- Provide a **legal inventory** of reserves of activities linked to professional qualifications in 3 sectors (**construction, business services, tourism**) and 13 EU Member States;
- Provide an **assessment of the economic impacts** of reserves of activities linked to the possession of specific professional qualifications in the above sectors.

There are currently about 800 different regulated professions in the European Union (EU) that have been reserved to individual professionals and to service providers holding specific qualifications.

The reserve of activities to holders of a specific professional qualification has been frequently mentioned as a barrier to the effective functioning of the Single Market in the provision of cross-border services, notably between Member States in which professions are, and are not, regulated. Indeed, many service activities are regulated in only a few Member States, and some are regulated in only a single Member State.

The Professional Qualifications Directive (2005/36/EC) enables professionals willing to establish or provide services in another Member State to ask for the recognition of their professional qualifications. However, in practice, the presence of a reserve of activities linked to a specific qualification can constitute an obstacle to the free movement of professionals in instances in which a professional moves from a Member State in which the profession is not regulated to another in which it is regulated. Examples in this regard are provided in the report.

Generally, different reasons of general interest justify the reserves of activities to particular professions:

- **Consumer protection** – ensuring high quality of services / preventing low quality professionals from providing services. Reserves of activities are also used in overcoming information asymmetries (i.e. some professional services require a high level of technical knowledge and consumers may find it difficult to judge the quality of services being provided).
- **Public good** – some sectors or services may be seen as important for the national interest with an attendant need to ensure high standards of service provision. Also, the protection of the independence of the exercise of a given activity.
- **Health and safety**– ensuring occupational health and safety for workers and that service recipients are adequately protected (including risks to third parties).

The reservation of a particular task or service activity to a regulated profession should be justified by an overriding reason of general interest and be proportionate to that objective.

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It should be stressed however that reserves of activities are only one aspect of market access barriers. Examples of wider market entry restrictions are:

- Rules on the length of practice – i.e. specifying a minimum number of years’ professional experience;
- Restrictions on the total number of educational or training places available;
- Requirements in order to obtain certification or licensing, such as a compulsory apprenticeship or a minimum period of work experience.
- Limitative and quantitative restrictions on the number of new market entrants per annum.
- Market conducts regulation (including business structure, inter-professional co-operation).

In its conclusions from the 10<sup>th</sup> of March 2011, the Competitiveness Council recognised that unjustified or disproportionate requirements reserving access to certain service activities to service providers holding particular qualifications can constitute a major barrier to the effective functioning of the Single Market and welcomed the Commission’s intention to further assess this issue.

## 1.1.2 Definitions

A **“regulated profession”** is defined in the Professional Qualifications Directive 2005/36/EC as a “professional activity or group of professional activities, access to which, the pursuit of which, or one of the modes of pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of specific professional qualifications” (c.f. Article 3-1 a)).

The mode of pursuit of a regulated profession also covers situations in which the **use of a professional title is limited by legislative or regulatory provisions to holders of a specific professional qualification** (as specified in Article 3(2) of the Directive). This states that “a profession practised by the members of an association or organisation listed in Annex I [of the Directive] shall be treated as a regulated profession. The purpose of the associations or organisations referred to is to promote and maintain a high standard in the professional field concerned. To that end they are recognised in a special form by a Member State and award evidence of formal qualifications to their members, ensure that their members respect the rules of professional conduct which they prescribe, and confer on them the right to use a title or designatory letters or to benefit from a status corresponding to those formal qualifications”.

It is also important to provide a definition of **“professional qualifications”**, as per Articles 3 (1) b Directive 2005/36/EC. Art 3 (1b) states that a professional qualification is “attested by evidence of formal qualifications, an attestation of competence referred to in Article 11, point (a) (i) and/or professional experience. Art 3(1c) states that (c) ‘evidence of formal qualifications’: diplomas, certificates and other evidence issued by an authority in a Member State designated pursuant to legislative, regulatory or administrative provisions of that Member State and certifying successful completion of professional training obtained mainly in the Community’.

A **“reserve of activities”** has been defined for the purposes of this study as: ***‘any requirement reserving the exercise of a service activity to the holders of a specific professional qualification’***. Holders of specific professional qualifications may have exclusive rights to offer specific services in the market of the Member State which has a reserve of activities.

The distinction between an **exclusive** and a **shared reserve of activities** conferring the right to provide services should also be noted. For the purpose of this study, a **reserve of activities** has been considered as exclusive reserve of activities the case when only a professional holder of specific professional

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qualifications can carry out a particular service activity while a shared reserve can be defined as a situation in which two or more different professions have a shared right to provide a given task or activity<sup>1</sup>.

## 1.2 Study scope

The aim of the study is to provide an inventory of current reserves of activities linked to professional qualifications across 13 EU Member States and in three sectors: **business services, construction and tourism**. The tender specifications provided an indicative breakdown of the professions within the three sectors and sub-sectors to be covered through the study, including the relevant NACE industrial code classifications (see Appendix D). A number of wider professions were defined as being within scope under the 'other sectors' heading, such as biotechnologist, economist, geologist, vehicle hire and mass media and communications specialist. An overview of the sectors and main NACE classifications is provided below:

1. **Construction:** sections F and L of the NACE classification (Section F – "*Construction*"; Section L – "*Real estate activities*"). Examples of professions are: architect, civil engineer, surveyor, mason/bricklayer, joiner/carpenter, electrician and real estate agent.
2. **Business services:** sections M and N of the NACE classification (Section M - "*Professional, scientific and technical activities*"; Section N "*Administrative and support service activities*"). Examples of professions to be considered in this sector are accountant, lawyer, biotechnologist, patent agent, photographer, translator/interpreter and employment officer.
3. **Tourism:** section N of the NACE classification, division 79. Professions within this sector include: travel agent, tour operator, tourist guide, tour manager.

The study also covers an inventory of repeals of reserves of activities which have taken into account these 3 economic sectors. While the legal inventory sets out the current situation in respect of reserves of activities, the analysis of repeals of previous legislation that has either removed or modernised reserves of activities within national legislation covers approximately the previous 10 years (some flexibility was adopted when especially interesting examples were identified).

The **geographic scope** of the study covers a sample of 13 EU Member States selected by the Commission in the tender specifications: the Czech Republic, Denmark, Finland, France, Germany, Greece, Italy, the Netherlands, Poland, Portugal, Slovenia, Spain, and the United Kingdom.

## 1.3 Policy background – completion of a single market in services

Wider EU policy developments for the completion of an internal market in services form the backdrop to this study. 2012 marks the 20th anniversary of the single market. In November 2010, the Commission adopted a Communication: "*Towards a Single Market Act – for a highly competitive social market economy*"<sup>2</sup> which identified 50 proposals to help to complete the single market.

The Communication points out that many professionals still face lengthy and cumbersome procedures before having their qualifications recognised by national competent authorities. Indeed, in 2010, problems relating to the cross-border recognition of professional qualifications accounted for 16% of the total

<sup>1</sup> Examples include: (i) tax advice, which in some EU countries is a shared task between lawyers and accountants and (ii) supervising and monitoring the construction of buildings, a shared reserve between engineers and architects in some EU countries.

<sup>2</sup>Commission Communication: Towards a Single Market Act for a highly competitive social market economy: 50 proposals for improving our work, business and exchanges with one another.

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caseload of the SOLVIT Network, an EU-wide Alternative Dispute Resolution (ADR) mechanism for resolving problems relating to the practical application of EU law without recourse to legal action<sup>3</sup>.

Following these initial 50 proposals, the Commission adopted a follow-up Communication on 13 April 2011 a *Single Market Act: Twelve levers to boost growth and strengthen citizen's confidence in the Single Market*<sup>4</sup>. The twelve priorities were selected from among 50 proposals initially put forward on the basis of contributions received through a public consultation and during public debates. The Commission proposes that the EU should adopt a key action for each lever by the end of 2012.

The Commission will present the necessary legislative proposals for the implementation of those key actions, so that the Parliament and Council can respond to the invitation from the European Council to adopt a series of priority measures to re-launch the Single Market by the end of 2012/2013.

The aim of the measures outlined in the Single Market Act is to provide a coherent political response to gaps in the Single Market by presenting a model for sustainable, smart and inclusive growth in the framework of the Europe 2020 Strategy. One of the twelve priority initiatives identified, Lever 2, is concerned with promoting the mobility for EU citizens. Part of this relates to "reviewing the scope of regulated professions". In addition, Lever 5, which concerns services, mentions the need to "carry out further assessments on reserved activities".

The freedom for a person or business entity to legally establish or to provide services in another EU Member State other than the one in which they are first established are two fundamental freedoms of the internal market. The services market is a critical part of the EU's economy, accounting for approximately 70% of EU GDP and a major share of employment. Strengthening the competitiveness of services is therefore critical for achieving the Europe2020 strategy objective of promoting smart and inclusive growth.

## 1.3.1 The Professional Qualifications Directive

The **Professional Qualifications Directive ("PQD")**<sup>5</sup> (Directive 2005/36/EC) was adopted in 2005 and provides a framework to facilitate the mutual recognition of professional qualifications. The Directive defines a set of rules for professionals wishing to establish or to provide services in another Member State where a particular profession is regulated. The aim of the Directive is to facilitate the mobility of professionals through the system set up for the recognition of professional qualifications.

Under the PQD, a professional must send an application to the appropriate Competent Authority in order to obtain recognition of their professional qualifications. There is a distinction between applications for permanent establishment and temporary mobility, which is allowed subject to a prior declaration made on an annual basis (or subject to a prior check of qualifications for professions with health and safety implications).

Under Chapter III of Title III of the Directive, some professions, notably some health professions (doctors, nurses, midwives and pharmacists), veterinaries and architects benefit from the automatic recognition of professional qualifications under the PQD. In the craft, commerce or industry sector, professional experience may qualify for automatic recognition in another EU country. Other professions fall within the scope of the Directive's general system for the recognition of qualifications and evidence of training which are set out under Chapter I of Title III of Directive 2005/36/EC. This relates to the

<sup>3</sup> SOLVIT is an ADR mechanism for handling problems with a cross-border element that are due to bad application of EU law by public authorities within the EU Member States. Although there is data on the topic of SOLVIT cases, information on the circumstances surrounding around these cases (i.e. why the professional qualifications were not recognised) is not available.

<sup>4</sup> Single Market Act "Twelve levers to boost growth and strengthen confidence "Working together to create new growth", COM(2011) 206/4

<sup>5</sup> Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, OJ L 255, 30/09/2005, p.22-142

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purposes of establishment in the host country. Professional qualifications are grouped under five levels so that they can be compared (c.f. Article 11).

Qualifications are recognised if an individual professional's level of qualification is at least equivalent to the level immediately below that required in the host country. Professionals qualified in countries that do not regulate the profession have to attest two years of professional experience or he/she has followed a regulated education or training. In case of substantial differences between the qualification of an applicant and the qualification required in the host country, the host country may impose compensation measures, i.e. an adaptation period of up to three years or an aptitude test. If the host country requires applicants to comply with such compensation measures, it must take into account their professional experience, and they may in principle choose between an adaptation period and an aptitude test. Professionals wishing to provide services in another EU country on a temporary basis<sup>6</sup> may be requested by national law to provide a prior annual declaration to the relevant Competent Authority before delivering their services.

This study is not concerned with assessing the effectiveness of the implementation of the Professional Qualifications Directive, since this has been subject to a separate evaluation<sup>7</sup>. However, barriers to the free movement of professionals linked to reserves of activities may arise in the case of professionals moving from a Member State in which a given profession is non-regulated to one in which it is regulated. Barriers to mobility are therefore considered in the report where appropriate.

Improving the recognition of professional qualifications will become more important as demand for high skilled and well-qualified EU citizens is expected to rise. In this context, the flagship initiative "*An Agenda for new skills and jobs*"<sup>8</sup> in the Europe2020 strategy launched by the Commission in November 2010 sets out actions to upgrade skills in line with labour market needs. The importance of free movement in the area of skilled professionals is especially important in the context of demographic ageing.

The Green Paper issued by the Commission on 22nd June 2011 on *Modernising the Professional Qualifications Directive*<sup>9</sup> calls for a review of the scope of regulated professions. It notes that '*while Member States are free to define qualifications requirements for access to certain professions as an appropriate tool to achieve policy objectives in relation to a given economic activity, e.g. the need to ensure its security or safety, qualifications requirements may be disproportionate or unnecessary [...] and this could lead to barriers to the freedom of movement of EU citizens*'.

A European Parliament resolution<sup>10</sup> of 15 November 2011 on the implementation of the Professional Qualifications Directive (2005/36/EC) calls for an examination and reduction in the number of regulated professions. Point 38 highlights the high number of regulated professions in the European Union and calls on the Member States to reconsider the justification for the classification of certain professions, in order to ascertain whether formal qualifications and occupations correspond to the same skills and qualifications in all the Member States; considers that reducing the total number of regulated professions in the EU would enhance mobility. Point 39 argues that the most effective way of making free movement of professionals possible would be to reduce the number of regulated professions in the EU; calls on the Commission to include in a revised directive a mechanism whereby Member States can check their regulatory provisions.

<sup>6</sup> Title II of Directive 2005/36/EC governs the recognition of professional qualifications in the context of a temporary move to the territory of another EU country. The temporary and occasional nature of the activities of a self-employed or employed person is assessed on a case-by-case basis.

<sup>7</sup> Evaluation Report: [http://ec.europa.eu/internal\\_market/qualifications/docs/news/20110706-evaluation-directive-200536ec\\_en.pdf](http://ec.europa.eu/internal_market/qualifications/docs/news/20110706-evaluation-directive-200536ec_en.pdf)

<sup>8</sup> Communication from the Commission "An Agenda for new skills and jobs: A European contribution towards full employment", <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0682:EN:NOT>

<sup>9</sup> COM(2011) 367 final, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0367:FIN:en:PDF>

<sup>10</sup> EP Resolution - 2011/2024(INI),)

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On 19 December 2011 the Commission presented a legislative proposal to modernise the Directive<sup>11</sup>. This proposal includes a provision on the transparency and mutual evaluation of regulated professions in Member States.

## 1.3.2 The Services Directive

The **Services Directive**<sup>12</sup> was adopted at the end of 2006 with the aim of facilitating the free movement of services in the services sector within the Internal Market and modernising the legal framework in respect of the provision of service activities. The Directive concerns activities which account for 40% of EU27 GDP and a high proportion of total employment.

The objective of the Services Directive is to unlock the full economic and job-creation potential of the EU's internal market in services, which has been estimated as potentially adding up to an additional 0.6-1.5% of EU GDP by removing unjustified and disproportionate barriers. As such, it forms an important part of the Commission's programme for regulatory simplification. The Services Directive was required to be transposed into national legislation by the end of 2009.

Service providers can provide services on either a temporary or a permanent basis in another EU Member State.

- **Establishment** means the actual pursuit of an economic activity by a service provider, as referred to in Article 49 of the FEU Treaty, for an indefinite period and through a stable infrastructure from where the business of providing services is actually carried out.
- **Free provision of services** is the exercise of a service activity in a Member State on a temporary basis.

For operators providing cross-border services into another Member State without establishing there permanently, the Directive applies the 'freedom to provide services principle', according to which a host Member State can apply its own rules to an incoming service provider only if they are non-discriminatory, justified and proportionate in the light of public order, public security, public health and the protection of environment.

The Directive's full and effective implementation should remove red tape and significantly facilitate the establishment of service providers and the cross-border provision of services into other EU countries. The Directive's implementation has required Member States to carry out a wide-ranging review of all legislation relating to services and to adopt legislative changes where appropriate. The Services Directive applies to a wide range of economic activities (including sectors such as retail, construction, tourism, most regulated professions and business services)<sup>13</sup>.

The mutual evaluation process foreseen in the Directive has permitted the exchange of information and experience between Member States through a "peer review" approach. Through these, a number of outstanding difficulties have been identified in the completion of the internal market in services such as

<sup>11</sup> See COM(2011) 883 final, Directive amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation [...] on administrative cooperation through the Internal Market Information System (see notably Article 59), available on

[http://ec.europa.eu/internal\\_market/qualifications/docs/policy\\_developments/modernising/COM2011\\_883\\_en.pdf](http://ec.europa.eu/internal_market/qualifications/docs/policy_developments/modernising/COM2011_883_en.pdf)

<sup>12</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on Services in the Internal Market, OJ L376 of 27.12.2006, p.36

<sup>13</sup> Several services activities are explicitly excluded from its scope of application, notably financial services, electronic communications networks, transport services, health services, audiovisual services, gambling, certain social services, notaries and bailiffs.



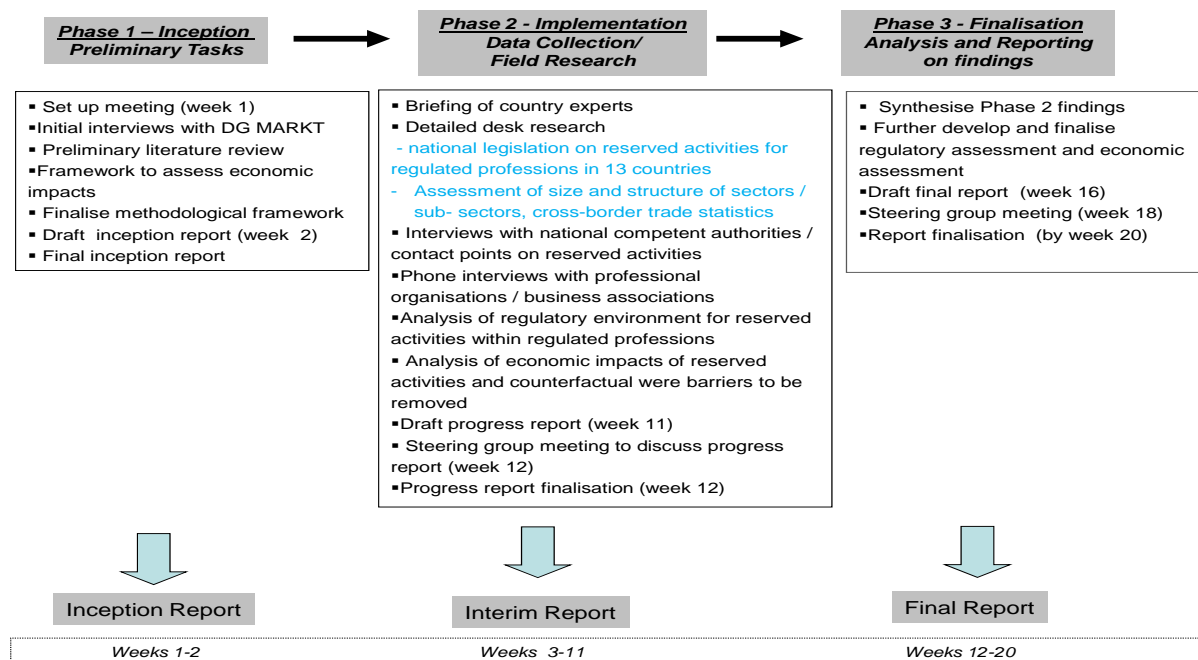
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the usage by many Member States of the possibility to reserve certain service activities within regulated professions for professionals holding a specific professional qualification.

## 1.4 Methodological approach - overview

The work was carried out over a 20 week period from May – November 2011 over three phases, as shown in the methodological diagram below:



The detailed methodology was set out in the inception report. An abbreviated version is provided in this report to explain how the research has been carried out. The work was divided into three main phases, which involved a series of tasks, as summarised below:

- **Phase 1 – Preparatory tasks:** a set up meeting with Commission officials, the finalisation of the methodology and preparation of research tools. Inception Report (Week 2).
- **Phase 2 – Fieldwork:** detailed review of legal information on regulated professions and sectoral and sub-sectoral statistics, interview programme with Commission officials and phone interviews with national coordinators responsible for the mutual recognition of professional qualifications, Competent Authorities for regulated professions and professional associations, the preparation of a progress report (Week 11).
- **Phase 3 – Analysis and reporting:** Synthesis of the findings from the legal inventory and economic analysis across 13 countries and 3 sectors. Production of draft final report (Week 16) and report finalisation (Week 20).

Section 2.1 sets out the methodology adopted for the development of the legal inventory and quality assurance (Task 1). In Section 3.1, an overview is provided as to how the economic analysis was undertaken (Task 2). This addresses both the methodology adopted and sets out a detailed and robust analytical framework which outlines the main hypotheses relating to how the presence or absence of reserves of activities might be expected to have economic impacts. These hypotheses are then tested in order to establish the extent to which key propositions stand up to quantitative and qualitative analysis.

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## 1.5 Key study challenges

The study has presented a number of challenges in completing an accurate picture of the position on reserves of activities within regulated professions. The following difficulties and constraints can be noted:

- **Legislation on regulated professions may lack clarity as to whether there is a reserve of activities for a particular professional.** Often, the reservation of activities may only be implicit in that there is a specific qualification requirement but no explicit mention that the activity is exclusively reserved to a particular professional in relevant legislation. Given the need to obtain specific formal qualifications, this has been interpreted for the purposes of this study as a *de facto* reserve of activities.
- **It was sometimes difficult to assess whether specific tasks are reserved, especially in some Member States in the sample e.g. Greece, Portugal and Spain.** The clarity of legislation on reserves of activities was found to vary considerably between countries.
- **Moreover, where reserves are clearly identified in legislation, it is not always transparent whether there is an exclusive or a shared reserve<sup>14</sup> of activities between different professionals holding particular qualifications.** This is evidenced by the fact that there have been frequent legal disputes in relation to the scope and delineation of reserves of activities. Examples of legal problems encountered are provided later in the report (e.g. see Section 2.4.7 which provides illustrations of problems identified in the construction sector through the research for the legal inventory).
- **Even in instances when a reserve of activities (and/ or a reserved title) is explicitly mentioned in legislation on regulated professions, the description often remains at a general level.** This can lead to ambiguities with regard to the scope of reserved activities and the specific tasks that can be carried out by particular professionals<sup>15</sup>.
- **In some southern EU countries, there have been contradictions in court rulings as to whether a given activity is subject to an exclusive reserve of activities.** This can cause problems in establishing the precise scope and delineation of reserves of activities, especially within some sectors, such as engineering.
- **In some instances, national legislation on regulated professions provides insufficient detail about professional qualifications requirements – or indeed, no detail at all.** Often, qualifications requirements are only mentioned at a general level and there is a need to examine other legislation, for example, on the system of national vocational training, and then to obtain further documentation to identify specific qualifications requirements.
- **There are difficulties in quantifying the number of reserves of activities and tasks accurately.** In some instances, the position is clear, while in other professions, there may be multiple reserved tasks, some exclusive, and others shared between two or more other professionals. Especially in the architecture and engineering sectors, for example, it is common for professionals to have both exclusive and shared reserves of activities in southern EU countries.
- **There are differences between countries in the definition of what constitutes a single regulated profession.** For example, in some countries, *stagiaire* or trainee levels count as a specific regulated profession.

<sup>14</sup> The 2003 study for DG COMP on the Economic impact of regulation in the field of liberal professions also found that ‘the question of “shared exclusive tasks” is a complicated one and a potential source of error. In many cases, not even the professional association has exact knowledge on this point’.

<sup>15</sup> An example in this regard is the engineering sector in Italy and Spain, where there have been frequent legal disputes with regard to the delimitation of reserved tasks between different branches of engineering.

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- **In some countries in the sample, (e.g. Greece, Portugal and Spain), there is a current state of flux in respect of the legal framework on reserves of activities within regulated professions<sup>16</sup>.** CSES has mapped the current position, but there is likely to be imminent change as a result of ongoing and proposed future legislative reforms of regulated professions in the above countries.

With regard to the **lack of clarity in national legislation as to the scope and delimitations of reserves of activities**, this especially affects **Greece, Italy and Spain**, but sometimes other countries also. For example, the Ministry of Economy in **Spain** noted during an interview that legislation on reserves of activities is *'often confusing, dates back a considerable period of time and is described only in general terms, without a specific explanation as to which activities are reserved, and to which professionals'*. Ambiguities in national legislation reflect the historical origins of many reserves of activities.

In some EU countries, the scope of reserves of activities was originally derived from the content of university degree courses and related qualifications. Since course content will have been superseded by modern course syllabuses and a proliferation of courses and specialisations, it is not always possible to establish a clear picture as to how specific reserved tasks relate to particular professional qualifications.

This is true for example in the Spanish engineering sector, where it was difficult to identify relevant legislation across all 17 branches of engineering<sup>17</sup>. There was a lack of clear delineation as to which categories of engineers are able to perform particular tasks, resulting in overlap and legal uncertainty, evidenced by the high number of legal disputes related to which type of engineer(s) can perform specific activities in construction projects. It is consequently difficult to know whether there is an exclusive or a shared reserve of activities in some areas of engineering. For example, national legislation may state that a particular document in building construction needs to be signed off by a competent technical expert, but does not clarify what constitutes such an expert, the professional qualifications needed to do so, and which type of engineer(s) can sign off the document.

Among the **difficulties in accurately quantifying the numbers of reserves of activities** were that it is sometimes complicated to classify how many professions share a particular reserved task. For example, in Greece, some reserved activities performed by engineers are also shared with architects for buildings over a certain size and complexity. Furthermore, for very small buildings and structures, the reservation is shared between architects and surveyors and industrial experts.

A further challenge in counting the numbers of reserves was in instances when, within a single regulated profession, a number of different sub-professions were each subject to a separate exclusive reserve. An example in this regard is that of geologist in **Poland**. While there are 3 different regulated professions pertaining to geology in the national database, there are ten different types of geologists in total, each with an exclusive reserve of activities linked to a specific qualification requirement.

Another challenge in quantification is the need to take into account the fact that **reserves of activities** linked to specific qualification requirements do not occur only at the national level, but also at **regional (and even local)** level. In the case of EU Member States such as **Italy and Spain** that have a substantial degree of regional autonomy, especially in the tourism sector, there are area-specific local and regional qualification requirements in tourist guiding services. In **Italy**, there are four different tourism professions

<sup>16</sup> Greece and Portugal have recently taken steps or are about to take steps to liberalise reserves of activities within regulated professions as part of structural reforms within the services sector. However, the implementation of the legislation will not come into effect until 2012 and there is a lack of information about which professions will be deregulated and how. The legislation sets out a general framework rather than detailed implementation rules.

<sup>17</sup> Only some of the 17 areas of engineering are within the scope of this study, specifically those relating to the construction sector. Nevertheless, it is important to look at the wider picture in terms of over-market segmentation within an individual profession.

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at national level: travel agent, tourist guide, interpreter-guide and mountain guide, all of which are subject to specific regional qualification requirements.

The above analysis illustrates some of the difficulties in examining the current position in respect of reserves of activities across different professions. In summary, the legal position is not always clear, and there are many technical complexities as to how to count reserves of activities, the basis for the development of the index of reserves of activities.

# Legal Inventory

## 2

In this section, the summary findings from the legal inventory are outlined. The full inventory is presented as a separately bound document (Appendix H).

A review of the aims and approach adopted to the development of the legal inventory is first provided (Section 2.1). An overview of the main findings at country level and by sector/ sub-sector and by profession is then set out (Section 2.2). The detailed findings for each of the three sectors are then considered (Sections 2.3 – 2.5). Wider approaches to regulating the market (other than through the use of reserves of activities) are considered (Section 2.6). Lastly, Section 2.7 provides a review of previous repeals of reserves of activities.

## 2.1 Legal inventory – aims, structure and approach

### 2.1.1 Aim of legal inventory

The purpose of the legal inventory<sup>18</sup> is to set out the current position on the presence of reserves of activities within regulated professions linked to the exclusive (or shared) right for professionals to provide particular types of services. The inventory also identifies the qualification requirements associated with these reserves of activities (where information was available).

A two stage process was adopted for the regulatory mapping to inform the development of the legal inventory of reserves of activities:

- 1 **Identify all the regulated professions within study scope across the three sectors under review** – business services, construction and tourism.
- 2 **Identify which of these regulated professions are subject to a reserve of activities** linked to the possession of specific professional qualifications. Then in the case of each reserve, (i) identify whether these reserves are exclusive or shared and (ii) specify which activities and tasks are reserved.

### 2.1.2 Structure of legal inventory

The legal inventory consists of two parts:

- A **detailed mapping** of the regulated professions within scope (business services, construction, tourism) in 13 Member States, organised by sector/ sub-sector. The tables provide information about each regulated profession, such as extracts from relevant legislation, whether particular tasks or activities are reserved (exclusive, shared). Information on professional qualifications requirements required, the Competent Authority responsible, and on protected titles is also provided;
- A **summary overview** of the legal position in respect of reserves of activities for the professions within study scope.

The summary of the legal position in respect of reserves of activities was developed in an Excel spreadsheet. This was used as the basis for the preparation of quantitative sectoral indexes of reserves of activities through which performance at the country level could be benchmarked at the sub-sector level across a combination of professions. In Appendix E, drawing on the findings from the legal inventory, cross-comparative tables are provided that set out (i) whether the professions within scope are a regulated profession or unregulated across the 13 EU Member States within scope and (ii) whether there was an exclusive or a shared reserve of activities within these different regulated professions.

<sup>18</sup> The legal inventory corresponds to Task 1 in the tender specifications.

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### 2.1.3 Approach to development of legal inventory - Task 1

With regard to the methodological approach to developing the legal inventory (Task 1), the mapping exercise was initially desk research driven. The main information sources were the database of regulated professions overseen by DG MARKT at EU level, and the websites of the National Contact Points<sup>19</sup> on the Recognition of Professional Qualifications Directive and Competent Authorities for the regulated professions within scope.

The first step was to produce a complete list of regulated professions across the three sectors within study scope. The next step was to review available legislation to establish whether the regulated professions had an exclusive or shared reserve of activities associated with them. Once draft summary tables of reserves of activities within regulated professions had been developed, these were then sent to the National Coordinators<sup>20</sup> for review. The National Coordinators were then interviewed and asked to provide feedback on the results of the legal mapping exercise. Contact was then established with national Competent Authorities responsible for specific regulated professions in order to obtain feedback on the factual accuracy of the information about reserves of activities (and professional titles) in the legal inventory). These are commonly national Ministries, professional associations or Chambers of Commerce with a sectoral orientation).

## 2.2 Legal inventory – overview of key findings

### 2.2.1 Overview - reserves of activities within regulated professions by country

An overview is provided in the following table of the situation across the 13 EU Member States in the sample in respect of the number of regulated professions (RPs) and exclusive and shared reserves of activities across the three sectors. The number of reserved titles is also summarised:

**Table 2.1: Legal inventory - Number of regulated professions and reserves of activities (13 countries)**

	MS	No. of regulated professions (total)	No. of regulated professions (3 sectors: construction, BS, tourism)	No. of exclusive reserved activities (3 sectors):	No. of shared reserves of activities (3 sectors):	Total no. of reserves (exclusive and shared) (3 sectors)	No. of reserved professional titles (under Directive 2005/36/EC (Art 3(2)) (3 sectors)
1	CZ	385	28	20	13	33	0
2	DE	152	55	24	39	63	0
3	DK	117	30	12	3	15	7
4	EL	167	22	18	34	52	0
5	ES	192	39	12	49	61	0
6	FI	74	16	6	0	6	7
7	FR	82	22	25	1	26	0
8	IT	149	24	11	27	38	0
9	NL	139	27	7	4	11	0
10	PL	321	27	17	22	39	0

<sup>19</sup> Article 57 of the Professional Qualifications Directive foresees that each Member State designate a contact point to provide information and assistance to citizens and contact points of other Member States. The list of contact points is available on: [http://ec.europa.eu/internal\\_market/qualifications/contact/national\\_contact\\_points\\_en.htm](http://ec.europa.eu/internal_market/qualifications/contact/national_contact_points_en.htm)

<sup>20</sup> Article 56 of the Professional Qualifications Directive foresees that each Member State designate a coordinator for the recognition of professional qualifications. Information on the Group of Coordinators is available on: [http://ec.europa.eu/internal\\_market/qualifications/policy\\_developments/group\\_of\\_coordinators\\_en.htm](http://ec.europa.eu/internal_market/qualifications/policy_developments/group_of_coordinators_en.htm)

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11	PT	132	28	13	55	71	0
12	SI	325	49	29	19	48	0
13	UK	187	43	3	18	21	23
	<b>Total (EU 13)</b>	<b>2101</b>	<b>410</b>	<b>197</b>	<b>284</b>	<b>481</b>	<b>37</b>
	<b>Median</b>	150.5	28.0	13.0	19.0	38.0	
	<b>Average</b>	175.1	31.5	15.2	21.8	37.2	

Source: CSES research. \* In the UK, according to the UK NCP, there are 102 regulated professions and a further 85 reserved professional titles (considered as "regulated professions" under Directive 2005/36/EC).

The estimate for the total number of regulated professions was made by CSES and our team of country experts as part of research conducted through this study. The source of the data estimate was commonly the national list of regulated professions accessible through the website of the National Contact Points<sup>21</sup>. In some countries, such as Germany and Greece, there was no list of regulated professions available online. In some instances, the Regulated Professions Database (managed by DG MARKT on the basis of the information provided by Member States) was used instead. There may occasionally be differences between the estimated number of regulated professions at national level and the number reported by the Member States in the Regulated professions database. Where possible, estimates from the national databases have been used to ensure that the most up to date data was used.

A number of important observations can be made from the legal analysis.

**It remains common in many EU Member States to reserve tasks to particular professionals holding a specific qualification, either through an exclusive or a shared reserve of activities.** Across the thirteen Member States in the sample, nine countries reserved activities relatively frequently, while four did so much more seldom (Denmark, Finland, the Netherlands, and the UK).

**There are wide variations in the total number of regulated professions across all sectors, reflecting different approaches to regulating professions across the 13 EU countries in the sample.** A high number of regulated professions were identified in the Czech Republic (385), Slovenia (325), Poland (321), Spain (192), Greece (167), and Italy (149). In contrast, there were only 67 regulated professions in Finland and 82 in France<sup>22</sup>.

**However, in some countries with a high number of regulated professions, such as Portugal, legislative reform has recently been instituted to reduce market entry barriers.** Further details are provided in Section 2.4 on repeals of legislation on reserves of activities.

**Across the three sectors under review, the number of regulated professions within scope also varied considerably.** In total, across the business services, construction and tourism sectors, there was a range from a high of 55 Regulated Professions in Germany to a low of only 9 in Finland.

**A total of 481 reserved activities were identified across the three sectors and the sample of 13 countries. With regard to the breakdown of this data between exclusive and shared reserves, there**

<sup>21</sup> Article 57 of the Professional Qualifications Directive foresees that each Member State designate a contact point to provide information and assistance to citizens and contact points of other Member States. The list of contact points is available on: [http://ec.europa.eu/internal\\_market/qualifications/contact/national\\_contact\\_points\\_en.htm](http://ec.europa.eu/internal_market/qualifications/contact/national_contact_points_en.htm)

<sup>22</sup> The total estimated number of Regulated Professions is not always consistent with the information provided in the EU level Regulated Professions Database managed by the Commission. This may be due to the fact that the EU database is prepared on the basis of information provided by the Member States, which might be incomplete or out of date in comparison with that available through national databases on regulated professions.

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were significantly more shared than exclusive reserves of activities (197 exclusive as opposed to 284 shared).

**There were clear differences in regulatory approach between the countries in the sample, with a greater emphasis on the use of exclusive reserves of activities in southern EU countries (Greece, Italy and Spain) and in the new member states (Czech Republic, Slovenia and Poland).**

**In contrast, countries such as Denmark, Finland, the Netherlands and the UK had low numbers of exclusive reserves. This can be attributed both to the fact that they have a greater tendency towards the use of reserved professional titles.**

**There were also wide variations in the number of reserves of activities shared between different professions across the country sample.** For example, in the engineering sector, Portugal and Spain had a high number of shared reserves, while in Finland and in France, there were no shared reserves at all and the Netherlands, only one instance.

**With regard to trends in the use of shared reserves of activities between countries, their usage was most common in Greece, Spain and the UK (the latter mainly in the legal sector).** In Poland, there were also a high number of shared reserves, but this should be seen in the context of a large number of RPs in total.

**The UK was the only country in the sample<sup>23</sup> that uses reserved titles as the primary mechanism for regulating professions (as recognised under Art 3(2) of Directive 2005/36/EC).** However, several instances were identified in other Member States of the use of reserved professional titles not linked to a reserve of activities (e.g. Denmark, Finland and the Netherlands).

**Caution is of course needed in adopting a purely quantitative approach to assessing the level of entry restrictiveness linked to reserves of activities.** For example, in some EU countries, a profession may have ten different exclusive reserves of activities, whereas in another country, the same profession may be divided into several sub-professions, each of which has a single reserve of activities. Qualitative considerations that influence the number of reserves of activities are therefore also considered in the analysis of the results of the legal mapping exercise by sector.

### 2.2.2 Sectoral findings – legal mapping

The sectoral findings from the legal inventory are now summarised, followed by a detailed presentation of the data across the sample:

**Among the regulated professions most commonly subject to an exclusive reserve of activities are: legal professionals, architects and engineers, and some areas of specialised construction activities (e.g. electricians, electrical engineers, gas installers) and tourist guides.**

**Professional services (which covers professions such as accountant, lawyer, architect and engineer – see table below) accounted for 68.5% of the total number of reserves of activities.** Other reserved tasks (31.5%) are divided between service activities such as vocational trades within specialised construction activities, security services and other professions.

<sup>23</sup> The approach to regulating professions through professional titles is common to the UK and Ireland only, but the latter is outside the study scope. In Denmark and Finland, a small number of instances of professional titles being used to regulate the profession were identified. As in the UK, there does not appear to be any compulsory requirement to use the services of the title holder. Professional titles were also identified in other EU countries in the sample, but these operate differently in that the title is secondary to the profession being regulated and subject to a reserve of activities.



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**Table 2.2: Reserves of activities within Professional Services among the 13 Member States covered by the study**

	Exclusive	Shared	Total
Accountancy	9	12	21
Audit	8	15	23
Legal Services	31	41	72
Architecture	9	72	81
Land Surveying	10	12	22
Engineering	18	94	112
<b>Total (prof. services)</b>	<b>85</b>	<b>246</b>	<b>331</b>
<b>Total no. of reserves</b>	<b>197</b>	<b>284</b>	<b>481</b>
<b>Professional services as proportion of total</b>	<b>42.5</b>	<b>86.9</b>	<b>68.5</b>

Source: own analysis

The highest number of **exclusive** reserves of activities were identified in legal services (31), followed by engineering (18), architecture (17), surveying (10), accountancy (9) and audit (8).

Engineering<sup>24</sup> accounted for the highest number of shared reserves of activities (94), followed by architecture (72) and then legal services (41). Accountancy and audit had a lower number of shared reserves (12 and 15 respectively).

The more detailed position is now reviewed in respect of reserves of activities in each of the three sectors within review – business services, construction and tourism.

### 2.3 Business Services

In this sub-section, the results of the analysis in respect of reserves of activities within the business services sector are set out. Among the professions addressed through this study in the business services sector and their respective NACE codes<sup>25</sup> are:

**Table 2.3: NACE Codes Rev 2 – Business Services**

<ul style="list-style-type: none"> <li>• <b>Accountancy services</b> - accountant, auditor and tax adviser (NACE code - 69)</li> <li>• <b>Legal services</b> – lawyer, legal adviser (NACE code - 69)</li> <li>• <b>Other services</b></li> <li>• <b>Real estate activities</b> - real estate agent (NACE code – Section L68)</li> <li>• <b>Other professional, scientific and technical activities</b> – technical designer, graphic designer, photographer and translator/interpreter (NACE code 74)</li> <li>• <b>Rental and leasing activities</b> – vehicle hire (NACE code 77)</li> <li>• <b>Employment activities</b> - employment officer (NACE code 78)</li> <li>• <b>Security and investigation activities</b> - security guard, security systems professional and private detective (NACE code 80).</li> </ul>
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<sup>24</sup> A high number of shared reserves of activities were identified in the engineering sector in Portugal and Spain.

<sup>25</sup> It should be noted that not all of these activities are necessarily classified in Eurostat data as being part of business services.

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### 2.3.1 Accountancy and related services

The overall position in respect of the number of reserves of activities by country for the professions of **accountant** and **tax advisor** is first provided:

**Table 2.4: The professions of accountant and tax advisor (EU13)**

	Exclusive	Shared	Total
CZ	0	1	1
DE	0	4	4
DK	0	0	0
EL	1	2	3
ES	0	0	0
FI	0	0	0
FR	0	1	1
IT	0	4	4
NL	3	0	3
PL	2	0	2
PT	1	0	1
SI	1	3	4
UK	0	0	0
<b>Total</b>	<b>8</b>	<b>15</b>	<b>23</b>

Overall, reserves of activities were identified across the **professions of accountant and tax advisor** in the accountancy services field, of which 8 were exclusive reserves of activities and a further 15 shared. Countries with the highest number of reserved tasks were **Germany (4), Italy (4), and Slovenia (4)**. This contrasts with the position in **Denmark, Finland, Spain** and the **UK** where there were no reserves of activities for these professions, and the **Czech Republic and France** in which only a single reserve of activities was identified.

A more detailed breakdown in respect of the presence of an exclusive or a shared reserve of activities across the different tasks identified in the accountancy profession is now examined. The table shows the aggregate position for the following professionals: **accountant, auditor and tax advisor**. The data on the profession of auditor is presented separately later in this sub-section.

**Table 2.5: Accountancy services – reserves of activities by task (EU13)**

Type of reserve	Non-statutory audit	Statutory audit	Accounting/bookkeeping	Insolvency practice	Tax advice	Representation before administrative agencies	Total
Exclusive	0	0	3	2	1	1	7
Shared	2	2	4	2	4	2	14
Total (exclusive and shared)	2	2	7	4	5	3	23

The most frequent reserves of activities were **accounting/ bookkeeping services** (seven reserves), **tax advice** (five reserves) and **representation before administrative agencies** (three reserves). Less commonly reserved tasks were **non-statutory audit** (two reserves). It should be noted that while information is presented separately on the profession of auditors that in a small number of instances other types of accounting professionals can also perform non-statutory and sometimes even statutory audit.

For example, in **Italy**, non-statutory audit can be performed by both a Certified Public Accountant (*Dottore Commercialista*) and also by an Accountant (*esperto contabile*). Indeed, the country research in **France** and **Italy** found that many accountants can also practice auditing as auditors. **Germany** was found to be unusual in that professions other than auditors are able to perform statutory audit. Specifically, a Business

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Controller (Wirtschaftsprüfer) has a shared reserve of activities with a Sworn Auditor (*Vereidigter Buchprüfer*) to perform audit services.

Among professionals with expertise in tax, a shared reserve of activities was identified in **Germany** (between a *Steuerberater / Tax Adviser* and a *Vereidigter Buchprüfer/ Sworn Auditor*) and an exclusive reserve of activities in **Poland** (Tax Adviser / *Doradca Podatkowy*) to provide representation on behalf of clients before administrative agencies.

*Accountants, book-keepers and tax advisers*

In **accountancy and book-keeping**, eight reserves of activities were identified of which three were exclusive and five were shared. There was a clear division in the sample between countries in which **accountants** do not have any reserved tasks (such as **Germany, Greece** and the **UK**) and those in which there is an exclusive reserve of activities to perform accountancy and bookkeeping services (e.g. **Portugal** and **France**, the latter only for services not being performed in-house). In **Italy**, there is a shared reserve of activities to carry out accountancy work between a Certified Public Accountant (*Dottore Commercialista*) and an accountant (*Esperto Contabile*). In **Poland**, while the profession of accountant does not confer any reserved tasks, bookkeeping services are a shared reserve open to three different professions: bookkeepers (*Usługowe Prowadzenie Ksiąg Rachunkowych*), tax advisers (*Doradca Podatkowy*) and auditors (*Audytorki*).

The regulatory position on the **provision of tax advice** varies between EU countries. In **France**, since the merger in 1992 between the professions of *avocat* and *conseils juridiques et fiscaux*, lawyers have had a monopoly in giving legal advice, including the provision of tax advice through an exclusive reserve of activities. French accountants are only legally able to provide such advice as an ancillary service. The profession of **tax adviser** is an exclusive reserve in the **Czech Republic**. In **Germany**, tax adviser is a shared reserve of activities (between four different professions, Attorney at law/ *Rechtsanwalt*, Tax advisers/ *Steuerberater*, Sworn Auditors/ *Vereidigter Buchprüfer* and Business Controllers (*Wirtschaftsprüfer*). In **Poland**, there is a dedicated profession of tax adviser (*Doradca Podatkowy*). However, tax advice can also be provided by auditors.

In the **UK**, both accountants and lawyers commonly provide tax advice to individuals and businesses, but this is not a reserved task. In **Italy**, both a Certified Public Accountant (*Dottore Commercialista*) and an accountant (*Esperto Contabile*) have a shared reserve of activities to carry out non-statutory audit.

Among the findings in relation to reserves of activities in the accountancy profession were that:

- There were a comparatively small number of reserved tasks in the accountancy field compared with other areas of professional services. Examples include the provision of insolvency services, bookkeeping and accountancy services and tax advice;
- Profession within the field of accountancy services operate largely in activity areas where there are no market access rules that restrict or prohibit the entry of other service providers;
- Indeed, in most countries in the sample, individuals who are not members of a professional body of accountants can also carry out most of the activities undertaken by professional accountants;

*Auditors*

Statutory audit has historically been a reserved task due to the need to ensure public confidence in the results of statutory audit exercises. Article 6 of the EU Auditing Directive (2006/43/EC)<sup>26</sup> sets out the

<sup>26</sup> Directive 2006/43/EC on statutory audit of annual accounts and consolidated accounts and amending Council Directives 78/660/EEC and 83/349/EEC. Statutory audit may be carried out only after having attained university

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educational qualification requirements for auditors while Article 7 addresses the need for an examination of professional competence. Moreover, there is also an upcoming EC legislative proposal on auditing to strengthen the independence rules.

Given the legislative framework mentioned above, audit was found to be subject to either an exclusive or a shared reserve of activities in all EU countries linked to a qualification requirement and competence test.

**Table 2.6: The profession of auditor (EU13)**

	Audit		
	Exclusive	Shared	Total
CZ	0	0	0
DE	0	2	2
DK	0	2	2
EL	0	4	4
ES	1	0	1
FI	2	0	2
FR	1	0	1
IT	1	0	1
NL	0	0	0
PL	2	2	4
PT	1	0	1
SI	0	2	2
UK	1	0	1
<b>Total</b>	<b>9</b>	<b>12</b>	<b>21</b>

An overview of the position in terms of reserves of activities for auditors is outlined below:

**Table 2.7: The audit profession – reserves of activities by task (EU13)**

Type of reserve	Non-statutory audit	Statutory audit	Accounting/bookkeeping	Insolvency practice	Tax advice	Total
Exclusive	0	9	0	0	0	9
Shared	0	9	1	0	2	12
Total (exclusive and shared)	0	18	1	0	2	21

An exclusive reserve of activities to carry out **statutory audit** were identified in ten EU Member States in the sample, while a shared reserve of activities was identified in a further three Member States: **Germany, Greece and Slovenia**. It can also be noted that in some EU Member States (e.g. **Germany, Poland**), auditors have a shared reserve of activities in wider fields, such as the provision of tax advice.

There are sometimes differences in the type of work that different kinds of auditors are able to carry out. In **Denmark**, for example, State Authorised Public Accountants (*Statsautoriseret revisor*) have a monopoly

entrance or equivalent level, then completed a course of theoretical instruction, undergone practical training and passed an examination of professional competence of university final or equivalent examination level.

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to audit publicly listed companies whereas Registered Public Accountants (*Registreret revisor*) are able to carry out audit work, but not to audit the accounts of companies listed on the stock exchange. In **Finland**, there are likewise two types of auditors, a Chartered Public Finance Auditor (*Julkisballinnon ja talouden tilintarkastaja*) able to carry out public sector audit work and a HTM or KHT auditor able to carry out audit services within companies.

In **Greece**, there are also two types of auditors, common auditors and chartered auditors. Public limited liability companies and private limited liability companies can be audited either by four common auditors (two regular and two alternate) or by two chartered auditors (one regular and one alternate). However, the law provides for specific categories of companies that must be audited by chartered auditors. In **Poland** there is a distinction between Internal Auditor (*Audytór Wewnętrzny*) and Auditor (*Audytór*). The first operates in the public administration sector and is not allowed to carry out auditing tasks in the private sector, whereas auditing qualifications linked to the second profession give the right to carry out auditing in the private sector only.

In the **UK**, accountants with the protected title of Chartered Certified Accountant do not have the right to carry out any reserved work. However, those having passed additional audit examinations overseen by a regulatory authority such as ACCA may perform audit services. Audit is a reserved task, through a shared reserve together with Registered Auditors (a protected title).

Conclusions in respect of reserves of activities within the auditing profession are that:

- Statutory audit has a high number of reserves of activities compared with the accountancy profession, but this reflects the requirements of Directive 2006/43/EC;
- Different types of auditors have been granted reserves of activities to carry out particular tasks, with a major distinction in most countries between the skills sets needed to carry out public and private sector auditing; and

In a limited number of countries (e.g. Germany, Poland), auditors have been granted a shared reserve of activities in wider fields. This was most common in respect of the provision of tax advice.

### 2.3.2 Legal professionals

The legal profession has traditionally been subject to heavy regulation in many EU countries. Especially in some areas, such as representing clients in court, an exclusive reserve of activities is common. Among the justifications for the use of reserves of activities within legal services are the independence of the legal profession and overcoming information asymmetries. The overall position in respect of reserves of activities by Member State across the professions falling within legal services is shown below:

**Table 2.8: The legal profession — reserves of activities by country (EU13)**

	Legal Services		
	Exclusive	Shared	Total
CZ	3	3	6
DE	4	1	5
DK	1	0	1
EL	6	0	6
ES	1	6	7
FI	1	0	1
FR	4	0	4
IT	1	4	5
NL	2	1	3
PL	0	8	8
PT	4	0	4
SI	4	0	4
UK	0	18	18
<b>Total</b>	<b>31</b>	<b>41</b>	<b>72</b>

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A total of 72 reserves of activities were identified within legal services, of which 31 were exclusive and 41 shared. Countries with the highest number of exclusive reserved tasks in the legal services field were **Greece (6)**, **France (4)**, **Germany (4)**, **Portugal (4)** and **Slovenia (4)**. Countries with the highest incidence of shared reserves between different professions were **Spain (6)**, **Poland (8)** and **the UK (18)**.

The high number of shared reserves in the **UK** is explained by the fact that there are different legal systems in each of the countries making up the UK (England & Wales, Scotland and Northern Ireland). The countries that came together to form the United Kingdom each retained aspects of their own legal systems. The UK is the only Member State in the EU with more than one legal system. It should be noted that some law applies throughout the whole of the UK; some applies in only one, two or three countries.

Accordingly, there are some differences in each of the countries within the UK in respect of legal-related regulated professions. The research found that while there is sometimes an equivalent in each country e.g. solicitors in England & Wales, Scotland and Northern Ireland, each with a separate regulatory body, the UK's national database of regulated professions does not always list separate professions for each country. Moreover, for some professions, such as patent attorney, there is a *de facto* UK-wide regulatory regime, rather than country-specific regulated professions. The Copyright Designs and Patents Act 1988 extends to the whole of the UK. Consequently, the effect of Section 121 of the Legal Services Act 2007 (extent) is to continue a UK legal order for Patent Attorneys<sup>27</sup>.

It is notable that within the sample, only the **UK** and **Poland** have no exclusive reserves of activities within legal services, rather reserves of activities are a shared reserve between different legal professionals.

In assessing the position on reserves of activities within the legal profession, the different traditions in the **evolution of Member States' legal systems** that have influenced which professionals are able to perform particular legal services needs to be taken into account. Examples of the range of approaches across the countries in the sample within the legal profession to the reservation of activities in the legal profession are now provided.

In some countries in the sample, those working in the legal profession have an exclusive reserve of activities to perform multiple reserved tasks. For example, in **Greece**, lawyers have six exclusive areas of reserved work, such as the provision of legal advice, representing clients in court and before administrative authorities, and tax advice. In the **Czech Republic**, lawyers have four exclusive reserves (legal advice, conveyancing, representing clients in court and before administrative authorities) and two shared reserves (tax advice and patent matters).

**Finland** was the only country in the sample in which lawyers do not have any reserved activities. This reflects a liberal regulatory approach to regulating professionals in general (architects for example are not subject to any reserve of activities either). Lawyers and advocates in **Finland** do not have any reserved activities, although there is a reserve for specialist areas (e.g. representing clients on patent matters).

Presently, this means that in principle there is no restriction on anybody in representing a client (or themselves) before a Court. However, a government committee established in 2009 proposed that non-lawyers appearing in court (the equivalent to paralegals in the UK) should have a licence granted by an independent state body. However, these licensees would be regulated and disciplined by the Finnish Bar and its code of conduct. The Finnish Ministry of Justice submitted a bill to parliament in 2011 that addresses professionals who provide legal assistance in court hearings that are not themselves registered as lawyers. While this will mean that the legal services sector in **Finland** will become more regulated in that non-lawyers appearing before a court will be subject to a licence, representing clients in court will not be reserved to the holders of specific professional qualifications.

In **France**, *avocats* (lawyers) have two exclusive reserved tasks, representation before the courts and the provision of legal advice. The profession of '*avoué*' also had an exclusive reserve, the right of

<sup>27</sup> <http://www.legislation.gov.uk/ukpga/2007/29/section/212>

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representation before the appellate court, but they will be merged with the lawyers on 1<sup>st</sup> January 2012. In **Germany**, lawyers have a number of exclusive reserved tasks, namely representation before courts, representation before administrative agencies and legal advice (domestic / foreign law).

In **Poland**, the professions of Lawyer (*Advokat*) and Solicitor (*Radca prawny*) share four reserved tasks (legal advice, conveyancing, a right of audience in court and representing clients before administrative authorities). However, there are some distinctions between the two professions. Lawyers are able to represent clients in courts on criminal law and tax-related legal matters, whereas solicitors may not.

In the **UK**, the legal services field has been the subject of regulatory reform through successive legal acts over the past 20 years. These have opened up the market by making a transition from exclusive to shared reserves of activities. As indicated above, there are separate legal systems and separate systems of regulation in each of the countries making up the UK. In England & Wales, six reserves of activities were identified in the Legal Services Act 2007<sup>28</sup>, however, there are no exclusive reserves of activities. In Scotland, the Legal Services (Scotland) Act 2010 identified similar reserves of activities and also made provision for the regulation of will writers who were not solicitors. Because of the different legal systems in each of the countries within the UK, a solicitor, advocate or barrister from one country (e.g. England) cannot practice in another (e.g. Scotland) without taking an appropriate training course and a test.

The detailed position in respect of which tasks were found to be reserved within legal services is now examined. The data has been aggregated across different legal professions e.g. Advocates, Lawyers, Barristers, Legal Executives, Patent Lawyers, Costs Lawyers, Judicial Valuers etc.<sup>29</sup> in order to show the overall position by task across legal services.

**Table 2.9: The legal profession — reserves of activities by task (EU13)**

Type of reserve	Legal advice (domestic / foreign law)	Conveyancing	Representation before courts	Representation before administrative agencies (including tax matters)	Tax advice	Representing clients on patent matters	Other legal services (please specify under notes)	Total
Exclusive	6	2	9	5	2	4	3	31
Shared	3	8	10	5	2	8	5	41
Total (exclusive and shared)	9	10	19	10	4	12	8	72

Note: NACE code 69 Legal and accounting activities

The most frequently reserved task was the **right of audience in court** (19 different reserves of activities across different legal professions in 8 countries), followed by **representing clients on patent matters** (12 reserves of activities), **conveyancing** (10 reserves in total) and **representation before administrative agencies** (also 10 reserves).

The **right of audience in court** was an exclusive reserve of activities in eight countries in the sample of thirteen (e.g. **Czech Republic, Denmark, France, Germany, Greece, Italy, the Netherlands and Portugal**). In the remaining countries, there was a shared reserve of activities between different legal professionals to represent clients in court (e.g. **Spain, Poland, Slovenia and the UK**). **Finland** was the only country in the sample not to have a reserve of activities for lawyers in representing clients in court.

**Conveyancing** was also commonly subject to a reserve of activities, although it was notable that this was often shared between different legal professionals. It was only an exclusive reserve of activities in two

<sup>28</sup> Consideration is presently being given to the addition of a seventh, will-writing, in England & Wales

<sup>29</sup> Notaries are however outside the study scope.

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countries, **Greece** and **Portugal**. In the **UK**, liberalisation in the conveyancing profession took place following the adoption of the Courts and Legal Services Act 1990, although reserved instrument activities, part of conveyancing services, is subject to a shared reserve of activities. While conveyancing services are no longer reserved, reserved instrument activities, a specialised area relating to the transfer of property, is subject to a shared reserve of activities in the UK between a number of different legal professionals such as Barristers, Solicitors and Licensed Conveyancers.

The **provision of legal advice** was identified as an exclusive reserve of activities for lawyers in six countries in the sample, and a shared reserve in a further three instances. In **Poland**, legal advice can be dispensed by both an Adwokat (Lawyer) and a Radca Prawny (Solicitor). However, in other EU countries, such as **Finland** and the **UK**, a wide range of service providers currently offer legal advice as an unregulated activity.

The complexity of establishing which tasks are reserved in some areas of legal services is illustrated by an example from **Italy**. For non-judicial matters, legal advice is a shared reserve between lawyers who are able to provide a broad range of legal advice, and other professions who are legally able to provide specific types of legal advice, notably employment agents and certified accountants. In addition, unregulated professions, such as car insurance agencies may provide legal advice in certain circumstances. Some areas of legal advice can therefore be considered as an unregulated activity. However, various legal judgments have ruled that non-qualified persons can only provide legal advice on an 'occasional basis', whereas those wishing to provide such advice as their main work activity must be appropriated qualified professionals within a regulated profession (e.g. lawyers, labour consultants, accountants).

In some countries, lawyers also have a reserve of activities to provide **tax advice**. In **France**, for example, they have an exclusive reserve to do so (accountants may only provide ancillary tax advice). In the **Czech Republic** and **Greece**, lawyers have a shared reserve with other professionals (e.g. usually accountants) to provide tax advice. In **Germany**, as noted earlier under accountancy and related services, tax adviser is a shared reserve of activities (between four different professions, Attorney at law/ *Rechtsanwalt*, Tax advisers/ *Steuerberater*, Sworn Auditors/ *Vereidigter Buchprüfer* and Business Controllers (*Wirtschaftsprüfer*)). However, a **tax adviser/ steuerberater** has exclusive rights to represent their clients before tax administrations.

**Representation before administrative agencies** was a reserved activity for lawyers in several EU countries in the sample (e.g. **Czech Republic, Germany, Greece, the Netherlands and Portugal**). It was also subject to a shared reserve of activities between different professionals in several EU countries (**Italy, Poland and Spain**), commonly lawyers, accountants and tax advisers, since representing clients in tax matters falls under this heading. In **Italy**, representation before administrative agencies is a shared reserve between lawyers, employment agents and certified accountants.

In relation to **representing clients on patent matters**, the activity of representing clients in court in this area tended to be reserved, whereas other types of patent work, such as registering patents, was unreserved. Lawyers have an exclusive reserve of activities in three EU countries in the sample (**in France patent matters have an exclusive reserve above a certain technical threshold, Finland and Greece**) to represent clients on patent matters.



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In other countries (e.g. **Czech Republic, Germany Italy, UK and France below a certain technical threshold**), the professions of **patent and trade mark attorney** are specialist regulated professions, with a shared reserve of activities to represent clients in court. In **Italy**, Industrial Property Agents (IPAs) share a reserve of activities to represent clients in court on patent matters with lawyers. However, legal representation is not mandatory, and entrepreneurs can register patents directly with the national patent/trademark authorities. The position is similar in the **Czech Republic**, with a shared reserve between lawyers and patent attorneys. In **Germany**, there is a distinct profession of patent lawyer/*Patentanwalt*, which has also a shared reserve with Lawyers (*Rechtsanwalt*).

In the **UK**, patent lawyers and trade mark attorneys have a shared reserve of activities to represent clients in court (with other professions, such as solicitors and barristers). Conversely, the professions of trade mark and patent agent are regulated professions but have no reserve of activities since their work is concerned with the registration of patents or trademarks, rather than representing clients in litigation matters pertaining to patents and/ or trademarks.

Among the reserved tasks under the heading '**other legal services**', were specialised services common to specific Member States. In **Slovenia**, for example, the professions of Judicial Valuer / Cost Assessor (*Sodni cenilec*), Court interpreter (*Sodni tolmač*) and Court expert (*Sodni izvedenec*) are each subject to an exclusive reserve of activities.

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Key findings from the review of reserves of activities within professions falling under the category of legal services were that:

- The approach to the reservation of activities within legal services varied considerably between Member States across the sample.
- In some EU Member States (e.g. the Czech Republic, Germany, Greece), legal professionals had an exclusive reserve to perform several reserved tasks, while in others (e.g. Finland), different means were used to regulate the market.
- The UK was the only country to regulate through a combination of reserved activities and reserved titles.
- Some tasks, such as the right of audience in court, conveyancing, and representing clients on patent matters, are more commonly subject to an exclusive reserve of activities than others.
- There was a mixed position across the sample as to whether the provision of legal advice was subject to a reserve of activities. In some countries, legal advice was reserved to a single legal professional, whereas in others, it was a shared reserve and in other Member States, was unreserved.
- Finland was the only EU Member State in the sample that had no reserved tasks for either lawyers or barristers (although there is a reserved task of representing clients on patents for specialist patent lawyers).

### 2.3.3 Security-related professionals

An overview of reserves of activities for security-related professions by Member State is provided in the following table:

**Table 2.10: Security-related professions – overview of reserves of activities by Member States**

Security services			
	Exclusive	Shared	Total

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CZ	3	0	3
DE	2	0	2
DK	1	0	1
EL	2	0	2
ES	3	0	3
FI	1	0	1
FR	0	0	0
IT	0	0	0
NL	3	2	5
PL	2	4	6
PT	1	0	1
SI	8	0	8
UK	0	0	0
<b>Total</b>	<b>26</b>	<b>6</b>	<b>32</b>

Countries with the highest numbers of reserves of activities in the private security industry were **Slovenia (8)** **Poland (6)**, the **Netherlands (5)**. It was notable that most reserves of activities identified in the security sector were exclusive. Shared reserves of activities were only identified in two EU countries in the sample, the **Netherlands** and **Poland**.

It should be noted before examining these reserves in greater detail that in some instances, professions within the private security industry listed as regulated professions in the national database were not actually regulated through a specific professional qualification requirement. In some instances, only a licensing system was in operation<sup>30</sup>. Such instances were deleted from the inventory and RA index for security services.

**Poland** was an interesting example in the security sub-sector, because in the case of two professions: body guard (*Pracownik Ochrony*) and security systems professional (*Pracownik Zabezpieczenia Technicznego*), there were two different levels of security personnel, each a separate regulated profession and able to perform a combination of both exclusive and shared reserved tasks. A bodyguard (2<sup>nd</sup> level) is able to carry out broadly similar tasks to a bodyguard (1<sup>st</sup> level) but has some additional exclusive tasks, such as developing protection plans and organising and directing teams of workers for their physical protection.

Similarly, a Security System Professional (2<sup>nd</sup> level) shares such tasks as: the installation of electronic devices and alarm systems; signalisation of danger of protected persons and property; and the exploitation, maintenance and repairs of places where devices are installed with Security Professional (1<sup>st</sup> level). However, those having obtained the qualification to work as a 2<sup>nd</sup> level professional additionally have a number of exclusive tasks such as: drafting technical security projects and organising and directing technical security staff.

The regulatory approach is similar in the **Netherlands**, where there is also quite a lot of fragmentation within the sector. For example, a distinction is made between a general security guard and a specialised security guard, such as a doorman or a football security guard. These are separate regulated professions. However, in many service activities, a general security guard has a shared reserve of activities with the more specialist areas of security provision. Alarm system installers and alarm system operators are separate regulated professions, although it can be argued that installation requires more specific technical knowledge than operating the alarm system.

**Slovenia** has the highest number of exclusive reserves among the sample in the private security sector with eight separate regulated professions<sup>31</sup>. Only two professions in the private security industry had an exclusive reserve linked to a qualification requirement explicitly referred to in national legislation (security

<sup>30</sup> These professions were then excluded from the legal inventory and weighted index.

<sup>31</sup> Security Manager, Security Supervisor/ Officer, Security Advisor In Security Techniques, Authorized Security Systems Engineer, Security Guard, Security guard (bodyguard), an operator at a security surveillance centre and a security technician.

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manager and security systems professional). In the case of the other six regulated professions (e.g. security guard, security supervisor), while there is a short training course requirement, followed by a one hour competence test, there is no reference to a reserve of activities in the legislation. In this study, we still assume that this constitutes an implicit reserve of activities since without the training, the profession cannot be accessed.

Several EU countries in the sample did not reserve any activities in the private security sector (e.g. **France, Greece, Italy** and the **UK**). These Member States rather operated national licensing systems not linked to a specific qualification requirement. General requirements, such as minimum age, such as having a basic education certificate and the completion of police checks were however needed in order to apply for a license.

Before outlining the more detailed position by reserved service task activity, it is worth noting that there were challenges in ascertaining whether particular security professionals listed in national databases on regulated professions were subject to a licensing requirement, or whether there was also a specific qualification requirement in order to obtain a licence. In several EU countries, such as **Denmark** and **Slovenia**, in order to apply for a licence, a short training course followed by a competency test was required in order to obtain the certificate necessary to apply for a licence, which implies a reserve of activities<sup>32</sup>. While the definition of a qualification requirement and of a reserve of activities is clear in Directive 2005/36/EC, a practical distinction can be made qualitatively to distinguish between the level of market restrictiveness in accessing a profession between professions such as a security guard, for which only a short training course and a test may be required (in some instances, involving only a few days of training) and professions that require higher education and a specific additional qualification, such as security systems technician or engineer.

A more detailed overview by profession of the position in respect of reserves of activities within **Security and investigation activities** (NACE code 80) is provided in the table below:

**Table 2.11: Security-related professions – overview of reserves of activities by task (EU13)**

Regulated professions	Exclusive	Shared	Total
Security guard/Warden	7	1	8
Security systems professional	8	1	9
Private detective	5	0	5
Other security personnel	9	1	10
<b>Total</b>	<b>29</b>	<b>3</b>	<b>32</b>

Overall, 32 reserves of activities were identified across the sample, of which twenty-nine were exclusive and three shared. The most commonly reserved professions within the private security industry were security guard/warden and security systems professional (which had eight and nine reserves of activities respectively). However, there was also a diverse range of regulated professions under the category ‘other security personnel’. Examples include professions such as body guard (a distinct profession from security guard). Private detective was also reserved relatively frequently in five EU countries in the sample.

The profession of **security guard** had an exclusive reserve of activities in seven EU countries: the **Czech Republic, Denmark, Finland, Germany, Spain, Poland** and **Portugal**. It was also a shared reserve of activities in the **Netherlands**. However, in the other countries under review (**France, Greece, Italy** and the **UK**), it was unregulated. The duration of training for security guards varies. In **Denmark**, before a

<sup>32</sup> Article 1 c (definitions) of Directive 2005/36/EC states that any profession requiring a certificate of competence constitutes a qualification requirement.

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mandatory licence can be issued by the local police, the training requirement for a security guard is only 21 hours. In **Slovenia**, a security guard must take a training course of a minimum of 54 hours, followed by a competency test.

The profession of **security systems professional** was an exclusive reserve of activities in six countries in the sample: the **Czech Republic, Germany, Spain, the Netherlands, Poland** and **Slovenia**. In **Slovenia**, the explanation provided by the Ministry of Interior as to why the profession of Authorized Security Systems Engineer (*Pooblaščen inženir varnostnih sistemov*) was subject to a reserve was that operating a security system requires professional expertise and higher education or equivalent vocational level qualifications, for example, in the field of engineering or in disciplines such as electrical work, telecommunications, energy and electronics. As noted above, in the **Netherlands**, there are separate regulated professions for alarm system operators and installers, each with an exclusive reserve of activities.

The profession of (private) **detective** was subject to an exclusive reserve of activities in five countries out of the thirteen: **Czech Republic, Greece, the Netherlands, Poland** and **Spain**.

Under the heading '**other security personnel**', additional regulated professions subject to a reserve of activities were identified. In **Slovenia**, as noted above, a wide variety of security-related regulated professions were identified: a Security Manager, a Security Supervisor/ Officer, a Security Advisor In Security Techniques, an operator at a security surveillance centre, a security technician and as in Poland, also a bodyguard (a distinct profession separate from an ordinary security guard). Most of these professions – with the exception of a bodyguard – were unique to Slovenia within the sample.

\*\*\*\*\*

Key findings in respect of **security-related professions** were that:

- There was a specific qualification requirement for professions within the private security industry in about half of EU Member States in the sample, with a reserve of activities often only implicit (i.e. the legislation does not state that the activities can only be performed by a particular professional explicitly, but the qualification requirement means that this is *de facto* the case).
- Poland, Slovenia and the Netherlands were found to have the greatest number of regulated professions in the private security field within the sample.
- Conversely, in other countries, such as France, Italy and the UK, there were no regulated professions in the security domain. Rather, compulsory licensing without a specific professional qualification was the main mechanism for regulating the profession.
- In EU Member States that require specific qualifications, these were not found to be especially onerous. They usually involve taking a short training course followed by a competence test.
- Notwithstanding, more demanding qualification requirements coupled with the exclusive reservation of activities to particular professions were also identified in some EU countries. This was the case in respect of security systems professionals (e.g. Netherlands and Slovenia).

### 2.3.4 Other business services professionals

A number of other professions were identified in the tender specifications and can be classified as being part of the business services sector. These include professions such as real estate agent, translator/interpreter and employment officer. A number of wider professions were examined under the heading other 'business services', as outlined in the following table.

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**Table 2.12: Miscellaneous professions – business services**

	<i>Exclusive</i>	<i>Shared</i>	<i>Total</i>
Real estate agent	2	2	4
Employment officer	0	1	1
Economist	0	1	1
Researcher	0	0	0
Translator/interpreter	3	1	4

The profession of **real estate agent** is subject to an exclusive reserve of activities in two EU countries **Poland** and **Slovenia**. It was also identified as a shared reserve with lawyers in a further two EU countries in the sample, **Denmark** and **Portugal**. Real estate agents have experienced deregulation in some EU countries. In the **Netherlands** and **Spain**, the profession of real estate agent was formerly a regulated profession with an exclusive reserve of activities but the profession was deregulated in Spain in 2000 and in the Netherlands in 2001. See Section 2.4 on repeals of reserves of activities.

**Labour consultants** were found to only have a reserve of activities in one country in the sample. A labour consultant in **Italy** (*Consulente del lavoro*) has a shared reserve of activities with lawyers, commercial law experts and accountants to advise on compliance requirements relating to employment, social security and the welfare of employees, when not dealt with directly by their employer. These functions may be carried out upon formal communication with the competent work inspectorate.

The profession of employment officer in the **Czech Republic** was classified in the national database as a regulated profession. However, upon closer analysis by CSES, although there are some specific activities related to employment mediation that only such an officer can perform, there is no reserve of activities *per se*.

The profession of **economist** is an example of a regulated profession that only has a shared reserve of activities in one Member State in the sample, **Greece**. This is presently shared with engineers to carry out economic studies and related services to public sector clients. No reserved tasks were identified in respect of the profession of **researcher**.

In three EU Member States in the sample – **Denmark, Germany and Spain** - the professions of **translator** and **interpreter** have an exclusive reserve of activities. In some countries, these are treated as separate regulated professions and on other occasions are combined as a single regulated profession. In **Greece**, there is a shared reserve of activities between officially authorised translators and lawyers. In **Denmark**, official translations must be carried out by a certified translator and interpreter. In **Germany**, the professions of translator and interpreter are separate regulated professions, and each is subject to an exclusive reserve of activities.

\*\*\*\*\*

A number of conclusions can be drawn in respect of professions within ‘other business services’:

- **Only a few professions had an exclusive or shared reserve of activities within the category of ‘other business services’.** Examples include the professions of real estate agent (4 Member States) and translator and interpreter (4 Member States).
- **The professions of economist and employment officer / labour consultant only had a reserve of activities in one EU Member State** covered by the study. This means that the regulatory approach is not shared with any other country in the sample.
- **Since very few reserves were identified within this category overall, there is no discernible pattern between countries as to the reservation of activities within these professions.**

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### 2.4 Construction

A number of construction-related professions sector are within study scope, as summarised below:

- **Architecture and building construction** – architect, building engineer and surveyor (NACE code - 41);
- **Civil engineering** - civil engineer (NACE code - 42);
- **Services to buildings and landscape activities** - landscape gardener/gardening, landscape expert, landscape architect/designer and the cleaning of monuments, facades and buildings (NACE code 81); and
- **Specialised construction activities** - Building demolition contractor, Electrician, Plumber, Plasterer, Tiler, Joiner/carpenter, Mason/bricklayer, Master builder, Painter/decorator, building insulator, Roofer, Electrical engineer, gas installation and maintenance, Air conditioning technician/Heating/Central heating technician/installer/repairer and floor layer (NACE Code 43).

The legal analysis provides an overview of reserves of activities within regulated professions across a number of professions e.g. architect, landscape architect and gardener, surveyor, engineer (civil, building, structural) and specialised construction activities. The tables are presented separately for each profession where possible. However, it was necessary to combine the different types of engineers into a single table (e.g. civil, building, structural) since the profession covers different areas of engineering in some EU Member States, whereas in others, these are separate professions.

It should also be stressed that there is a close inter-connection between the different tasks that construction sector professionals can perform e.g. some reserved tasks are shared between engineers and architects, and likewise between architects and surveyors.

#### 2.4.1 Architects

In the table on the following page, the number of exclusive and shared reserves of activities that can be performed by architects is presented.

**Table 2.13: Architects – overall position on reserves of activities (EU13)**

Architects			
Country	Exclusive	Shared	Total
CZ	3	3	6
DE	0	21	21
DK	0	0	0
EL	0	7	7
ES	0	17	17
FI	0	0	0
FR	4	0	4
IT	0	6	6
NL	0	0	0
PL	1	1	2
PT	0	6	6
SI	1	11	12
UK	0	0	0
<b>Total</b>	9	72	81

Architects were found to have a large number of reserved tasks overall, but these were mainly shared reserves. Exclusive reserves of activities were only identified in nine instances, for tasks such as **urban and landscape planning (Czech Republic)**, requests for **construction permits/ building licences (Denmark, France)** and the **monitoring of construction works (France)**. A large number of shared reserved tasks (72) were identified between architects and other professionals, such as land surveyors, engineers and urban and spatial planners.

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In the following table, the more detailed position for architects in terms of which tasks are reserved, and whether these are exclusive or shared is set out.

**Table 2.14: Architects – reserves of activities by task (EU13)**

Type of reserve	Land surveying	Topographical determination /demarcation	Feasibility studies	Planning and design	Request for construction permits/building licences	Supervision and monitoring construction works	Technical control and certification	Urban and landscape planning	Interior design	Total
Exclusive	1	1	0	2	1	1	1	2	0	9
Shared	9	8	3	11	9	9	8	11	4	72
Total reserves	10	9	3	13	10	10	9	13	4	81

The most frequently identified reserve of activities was **planning and design** and **urban and landscape planning** (each with 13 reserves of activities in total). Whereas **planning and design** was commonly a shared reserve with engineers, urban and landscape planning was commonly shared with spatial planning and landscape planning specialists. Other commonly reserved tasks for architects were the **supervision and monitoring of construction activities** (ten reserves) and **technical control and certification** (nine reserves). Although **land surveying and topographical determination /demarcation** are the core business of surveyors, it was interesting that there was often a shared reserve of activities between surveyors and architects to carry out these tasks.

Across the 13 EU countries in the sample, there was often a **nuanced picture in terms of the delimitation of reserved activities within construction between architecture and engineering**. For example, responsibility for design and planning, and for signing off buildings was quite commonly shared between architects and engineers, although in some EU Member States, there were rules as to which professional can sign off different types of building projects (depending whether they were in the public and private sector, the type and size of construction project e.g. residential, commercial). The supervision and monitoring construction works was also commonly a shared reserved activity, but the precise functions of architects and engineers respectively, and the type of construction projects on which they can work varies considerably and was dependent on object-related regulations.

There were **interesting country differences** within the sample as to what tasks architects could perform, and whether the market was regulated through a reserve of activities, a reserved professional title or a wider mechanism. In the **Czech Republic**, for example, while architects have an exclusive reserve to carry out landscape architecture design, building and architectural and urban planning surveys, other tasks, such as the preparation of (i) spatial planning documentation (ii) design documentation (except civil engineering constructions) (iii) reviewing project documentation for civil engineering constructions drawn up by chartered engineers and (iv) documentation relating to the interior of buildings are a shared reserve with chartered engineers.

Architects in **Germany** are able to perform a variety of shared reserved tasks, mainly with civil consulting engineers. Examples in this regard are (i) building permission applications (ii) technical inspection and control, and expert public certification, (iii) submission of a building permit for simple constructions (also shared with masters, masons, carpenters and registered construction technicians). Applying for a building permit for refurbishment is a shared reserve task with interior designers and civil engineers.

In **Greece**, architects share a number of reserved tasks relating to planning and design, and the supervision and monitoring of construction works. However, there are limits as to the maximum building size that architects can work on. Greek architects may only work on buildings of up to two stories, whereas civil engineers may work on construction projects of all sizes. A further interesting feature is that architectural designs in respect of public sector buildings need to be signed off by an architect and then

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also by a civil engineer, who is responsible for structural design aspects. This does not apply to private sector buildings, however. Greek land surveyors also have a shared reserve with architects and civil engineers in respect of the design and supervision of buildings of up to 2 floors.

In **Italy**, most types of civil construction works are subject to a shared reserve of activities between architects (and junior architects) and engineers (and junior engineers), although there is an exclusive reserved tasks for architects in specialist areas, such as cultural heritage projects in buildings. In **Portugal**, architects have an exclusive reserve of activities to prepare and underwrite architectural projects, but other reserved tasks, such as the supervision and monitoring of construction works are shared with technical engineers and landscape architects.

In **Spain**, architects have both an exclusive and a shared reserve of activities. The reservation is focused in three main areas: building/ construction works, planning permission and others. Among the exclusive tasks that they are able to perform are project management and construction works for many types of public buildings (e.g. administrative, health, education and cultural). In carrying out construction projects, however, there is a requirement to involve engineers in carrying out specific tasks. The overall position in Spanish legislation is very complicated depending on the type of construction works, with unclear delimitations between different branches of engineering and also between the technical and higher branches of engineers.

Spanish legislation states that in addition to input by architects on construction projects, the skills and expertise of other professions (e.g. engineer/ technical engineer and technical architect) must be drawn upon where relevant in accordance with their respective specialties and specific skills. However, there is a lack of clarity as to the precise delineation and scope of the reserves within engineering. Architects also have a shared reserve with surveyors in carrying out land surveying, topographical demarcation and measurement, and for the valuation of land and buildings.

In the new member states in the sample, architects were found to have the right to perform a variety of reserved tasks. For example, in **Poland**, architects have a number of exclusive tasks, such as preparing architectural designs, the verification of design projects and the supervision and monitoring of construction works. In terms of the construction process, architects have overall responsibility for the early stages of construction, whereas once the initial designs have been developed, civil engineers then have responsibility through an exclusive reserve to carry out tasks such as verifying architectural-construction design documents and supervising and managing the implementation of construction works.

In **Slovenia**, architects can only deliver services if they are registered as a legal entity, not as an individual person. Slovenian architects have a number of reserved activities, such as planning and design and land surveying / topographical determination and demarcation. There are multiple different professions in Slovenia under the broad heading of architecture and surveying. The professions include: an architectural designer and planner, three different types of Spatial Planners (Licence A, KA and P respectively), a land surveyor and a chief land surveyor. Each of the professions mentioned is a separate regulated profession. However, only an architectural designer and planner (*Odgovorni projektant*) carries out architectural services such as planning and design. The other professions are mainly concerned with land surveying and topographical determination and with spatial and urban planning.

In three EU countries in the sample, **Denmark**, **Finland** and the **UK**, the profession of architect is a regulated profession, but does not have any reserves of activities. The title of "architect" is a reserved title protected through legislation in both **Finland**<sup>33</sup> and the **UK**<sup>34</sup>. In the **UK**<sup>35</sup>, there are several different architecture-related reserved titles, namely Registered Architect, Chartered Architect and a Chartered Architectural Technologist. Since the activities performed by title holders are not reserved, however, there

<sup>33</sup> In order to use the title 'architect', architects in Finland must have a degree in architecture

<sup>34</sup> Under Section 20 of the Architects Act 1997, the title 'architect' is protected.

<sup>35</sup> Further details in respect of the use of reserved titles in the UK in this sector are provided in Appendix G.



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is no legal requirement to use the services of an architect holding a professional title. In the aforementioned countries, a largely self-regulatory approach applies to regulate the architecture profession, with a focus on promoting high professional standards through the work of professional bodies (who provide training and may draw up codes of practice). In addition, wider regulations also help to govern the market, such as the norms and standards associated with building regulations, health and safety legislation, and object-related regulations relating to the construction of different types of buildings.

\*\*\*\*\*

Among the findings in respect of reserves of activities for architects were that:

**Architects have a large number of reserved tasks overall, although the majority of these are shared rather than exclusive, typically with engineers and / or land surveyors and landscape architects (where this is a separate dedicated profession).**

**While several EU countries in the sample such as Italy, Greece, Portugal and Spain have large numbers of reserved tasks within architecture, in other countries such as Denmark, Finland and the UK, there are no reserves of activities<sup>36</sup>.**

**Planning and design and urban and landscape planning were among the most frequently identified reserves of activities.** However, other tasks were also often subject to a shared reserve, such as the supervision and monitoring of construction activities, technical control and certification, land surveying and topographical determination /demarcation.

**Reserved titles were used in some countries (e.g. the UK, Finland) as an alternative means of regulating services activities within the architect profession.**

### 2.4.2 Land surveyors

The research examined the position on reserves of activities for land surveyors and related professions such as the *geometra* in **Italy** and *geometre expert* in **France**. It should be noted that there is no precise translation of the profession in that their role falls somewhere in between the work performed by an architect and by a surveyor in other EU Member States, such as the **UK**.

In the first table, an overview of reserves of activities by country is provided:

**Table 2.15: Land surveyors – overall position on reserves of activities (EU13)**

Land surveyors			
Country	Exclusive	Shared	Total
CZ	2	0	2
DE	2	0	2
DK	2	0	2
EL	0	4	4
ES	0	2	2
FI	0	0	0
FR	2	0	2
IT	0	2	2
NL	0	0	0
PL	2	0	2
PT	0	0	0
SI	0	4	4
UK	0	0	0

<sup>36</sup> In France, there were no reserved tasks in engineering either, although there were in architecture.

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<b>Total</b>	10	12	22
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The data reveals some interesting country-specific differences. For example, in **Greece** and in **Slovenia**, land surveyors each have four reserves of activities. In Greece, this is because unusually, they are also able to perform other types of reserved tasks in addition to land surveying and topographical determination /demarcation (see below). In the case of Slovenia, there are two different categories of surveyor, depending on their level of seniority. Is it notable that there are no reserves of activities for land surveyors in either **Finland**, the **Netherlands** or the **UK**. In the case of the **UK**, however, there are various reserved titles that relate to surveying, such as a Chartered Surveyor and a Chartered Building Surveyor. It should be noted that surveying is not an activity reserved to any particular grouping by statute and that consequently, anyone can pursue the activities of a surveyor.

In the following table, the more detailed position in respect of land surveyors is provided.

**Table 2.16: Land surveyors – reserves of activities by task (EU13)**

Type of reserve	Land surveying	Topographical determination / demarcation	Feasibility studies	Planning and design	Request for construction permits / building licences	Supervision and monitoring construction works	Technical control and certification	Urban and landscape planning	Interior design	Total
Exclusive	5	5	0	0	0	0	0	0	0	10
Shared	4	5	1	0	0	1	0	1	0	12
Total reserves	9	10	1	0	0	1	0	1	0	22

The most frequently identified reserve of activities for surveyors was not surprisingly **topographical determination /demarcation** (10 reserves total) and **land surveying** (9 reserves total). However, it was interesting that surveyors were able to perform additional tasks through a shared reserve of activities in some EU countries. Examples were feasibility studies, the supervision and monitoring of construction works and urban and landscape planning (one instance of each was identified).

In five EU Member States in the sample (the **Czech Republic**, **Denmark**, **France**, **Germany** and **Poland**), **land surveyors** had an exclusive reserve of activities to carry out land surveying and topographical determination /demarcation. In other Member States in the sample, e.g. **Greece**, **Italy**, **Poland** and **Slovenia**, there was a shared reserve of activities to carry out these tasks between land surveyors and either architects, engineers or both.

Land surveyors were only able to carry out wider activities over and above land surveying and topographical determination /demarcation in **Greece**. A Land Surveyor (*Topografos Mibanikos AEI*) is able to carry out several other reserved activities such as feasibility studies, the supervision and monitoring of construction works and urban and landscape planning through a shared reserve of activities with architects and engineers.

There are two types of land surveyors in **Slovenia**, a land surveyor (*Geodet*) and a chief land surveyor (*Odgovornigeodet*), which are listed as separate regulated professions in the national database. The distinction is not dissimilar to the concept of junior and senior professionals used in **Italy**. In **Portugal**, there is no profession of land surveyor, but a Geotechnical Engineer Technician (*Engenheiro Técnico de Geotecnia*) carries out the equivalent activities.

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Key findings in respect of the profession of land surveyors were that:

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The activities of land surveying and topographical determination and demarcation are the subject of a reserve of activities for land surveyors in most EU countries in the sample. There was a mixed picture in terms as to whether the reserve was exclusive or shared.

With a single exception (in Poland), land surveyors were able to carry out both land surveying and topographical determination /demarcation.

Only in rare instances are land surveyors able to carry out wider activities, with Greece the only example (Greek surveyors have a shared reserve of activities to undertake the supervision and monitoring of construction works and urban and landscape planning).

### 2.4.3 Landscape architects and gardeners

The presence of reserves of activities within services to buildings and landscape activities was also considered. The earlier table (table 2.13) on architects should also be consulted since some landscape-related services, such as landscape architecture, landscape design and gardening, etc. are the subject of a reserve of activities for architects, whereas in other EU Member States in the sample, such as **Germany**, **Italy** and **Portugal**, there was a dedicated profession of landscape architect.

**Table 2.17: Services to buildings and landscape activities – reserves of activities (EU13)**

Country	Landscape activities		Total
	Exclusive	Shared	
CZ	0	1	1
DE	2	0	2
DK	0	0	0
EL	0	1	1
ES	0	1	1
FI	0	0	0
FR	0	0	0
IT	0	1	1
NL	0	0	0
PL	0	0	0
PT	0	1	1
SI	1	0	1
UK	0	0	0
<b>Total</b>	<b>3</b>	<b>5</b>	<b>8</b>

Only a small number of reserves of activities were identified under NACE 81 (*Services to buildings and landscape activities, NACE Rev 2*). This was mostly connected with architectural-related activities, i.e. the profession of landscape architect/designer. While in **Slovenia**, this was an exclusive reserve of activities, in other countries, such as **Germany**, **Greece**, **Italy**, **Portugal** and **Spain**, there was a shared reserve of activities with architects.

**Table 2.18: Services to buildings and landscape activities – reserves of activities (EU13)**

Profession	Exclusive reserve of activities (no. of countries)	Shared reserve of activities (no. of countries)	Total no. of reserves of activities (no. of countries)
Landscape gardener/gardening	1	0	1
Landscape architect/designer	2	5	7
Cleaning of monuments, fascades and buildings	0	0	0
<b>Total</b>	<b>3</b>	<b>5</b>	<b>8</b>

Dedicated specialist professions in the area of landscape architecture and gardening were identified in **Germany** (that of both a Landscape architect - *Landschafts* – and a garden architect/designer or *Gartenarchitect*), **Portugal** (*Arquitecto paisagista*) and **Italy** (*paesaggista*), which corresponds to the title of landscape expert. In **Italy**, there was a shared reserves of activities between architects and landscape

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experts. Among the shared reserved tasks that can be carried out are: the preparation of landscape/territorial plans, landscape design (including parks and gardens) and landscape architecture.

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Key findings in relation to the research on services to buildings and landscape activities were that:

**The profession of landscape gardener/gardening is only subject to an exclusive reserve of activities in Germany.** However, in other countries, similar activities were also subject to a reserve of activities, but for different professionals, namely architects and landscape architects.

**In three EU Member States, landscape architecture was a dedicated specialist profession, whereas in the other countries in the sample, services in this area are performed by architects.**

### 2.4.4 Engineering (construction-related)

An overview of reserves of activities within construction-related engineering<sup>37</sup> by EU Member State is provided below. Since in some EU countries, the profession of 'engineer' encompasses both civil and building engineering, only aggregate figures can be provided. .

**Table 2.19: The engineering profession – overall position on reserves of activities (EU13)**

Engineering (building and civil)			
Country	Exclusive	Shared	Total
CZ	0	5	5
DE	1	5	6
DK	0	0	0
EL	6	7	13
ES	0	21	21
FI	1	0	1
FR	0	0	0
IT	1	6	7
NL	1	0	1
PL	5	2	7
PT	0	48	48
SI	3	0	3
UK	0	0	0
<b>Total</b>	<b>18</b>	<b>94</b>	<b>112</b>

Source: CSES own analysis, the analysis covers NACE codes 41 (Construction of buildings) and 42 (Civil engineering) respectively.

Overall, **engineering had the highest number of reserves of activities among the professions within study scope.** It should be stressed however that a high proportion of these were shared reserves of activities, and also that **Spain and Portugal** accounted for a disproportionate share of the total (the number of reserves in these countries is inflated as a result of the distinction between technical and higher branches of engineering).

The regulatory landscape in engineering differs markedly between EU countries in the sample. While in nine countries, engineers have either an exclusive or a shared reserve of activities (and sometimes a combination of both), engineering is not subject to any reserve of activities in **Denmark, Finland, France** or the **UK**.

<sup>37</sup> For the purposes of this study, engineering relates only to the construction sector (civil and building engineers under NACE codes 41 and 42 respectively). Other types of engineering are not included in the analysis, although engineering related to road building and other infrastructure development, such as telecommunications, has been included.

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However, in three EU Member States in the sample, **Denmark, Finland** and the **UK**, reserved titles are used in engineering as a means of regulating the market, although there is no requirement to use the services of a professional title holder. Examples that are regulated through the title include professions such as structural engineer (DK), chartered engineer (FI) and in the UK, several different reserved titles e.g. Chartered Building Services Engineer, Engineering Technician, Chartered Civil Engineer and Chartered Structural Engineer. In the UK, the generic term 'engineer' is not a protected title, but using the services of an engineer with chartered status carries a mark of quality. Further details in respect of the use of reserved titles in the UK are provided in Appendix G.

With regard to the situation in **France**, engineering is an unregulated profession. The professional title is not protected but there is a scheme for the accreditation of the title of engineer. Therefore, a firm can employ somebody in the capacity of an engineer even if they do not have an engineering diploma. However, a professional holding an academic title (the title of "*ingénieur diplômé*" is regulated and can only be granted by an education institution that is accredited by the Commission des Titres d'Ingénieur (CTI)<sup>38</sup>.

In countries that do not regulate the market directly through the reservation of activities to professionals holding specific professional qualifications, there are nevertheless other ways in which the work of engineering professionals is regulated indirectly, for example through health and safety legislation and building regulations.

In several EU Member States in the sample, there was a complex picture in terms of the scope of reserves of activities that engineers have been granted. There was sometimes a combination of exclusive and shared reserved tasks, depending on the type and size of construction works and other factors, such as whether the project involved the public or the private sector. A detailed breakdown of the different reserved tasks within engineering is provided in the following table:

**Table 2.20: Engineering – reserves of activities (EU13)**

Type of reserve	Land Surveying	Topographical determination /demarcation	Feasibility studies	Planning and design	Review of project documentation	Request for construction permits/ obtaining building licences	Supervision and monitoring of construction works	Technical control and certification	Civil engineering	Building demolition	Total
Exclusive	0	0	1	0	2	1	4	2	4	4	18
Shared	5	5	16	22	4	16	9	5	6	6	94
Total (exclusive and shared)	5	5	17	22	6	17	13	7	10	10	112

*Source: CSES own analysis, note: the analysis covers construction-related engineering only*

Eighteen exclusive reserves of activities were identified within engineering, of which there were four instances in the case of each of the following: the **supervision and monitoring of construction works**, **civil engineering** and **building demolition**. As was the case with architectural services, it was more common for engineers to have a shared reserve with other professionals, such as architects and surveyors than an exclusive reserve, although larger-scale construction projects typically fall under the responsibility of engineers through an exclusive reserve. Ninety four shared reserves were identified in total.

<sup>38</sup> CTI : <http://www.cti-commission.fr/>

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Among the reserved tasks most frequently shared between engineers and other professionals were: **planning and design** (22), **requests for construction permits/ building licences** (17) and the **supervision and monitoring of construction works** (13). Although engineers also had a reserve of activities to undertake feasibility studies in 17 instances, 16 of these were shared reserved tasks for engineers in **Spain** and **Portugal**. Engineers were found to have a shared reserve of activities with land surveyors in several Member States to carry out **topographical determination** and land demarcation and land surveying (e.g. the **Czech Republic, Greece, Italy, Poland** and **Portugal**). In many instances, they were also able to carry out surveying, but not for example in **Poland**.

The division of reserves of activities between engineers and related professionals (e.g. architects, landscape architects, land surveyors) is commonly set out in object-related regulations relating to the construction of different types of buildings. This was the case, for example, in **Greece**, where there is a reserve of activities for engineers in respect of the design and supervision of all types of architectural and structural projects. This is not entirely exclusive in that as noted above, for smaller-scale constructions, other professionals can also perform some elements of this reserved task, but civil engineers have a reserve across the complete spectrum of construction projects. Buildings of up to two floors can however be planned and designed and the construction works overseen by several professions through a shared reserve of activities between civil / building engineers, architects and land surveyors.

In the **Czech Republic**, civil engineers have a shared reserve with other professions such as chartered engineers and chartered technicians to construct civil engineering structures, and in respect of any structural alterations to buildings and their demolition. They similarly have a shared reserve to produce spatial planning documentation, territorial studies, documentation for the issuance of spatial and construction permits, and for managing construction works.

In **Germany**, as noted in the section on architecture, most of the tasks of civil consulting engineers are shared with architects, such as building permission applications and technical inspection and control, and expert public certification. However, documentation for larger-scale construction works can only be produced by civil engineers.

In **Italy**, as noted in the above analysis on architects, most types of civil construction works are shared between architects and engineers. However, there are also some specialised areas of work that are exclusive, namely the design, project execution, assessment of works (i) aimed at extracting, transforming and utilising materials directly or indirectly necessary for industry or construction; (ii) related to transportation, communication and drainage flows to constructions of any kind, to industrial plants and machinery; (iii) related to geometrical surveys and topographical measurements.

Civil engineers in **Poland** have an exclusive reserve of activities in respect of various tasks, such as the design and verification of architectural-construction design documents and providing supervision over their implementation; managing a construction site or other construction works; managing the fabrication of structural components (this was also the case in **Italy**) and supervising and monitoring the manufacturing of such components; conducting technical monitoring of construction facility maintenance and serving as a construction expert. A reserve not seen in other countries in the sample was providing investor supervision. Civil engineers are also responsible for providing investor supervision to check if the investment and building process itself is being developed in accordance with construction plans prepared beforehand and if there are no omissions or changes to initial project.

In **Portugal**, civil engineers have a number of reserved tasks, such as the supervision and monitoring of construction works. These are shared with technical civil engineers, architects (and technical architects), and landscape architects. In addition, there is an exclusive reserved task for civil engineers (civil engineer technicians) to undertake projects relating to building foundations, retaining walls and structures. Geographical Engineers have a reserve of activities to undertake land surveying and topographical determination /demarcation.

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In **Slovenia**, the supervision and monitoring of construction works is the responsibility of a senior works manager (responsible for construction works) and a senior individual works manager responsible for construction workers' occupational health and safety while on construction sites).

\*\*\*\*\*

The findings in respect of the research on construction-related engineering profession were that:

**Engineering has the highest overall number of reserves of activities among the professions addressed through the study but it needs to be taken into account that a high proportion of these are shared reserves and Spain (21) and Portugal (48) account for a disproportionate share of the total.**

**In Denmark, Finland, France and the UK, there are no reserved activities within the engineering sector. In some instances, the profession is unregulated, while in other different regulatory approaches are used, namely the use of reserved professional titles.** However, there is no requirement to exclusively procure the services of a title holder only.

**The tasks reserved to engineers have tended to take the form of shared reserves of activities with architects or similar professionals.** If the reserves were exclusive to one type of professional only, the rationale was often centred on object-based regulations linked to the size and type of building or works being developed.

### 2.4.5 Specialised construction activities

The position in respect of reserves of activities within specialised construction activities is now examined. The analysis begins with a review of the overall position by country.

**Table 2.21: Specialised construction activities – reserves of activities by Member State (EU13):**

Specialised Construction Activities			
Country	Exclusive	Shared	Total
CZ	9	0	9
DE	12	3	15
DK	8	0	8
EL	0	7	7
ES	4	0	4
FI	1	0	1
FR	11	0	11
IT	2	2	4
NL	2	0	2
PL	0	2	2
PT	8	1	9
SI	7	0	7
UK	1	0	1
<b>Total</b>	<b>65</b>	<b>15</b>	<b>80</b>

Source: CSES own analysis, NACE Rev 2, code 43

An analysis of the incidence of reserves of activities across different specialised construction activities by country reveals that there are considerable differences between countries in the level of regulation. It is notable that **Germany** has significantly more total reserved activities (15) than other countries. The next highest number of reserves identified was in **France** (11), the **Czech Republic** (9) **Greece** and **Slovenia** (7 each). The high incidence of reserved tasks in the crafts sector in both the **Czech Republic** and **Germany** reflects a strong tradition of apprenticeships, even though reforms have been instituted in both countries in the crafts/ trades sectors (these are described in Section 2.4 on repeats).

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In the following table, the overall position on reserves of activities within specialised construction activities by profession is summarised:

**Table 2.22: Specialised construction activities – reserves of activities by profession**

<i>Profession</i>	<i>Exclusive reserve of activities (no. of countries)</i>	<i>Shared reserve of activities (no. of countries)</i>	<i>Total no. of reserves of activities (no. of countries)</i>
1. Building demolition contractor	2	2	4
2. Electrician	3	3	6
3. Plumber	6	1	7
4. Plasterer	2	0	2
5. Tiler	0	0	0
6. Joiner/carpenter	4	0	4
7. Mason/bricklayer	2	0	2
8. Master builder	1	2	3
9. Painter/decorator	3	0	3
10. Building insulator	2	0	2
11. Roofer	4	0	4
12. Electrical engineer	8	3	11
13. Air conditioning technician/ central heating technician	5	2	7
14. Crane driver	3	0	3
15. Gas installation and maintenance	12	2	14
16. Boiler inspector / operator	4	0	4
17. Floor layer	1	0	1
18. Scaffolder	3	0	3
<b>Total</b>	<b>65</b>	<b>15</b>	<b>80</b>

*Notes on the calculations are provided in the footnote<sup>39</sup>:*

Out of the eighteen professions presented in the table above, only **tilers** have no reserved activities across the countries in the sample<sup>40</sup>. Floor layers had a reserve of activities in only one Member State (**Czech Republic**). The professions of building insulator, mason/bricklayer, roofer and plasterer were only regulated in two countries (again, **Czech Republic** and **Germany**). Painters and decorators and master builders had a reserve of activities in only three Member States (the **Czech Republic**, **France** and **Germany**).

Differences in the regulatory approach to regulating professions within specialised construction activities were identified. **Denmark** provides an interesting case, since it has a low number of reserved activities across the three sectors overall, but within specialised construction activities, several professions are subject to an exclusive reserve of activities e.g. **scaffold erector** and **offshore scaffold erector, welder, fork stacker, forklift truck driver**, and **lift inspector**. Many professions subject to a reserve of activities relate to off-shore activities.

In the **UK**, almost all the professions examined were unregulated or their access was not subject to any professional qualifications requirements except if the provider wants to use the "chartered title". In relation to **forklift truck driving**, for example, the law requires that employers ensure that drivers are

<sup>39</sup> The excel sheet counts the incidence of reserved activities, but there is a need to add in a small number of additional reserves in instances when a given area of specialised construction activities has more than one regulated profession. This is the case for Portugal (five regulated professions in the area of Gas installation and maintenance and four regulated professions in the field of electrical engineering) and in Denmark (two exclusive regulated professions in plumbing (gas and water) and a further two in respect of scaffolding (scaffolder and offshore scaffolder)).

<sup>40</sup> Tiling was however formerly a reserved activity in both the Czech Republic and Germany prior to the adoption of the 2004 Revision of Handicrafts Code (Handwerksordnung) and also in the Czech Republic in the 1991 Trade Licensing Act (455/1991)



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appropriately trained but there is no specific qualification requirement. The same is true in **Italy** in that only a driving licence is required. However, Italy does regulate other professions in the area of specialised construction, such as installers of fire protection systems, renewable energy systems, and installers of radio, TV and electronics systems and lift technicians.

As detailed in Section 2.7 on repeals of reserves of activities, there has been legislative reform of the craft sector in the **Czech Republic, France, Germany** and **Slovenia**.

In **France**, a legal entity can only perform certain duties if the person with ‘permanent and effective control’ of the activity has a combination of specific qualifications and work experience. Since 1996, any professional can perform those activities even without qualifications provided that they are under the permanent and effective control of a qualified person. Nevertheless, since in the case of sole traders, many activities still require a professional qualification, and are therefore still subject to a reserve of activities. Similar legislative reform of crafts and craft-related activities took place in **Slovenia** in 2004, with a focus on regulating service activities rather than individual professionals. Nevertheless, sole traders and a minimum of at least one individual are still subject to a qualification requirement. Therefore, these professions are still subject to a reserve of activities according to the definition used in this study.

In **Germany**, the Revision of the Handicrafts Code (*Handwerksordnung*) in 2004 deregulated some craft professions, however, forty one professions remain regulated. Moreover, it is commonly the case due to the dual system of vocational training in Germany that a requirement remains to undergo an apprenticeship in order to obtain a specific qualification (a Master’s certificate) for professions such as plasterer, mason/ bricklayer, master builder and painter/ decorator.

The position in respect of reserves of activities within regulated professions in specialised construction activities is now examined in further detail:

Among the other professions in which at least several reserved activities were identified were: **electrical engineer** (eight reserves), **building demolition contractor** (five reserves), and **gas installation and maintenance** (fourteen reserves, of which five were exclusive reserves for separate regulated professions in Portugal). The rationale for reserving activities in these fields was driven by health and safety concerns, and issues about the risk to third parties.

Three countries have an exclusive reserve of activities for the profession of **building demolition** (**Finland, Netherlands and Poland**). In the case of Finland, this is a specialist contractor, whereas in the case of the Netherlands and Poland, this is carried out by engineers. **Germany** and **Greece** have a shared reserve of activities between demolition contractors and engineers to carry out demolition work. In other countries, among engineers, a shared reserve of activities to undertake demolition work was identified (see the earlier table on the engineering profession).

**Gas installation and maintenance** had the highest number of reserves within this sector - a total of fourteen reserved activities. An exclusive reserve was identified in six countries (**Denmark, Germany, Spain, Portugal, Slovenia** and the **UK**). Moreover, in **Portugal**, there were five different regulated professions<sup>41</sup>, each with an exclusive reserve of activities. Shared reserves were identified in **Greece** and **Italy**.

As far as **electricians** are concerned, three countries (**Czech Republic, Denmark** and **Italy**) have an exclusive reserve of activities, and a further three countries (**Germany, Greece** and **Poland**) have a shared reserve. In **France**, there is also an exclusive reserve of activities, but only one person working within a legal entity must have the requisite professional qualifications. Other employees working on electrical work can do without holding any qualification provided that they are under the qualified person’s ‘effective and permanent control’.

<sup>41</sup> These include a Gas Pipes Welder, a Gas Technician, a Gas Piping Design Engineer, a Gas Pipes Installer and a Gas Appliances Technician.

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The profession of **electrical engineer** has two countries in which there is an exclusive reserve (**Germany** and **Italy**) and a further three countries a shared reserve (**Greece, Poland, and Portugal**).

In **Portugal**, there are four different types of **electrical engineers**, each of which is a regulated profession, with an exclusive reserve of activities. The four professions are an Electrical Engineer, a Technician responsible for the servicing of electrical installations; a technician responsible for the operation of electrical installations; and a technician responsible for the design of electrical installations).

For each type of electrical installation work (e.g. design, servicing and operation), a series of professional qualifications requirements are required limiting market access, depending on the complexity of the electrical installations, and the level of civil liability of the specialised technicians. The professions of technician for electrical installations however are shared rather than exclusive reserves of activities, and may be exercised by electrical engineers, technical engineers specializing in electrical engineering and electricians<sup>42</sup>. This provides an example of fragmentation and is examined in more detail in Section 3.3.3.3 (sectoral analysis – qualitative findings construction). It is however relatively common in practice that Portuguese engineers hold appropriate qualifications and are authorised on a register to work in more than one area of engineering. In other words, although the requirements differ for each profession, many engineers hold more than one qualification.

**Denmark, Spain** and the **Netherlands** each have an exclusive reserve of activities for **crane driving**. In **Spain**, there are two different crane driving professions with exclusive reserves, the first being a crane driver or operator of crane towers and the second being a crane operator or self-propelled mobile crane driver. In comparison, in the UK where crane driving is not a reserved activity, individuals with car licences can operate lightweight cranes whereas those with truck licences can operate (accompanied by a medical and additional theory test) heavyweight cranes.

Among the countries that have an exclusive reserve of activities for **plumbing** are the **Czech Republic, Denmark** and **Germany**. **France** and **Slovenia** do so also, but there is again the difference that the only obligation is that at least one person working in a business entity must fulfil the specific qualification requirement and does not apply to every single professional performing the service activity. In **Denmark**, there are two types of plumbers which are both separate regulated professions, one focused on gas installations and piping and water-related plumbing and sanitation (*Fittergas, vand- og sanitetsmester*) while the second deals only with water-related plumbing and sanitation (*4Vand- og sanitetsmester*). **Greece** was the only country with a shared reserve of activities in plumbing. The profession of **boiler operator** also has an **exclusive reserve** in three countries, **Spain, Denmark** and **Slovenia**.

The profession of **air conditioning / central heating** has an exclusive reserve of activities in several countries, such as the **Czech Republic, France, Germany, Slovenia** and **Spain**. It was furthermore a shared reserve of activities in a further two countries, **Italy** and **Greece**.

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Among the main findings were that:

**Many professions in respect of specialised construction activities were only regulated in between one and three Member States in the sample.** Examples are floor layers, building insulators, plasterers, master builders, painters and decorators and crane drivers. Since these professions are only designated as a regulated profession in a limited number of Member States, this raises an issue as to whether market access barriers through the requirement to hold a specific qualification requirement are really necessary.

<sup>42</sup> The competences of each profession are regulated by the Regulatory Decree no. 31/83 of 18th April.

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**Reform within specialised construction activities (particularly crafts), has led to a reduction in the number of regulated professions compared with the situation 10 years ago (see Section 2.7 on repeals of reserves of activities).** However, the research shows that in the Czech Republic and Germany, despite the progress made through previous legislative reforms, many vocational craft-related trades remain subject to an exclusive reserve of activities linked to a specific qualification requirement.

### *2.4.6 National higher education systems and reserves of activities within the construction profession*

Reserves of activities within regulated professions are influenced by the prevailing higher education system at national level and by the extent of reform within higher education linked to the Bologna process.

For example, in **Italy**, reform of the Italian university system has been driven by the impetus provided by the **Bologna process**<sup>43</sup>. One of the objectives of Bologna was to facilitate the entry to the labour market of Bachelor students. Since legislative reform took place in 2001<sup>44</sup> to facilitate market access to a range of professions for those holding only a Bachelor's degree, there has been a distinction between a 'junior' and a 'senior' professional. However, this does not relate to their length of experience, but rather to the specific academic qualifications that they hold.

The Italian higher education system is based on the 3+2 system (i.e. a bachelor's degree can be obtained in three years, with a Master's specialisation requiring a further two years' studies). The separation of a junior from a 'senior' professional is linked to their respective academic qualifications. For example, a *Laurea magistrale* or Master's degree is required with a specialisation in architecture and building construction engineering in order to become a senior level architect or engineer, whereas for the junior profession, only a *Laurea* (Bachelor's) is required). Formerly, prior to university reform, under the old system, only fully qualified engineers and architects had access to higher-level professions i.e. a specific Master's degree qualification entitled the holder to perform the services of a senior engineer.

A junior and a senior professional are separate regulated professions. A junior can access the profession having obtained a Bachelor's degree, whereas a higher-level professional must hold a Master's equivalent. Examples of professions in which there is such a division include those of: architect, planning expert, landscape expert, architectural and environmental curator, and engineer. There is an equivalent junior title designation for those holding a Bachelor's degree e.g. junior architect, junior territorial planner, junior landscape architect.

While the division between a junior and a senior professional has promoted access to the architecture and engineering professions for graduates with Bachelor's level higher education, a specific qualification requirement remains. The junior professional commonly has a narrower scope of competence through a shared reserve of activities with the senior professional, whereas the latter also has some exclusive reserves of activities as part of their specialisation (see the full legal inventory under 'Italy' for examples).

Some data has been obtained on the **market distribution between junior and senior professionals in Italy**. For example, the most recent statistics on the architects' profession were published by the National Council of Architects in 2009, and provide a snapshot of the situation at the end of 2008. The period

<sup>43</sup> [http://ec.europa.eu/education/higher-education/doc1290\\_en.htm](http://ec.europa.eu/education/higher-education/doc1290_en.htm)

<sup>44</sup> DPR 5 June 2001, n. 328 (art. 16)

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analysed is between 2002 (the year of establishment of the registry of junior architects) and 2008. At the end of 2008, there were 136,000 architects in Italy. However, junior professionals amounted to less than 1,000 professionals, i.e. some 0.7% of the total. Nevertheless, the growth rate of junior architects in 2008 was 30% compared with the previous year, while for senior architects, the equivalent figure was only 3%. In engineering, the most recent statistics published by the National Council of Engineers in 2010 provide a snapshot of the situation at the end of 2009. As at the end of 2009, there were some 220,000 architects in Italy, of which junior professionals amounted to 6,000, i.e. some 2.8% of the total. The growth rate of junior architects was nearly 20% in 2009 compared with the previous year, while for senior architects it was only 2.7%.

Overall, it is clear from the statistics that reform has facilitated market access for junior professionals holding only a Bachelor's level qualification. Even if the total number of junior professionals is small compared with the total, the percentage is growing. However, the distinction between a 'junior' and a 'senior' professional between graduates holding Bachelor's and Master's level qualifications has arguably led to further fragmentation within regulated professions. Whereas there was previously a single regulated profession, there are now two separate regulated professions. This can be contrasted with the position in **Spain** where the Bologna process may well lead to reduced fragmentation within regulated professions in the future through the unification between the technical and higher branches of engineering with only one type of engineering graduate.

Differences in the scope and delineation of reserves of activities specific to qualifications obtained and the organisation of higher education systems were also identified in other countries, such as **Spain** and **Portugal**.

In **Spain**, there are a large numbers of different types of engineers (17 in total) due to the distinction between the technical and higher branches of engineering, which is linked to differences in academic qualifications depending on the level of degree cycle pursued. Graduate degrees in Spain have historically been divided into three different cycles.

Engineering degrees in Spain have traditionally encompassed five year "higher engineering" degrees corresponding to the long cycle and 3 year *Ingeniería Técnica* "technical engineering" degrees corresponding to the short cycle. The educational institutions are different for each cycle and the studies in the short cycle are of a lower level than those of the long cycle. The three year engineering degree qualified professionals to enter a medium-level technical profession whereas a five or six-year "*Ingeniería*" degree facilitated access to higher-level engineering.

However, this does not mean that "higher engineers" or "higher architects" dominate all the reserves of activities within engineering. For example, the direction of execution of work is exclusively reserved to technical architects (an architect can design a ramp, but the direction of the execution of the work has to be carried out by a technical architect). Architects receive training to design projects, while technical architects are specialists in what kind of materials to use and how to use them during construction. Although the two degree types used to be completely separate, as a result of the Bologna process, the Spanish higher education system is currently undergoing reform. In future, there will only be one type of engineering graduate.

With regard to the distinction between the professions of engineer and technical engineer in **Portugal**, a technical engineer is a certified professional who has completed a first degree cycle in engineering sciences or engineering (i.e. holds a bachelor's level degree). In order to obtain the professional title "engineer" and to work in the higher level branch of engineering, an advanced course in engineering must be completed (i.e. the second degree cycle. Prior to the Bologna process, this required a full degree and post-Bologna, this will require a Master's degree). Higher-level engineers must also be a member of the engineering professional association, the *Ordem dos Engenheiros*.

### 2.4.7 Legal disputes in the construction sector

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In Section 1.5, a number of challenges in carrying out the study were outlined. Among these were the fact that legal disputes have occurred as a result of the lack of a clear description of the scope and delineation of reserves of activities between different professionals. This was particularly the case in respect of engineering in Member States such as **Portugal** and **Spain**. In **Italy**, there have also been contradictions in legal judgements reached as to whether particular professionals had exclusive reserves of activities or were open to wider competition.

Selected examples of legal problems arising from the unclear delineation of reserves of activities are provided by way of illustration below:

In **Italy**, for example, there have been difficulties in some areas with regard to the scope and delineation of reserves of activities between surveyors, architects and engineers. A piece of legislation dating back to the 1920s states that surveyors are allowed to build ‘modest buildings’ with a description that sets out the reserve of activities only in quite general terms. There have been various legal rulings that ‘modest’ means ‘not requiring the use of concrete cement’ (for example, see the recent Court of Cassation judgments no. 19292/2009 and 6402/2011). However, in other legal cases, judges have rejected this interpretation and exonerated surveyors that have made buildings using concrete (e.g. c.f. State Council sentences no. 348/2001 and 5208/2002).

In **Portugal**, there have been disputes with regard to the scope and delineation of reserves of activities between the professional associations representing the interests of engineers, technical engineers and architects. For example, Decree No. 1379/2009 of 30 October which regulates the minimum qualifications appropriate to the project development, direction of works and direction of supervision of works, included in the Law 31/2009 of 3 July was an initiative from a government Ministry, but which did not have the agreement of these professional associations.

According to the Portuguese country expert, the engineering association (*Ordem dos Engehneiros*) has requested the suspension of the Decree N° 1379/2009 of 30 October, arguing that it does not respect the principles set out in Law n° 31/2009. From their point of view, the Decree has not properly considered the differences between the qualification and training background of engineers and technical engineers respectively. The concern was that the law would allow technical engineers to design works of considerable complexity and responsibility, for which their more basic training may not be enough.

There has also been a disagreement in respect of the above Decree between professional associations in Portugal with regard to the scope of architects’ competence. The decree gives them a shared reserve of activities with engineers to work on buildings up to a market value of 2,656,000€. The Portuguese Architects’ Association (*Ordem dos Arquitectos*) is in favour of extending the management of building works as a shared reserve of activity for architects with engineers but the Portuguese Engineering Association (*Ordem dos Engenheiros*) argues that architects’ qualifications and training is not fully suited for such tasks.

The interviewee from the Spanish Ministry of Economy confirmed that there have been numerous legal disputes in **Spain** between different branches of the engineering sector (especially between the technical branch and higher level).

While clearly it would be inappropriate to comment on the merits or otherwise of these particular legal cases, the examples provided show that there have been many legal disputes due to ambiguities in the scope and delineation of reserves of activities within regulated professions. Aside from the adverse economic impacts associated with any on-going legal uncertainties with regard to reserves of activities, this demonstrates some of the difficulties in undertaking the legal mapping exercise, since the position as to whether particular service activities and tasks are reserved to a particular professional is not always clear.

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### 2.5 Tourism

The findings in respect of the presence of reserves of activities in the tourism sector are summarised below, disaggregated by country:

**Table 2.23: Tourism – reserves of activities by country at national level (EU13)**

Tourism			
Country	Exclusive	Shared	Total
CZ	2	0	2
DE	0	0	0
DK	0	0	0
EL	1	0	1
ES	2	0	2
FI	0	0	0
FR	2	2	4
IT*	5	0	5
NL	0	0	0
PL**	2	0	2
PT	4	0	4
SI	3	0	3
UK	0	0	0
<b>Total</b>	<b>21</b>	<b>2</b>	<b>23</b>

There is a clear distinction in the tourism sector between the regulatory approach adopted across the different countries in the sample, in particular, the trend discernible between the northern EU countries, southern EU countries and the new member states. Five northern EU countries do not have any reserved activities in the tourism sector, **Denmark, Finland, Germany** (apart from two reserved activities for mountain guides, but this applies to Bayern only), the **Netherlands** and **UK**. Conversely, exclusive reserves of activities were identified in countries such as **Italy, Portugal, Slovenia and Spain**. Although regional reserves of activities i.e. the requirement for local and/ or regional area-specific qualifications requirements constitutes an additional barrier to mobility, this is a different type of market restriction in that it is at the domestic level, so has not been quantified in the above analysis.

In addition to the presence of national reserves of activities, it is also important to note that in five EU countries in the sample – **Germany** (mountain guiding in Bayern region only), **Italy, Poland, Slovenia and Spain**, there are also area-specific qualifications requirements for tourism professionals at regional and sometimes even local level. The position in respect of regional reserves of activities is set out later in this sub-section.

In the following table, an overview of reserves of activities by profession across the sample of thirteen countries is provided:

**Table 2.24: Tourism - reserves of activities by profession (EU13)**

Profession	Exclusive reserves of activities (no. of countries)	Shared reserves of activities (no. of countries)	Total no. of reserves of activities (no. of countries)
Tourist Guide	6	1	7
Tour operator	3	0	3
Travel agent	3	0	3
Mountain guide	6	0	6
Reservation services	0	0	0
Travel companion / tour escort	3	0	3
<b>Total</b>	<b>21</b>	<b>1</b>	<b>22</b>

The detailed position in the tourism sector by profession is now considered.

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Within the tourism sector, the profession of **tourist guide** was found to have the highest number of reserves of activities. There is an exclusive reserve of activities within five EU countries (**Greece, Italy, Portugal, Poland, Spain**) and a further shared reserve in **France**.

Across the sample, there were found to be seven reserves of activities at the national level for the **tourist guiding** profession. In **France**, the profession of tourist guide is not regulated *per se*, however, the professions of interpreter guide (*guide-interprète regional* and *guide interprète national*) and of *conférencier national* and *conférencier des villes et pays d'art et d'histoire* (a professional who can provide guiding services in some particular places) are regulated. The guiding activity is reserved to these professions only for visits organised by a tour operator or a travel agent in museums. As of 31<sup>st</sup> March 2012, the two professions will be merged into one ("*guide – conférencier*").

In **Portugal**, there is some degree of fragmentation since the profession is divided between national tourist guides, which have some exclusive and some shared reserved tasks (and privileged access to certain tourist sites) and regional tourist guides. The same is true in **Slovenia** where there is also a shared reserve to perform tourist guide services between the professions of national tourist guide and 'local tourist guide in tourist areas'. This is a localised version of the tourist guide profession at national level and requires taking an additional test set by the local municipality to demonstrate knowledge proficiency about the specific cultural heritage and geography of zones designated as being of particular tourist interest. In principle, however, tourist guides at the national level (*Turistični vodnik*) in possession of the national qualification only can also deliver tour guide services locally i.e. there is a shared reserve of activities with local tourist guides in locations of special touristic interest (*Turistični vodnik turističnega območja*) and therefore less of a competition issue.

The difficulty in quantifying the number of reserves of activities in the tourism sector can be illustrated by an example from **Poland**. While the profession of tourist guide is a single regulated profession in the national database on regulated professions, there are in fact four distinct sub-categories of tourist guides, a tourist guide at the national level, a city tourist guide, a regional tourist guide for individual provinces or regions and a mountain guide, each with an exclusive reserve of activities requiring different qualifications. Although mountain guide is a sub-profession within tourist guide in the national database, there are in effect two types of mountain guides linked to qualification requirements. The first type of mountain guides is licenced to provide services in specific mountain ranges, whereas the second type is able to provide mountain guiding services without any territorial restrictions.

**Tour operators** have an exclusive reserve of activities in three EU countries (**the Czech Republic, Italy and Portugal**). In **Slovenia**, the Act for the Promotion of Tourism Development 2004 supports a licensing scheme for tour operators and travel agents. This is conditional upon being a member of the Chamber of Commerce and having the requisite number of years' professional experience. It does not appear to be linked to any specific vocational qualifications. In **Greece**, the licensing scheme for tour operators and agents was repealed in 2011. **Reservation services** was not found to have any reserves of activities, although aspects of the work of a tour operator, which may include such functions. In three countries, the profession of **travel agent** is subject to an exclusive reserve of activities (**Italy, Spain and Portugal**).

The profession of **mountain guide** is exclusively reserved in four EU countries, the **Czech Republic, Italy, Slovenia and Poland**. In **Poland**, a further distinction in the scope of the reserve has been between exclusive reserves for **mountain guides** (who operate within regional restrictions) and climbing tourist guide (professionals who are able to offer services across all mountainous areas in Poland rather than confined to a specific regional area). In **France**, the profession of *guide de haute montagne* is a reserved activity for the provision of guiding services in relation to high mountain ranges.

The profession of **travel companion / courier** (who represent tour operators and accompany tourists whilst travelling) is an exclusive reserve in **Italy, Portugal and Slovenia**. In **Portugal**, there is a further

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distinction between **travel companions and tour escorts** whose role is to welcome tourists to airports and to escort them to their accommodation.

**Examples were also identified of regulatory reform to deregulate some professions in the tourism sector.** In the **Czech Republic**, the profession of tourist guide was deregulated in 2008 with a move to a licensing system (see Section 2.7 which sets out repeals of reserved activities). In **France**, legislation will be simplified by merging the present four tourist guide professions into one on 31<sup>st</sup> March 2012. In **Greece**, tour operators and travel agents were formerly subject to a reserve of activities, but since 2011 have been subject to a national licensing scheme. In **Portugal**, the profession of hotel director has been deregulated through legislation adopted in 2011.

### *Regional reserves of activities – tourism*

As noted earlier, in five EU Member States in the sample, **Germany, Italy, Poland, Slovenia and Spain**, there are area-specific qualification requirements, mainly for tourist guiding services, but also for some types of mountain guiding professionals.

In **Germany**, mountain guiding is a reserved activity, but only in the Bayern region, reflecting geographic considerations.

As regards **Italy**, there are regional-specific qualification requirements for tourist guides across all 21 regions. In addition, there are also often qualification requirements set at the local municipality level, although the precise number of reserves of activities is difficult to quantify - despite efforts to do so through this study.

As far as **Poland** is concerned, there are ten different area-specific qualifications to work as a city tourist guide. City Tourist Guide qualifications are required to perform tourist guide activities in the following cities: 1) Gdańsk, Gdynia, Sopot (together); 2) Katowice z Górnośląskim Okręgiem Przemysłowym (together); 3) Kraków; 4) Lublin; 5) Łódź; 6) Poznań; 7) Szczecin; 8) Toruń; 9) Warszawa; and 10) Wrocław. There are moreover three different types of area-specific mountain guide qualifications, a Beskid Mountain Guide, a Tatry Mountain Guide and a Sudety Mountain Guide.

As far as **Slovenia** is concerned, as noted earlier, local municipalities in areas designated as being of special tourist interest, either because of the natural environment or for cultural heritage reasons, can set additional area-specific qualification requirements. Nevertheless, this appears to be an optional and alternative qualification route to sitting the national exam. It does not restrict access to the market in that national tourist guides can also provide guiding services, according to an interviewee from the Slovenian Chamber for Tourism and Hospitality, which stated that, *'in addition to a local tourist guide, a tourist guide having passed the state exam can also provide tourist guiding services'*.

In **Spain**, a tourist guide is a regulated profession in 15 out of the 17 autonomous regions. The only two exceptions that do not require a regional-specific qualification are Madrid and the Basque Country.

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### *Summary of findings – tourism*

**Among the EU Member States that had the highest numbers of reserves of activities within the tourism sector were: Italy, Poland, Portugal, Slovenia and Spain.**

**Conversely, the following countries did not have any reserves of activities in tourism: Denmark, Finland, the Netherlands and the UK.** Germany also has a largely unregulated approach - with the exception of mountain guides in the Bayern region.

**The profession of tourist guide was a regulated profession in seven out of thirteen EU countries**



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within study scope.

The number of reserves of activities relating to tourist guiding services is compounded by the fact that there are area-specific qualification requirements (e.g. in Italy, most regions in Spain, Poland and Slovenia).

Across the sample, an exclusive reserve of activities was also identified in other areas of tourism, such as professions related to tour operators and travel agents (3 countries each), mountain guides (5 countries), tourist escorts and travel companions (3 countries).

The research identified several examples of professions that have been deregulated in the tourism sector. However, there is insufficient information about the impacts of repealing these reserves. There have also been recent steps to deregulate professions such as hotel manager in Portugal.

## 2.6 Different approaches to regulating the market

A number of different ways of regulating the market other than through the use of reserves of activities within regulated professions were identified through the research. These include:

- Regulating the market through **reserved professional titles** and **designatory letters**<sup>45</sup> whose usage is protected by law and overseen by professional associations that are designated as regulatory authorities within the scope of Article 3(2) of Directive 2005/36/EC.
- Regulating professions through an **activity-based approach** rather than requiring individual professionals to hold specific professional qualifications. In order to facilitate the exercise of these activities, some Member States have chosen not to reserve the activities concerned to the holders of specific professional qualifications but to require that the legal entity providing particular service activities must have at least one person holding the required qualifications.
- **Self-regulation** - a number of examples were identified of professions that were formerly regulated that are now self-regulated, such as a tourist guide (CZ), and a real estate agent (ES, NL)
- The use of **licensing schemes** (not linked to a specific professional qualification requirement) and **certification systems**.

### 2.6.1 Reserved professional titles

The mode of pursuit of a regulated profession also covers situations in which the use of a professional title is limited by regulatory provisions to holders of a specific professional qualification (c.f. Article 3 of Directive 2005/36/EC). In other words, the title itself is the main means through which the profession is regulated, and professional associations have the right to confer (or to withdraw) the use of a reserved professional title.

Annex I of the Recognition of Professional Qualifications Directive provides a list of regulated titles falling under the definition of "regulated profession". The most recent update from June 22<sup>nd</sup> 2011 suggests that only the **UK** and **Ireland** use titles as a means of regulating the market without reserving these activities to the holders of specific professional qualifications. However, our research suggests that there are a number of other Member States that have a small number of reserved professional titles, such as **Denmark**, **Finland** and the **Netherlands**.

<sup>45</sup> Designatory letters are letters that can be used after an individual's name by those professionals that hold an appropriate professional qualification and are fully paid up members of the corresponding professional association

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Reserved titles are an alternative way of regulating the market, since there is no obligation on consumers (or enterprises) to use their services. However only the holders of the required qualifications can act under the reserved professional title. Examples of the way in which reserved titles operate in the limited number of EU countries within study scope where they are used are now provided.

In the **UK**, many professions are regulated through a reserved professional title, a legally protected term overseen by professional associations<sup>46</sup> who are responsible for overseeing the title's usage in their capacity as regulatory authorities. Individuals using a particular reserved title must be a member of the corresponding regulated professional body, which have the right to confer reserved professional titles. As part of their enforcement responsibilities, they also have the ability to take the right to use the title away in the case of any infringement of professional rules, misconduct or non-payment of membership fees.

Chartered status was the most common form of reserved title linked to a qualification requirement in the UK. Although chartered status does carry strong brand recognition among consumers, the research suggested that in the UK, there are many professionals that do not have the reserved professional title of architect or engineer but are still able by dint of their professional reputation to obtain work. Indeed, in some instances, the professionals concerned do already possess the requisite professional qualification, but have simply let their membership fees lapse and are no longer therefore able to use the designatory letters.

It was not possible to obtain robust data on the proportion of professionals working in different professions within study scope that were title-holders and non-title holders. However, approximate estimates were obtained in some instances from sources such as a parliamentary hearing in which the UK's Engineering Council participated. This suggested that in the UK engineering sector, a relatively high proportion of 'engineers' – perhaps as high as two-thirds - do not have a reserved professional title and are not fully paid up members of a professional association with regulatory powers.

A small number of wider instances of the use of reserved professional titles were also identified in countries such as **Denmark**, **Finland** and the **Netherlands**. Among the examples in this regard were a Certified Structural Engineer (Denmark), which has no reserve of activities associated with it but is listed as a regulated profession in the Danish database. The Danish Society of Engineers IDA is responsible for overseeing the use of the title. As in the UK, there is no compulsion upon consumers to use the services of the holder of a specific professional title.

In **Finland**, an example was also identified of activities that were not reserved but where the profession was effectively regulated through a title overseen by a professional association. For example, unlike in other countries in the sample, the legal profession is not subject to any reserve of activities, not even in relation to representing clients in court. However, the profession of *Advocate (Asianajaja)* is a reserved title, whose usage is overseen by the Finnish Bar Association.

A further example of the use of reserved professional titles was identified in the **Netherlands**. Although some reserved titles (such as registered accountant) were linked to reserves of activities, others had no such reserve (e.g. architect). While architects do not have any reserve of activities, under the Architects' Title Act (*Wet op de architectentitel*) 2011, the Dutch Architectural Registration Board (*Stichting bureau architectenregister*) is able to confer professional titles upon its members. This applies not only to architects in general, but also to specific types of architects and related professions (e.g. Interior Architect, Landscape Architect, Urban Planning Expert and Architect (with acquired rights)).

A detailed assessment of the use of reserved professional titles and their economic impacts is provided in Appendix G. Since the UK was the main country within the sample that makes wide use of reserved titles regulated through professional associations, the focus of the research was on this Member State.

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<sup>46</sup> There may be several such bodies overseeing the use of protected professional titles for one profession. For example, in the accountancy field, there are several accountancy bodies, such as ACCA, ICAEW, CIPFA and CIMA that have been given a Royal Charter, which gives them the right to oversee the dispensation, use and withdrawal of professional titles.

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It should be noted however that there was a general absence of empirical research on the role and impact of reserved titles. The literature review did identify some research<sup>47</sup> that touched on the issue of reserved titles but this was limited in scope, given that there were only brief references as part of a wider examination of regulated professions and their impact on competition within the UK professional services market. The findings also draw on field research discussions with key stakeholders such as the Legal Services Board, the Office of Fair Trading, the UK's Engineering Council and the Architects' Registration Board.

A summary of the conclusions reached in respect of the use and impact of reserved professional titles is now provided.

First, a key finding was that reserved professional titles can provide an alternative **mechanism for regulating the market** which may also help to avoid recourse to the exclusive reservation of activities to specific professionals. However, the underlying rationale for the use of reserved titles is similar to that used for the reservation of specific activities e.g. consumer protection/ overcoming information asymmetries and ensuring high quality of services. Secondly, it was commented by interviewees that **those holding a reserved title tend on average to earn higher salaries than persons with other qualifications**. For example, accountants with chartered status tend to charge more for their services than other market participants not holding the title. There are of course exceptions, and many examples of non-qualified persons working in positions that demand an accountancy skills-set who are highly paid. Overall, however, among professionals in most sectors, it is still viewed as desirable to hold the title from the point of view of enhancing total career earnings. This was found to be especially the case in accountancy, but less so in engineering and architecture.

Thirdly, reserved professional titles overseen by professional associations are considered as a useful means of promoting **high levels of consumer protection**. Individual professionals are accountable to professional associations that govern his or her use of the title, which in turn may help to reassure consumers. Consumers using the services of a title holder have formal protection mechanisms in place and in case of complaint about the services received from a given professional, they are then accountable to the professional body for their ethical and professional conduct.

With regard to the economic impacts of reserved professional titles (to the limited extent that evidence was available), the research identified various benefits from the use of such titles. Reserved professional titles were found to have a **positive impact on influencing market structure**. Since professions in which reserved titles are used are not generally subject to a reserve of activities, this can serve to **lower entry barriers for market participants** in related professions, or from within the same profession not holding the professional qualification, thereby encouraging greater competition.

Reserved titles were also found to **facilitate consumer choice**, since there is no obligation on either consumers or enterprises (as intermediate users of services) to use the services of a title holder. Rather, consumers can choose between a reserved title holder and a non-title holder, and this helps to structure the market and to promote price competition. However, there is an absence of reliable data on pricing differentials.

It is worth noting that in some countries, academic titles are sometimes used that do not have any reserve of activities attached, are an unregulated profession but the use of the title is not overseen and monitored by a professional association. For example, in **France**, as noted earlier in Section 2.4.4, engineering is an unregulated profession. The professional title is not protected but there is an accreditation scheme for professionals holding the academic title of *ingénieur diplômé*. Rather than a professional association supervising the use of the title, the CTI (*Commission des Titres d'Ingénieur*) is responsible for accrediting training programmes and engineering qualifications granted through education institutions.

<sup>47</sup> See reports by the Office of Fair Trading, the UK's national competition body, and by the Legal Services Board – a full list is provided in the bibliography (Appendix B).

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It should be noted that a more detailed assessment of the impact of the use of professional titles, limited to those countries that use such titles under Article 3(2) of Directive 2005 is provided in Appendix G.

### 2.6.2 Activity-based approach

An **activity-based approach** to regulating service activities rather than individual professionals was identified especially in the crafts sector. Legislative reforms have taken place in a number of Member States, such as **France** (1996) and **Slovenia** (2004) in order to reduce market entry barriers by limiting the number of persons within a business entity that must hold a specific professional qualification and by allowing qualified persons to oversee the work of unqualified persons. Concrete examples in this regard are now examined:

In 1996 in **France**, as part of reform within the specialised construction sector, through the Law of 5th July 1996<sup>48</sup>, a change was made so that (service) activities are regulated through a professional qualification requirement, rather than the former burden on individual professionals.

In **France**, professions listed under Article 16 of Law 96-603 of 5th July 1996 *relative au développement et à la promotion du commerce et de l'artisanat*, remain regulated but are regulated at the level of the service activity rather than the individual professional. It is for instance possible for an entrepreneur to set up a company offering the services listed in Article 16, even without holding the appropriate qualifications. In order to offer certain services however, the entrepreneur has to employ a person with adequate experience or qualifications in order to perform or oversee the activities. Anyone offering services must be “under the effective and permanent control” of a person with adequate qualifications.

This reform was designed to ensure that the concepts of freedom of enterprise on the one hand and regulation (issues concerning health and safety, environmental protection, and ensuring high quality of services...) on the other were not mutually exclusive. It also allows a company to offer more than one type of service, which is especially useful in the construction sector, where the same company can have a wider number of employees “under the effective and permanent control” of a smaller number of qualified staff. According to the Ministry responsible for this reform, the aim was to strike a balance between ensuring quality of craftsmanship on the one hand, while avoiding imposing any unnecessary regulatory burdens on the other. It also makes it easier for companies to offer a wider range of activities, such as the installation of gas and water networks in France.

Similar reforms have taken place in respect of the craft sector in **Slovenia** through the adoption of the "Small Business Act"<sup>49</sup> in 2004 (Official Gazette of RS, No.40/2004). This sets out general principles concerning the regulation of professions relating to craft and craft-like activities. The Act brought about regulatory reform through a change in emphasis towards regulating service activities. This means that there is greater flexibility in meeting the qualifications requirements to obtain a licence for business entities (including sole traders) to provide services. Law Decree no.18/2008 of the Official Gazette RS laying down the validity of crafts and activities similar to crafts led to deregulation in respect of individual professionals, such as those specialising in carpentry and joinery. A basic requirement is that a minimum of one person working within a particular enterprise must be appropriately qualified. As in France, this means that non-qualified persons can deliver craft-related services provided that they are overseen by an appropriately qualified professional.

### 2.6.3 Self-regulation

A number of instances were identified of a **self-regulated approach** to regulating particular professions. Self-regulation must of course be compatible with prevailing national and European laws, notably competition rules.

<sup>48</sup> Loi 96-603 modifiant la loi n° 73-1193 du 27 décembre 1973 d'orientation du commerce et de l'artisanat

<sup>49</sup> Article 9 of the Small Business Act sets out the conditions for obtaining a business license and Article 10 sets out the rules for how the different business entities may obtain this license.

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Under a **self-regulated approach**, professional associations and trade bodies play an important role in encouraging the development of professional standards and codes of conduct and guidance on ethical practices.

An example of a self-regulated profession that did not have any reserve of activities associated with it was an **architect in Finland**. According to the Finnish Association of Architects (SAFA), the market for architectural services is unregulated, and there is no regulation of the profession through qualifications. There is only a voluntary register (maintained by a professional association, the Qualification of Professionals in Building, HVAC and Real Estate Sector in Finland (FISE). While participation in the register has become more popular among architects in recent years because it is viewed as a mark of high service quality, many smaller companies and entrepreneurs in rural areas do not belong to the association.

In the **Netherlands**, a good example was identified of a profession that has been deregulated, real estate agent, but where professional associations have stepped in and set up **voluntary certification scheme** as part of self-regulation. Changes in national legislation in 2001 mean that the title of real estate agent (*makelaar*) is no longer protected. However, in order to promote high quality standards, the three main professional federations: NVM (Dutch Federation of Real Estate Agents), VBO (Association of Real Estate Agents) and VastgoedPro formulated their own voluntary admission requirements. In order to become a fully accredited member of these professional associations, real estate agents must sign up to a certification scheme. This is linked to specific educational and qualification requirements and also requires adherence to a code of conduct. This voluntary mechanism has replaced legislation regulating the profession as the primary means of structuring the market.

### 2.6.4 Licensing and certification schemes

In some professions, national **licencing systems** have been introduced as part of the process of deregulating individual professions from qualifications requirements linked to a reserve of activities. In order to obtain a licence, a service provider (an individual or a company) must meet general rather than specific professional qualifications requirements and may also be required to meet additional criteria (such as a minimum age requirement, being a citizen of good standing without a criminal record, etc.).

Examples of licensing scheme adopted as part of efforts to reduce the number of reserves of activities within regulated professions are the professions of tour operator and travel agent in **Greece**. These professions were formerly subject to a reserve of activities. However, this was repealed during 2011 and replaced by a national licensing scheme.

The profession of **electrician** in the UK provides an interesting example of a **certification scheme**. A "competent" electrician is an individual who has either notified local Building Control beforehand or is a member of a "Part P" registration scheme and has self-certified that they have the requisite qualifications to carry out electrical work. The Department for Communities and Local Government (CLG) current criteria dictate that assessments should be carried out to ensure that the Minimum Technical Competence of the Electrotechnical Assessment Scheme (EAS) is met. The qualifications or certification requirements vary depending on which Part P registration body is carrying out the work. Proposed electrical work can be undertaken by a Competent Person, which is defined as an individual (or a company) authorised to self-certify compliance with the Part B Building Regulations on the completion of the work.

A further example from the **UK** was identified of a national **licensing system** in the private security sector. Under the Private Security Industry Act, 2001, a licensing scheme has been set up by the Security Industry Association (SIA), an agency under the UK's Home Office. Professionals in the security field must go through an application process which includes a police check, but are not subject to any specific qualifications requirements.

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In summary, the research has identified a number of alternative ways of regulating the market across different professions, sectors and countries which aim also at ensuring high levels of consumer protection and overcoming information asymmetries.

### 2.6.5 Overall findings

- Reserved professional titles overseen by a professional association provide an alternative means of regulating the profession.
- The rationale for the use of reserved titles is broadly similar to that cited for the exclusive reservation of activities to professionals holding specific qualifications.
- Those holding a reserved title tend on average to earn higher salaries than persons with other qualifications.
- Since consumers commonly have a choice as to whether to use a professional with a reserved title or a non-titled professional or unqualified individual, this lowers entry barriers for wider market participants.
- An activity-based approach to regulating service activities rather than individual professionals has provided an opportunity to facilitate market access, especially among professionals in specialised construction activities.
- In several EU countries, regulatory reform has taken place in the crafts sector<sup>50</sup> to reduce qualification-based market entry regulations. Two main types of reforms have taken place (i) the repeal of reserves of activities in relation to individual professions, in instances where these have become unregulated (Germany), and (ii) legislation resulting in a transition to regulating service activities, rather than individual professionals (France, Slovenia).
- Although such reforms have helped to promote a more flexible approach in enabling professionals to access the market, there remains a requirement for a minimum of one person within a legal entity to be appropriately qualified before they can supervise the work of non-qualified persons.
- Self-regulation was viewed as providing a viable alternative approach to regulating professions through legislation in some EU countries. The role of professional associations and trade bodies was found to be crucial in ensuring that self-regulation is effective, for example, in developing appropriate professional standards, codes of conduct and ethical standards.
- Licensing schemes provide an alternative approach to reserving activities to a particular professional through a specific qualification requirement. Licensing appears to be appropriate for professions where the need to hold a specific qualification has been questioned, such as professions within the security and tourism industries respectively.

### 2.7 Repeals of reserves of activities and regulatory reform within regulated professions

In this sub-section, a review is provided of:

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<sup>50</sup> Crafts and related activities are covered through the study under the heading ‘specialised construction activities’.

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- Previous repeals of reserves of activities in thirteen EU Member States related to specific professions or sectors; and
- Legislative reforms within regulated professions at the country level affecting multiple sectors.

Through the research, examples were identified of the repeal of reserves of activities within regulated professions deemed to be disproportionate or unnecessary pertaining to individual professions and in specific sectors / sub-sectors. The time scope of the review of repeals of reserves of activities broadly covered the previous ten years. However, a flexible approach was adopted in instances where interesting examples were identified from the mid to late 1990s (e.g. the craft sector in France was subject to reform in 1996). In addition, the analysis identified recent examples of regulatory reforms that took place at national level and pertain to reserves of activities within regulated professions more generally.

There is a current lack of empirical research about the impacts arising from previous repeals of reserves of activities. When deregulation has taken place, it is often the case that no analysis has been carried out of the impacts of making a regulated profession unregulated, for example, by relevant Ministries, competition authorities and sectoral and professional associations. Another challenge for this aspect of the research was that several southern EU countries have committed to large-scale reforms of regulated professions very recently but the process of reviewing and reforming legislation on regulated professions is still ongoing. Despite these constraints, the analysis of previous repeals provides a useful backdrop to both the presentation of the current legal situation in respect of reserves of activities (Section 2) and for the economic analysis presented in Section 3.

### 2.7.1 *The repeal of reserves of activities - specific professions and sectors*

Examples of previous repeals of reserves of activities, both within specific professions and sectors – and their impacts - are outlined in this sub-section. An overview in tabular form is also provided in Appendix F at the end of the legal inventory. Although discussions have been carried out with national coordinators on regulated professions and contact has been made with wider national authorities, the identification of repeals is illustrative, rather than exhaustive, given the short duration of this study. It was also notable that not all countries could identify examples of the repeal of reserves of activities through national legislation.

In the **business services sector**, only a few examples of formerly regulated professions that have been repealed were identified, for example the profession of real estate agent in the **Netherlands** and **Spain**. In addition, an example was identified of the process of modernising and clarifying the legislative framework in respect of reserves of activities within the legal services sector in the **UK**. The current batch of regulatory reforms taking place in southern European countries such as **Greece and Portugal** may lead to further deregulation of regulated professions within business services. The Framework Law 2011 on the reform of regulated professions in Greece may lead to the deregulation of some reserves of activities in the legal and accountancy professions (see Section 2.4.2).

#### ***Repeals of reserved activities in legal services***

There have been challenges in repealing reserves of activities within the legal profession in some EU countries. For example, a Commission Communication from 2005 on Progress by Member States in Reviewing and Eliminating Restrictions to Competition in Professional Services<sup>51</sup> noted in a section on '*entry restrictions and reserved tasks*' that work was planned to examine the continued justification for reserved areas in a number of sectors, such as the legal profession. However, since then, while some national authorities have reviewed a range of market entry barriers, including reserves of activities, this has not always led to substantive changes in practice to the scope of reserved tasks.

<sup>51</sup> COM(2005) 405 final, Commission Staff Working Document

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For example, in **Denmark**, a committee was set up in 2005 to consider the regulatory framework for lawyers, including lawyers' exclusive rights to represent parties before courts. The Committee's examination of the legislation around lawyers resulted in recommendations to make various changes to regulation but none of these related to reserves of activities. The recommendations related to other issues, such as changes in obligatory membership requirements of the 'society of lawyers, the monopoly of lawyers to represent parties in civil cases in lower courts (a change to the Judicial Code in 2008 now allows a mediator to get the parties to agree so the case does not need to go to court, however the mediator has to be a judge or a lawyer); the supervision and disciplinary system ruling the activity of lawyers; and rules about the ownership of legal firms.

Likewise, in **Poland**, the Communication on Competition in Professional Services (COM(2005) 405 final) mentions that discussions took place regarding the possible creation of a 'routine' legal services sector which would have seen the removal of the exclusive right of legal advisers and advocates to provide legal advice and services. However, the research by the Polish country expert as part of this study found that, this proposal has not come to fruition.

The Supreme Bar Council (*Naczelna Rada Adwokacka*) issued an application to the Constitutional Court (*Tybunał Konstytucyjny*) to check the compatibility of the proposal with the provisions of the Polish Constitution. The Constitutional Court accepted that the intention of the legislator was to create a legal basis for the provision of routine legal services, although a lowering of market entry barriers for legal advisory services must be based on a clear rationale and needed to take into further consideration the relevant protection instruments. The Court ruled that the deprivation of the Supreme Bar Council's powers to determine the rules for the advocates' exams could have led to a restriction/narrowing of the constitutional provisions concerning the protection of the legal profession. The example from Poland shows that there are complexities in implementing changes to reserves of activities within legal services, since professional bodies may oppose the removal of reserved tasks on grounds such as concerns about ensuring the quality of services, maintaining the profession's reputation for independence and information asymmetries among consumers.

The legal services sector in the **UK** has been through various legislative reforms over the past 20 years, which have had a major impact on opening up the legal services market and promoting greater competition, since former monopolies for particular legal professions within legal services have largely been removed. This in turn has had a major impact on the structure of the legal services market, both for reserved and unreserved work. For example, following the Administration of Justice Act 1985, there has been regulatory reform of conveyancing services, which had hitherto been an exclusive reserve of activities for solicitors, a protected title.

The Act's adoption has led to new market entrants, licensed conveyancers, through a shared reserve of activities. Further reform was brought in by the Courts and Legal Services Act 1999; this Act allowed organisations to apply for rights to regulate reserved legal activities. This led to the Council for Licensed Conveyancers applying and being granted the right for their members, Licensed Conveyancers, to provide probate services. Similarly the Association of Law Costs Draftsman and the Institute of Legal Executives were granted reserved legal activity rights for Costs Lawyers in the area of litigation and rights of audience and Legal Executives were granted rights of audience respectively.

Reform of reserves of activities within legal services has continued through subsequent legal acts. There has been a marked transition away from exclusive reserves of activities, which often had historical origins (e.g. barrister's right of audience in court) towards shared reserves of activities that promote competition between different legal professionals. For example, the exercise of a right of audience in (lower) courts, traditionally the preserve of barristers, is now open to a number of different legal professionals, including: barristers, solicitors, legal executives, patent agents and trade mark attorneys. Areas of work that were formerly mainly the preserve of solicitors, for example, the provision of legal advice, conveyancing and probate work, have also been opened up to wider legal professionals, such as licensed conveyancers.



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The **Legal Services Act 2007 (UK)** provides the framework to clarify the scope and limitations of reserves of activities within the legal profession.

**Table 2.25: Legal Services Act 2007**

The Legal Services Act sought to achieve various aims: clarifying the number and scope of reserves of activities within legal services, striking a balance between ensuring adequate consumer protection and quality of services on the one hand, and opening up the market to promote increased competition, lower barriers to new market entrants and stimulate innovation on the other. The Legal Services Act 2007 was designed to provide a more cohesive regulatory framework and a strategic approach to regulating the legal services market. There was previously a patchwork of legislation regulating the legal profession which led to a lack of clarity as to which activities were reserved, the precise scope of reserved tasks and the rights of different legal professionals to perform different reserved work.

A key driver of legislative reform was the desire to make regulation and the reserves of activities more transparent and to promote greater competition. The Act did not change the list of reserves or authorities to perform reserved work – the existing list were transferred in as were. There are six activities reserved to different legal professionals: (i) the exercise of a right of audience; (ii) the conduct of litigation, (iii) reserved instrument activities, (iv) probate activities (v) notarial activities and (vi) the administration of oaths.

The Act introduced flexibility for activities to be added to or removed from the list of reserves without the need for primary legislation. The legislation established the Legal Services Board (LSB), a newly created non-departmental public body, which has a statutory duty to review the scope and justification for reserved tasks within legal services on an ongoing basis. The Act provides for the extension or removal of reserved activities by order of the Lord Chancellor on the recommendation of the LSB through secondary legislation. The LSB must investigate the potential introduction of an additional reserve of activities within legal services and to consider the impact on the market, including the risk of higher cost of services.

An innovation introduced in the Act was that should any new reserved tasks be introduced, such as will-writing, then professional and trade bodies will have to apply for 'approved regulator status' in order for them to be able to gain the right for their members to carry out reserved tasks. The intention was to ensure that reserves of activities do not lead to a monopoly, even in instances when a particular area of legal services has traditionally been dominated by solicitors (a regulated profession but not subject to reserves of activities) for will-writing, although this has seen some new market entrants in the past 20 years).

The Act further introduces provision for new organisations with appropriate regulatory arrangements to be designated as an approved regulator in relation to one or more reserved legal activities allowing them to authorise their members to undertake those activities without primary legislation. Existing regulators may extend the reserved activities that they may authorise their members to undertake without primary legislation. For example, the Institute of Legal Executives were designated to authorise their members to undertake litigation in March 2010.

The evolution in the structure of the legal services market in the **UK** cannot however be attributed solely to changes in the regulatory approach to reserves of activities. For example, changes in ownership structure, in particular, the introduction of Alternative Business Structures (ABS) were provided for in the Legal Services Act 2007 and these will be introduced in October 2011. These are likely to affect market structure, and to make it easier for non-reserved work to be carried out alongside reserved work, although the impact is difficult to predict at this stage.

### ***Repeals of reserved activities - real estate agent***

The profession of **real estate agent** has been deregulated in the **Netherlands** and **Spain**. In the **Netherlands**, the "Law of 7 December 2000 adapting laws related to the removal of title protection and inauguration of estate agents"<sup>52</sup> came into force on 1 March 2001 and abolished the protection of the title and the connected formal inauguration of real estate agents.

<sup>52</sup> Legislation and associated documents:

[www.eerstekamer.nl/9370000/1/j9vvhwtbnzpbzcc/vfsff0dhw000](http://www.eerstekamer.nl/9370000/1/j9vvhwtbnzpbzcc/vfsff0dhw000)

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In 2002, one year after the repeal of the professional title, the Consumers' Association and the Homeowners' Association carried out a study examining prices and the level of competition in the real estate sector. They identified subtle relative price decreases in services of agents, though since the fees of estate agents are linked to house prices, and these were rising, their overall fee income actually increased. Contrary to a general trend of decreasing growth in the number of estate agents, in the year of the repeal the growth in the number of estate agents picked up again, which may be caused by new entrants who previously did not have access to the formal title. New entrants that were not members of professional associations charged significantly lower prices than the 'traditional' agents. Finally, the research suggested that real estate agents had become more flexible in their service provision and that the competition had improved, though the causes of this development were not clear.

Regarding the situation in 2011, ten years after the repeal of the professional title, no reliable evidence is available. Anecdotal evidence suggests that the competition in the sector is high and profit margins are low. It is however not clear whether this is connected to the repeal of the protection of the professional title. The development is often cited in conjunction with the abolishment of a fixed rate for estate agents and the increasing use of the internet. As a result of the increasing use of the internet, clients of real estate agents tend to carry out more activities themselves without using the services of intermediaries.

In **Spain**, **real estate agent** was also formerly a regulated profession with an exclusive reserve of activities linked to a specific professional qualification and requirement to have a licence with appropriate authorisation. This activity was liberalised in 2000 and any individual can now work as a real estate agent. There has not been any assessment however of the impacts of deregulation. An interviewee from the Ministry of Economy in Spain did however observe that liberalisation coincided with a period of growth in the real estate sector, and prices for real estate services have been stable for a period of years. However, as in the **Netherlands**, isolating the impacts to deregulation of the profession, as opposed to wider developments, such as the advent of the internet as the main tool that enables consumers to carry out some activities traditionally performed by estate agents, is difficult.

### ***Repeals of reserved activities - tourism***

In the **tourism sector**, the profession of **tourist guide**, formerly a regulated profession, was repealed in the **Czech Republic** in 2008. Following an amendment to the Trades Act No. 455/1991 Coll., the profession was deregulated, with no professional or language qualification requirements for any of the professions listed in this Act. Among the drivers of repeals were removing market entry restrictions in order to eliminate obstacles to the free movement of tourism professionals to and from the Czech Republic. However, less positively, there has been persistent legal uncertainty with regard to the status of the profession of Tourist Guide in the Czech Republic. Since the early 1990s, the profession of Tourist Guide has been regulated and subsequently deregulated on four separate occasions.

There is presently a debate as to whether this profession should be regulated. Supporters of regulation in this sector, such as the Czech Association of Tourist Guides, highlight the negative impacts of deregulation related to ensuring high quality of services and the closure of some "accredited" tourist guides companies because of the limited market size. However, proponents of a deregulated approach in the tourism sector (such as some professional associations of tour operators and travel agents) argue that deregulation has had positive effects on the prices that consumers pay for services, and has facilitated market entry by reducing administrative burdens.

In **Italy**, there have been a number of legislative changes affecting the tourism profession (specifically the professions of travel agent, tourist guide, and courier/interpreter-guide) over the past 10 years, in 2001, 2007<sup>53</sup> and 2011<sup>54</sup> respectively. However, although some reforms have taken place, most of these

<sup>53</sup> Legge 29 marzo 2001, n. 135. "Riforma della legislazione nazionale del turismo"<sup>53</sup> and part of Legge 2 aprile 2007, n. 40..

<sup>54</sup> Conversione in legge, con modificazioni, del decreto-legge 31 gennaio 2007, n. 7, recante misure urgenti per la tutela dei consumatori, la promozione della concorrenza, lo sviluppo di attività economiche e la nascita di nuove imprese", 2011

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professions remain both regulated and subject to a reserve of activities. The most recent law passed only entered into force in June 2011 and contains insufficient detail to ascertain its likely impact. There is only a brief statement that: “*Tourism professionals are those whose activities consist of: tourism promotion services, accommodation, assistance, tourist guide<sup>55</sup> and interpreter-guide services*”. While the law does not yet list the specific changes in qualification requirements, the previous professional requirements have been repealed by the new law. This means that market access is now entirely regulated by regional law. This particularly affects the professions of “tourist guide” and “courier-interpreter guide”. A forthcoming Ministerial decree has been adopted which will address the profession of ‘travel agent’.

Regulatory reforms in the tourism sector in Italy were undertaken with a view to promoting competitiveness. However, access to the profession is still regulated at local/regional level, and this means that it may in fact have the opposite effect, by further fragmenting the market. In the case of travel agent, the impact will depend on the new requirements that will be established in the forthcoming decree.

In **Portugal**, during 2011, the Decree-Law 49/2011 concerns the deregulation of the profession of **Hotel guide/ director**. In addition, a second more wide-ranging Decree-Law No. 92/2011 of 27 July<sup>56</sup> issued by the Ministry of Labour and Social Solidarity will affect some of the professions within the scope of the study such as National and Regional Tourist Guide, Tourist courier and Tourist Escort. Further details on the new decree are provided later in this sub-section, since this concerns reform at the national level. Lastly, in **Greece**, a reserve of activities for tour operators and agents has been repealed in 2011 and replaced with a national licensing scheme. Again, since this reform has only just taken place, it is too early to assess its impact.

### *Repeals of reserved activities in construction*

In the **construction sector**, there has been deregulation within the craft sector which under the NACE codes identified in the tender specifications relates to **specialised construction activities**. Two types of regulatory reform have been identified in this field:

- Reforms that have partially liberalised the craft sector through a **transition from regulating individual professionals to regulating service activities** through business entities (whereby only one individual needs to hold a specific qualification and can supervise the work of unqualified persons)<sup>57</sup>. (also see Section 2.6.2)
- The **deregulation of professions that were formerly subject to a reserve of activities** but where reserve is no longer considered necessary or proportionate.

The main Member States in which reform has taken place of regulated professions in the crafts sector are the **Czech Republic, France, Germany and Slovenia**.

Countries in which there has been a shift in emphasis towards regulating service activities rather than individual professionals in the crafts sector include the **France** (1996), **Slovenia** (2004 and 2008) and to some extent, also **Germany**. In the case of France and Slovenia, however, this approach has already been explained in detail in Section 2.6.2 under the heading “an activity-based approach”.

In the **Czech Republic**, the most common procedure giving access to service activities was to apply for a trade licence under the Trade Licensing Act (Act No 455/1991 from 15 November 1991 Trade Licensing Act, Journal of laws Czech republic, No. 87). This was a scheme that applied to about 120 activities (“trades”). There were three types of “registered trades”, trades requiring a professional qualification acquired in the field and trades requiring a professional qualification acquired otherwise (Annex I and II respectively). This included activities such as real-estate services, advertising, travel agencies and tourist

<sup>55</sup> The profession of ‘Mountain guide’ is not affected by these legislative changes since this is a separate regulated profession with its own legal framework.

<sup>56</sup> Decree establishes a legal framework for the System of Regulating Access to the Professions (Sistema de Regulação de Acesso a Profissões - SRAP)

<sup>57</sup> Section 2.4 should also be consulted since this addresses alternative ways of regulating the market

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guides, restaurant services, intermediation in trade and services, and construction (for example designing electrical installations, project design in the construction, the construction, modification and demolition of structures and bricklaying). In the area of construction, there were also authorisation schemes concerning authorised construction inspectors and inspectors of boilers and air-conditioning control.

The legal situation in respect of trades in the **Czech Republic** is complex with 20-30 amendments to the 1991 Trade Licensing Act. A major reform of the Trades Act took place in 2008 which led to deregulation in professions such as tourist guide and ski lifts operator. Nevertheless, a high number of vocational trades remain subject to an apprenticeship requirement within specialised construction activities such as: carpentry and joinery, flooring, bricklaying, plumbing, heating, painting and roofing.

In **Germany**, a major revision of the Handicrafts Code (*Handwerksordnung*) took place in 2004 when the Handicrafts Code was reformed through the trade law amendment (Third Law amending the Code and other craft regulations) which entered into force on 1 January 2004 (a more recent update was published on 11 July 2011). The aim of legislative reform was to foster competition in the services sector and to promote employment creation.

After the revision of the Crafts and Trade Code, there are now two types of handicrafts. The first includes crafts that endanger life and the health and safety of third parties if carried out incorrectly. These crafts are listed in the first part of the Crafts and Trade Code's attachment (Annex A). Examples of reserved activities that remain include: bricklayers, plumbers, plasterer, painters and decorators and scaffolders.<sup>58</sup> Overall, the "Masters' obligation" is now limited to 41 licensed trades.

The second type of handicraft trade is unregulated, and includes crafts as well as 'quasi-crafts' for which the entrepreneur no longer needs a permit. The remaining 53 trades that have no market entry restrictions linked to qualifications. Examples of professions that were liberalised include: floor layers and wood sculptors. The reform was intended to make the establishment of a craft trade business possible for people who do not possess a Master's certificate ("*großer Befähigungsnachweis*") which was previously an entrance requirement in most such areas of the craft trade business.

People that have completed apprenticeship training and at least 6 years' work experience in a particular trade ("*Gesellen*") are allowed to be entered on the Crafts Roll ("*Handwerksrolle*") without a Master's certificate in areas exempt from the reform. Furthermore, the owner's principle, whereby the owner of a craft trade business, must hold the master's certificate themselves, was removed. This means that it should be sufficient to appoint an operations manager who is entered on the Crafts Roll. According to a case study<sup>59</sup> by the European Foundation for the Improvement of Living and Working Conditions, 2011, the Revision of the Handicrafts Code has had a significant impact on the promotion of new business start-ups, including those by foreigners living in Germany (who number several million in total).

Since 2004, the number of handicrafts requiring accreditation as a Meister has decreased and the number of foreign founders who have started businesses in the crafts sector not requiring specific permits has increased considerably. However, the overall extent of impact is limited by the fact that some professions, such as bricklayers, plasterers, painter and decorator remain regulated. Since this is not the case in other Member States, market entry restrictions due to exclusive reserves of activities appear to continue to apply.

### 2.7.2 Recent legislative developments on reserves of activities – Member State level

The research found several examples at national level of recent legislative reforms in respect of reserves of activities within regulated professions, and ongoing reviews and screening processes to assess the current legal framework with a view to modernising and reforming legislation and removing any

<sup>58</sup> [http://www.gesetze-im-internet.de/hwo/anlage\\_a\\_195.html](http://www.gesetze-im-internet.de/hwo/anlage_a_195.html)

<sup>59</sup> <http://www.eurofound.europa.eu/pubdocs/2011/211/en/1/EF11211EN.pdf>

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unnecessary or disproportionate reserves of activities. The aim of these reforms is to strengthen the competitiveness of the services sector in general and of particular professions in particular. Indeed, in the case of **Greece** and **Portugal**, the reforms are part of the National Reform Plans (a Memorandum of Understanding has been signed).

**Table 2.26: Reform of legislation on reserves of activities – national level**

Member State	Profession	Year	Legislation repealing the reserve of activities	Impacts
EL	Security services Tax advisor- Accountants Auditors Notaries and lawyers Real estate agents Economists Construction Electrician Construction equipment technician/operato r Air conditioning technician/ heating/ central heating technician/ installer/repairer Plumber Tourist guide	2011	<p>During 2011, two new laws were adopted in Greece:</p> <ul style="list-style-type: none"> <li>• Law 3919/2011 on professional freedom and the repeal of unjustified restrictions on access to, and the practice of professions.</li> <li>• Law 3982/2011 on the simplification of procedures for the licensing of technical professions</li> </ul> <p>Law 3919/2011 is a framework law. It sets out a general commitment to undertake major reform of regulated professions.</p> <p>However, the screening process to review regulated professions and to determine precisely which professions should no longer be regulated and reserves of activities removed will not be completed before the end of 2011, with changes in respect of these professions taking place only in 2012.</p>	<p><b>The Greek Government will undertake a screening process of national legislation on regulated professions during 2011, with a view to removing reserves of activities and other market access barriers deemed unnecessary by the end of 2011 with changes in respect of these professions taking place in 2012 only.</b></p>
PT	Access to the professions  170 professions listed in the Decree Law	2011	<p>Decree-Law N° 92/2011 of 27 July</p> <p>The new Decree establishes a legal framework for the System of Regulating Access to the Professions (Sistema de Regulação de Acesso a Profissões - SRAP) and will simplify access to several professions through the elimination of mandatory training courses, certificates of professional competence and professional id cards, facilitating access to professions. As a consequence, many Decree-Law and Decree will be revoked (90 days after the Decree enters into force).</p> <p>In <b>Portugal</b>, during 2011, legislation was adopted that means that access to some professions and professional activities will generally be deregulated. The professional activities associated with each profession will be reserved only when expressly provided for by law, founded on reasons of overriding public interest. However, it is expected to set specific access requirements for each occupation.</p>	<p>The liberalisation of professions is in line with the recent commitment by the Portugese Government and the social partners under the Tripartite Agreement for the Competitiveness and Employment. Since the new legislation has not yet entered into force and will do so in 2012, it is not possible to assess its impact.</p>

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During 2011, the table shows that steps have been taken to modernise the legal framework concerning regulated professions and that this will potentially remove significant numbers of reserves of activities. The aim of these reforms is to encourage greater competition in the services sector and to strengthen competitiveness. However, since the legislation linked to reserves of activities in **Greece** will not be completed before the end of 2011 and in **Portugal** will not come into force until 2012, there is presently no information on the impact that future repeals are likely to have in practice.

In **Spain**, although not yet statute, it is worth mentioning the *Draft Law on Professional Services*. While the draft bill has been delayed due to the elections in Spain that took place in November 2011, the draft law was included as part of the Europe Act, one of eight pieces of draft legislation on the priority list. The example is relevant in terms of looking ahead to potential future developments within regulated professions. It aims to reduce the overall number of regulated professions and exclusive reserve of activities by approximately 50% from the current number (192). The legislative proposal also includes plans for a reduction in licensing obligations.

The types of adverse economic impacts that the proposed legislation is designed to address have been examined by the Spanish Ministry of Economy as part of an internal ex-ante assessment. These were: frequent legal disputes in the engineering sector between different branches of engineering (technical and higher) resulting from ambiguities in legislation with regard to the scope of reserved tasks; too narrow scope of competence which may overly segment the market and lessen the flexibility of engineering firms to meet the real needs of the economy (especially through knock-on effects in the construction sector, a significant intermediate user of engineering services), and reduced portability of professional qualifications.

### 2.7.3 Repeals of reserves of activities – overall findings

There is a general lack of empirical research about the economic impacts of previous repeals of reserves of activities. Nevertheless, various research findings can be noted:

- There are **only a limited number of examples of repeals of reserves of activities relating to individual professions**.
- **There is an absence of empirical research on the impacts of repeals of reserves of activities by national authorities, competition authorities and/ or by sectoral / professional associations**.
- There has been an **increased pace of legislative reform** in respect of reserves of activities within regulated professions in southern EU countries in the sample.
- **In Greece and Portugal, legislation adopted (or due to be adopted) by the end of 2011 may lead to the removal of a significant number of exclusive reserves of activities**. However, since an ongoing screening process of legislation on regulated professions is currently taking place to ascertain which reserves of activities should be repealed, it is too premature to assess impacts<sup>60</sup>.
- **In Italy and Spain, there has been some recent debate on regulatory reform in respect of reserves of activities within regulated professions**. However, legislative proposals relating to the repeal of legislation on reserves of activities<sup>61</sup> are unlikely to be adopted in the immediate future.
- **Wider national authorities in the sample have also reviewed some reserves of activities within regulated professions**. In Denmark and Poland, for example, discussions have taken place on

<sup>60</sup> In the case of Greece, this is because Law 3919/2011 adopted in July 2011 is a framework law. Screening of the legislation to examine any unnecessary reserved tasks within regulated professions will be completed by the end of 2011. In relation to Portugal, legislation adopted in 2011 will only come into effect in 2012.

<sup>61</sup> While a draft law has been adopted in Spain on the reform of professional services, this is unlikely to go ahead due to the early holding of Spanish parliamentary elections in November 2011.

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possible reforms of reserves of activities within the legal profession. While such reforms have sometimes reduced the overall regulatory burdens, it has not always led to concrete legislative reforms in terms of material changes in the scope and nature of reserved activities.

# Economic Analysis

## 3

Section 3.1 presents a methodological framework for the assessment of economic impacts of reserves of activities within regulated professions and outlines key hypotheses to be tested through the quantitative research. Section 3.2 outlines the results of the sectoral Indexes of Reserves of Activities. Section 3.3 examines general sectoral patterns and trends to identify any correlation with reserves of activities. Section 3.4 provides a rank correlation and regression analysis to ascertain whether a relationship can be established between reserves of activities and sectoral performance indicators. Lastly, Section 3.5 considers the extent of knock-on effects i.e. inter-dependencies between the three sectors within scope and wider sectors.

### 3.1 Economic analysis - introduction

#### 3.1.1 Introduction

The methodological framework for the assessment of the economic impacts of reserves of activities within regulated professions consisted of a number of components, described in Table 3.1:

**Table 3.1: Economic analysis - overview**

<i>Economic analysis – components</i>	<i>Purpose</i>
Quantitative <b>Index of Reserves of Activities (RA Index)</b> based on the results of the legal mapping exercise (Section 3.2).	The weighted index ranks countries and professions according to the <b>level of market entry restrictiveness</b> through reserves of activities linked to professional qualifications. It ascribes a value to reserved activities and tasks, with a higher rating for exclusive reserves, and a scaled weighting system for shared reserves, depending on the number of professionals that share a given reserve.  The index's purpose is to provide quantitative benchmarks for comparing the level of market restrictiveness due to reserves of activities across the sectors/ countries in the sample <sup>62</sup> .
Analysis of <b>sectoral patterns and trends</b> (Section 3.3)	A high-level sectoral overview is presented, followed by an analysis of general sectoral patterns and trends using Eurostat SBS indicators such as employment and sectoral turnover, productivity etc. A comparison is then made with the respective position on the RA Index.
<b>Rank correlation analysis</b> – an analysis of the extent of correlation between ranking in the index and the market size (Section 3.4).  <b>Regression analysis and review of sectoral data</b> from Eurostat's Structural Business Statistics (SBS) database (Section 3.4).	The purpose of the <b>rank correlation</b> was to test whether market entry restrictions through reserves of activities restrict the size of the market.  The statistical review has sought to establish the extent of correlation between <b>reserves of activities and Eurostat SBS data</b> on key indicators e.g. sectoral turnover and employment, productivity. The regression was undertaken to further assess the correlation between the ranking in the weighted index and sectoral performance, conditional on country differences and sector differences in the sample.
Analysis of <b>knock-on effects</b> (based on Eurostat's input-output tables).	The assessment of knock-on effects shows the extent of inter-linkages between the sectors within scope and other sectors. The purpose is to show how the presence of reserves of activities may indirectly have wider impacts in addition to those in the sector/ sub-sector in which a given profession has a reserve of activities alone (multiplier effects).
<b>Qualitative review</b> – desk research and interview programme to obtain feedback on the impacts of reserves of activities (positive, negative).	Obtain views on the impacts of reserves of activities in areas such as: the level of competition and consumer choice, extent of market fragmentation, the level of consumer protection and the quality of services. The impact of the use of reserved titles was also considered through the research in the UK.

<sup>62</sup> This mirrors the approach adopted by the OECD in their Indicators of Product Market Regulation which has been carried out in respect of professional services in 30 OECD countries in (or around) 1998, 2003 and 2008.



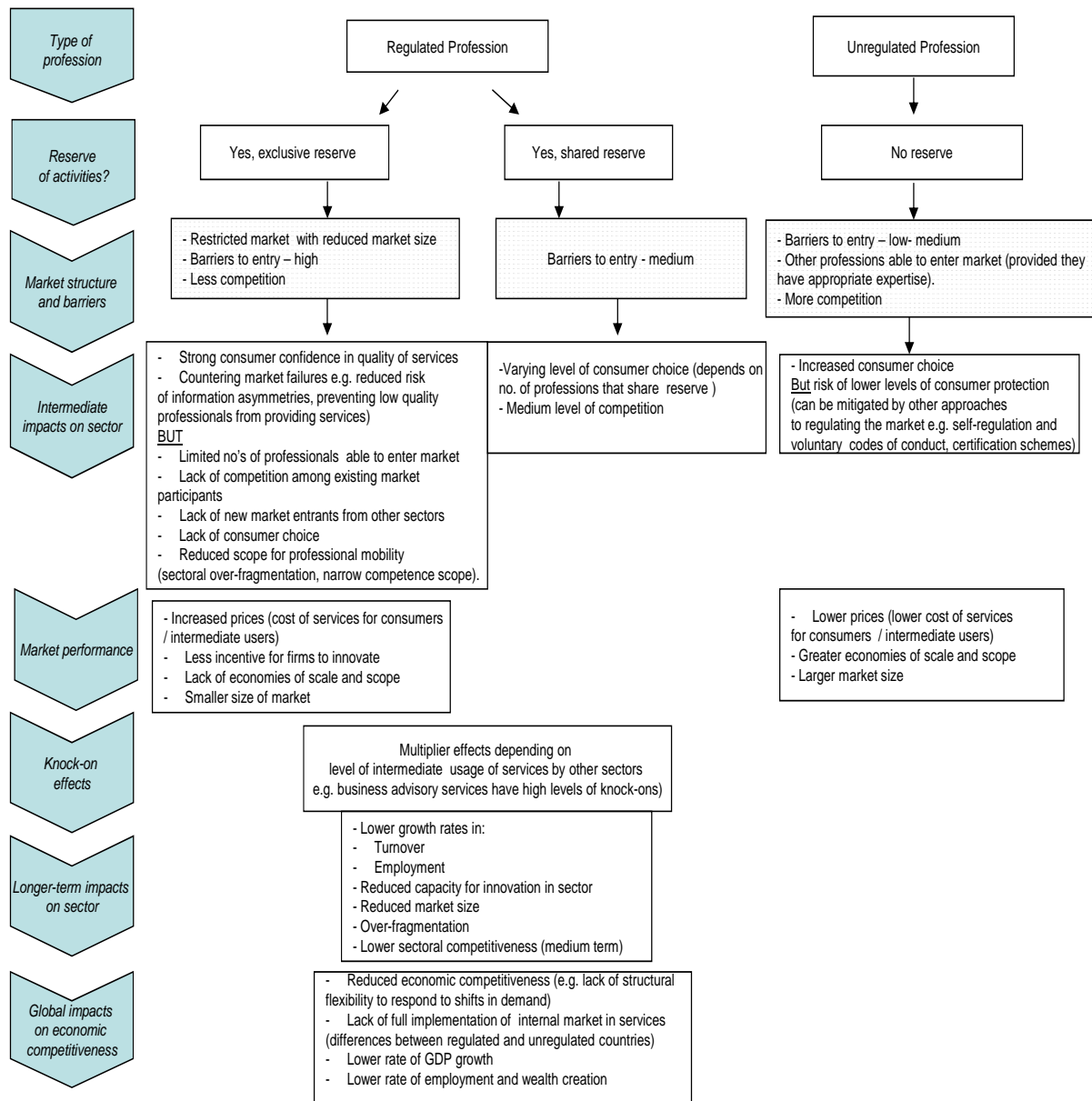
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### 3.1.2 Analytical framework for economic analysis

The analytical framework consists of an economic model which sets out hypotheses as to how the exclusive reservation of service activities might be expected to have economic impacts (positive, negative) on the size and operation of the market. Mapping out the mechanics of an economic model is an important first step in testing the extent to which the exclusive reservation of (service) activities to professionals holding specific professional qualifications are having an impact in practice. The various elements of the model showing the causality chain are summarised in the following diagram:

**Figure 3.1: Theoretical model – the economic impacts of reserves of activities on services markets**



Source: CSES – own analysis

Underlying this representation is the Structure Conduct Performance (SCP) approach, an approach for setting out the characteristics of markets and their consequences and helping in an examination of the **chain of causality**. The approach is to start with a characterisation of the structure of the market, and then to explain how the presence of a reserve of activities may affect how key actors behave (e.g. consumers, employers, service providers and professionals), and finally to arrive at the economic impacts.

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The model gives rise to certain hypotheses that have been tested through the research, for example, by carrying out a regression analysis to establish whether a link can be established between the presence (or absence) of reserves of activities and sectoral turnover, employment, and productivity.

As part of the analytical framework, key assumptions have been developed as to the types of economic impacts that might be expected to materialise as a result of the presence of exclusive reserves of activities. The purpose of the economic analysis was to assess whether these assumptions can be confirmed, in particular through the quantitative analysis (i.e. the regression and assessment of knock-on effects).

### (i) Market structure and size

A key issue was how the presence of a reserve of activities may influence **market structure and size**. The following considerations were deemed especially relevant in this regard: market size including supply and demand characteristics; the types of services provided and their scope; average firm size and firm configuration (the ability to derive economies of scale and scope) and employment structure.

A key hypothesis is that **exclusive reserves of activities may influence market structure by limiting access to suppliers of services through entry restrictions**. Market restrictions may lead to a lack of consumer choice, because of the limited degree of competition associated with a restricted numbers of professionals being able to enter the market, and a comparatively low number of new market entrants, compared with EU countries in which the corresponding profession is unregulated, due to lower entry barriers.

Reducing market size compared with what would happen in a completely free market may also result in less consumer choice through reduced market competition, and hence higher prices. In well-functioning services markets, stronger competition helps to ensure that resources are allocated efficiently, and that: (i) enterprises are able to take advantage of potential economies of scale and scope and (ii) providers of services have an incentive to reduce costs in so far as possible and (iii) consumers have access to a broad range of services at competitive prices. Sectors in which there are market restrictions through the presence of a reserve of activities may also find it more difficult to adapt to shifts in demand due to inherent structural limitations.

**Another proposition for consideration was whether prohibitive restrictions on market entry may limit the ability of larger services firms to take advantage of market efficiencies associated with their size through economies of scope and scale.** The concept of ‘**economies of scope**’ relates to the ability of enterprises to offer a wide range of complementary services in order to better meet the needs of clients. In sectors with a high level of market restrictiveness due to the presence of reserves of activities, there may be inherent limitations on the ability of enterprises to provide a full range of services. The restriction of service provision to holders of a specific qualification may also limit the opportunity for firms to expand and benefit from **economies of scale**. The lack of ability to offer a broader range of services inhibits the potential for service providers to maximise operational efficiencies, for example, through better organising internal administration and by spreading costs by cross-marketing services.

Caution is however needed when making assumptions with regard to the extent of potential economies of scale linked to firm size in the services sector. While the benefits of increases in firm size are evident in the case of manufacturing (e.g. through a reduction in unit costs), they are less evident among professional services companies. Although traditional economic theory acknowledges that it may be more efficient for one firm to expand than for new firms to be established, smaller services firms may be in a better position to offer flexible services and to be innovative than their larger counterparts.

**Reserves of activities may also impact on the size and overall structure of the market by causing market fragmentation.** Unnecessary segmentation can have different types of adverse economic impacts: on market structure, the ability of professional services firms (and/ or individual professionals) from other EU countries to practice a particular service activity, legal clarity as to the scope of competences and on the prices of services (failure to exploit potential economies of scale). The

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subsequent sections of the economic analysis will assess whether these assumptions can be confirmed by the economic evidence, drawing in particular on Eurostat' SBS data.

The diagram outlined earlier which is based on the SCM model suggested that a reserve of activities could, other things being equal, lead to a smaller market than would otherwise be the case. If, however, this effect is weak or if there are countervailing considerations, such as an effect from overcoming information asymmetries or other market failures, a smaller effect on market size would be observed or no effect at all. If the first hypothesis holds, then generally we could expect to see that those countries that have more restrictive regimes would consistently have relatively smaller service markets. If on the other hand the alternative hypothesis holds, we would not expect to see this relationship between countries with reserves of activities and the relative size of the respective markets.

These hypotheses can be tested by conducting a **rank correlation analysis** comparing the respective size of relevant markets by country (sectoral turnover data by country as a proportion of GDP) with their respective ranking in the weighted index of reserves of activities. This would show the extent to which there is a consistent relationship between the restrictiveness of the regime and the relative size of the corresponding markets. This analysis, alongside a more rigorous statistical regression, is set out in Section 3.4.

### (ii) The prices of services and wider anti-competitive effects

Among the issues considered were the impacts on pricing structures from the anti-competitive effects<sup>63</sup> of market access restrictions linked to the presence of exclusive reserves of activities.

Market restrictions limiting entry to professions through an exclusive reserve of activities may lead to higher prices due to a *de facto* monopoly in service provision. Among the drivers likely to lead to higher prices are the fact that (i) only limited numbers of professionals holding a specific qualification are able to enter the market (ii) that there is a lack of incentive for competition among existing market participants and that (iii) the lack of new market entrants from other sectors hinders innovation in service design and delivery, which could otherwise be a driver of operational efficiency savings.

Testing this theory is hindered by a lack of comparable data on the prices of services. A full study would need to look at the evidence both on price differentials between national markets and any effects between pricing and the size of those markets. In the context of the present 5 month study which has a major data gathering component to it (i.e. research on the legal inventory to identify reserves of activities), it has not been possible to go into the complexities of price structures in detail.

Only limited empirical research was available on the economic impact of reserves of activities in terms of the impact on pricing. However, some research has been undertaken to examine the degree to which reductions in the prices of services have occurred when reserves of activities within regulated professions in national legislation have been repealed. A *Study on the Conveyancing Services Market*<sup>64</sup> for the European Commission's DG COMP in 2007 noted a reduction in the prices of services following the deregulation of the UK's conveyancing market .

Even if better data on the price of services were available to allow for a comparison in pricing between clusters of countries that do, and do not, have a reserve of activities limiting access to particular professions, there remain methodological challenges in establishing empirically a firm relationship between the price of services and the presence of a reserve of activities. For example, the profession of real estate agent has been deregulated in two countries, **Spain** and the **Netherlands** (in 2000 and 2001 respectively). Other factors, such as the transformational impact of the internet on the sector and house

<sup>63</sup> Following discussion with DG MARKET, due to time constraints, limited emphasis was put on assessing the impact on prices in the service markets. Moreover, the markets for different types of services are very complex, and there is disagreement among key actors as to the effects of deregulation on market prices. However, where relevant, the findings from previous studies that examined the impact of the repeal of reserves of activities on the price of services are cited.

<sup>64</sup> Study on the Conveyancing Services Market, DG Competition, December 2007, COMP/2006/D3/003

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price trends were found to have had a more significant impact on the fees paid by consumers for real estate services than the fact that the profession had been deregulated.

This type of impact will not be covered in the following sections of the economic analysis since it was not possible within the scope of this study (or the timeframe) to obtain detailed and reliable comparative data on the price of services across the 13 Member States.

### (iii) Impact on growth and employment at sectoral level

With regard to the overall impact on sectoral competitiveness, a key hypothesis was that there may be a negative correlation between the presence of reserves of activities and the rate of sectoral growth (measured in terms of turnover, employment) and other key performance indicators (e.g. productivity). Such a correlation could be expected at the sectoral level due to the impact that market access restrictions have in discouraging price competition which in turn might be expected to limit market size.

A more general assessment of the extent to which any patterns and trends can be discerned between sectoral data and the presence of a reserve of activities across key sectoral performance indicators is examined in Section 3.3. The hypothesis of a negative correlation can be tested by conducting a **rank correlation analysis** comparing the respective size of relevant markets by country (sectoral turnover data by country as a proportion of GDP) with their respective ranking in the weighted index of reserves of activities (see Section 3.4). In addition, the significance of any correlation can be tested through a **regression analysis**, which provides a more robust statistical assessment of correlation.

### (iv) Knock-on effects

If there are economic effects arising from reserves of activities, these effects are not limited to those felt in the market for the particular service concerned. There will be knock-on effects on other markets where suppliers make use of these services in providing their own goods and services. Knock-on effects in the context of reserves of activities can be defined as the multiplier effects on other sectors resulting from the economic impacts of reserves of activities through the intermediate use of services by firms.

The exclusive reserve of service activities and/ or specific tasks within a profession represents a restriction of competition. Primarily, the competition impacts are restricted to the sector concerned (e.g. legal services). However, the economic impacts are manifested much more widely since many sectors of the economy supply outputs to (and/or receive intermediate inputs from) other sectors. In particular, this occurs through sectors that are dependent on inputs from a particular sector that entails reserved tasks. The sum of these knock-on effects shows the extent of impact of non-competitive regulation, such as the reservation of tasks, on the whole economy. In other words, the macro-effect of non-competitive regulation is potentially increased by a “multiplier” throughout the whole economy.

An input-output analysis using Eurostat data has been undertaken in order to establish the relative degree of inter-linkage between sectors covered by the study. This is set out in Section 3.5 on knock-on effects.

### (v) Dynamic effects

There is also a need to consider the **dynamic effects of reserves of activities** over the medium-long term, i.e. the way in which restricting market entry through a reservation may **limit the extent of innovation in service design and delivery**. Innovation can be spurred by deregulation and the opening up of formerly reserved markets to greater competition. For example, in the sphere of legal services, conveyancing in the UK was deregulated in 1990, and following this, as a result of new market entrants, there have been changes in the structure of the market. This has arguably led to innovation in the design of services so that consumers have a wider choice between a full service commonly provided by solicitors, which may include legal advice, and a ‘no-frills’ service provided by low-cost conveyancers that focuses on the administrative process.

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The impact of reserves of activities on innovation in service design and delivery have however only been examined in a limited way in this study due to the inherent limitations in assessing the impact on innovation within particular professional services markets due to the fact that a given service activity may be reserved in one Member State and not reserved in another. There is a risk that perceptions as to the nature of the impact will be subjective and therefore a large number of interviews would be required to assess such impacts sufficiently robustly (it was not possible within the study timeframe to have a strong qualitative focus, given the legal mapping exercise).

### (vi) Cross-border mobility

A further hypothesis is that the presence of an exclusive reserve of activities may **hinder the free movement of professionals within the Internal Market** within the same sector/ sub-sector. For example, there may be sector-specific difficulties for individual professionals in moving from an unregulated to a regulated country.

With regard to the impacts of reserves of activities on cross-border mobility, a key proposition was that this may restrict free of movement of professionals thereby undermining the full and effective functioning of the Internal Market in services, which in turn may limit market size. In sectors in which there is evidence of over-fragmentation due to reserves of activities, the professionals concerned may be able to perform a narrower range of tasks than their counterparts in other EU Member States. This in turn may limit the portability of their professional qualifications and skills to other EU countries. For example, an engineer with a narrowly defined scope of competence may find themselves at a disadvantage when competing in another market against an engineer with a broader range of competences linked to their professional qualifications. It could also reduce competitive pressure within domestic markets.

More generally, services firms may be less able to operate cross-border, and thus to generate economies of scale, because their staff cannot provide services in regulated countries that easily. Service providers wishing to operate in another EU country in which a given profession is regulated must ensure that their staff have had their professional qualifications recognised (or in the absence of an equivalent qualification from their own country, demonstrate sufficient professional experience). A prior declaration is however sufficient in the case of the temporary provision of services, except if the professions have health and safety implications. In such a case, prior recognition of professional qualifications may be required.

The impact of reserves of activities on cross-border mobility of professionals is only covered to a limited extent through the research.

### Relationship between dependent and independent variables

In analysing the different impacts outlined above, it will be important to differentiate between **dependent variables** (the impacts) and **independent variables** (factors causing the impacts). Methodologically, a key challenge for the analysis was the extent to which economic impacts can be attributed specifically to the presence of an exclusive (or shared) reserve of activities and isolated from other factors, such as wider market entry and market conduct barriers, as well as non-regulatory factors. It is also necessary to stress again that reserves of activities are only one form of market entry barrier. As noted earlier, among the other types of market entry barriers are: rules on the minimum number of years' professional experience required; restrictions on the number of educational or training places available and apprenticeship or work experience requirements to obtain the necessary certification or licensing to practise a particular profession and deliver service activities.

#### 3.1.3 Levels of analysis and key actors

In carrying out the economic analysis, it was important to define the different levels at which the various types of economic impacts linked to reserves of activities might materialise. The impacts linked to the presence of a reserve of activities may be expected to be felt at different levels, e.g. the:

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- **Enterprise level** - level of economic agents (single firm; factor markets);
- **Industry level** - level of service industry or sectoral level; and
- **Internal Market level** – level of national, transnational and European-wide markets.

There is also a need to consider how the impacts of reserved activities affect the economic welfare of different actors in the market – from consumers and intermediate users that use the services of (regulated) professionals, through to individual professionals and service providers. Among the main actors, and the types of impacts that need to be considered in relation to each group are:

- **Consumers** – e.g. price of services to end-users, extent of consumer choice, trade-off between consumer protection and consumer choice/ value for money considerations.
- **Intermediate users** – e.g. the price of services paid, linkages between sectors through knock-on effect multipliers.
- **Employers (professional services sector)** – the cost implications of hiring professionals depending on whether a given profession is / is not reserved, the implications for firm competitiveness.
- **Mobile professionals** – the ease / difficulty of working in another Member State in which a profession is regulated (subject to a reserve of activities linked to a specific qualification requirement) and unregulated.
- **Service providers** – ease / difficulty of market entry (for domestic providers and providers of cross-border services).

### 3.2. Index of reserves of activities

#### 3.2.1 Introduction

The purpose of the index is to map out the degree of restrictiveness to market entry associated with the reservation of tasks, and then to compare the intensity of market entry restrictions across the 13 EU Member States and three sectors under review (Business Services, Construction, Tourism). The coding for the 13 countries is as follows: the Czech Republic (CZ), Denmark (DK), Finland (FI), France (FR), Germany (DE), Greece (EL), Italy (IT), the Netherlands (NL), Poland (PL), Portugal (PT), Slovenia (SI), Spain (ES) and the United Kingdom (UK).

The index builds on earlier work by both the Institute for Advanced Studies (IHS) and the OECD to develop indices on market entry and market conduct regulation. In the economic literature, the degree of anti-competitive regulation is measured by regulatory indices. Through a study for the European Commission's DG Competition<sup>65</sup>, Paterson et al. (2003) developed indices on professional services (such as lawyers, notaries, accountants, architects and technical engineers) taking into account regulative restrictions to market entry (e.g. the 'number of exclusive or shared exclusive tasks' or the 'duration of compulsory practicing', etc.) and market conduct (e.g. 'prohibition of advertising' or 'regulations on prices and fees', etc.).

The OECD has developed an economy-wide PMR-index (see Conway et al. 2005) reflecting for example public ownership structures, price regulation, regulatory and administrative burdens, and barriers to trade or foreign investment. Additionally, the OECD has developed regulatory indices at a sectoral level (see Conway 2006) through the *Indicators of Sectoral Regulation (NSMR)*, which include indicators to measure

<sup>65</sup> Economic Impact of Regulation in the field of Liberal Professions in different Member States, DG Competition, January 2003, IHS, Iain Paterson, Marcel Fink, Anthony Ogus et al.

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regulatory conditions within professional services<sup>66</sup>. The indicators cover entry and conduct regulations in the legal, accounting, engineering and architecture professions in 1996, 2003 and 2008 respectively. Unlike the earlier indices, the index in the present study focuses solely on one aspect of market entry regulation - the number of exclusive and shared reserved activities and tasks within regulated professions (in three sectors).

### 3.2.2 Development of an index of reserves of activities

This sub-section describes how the index of reserves of activities (“RA Index”) has been constructed. The index maps the value of particular professions, depending on whether they are non-reserved, subject to a shared or an exclusive reserve of activities on a 0-1 scale, where 0 indicates no reservation of activity, and 1 is the highest degree of restrictiveness, namely the reservation of a task to a sole profession. For each task and subsector, data has been collected through the legal inventory as to whether the task was non-reserved (denoted by “0”), an exclusive reserved task (“1”), or a shared reserve task (“2”). More detailed information has also been obtained in respect of the number of professions that are “sharers” of any one reserved activity or task<sup>67</sup>.

When two or more professions have a shared reserve of activities, there is, all other things being equal, less restrictiveness than in the case of an exclusive task reserved to a single profession, so it is mapped to a value of less than 1. Likewise, the higher the number of professions sharing a reserved task, the lower the index value should be. The basic premise is that if several professionals share a given reserved task or activity, then this is an indication of a lower level of market restrictiveness comparatively speaking than a reserved task shared by only two professionals. Of course, in practice, the nature of market entry barriers, the structure of the market and the level of market openness or monopoly will vary, but the index will at least provide a quantitative basis for comparison.

When multiple professions have access to a shared task, the degree of restrictiveness is nevertheless considered to be considerably different from the situation of non-reservation: for this reason, a lower minimum threshold value for shared reserved tasks of 0.5 has been set. The mapping of task reservation to index value therefore adopts the following schedule:

**Table 3.2: Weightings of Task reservations**

Activity /Task is exclusively reserved	Index Value = 1
Activity /Task is subject both to an exclusive and shared reserves of activities	Index Value = 0.9
Activity /Task is a shared reservation between 2 professions	Index Value = 0.8
Activity /Task is a shared reservation between 3 professions	Index Value = 0.7
Activity /Task is a shared reservation between 4 professions	Index Value = 0.6
Activity /Task is a shared reservation between 5 or more professions	Index Value = 0.5
Task is non-reserved	Index Value = 0

The weighting values ascribed in compiling the index from the results of the legal mapping exercise are largely self-explanatory. The intention was to ascribe relative weightings on a ‘sliding scale’ basis in order to capture the level of market restrictiveness of Reserves of Activities. The precise values selected for the index were chosen so that there would be a clear distinction in the weighting between exclusive reserves of activities and shared reservations and, within the shared category, a clear differentiation in value depending on how many professions shared a particular reserve. For example, a reservation shared by 3 professions is less restrictive *ceteris paribus* than a reservation shared by 2 professions, hence the degree of reservation is set to a lower index value. The *threshold value*, i.e. the lowest index value for a shared reservation was set to 0.5. This index value is assigned when five or more professions share a reservation – this applies to a small subset of reservations. The threshold value was chosen to be 0.5 in order to reflect the qualitative difference between a situation with many sharers and that of non-reservation (index value 0). Other index values for shared reservations are set in the scale between 0.5 and 1.

<sup>66</sup> [http://www.oecd.org/document/1/0,3746,en\\_2649\\_34323\\_2367297\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/1/0,3746,en_2649_34323_2367297_1_1_1_1,00.html)

<sup>67</sup> An exception may be the Notary profession, which is not included in the analysis.

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However, it is worth noting in relation to Index Value 0.9 that this describes a situation in which a given Activity /Task was found to be subject to both an exclusive and a shared reserve of activities. An example in this regard is that of civil engineer in **Greece**. Civil engineers have an exclusive reservation to carry out the design and supervision of all types of architectural and structural projects (indeed, all construction projects above two floors must use a civil engineer). However, for certain types of small-scale construction projects, some of these exclusive reserved tasks can be shared with other professionals. Some tasks reserved to civil engineers can also be shared with architects e.g. supervising the construction of many types of structural works.

Once the mapping of individual tasks for each Member State to the 0-1 scale<sup>68</sup> was completed, calculation of a “weighted” index for each sub-sector in each country was calculated by taking the average level of reservation across all tasks within a given profession. This default model is equivalent to the application of “principle of indifference” in the face of the unknown exact economic significance of each sub-sector. The default weighting of different tasks is based on the assumption of a hypothetical case, meaning that one model is used for all countries (irrespective of actual variations in the importance of the different tasks).

### *Challenges in compiling an index*

Various challenges were identified in compiling the index, which are worth noting.

Quantifying the number of ‘sharers’ in relation to a given Activity /Task (and in turn assigning a value between 0.5 and 0.9 based on the weighting values above) is not always straight forward. A judgement has to be reached with regard to how activities shared between different professionals should be classified. For example, in **Italy**, civil engineers are the dominant profession in terms of reserved tasks in the construction of buildings. However, some activities are also a shared reservation with architects for buildings of a certain size and complexity. Furthermore, for small, simple buildings, the reservation is shared between architects, surveyors and industrial experts. Therefore, an issue arises as to whether the task is shared between two or four professions.

The index simply maps out the number of exclusive and shared reserves. It does not seek to take into account: the relative importance of the different reserved tasks in terms of their share of overall turnover in the respective professional field; the type of qualification requirements applying for different areas of professional activity; and other differences between countries, such as differences between legal systems, which may lead to higher or lower rates of litigation, implying different levels of relative importance of the task of the representation of clients before courts (which is reserved in many, but not all, countries in the sample).

As with any index, it provides useful quantitative benchmarks, but needs qualifying since there are particularities specific to professions that affect market structures across different countries (e.g. Germany has a high level of reservation within legal services, but some areas of the market are open to competition, namely the provision of legal advice). The findings also need to be given context in terms of the national situation in particular markets that may explain differences in market structures.

### *Sensitivity of index calculations*

The sensitivity of results (presented in the next section) was tested by changing the threshold value from 0.5 to 0.3, and interpolating the index values of Table 3.2 accordingly, so that the index values between 1 and 0.3 now take on the values 0.86, 0.72, 0.58 and 0.44 respectively. The (re-calculated) country indexes obtained for the professional groupings in the study generally differed by 1-4 per cent from the reported indexes (cf. Tables 3.3 – 3.5), except for the accountancy profession (on average 8% lower values) and

<sup>68</sup> In a few exceptional cases, index values of 1.1, 1.2 and 1.5 were assigned for countries where the named task – as defined for all countries – is actually split into two, three or more reserves of professions within reserves respectively. There are a few instances when this applies e.g. statutory audit in Finland, exclusive court representation rights of legal experts in Slovenia, and the large number of reserves in the security sector in Slovenia under ‘other security services’. Nevertheless, the outcome for every index, averaged over the reserved tasks, is in all cases less than 1.



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accountancy and engineering professions (each 12% lower), on account of the relatively higher number of shared reservations in these professions (cf. legal mapping). Of greater importance than the difference between the re-calculated and original values is the observation that the two sets results were very highly correlated with each other. For all cases reported (accountancy, legal, security, other BS; architecture, engineering, specialised construction, other construction; tourism) the correlation coefficient between re-calculated and original country index values was at least 0.97, indicating a very high correspondence.

Indeed there were only a few isolated cases of a country's rank changing, and then by only one place (ranks are shown in the right panel of Tables 3.3 – 3.5). In short, the country index values are very robust in their calculation due to the change in threshold value. The remarkably high level of correlation between re-calculated and original index values implies that the original index values offer a stable basis for further analysis of the effects of reservation of activities in Sections 3.4 and 3.5.

There is a further general point to be made with respect to the sensitivity of index values: because each of the country index values calculated for a profession (e.g. architecture) or a group of occupations (e.g. specialised construction) are predicated on a bundle of multiple tasks or occupations, the sensitivity to a change in one member of the bundle is limited. Thus the index values reported will be generally robust even in the face of isolated (unintended) coding errors derived from the legal mapping.

Before presenting the findings from the development of the RA Index across three sectors, it should be noted that for the purposes of the development of each RA sectoral index, each subsector is made up of a number of reserved activities and occupations. The index has not been developed at the level of each occupation, rather an aggregate sectoral-level weighting has been calculated across a number of occupations that collectively make up the subsector. For example, the RA index on business services has been calculated based on 4 subsectors, while construction also has 4 subsectors. However, tourism is a sector/subsector in its own right. The reason for this approach is that if a more detailed approach were adopted at the level of individual professions, then the index would be near to 1 or near to zero in Member States that had adopted a similar regulatory approach. An aggregate level approach at the sub-sector level provides a more useful basis for a general comparison between Member States.

### 3.2.3 RA Index – Business Services

In this sub-section, we focus on **business services** in the 13 Member States addressed by this study. This includes accountancy, legal services, security and other business services professions/occupations. For each of these 4 subsectors, we use the summary data on the reservation of tasks that has been gathered. For each of these four areas, an excel sheet summarises information on the 16 reserved tasks that have been analysed: in the accountancy field, 6 reserved tasks were considered, in legal services 7 tasks, in security services, 4 tasks and 13 tasks under the heading 'other services'.

Table 3.3 shows the results of the calculations for the weighted index of reserves of activities (RA Index). In addition to the "score" of each country in the subsectors accountancy, legal services security and other services there is also a combined index of all four subsectors aggregated together<sup>69</sup>. In the sub-tables, the index values are on a scale between 0 and 1: the higher the value the higher the degree of restrictiveness in terms of exclusivity of the reservations of activities.

<sup>69</sup> Sum of weighted values divided by sum of reserved tasks: not identical to average of indexes.

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Table 3.3: Weighted RA Index and by ranking – Business Services

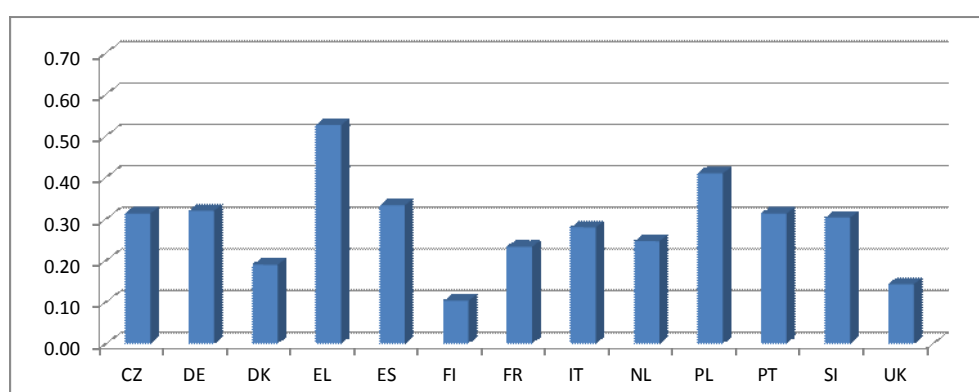
	Business Services						Business Services				
	RA-Index						Ranks of RA-Index				
	Accountancy	Legal	Security	Other BS	4 Sectors Combined	Accountancy	Legal	Security	Other	4 Sectors Combined	
CZ	0.133	0.657	0.750	0.077	0.313	1	11	9	4	8	
DE	0.333	0.657	0.500	0.077	0.320	7	11	7	4	10	
DK	0.150	0.143	0.250	0.215	0.190	3	1	4	12	3	
EL	0.600	0.857	0.500	0.323	0.527	13	13	7	13	13	
ES	0.167	0.486	0.750	0.200	0.333	4	7	9	10	11	
FI	0.183	0.143	0.250	0.000	0.103	5	1	4	1	1	
FR	0.333	0.571	0.000	0.077	0.233	7	9	1	4	4	
IT	0.533	0.486	0.000	0.138	0.280	11	7	1	7	6	
NL	0.133	0.400	0.950	0.000	0.247	1	5	13	1	5	
PL	0.583	0.457	0.900	0.154	0.410	12	6	12	8	12	
PT	0.333	0.571	0.250	0.185	0.313	7	9	4	9	9	
SI	0.300	0.171	0.875	0.200	0.303	6	3	11	10	7	
UK	0.333	0.329	0.000	0.000	0.143	7	4	1	1	2	

Source: Own data

The relative position of Member States in terms of the index values is shown. It should be noted that the highest rank (=1) in each column has been given to the country which shows the *least* degree of market restrictiveness measured in terms of the level of exclusivity in the index.

Among the findings at the country level were that there are major differences between countries in regulatory approach vis-à-vis the use of reserved activities. For example, **Finland** occupied the least restrictive position among the 13 Member States for legal and other services and overall (4 business service sub-sectors combined). Conversely, **Greece** is ranked as the most restrictive for accountancy and legal and other services, and in all these business services combined. **Spain and Portugal** were near the median position in all subsectors, whereby the relatively low overall values of indexes for the **UK** is influenced by the complete absence of exclusion in security and other business services (this last remark also applying to **France** and **Italy** in respect to security services). The combined weighted index values for restrictiveness of reservation in the 13 Member States as shown in Figure 3.2.

Figure 3.2: Combined weighted RA Index - Business Services (13 MS)



Source: Own data (note: scale of weights for each reserved tasks is from 0 to 1.0).

### 3.2.4 RA Index – Construction

In this sub-section, we focus on the **construction sector** in the 13 Member States. This includes architecture, engineering, specialised and other construction professions/occupations. For each of these 4 subsectors, we use the summary data on the reservation of tasks that has been gathered. For each of these four areas, an excel sheet summarises information on the 16 reserved tasks that have been analysed: in the architecture field, 9 reserved tasks were considered, in engineering 10 tasks, in specialised construction 18 tasks, plus 3 other tasks

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Table 3.4 shows the results of the calculations for the weighted index of reserves of activities (RA Index). In addition to the “score” of each country in the subsectors architecture, engineering, specialised and other construction there is also a combined index of all four subsectors aggregated together<sup>70</sup>. In the sub-tables, the index values are on a scale between 0 and 1: the higher the value the higher the degree of restrictiveness in terms of exclusivity of the reservations of activities.

**Table 3.4: Weighted RA Index and by ranking – Construction**

	Construction				
	RA-Index				
	Architecture	Engineering	Specialised	Other C	4 Sectors Combined
CZ	0.600	0.320	0.500	0.267	0.460
DE	0.622	0.380	0.800	0.667	0.645
DK	0.222	0.000	0.333	0.000	0.200
EL	0.644	0.630	0.311	0.267	0.463
ES	0.633	0.500	0.222	0.267	0.388
FI	0.000	0.100	0.056	0.000	0.050
FR	0.667	0.000	0.611	0.000	0.425
IT	0.533	0.580	0.200	0.267	0.375
NL	0.000	0.100	0.111	0.000	0.075
PL	0.422	0.720	0.089	0.000	0.315
PT	0.433	0.610	0.100	0.267	0.315
SI	0.300	0.210	0.389	0.333	0.320
UK	0.000	0.000	0.056	0.000	0.025

	Construction				
	Ranks of RA-Index				
	Architecture	Engineering	Specialised	Other C	4 Sectors Combined
CZ	9	7	11	7	11
DE	10	8	13	13	13
DK	4	1	9	1	4
EL	12	12	8	7	12
ES	11	9	7	7	9
FI	1	4	1	1	2
FR	13	1	12	1	10
IT	8	10	6	7	8
NL	1	4	5	1	3
PL	6	13	3	1	5
PT	7	11	4	7	6
SI	5	6	10	12	7
UK	1	1	1	1	1

Ranks show order of lowest reservation effect

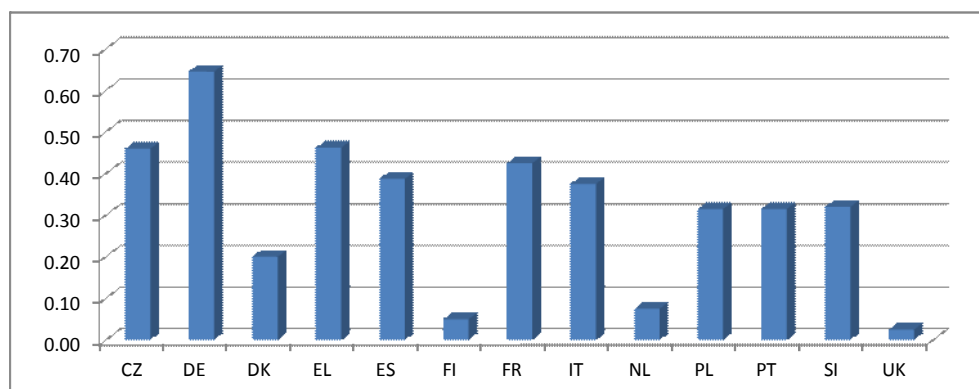
Source: Own data

The relative position of Member States in terms of the index values is shown. It should be noted that the highest rank (=1) in each column has been given to the country which shows the *least* degree of exclusivity in the index.

Among the findings at the country level were that there are major differences between countries in regulatory approach vis-à-vis the use of reserved activities. **UK** exhibits the lowest average degree of reserved activities in each sub-sector, and thus overall. **Finland** also occupied the least restrictive position among the 13 Member States for architecture, specialised and other construction. Conversely, **Germany** is ranked according to the RA Index as the most restrictive for the specialised craft occupations, other construction and for all 4 sub-sectors combined. Member States that are near the median position in many subsectors are exemplified by **Italy** and **Spain**.

The low overall values of indexes for the **UK** is influenced by the absence of reserves of activities in architecture (along with **Finland** and **Netherlands**), engineering (along with **Denmark** and **France** and other construction (along with the aforementioned Member States plus **Poland**). The combined weighted index values for restrictiveness of reservation in the 13 Member States as shown in Figure 3.3.

**Figure 3.3: Combined weighted RA Index - Construction (13 MS)**



<sup>70</sup> Sum of weighted values divided by sum of reserved tasks: not identical to average of indexes.

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Source: Own data (note: scale of weights for each reserved tasks is from 0 to 1.0).

### 3.2.5 RA Index– Tourism

In this section, we focus on the **tourism sector** in the 13 Member States. For this sector, we use the summary data that has been gathered on the reservation of tasks.

Table 3.5 shows the results of the calculations for the weighted index of reserves of activities (RA Index). In the tables, the index values are on a scale between 0 and 1: again, the higher the value in the index, then the higher the degree of restrictiveness in terms of exclusivity of the reservations of activities.

**Table 3.5: Weighted RA Index and by ranking – Tourism**

Tourism RA-Index		Tourism Ranks of RA-Index	
	Tourism		Tourism
CZ	0.167	CZ	5
DE	0.167	DE	5
DK	0.000	DK	1
EL	0.167	EL	5
ES	0.333	ES	9
FI	0.000	FI	1
FR	0.300	FR	8
IT	0.833	IT	13
NL	0.000	NL	1
PL	0.333	PL	9
PT	0.667	PT	12
SI	0.500	SI	11
UK	0.000	UK	1

Source: Own data

The relative position of Member States in terms of the index values is shown. It should be noted that the highest rank (=1) in each column has been given to the country which shows the *least* degree of exclusivity in the index.

The RA index for the tourism sector is comprised of six activities (Tourist Guide, Tour operator, Travel agent, Mountain guide, Reservation services and Travel companion). Making an index for each of these professions separately - while possible – would not be appropriate firstly because the index will be near to 1, or near to zero, with no further differentiation between countries. Second, it is a different approach to the other sectors. For business services, for example, there is a sub-division into four separate types of sub-sectors – accountancy, legal services, security and other business services. However, each sub-sector provides an aggregate weighting across a number of professions i.e. a number of occupations together make up the subsector (e.g. legal services – lawyer, attorney, patent attorney, costs lawyer).

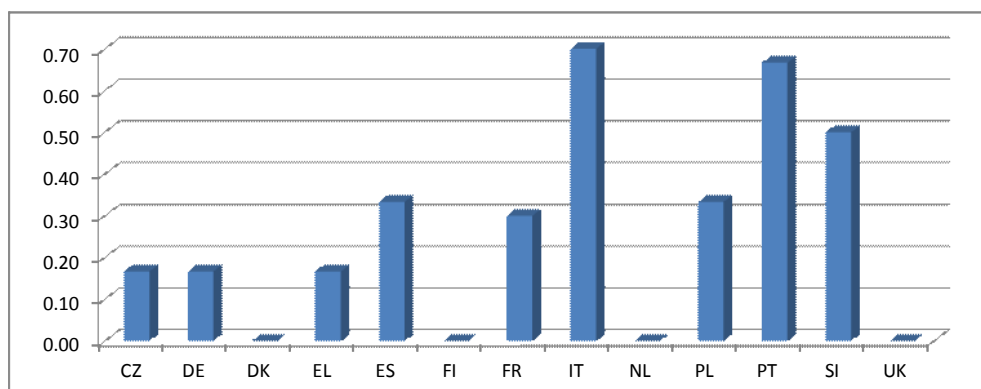
Among the findings at country level were that there are major differences between countries vis-à-vis whether professions within the tourism sector are regulated professions and are subject to a reserve of activities. Some countries have no regulated professions at all within tourism, whereas others have several different regulated professions. Reservation services were not subject to a reserve of activities in any of the Member States within scope

**Denmark, Finland, Netherlands** and **UK** occupy the least restrictive position among the 13 Member States, with no reserves of activities at all within the tourism sector. Conversely, **Italy**, followed by **Portugal and Slovenia**, are ranked as the most restrictive for tourism reserves of activities. Member States that are near the median position in all subsectors are **France, Poland** and **Spain**.

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Figure 3.4: Combined weighted RA Index – Tourism (13 MS)



Source: Own data (note: scale of weights for each reserved tasks is from 0 to 1.0).

In the case of **Italy**, **Slovenia** and **Spain**, the index sets out the position at national and also at regional level<sup>71</sup>. At local and regional level, there may be area-specific qualification requirements, but some stakeholders insist that there is only a single reserve of activities at national level, that of tourist guiding services, with local and regional qualification requirements building on the core area of general expertise acquired through taking a national qualification in tourist guiding.

### 3.2.6 RA Indexes – Business Services, Construction Tourism, and Overall

The weighted RA Indexes for each of Business Services, Construction and Tourism, along with the ranking of each of the 13 Member States summarised in Table 3.6. These indexes and rankings correspond to the combined RA Indexes shown above, respectively. EU-13 Member States are listed in by decreasing RA Index values.

Table 3.6: Weighted RA Index and ranking – Business Services, Construction, Tourism

Sectoral RA-Indexes					
Business Services		Construction		Tourism	
Index	rank	Index	rank	Index	rank
0.527	EL	0.645	DE	0.833	IT
0.410	PL	0.463	EL	0.667	PT
0.333	ES	0.460	CZ	0.500	SI
0.320	DE	0.425	FR	0.333	ES
0.313	PT	0.388	ES	0.333	PL
0.313	CZ	0.375	IT	0.300	FR
0.303	SI	0.320	SI	0.167	CZ
0.280	IT	0.315	PT	0.167	DE
0.247	NL	0.315	PL	0.167	EL
0.233	FR	0.200	DK	0.000	DK
0.190	DK	0.075	NL	0.000	FI
0.143	UK	0.050	FI	0.000	NL
0.103	FI	0.025	UK	0.000	UK

EU-13 MS in decreasing order of reserved Activities Index

Source: Own data

The findings in respect of the relative ranking of different countries in the index broadly correspond to observations made by the research team as to the overall level of market restrictiveness during the interview programme, desk research and legal mapping exercise.

<sup>71</sup> Index values 1.1, 1.2 and 1.3 were used to take into account the number of regional restrictions (between 3 and 7, 8 and 14, and 15 or more, respectively). Index values greater than one indicate a more restrictive reservation than a single exclusive activity at the national level.

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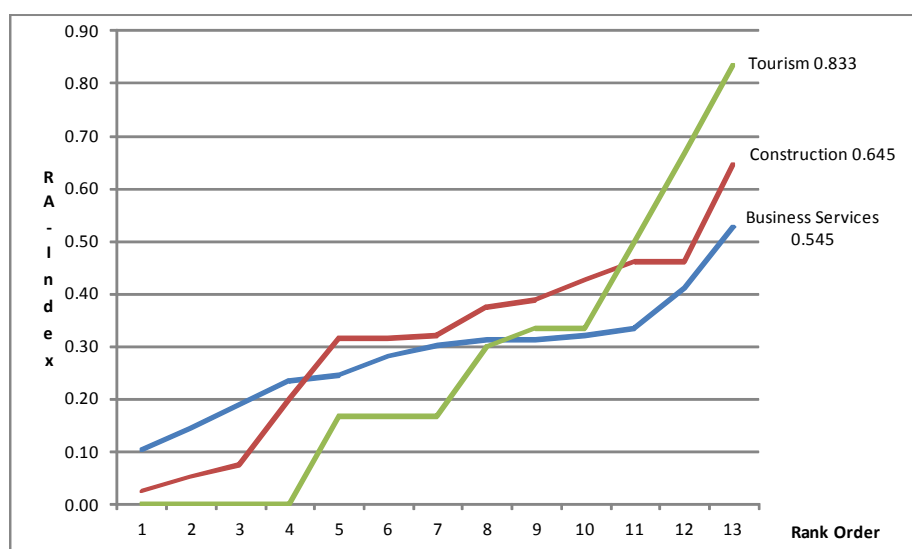
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The overall positioning in the indexes reflects their general approach to regulating professions and the use of reserves of activities. A contrast can be drawn between countries that only rarely have recourse to the exclusive reservation of activities such as **Denmark, Finland, the Netherlands and the UK**, and countries that have frequent recourse to reserves of activities e.g. **the Czech Republic, Greece, and Italy**. **Germany** has frequent recourse to reserves of activities in legal and many occupations in the construction sector. In **Portugal and Spain** have a higher than average number of reserves of activities in architecture, engineering and tourism.

### *Dispersion of RA Indexes – Business Services, Construction Tourism, and Overall*

The variation of the RA indexes is shown in Figure 3.5, which is a plot of the index values for Business Services, Construction and Tourism. The dispersion of the degree of reservation of activities among the 13 Member States is similar for Business Services and Construction. The dispersion is wider – i.e. the variation in index values is greater in tourism, which exhibits the countries with the lowest values (corresponding to no reservations of activities, as mentioned above), and also the highest value (Italy, 0.833).

**Figure 3.5: Dispersion of RA Indexes (13 MS)**



Source: Own data

## 3.3 Sectoral analysis

### 3.3.1 Introduction and data sources

In order to support the assessment of the economic impacts of reserves of activities, an analysis of sectoral data was carried out of the three sectors within scope. The purpose of the analysis was to:

- Map out the **size and structure** of the market at aggregate level in the 3 sectors across a sample of 13 EU Member States.
- Identify trends at sectoral/ sub-sectoral levels that may be linked to the presence/ absence of reserves of activities within regulated professions through a **regression analysis**.

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The sectoral analysis was based on a review of statistical sources and wider desk research. The main data source used was Eurostat's Structural Business Statistics (SBS)<sup>72</sup>. In order to obtain relevant statistics, a combination of Eurostat 2006 (NACE Rev 1.1) and 2008 (NACE Rev 2) has been used.

The main variables on which data queries were run through Eurostat's SBS were:

- No. of enterprises
- Average size of enterprise
- No. of persons employed
- Sectoral turnover (€)
- Gross value added per person employed and GVA per full time employee (productivity measures)

Among the relevant data sources and statistical publications that have been used for the purposes of the sectoral data analysis are:

**Table 3.7: Data sources for sectoral analysis**

<i>Sector</i>	<i>Data source/ reference year</i>	<i>Weblink/ publication/ sources of further info</i>
Business services	Eurostat SBS 2006 (Rev 1.1) and SBS 2008 (Rev 2)	<a href="http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Structural_business_statistics_overview">http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Structural_business_statistics_overview</a> - 2006 data <a href="http://epp.eurostat.ec.europa.eu/portal/page/portal/european_business/data/database">http://epp.eurostat.ec.europa.eu/portal/page/portal/european_business/data/database</a> - 2006 and 2008 data from SBS  European Business: Facts and figures – 2010 edition (also 2006 data presented) (section on business services).
Construction	Eurostat SBS 2008 (Rev 2)	<a href="http://epp.eurostat.ec.europa.eu/portal/page/portal/european_business/data/database">http://epp.eurostat.ec.europa.eu/portal/page/portal/european_business/data/database</a> - 2008 SBS data  European Business: Facts and figures – 2010 (section on industry and construction) Quarterly Panorama of EU Business Statistics 2010 (construction)
Tourism	Eurostat SBS 2006 (Rev 1.1) and SBS 2008 (Rev 2)	2006 and 2008 data – weblink as above.  Publications reviewed were: Tourism statistics in the European Statistical System (2008 data) and Study on the Competitiveness of the EU tourism industry - with specific focus on the accommodation and tour operator & travel agent industries (DG ENTR, 2009, but 2006 data).

There have been special SBS topics on particular sectors within study scope, e.g. business services (2006), industry and construction (2008) and tourism (2008). In addition, relevant studies have also been consulted, such as a *Study on the Competitiveness of the EU tourism industry* - with specific focus on the accommodation and tour operator & travel agent industries (DG ENTR).

In summary, the main challenges in terms of the review of statistics were:

- Differences in the extent to which sectoral data can be obtained through Eurostat at NACE code level that corresponds to the professions within scope.
- The transition in NACE code classifications between NACE Rev 1.1. and NACE 2 and the need to use data from both 2006 (NACE Rev 1.1) and 2008 (NACE Rev 2) in some instances<sup>73</sup>.
- Lack of time series data - especially within business services.

<sup>72</sup> Eurostat's database on Structural Business statistics (SBS)

[http://epp.eurostat.ec.europa.eu/portal/page/portal/european\\_business/data/database](http://epp.eurostat.ec.europa.eu/portal/page/portal/european_business/data/database)

<sup>73</sup> In some instances, both types of data have had to be reviewed since the new datasets do not always provide information across all variables. For example, data by enterprise size class was not available for the more recent 2008 Eurostat data on the tourism sector, only for the earlier 2006 data.

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There is wide recognition that Eurostat data in the business services sector up until the changes made to NACE Rev 1.1 had considerable weaknesses. In order to address these deficiencies, important changes were made by Eurostat<sup>74</sup> to the NACE code classification system in 2008 through the introduction of statistics collection under NACE Rev.2, which provides improved data on business services. Whereas previously, under NACE Rev 1.1, statistics on business services were grouped together under broad activity headings under Sector K (Real Estate and Other business activities), this is now split into three: L Real estate, M Professional, scientific and technical services and N Administrative and support services. However, these changes mean that there is a lack of time series.

In **construction**, 2008 data is available from Eurostat through the industry and construction section of the SBS database. Under NACE Rev 2, data was obtained on building construction (NACE F41), civil engineering (F42) and specialised construction services (F43). This corresponds to the professions within study scope. A difficulty in relation to the analysis of sectoral data in the **tourism sector** is that Eurostat data focuses mainly on accommodation services. It does not correspond to all the professions covered by this study e.g. tourist guide, mountain guide, but does correspond to some of them, e.g. tour operators and travel agents. Data on the tour operators and travel agents (TO & TA) sub-sector is also available from a 2009 *Study on the Competitiveness of the EU tourism industry*.<sup>75</sup> Data on this sub-sector was collected under NACE Rev 1.1 until 2007, after which NACE Rev. 2 collected disaggregated data on TO & TA under NACE code N79 (Travel agency, tour operators, reservation service and related activities).

The correspondence between these NACE Rev 2 codes and the professions within study scope are set out below. Most but not all data analysed has used NACE Rev 2 (2008 data is the most recently published):

**Table 3.8: Correspondence between Regulated Professions and Economic Data**

Profession	Economic data - NACE Rev. 2
Accountancy	69.2: Accounting, bookkeeping, auditing activities; tax consultancy
Legal	69.1: Legal activities
Security	80: Security and investigation systems
Other	68: Real estate activities 70: Activities of head offices; management consultancy activities 72: Scientific research and development 73: Advertising and market research 74: Other professional, scientific and technical activities 77.1: Renting and leasing of motor vehicles 78: Employment activities
Architecture	71: Architectural activities and engineering activities; technical testing and analysis
Engineering	41: Construction of buildings 42: Civil engineering
Specialized	43: Specialized construction activities
Building Services	81: Services to buildings and landscape activities
Tourism	79: Travel agency, tour operator and other reservation service and related activities

Source: Own tabulation.

### 3.3.2 Sectoral analysis - business services

<sup>74</sup> Regulation (EC) No 295/2008 of the European Parliament and of the Council of 11 March 2008 concerning structural business statistics (recast)

<sup>75</sup> Study on the Competitiveness of the EU tourism industry - with a specific focus on the accommodation and tour operator & travel agent industries Final Report, September 2009, DG ENTR



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This sub-section initially provides an overview of the size and structure of the business services sector, drawing on Eurostat data from the Structural Business Statistics Database (SBS). The extent to which patterns and trends can be discerned in sectoral performance and the relative ranking of a given profession and country in the weighted index of reserved activities is then examined.

### 3.3.2.1 Sectoral overview – business services

The business services sector has grown rapidly in the past ten years, both due to growing demand for specialist knowledge and expertise and because of the need to outsource business processes. Many different activities fall within business services, such as legal services, accountancy, management consultancy, technical services such as engineering consultancy, advertising and market research, and operational services such as security services. Knowledge-intensive business services (KIBS) are an especially important and fast-growing branch of the services sector<sup>76</sup>.

Eurostat data on business services from 2006<sup>77</sup> shows that across EU27 Member States, 4.4m enterprises' main activity was the provision of business services. These enterprises employed 22.2m people with a total gross turnover of EUR 1763bn. Legal, accounting, auditing and business management services accounted for 29.8% of business services turnover in EU27, computer and related activities for 21.0 %, architecture, engineering and consultancy (15.3%), advertising (8.2%), and labour recruitment and the provision of personnel (7.3%). The following table provides an overview of business services from the point of view of expenditure, productivity and profitability.

**Table 3.9: Business services: Expenditure, productivity and profitability, EU-27, 2006 (NACE 72 and 74)**

	EUR m			EUR 000's per person		
	Personnel costs	Purchase of goods and services	Apparent labour productivity	Average personnel costs	Wage adjusted labour productivity	Gross operating rate
<b>Business services</b>	<b>582544</b>	<b>891682</b>	<b>40.2</b>	<b>31.1</b>	<b>129.4</b>	<b>17.6</b>
Computer and related activities	123693	193080	64.7	51.1	126.5	15.3
Other business activities	458851	698602	36.7	28.1	130.5	18.1
Professional business services	160965	255081	54.5	41.5	131.4	22.5
Technical business services	78749	145970	47.2	40	118.2	18.9
Advertising	22027	106987	43.7	30.9	141.5	11.5
Personnel services	80527	30454	25.4	21.6	117.5	12.2
Other business services	116582	160111	24.5	19.3	126.8	15.8

Source: Eurostat Business Facts and Figures 2010 (draws on 2006 data)

A 2008 Eurostat Statistics in Focus Report on Business Services across EU27<sup>78</sup> (2006 data) noted the significance of the business services sector in terms of its contribution to value added. *The Business services sector created value added of EUR 665.8bn, equivalent to 12.4% of the non-financial business economy and to 22.3 % of the contribution made by the services sector*. Legal, accounting and management services (NACE K74.1) was the largest sub-sector within business services, accounting for 48% of total enterprises, 38% of value added and 34% of persons employed.

Professional services (which includes a number of the professions within study scope, such as accountancy, book-keeping and audit, legal services) are an important component of the business services sector, accounting for EUR525.2bn of business services turnover (29.8%) and 31.3 % (EUR 279.2bn) of total value added. Professional services had the largest turnover and value added among business services

<sup>76</sup> Trends and drivers of change in the European knowledge-intensive business services sector: Mapping report, European Monitoring Centre on Change, 2006

<sup>77</sup> [http://epp.eurostat.ec.europa.eu/portal/page/portal/european\\_business/special\\_sbs\\_topics/business\\_services](http://epp.eurostat.ec.europa.eu/portal/page/portal/european_business/special_sbs_topics/business_services).

<sup>78</sup> Main features of EU-27 Business services (Eurostat Statistics in Focus, 101/ 2008)

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and high productivity - its contribution to business services was larger when measured in terms of output relative to its share of employment. In 2006, there were 1.6m enterprises in the EU's professional services sector (NACE 74.1) employing 5.1m people (2006). The UK generated more than one quarter (27.0%) of the EU's value added in this sector, followed by France and Germany (17% and 18% respectively). Italy had more than a 10% share of EU value added. Within legal services, in most EU countries, legal advisory and representation services accounted for the highest proportion of turnover.

### 3.2.1.2 Analysis of sectoral patterns and trends - business services

A sectoral analysis of **market size** and **structure** is presented in relation to the business services sector, focusing on the professions under review. Any trends discernable that may suggest a correlation between the presence of exclusive reserves of activities and sectoral characteristics are pointed out. This analysis supports the regression analysis which examined a possible statistical correlation between the two. Among the general characteristics of the business services sector are that:

- There are **variations in average enterprise size** across different areas of business services and between different countries. There is a strong concentration of micro and small firms in some countries, especially in southern Europe. In northern Europe, medium and large firms account for a comparatively high proportion of total employment and value added.
- **Strong employment growth** has taken place in the business services sector over the past decade – business services account for an increased share of total employment.
- There are comparatively **high levels of self-employment** among those working in professional services, which affects market structure.
- There are **high levels of productivity within professional services**, compared with other areas of business services.

Eurostat SBS data NACE Rev 2 data from 2008 is now examined in order to explore some of the above points in further detail – and to assess any linkages with reserve of activities. This sub-section notes some of the general trends, whereas Section 3.4 provides a statistical regression i.e. compares Eurostat's SBS data using a piece of software able to calculate regressions.

#### Number of enterprises by size class

Data on **average enterprise size** is now examined for some of the professions within scope across the 13 Member States.

The following table sets out the position on **legal services**:

**Table 3.10: Number of enterprises by size class – legal services, 2008**

Member State	Between 0 and 1	Between 2 and 9	Between 10 and 19	Between 20 and 49	Between 50 and 249	> 250	Total	% of total
CZ	0	0	0	0	0	0	0	0
DK	751	546	134	116	55	6	1608	0.4
DE	14074	27237	3989	1042	209	29	46580	12.4
ES	77339	20249	1483	400	54	8	99533	26.5
FR	0	0	0	0	0	0	0	0
IT	117511	26950	949	80	11	0	145501	38.8
NL	4283	2866	528	285	87	14	8063	2.2
PL	10536	4817	208	41	23	0	15625	4.2
PT	23356	2427	59	16	4	0	25862	6.9

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SI	763	640	18	6	0	0	1427	0.4
SU	1037	521	18	20	11	0	1607	0.4
UK	13291	10660	2441	1669	884	148	29093	7.8
<b>Total</b>	<b>262941</b>	<b>96913</b>	<b>9827</b>	<b>3675</b>	<b>1338</b>	<b>205</b>	<b>374899</b>	<b>100.0</b>

Source: Eurostat SBS, Business Services 2008, M691, NACE Rev. 2. Note: data was unavailable for three countries in the sample (CZ, EL, FR).

There are clear country-specific patterns in average firm size. After allowing for differences in population size, there was a much lower incidence of medium to large-sized enterprises in the legal services field in some countries such as **Italy, Poland, Portugal** and **Slovenia**, with very few or no enterprises in the size categories 'between 50 and 249 employees' and '>250 employees'. In contrast, in **Denmark, Germany, the Netherlands** and the **UK**, in addition to significant numbers of micro and small firms, there were a good number of medium to large-sized legal enterprises.

With regard to possible links with reserves of activities, it can be noted that **Finland** (population 5.4m), which is not subject to any reserve of activities within the legal profession has the same number of legal firms with between 50 and 249 employees as **Italy** (population 60.3m). The weighted index shows that **Finland** was ranked joint first together with **Denmark** (i.e. was the least restricted), whereas Italy was mid-ranked in joint seventh place with Spain. It was also notable at the other end of the size threshold spectrum that there was a very high number of very small firms with either 0 or 1 employees in some of the countries that had a relatively high level of market restrictiveness, particularly **Italy** and **Spain (joint 7<sup>th</sup> ranked)** and **Portugal (9<sup>th</sup> ranked)**. However, this was also the case in the UK, which was ranked 4<sup>th</sup> overall.

However, there was not always a clear link within legal services firm between firm size and the presence of reserved activities. For example, **Germany** has 238 legal services companies in the size brackets 'between 50 and 249' and '>250 employees', but was ranked twelfth out of thirteen countries in the index, indicating a high level of market restrictiveness. This may reflect the fact that although lawyers in Germany have the right to carry out a large number of reserved tasks, non-legal organisations such as banks and insurance companies also have the right to offer legal services. Traditional law firms do not have a monopoly of the legal services market.

No data was available for the **Czech Republic** (11<sup>th</sup> ranked on the RA index within legal services), **France** (9<sup>th</sup> ranked) and **Greece** (13<sup>th</sup> ranked).

Average enterprise size within legal services was found to vary greatly between countries. This can be attributed to various factors such as:

- **The level of market restrictiveness** – the legal profession was found to be subject to market entry and conduct regulations at country level which may limit average enterprise size.
- **Rules on ownership structure** – non-legal professionals are barred in many jurisdictions from owning legal firms<sup>79</sup>. There may also be restrictions in providing legal services together with other types of multidisciplinary services (e.g. France). In combination with the presence of reserves of activities, such rules may limit economies of scale and scope.
- **Differences in business culture** - e.g. micro and small firms with a narrow specialisation are the norm in legal services in countries such as Italy, while in other countries, such as the UK, there is a propensity towards larger average firm size, industry consolidation and a greater number of multidisciplinary professional services firms.

<sup>79</sup> It should however be pointed out that this is not the case in all countries in the sample. For example, the rules on ownership have been liberalised in Germany and also in the UK where the rules on ownership structure were changed under the Legal Services Act 2007. Since October 2011, Alternative Business Structures (ABS) can be established, which allow non-lawyers to be the joint owners of legal services firms.

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An overview of enterprise size class in the accounting, bookkeeping and auditing fields by EU Member State is provided in the table below:

**Table 3.11: Number of enterprises by size class – Accounting, bookkeeping and auditing activities; tax consultancy, 2008**

	<i>Between 0 and 1</i>	<i>Between 2 and 9</i>	<i>Between 10 and 19</i>	<i>Between 20 and 49</i>	<i>Between 50 and 249</i>	<i>&gt; 250</i>	<i>Total</i>	<i>% of total</i>
<b>Member State</b>								
CZ	0	0	0	0	0	0	0	0
DK	2979	867	166	70	28	7	4117	1.2
DE	11014	25491	6115	2061	322	38	45040	13.5
ES	28510	27978	2027	461	139	24	59139	17.7
FR	0	0	0	0	0	0	0	0
IT	82332	34842	1426	319	133	14	119066	35.7
NL	11388	5495	529	274	109	25	17820	5.3
PL	12231	9334	398	150	34	11	22158	6.6
PT	17596	6848	380	71	23	4	24922	7.5
SI	2669	1204	52	8	4	0	3937	1.2
SU	2854	1746	115	58	16	5	4794	1.4
UK	13310	16628	1771	808	274	46	32837	9.8
<b>Total</b>	<b>184883</b>	<b>130433</b>	<b>12979</b>	<b>4280</b>	<b>1082</b>	<b>174</b>	<b>333830</b>	<b>100.0</b>

*Eurostat SBS, Business Services 2008, ACE Rev. 2, 69.2: Accounting, bookkeeping and auditing activities*

The structure and organisation of the accountancy profession differed widely from one country to another. Similarly, the legal forms and ownership rules of accounting and audit firms vary throughout the 13 EU countries in the sample. **Italy** had the largest total number of enterprises across all size bands in the accountancy profession, followed by **Spain** and **Germany**. As far as the size categories ‘between 50 and 249 employees’ and ‘> 250 employees’ are concerned, as was the case with legal services, **Germany** and the **UK** had the largest number of firms, followed by **Spain** and **Italy**. With regard to the relative positioning on the index, **Greece, Portugal** and **Italy** were the most restricted countries in terms of the level of market restrictiveness due to reserves of activities. It is notable that both **Portugal** and **Italy** have very low numbers of firms with >250 employees in the accountancy field (no data was available for the Czech Republic, France and Greece).

### **Gross value added per person employed**

Gross value added per person employed is a useful indicator for assessing labour productivity across different professionals. The position in respect of legal services is outlined below:

**Table 3.12: Gross Value Added per person employed – legal services (NACE Rev. 2), 2008**

<b>Member State</b>	<i>Between 0 and 1</i>	<i>Between 2 and 9</i>	<i>Between 10 and 19</i>	<i>Between 20 and 49</i>	<i>Between 50 and 249</i>	<i>&gt; 250</i>	<i>Total value added / persons employed (all size classes)</i>
CZ	0	0	0	0	0	0	0
DK	97.8	63.8	47.9	60.9	61.5	85.0	66.4
DE	45.0	35.8	50.3	66.8	93.9	140.6	54.5
ES	25.4	39.3	65.7	69.9	82.4	60.4	39.9
FR	0	0	0	0	0	0	0
IT	30.8	59.3	102.2	168.4	242.5	0	47.9
NL	0	79.3	41.3	47.8	78.8	0	57.0
PL	14.5	14.9	36.1	53.7	79.9	0	21.4
PT	13.5	30.5	66.0	95.3	178.3	0	21.2
SI	20.3	34.0	46.4	69.9	0	0	33.6
SU	58.6	62.9	72.9	100.5	111.7	0	81.5
UK	87.6	74.6	54.2	51.1	48.0	112.4	73.6

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Source: Eurostat SBS, Business Services 2008, NACE Rev. 2, M691 - Legal activities

The Eurostat data shows that a small number of countries (e.g. **Denmark, France, Germany, the Netherlands, Spain** and the **UK**) account for a high proportion of gross value added, especially in the size categories between 50 and 249 and >250 employees. It is difficult to find a clear link here with the presence of a reserve of activities. While some countries that perform well on gross value added, such as the **Netherlands** and the **UK**, achieved a good ranking in the index of reserves of activities (5th and 4th place out of 13 countries in inverse order of the level of restrictiveness), other countries with a high rating in respect of GVA per person employed did not perform well in the Index of Reserves. For example, **Germany** was ranked twelfth out of thirteen countries in the index, but has the highest GVA per person employed in some size categories of firms, especially between 50 and 249 and > 250 employees.

The position in respect of GVA per person employed (which as noted earlier is an indicator of productivity) in the accountancy profession is set out in the following table:

**Table 3.13: Gross Value Added per person employed – accountancy services (NACE Rev. 2), 2008**

	Between 0 and 1	Between 2 and 9	Between 10 and 19	Between 20 and 49	Between 50 and 249	> 250	
Member State	2008	2008	2008	2008	2008	2008	2008
CZ	0	0	0	0	0	0	0
DK	34.8	61.9	63.5	64.3	66.0	79.9	66.4
DE	48.8	38.2	44.6	48.7	56.9	87.7	50.4
ES	29.2	29.7	34.9	47.9	51.9	53.1	34.9
FR	0	0	0	0	0	0	0
IT	58.5	37.2	43.5	49.4	67.8	59.9	47.7
NL	36.3	76.5	47.9	57.0	50.4	76.8	60.4
PL	14.5	14.5	14.6	17.4	34.7	33.9	17.4
PT	9.4	15.3	21.3	27.3	0	0	16.2
SI	13.8	24.4	30.0	36.8	35.5	0	22.2
SU	42.2	36.7	44.3	42.2	45.7	81.2	46.4
UK	35.2	61.1	51.9	59.3	56.3	93.9	71.2

Source: Eurostat SBS, Business Services 2008, NACE Rev. 2, 69.2: Accounting, bookkeeping and auditing activities

The following countries achieved the best performance in respect of GVA per person employed in the accountancy profession: the **UK (71.2)**, **Denmark (66.4)** and the **Netherlands (60.4)**. All three countries were ranked towards the lower end of the scale in terms of the level of market restrictiveness. There may be a possible link between high levels of productivity per employee, and the comparatively small numbers of exclusive reserves of activities in the accountancy field in these countries. In other Member States, there is not a lot that can be drawn in terms of the link with reserves of activities, however a general point can be noted that the EU countries in the sample from the new member states appear to perform poorly in absolute real value terms, but there is a need to take into account differences in sectoral GDP across the different economies in the sample. In the regression analysis (see Section 3.4.3), we therefore take Purchasing Power Parity (PPP) into account when considering SBS productivity data.

### Employment structure

As far as **employment structure** is concerned, within professional services firms, according to Eurostat, paid employees account for a relatively low proportion (75.7 %) of the workforce<sup>80</sup>, with a relatively high proportion of self-employed (either working on an individual basis or through partnerships. This compares with an average proportion of paid employees across business services as a whole of 84.5 %. This reflects differences in the legal structure of business entities (e.g. partnership structures are common within legal services, accountancy etc.) and the fact that self-employment is more common within some professions, e.g. barristers and architects often work as individual practitioners.

<sup>80</sup> Eurostat Business Facts and Figures 2010

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The following table sets out the number of persons employed within legal services.

**Table 3.14: No. of persons employed by enterprise size class – legal services (NACE Rev. 2), 2008**

	<i>Between 0 and 1</i>	<i>Between 2 and 9</i>	<i>Between 10 and 19</i>	<i>Between 20 and 49</i>	<i>Between 50 and 249</i>	<i>&gt; 250</i>	<i>Total</i>
<b>Member State</b>							
CZ	0	0	0	0	0	0	0
DK	2925	3169	2255	2032	3123	8789	22293
DE	11014	112077	80598	57295	26559	47772	335315
ES	28354	104201	25795	13722	13534	16154	201759
FR	0	0	0	0	0	0	0
IT	82714	115286	17900	9335	12859	10137	248231
NL	23353	15141	8690	9079	13843	36391	106498
PL	14446	36716	5533	4186	3791	6123	70795
PT	17596	23738	4806	2006	0	0	53335
SI	2593	3843	693	258	307	0	7695
SU	2094	6356	1576	1825	1508	2381	15739
UK	22929	43470	22293	24446	27014	105061	245213
<b>Total</b>	<b>208018</b>	<b>463997</b>	<b>170139</b>	<b>124184</b>	<b>102538</b>	<b>232808</b>	<b>1306873</b>

Source: Eurostat SBS, Business Services 2008, NACE Rev. 2, M691 - Legal activities

The data shows that a much higher number of people are employed in legal firms in some countries in the sample, notably **Germany, Italy, the Netherlands, Spain** and the **UK**. The main observation that can be made is related to the earlier findings on average enterprise size. Several countries do not have any large sized legal services firms, whereas in other countries, such as **Germany, Spain** and the **UK**, a substantial number of people are employed in firms with >250 employees. However, there do not appear to be clear links with the presence of reserves of activities in that the three countries with the largest number of people employed in the legal profession (**Germany, Italy and the UK**) were ranked quite differently in terms of their position on the index (twelfth, seventh and fourth) respectively.

No data was available for the Czech Republic, France and Greece.

**Table 3.15: No. of persons employed by enterprise size class – accountancy (NACE Rev. 2), 2008**

	<i>Between 0 and 1</i>	<i>Between 2 and 9</i>	<i>Between 10 and 19</i>	<i>Between 20 and 49</i>	<i>Between 50 and 249</i>	<i>&gt; 250</i>	<i>Total</i>
<b>Member State</b>							
CZ	0	0	0	0	0	0	0
DK	636	2117	1892	3598	5157	3503	16903
DE	14074	111791	51460	29241	18439	15729	240734
ES	76471	64393	19367	10465	5413	5228	181336
FR	0	0	0	0	0	0	0
IT	117755	82299	11687	2110	957	0	214808
NL	13691	9112	7930	8385	9860	5973	54952
PL	12443	18424	2755	1159	2155	0	36936
PT	23356	6947	754	467	300	0	31824
SI	762	1931	218	183	0	0	3094
SU	776	1795	237	615	1374	0	4796
UK	17559	38423	31291	48672	90752	96747	323444
<b>Total</b>	<b>277523</b>	<b>337232</b>	<b>127591</b>	<b>104895</b>	<b>134407</b>	<b>127180</b>	<b>1108827</b>

Source: Eurostat SBS, Business Services 2008, NACE Rev. 2, 69.2: Accounting, bookkeeping and auditing activities

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The statistics on the number of people employed in the accountancy field shows that over 1.1m people are employed in the profession across the 13 countries in the sample. However, it is again notable that employment in larger-size firms able to take advantages of economies of scale is concentrated in the **UK** and to a lesser extent, also **Germany**.

For the purposes of this study, data on the number of persons employed, which is available through Eurostat' SBS data, has been examined. An effort has also been made to obtain data on the number of professionals, since this arguably relates more directly to issues around the impacts of reserves of activities). However, since such data is not collected through official statistics, there was a need to ascertain whether data had been gathered on a bottom-up basis. No data was available for the Czech Republic, France and Greece.

### *Number of professionals*

In the case of the legal profession, data was available from a recent sectoral study<sup>81</sup> (this was also true for architects, but no data was available for most of the other professions within scope).

**Table 3.16: No. of professionals - legal services**

MS	No. of legal professionals	Population	Professional density
CZ	8410	10,506,813	0.08
DE	1825	81,802,257	0.00
DK	126799	5,534,738	2.29
EL	48461	11,305,118	0.43
ES	1169	45,989,016	0.00
FR	120691	64,716,310	0.19
IT	39312	60,340,328	0.07
NL	198000	16,574,989	1.19
PL	15547	38,167,329	0.04
PT	27310	10,637,713	0.26
SI	27623	2,046,976	1.35
SU	5246	5,351,427	0.10
UK	153710	62,008,048	0.25
<b>EU13</b>	<b>774,103</b>	<b>414,981,062</b>	<b>0.19</b>

*Source: Efficiency and quality of justice - CEPEJ Studies No. 12, (2010 edition, 2008 data) European Commission for the Efficiency of European Judicial Systems*

The data shows a high number of legal professionals per head of population in some countries such as **Denmark, Slovenia** and the **Netherlands**. There could be a link between the presence of reserves of activities and the number of legal professionals in these countries since they are ranked 1st, 3rd and 5th in the index for legal services (i.e. have a low level of market restrictiveness) but a high number of legal professionals. However, a caution is needed in this regard since two of the three countries in question have a relatively low population size, and other variables may be at play.

### *Intra-EU trade*

With regard to the level of **intra-EU trade in business services**, while recent data is lacking, most business services remain oriented towards local markets. Some types of services, such as IT services, more readily lend themselves to being delivered from a distance than others. In 2005, the last time that such data was published, domestic clients accounted for more than 90% of the turnover in the business services sectors in **Germany, Spain, Greece** and **Portugal**. The data does not however show the ultimate ownership of firms delivering these services i.e. whether services delivered locally are provided by firms that are ultimately foreign-owned.

<sup>81</sup> Efficiency and quality of justice - CEPEJ Studies No. 12, (2010 edition, 2008 data) European Commission for the Efficiency of European Judicial Systems

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Table 3.17: Turnover within business services by residence of client, 2005 (% of total turnover):

	In the same country	Intra-EU	Extra-EU
PT	96.1	2.6	1.3
EL	94.9	3.8	1.3
ES	91.6	5.3	3.2
DE	90.5	5.3	4.2
SI	89.3	6.1	4.6
SE	87.7	6.4	5.9
FI	87.3	7.7	5.1
RO	86.9	8.9	4.2
PL	86.1	10.7	3.2
NO	84.9	7.7	7.4
UK	84.8	7.0	8.3
LT	84.4	10.3	5.2
DK	83.4	8.6	8.0
MT	80.8	14.0	5.2
SK	80.7	13.8	5.5
LV	77.0	15.8	7.2

Source: Eurostat - SBS data, 2005

A 2006 Eurostat Statistics in Focus publication<sup>82</sup> examined likely future trends in demand for services and found that 'only 1.2 % of all enterprises cited another EU Member State as the origin of their main external service provider. This pattern of local provision was repeated across the Member States.' However, data on **intra-EU trade in services can be misleading** since the ownership of service providers is not well reflected. For example, multi-national enterprises established locally are classified as local service providers in the statistics. Nevertheless, the growth in near-shore outsourcing means that in some areas of business services such as IT services, there has been a growth in intra-EU trade in services.

### 3.3.3 Sectoral analysis - construction

#### 3.3.3.1 Sectoral overview – construction

Construction is a key sector of the EU economy and also has an important role in influencing the EU's overall competitiveness, for example, through the development and maintenance of road, transport and information communication infrastructure. According to Eurostat<sup>83</sup>, in 2008, construction accounted for 6.5% of the EUR 11,192.7 billion of gross value added generated in EU27. Turnover in the EU's construction market (including civil engineering and infrastructure) across EU27, candidate and EFTA countries was estimated to be worth €1,730 billion in 2006. There is a strong concentration of sectoral turnover in five Member States - **France, Germany, Italy, Spain** and the **UK** – which account for approximately two-thirds of all European construction output. The construction sector employed an estimated 14.8m people across EU27 in 2007 (11.5 % of the non-financial business economy workforce), and generated an estimated EUR 562 billion of value added (9.3% of the non-financial business economy's total value added). A structural profile of the construction sector is provided on the following page:

<sup>82</sup> Demand for services: external but local provision - Issue number 26/2006 (Eurostat Statistics in Focus Industry, Trade and Services 26/2006).

<sup>83</sup> European Business: Facts and Figures 2010, Construction Sector, Chapter 16.



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**Table 3.18: Structural profile of construction sector, EU-27, 2007.**

	Number of enterprises	Number of persons employed	Turnover	Value added	Apparent labour productivity (per person employed)	Gross operating rate (2)	Invest. rate (2)
	(1 000)		(EUR million)		(EUR 1 000)	(%)	
<b>Construction</b>	<b>3 090</b>	<b>14 793</b>	<b>1 665 092</b>	<b>562 159</b>	<b>38.0</b>	<b>12</b>	<b>9</b>
Site preparation	117	460	55 540	19 178	41.7	:	20
General construction	1 270	8 112	1 070 417	325 650	40.1	11	11
Building installation	759	3 483	324 624	125 337	36.0	12	5
Building completion	930	2 637	202 221	86 329	32.7	17	7
Renting of const. equipment	16	89	10 131	4 812	54.0	24	:

(1) Including estimates.  
(2) 2006.

Source: Eurostat construction services statistics, 2006, NACE Rev 1.1

The table shows that general construction accounts for the largest area of activity within the construction sector, followed by building installation and completion. A more detailed breakdown of the general construction industry, which also provides productivity data, is provided below:

**Table 3.19: General construction (NACE 45.2 Rev 1.1). Expenditure and productivity, EU-27, 2006**

	(EUR million)			(EUR thousand per person)	
	Personnel costs	Purchases of goods & services	Investment in tangible goods	Apparent labour productivity	Average personnel costs
<b>General construction</b>	772 842	187 542	32 000	38.7	27.7
General construction of buildings and civil engineering works	597 770	128 713	23 000	38.2	26.8
Erection of roof covering and frames	28 919	12 437	1 016	37.7	28.4
Construction of motorways, roads, airfields and sport facilities	82 120	20 348	4 000	42.0	30.6
Construction of water projects	10 000	2 900	965	34.0	26.4
Other construction work involving special trades	54 000	23 000	2 873	40.3	30.7

Source: Eurostat (SBS)

The construction of buildings and civil engineering dominate the sector, with 70.5 % of value added and 71.6 % of employment. In terms of differences in Member States' share of value added, the UK had the largest construction sector within EU27, with a 19.1 % share of the EU27 total in 2006<sup>84</sup>, followed by Spain (18.5 %). Spain also had the largest construction sector workforce, with approximately 2.8m persons employed in 2006, although this has since been reduced due to the financial crisis. There are relatively high levels of self-employment in the construction sector. According to Eurostat, the proportion of paid employees was 82.2 % in EU25 in 2006.

### 3.3.3.2 Analysis of sectoral patterns and trends – construction

The construction sector is dominated by SMEs, with micro and small enterprises (with less than 50 persons employed) employing 72.1 % of the construction sector workforce in 2006 across EU25. These enterprises also accounted for about two-thirds (64.7%) of sectoral value added in 2006, compared with two fifths (39.8 %, 2005) for the whole of the non-financial business economy<sup>85</sup>.

<sup>84</sup> Eurostat data on construction services, January 2009.

<sup>85</sup> The EU-27 Construction sector: from boom to gloom. Eurostat Statistics in focus 7/2010, Industry, trade and services. Author Aleksandra Stawinska

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### Number of enterprises

The number of enterprises in the construction sector is presented across the three NACE codes within study scope below:

**Table 3.20: No. of enterprises, construction sector (NACE codes 41 – 43)**

Member State, 2008	Construction of buildings (NACE 41)	Civil Engineering (NACE 42)	Specialised construction activities (NACE 43)	Total no. of enterprises - NACE F
CZ	44898	4344	108237	157479
DK	4753	1210	30065	36028
DE	23552	5447	207718	236717
ES	194945	5199	219425	419569
FR	44007	6449	387333	437789
IT	178533	6879	449576	634988
NL	36980	4939	58015	99934
PL	75835	8145	154145	238125
PT	59658	3922	53447	117027
SI	4206	509	14718	19433
SU	17663	995	23231	41889
UK	17058	1363	59813	78234
<b>Total</b>	<b>702088</b>	<b>49401</b>	<b>1765723</b>	<b>2517212</b>

Source: Eurostat's SBS database, Annual detailed enterprise statistics for construction (NACE Rev.2 F), Comparison with population size, CSES own analysis

The data shows that there are more than 2.5m business entities in the construction sector across the thirteen countries within study scope. It was notable that there is a marked difference in the total number of enterprises between countries such as **France, Germany, Italy, Poland** and **Spain**, which had between 150000 - 450000 enterprises in the construction sector and the **UK**, which had only 59813 enterprises, significantly lower per head of population, due to larger average enterprise size.

Data by enterprise size class is now provided for the construction sector as a whole (NACE code F) using NACE Rev 1.1 (2006 data<sup>86</sup>).

**Table 3.21: Number of enterprises by size class, construction sector (NACE code F)**

2007	Between 1 and 9	Between 10 and 19	Between 20 and 49	Between 50 and 249	250 or more
CZ	147,243	3,336	1,788	720	69
DK	31,102	2,638	1,436	396	39
DE	186,081	21,833	9,632	2,935	182
EL	104,360	3,106	969	368	27
ES	405,780	27,616	17,368	5,210	384
FR	405,385	18,584	8,874	2,142	341
IT	581,939	25,202	7,105	1,531	85
NL	77,675	4,295	2,865	960	120
PL	199,094	2,184	2,412	1,561	189
PT	112,847	5,980	2,689	883	88
SI	15,896	702	389	168	21

<sup>86</sup> Enquiries with Eurostat confirmed that while data disaggregated by firm size is available under NACE rev 1.1 for the 2002-2007 period, under NACE Code Rev.2 F, the most recently available SBS data from 2008 does not provide any disaggregation by size class (only data on the number of employees is available, which can be used as a proxy indicator, since the vast majority of firms in the construction sector are micro or small enterprises).

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SU	38,132	1,390	695	209	30
UK	219,141	12,643	5,752	2,501	364

Source: Eurostat's SBS database, Annual detailed enterprise statistics for construction (NACE Rev. 1.1)

The data shows that while micro enterprises and small firms dominate the construction sector, this is especially the case in some countries in the sample. For example, **Italy** had the highest number of firms with between 1-9 employees, followed by **Spain** and **France**. Relative to country size, the **Czech Republic** and **Portugal** also have a relatively high number of enterprises. It is notable that there may be a link in some countries between the regulatory environment in respect of RAs and the ability to form medium and larger sized firms within the size threshold >250 employees.

For example, on the RA index (construction), the **UK** was first ranked overall (i.e. the least restrictive) across the different sub-sectors – architecture and surveying, engineering, specialised construction activities and other construction activities. Table 3.20 shows that it has the second highest number of construction firms in both the size thresholds of between 50 and 249 and >250 employees. Conversely, at the other end of the spectrum on the RA index, **Greece** was ranked twelfth out of thirteen and only has 27 firms with > 250 employees. Caution should be exercised however in establishing any firm correlation since the extent of any link varies considerably. For example, in **Germany**, ranked in thirteen place i.e. the most restrictive across construction overall (primarily due to the large number of RAs within specialised construction activities, there are 182 firms with >250 employees, the 5<sup>th</sup> highest out of 13, although arguably a higher number might be expected relative to population size.

### Number of persons employed

The number of persons employed in the construction sector in 2008 is presented in Table 3.21.

**Table 3.22: Number of persons employed, construction sector (NACE codes 41 – 43)**

Member State, 2008	Construction of buildings (NACE 41)	Civil Engineering (NACE 42)	Specialised construction activities (NACE 43)	Total number of persons employed NACE F
CZ	149994	66054	196687	412735
DK	33642	15984	170130	219756
DE	261641	164777	1155852	1582270
ES	1047163	183904	1001171	2232238
FR	:	:	:	0
IT	713207	96069	1201867	2011143
NL	159851	63496	289415	512762
PL	370163	146075	413975	930213
PT	263967	85342	163896	513205
SI	30479	14246	45041	89766
SU	48748	8895	70607	128250
UK	401981	259293	849751	1511025
<b>Total</b>	<b>3480836</b>	<b>1104135</b>	<b>5558392</b>	<b>10143363</b>

Source: Eurostat's SBS database, Annual detailed enterprise statistics for construction (NACE Rev.2 F)

The construction sector is a significant employer in many EU countries, particularly in **Spain (>2.2m)**, **Italy (>2.0m)**, **Germany (1.58m)** and the **UK (>1.5m)**. There does not however appear to be a strong correlation with the presence of reserves of activities in the number of enterprises. On the index of reserves, the **UK**, which is the largest market by size, but only the fourth largest employer (2008 data), was ranked first (i.e. was least restrictive) in architecture, engineering and specialised construction activities, with no reserves of activities, only professional titles<sup>87</sup>. However, **Spain**, which was the largest

<sup>87</sup> There is no requirement to use a professional with the title.

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employer and second largest market by size, is ranked eleventh out of thirteen in the degree of market restrictiveness in architecture, ninth in engineering and seventh in specialised construction activities.

### *Gross value added per person employed*

Gross Value Added per person employed in the construction sector is presented in Table 3.22.

**Table 3.23: Gross Value Added per person employed, construction sector (NACE F41 – 43)**

Member State, 2008	Construction of buildings (NACE 41)	Civil Engineering (NACE 42)	Specialised construction activities (NACE 43)
CZ	24.4	30.1	30.4
DK	74.8	75.9	66.6
DE	59.0	46.6	48.9
ES	68.1	51.5	43.0
FR	95.1	60.6	75.6
IT	86.0	76.0	75.3
NL	91.2	85.3	74.1
PL	0	0	0
PT	0	0	0
SI	0.00	0.00	0.00
SU	60.7	67.7	70.3
UK	116.4	80.7	70.9

Source: Eurostat's SBS database, Annual detailed enterprise statistics for construction (NACE Rev.2 F)

There were some interesting findings with regard to Gross Value Added per person employed (a key measure of productivity). GVA was significantly lower in specialised construction activities in some EU countries that were ranked in the RA index in the lower to bottom tier in terms of the level of market restrictiveness. The **Czech Republic**, **Germany** and **Spain** had considerably lower levels of GVA than other countries, and had a ranking under specialised construction activities of eleventh, thirteenth and seventh respectively on the RA index (i.e. a comparatively high level of market restrictiveness).

In the engineering sector, it can be observed that the **Netherlands** and the **UK** had the first and second highest level of Gross Value Added per person employed i.e. a high level of productivity and were ranked first and third on the RA Index respectively, i.e. had a low level of market access restrictiveness due to reserves of activities. Indeed, in the **Netherlands**, the only reserve of activities for an engineer is demolition work and in the UK, the engineering profession is not subject to any reserves of activities. Rather, the market has both practitioners without any prior professional qualifications requirements and those regulated through a reserved title by professional associations. Conversely, **Germany** and **Spain** had much lower GVA per person employed in NACE 42 (civil engineering), although Spain's performance was better in respect of GVA under NACE 41 (the Construction of buildings).

### 3.3.4 Sectoral analysis - tourism

#### 3.3.4.1 Sectoral overview – tourism

The tourism sector is a significant employer and economic sector in the EU. As noted in the introduction to the sectoral analysis, Eurostat data mainly focuses on accommodation services. According to Eurostat LFS data (circa 9.5m people) were employed in the HORECA (hotels, restaurants, catering) sector or 4.3% of all employed persons. General characteristics in respect of size and scope relating to the tourism sector are that:

- There are a very large numbers of micro enterprises in the TO & TA industry, although a small number of large firms account for a very high proportion of turnover and total employment.

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- There is a strong seasonal component to employment in the TO & TA sector.

Eurostat data only partially corresponds to the professions within study scope e.g. tourist guides, mountain guides, tour operators, travel agents and travel companions. The most recent Eurostat data on tourism from 2008 88 provides statistics on some relevant professions, notably under NACE 79 Rev 2 (travel agency, tour operator reservation service and related activities). The relevant NACE codes are provided below:

**Table 3.24: NACE code N79 - Travel agency, tour operator reservation service and related activities**

NACE codes N79 - Travel agency, tour operator reservation service and related activities
N791 Travel agency and tour operator activities
N7911 Travel agency activities
N799 Other reservation service and related activities
N7990 Other reservation service and related activities

### 3.3.4.2 Analysis of sectoral patterns and trends

Given the data constraints outlined above, the analysis focuses mainly on the NACE code 79 - Travel agency, tour operator reservation service and related activities for which Eurostat data is available. The position in respect of the number of enterprises is first provided:

**Table 3.25: Tour operators and travel agents: number of enterprises per Member State (2008)**

Member State, 2008	Travel agency and tour operator activities (N791)	Travel agency activities (N7911)	Tour operator activities (N7912)	Other reservation service and related activities (N799)	Total (N79)
CZ	5211	0	0	1455	6666
DK	541	164	377	115	656
EL	8912	6930	1982	730	9642
DE	0	0	0	0	0
ES	7818	7638	180	2518	10336
FR	3967	0	0	1358	5325
IT	9745	5825	3920	3396	13141
NL	2179	1388	791	358	2537
PL	3909	1684	2225	2473	6382
PT	1336	1269	67	987	2323
SI	411	268	143	148	559
SU	318	214	104	1085	1403
UK	5812	4210	1602	998	6810
<b>Total</b>	<b>50159</b>	<b>29590</b>	<b>11391</b>	<b>15621</b>	<b>65780</b>

Source: Eurostat's SBS database, *Annual detailed enterprise statistics for services (NACE Rev.2 H-N and S95)*. Note: N791 (column 1) on TA & TO provides an aggregate of columns 2 and 3. The total is provided separately because in some countries e.g. CZ, FR, no disaggregation is provided between these sub-sectors at a 3 digit NACE code level.

There is a high prevalence of enterprises in the tour operator and travel agent (TO and TA) sector in the new member states. Indeed, in **Poland** and the **Czech Republic**, there are more tour operators and travel agents than in **France**. **Slovenia** has a small number of enterprises in this sector relative to say the **Czech Republic** (once population size is taken into account).

A 2009 study on the *Competitiveness of the EU tourism industry*<sup>89</sup> provided figures on the number of enterprises drawing on earlier Eurostat data from 2006 (NACE Rev 1.1). This is useful for comparison

<sup>88</sup> In some sub-sectors and in some countries, the data is available at a two, while in others a three digit NACE code level.

<sup>89</sup> Study on the Competitiveness of the EU tourism industry, DG ENTR, 2009

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purposes in assessing how the sector has grown over time. With regard to the evolution in the number of enterprises, the study noted that between 2001 and 2006, the average number of enterprises per country increased from 2,500 to 2,900 across EU27 (16%). The largest increase was seen in **Spain** and **Italy**, with 2,600 and 1,800 more tour operators and travel agent respectively. There does **not appear to be a correlation with the respective ranking of these countries on the index of reserves of activities**, however, since Spain and Italy which saw strong growth in this sector but were ranked ninth and thirteenth on the index i.e. had a comparatively high level of market restrictiveness.

Over the same period (2001-2006), **Slovenia** and the **Czech Republic** saw a decrease in the number of companies (of 450 and 290 companies) respectively. Again, there does not appear to be a correlation with their respective ranking on the RA index – tourism, since they were ranked 11<sup>th</sup> and joint 5<sup>th</sup> on the index respectively.

With regard to enterprise structure, the sectoral competitiveness study mentioned above noted that the TO & TA industry is dominated by micro enterprises, which account for more than 80% of the total. In most Member States, the proportion of micro enterprises exceeds 90% and was below 85% in only two countries in the sample, **the Netherlands** and the **UK**. In the new member states, micro entities with 2 -4 employees were common in the **Czech Republic, Poland** and **Slovenia**. Professions such as tourist guiding are also strongly characterised by micro-firms. Although medium and large enterprises represent less than 3% of TOs and TAs across all EU countries, a small number of large firms in the sector have a very large market share. The TO&TA industry has undergone a major consolidation process since the mid-1990s and is today highly concentrated, with about 70% of the market accounted for by the five largest companies in Europe.

It was noted that the **employment structure** in the TO & TA industry consists on the one hand of (very) large tour operators employing significant numbers of people and on the other of micro enterprises. The study also noted that especially in western and northern EU countries, employment in medium to large sized enterprises may account for more than 40% of total employment. *‘Whereas medium-sized companies generate approx. 10% to 15% of the total employment, the large companies generate 25% to 50% of employment. This is in contrast with the situation in the new Member States and in Italy where the relative importance of medium and large enterprises in terms of employment is limited’.*

In 2008, Eurostat data shows that 372,817 people were employed in the TO & TA sector across the 13 countries in the sample, as shown in the following table:

**Table 3.26: Tour operators and travel agents: no. of persons employed.**

Member State, 2008	Travel agency and tour operator activities (N791)	Travel agency activities (N7911)	Tour operator activities (N7912)	Other reservation service and related activities (N799)	Total (N79)
CZ	12,668	0	0	1,026	13,694
DK	4,875	1,505	3,370	818	5,693
EL	71,490	46,164	25,327	6,908	78,399
DE	0	0	0	0	0
ES	56,205	47,283	8,922	4,439	60,644
FR	0	0	0	0	0
IT	43,714	22,159	21,555	6,021	49,735
NL	21,947	13,349	8,598	3,552	25,499
PL	14,173	4,774	9,399	5,602	19,775
PT	9,376	8,921	455	1,409	10,785
SI	1,606	779	827	386	1,992
SU	3,586	2,495	1,091	2,231	5,817
UK	92,434	66,335	26,099	8,350	100,784
<b>Total</b>	<b>332,074</b>	<b>213,764</b>	<b>105,643</b>	<b>40,742</b>	<b>372,817</b>

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Source: Eurostat's SBS database, Annual detailed enterprise statistics for services (NACE Rev.2 H-N and S95). N791 (column 1) on TA & TO provides an aggregate of columns 2 and 3, however the total is provided separately because in CZ, no disaggregation between these sub-sectors is provided at the 3 digit NACE code level.

It is worth recalling the strong seasonal component to employment in the tourism sector, especially for some professions within study scope (e.g. tourist guides in the period May – September). There does not appear to be a strong correlation in the TO & TA sector between market size and the presence of reserves of activities. For example, **Italy** and **Spain**, which as noted above were ranked eighth and thirteenth on the index respectively employed significant numbers of people in the TO & TA sector (60,644 and 49,735). However, it was notable that the largest employer in this sector was the **UK**, which does not have any reserves of activities within the tourism sector and was first ranked on the RA Index Tourism<sup>90</sup>.

With regard to employment data on other professions within scope, according to the European Federation of Tourist Guide Associations (FEG), there are more than 40000 professional tourist guides across its 21 member countries. However, FEG was not able to provide disaggregated data on the number of tourist guides by Member State. In the following table, labour productivity is examined through the indicator 'Gross Value Added per person employed'.

**Table 3.27: TOs and TAs: Apparent labour productivity (Gross value added per person employed).**

Member State, 2008	Travel agency and tour operator activities (N791)	Travel agency activities (N7911)	Tour operator activities (N7912)	Other reservation service and related activities (N799)
CZ	16.0	0	0	16.7
DK	63.0	63.4	62.8	51.3
EL	70.1	47.5	111.3	52.9
DE	0	0	0	0
ES	38.5	34.7	58.8	22.8
FR	0	0	0	0
IT	28.6	31.1	26.0	24.0
NL	40.4	42.9	36.6	0
PL	20.0	21.1	19.4	18.9
PT	24.9	25.7	8.8	12.6
SI	21.3	16.6	25.6	21.0
SU	46.6	40.9	59.5	31.8
UK	56.2	58.0	51.6	31.7

Source: Eurostat's SBS database, Annual detailed enterprise statistics for services (NACE Rev.2 H-N and S95).

The data shows that there are wide variations in labour productivity both between the different countries in the sample and the various sub-sectors making up the TO & TA sub-sector. It is notable that countries such as **Spain** and the **UK** have high levels of productivity in respect of TA and TO activities (N791). In **Spain**, the data appears to show a contrast between productivity levels in travel agencies and those of tour operators.

In some Member States in the sample, low levels of productivity can be noted, especially in the three new member states in the sample e.g. the **Czech Republic**, **Poland** and **Slovenia**. However, this may well not be due to other factors, which may not be linked to the presence of reserves of activities once purchasing power parities (PPP) have been taken into account.

There does not however appear to be a strong correlation between GVA per person employed and the presence of RAs.

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### 3.4 Rank correlation and regression analysis

In this section of the report, the following is provided:

- A basic **rank correlation analysis** to examine whether there is an inverse relationship between the presence of reserves of activities and market size.
- A **regression analysis** to assess the extent of correlation in more detail and to submit the coefficients to rigorous testing of statistical significance.

The intention is to test some of the hypotheses that the presence of an exclusive reserve of activities has a negative correlation with employment, turnover, value added, firm size and productivity through a rank correlation and a regression analysis. A ‘correlation coefficient’ expresses the degree to which there may be a linear association (positive or negative) between two variables.

#### 3.4.1 Introduction and data

The aim of this section of the report is to provide a regression analysis drawing on the findings from the sectoral indexes of reserves of activities developed for the present study (see Section 3.2), and to examine the impact of reserved activities on sectoral performance.

A key consideration is the extent to which through statistical analysis, market restrictions in access to professions are impacting on the performance of the sectors within study scope measured in terms of the following variables: **productivity, employment, turnover, value added** and **firm size**. The focus is on professional services (and also on other types of business services), and on the construction and tourism sectors.

It should however be mentioned that there are limits to the regression analysis in this study in the sense that they are not based on a fully specified economic model. For instance, the average labour productivity of a sector will depend on additional factors such as the level of technology used, the wage paid in the sector (incentives) and the skills of the workforce. Thus, **we are not able to test strictly causal relationships, and the results should therefore be interpreted with caution.**

However, within the regression analysis, it is possible to control for common unobserved sector and country influences, by including ‘dummy variables’ for sectors and countries. These variables filter out common trends within sectors across and within Member States and across sectors respectively. A common trend at the Member State level might be that the average firm size in a particular country is higher in all sectors than the average in the sample over all countries, due to factors other than the presence of an exclusive or shared reserved of activities (captured in each of the three sectoral RA indexes). As an example for a common sector trend, consider that the sector ‘Other business services’ might possibly use a better production technology or a better knowledge stock than other sectors in all countries under investigation. This may lead to higher average labour productivity in this sector.

The most detailed sectoral data classification source for the 13 EU countries is Eurostat’s Structural Business Statistics (SBS) database. This contains data on the number of enterprises, turnover, employees, personnel costs, productivity, value added and operating surplus. NACE Rev. 2 data at a 4-digit level is available for 2008 covering all 13 countries of this study. The match between reserved activities indicators and the economic data from the SBS database for NACE Rev 2 was provided in Section 3.3 (sectoral analysis). It should be noted that for the purposes of the analysis, we have excluded the subsector NACE 73: Advertising and Market Research since no reserved activities were identified in this sub-sector.



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In this section we use the same statistical information from the SBS database as in Section 3.3 of the report which examines general sectoral patterns and trends. Some data (such as average firm size and average labour productivity) are transformed to ratios or logarithmic scales, which favours ease of interpretation of the results of the regressions<sup>91</sup>. Furthermore, given that the data in the SBS is in real values (euros), the monetary variables (turnover, value added, productivity) have been adjusted to take into account purchasing power parities (PPP), taken from Eurostat, so as to eliminate differences in price levels across EU countries. This was an important step in ensuring that the analysis takes into account the fact that some EU countries in the sample (particularly the Czech Republic and Poland, and to a lesser extent Slovenia) are at a different stage of economic development from the others.

The impact of reserved activities indicators for the activities set out above is then tested across the following key performance indicators:

- Share of sectoral turnover in total turnover
- Share of sectoral employment in total employment
- Share of sectoral value added
- Average firm size
- Average labour productivity in the sector

Average labour productivity is defined as the value added per employee in a sector and average firm size has been calculated by dividing the number of employees by the number of enterprises in a sector. Furthermore, for the purposes of the statistical analysis, the logarithms of average firm size and average labour productivity have been taken.

There are limitations to the analysis in that time series data is not available on a comparable basis (see the explanation provided earlier in Section 3.3.1 regarding the availability of sectoral data and changes to the NACE codes between Rev 1.1 and 2). Since only Eurostat SBS NACE Rev 2 data from 2008 is available for the analysis, we are not able to construct growth rates of employment, turnover, value added or the number of enterprises, which would be of research interest. However, since the RA indexes developed through this study relate to the present situation i.e. 2011 is the base year, a correlation analysis with past growth would only be appropriate if data for the RA indexes could be mapped out for the period prior to 2008.

### 3.4.2 Rank correlation analysis

As noted in Section 3.2, the degree of reservation of activities in a sector/ Member State is encapsulated in the respective index of reservation (RA index). The index takes into account and is thus weighted by the number of exclusive reserved activities (more exclusivity is associated, all other things being equal, with a higher index), the number of professions that share a reserved task (a higher number is associated with a lower index), and whether the reserved task is split into reserved sub-tasks (more reservations is associated with a higher index value).

The exclusive reservation of professional activities to a professional holding a specific qualification (irrespective of the justification) represents an economic barrier to entry into the activities concerned. Potentially, restricting the supply of professionals can reduce the level of economic activity in the associated sector. An initial simple analysis of the economic impact of reservation can start by looking at sectoral economic performance versus the degree of reservation, as expressed in the RA indexes.

<sup>91</sup> A regression coefficient can be interpreted as an elasticity if the dependent and explanatory variables are each on a logarithmic scale: thus, for instance, a regression coefficient of 0.5 would imply that one percent change in the explanatory variable leads to a 0.5 percent change in the dependent variable.

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The relative output (turnover share), in nine sub-sectors (4 in business services, 4 in construction, plus tourism) is explored in conjunction with the respective RA index calculated for each of these sectors. If there is a high degree of reservation of activities in a particular sector in a specific country (i.e. high RA index value), we would hypothesise that the turnover share in the sector should, other things being equal, be relatively low. That would imply a negative correlation. Likewise if the Member States are ranked by RA index and relative turnover, the correlation of ranks would also be negative.

The rank correlations between the RA index and five key economic variables - turnover share, employment share, value added share, firm size (in terms of average no. of employees per firm in logs) and labour productivity (value added per employee in logs) are shown respectively in Table 3.27 for each of the nine sectors of interest. A picture emerges of a **preponderance of negative correlations between each of these economic performance variables and the degree of reservation of activities in the architecture and tourism sectors, and for four out of five variables for the accounting sector and in other business services.** (Negative rank correlations are indicated by the red colour in the table).

Productivity shows a general negative rank correlation with the degree of reservation (RA index) in all sectors (apart from 'other business services').

**Table 3.28: Rank Correlation between the RA index and 5 economic indicators**

Rank Correlation of RA-Index with . . . :					
	Productivity (log Value Added per employee)	Firm Size (log no. of employees)	Employ- ment share	Turnover share	Value Added share
accounting	-0.277	-0.106	-0.090	0.026	-0.337
legal	-0.109	-0.521	0.261	0.408	0.399
security	-0.181	0.129	0.525	0.238	0.366
other bs	0.053	-0.526	-0.750	-0.756	-0.790
architecture	-0.257	-0.627	-0.144	-0.207	-0.392
engineering	-0.416	-0.028	0.527	0.539	0.562
special constr.	-0.311	0.096	0.423	0.479	0.449
other constr.	-0.668	0.113	0.103	-0.445	-0.220
tourism	-0.661	-0.828	-0.117	-0.042	-0.296

Source: Eurostat, own calculations.

Thus the **hypothesis of a link between (more) reservation of activities and (less) economic output and other key indicators is only partially supported in the first instance.** More detailed and rigorous regression analysis follows below:

### 3.4.3 Regression Analysis

A simple correlation analysis between the RA indexes and a performance measure may indicate, but not definitively establish a causal relationship. In this section we take the analysis a step further, by controlling for common factors influencing the performance measures.

As the sample data comprises 13 countries and 9 activities/sectors, this sample can be pooled to increase the degrees of freedom for the statistical analysis and to control for country specific and activity/sector specific influences on the performance measures. This has been done by including 'dummy variables' for each sector and country<sup>92</sup>. We do so because there is reason to believe that most of our performance measures experience common factors in sectors and countries. For instance, some countries might account for a higher labour productivity in all sectors due to a better infrastructure or educational system.

<sup>92</sup> For example, the dummy variable for Germany takes the value 1 if an observation is from Germany and 0 otherwise.

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Country fixed effects filter those differences from the data and enable a better identification of the influence of the reserved activities index. Including sector specific effects controls for common trends of a specific sector across countries. For example, due to the nature of the service provided, a sector (for instance construction or tourism) may require more employees per enterprise (average firm size) than other sectors. The sector specific effects eliminate those aggregation differences and other common trends.

Given the technical and complex nature of the general regression equation, the details are presented in Appendix F in the form of supporting information as to how the calculations have been made. The tables later in this sub-section set out the resulting coefficients on the reserved activities index for each sector from the regressions<sup>93</sup> of each performance measure. Additionally, we report the standard error as a measure of uncertainty of the coefficient. Significance at a 90%, 95% and 99% confidence-interval is reported by \*, \*\* or \*\*\* next to the coefficient, respectively.

Inspecting the overall regression results, we see that **9 of 45 coefficients are statistically significant with respect to the confidence levels given above.** The explained variation in the data, denoted by  $R^2$ , varies between 85 and 96 per cent, which is due to the country and sector fixed effects.

For our first performance measure - **average firm size** – we find a **significant negative coefficient for the sectors ‘Legal’ and ‘Architecture’.** An increase in the reserved activities index of 0.1 leads to a decrease in average firm size in the sector ‘Legal’ by 0.13 per cent. The effect of the intensity of reservation in activities on average firm size in ‘Architecture’ is smaller with a coefficient of 0.01, which means that an increase (decrease) in the index value of 0.1 would be associated with a decrease (increase) of 0.1 per cent of average firm size. Even though statistically significant, the size of the effect is relatively small. This may be due to the limited range of firm sizes included in the sample: the average firm size in the sector ‘Legal’ varies between 1.2 and 11 and for the sector ‘Architecture’ the sample covers a range between 1.4 and 6.9. As discussed previously in this chapter, a majority of the firms in those sectors are within the size class of 0 and 9 employees.

The results for the performance measures **share of employment, turnover and value added** can be discussed jointly, as they show similar sectoral patterns. In the engineering sector, high reservations of activities are significantly positively correlated with higher shares in employment, turnover and value added. Concerning the interpretation of the coefficient, an increase in reserved activities by 0.1 would translate into an increase in the engineering sector’s share of the economy of between 0.44 to 0.86 percentage points. This is however the opposite of what might be expected from the hypothesis set out in the economic model that the relationship should be negative. At least in respect of the two variables, turnover and value added, however, the positive correlation may be due in part to higher prices (although this is not possible to test given the lack of data in pricing).

A much stronger inverse pattern can be observed for the sector **‘Other business services’.** Decreasing the RA index by 0.1 would increase this sector’s share in total employment by 2.6 percentage points, the share in total turnover by 1.5 percentage points and the share in total value added by 7.7 percentage points. Still, bearing in mind that the sector of ‘Other business services’ has, on average over all countries studied, the lowest level of reserved activity (by RA index), the potential for increasing the size of this sector in terms of these measures seems limited.

Finally, we find a significant positive coefficient for average labour productivity in the sector ‘Other business services’. The coefficient indicates that an increase in the RA index would be associated with a slight increase in labour productivity. However, the regression analysis for other business services also shows that there are – statistically significant – benefits of reducing reserves of activities in terms of higher turnover, employment share and value added share that may well compensate for the relatively small loss in productivity. It should at this point be remembered that no fully specified economic model was used to derive these correlations and thus other important factors influencing productivity, apart from country and sector-specific effects, are not taken into account.

<sup>93</sup> All specifications were estimated using White heteroskedasticity-consistent standard errors and covariance matrix.

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Table 3.29: Significant reserved activity index correlation with performance measures

Industry	Firm size	Employment share	Turnover share	Value Added share	Average labour productivity
	Engineering	0.006 (0.005)	0.044 *** (0.012)	0.069 *** (0.012)	0.086 *** (0.022)
Legal	-0.013 * (0.007)	0.013 (0.016)	0.011 (0.018)	0.016 (0.030)	-0.001 (0.003)
Accounting	0.001 (0.009)	0.012 (0.019)	0.013 (0.022)	0.023 (0.037)	-0.0004 (0.004)
Architecture	-0.010 * (0.005)	0.003 (0.012)	-0.002 (0.012)	0.007 (0.022)	-0.001 (0.003)
Other business services	-0.027 (0.018)	-0.258 *** (0.039)	-0.148 *** (0.042)	-0.771 *** (0.076)	0.020 ** (0.008)
Security	0.004 (0.004)	0.004 (0.008)	-0.001 (0.008)	0.000 (0.015)	-0.002 (0.002)
Other construction	0.006 (0.006)	0.014 (0.014)	0.005 (0.015)	0.014 (0.027)	-0.005 (0.003)
Specialised construction	0.001 (0.006)	0.017 (0.013)	0.013 (0.013)	0.008 (0.023)	-0.004 (0.003)
Tourism	-0.004 (0.005)	0.0001 (0.010)	0.0003 (0.011)	0.016 (0.020)	-0.001 (0.002)
Country fixed effects	yes	yes	yes	yes	yes
Sector fixed effects	yes	yes	yes	yes	yes
R <sup>2</sup>	0.851	0.851	0.851	0.961	0.957
# Observations	97	97	96	105	97

Source: Own calculations.

Although there are some negative correlations, it can also be observed that the regression analysis identified some positive correlations. Since it is not possible to identify the extent of causality only the extent of any relationship between reserves of activities and key indicators, it can only be speculated why some indicators show a positive correlation. However, in the case of apparently higher levels of productivity in some professions linked to the presence of a reserve of activities, this may be a consequence of higher pricing in that value added per full-time employee among other factors reflects the underlying pricing levels of the services being provided.

### 3.4.4 Overall conclusions – rank correlation and regression analysis

The correlation analysis provides some initial evidence of negative associations of reservation of activities with key economic indicators.

The effect most readily identified would seem to be a relationship between reservation and productivity, for all sectors studied apart from the category ‘other business services’ within business services.

In each of these sectors, increases in productivity are associated with lower reserves of activities and conversely, a decrease in productivity may result from higher levels of reserves of activities.

However, when subjected to the more stringent scrutiny of regression analysis, the negative relationship does not meet tests of statistical significance.

For ‘other business services’, however, there are strong negative links shown with other economic variables analysed, namely, employment, turnover, and value added (all statistically significant).

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The negative correlations between reservation and firm size are supported by tests of statistical significance for the legal and architecture sectors. However, the positive correlations for the engineering sector and economic performance variables are anomalous.

### 3.5 Analysis of knock-on effects

Many sectors of the economy supply outputs to (and/or receive intermediate inputs from) other sectors. Thus, in countries in which there are reserved tasks within legal services, the increased cost of services resulting from lack of competition may affect many different sectors. The ‘knock-on’ effect will be felt by consumers and/ or firms not only in the sector in which there is a reserve of activities, but also in other sectors through higher costs of services, less flexibility in service delivery, etc. (cf. OECD 2006<sup>94</sup>)

In particular, this study is interested in the sectors that are dependent on inputs from a particular sector that entails reserved tasks. The sum of these knock-on effects shows the extent of impacts from the reservation of tasks on the *whole* economy. In other words, the aggregate effect of non-competitive regulation is potentially increased by a “multiplier” throughout the whole economy. The question posed here is: how influential are business services, construction and tourism activities on the rest of the economy? The extent of the potential for the effects of non-competitive regulation (or indeed any other positive or negative aspects of these sectors) to be passed on to the rest of the economy will be indicated by calculating the *forward multiplier* effects of business services, construction and tourism.

The basis for calculating knock-on multipliers is Input-Output tables. These are compiled for Member States’ economies, and are available at Eurostat for certain years (not on an annual basis). For most of the 13 Member States in this study, the latest available IO Tables are for 2005 (with the exception of the UK). Background information on Input-Output tables and forward linkages may be found in Appendix F, which provides a detailed technical explanation of how the multipliers have been calculated.

We define knock-on effects as the forward linkages of one of three key sectors (business services, construction and tourism) to all other sectors of the economy. In other words, increasing the output of one of the three sectors facilitates output growth in other sectors of the economy that use those services as inputs in the production of their own output. The extent of the use of inputs is determined by the demand for outputs. The **intensity of the linkages therefore depends on the degree of interdependence of inputs between sectors**. The measure used ( $\lambda_{ij}$  – see Appendix F) describes the direct and indirect input content of the good of a sector that is necessary to produce one unit of gross output in a specific sector.

#### 3.5.1 Data – analysis of knock-on effects

The method for calculating knock-on effects requires harmonized Input-Output tables from all 13 countries and there are a number of difficulties to resolve in arriving at these harmonised data. Eurostat collects data and produces Input-Output tables based on ESA 1995 standards, for all EU Member States, every five years starting from 1995.

The latest available tables are for 2005, with the exception of the UK where the symmetric Input-Output table is only available for 1995<sup>95</sup>. For details concerning the required data, methodologies and preparation of Input-Output tables see Eurostat (2008)<sup>96</sup>.

<sup>94</sup> Conway and Nicoletti (2006) “Product Market Regulation in the Non-Manufacturing Sectors of OECD Countries: Measurement and Highlights”, Economics Department Working Papers No. 530”

<sup>95</sup> We assume that any structural changes in UK between 1995 and 2005 do not significantly bias the results. Monetary effects (such as embodied value) will be underestimated for the UK.

<sup>96</sup> Eurostat Manual of Supply (2008) Use and Input-Output Tables. Methodologies and Working Papers, ISSN 1977-0375.

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Up until 2008, the industry classification of the Input-Output tables was based on the version of the standard classification, known as NACE Revision 1.1. Hence, the Input-Output tables used in the analysis cover 58 sectors<sup>97</sup> that correspond to the 2-digit industries within NACE Rev. 1.1. A full list of sectors according to this classification can be found in Appendix F, as well as the list of subsectors covered by this study. Since the levels of aggregation differ between the sectors in focus and the aggregation of the European Input-Output tables, it is necessary to redefine our three key sectors.

The professions covered within the ‘construction’ sector in our study correspond closely to the NACE Rev. 2 classification of construction activities. However, it should be noted that for instance the profession of architect is included within ‘other business services’ in NACE Rev. 1.1. Tourism is included in the sector ‘Supporting and auxiliary transport services; travel agency services’. The additional sub-sector ‘Supporting and auxiliary transport services’ might dominate the inputs and outputs of ‘Travel agency services’, so some caution is required when analysing this sector.

Professions within business services are, unfortunately, dispersed over several industries within the Input-Output classification. The hiring of vehicles corresponds to ‘Renting services of machinery and equipment without operator and of personal and household goods’ in the NACE Rev. 1.1. Services in ‘Research and Development’ can also easily be connected to the similarly named sector in the old NACE revision. The sector hereafter referred to as ‘**Business Services\***’ includes a range of professions that are of interest, such as legal and accounting, and architects.<sup>98</sup> The two remaining activities ‘Veterinary Activities’ and ‘Landscape Gardening’ are somewhat problematic, as they are included in the industries ‘Agriculture’ and ‘Health’ respectively. As it is very likely that those two activities only account for a very small weight within these sectors, we do not include them in the following analysis.

In summary, six out of 58 industries of the input-output tables are identified as being relevant for this analysis of knock-on effects. These are as follows, whereby the four IO sectors denoted ‘c’ - ‘f’ together comprise business services: Construction (NACE 45), Tourism (NACE 63), Real Estate (NACE 70), Renting (NACE 71), R & D (NACE 73) and Other Business Services (NACE 74).

**Table 3.30: Correspondence between Input-Output NACE Rev. 1.1. classification and key sectors**

Nace Rev. 1.1.	Nace Rev. 1.1. Name	Sector/Activity of interest included
01	Products of agriculture, hunting and related services	Landscape Gardening
45	Construction work	Construction (fully covered)
63	Supporting and auxiliary transport services; travel agency services	Tourism: Travel agencies, Tour Guides
70	Real estate services	Real Estate (fully covered)
71	Renting services of machinery and equipment without operator and of personal and household goods	Vehicle hire
73	Research and development services	Scientific Research and Development
74	Business Services* (Other business services)	Legal and Accounting, Consulting, Architects, Advertising, Market Research, Photographer, Translator, Labour Recruitment and provision of employment, Investigation and Security Activities, Industrial Cleaning (Services to Buildings)
85	Health and social work services	Veterinary Activities

<sup>97</sup> Due to missing data and lack of relevance to the research question, we excluded sector 59 ‘Private households with employed persons’ from our dataset.

<sup>98</sup> The name ‘Business Services\*’ has been adopted in this section; the original name in Nace Rev. 1.1 is ‘other Business Services’ but this would lead to confusion with our use of this term in other chapters based on NACE Rev. 2. Thus, for example, the results found in the regression analysis for OBS cannot be directly linked to the knock-on effects on Business Services\* because the activities covered are different.

# Economic Analysis

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Source: Own illustration.

### 3.5.2 Analysis of knock-on effects - results

In the following sub-section, the results of the analysis of knock-on effects across the sectors under review in 13 EU Member States are presented. The input-output tables distinguish between **four different industries** within the business services sector (other business services, real estate, rental, R&D). Data is also provided on the **construction** and **tourism** sectors.

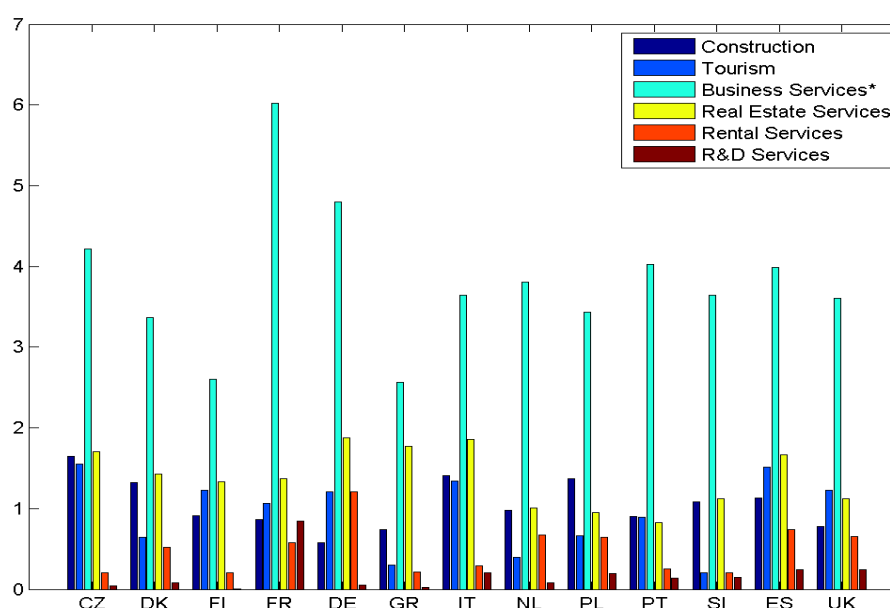
A series of indicators to show the relative influence of the sectors within scope on wider industries and on national economies are shown in the figures and tables. The indicators can be compared across industries within a country or across countries. Cross-industry comparisons can be interpreted as showing the importance of a certain sector compared to other sectors within a specific country. Comparing the indicators across countries gives valuable insights into the differences in the sectoral linkages and economic structure of the 13 Member States.

As shown in Appendix F,  $\lambda_{ij}$  represents the direct and indirect (i.e. the total) input content of good  $i$  necessary to produce one unit of gross output of good  $j$ . Thus, the more total input content a good (or in this respect a sector)  $i$  accounts for, the more important sector  $i$  is for the economy. This interpretation of 'forward linkages' is essentially what corresponds to the knock-on effects of a sector on other sectors of the economy. The 'lamdas' can also be used as multipliers for gross output or value added to show the absolute impact on the economy. These effects can be interpreted as the economic knock-on impact effects of a sector.

The analysis starts with  $\lambda_{ij}$  calculated from the Input-Output tables of the  $m = 13$  Member States for  $i=1, \dots, 58$  sectors on  $j=1, \dots, 58$  sectors. As a result we end up with  $13 \times 58^2 = 43,732$  lamdas, an amount that calls for summary measures for interpretation. As a first step, we take the sum of the 57 lamdas each in row  $i$  (corresponding to all sectoral knock-ons) of each industry for each Member State.

The higher this measure, the higher the influence of a certain sector on the production of all other sectors will be. Figure 3.6 summarises the sum of knock-on effects for the construction, tourism and the four business services sectors for each of the 13 EU member states for the year 2005.

**Figure 3.6: Total of knock-on effects for the six sectors, (base year 2005)**



Source: Eurostat ESA 95 Input-Output tables, CSES/ IHS calculations

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It can be seen that **'Business Services\*'** has the highest knock-on effects in all countries, followed by 'Real Estate Services' in most of the countries. The greatest multipliers in terms of forward linkages of the sector 'Business Services\*' were found in **France**, followed by **Germany** and the **Czech Republic**.

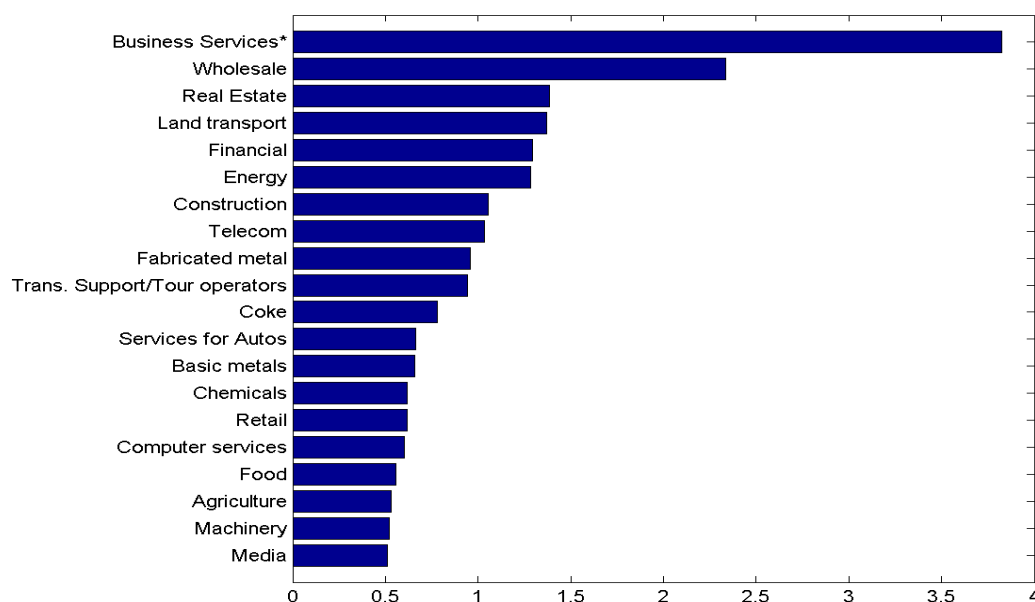
**France** also accounts for the largest forward linkages in the sector 'R&D Services', being the only country in our analysis with higher knock-on effects in this sector than in 'Renting Services'. **Greece** and **Finland** show the lowest forward linkages of 'Business Services\*', with a value that is less than half of that of France's. The highest forward linkages in 'Construction' and 'Tourism' can be found in the **Czech Republic**.

The knock-on contribution of Business Services\* to all other sectors in most EU Member States is considerable, being a factor of 3.5 - 4 times greater than the output of the sector Business Services\* itself. In real estate services, the factor is around 1 - 1.4 times; for rental services, the factor is generally between 0.2 and 0.7 (exception in Germany, where it is greater than 1), but even this means that the knock-on effect is at least 20%. Only for R&D services is there a small knock-on factor of less than 30% in most countries.

The average knock-on effect for both 'Construction' and 'Tourism' is approximately 1. In other words, the indirect effect of these industries on other sectors is roughly of the same order as their direct effect. The relative size of this **knock-on factor** is readily understood: business services are bought in relatively large quantities by intermediate users of services in other sectors, and to a lesser extent also in real estate, construction, tourism and rental services.

Another way of looking at the total forward linkages is to compare them across industries (sectors) within each country. Given space restrictions, we aggregate the resulting knock-on effects – which are standardised with respect to one unit of output - in order to discuss the general pattern across all 13 EU countries in the sample. Figure 3.7 displays the 20 industries with the highest sum of knock-on effects on EU 13 average.

**Figure 3.7: 20 industries with the highest total knock-on effects, EU 13 average, (base year 2005)<sup>99</sup>**



Source: Eurostat ESA 95 Input-Output tables, CSES/ IHS calculations

<sup>99</sup> Note: a short form name for NACE sector industries has been chosen.



# Economic Analysis

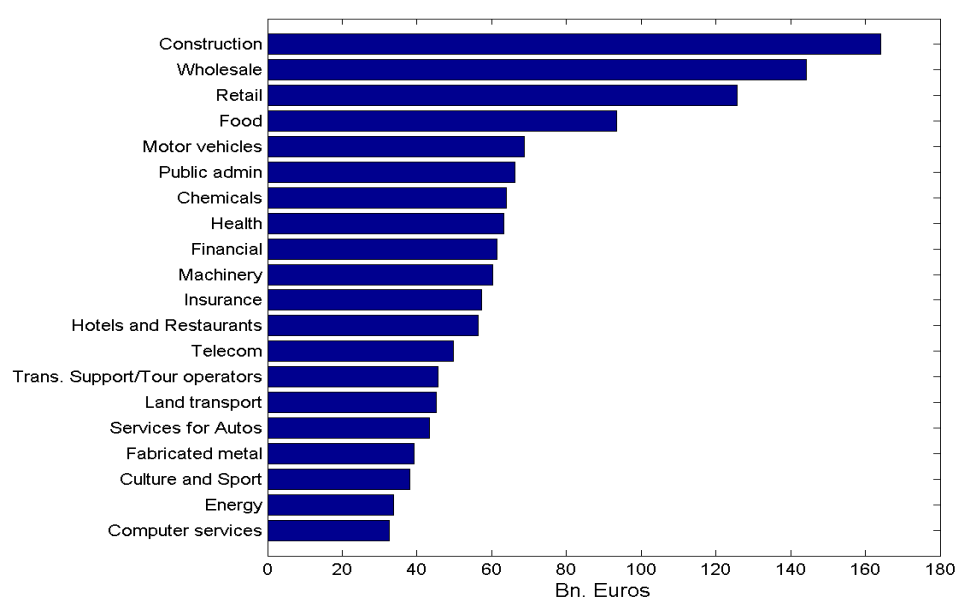
## 3

'Business Services\*' account for the highest knock-on effects across all sectors. Moreover, the total knock-on effect of Business Services\* (a factor of 3.8 times) is one and a half times larger than the sector with the second largest knock-on effects 'Wholesale'. Other sectors within our analysis also appear among the top 20 industries on EU 13 average. The industry 'Real Estate' follows 'Wholesale' on the third position with a knock-on effect of 1.3. 'Construction' is ranked 7<sup>th</sup> and shows an EU 13 averaged value of 1.05. 'Transport Support and Tour Operators' is ranked 10<sup>th</sup> in the list. This sector approximates to the professions addressed within the tourism sector of this study. It accounts for an average knock-on effect of slightly below 1.

The next indicator shows the **total embodied monetary value** of goods or services produced on other sectors of the economy. This represents the total output value of each sector together with the indirect knocked-on value in all other sectors.

In order to illustrate this, the impacts of the four sub-sectors (industries) within the business services sector i.e. real estate, rental, R&D, and BS\* ('Business Services\*') are summarised by showing only the aggregated values of these four industries and further summarising them by aggregating the values for all 13 EU countries in the sample. The resulting 20 industries with the highest monetary embodiment of business services are given in Figure 3.8.<sup>100</sup>

**Figure 3.8: 20 industries with highest embodied value of business services (sum of 4 industries), EU13 Sum, (base-year 2005), in Bn. EUR.**



Source: Eurostat ESA 95 Input-Output tables, CSES/ IHS calculations

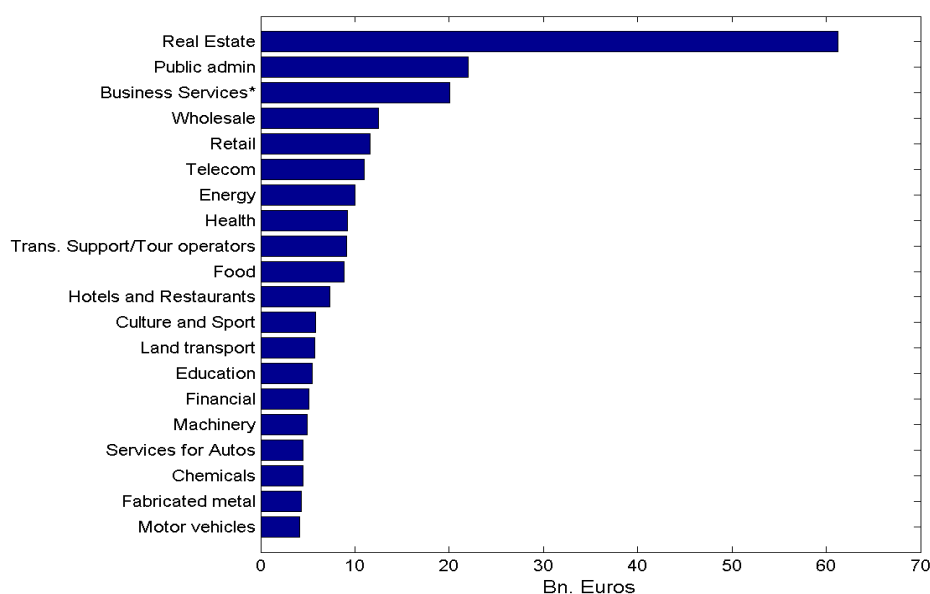
<sup>100</sup> We note that since the embodied values are notional, and may not be summed across industries, as this would imply a certain amount of "double-counting". Nevertheless, compared across industries they show the relative value of embodiment.

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The highest monetary EU13-wide embodiment of business services can be found in the ‘Construction’ sector. Within the 13 countries, business services have an embodied value of nearly € 160 billion in this sector. The high inter-dependence between business services and construction in terms of embodied value is interesting in that in some countries in the sample, professions in both the business services and construction subsectors were found to be subject to entry restrictions on professions through exclusive reserves of activities, with evidence emerging through the qualitative research of over-fragmentation in engineering services provided to the construction sector in particular (e.g. Portugal, Spain). The total gross output (or input) in the 13 EU Member States amounted to € 16 trillion in 2005. The strong link between business services (BS\*) and construction may also be due to the fact that in Eurostat input-output data used for the analysis of knock-on effects, architecture activities are included in the category business services (BS\*).

**Figure 3.9: 20 industries with highest embodied value of construction, EU13 Sum, (base-year 2005), in Bn. EUR.**



*Source: Eurostat ESA 95 Input-Output tables, IHS calculations*

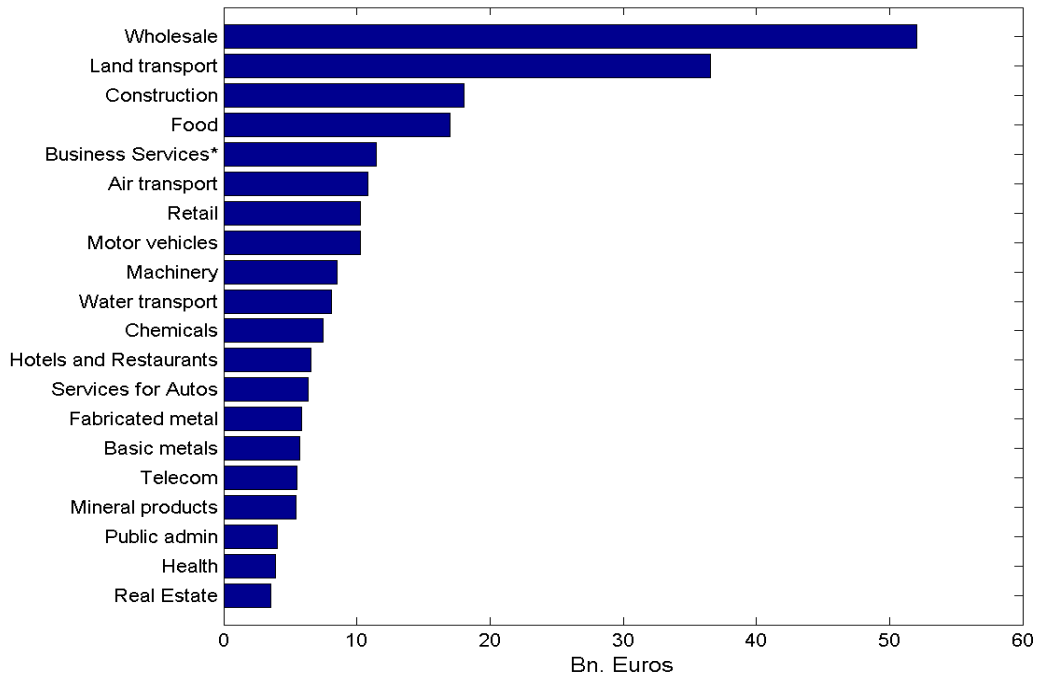
Figure 3.9 shows the 20 industries with the largest embodiment of direct and indirect construction inputs, as the sum over all 13 EU countries in our sample. The sector with the most embodied value of construction activities is ‘Real estate’, which amounts to slightly over € 60 billion.

In the next Figure (3.10), the directly and indirectly embodied value of tourism inputs is depicted for the 20 industries that account for the highest value in the EU 13. It can be observed that the tourism sector also includes auxiliary and supporting transport services. Thus, the transport sub-sector may dominate the values of the professions within scope in the tourism sector (e.g. Tour operator, Travel agent, Tourist guide, Tour manager), which may risk distorting the level of knock-on effects from the tourism sub-sector. Figure 3.10 substantiates this supposition, since Wholesale, Land Transport and Construction appear to have the largest embodied direct and indirect value of Tourism. The results should however be treated with caution since these sectors are likely to require auxiliary and supporting transport services much more than the services of tourist guides.

**Figure 3.10: 20 industries with highest embodied value of tourism, EU13 Sum, (base-year 2005), in Bn. EUR.**

# Economic Analysis

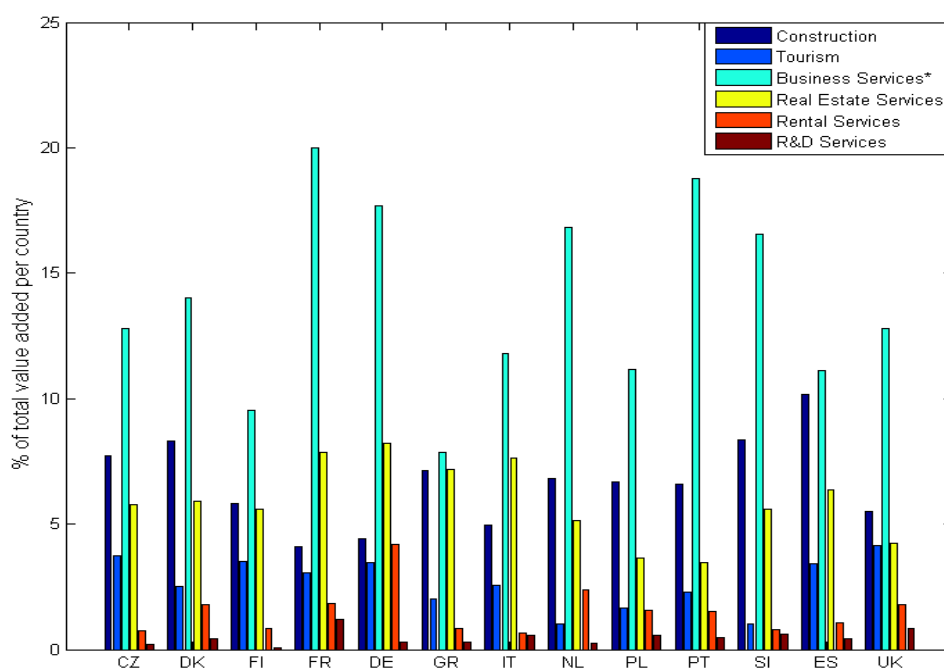
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Source: Eurostat ESA 95 Input-Output tables, CSES/ IHS calculations

The economic impact of a sector such as business services can also be estimated in terms of value added. GDP can be represented as the sum of sectoral value added. In this step the 'lambdas' are used to calculate the **share of value added** in each sector that is attributable to the direct *and indirect* inputs. (cf. Fig. 3.11). The total value added in billion Euros (price base 2005) that is knocked-on from 'Construction', 'Tourism' and the 4 business services sub-sectors (Business Services\*, real estate, rental and R&D services) in percent of total value added for each of the 13 EU countries is shown. The sector 'Business Services\*' again shows the highest values, followed by 'Construction' and 'Real Estate Services'. In **Spain**, the construction sector is of nearly the same importance in terms of knock-on effects as BS\*.

**Figure 3.11: Knock-on value added from business services in % of total value added per country, base-year 2005**



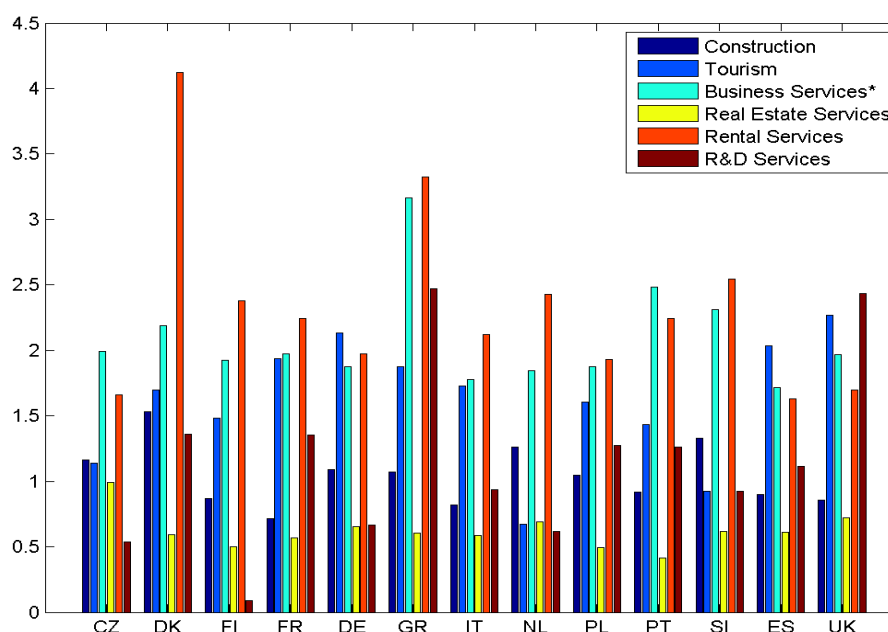
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Source: Eurostat ESA 95 Input-Output tables, CSES/ IHS calculations

To get a better impression of the relative importance of the knocked-on value added, the ratio of GDP attributable to sectoral knock-on to the specific sector's value added is computed. The **knock-on value added factor** is shown in Figure 3.12 for the six sectors and the 13 EU Member States in the sample. The differences in value added among the sectors leads to a rather different picture. In most countries 'Rental Services' shows the highest ratio of knocked-on value added to own value added, followed by 'Business Services\*'. 'Real Estate Services' shows the lowest ratio of knocked-on value added to own value added, followed by 'Construction'.

**Figure 3.12: Ratio of business services knock-on value added to value added in business services**



Source: Eurostat ESA 95 Input-Output tables, IHS calculations

Interestingly, **Greece** shows some of the highest ratios on average, along with **Denmark**. The highest value added knock-on ratio can be found in Danish sector 'Rental Services' with a factor of over 4 times the value added in the sector. However, it should be noted that no reserves of activities were identified within professions related to vehicle hire or other rental services among the countries in the sample. The sub-sector 'Real Estate Services' accounts for the lowest ratio (less than 1) in most of the 13 Member States. This is not a surprising result, since this sector is of major economic importance and exhibits heavy weight in value added in most of the countries.

In most Member States in the sample, the value-added measured by the knock-on effect is around twice (or 200%) the conventional value added of the sector. Likewise, the corresponding factor for 'other business services' is 1.5 or 150%. So these business services sectors (which include accounting and legal services) belong to sectors of the economy that exhibit a greater knock-on value across the economy, than value added in their own sector. (Patently there can roughly only be around a half of sectors for which this holds; for the other "half" the reverse is true, since the sum of all value added, whether knocked-on value added, or value added in the own sector, sums to the total GDP of the economy.)

The analysis of the "slicing of GDP" in terms of the knocked-on value-added shows that the importance of BS\*, rental services, tourism as well as construction and R&D services (in some Member States) is greater than is revealed by their own sectoral value added (corresponding to factor > 1). These sectors can be viewed as exhibiting growth potential throughout the economy, or, seen in another light, they may act as a brake on the economy if growth potential is hindered by non-competitive regulatory restrictions.

# Economic Analysis

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It should also be noted that a possible link between the relative positioning in the RA indexes and knock-on effects was examined through the research. However, no correlation could be identified. This could however perhaps be expected since if a correlation were to exist, this would more likely be between the price level of services and the reserved activities indicator (however, as noted earlier, it was not possible to make comparisons between countries on the basis of the price of services and the presence of reserves of activities).

### Conclusions

Assessing forwards linkages and inter-dependencies between sectors allows for an assessment to be made of the indirect effects of reserves of activities and the multipliers linked to them. Among the key findings from the analysis of knock-ons were that:

- **The sectors within scope have quite high knock-on effects.** This is especially the case within business services, which has a multiplier effect on output of 3-4 times the level of its own output, the largest knock-on effect of all sectors of the economy.
- **Construction has the 7<sup>th</sup> largest multiplier effects through knock-on effects out of 58 sectors, equal in size to the direct gross output of the sector.** Tourism has a similar multiplier effect but this may be exaggerated due to the way in which Eurostat input-output tables are configured i.e. tourism is combined with transport, and the latter will account for most of the knock-ons.
- **In most Member States in the sample, the knock-on effect measured in terms of value-added is around twice (or 200%) the conventional value added of the sector.**
- **There is a high inter-dependence between the business services and construction sectors.** This finding based on Eurostat input-output tables may suggest that there are adverse economic impacts due to reserves of activities as a result of knock-on effects. The qualitative research suggests that the level of impact may be magnified in some countries that exhibit over-fragmentation in particular professions such as engineering due to the presence of reserves of activities.
- No correlation could be identified between the relative positioning in the RA indexes and knock on effects. While there are difficulties in calculating the economic impacts of the reservation of activities directly (due to the absence of comparative data on the pricing of services), **any economic impact is likely to be transmitted through the considerable knock-on effects associated with these sectors.**

### 3.6 Other kinds of impacts

A number of wider economic impacts were identified that do not directly stem from the quantitative analysis, but which arise from other parts of the research e.g. qualitative feedback through the interview programme and observations based on the literature review.

**Insufficient clarity in the legal framework on reserve of activities within regulated professions appears to be having adverse economic consequences in some sub-sectors and in particular EU Member States<sup>101</sup>.** For example, legal disputes relating to the scope and delineation of reserves of activities were found to be most frequent in engineering, and to a lesser extent in architecture, especially in Italy, Spain and Portugal.

<sup>101</sup> See Section 2.2.7 - legal disputes in the construction sector

# *Economic Analysis*

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**Among the negative economic impacts are frequent and costly legal disputes between professions as to who has the right to carry out particular reserved tasks/ activities, and ongoing legal uncertainty.** This may deter investment domestically and also make it more difficult to attract inwards investment due to the increased risk of litigation stemming from these uncertainties<sup>102</sup>.

**The presence of overly narrow exclusive reserves of activities may also restrict members of related professions from offering similar services.** The engineering sector in Spain and Portugal was cited in the report as an example of the difficulty professionals may face in accessing different parts of the market for which they should have at least some relevant expertise to perform.

**Over-fragmentation within engineering was viewed by interviewees as potentially hindering the mobility of professionals and also restricting market size by placing an artificial limit on the scope of services that can be provided.** In instances of over-fragmentation due to an overly narrow scope of reserves of activities, there may be inefficiencies for intermediate users of services who may have to use multiple service providers, rather than a single service provider. Examples in this regard were construction firms using engineers services on building projects in Spain.

**In some sectors, the presence of an exclusive reserve of activities may restrict consumer choice.** In some Member States, there is a *de facto* monopoly of service provision for legal professionals holding specific qualifications. This can be contrasted with regulatory approaches such as the UK that encourage competition through shared reserves of activities between two or more types of legal professionals.

**The presence of regional reserves of activities in some sectors such as tourism may restrict the free movement of professionals within domestic markets.** Among the examples in this regard are the professions of tourist guide in Italy and Spain. Having too narrow a specialisation in tourist guiding services through a local, area-specific qualification may limit mobility to work in other EU countries.

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<sup>102</sup> The frequent legal disputes in the engineering sector resulting from the absence of a clear description in legislation as to the scope of reserved tasks and the delineation of functions between different branches of engineering identified in Portugal and Spain. The types of economic impacts cited were mentioned in the interview programme and in work to assess the impacts of reserves of activities presently being undertaken by the Spanish Ministry of Economy (not yet published).

# Conclusions

# 4

In this section, the main conclusions from the research in respect of the legal mapping exercise and the economic analysis of reserves of activities within regulated professions are summarised.

## 4.1 Conclusions – inventory of legislation on reserves of activities

### 4.1.1 Legislation on regulated professions

Key findings from the legal mapping exercise to identify reserves of activities within regulated professions across the three sectors within scope are first summarised across a sample of 13 EU Member States. *The detailed findings from the legal inventory are provided in Section 2, and the full legal inventory is a separately bound document (see Appendix H).*

#### **Level of regulation through reserves of activities – the situation across 13 EU Member States**

Across the three sectors under review, the number of regulated professions within scope has varied considerably between the Member States in the sample, from a high of 55 in Germany to a low of 9 in Finland. The majority of regulated professions are associated with reserved activities; however in some cases, such as the UK and in limited cases also Denmark, Finland and the Netherlands, professions are also regulated without any reserved activity being attached.

**A total of 481 reserved activities were identified across the three sectors and the sample of thirteen EU Member States.** It was notable that there were significantly more shared than exclusive reserves of activities restricted to a single professional (284 shared, as opposed to 197 exclusive).

Across the Member States within study scope, nine Member States (the Czech Republic, France, Germany, Greece, Italy, Poland, Portugal, Slovenia, Spain), were found to reserve service activities to professionals holding a specific professional qualification relatively frequently.

Four Member States had recourse to the use of exclusive reserves of service activities more seldom (Denmark, Finland, the Netherlands and the UK). This was partly because they pursued different approaches to regulating the market, such as the use of reserved professional titles, certification and licensing schemes not linked to a professional qualification requirement.

**Overall, there were not many instances of repeals of reserves of activities in respect of individual professions identified across the 13 countries.** In some Member States, instances of legislative reforms to deregulate formerly regulated professions and to remove reserves of activities were identified in specific sub-sectors. Annex H3 provides a list of those identified.

Other Member States<sup>103</sup>, such as Greece and Portugal, are in the process of implementing potentially wide-ranging legislative reforms so as to reduce the number of reserves of activities and to deregulate access to professions. Many reforms have however only recently been instituted as part of the National Reform Plans and it is too early to assess their impacts.

**The Czech Republic and Germany have taken steps to remove reserves of activities within the specialised construction sector (particularly craft and related activities).** However, the benchmark Index of Reserve of Activities produced as part of this study found that there remains a comparatively high level of market restrictiveness in these countries within the craft trades.

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<sup>103</sup> Greece and Portugal have enacted general framework legislation to modernise regulated professions and reservations within these and in Spain, a draft law on professional services is under consideration, with the aim of reducing the number of regulate professions by 50%.

# Conclusions

# 4

## ***Reserves of activities at a sectoral level***

There are considerable variations in the frequency of recourse by the Member States to the exclusive reserve of activities to professionals holding specific qualifications between sectors.

**Among the regulated professions most commonly subject to an exclusive reserve of activities are: legal professionals, architects and engineers, and some areas of specialised construction activities (e.g. electricians, electrical engineers, gas installers).**

**The largest number of exclusive reserves of activities was identified in legal services, followed by engineering, architecture and surveying.** Accountancy had a lower number of reserves of activities compared with other professions. Statutory audit is subject to a reserve of activities in all EU countries due to the requirements of the Statutory Audit Directive (2006/43/EC).

**Engineering accounted for the highest number of shared reserves of activities followed by architecture, legal services and accountancy.** The high number of shared reserves in the engineering sector was influenced by the situation in Portugal and Spain, where there are many shared reserved tasks across both the technical and higher branches of engineering.

**Especially in architecture and engineering, it was common for some professions to have the right to carry out a combination of exclusive and shared reserved tasks.** This was particularly the case in some southern EU Member States in the sample. To some extent, this was also true of legal services.

**Some EU Member States in the sample had a high number of reserves of activities in specific sectors, such as the Netherlands and Slovenia (private security), Spain and Portugal (engineering), and Poland (business services).** There were also a large number of reserved professional titles in the UK (legal services).

**There were also found to be a high number of reserve of activities in the tourism sector, especially once regional reserves of activities linked to area-specific qualifications requirements were taken into account (e.g. in Italy, Poland, Slovenia and Spain).** This was especially the case for the professions of tourist guiding and mountain guiding.

## ***Differences in approaches to regulating access to professional services markets***

**In some Member States, different ways of regulating access to professional services markets, other than through the use of exclusive reserves of activities were identified.**

**Different means of regulating the market included the use of reserved professional titles, self-regulation (and the development of voluntary professional standards and codes of conduct), and licensing and certification schemes without specific qualification requirements.** Licensing was relatively common in the tourism and security sectors.

**The use of reserved professional titles regulated by professional associations under Article 3(2) of Directive 2005/36/EC was common in the UK.** In addition, a small number of reserved titles - not linked to a reserve of activities - were identified in other EU Member States, e.g. Denmark, Finland and the Netherlands.

**The rationale for regulating services markets through reserved titles was broadly similar to that used for reserves of activities (e.g. consumer protection and ensuring high quality of services).**

**There has also been a transition in some Member States (e.g. France and Slovenia, and to some extent Germany) towards regulating market access at the level of enterprises providing service activities, rather than individual professionals.** This was especially the case in specialised construction activities. However, there remains a requirement for a minimum of one person within the firm (and for sole traders) to hold a specific qualification.



# Conclusions

## 4

### 4.1.2 Sectoral indexes of Reserves of Activities

*Section 3.2 sets out the three sectoral indexes of Reserves of Activities (RA Index). These were developed across the 13 EU Member States in the sample. The index builds directly on the results from the legal mapping exercise and provides a quantitative regulatory benchmark on the presence of exclusive reserves of activities for use in comparing the extent of market access barriers. Key findings were that:*

Some EU countries use exclusive reserves of activities as the main mechanism for regulating access to the market.

**With regard to the RA Index – Business Services, across the four sub-sectors under consideration (accountancy, legal, security, other business services), Spain, Poland and Greece were the most restrictive countries in the sample in limiting market access through a reserve of activities. Conversely, Denmark Finland and the UK were ranked as being the least three restrictive countries.**

**In relation to the RA Index – Construction, across the four sub-sectors under consideration, the Czech Republic, Greece and Germany had the most restricted access to the market for professionals.** Finland, the UK and the Netherlands were the least three restrictive countries in the sample (and indeed, did not have any exclusive reserves of activities within engineering and architecture).

**In the case of the Czech Republic and Germany, this reflects the high level of reservation of service activities observed in specialised construction activities.** Both countries have undertaken some legislative reforms in this field, but there remain a large number of reserves of activities, reflecting an emphasis on specific vocational qualification requirements, often linked to apprenticeships.

**The highest ranking countries in the sample in terms of the level of market restrictiveness in respect of the RA Index – Tourism that reserved activities to specific tourism professionals were: Italy, Portugal and Slovenia.** Italy and Slovenia also had regional qualification requirements.

**The lowest ranking countries in the sample (with no reservation of activities linked to qualifications in the tourism sector) were Denmark, Finland, the Netherlands and the UK.**

**Overall, the relative positioning of different Member States on the sectoral indexes of Reserves of Activities (RA Index) varied considerably between sectors.** The Netherlands, for example, was the least restricted market in the accountancy field and within other business services, but was ranked thirteenth i.e. the most restricted in respect of security services.

## 4.2 Economic impacts – overall findings

*A wide range of market entry and conduct barriers across different services markets – among which reserves of activities exclusive to professionals holding specific qualifications – influence aggregate sectoral performance. There are therefore challenges in attributing economic impacts to a single cause given that multiple independent variables influence dependent variables such as sectoral employment and turnover. Nevertheless, despite the methodological challenges in isolating impacts, various conclusions can be drawn with regard to the impacts of reserves of activities within regulated professions, drawing on the quantitative research carried out through the regression analysis and assessment of knock-on effects.*

### 4.2.1 General sectoral patterns and trends

Section 3.3 provided an analysis of sectoral patterns and trends drawing on Eurostat SBS data. The aim was to ascertain whether any observations could be made between the relative positioning of different countries on the RA index and data on sectoral performance across the three sectors. However, it should be stressed that it is not possible to establish causation since many other factors influence sectoral performance (e.g. macro-economic backdrop, state of development of infrastructure, quality of education and training systems).

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**The ranking of different Member States in respect of reserves of activities at sectoral level may have some relationship with variables such as average enterprise size.**

**However, the results were mixed in this regard.** For instance, there was not always a clear link within legal services between firm size, and the presence of reserves of activities. However, in the construction sector, the high level of market restrictiveness on the RA index was found to have at least some relationship in inhibiting the development of medium and large-sized firms.

**The data also suggests a link between the relative positioning of different Member States on the RA Indexes and productivity (value added per FTE employee) in several professions across the different sub-sectors.** Examples were the engineering sector, where high-ranking countries on the RA index (i.e. with low recourse to reserves of activities) such as the **Netherlands** and the **UK** had the first and second highest Gross Value Added (GVA) per person employed respectively.

**A possible link between RAs and productivity was identified in the construction sector.** GVA per person employed was lower in specialised construction activities in some EU countries in the bottom tier of the RA index (i.e. that had a high level of market restrictiveness).

## 4.2.2 Regression analysis

The correlation and regression analyses provide a mixed picture as to the extent of association between exclusive reserves of activities and sectoral performance across key indicators, such as productivity, turnover and firm size.

As the regression is not based on a fully specified economic model – technology, wage incentives or skill levels, for instance, are not modelled – we are not able to test strictly causal relationships. However, within the regression analysis, it is possible to control for common unobserved sector and country influences.

**The rank correlation analysis identified a negative correlation between reserved activities and performance across many of the professions within scope, especially in respect of productivity.**

**This negative relationship between reserves of activities and productivity was also established through the regression analysis, notably in the fields of engineering, legal, accounting, architecture, security, building services.** However, the magnitude of the negative coefficient was low and the results were statistically insignificant at conventional confidence levels.

**Overall, the quantitative results from the regression analysis should be treated with caution.** Although evidence was found of a negative relationship for some key indicators, in the case of other specific professions, such as engineering and specialised construction activities, there was a positive correlation for some indicators.

**Most of the established correlations were statistically insignificant on conventional confidence levels.** This might be due to the small sample size or the omission of key variables explaining the performance measures within a fully specified economic model.

**The lack of conclusive findings from the quantitative analysis across professions and Member States reflects the difficulty in isolating impacts to a single cause only.** It also suggests a need for further in-depth qualitative assessment of economic impacts to be undertaken in future through possible follow-up studies based on empirical research.

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## 4.2.3 Knock-on effects

Since comparable data on the price of services across particular professions is not available, **price differentials between EU countries that do - and do not - reserve activities and tasks within regulated professions in particular sectors cannot be compared.** It has not therefore been possible to quantify the net economic impacts (e.g. gross economic impacts multiplied by knock-on effects).

However, it was possible to analyse the scale of knock-on effects between the three sectors within scope and other sectors through an assessment of forwards linkages and inter-dependencies and the use of Eurostat's input-output tables.

The research on knock-on effects shows that:

**Knock-on effects within the three sectors in scope – business services, construction and tourism - were found to have a high impact on other sectors.** The multipliers in terms of input-outputs varied from as much as four times (business services), to approximately one times for both the 'Construction' and 'Tourism'<sup>104</sup> sectors. In other words, the indirect effect of two of the three industries on other sectors was approximately of the same order as their direct effects.

**A high level of inter-dependence was identified between the business services and construction sectors.** Knock-on effects may therefore be particularly significant since a relatively high proportion of professions within these sectors were subject to either an exclusive or a shared reserve of activities.

**The possibility of a link between knock-on effects and the relative positioning of different Member States on the RA sectoral indexes under review was examined through the research at the sector and sub-sector level. However, no correlation could be identified.**

## 4.3 Economic impacts by sector

The findings from the economic analysis by sector draw on the analysis presented in Sections 3.3 (*sectoral patterns and trends*), 3.4 (*regression and rank correlation analysis*) and 3.5 (*knock-on effects*).

### 4.3.1 Impacts - business services

**An interesting finding from the regression was that within 'other business services' (OBS) negative links for the RA-Index were shown with variables such as employment, turnover, and value added.** OBS includes real estate services, rental services (machinery and equipment) and R&D services, but not legal, accounting and architect's services. The relationship was found to be statistically significant across each of these variables. There was also negative correlation effect found for firm size (that is, however, not statistically significant), and a contradictory positive correlation for average labour productivity. Nevertheless, both of these effects are of rather small magnitude.

**However, the regression only identified a small negative relationship in respect of other professions within business services (such as legal services).**

**The analysis of knock-on effects found that there was a strong inter-dependency between business services and wider sectors of the economy.** This was especially the case in respect of legal, accounting and architecture activities, where the knock-on contribution (measured through input-output tables) to other sectors was an average factor of 3.5 - 4 times the output of the sub-sector itself. In comparison, in real estate services, for example, the factor was an estimated 1 - 1.4 times.

**In most Member States, the value-added measured by the knock-on effect in business services overall was around twice the conventional value added of the sector.**

<sup>104</sup> In Eurostat input-output statistics, the tourism sector is combined with the transport sector

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**In some professions, particularly legal services, there appears to be a relationship in some EU countries within the sample between enterprise size and the relative positioning in the RA index on the legal services subsector.** Member States that had a high ranking in the RA index (i.e. had a low level of market restrictiveness) such as Finland and the UK tended to have a higher proportion of medium and large-sized legal services firms than countries such as Italy, which was mid-ranked on the Business Services RA index.

**However, the conclusions are only tentative, since it is difficult to isolate the impact of a reserved activity linked to a qualification requirement, alone, as opposed to other factors.** There are many wider market access restrictions (e.g. quotas on the number of new entrants to a profession and limits on the number of new entrants on training schemes) and rules on ownership and business structure that reinforce reserves of activities.

A correlation between reserves of activities and sectoral trends and patterns across some professions within business services (e.g. accountancy services, security, other business services) was less discernible for indicators such as the number of enterprises, sectoral employment (indicators of market size), and average enterprise size (an indicator of market structure).

**It was however notable that across most professions within business services, such as legal services and accountancy, there was an inverse correlation between the presence of reserve of activities and productivity.** However, this finding could not be underpinned by the statistical significance test of regression analysis.

## 4.3.2 Impacts – construction

**In the construction sector, the rank correlation between the RA index and 5 economic indicators found a mixed picture as to whether a positive or negative correlation could be established at the level of individual professions.** For example, in architecture, a negative correlation was identified in respect of several variables, such as firm size, share of value added and productivity, measured in terms of value added per employee.

**Conversely, the correlation between RAs and sectoral performance across key indicators was found to be positive in professions such as engineering (employment, turnover and value added) and in respect of specialised construction activities (no. of employees, employment, turnover and value added).** While this is the opposite of what might be expected, there may be other unidentified variables that influence sectoral performance in the countries within scope.

**Rank correlation and regression analysis found that the exclusive reserve of activities to professionals holding specific qualifications within engineering, architecture and building services may lower productivity compared with EU countries in which the same professions are unregulated.** However, the degree of negative relationship found by regression was statistically insignificant at conventional confidence levels.

**With regard to knock-on effects in the construction sector, the research found that construction has the seventh largest multiplier effects through knock-on effects out of 58 sectors.** The multiplier was equal in size to the direct gross output of the sector.

**Across the 13 EU Member States within scope, the highest monetary embodiment (total output value of each sector together with the indirect knocked-on value in all other sectors) of services was identified in the ‘Construction’ sector.**

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The assessment of knock-ons also found that there were inter-dependencies between business services and the construction sector, since firms in the latter are strong intermediate users of services. Across the 13 EU Member States within scope, the highest monetary embodiment (total output value of each sector together with the indirect knocked-on value in all other sectors) of business services was identified in the 'Construction' sector.

### 4.3.3 Impacts – tourism

In the tourism sector, the rank correlation between the RA index and key economic indicators found that there was a negative correlation for several key indicators, notably firm size (-0.828), productivity (-0.661) and value added (-0.296).

As far as the regression analysis is concerned, across the six professions within study scope for the tourism sector, a small but statistically insignificant negative relationship could be found in respect of firm size and average labour productivity.

With regard to knock-on effects in the tourism sector, the input-output model found that the multiplier was approximately one times the size of the sector itself. In other words, the indirect effect is roughly of the same order as their direct effect.

However, a caution should be added that for statistical purposes, tourism and transport services in Eurostat input-output tables are grouped together. Therefore, the actual magnitude of knock-on effects from professions in the tourism sector on other sectors is likely to be lower.

The analysis of sectoral patterns and trends suggests that there also be some impact on average firm size linked to the relative positioning of different countries on the Tourism RA Index, but Eurostat data is limited to the tour operators and travel agents (TO & TA) sub-sector.

The overall economic impacts of RAs in the tourism sector are less than in the other two sectors, since the main impacts are felt at the level of individuals through restricted mobility.

*Wider economic impacts not directly resulting from the quantitative analysis were also identified. These are summarised in Section 3.6.*

The lack of clarity in the legal framework on reserve of activities within regulated professions is having adverse economic consequences in some sub-sectors and in particular EU Member States. Examples are costly legal disputes about the scope and delimitations of reserves of activities, delayed investment as a result of legal uncertainty, and dependency on a variety of service providers rather than streamlining the supplier base.

Regional reserves of activities may restrict the free movement of professionals within domestic markets in some sectors such as tourism.

# Interview list

# A

## A. Interview list

The study's main objective was to carry out a fact-finding exercise in relation to reserves of activities for the purposes of the legal inventory. Given the 5 months study duration, the analysis has been largely desk research based, supported by extensive email and phone contact with Competent Authorities. However, in addition, a small-scale interview programme was undertaken to inform both the analysis of the legal situation in respect of reserves of activities within regulated professions and the economic analysis.

In the following table, we provide a list of organisations contacted for the fact checking and of those interviewed.

No.	Country	Organisation
1	European Commission	DG Enterprise and Industry Tourism Policy Development, Unit F1
2	European Commission	Unit ENTR F.2 - Support to Tourism Industry
3	European professional association	ETOA - European Tour Operators Association
4	European professional association	European Federation of Tourist Guide Associations (FEG)
5	European professional association	Federation des Experts comptables Européens – Federation of European Accountants (AISBL)
6	European professional association	Federation des Experts comptables Européens (FEE) Federation of European Accountants (AISBL)
7	European professional association	Confederation of European Security Services
8	CZ	Ministry of Education, Youth and Sports
9	CZ	Ministry of Industry and Trade
10	CZ	Czech Chamber of Architects
11	CZ	Czech Chamber of Tax Advisers
12	CZ	Czech Chamber of Chartered Engineers and Technicians Engaged in Construction
13	CZ	Ministry for Regional Development – Department for European Affairs
14	CZ	Ministry of Labour and Social Affairs
15	CZ	Czech Bar Association
16	CZ	Czech Office for Surveying, Mapping and Cadastre
17	DE	Ministry of Economic and Technology (Bundesministerium für Wirtschaft und Technologie)
18	DE	German Bar Association (Deutscher Anwaltverein)
19	DK	Ministry of Science, Technology and Innovation, Danish Agency for International Education
20	DK	Danish Commerce and Companies Agency
21	DK	Ministry of Justice
22	DK	Danish Safety Technology Authority
23	DK	Danish Working Environment Authority
24	DK	Danish Society of Engineers (IDA)
25	DK	Danish Enterprise and Construction Authority
26	DK	National Survey and Cadastre
27	DK	Danish Marine Authority
28	EL	Ministry of Education
29	ES	Ministerio de Educación
30	ES	Spanish Ministry of Economy

*Interview list***A**

31	ES	National Institute for Occupational Safety and Health
32	ES	Ministry of Foreign Affairs and Cooperation
33	ES	Ministry of Justice
34	ES	Government of the Community of Madrid
35	ES	Government of the Basque Country
36	FI	Ministry for Education and Culture
37	FI	The Finnish National Board of Education
38	FI	Ministry of Employment and the Economy
39	FI	The Finnish Bar Association
40	FI	The Finnish Association of Architects
41	FR	Ministère de l'Economie, de l'Industrie et de l'Emploi - Direction générale de la compétitivité, de l'industrie et des services / DGCIS x4
42	FR	Ministère chargé du développement durable / DGALN
43	FR	Ministère chargé de la justice/ DACS x2
44	FR	Ministère chargé du budget / DGFIP x2
45	FR	Ministère chargé de la culture / SDAJ
46	IT	Presidency of Ministers' Council - Department of European Affairs
47	IT	Ministry of Economic Development – Department of Enterprises and Internationalization –
48	IT	Presidency of Ministers' Council - Department of Tourism Development and Competitiveness
49	IT	Ministry of Justice – Department of Justice Affairs
50	IT	Consiglio Nazionale dei Dottori Commercialisti ed Esperti Contabili (CNDCEC) <i>(National Council of Accountants)</i>
51	IT	Collegio Periti Industriali e dei periti industriali laureati (Prov. di Bologna) <i>Council of Industrial Experts –Province of Bologna)</i>
52	IT	Ordine degli Architetti, Pianificatori, Paesaggisti e Conservatori (Prov. Di Bologna) <i>Professional Order of Architects, Planners, Landscapers, and Curators – Province of Bologna)</i>
53	IT	Ordine degli Architetti, Pianificatori, Paesaggisti e Conservatori (Prov. Di Bologna) <i>Professional Order of Architects, Planners, Landscapers, and Curators – Province of Bologna)</i>
54	IT	Ordine dei Consulenti in Proprietà Industriale <i>(Professional Order of Industrial Property Consultants)</i>
55	NL	Dutch Competition Authority ( <i>Nederlandse Mededingingsautoriteit</i> )
56	NL	Ministry of Education, Culture and Science ( <i>Ministerie van Onderwijs, cultuur en wetenschap</i> ) - Department International Policy ( <i>Internationaal beleid</i> )
57	NL	Ministry of Social Affairs and Employment ( <i>Ministerie van Sociale Zaken en Werkgelegenheid</i> ) – Department Legislative, administrative and legal affairs ( <i>Directie Wetgeving, Bestuurlijke en Juridische Aangelegenheden</i> )
58	NL	Ministry of Economy, Agriculture and Innovation ( <i>Ministerie van Economie, Landbouw en Innovatie</i> ), Bureau Europa
59	PL	Ministry of Science and Higher Education,
60	PL	Supreme Audit Office
61	PL	Ministry of Finance
62	PL	Ministry of Infrastructure
63	PT	Ministry of Employment and Social Affairs Ministério do Trabalho e da Solidariedade Social Direcção-Geral do Emprego e Relações de Trabalho
64	PT	Portuguese Authority for Working Conditions (Autoridade para as Condições do Trabalho-ACT)
65	SI	Ministry of Labour, Family and Social Affairs
66	SI	Ministry of Interior (overall responsibility for the security industry)
67	SI	Ministry of Justice (Ministrstvozapravosodje)
68	SI	Slovenian Tourist Industry Association (Slovenije Turističnogostinskazbornica)
69	SI	Ministry of the Economy (Ministrstvozagospodarstvo)
70	UK	The Department for Business, Innovation and Skills (BIS)

*Interview list***A**

71	UK	National Agency on Professional Qualifications (UK NARIC)
72	UK	Office of Fair Trading (national competition authority)
73	UK	Costs Lawyer Standards Board (CLSB)
74	UK	Law Society of England and Wales
75	UK	Law Society of Scotland
76	UK	Bar Council of England and Wales (contact, no comments received)
77	UK	Legal Services Board
78	UK	ACCA Global
79	UK	Security Industry Authority (SIA)
80	UK	Engineering Council



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# B

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[http://ec.europa.eu/internal\\_market/qualifications/regprof/index.cfm?fuseaction=stats.home&services=true](http://ec.europa.eu/internal_market/qualifications/regprof/index.cfm?fuseaction=stats.home&services=true)

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# Research Tools

# C

## C. Research tools

### Interview Checklist – National Authorities, National Coordinators on the recognition of professional qualifications and National Competition Authorities

1. Please provide an overview of the role of your entity in the supervision of professions. To what extent does your entity focus on issues relating to (i) regulated professions (ii) reserves of activities within regulated professions and (iii) reserved professional titles?

#### **LEGAL MAPPING:**

2. We have drawn up a list of regulated professions and related reserved activities in your country on the basis of a desk research: could you confirm that this list is correct and complete?

Please provide a link to relevant national legislation if you consider that there is any inconsistency in the results of the desk research.

3. What justifications have been used to reserve activities (and/ or professional titles) to specific qualifications in your Member State? (e.g. quality of service, consumer protection, health and safety, public good/ public interest arguments, market failures).
4. Are there any professions in which there are ‘shared’ exclusive tasks (a situation in which two or more different professions are licensed to provide a given service).

*An example is the dispensation of tax advice. In some EU countries, this may be a shared reserved task exclusive to more than one profession e.g. both lawyers and accountants.*

5. Has there been any examination by national competition or wider regulatory authorities on reserves of activities within regulated professions?
6. In some professions (e.g. legal services), some services / tasks are reserved, whereas others are not. How appropriate is the existing divide between reserved /non-reserved activities?

#### **ECONOMIC ANALYSIS:**

7. Insofar as you are aware, have any studies been undertaken to examine the impact of reserved activities in the sectors of construction, business services and tourism?
8. In particular, do you know if any data is available on the impact of reserved activities in the following areas (if no data is available, please provide qualitative views):
  - Cost and quality of services
  - Value for money and consumer choice
  - Market entry barriers and the number of new market entrants
  - The level of innovation
  - The overall level of competitiveness
  - The level of cross-border business activity and professional mobility
9. Have there been any effects in terms of market structure in each sector (firms’ cost structures, access to skilled labour, size and structure of firms operating in the domestic market)?

# *Research Tools*

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## **LEGISLATIVE CHANGE IN THE AREA OF RESERVED ACTIVITIES**

10. Have there been any repeals of national legislation in respect of reserves of activities linked to specific professional qualifications in the past 10 years? If yes, in which sector(s) and sub-sector(s)?
11. What impacts have previous repeals of reserved activities linked to professional qualifications had in the sector(s)/ sub-sector(s) concerned (e.g. cost and quality of services, no. of new market entrants, innovation, overall sectoral competitiveness, levels of cross-border service activity, consumer empowerment through greater choice)?
12. In your view, are there any examples of professional services currently subject to reserved activities for which the rationale could be questioned? On what grounds? (e.g. lack of proportionality, market failures, anti-competitive protectionist influences)
13. Please provide any relevant contacts for additional information on this topic. .

# Research Tools

# C

## *Interview checklist – Commission officials*

The *Centre for Strategy & Evaluation Services (CSES)* LLP has been appointed by DG Internal Market and Services ('DG MARKET') to carry out a *Study to provide an inventory of reserves of activities linked to professional qualifications in 13 EU Member States, and to assess their economic impact*. The study covers 3 sectors: **construction; business services and tourism**.

1. Please provide an overview of the role of your unit within the Commission.
2. To what extent do you perceive there to be a problem in respect of reserves of activities within regulated professions across EU27? How does this vary between the 13 Member States under study scope? And between the sector(s) and sub-sector(s) under review?
3. What justifications have typically been used by the Member States to reserve activities to specific qualifications? (e.g. quality of service, consumer protection, health and safety, public interest/ public good). How defensible are these arguments?
4. In qualitative terms, what economic impacts are you aware of that reserves of activities have had in service sectors in which these are present (e.g. on the cost and quality of services, cross-border trade, level of market entry barriers, innovation and sectoral competitiveness)?
5. Based on the data at your disposal, to what extent have there been 'knock-on effects' in market structure (firms' cost structures, access to skilled labour)? Which Member States have been particularly affected?
6. Are you aware of any repeals of national legislation reserving the exercise of a particular service activity to a specific professional qualification? In which sector(s) and sub-sector(s)?
7. Are there any Member States that demonstrate good practice in tackling regulatory obstacles within regulated professions, with specific regard to reserves of activities?
8. Taking a 10 year time horizon, in view of future skills needs towards high-end skills, and the trend towards ageing demographics, what impact is the continuation of reserves of activities likely to have (i) overall and (ii) in the sector(s)/ sub-sector(s) concerned?
9. Are there any professions that are presently subject to a reserve of activities, but where there may be scope in future for removing or relaxing the existing rules limiting the exercise of a given service activity to the holders of a particular qualification? On what basis?
10. Please provide (i) any relevant contacts for additional information - e.g. regulatory bodies dealing with regulated professions subject to reserves of activities and (ii) any relevant data sources: studies, economic or sectoral data, etc.

### **For DG ENTR officials – sectoral specialists e.g. construction, tourism**

#### **Factual information**

To the extent available, please provide information or signpost to sources of further information on the following variables:

- Number of firms
- Number of people (i) employed and (ii) self-employed in the sector/ sub-sector
- Annual turnover (aggregate) and average per firm
- Sectoral and sub-sectoral GDP (€)

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## *Research Tools*

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- Sector as a proportion of national GDP (%)
- Annual average growth rate
- Volume of intra-EU trade
- Impact on the competitiveness of other sectors ("knock-on effects").



# Research tools

# C

## *Interview Checklist – Competent Authorities, professional associations and Chambers of Commerce*

### LEGAL MAPPING

1. In your Member State, which tasks are expressly reserved to your profession (i.e are subject to a reserve of activities linked to a specific professional qualification)?

We have elaborated a list of reserved activities and necessary qualifications to access your profession : could you confirm that this list is correct and complete? Please provide a link to relevant national legislation if you consider that there is an inconsistency in the results of the desk research.

2. In your opinion, what are the justifications to reserve these activities to your profession? (e.g. quality of service, consumer protection, health and safety, public good).
3. To the best of your knowledge, are there any examples of tasks which can be performed by your profession and also by another profession (i.e tasks shared between more than one profession e.g. share exclusive tasks)?
4. Are there any tasks that are not expressly reserved to the members of your profession? How the distinction is made between the reserved tasks and the non reserved tasks ? Which are the criteria used to distinguish?

### FACTUAL INFORMATION

5. In order to better understand your sector, CSES are gathering sectoral information to map out the domestic market, its size and structure.

Please provide any information or data or signpost CSES to further information on the following variables:

- Number of firms
- Number of people (i) employed and (ii) self-employed in the sector/ sub-sector
- Annual turnover (aggregate) and average per firm
- Sectoral and sub-sectoral GDP (€)
- Sector as a proportion of national GDP (%)
- Annual average growth rate
- Labour productivity
- Volume of intra-EU trade
- Impact on the competitiveness of other sectors ("knock-on effects").
- Costs of services (cost per unit of time - per hour or day)

### ECONOMIC ANALYSIS

6. Insofar as you are aware, have any studies been undertaken to examine the impact of reserved activities in your sector?
7. In particular, do you know if data are available on the impact of reserved activities on the following:
  - Quality of the service provided,
  - Cost of services,
  - Consumer choice,
  - The level of innovation,
  - The level of cross-border business activity and professional mobility,
  - Overall sectoral competitiveness.

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## *Research tools*

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8. In your opinion, have there been any effects on market structure (firms' cost structures, access to skilled labour)?
9. Looking ahead to 2020, are there likely to be any supply side constraints in the availability of skilled labour in your profession?

# List of Sectors and Sub-Sectors

# D

## D. List of Sectors and Sub-Sectors

A list of the professions determined by the Commission in the terms of reference broken down by sector and sub-sector is provided in this Appendix, together with the relevant NACE codes:

### SECTION F — CONSTRUCTION

NACE Classification	Corresponding regulated professions in the scope of the study (indicative list)	Corresponding regulated professions not in the scope of the study
<b>41 Construction of buildings</b> 41.1 Development of building projects 41.10 Development of building projects 41.2 Construction of residential and non-residential buildings 41.20 Construction of residential and non-residential buildings	Architect Building engineer Surveyor	
<b>42 Civil engineering</b> 42.1 Construction of roads and railways 42.11 Construction of roads and motorways 42.12 Construction of railways and underground railways 42.13 Construction of bridges and tunnels 42.2 Construction of utility projects 42.21 Construction of utility projects for fluids 42.22 Construction of utility projects for electricity and telecommunications 42.9 Construction of other civil engineering projects 42.91 Construction of water projects 42.99 Construction of other civil engineering projects n.e.c.	Civil engineer	
<b>43 Specialised construction activities</b> 43.1 Demolition and site preparation 43.11 Demolition 4311 43.12 Site preparation 43.13 Test drilling and boring 43.2 Electrical, plumbing and other construction installation activities 43.21 Electrical installation 43.22 Plumbing, heat and air conditioning installation 43.29 Other construction installation 43.3 Building completion and finishing 43.31 Plastering 43.32 Joinery installation 43.33 Floor and wall covering 43.34 Painting and glazing 43.39 Other building completion and finishing 43.9 Other specialised construction activities 43.91 Roofing activities 43.99 Other specialised construction activities n.e.c.	Building demolition contractor Electrician Plumber Plasterer Tiler Joiner/carpenter Mason/bricklayer Master builder Painter/decorator building insulator Roofer Electrical engineer Air conditioning technician/Heating/Central heating technician/installer/repairer/ Floor layer	

# List of Sectors and Sub-Sectors

# D

## SECTION L – REAL ESTATE ACTIVITIES

NACE Classification	Corresponding regulated professions in the scope of the study (indicative list)	Corresponding regulated professions not in the scope of the study
68.1 Buying and selling of own real estate 68.10 Buying and selling of own real estate 68.2 Renting and operating of own or leased real estate 68.20 Renting and operating of own or leased real estate 68.3 Real estate activities on a fee or contract basis 68.31 Real estate agencies 68.32 Management of real estate on a fee or contract basis	Real estate agent	

## SECTION M — PROFESSIONAL, SCIENTIFIC AND TECHNICAL ACTIVITIES

NACE Classification	Corresponding regulated professions in the scope of the study (indicative list)	Corresponding regulated professions not in the scope of the study
<b>69 Legal and accounting activities</b> 69.1 Legal activities 69.10 Legal activities 69.2 Accounting, bookkeeping and auditing activities; tax consultancy 69.20 Accounting, bookkeeping and auditing activities; tax consultancy	Lawyer Legal adviser Accountant Tax adviser	Auditor Notary
<b>70 Activities of head offices; management consultancy activities</b> 70.1 Activities of head offices 70.10 Activities of head offices 70.2 Management consultancy activities 70.21 Public relations and communication activities Business and other management consultancy activities	Administrative manager Marketing consultant / manager	
<b>71 Architectural and engineering activities; technical testing and analysis</b> 71.1 Architectural and engineering activities and related technical consultancy 71.11 Architectural activities 71.12 Engineering activities and related technical consultancy 71.2 Technical testing and analysis 71.20 Technical testing and analysis	Consulting engineer Architect	
<b>72 Scientific research and development</b> 72.1 Research and experimental	Biotechnologist Economist	

## List of Sectors and Sub-Sectors

# D

development on natural sciences and engineering 72.11 Research and experimental development on biotechnology 72.19 Other research and experimental development on natural sciences and engineering 72.2 Research and experimental development on social sciences and humanities 72.20 Research and experimental development on social sciences and humanities	Researcher Patent agent	
<b>73 Advertising and market research</b> 73.1 Advertising 73.11 Advertising agencies 73.12 Media representation 73.2 Market research and public opinion polling 73.20 Market research and public opinion polling	Mass media and communication specialist Quantity surveyor	
<b>74 Other professional, scientific and technical activities</b> 74.1 Specialised design activities 74.10 Specialised design activities 74.2 Photographic activities 74.20 Photographic activities 74.3 Translation and interpretation activities 74.30 Translation and interpretation activities 74.9 Other professional, scientific and technical activities n.e.c. 74.90 Other professional, scientific and technical activities n.e.c.	Technical designer Graphic designer Photographer Translator/interpreter	
<b>75 Veterinary activities</b> 75.0 Veterinary activities 75.00 Veterinary activities		Veterinary surgeon

### SECTION N — ADMINISTRATIVE AND SUPPORT SERVICE ACTIVITIES

NACE Classification	Corresponding regulated professions in the scope of the study (indicative list)	Corresponding regulated professions not in the scope of the study
<b>77 Rental and leasing activities</b> 77.1 Renting and leasing of motor vehicles 77.11 Renting and leasing of cars and light motor vehicles 77.12 Renting and leasing of trucks 77.2 Renting and leasing of personal and household goods 77.21 Renting and leasing of recreational	Vehicle hire	

## List of Sectors and Sub-Sectors

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<p>and sports goods</p> <p>77.22 Renting of video tapes and disks</p> <p>77.29 Renting and leasing of other personal and household goods</p> <p>77.3 Renting and leasing of other machinery, equipment and tangible goods</p> <p>77.31 Renting and leasing of agricultural machinery and equipment</p> <p>77.32 Renting and leasing of construction and civil engineering machinery and equipment</p> <p>77.33 Renting and leasing of office machinery and equipment (including computers)</p> <p>77.34 Renting and leasing of water transport equipment</p> <p>77.35 Renting and leasing of air transport equipment</p> <p>77.39 Renting and leasing of other machinery, equipment and tangible goods n.e.c.</p> <p>77.4 Leasing of intellectual property and similar products, except copyrighted works</p> <p>77.40 Leasing of intellectual property and similar products, except copyrighted works</p>		
<p><b>78 Employment activities</b></p> <p>78.1 Activities of employment placement agencies</p> <p>78.10 Activities of employment placement agencies 7810</p> <p>78.2 Temporary employment agency activities</p> <p>78.20 Temporary employment agency activities</p> <p>78.3 Other human resources provision</p> <p>78.30 Other human resources provision</p>	Employment officer	
<p><b>79 Travel agency, tour operator reservation service and related activities</b></p> <p>79.1 Travel agency and tour operator activities</p> <p>79.11 Travel agency activities</p> <p>79.12 Tour operator activities</p> <p>79.9 Other reservation service and related activities</p> <p>79.90 Other reservation service and related activities</p>	Tour operator Travel agent Tourist guide Tour manager	
<p><b>80 Security and investigation activities</b></p> <p>80.1 Private security activities</p> <p>80.10 Private security activities</p> <p>80.2 Security systems service activities</p> <p>80.20 Security systems service activities</p> <p>80.3 Investigation activities</p> <p>80.30 Investigation activities</p>	Security systems professional Security guard / Warden Private detective	

*List of Sectors and Sub-Sectors***D**

<b>81 Services to buildings and landscape activities</b> 81.1 Combined facilities support activities 81.10 Combined facilities support activities 81.2 Cleaning activities 81.21 General cleaning of buildings 81.22 Other building and industrial cleaning activities 81.29 Other cleaning activities 81.3 Landscape service activities 81.30 Landscape service activities	Landscape gardener/gardening Landscape expert Landscape architect/designer Cleaning of monuments, facades and buildings	
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# Overview of Regulated Professions & Reserves of Activities

## E

### E. Overview of Regulated Professions and Reserves of Activities

In this appendix, two types of tables are presented providing a cross-comparative overview of the situation across the 13 countries within study scope:

- Tables indicating whether a given profession is regulated (or subject to a reserved title) or unregulated
- Tables indicating in the case of regulated professions which activities are subject to an exclusive or shared reserve of activities or are unreserved.

It should be noted that the legal inventory then provides more detailed information in respect of the reserves associated with particular regulated professions. It also provides a detailed cross-comparative overview by profession and by country (see Appendix H).

In the following tables, “X” indicates that a given profession is regulated and “–” indicates that it is not a regulated profession. This may either be because it is unregulated (e.g. architect, Finland) or because there is no such dedicated profession (e.g. landscape architect, Denmark). “RT” is used to denote a profession that is regulated through a reserved title under the mode of pursuit defined in Article 3(2) of the Directive.

**Table E.1 Architect and Surveyor**

Profession	CZ	DE	DK	EL	ES	FI	FR	IT	NL	PL	PT	SI	UK
Architect	X	X	-	X	X	-	X	X	X	X	X	X	RT
Surveyor	X	X	X	X	X	-	X	X	-	X	-	X	RT

\*Architect is not a protected title, however, Registered Architect and Chartered Architectural Technologist are protected titles. The profession is not regulated per se however.

**Table E.2 Landscape Architect and Landscape Gardeners**

Profession	CZ	DE	DK	EL	ES	FI	FR	IT	NL	PL	PT	SI	UK
Landscape architect	X	X	-	X	X	-	-	X	X	-	X	X	RT
Landscape Gardener	-	X	-	-	-	-	-	-	-	-	-	-	-



# Overview of Regulated Professions & Reserves of Activities

E

**Table E.3 Accountant, Auditor and Tax Advisers**

Profession	CZ	DE	DK	EL	ES	FI	FR	IT	NL	PL	PT	SI	UK
Accountant	X	-	X	X	X	-	X	X	-	X	X	-	RT
Auditor	-	X	X	X	X	X	X	X	X	X	X	X	X
Tax Advisor	X	X	-	X	-	-	-	-	-	X	-	-	-

\*Accountant is not a protected title, however, Chartered Certified Accountant and Chartered Account are protected titles.

**Table E.4 Legal Professionals**

Profession	CZ	DE	DK	EL	ES	FI	FR	IT	NL	PL	PT	SI	UK
Attorney	X	X	X	X	X	X	X	X	X	X	X	X	X/ RT
Lawyer	-	-	-	-	X	X	-	-	-	X	X	-	X/ RT
Patent Attorney	X	X	-	X	-	X	X	X	X	-	-	-	X

**Table E.5 Engineering**

Profession	CZ	DE	DK	EL	ES	FI	FR	IT	NL	PL	PT	SI	UK
Building / Structural Engineer	X	X	X	X	X	X	-	-	-	X	-	-	RT
Civil Engineer	X	-	-	X	X	X	-	X	-	X	X	-	RT

**Table E.6 Security Professionals**

Profession	CZ	DE	DK	EL	ES	FI	FR	IT	NL	PL	PT	SI	UK
Security Systems Professionals	X	X	-	-	X	X	-	-	X	X	-	X	-
Security Guard /Warden	X	X	X	X	X	X	-	-	X	X	X	X	-
Private Detective	X	-	-	-	X	-	-	-	X	X	-	-	-

# Overview of Regulated Professions & Reserves of Activities

E

**Table E.7** Specialised construction activities

Profession	CZ	DE	DK	EL	ES	FI	FR	IT	NL	PL	PT	SI	UK
Air conditioning/ central heating technician	X	X	-	X	X	-	X	X	-	X	-	X	-
<i>Building Demolition</i>	-	X	-	X	-	X	-	-	X	- (see engineering)	-	-	-
Building insulator	X	X	-	-	-	-	-	-	-	-	-	-	-
Boiler operator	-	-	X	-	X	-	-	-	-	-	-	X	-
Crane driver	-	-	X	-	X	-	-	-	X	-	-	-	-
Electrical engineer	X	X	-	X	X	-	-	X	-	X	X	X	-
<i>Electrician</i>	X	X	X	X	X	-	X	X	-	X	-	X	-
Floor layer	-	X	-	-	-	-	-	-	-	-	-	-	-
Gas installation and maintenance	X	X	X	-	X	-	X	X	-	X	X	X	X
Joiner/ carpenter	X	X	-	-	-	-	X	-	-	-	-	X	-
Mason/ bricklayer	X	X	-	-	-	-	X	-	-	-	-	-	-
Master builder	-	X	-	X	-	-	X	-	-	-	-	-	-
Painter / decorator	X	X	-	-	-	-	X	-	-	-	-	-	-
Plasterer	-	X	-	-	-	-	-	-	-	-	-	-	-
Plumber	X	X	X	X	X	-	X	X	-	X	-	X	-
Roofer	X	X	-	-	-	-	X	-	-	-	-	X	-
Scaffolder	-	X	X	-	-	-	-	-	-	-	-	-	-
Tiler	-	-	-	-	-	-	X	-	-	-	-	-	-

# Overview of Regulated Professions & Reserves of Activities

E

**Table E.8 Tourism**

<i>Profession</i>	<i>CZ</i>	<i>DE</i>	<i>DK</i>	<i>EL</i>	<i>ES</i>	<i>FI</i>	<i>FR</i>	<i>IT</i>	<i>NL</i>	<i>PL</i>	<i>PT</i>	<i>SI</i>	<i>UK</i>
Tourist guide	-	-	-	X	X	-	X	X	-	X	X	X	-
Tour operator	X	-	-	-	-	-	-	-	-	-	-	-	-
Travel agent	-	-	-	-	-	-	-	X	-	-	-	X	-
Mountain guide	X	X (Bayern only)	-	-	-	-	X	X	-	X	-	X	-
Reservation services	-	-	-	-	-	-	-	-	-	-	-	-	-
Travel Companion	-	-	-	-	-	-	-	X	-	-	X	X	-

**Table E.9 Other**

<i>Profession</i>	<i>CZ</i>	<i>DE</i>	<i>DK</i>	<i>EL</i>	<i>ES</i>	<i>FI</i>	<i>FR</i>	<i>IT</i>	<i>NL</i>	<i>PL</i>	<i>PT</i>	<i>SI</i>	<i>UK</i>
Employment officer	-	-	-	-	-	-	-	X	-	-	-	-	-
Vehicle hire	-	-	-	X	-	-	-	-	-	-	X	-	-
Biotechnologist	-	-	X	-	-	-	-	-	-	-	-	-	-
Economist	-	-	-	X	X	-	-	-	-	-	-	-	-
Researcher	-	-	-	-	-	-	-	-	-	-	-	-	-
Mass media and communication specialist	-	-	-	-	-	-	-	-	-	-	-	-	-
Quantity surveyor	-	-	-	X	-	-	-	-	-	-	-	-	RT
Technical designer	-	-	-	-	X	-	-	-	-	-	-	-	RT
Graphic designer	-	-	-	-	-	-	-	-	-	-	-	-	-

## *Overview of Regulated Professions & Reserves of Activities*

E

Photographer	-	-	-	-	-	-	-	-	-	-	-	-	-
Translator/interpreter	-	X	X	X	X	-	-	-	-	-	-	-	-
Real Estate Agent	-	-	X	X	-	-	X	-	-	X	X	X	-
Geologist	X	-	-	X	-	-	-	X	-	X	X	-	-

# Overview of Regulated Professions & Reserves of Activities

## E

In the subsequent set of tables, we indicate whether a given profession is unreserved (denoted by --), subject to an exclusive reserve (denoted by one cross – x) or a shared reserve (two crosses – xx). A particular service activity may be unreserved either due to the fact that the profession is unregulated (see the previous set of tables) or because it is regulated but no specific reserve has been identified.

**Table E.10 Accountant – reserves of activities**

<i>Member State</i>	<i>Non-statutory audit</i>	<i>Statutory audit</i>	<i>Accounting/ bookkeeping</i>	<i>Insolvency practice</i>	<i>Tax advice</i>
CZ	--	--	--	--	--
DE	--	--	--	--	--
DK	--	--	--	--	--
EL	--	--	x	--	x
ES	--	x	--	--	--
FI	--	x	--	--	--
FR	--	--	x	--	--
IT	xx	--	xx	xx (shared with lawyers)	--
NL	--	xx	--	--	--
PL	--	--	xx (only bookkeeper has shared reserve, not accountants, shared with tax adviser)	--	--
PT	--	--	x	--	--
SI	--	--	--	--	--
UK	--	x (note: only accountants having taken additional qualifications)	--	x (note: only accountants having taken additional qualifications)	--

**Table E.11 Auditor – reserves of activities**

<i>Member State</i>	<i>Non-statutory audit</i>	<i>Statutory audit</i>	<i>Accounting/ bookkeeping</i>	<i>Insolvency practice</i>	<i>Tax advice</i>
CZ	--	--	--	--	--
DE	--	xx	--	--	xx
DK	--	xx	--	--	--

## Overview of Regulated Professions & Reserves of Activities

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EL	xx	xx	--	--	--
ES	--	x	--	--	--
FI	--	x	--	--	--
FR	--	x	--	--	--
IT	--	x	--	--	--
NL	--	xx	--	--	--
PL	--	x	--	--	--
PT	--	x	--	--	--
SI	--	xx	--	--	--
UK	--	xx	--	--	--

*Note: Statutory audit is sometimes marked as a shared reserve under both tables for accountant and auditor. There were various examples when there was a shared reserve between different professionals, and also professionals that straddle both accountancy and auditing. For example, in the Netherlands, both accountant-auditors and accountant consultants (polytechnic level) are able to carry out audit of annual accounts of enterprises. In Denmark, statutory audit is a shared reserve of activities between a State Authorised Public Accountant (Statsautoriseret revisor) and a Registered Public Accountant (Registreret revisor) both professions being licensed under the Audit Act.*

**Table E.12 Tax Adviser – reserves of activities**

Note: tax adviser is only a dedicated profession in a small number of countries. In other countries, the provision of tax advice may be the preserve of other professionals, such as accountants and lawyers. Therefore, other tables on these professions should also be consulted for the complete picture.

Member State	Non-statutory audit	Statutory audit	Accounting/ bookkeeping	Insolvency practice	Tax advice	Representation before admin agencies
CZ	--	--	--	--	xx	--
DE	--	--	--	--	xx	--
DK	--	--	--	--	--	--
EL	--	--	--	--	x (accountant only)	--
ES	--	--	--	--	--	--
FI	--	--	--	--	--	--
FR	--	--	--	--	--	--
IT	--	--	--	--	--	--
NL	--	--	--	--	--	--
PL	--	--	xx	--	xx (reserved to tax advisors)	xx (tax advisers can)

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					and shared with auditor)	represent clients before admin agencies along with attorneys and lawyers)
PT	--	--	--	--	--	--
SI	--	--	--	--	--	--
UK	--	--	--	--	--	--

**Table E.13 Attorneys – reserves of activities**

Member State	Legal advice (domestic / foreign law)	Conveyancing	Representation before courts	Representation before administrative agencies (including tax matters)	Tax advice	Representing clients on patent matters	Other legal services
CZ	x	--	x	x	xx	xx	--
DE	x	--	x	x	xx	x	--
DK	--	--	x	--	--	--	--
EL	x	x	x	x	x	x	--
ES	xx	xx	xx	xx	--	--	--
FI	--	--	--	--	--	--	--
FR	x	--	x	--	x	x	--
IT	xx	--	x	xx	--	xx	--
NL	--	--	x	x	--	--	--
PL	xx	xx	xx	xx (shared with tax advisor)	--	--	--
PT	x	x	x	x	--	--	--
SI	--	--	xx	--	--	--	--
UK	--	xx (note: conveyancing is unreserved, but reserved instrument activities within conveyancing are reserved)	xx/ RT	RT	--	xx	--

# Overview of Regulated Professions & Reserves of Activities

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**Table E.14** Lawyers – reserves of activities

Member State	Legal advice (domestic / foreign law)	Conveyancing	Representation before courts	Representation before administrative agencies (including tax matters)	Tax advice	Representing clients on patent matters	Other legal services
CZ	--	--	--	--	xx	--	--
DE	--	--	--	--	--	--	--
DK	--	--	--	--	--	--	--
EL	--	--	--	--	--	--	--
ES	x	xx	xx	xx	--	--	--
FI	--	--	--	--	--	--	--
FR*	--	--	-	--	x <sup>1</sup>	--	--
IT	--	--	--	--	--	--	--
NL	--	--	--	--	--	--	--
PL	xx	xx	xx	xx	--	--	--
PT	x	x	x	x	--	--	--
SI	--	--	--	--	--	--	--
UK	--	xx (note: conveyancing is unreserved, but 'reserved instrument activities', an area within conveyancing, is a reserved activity)	xx	--	--	xx	--

\*Profession merged with advocate from 2012

Note: conveyancing is a shared reserve of activities for different types of legal professionals in Poland, Spain and the UK. For example, in Spain, it is shared between an Attorney (Procurador) and a Lawyer (Abogado). In the UK, a barrister, solicitor, legal executive and a costs lawyer can all perform some aspects of conveyancing work.

<sup>1</sup> Accountants in FR may only provide ancillary tax advice



# Overview of Regulated Professions & Reserves of Activities

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**Table E.15** Patent Attorney – reserves of activities

<i>Member State</i>	<i>Legal advice (domestic / foreign law)</i>	<i>Conveyancing</i>	<i>Representation before courts</i>	<i>Representation before administrative agencies (including tax matters)</i>	<i>Tax advice</i>	<i>Representing clients on patent matters</i>	<i>Other legal services</i>
CZ	--	--	--	--	--	xx	--
DE	--	--	--	--	--	xx	--
DK	--	--	--	--	--	--	--
EL	--	--	--	--	--	--	--
ES	-	-	-	-	--	--	--
FI	--	--	--	--	--	xx	--
FR	--	--	-	--	-	--	--
IT	--	--	--	--	--	xx	--
NL	--	--	--	--	--	--	--
PL	--	--	--	--	--	--	--
PT	--	--	--	--	--	--	--
SI	--	--	--	--	--	--	--
UK	--	--	--	--	--	xx	--

**Table E.16** Other legal professions – reserves of activities

<i>Member State</i>	<i>Legal advice (domestic / foreign law)</i>	<i>Conveyancing</i>	<i>Representation before courts</i>	<i>Representation before administrative agencies (including tax matters)</i>	<i>Tax advice</i>	<i>Representing clients on patent matters</i>	<i>Other legal services</i>
CZ	--	--	--	--	--	--	--
DE	--	--	--	--	--	--	--
DK	--	--	--	--	--	--	--
EL	--	--	--	--	--	--	--
ES	-	-	-	-	--	--	--
FI	--	--	--	--	--	--	--
FR	--	--	-	--	-	--	--
IT	--	--	--	--	--	--	--

## Overview of Regulated Professions & Reserves of Activities

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NL	--	--	--	--	--	--	--
PL	--	--	--	--	--	--	--
PT	--	--	--	--	--	--	--
SI*	--	--	--	--	--	--	x
UK**	--	xx	xx	--	--	xx	xx

\*Judicial valuer, Court interpreter, Court expert

\*\* Legal Executive, Trademark Attorney, Costs Lawyer

**Table E.17 Security services – reserves of activities**

Member State	Security systems professional	Security guard/Warden	Private detective	Other security personnel
CZ	x	x	x	x
DE	x	x	x	--
DK	--	--	--	--
EL	x	--	x	x
ES	--	--	--	--
FI	--	x	--	--
FR	--	--	--	--
IT	--	--	--	--
NL	x	xx	xx	x
PL	xx	x	xx	x
PT	--	x	--	--
SI	x	x	--	--
UK	--	x	--	--

# Overview of Regulated Professions & Reserves of Activities

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**Table E.18 Other business services – reserves of activities**

Member State	Employment officer	Vehicle hire	Biotechnologist	Economist	Researcher	Mass media and communication specialist	Quantity surveyor	Technical designer	Graphic designer	Photographer	Translator/interpreter	Real Estate Agent	Geologist
CZ	--	--	--	--	--	--	--	--	--	--	--	--	X
DE	--	--	--	--	--	--	--	--	--	--	X	--	--
DK	--	--	X	--	--	--	--	--	--	--	X	XX	--
EL	--	--	--	XX	--	--	XX	--	--	--	XX	--	X
ES	--	--	--	--	--	--	--	XX	--	--	X	--	XX
FI	--	--	--	--	--	--	--	--	--	--	--	--	--
FR	--	--	--	--	--	--	--	--	--	--	--	--	--
IT	XX	--	--	--	--	--	--	--	--	--	--	--	X
NL	--	--	--	--	--	--	--	--	--	--	--	--	--
PL	--	--	--	--	--	--	--	--	--	--	--	X	X
PT	--	--	--	--	--	--	--	XX	--	--	--	XX	XX
SI	--	--	--	--	--	--	--	--	--	--	--	X	--
UK	--	--	--	--	--	--	--	--	--	--	--	--	--

**Table E.19 Architect – reserves of activities**

Member State	Feasibility studies	Topographical determination / demarcation	Land surveying	Planning and design	Request for construction permits / building licences	Supervision and monitoring of construction works	Technical control and certification	Urban and landscape planning	Interior design
CZ	--	--	--	XX	XX	--	--	X	XX
DE	--	--	--	XX	XX	--	XX	XX	XX
DK	--	--	--	--	--	--	--	--	--
EL	XX	XX	XX	XX	XX	XX	XX	XX	--
ES	XX	XX	XX	XX	XX	XX	XX	XX	--
FI	--	--	--	--	--	--	--	--	--
FR	--	--	--	X	X	X	--	--	--
IT	--	XX	XX	XX	--	XX	XX	XX	--

## *Overview of Regulated Professions & Reserves of Activities*

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NL	--	--	--	--	--	--	--	--	--
PL	xx	xx	xx	xx	--	xx	--	x (exclusive reserve for town planners)	--
PT	xx	--	xx	xx	xx	xx	--	xx	--
SI	--	xx	xx	x	--	--	--	xx	--
UK	--	--	--	--	--	--	--	--	--

**Table E.20** Surveyor – reserves of activities

<i>Member State</i>	<i>Feasibility studies</i>	<i>Topographical determination / demarcation</i>	<i>Land surveying</i>	<i>Planning and design</i>	<i>Request for construction permits / building licences</i>	<i>Supervision and monitoring of construction works</i>	<i>Technical control and certification</i>	<i>Urban and landscape planning</i>	<i>Interior design</i>
CZ	--	x	x	--	--	--	--	--	--
DE	--	--	--	--	--	--	--	--	--
DK	--	x	x	--	--	--	--	--	--
EL	xx	xx	--	--	--	xx	--	--	--
ES	--	xx (shared with Technical Architect)	xx (shared with Technical Architect)	--	--	--	--	--	--
FI	--	--	--	--	--	--	--	--	--
FR	--	x	x	--	--	--	--	--	--
IT	--	xx (shared between Architetto and Geometra)	xx (shared between Architetto and Geometra)	--	--	--	--	--	--
NL	--	--	--	--	--	--	--	--	--
PL	--	-	x	--	--	--	--	--	--
PT*	--	--	--	--	--	--	--	--	--
SI	--	xx (shared between Architect License A and License KA)	xx (shared between Architect License A and License KA)	--	--	--	--	--	--
UK	--	--	--	--	--	--	--	--	--

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\*see architect, no separate profession of surveyor

**Table E.21 Building / Structural Engineer – reserves of activities**

Member State	Feasibility studies	Planning and Design	Surveying	Topographical determination / demarcation	Review of project documentation	Request for construction permits / building licences	Supervision and monitoring of construction works	Technical Control and Certification	Building Demolition
CZ	--	xx	--	xx	--	xx	--	--	xx
DE	--	--	--	--	--	--	--	--	--
DK	--	--	--	--	--	--	--	--	--
EL	--	xx	xx	xx	x	x	x	--	x
ES	--	--	--	--	--	--	--	--	--
FI	--	--	--	--	--	--	--	--	x
FR	--	--	--	--	--	--	--	--	--
IT	--	xx	xx	xx	--	--	xx	xx	xx
NL	--	--	--	--	--	--	--	--	- (see specialised construction)
PL	xx	xx	--	--	--	--	x	x	x
PT	--	--	--	--	--	--	--	--	--
SI	--	--	--	--	--	--	--	--	--
UK	--	--	--	--	--	--	--	--	--

**Table E.22 Civil Engineer – reserves of activities**

Member State	Feasibility studies	Planning and Design	Surveying	Topographical determination / demarcation	Review of project documentation	Request for construction permits / building licences	Supervision and monitoring of construction works	Technical Control and Certification	Building Demolition
CZ	--	xx	--	--	xx	--	xx	x	--
DE	--	xx	--	--	xx	xx	xx	xx	--
DK	--	--	--	--	--	--	--	--	--
EL	--	xx	xx	xx	x	x	x	--	x
ES*	xx	xx	--	--	xx	xx	xx	--	xx
FI	--	--	--	--	--	--	--	--	--

## *Overview of Regulated Professions & Reserves of Activities*

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FR	--	--	--	--	--	--	--	--	--
IT**	--	xx	xx	xx	--	--	xx	xx	xx
NL	--	--	--	--	--	--	--	--	--
PL	xx	xx	--	xx	xx	--	x	x	x
PT **	xx	xx	--	--	--	xx	xx	xx	xx
SI	--	--	--	--	--	--	--	--	--
UK	--	--	--	--	--	--	--	--	--

\*covers civil engineer and civil engineer technician

\*\* covers civil and environmental sector

\*\*\* covers civil engineer and civil engineer technician

**Table E.23 Other types of engineers – reserves of activities**

<i>Member State</i>	<i>Feasibility studies</i>	<i>Planning and Design</i>	<i>Surveying</i>	<i>Topographical determination / demarcation</i>	<i>Review of project documentation</i>	<i>Request for construction permits / building licenses</i>	<i>Supervision and monitoring of construction works</i>	<i>Technical Control and Certification</i>	<i>Building Demolition</i>
CZ	--	--	--	--	--	--	--	--	--
DE	--	--	--	--	--	--	--	--	--
DK	--	--	--	--	--	--	--	--	--
EL*	--	xx	xx	--	--	--	xx	--	--
ES**	xx	xx	--	--	xx	--	xx	--	--
FI	--	--	--	--	--	--	--	--	--
FR	--	--	--	--	--	--	--	--	--
IT	--	--	--	--	--	--	--	--	--
NL	--	--	--	--	--	--	--	--	--
PL	--	--	--	--	--	--	--	--	--
PT ***	xx	xx	xx	xx	--	xx	xx	xx	xx
SI	--	--	--	--	--	--	--	--	--
UK	--	--	--	--	--	--	--	--	--

\*Planning and regional development engineer

\*\*Industrial engineer and industrial engineer technician

\*\*\* Geographical Engineer, Electronics and Telecommunications Technical Engineer, Energy and Power Systems Engineer, Geotechnical Engineer Technician, Telecommunications Installer/Electronics Technician Inside Buildings, Telecommunications Infrastructure Planner Inside Buildings, Gap Pipe Design Engineer, Technician Responsible for the Execution of Private Service Electrical Installations, Technician Responsible for the Operation of Private Service Electrical Installations, Technician Responsible for the Design of Private Service Electrical Installation.

# Overview of Regulated Professions & Reserves of Activities

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**Table E.24 Specialised Construction Activities – reserves of activities**

Member State	Building Demolition	Electrician	Plumber	Plasterer	Tiler	Joiner/carpenter	Mason/bricklayer	Master builder	Painter / decorator	Building insulator	Roofer	Electrical engineer	Air conditioning/central heating technician	Crane driver	Gas installation and maintenance	Boiler operator	Floor layer	Scaffolder
CZ	--	x	x	--	--	x	x	--	x	x	x	x	x	--	x	--	--	--
DE	xx	xx	x	x	--	x	x	xx	x	x	x	x	x	--	x	--	--	x
DK	--	x	x	--	--	--	--	--	--	--	--	--	--	x	x	x	--	x
EL	xx	xx	xx	--	--	--	--	xx	--	--	--	xx	xx	--	--	--	--	--
ES	--	x	--	--	--	--	--	--	--	--	--	x	x	x	x	x	--	--
FI	x	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
FR	--	x	x	--	x	x	x	x	x	--	x	x	x	--	x	--	--	--
IT	--	x	x	--	--	--	--	--	--	--	--	x	xx	--	xx	--	--	--
NL	x	--	--	--	--	--	--	--	--	--	--	--	--	x	--	--	--	--
PL	-	xx	x	--	--	--	--	--	--	--	--	xx	--	--	x	--	--	--
PT	--	--	--	--	--	--	--	--	--	--	--	xx	--	--	x	--	--	--
SI	--	--	x	--	--	x	--	--	--	--	x	x	x	--	x	x	--	--
UK	--	--	--	--	--	--	--	--	--	--	--	--	--	--	x	--	--	--

**Table E.25 Landscape Gardening – reserves of activities**

Member State	Landscape Gardener	Landscape Architect / Designer	Cleaning of Monuments, Buildings and Facades
CZ	--	xx	--
DE	x	x	--
DK	--	--	--
EL	--	xx	--
ES	--	xx	--
FI	--	--	--

## *Overview of Regulated Professions & Reserves of Activities*

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FR	--	--	--
IT	--	xx	--
NL	--	--	--
PL	--	--	-
PT	--	xx	--
SI	--	x	--
UK	--	--	--

**Table E.26** Tourism – reserves of activities

<i>Member State</i>	<i>Tourist guide</i>	<i>Tour operator</i>	<i>Travel agent</i>	<i>Mountain guide</i>	<i>Reservation services</i>	<i>Travel companion</i>
CZ	--	x	--	x	--	--
DE	--	--	--	x (Bayern only)	--	--
DK	--	--	--	--	--	--
EL	x	--	--	--	--	--
ES	x	--	--	--	--	--
FI	--	--	--	--	--	--
FR	xx	--	--	x	--	--
IT	x	--	x	x	--	--
NL	--	--	--	--	--	--
PL	x	--	-	x	--	--
PT	x	--	x	--	--	x
SI	x	--	--	x	--	x
UK	--	--	--	--	--	--



# Technical Work - Knock-ons, Regression

# F

## F. Technical work

### F.1 Knock-on effects

An economy-wide input-output table is made up of rows and columns, rows representing sectoral output (sales) and the columns representing sectoral inputs (purchases). In the NACE classification which forms the basis for this study, there are 58 industries (sectors) in each Member States' economy. An input-output table also consists of final demand and value added sections. Final demand covers total consumption (private or public), capital formation, and exports. The row sum of intermediate demand and final demand equals the gross value of production. Similarly, the column sums of intermediate demand plus value added (total inputs) also equal the gross values of production of an industry (total outputs). The following table illustrates the input-output table structure.

**Table F.1: input-output table structure**

			Intermediate Demands	Final Demands	Total output
			Sectors		
			1, 2, ..., n		
Intermediate Inputs	Sectors	1, 2, .. n	$x_{ij}$	$d_i$	$x_i$
Primary Inputs	Value Added		$v_j$		
Total Inputs			$x_j$		

Input-output analysis is an economic tool that is based on a fixed-coefficient linear production function that relates the inputs used by a sector or industry to sectoral outputs. In the Input Coefficient matrix  $A$  the element  $a_{ij}$  indicates how much of sector  $i$  output is used as input in production of each unit of sector  $j$ . The input coefficients can be represented as  $a_{ij} = x_{ij} / X_j$  where  $x_{ij}$  is the input from sector  $i$  into sector  $j$ , and  $X_j$  is the total output of (= the total input into) sector  $j$ .

Writing  $\mathbf{x}$  for the vector of industry gross outputs,  $\mathbf{d}$  for the vector of demand for final goods, then the basic relation between output and final demand can be expressed as:

$$\mathbf{d} = (\mathbf{I} - \mathbf{A}) \mathbf{x}, \text{ or alternatively, } \mathbf{x} = (\mathbf{I} - \mathbf{A})^{-1} \mathbf{d}, \text{ where } \mathbf{I} \text{ is the } n \times n \text{ identity matrix.}$$

In this equation  $(\mathbf{I} - \mathbf{A})^{-1} = \mathbf{B}$  is the *Inverse Leontief Matrix* of the input-output coefficients and describes how many units of an industry's output have to be produced at any stage of the value chain in order to produce one unit for final demand.

The importance of any sector in the economy can be estimated by examining the inter-industry linkage effects. A sector usually uses inputs from other industries in its production process. This reflects the sector's backward linkage. On the other hand, when a sector supplies inputs to other industries (sectors), the dependence of these sectors on inputs supplied from that particular originating sector indicates the *knock-on effect* of production. This is indicated by the *forward linkage* of the sector into other industries to which it supplies inputs.

In general, backward linkages are indicated by matrix columns (from different sector  $i$ 's to a particular sector  $j$ ) and forward linkages (knock-ons) are indicated by rows (from a particular sector  $i$  to all other sector  $j$ 's). The

# Technical Work - Knock-ons, Regression

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derivation of the matrix to be used for calculating linkages is, however, a vexed question. For example, the strength of backward linkages has been measured by the columns of the A matrix<sup>1</sup>, and while use of the rows and columns of the inverse Leontief matrix B for, respectively, measuring forward and backward linkages<sup>2</sup> has gained a certain popularity, its appropriateness has also been widely disputed<sup>3</sup>. In this study we develop further an approach shown by Fujita (2008)<sup>4</sup> which obtains amount of a standard good (sector)  $i$  embodied in one unit of gross output in each other sectors  $j$  of the economy, represented by  $\lambda_{ij}$ . This measure of the knock-on effect includes not only the value of direct inputs that from sector  $i$  to sector  $j$  (which are the  $a_{ij}$ ), but it also includes the value of other *indirect inputs* that originate from sector  $i$  and whose effect ends at sector  $j$  via *other* intersectoral transfers through the network of inputs and outputs. The values of  $\lambda_{ij}$  are derived from the elements inverse Leontief matrix  $b_{ij}$  as follows

$$\lambda_{ij} = b_{ij} / b_{ii} \quad (i \neq j), \quad \lambda_{ii} = (b_{ii} - 1) / b_{ii}$$

We can show that:

$$a_{ij} \leq \lambda_{ij} \leq b_{ij} \quad \text{for all sectors } i, j = 1, 2, \dots, n.$$

In other words, the results obtained by using  $\lambda_{ij}$  (elements of a corresponding matrix  $\Lambda$ ) will represent a **conservative estimate** of knock-on effects as compared to the commonly used values of  $b_{ij}$ .

- *Calculation of Total knock-on effects*

As a first step, we take the sum of the 57  $\lambda$ mdas in row  $i$  (corresponding to sector  $i$ ) of each other sector within each Member State (denoted by  $m$ ). Mathematically, the sum of knock-on effects of a sector  $i$  is given by: (cf. Fig. 3.7)

$$\xi_{i,m} = \sum_{j=1,58} \lambda_{ij,m} \quad \forall j \neq i, \quad j=1, \dots, 58; \quad m=1, \dots, 13.$$

- The next indicator to be examined shows the **total embodied monetary value** of a good or services produces in sector  $i$  in other sectors  $j$  in country  $m$ : (cf. Fig. 3.9)

$$\mu_{i,m} = \sum_{j=1,58} x_{j,m} * \lambda_{ij,m} \quad \forall j \neq i, \quad j=1, \dots, 58; \quad m=1, \dots, 13.$$

<sup>1</sup> *Chenery and Watanabe* (1958) "International comparison of the structure of production", *Econometrica*, 26, pp. 487–521.

<sup>2</sup> *Rasmussen* (1956) *Studies in Inter-Sectoral Relations* (Copenhagen, Einar Harks).

<sup>3</sup> For example, by *Ghosh* (1958) "Input-output approach to an allocation system", *Economica*, 25, pp. 58–64., *Augustinovic* (1970) "Methods of international and intertemporal comparison of structure", in: Carter & Brody (eds.) *Contributions to Input-Output Analysis* (Amsterdam, North-Holland), pp. 249–269. and *Jones* (1976) "The measurement of Hirschmanian linkages", *Quarterly Journal of Economics*, 90, pp. 323–333.. Furthermore, alternative measures put forward by these authors have also been the subject of much criticism, most recently by *de Mesnard* (2009) "On the Fallacy of Forward Linkages: A Note in the Light of Recent Results". University of Burgundy and CNRS; University of Illinois at Urbana-Champaign - Working paper series. Regional Economics Applications Laboratory (REAL).

<sup>4</sup> *Yukibiko Fujita* (2008) "A Reconsideration of a Correct Economic Interpretation of the Hawkins-Simon Condition", *Fukuoka University Review of Economics* 53(1/2), 11-15, 2008-09.

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This measure tells us – in monetary terms (in EUR, price base 2005) – how important is the forward impact of a certain sector  $i$  on a sector  $j$ . Note that in contrast to the knock-on effects, which measure relative importance based on the originating sector's output, this measure takes into account the output of the target sector  $x_{j,m}$ , and therefore shows the economic importance of business services industries on the other sectors.

- The economic impact of a sector such as business services can also be estimated in terms of value added. GDP can be represented as the sum of sectoral values added. In this step the 'lamdas' are used to calculate the **share of value added (GDP)** in each sector that is attributable to the direct *and indirect* inputs. ). To derive measures that sum to the total value added of an economy, we normalize our matrix of lamdas  $\Lambda$  such that each column sums to unity: (*cf. Fig. 3.12*)

$$\lambda_{ij}^* = \lambda_{ij} / \sum_{i=1, \dots, 58} \lambda_{ij}$$

This normalized lamdas are then multiplied by the sectoral value added  $v_j$ :

$$v_{ij,m}^* = v_j * \lambda_{ij}^* \quad \forall j \neq i, \quad j=1, \dots, 58; \quad m=1, \dots, 13.$$

The **share of GDP attributable to a sector through knocked-on value added** is then given by summing up over the  $j$  sectors:

$$v_{i,m}^* = \sum_{i=1, \dots, 58} v_{ij,m}^*$$

- To get a better impression of the relative importance of this knocked-on value added, the ratio of GDP attributable to sectoral knock-on to the specific sector's value added is computed:

$$\Phi = v_{i,m}^* / v_j \quad \forall i, j = 1, \dots, 58; \quad m=1, \dots, 13$$

This **knock-on value added factor** is shown in Figure 3.13 for the 6 sectors and the 13 EU countries of the sample.

### F.2 Regression analysis

## Technical Work - Knock-ons, Regression

## F

The general regression equation can be written as follows:

$$Y_{i,j} = \alpha + \sum_{i=1}^{12} \delta_i C_i + \sum_{j=1}^8 \gamma_j S_j + \phi_{base} RA_{i,j} + \sum_{j=1}^8 \phi_j S_j RA_{i,j} + \varepsilon_{i,j},$$

whereas  $Y_{i,j}$  is one of the five performance measures for country  $i$  and sector/activity  $j$ . The dummy variables  $C_i$  and  $S_j$  capture the country and sector effects, whereas one country and sector is left out, captured by the general intercept  $\alpha$ .  $\varepsilon_{i,j}$  is an i.i.d. disturbance term.

The variable  $RA_{i,j}$  is our index of reserved activities that takes values between 0 and 1 and varies between countries and sectors. The coefficients of interest in this analysis are the  $\phi$ 's as they indicate the correlation between the reserved activities index and the performance measure. As with the dummy variables for countries and sectors, the coefficient on the RA index is measured for a base sector  $\phi_{base}$  and eight deviations from that base  $\phi_j$ . The sector specific correlations can then be derived by summing statistically significant  $\phi_j$  to the statistically significant  $\phi_{base}$ .

# *Economic impacts of titles*

# G

## *G. Economic impact of reserved professional titles and designatory letters*

This section provides supplementary information regarding the use of reserved professional titles, and to the limited extent that information is available, considers the possible economic impacts of the use of titles. It complements and builds on the information already provided in Section 2.6 (Different approaches to regulating the market).

### *G.1 Introduction and approach*

The mode of pursuit of a regulated profession also covers situations in which the use of a professional title and designatory letters is limited by regulatory provisions to holders of a specific professional qualification (as per Article 3 of Directive 2005/36/EC).

Professional titles provide a specific mechanism for regulating professions that may avoid recourse to the use of exclusive reserves of activities. The specifications require an assessment of the economic impacts of reserved professional titles.

The analysis is focused on the **UK**, since this was the main country in the sample that regulates professions through legally protected titles overseen by professional associations<sup>1</sup>, who are responsible for ensuring that high quality of services are achieved through a focus on consumer protection, and on maintaining high standards of ethics and professionalism among title holders. Professional associations also often develop codes of conduct and have membership conditions that help to ensure that title holders provide high quality of services.

It should also be pointed out however that a small number of other EU countries in the sample, namely **Denmark, Finland** and the **Netherlands**, also sometimes use reserved titles as a means of regulating the market not linked to a reserve of activities. Many other countries also of course use professional titles, but the reserve of activities itself is the primary mechanism for regulating the profession rather than the use of a title regulated through a professional association as this is understood under Article 3(2) of Directive 2005/36/EC.

The UK has a tradition of regulating professions through titles rather than regulating the functions (at least outside the legal profession). Chartered status is the most common form of reserved professional title in the UK. Royal Charters are granted by the Sovereign on the advice of the Privy Council. Charters are reserved for bodies that work in the public interest, such as professional associations, which demonstrate pre-eminence in their particular field.

There is limited empirical research on the role and impact of the use of professional titles. However some research was identified through the literature review on its impact on competition in the UK professional services market (e.g. reports by the UK's Office of Fair Trading, the national competition body, and by the Legal Services Board). There was a greater body of literature that touched on reserved titles in the legal services field than in other professions. In addition, there is an interesting body of literature on reserved activities and reserved titles in Canada. For example, a 2007 report by the Competition Bureau<sup>2</sup> stated that:

'Restrictions on professionals' use of titles may reserve a title for members of the profession who meet certain education, experience or training qualifications. Such titles may act as a quality signal to consumers, which may increase demand or reduce their search costs. Conversely, these restrictions may suggest to consumers that only professionals holding the title are qualified to provide certain services. This may harm competition when, as a result, consumers must purchase higher quality services than they need, at correspondingly higher prices. Restrictions on the number of professionals allowed to use a title may also inhibit price and quality competition among those holding it, resulting in a decline in consumer welfare'.

<sup>1</sup> According to Annex I of the Directive, which lists the professional associations that are able to dispense and oversee the use of professional titles under statute, this approach is only used in the UK and Ireland, since Member States' authorities are obliged to notify the Commission regarding the use of professional titles. The most recent update was from June 22<sup>nd</sup> 2011.

<sup>2</sup> Self-regulated professions - Balancing competition and regulation, Competition Bureau, Canada, 2007

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## *G.2 The use of reserved professional titles*

The analysis considers:

- The role of reserved professional titles as a mechanism for regulating professions.
- The impact of reserved titles on market structure and in particular on the relative share of the market between title holders and non-holders.
- Wider impacts of the use of reserved titles e.g. on the costs of services, consumer choice, overcoming information asymmetries between professionals and consumers.

Overall, the evidence on the impacts of reserved titles is sometimes conflicting and varies depending on the profession, and the market dynamics of particular sectors. A summary of some of the potential benefits and disadvantages of the use of professional titles is provided below:

<p><b>Benefits:</b></p> <ul style="list-style-type: none"> <li>• <b>Promoting increased consumer choice</b> – consumers can decide whether to use the services of a title holder or non-title holder. The option of using a professional with a title may reassure consumers that the services they receive will be of high quality (this can be especially important in professions in which there are information asymmetries, such as areas of legal services).</li> <li>• <b>Less recourse to exclusive reserves of activities and <i>de facto</i> monopolies within particular professions</b> – titles provide an alternative approach to regulating professions. With some exceptions (e.g. registered auditors, solicitors and barristers), titles usually do not have a reserve of activities attached to them. There are therefore lower barriers to entry for wider market participants i.e. non-title holders.</li> <li>• <b>Increased price competition for some services</b> – the use of protected titles rather than reserves of activities may promote lower prices for consumers and businesses within some professions.</li> </ul> <p><b>Dis-benefits:</b></p> <ul style="list-style-type: none"> <li>• <b>Risk of higher cost of services</b> – there is a risk that restricting access to members of recognised professional bodies through protected titles may limit market entry in specialised areas by reducing the supply of professionals, resulting in higher prices.</li> <li>• <b>Restrictions on organisational form / business structure</b> – within legal services, it has been difficult for lawyers with different reserved titles to work together through a common business structure (although the introduction of Alternative Business Structures (ABS) in October 2011 may lead to changes in this regard. This has limited the potential for economies of scale that could arise from sectoral consolidation (which is the norm in other areas of business services, with large-scale multidisciplinary services firms prevalent in the UK).</li> </ul>
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## *G.3 The approach to professional titles across different sectors*

With certain exceptions, such as auditors, in the **accountancy** and **engineering** fields, professional titles do not confer a reserve of activities; rather, consumers have a free choice as to whether to use a professional with a title or a non-title holder, who may be unqualified or licensed, depending on the profession and sector.

- **Accountancy and audit**

In **accountancy**, while any individual in the UK may call themselves an accountant, six professional titles are legally protected (Chartered Accountant, Chartered Certified Accountant, Chartered Management Accountant, Chartered Public Finance Accountant, Registered Auditor and Insolvency Practitioner). Some tasks are reserved and specific to particular title holders, such as statutory audit and insolvency work, which may only be carried out by Registered Auditors and Insolvency Practitioners or by Chartered Certified Accountants having taken additional professional qualifications. Only authorised professional associations responsible for overseeing the use of titles are able to authorise their members to conduct audit and insolvency work in the

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UK, such as ACCA, ICAEW, IACI, ICAS and the AIA. As well as unqualified persons working in accountancy, there are also those with second tier qualifications that do not have chartered status such as qualifications obtained through the Institute of Financial Accountants and the Association of International Accountants.

Some data has been obtained on the number of individuals holding the professional titles of Chartered Accountant and Chartered Certified Accountant<sup>1</sup>. The data shows the number of members of each of the six chartered accountancy bodies in the UK and Ireland (the figures are aggregated). In 2007, there were more than 277,700 members of chartered accountancy bodies across both countries. Eurostat data is available on the number of persons employed in the UK in accountancy – approximately 270000. Since the data on accountants with Chartered status relates to both the UK and Ireland, it can be assumed that a significant proportion of accountants in the UK have chartered status.

From a competition point of view, the fact that non-title holders can practice as accountants or bookkeepers without any formal qualifications means that there remains adequate consumer choice..

However, consumers and businesses often may prefer to choose an accountant holding a professional title , since there is greater consumer protection, such as the existence of complaints mechanisms with professional associations that are responsible for upholding standards and requirements for them to hold Professional Indemnity Insurance. In cases of professional misconduct, those holding a title are accountable to a professional association. Differences between qualified title holders and unqualified accountants and tax advisers are that those that are qualified must sign up to a code of ethics and are at risk of losing their title should they act unprofessionally.

With regard to salary differentials between chartered accountants and unqualified persons working in accounting, in general, qualified accountants earn higher wages than their unqualified counterparts, but there is no firm data available on this. By the same logic, the costs of services will typically be greater for qualified accountants with a protected title. Among the reasons for this are that professional accountants have additional compliance costs, membership costs of belonging to the professional association and time costs associated with being subject to quality review. Qualified accountants may face obstacles in competing with unqualified or unregulated accountants on price alone, but this is not a problem since the market structure reflects this, with some consumers willing to save money by using the services of unqualified accountants, whereas others will pay a premium to use the services of a title holder.

With regard to **audit**, while Registered Auditor is a reserved title, a number of a number of different bodies have been authorised to issue the licence to conduct audit work. There are five Recognised Supervisory and Qualifying bodies (RSBs)<sup>2</sup>. There are an estimated 8,500 registered auditors licensed to carry out statutory audit work in the UK and Ireland. Since there is a reserve of activities linked to the EU Directive on Statutory Audit, the possession of a reserved title is a pre-requisite to carry out audit work, at least at senior level. More junior personnel may assist with basic audit work, but will not have the right to sign off audits. There are no unlicensed auditors legally able to practise.

An interesting development in respect of UK auditors of wider relevance to the assessment of the impacts of titles is that the Chartered Institute of Internal Auditors only recently gained Chartered status as a Chartered body (2010). In a 2009 publication entitled '*Chartered status for the internal audit profession*'<sup>3</sup>, the advantages of having chartered status were outlined. This highlights some of the ways in which having a reserved title may add reputational value (which can in turn enhance career and earnings potential compared with unqualified counterparts). According to the publication on chartered status, *Becoming a Chartered body demonstrates that a*

<sup>1</sup> *Key facts and Trends in the Accountancy Profession*, Professional Oversight Board, UK (2008)

<sup>2</sup> Examples of RSBs include the Association of Chartered Certified Accountants (ACCA) and the Institute of Chartered Accountants in England and Wales (ICAEW) – see legal inventory for all five RSBs.

<sup>3</sup> Chartered status for the internal audit profession, Chartered Institute of Internal Auditors, 2009

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*profession is distinctive, with the ability to set and maintain high standards of technical and ethical performance amongst its members. Chartered status also confirms that the organisation and its members are the recognised experts in their field.* Moreover, conferring chartered status was seen as giving a ‘seal of public interest approval’, alongside existing chartered professions such as accountancy, legal services, surveying and engineering,

The above statement could apply equally to a number of other chartered professions in the UK that use reserved titles as the main mechanism for regulating the profession to achieve some of the same goals relating to ensuring quality of services that may require an exclusive reserve of activities linked to a particular qualification requirement within a regulated profession in other countries.

Another axiom in respect of the use of professional titles in the UK, and in particular the use of chartered status is more important for independent professionals but is less relevant for exercising the activity as an employee in a private company.. With regard to evidence to underpin this conclusion, for example, the vast majority of FTSE 250 companies in the UK are audited by Top 4 accountancy firms. Large companies engage the services of companies without specifying the specific skills sets of individuals, which provide large teams to work on auditing work, some of which will have relevant audit and accounting qualifications, but not all.

- **Engineering**

There is a similar regulatory approach to that in accountancy in the UK’s **engineering sector**. As with the profession of ‘accountant’, ‘engineer’ is not a protected title. Indeed, the term engineer has been in use across a diverse variety of professions (e.g. to describe mechanics, installers, and maintenance workers), in some cases for several centuries. The overall approach to regulation in engineering is not of regulating the *function*, but rather regulating the profession through *titles*, with industry then choosing who they prefer to carry out engineering functions (title holders or non-title holders, the latter may include qualified persons with a degree in engineer, but who are not active members of the professional body) and non-qualified persons.

However, several professional titles in the UK’s engineering sector are legally protected through chartered status (e.g. Chartered Engineer/ CEng, Incorporated Engineer/ IEng, Engineering Technician/ EngTech, and Chartered Structural Engineer/ (M.I.Struct.E). In order to use any these titles, professional engineers must be a member of a professional association with regulatory authority status<sup>1</sup> and have university education and monitored professional practice training. Unlike in accountancy or legal services, there are no reserves of activities in engineering. Professional titles provide an alternative mechanism for regulating the market.

Higher-level tasks within engineering tend however to be carried out by qualified professionals with university education, but they may not always hold specific professional titles. With regard to the structure of the market, the UK’s Engineering Council has commented on issues relating to the statutory recognition of professional titles, and the fact that engineer is not protected, in a Commons Select Committee hearing on Innovation, Universities and Skills<sup>2</sup>. The Engineering Council stated that they apply very rigorous requirements to allow engineers to gain chartered status. However, they estimated that only approximately one-third of people practising as professional engineers have gained chartered recognition in the UK. According to the Engineering Council’s published statement in the Commons Select Committee hearing, the remaining two-thirds *‘have either not bothered or consider it might be too difficult to gain chartered recognition, but, of course, for many of them there is no economic problem about not being a chartered engineer because employers do not at the moment discriminate terribly much between chartered and non-chartered’*. The use of titles in this sector therefore provides consumers and intermediate users (i.e enterprises) that use engineering services with a choice between using the services of a title holder or a non-title holder.

<sup>1</sup> Regulatory authorities for reserved professional titles are the Engineering Council UK, the Institute of Structural Engineers and the Institute of Civil Engineers.

<sup>2</sup> Minutes of Evidence taken before the Innovation, Universities, Science and Skills Committee – Engineering, Wednesday 7 May 2008. <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmdius/c470-i/c47002.htm>



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On large-scale construction contracts, it can be made a condition of contract that the sign-off on the building or other type of infrastructure developed will be made for example by a Chartered Civil Engineer. However, since construction is a highly competitive business, the Engineering Council does not believe that this increases costs at all. It was stated by the Engineering Council at the Commons Select Committee that *‘The economic aspect of professional titles is pretty negligible in engineering since there are plenty of untitled engineers about and hence a competitive market operates’*.

Under the Building Regulations 2010 Act<sup>1</sup> (consolidated version), construction companies and individuals involved in small-scale construction works have a choice as to whether they pay their local authority to check compliance with Building Regulations or whether to use a fully qualified Structural Engineer, which is a protected title. There are sometimes market incentives to use the services of a qualified professional with chartered status. For example, in Scotland, under a government-backed scheme of Approved Certifiers of Design (Building Structures), those that use an Approved Certifier for structural designs do not require checking by the local authority verifier and a valid certificate may attract a 10% discount on the warrant fee.

There is also an interesting case from **Denmark** in this regard. When an individual with the professional title of certified structural engineer has calculated or checked the calculations for building construction, building authorities do not need to check the calculations. However, there is no exclusive reserve of activities specific to this profession, and the use of the title is overseen by the Danish Society of Engineers (IDA).

- **Architecture**

In the field of **architectural services, reserved professional titles are used in both the Netherlands and in the UK**. In the UK, only a registered architect may use that title in the course of business or practice. Under Section 20 of the Architects Act 1997, the title ‘architect’ is protected and overseen by the regulatory authority for architects, the Architects Registration Board (ARB). It can only be used in business or practice by someone with the requisite education, training and experience<sup>2</sup> needed to become an architect, and who is registered with the ARB. Firms or partnerships can also use the term ‘architect’ in their business name, as long as a registered architect is in direct control. They can become a ‘chartered architect’ if they also join the Royal Institute of British Architects (RIBA) as a corporate member.

However, the underlying activities are not subject to any statutory restrictions. UK market conditions differ from the majority of Europe in that the profession is regulated through a title, but not restricted. Indeed, as with engineering, any individual can use the title architect since this is sometimes used in a way that is not connected to building construction and design. Examples in this regard include ‘software architect’ and ‘systems architect’ in the ICT industry.

Architects are assisted in their work by Architectural Technicians or Technologists, whose qualifications and experience lies in detailed technical areas of work, rather than in the aesthetic design of buildings. This is also a protected title with specific qualification requirements<sup>3</sup>. A person who has gained a postgraduate diploma in architecture (or its equivalent) and has gained ARB/RIBA Part 2 exemption can also apply for membership of the Chartered Institute of Architectural Technologists. Among their tasks include quality control and site inspection and the interpretation of Building Regulations and associated legislation.

According to a 2008 study by the Architects’ Council of Europe<sup>4</sup> there are 33000 architects in the UK with the

<sup>1</sup> <http://www.communities.gov.uk/planningandbuilding/buildingregulations/>

<sup>2</sup> Architects are required to have gained qualifications in architecture recognised by the ARB. There are two methods of gaining qualifications; through full or part time study at schools of architecture recognised by the ARB and RIBA.

<sup>3</sup> Architectural Technologist has traditionally qualified by means of BTEC Higher National Certificate or Diploma courses and many of these are still available at Universities and Colleges in the UK. However, in recent years, many Universities have developed degrees in Architectural Technology.

<sup>4</sup> The Architectural Profession in Europe - A Sector Study Commissioned by the Architects’ Council of Europe 2008

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professional title of registered architect. With regard to market structure, however, there is a lack of data on the approximate division between architectural services delivered by those with the title registered architect and those that are unqualified.

In the **Netherlands**, although architects do not have any reserve of activities, under the Architects' Title Act (*Wet op de architectentitel*) 2011, the Dutch Architectural Registration Board (*Stichting bureau architectenregister*) can confer professional titles upon its members. In addition, specific types of architects and related professions such as Interior Architect, Landscape Architect, Urban Planning Expert and Architect (with acquired rights) are also reserved titles, with no specific reserve of activities attached to them.

- **Legal professions**

The opening up of the legal services market in the UK has been achieved through successive regulatory reforms, including those related to reserved activities, rather than to reform of the system of reserved titles. This has lowered barriers to entry for some market participants in particular areas of legal services through the opening up of formerly exclusive reserves of activities. For example, following the adoption of the Administration of Justice Act 1985, regulatory reform took place within conveyancing services, which had hitherto been an exclusive reserve of activities for solicitors, a protected title. The adoption of this Act led to new market entrants, notably licensed conveyancers, through a shared reserve of activities.

Further reform was brought in by the Courts and Legal Services Act 1999. The Act allowed organisations to apply for rights to regulate reserved legal activities. This led to the Council for Licensed Conveyancers (CLC) applying and being granted the right for their members, Licensed Conveyancers, to provide probate services. Similarly the Association of Law Costs Draftsman (now the Association of Costs Lawyers) and the Institute of Legal Executives were granted reserved legal activity rights for Costs Lawyers in the areas of litigation and rights of audience and Legal Executives were granted rights of audience respectively.

Reform of reserves of activities in the UK legal sector was explored in greater detail in Section 2.

In the **legal profession**, in the **UK**, the professions of solicitor and barrister are legally protected titles, whereas 'lawyer' and 'costs lawyer' are not (although the latter has a shared reserve of activities to a right of audience in court to advise on costs matters). However, under Section 17 of the LSA, it is an offence to carry out any reserved activity when not entitled to do so, and to take or use any name, title or description – which is effectively protecting all titles of authorised persons (solicitors, trademark attorneys, costs lawyers etc.).

The reserved title of solicitor are regulated through the Law Society of England and Wales, the Law Society of Scotland. The reserved titles of barrister (England and Wales) or advocate (Scotland) are regulated through the General Council of the Bar in England and Wales and the Faculty of Advocates in Scotland. There are similar arrangements in Northern Ireland. Professional bodies regulate market entry, for example, by specifying a minimum period of experience before an individual is allowed to use a specific professional title.

The title of Queen's Counsel (QC) is also protected and there has been a debate in the early 2000s about whether to retain the title, given that the historical origins of the title no longer correspond to its functions. However, QC remains a separate professional title. Following a reform of the appointments system, both senior advocates or barristers and solicitor advocates whose abilities have been assessed by an independent panel<sup>1</sup> and recognised can be awarded the title.

While professional titles provide an alternative mechanism for regulating a profession, it is not always the case that a reserved title means that there are no associated reserves of activities. It can be the case that both title-holders and non-title holders have the right to carry out specific reserved tasks. In the legal profession, for

<sup>1</sup> Queen's Counsel Appointments website for England & Wales, <http://www.qcappointments.org/> For Scotland, see <http://www.scotcourts.gov.uk/current/docs/QCApplicants.pdf>

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example, solicitors and barristers each have shared reserved tasks but also have a protected title. Nevertheless, this does not mean that the title grants a monopoly on the market to title-holders. For example, costs lawyers do not have a legally protected title but have three different reserves of activities (a right of audience in court, the conduct of litigation and the administration of oaths). These reserves are sometimes shared with legal professionals such as solicitors (which do have a reserved title).

The Legal Services Act 2007 sets out six reserved activities and the approved regulators responsible for overseeing the work of their members. The position on reserved tasks and reserved titles in respect of the UK legal profession is examined in detail in the legal inventory and in Section 2.4.

The rationale for the use of exclusive reserved titles within legal services was considered in a paper by the Regulatory Policy Institute on *Understanding the economic rationale for legal services regulation*<sup>21</sup>. This examined arguments used to justify reserved titles. It noted that *'titles are used to denote quality, or to provide a certification stamp, and they may also act to mitigate some of the information problems associated with legal services. They can also provide comfort to consumers that the legal practitioner they are dealing with is governed by a code of conduct and ethics.'*

- **Economic impact of reserved professional titles**

The 2001 OFT report on *Competition in Professions*<sup>1</sup> notes that *'among the claimed benefits of specifying professional qualifications and making the use of professional titles conditional thereon is that consumers will otherwise find it difficult to judge the quality of the advice they are purchasing'*. In other words, the title helps to overcome information asymmetries between professionals and their clients. According to the report, *'A professional qualification serves as a mark of at least a basic level of competence, and by implication quality of service, particularly when it is backed by the power to withdraw the professional title from those who act negligently or incompetently'*.

There are some concerns however about the potential adverse impacts of the use of titles in terms of the potential **increased risk of monopolies** in the same way that until reform of legal services took place in the UK, exclusive reserves of activities historically led to the domination of particular markets by particular legal professionals (e.g. Barrister's right of audience in court). The study notes that *'the granting of exclusive rights [to title holders] carries a risk that they can be used as a method to artificially restrict the supply of legal services in particular areas, which can permit a collective increase in prices for particular practitioners (e.g.: Queen's Counsel), or to increases in prices in specific areas of practice, to levels above those required for efficient provision. Alternatively, exclusive rights could lead to degradation in quality, because of the muting of competitive challenges from those who are excluded. The distinction between entry requirements and exclusive rights is that while the former can act to prevent existing legal professions as a whole from being challenged by the threat of competition from outside the profession, the latter restricts competitive challenges from those working within the profession itself'*.

However, although QC's generally charge higher fees, the market remains open to competition since there is no exclusive reserve of activities linked to the title in terms of representation of clients in higher courts. A client is never obliged to instruct a QC and it is not altogether uncommon to see a QC working together with a junior barrister for one party against a 'junior' barrister for the other. However, some contracts may require the opinion of a QC as a condition for something happening, but this depends on the parties' need for confidence in the quality of the advice. The main impact of the title of QC, according to a 2001 report by the Office of Fair Trading (OFT) is that it *'enhances their earning power and competitive position relative to others'*<sup>2</sup>.

While there is no market monopoly and although improvements have been made to the appointments system, the OFT report has noted that *'it is difficult to understand the client's need for a quality mark where restrictions upon direct access by clients to barristers remain in place and barristers' services are consequently purchased by solicitors who are specialists. Given these considerations, it is questionable what the value of the system is to consumers'*.

Another impact of reserved titles within the legal profession relates to the impacts on **organisational and business structure**. The study notes that there have generally been difficulties for legal professionals in

<sup>1</sup> Competition in Professions, 2001, A Report by the Director General of Fair Trading

<sup>2</sup> Competition in professions, March 2001, A report by the Director General of Fair Trading.

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forming partnerships between lawyers with different reserved titles, such as barristers and solicitors (so-called legal disciplinary partnerships), or partnerships that include lawyers and non-lawyers (multi-disciplinary partnerships). There are economic implications on market structure and opportunity costs associated with the inability to form larger full-service legal services firms (and equally barriers to the development of multi-disciplinary services firms between lawyers and non-lawyers) in taking advantage of the potential efficiencies that might be derived from economies of scale. However, there is little empirical research or data estimates in this regard.

Nevertheless, the advent of Alternative Business Structures (ABS) which only recently came into force on 6 October 2011 (c.f. part 5 of the Legal Services Act 2007) now allows lawyers and non-lawyers to be joint owners of firms providing legal services. While this change in the law on legal and ownership structure is not directly concerned with reserved tasks, it will have implications in overcoming the problems stemming from reserved titles mentioned above.

A study by the Legal Services Board on ‘Reserved and Unreserved Lawyers’ Activities<sup>1</sup> found that reserved titles serve an important role in legal services in terms of their reputational value, i.e. they reassure consumers who face information asymmetries in the use of such services. *‘Titles act as more powerful brands for most consumers than individual firms and this has prevented the development of competitive pressures from the consumers of the service. Even as the numbers of individuals practicing has increased (for example solicitors with practicing certificates has increased from 46,000 in 1985 to 118,000 in 2010) firms have remained relatively undifferentiated. Only recently have models emerged suggesting greater competition between firms e.g. emergence of Quality Solicitors’.*

Data was not immediately available on the relative share of the market of those with protected titles, such as solicitors and barristers, and legal professionals without titles, such as lawyers working in a corporate environment and non-legal personnel providing general legal advice (e.g. accountants provide legal advice about tax law, employment agents about employment law). Non-solicitor individuals have also become partners in legal disciplinary practices, especially legal executives.

Data estimates were obtained on the percentage of turnover in the legal profession relating to reserved work in the UK. While six reserves of activity are outlined in the Legal Services Act 2007, according to the legal academic, Professor Stephen Mason, some 80% of the work in the legal profession falls outside the protection of “reserved” legal work. For example, solicitors may, for example, give legal advice that is not reserved legal work, such as advising an author on contractual terms, advising a dismissed employee on courses of action open to them, and advising a company on how to resist a take-over.

With regard to the impact of reserved titles on the **costs of services**, there is insufficient evidence across all professions to reach firm conclusions about the nature of the impacts of titles.

In other professions, such as accountancy, while precise data is lacking, the market appears to be dominated by those with chartered status and therefore, given that there are in excess of 270000 such professionals in the UK and Ireland, it is debateable whether reserved titles have impacted costs. Nevertheless, it is clear that chartered professional titles, such as Chartered Certified Accountant are prestigious, and therefore, compared with non-title holders, individual professionals tend (on average) to be able to command higher-paid work. The main areas in which price competition clearly takes place within the profession is based on enterprise type, e.g. between small, medium and large accountancy firms and between top 4 and middle-tier firms.

<sup>1</sup> ‘Reserved and Unreserved Lawyers’ Activities’ by the Legal Services Board, Alex Roy & Chris Handford, 2010

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## *G.4 Conclusions*

The following conclusions can be drawn from the assessment of the impacts of reserved titles.

- **Reserved titles provide a mechanism for regulating the market which can avoid recourse to reserves of activities.** The rationale for the use of reserved titles is similar to that used for the reservation of specific activities e.g. overcoming information asymmetries, ensuring high quality of services and consumer protection.
- **Chartered status, the most common form of reserved title linked to a qualification requirement, was seen as providing an important quality mark among consumers.** Chartered status is especially important in providing reassurance to consumers engaging the services of independent professionals.
- **Since the use of a legally protected title requires compulsory membership of a professional association, users of services benefit from having formal consumers protection mechanisms in place.** In case complaints about a given professional's services are received, the professional is accountable to the professional body for their ethical and professional conduct.

With regard to the economic impacts of titles:

- **Reserved titles facilitate consumer choice.** With the exception of statutory audit, there is no obligation for consumers or intermediate users to use the services of a professional with a reserved title.
- **Reserved titles may help to promote price competition.** Consumers have the option whether to use the services of a professional that is a title holder or a non-holder.
- **Reserved titles may have had an impact on the structure of the market in that in many professions, but there is scope for wider market entrants to participate in the market. Those holding a reserved title tend to earn higher salaries than unqualified persons.** Among professionals in most sectors, it is therefore desirable to hold the title, especially in accountancy, but less so in engineering and architecture.

