



# **The State of Liberal Professions Concerning their Functions and Relevance to European Civil Society**



*European Economic and Social Committee*

**The State of Liberal Professions Concerning Their  
Functions and Relevance to European Civil Society**

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## Preface

The present study was conducted from May to October 2013, commissioned by the European Economic and Social Committee (“EESC”) and carried out by the European Centre for Liberal Professions, University of Cologne (“ECLP”). The ECLP is an independent interdisciplinary research institute of the Faculty of Law together with the Faculty of Management, Economics and Social Sciences of the University of Cologne under the direction of Professor Dr. *Martin Henssler* and Professor *Achim Wambach*, Ph.D. It is devoted to the study of the regulation of liberal professions and their economic impact in the European Union.

The authors of the present study had a very narrowly defined time period (May to October 2013) at their disposal. The aim of the study, taking into consideration the narrow time frame, was to prepare an initial inventory of the regulation of liberal professions and its effects within the Member States of the European Union (“EU”). The study does not however aim to be of a final or exhaustive nature. Given the language barrier alone, neither all EU Member States nor all occupations which could conceivably be defined as liberal professions were examined with equal depth.

This summary presents the main findings of the study. The unabridged report prepared for the EESC, contains a large number of overviews, addressing the respective individual questions and identifying and comparing the various legal provisions. Unfortunately there is insufficient space to reproduce them here. The full version of the study for in-depth research is available free of charge on the website of the ECLP ([www.euzfb.uni-koeln.de](http://www.euzfb.uni-koeln.de)) and of the EESC ([www.eesc.europa.eu](http://www.eesc.europa.eu)).

Under the scientific direction of Professor Dr. Martin Henssler and Professor Achim Wambach, Ph. D., the present study was prepared by Dr. Oliver Arentz, Thomas Dorando, Svenja Ersfeld Jan Glindemann, Verena Herkenberg, Christoph Hesse, Dr. Matthias Kilian, Laura Kohlleppele, Katharina Kopyciok, David Markworth, Dr. Dirk Michel, Natalie Moll, Julia Pitten, Anne Schäfer and Kai-Oliver Ulmer. The English-language translation of the present summary was prepared by Robert Neumeier LL.M. and Michael Neumeier LL.B/B.Com. (Accounting).

Cologne, March 2014

Professor Dr. *Martin Henssler* and Professor *Achim Wambach*, Ph. D.

## **Chapter 1: Introduction and objectives**

The liberal professions play an important role in the social and economic development of many European countries. They provide jobs, contribute to economic growth and fulfil important social-welfare functions. They typically provide services that are of high importance for the performance of core state functions. These tasks carried out for the common good and in the public interest include; ensuring legal protection for citizens, ensuring the rule of law within the tax and social levy system and a functioning market economy, as well as providing health care for the population. In all these areas, members of the liberal professions serve as particularly qualified service providers (E.g. as lawyers, auditors, accountants, engineers, medical practitioners). The general public places a great deal of trust in their activities aimed at promoting the public interest, which is why the liberal professions can also be referred to as "trust" professions.

At the level of the European Union, the liberal professions are increasingly gaining in significance. Thus, the European Commission established a working group on the liberal professions in the spring of 2013, which deals with these professions from an economic and legal perspective. The Entrepreneurship Action Plan for 2020, with which the Commission intends to unleash Europe's entrepreneurial potential; emphasises that the liberal professions make a significant contribution to the EU economy.<sup>1</sup>

Against this background, the study aims to investigate the social and economic functions of the liberal professions on the one hand, and the legal framework for the legal professions in the Member States on the other hand. It provides an overview of quantitative aspects, economic indicators, functions and legal framework of the liberal professions in Europe using jurisprudential, economic, and social science methods. In order to achieve this goal, the subject of the study ("The State of Liberal Professions and Their Functions and Relevance to European Civil Society") is divided among several issues for investigation. The present summary reproduces the most significant findings of the study. The starting point is Chapter 2, which deals with the definition and the concept of the term 'liberal profession'. The subsequent third chapter is dedicated to deeper analysis of the economic and social functions and significance of the liberal professions. In this context, socio-economic indicators are used in particular. Chapter 4 deals with the legal framework of the liberal professions and presents the various forms of regulatory systems and organisational models of liberal professions generally used in Europe. Finally, Chapter 5 examines in more detail individual systems of regulation typically applied to selected liberal professions in the Member States.

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<sup>1</sup> See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 01.09.2013, COM (2012) 795 final, p 5.

## Chapter 2: Definition of 'Liberal Profession'

### 2.1. The concept of Liberal Profession in ECJ case law

The study is to be based on the term Liberal Profession, as defined by the ECJ in its judgement of 11 October 2001.<sup>2</sup> Accordingly, the liberal professions include activities,

*"which, inter alia, are of a marked intellectual character, require a high-level qualification and are usually subject to clear and strict professional regulation. In the exercise of such an activity, the personal element is of special importance and such exercise always involves a large measure of independence in the accomplishment of the professional activities."*<sup>3</sup>

In analysing this description, it should be taken into consideration that in the cited decision, the ECJ has not defined the term Liberal Profession in the sense of a legal term binding upon the entire body of European law. As part of a value-added tax ("VAT") related decision, it was merely clarifying understanding of the term according to 'Annex F, point 2 of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of Member States relating to turnover taxes - Common system of VAT'. The Court merely spelled out, for which group of revenues from entrepreneurial activities the Member States, under Article 28, paragraph 2 e) of the Directive in the version then in force; were allowed to apply a reduced VAT rate of at least 12%. Moreover, the decision bears no final meaning for an understanding of the term liberal profession in European law. Nor for that matter, does the ECJ with this decision in any way set out the definition upon which Member States must base their national regulations. Like any other legal term, Liberal Profession must be understood in the light of the normative intent of the respective provision in which it is used. So long as the implementation of European law is not affected, EU Member States are free to either completely or partially abstain from linking regulations to the term Liberal Profession or to use their own broader or narrower definition of the term Liberal Profession in national law. The essence of what constitutes a liberal profession is of course covered by the ECJ's definition; which in turn is based on the common traditions of a large majority of the EU Member States. The Directive on the recognition of professional qualifications 2005/36/EC also contains, in its revised version of 20 November 2013<sup>4</sup>; a definition of the Liberal Profession, to be found in Recital 43, which, though inspired by the case law of the ECJ, is not identical to it. Here liberal professions are defined as such activities *"practised on the basis of relevant professional qualifications in a personal, responsible and professionally independent capacity by those providing intellectual and conceptual services in the interest of the client and the public."* These liberal professions are indeed; with the exception of notaries (Article 2, Paragraph 4 of the Directive) included in the scope of the Directive. At the same time however, it is clarified that they may be subject to restrictions of national law, *"safeguarding and*

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2 ECJ 11 October 2001, C 267/99, ECR 2001, I-7467 (Adam).

3 ECJ 11 October 2001, C 267/99, ECR 2001, I-7467 (Adam), para. 3.

4 Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Council Regulation (EU) No 1024/2012 on administrative cooperation with the Internal Market Information System ('IMI Regulation'), OJ. No L 354, pp. 132-170.

*developing their professionalism and quality of service and the confidentiality of relations with the client."*

For these reasons, neither the definition of the ECJ nor that of the Directive 2013/55/EU could serve as a final reference point for the present study. The basic principles and the social function of the liberal professions are largely but not fully covered by the aforementioned definitions. During the course of the analysis of the national law of the Member States, other term characteristics<sup>5</sup> and their context must be taken into consideration.

## **2.2. Origin of the term Liberal Profession**

The concept of 'Liberal Profession' can be traced back to the concept of "*artes liberales*". According to Cicero and Seneca, these were activities that were worthy of a free person and the learning of which was in fact a necessity for any free Roman citizen.<sup>6</sup> In ancient times, activities such as those of a teacher, lawyer, master builder, architect, engineer and physician were described as "*artes liberales*".<sup>7</sup> Thus, this term was based on a social, moral and legal assessment of the activity in question.<sup>8</sup> Activities such as field work or the manual trades – i.e. physical activities as opposed to the intellectual activities<sup>9</sup> – were instead classified as "*operae illiberales*", because these activities were exercised by the un-free (mainly slaves). The exercise of the "*artes liberales*", was however the privilege of the 'free' citizens and nobility.<sup>10</sup>

The current understanding of the concept of 'Liberal Profession' has developed since the 19th Century. Up to the 18th Century the term "*artes liberales*" continued to be applied to 'intellectual' activities. At this point, the term was no longer tied to the personal attribute of 'free birth', but to the activity performed. Under the influence of liberalism, a new corporate consciousness of the liberal professions developed during the course of the 19th Century.<sup>11</sup> Concomitantly independent professional bodies were established, which pooled the interests of the respective professions. In many places, the organisation of the liberal professions created the basis for the first professional policy initiatives; namely the separation of the liberal professions from strict state supervision and control. Indeed, many liberal professions; such as the legal<sup>12</sup>, the medical<sup>13</sup> and pharmacy professions were, at the beginning of the 19th Century, closely integrated into state structures. For example in the German

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<sup>5</sup> Cf 2.4

<sup>6</sup> Cicero, *De inv.* 1.35; Seneca, *Ep. ad Lucilium* 88,2; quoted by Visky, Károly, *Geistige Arbeit und die „Artes Liberales“ in den Quellen des Römischen Rechts*, p. 10, fn. 2.

<sup>7</sup> Cf. Kaser, Max/Knüttel, Rolf, *Römisches Privatrecht*, § 42 Rn. 20, 20th edition, 2014; Taupitz, Jochen, *Die Standesordnungen der freien Berufe*, § 3 C. IV., 2., p. 140.

<sup>8</sup> Cf. Michalski, Lutz, *Der Begriff des freien Berufs im Standes- und im Steuerrecht*, 1989, p. 18; Taupitz, Jochen, *Die Standesordnungen der freien Berufe*, § 3 C. IV. 2., p. 138; Visky, Károly, *Geistige Arbeit und die „Artes Liberales“ in den Quellen des Römischen Rechts*, p. 17.

<sup>9</sup> Cf. Visky, Károly, *Geistige Arbeit und die „Artes Liberales“ in den Quellen des Römischen Rechts*, Übersetzung durch Karcsay, Budapest 1977, p. 11.

<sup>10</sup> Cf. Michalski, Lutz, *Der Begriff des freien Berufs im Standes- und im Steuerrecht*, 1989, pp. 17 et seq.; Taupitz, Jochen, *Die Standesordnungen der freien Berufe*, § 3 C. I, IV. 2., p. 138.

<sup>11</sup> See for more detail, Taupitz, Jochen, *Die Standesordnungen der freien Berufe*, § 3 C III., p. 121 et seq.

<sup>12</sup> Cf. Taupitz, Jochen, *Die Standesordnungen der freien Berufe*, § 3 C. II. 1., p. 114 et seq.

<sup>13</sup> Cf. Taupitz, Jochen, *Die Standesordnungen der freien Berufe*, § 3 C II. 2., p. 117 et seq.

states, the legal profession was subject to state control of professional activities through direct state approval and control. The appointment and transfer of lawyers was decided by the courts<sup>14</sup> or state authorities<sup>15</sup>. Supervision and disciplinary authority also lay with the courts or public authorities.<sup>16</sup> The same is true for state authority over the medical profession.<sup>17</sup> Lawyers, notaries, medical doctors<sup>18</sup> and pharmacists had often obtained quasi civil-servant status or had indeed been integrated into the civil service.

During the second half of the 19th Century, the above professional groups succeeded in emancipating themselves from state supervision and control. Therefore, German lawyers were successful in their struggle for a free legal profession<sup>19</sup> and were able to establish in 1878, their own professional law, the *Reichsrechtsanwaltsordnung* ("RAO").<sup>20</sup> Other liberal professions such as the medical profession,<sup>21</sup> obtained the transfer of certain issues, including admission to the profession and professional supervision, to the control of professional bodies. Finally, these organisations began issuing their own deontology codes. From this the chamber system arose, which is typical for a large number of Member States, particularly in Continental Europe.

### **2.3. Liberal profession as a legal concept**

The term 'Liberal Profession', although often used in legal norms, court judgements and legal scholarship publications, is not a universally accepted legal term. This applies both for EU law and the national law of Member States.

Under EU law the concept Liberal Profession can be found in Article 57 paragraph 2 lit d) TFEU, which includes "liberally exercised professions" as a subgroup of "service" within the meaning of the freedom to provide services. They are insofar on equal footing with the industrial, commercial and manual trade activities, so that primary European law does not depend on the clear distinction from other forms of services. The term has not been subject to a more precise definition within primary European law. As a result, relevant ECJ case law has not developed, due to a lack of legal relevance. Recital 43 of Directive 2005/36/EC<sup>22</sup> contains the purely declaratory note that the activities of liberal professions are also subject to the scope of the directive, to the extent to which they are regulated. Article 2 of the directive refers to "members of liberal professions" explicitly, including them within the scope of the directive. However, here too, specific legal consequences do not result from their

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14 Cf. Schmidt, Gerrit, *Die Geschichte der Hamburgischen Anwaltschaft von 1815 bis 1879*, 1989, p. 16

15 Cf. for the German states, *Die Geschichte der Hamburgischen Anwaltschaft von 1815 bis 1879*, 1989, p. 17 Fn. 4.

16 Cf. for the legal profession in Germany, Schmidt, *Die Geschichte der Hamburgischen Anwaltschaft von 1815 bis 1879*, 1989, pp. 107 et seq. and Taupitz, Jochen, *Die Standesordnungen der freien Berufe*, § 3 C. II. 1., p. 115 et seq.

17 Taupitz, Jochen, *Die Standesordnungen der freien Berufe*, § 3 C. II. 2., p. 118 et seq.

18 Cf. Taupitz, Jochen, *Die Standesordnungen der freien Berufe*, § 3 C. II. 2., pp. 117-118, 120.

19 Cf. Taupitz, Jochen, *Die Standesordnungen der freien Berufe*, § 3 C. III. 1., p. 124 et seq.

20 Koch in: Henssler, Martin/Prütting, Hanns, *Bundesrechtsanwaltsordnung*, Introduction Rn. 4, 5.

21 Cf. Taupitz, Jochen, *Die Standesordnungen der freien Berufe*, § 3 C. III. 2., p. 129 et seq.

22 Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, OJ. EU No. L 255, p 22

inclusion. As far as the term Liberal Profession or ‘Liberal Professional Activity’ is used variously in Commission documents, this does not result in a clearly defined legal understanding of the term.

Many Member States use the concept of liberal profession or liberal professional activity in legal texts, judicial decisions and other texts and statements. Often direct legal consequences are connected with the status as a liberal profession. However, the concretisation through legislation, jurisprudence and court practice that is found in the Member States is in turn generally limited to the specific subject matter subject to regulation. Even within a national legal system, the term is partly used in various ways. For example, the understanding of the term in § 1 paragraph 2 of the German Partnership Act (“PartGG”) is not identical to that in § 18 paragraph 1 sentence 2 and 3 of the German Income Tax Act (EStG).<sup>23</sup> The same is true in Polish law for the tax regime in the Flat-Rate Income Tax Act on the one hand and the provision in Article 88 of the Commercial Code on the other hand, which opens the possibility for particular liberal professions to join together in the legal form the partnership company.

Individual Member States provide normative legal definitions of the concept of Liberal Profession. Only recently has France established a legal definition of liberal profession in Article 29 of Law No. 2012-387 of 22 March 2012:

*Article 29, al. 1 Les professions libérales groupent les personnes exerçant à titre habituel, de manière indépendante et sous leur responsabilité, une activité de nature généralement civile ayant pour objet d'assurer, dans l'intérêt du client ou du public, des prestations principalement intellectuelles, techniques ou de soins mises en œuvre au moyen de qualifications professionnelles appropriées et dans le respect de principes éthiques ou d'une déontologie professionnelle, sans préjudice des dispositions législatives applicables aux autres formes de travail indépendant.*

Characteristics of a liberal profession according to this definition are the independent provision of intellectual or technical services in the interest of a client or the public under the observance of ethical principles or laws governing a profession. Specific legal consequences do not arise from this legal definition in French, so we cannot qualify this as a legal term strictly speaking.

German law defines a liberal professional service in § 1 section 2 sentence 1 PartGG as a high value service provided in general on the basis of special professional qualification or creative talent, personally, in a professionally independent manner, in the interests of the client and the general public. Subsequently in subsection 2 of the aforementioned provision, the independent professional activities of medical doctors, dentists, veterinarians, medical practitioners, physiotherapists, midwives, massage therapists, psychologists, members of lawyers' chambers, patent attorneys, accountants, tax advisors,

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<sup>23</sup> Cf. BVerfG BVerfGE 10, 354, 364; NJW 1978, 365, 366 et seq.; Brandt, Jürgen in: Herrmann/Heuer/Raupach, EStG, KStG, § 18 Rn. 65; Hutter, Ulrich in: Blümich, EStG, § 18 Rn. 50; Schäfer, Carsten in: MünchKomm. BGB, § 7 PartGG Rn. 33 ff.; on the commercial law term Körper, Torsten in: Oetker, Handelsgesetzbuch § 1 Rn. 38; Schmidt, Karsten in: MünchKomm. HGB § 1 Rn. 36.

economics and business consultants, accountants (chartered accountants), tax agents, engineers, architects, commercial chemists, pilots, full-time court appointed experts, journalists, photo reporters, interpreters, translators, and similar professions as well as scientists, artists, writers, teachers and educators are explicitly mentioned.<sup>24</sup>

#### **2.4. Liberal Profession as a sociological neologism**

The short historical outline shows that the legal term of Liberal Profession is not determined legally, but has developed historically. It unites a group of similar occupations, which share certain common characteristics. The term is a sociological neologism.<sup>25</sup> The German Federal Constitutional Court has convincingly characterised liberal professions as a sociological term, which is characterised by factual circumstances arising within a specific social context.<sup>26</sup>

The generally applied description of the term 'Liberal Profession' coincides with the core attributes of the previously mentioned characteristics identified by the ECJ. In the Member States numerous other characteristics are mentioned, which are said to characterise liberal professions.<sup>27</sup> These include:

- the public interest aspect of the service;
- the professionally and economically independent performance of tasks;
- the independent and personal execution of services;
- the existence of a special relationship of trust between client and contractor; and
- the restraint of the profit-maximisation motive.

The "*clear and strict professional regulation*", outlined in the ECJ decision is on the other hand neither a necessary nor a sufficient condition for classifying an entrepreneurial activity as a liberal profession. In this respect, it is also imprecise to conduct the legal and policy debate about the future of the liberal professions exclusively under the key-phrase "future treatment of regulated professions". The existence of regulation for individual professions does not even offer an indication as to whether the respective Member State recognises the members of the liberal professions as a separate category of entrepreneur.

#### **2.5. Information asymmetry, "trust" Occupation**

Although the existence of information asymmetries between providers and recipients of services is not included in the understanding of the term of Liberal Profession, such informational deficits in the

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24 Cf. Henssler, Martin, *PartGG*, § 1 Rn. 51 et seq.; Schäfer, Carsten in: *MünchKomm. BGB*, § 7 PartGG Rn. 36 et seq.

25 Cf. for example Raisch, Peter, *Geschichtliche Voraussetzungen, dogmatische Grundlagen und Sinnwandlung des Handelsrechts*, Chapter Four, I., p. 209; Rittner, Fritz, *Unternehmen und Freier Beruf als Rechtsbegriffe*, p. 8.

26 Cf. BVerfGE 10, 354, 364.

27 Cf. the "*Charter for liberal professions*" recently adopted by the *Council of European Dentists (CED)*, the *Standing Committee of European Doctors (CPME)*, the *European Council of Engineers Chambers (ECEC)* and the *Federation of Veterinarians of Europe (FVE)*.

Principal/Client Relationship are characteristic for almost all services provided by the liberal professions.<sup>28</sup> They are a common reason for professional regulation.

The services offered by liberal professions are complex and require a high level of expertise. They are also not regularly, but typically rarely called upon by the respective principals. The service recipient therefore lacks sufficient information and experience, necessary, to select the provider and to assess the quality of service offered following the contract's fulfilment. Additional information processing deficits also arise. Even if the service recipient has access to important information, this may be impossible to process in the case of liberal professional services. Causes of this information processing deficit are mainly a lack of specialist knowledge, education deficiencies and information overload.

The consequence of this asymmetry is that service recipients must place particular confidence in the service provider. The liberal professions can therefore also be described as confidence professions. The service recipient makes a leap of faith, trusting at the time an agreement on the provision of services is reached, that the provider will not exploit this informational deficit to his or her own advantage. There is a risk that the provider may not perform services with the necessary care and quality, without the service recipient being in a position to detect and challenge this. It is to be feared, moreover, that the provider may perform services for the recipient which the latter does not require at all.

## **2.6. The social function of the liberal professions**

The characteristics of the term Liberal Profession are in close interaction with their social function. Both are mutually dependent. As a result, a normatively relevant definition of liberal professions is only complete when its social function has been taken into account.

Liberal professional services, although provided primarily for the service recipient, are always fundamentally linked to the public interest. Therefore, the medical professions maintain an infrastructure serving to promote and safeguard the health of the entire population. The legal and accounting professions participate in promoting the rule of law and democratic governance by protecting rights and freedoms. Together with the profession of accountants they also ensure the smooth running of business processes. They vouch for the rule of law and protect the financial interests of their clients. The architecture and engineering professions protect the community from risks posed by buildings and technical facilities. At the same time they promote the innovation potential of society at large and the overall quality of life through the development of infrastructure and technical advances. Artistic professions serve to foster and shape the culture sphere. Out of these functions, arises a special ethical responsibility of the liberal professions with regard to patients and clients.

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28 An economic analysis of information asymmetries follows in 3.1.1.



### **2.7. Implications of terminology development for the study**

The research assignment for the present study refers to the liberal professions as defined in the previously shown ECJ case law. Therefore, the jurisprudential issues are to be investigated, for all occupational groups which can be identified as liberal professions according to the understanding of the term as outlined above. Due to the openness of the concept and the differing emphasis on the term in the various Member States, a binding categorisation is not possible. Therefore those occupational groups selected for further consideration, were those that counted among the liberal professions in the vast majority of Member States and were capable of being subsumed under the ECJ's definition without difficulty. At the same time, care was taken to ensure that the main sub-groups of the liberal professions; namely, the health , legal and business advisory professions and the engineering and architectural professions, were each represented in the study. Out of these occupational groups, the following professions were examined in more detail as typical examples:

- Lawyers
- Tax advisors
- Auditors
- Notaries
- Engineers
- Architects
- Dentists
- Pharmacists

Already at this point it should be noted that in some Member States, the concept of Liberal Profession is unknown or not in use, or that one or more of the aforementioned professions are not considered as liberal professions in certain Member States. However this is not relevant to the questions raised by this study. The questions raised deal with the existence and the specific features of certain regulations for the respective profession, which is typically classified as a Liberal Profession. These specific questions may be addressed without regard to the national categorisation of a particular occupation or sociological developments in the respective Member State. The questions of regulation and organisation of a profession can thus be investigated regardless of a particular national understanding of the legal term. On the other hand, a narrow understanding of liberal professions can serve to explain the liberal attitude of a respective jurisdiction with regard to certain professions.

However, the openness of the term of Liberal Profession leads to difficulties in answering the economic questions in this study. The main reason is that the statistical data uses a categorisation which is inconsistent and differs from the terminological understanding described above. Existing deviations are pointed out separately

## **2.8. European definition of Liberal Profession**

Although European law currently attaches marginal if any legal consequences to the status of an occupation as a Liberal Profession, a European definition of the liberal professions would still be a welcome addition. Reference is made to French law, which has already gone down this route. A definition would take into account the economic importance of the liberal professions, in particular their contribution to the strengthening of the labour market in the EU and promoting the training of young citizens. At the same time, such a definition would be helpful in order to preserve the independence of these professions within the framework of future EU regulations. A European definition would however need to be formulated in a sufficiently wide manner, so as to neither be in opposition to national law terminology nor stand in the way of the emergence of new liberal professions.

### **Chapter 3: The economic and social function and significance of the liberal professions**

The economic and social function of the liberal professions will first be described from a qualitative standpoint. As a result, the particularities of the services provided by liberal professions will be highlighted and placed within their economic context. Subsequently the main part of this chapter presents the socio-economic indicators of liberal professions in the EU-27 and discusses the significance of these figures. Finally, the cross-border activities of liberal professionals in the EU are described briefly.

#### **3.1. Qualitative classification of the social and economic function of the liberal professions in the Member States of the European Union**

Liberal professionals are usually self-employed entrepreneurs. As such, they make business decisions and assume responsibility for their consequences with the own capital contributed to the enterprise.<sup>29</sup> This applies when they make a profit, and this is equally true for losses. This willingness to vouch for a business with one's own capital is of great significance for society as a whole.

First, the use of own capital results in a responsible use of resources, as in the case of a loss, one's income is directly affected. Risks and opportunities of an economic activity must be carefully considered. Delegation issues between owners and management, as they appear in large corporations, are rather an exception with regard to typical liberal professions.

A liberal profession is in most cases aimed at a life-long occupation. Short-term profit maximisation, which is associated with long-term losses, is thus avoided. Often a dynastic aspect also plays a role, as the enterprise is intended to be passed on to the next generation. Therefore, there is much evidence to suggest that liberal professions are organised in a sustainable manner.

Most liberal professionals are solidly anchored in the local context. Their reputation and credibility are directly related to their behaviour locally. This includes not only their behaviour towards clients and their dealings with employees, but their contribution to the local community.

The members of liberal professions provide essential services for the public. In many cases, liberal professionals make a key contribution to the creation and maintenance of social 'infrastructure' and thus contribute to the peaceful and productive coexistence of citizens; for example, by their contribution to the legal system or to health care. With their services, they guarantee a framework for the public-welfare oriented social and economic division of labour.

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<sup>29</sup> In fact, many business owners are liable for business decisions with the entirety of their private assets, even in legal forms with limited liability, because banks often require appropriate additional collateral as a condition for lending.

The services offered by liberal professionals are characterised by numerous special features that make their economic description exceedingly complex. They differ fundamentally from the textbook examples of a perfect market. These features will be outlined and briefly classified below.<sup>30</sup>

### **3.1.1. Information asymmetry as a characteristic of liberal professional occupations**

The buyers of professional services, such as medical or legal advisory services, are often unable to assess the quality of service, as they lack the necessary information. In addition, the resources needed to obtain this information are prohibitively expensive in most cases. Because the services are often called upon only once, or with large time intervals; the consumer does not have the opportunity to build up their own knowledge and experience. For many professional services, it should also be noted that the quality is difficult to assess even in retrospect, because the result depends not only on the behaviour of the liberal professional, but also on many factors not controlled by the liberal professional. In addition, an error of judgement on the part of the consumer is often associated with serious negative consequences for their health or general income and living situation. This results in the particular need for special protection of consumers.

An important branch of economic scholarship deals with the production of such trust goods. Of fundamental importance is a paper by *Akerlof*<sup>31</sup>, in which he has shown that information asymmetry can affect the viability of a market and even tend towards market collapse. Markets for high-quality products or services are particularly susceptible to this form of market imperfection. However, numerous private law measures are available, which can counteract this and ensure an adequate functioning of the market. For example, the providers of trust goods could attempt to make the quality of their goods more transparent; either by disclosure of relevant work processes or through the certification of their work by an independent certification authority.

Therefore, no general statement can be made as to what extent information asymmetries make specific state regulations for liberal professions necessary and how these should be framed. Instead, a case-by-case examination is necessary, in order to establish which market imperfections exist, to what extent they negatively affect public welfare and whether such a deficiency can be resolved through government regulation. The spectrum of regulations to reduce information asymmetries range from information requirements for providers, to best practice guides for the provision of services, up to professional access restrictions in order to ensure a minimum quality of service provision. From an economic perspective, it is advisable to choose the form of regulation with the degree of intervention, which is suitable in order to achieve the set target (e.g. consumer protection). Liability law may be used alternatively or in addition to the above mentioned regulations in order to protect the interests of consumers.

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<sup>30</sup> The individual characteristics are not necessarily a unique feature of liberal professions. Many points apply in principle to comprehensive services and complex products. Their reasoning mentioned herein applies by analogy.

<sup>31</sup> Akerlof, George., *The Market for 'Lemons: Quality Uncertainty and the Market Mechanism*, in: *Quarterly Journal of Economics*, Vol. 84, 1970, p. 488 et seq.

### **3.1.2. Externalities of service provision by liberal professionals**

The actions of liberal professionals can have consequences that affect not only liberal professionals and their clients, but also massively influence the welfare of third parties. For example, if a medical doctor doesn't adequately treat a patient with an infectious disease, this can result in adverse health consequences for those in a close relationship to the patient.

A wide range of regulatory instruments are also available to limit negative externalities. These range from self-regulation and codes of ethics to statutory regulations defining how a service must be provided, as well as liability law rules. What form of regulation is appropriate in a particular case, once again cannot be established generally, but must instead be examined on a case-by-case basis.

## **3.2. Socio-economic indicators for the Liberal Professions in the Member States of the European Union**

The present section deals with socio-economic indicators of the Liberal Professions in the EU. This should allow a rough approximation of the quantitative significance of the Liberal Professions.

### **3.2.1. Available data**

The quantitative description of the Liberal Professions in the EU on the basis of socio-economic indicators can only ever be an auxiliary tool to quantify the actual economic and social importance of the Liberal Professions, because many qualitative aspects of economic and social activities of liberal professions are not statistically measurable. For example, the contribution of a functioning legal system to overall social welfare cannot be expressed in monetary terms. The same is true for health care and other goods provided by liberal professions, such as the increase in public safety.

The quantitative description of the economic and social importance of the liberal professions is further complicated by the lack of a commonly accepted definition of the Liberal Professions, which can be used for statistical studies.<sup>32</sup> Most definitions do not allow for a clear statistical distinction between liberal professions and commercial activities. These are often either not sufficiently clear or the attributes of such definitions are not amenable to empirical study.

The ECJ definition<sup>33</sup> is also unsuitable for empirical studies because its attributes cannot be clearly operationalised. The same is true for the definition developed in Recital 43 of the "EU Directive on the mutual recognition of professional qualifications".<sup>34</sup> The coexistence of many, often very different views on the constituent attributes of the Liberal Professions is also reflected in the remarks on the legal concept of liberal professions in the Member States of the European Union in Chapter 2.

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32 Suprinovič et. al. (2011), pp. 6-16, discuss several definitions based sociological characteristics of the professions and the resulting difficulties for empirical implementation.

33 ECJ Case C-267/99, point 39.

34 Directive 2005/36/EC.

The definition problem must therefore be solved for empirical purposes, by pragmatic attachment to the most clearly identifiable criteria which can be adapted to the objectives of the study. Besides the sharpest possible statistical distinction between liberal professions and other commercial activities, the fullest possible range of liberal professions needed to be covered. Remaining uncertainties must be accepted and communicated in a transparent manner. At the level of Member States, taking into account national particularities (E.g. the distinction between income from the exercise of a liberal profession and commercial income in German tax ) provides a pragmatic solution for some, but not all of the research questions. However, a generalised transfer of national stand-alone solutions to the European level is not possible.

For the purposes of this report, the pragmatic solution has been to make use of data provided by Eurostat. Eurostat collects no data itself, but receives data reported by the national statistical bureaus. Eurostat data are consolidated prior to publication, in order to achieve maximum comparability between Member States. Eurostat received allocations towards operating appropriations in the amount of 61.4 million Euros in 2010. This allowed around 900 people to be employed in 2011. Nevertheless, Eurostat cannot represent all economic activities with the desired level of accuracy. Therefore priorities for the further development of European statistics are set in a five-year framework program, which is further specified in Eurostat's annual work program.

The activities of liberal professions are recorded in the data provided by Eurostat at different levels and in greatly varying quality. As part of this research project, the data of the detailed annual business statistics provides the widest range of possibilities for evaluation. The business statistics provide, inter alia, information on corporate figures, sales figures and gross operating surplus. Since the data is collected at the enterprise level<sup>35</sup>, it is not possible to draw conclusions at the individual level, which is also important for an understanding of liberal professions. Numerous data gaps and partly implausible data complicate the interpretation of the results.

Statistics on the economic activities of health professionals are provided by Eurostat only to a very inadequate extent. This is most likely due to the fact that health professionals provide services of general interest. For this category of services, the concept of business undertaking under European law does not apply. As a result, there is also no comparable statistical coverage of corporate indicators, as is the case with other services provided by the liberal professions.

Data at the individual level are collected, based on a household sample survey for the self-employed and employees, and are available in the European Labour Force Survey. However in this case, the activities of the liberal professions are only collected approximately at the level of the economic

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35 The EU defines the term enterprise as follows: *"The enterprise is the smallest combination of legal units that is an organisational unit producing goods or services, which benefits from a certain degree of autonomy in decision-making, especially for the allocation of its current resources. An enterprise carries out one or more activities at one or more locations. An enterprise may be a sole legal unit."* See point 3.5: [http://epp.eurostat.ec.europa.eu/cache/ITY\\_SDDS/de/sbs\\_esms.htm#stat\\_pres](http://epp.eurostat.ec.europa.eu/cache/ITY_SDDS/de/sbs_esms.htm#stat_pres).

sectors "provision of professional, scientific and technical services" and "health and social work". A more detailed distinction of professions is not possible.

More information could be obtained from national accounts data. However, here too, a detailed distinction between liberal professions is also not possible because of the high degree of aggregation.

In order to use terms taking into account the difficulties of statistical recording of liberal profession activities, the following will refer to liberal profession dominated economic sectors or typically liberal professional occupations. This expresses the fact that the data presented represents the contribution of liberal professions only in a very approximate manner. On the one hand, it is possible that liberal professional activities are provided in other sectors of the economy and not included here; and on the other hand, the considered sectors of the economy may also include input from commercial activities which are not attributable to the liberal professions.

To increase the validity of the data and to allow country-to-country comparisons, reference categories are established for several metrics that are used to relativize the absolute numbers. As a result, a classification and comparison of magnitudes between countries becomes possible. The processing of the source data was, where in any doubt, carried out in coordination with Eurostat. The socio-economic indicators were, where reasonably possible, combined with business surveys by Eurostat concerning potential impediments to growth.

Despite these caveats, the official statistics from Eurostat remain preferable to privately obtained figures. Firstly, Eurostat ensures maximum comparability of data between the EU countries. Comparability is of the utmost importance in light of the objective of the present study, which is to provide an overview of EU countries. In addition, a private-sector collection of the necessary data would also result in an enormous expenditure of resources that would go beyond the scope of this investigation and would only be possible with a correspondingly low number of samples, so that no valid conclusions could be drawn.

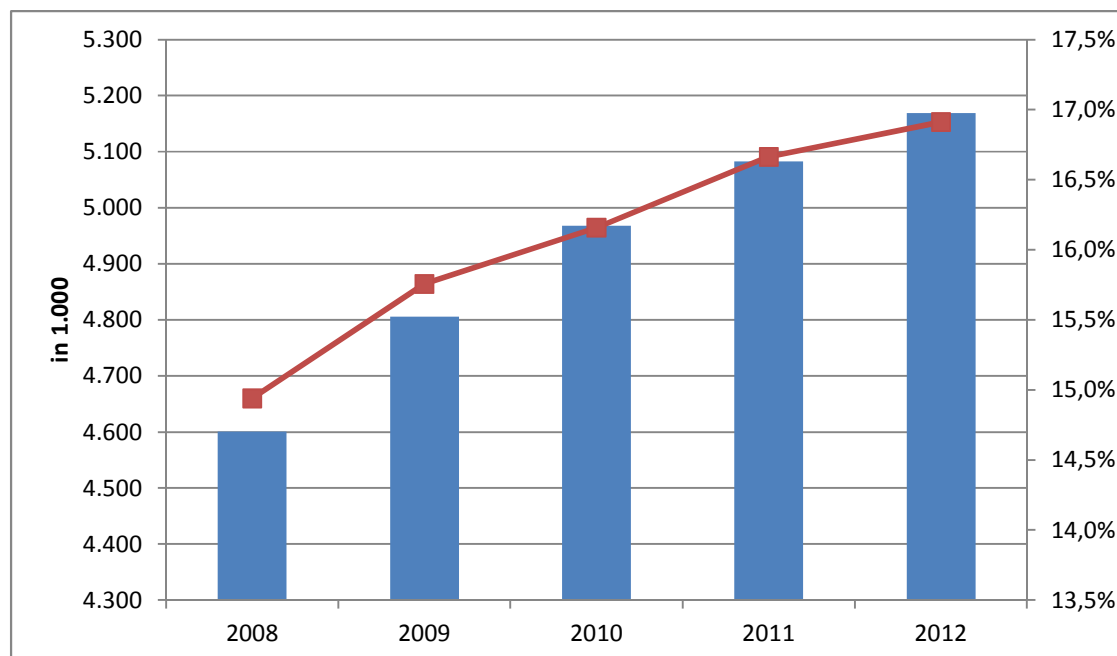
### **3.2.2. Self-employed persons and employees in liberal profession dominated sectors across the Member States of the European Union**

The number of self-employed persons<sup>36</sup> in the liberal profession dominated sectors "provision of professional, scientific and technical services" and "health and social work" has risen steadily from 4.6 million in 2008 to 5.17 million in 2012 (Figure 1). Over the same period, the proportion of self-employed persons in liberal profession dominated sectors, compared with self-employed persons overall, rose by 2 percentage points increasing from 14.9 to 16.9 percent. Thus in 2012, almost one in six self-employed persons was working in a liberal profession dominated sector.

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<sup>36</sup> Self-employed persons aged 20 to 64 years are taken into consideration. The age groups 15-19 years and 65 years or older are excluded because their collection is subject to significant statistical uncertainty and their quantitative importance is negligible.

**Figure 1: Number of self-employed persons aged 20 to 64 years in liberal profession dominated industries in the EU-27 and their share among all self-employed persons. Source: Own illustration according to data from the European Labour Force Survey by Eurostat**



On a country-by-country basis, the high number of self-employed persons in liberal profession dominated industries in Italy is particularly noticeable (Table 1). There were more than 1 million self-employed reported in liberal profession dominated sectors of the economy for 2012. The figures for Germany and the United Kingdom amounted to 970,000 and 717,000 respectively.

**Table 1: Number of self-employed persons aged 20 to 64 years in liberal profession dominated industries in the EU-27 (In 1000s). Source: Own illustration according to data from the European Labour Force Survey by Eurostat**

	2008	2009	2010	2011	2012
<b>European Union (27)</b>	4600.8	4805.4	4967.6	5083.1	5169.2
<b>Belgium</b>	136.3	142.9	142.1	135.0	150.2
<b>Bulgaria</b>	32.5	35.1	36.0	30.9	32.2
<b>Czech Republic</b>	97.3	105.1	112.7	110.7	117.1
<b>Denmark</b>	43.3	46.9	49.5	49.3	48.8
<b>Germany</b>	806.8	900.5	931.3	982.2	970.7
<b>Estonia</b>	:	:	:	6.8	:
<b>Ireland</b>	35.8	40.4	40.2	39.1	40.4
<b>Greece</b>	150.6	148.3	155.8	167.0	163.4
<b>Spain</b>	354.7	345.4	346.9	341.4	345.2



<b>France</b>	502.9	528.0	552.6	589.8	576.3
<b>Italy</b>	993,6	974.5	1,003.6	994.1	1,014.9
<b>Cyprus</b>	6.4	6.4	7.4	6.6	7.3
<b>Latvia</b>	7.8	11.8	9.5	8.8	10.5
<b>Lithuania</b>	:	:	:	:	:
<b>Luxembourg</b>	3.9	5.2	4.8	5.5	6.3
<b>Hungary</b>	58.5	55.2	53.9	61.1	54.2
<b>Malta</b>	:	:	:	:	2.4
<b>Netherlands</b>	241.5	226.8	225.6	237.1	:
<b>Austria</b>	77.8	79.8	85.1	86.0	83.0
<b>Poland</b>	177.5	196.7	218.0	226.4	244.1
<b>Portugal</b>	65.9	64.5	62.0	72.2	71.4
<b>Romania</b>	24.1	28.0	31.0	39.0	43.3
<b>Slovenia</b>	9.7	10.4	14.7	14.2	13.0
<b>Slovakia</b>	40.4	50.8	47.2	52.0	51.5
<b>Finland</b>	46.0	46.0	42.2	46.8	51.8
<b>Sweden</b>	80.1	81.8	82.1	82.2	82.7
<b>United Kingdom</b>	592.9	659.5	697.9	688.1	717.2

In relation to all self-employed, the proportion of self-employed in liberal profession dominated industries in Italy is 20.2 per cent; although higher than the average for all EU countries (16.9 percent), there are some countries where the proportion is still higher (Table 2). This provides an indication of the need to relativize the absolute numbers for cross-country comparisons. The range of varying proportions of self-employed persons in a liberal profession dominated industry, compared with all self-employed persons, is large in the EU-27. While in 2012 almost one third of self-employed persons in Luxembourg worked in a liberal profession dominated industry, in Romania this is the case for only one in every 37 self-employed persons. Less than one in 10 self-employed persons in Poland and Portugal can be found in the liberal profession dominated industries.

**Table 2: Share of self-employed persons aged 20 to 64 years in liberal profession dominated industries as a proportion of all self-employed persons aged 20-64 years in the EU-27 (In 1000s). Source: Own illustration according to data from the European Labour Force Survey by Eurostat**

	2008	2009	2010	2011	2012
<b>European Union (27 countries)</b>	14.9%	15.8%	16.2%	16.7%	16.9%
<b>Belgium</b>	24.4%	24.8%	24.6%	23.6%	25.8%
<b>Bulgaria</b>	9.0%	9.8%	10.4%	9.8%	10.6%
<b>Czech Republic</b>	13.0%	13.7%	14.0%	13.4%	13.9%
<b>Denmark</b>	19.3%	20.0%	22.3%	22.4%	22.6%

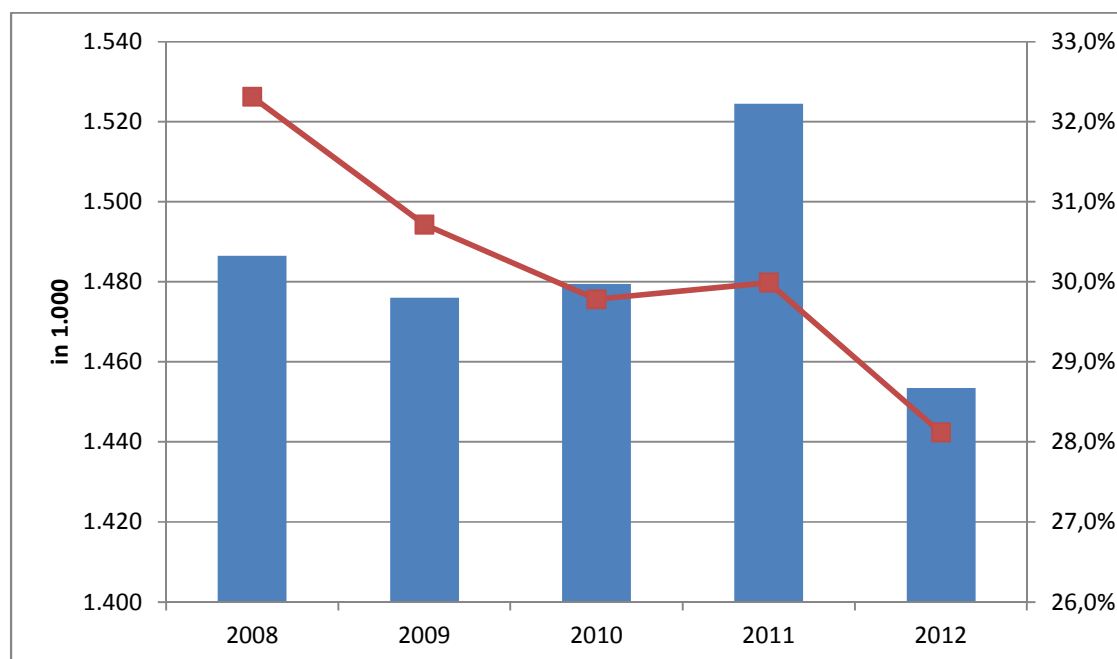
<b>Germany</b>	20.8%	22.8%	23.4%	24.0%	23.7%
<b>Estonia</b>	:	:	:	:	:
<b>Ireland</b>	11.1%	13.4%	14.5%	14.7%	15.6%
<b>Greece</b>	11.7%	11.5%	12.2%	13.7%	14.1%
<b>Spain</b>	10.8%	11.7%	12.1%	12.3%	12.2%
<b>France</b>	19.9%	20.3%	20.1%	21.2%	21.1%
<b>Italy</b>	18.9%	19.1%	19.7%	19.6%	20.2%
<b>Cyprus</b>	10.2%	10.6%	12.7%	11.6%	14.1%
<b>Latvia</b>	8.5%	12.8%	10.5%	10.4%	12.1%
<b>Lithuania</b>	:	:	:	:	:
<b>Luxembourg</b>	31.5%	32.9%	30.8%	32.2%	33.7%
<b>Hungary</b>	13.1%	12.4%	12.2%	14.3%	12.9%
<b>Malta</b>	:	:	:	:	11.0%
<b>Netherlands</b>	23.9%	22.1%	20.2%	21.3%	:
<b>Austria</b>	17.5%	18.3%	18.9%	18.7%	18.4%
<b>Poland</b>	6.2%	6.9%	7.7%	7.9%	8.6%
<b>Portugal</b>	7.2%	7.4%	7.6%	9.6%	9.8%
<b>Romania</b>	1.5%	1.7%	1.8%	2.5%	2.7%
<b>Slovenia</b>	10.7%	10.8%	13.4%	13.1%	12.4%
<b>Slovakia</b>	12.3%	14.0%	13.0%	14.3%	14.5%
<b>Finland</b>	15.7%	15.2%	14.3%	15.8%	17.3%
<b>Sweden</b>	19.1%	19.5%	19.1%	19.7%	20.0%
<b>United Kingdom</b>	16.6%	18.5%	19.2%	18.7%	18.8%

The number of self-employed persons in a liberal profession dominated sector of the economy with their own employees actually fell from 1.48 million in 2008 to 1.45 million in 2012 (Figure 2). A trend was however not found over the examined period. The highest number of self-employed persons in liberal profession dominated industries with their own employees over the observation period is 1.52 million in 2011. The range of variation<sup>37</sup> amounts to about 71,000 or less than 5 percent of the average over the years 2008-2012 and is thereby within a band which is highly susceptible to statistical background noise. In relation to all self-employed persons in liberal profession dominated industries, the share of self-employed persons in such industries with their own employees has fallen from 32.3 percent in 2008 to 28.1 percent. Only in 2011 did the share remain constant compared to the previous year, increasing slightly. This is a trend across all sectors of the economy: the proportion of self-employed persons with their own employees, has declined from 31.2 percent in 2008 to 28.9 percent in 2012.

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<sup>37</sup> Highest value in 2011 minus the lowest value in 2012.

**Figure 2: Number of self-employed persons aged 20 to 64 years in liberal profession dominated sectors of the economy with their own employees in the EU-27 and their share of all self-employed persons in this sector. Source: Own illustration according to data from the European Labour Force Survey by Eurostat**



The proportion<sup>38</sup> of self-employed persons in liberal profession dominated industries with their own employees compared with the total number of self-employed persons in these industries varied by around 30 percentage points between the Member States in 2012 (Table 3). While in Hungary almost every other self-employed person in liberal profession dominated industries has at least one employee; in Italy it is less than one in six.

**Table 3: Share of self-employed aged 20 to 64 years in liberal profession dominated sectors of the economy with their own employees as a proportion of all self-employed in this sector in the EU-27. Source: Own illustration according to data from the European Labour Force Survey by Eurostat**

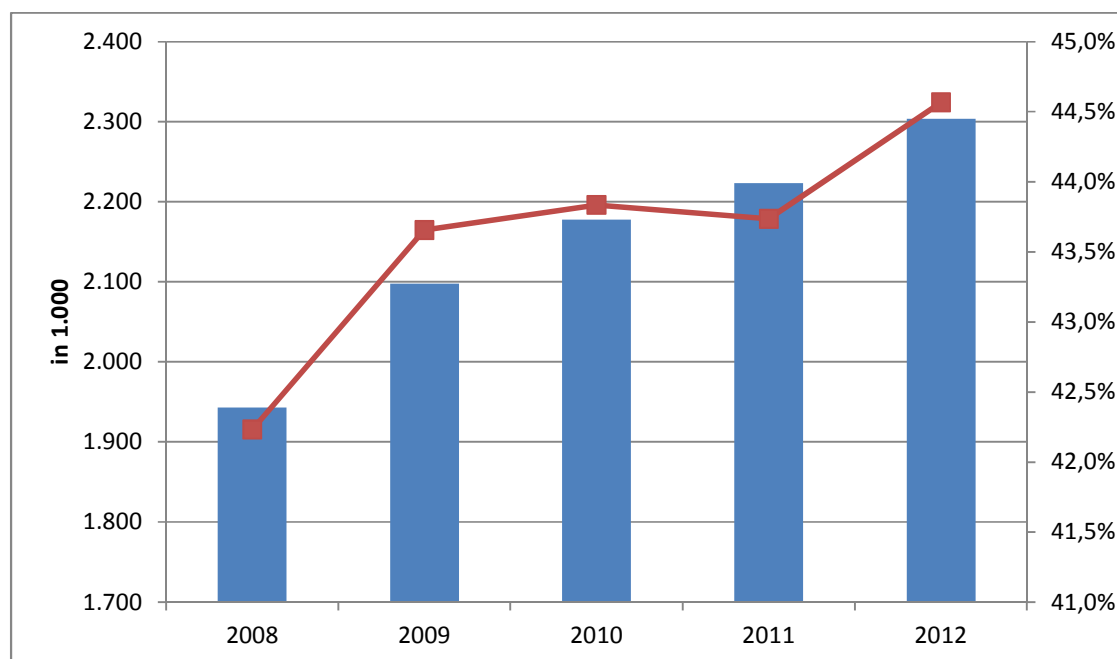
	2008	2009	201	2011	2012
<b>European Union (27 countries)</b>	32.3%	30.7%	29.8%	30.0%	28.1%
<b>Belgium</b>	19.8%	18.5%	20.2%	19.1%	17.0%
<b>Bulgaria</b>	34.5%	32.8%	35.0%	36.9%	:
<b>Czech Republic</b>	23.0%	24.5%	22.4%	21.9%	20.6%
<b>Denmark</b>	39.7%	37.5%	36.0%	37.9%	35.2%
<b>Germany</b>	47.7%	45.6%	44.9%	44.1%	42.6%
<b>Estonia</b>	:	:	:	:	:

<sup>38</sup> The absolute figures are reproduced in the Appendix.

<b>Ireland</b>	43.0%	42.1%	40.5%	38.1%	35.1%
<b>Greece</b>	25.7%	24.1%	21.4%	21.9%	21.1%
<b>Spain</b>	29.2%	32.3%	30.9%	29.1%	26.5%
<b>France</b>	46.6%	43.0%	38.5%	37.7%	37.6%
<b>Italy</b>	18.9%	17.2%	17.0%	16.6%	15.4%
<b>Cyprus</b>	31.3%	32.8%	35.1%	33.3%	30.1%
<b>Latvia</b>	:	:	:	:	:
<b>Lithuania</b>	:	:	:	:	:
<b>Luxembourg</b>	:	30.8%	43.8%	32.7%	34.9%
<b>Hungary</b>	43.1%	44.7%	50.6%	47.8%	46.3%
<b>Malta</b>	:	:	:	:	:
<b>Netherlands</b>	27.9%	28.3%	28.4%	26.1%	:
<b>Austria</b>	42.8%	37.5%	38.1%	43.0%	38.6%
<b>Poland</b>	32.2%	29.4%	29.2%	32.2%	27.5%
<b>Portugal</b>	:	30.2%	31.0%	39.9%	35.0%
<b>Romania</b>	:	:	:	:	:
<b>Slovenia</b>	39.2%	40.4%	39.5%	33.1%	29.2%
<b>Slovakia</b>	25.7%	21.3%	23.9%	26.0%	18.8%
<b>Finland</b>	28.3%	25.9%	24.2%	26.1%	23.6%
<b>Sweden</b>	27.7%	26.0%	28.5%	29.8%	28.9%
<b>United Kingdom</b>	28.6%	23.8%	22.3%	23.6%	22.4%

The number of self-employed women in liberal profession dominated sectors of the economy has risen from 1.9 million in 2008 to 2.3 million in 2012 (Figure 3). During the same period, the share of self-employed women in liberal profession dominated industries as a proportion of all self-employed persons in these sectors has increased from 42.2 percent to 44.6 percent. As a result nearly one in two self-employed persons in a liberal profession dominated industry in 2012 was female. The share of self-employed women as a proportion of all self-employed persons across all sectors of the economy in 2012 was considerably lower at 31.1 percent. The high proportion of self-employed women in liberal profession dominated industries is boosted in particular by the high proportion of women in the health and social services sectors (61.1 percent in 2012).

**Figure 3: Number of self-employed women aged 20 to 64 years in liberal profession dominated industries in the EU-27 and their share of all self-employed in this sector, Source: Own illustration according to data from the European Labour Force Survey by Eurostat**



The proportion of women<sup>39</sup> in liberal profession dominated industries within the EU-27 in 2012 varied by more than 37 percentage points (Table 4). In Latvia, 70.5 percent of self-employed in these industries were women, while the proportion of women was only 32.9 percent in Cyprus. Generally speaking, the Eastern European States showed an above average proportion of women in liberal profession dominated industries, while in the southern European countries their proportion was rather below average.

**Table 4: Share of self-employed women aged 20 to 64 years in liberal profession dominated industries as a proportion of all self-employed persons in this sector in the EU-27. Source: Own illustration according to data from the European Labour Force Survey by Eurostat**

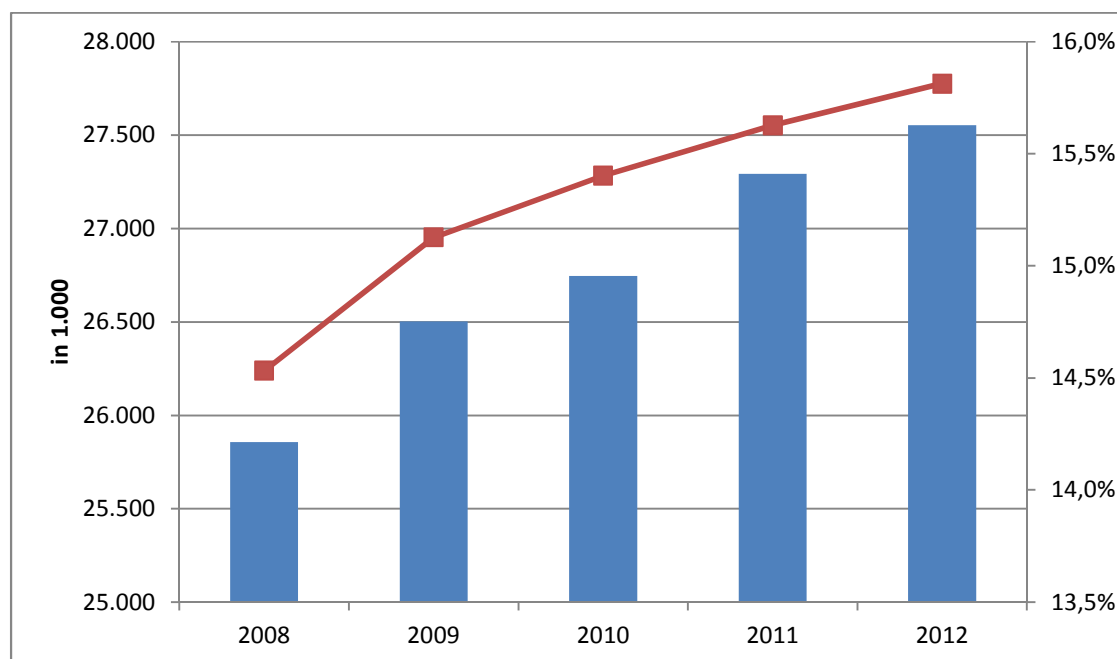
		2008	2009	2010	2011	2012
<b>European Union (27 countries)</b>		42.2%	43.7%	43.8%	43.7%	44.6%
<b>Belgium</b>		42.9%	44.9%	44.9%	44.8%	46.5%
<b>Bulgaria</b>		58.5%	60.1%	65.0%	61.5%	58.7%
<b>Czech Republic</b>		54.0%	52.9%	51.3%	56.5%	53.7%
<b>Denmark</b>		43.2%	47.3%	51.9%	47.3%	48.0%

<sup>39</sup> Absolute figures are provided in the Annex.

<b>Germany</b>	42.1%	43.7%	44.2%	44.5%	45.1%
<b>Estonia</b>	:	:	:	60.3%	:
<b>Ireland</b>	36.3%	36.9%	39.1%	36.6%	41.3%
<b>Greece</b>	36.8%	36.7%	39.3%	35.6%	37.4%
<b>Spain</b>	39.1%	42.0%	42.0%	39.9%	39.8%
<b>France</b>	44.8%	44.9%	43.9%	43.3%	44.1%
<b>Italy</b>	36.4%	36.6%	36.9%	38.0%	40.2%
<b>Cyprus</b>	37.5%	40.6%	39.2%	34.8%	32.9%
<b>Latvia</b>	65.4%	61.0%	62.1%	64.8%	70.5%
<b>Lithuania</b>	:	:	:	:	:
<b>Luxembourg</b>	53.8%	38.5%	39.6%	43.6%	46.0%
<b>Hungary</b>	43.6%	45.5%	45.1%	42.2%	47.4%
<b>Malta</b>	:	:	:	:	:
<b>Netherlands</b>	43.4%	45.1%	46.7%	47.3%	:
<b>Austria</b>	37.8%	42.2%	41.6%	41.7%	43.1%
<b>Poland</b>	47.5%	50.2%	48.4%	47.3%	48.1%
<b>Portugal</b>	47.6%	46.2%	44.8%	42.2%	43.0%
<b>Romania</b>	59.3%	:	55.8%	50.3%	50.6%
<b>Slovenia</b>	45.4%	46.2%	49.0%	54.9%	45.4%
<b>Slovakia</b>	55.4%	57.9%	57.0%	62.5%	62.3%
<b>Finland</b>	51.3%	53.5%	52.6%	49.6%	51.0%
<b>Sweden</b>	39.2%	40.1%	37.9%	38.3%	39.3%
<b>United Kingdom</b>	46.2%	48.2%	48.4%	48.4%	48.0%

In the EU-27, 27.6 million employees in liberal profession dominated industries were in paid employment in 2012 (Figure 4). This represents an increase of 1.7 million workers compared with 2008. The share of employees in liberal profession dominated sectors of the economy increased from 14.5 to 15.8 percent over the same period. Therefore in 2012, one in every six or seven employees was employed in a liberal profession dominated industry. Around two-thirds of the employees in liberal profession dominated sectors are employed in the health and social services sectors.

**Figure 4: Number of workers aged 20 to 64 years in liberal profession dominated industries in the EU-27 and their share of all workers.** Source: Own illustration according to data from the European Labour Force Survey by Eurostat



The lowest proportion<sup>40</sup> of employees in liberal profession dominated industries as a share of overall employment was found in 2012 in Bulgaria at 7.3 percent (Table 5). The highest share (25.0 percent) was recorded in Denmark. Overall the proportions found in the Scandinavian countries were well above average. Below average unit values were observed in the eastern European Member States.

**Table 5: Proportion of employees in liberal profession dominated industries as a share of all workers in the EU-27 aged 20-64 years, in percent.** Source: Own illustration according to data from the European Labour Force Survey by Eurostat

	2008	2009	201	2011	2012
<b>European Union (27 countries)</b>	14.5%	15.1%	15.4%	15.6%	15.8%
<b>Belgium</b>	16.4%	17.2%	17.1%	17.7%	18.3%
<b>Bulgaria</b>	7.0%	7.5%	7.7%	7.8%	7.3%
<b>Czech Republic</b>	9.7%	10.0%	10.3%	10.0%	10.4%
<b>Denmark</b>	24.1%	25.0%	25.9%	25.4%	25.0%
<b>Germany</b>	15.7%	16.1%	16.4%	16.7%	16.7%
<b>Estonia</b>	7.5%	8.5%	9.0%	9.0%	8.9%
<b>Ireland</b>	17.4%	18.3%	19.0%	19.4%	19.7%

<sup>40</sup> Absolute figures are provided in the Annex.

<b>Greece</b>	10.3%	10.4%	10.5%	10.8%	11.6%
<b>Spain</b>	10.7%	11.6%	12.1%	12.5%	12.9%
<b>France</b>	17.3%	17.7%	18.1%	18.5%	18.9%
<b>Italy</b>	11.8%	11.8%	11.8%	11.8%	11.9%
<b>Cyprus</b>	9.3%	9.7%	9.5%	9.6%	10.3%
<b>Latvia</b>	6.9%	6.8%	7.5%	8.4%	8.7%
<b>Lithuania</b>	9.8%	10.3%	11.2%	10.9%	11.0%
<b>Luxembourg</b>	15.7%	16.0%	15.1%	15.4%	16.7%
<b>Hungary</b>	9.9%	9.8%	10.2%	9.9%	10.1%
<b>Malta</b>	11.5%	12.2%	12.4%	13.0%	13.5%
<b>Netherlands</b>	23.4%	23.3%	23.5%	23.5%	
<b>Austria</b>	14.2%	14.9%	15.0%	14.6%	15.0%
<b>Poland</b>	8.8%	9.1%	9.5%	9.4%	9.6%
<b>Portugal</b>	10.4%	10.9%	11.3%	12.2%	12.6%
<b>Romania</b>	7.9%	8.3%	8.8%	8.6%	8.2%
<b>Slovenia</b>	9.9%	10.1%	10.3%	10.5%	10.9%
<b>Slovakia</b>	8.8%	9.0%	9.5%	9.2%	9.1%
<b>Finland</b>	22.3%	23.2%	23.1%	23.6%	24.2%
<b>Sweden</b>	23.6%	23.8%	23.9%	24.1%	23.8%
<b>United Kingdom</b>	18.5%	20.2%	20.1%	20.5%	20.6%

### 3.2.3. Companies in liberal profession dominated sectors in the Member States

The individual data in the previous section does not allow further differentiation of liberal profession dominated occupations. For a more detailed analysis we refer below to company data. All enterprises in the industry "provision of professional, scientific and technical services" and (where information was available) pharmacies were included. However, the additional knowledge about the activities of certain liberal profession dominated occupations comes at a price: Firstly it is questionable whether the assessment made by Eurostat classification of occupational groups always allows the desired distinction between liberal professional and non-liberal professional activities., It should be noted that certain liberal professional activities may partially not have been recorded; or that some economic activities attributed to the liberal professions should have on closer examination been classified in the field of non-liberal professional activities. Secondly, there are no enterprise figures for the industry "Health and social work".

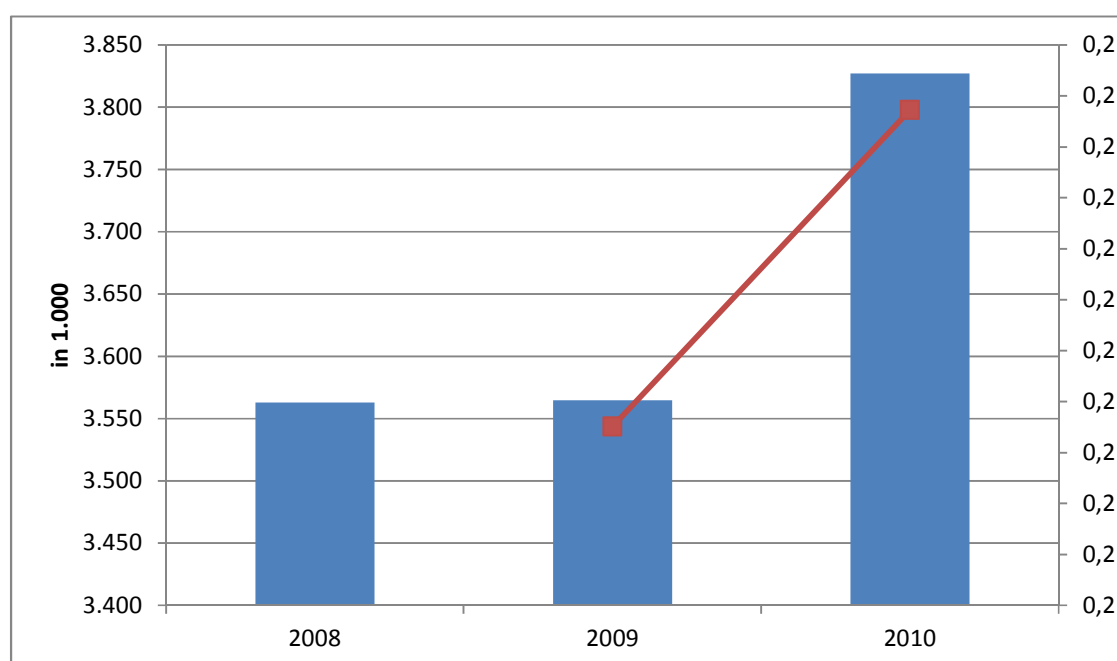
No statement can be made about the number of people who are involved in a company either as investors or active entrepreneurs. The data are therefore not comparable with the figures from the previous section.



The concept of enterprise is defined in the European Regulation on statistical units (Regulation 696/93). Accordingly, the smallest combination of legal units that also form an economic unit is a company. However, the implementation of this definition for statistical purposes is difficult, so that in practice, there is no uniform basis for the collection of data on the 'business' level. Differences between countries may therefore be due in part to different implementations of the definition of enterprise.

The number of enterprises operating in the "provision of professional, scientific and technical services" plus pharmacies increased from 3.6 million in 2008 to 3.8 million in 2010 (Figure 5). The proportion of these companies has grown between 2009 and 2010 by 0.3 percentage points to 17.6 percent. This correlates with the growth of self-employment in liberal profession dominated industries, bearing in mind that the enterprise figures do not contain information about the health and social services sectors.

**Figure 5: Number of companies in the industry "provision of professional, scientific and technical services" plus pharmacies and their share of all enterprises in the commercial sector in the EU-27. Source: Own representations according to reports from the structural business statistics by Eurostat**



The share<sup>41</sup> of companies in liberal profession dominated industries as a proportion of the overall economy in 2010 varied throughout the Member States, ranging from 10.9 percent in Cyprus to 26.1 percent in the Netherlands (Table 6). Sweden and Luxembourg also reported well above average ratios

41 Absolute figures are provided in the Annex.

of companies in liberal profession dominated industries as a share of the overall economy at 25.2 percent and 24.2 percent respectively.

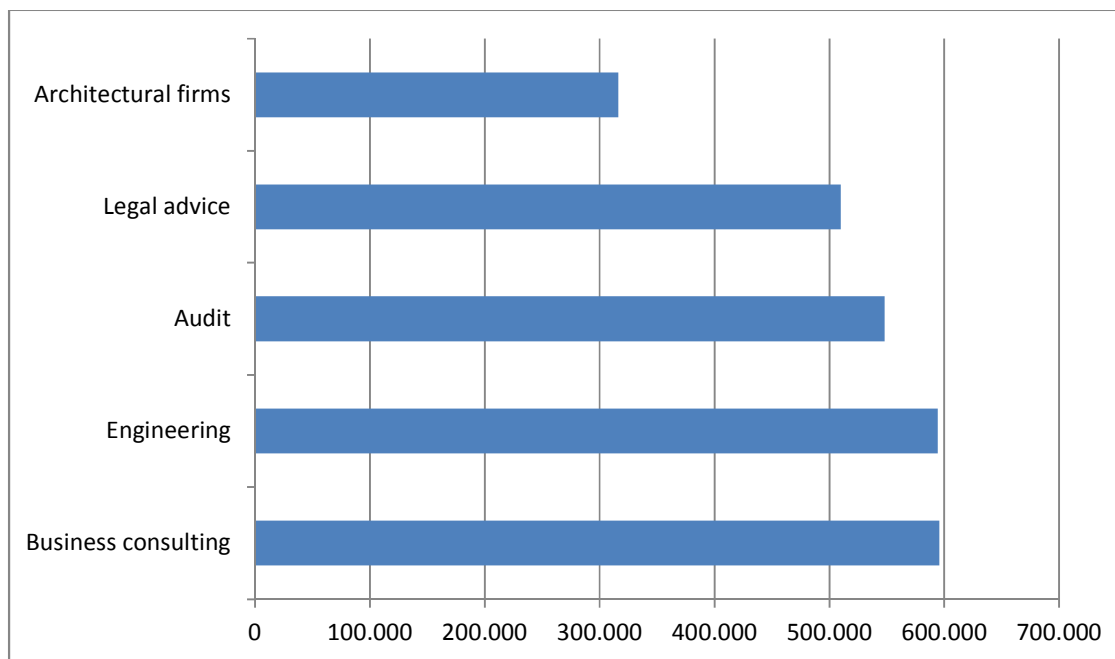
**Table 6: Share of enterprises operating in the "provision of professional, scientific and technical services" plus pharmacies in all companies in the industrial sector in the EU-27 in percent. Source: Own representations according to reports from the structural business statistics by Eurostat**

	2008	2009	2010
<b>European Union (27 countries)</b>		17.3	17.6
<b>Belgium</b>	18.6	18.8	20.0
<b>Bulgaria</b>	11.5	:	12.4
<b>Czech Republic</b>	18.1	:	16.9
<b>Denmark</b>	:	14.0	14.7
<b>Germany</b>	18.4	17.4	17.8
<b>Estonia</b>	15.9	16.8	16.6
<b>Ireland</b>	16.1	16.5	18.1
<b>Greece</b>	:	:	:
<b>Spain</b>	14.2	16.3	15.4
<b>France</b>	13.9	15.1	17.3
<b>Italy</b>	18.2	18.6	19.0
<b>Cyprus</b>	7.9	8.7	10.9
<b>Latvia</b>	13.7	14.8	15.7
<b>Lithuania</b>	9.6	11.5	12.7
<b>Luxembourg</b>	22.5	23.3	24.2
<b>Hungary</b>	19.0	20.3	20.8
<b>Malta</b>	:	:	:
<b>Netherlands</b>	22.6	23.0	26.1
<b>Austria</b>	19.2	19.7	20.3
<b>Poland</b>	12.5	13.1	13.2
<b>Portugal</b>	15.4	16.0	14.2
<b>Romania</b>	12.7	13.2	13.3
<b>Slovenia</b>	18.4	18.9	19.7
<b>Slovakia</b>	15.7	17.4	12.8
<b>Finland</b>	14.9	15.0	15.3
<b>Sweden</b>	24.4	24.7	25.2
<b>United Kingdom</b>	19.4	19.6	20.2

Dividing the industry "provision of professional, scientific and technical services" according to typical liberal professional occupations shows that in 2010 "business consultants" were represented most frequently with 596,000 companies, closely followed by "engineering" with 594,000 companies

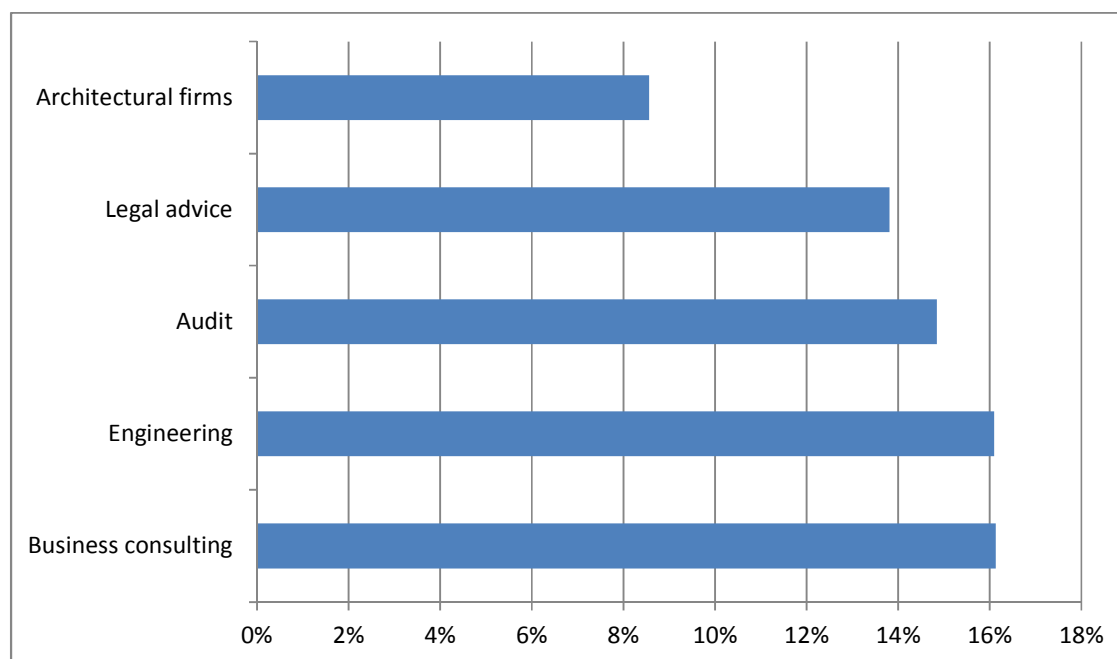
(Figure 6). In the professional fields "auditing" and "legal advice" 510,000 and 548,000 companies were recorded, followed by 316,000 companies in the "architectural firms" field.

**Figure 6: Businesses in selected liberal professional occupations in 2010 in the EU-27. Source: Own representations according to reports from the structural business statistics by Eurostat**



As a share of all liberal professional companies in the EU-27 in 2010, the proportion of "business consulting firms" and "engineering firms" stood at 16.1 percent each (Figure 7). "Auditing" and "legal advice" recorded relative shares of 14.8 percent and 13.8 percent. The corresponding figure for "architectural firms" was 8.6 percent.

**Figure 7: Proportion of enterprises in selected professional fields as a share of all enterprises in the industry "provision of professional, scientific and technical services" in the EU-27 in 2010. Source: Own representations according to reports from the structural business statistics by Eurostat**



A breakdown of the shares<sup>42</sup> of companies in the occupational fields of "business consulting", "engineering", "audit", "legal advice" and "architectural firms" in all companies in the industry "provision of professional, scientific and technical services" for the EU-27 Member States for 2010 is shown by Table 7. In many countries it is possible to identify "priority" liberal professions. For example, in the Netherlands, the United Kingdom and Sweden, around one in three enterprises in the industry "provision of professional, scientific and technical services" are active in the occupational fields of "business consulting". This is well above the average of all EU-27 Member States. Italy and Sweden have the highest proportions in "engineering" (20.4 percent and 19.2 percent). Overall, the proportional shares for "engineering" hardly vary between the EU-27 countries. The highest shares in the "auditing" field were recorded in the Eastern European Member States. For instance, the share in Slovakia (29.1 percent), Bulgaria (25.3 percent) and Estonia (24.9 percent) is in each case more than 10 percentage points above the average of the EU-27. The share of "architect firms" in Belgium and Spain are almost twice as high as the EU-27 average, at more than 15 percent.

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Absolute figures are provided in the Annex.

Table 7: Proportion of enterprises in selected occupational fields as a share of all enterprises in the industry "provision of professional, scientific and technical services" in the EU-27 for 2010. Source: Own representations according to reports from the structural business statistics by Eurostat

	Business consulting	Engineering	Audit	Legal advice	Architectural firms
<b>European Union (27 countries)</b>	16.1%	16.1%	14.8%	13.8%	8.6%
<b>Belgium</b>	28.7%	6.1%	12.5%	6.0%	15.4%
<b>Bulgaria</b>	11.1%	16.1%	25.3%	3.5%	7.0%
<b>Czech Republic</b>	:	:	:	:	:
<b>Denmark</b>	24.5%	12.3%	13.7%	5.6%	6.3%
<b>Germany</b>	12.6%	18.1%	13.7%	14.0%	9.3%
<b>Estonia</b>	23.4%	12.1%	24.9%	6.6%	4.0%
<b>Ireland</b>	0.0%	13.7%	18.1%	16.7%	8.6%
<b>Greece</b>	:	:	:	:	:
<b>Spain</b>	0.0%	13.7%	16.5%	25.9%	15.1%
<b>France</b>	23.2%	10.4%	6.2%	12.9%	7.7%
<b>Italy</b>	5.7%	20.4%	17.2%	21.0%	10.1%
<b>Cyprus</b>	15.0%	11.9%	16.6%	17.1%	12.2%
<b>Latvia</b>	11.0%	5.6%	23.1%	18.9%	5.3%
<b>Lithuania</b>	9.8%	13.2%	9.1%	21.3%	5.2%
<b>Luxembourg</b>	20.5%	9.6%	16.1%	22.1%	8.0%
<b>Hungary</b>	18.2%	15.6%	23.6%	6.8%	3.5%
<b>Malta</b>	:	:	:	:	:
<b>Netherlands</b>	31.1%	12.2%	12.3%	5.7%	2.1%
<b>Austria</b>	16.0%	15.4%	11.6%	8.5%	9.2%
<b>Poland</b>	11.6%	17.6%	15.6%	12.4%	7.9%
<b>Portugal</b>	13.5%	18.5%	20.5%	22.3%	8.0%
<b>Romania</b>	30.9%	16.0%	14.5%	0.5%	7.9%
<b>Slovenia</b>	25.8%	17.0%	19.6%	6.9%	6.1%
<b>Slovakia</b>	13.3%	16.5%	29.1%	7.4%	3.4%
<b>Finland</b>	20.6%	18.6%	14.4%	4.7%	4.7%
<b>Sweden</b>	30.1%	19.2%	11.8%	3.5%	2.3%
<b>United Kingdom</b>	34.5%	16.6%	10.0%	9.0%	3.3%

In 2010, the enterprises operating in the industry "provision of professional, scientific and technical services" mainly chose the legal structure of unlisted company with limited liability. Partnerships were the second most frequently chosen legal structure in most Member States (Table 8). In Ireland, this legal structure was chosen by every second company, ahead of the unlisted company with limited liability. The legal structure of "individual enterprise" was chosen significantly less frequently compared with the two previously mentioned legal structures. The highest proportion of individual enterprises was reported for Germany with 20.7 percent. Listed company structures in this sector played a significant role only in Cyprus, with 22.2 percent. The difference to Germany, which had the second highest proportion at 7.6 percent, is significant. Overall, it is questionable how far the values between countries are actually comparable, and whether the allocation of the legal structure is always correct. In particular, the values for Latvia, Lithuania and Finland, each with over 90 percent of non-listed limited companies are rather striking in comparison to the other countries. Information on selected legal structures was only available for 20 of the previously listed countries.

**Table 8: Percentage values of different legal structures in the industry "provision of professional, scientific and technical services". Source: Own representations according to reports from the structural business statistics by Eurostat**

	Other	Individual enterprise	Partnership	Limited liability company, not listed	Limited liability company, listed
<b>Belgium</b>	0.0	1.9	27.2	68.9	2.0
<b>Bulgaria</b>	4.4	0.6	19.2	75.1	0.6
<b>Denmark</b>	0.3	3.9	15.2	79.7	0.9
<b>Germany</b>	43.8	20.7	0.7	27.3	7.6
<b>Ireland</b>	1.4	6.0	50.4	40.8	1.4
<b>Greece</b>	0.0	5.3	0.0	89.5	5.3
<b>Spain</b>	7.0	13.8	3.9	75.2	0.1
<b>France</b>	0.2	5.5	25.7	68.6	0.1
<b>Italy</b>	36.5	9.1	12.5	41.9	0.0
<b>Cyprus</b>	0.0	0.0	22.2	55.6	22.2
<b>Latvia</b>	0.0	0.0	0.0	100.0	0.0
<b>Lithuania</b>	7.5	0.0	0.0	92.2	0.4
<b>Luxembourg</b>	0.0	12.3	8.2	78.7	0.8
<b>Malta</b>	0.0	13.3	26.7	60.0	0.0
<b>Netherlands</b>	5.7	1.9	14.7	77.0	0.6
<b>Poland</b>	37.8	6.8	4.2	51.1	0.1
<b>Slovakia</b>	0.0	9.4	25.7	64.9	0.0
<b>Finland</b>	0.0	0.0	0.0	99.8	0.2
<b>Sweden</b>	7.2	0.0	6.2	81.7	4.9
<b>United Kingdom</b>	6.8	3.8	39.6	43.4	6.4

The enterprise structure in the industry "provision of professional, scientific and technical services" is dominated by entities with fewer than ten employees (Table 9). These small businesses make up more than 96 percent of all businesses in the industry "provision of professional, scientific and technical services". The dominance of this enterprise size class reflects the fact that more than 70 percent of self-employed persons in this sector have no employees at all. The share of smaller companies with 10 to 49 employees is 3.1 percent. The medium and large companies with 50 to 249 employees and 250 or more employees together represent only 0.5 percent of all companies in this sector.

Compared to all enterprises across all industrial sectors, micro-enterprises are found frequently in the industry "provision of professional, scientific and technical services" while particularly small and medium-sized enterprises are less well represented.<sup>43</sup> This is probably due in no small part to the peculiarities of liberal professional activity. Thus, personal performance often makes smaller company sizes necessary. But this is true only on average over all countries and all Liberal Professions. Variations are possible within countries and certain professions. In Germany for example, almost three times as many small businesses are active in the sector "provision of professional, scientific and technical services" than the EU average, while the share of the smallest enterprises is more than 6 percentage points lower.

**Table 9: Percentage values of different size classes of enterprises in the industry "provision of professional, scientific and technical services". Source: Own representations according to reports from the structural business statistics by Eurostat (deviations up to 100 percent due to rounding is possible)**

	0 to 9 employees	10 to 49 employees	50 to 249 employees	250 and more employees
<b>European Union (27) countries)</b>	96.5%	3.1%	0.4%	0.1%
<b>Belgium</b>	97.9%	1.8%	0.3%	0.1%
<b>Bulgaria</b>	96.6%	3.1%	0.3%	0.0%
<b>Czech Republic</b>	98.3%	1.5%	0.2%	0.0%
<b>Denmark</b>	93.9%	5.0%	0.9%	0.2%
<b>Germany</b>	90.2%	8.9%	0.8%	0.1%
<b>Estonia</b>	95.7%	3.9%	0.4%	0.0%
<b>Ireland</b>	93.9%	5.3%	0.6%	0.1%
<b>Spain</b>	97.0%	2.7%	0.3%	0.1%
<b>France</b>	96.2%	3.3%	0.4%	0.1%
<b>Italy</b>	98.9%	1.0%	0.1%	0.0%

<sup>43</sup> The size structure of the entire industrial sector is composed as follows: micro enterprises 92.4 percent, small businesses, 6.2 percent, medium-sized enterprises 1.0 percent and large enterprises 0.2 percent. Absolute figures are provided in the Annex.

<b>Cyprus</b>	92.6%	6.6%	0.8%	0.1%
<b>Latvia</b>	96.5%	3.2%	0.3%	0.0%
<b>Lithuania</b>	94.7%	4.8%	0.4%	0.0%
<b>Luxembourg</b>	94.4%	4.7%	0.7%	0.1%
<b>Hungary</b>	98.4%	1.5%	0.1%	0.0%
<b>Netherlands</b>	97.2%	2.4%	0.4%	0.1%
<b>Austria</b>	94.2%	5.3%	0.5%	0.0%
<b>Poland</b>	98.2%	1.4%	0.3%	0.1%
<b>Portugal</b>	98.2%	1.6%	0.2%	0.0%
<b>Romania</b>	95.7%	3.7%	0.6%	0.1%
<b>Slovenia</b>	97.3%	2.4%	0.2%	0.0%
<b>Slovakia</b>	97.6%	2.2%	0.2%	0.0%
<b>Finland</b>	95.5%	3.9%	0.5%	0.1%
<b>Sweden</b>	97.9%	1.8%	0.3%	0.0%
<b>United Kingdom</b>	93.1%	5.8%	0.9%	0.2%

Data on enterprises demography (i.e. the development of enterprises overall) is very incomplete (Table 10). At the EU level, only data on new business registration is available for the industry "provision of professional, scientific and technical services". Approximately 400,000 companies were created in this sector in 2010, which corresponds to about one-in-ten newly founded companies. In the public debate, a high and increasing number of start-ups are often seen as an indicator of a functioning economic structure. When interpreting the start-up figures, many aspects need to be taken into consideration. It is true that high and rising start-up figures may be an expression of a vibrant and innovative sectoral dynamic. However, high and increasing numbers of company foundings are also often an indicator of a weak labour market in a given country. In this case, innovative business models are not the driving force for starting a business, but lack of labour market opportunities. Accordingly, a high and increasing number of business start-ups may point to an economic crisis or a weakening labour market. The reported business opening and closing figures as well as the net number of start-ups must therefore always be interpreted only against the context of national economic development. More important than the absolute number of business creations and closures is the resulting loss or gain of economic output. However, no reliable figures are currently available for this purpose.



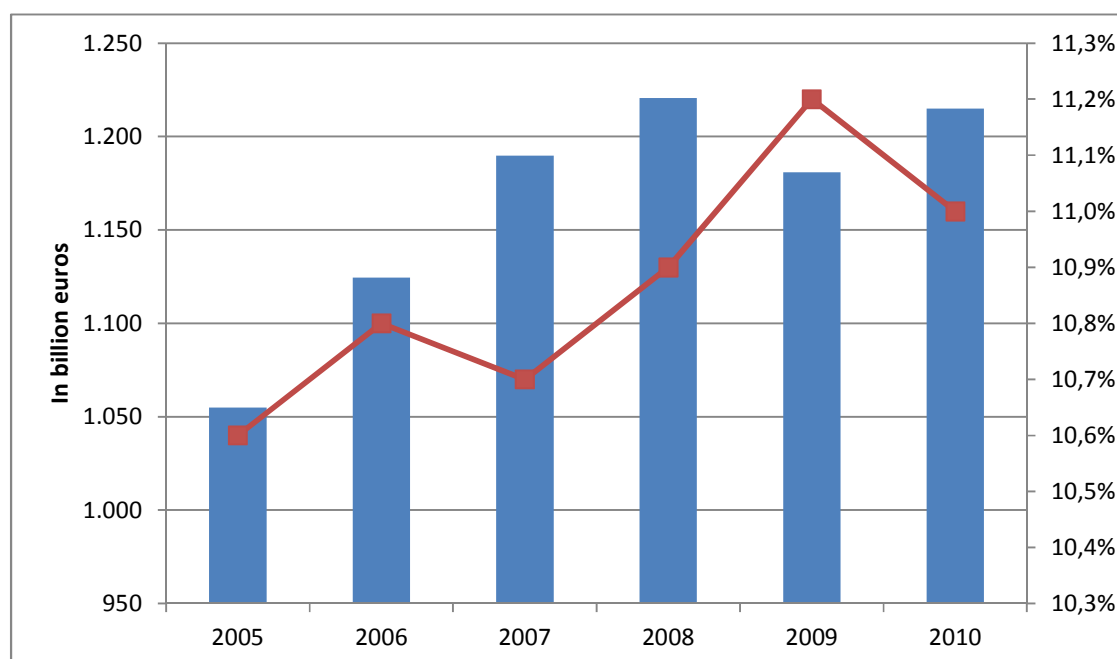
**Table 10: Start-ups, closures and net business-creation during 2010 in the industry "provision of professional, scientific and technical services". Source: Compiled and calculated according to Eurostat**

	Start-ups	Closures	Net business creation
<b>European Union</b>	405 971	:	:
<b>Belgium</b>	5745	2639	3106
<b>Bulgaria</b>	3995	1896	2099
<b>Czech Republic</b>	16,994	12,612	4382
<b>Denmark</b>	5041	4,565	476
<b>Germany</b>	47,440	43 135	4305
<b>Estonia</b>	1277	1037	240
<b>Ireland</b>	1,955	5,019	-3064
<b>Spain</b>	32,230	31 533	697
<b>France</b>	74,950	29,100	45850
<b>Italy</b>	46 406	46 563	-157
<b>Cyprus</b>	321	283	38
<b>Latvia</b>	2320	3176	-856
<b>Lithuania</b>	3091	7234	-4143
<b>Luxembourg</b>	606	376	230
<b>Hungary</b>	8509	8378	131
<b>Malta</b>	449	91	358
<b>Netherlands</b>	24,760	11,886	12874
<b>Austria</b>	4,447	4556	-109
<b>Poland</b>	30,740	17,729	13011
<b>Portugal</b>	12,199	20,072	-7873
<b>Romania</b>	4312	8,121	-3809
<b>Slovenia</b>	2939	1442	1497
<b>Slovakia</b>	7456	9,456	-2000
<b>Finland</b>	5,260	5746	-486
<b>Sweden</b>	12,714	9263	3451
<b>United Kingdom</b>	49,815	46 425	3390

### 3.2.4. Post freelance embossed industries to gross-value-added and sales

Gross-value-added in liberal profession dominated industries<sup>44</sup> increased from 1.050 billion Euros in 2005 to 1.220 billion Euros in 2008 (Figure 8). In 2009, there was a crisis-induced decline to 1.180 billion Euros. 2010 saw an increase to 1,200 billion Euros thus nearly returning to 2008 levels. The contribution of liberal profession dominated industries during the observation period remained in a narrow band of between 10.6 percent and 11.2 percent. Liberal profession dominated industries therefore contributed more than one in ten Euros of gross-value-added in the EU-27. Here, the maximum value was achieved in 2009. This is a sign that the financial crisis did not affect the liberal profession dominated industries as hard as the overall economy. As a result, the liberal profession dominated industries contributed to the stabilisation of the economic situation.

**Figure 8: Gross-added-value<sup>45</sup> in liberal profession dominated industries and their share of total gross added value.**  
Source: Own illustration according to Eurostat from the national accounts



The share of liberal professional dominated industries in the total gross-value-added generated in 2010 fluctuated between 13.5 percent in Belgium and 6.5 percent in Bulgaria and Romania (Table 11). Overall, the proportion of gross-value-added is lower in the eastern Member States than in western ones.

44 These are the industries "provision of professional, scientific and technical services" and "health care".

45 Shown here is the gross-value-added at basic prices, which corresponds to the value of output at basic prices less intermediate consumption at purchasers' prices. The base price is the price received by producers from the purchaser for one unit of the product, excepting taxes and subsidies on the product.

**Table 11: Gross-value-added<sup>46</sup> in liberal profession dominated industries and their share of total gross added value.**  
Source: Own illustration according to Eurostat from the national accounts

	2008	2009	2010
<b>European Union (27 countries)</b>	10.9%	11.2%	11.0%
<b>Belgium</b>	13.3%	13.8%	13.5%
<b>Bulgaria</b>	4.7%	5.5%	6.5%
<b>Czech Republic</b>	8.3%	8.5%	8.5%
<b>Denmark</b>	9.8%	10.7%	10.5%
<b>Germany</b>	11.7%	11.7%	11.5%
<b>Estonia</b>	7.7%	8.6%	8.1%
<b>Ireland</b>	:	:	:
<b>Greece</b>	8.2%	9.2%	8.5%
<b>Spain</b>	:	:	:
<b>France</b>	12.1%	12.2%	12.2%
<b>Italy</b>	10.7%	10.9%	10.9%
<b>Cyprus</b>	7.2%	7.5%	8.8%
<b>Latvia</b>	7.5%	7.5%	7.2%
<b>Lithuania</b>	6.4%	7.5%	6.8%
<b>Luxembourg</b>	:	:	:
<b>Hungary</b>	8.0%	8.2%	8.2%
<b>Malta</b>	:	:	:
<b>Netherlands</b>	11.3%	11.8%	11.4%
<b>Austria</b>	9.4%	9.7%	9.5%
<b>Poland</b>	8.6%	8.6%	8.5%
<b>Portugal</b>	8.7%	9.0%	8.8%
<b>Romania</b>	5.9%	6.2%	6.5%
<b>Slovenia</b>	10.1%	10.6%	10.8%
<b>Slovakia</b>	7.3%	7.9%	8.0%
<b>Finland</b>	9.2%	10.0%	10.0%
<b>Sweden</b>	:	:	:
<b>United Kingdom</b>	12.2%	12.5%	12.4%

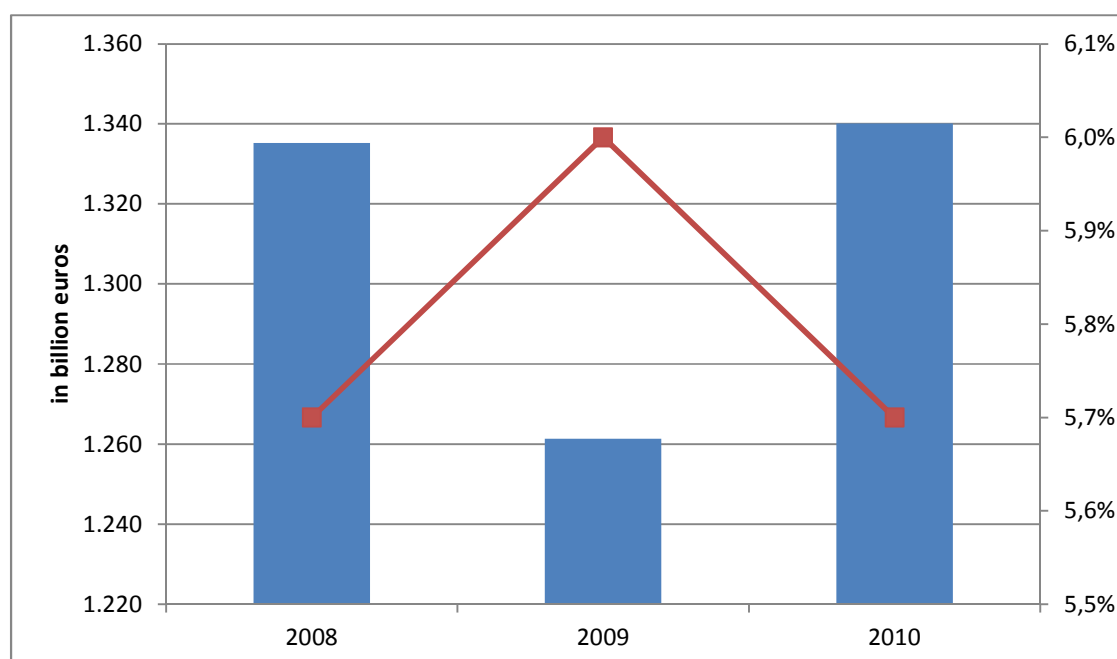
A differentiated view of liberal profession dominated occupations is not possible on the basis of the current gross-value-added data drawn from the national accounts. Therefore, in the following, reference is made to business statistics and the revenue figures available there. However, unlike the gross-value-added figures, these do not include the contribution of health.

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<sup>46</sup> Cf. Footnote 45

Revenue in the industry "provision of professional, scientific and technical services" plus pharmacies, was around 1,330 billion Euros in 2008 and 2010. In 2009, there was a crisis-induced slump to 1,260 billion Euros (Figure 9). The proportion of revenue from the industry "provision of professional, scientific and technical services" plus pharmacies; as a share of revenue across all industries was at its highest point in 2009 at almost 6.0 percent. This confirms the observation made regarding gross-value-added data, that the liberal professional dominated industries were less affected by the crisis than the economy as a whole and thus contributed to the stabilisation of the economic situation.

**Figure 9: Revenue of enterprises operating in the "provision of professional, scientific and technical services" plus pharmacies and their share of sales in the commercial economy. Source: Own illustration according to Eurostat from the business statistics**



The relative share of revenues in the industry "provision of professional, scientific and technical services" plus pharmacies in 2010 fluctuated between 2.6 percent in Estonia and 7.3 percent in France (Table 12).

**Table 12: National revenues in the industry "provision of professional, scientific and technical services" plus pharmacies as a percentage share of overall commercial revenues in the EU-27. Source: Own illustration according to Eurostat from the business statistics**

	2008	2009	2010
<b>European Union (27)</b>	5.7%	6.0%	5.7%
<b>Belgium</b>	4.9%	5.6%	5.9%
<b>Bulgaria</b>	3.1%		3.5%

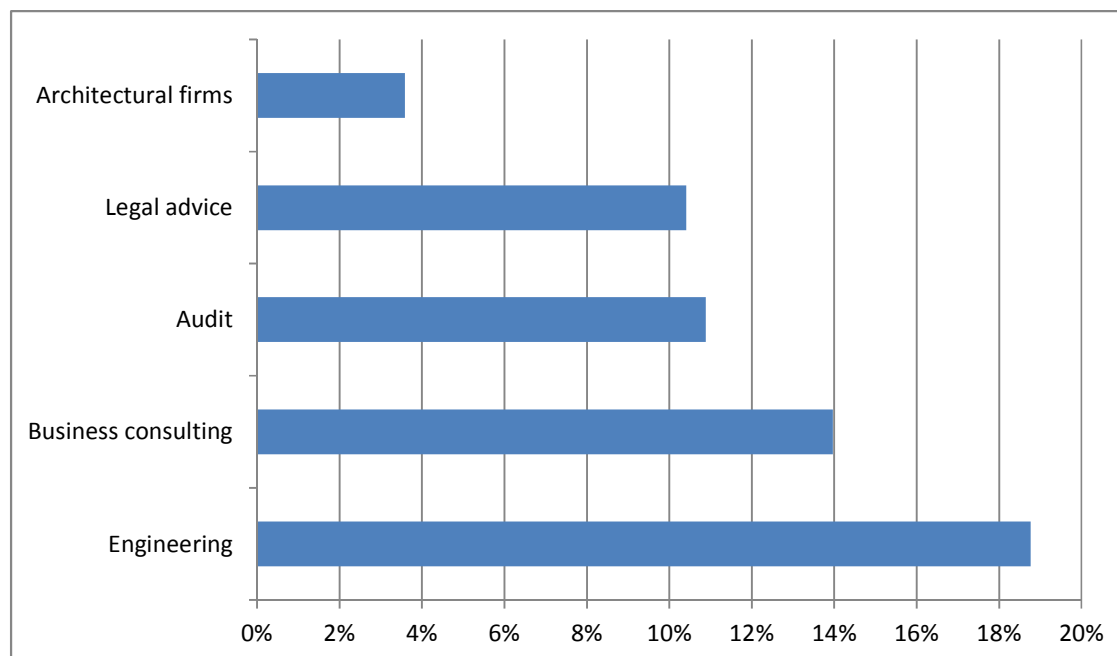
<b>Czech Republic</b>	4.3%		4.3%
<b>Denmark</b>		5.8%	5.0%
<b>Germany</b>	4.9%	5.5%	4.9%
<b>Estonia</b>	2.5%	3.7%	2.6%
<b>Ireland</b>	4.8%	4.8%	4.8%
<b>Greece</b>			
<b>Spain</b>	7.9%	8.9%	5.4%
<b>France</b>	5.6%	6.8%	7.3%
<b>Italy</b>	4.5%	4.7%	4.8%
<b>Cyprus</b>	4.0%	4.5%	5.4%
<b>Latvia</b>	3.8%	4.2%	3.8%
<b>Lithuania</b>	3.5%	3.8%	3.6%
<b>Luxembourg</b>	4.3%	5.2%	4.3%
<b>Hungary</b>	4.4%	5.1%	4.8%
<b>Malta</b>			
<b>Netherlands</b>	5.9%	6.5%	6.2%
<b>Austria</b>	4.8%	5.2%	4.9%
<b>Poland</b>	3.7%	4.0%	3.8%
<b>Portugal</b>	4.4%	4.8%	4.9%
<b>Romania</b>	4.2%	4.7%	4.7%
<b>Slovenia</b>	5.3%	5.8%	6.0%
<b>Slovakia</b>	2.9%	3.3%	4.0%
<b>Finland</b>	3.8%	4.0%	3.9%
<b>Sweden</b>	5.1%	5.4%	6.0%
<b>United Kingdom</b>	6.9%	7.3%	7.1%

For selected liberal professional occupations, Figure 10 shows the share of the respective profession in overall revenue for the industry "provision of professional, scientific and technical services".<sup>47</sup> The revenue share of the engineering profession is highest at 18.8 percent. Architectural firms have a share of 3.6 percent.

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<sup>47</sup> Country figures in the Appendix.

**Figure 10: Share of selected freelance professional fields of sales in the industry "provision of professional, scientific and technical services" in 2010 in the EU-27, Source: Own illustration according to Eurostat from the business statistics**



Although the smallest enterprises accounted for 96.5 percent of all enterprises within the industry "provision of professional, scientific and technical services", they contributed little more than one in three Euros of revenue in this industry (Table 13). Large enterprises were found to contribute one in every four Euros of revenue, although they make up less than 0.1 percent of all enterprises. The small and medium enterprises also contributed a disproportionately greater share of revenue (21.0 percent and 17.2 percent); relative to their relative numerical share of all enterprises (3.1 percent and 0.4 percent). This uneven distribution of business prevalence and revenue shares is typical of all sectors of the economy, while their significance can greatly vary from one sector to another. Across all industries, the dominance of large enterprises with regard to revenue is even more strongly pronounced.<sup>48</sup> In this respect, the industry "provision of professional, scientific and technical services" is characterised by the relatively high revenue shares achieved by small and medium-sized enterprises (SME or SMEs).

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<sup>48</sup> In relation to the entire commercial economy, the revenue share of large companies in 2010 exceeded 40 percent. Source: Own calculations based on data from Eurostat.

**Table 13: Share of sales within the industry "provision of professional, scientific and technical services" by size class in 2010, Source: Compiled and calculated according to reports from the structural business statistics by Eurostat**

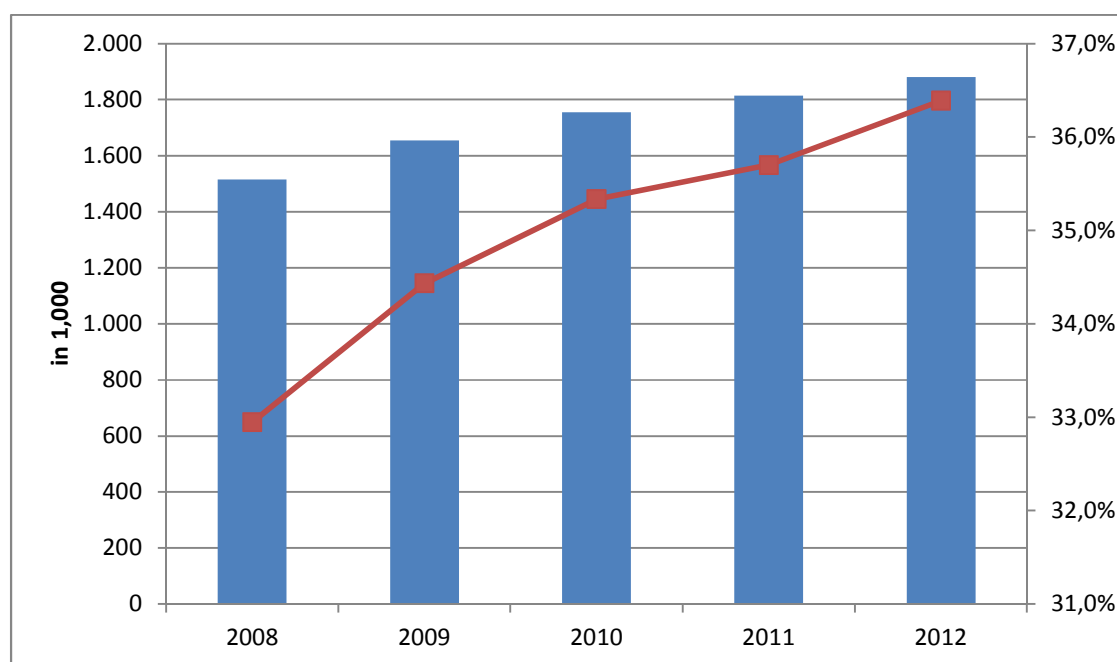
	0 to 9 employees	10 to 49 employees	50 to 249 Employees	250 employees and more
<b>European Union (27) countries)</b>	36.3%	21.0%	17.2%	25.6%
<b>Belgium</b>	39.7%	17.9%	22.1%	20.3%
<b>Bulgaria</b>	48.5%	28.4%	18.4%	4.7%
<b>Czech Republic</b>	45.7%	23.8%	18.9%	11.6%
<b>Denmark</b>	26.8%	20.3%	19.6%	33.4%
<b>Germany</b>	28.1%	25.0%	17.6%	29.3%
<b>Estonia</b>	56.5%	31.1%	12.4%	0.0%
<b>Ireland</b>	35.2%	27.0%	16.1%	21.6%
<b>Spain</b>	37.8%	21.8%	21.2%	19.2%
<b>France</b>	39.2%	20.8%	15.3%	24.7%
<b>Italy</b>	54.7%	15.9%	10.4%	19.0%
<b>Cyprus</b>	41.3%	30.1%	18.8%	9.8%
<b>Latvia</b>				
<b>Lithuania</b>	46.8%	35.7%	12.8%	4.6%
<b>Luxembourg</b>	28.7%	25.6%	22.2%	23.6%
<b>Hungary</b>	50.7%	27.5%	16.6%	5.2%
<b>Netherlands</b>	34.4%	19.2%	18.0%	28.4%
<b>Austria</b>	41.3%	29.0%	22.2%	7.5%
<b>Poland</b>	45.5%	13.7%	20.0%	20.9%
<b>Portugal</b>	45.1%	24.9%	19.0%	10.9%
<b>Romania</b>	43.4%	25.5%	19.5%	11.6%
<b>Slovenia</b>				
<b>Slovakia</b>	90.8%	5.1%	2.4%	1.7%
<b>Finland</b>	38.9%	27.4%	18.3%	15.4%
<b>Sweden</b>	39.3%	22.7%	17.1%	20.8%
<b>United Kingdom</b>	25.7%	18.3%	18.0%	38.0%

### **3.2.5. Future demand for professionals and skilled labour needs in the liberal professions**

On average in EU-27 for 2012, more than a third of self-employed persons in liberal profession dominated sectors were aged 50 to 64 (Figure 11). The proportion of older self-employed persons has risen steadily in recent years. This trend can be observed across all sectors of the economy. In absolute

terms, the number of older self-employed persons has risen from 1.5 billion in 2008 to over 1.8 billion in 2012.

**Figure 11: Number of 50-64-year-old self-employed persons in liberal profession dominated industries and their share of all self-employed persons in this sector. Source: Own illustration according to data from the European Labour Force Survey by Eurostat**



Within the liberal profession dominated industries, there are large differences between countries (Table 14). While in Luxembourg, one in five self-employed persons in a liberal profession dominated industry was 50 to 64 years old; this was the case for approximately every second such person in Sweden. The high proportion of older self-employed persons is also a reflection of the demographic development in the respective countries. What impact it will have on the operation of liberal professions remains to be seen. Due to medical-technical progress, it is quite possible that in the future more liberal professionals will also work well beyond the age of 64, either because they need the income or for reasons of self-realisation. Especially because no strict age limit for retirement applies in the case of self-employment. Nevertheless, countries with a high proportion of older professionals will be forced to deal with replacement issues, when a portion of liberal professionals withdraws into retirement. This could result in some regions being forced to discuss the guarantee of certain liberal professional services particularly in health care.



**Table 14: Share of self-employed persons aged 50 to 64 years out of all self-employed persons aged 20 to 64 years in liberal profession dominated industries in the EU-27. Source: Own illustration according to data from the European Labour Force Survey by Eurostat**

	2008	2009	2010	2011	2012
<b>European Union (27 countries)</b>	32.9%	34.4%	35.3%	35.7%	36.4%
<b>Belgium</b>	28.8%	32.5%	31.2%	34.8%	35.6%
<b>Bulgaria</b>	30.8%	32.2%	33.1%	44.7%	46.6%
<b>Czech Republic</b>	38.4%	41.2%	36.2%	37.2%	40.6%
<b>Denmark</b>	44.1%	44.8%	37.0%	41.2%	45.3%
<b>Germany</b>	37.8%	38.6%	39.6%	41.0%	43.1%
<b>Estonia</b>	:	:	:	:	:
<b>Ireland</b>	32.4%	32.9%	34.6%	40.4%	37.1%
<b>Greece</b>	30.3%	31.5%	30.9%	32.3%	34.3%
<b>Spain</b>	24.4%	27.5%	29.6%	30.0%	30.4%
<b>France</b>	36.8%	39.8%	40.6%	37.1%	39.5%
<b>Italy</b>	23.8%	25.5%	26.7%	26.5%	26.9%
<b>Cyprus</b>	40.6%	34.4%	41.9%	47.0%	45.2%
<b>Latvia</b>	:	38.1%	:	:	43.8%
<b>Lithuania</b>	:	:	:	:	:
<b>Luxembourg</b>	:	25.0%	31.3%	34.5%	25.4%
<b>Hungary</b>	42.4%	34.2%	40.6%	38.6%	41.1%
<b>Malta</b>	:	:	:	:	:
<b>Netherlands</b>	38.8%	40.0%	40.3%	40.4%	:
<b>Austria</b>	31.0%	32.1%	37.1%	38.6%	36.0%
<b>Poland</b>	30.2%	34.0%	34.1%	34.0%	33.2%
<b>Portugal</b>	:	27.1%	27.3%	25.8%	28.6%
<b>Romania</b>	:	:	:	:	:
<b>Slovenia</b>	30.9%	34.6%	31.3%	30.3%	32.3%
<b>Slovakia</b>	31.9%	30.3%	33.7%	37.7%	35.9%
<b>Finland</b>	41.3%	41.1%	43.8%	45.1%	43.2%
<b>Sweden</b>	48.9%	49.1%	51.5%	50.4%	48.1%
<b>United Kingdom</b>	39.4%	38.8%	39.8%	40.4%	39.8%

The figures on the age structure of the liberal professions show that in future, the liberal professions increasingly need to win over young professionals in order to ensure the existing supply of services, including in regional areas. It should be noted that due to the general demographic trends, the pool of labour from which the liberal professions may draw new young professionals is shrinking overall. It is therefore important for the recruitment of new liberal professionals, that the proportion of young

people with an appropriate level of qualification is high. The liberal professions are in competition with the commercial economy for qualified young people. In order to survive in the long term, the occupational profile of the liberal professions needs to be attractive and fashionable. Here, the respective professions are challenged to present themselves as a desirable life-ambition for young, qualified people.

In the EU-27, the share of young people with a tertiary qualification has risen to approximately 25.4 percent in 2012 from 19.0 percent in 2003. (Table 15)

Although this does not directly allow conclusions to be drawn, with regard to the proportion of qualifications allowing for admission to a Liberal Profession, it is not unrealistic to assume that an ever-increasing proportion of young people have obtained the necessary qualifications.

**Table 15: Proportion of tertiary education (ISCED levels 5 and 6 in 1997) as a proportion of overall educational attainment among persons aged 20-29 years, Source Own calculation and representation, according to the Labour Force Survey by Eurostat**

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
<b>European Union (27 countries)</b>	19.0%	19.9%	20.7%	21.4%	21.7%	22.3%	23.2%	23.6%	24.4%	25.4%
<b>Belgium</b>	27.3%	30.8%	31.3%	32.0%	31.4%	32.3%	33.5%	33.2%	32.5%	33.5%
<b>Bulgaria</b>	15.0%	14.9%	14.2%	14.8%	14.5%	14.8%	15.4%	15.1%	16.4%	17.6%
<b>Czech Republic</b>	7.6%	8.9%	10.3%	11.5%	11.6%	13.5%	15.6%	16.8%	17.6%	20.4%
<b>Denmark</b>	19.6%	19.3%	22.7%	23.0%	19.3%	18.5%	18.1%	18.2%	19.2%	19.8%
<b>Germany</b>	10.5%	10.8%	11.2%	11.1%	11.4%	12.4%	13.4%	13.8%	15.3%	16.5%
<b>Estonia</b>	19.7%	22.6%	24.6%	24.4%	24.0%	24.2%	25.0%	25.2%	25.6%	27.1%
<b>Ireland</b>	31.2%	32.4%	32.9%	33.6%	34.4%	34.8%	35.4%	35.1%	34.3%	35.8%
<b>Greece</b>	15.5%	16.9%	16.6%	18.5%	20.2%	21.0%	21.7%	22.5%	24.8%	26.5%
<b>Spain</b>	31.5%	31.5%	32.4%	32.3%	30.9%	30.3%	29.5%	30.2%	30.5%	30.8%
<b>France</b>	34.9%	35.0%	35.6%	35.9%	34.7%	34.2%	34.9%	34.3%	34.1%	34.5%
<b>Italy</b>	7.7%	8.7%	10.5%	12.1%	13.6%	14.3%	14.6%	14.3%	14.4%	15.1%
<b>Cyprus</b>	36.3%	33.2%	33.4%	36.7%	38.5%	40.2%	41.3%	42.3%	43.6%	45.1%
<b>Latvia</b>	13.9%	14.3%	18.2%	18.6%	19.0%	20.9%	20.9%	22.8%	23.4%	26.5%
<b>Lithuania</b>	22.5%	27.9%	24.9%	26.0%	26.7%	28.8%	28.9%	30.0%	30.0%	29.9%
<b>Luxembourg</b>	14.7%	23.9%	24.6%	20.2%	23.4%	25.0%	29.7%	26.9%	29.3%	32.5%
<b>Hungary</b>	11.8%	13.2%	14.6%	15.2%	16.1%	17.0%	17.1%	17.3%	18.3%	20.1%
<b>Malta</b>	15.5%	16.1%	15.2%	18.3%	20.5%	19.2%	19.2%	21.9%	23.4%	22.3%
<b>Netherlands</b>	21.4%	24.5%	25.5%	25.3%	25.7%	27.1%	27.4%	27.4%	27.4%	28.2%
<b>Austria</b>	12.2%	12.9%	12.1%	10.5%	10.2%	10.3%	11.9%	12.0%	12.2%	13.1%
<b>Poland</b>	14.1%	15.5%	17.5%	19.4%	20.8%	22.3%	25.2%	26.7%	28.3%	29.4%

<b>Portugal</b>	12.1%	14.1%	14.0%	14.6%	16.1%	17.8%	18.9%	19.4%	21.5%	23.0%
<b>Romania</b>	8.3%	9.7%	10.0%	10.9%	11.9%	13.2%	14.1%	15.1%	16.7%	17.4%
<b>Slovenia</b>	12.7%	13.5%	14.4%	15.3%	16.6%	16.8%	16.6%	16.9%	18.1%	20.2%
<b>Slovakia</b>	9.5%	10.2%	11.4%	12.0%	12.9%	14.0%	16.4%	19.0%	20.9%	23.3%
<b>Finland</b>	19.4%	18.9%	17.4%	17.2%	17.7%	17.6%	19.2%	19.0%	18.9%	19.3%
<b>Sweden</b>	22.8%	23.2%	23.8%	25.8%	25.4%	25.7%	25.9%	25.2%	25.0%	26.2%
<b>United Kingdom</b>	27.9%	28.6%	29.1%	29.3%	29.5%	29.9%	31.0%	32.2%	33.5%	34.3%

Skilled immigration provides another means of meeting demand for qualified persons for a particular profession. Overall in 2008 in the EU-27, over a quarter of the working population born outside the reporting country held a tertiary qualification (Table 16). The proportion of foreign-born employees with tertiary qualifications varies greatly between Member States. While this represented only 12.7 percent in Slovenia and Italy, their proportion in Poland is about 50 percent. The data does not allow conclusions as to whether the country of birth was outside the EU or simply another EU country. However, the significance of labour migration is rising within the EU. As a result, in the future we are likely to see an increase in highly qualified persons from the EU countries most affected by the financial and debt crisis looking for work in other EU countries. The persons concerned may thereby obtain their qualifications and gain valuable experience abroad, while receiving countries benefit from the increased supply of skilled labour. However, the sending countries may benefit over time, when migrants return to their home country after several years abroad and apply knowledge gained abroad there. Surveys as part of the Professional Qualifications Directive show that the rate of mobility in the field of highly qualified, regulated activities<sup>49</sup> has been rather low so far.<sup>50</sup>

**Table 16: Proportion of foreign-born labour force participants with tertiary qualifications (levels 5 and 6 ISCED 1997) as a share of all foreign-born workers in 2008. Source: Own illustration according to data from the Special Survey 2008 "Labour Market Situation of Migrants" as part of the Labour Force Survey by Eurostat**

	2008
<b>European Union (27 countries)</b>	25.4%
<b>Belgium</b>	38.0%
<b>Bulgaria</b>	
<b>Czech Republic</b>	20.0%
<b>Denmark</b>	20.4%
<b>Germany</b>	20.9%
<b>Estonia</b>	40.7%
<b>Ireland</b>	40.0%

<sup>49</sup> The concept of regulated activities is not identical to the liberal professions, however, there is significant over-lap.

<sup>50</sup> Cf. DG Internal Market and Services: *Revised Final Report - Study Evaluating the Professional Qualifications Directive against recent educational Reforms in EU Member States*, 28 October 2011.

<b>Greece</b>	13.6%
<b>Spain</b>	24.0%
<b>France</b>	27.3%
<b>Italy</b>	12.7%
<b>Cyprus</b>	33.2%
<b>Latvia</b>	30.4%
<b>Lithuania</b>	28.5%
<b>Luxembourg</b>	38.7%
<b>Hungary</b>	34.1%
<b>Malta</b>	19.4%
<b>Netherlands</b>	29.2%
<b>Austria</b>	18.7%
<b>Poland</b>	51.3%
<b>Portugal</b>	22.1%
<b>Romania</b>	
<b>Slovenia</b>	12.7%
<b>Slovakia</b>	27.4%
<b>Sweden</b>	35.5%
<b>United Kingdom</b>	35.9%

In a survey by Eurostat on possible impediments to growth in the 2011-2013 period; enterprises in the industry "provision of professional, scientific and technical services," expressed mixed opinions on relevance of the issue of availability of qualified personnel (Table 17). While this factor was considered unimportant in some countries, in other countries (Germany, Netherlands, Finland and Sweden) more than one in ten enterprises saw this as a problem. The loss of existing staff was considered a problem for one in ten enterprises in Sweden only. Succession planning was not perceived as a major obstacle to growth in any country.

**Table 17: Proportion of businesses in the industry "provision of professional, scientific and technical services" that see one or more factors as a potential obstacle to growth between 2011 and 2013**

	<b>Limited availability of suitable new staff</b>	<b>Loss of existing staff</b>	<b>Unclear succession, transmission, inheritance</b>
<b>Belgium</b>	9.2	2.6	2.6
<b>Bulgaria</b>	6.2	4.1	0.2
<b>Denmark</b>	6.1	2.8	3.3
<b>Germany</b>	10.6	4.2	1.7
<b>Ireland</b>	0.7	1.2	0.0
<b>Greece</b>	0.0	3.9	0.0

<b>Spain</b>	0.9	1.7	0.4
<b>France</b>	7.6	2.5	1.4
<b>Italy</b>	1.9	0.4	0.7
<b>Cyprus</b>	7.3	6.1	0.0
<b>Latvia</b>	0.0	3.4	0.0
<b>Lithuania</b>	1.0	1.0	0.0
<b>Luxembourg</b>	7.0	5.5	0.7
<b>Malta</b>	7.7	5.8	0.0
<b>Netherlands</b>	10.0	1.0	0.5
<b>Poland</b>	1.9	0.3	0.0
<b>Slovakia</b>	1.8	0.0	0.0
<b>Finland</b>	11.0	6.0	0.0
<b>Sweden</b>	16.3	11.8	1.0
<b>United Kingdom</b>	4.7	3.3	1.5

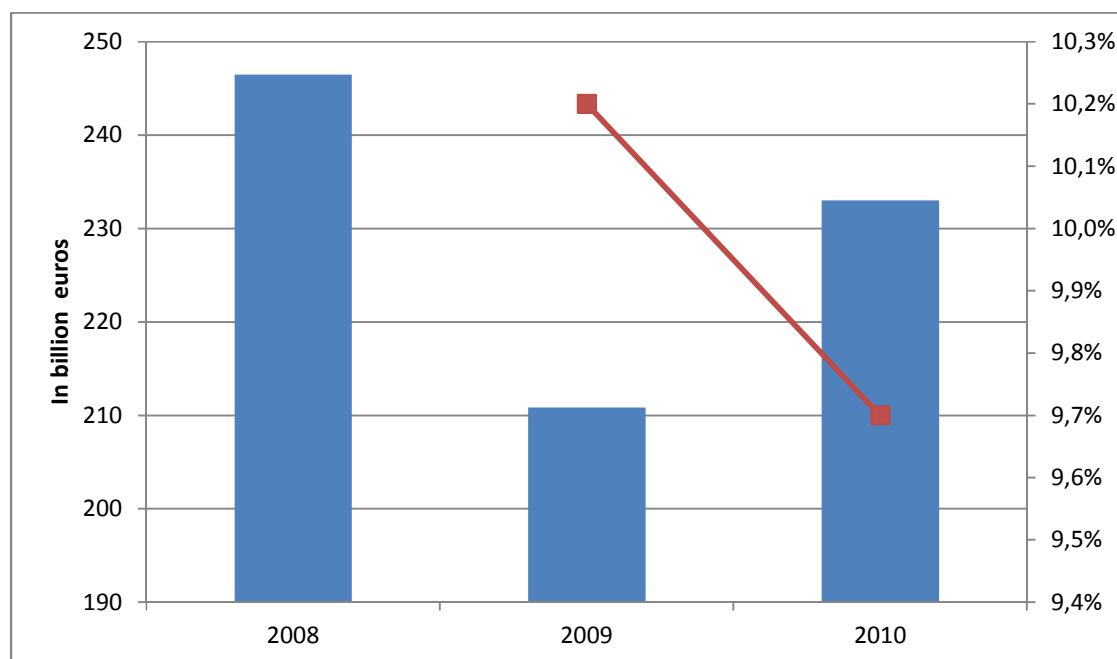
### 3.2.6. Key figures on the economic situation of the liberal professions

The data from Eurostat on the revenue of the liberal professions are all based on statistical aggregates. They represent average values that have only very limited diagnostic value without details on the distribution within the aggregates. Although the average values, for example, suggest a good result, this need not apply to all companies. Thus, no conclusions are possible on the respective proportions of prosperous and non-performing enterprises.

The gross operating surplus indicates the cash operating surplus net of wage costs. The operating surplus allows the enterprise to finance investments, to repay funds to capital or to pay tax liabilities. In contrast to profits set out in the accounts, not all costs are taken into consideration for the calculation of the gross operating surplus. The gross operating surplus in the industry "provision of professional, scientific and technical services" plus pharmacies, decreased in the crisis year 2009 by 246 billion Euros to 210 billion. In 2010, 233 billion Euros were once again achieved.

The share of the industry "provision of professional, scientific and technical services" plus pharmacies in the total gross operating surplus in the EU-27 in 2009 was 10.2 percent and fell in 2010 (Figure 12) to 9.7 percent. This is consistent with observations relating to gross-value-added and sales. For these too, the share of the industry "provision of professional, scientific and technical services" was at its highest in the crisis year 2009, suggesting a stabilising role for this industry.

**Figure 12: Gross operating surplus in liberal profession dominated industries (plus pharmacies) in million EUR and its share in the total gross operating surplus. Source own representation according to reports from the structural business statistics by Eurostat**



In 2010, the share of gross operating surplus in the industry "provision of professional, scientific and technical services" in the gross operating surplus in each country varied between the Member States by between 12.9 percent in Italy and 3.9 percent in Estonia (Table 18).

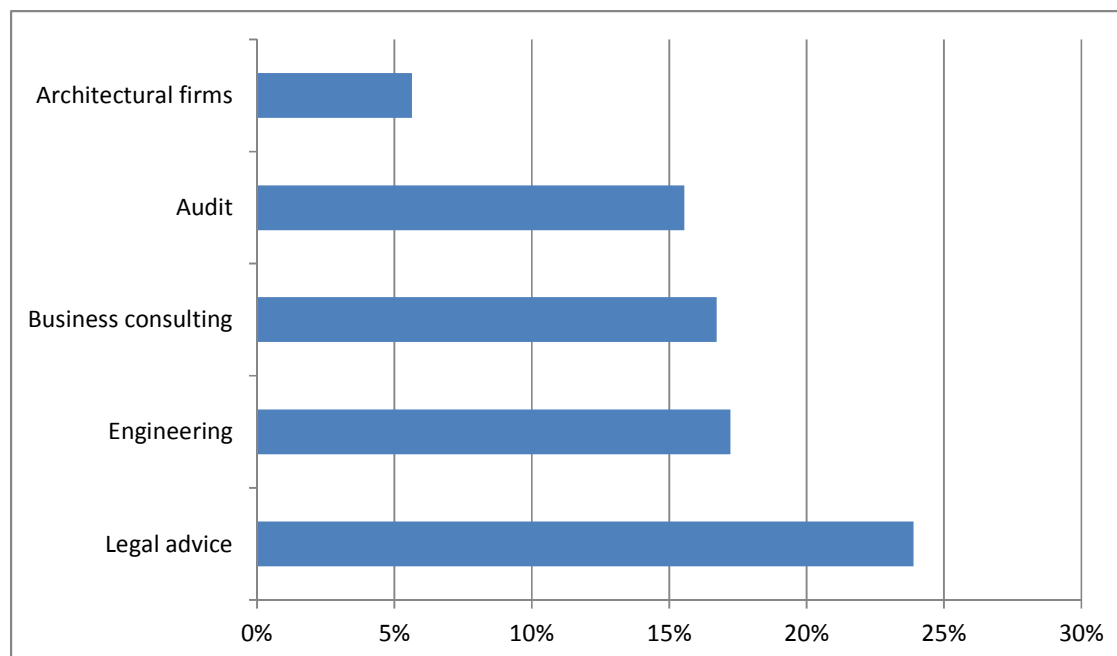
**Table 18: Share of gross operating surplus in the industry "provision freelancing, scientific and technical services" in the total gross operating surplus in each country. Own source representation according to reports from the structural business statistics by Eurostat**

	2008	2009	2010
<b>European Union (27 countries)</b>		10.2%	9.7%
<b>Belgium</b>	9.6%	9.5%	9.9%
<b>Bulgaria</b>	6.1%		5.9%
<b>Czech Republic</b>	7.7%		6.3%
<b>Denmark</b>		6.5%	5.1%
<b>Germany</b>	10.7%	10.3%	9.7%
<b>Estonia</b>	5.5%	7.0%	3.9%
<b>Ireland</b>	8.2%	5.8%	5.7%
<b>Greece</b>			
<b>Spain</b>	8.2%	13.3%	9.1%
<b>France</b>	8.7%	9.0%	9.9%
<b>Italy</b>	13.8%	12.9%	12.9%

<b>Cyprus</b>	7.1%	8.0%	10.1%
<b>Latvia</b>	6.6%	7.3%	5.5%
<b>Lithuania</b>	6.8%	5.4%	4.7%
<b>Luxembourg</b>	10.0%	17.2%	11.0%
<b>Hungary</b>	4.9%	4.2%	5.9%
<b>Malta</b>			
<b>Netherlands</b>	9.5%	9.5%	8.9%
<b>Austria</b>	8.1%	8.7%	7.9%
<b>Poland</b>	6.1%	5.8%	6.7%
<b>Portugal</b>	7.4%	7.6%	8.7%
<b>Romania</b>	5.4%	5.8%	5.2%
<b>Slovenia</b>	8.3%	9.7%	7.1%
<b>Slovakia</b>	4.7%	4.5%	6.3%
<b>Finland</b>	5.1%	5.6%	4.7%
<b>Sweden</b>	5.4%	3.9%	4.9%
<b>United Kingdom</b>	10.2%	12.3%	11.1%

Within the industry "provision of professional, scientific and technical services", the activity legal advice accounted for almost one in four Euros of gross operating surplus (Figure 13). The share of engineering and consulting firms amounted to around 17 percent each. Auditing and architectural firms contributed 15.5 percent and 5.6 percent respectively.

Figure 13: Shares of selected typical liberal-professional occupations in the total gross operating surplus for the industry "provision of professional, scientific and technical services" in the EU-27 in 2010. Source: Own calculations and presentation according to reports from the structural service statistics by Eurostat



At the Member State level, legal advice represents a particularly high share of gross operating surplus in the industry "provision of professional, scientific and technical services" in Luxembourg (47.1 percent) and Ireland (44.5 percent) (Table 19). In Bulgaria on the other hand, it accounts for only 9.0 percent. Engineering firms make a particularly strong contribution to national gross operating surplus in Bulgaria at 31.8 percent. The corresponding share in Ireland is only 3.7 percent. The contribution of business consulting is highest in Romania at 31.3 percent. The lowest share can be found in Italy with 8.6 percent. The national shares of gross operating surplus accounted for by auditing range from 8.6 percent in Estonia to 27.9 percent in Luxembourg. The highest contribution to the national gross operating surplus by architectural firms can be found in Austria with 9.7 percent, while Ireland has the lowest at 1.4 percent.

Table 19: Shares of selected typical liberal profession occupations in total gross operating surplus of the industry "provision of professional, scientific and technical services" in 2010 per country. Source: Own calculations and presentation according to reports from the structural service statistics by Eurostat

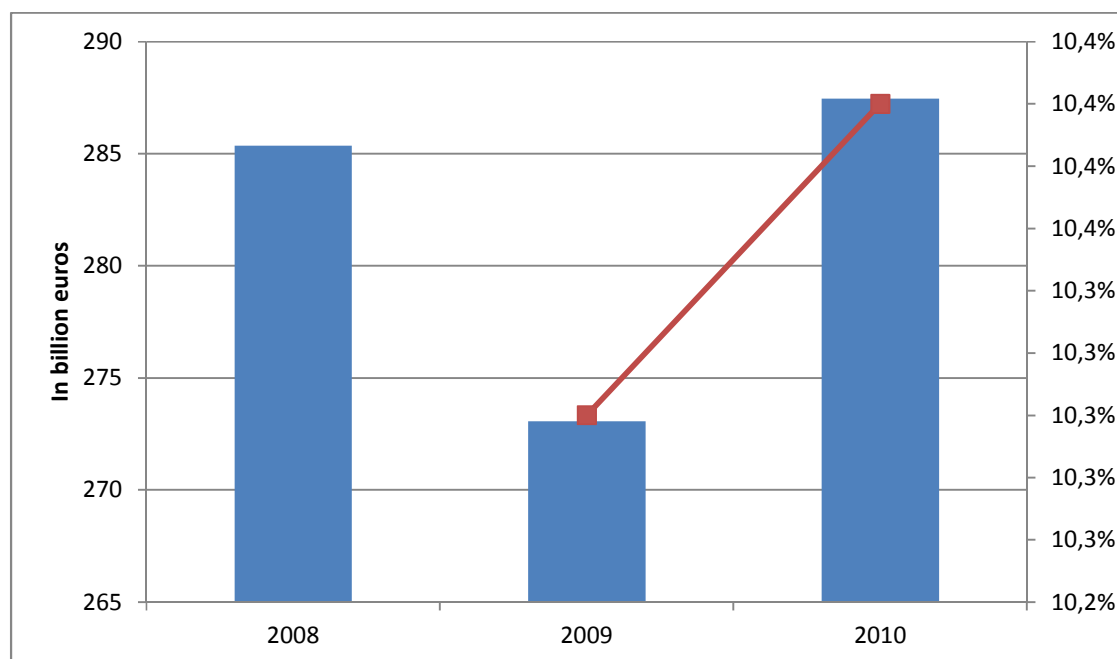
	Legal advice	Engineering	Business consulting	Audit	Architectural firms
<b>European Union (27 countries)</b>	23.9%	17.2%	16.7%	15.5%	5.6%
<b>Belgium</b>	19.2%	8.9%	28.0%	10.7%	8.5%



<b>Bulgaria</b>	9.0%	31.8%	10.1%	11.1%	4.8%
<b>Czech Republic</b>	:	:	:	:	:
<b>Denmark</b>	26.0%	28.0%	10.8%	14.2%	2.9%
<b>Germany</b>	19.5%	17.6%	10.5%	13.5%	6.2%
<b>Estonia</b>	15.1%	23.9%	:	8.6%	:
<b>Ireland</b>	44.5%	3.7%	:	24.8%	1.4%
<b>Greece</b>	:	:	:	:	:
<b>Spain</b>	31.3%	15.4%	:	13.4%	9.4%
<b>France</b>	33.9%	10.0%	15.4%	8.8%	6.5%
<b>Italy</b>	28.5%	17.1%	8.6%	19.4%	8.0%
<b>Cyprus</b>	15.7%	6.8%	21.6%	35.5%	6.3%
<b>Latvia</b>	17.7%	10.6%	14.8%	10.7%	5.1%
<b>Lithuania</b>	38.0%	10.4%	14.8%	2.8%	4.0%
<b>Luxembourg</b>	47.1%	7.4%	13.7%	27.9%	2.3%
<b>Hungary</b>	13.3%	17.0%	20.3%	15.9%	2.2%
<b>Malta</b>	:	:	:	:	:
<b>Netherlands</b>	12.3%	15.9%	29.2%	20.3%	1.6%
<b>Austria</b>	21.0%	16.4%	10.5%	16.8%	9.7%
<b>Poland</b>	14.0%	15.4%	12.4%	18.7%	5.8%
<b>Portugal</b>	23.6%	14.3%	15.6%	11.9%	3.5%
<b>Romania</b>	:	22.7%	31.3%	10.0%	4.6%
<b>Slovenia</b>	12.9%	19.9%	21.7%	13.9%	6.0%
<b>Slovakia</b>	16.4%	14.9%	17.6%	16.3%	3.0%
<b>Finland</b>	13.2%	19.8%	16.3%	15.2%	4.8%
<b>Sweden</b>	12.2%	25.1%	19.5%	15.2%	2.2%
<b>United Kingdom</b>	25.4%	21.6%	30.3%	16.8%	1.9%

In the EU-27, in 2010, around 287 billion Euros in wages and salaries were paid in the industry "provision of professional, scientific and technical services" plus pharmacies (Figure 14). After the crisis year 2009 (273 billion Euros), wage and salary payments in the sector had once again risen over 2008 levels (285 billion Euros). This accounted for roughly one in every ten Euros spent on wages and salaries in this industry.

Figure 14: Wages and salaries in the industry "provision of professional, scientific and technical services" plus pharmacies in million euro and as a share of wages and salaries in the commercial economy. Source: Own illustration according to data from the structural business statistics by Eurostat



The proportion<sup>51</sup> of wage and salary payments made in the industry "provision of professional, scientific and technical services" varied between the Member States from 5.8 percent in Poland to 16.7 percent in Luxembourg (Table 20).

Table 20: Share of wage and salary payments in the industry "provision of professional, scientific and technical services" plus pharmacies in the industrial sector, Source: Own illustration according to data from the structural business statistics by Eurostat

GEO / TIME	2008	2009	2010
<b>European Union (27 countries)</b>		10.3%	10.4%
<b>Belgium</b>	8.1%	8.0%	8.4%
<b>Bulgaria</b>	5.9%		6.5%
<b>Czech Republic</b>	6.2%		7.1%
<b>Denmark</b>		11.0%	11.5%
<b>Germany</b>	8.7%	8.8%	9.0%
<b>Estonia</b>	5.9%	7.1%	6.5%
<b>Ireland</b>	11.1%	11.4%	11.7%
<b>Greece</b>			

<sup>51</sup> Absolute figures are provided in the Annex.

<b>Spain</b>	7.7%	11.2%	8.8%
<b>France</b>		11.6%	12.2%
<b>Italy</b>	5.6%	5.5%	5.9%
<b>Cyprus</b>	8.0%	8.3%	11.1%
<b>Latvia</b>	6.7%	6.8%	6.5%
<b>Lithuania</b>	6.3%	7.0%	7.1%
<b>Luxembourg</b>	16.1%	16.5%	16.7%
<b>Hungary</b>	8.0%	8.3%	8.2%
<b>Netherlands</b>	14.4%	14.7%	15.1%
<b>Austria</b>	8.0%	8.3%	8.3%
<b>Poland</b>	5.3%	5.8%	5.8%
<b>Portugal</b>	7.1%	7.5%	7.9%
<b>Romania</b>	6.0%	6.8%	6.9%
<b>Slovenia</b>	7.5%	8.2%	8.4%
<b>Slovakia</b>	7.0%	8.1%	7.7%
<b>Finland</b>	8.5%	8.5%	8.6%
<b>Sweden</b>	9.9%	10.5%	10.8%
<b>United Kingdom</b>	15.1%	14.8%	15.1%

Across the industry "provision of professional, scientific and technical services" in 2010, the respective share of total wage payments by individual occupational groups on average across the EU-27 were as follows: Engineering 19.1 percent, audit firms 15.1 percent, consulting firms 15.0 percent, legal advice 9.3 percent and the architectural firms 3.1 percent (Table 21). Between the various Member States and professions variations are widespread. While legal advice in Romania contributes a share of just 0.1 percent to the national wage and salary bill of the industry, the share in Cyprus is 16.8 percent. In Luxembourg, auditing generates 45.1 percent of the national wage and salaries in the industry "provision of professional, scientific and technical services"; in Romania the share is only 7.9 percent. The corresponding proportions for business consulting, varies between 28.2 percent in Portugal and 6.5 percent in Luxembourg. In Italy, architectural firms contribute only 0.6 percent of the national total wages and salaries in the industry under examination compared to 8.4 percent in Cyprus. In Finland, Engineering firms contribute 32.6 percent of the national total salary bill in the industry "provision of professional, scientific and technical services", compared to 7.2 percent in Cyprus.

**Table 21: Shares of selected occupations in the total wages and salaries bill of the industry "provision of professional, scientific and technical services". Source: Own calculations and presentation according to reports from the structural business statistics by Eurostat**

	Legal advice	Audit	Business consulting	Architectural firms	Engineering
<b>European Union (27 countries)</b>	9.3%	15.1%	15.0%	3.1%	19.1%
<b>Belgium</b>	9.2%	9.4%	13.2%	2.4%	14.7%
<b>Bulgaria</b>	3.8%	19.0%	17.4%	3.2%	18.6%
<b>Czech Republic</b>					
<b>Denmark</b>	8.7%	15.2%	9.2%	4.5%	25.3%
<b>Germany</b>	6.8%	16.3%	10.4%	3.3%	18.6%
<b>Estonia</b>	9.4%	13.3%			18.9%
<b>Ireland</b>	15.5%	20.9%		5.7%	15.8%
<b>Greece</b>					
<b>Spain</b>	11.3%	20.0%	:	3.6%	23.5%
<b>France</b>	7.8%	11.4%	13.7%	3.4%	19.6%
<b>Italy</b>	8.2%	21.7%	17.4%	0.6%	12.7%
<b>Cyprus</b>	16.8%	38.8%	14.1%	8.4%	7.2%
<b>Latvia</b>	4.5%	15.9%	9.8%	5.4%	12.6%
<b>Lithuania</b>	9.5%	12.4%	16.0%	7.8%	16.0%
<b>Luxembourg</b>	8.9%	45.1%	6.5%	4.1%	12.6%
<b>Hungary</b>	5.5%	24.4%	19.5%	2.2%	16.7%
<b>Malta</b>					
<b>Netherlands</b>	9.2%	17.9%	19.4%	2.3%	18.1%
<b>Austria</b>	7.2%	14.9%	9.3%	5.1%	19.5%
<b>Poland</b>	6.4%	17.4%	19.0%	6.8%	14.6%
<b>Portugal</b>	3.5%	18.5%	28.2%	3.9%	20.4%
<b>Romania</b>	0.1%	7.9%	23.1%	4.1%	26.8%
<b>Slovenia</b>	5.8%	13.2%	14.1%	5.6%	28.4%
<b>Slovakia</b>	3.2%	24.8%	23.3%	3.3%	14.1%
<b>Finland</b>	5.6%	14.3%	15.8%	3.8%	32.6%
<b>Sweden</b>	6.2%	12.0%	18.8%	2.8%	28.9%
<b>United Kingdom</b>	14.2%	12.0%	20.2%	2.7%	18.2%

In a survey by Eurostat, companies in the industry "provision of professional, scientific and technical services," saw the general economic outlook as the biggest potential obstacle to growth for the period 2011-2013 (Table 22). In the Netherlands, the general economic outlook was mentioned most often at 28.8 percent, while in Sweden only 9.6 percent of companies saw this as an obstacle to growth. Overall, concerns about the general economic outlook are likely to reflect the impact of the financial and sovereign debt crisis in the Euro area. Concerns about demand on domestic markets are likely to be cited alongside the general economic situation and were also mentioned relatively often as a potential obstacle to growth. Price competition and low profit margins were also considered an obstacle to growth by more than one in ten businesses in the sector "provision of professional, scientific and technical services" in most Member States. In more than nine Member States, high labour costs were also cited as concerns by more than one in ten companies. This was true among others, for Poland and Slovakia, which are not seen as high-wage countries in many other EU Member States.

**Table 22: Proportion of businesses in the sector "provision of professional, scientific and technical services" that see one or more factors as a potential obstacle to growth between 2011 and 2013**

	General economic outlook	Limited demand in the local markets / home markets	Price competition, small profit margins	High labour costs
<b>Belgium</b>	22.9	10.3	11.7	12.8
<b>Bulgaria</b>	22.0	14.0	7.9	3.2
<b>Denmark</b>	23.2	13.5	17.1	10.5
<b>Germany</b>	12.4	12.2	14.4	13.1
<b>Ireland</b>	24.7	15.7	15.9	10.1
<b>Greece</b>	22.5	12.7	12.7	7.8
<b>Spain</b>	25.2	16.5	12.2	10.9
<b>France</b>	28.6	8.1	12.9	13.2
<b>Italy</b>	24.0	9.6	12.5	14.8
<b>Cyprus</b>	26.8	12.8	3.7	9.8
<b>Latvia</b>	24.1	17.2	12.1	5.2
<b>Lithuania</b>	29.2	9.4	14.6	3.3
<b>Luxembourg</b>	23.0	15.0	12.3	8.6
<b>Malta</b>	19.2	11.5	15.4	7.7
<b>Netherlands</b>	28.8	10.3	16.8	9.4
<b>Poland</b>	18.4	19.8	16.2	16.3
<b>Slovakia</b>	19.3	14.9	8.8	15.9
<b>Finland</b>	22.0	10.8	12.5	7.8
<b>Sweden</b>	9.7	11.5	15.1	9.6
<b>United Kingdom</b>	24.0	13.3	16.8	5.9

The legal framework, tax incentives and access to finance were usually hardly seen as an impediment to growth (Table 23). However, here we find a large variation between countries. In Greece and Latvia one out of every ten businesses in the sector "provision of professional, scientific and technical services" see the legal framework as a possible obstacle to growth. The same applies to tax incentives in Italy, Latvia and Lithuania. Access to finance on the other was not mentioned as a potential obstacle to growth by more than ten percent of enterprises in any country.

**Table 23: Proportion of businesses in the sector "provision of professional, scientific and technical services" that see one or more factors as a potential obstacle to growth between 2011 and 2013**

	Legal framework	Lack of tax incentives	Not enough funding
<b>Belgium</b>	5.4	3.1	2.0
<b>Bulgaria</b>	9.4	3.1	6.6
<b>Denmark</b>	2.9	0.5	3.9
<b>Germany</b>	6.0	5.7	0.9
<b>Ireland</b>	6.6	0.0	7.6
<b>Greece</b>	10.8	3.9	7.8
<b>Spain</b>	2.5	9.6	5.2
<b>France</b>	5.4	4.9	2.5
<b>Italy</b>	8.4	11.3	4.2
<b>Cyprus</b>	1.2	6.1	0.0
<b>Latvia</b>	10.3	15.5	5.2
<b>Lithuania</b>	3.8	10.8	6.2
<b>Luxembourg</b>	6.6	7.0	1.1
<b>Malta</b>	7.7	5.8	0.0
<b>Netherlands</b>	7.5	2.6	3.5
<b>Poland</b>	1.9	7.1	4.3
<b>Slovakia</b>	1.3	8.6	8.3
<b>Finland</b>	1.5	5.8	3.0
<b>Sweden</b>	3.4	1.8	0.9
<b>United Kingdom</b>	8.8	3.0	3.0

### **3.2.7. The provision of cross-border services within the European Union**

The share of services exports in the gross domestic product in the EU-27 increased from 8.9 percent in 2005 to 11.1 percent in 2012 (Table 24). A distinction between liberal professional and non-professional services is just as impossible as a distinction based on the country of destination of exports. General statements about the importance of cross-border provision of services for all liberal professions are hardly possible. While some of the services offered clearly have a regional character, (e.g. the services of midwives and medical doctors) where cross-border activities play a role only in

border areas, there are other professions in international competition (e.g. engineers or architects). However, a large part of the expertise of liberal professionals is based on the knowledge of the national legal framework. The cross-border provision of professional services therefore usually requires additional qualifications or makes collaboration with liberal professionals in the destination country necessary. Unfortunately there is no reliable data about the scope of cross-border activities by liberal professionals. In addition, the EU Commission is currently driving debate on the impact of national regulations on cross-border activities of service providers. Here it should be clarified on a case-by-case basis whether regulation is in the public interest. This debate also opens up the opportunity for the liberal professions to review existing regulations with regard to their usefulness.

**Table 24: Share of service exports in the GDP of the EU-27. Source: Own illustration according to data from the national accounts of Eurostat**

	2005	2006	2007	2008	2009	2010	2011	2012
<b>European Union (27 countries)</b>	8.9	9.4	9.8	10.2	9.9	10.3	10.7	11.1
<b>Belgium</b>	15.6	15.4	16.7	18.1	18.4	19.5	19.0	20.8
<b>Bulgaria</b>	18.0	15.8	15.6	15.3	14.0	14.2	13.9	14.2
<b>Czech Republic</b>	9.2	9.4	9.4	9.6	9.7	10.5	10.8	11.7
<b>Denmark</b>	16.9	19.0	19.9	21.5	18.4	20.1	20.3	21.0
<b>Germany</b>	5.8	6.4	6.5	6.9	7.1	7.4	7.5	7.8
<b>Estonia</b>	23.6	22.0	20.9	23.1	23.3	24.3	24.8	24.6
<b>Ireland</b>	30.4	32.7	36.0	38.4	42.3	47.6	50.4	55.4
<b>Greece</b>	12.6	12.2	12.8	13.4	10.6	11.7	12.4	12.7
<b>Spain</b>	8.3	8.5	8.6	8.8	8.4	8.9	9.8	10.3
<b>France</b>	5.6	5.5	5.6	5.7	5.2	5.5	5.8	6.0
<b>Italy</b>	5.1	5.4	5.4	5.0	4.5	4.8	5.0	5.3
<b>Cyprus</b>	39.5	40.4	41.4	38.9	34.9	35.4	35.6	35.4
<b>Latvia</b>	14.5	14.2	13.9	14.6	15.6	15.8	16.3	16.6
<b>Lithuania</b>	12.1	12.1	10.3	10.0	10.0	11.2	12.1	14.0
<b>Luxembourg</b>	118.1	131.2	140.2	143.4	130.7	138.5	144.8	147.1
<b>Hungary</b>	9.8	12.5	13.0	13.4	14.8	15.5	16.3	16.6
<b>Malta</b>	32.8	39.3	43.7	49.5	47.6	51.4	54.7	54.4
<b>Netherlands</b>	14.7	14.3	14.3	15.3	16.1	17.0	17.6	17.9
<b>Austria</b>	14.6	15.2	15.6	16.3	15.0	15.2	15.7	16.2
<b>Poland</b>	5.4	6.0	6.7	6.7	6.7	7.0	7.3	7.7
<b>Portugal</b>	6.4	7.5	8.4	8.6	8.0	8.5	9.3	9.8
<b>Romania</b>	5.2	5.7	5.6	6.4	6.0	5.4	5.6	5.8

<b>Slovenia</b>	11.4	11.7	12.3	13.4	12.5	13.3	13.7	14.8
<b>Slovakia</b>	9.1	9.7	9.5	9.1	7.1	6.9	7.2	8.2
<b>Finland</b>	8.4	8.4	9.3	11.3	11.2	11.0	10.8	10.9
<b>Sweden</b>	12.5	13.4	14.4	15.6	15.6	15.1	14.7	15.1
<b>United Kingdom</b>	10.1	10.7	11.2	12.2	12.3	12.3	12.7	12.4

Overall, enterprises in the industry "provision of professional, scientific and technical services" do not see demand in foreign markets as a major obstacle to growth (Table 25). While limited demand in local markets is seen as a potential obstacle to growth in one in ten enterprises across the EU Member States, less than one in 20 enterprises are concerned by limited foreign demand. Only in Cyprus do one in ten companies fear limited demand in foreign markets.

**Table 25: Proportion of businesses in the sector "provision of professional, scientific and technical services" that see one or more factors as a potential obstacle to growth between 2011 and 2013**

	Limited demand in local markets / home markets	Limited demand in foreign markets
<b>Belgium</b>	10.3	2.9
<b>Bulgaria</b>	14.0	3.4
<b>Denmark</b>	13.5	3.1
<b>Germany</b>	12.2	1.5
<b>Ireland</b>	15.7	1.2
<b>Greece</b>	12.7	6.9
<b>Spain</b>	16.5	2.0
<b>France</b>	8.1	1.1
<b>Italy</b>	9.6	1.7
<b>Cyprus</b>	12.8	9.8
<b>Latvia</b>	17.2	5.2
<b>Lithuania</b>	9.4	2.9
<b>Luxembourg</b>	15.0	3.6
<b>Malta</b>	11.5	3.8
<b>Netherlands</b>	10.3	0.5
<b>Poland</b>	19.8	0.9
<b>Slovakia</b>	14.9	3.1
<b>Finland</b>	10.8	1.6
<b>Sweden</b>	11.5	0.8
<b>United Kingdom</b>	13.3	1.9



## Chapter 4: The legal framework of the liberal professions

### 4.1. Introduction

The object of the study includes; in addition to the description of the economic and social function of the liberal professions, an overview of the applicable legal framework. The study of the regulatory framework includes three parts: The regulatory systems (*principles-based regulation* and *rules based regulation*) in the Member States of the EU are described in the first part (4.2.). The second part (4.3.) provides an overview of the organisational models for the liberal professions used in the Member States. Finally, the third part (Chapter 5) deals in detail with the most important aspects of professional regulation.

### 4.2. Regulatory systems

The liberal professions investigated here are subject to specific professional regulation in the large majority of Member States. Regardless of the question of regulatory scope and the intensity of regulation, two main regulatory systems can be identified in Europe. On the one hand the proscriptive and prescriptive characterised regulatory approach (*rules-based regulation*), and on the other hand the principles-based regulatory approach (*principles-based regulation*). The comparison of the regulations in EU Member States is complicated by these systemic divergences.

#### 4.2.1. Rules-Based Regulation

*Rules-based regulation* is defined as a casuistically structured normative system, which establishes legal consequences for a wide range of individual circumstances on the basis of clearly established criteria<sup>52</sup>. The person subject to the rule (in this case the members of the liberal profession) is required to follow the requirements of the law.<sup>53</sup> The advantage of *rules-based regulation* is the high level of legal certainty for individual circumstances all regulated by the rule.<sup>54</sup> The service provider knows how to behave in specific situations.<sup>55</sup> A certain disadvantage is the tendency towards excessive regulation, in a manner which is unwieldy and not accessible to the respective professional.<sup>56</sup> In addition, new and unexpected situations are often insufficiently provided for by the retrospectively

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52 Graeme Laurie / Sethi, Nayha, *Towards Principles-Based Approaches to Governance of Health-Related Research Using Personal Data*, The European Journal of Risk Regulation, No. 2013/1, pp. 43, 45; Schlag, Pierre, *Rules and Standards*, UCLA Law Review, Vol 33, Issue 2, 1985, pp. 379, 381 f, Sullivan, Kathleen M., *Foreword: The Justices of Rules and Standards*, Harvard Law Review, 1992/93, Volume 106.1, pp. 22, 58

53 Graeme Laurie / Sethi, Nayha, *Towards Principles-Based Approaches to Governance of Health-Related Research Using Personal Data*, The European Journal of Risk Regulation, No. 2013/1, pp. 43, 45; Schlag, Pierre, *Rules and Standards*, UCLA Law Review, Vol 33, Issue 2, 1985, pp. 379, 382; Schneider, Uwe, *Kapitalmarktrecht - Principles-based or Rules-Based Regulation?* in: Baums, Theodor / Hutter, Stephan *Memorial in honor of Michael Gruson*, Frankfurt, 2009, pp. 369, 372

54 Awrey, Dan, *Regulating Financial Innovation: A More Principles-Based Proposal?*, Brooklyn Journal of Corporate, Financial and Commercial Law, 2011, Vol 5, Issue 2, pp. 273, 276; Schlag, Pierre, *Rules and Standards*, UCLA Law Review, Vol 33, Issue 2, 1985, pp. 379, 384.

55 Graeme, Laurie/Sethi, Nayha, *Towards Principles-Based Approaches to Governance of Health-Related Research Using Personal Data*, The European Journal of Risk Regulation, Issue 2013/1, pp. 43, 46; Schauer, Frederick, *The Convergence of rules and Standards*, New Zealand Law Review, 2003, Heft 3, S. 303, 309, Sullivan, Kathleen M., *Foreword: The Justices of Rules and Standards*, Harvard Law Review, 1992/93, Vol 106.1, pp. 22, 62.

56 Schneider, Uwe, *Kapitalmarktrecht - Principles-based or Rules-Based Regulation?* in: Baums, Theodor / Hutter, Stephan *Memorial in honour of Michael Gruson*, Frankfurt, 2009, pp. 369, 374

oriented system.<sup>57</sup> Hazards for service beneficiaries, the general public or consumers, which appear for the first time, result in constant calls for improvement by the legislator. The *rules-based system regulation* can be described as prevalent in the EU Member States and is found mainly in the continental European Member States.

#### 4.2.2. Principles-Based Regulation

More recently, Common law and certain Nordic legal systems have increasingly turned to the use of *principles-based regulation*. This approach is characterised by the formulation of abstract legal principles of professional regulation, which must then be applied on a case-by-case basis.<sup>58</sup> In the exercise of their profession, the respective professionals must be guided by the principles and objectives in order to achieve the goals stated therein (*outcomes-based regulation*). This is in contrast to rules based regulation, as the way in which the person subject to the rule achieves the legally mandated objectives in a given situation, is left to their sole discretion.<sup>59</sup>

*Principles-based regulation* is thus limited to a number of principles which are far more manageable for practitioners. Respective professionals can thereby easily obtain an overview of professional regulation. New factual circumstances can in general be addressed on the basis of existing principles. *Principles-based regulation* is thus more flexible than traditional *rules-based regulation*.<sup>60</sup> However, the openly formulated provisions are also particularly imprecise, resulting in legal uncertainty.<sup>61</sup> However, after application of the principles over a longer time period and their further concretisation by professional supervisory bodies and courts; related case groups will begin to develop, thus increasingly leading to an overall system with sufficient legal security under this model as well.<sup>62</sup>

#### 4.2.3. Assessment

In reality, both approaches regularly now exist only in mixed forms.<sup>63</sup> For example, German professional regulation for the legal profession, which can be characterised in principle as part of the rules-based system, also includes basic principles. For instance, the ‘core values’ of independence,

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57 Graeme Laurie / Sethi, Nayha, *Towards Principles-Based Approaches to Governance of Health-Related Research Using Personal Data*, The European Journal of Risk Regulation, No. 2013/1, pp. 43, 45

58 Schlag, Pierre, *Rules and Standards*, UCLA Law Review, Vol 33, Issue 2, 1985, pp. 379, 382

59 Schneider, Uwe, *Kapitalmarktrecht - Principles-based or Rules-Based Regulation?* in: Baums, Theodor / Hutter, Stephan *Memorial in honour of Michael Gruson*, Frankfurt, 2009, pp. 369, 372; Sullivan, Kathleen M., *Foreword: The Justices of Rules and Standards*, Harvard Law Review, 1992/93, Vol 106,1, pp. 22, 59.

60 Awrey, Dan, *Regulating Financial Innovation: A More Principles-Based Proposal*, Brooklyn Journal of Corporate, Financial and Commercial Law, 2011, Volume 5, Issue 2, pp. 273, 294; Schneider, Uwe, *Kapitalmarktrecht- Principles-based or Rules-Based Regulation?* in: Baums, Theodor / Hutter, Stephan *Memorial in honor of Michael Gruson*, Frankfurt, 2009, pp. 369, 373; Graeme Laurie / Sethi, Nayha, *Towards Principles-Based Approaches to Governance of Health-Related Research Using Personal Data*, The European Journal of Risk Regulation, No. 2013/1, pp. 43, 46; Schauer, Frederick, *The Convergence of rules and standards*, New Zealand Law Review, 2003, No. 3, pp. 303, 309; Sullivan, Kathleen M., *Foreword: The Justices of Rules and Standards*, Harvard Law Review, 1992/93, Volume 106.1, pp. 22, 66

61 Awrey, Dan, *Regulating Financial Innovation: A More Principles-Based Proposal*, Brooklyn Journal of Corporate, Financial and Commercial Law, 2011, Volume 5, Issue 2, pp. 273, 278

62 Schneider, Uwe, *Kapitalmarktrecht - Principles-based or Rules-Based Regulation?* in: Baums, Theodor / Hutter, Stephan *Memorial in honour of Michael Gruson*, Frankfurt, 2009, pp. 369, 373, a similar phenomenon is described by Schauer as “Convergence”: Schauer, Frederick, *The Convergence of rules and standards*, New Zealand Law Review, 2003, No. 3, pp. 303

63 Cf in general Awrey, Dan, *Regulating Financial Innovation: A More Principles-Based Proposal*, Brooklyn Journal of Corporate, Financial and Commercial Law, 2011, Volume 5, Issue 2, pp. 273, 275

confidentiality and avoidance of conflicts of interest. Conversely, those countries that apply *principles-based regulation*, cannot avoid clear ground rules for certain matters such as admission to the profession. As a result, regulations can only be classified according to which regulatory system provides the primary focus.

The choice of regulatory system in itself has no effect on the content of the relevant professional regulations. As a result, it is not possible to draw a conclusion on the quality of individual rules, on the basis of the choice of regulatory system. The chosen regulatory system also says nothing about the density of regulation and regulation intensity, and thus how rigid the respective system of professional regulation is. Even a cursory glance at the system of regulation applied by the Solicitors Regulation Authority, (The English regulatory authority for legal services) makes it clear that the rules for professionals are in fact far more detailed than German regulation of the legal profession. Another example of comparatively stricter regulation in English law is the professional regulation of the medical profession. For example, since December 2012 the approximately 230,000 practising English medical doctors, have been required to undergo revalidation by the General Medical Council, every five years. In comparison, the training requirement for German medical doctors, so far as they are neither public health insurance approved nor employed by hospitals, is only lightly regulated.

Finally, the regulatory system provides no indication whether professional rules and regulations are directly and exclusively enforced by government agencies or concurrently by self-governing bodies. In particular, the question of whether the respective jurisdiction requires compulsory membership in a self-regulatory body for members of a given liberal profession, and whether such a body has received powers of self-regulation, is not dependent on the chosen regulatory system.

From an economic perspective, at best a certain tendency can be identified, whereby interference in market activities through *principles-based regulation* is less strict, as this concept leaves the individual entrepreneur more leeway in implementing the set principles. On the other hand, it would be wrong to draw the general conclusion that *principles-based regulation* would lead to better economic outcomes when compared against rules-based regulation.<sup>64</sup>

### **4.3. Organisation of the liberal professions**

#### **4.3.1. Organisational models**

The question of the organisation of the liberal professions relates to the structure and scope of the self-administration and self-regulatory bodies of liberal professions in place in the majority of Member States. The concept of self-administration and self-regulation has historical roots. The starting point for this development was the professions of lawyers, medical doctors and pharmacists; which at the beginning of the 19th century (As mentioned above) were still characterised by their close proximity

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<sup>64</sup> On the issue of transaction costs, see in detail, Awrey, Dan, *Regulating Financial Innovation: A More Principles-Based Proposal*, *Brooklyn Journal of Corporate, Financial and Commercial Law*, 2011, Volume 5, Issue 2, pp. 273, 279, 280, 294 et seq.

to government accompanied by intense government supervision. With the advent of liberalism in the 19th Century, these professions developed their own corporate consciousness, which gave the impetus for the creation of private law professional associations. In a further step, the professions attempted to loosen the grip of the state, in order to better implement their own concept of the profession and in order to gain increased trust from the general public as a result of greater independence. Finally, it was possible to transfer all the necessary rules, regulations and key administrative tasks such as professional licensing, and oversight to self-governing professional associations based on the model of Chambers of Commerce. From this emerged the now well-known chambers such as the lawyers' chambers and medical chambers in many Member States, a concept that was later transferred to other occupational groups.<sup>65</sup>

In almost all Member States, there now exists some form of self-government for liberal professions through professional chambers and associations. In many Member States the concept of self-government as an organising principle is in fact inseparably connected with the idea of liberal professions. However, differences exist, both between Member States and between the professions in the extent of self-government and self-regulation. In any case, professional associations and chambers represent the interests of their profession in the political arena and with the general public. They act in an advisory capacity on matters of government regulation of respective professions. Often they set out the profession's position on the standards of professional practice in the form of ethics codes.

The most extensive model of self-governance has developed, among others, in Germany and Austria in the form of professional chambers. These can be described by the following features:

- 1) They take the form of public law regulated entities.
- 2) All members of the profession are members of such entity by way of a compulsory legal mandate.
- 3) The administrative organ of the entity is determined by elections among its members and formed from members of the entity.
- 4) The entity is entrusted by law with carrying out certain tasks on behalf of the state, for example professional licensing and professional supervision.
- 5) The entities, or rather the representative or general assembly of their members attached thereto, have the authority to adopt their own by-laws. Hence they can adopt regulations binding upon all members, within the limits of the areas of responsibility transferred to them by law.

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<sup>65</sup> Cf. in full 2.2 above

The chamber model continues to enjoy undiminished popularity in many continental European countries. In the last few years, Germany has even seen an extension of the chamber system. By example, on 17 May 2003, the Federal Chamber of Psychotherapists (BPtK) was established. Previously only regional chambers had existed for this profession. The establishment of the BPtK has proven to be beneficial for professionals and consumers. Currently in the Federal Republic of Germany, discussions are ongoing concerning the establishment of a new chamber for care providers. However, unlike under the model of self-governance described here, such a chamber is intended to serve less as an institution of self-government but more as a union-like advocacy body.<sup>66</sup>

Likewise certain other Member States apply models of self-administration which differ significantly from the previously described concept of wide-ranging autonomy, with regard to matters of professional organisation or devolved competencies of self-governance. Thus in many Member States, chambers or professional associations are not organised as public law entities but rather as private associations. The differences to the previously described chamber model remain limited, so long as members of the profession are mandated by law to be members of such a professional association, as is often the case. Here too, the profession is organised in a uniform manner. Insofar as the membership of such private law entities chose their own representatives in representative bodies, the self-administration of respective professionals is reasonably assured. This private law model of self-administration also differs substantially from administration by third parties in government authorities with no link to the profession. Decisive for the scope of self-administration, is whether or not these associations are also entrusted with essential administrative tasks and professional supervision.<sup>67</sup> Without such powers, the self-administration organisation is reduced to a pure interest group.

It is only possible to speak of real self-administration when two criteria are met: The autonomous responsibility of the uniformly organised profession and a core area of assigned competencies. Materially, there is no difference in terms of the binding nature of the rules adopted by the professional group, such as deontology codes. Only the legal form, for the binding nature of such rules differs in each case. In case of private law entities, the binding nature results not from a normative instruction but instead on the basis of the corporative obligation of the member as a result of membership in the chamber or professional association.

An even more diminished form of self-administration can be found in those countries where the government has chosen to delegate authority not to a single association, but instead to several privately organised professional associations. For example, in several Member States, obligatory membership in a professional association is a requirement for exercising a certain profession,, however professionals can choose between different professional associations. In these cases, the various professional associations may have created differing by-laws concerning professional duties;

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66 Cf. Also *Frankfurter Allgemeine Zeitung* of 15 July 2013, *Ab in die Kammer*, Issue. 161, p. 19.

67 For details on the internal organisation of self-government in the studied occupations and countries see Chapter 5 below

thus opening a degree of choice to members of the profession. Here unified professional organisation no longer exists.

A fourth organisational model, encountered in certain Member States, essentially does without a genuine form of self-administration. Individual states may grant professional associations a certain regulatory power with regard to members; however membership in one of the professional associations is merely optional. This model is often found when only certain job titles are protected by law, while the exercise of the activity itself is not limited. For instance, in some states, tax advisory services may in principle be provided without particular requirements, such as registration or admission to the profession. Whereas using a specific title, for example *Belastingadviseur* or architect in the Netherlands or 'consulting engineer' in Germany, is by law subject to membership in a professional association. Notwithstanding mandatory state regulation, self-administration and self-regulation is carried out exclusively on the basis of the respective association's by-laws. Membership is voluntary, and holding the respective professional title is optional and thus not required in order to carry out the occupation. In many cases however, a de facto economic pressure exists to hold a specific professional title in order to successfully participate in the market and compete for clients. Therefore a degree of compulsion to submit to the by-laws of an association remains. Despite these factual constraints, professionals under this model are no longer subject to self-governing organisation. Professional organisation is as a result completely lacking in this case. The State must, so far as it does not completely dispense with regulation; become more active in adopting regulative norms as well as taking over administrative tasks.

In the United Kingdom and the Scandinavian countries in particular, self-government in the sense described above is largely unknown. To some extent, particularly in certain Scandinavian countries; regulation of liberal professions is dispensed with altogether. As a result, real delegation of responsibilities to self-governing bodies does not take place. Essential administrative tasks are performed directly by state agencies, in which members of the profession are not represented. Mixed forms have emerged in the United Kingdom, where professional associations such as the Law Society serve only as interest groups. Although these professional associations maintain a professional register, registration is not mandatory. However by registering, members also submit to the additional professional regulations of these associations.

The duties of regulatory and disciplinary oversight on the other hand, have been transferred to independent bodies, although in the case of solicitors, to the *Solicitors Regulation Authority*, a body still nominally linked to the Law Society<sup>68</sup>. In the health professions there are independent bodies, such as the *General Medical Council* or the *General Dental Council*, which are responsible for registration, inspection and discipline as well as monitoring revalidation in the case of medical doctors. . The constituent bodies of these institutions consist of both members of the profession as

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<sup>68</sup> The *Solicitors Regulation Authority* is a "board" of the *Law Society*, even if it adopts and implements regulations completely independent thereof.

well as independent persons who must not belong to the profession and are appointed in a separate process.<sup>69</sup>

#### 4.3.2. Review

Self-administration and self-regulation has not remained free of criticism in recent times. There is concern that professional associations could be guided by extraneous considerations in the performance of their legal duties and serve a particular interest group to the detriment of consumers.<sup>70</sup> According to the principles established by the ECJ in *Wouters*,<sup>71</sup> mandatory professional rules set by chambers must serve the public interest, the essential principles must be established by the state itself and the state must maintain the final decision-making authority on the application of a norm. Otherwise, the chamber remains subject to the rules for business associations set out by European antitrust law.

Indeed, the above-mentioned risks cannot be dismissed out of hand. If professional organisations serve both as regulatory authority and interest group, the Member States must provide appropriate tools to effectively eliminate conflicts of interest resulting from these competing roles. If these conditions are respected; self-administration and self-regulation show themselves to be an extremely effective and suitable model. The self-administration of liberal professions mediates between the freedom of professionals to exercise their profession free from state interference, and the regulatory interest of the state in securing the public interest orientation of the liberal professions. In addition, self-administration and self-regulation are an expression of the subsidiarity principle, according to which a task should always be exercised by the entity closest to the issue at hand. In this case, this would primarily be the members of a profession themselves because of their special expertise. As members of the profession, they themselves also have a vested interest to preserve the reputation of the profession and the confidence of clients in the professional group. Therefore, there is also no danger that the constituent bodies of the self-administrative organisations would not adequately pursue breaches in professional duties and not do enough to prevent undesirable developments.

In order to function, the concept of self-administration requires the compulsory membership of all professionals in the relevant professional chamber. This is because self-administrative bodies can only adopt regulations with regard to their members. Without compulsory membership, the self-governing bodies are unable to fulfil their assigned statutory duties. Compulsory membership does represent an interference with rights and freedoms; in the case of Germany for example, the constitutionally protected freedom to exercise a profession and the European law protected freedom to provide services and freedom of establishment. However this interference is justified in the public interest, in

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69 Cf. in detail, the basic models of professional organisation for dentists (under 5.3.7.).

70 Cf. only the main report of the German Monopolies Commission 2004/2005, *Mehr Wettbewerb auch im Dienstleistungssektor*, Baden-Baden, 2006, para. 957 et seq. and the study of Paterson, Iain / Fink, Marcel / Ogus, Anthony, *Economic impact of regulation in the field of liberal professions in different Member States*, Institute for Advanced Studies (IHS), Vienna, 2003, pp. 18 et seq.

71 ECJ, 19.02.2002 - C-309/99 *Wouters and Others*./ NOvA, ECR 2002, I-1577.

the terminology of the ECJ<sup>72</sup> by "*overriding reasons relating to the public interest*". To avoid friction with the European freedom to provide services and freedom of establishment from the outset, the Member States regularly recognise registrations by another Member State. The problem is additionally addressed and resolved by the European Professional Qualifications Directive<sup>73</sup>. Compared to models with multiple optional professional chambers, the obligation to adhere to a single professional organisation has the advantage that the profession is organised in a unified manner.

To avoid potential conflicts of interest by professional chambers, certain member states, for example Germany, have established an effective system whereby self-administration, professional supervision and self-regulation by the chambers are strictly separated from associational and interest group activities.. On the one side are the chambers, which members of the profession are legally mandated to adhere to. The chambers; in the case of lawyers the regional law chambers (*Rechtsanwaltskammer*) and the Federal Law Chamber (*Bundesrechtsanwaltskammer*), carry out the tasks of professional supervision and self-administration. Advocating the interests of the profession on the other hand, is carried out by independent privately organised associations, in the case of lawyers by the regional bar associations and the German Bar Association. Membership in these organisations is voluntary. The professionals can often choose between different professional associations.

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<sup>72</sup> ECJ, 19.02.2002 - C-309/99 *Wouters and Others.*/, NOvA, ECR 2002, I-1577.

<sup>73</sup> Directive 2005/36/EC of the European Parliament and Council of 7 September 2005 on the recognition of professional qualifications, OJ. EC No. L 255, pp. 22 et seq.



## **Chapter 5: Comparison of individual regulation of Liberal Professions**

### **5.1. Introduction**

The following chapter contains a summary of the comparative study of individual professional regulations. Comparing the full scope of possible individual legal rules of professional regulation across all Member States was not practical, based on the design of the study. For this reason, individual regulations, typical for the liberal professions were identified, before investigating whether, and for which occupational groups these rules exist across EU Member States. Fundamental issues were examined, including; professional qualifications and admission to professions, professional organisation and professional supervision, individual professional duties, special professional regulations for advertising and pricing, mono-professional and inter-professional collaboration as well as provisions concerning quality assurance. Professions considered typical examples and therefore included in the sample were from the business-related advisory professions (lawyers, accountants, tax consultants and notaries), the technical professions (architects, and an overview of the engineering profession) as well as the medical professions (based on the example of dentists and pharmacists). The respective professional regulations where available, were evaluated methodically, secondary sources were analysed and additional expert interviews were carried out. In addition, the ECLP could draw on its own findings obtained from previous or parallel research. The results were separately compared for each profession and then summarised.

As far as professional laws, regulations, by-laws and professional deontology-codes were included in the study; it should be noted that these are often available only in their original language. An examination of the standards in a uniform working language was therefore not possible. National professional law is at times partially available in English translations, but these translations have not in each case been certified by the body responsible for adopting them. Thus a degree of ambiguity, with regard to the correct understanding of a legal norm, cannot be excluded.

Furthermore, it must be noted that national professional law is always placed in the context of the understanding of the profession and the related qualifications in the respective countries. Thus, for example the absence of a specific regulation for a profession in a Member State can simply be based on the fact that this is not required due to a different understanding of the profession as compared to another Member State. In addition, the regulations must always be seen in the light of national regulatory and organisational systems. The intensity and depth of regulation may also differ.

In consequence, only the dissemination of a particular regulation may be reported on. From this, certain trends can be derived. As a result of the prevalence of a particular regulation, a conclusion can be drawn as to whether a regulation is typical for a particular occupational group. An often present regulation may also indicate an acceptance of the respective regulation by regulators and/or professionals in the Member States. It cannot be excluded, however, that a widespread norm may be seen as a desirable policy by regulators, but not by those subject to the norm. Often regulators at least, are convinced of the effectiveness and necessity of a regulation. Relying solely on the dissemination

of a regulation does not permit conclusions to be drawn regarding their actual effectiveness, quality, and their effects.

## **5.2. Access to the profession and admissions**

### **5.2.1. Qualification requirements and other admission requirements**

The particular qualification or special creative talent required is consistently mentioned as a defining feature of liberal professions in various commentaries. The importance of this feature can be confirmed with regard to the studied occupational groups. Most of the investigated occupations require higher education, mostly on the level of qualification of a master's degree, or a comparable qualification. Working as a lawyer, accountant, notary, pharmacist or dentist also requires an additional practical training period. Frequently, especially regarding the professions of lawyers, accountants and notaries; admission to the profession is only granted after passing an additional theoretical examination at the beginning (professional entry or entrance examination) or after the practical training period following graduation from tertiary studies. Training and examination are frequently organised by professional associations, but just as often by government agencies or specially established independent institutions.

Somewhat greater differences exist in Europe with regard to the admission requirements for the professions of architect and engineer. In certain Member States, a qualification below the master's level is sufficient. This is especially true for graduates with a bachelor's degree. Vocational training is also possible, which is then combined with a practical training period. For the profession of architect, a practical training period is not mandatory in all Member States.

#### **5.2.1.1. Lawyers**

In order to adopt and practice the profession of lawyer in Europe, further qualification requirements must commonly be met, in addition to the higher education qualification usually necessary. In some instances, such as in England and Wales, Northern Ireland and Scotland, a further year of postgraduate studies is necessary, however in most cases this takes the form of practical training. The duration of this training diverges strongly. While it amounts to six to twelve months in Bulgaria, five years must be completed in Latvia and Austria. As a rule, a period of two years can be identified. An examination typically takes place at the end of the practical training period. Alternatively, it is possible in Latvia and Lithuania, to gain admission to the profession of lawyer following seven or five years of professional experience in another legal profession. In addition, the existence of age limits was identified in various countries. In Finland for example, the minimum age requirement is 25 years.

In addition, in nearly all Member States of the EU, a lawyer must be a member of a bar association or a professional chamber, which predominantly also carries out the task of registration. In some cases, such as in England and Wales (only with respect to *solicitors*) as well as in France and Austria; registration results in membership of a bar association/ professional chamber. Only in Malta there is neither a requirement to adhere to a bar association nor to be included in a register.

### **5.2.1.2. Auditors**

Access to the profession and admissions are regulated by the Statutory Audit Directive. Since the annual statutory audit is the main task of auditors, the professional access arrangements in all Member States are in agreement with those of the Statutory Audit Directive. Article 3, Section 2 of the Statutory Audit Directive provides that each Member State shall designate an accrediting body. It is explicitly provided that this can also be a professional body, so long as it is subject to state control. Registration is subject to meeting certain qualification requirements. This includes, according to Article 6 of the Statutory Audit Directive, at least three years practical training, ending with a state or state-recognised professional aptitude examination at the level of a tertiary degree or equivalent. The contents of the theoretical test are established by Article 8 of the Statutory Audit Directive, the minimum requirements for practical training by Article 10 of directive.

Article 4 of the Statutory Audit Directive provides that an authorisation shall only be issued to natural or legal persons of good repute. Minimum requirements for the register and the registration process are provided by Articles 15 et seq. of the Statutory Audit Directive.

In all Member States the authorisation process is divided into two stages. Applicants must first have a tertiary degree at the master's degree level of qualification. In some Member States any university degree is sufficient. In the majority of Member States, the degree to be obtained must however be in law or economics and business or related subjects. The university degree is followed by practical training and a final examination (auditor's examination).

The other qualification requirements are largely similar, also due to the requirements of the Statutory Audit Directive. These include, in addition to the previously mentioned minimum three years of practical training (which rarely lasts longer) and other conditions including the nationality of an EU or EEA Member State, no criminal record, no insolvency, a good reputation as well as liability insurance. Area restrictions do not apply to the profession of auditor. Occasionally a minimum age of 25 years (Belgium, Portugal) or the age of majority is required. However due to the extent of training required in order to practice as an auditor, these age limits are rather theoretical in nature. A particularity applies in Sweden: Registration there is only valid for five years respectively.

### **5.2.1.3. Tax advisors**

Prior to addressing the qualification requirements for tax advisors, it must be emphasised that a unified profession of tax advisors does not (yet) exist in Europe.<sup>74</sup> The tasks that are regularly grouped under the term 'tax advice', mainly include advising on tax matters, preparing tax returns (including for VAT), representing clients (individuals and companies) dealing with tax authorities, and in some European countries, the legal representation of clients before (financial) courts on tax matters<sup>75</sup>; and

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<sup>74</sup> Pestke, Axel, *Der europäische Steuerberater – Illusion oder Wirklichkeit?*, in: Binnewies, Burkhard/Spatscheck. Rainer, *Festschrift für Michael Streck zum 70. Geburtstag*, Cologne 2011, pp. 761, 784.

<sup>75</sup> Reibel, Rudolf, *European Professional Handbook for Tax Advisers*, Brüssel, 2013, p. 1.

are carried out by a variety of professionals in the Member States, only some of whom deal exclusively with tax advice. This necessarily complicates the comparability of the findings in detail.

In the majority of Member States examined, the state has mandated the attainment of a particular qualification in order to be admitted in the area of tax advice (Germany, France, Greece, Croatia, Austria, Poland, and to a certain extent Portugal, Slovakia and the Czech Republic). By contrast, two of the countries examined require a particular qualification only as a pre-condition for the right to use the title ‘tax consultant’ (Belgium, Romania).

Yet another group of Member States requires a particular qualification, only as a prerequisite for admission to a professional organisation. State authorisation to exercise the profession on the other hand, is not linked to any particular qualification (Ireland, Latvia, the Netherlands, Spain and the United Kingdom). Finally, there are states in which not even admission to respective professional organisations is subject to a particular academic degree or vocational training requirement (Finland, Italy, Luxembourg and Malta). It should be noted however, that tax advice is regularly provided by persons who are simultaneously members of another state-regulated profession.

In those Member States where a qualification requirement has been identified, this usually consists of theoretical training, in most cases necessarily ending with a university degree (See for example Belgium, Germany, France, Greece, Luxembourg, the Netherlands and Austria) and a practical component, often over a 3-year period (See for example ,Belgium, Germany and France). Following the practical component, a professional exam must be passed in most Member States.

In most Member States, admission to the profession is subject to compliance with further conditions, such as providing a certificate of good conduct or the availability of professional liability insurance. Additionally, in certain Member States, tax advisors must register with a state body prior to commencing their activities.

A compulsory professional liability insurance (I.e. insurance, which covers regress claims following professional errors by tax advisors) is only mandated by some of the Member States studied (Belgium, Denmark, Germany, Finland, Ireland, Netherlands, Austria, Poland, Romania, Slovakia, Czech Republic and the United Kingdom). In Greece, Latvia, Malta, Slovenia and Spain the existence of professional liability insurance is required neither by government nor by the by-laws of a professional organisation. In Italy, Luxembourg and Portugal, members of a regulated profession providing tax advice are mandated by regulation to hold professional liability insurance.

The countries in which professional liability insurance is mandatory, generally forgo establishing requirements for the extent of insurance coverage. Moreover, the minimum insured amounts per event

of claim differ widely. They range from 10,000 Euros (Poland) to over 1 million Euros (Belgium and France).

Only some of the Member States examined, require professional liability insurance for tax consulting companies. In some cases, a respective requirement is waived because the personal liability of the professionals is not affected by joining to form partnerships since a separate legal entity is not created. Those states which require tax consulting companies to hold professional liability insurance also extend the compulsory insurance requirement to partners and employees of the company.

#### **5.2.1.4. Notaries**

The differing qualification requirements are explained by different roles for the profession of notary in the Member States of the EU. Continental European legal systems in principle always provide for the Latin-rooted occupation of notary; who is an independent and impartial advisor as well as a public official. The Latin notary system, which finds its origins in Roman law, is traditionally represented in Germany, Belgium, France, Greece, Italy, Luxembourg, the Netherlands, Austria, Spain, Malta and Portugal. In Central and Eastern Europe; Croatia, Estonia, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia, Czech Republic, Bulgaria and Hungary have adopted the Latin notary profession. Outside Europe, the Latin notary profession is also widespread. Overall, professional organisations from 76 countries with Latin notaries have joined together in the International Union of Notaries (UINL).

Most continental European Member States apply a two-pillar model of civil law. The preventive administration of justice by the notary serves to protect inexperienced, unsophisticated parties from legal discrimination and ensures legal and evidential value for the purpose avoiding future disputes. The preventive legal control by notaries has a truly complementary function with regard to judicial dispute resolution. Notaries in a way serve as "judges in advance" with their own sovereign control and decision-making powers.

With their assigned responsibilities of certification, they fulfil a public law regulated legal service as part of the state's responsibility to provide the rule of law in the form of a final decision with immediate legal consequences for all involved parties: Only through certification can a legally binding and effective contract be established, in cases where certification is required. Just as the right of access to justice ensures citizens' access to a judge in order to have a dispute resolved, the right to certification compels the notary to lawfully carry out the certification of documents.<sup>76</sup>

A fundamentally different case is the position of *the Notary Public* in common law legal systems. In the United Kingdom notaries are usually only tasked with authenticating signatures. Legal advice is not provided. The notary (Originally representative of the king) may administer oaths which are legally required or permitted under common law, certify documents, liens, mortgages, powers of

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<sup>76</sup> Reibel, Rudolf, *European Professional Handbook for Tax Advisers*, Brussels, 2013, p 1

attorney and other documents in legal transactions and record objections. With the acceptance of affidavits he or she performs judicial functions and may order the hearing of witnesses and means of enforcement.<sup>77</sup> In Ireland, the most important duties of publicly appointed notaries include the notarisation of documents and the verification and authentication of signatures.

Member States belonging to the Nordic family of legal systems, including Finland, Denmark and Sweden, also do not have notaries within the continental European understanding of the term. Unlike in the continental European legal systems, these Member States do not provide "preventive justice".

The conditions for access to the profession of notary therefore vary from one Member State to another. Most states which know the Latin notary require a several-year long law degree as well as practical training period, mainly with a final exam. This is the case in Belgium, Bulgaria, Germany (partly), Estonia, France, Italy, Latvia, Lithuania (partly), Luxembourg, Malta, the Netherlands, Austria, Poland, Portugal, Romania, Slovakia, Slovenia, the Czech Republic and Hungary. Others only require a state admission examination (Lithuania (partly), Spain) or an aptitude test before the Chamber of Notaries (Germany (partly)). In Member States with a different understanding of the profession of notary (common law), and in which notaries have a limited scope of duties, the professional entry requirements also vary. In the United Kingdom applicants must first obtain a *Postgraduate Diploma in Notarial Practice, Roman Law and International Private Law* which is awarded by the University of Cambridge. On the other hand, a simple law degree is sufficient for the appointment as a *Notarius Publicus* in Sweden.

Generally, the law provides that candidates for the profession of notary must not have a criminal record or be "blameless", be both physically and mentally suitable for service as a notary and swear an oath of office before being admitted to the office. In addition, most EU countries require membership in the Chamber of Notaries and an additional admission or appointment to the office by the state. Increasingly, professional regulations also establish age limits, both in the form of a minimum age (For example, in Greece, Italy, Luxembourg, Poland and Spain) and in the form of maximum age limits (For example, in Belgium, Germany, Greece, Luxembourg and the Netherlands).

Nearly half of the professional regulations still include a nationality condition for access to the profession of notary. Examples include Bulgaria, Greece, Latvia, Lithuania, Luxembourg, Slovenia, Slovakia, Spain, Romania, Hungary and the Czech Republic. Such reservations are contrary to European law, as according to the most recent case-law of the ECJ, they are contrary to Article 43 EC which prohibits discrimination on grounds of nationality.<sup>78</sup> It is to be expected that these Member States will adapt their professional regulations in the near future. Thus, the European Commission has

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<sup>77</sup> <http://www.thenotariessociety.org.uk/what-is-a-notary>.

<sup>78</sup> ECJ ruling of 24.May 2011, Case No. C 47/08, ECR 2011, I-4105-4194, C 50/08, ECR 2011, I-4195-4229, C 51/08, ECR 2011, I-4231-4274, C 53 / 08, ECR 2011, I-4309-4353, C 54/08, ECR 2011, I-4355-4398, C 61/08, ECR 2011, I-4399-4439, C 52/08, ECR 2011, I- 4275-4307.

recently brought a case against Latvia before the ECJ, because of the continuing existence of the condition of nationality there.<sup>79</sup>

In almost all Member States, notaries are obliged by law to take out liability insurance before any exercise of the profession of notary is permitted.

#### **5.2.1.5. Architects**

The broad occupational field between modern or historical architecture on the one hand and applied technology on the other hand are reflected in the training paths for the architectural profession. Again, the Member States differ considerably with regard to admission requirements for the profession. Indeed there are many ways to learn the profession of architect; ranging from universities (Especially technical universities / institutes of technology), to technical colleges, art academies and vocational academies, but also in colleges and technical schools. The focal point of training are traditionally different; art academies place a particular emphasis on the design aspect, universities give special attention to theory and the scientific method, technical colleges provide a more applied approach on a scientific basis, while vocational academies teach in a more hands-on but less broadly based fashion than tertiary institutions. Most institutions now have their own individual training profile with their own specialisations.

It should be noted that on the basis of the directive on the recognition of professional qualifications, uniform conditions are in place for automatic recognition as a building architect, namely a university course with a duration of at least four years of regular full-time study and the corresponding tertiary qualification. An individual assessment of the automatically recognised degrees does not take place. Graduates with a university degree, obtained after less than four, but at least three years of regular full-time study may be recognised following an individual assessment by the EU country in which they intend to exercise their occupation.<sup>80</sup> In addition to the study period of tertiary-trained building architects, the content of courses is also relevant for the "European credentials" of building architects. Training must be executed at tertiary level and be mainly focused on architecture. It must also take into account the theoretical and practical aspects of architectural training in a balanced manner.<sup>81</sup>

For the fields of interior design, landscape architecture and urban planning a different rule applies. Graduates who have completed a course of study with a regular period of full-time study of at least three but less than four years ending with a respective university examination can, in principle have their qualification recognised in all EU Member States. The host Member State may, however, require

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<sup>79</sup> Cf. *European Commission* - IP/14/48 23/01/2014

<sup>80</sup> Article 46 et seq. Directive 2005/36/EC.

<sup>81</sup> Article 46 Directive 2005/36/EC.

appropriate aptitude tests and adaptation periods, where the education level of their own graduates is higher in the corresponding degree programs.<sup>82</sup>

The minimum requirement for qualification as an architect in all Member States, is theoretical training, usually at a university, of three to five years of regular full-time study.

In most Member States, a professional practice period is required in addition to a tertiary degree. In certain Member States, this amounts to two years, for example in Belgium<sup>83</sup>, Bulgaria, Germany<sup>84</sup>, Ireland, Luxembourg<sup>85</sup> the Netherlands (To the extent that a registration with the *Bureau Architect register* is to be undertaken in order to use the professional title)<sup>86</sup>, Romania, Sweden (Insofar as voluntary membership is sought in the association of architects), Hungary and the United Kingdom. In other Member States, qualification for the profession of architect requires three years of practical professional experience, such as in Estonia<sup>87</sup>, Austria<sup>88</sup> (Followed by a civil engineering examination<sup>89</sup>), Poland, Slovakia<sup>90</sup> and in Slovenia<sup>91</sup>. Three to five years are mandated in Lithuania and the Czech Republic.<sup>92</sup> And in principle 9-12 months of professional practice time are required in Portugal<sup>93</sup> and one year in Cyprus. In some cases, an additional admission test is set by the respective chamber, as in Greece, Ireland (*By the RIAI* - for voluntary members), Malta (Before the *Periti warranting Board*)<sup>94</sup>, Romania, Slovakia<sup>95</sup> and the Czech Republic.<sup>96</sup> Other Member States require further additional state examination, such as Italy<sup>97</sup> and Lithuania.

Another group of Member States does not apply any further requirements for admission to the profession beyond completing tertiary education. This is the case in Denmark, Finland, France and Spain.

#### 5.2.1.6. Engineers

The occupational profile for engineer in Europe is far from uniform. In addition, the activities commonly carried out by engineers vary greatly from one Member State to another. Because of this

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<sup>82</sup> Cf instructions from the EU Commission,

[http://ec.europa.eu/internal\\_market/qualifications/directive\\_in\\_practice/automatic\\_recognition/architects/index\\_de.htm](http://ec.europa.eu/internal_market/qualifications/directive_in_practice/automatic_recognition/architects/index_de.htm).

<sup>83</sup> Article 50 *Loi du 26 juin 1963*.

<sup>84</sup> E.g. § 4 BauKaG NRW.

<sup>85</sup> Article 15 *Loi du 2 septembre 2011*.

<sup>86</sup> See further details at: [https://www.architectenregister.nl/en/Professional\\_experience\\_period/index.aspx](https://www.architectenregister.nl/en/Professional_experience_period/index.aspx).

<sup>87</sup> to distinguish (cf. below, depending on the level of qualification

<http://www.kutsekoda.ee/et/kutseregister/kutsestandardid/10440735/pdf/diplomeeritud-arhitekt-tase-7.3.et.pdf>).

<sup>88</sup> § 8 Ziviltechnikergesetz.

<sup>89</sup> § 9 Ziviltechnikergesetz.

<sup>90</sup> § 16b law on authorised architects 138/1992.

<sup>91</sup> Cf.

further

at:

[http://www.mop.gov.si/fileadmin/mop.gov.si/pageuploads/zakonodaja/prostor/graditev/pravilnik\\_strokovni\\_inzenirski\\_izpiti.pdf](http://www.mop.gov.si/fileadmin/mop.gov.si/pageuploads/zakonodaja/prostor/graditev/pravilnik_strokovni_inzenirski_izpiti.pdf).

<sup>92</sup> § 8 *Architects Act 360/1992*.

<sup>93</sup> Art. 6 *Decreto-Lei n.º 176/98, de 3 de Julho* iVm Annex 2 zu *Regulamento de Inscrição*.

<sup>94</sup> Art. 3 *Periti Act*.

<sup>95</sup> § 21 law on authorised architects 138/1992.

<sup>96</sup> Art. 8 *Architects Act 360/1992*.

<sup>97</sup> *Decreto del presidente della repubblica 5 giugno 2001, n. 328*



heterogeneous occupational profile, a comparison between the different states, to the extent and in the same manner as carried out with regard to other professional groups; could not be carried out in the allotted time and with the available resources. To make matters more difficult, the engineering profession encompasses very different, distinct occupational profiles. For the manifold aspects of the engineering professions, a wide variety of job titles are in use throughout the EU Member States.

As a result, training to become an engineer and the exercise of the profession itself are regulated in various ways throughout Europe. The implementation of the Bologna Agreement has resulted in the creation of various new professional titles. Tertiary degrees now refer to the titles Bachelor of Engineering (B.Eng.) or Master of Engineering (M.Eng.). In addition to classical tertiary education at universities and technical colleges, Austria for instance operates so called Higher Technical Schools (HTL) which offer vocational education programs in technical fields which permit the use of the title of engineer; after the successful completion of the course and a minimum of 3 years of relevant practical experience requiring advanced knowledge of the field. In the United Kingdom too, a tertiary degree is not a mandatory professional registration requirement.

In Germany, engineering education is regulated by state laws and regulations. In each of the 16 states, there is a Ministry of Science, which is responsible for higher education institutions and study programs. In Germany, it is possible to study engineering at technical universities, universities, universities of applied science or vocational colleges, which due to the combination of theory and practice may also be referred to as vocational tertiary institutions. In Finland, engineering can be studied at technical universities, at technical faculties of other universities and technical colleges. In France, engineering degrees are taught at *Écoles d'Ingénieurs* (Engineering Schools), and so-called *Grandes Ecoles*, as well as at universities.

In certain Eastern European countries, such as Bulgaria, Hungary and Poland; Bachelors' and Masters' degrees are now also awarded in accordance with the Bologna process. Here the respective international terms Bachelor of Engineering (B. Eng.) and Master of Engineering (M. Eng.) are now in use.

The title 'EUR ING' (European Engineer) was created by the *European Federation of National Engineering Associations (FEANI)* in order to make the diversity of technical professional titles in Europe more manageable. The aim is to confirm completed high quality training in a technical field associated with additional practical experience. The guidelines for the award of 'EUR ING', therefore, require a minimum of seven years, at least three years of which must be shown to have been at a tertiary institution (tertiary-like training) and at least two years professional experience. In any case, the 'EUR ING' title is awarded only to members of an engineering association belonging to the respective national committee.

### 5.2.1.7. Dentists

In all Member States, a prerequisite for the exercise of the dental profession is the conclusion of a course in dentistry at a university or college. Only in Cyprus and Luxembourg there is no way to complete a dental degree. As a result, students must go abroad to study. The EU countries partially differ on the minimum period of study. Since the profession of dental practitioner is one of the seven so-called 'sectoral' professions, for which the procedure of automatic recognition of basic dental qualification applies according to the Professional Qualifications Directive (See Chapter III of Directive 2005/36/EC), and for which Article 34 Paragraph 2 of the Professional Qualifications Directive requires a minimum five year training period in order to obtain recognition. The vast number of EU countries have opted for a minimum training period of five years in their implementation of the Directive into national law. Only in France, Austria, the Netherlands, Slovakia and Slovenia do students need to study for at least five and a half years or more (Bulgaria: six years) to attain the national academic qualification in order to exercise the profession of dentistry.<sup>98</sup> In the United Kingdom, where up until 2009 dental degrees could be completed in just four years<sup>99</sup>, the minimum duration of study is now also five years. The national basic dentistry qualification and related degree which is issued in respective Member State can be found in section 5.3.2. of the Professional Qualifications Directive (Directive 2005/36/EC).<sup>100</sup>

The dentistry program includes theoretical and practical training elements. Practical experience (For example working under the supervision of an experienced practicing dentist) that goes beyond the practical training during university education, exempting the predominantly specifically regulated admission of dentists to activity in the state health care system, is mostly not required by national regulations. According to the currently available findings, exceptions to this rule apply only to Lithuania<sup>101</sup>, Poland<sup>102</sup> and Slovenia<sup>103</sup>. But there too, supervised practical experience can be partly carried out simultaneously with tertiary study. In other countries, such practical experience supervised by an experienced dentist upon completion of a dentistry course is required only in order to be allowed to operate within the framework of the state or state-funded health system (For example, in Germany and Finland).

In almost all EU countries, dentists can pursue further training as a specialised dentistry practitioner. Specialist dentistry training comprises theoretical and practical study at a university or a recognised

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<sup>98</sup> Cf. Council of European Dentists, *Manual of Dental Practice Version 4.1 (2009)*, p 32, available online at: <http://www.eudental.eu/index.php?ID=2740> (last accessed on 09/20/2013).

<sup>99</sup> Cf. Council of European Dentists, *Manual of Dental Practice Version 4.1 (2009)*, p 32, available online at: <http://www.eudental.eu/index.php?ID=2740> (last accessed on 09/20/2013).

<sup>100</sup> Available at: [http://ec.europa.eu/internal\\_market/qualifications/policy\\_developments/legislation/index\\_de.htm](http://ec.europa.eu/internal_market/qualifications/policy_developments/legislation/index_de.htm) (last accessed on 25.10.2013).

<sup>101</sup> See Article 2 para.4 Lietuvos Respublikos odontologijos Praktiskos įstatymas, available online at: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=259519&p\\_query=&p\\_tr2=](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=259519&p_query=&p_tr2=) (last accessed on 21/10/2013).

<sup>102</sup> Law on the Professions of Medical Doctor and Dentist, dated 5 December 1996 (Ustawa z dnia 5 grudnia 1996 ro zawodach lekarza i lekarza dentysty).

<sup>103</sup> Figure is based on an expert survey and on the Council of European Dentists, *Manual of Dental Practice Version 4.1 (2009)*, p 321

training and research centre following the completion and recognition of dentistry studies. Only in Luxembourg, Spain<sup>104</sup> and Cyprus there is no such opportunity to specialise. The number of dental specialisations varies considerably between EU countries. Many EU countries (For example France, Belgium, Germany, Malta, the Netherlands, Slovakia, Finland) offer only two or three types of further training courses in specialised dentistry ( E.g. orthodontics, oral surgery, public health specialist, and in Belgium also: specialist in general dentistry), while other EU countries offer eight (E.g. Poland) or twelve (E.g. United Kingdom) types of specialist dental training. The length of training depends on the selected specialisation. Article 35 of the Professional Qualifications Directive (Directive 2005/36/EC) provides for a procedure by which specialist dental training can also be completed in another EU country. In some cases, specialist dentists are entered into a specific register (Such as is the case with the *General Dental Council* in the United Kingdom and the *Irish Dental Council* in Ireland).

#### **5.2.1.8. Pharmacists**

Access to the profession, in particular with regard to training, follows the same principles in the Member States as a result of harmonisation under directive 2005/36/EC. Commonly the authority to use the title 'pharmacist' is additionally dependent on successful professional admission (For example in Germany, the professional title pharmacist may only be employed after having received official approbation<sup>105</sup>). Either a chamber membership, registration and/or a pharmacy license is required in order to exercise the profession of pharmacist in the EU Member States, with the exception of Denmark and Lithuania.

For EU-wide recognition of pharmacist training, Article 44 of the Professional Qualifications Directive requires at least five years training, including four years full-time study at university, followed by a minimum of six months practical experience. Under the directive, the exact form of training is left up to the Member States. In most countries, university education takes five to six years and the professional practice period lasts six months. In variation from this, practical training in Germany, Greece, Ireland, Austria, the United Kingdom and Cyprus takes one year, in France 14 months, and in Luxembourg two years.

Across Member States, pharmacists must show that they have no criminal record, have sufficient language skills and a good reputation and are mentally and physically suited for the profession. In Ireland and the United Kingdom, these requirements are summarised under the condition "*fitness to practice*" and controlled by the relevant regulatory authority.<sup>106</sup>

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<sup>104</sup> As indicated by the Spanish Ministry of Health as part of an expert inquiry and as well as a statement by the Consejo General de colegio Odontologos y Estomatologos of Espana.

<sup>105</sup> § 3 BApo.

<sup>106</sup> *Irish Pharmacy Act 2007, U.K. Pharmacist and Pharmacy Technician Order 2007.*

### **5.2.2. Registration and compulsory membership in chambers or associations**

Almost all liberal professions have a registration requirement on a professional register. This is often closely related to mandatory membership in a professional chamber or association. The registration requirement fulfils two functions. First, it can serve as a barrier to professional admission where registration takes place only after verification of the professional admission requirements and professional activity may only be carried out after inclusion in the registry. In such cases registration replaces a formal professional admission process or is identical with it. Secondly, a professional register has a publicity function. When the register is public, everyone has the opportunity to inform themselves about, for example, a professional's address details.

If mandatory registration is carried out through a public or private law organised association, it is accompanied by membership of the respective association. The professionals are then compulsory members of the respective organisation. As a result of membership, they are also bound by the by-laws of the association.

In some Member States where professions require registration or compulsory membership, this is designed in such a manner that professionals can register with one of several professional organisations. In this case, they have a right to choose whether and to which association they would like to adhere to.

In this respect too, there is a difference between various professions. Pharmacists are subject to a compulsory membership requirement in the majority of Member States and a registration requirement in nearly all member states. The same applies to the professions of architect, notary and lawyer. Auditors and dentists must register in all Member States and are also subject to a compulsory membership requirement in a majority of them. For the profession of tax advisor however, a registration requirement exists in only less than half of all Member States.

Overall, the existence of a registration requirement for the liberal professions is well known. The same applies to compulsory membership in a chamber or a professional association. These two aspects are closely related to the particular forms of organisation of liberal professions and can be regarded as a principle of liberal professions. Geographically, it is again the Scandinavian and Baltic countries as well as Great Britain and Ireland, where mandatory membership requirements are mostly a foreign concept under respective professional law. However, we have observed that, to a high degree professionals voluntarily join a professional association so that the absence of a mandatory membership requirement does not result in a significantly lower degree of organisation of liberal professions in the respective country.

#### **5.2.2.1. Lawyers**

The profession of lawyer provides a very uniform picture. With the exception of Malta, a registration requirement on a professional register and a mandatory membership in a chamber or professional organisation was found to exist in each Member State.

#### **5.2.2.2. Auditors**

Due to the provisions of the Statutory Audit Directive, registration on a professional register is a mandatory requirement in all Member States for employment as an auditor. Where a professional chamber has been established, the register is maintained there. In the other Member States responsibility for registration lies with a state agency or an association entrusted with this task. Registration simultaneously results in membership in a professional chamber, only in those Member States that have a chamber system (Mandatory membership, cf. below 5.3.). Otherwise, membership in one of the professional associations is voluntary.

#### **5.2.2.3. Tax advisors**

A registration requirement exists for tax advisors only in certain Member States. This could be definitively identified only in the case of Belgium, Denmark, Greece, Ireland, Latvia, Luxembourg, Portugal, Spain and the United Kingdom. In the Netherlands, registration is optional but wide-spread for compliance reasons.

#### **5.2.2.4. Notaries**

In all European Member States with a Latin influenced notary profession, notaries are required to become members of chamber organisations in order to be permitted to practice the profession of notary. Only in Denmark, Finland, Ireland, Sweden and Cyprus, where the occupational profile of the notary profession differs from the Latin inspired model, is compulsory membership in a professional organisation non-existent for logical reasons.

#### **5.2.2.5. Architects**

In order to exercise the profession of architect, membership in a chamber or a professional association is mandatory in the majority of European countries. This applies to Austria, Belgium, Bulgaria, Germany, France, Greece, Italy, Luxembourg, Malta, Austria, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Hungary and Cyprus. In the Czech Republic membership is only mandatory for ‘certified architects’. No compulsory membership requirement exists in Denmark, Estonia, Finland, Ireland, Latvia, Lithuania, the Netherlands, Sweden and the United Kingdom.

By contrast, a registration requirement exists in almost all Member States. Only Denmark, Finland and Sweden do completely without registration. In France, only a temporary exercise of the profession of architect is possible without registration.<sup>107</sup> In the Netherlands, registration is only required in order to use the professional title of architect. Practicing the profession of architect is possible irrespectively of registration. In the Czech Republic, registration is required only for ‘certified architects’. In Bulgaria, the United Kingdom and Cyprus, registration must be renewed annually.

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<sup>107</sup> Art. 10-1 Loi n°77-2 du 3 Janvier 1977.

#### **5.2.2.6. Engineers**

Requirements relating to compulsory membership in a chamber and the registration on a professional register are more heterogeneous for the engineering profession than for any other liberal profession. This is mainly due to the wide-ranging occupational profile of the engineering profession, which includes a variety of different activities.

Compulsory membership requirements in a professional chamber or professional association exist in Bulgaria, Germany (Only for 'Consulting Engineers'), Greece, Ireland (Only in order to use the title 'Chartered Engineer', 'Associate Engineer' or 'Engineering Technician'), Italy, Luxembourg, Malta, Austria, Poland (Only civil engineers), Portugal, Slovakia (Only civil engineers), Slovenia, Spain, the Czech Republic (Only 'certified engineers'), Hungary, the United Kingdom (Only 'Chartered Engineer' (CEng), 'Incorporated Engineer' (IEng) or 'Engineering Technician' (EngTech)) as well as in Cyprus.

Registration requirements can be found in Bulgaria, Germany (Only for 'Consulting Engineers'), Greece, Ireland (Only in order to use the titles 'Chartered Engineer', 'Associate Engineer' or 'Engineering Technician'), Italy, Luxembourg, Malta, Austria, Slovakia (Only civil engineers), Slovenia, Spain, the Czech Republic (Only 'certified engineers'), Hungary, the United Kingdom ('Chartered Engineer' (CEng), 'Incorporated Engineer' (IEng) or 'Engineering Technician' (EngTech)) as well as in Cyprus.

In the remaining Member States, the engineering profession can be practiced without special registration. However, in this case the use of the title 'engineer' may be protected and bound to certain conditions. This is the case in Belgium, Latvia, the Netherlands and Poland. In addition, in Member States where only certain branches of the engineering profession are subject to registration requirements, the remaining branches of the profession may be exercised without any particular registration requirements.

#### **5.2.2.7. Dentists**

In all EU Member States, dentists must be registered in order to be allowed to practice. In addition to presenting examination results, several EU countries also require knowledge of the state language, a certificate of good repute and/or showing the applicant to be medically fit to exercise the profession.

Registration of dentists is carried out by various entities throughout Europe (Government bodies, chambers or councils), depending on the model of the professional organisation and professional supervision. Here a particularity of health professions should be pointed out. In certain countries, several different entities are responsible for the registration of dentists. Where dentists wish to treat patients within the system of state/social security health care (Or a state-funded system of health care), they must in certain countries (For example, Germany and Austria) obtain an additional special

registration in addition to their general registration/approval (In Germany, for example the so-called admission or "Zulassung"<sup>108</sup>, which is issued by the regional social security approved dentists' association); or they must be parties to a special contract with a health insurance or a public health service provider (Ss is the case for example in Austria, Sweden and Ireland). This form of registration must be distinguished from registration under general professional law. A special situation exists in Luxembourg.<sup>109</sup> There, dental care is exclusively provided by so-called public insurance dentists. The authorisation to provide dentistry treatment within a public health insurance scheme coincides with the general authorisation to practice dentistry. This is different again in Spain, where dental services are always provided as a private service outside the public health care system.

For dentists who have completed their dentistry studies and obtained their degree in a Non-EU country, certain additional requirements may apply (Such as language tests, aptitude tests, certificates of good reputation, and supervised practice periods of a certain duration).<sup>110</sup>

#### **5.2.2.8. Pharmacists**

Almost all Member States have established regulations for pharmacists with regard to chamber membership, registration and/or a personal license to operate a pharmacy. Denmark, which requires neither membership in a professional organisation, nor registration and does not require a personal license, is a notable exception. In addition there are requirements for the award of a concession for a specific pharmacy; and in this context there are special 'Establishment Rules' regarding the location of pharmacies, in a majority of the EU countries.

One thing all Member States, with the exception of Denmark, have in common, is that they make exercising the profession of pharmacist conditional on compulsory membership in a professional body. Registration or obtaining personal licenses is required in order to better control the exercise of occupation through comprehensive regulation. In some Member States, both membership and the registration must be carried out with the chamber (As in Bulgaria, France, Greece, Italy, Poland, Portugal, Spain, the Czech Republic and Hungary). In Belgium, Ireland, Romania and the United Kingdom on the other hand, registration with the chamber/regulator is sufficient and has the same effect as a chamber membership. A completely opposite legal situation exists in Germany and Austria, where membership of a chamber replaces further registration. In other Member States conversely, there is no chamber in the traditional sense. However, pharmacists are required to register with a government authority (As in Estonia, Finland, Latvia, Malta, the Netherlands, Sweden and Slovakia). A compulsory membership requirement in a professional organisation exists in Slovenia and Cyprus, but registration is carried out by the Ministry of Health. Lithuanian pharmacists are a special case in

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<sup>108</sup> Cf. §§ 95, 98 SGB V along with Zahnärzte-Zulassungsverordnung für Zahnärzte.

<sup>109</sup> The information on the situation in Luxembourg is based on an expert survey by the Ministry of Health in Luxembourg.

<sup>110</sup> For example, in Denmark, information is available online at: [http://www.sst.dk/English/Education\\_and\\_authorization/Dentist.aspx](http://www.sst.dk/English/Education_and_authorization/Dentist.aspx) (last accessed on 12/10/2013).

that they are neither subject to a membership requirement nor a registration requirement, but instead require a personal professional practice license issued by a government authority.

Apart from the personal professional conditions for admission, the majority of Member States also regulate the number and location of pharmacies through the granting of concessions. These concessions are granted on the basis of 'Establishment rules', which take into account factors such as the number of inhabitants to be served, the distance to the next nearest pharmacy and the needs of the local municipality.<sup>111</sup> While such limits on issuing pharmacy concessions exist in Belgium, Denmark, Estonia, Finland, France, Greece, Italy, Latvia, Luxembourg, Malta, Austria, Portugal, Slovenia, Spain and Hungary; such geographical/demographic rules for the issuance of a pharmacy licence do not exist in Lithuania, Poland, Romania, the Czech Republic and Cyprus. Bulgaria and Germany require a license in order to operate a pharmacy. On the other hand, pharmacies can be freely established in Ireland, the Netherlands, Sweden, Slovakia and the United Kingdom.

### **5.2.3. Geographical limitations on activity**

Geographic limitations on activity, for example in the form of statutory area protection, can be identified only very rarely and in such cases are typical of the occupation. Notaries in particular may usually only act for clients in the district for which they were appointed. This results from the already stated official position of the notary (District principle). Pharmacists usually require a concession, which is often limited in number for a particular area. Geographical limitations on activity cannot be described as a principle of liberal professions.

### **5.2.4. Age limits**

Age limits on the exercise of a liberal profession are found only in very few instances. Where such limits exist, they are chosen in such a manner, that they in fact do not represent a disadvantage, as the minimum age is already reached due to the many years of required training. An exception is the notary profession for which a minimum and/or maximum age limit exists in almost all Member States. The minimum age ranges from 25 to 28 years, the maximum age ranges from 65 to 70 years.

## **5.3. Professional organisation**

Behind the question of professional organisation lies the question whether the liberal professions in Europe are characterised by a model of self-administration and self-regulation. This question cannot be affirmed or denied across the board. Instead we find a highly differentiated picture. The model of self-administration and self-regulation is most prevalent within the system of professional chambers. These exist mainly in Western Continental European Member States, particularly in Portugal, Spain, France, Italy, Austria and Germany. The Benelux countries do not apply the chamber model for all occupations. However, overall the local professional organisations have strong elements of self-administration and self-regulation. The Eastern European Member States show a mixed picture. In

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<sup>111</sup> Vogler, Sabine/Arts, Danielle/Sandberger, Katharina, *Impact of pharmacy deregulation and regulation in European countries*, 2012, pp. 144 et seq.



part, the Central European chamber model has been adopted there, while other states have opted for more state-regulated models. The United Kingdom, Ireland and Scandinavian Member States on the other hand have largely distanced themselves from the chamber model. The Scandinavian countries largely avoid all professional regulations; necessary administrative tasks are performed by state agencies. In the United Kingdom and Ireland however a system of several professional organisations and (semi-) governmental bodies has been established, where administrative and regulatory tasks are carried out with the participation of representatives of the profession, state officials and social groups.

These considerations however, do not allow the conclusion to be drawn that professions not organised in a chamber or states which have not established a chamber system do not apply any elements of self-administration and self-regulation. This is because the second pillar of the model of self-administration and self-regulation is formed by privately organised professional associations, in which a clear majority of the respective professional group are members. The level of organisation of liberal professions is therefore also relatively high in countries and occupational groups that have no compulsory membership in a chamber or a professional association. These professional organisations see themselves as more than mere interest groups for their respective profession. On the contrary, they participate in a wide variety of activities, such as in vocational education and training. They promote the public interest through participation in socio-political and legal policy discussions in which members of the profession contribute their specialist expertise. They act in an advising capacity on legislation related to their profession. Finally, the professional associations are committed to professional ethics. This commitment is expressed not only by statements to members of the profession and the general public. Instead in almost all cases, professional organisations assist with the formulation of a personal code of ethics which is binding on all association members.

In addition to self-administration and self-regulation on the basis of a statutory delegation of powers, there is a second form of voluntary self-administration and self-regulation common to all liberal professions in the Member States. In this way, they distinguish themselves from a variety of other professions, that neither show such a high degree of organisation nor have a comparably developed professional or corporatist identity. Self-administration and self-regulation are thus features of the liberal professions, which express the common interest focus of these professions and which distinguishes them from other occupational groups.

When comparing the occupational groups, lawyers and notaries stand out in particular as professions which are organised into chambers in almost all Member States. For the other professions, a slim majority or at least half of professions examined were found to have a chamber organisation in the member states.

### **5.3.1. Lawyers**

The profession of lawyer is considered as one of the traditional regulated liberal professions ever since the advent of the *free advocacy* whereby lawyers were recognised as an independent organ of the administration of justice from the second half of the 19th Century onwards. In addition, the profession

is organised into chambers in almost all EU Member States. The local and national law chambers existing in the continental European Member States not only carry out advocacy tasks for the legal profession but are also responsible for the regulation of the profession. An exception is Germany, where these functions have always been separated. The German Bar Association, a private association, carries out advocacy tasks while the Federal Law Chamber carries out delegated state regulatory tasks. The introduction of state regulation authorities in England, Wales and Scotland has meant that the 'Law Societies' have had their regulatory tasks withdrawn<sup>112</sup>. Strictly speaking, from the point of view of self-administration in terms of a self-regulating profession, law societies can no longer be considered chambers as such, but rather as another form of professional organization. Since the reform of professional law, the 'Solicitors Regulation Authority' is now responsible for the regulation of solicitors in England, Wales and Scotland.

### **5.3.2. Auditors**

For the profession of auditor, the chamber system of professional organisation is widespread. Just over half the Member States have a professional chamber, in which all auditors are mandatory members and which has received a delegation of self-administration and self-regulation responsibilities. In many cases, such as in Germany and Austria<sup>113</sup>, there is a single chamber without regional subdivisions. Professional associations also exist in Belgium, Germany, Estonia, France, Italy, Lithuania, the Netherlands, Austria, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, the Czech Republic, Hungary and the United Kingdom. In addition, in some Member States, there are private professional organisations which provide services to their members and represent their interests. Where these are not chambers, but merely professional associations, they usually have their own Ethics Code, which is binding on members, and for which compliance is monitored. Of particular importance for the profession of auditor, is these associations' participation in national and international standard setting for the audit process, for example as part of the FEE and IFAC. Both chambers and professional associations are members of such professional organisations. When, as is often the case in Member States, there is both a chamber and one or more privately organised professional association, several national associations are often members of the international organisations mentioned.

### **5.3.3. Tax advisors**

Between the Member States examined, large differences exist in the legal regulation and professional organisation of the profession of tax advisor, which are mostly a result of the differences in the occupational profile of the profession across Europe. Two basic models of regulation are recognisable, which can be divided into five subcategories.

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<sup>112</sup> Cf. also on this development Henssler, Martin, *AnwBl* 2013, S. 394, 400.

<sup>113</sup> The local Chamber of Public Accountants (KWT) is the umbrella organization for tax advisors and auditors in Austria. While there are no state chambers, state branches have been created, each headed by a state president.

There is a group of countries in which the profession of tax advisor is reserved for a specific category of trained professionals as a result of state regulation. In particular, this group includes those Member States where there is a chamber system (Of Central European character) for tax advisors. Here professional chamber refers only to an entity whose constitutive bodies are composed of persons, elected by its members, responsible for registration and supervision of professionals, and where membership is a requirement in order to exercise the profession. Tax advisory services are legally regulated in this way in Germany, Greece, Austria, Poland, Slovakia, Slovenia, the Czech Republic and Hungary.<sup>114</sup>

In Germany, lawyers, auditors and chartered accountants are also permitted to provide tax advisory services to a large extent. These professions are however subject to specific professional regulations. The same is true in Austria with regard to accountants and lawyers, in Poland with regard to lawyers, legal advisors and to some extent auditors, and the Czech Republic with respect to lawyers as well as (At least partially) auditors and chartered accountants.

In addition, there are Member States in which tax advisory services have not been assigned to the specific profession of tax advisor, but (At least for the most part) instead to another legally regulated profession (France, Portugal and Cyprus). In France, tax advisory services may be provided only by lawyers and to a lesser extent by chartered accountants, notaries and auditors. Lawyers may obtain the qualification of specialist tax lawyer (*Avocat spécialiste en droit fiscale et droit douanier*). In Portugal, when tax advice includes legal advice, such services may only be provided by lawyers. Filing tax returns on the other hand is reserved exclusively for chartered accountants (*Técnicos Oficiais de Contas*). Only a member of one of these two professional groups or an auditor may represent clients before the tax authorities. As a result, there are practically no tax advisors who are not also simultaneously members of these professional groups. In Cyprus, tax advice is provided by chartered accountants and auditors.

In addition, there are Member States, where the exercise of the profession itself is not regulated, but only the use of the professional title is regulated and protected by law. Professionals who wish to use the professional title of tax advisor must be members of a professional organisation, which has been authorised to regulate the award of the professional title by respective member states (Belgium, Latvia and Romania). Tax advisory services are however not reserved exclusively for professionals having obtained the professional title. Anyone may offer tax advice, so long as the title is not used. For example in Belgium, the professional title (*Belastingconsulent / Conseil Fiscal / Steuerberater*) may be used only by members of the *Institut des Experts-Comptables et des Conseils Fiscaux / Instituut van de Accountants en de Belastingconsulenten*, a public law entity. In Latvia and Romania as well, tax consultants, who wish to be identified as such, must be members of the relevant professional

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<sup>114</sup> Pestke, Axel, *Der europäische Steuerberater – Illusion oder Wirklichkeit?*, in: *Festschrift für Michael Streck zum 70. Geburtstag*, Cologne 2011, pp. 761-784 (772).

organisation (*Latvijas Nodokļu Konsultantu Asociācija, LNKA und Camera Consultantor Fiscali din Romania, CCFR*). In addition to tax advisors, lawyers, chartered accountants and auditors may offer tax advice in Romania.

Finally, a group of Member States can be identified in which there is no requirement to be a member of a professional organisation. However, the qualifications necessary for the proper practice of the profession can be obtained voluntarily. This group can also be divided into further categories:

On the one hand there are Member States in which the professional bodies for tax advisors have established extensive regulations which are binding for their members. As a result, a kind of voluntary regulation is in place (Bulgaria, Ireland, Netherlands, Spain and the United Kingdom). In Ireland and the Netherlands, there is the particular feature, that the local professional organisations have also been authorised by law to award a specific title. Furthermore, it should be noted that in Ireland and the United Kingdom the profession of tax advisor as typically understood must be distinguished from tax agents, who represent their clients before the tax authorities and submit tax returns on their behalf, for which they require an authorisation from the respective government authority responsible for taxation. In the United Kingdom, there are also tax representatives, who independently prepare tax and VAT returns for non-resident individuals.

This must in turn be distinguished from those Member States in which, although a professional organisation with voluntary membership may exist in part, such an organisation has adopted only incomplete professional conduct rules for its members or indeed no rules at all. In such states, the independent profession of tax advisor is virtually unknown, while most professionals providing tax advisory services are normally also members of another professional group. As opposed to tax advice, these professions are regulated by law in each case. These countries include Finland, Italy, Luxembourg and Malta. In Finland for example, most tax advisors simultaneously work as auditors, lawyers or chartered accountants. In Italy, most tax advisors are also chartered accountants (*Dottori Commercialisti / Esperti contabili*) or auditors (*Revisori contabili*) and as such subject to a statutory regulation. Most professionals providing tax advice in Luxembourg also practice the legally regulated profession of chartered accountant (*expert comptable*). Finally, the majority of Maltese tax advisors also serve as lawyers or accountants.

It should be noted that professionals who offer tax advice in some of the Member States examined are required to (Additionally) register with a government authority in order to exercise the profession. Auditors in Denmark for example, must be admitted by the Danish Business Authority (*Erhvervs-og Selskabsstyrelsen*) and be entered in a register.

In Estonia, Lithuania and Sweden, there does not seem to be a profession of tax advisor in line with the definition underlying the present report. However, only very little information was available for these Member States.

Regardless of whether there is a chamber system or not, the professional organisations in the various Member States see themselves primarily as representatives of the professionals providing tax advice (See in particular information provided by the organisations themselves or the membership rules of professional organisations in Belgium, Germany, France, Latvia, Luxembourg, Netherlands, Austria, Poland, Portugal, Slovakia, Slovenia, Spain, the Czech Republic and the United Kingdom). In some instances, interest group functions are exclusively reserved for privately organised professional associations, while the chambers see themselves as professional supervisory bodies. There is a clear developing trend in Europe to clearly distinguish between interest group activities by a private professional association on the one hand, and control of admission to the profession and professional supervision by a self-regulatory body, such as the professional chambers, on the other hand. This is intended to avoid conflicts of interest and to secure the independence of the authority responsible for admissions and supervisory matters.

Professional associations also ensure compliance with self-established standards of professional practice. Activities in this area range from the organisation of *Continuing Professional Development* (CPD) programs, to the publication of specialist publications and the training of young professionals (For example by conducting professional examinations) to concrete proposals for tax legislation.

Only sometimes do the professional organisations also serve as arbitration bodies in case of conflicts between members of the profession (See Belgium, Germany, Finland, France, Latvia, Malta, Austria, Poland, Romania, Slovakia and partly Spain).

#### **5.3.4. Notaries**

In the EU Member States, notaries are commonly organised into public law entities (chambers). Only the common law and Nordic legal systems do without this form of organisation for the notary profession. However, there too, the profession is strictly regulated by law. Admission to the profession and professional practice are subject to strict legal regulations. Notaries are also subject to far-reaching professional ethics obligations.

Professional chambers exist in Belgium, Bulgaria, Germany, Estonia, France, Greece, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Austria, Poland, Portugal, Slovakia, Slovenia, Spain, the Czech Republic and Hungary. Membership in the respective chambers is a prerequisite in order to exercise the profession of notary. In many cases, the professional chambers are entitled to adopt mandatory by-laws or professional deontology codes which are binding upon their members. This is the case for example in Belgium, Germany, Lithuania and Malta. Monitoring compliance with professional law is one of the typical tasks of notary chambers in countries such as Belgium, Germany, Estonia, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland and the Czech Republic. Most chambers are organised as public law entities. This is the case for example in Belgium, Bulgaria, Germany, Estonia, France, Greece, Latvia, the Netherlands, Austria, Slovenia and Spain. The Romanian National Union of Notaries (*Uniunea Nationala a Notarilor Publici*) however is organised

under private law, though all notaries are nevertheless legally required to be members of the association.

In the Nordic countries, especially in Sweden and Finland, there are no continental-European style chambers or comparable organisations. In Denmark, notarial services are provided by the district courts. In the United Kingdom and Ireland, the profession is also not organised in a chamber. However, the interests of *Notaries Public* in the United Kingdom are represented by their own professional association, the *Notaries Society*<sup>115</sup>. The *Faculty Office*<sup>116</sup> also assumes the oversight and supervision of notaries. In Ireland, the requirements for professional qualifications and suitability for the profession of publicly appointed notaries are set by the Faculty of Notaries Public of Ireland.<sup>117</sup>

In Cyprus, the notary profession does not exist as such so that questions of professional organisation do not arise.

### **5.3.5. Architects**

The architectural profession has been characterised as the liberal profession with one of longest traditions in Europe, and has always featured a chamber organisation. Since then, the overall picture in Europe has become more varied. Professional chambers of architects have been organised in more than half of the Member States, at times in conjunction with the profession of engineers (Austria) or landscape architects, curators and conservators (Italy). Chambers of architects exist in Austria, Belgium, Bulgaria, Germany, France, Greece, Italy, Luxembourg, Austria, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Hungary and Cyprus. Membership in the respective chambers is a prerequisite for exercising the profession of architect in the Member States concerned. The tasks of the chambers include in particular, adopting binding professional regulations and professional supervision.

In Lithuania, an architectural association has been established as a public law entity, membership however is voluntary. In the Czech Republic, chamber membership is also not mandatory. However, the authorisation to use the title ‘Authorised Architect’ and carrying out the occupation of architect as a liberal profession is dependent on membership. The title of architect is not protected as such in the Czech Republic.

In the United Kingdom, architects are obliged to register with the *Architects Registration Board (ARB)*, a public corporation. The ARB is responsible, among other things, for determining the qualification requirements which entitle using the title ‘architect’ and maintains the UK Register of Architects. In addition, it has the power to determine the standards in training and professional practice, maintains a

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<sup>115</sup> <http://www.thenotariessociety.org.uk/>.

<sup>116</sup> [www.facultyoffice.org.uk](http://www.facultyoffice.org.uk).

<sup>117</sup> <http://notarypublic.ie/>.

complaints board dealing with misconduct by architects, ensures that no one uses the title of ‘architect’ without prior registration and has established a code of conduct.

In addition, architects are free to join a private law organised association. The most important association for architects and the association with the largest membership is the *Royal Institute of British Architects (RIBA)* with its regional offshoots, including the *Royal Society of Architects in Wales (RSAW)*. The RIBA is a private professional association which was founded in 1834 and received its royal charter in 1837. The general objective of the RIBA is the "promotion of architecture". Fully-qualified members of the RIBA may use the title ‘chartered architect’ and include the addition ‘RIBA’ behind their name. The RIBA requires its members to work according to the *RIBA Code of Professional Conduct* and the association punishes violations with sanctions up to and including exclusion from the association.<sup>118</sup>

A mixed form is applied in Ireland. The Irish *Building Control Act 2007* stipulates that the *Royal Institute of the Architects of Ireland (RIAI)* must maintain a professional register of members. The RIAI is the regulatory and advocacy body of Irish architects. Even if the right to hold the professional title can only be obtained through registration with the RIAI, membership in this Association is not mandatory. Thus inclusion in the professional register is not linked to membership. The RIAI does however provide its members with a wealth of information, which is why most Irish architects decide in favour of voluntary membership in the RIAI. Moreover, tender conditions for public construction projects often require membership of the RIAI.

Another hybrid form can be found on Malta. In Malta all architects are members of the chamber of architects. However, responsibility for registration lies with the *Periti Warranting Board*. This is composed of several members, who are partly appointed by the Minister of Works, partly by the chamber and partly elected by the registered architects themselves.<sup>119</sup>

The Latvian Association of Architects (*Latvijas Arhitektu Savienība*) is a private law professional organisation. Exercising the profession of ‘architect’ requires prior registration with this association of architects. In addition, certain tasks have been delegated to the association, similar to those of professional chambers.

In other Member States the architectural profession can be exercised without membership in a professional association or professional body. This is the case in Denmark, Estonia, Finland, the Netherlands and Sweden. In some instances, membership in one of these professional associations allows the use of a particular title, as in Denmark, (*architect, MAA*) for members of the *Akademisk Arkitektforening*. Members of the Swedish Association of Architects may use the additional title

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<sup>118</sup> <http://www.architecture.com/TheRIBA/AboutUs/Ourstructure/Constitution/CodeOfConduct.aspx>.

<sup>119</sup> Art. 6 *Periti Act*.

*Arkitekt SAR / MSA*. In the Netherlands, only the use of the title of ‘architect’ is protected by law. This requires prior registration with the *Bureau Architectenregister*<sup>120</sup> in order to use the title of ‘architect’.

### 5.3.6. Engineers

The various engineering professions are not generally organised in chambers across Europe. Traditionally, the profession of civil engineers is more likely to be organised in a public law entity in the southern and eastern Member States. In Germany, the profession of ‘consulting engineer’ is organised into chambers, and practice of the profession is linked to the membership in the respective state chambers of engineers. In many Member States, the various engineering disciplines are however only organised in private law interest groups.

At the European level, there is an umbrella organisation of the various chambers of engineers, the *European Council of Engineers Chambers (ECEC)*.<sup>121</sup> It has adopted a *Code of Conduct*<sup>122</sup> and a *Code of Quality*.<sup>123</sup>

### 5.3.7. Dentists

The professional organisation of dentists in the European Member States can be divided into three basic models, with a more or less pronounced degree of variation to be found within the various models.

**Basic Model 1** is characterised by the fact that the registration of dentists and/or the supervision of the profession is carried out by a government agency (For example a ministry), and the interests of dentists are represented by private law associations with voluntary membership. This model can be found for instance in Finland, Estonia and Belgium. Under this model, the agency responsible for registration and professional supervision is not always identical. In Belgium for example the Ministry of Health (*Service Public Fédéral (SPF) Santé publique*) is responsible for the registration of dentists. However, professional supervision is carried out by the *Commissions Médicales Provinciales* at the provincial level, which consist of four representatives of various professions (medical doctors, pharmacists, midwives, dentists, nurses, veterinarians and physical therapists). In Denmark, the Ministry of Health operates an exclusively electronic register, which has replaced the paper register.<sup>124</sup> In addition, dentists must be registered with the Danish professional association of dentists if they do not work in public health facilities, but would like to receive state subsidies for the cost of treatment.<sup>125</sup> The reason for this is that dental care is divided in Denmark. While children up to 18 years of age and older people receiving aged care are supplied by local government public dental-health facilities funded by the state, all other groups of patients are treated by private dental

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<sup>120</sup> <https://www.architectenregister.nl/Home/index.aspx>.

<sup>121</sup> <http://www.ecec.net/>.

<sup>122</sup> <http://www.ecec.net/fileadmin/downloads/ECEC-Code-of-Conduct.pdf>.

<sup>123</sup> <http://www.ecec.net/fileadmin/pdf/FINAL-CodeofQuality-tsitoumis17122010.pdf>.

<sup>124</sup> Information online in English at: [http://www.sst.dk/English/Online\\_register\\_registered\\_health\\_professionals.aspx](http://www.sst.dk/English/Online_register_registered_health_professionals.aspx) (last accessed on 10/16/2013)

<sup>125</sup> Cf. Council of European Dentists, *Manual of Dental Practice Version 4.1* (2009), p 116



practitioners operating in private practice. Depending on the category and type of treatment received, their treatment is in part subject to fixed prices which are paid for or subsidised by the state. The state-regulated prices are negotiated in particular by the Danish professional association of dentists and the regions as contracting parties.

Professional associations with voluntary membership exist not only in EU countries where registration and/or supervision is carried out exclusively by government agencies, but also in such countries where chambers carry out registration and/or supervision as self-regulatory bodies; membership of which is mandatory for dentists (Basic Model 2). As the following table 26 shows, many EU countries have opted for the chamber model. This model exists in a total of 13 EU countries.<sup>126</sup> A special situation exists in Hungary. There, the compulsory membership requirement in the Hungarian medical chamber, which maintains a specific section for dentists, was repealed effective from 1 January 2007 and the registration of dentists was transferred to the Ministry of Health. Since then, the membership of the *Magyar Kamara Orvosi Fogorvosai Tagozata* is apparently voluntary.<sup>127</sup> With regard to Romania, further research is necessary concerning the legal form of the registering authority, the Romanian Collegium of Dental Physicians. Unfortunately, during the investigation period it could not be determined conclusively whether this institution is in fact a private law association or a local authority (and therefore classified as a chamber).

**Table 26<sup>128</sup>: the basic model of professional organisations and associations by Member State**

Member State	Basic Model 1 State registration and / or supervisory body	Basic model 2 Chambers *	Basic model 3 Councils	Private-sector organizations
Belgium	✓ <sup>129</sup>			✓ <sup>130</sup>
Bulgaria	✓ <sup>131</sup>	✓ <sup>132</sup>		
Denmark	✓ <sup>133</sup>			✓ <sup>134</sup>
Germany		✓ <sup>135</sup>		✓ <sup>136</sup>

<sup>126</sup> Croatia, an EU member, since 1 July 2013, also applies this self-administration model. Information to the Croatian Dental Chamber (*Hrvatska Stomatološka komora*) is available online at: [www.hkdm.hr/](http://www.hkdm.hr/) (last accessed on 16/10/2013).

<sup>127</sup> However, according to findings from an expert survey membership is mandatory.

<sup>128</sup> Unless indicated otherwise, information is based on: Council of European Dentists, *Manual of Dental Practice Version 4.1* (2009).

<sup>129</sup> The registration is carried out by the SPF *Santé Publique* (Ministry of Health). Professional supervision is undertaken by the *Commissions Médicales Provinciales* (Art. 36 f. *Arrêté royal n° 78 relatif à l'exercice des professions des soins de santé du 10/11/1967*).

<sup>130</sup> There are two federations for Flemish-speaking Dentists: *Verbond the Vlaamse Tandartsen (VVT)*; *beroepsvereniging van de Vlaamse Tandartsen (VBT)*. In addition, there are two associations for French and German speaking dentists: *ASBL Chambres Syndicales Dentaires (CSD)* and *Société de Médecine Dentaire ASBL (SMD)*.

<sup>131</sup> The Ministry of Health is only responsible for the registration of dental surgeries as a medical facilities, while the regional associations of the Bulgarian Dental Society carry out the registration of dentists in private practice, see Council of European Dentists, *Manual of Dental Practice Version 4.1* (2009), p 77

<sup>132</sup> The Bulgarian Dental Association (*Bulgarian Dental Association*), see Council of European Dentists, *Manual of Dental Practice Version 4.1* (2009), p 49

<sup>133</sup> Registration is carried out by the *Sundhedsstyrelsen* (National Board of Health).

<sup>134</sup> The professional association and trade union "*Tandlægeforeningen*", information available online at: [www.tandlaegeforeningen.dk](http://www.tandlaegeforeningen.dk) (last accessed on 16/10/2013); also "*Tandægernes Nye Landsforening*", an association representing dentists employed dentists in the local public health centres, see Council of European Dentists, *Manual of Dental Practice Version 4.1* (2009), p 119

<sup>135</sup> The state dental associations are in each case public-law entities. Together they form an umbrella organisation in the legal form of association, which calls itself the Federal Chamber of Dentists.

Estonia	✓ <sup>137</sup>			✓ <sup>138</sup>
Finland	✓ <sup>139</sup>			✓ <sup>140</sup>
France		✓ <sup>141</sup>		✓ <sup>142</sup>
Greece		✓ <sup>143</sup>		
Ireland			✓ <sup>144</sup>	✓ <sup>145</sup>
Italy		✓ <sup>146</sup>		✓ <sup>147</sup>
Latvia	✓ <sup>148</sup>			✓ <sup>149</sup>
Lithuania		✓ <sup>150</sup>		(-) <sup>151</sup>
Luxembourg	✓ <sup>152</sup>			✓ <sup>153</sup>
Malta			✓ <sup>154</sup>	✓ <sup>155</sup>
Netherlands	✓ <sup>156</sup>			✓ <sup>157</sup>
Austria		✓ <sup>158</sup>		✓ <sup>159</sup>

<sup>136</sup> For example, the “Free Association of German Dentists”, to be found online at: [www.fvdz.de](http://www.fvdz.de) (last accessed on 03/10/2013), which also has state-level associations.

<sup>137</sup> *Health Board (Ministry of Social Affairs)*.

<sup>138</sup> “Eesti Hambaarstide Liit” information online at: <http://www.ehl.ee/> (last accessed on 11/10/2013).

<sup>139</sup> *National Supervisory Authority for Welfare and Health (Valvira)*.

<sup>140</sup> *Suomen Hammaslääkäriliitto*, available online at: <http://www.hammaslaakariliitto.fi/> (last accessed on 09/22/2013).

<sup>141</sup> *Ordre National des Chirurgiens-Dentistes* with its regional chambers, it is debatable whether the regional chambers are public or civil-law entities. On their origins, structure, powers and the legal nature of the French professional associations cf. Waline, Jean *Droit Administratif* 24 Edition, 2012, para. 278 et seq; on developments in the normative and disciplinary powers see Lascombe, Michel, *Les ordres professionnels Actualité juridique Droit administratif*, 1994, pp. 855 et seq.

<sup>142</sup> The *Confédération Nationale des Syndicats Dentaires (CNSD)* concludes, inter alia, the contracts with the state health care fund, information available online at: [www.cnsd.fr](http://www.cnsd.fr) (last accessed on 15/10/2013); *Association Dentaire Française = French Dental Association (ADF)* is an umbrella organization with a total of 26 dental professional associations, information online at: <http://www.adf.asso.fr/en/> (last accessed on 15/10/2013).

<sup>143</sup> In the Greek professional association (“Ελληνική Οδοντιατρική Ομοσπονδία”), which has regional subdivisions, the members must be part of regional subdivision. The regional divisions carry out the registration of dentists and have disciplinary powers. Approvals under the auspices of the state health care system are granted by the Ministry of Health, see Council of European Dentists, *Manual of Dental Practice Version 4.1 (2009)*, p 49

<sup>144</sup> *Irish Dental Council*, information available online at: <http://www.dentalcouncil.ie/> (last accessed on 13/10/2013).

<sup>145</sup> *Irish Dental Association (IDA)*, information is available online at: <http://www.dentist.ie/> (last accessed on 15/10/2013).

<sup>146</sup> *Federazione dei Medici Ordini Chirurghi e degli Odontoiatri*, information available online at: <http://www.fnomceo.it/fnomceo/home.2puntOT> (last accessed on 15/10/2013).

<sup>147</sup> *Associazione Nazionale Dentisti Italiani (ANDI)*, information available online at: [www.andi.it](http://www.andi.it) (last accessed on 11/10/2013); *Associazione Italiana Odontoiatri (AIO)* information available on the Internet at: [www.aio.it](http://www.aio.it) (last accessed on 20/09/2013).

<sup>148</sup> *Health Inspectorate* of the Ministry of Health, see also see Mitenbergs, Uldis/Taube, Maris/Misins, Janis/Mikitis, Erik/Martinson, Atis/Rurane, Aiga/Quentin, Wilm, *Health Systems in Transition*, vol.14, no. . 8, 2012 *Latvia Health system review*, page 40, available online at: [http://www.euro.who.int/\\_data/assets/pdf\\_file/0006/186072/e96822.pdf](http://www.euro.who.int/_data/assets/pdf_file/0006/186072/e96822.pdf) (last accessed on 20/09/2013 ).

<sup>149</sup> *Latvijas Zobarstu Asociacija*, information available online at: [www.lza-zobi.lv](http://www.lza-zobi.lv) (last accessed on 13/10/2013).

<sup>150</sup> *Lietuvos Odontologu Rumai*, information online at: <http://www.odontologurumai.lt/index.php> (last accessed on 28/08/2013).

<sup>151</sup> Cf. Council of European Dentists. *Manual of Dental Practice Version 4.1 (2009)*, p 238

<sup>152</sup> The authority responsible for registration is the Ministry of Health: *Médecin-Dentiste auprès de la Direction de la Santé*.

<sup>153</sup> *Association des Médecins et Médecins-Dentistes” du Grand-Duché de Luxembourg (AMMD)*, information available online at: [www.ammd.lu](http://www.ammd.lu) (letztet accessed on 15/10/2013).

<sup>154</sup> *Medical Council of Malta*, subject to the Ministry of Health, information available online at: [https://ehealth.gov.mt/HealthPortal/others/regulatory\\_councils/medical\\_council/medicalcouncilregisters.aspx](https://ehealth.gov.mt/HealthPortal/others/regulatory_councils/medical_council/medicalcouncilregisters.aspx) (Last accessed on 14/10/2013). It is responsible for registration and has disciplinary power (see Part VII of the *Health Care Professions Act*, available in English online at: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8930&l=1> (last accessed on 14/10/2013).

<sup>155</sup> According to the *Dental Association of Malta*, 98% of registered dentists are members of the association represented in Malta, cf. information available online at: <http://www.dam.com.mt/> (last accessed on 29/10/2013).

<sup>156</sup> The *Ministerie van Volksgezondheid Welzijn en Sport* (Ministry of Health) is responsible for registration.

<sup>157</sup> *Nederlandse Maatschappij tot Bevordering the Tandheelkunde*, information available online at: <http://www.tandartsennet.nl/index.html> (last accessed on 15/10/2013).The association also has disciplinary powers.

<sup>158</sup> The Dental Association Austria, information available online at: <http://www.zahnaerztekammer.at/> (last accessed on 14/10/2013).

<sup>159</sup> The Austrian Society for Dental, Oral and Maxillofacial Surgery is an umbrella organisation in which different dental health related professional associations have joined together, information available online at: <http://www.oegzmk.at/> (last accessed on 16/10/2013).

Poland		✓ <sup>160</sup>		✓ <sup>161</sup>
Portugal		✓ <sup>162</sup>		
Romania		unclear <sup>163</sup>		✓ <sup>164</sup>
Sweden	✓ <sup>165</sup>			✓ <sup>166</sup>
Slovakia		✓ <sup>167</sup>		✓ <sup>168</sup>
Slovenia		✓ <sup>169</sup>		
Spain		✓ <sup>170</sup>		
Czech Republic		✓ <sup>171</sup>		
Hungary	✓ <sup>172</sup>	✓ to 2007 <sup>173</sup>		✓ <sup>174</sup>
United Kingdom			✓ <sup>175</sup>	✓ <sup>176</sup>

<sup>160</sup> *Naczelna Izba Lekarska* (the Polish Medical and Dental Association). Registration is carried out by regional chambers (*Okregowa Izba Lekarska*), see Council of European Dentists, *Manual of Dental Practice Version 4.1* (2009), pp. 277 et seq.). Information from the Polish medical and dental association available online at: <http://www.nil.org.pl/> (last accessed: 16/10/2013).

<sup>161</sup> The Polish Association of Dentists, information in Polish available online at: [www.pts.net.pl](http://www.pts.net.pl) (last accessed on 16/10/2013).

<sup>162</sup> *Ordem dos Medicos Dentistas (OMD)*, information available online at: <http://www.ond.pt/> (last accessed on 16/10/2013).

<sup>163</sup> Further investigation is necessary, as to whether the *Romanian Collegium of Dental Physicians* is a private law association or a public-law local authority, along the lines of the *Colegiul Medicilor Din Romania* established for medical doctors on the basis of Law No 95/2006.

<sup>164</sup> *Romanian Dental Association of Private Practitioners, Romanian Society of Oral and Maxillo-Facial, Romanian National Association of Orthodontists, Romanian Society of Stomatology (Academic Association)*, cf. Council of European Dentists, *Manual of Dental Practice Version 4.1* (2009), p. 306.

<sup>165</sup> The *National Board of Health and Welfare* carries out registration. For activity within the state health care system, a register is kept by the *Försäkringskassan*. The monitoring of compliance with professional rules and principles is carried out by a government agency ("*Medical Responsibility Board (HSAN)*"), see Council of European Dentists, *Manual of Dental Practice Version 4.1* (2009), pp. 341 and 344.

<sup>166</sup> *Sveriges Tandläkarförbund* (Swedish professional association of dentists) is an umbrella organisation in which four professional associations have joined together: the Professional Association of Private Dentists "*Privattandläkarna*", *Tjänstetandläkarföreningen* (association of dentists in public healthcare), *Per Tidehag* (association of teachers of dentistry) and an association for students of dentistry, see Council of European Dentists *Manual of Dental Practice Version 4.1* (2009), pp. 344 and 346.

<sup>167</sup> *Slovenská komora zubných lekárov* (Slovak Chamber of Dentists), information available online at: <http://www.skzl.sk/> (last accessed on 16/10/2013).

<sup>168</sup> In addition to the Slovak Chamber of Dentists with its regional chambers which act as interest groups, there is a professional association of orthodontists (*Slovenská ortodontická spoločnosť*), see Council of European Dentists, *Manual of Dental Practice Version 4.1* (2009), p. 318.

<sup>169</sup> *Zdravniška zbornica Slovenije* (Slovenian Medical Association, which is also responsible for the registration and supervision of dentists), information in English available online at: <http://www.zdravniskazbornica.si/en/default.asp> (last accessed on 16/10/2013).

<sup>170</sup> The Spanish regional dental associations under the umbrella of the *Consejo General de Colegio de Oficiales Odontólogos y estomatólogos de España*. Information available online at: <http://www.consejodentistas.es/> (last accessed on 16/10/2013), see also Council of European Dentists, *Manual of Dental Practice Version 4.1* (2009), pp. 329 and 333, Information on mandatory membership is based on the expert survey.

<sup>171</sup> *Česká stomatologická komora – CSK* (the Czech Dental Chamber), information available online at: <http://www.dent.cz/> (last accessed on 16/10/2013).

<sup>172</sup> The *Ministry of Health - Office of Health Authorisation and Administrative Procedures*, is responsible for registration and supervision: see Council of European Dentists, *Manual of Dental Practice Version 4.1* (2009), p. 181, In addition, oversight by chambers, regarding compliance with professional guidelines (code of ethics).

<sup>173</sup> The Hungarian Medical Association (*Magyar Kamara Orvosi*) has formed a department for Dentists (*OMC Fogorvosok Területi Szervezete*). It has regional branches in the 19 provinces and Budapest. Dentists are represented at all levels of the organisation; Cf. Council of European Dentists, *Manual of Dental Practice Version 4.1* (2009), p. 185 For the historical development of the chamber as well as to regulate the medical profession as a whole, see Gaal, Péter / Szigeti, Szabolcs / Csere, Márton / Gaskins, Matthew / Panteli, Dimitra, *Health Systems in Transition*, vol.13, no. 5, 2011, Hungary, pp. 36 et seq., available online at: [http://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0019/155044/e96034.pdf](http://www.euro.who.int/__data/assets/pdf_file/0019/155044/e96034.pdf) (last accessed on 10/12/2013).

<sup>174</sup> *Magyar Fogorvosok Egyesülete* is a scientific society in which various professional associations have joined together. Membership is voluntary. For more information, in Hungarian, please visit: <http://www.mfe-hda.hu/> (last accessed on 12/10/2013). In summary cf. Council of European Dentists, *Manual of Dental Practice Version 4.1* (2009), p. 185.

<sup>175</sup> *General Dental Council*, for more information, please visit the web [www.gdc-uk.org](http://www.gdc-uk.org) (last accessed on 10/12/2013). In the United Kingdom there is a *General Dental Council*. For Scotland, however, the GDC has its own managing director of who deals exclusively with the affairs of Scotland, see <http://www.gdc-uk.org/Aboutus/Thecouncil/Pages/scotland.aspx> (last accessed on 19/10/2013).

<sup>176</sup> *British Dental Association* is a professional association and a trade union, for more information, available in English at: <http://www.bda.org> (last fetch on 12/10/2013).

Cyprus			✓ <sup>177</sup>	✓ <sup>178</sup>
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\* The term ‘chamber’ is understood as an autonomous entity, in which membership is mandatory for the professional practitioner, which is responsible for the registration and professional supervision and the constituent bodies of which are elected.

Other features are shown by **Basic model 3**, which is in place in only a few European countries (The United Kingdom, Malta and Cyprus). The Council partly resembles the (Dentistry) chamber model, to the extent that it is responsible for the registration of dentists and also has a monitoring function. Within the model, there is a certain degree of variation with regard to organisation and methodology, as is the case with the two other basic models. Thus, the seven members of the Council in Cyprus are appointed exclusively by the Council of Ministers<sup>179</sup>, while in the United Kingdom, members are partly elected. In Malta, all members of the Council are elected by the registered dentists in Malta.<sup>180</sup> In the following, the Council model is to be presented more closely based on the example of the *General Dental Council (GDC)* in the United Kingdom. The GDC is a legal entity (‘body corporate’). The activities of the GDC can be summarised as follows<sup>181</sup>:

- Registration of all professionals in the field of dentistry (clinical dental technicians, dental hygienists, dental nurses, dental technicians, dental therapists and orthodontic therapists);<sup>182</sup>, -
- Setting and enforcing standards of dental practice and professional conduct;
- Protection of patient/public from illegal practitioners;
- Ensuring the quality of dental / dental auxiliary training’
- Ensuring that professionals keep their knowledge and skills up to date’
- Investigation of complaints and dealing with any complaint concerning the “*fitness to practice*” (suitability to practice the profession);

<sup>177</sup> The *Cyprus Dental Council* is responsible for the registration and for the recognition of specialist dental training. In summary, cf. Theodorou, Mamas / Charalambous, Chrystala / Petrou, Christos / Cylos, Jonathan, *Health Systems in Transition*, Vol 14 No.6 2012, Cyprus, pp. 23 et seq., available at: [http://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0017/174041/Health-Systems-in-Transition\\_Cyprus\\_Health-system-review.pdf](http://www.euro.who.int/__data/assets/pdf_file/0017/174041/Health-Systems-in-Transition_Cyprus_Health-system-review.pdf) (last accessed on 12/10/2013).

<sup>178</sup> Παγκύπριος Οδοντιατρικός Σύλλογος is the only Cypriot professional association of dentists which has five local dental professional associations in the districts of Cyprus. The professional enforces the code of ethics for dentists, further information, in Greek, available at: <http://www.dental.org.cy/> (last accessed on 12/10/2013). In summary cf. Council of European Dentists, *Manual of Dental Practice Version 4.1* (2009), p 100

<sup>179</sup> Cf. Theodorou, Mamas./ Charalambous, Chrystala / Petrou, Christos / Cylos, Jonathan, *Health Systems in Transition*, vol.14, no. 6, 2012, Cyprus, pp. 23 et seq., available at: [http://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0017/174041/Health-Systems-in-Transition\\_Cyprus\\_Health-system-review.pdf](http://www.euro.who.int/__data/assets/pdf_file/0017/174041/Health-Systems-in-Transition_Cyprus_Health-system-review.pdf) (last accessed on 12/10/2013).

<sup>180</sup> See LN 35 (2004): *Medical Council (Elections) Regulations*, 2004, available at: [https://ehealth.gov.mt/HealthPortal/others/regulatory\\_councils/medical\\_council/elections.aspx](https://ehealth.gov.mt/HealthPortal/others/regulatory_councils/medical_council/elections.aspx) (last accessed on 14/10/2013).

<sup>181</sup> Based on the GDC’s own presentation online at: [https://www.gdccouncilmembers.com/sections/about\\_the\\_org](https://www.gdccouncilmembers.com/sections/about_the_org) (last accessed on 21/09/2013).

<sup>182</sup> Available at: <http://www.gdc-uk.org/Aboutus/Whoweregulate/Pages/default.aspx> (Last accessed on 21/9/2013).

- Help in the resolution of disputes between patients and dental professionals regarding private practice dental treatments.

The GDC consists of twelve persons and is composed of registered dentists, dental assistants ('dental auxiliaries') and six laypersons.<sup>183</sup> Only the dentists and other dental professionals are elected to the Council.<sup>184</sup> The laypersons are appointed by the Queen, upon the advice of the *Privy Council*, a political advisory body to the Queen<sup>185</sup>. Since 10 October 2013, the President of the Council ('chair') is appointed by the Privy Council and no longer elected from among the members of the Council.<sup>186</sup>

When comparing the chamber model of self-administration, as exists in Germany for example, with the General Dental Council in the United Kingdom, the similarities and differences can be summarised as follows: Both the GDC and the dentistry chamber are legal entities with the tasks of registration and professional supervision. However, the two models differ mainly in terms of the constitution of their membership. While in Germany membership in the chamber is a prerequisite for practicing the profession (mandatory membership), dentists and other associated professionals are not required to be members in the Council. However they must be registered there and pay the required fees. The Council members are partly elected by the registered persons, and are partly (the laypersons) appointed by the Privy Council. The activities carried out by the chamber and the Council, partly coincide. In Germany, the chambers have far-reaching autonomy, as they are only subject to state legal supervision.

### 5.3.8. Pharmacists

Pharmacists are represented by at least one professional organisation in each Member State. The concept of self-administration is implemented to very different degrees. In a narrow majority of Member States, including Belgium, Bulgaria, Germany, France, Greece, Italy, Austria, Poland, Portugal, Romania, Slovenia, Spain and the Czech Republic, the organisation and representation of the profession of pharmacist is carried out by chambers as self-regulatory bodies. In other countries (Including Denmark, Estonia, Finland, Lithuania, Malta, the Netherlands, Sweden and Cyprus) private law pharmacist associations mainly serve as interest groups without independent regulatory powers. The regulatory authorities in Ireland and the United Kingdom form a separate category with regard to the organisational structure of the profession.

In particular, the chamber-like professional organisations usually take on the task of developing general rules and principles in the form of a code of conduct, as well as advising members with regard

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<sup>183</sup> Appendix 1 (Schedule 1) in Part 1 of the *Dentist Act* 1984.

<sup>184</sup> Schedule 1 Part I, Sec 3 subsec.2 *Dentist Act* 1984.

<sup>185</sup> Information available online at: <http://privycouncil.independent.gov.uk/> (last accessed on 21/09/2013).

<sup>186</sup> See *the General Dental Council (Constitution) (Amendment) Order* 2012, available online at: <http://www.legislation.gov.uk/uksi/2012/1655/article/2/made> (last accessed on 21/09/2013).

to professional duties, dispute resolution between members, professional supervision, advocacy and the organisation and supervision of training and continuing education courses.

Except for the associations in Latvia and Lithuania, the professional organisations are also members of the Pharmaceutical Group of the European Union (PGEU), the European association of public pharmacists.<sup>187</sup>

#### **5.4. Special Legal Status of liberal professions as a result of specific professional rules**

##### **5.4.1. Independence**

Independence is one of the ‘core values’ of liberal professional services. The independent provision of professional services is a feature which indicates and confirms their orientation in favour of the public good. Independence means, above all, professional independence. The liberal professional should be permitted to provide services autonomously, without interference from government agencies, subcontractors or other third parties.<sup>188</sup> Independence is recognised in all Member States and for all investigated professions and in almost all cases guaranteed by professional law. This is especially true for the profession of **lawyer**, where independence is a key professional duty. As a result, it is protected by law in all Member States.

Independence is of particular importance for the profession of **auditor**, especially in the case of statutory annual audits. In this activity, the auditor's independence is a functional prerequisite for the audit. Chapter IV of the Statutory Audit Directive therefore establishes certain professional duties which must be implemented by Member States. The independence of the auditor is one of the main professional duties of statutory auditors, see Article 22 and 42 of the Statutory Audit Directive. In contrast to most other liberal professions, in which the main focus is independence on professional matters and independence from state control, here it is independence from clients which is paramount. The independence of the auditor is therefore also subject to a variety of national regulations and auditing standards. At the European level, comprehensive harmonisation of rules regarding professional independence is currently being prepared in the legislative process. The European legislative process for revision of the Statutory Audit Directive is expected to be completed during the spring of 2014. The international auditing standards deal with the question of independence in detail. Questions of the prohibition against representing conflicting interests are often regulated in the context of independence from clients. In most cases, the audit of listed companies is subject to stricter rules than those applying to non-listed companies.

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<sup>187</sup> <http://www.pgeu.eu/en/pgeu/members.html>.

<sup>188</sup> Cf on the independence of lawyers, for example, for German law Henssler, Martin in: Henssler, Martin / Prütting, Hanns, *BRAO Bundesrechtsanwaltsordnung, Kommentar*, Munich, 2014, § 43a Bundesrechtsanwaltsordnung Rn. 2 et seq.

In addition to the aforementioned professional duties regarding annual statutory audits, which are mostly found in commercial law and professional law; deontology codes apply to all services provided by auditors. Independence and professional secrecy requirements are mandated by Member States.

The rules in the Member States for the profession of **tax advisor** are similarly designed. In all of the Member States for which results are available, there are either provisions requiring professional independence of tax advisors, or independence is part of the core values for practicing the profession. The rules on professional independence are established by the respective professional organisations, either chambers with compulsory membership or professional associations.

The principles of the **notarial profession** include the duty to exercise the profession independently and impartially. Unlike lawyers, notaries are not representatives of a single party, but completely independent and impartial service providers for all participants. The profession's independence is enshrined in section 1.2.2. of the European Code of Notarial Professional Ethics. In order to avoid any doubts about impartiality, a notary in Germany may, for example, not act in a matter which he or she has dealt with in another function. As a result, a lawyer-notary may not perform authentication in a matter in which he or she (Or a partner in the same firm) has worked on as a lawyer. Conversely, the lawyer-notary may not act in his or her capacity as a lawyer after having dealt with the same matter as a notary.

**Architects** too, must not simultaneously carry out tasks which could result in their professional independence being called into question. For instance in Luxembourg<sup>189</sup> architects are forbidden from engaging in commercial activity<sup>190</sup>. The same limitation also applies in Austria.<sup>191</sup> Almost all Member States require architects, in general terms, to maintain their professional independence. They are in principle committed to professional behaviour towards colleagues.

A general obligation to perform professional duties independently also applies to the **medical professions**. For dentists, this professional duty is only un-reported in Malta, Sweden and Slovakia.<sup>192</sup> On the other hand for the profession of pharmacist, a commitment to professional independence was found in all examined jurisdictions.

#### 5.4.2. Confidentiality

Confidentiality is another key basic duty or 'core value' of the liberal professions. This results from the fact that professional services usually deal with highly personal interests of the client. Therefore, a duty of confidentiality is provided for in all Member States. The professional law confidentiality duty is in most cases reinforced by criminal law provisions. In addition, for most liberal professions, the duty of confidentiality coincides with a right to refuse testimony before state authorities and courts

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<sup>189</sup> Art. 2 *Loi du 13.12.1989*.

<sup>190</sup> Art. 4 *Code de déontologie*.

<sup>191</sup> § 14 section 7 *Ziviltechnikergesetz*.

<sup>192</sup> Information based on the expert survey

and in many cases even a prohibition to testify. The confidentiality rights and duties apply to all information obtained in the course of professional practice. Moreover, these apply not only to the liberal professional but all employees as well. The duty is usually suspended when the professional is released from the obligation by the client. Thus, the client remains ‘in control’ of the confidentiality duty.

Such confidentiality privileges and duties for **lawyers** exist in all member states. For **auditors** this commitment is backed by European law. Article 23 of the Statutory Audit Directive, establishes as a further basic obligation for all Member States, that professionals must be subject to a duty of confidentiality and professional secrecy.

A more differentiated legal situation exists for the profession of **tax advisor**. In order to properly exercise the profession, a tax advisor requires a wide range of information on the financial and legal situation of his or her client. On the one hand, the client has a legally justified interest worthy of protection to ensure this information is not disclosed to third parties.<sup>193</sup> Therefore professional confidentiality with its two-fold components; the duty of confidentiality and the right to refuse testimony, is in principle of high importance for tax advisors. Nevertheless, Member States only have rules that prohibit an accountant from passing on information obtained during the course of a client mandate to any third party. Rules protecting the second component of professional confidentiality, namely not to be forced to pass on client information to government agencies (Evidentiary privilege), exist only in a small number of Member States.<sup>194</sup> At times, tax advisors are even obliged to inform government authorities if they become aware of cases of tax evasion.<sup>195</sup> In addition, Directive 2005/60/EC<sup>196</sup> requires tax advisors to inform authorities (Partly through their professional organisation), where they suspect cases of money laundering or terrorist financing.<sup>197</sup>

**Notaries** on the other hand are subject to a comprehensive duty of confidentiality. This is a basic notarial duty which remains in force after the professional leaves office. The same applies to the **profession of architect**. The architect is commonly required to treat the orders entrusted to him in confidence and to protect operating and business secrets of his or her client.

For the **health professions**, comprehensive confidentiality duties as well as evidentiary privileges are also in place.

#### 5.4.3. Conflict of interests

The prohibition against representing conflicting interests is generally considered to be one of the ‘core values’ of the liberal professions. The aim is to secure the independence of the liberal professions and

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<sup>193</sup> Reibel, Rudolf, *European Professional Handbook for Tax Advisers*, Brussels, 2013, p. 29.

<sup>194</sup> Cf. also Reibel, Rudolf, *European Professional Handbook for Tax Advisers*, Brussels, 2013, pp. 30 et seq.

<sup>195</sup> Reibel, Rudolf, *European Professional Handbook for Tax Advisers*, Brussels, 2013, p. 31.

<sup>196</sup> Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, OJ. EU No. L 309, p 15

<sup>197</sup> Cf also Reibel, Rudolf, *European Professional Handbook for Tax Advisers*, Brussels, 2013, pp. 32 et seq.



to maintain relationships of trust between the client and the service provider. No one should "serve two masters" in the field of liberal professional services.<sup>198</sup> The prohibition is codified in particular in cases where the professional service in question deals with representing client interests, this is particularly the case for the professions of lawyer and tax advisor. For other professions such as the health professions, this prohibition plays only a minor role if any.

The prohibition against representing conflicting interests is a key feature of the legal profession. Here the prohibition ensures both the good reputation of the profession and the effective functioning of the respective justice system.<sup>199</sup> Accordingly, the prohibition for lawyers to represent conflicting interests is established by professional law across the Member States. In some Member States, the prohibition on conflicts of interests is additionally reinforced with the help of criminal law provisions, as is the case in Germany and Greece and to a lesser extent also in Italy, Romania and Spain.<sup>200</sup>

For **auditors**, the prohibition against representing conflicting interests is closely linked with the independence of the auditor and established by the relevant regulations.<sup>201</sup> For the profession of **tax advisor**, the majority of the investigated Member States for which information is available have established respective legal prohibitions. In other instances, oversight is at least carried out by the respective professional organisation. However, the prohibition is not applied as strictly as in the case of the legal profession. Two regulatory concepts can be distinguished. On the one hand there are Member States in which a professional must immediately give up a mandate as soon as a conflict of interest appears (For example, Latvia). On the other hand there are Member States where it is sufficient in such a case that the professional informs the client, who may then decide whether they wish to continue to be represented by the respective professional (For example Finland).

As a result of their special function as a public official, the **notary profession** is considered incompatible with the exercise of other professions in most Member States. This is intended to avoid conflicts of interest as well as guarantee the independence and impartiality of notaries. Against this background, the operation of a business or the participation in commercial companies is often viewed as incompatible with the profession. Exceptions to the disqualification are mostly with regard to scientific, artistic or teaching activities.

Across Europe, **architects** are bound by various professional duties in the exercise of their profession. An increasing trend leans towards an explicit prohibition against representing conflicting interests such as in Belgium, where an architect may not simultaneously carry out building contractor

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<sup>198</sup> Cf. Deckenbrock, Christian, *Strafrechtlicher Parteiverrat und berufsrechtliches Verbot widerstreitender Interessen*, Bonn, 2009, Rn. 2, pp 244 et seq.; Henssler, Martin in: Henssler, Martin/Prütting, Hanns, *BRAO Bundesrechtsanwaltsordnung, Kommentar*, Munich, 2014, § 43a BRAO Rn. 161 et seq.

<sup>199</sup> Cf. Deckenbrock, Christian, *Strafrechtlicher Parteiverrat und berufsrechtliches Verbot widerstreitender Interessen*, Bonn, 2009, Rn. 2, pp 244 et seq.; Henssler, Martin in: Henssler, Martin/Prütting, Hanns, *BRAO Bundesrechtsanwaltsordnung, Kommentar*, Munich, 2014, § 43a BRAO Rn. 161 et seq.

<sup>200</sup> Cf. Deckenbrock, Christian, *Strafrechtlicher Parteiverrat und berufsrechtliches Verbot widerstreitender Interessen*, Bonn, 2009, Fn. 169.

<sup>201</sup> Cf 5.4.1. above

activities<sup>202</sup>, or in Bulgaria where an architect must not at the same time be employed as a public servant. Such a restriction also applies to architects in Portugal and the Czech Republic, where they may not exercise certain functions in public administration.<sup>203</sup> In France and the United Kingdom there are similar restrictions.

#### **5.4.4. Advertising regulations**

Regulations on advertising for liberal professional services were once common in many liberal professions across the Member States. In addition to the general provisions of unfair competition law and competition law; liberal professionals were often completely forbidden from advertising or permitted to advertise only within very narrow limits. Over the past two decades however the advertising rules for liberal professional services have been significantly deregulated. To this day however, professional law rules often establish an objectivity requirement. This is especially true for pharmacists, dentists, lawyers, notaries and tax advisors. More rarely, the objectivity rule is also established for architects and auditors. Often, as a result of the duty of confidentiality, advertising with the identity of current or former clients and clients without their consent is prohibited. Various professional laws at times forbid lawyers from advertising for a specific mandate in a particular case in order to protect clients' freedom of choice in exceptional circumstances. Comprehensive advertising bans are now an absolute exception, and are also subject to concerns regarding their conformity with European law under recent ECJ case law. These are (still) in force for Portuguese pharmacists and Maltese architects and in various instances for notaries.

In summary, it can be stated that liberal professionals are often required to show a certain degree of restraint with regard to advertising. This is likely a result of the continuing relevance of liberal professions' orientation in favour of the public good.

##### **5.4.4.1. Lawyers**

Traditionally, continental European jurisdictions in particular have applied limitations on advertising opportunities for the legal profession. The underlying principle being that lawyers ought to advertise only through the quality of services provided. Over the past two decades, these restrictions have been reduced or even eliminated entirely. Absolute advertising bans for lawyers no longer exist in the European Member States, partly as a result of current ECJ case law. In Estonia § 58 paragraph 1 of the Lawyers Act provides that any form of attorney advertising is banned, however certain types of information do not fall under the concept of illicit advertising and can therefore still be published.

Certain restrictions on the advertising opportunities of lawyers have however survived to this day. Particularly common is the prohibition on the dissemination of irrelevant information. More than half of the Member States provide for such a restriction. Requirements with respect to certain advertising

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<sup>202</sup> Article 6 *Loi du 02.20.1939*.

<sup>203</sup> Art. 46 *Decreto-Lei n.º 176/98*; Art. 12 Nr. 4 *Architects Act 360/1992*.

materials exist in Estonia, France, Ireland, Latvia, Luxembourg, Malta, Poland, Romania, Slovakia, Slovenia, the Czech Republic and Cyprus. In addition, references to former mandates are mostly prohibited. However, there are exceptions where consent is given by the affected client. This is the case in Austria, Scotland (*advocates*), Ireland (*solicitors*) and Finland. French lawyers' law allows advertising with a mandate only abroad and only when this is also permitted under local regulation. Finally, specific promotional activities are prohibited by professional law. The prohibition to advertise for a specific mandate exists in various forms in Germany, Belgium, England and Wales, Estonia, Finland, France, Ireland, Latvia, Luxembourg, Northern Ireland, Austria, Poland, Portugal, Romania and in the Czech Republic.

#### **5.4.4.2. Auditors**

Legal restrictions on advertising are the absolute exception for auditors. Such a prohibition was found to still exist only in Slovakia. Apart from this, rules on advertising can at times be found in certain ethics codes. These declare that only factual advertising may be considered compatible with professional standards. Similar rules exist for example in France, Italy, the Netherlands and Portugal. Advertising with specific mandates is prohibited in certain Member States such as France. Specific restrictions on advertising for the profession of auditor in Germany were abolished without replacement in the 7th edition of the Public Accountant Act (WPO) as amended in 2007. According to §52 WPO, since then, only general legal provisions of the law on unfair competition apply. The objectivity rule and the prohibition of advertising with specific mandates remains in force as a result of Section 250 IFAC *Code of Ethics* which is binding upon all member organisations of IFAC.

#### **5.4.4.3. Tax advisors**

In the field of tax advice, advertising for one's own professional activity was in principle permitted in each of the Member States surveyed for which information was available. In the majority of Member States examined however, professional law provisions exist which limit either the type or content of such advertising.

The content restrictions are mostly motivated by a desire to maintain the good reputation of the profession. For this purpose, either specific regulations are enacted or certain existing professional law regulations are reinforced by a restriction on advertising. For example, certain countries prohibit tax advisors from including information on previously completed mandates in their advertising. Generally this is reinforced by a separate duty of confidentiality for tax advisors. In addition comparative advertising; advertising that promises a specific result or advertising that directly addresses a potential client is often prohibited. In these cases, professional law does not go beyond the general requirements of competition law.

#### **5.4.4.4. Notaries**

Regulations on advertising by notaries can be found in almost all Member States. However, an absolute ban on advertising is required only by a small number of professional codes. This can be found for example in Bulgaria, Estonia, France, Latvia, Poland and Slovenia. Compared to the other

professions examined, an advertising ban is the most common among notaries. In some instances, advertising is limited to factual information, this is true of Italy and Hungary. Finally, in some cases there are restrictions on comparative advertising which refers to other professionals (For example in Austria and Slovakia).

#### **5.4.4.5. Architects**

Across the EU, there are relatively few professional regulations for the profession of architect which restrict advertising opportunities, beyond the requirements of general regulations that apply to all sectors of the economy. Only a small minority of Member States have established regulations specific to the profession, which go beyond the provisions of general competition law.

In some instances, advertising is limited to factual information as a result of a ban on "laudatory advertising". This is the case in Belgium, Luxembourg, Romania and Germany for example. In addition, in some instances restrictions apply to comparative advertising through referring to other professionals. This is the case in Portugal and Spain for example. In the previously mentioned restrictive countries, advertising by referring to completed client contracts is also forbidden. In contrast, Austria prohibits only statements designed to mislead, lead to confusion and disparaging comments. This is in line with general law on unfair competition. Architects are also not permitted to advertise in a manner contrary to the spirit of collegiality.

The most stringent advertising restrictions are in place in Malta, where architects are prevented from advertising except when searching for new employees or notifying clients of a change of address. In Cyprus there is even an absolute ban on advertising.

#### **5.4.4.6. Dentists**

In almost all countries, there are special rules on advertising by dentists. These advertising rules include national rules concerning external presentation of dentists and their communication with the general public (E.g. guidelines for practice signs or web-page design). In particular, an objectivity rule and a ban on comparative advertising apply across the board. Particularly strict regulations exist in France. Here any form of direct and indirect advertising is prohibited.<sup>204</sup> The design and signage of a dental surgery must not create "an impression of commerciality". Information on the occasion of opening, closure or transfer of a dental-surgery must be submitted to the chamber for prior approval. In Malta, any advertisement must first be submitted to the Medical Council.

#### **5.4.4.7. Pharmacists**

Except with regard to the advertisement of medicines, very few rules exist for pharmacists with regard to self-advertisement. For example in Belgium<sup>205</sup>, Germany<sup>206</sup>, France<sup>207</sup>, Greece<sup>208</sup>, Ireland<sup>209</sup>, Italy<sup>210</sup>,

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<sup>204</sup> Articles R. 4127-215, Section 2, No. 3 CSP.

<sup>205</sup> Art. 85, 91 du *Code déontologie*.

<sup>206</sup> e.g. § 18 BerufsO North-Rhine Chamber of Pharmacists

<sup>207</sup> Art. R. 4235-22 *Code de déontologie*.

the Netherlands<sup>211</sup>, Austria<sup>212</sup>, Portugal<sup>213</sup>, Hungary<sup>214</sup>, the United Kingdom<sup>215</sup> and Cyprus<sup>216</sup> there is merely a general requirement that advertising be truthful, not misleading, or unfair and in accordance with professional honour. In Belgium, the *Cour de Cassation* ruled in 1999 that the *Ordre des Pharmaciens* may not establish advertising restrictions which restrict or hinder competition.<sup>217</sup> For this reason, advertisement may only be prohibited there, insofar as the honour of the profession or the public interest is threatened. In addition, in Germany, undercutting the price of medicines and providing services not related to the pharmacist profession is prohibited. A particularly strict regulation for pharmacists exists in Portugal. Pharmacists there may not carry out any form of advertising for their individual professional activity.<sup>218</sup>

#### 5.4.5. Regulations on fees

As with advertising regulations, fee-rules, particularly in the form of fee regulations and fee tables, were once widespread among liberal professionals. Again, significant liberalisation has occurred here. In most cases, the fees for professional services are negotiated freely. Continuing particularities in this area are less a result of a jurisdiction's inclusion in a particular family of legal systems but rather characteristic of specific professions.

Only in a few instances can mandatory fee regulations which do not permit offering lower fees (minimum fees) still be found. For the notary profession (except in the Netherlands), fees are regulated by fee regulations of varying legal nature. However in this matter, it should be noted that notaries are considered public office-holders by the legal systems of the Member States<sup>219</sup>. Minimum fees for legal representation by lawyers exist only in Germany. For architects, minimum fees are in place in Germany and Malta.

Far more common are subordinate fee regulations. These apply when the parties have not agreed otherwise. Such fee regulations were found in particular for the professions of lawyer and tax advisor and to some extent for the profession of architect.

In general however, the fees for liberal professional services are negotiable in the vast majority of Member States. Often fees (For example lawyers' fees) are required to be set according to ethical

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<sup>208</sup> Art. 22 Ethics Code of Pharmacists (LAW 3457/2006).

<sup>209</sup> PSI Guidelines.

<sup>210</sup> Art. 20 of the Code of Conduct.

<sup>211</sup> Art. 2.16 *Professional Code and Rules of Conduct*.

<sup>212</sup> §§ 12, 18 BerufsO.

<sup>213</sup> Art. 105 *Decreto-Lei 288/200*.

<sup>214</sup> Code of Conduct

<sup>215</sup> *Standards of Conduct, Ethics and Performance*.

<sup>216</sup> *Pharmacy and Poisons Law, Ethics Regulations of Pancyprrian Pharmaceutical Association*.

<sup>217</sup> Hof van Cassatie, 7 Mei, 1999, R.W., 1999–2000, S. 112.

<sup>218</sup> Art. 106 *Decreto-Lei 288/2001*.

<sup>219</sup> For different classification by the ECJ with a view of Article 51 TFEU, see ECJ v.24 5 2011 - C-54/08, EuZW 2011/468

principles. Regulations for the profession of auditor often provide that compensation must be proportionate to the necessary auditing effort. This is intended to ensure audit quality.

Success based fees for auditors are prohibited without exception. Such limitations are widespread for the profession of lawyer. However, professional regulations of certain countries have been liberalised in recent years.

Compensation provisions for the health professions are not comparable with the provisions of other professional services, as these are closely linked to the national health system. As part of government health care or state/social-security funded health care price controls are the rule. However, where patients are required to contribute co-payments, or bear the entire cost of treatment, we have found that the prices for private dental services are predominantly freely negotiated by patients throughout Europe.

#### **5.4.5.1. Lawyers**

In the majority of European Member States, the principle of free negotiation of fees between lawyers and clients applies. Oftentimes however, fee regulations can be found which apply optionally, where the contracting parties have not agreed otherwise. Other fee scales serve only as a guide. German lawyers for example, may in principle freely negotiate their fees for non-forensic matters with their clients. The German Lawyers Remuneration Act (RVG) is valid only as a subordinate fee scale. For the representation of clients in court however, the fees prescribed by the RVG may not be undercut. Fee increases on the other hand are not a problem, so long as they do not exceed the limit of moral standards. The same applies in Bulgaria. Austrian lawyers may conclude agreements derogating from the Lawyers' Fees Act without limitations. In the Czech Republic, the fee structure is also subordinate while in Lithuania we find a fee schedule for lawyers published as a recommendation.

In other Member States, the professional is merely required to set fees which are "fair", "reasonable" or "restrained". Such provisions exist for example for lawyers in Belgium, Denmark, Luxembourg, the Netherlands and Sweden.

In addition to fee scales, there are also other provisions which restrict contractual freedom with regard to fees. Restrictions apply in particular to the agreement of contingency fees, which for example are not permitted or highly restricted for lawyers in Belgium, Greece, Portugal, Luxemburg, France and Romania. In the aforementioned states, it is permitted to agree to so-called additional success fees.

#### **5.4.5.2. Auditors**

The structure of audit fees is not regulated in detail by the Statutory Audit Directive. Article 25 of the Statutory Audit Directive mentions only two limitations which must be implemented by the Member States and which serve to ensure the independence of the auditor. The audit fee must not be influenced or determined by the provision of additional services. Also, the fee must not be subject to any conditions which specifically rule out contingency fees for audit services.

Requirements going beyond the terms of the Statutory Audit Directive are rarely encountered in the Member States. Frequently we find (Professional ethics) rules requiring that the audit fee should be adequately proportionate to the auditing work required. This is to ensure excessively low audit fees are not used to entice clients, resulting in a lower audit quality as a result of an overly low quote. Such rules are in place in Belgium, Germany, France, the Netherlands and Portugal for example. Slovakia has both minimum requirements as well as a minimum number of hours which must be expended for the audit, dependent upon the total assets of the audit client. In France, auditors' hourly rates are freely negotiable. However, the number of hours expended for an audit is determined (In a range) by regulation, based on the total assets of the audit client.

#### **5.4.5.3. Tax advisors**

Mandatory fee regulations for tax advisory professionals are rare. In some of the Member States examined, there is a total absence of any special provision concerning the fees of tax advisors (Finland, Italy, Latvia, Malta, Romania, Slovakia and Spain). In other states the professional organisations have published guidelines or recommendations, but these are not mandatory (Belgium, Greece, Ireland, Luxembourg, the Netherlands and Slovenia).

Within the group of states with binding rules on fees it is possible to further differentiate. Only one country requires tax advisors to remain within a specific price range when concluding fee agreements (Germany). In other countries which have fee regulations, these refer only to certain specific aspects of tax advisory services (Czech Republic: representation in court) or to success based fees. These are generally permitted in all investigated Member States, however only to a limited extent in some (Portugal and the United Kingdom), while in others the amount of compensation may only be partly based on performance related elements. Certain countries require a base remuneration to always be paid, regardless of success (Austria, France, Poland).

#### **5.4.5.4. Notaries**

In most Member States with a Latin notary system, there are legally binding fee regulations or legally binding notary fee scales for notary activity. For example, remuneration for notary services is regulated by law in Belgium, Germany, France, Italy, Luxembourg, Malta, Austria, Romania, Spain and the Czech Republic. In other Member States the remuneration for notary activities is controlled by regulation, by the responsible ministry. This is the case for example in Bulgaria, Greece, Latvia, Lithuania, Poland, Portugal and Slovakia. In Slovenia the notarial tariff must be adopted by the Chamber of Notaries with the approval of the Minister of Justice.

In the Netherlands, the remuneration of notaries is in principle freely negotiable. This is intended to result in increased competition on prices among notaries and increased quality of notarial services.

According to a comparative study by *Peter L. Murray* of Harvard University (USA), fixed fees have not shown themselves to be disadvantageous for consumers.<sup>220</sup>

#### **5.4.5.5. Architects**

In most Member States there are no legally binding fee scales, so that fees can be freely agreed between client and architect. Examples include Belgium, Finland, the Netherlands, Portugal, Sweden, Denmark and Bulgaria.

In some Member States, such as France, Italy and Spain, fee scales have existed in the past, but these were abolished in the interest of free competition. Certain Member States have fee scales or guidelines of merely recommendatory character as in the case of Ireland, Latvia, Luxembourg, Poland, the United Kingdom and the Czech Republic. Mandatory fee scales remain the exception. They are in place in Germany and Malta. Greece has minimum fees for architectural services.

#### **5.4.5.6. Dentists**

In the majority of European Member States, it is possible to freely negotiate the prices for dental services that are provided outside of the systems of government health care. Price restrictions are only in place in a small number of countries, for example with the help of fee schedules with fixed prices, although even these countries partly allow differing agreements on fees.

In the legal analysis of the remuneration of dental services, it must be taken into account that a wide variety of health systems exist in Europe, which take very different approaches to the inclusion of dental services in state or social security funded health services. First there are the strongly welfare state dominated systems with a focus on state or state-funded dental services (Such as in Scandinavia). At times, each registered dentist is simultaneously registered with the social security fund (As in Luxembourg) and is obliged to practice within the state system (I.e. not independently of the state). In other countries, such as Spain, dental services are exclusively provided through private dentists and patients pay the total cost of treatment. The German dual model is different again with both public and private health insurance. A particular experiment on the pricing of dental services was carried out in the Netherlands in 2012. The Health Minister there permitted free pricing.<sup>221</sup> After, contrary to expectations, prices had not fallen but in fact risen, the experiment which had originally been planned to last three years was terminated on 31 December 2012. Since 1 January 2013 the old system of fixed prices is back in force.<sup>222</sup>

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<sup>220</sup> Murray, Peter/Stürmer, Rolf, *The civil Law Notary – Neutral Lawyer for the Situation*, 2010.

<sup>221</sup> Information available online at: <http://www.rijksoverheid.nl/nieuws/2012/06/25/waarschuwing-schippers-aan-tandartsen-over-experiment-vrije-prijzen.html>; as well as other information in the letter to the Minister of Public Health from 25/06/2012, available online at: <http://www.rijksoverheid.nl/ministeries/vws/documenten-en-publicaties?keyword=tandartsen+tarieven&period-from=&period-to=&informatie=&informatietype=> (Last accessed on 25/09/2013).

<sup>222</sup> Cf. Information from the Dutch Dental Association NMT, available online at: <http://www.tandartsennet.nl/actueel/qa-tandartstarieven.html> (last accessed on 26/09/2013).



#### 5.4.5.7. Pharmacist

While the regulations on the approval of pharmaceuticals have been harmonised at the EU level, the pricing and the rules for reimbursement of medicines are still within the competence of Member States. According to directive 89/105/EEC (Transparency Directive)<sup>223</sup>, only certain procedural requirements must be complied with.

The price ranges of pharmacists are regulated in all Member States. In general, non-prescription medicines (OTC medicines) have prices which are freely established by the manufacturer, as is the case in France, Ireland, the Netherlands<sup>224</sup>, Sweden and the United Kingdom for example. A wholesale mark-up is granted on this manufacturer price. The pharmacy mark-up is then added to the resulting wholesale price.<sup>225</sup>

In all EU countries, the sale of prescription medicines is restricted to public pharmacies. However, in Denmark, Greece, Ireland<sup>226</sup>, Lithuania, the Netherlands, Austria and the United Kingdom<sup>227</sup>, among others, so-called dispensing doctors may by exemption distribute prescription medicines in areas with insufficient pharmacy coverage. In addition, some countries (Bulgaria, Denmark, Germany, Ireland, the Netherlands, Austria, Poland, Portugal, Sweden and the United Kingdom) have established a 'General Sales List' of OTC Medicines that may be sold outside pharmacies.

In the majority of EU Member States, the sale of other products in pharmacies is only allowed on the condition that the products have a natural connection to pharmacies and promote good health. Poland is the only country in which the sale of such products is completely prohibited. In Italy, the Netherlands, Spain, the Czech Republic and the United Kingdom, on the other hand, there are no sales restrictions.

In some countries there is a prohibition on internet mail order sales of prescription medicines (POM). This prohibition has been recognised by the ECJ as capable of justification.<sup>228</sup> The mail order distribution of OTC medicines is however permitted, insofar as the sale is conducted by a pharmacy, the pharmacy is subject to regular checks and a pharmacist is always available to answer questions which may arise regarding the use of the product.

Mail order pharmacies remain prohibited in Belgium, Estonia, Austria and Slovenia. In Denmark, only Apoteket.dk, which is connected with the 'Association of Danish Pharmacies', is permitted to

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<sup>223</sup> Council Directive 89/105/EEC of 21 December 1988 relating to the transparency of measures regulating the pricing of medicinal products for human use and their inclusion in the scope of national health insurance systems, OJ. No L 40 of 11/2/1989, p 8.

<sup>224</sup> Vogler, Sabine/Arts, Danielle/Sandberger, Katharina, Impact of pharmacy deregulation and regulation in European countries, 2012, pp. 47 et seq.

<sup>225</sup> Cf. for further details, Vogler, Sabine, Preisbildung und Erstattung von Arzneimitteln in der EU – Gemeinsamkeiten, Unterschiede und Trends, pharmazeutische Medizin 2012, Issue 1, pp. 48 et seq. and Rosian, Ingrid/Vogler, Sabine, Arzneimittelsysteme in Europa – ein vergleichender Überblick, Soziale Sicherheit 4/2002, pp. 165 et seq.

<sup>226</sup> Vogler, Sabine/Arts, Danielle/Sandberger, Katharina, Impact of pharmacy deregulation and regulation in European countries, 2012, p. 22.

<sup>227</sup> Lluch, Maria/Kanavos Panos, Impact of regulation of Community Pharmacies on efficiency, access and equity. Evidence from the UK and Spain, 2010, Health Policy 95 (2010), pp. 245, 251.

<sup>228</sup> ECJ, 11.12.2003, Case C-322/01, ECR 2003, I-14887 - *DocMorris*.

distribute POM online. Other pharmacies may only sell OTC medicines by mail. In Spain<sup>229</sup>, Ireland, Latvia and Hungary, online sales of POM is prohibited, but allowed for OTC medicines. Pharmacies in Finland, the Netherlands, Sweden and the United Kingdom have no restrictions regarding the shipping trade. In Germany too, prescription medicines may be shipped from pharmacies nationwide.<sup>230</sup> Mail order pharmacies from other EU countries must adhere to German price regulation on prescription drugs, as the German regulations on pharmacy sales prices also apply to them.<sup>231</sup>

### **5.5. Education and training**

It has already been established that the exercise of liberal professions requires meeting particular qualification requirements. This applies not only to those who take up a profession. Liberal professionals in particular rely on constantly being informed about the latest developments in their field in order to properly perform their duties. In order to ensure the quality of professional services, many Member States have established mandatory training requirements for the liberal professions backed by professional sanctions. Such a duty applies almost across the board to dentists, pharmacists, lawyers, tax advisors and auditors. For notaries, a sanctions-backed training requirement exists in about half of the Member States. In the remaining Member States, voluntary training is usually available. The architectural profession is rarely subject to training obligations.

In some cases, training must be directly carried out through the programs provided by the respective professional organisation. In its judgment of 28 February 2013 - C-1/12 (*Ordem dos Técnicos de Contas Oficiais / Autoridade da Concorrência*) the ECJ qualified such rules as an undue restriction of competition under Article 101 TFEU. This means that regulations which require mandatory training exclusively through continuing education programs by the relevant professional organisation are inadmissible and must be replaced by a scheme under which the continuing education hours may also be completed with other providers.

#### **5.5.1. Lawyers**

In the majority of European Member States, lawyers are now subject to an obligation to participate in continuing education and training. However, only a small number of Member States have established a mandatory sanctions-backed obligation. In some cases only a voluntary requirement has been established, such as in Latvia, the Czech Republic, Hungary and Cyprus. Germany has also not established sanctions for failing to meet the training requirement enshrined in § 43a para 6 BRAO, although this has been repeatedly called for in legal policy discussions. Where a duty is established in national professional law, the extent of the requirement is established either in training points<sup>232</sup> or in hours. In the latter case, the required number of hours ranges from three hours per year to 60 hours which must be completed over a three year period. Most frequently, training requirements amount to

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<sup>229</sup> Medicines Law 29/206.

<sup>230</sup> § 11a ApoG, § 43 Abs. 1 S. 1 ArzneimittelG.

<sup>231</sup> Gemeinsamer Senat der obersten Gerichtshöfe des Bundes, Beschl. v. 22.8.2010 – GmS-OGb 1/10, BGHZ 194, 354.

<sup>232</sup> Various training programs have a set number of training points. The sum of training points must reach a certain target at the end of the assessment period.

about 12-16 hours per year. As already indicated, the existence of a training requirement does not always result in a requirement to show proof of training or the possibility of sanctions in case of non-compliance. In Bulgaria and Germany, neither verification is conducted nor sanctions imposed if it becomes known that a lawyer has not complied with training obligations. The situation is different in Germany only for ‘specialist lawyers’ who must show proof of at least ten hours of training a year in their respective sub-area (For example labour law, family law, tax law)<sup>233</sup>.

#### **5.5.2. Auditors**

The Member States must ensure continuing training as per Article 13 of the Statutory Audit Directive. Violations must be subject to sanctions. Oversight is usually performed through annual reports to the chamber or other regulatory authority as well as under compulsory quality control. The practical implementation of the provisions varies. In all cases, advanced training is possible in various ways (Seminars, conferences, self-study, etc.). However the amount of training required varies. The minimum duration is generally 20 hours per year, but occasionally it is also higher. In most cases an average number of hours of training must be shown over a period of several years.

#### **5.5.3. Tax advisors**

Only in Finland, Spain and the Czech Republic are there neither state nor professional association rules related to *Continuing Professional Development* (CPD). Such provisions exist in Portugal, in principle, for all regulated professions, but not specifically for tax advisors. In Luxembourg and Greece professionals providing tax advice only have a duty to keep their knowledge with regard to the practice of their profession up to date without the need for institutionalised CPD.

In France, Ireland, Latvia, the Netherlands, Austria, Poland and Romania tax advisors must complete a certain number of hours of CPD (20 to 30) per year. In the United Kingdom, only the professional association CIOT prescribes a certain number of hours, which is particularly high at 90 hours per year. In Belgium, Denmark, Germany, Malta and Slovenia, the exact extent of CPD is not explicitly provided for by law.

Only in Romania, Slovakia and the United Kingdom must CPD be carried out directly through the programs offered by the respective professional organisation.<sup>234</sup>

#### **5.5.4. Notaries**

In the majority of the EU Member States of the Latin notary system; notaries are obliged to undertake adequate professional development. Training is mostly offered and monitored by the chamber. In some states participation in the offered programs remains voluntary.

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<sup>233</sup> Cf. § 15 FAO.

<sup>234</sup> Cf. however Introduction to 5.5.

#### **5.5.5. Architects**

In the majority of Member States, professional development is encouraged by professional organisations. However, this is usually not mandatory. In some cases professional development is mandatory; insofar as properly participating in the programs is tied to, for example, the right to use a title. This applies, for example, to the United Kingdom, where the membership of the 'RIBA' and the associated use of the title 'Chartered Architect' is tied to regular participation in professional development activities offered by the RIBA. Training obligations exist in different forms in Denmark, Germany, Ireland, Italy, Lithuania, the Netherlands, Austria, Poland, Sweden, Spain, the Czech Republic, Hungary and the United Kingdom.

#### **5.5.6. Dentists**

For the dental profession, a distinction must be made between continuing professional development and further education and training. While the term 'further education and training' refers to preparing for dentistry specialisations; continuing Professional Development or CPD refers to training, necessary for the conservation and development of knowledge and skills required for the pursuit of the profession. This is sometimes also required as a result of the duty to provide treatment in accordance with the professional (Dental) standard of the patient. Across Europe, there are many different types and systems of continuing professional development for dentists (And other health professionals). Irrespective of the specific nature of possible training activities, (Such as participating in courses and conferences, giving lectures, reading specialist literature) it can be noted that dentists must receive training in the vast majority of EU countries. Precisely because of the importance of continuing professional development, which is necessary in order to carry out treatment according to accepted scientific standards and in view of the potential consequences of liability; it is to be assumed that even in those countries in which no training requirement could be found in the form of a specific professional duty (Greece, Malta, Sweden, Sweden and Spain), dentists are often nevertheless at least subject to legal incentives for training.

#### **5.5.7. Pharmacists**

Generally there are extensive continuing education programs and further education programs in the Member States, allowing for the collection of points awarded for specific continuing and further education programs. The respective professional organisations are mostly responsible for the development and implementation of these programs. The continuing professional education and further education programs include, among others; theoretical and practical training courses, attending conferences, and the acquisition of knowledge through reviewing and writing of scientific publications. Participation in CPD programs is mandatory, except in Belgium, Bulgaria, Denmark, Greece, Malta, Spain, Sweden and Cyprus. In countries without a training requirement, CPD programs are often still taken up on a voluntary basis.

### **5.6. Professional and inter-professional collaboration**

Personal performance is one of the key features of liberal professions. For a long time, the provision of professional services jointly with other members of the same profession; or even more so, collaboration with other professions, was considered inadmissible. This view has changed fundamentally for many professions in recent decades. The joint provision of liberal professional services by several members of the same profession is now not only commonplace, but necessary for many professions. Mono-professional partnerships allow members of the profession to specialise, while still being able to provide a wide range of liberal professional services. Inter-professional partnerships have also begun to be viewed more positively. They make it possible to provide clients with a broad range of services from a single source. Especially in the business orientated advisory professions of lawyer, tax-advisor and auditor, the ‘lone wolf’ model of professional practice appears out of date.

As far as the legal restrictions on professional and inter-professional collaboration are concerned, these differ from one profession to another. For notaries, who are considered to serve as a public official, professional collaboration is ruled out in almost all Member States. For the profession of lawyer, inter-professional cooperation is prohibited in the majority of Member States. The same applies to the profession of pharmacist. On the other hand professional and inter-professional collaboration is mostly allowed for the professions of architect, tax advisor and auditor.

Where inter-professional collaboration is permitted, respective professional law provides that a majority or a qualified majority of up to two-thirds of the shares and voting rights must be held by a member of the respective profession. These must often also hold a majority or a qualified majority of the positions in the administrative body or on the board of directors. These provisions aim to ensure the company's compliance with the respective professional law. However as a matter of legal policy, these arrangements remain controversial. Some argue in favour of waiving such requirements, suggesting that there are less intrusive means of ensuring the adherence to professional law particularities, without such an intensive restriction of professional freedom. With this reasoning, the German Federal Constitutional Court has recently rejected a related-profession majority clause, which had concerned the joint practice of the profession of lawyer and patent lawyer within a limited corporation, as unconstitutional.<sup>235</sup>

Insofar as collaboration between liberal professionals within a legal entity is permitted, liberal professionals in the wide majority of Member States may choose any one of the available national legal forms. However, some Member States have established specific types of legal entities for liberal professionals, most of which provide a form of limited liability. Germany has for example introduced the partnership company with limited professional liability. A specific type of partnership has also

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<sup>235</sup> BVerfG, Beschluss vom 14. Januar 2014 – 1 BvR 2998/11 – und – 1 BvR 236/12 –, juris.

been established in Poland (See Article 88 of the Commercial Code)<sup>236</sup>. In Italy, liberal professionals may use the *società tra professionisti* since 2011. France has introduced multiple legal structures for certain liberal professions, such as the *société civile professionnelle* (An unincorporated partnership)<sup>237</sup>, the *société d'exercice libéral* (A corporation)<sup>238</sup> and the *société en participation des professions*. While Spain has established legal framework legislation for all liberal professional entities, irrespective of their legal structure (*Sociedades profesionales*)<sup>239</sup>.

Whether members of the profession can exclude personal liability for professional misconduct by the choice of a particular legal structure, is in not a question of professional law but rather one of respective national company law. Where an occupation may be carried out in a separate legal entity or partnership, the respective states provide liberal professionals with legal entities permitting a limitation of liability. However, a difference exists, in some cases established in company law, in others in general civil law; as to whether personal liability of the acting professional for professional misconduct remains mandatory irrespective of the chosen legal structure.

In summary, it can be noted that organisational freedom for liberal professionals now exists in most Member States. Restrictions are specific to certain professions and are found in most Member States. However, all Member States have adopted rules ensuring adherence to the respective professional law within and throughout the respective legal entity or partnership. These usually include majority requirements. As a result, equal cooperation between members of various professions (Such as lawyers, accountants and auditors) often requires partners who have multiple professional qualifications.

#### 5.6.1. Lawyers

Looking at the **types of legal entities and partnerships** that are available to lawyers for joint practice, two opposing models can be distinguished in Europe. The (almost) overwhelming majority of Member States<sup>240</sup> allow lawyers to make use of all types of legal structures available under general corporate law and define specific restrictions, such as ownership restrictions in professional law. The opposite approach<sup>241</sup> is to establish specific legal structures for lawyers or members of the liberal professions and allow professional practice exclusively in this framework. Nevertheless, these are mostly based on existing legal structures.

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<sup>236</sup> While simultaneously prohibiting the use of incorporated companies for lawyers.

<sup>237</sup> Art. 1 et seq. loi n° 66-879.

<sup>238</sup> Art. 1 et seq. loi n° 90-1258. Permits the creation of the *société d'exercice libéral à responsabilité limitée* (a form of limited company), à forme anonyme (joint stock company), en commandite par actions (limited partnership) and par actions simplifiée (simplified joint stock company). Commercial partnerships such as the *société en nom collectif* (open partnership) and *société en commandite simple* (limited partnership) remain excluded.

<sup>239</sup> Ley 2/2007, de 15 de marzo, de sociedades profesionales (BOE-A-2007-5584); see further Kilian, Matthias/Bubrowski, Helene, *Regulierungsansätze für ein berufsspezifisches Gesellschaftsrecht: die spanische Sociedad Profesional als zukunftsweisendes Modell?*; *Recht der Internationalen Wirtschaft* 2007, pp. 669 et seq.

<sup>240</sup> Belgium under the jurisdiction of the OVB, Denmark, England and Wales, Estonia, Finland, Italy, Luxembourg, Malta, Netherlands, Northern Ireland and Scotland for *Solicitors*, Sweden, Spain.

<sup>241</sup> As in Bulgaria, France, Greece, Lithuania, Portugal, Romania, Hungary.

In between these two extremes, is the prohibition of certain legal forms or categories of legal forms, which is in force in certain Member States. Relatively often, exercising a profession in the form of a joint stock company is prohibited<sup>242</sup>, as their perceived open membership structure and the possibility of listing is considered inappropriate for lawyers. In some cases, lawyers are denied access to incorporated companies<sup>243</sup>, in order to prevent the resulting limitation of liability. Relatively rare are legal structure prohibitions, which are based on the rather outdated distinction between liberal professions and more profit oriented commercial activities.<sup>244</sup> Some countries have on the other hand, extended the range of legal structures available under general company law in order to specifically take into account the needs of lawyers or other liberal professionals, while not solely restricting the use of these legal structures to the mentioned professions.<sup>245</sup> A relatively new approach to regulation is to create an overarching legal framework for all joint professional practice or of liberal professions organised into chambers, so as to achieve a harmonisation of conditions in view of inter-professional collaboration.<sup>246</sup>

The possibility of **limiting the personal liability** through the choice of available legal structures varies significantly from one Member State to another. An exclusion of liability with regard to the client for a professional's own errors while fulfilling the mandate is only permitted in some of the states examined<sup>247</sup>; generally on the condition of increased liability insurance for the company. Mostly however, personal liability of the directly acting lawyer is either legally mandated<sup>248</sup>, or in the common law system recoverable under the tort of negligence<sup>249</sup>. The establishment of an incorporated company, may therefore only result in an exclusion of other liabilities (Rent, etc.) and not of liability for professional errors by colleagues.

The possibilities of joint professional activity by lawyers within professional partnerships or companies, differs considerably across the various Member States. **Mono-professional associations** between lawyers are generally permissible. Absolute prohibitions against association still exist only for barristers in certain common law countries<sup>250</sup>; this is intended to guarantee their complete independence from external influences.

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<sup>242</sup> As in Belgium under the jurisdiction of the OBF, Austria, Slovakia, Slovenia, the Czech Republic and Cyprus.

<sup>243</sup> As in Ireland for *solicitors*, Latvia, and Poland.

<sup>244</sup> As in Germany in particular.

<sup>245</sup> *Limited Liability Partnership* in the UK and Northern Ireland.

<sup>246</sup> As with the *societades profesionales* in Spain (2007) and the *società tra professionisti* Italy (2011), and in part (corporations) also the *sociétés d'exercice libéral* in France (1990).

<sup>247</sup> Germany (limited liability partnership and incorporated companies), Luxembourg, Austria, Portugal, Romania, Sweden, Slovakia, Slovenia, Czech Republic.

<sup>248</sup> Because of the prohibition against professional practice in incorporated companies (as in Ireland for *solicitors*, Latvia, and Poland) or as a result of statutorily mandated personal liability irrespective of the legal form (as in Belgium in the jurisdiction of the OBF, Bulgaria, Denmark, Estonia, Finland France, Greece, Italy, Latvia, Lithuania, the Netherlands, Spain and Hungary).

<sup>249</sup> As in the United Kingdom, Malta and Cyprus.

<sup>250</sup> Ireland, Northern Ireland, Scotland.

However, the cooperation between lawyers and other professions (So-called ‘Multi-Disciplinary Practice’) currently remains prohibited in most Member States.<sup>251</sup> Differences in professional law standards and issues of disciplinary authority are seen as problematic from a legal policy point of view. Article 11 section 5 of Directive 98/5/EC<sup>252</sup> allows extending such prohibitions on the participation of persons who are "not members of the professional group" to practising lawyers from another Member State. The ECJ ruled in the *Wouters* case that such restrictions on the freedom of establishment and freedom to provide services may be justified if they are necessary "to ensure the proper practice of the legal profession, as organised in the Member State concerned."<sup>253</sup>

In the countries that permit inter-professional collaboration, there are different models. In the Scandinavian countries in particular, employees who carry out management activities within a law firm without being members of the legal profession are permitted to hold a minority stake.<sup>254</sup> This is primarily intended to create incentives allowing the recruitment of highly qualified support staff, while the dominance of lawyer shareholders remains secure. Certain states go further in allowing a partnership of equals between complementary legal and/or business advisory professions,<sup>255</sup> or even between all liberal professions organised into chambers<sup>256</sup>; while only rarely complicating matters by introducing majority requirements for the benefit of lawyers.<sup>257</sup> A special role is played by the ‘Alternative Business Structures’ in England and Wales (And in the future in Scotland) which allows a multi-disciplinary company with any number of professionals and commercial entrepreneurs. There, shares in lawyers professional practice companies may even be held entirely by persons external to the profession. The observance of professional law of the legal profession is to be ensured through the appointment of a ‘Compliance Officer for Legal Practice’ as the competent body within the company as well as strict oversight by regulators.

In most Member States, partnership or share ownership for persons who are not actively employed with the professional services firm (So called external equity) is not permitted.<sup>258</sup> This is certainly the case for the involvement of non-lawyers; as verifying whether each lawyer partner is actually active in the service of the company faces considerable practical difficulties. Certain countries with a general ban on external participation also allow the formation of consolidated law firms.<sup>259</sup> The reason for the prohibition of external capital investments is generally justified by referring to the incompatibility between the public interest orientation of the legal profession with the profit motive of investors.

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<sup>251</sup> Belgium, Bulgaria, Denmark, Estonia, Finland, France, Greece, Ireland, Latvia, Lithuania, Luxembourg, Malta, Northern Ireland, Austria, Portugal, Romania, Scotland, Sweden, the Slovak Republic, Slovenia, the Czech Republic, Hungary and Cyprus.

<sup>252</sup> Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the legal profession in a Member State other than that in which the qualification was obtained.

<sup>253</sup> ECJ 19/02/2002, *Wouters and Others.*, C-309/99, ECR 2002, I-1577, para.107

<sup>254</sup> As in Denmark, the Netherlands and Sweden (10% stake in each case); similarly for the *società tra professionisti* in Italy (1/3-stake).

<sup>255</sup> As in Germany, the Netherlands, Poland and the *Legal Disciplinary Practices* in England and Wales.

<sup>256</sup> As for the *società tra professionisti* in Italy and the *sociedades profesionales* in Spain.

<sup>257</sup> As for the German limited liability partnership for lawyers.

<sup>258</sup> As for Belgium, Bulgaria, Denmark, Germany, Estonia, Finland, Greece, Ireland, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Northern Ireland, Portugal, Sweden, Slovakia, Slovenia, Spain, Czech Republic and Cyprus.

<sup>259</sup> For example in Denmark, Finland and the Netherlands.



Most states that allow some form of participation by persons external to the profession, do so in order to ensure adequate financial support for lawyers and related parties by allowing the distribution of the firm's profits to retired partners and surviving family members. In some cases, the membership of such persons in the firm is possible only for a transition period.<sup>260</sup>

However, certain Member States allow the full opening of shareholder status to any investors<sup>261</sup> to enable effective market financing. While Italian law allows only a minority stake, the British 'Alternative Business Structures' may even be completely owned by external investors.<sup>262</sup> Potential shareholders are merely required to undergo a "*fit and proper*" test by the registration authority.

### 5.6.2. Auditors

Article 3 section 2 lit b) of the Statutory Audit Directive requires that the majority of voting rights must be held by statutory auditors or audit firms. In addition, Member States may provide that up to 75% of members of administrative bodies must be members of the profession. Other issues, such as the types of legal structures available or other aspects of inter-professional collaboration, or the possibility of capital investments are however not addressed by the Statutory Audit Directive. Since auditing companies are entitled to carry out the statutory audit, the minimum requirements of the Statutory Audit Directive apply to all recognised auditing firms, following their implementation into national law.

Recognition as an auditing firm is open to any legal form in most Member States. Restrictions can be found only in very few cases. In Germany for example, the commercial partnerships (OHG and KG and GmbH & Co KG) can be recognised only exceptionally, if the company is mainly engaged in commercial fiduciary activities. In general, the commercial partnerships are not available to German auditors as a legal form; because as liberal professionals, they are not seen as carrying out a commercial activity. In exchange for this limitation, there is a possibility of joining together in a partnership company, which is closely modelled on the law on commercial partnerships and offers special liability privileges. The German legislator has even recently introduced a partnership with limited professional liability (PPA MBB), which allows an exclusion of liability for wrongful actions by the professional responsible for a mandate.

The possibility of **limiting personal liability**, especially for professional misconduct, through the choice of a legal structure, depends on the configuration of national company law. Auditors in all Member States have access to limited liability legal forms. While in some Member States, such as Germany for example, this liability shield allows excluding personal liability of members of the firm

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<sup>260</sup> Cf. regulations in France, Austria and Hungary.

<sup>261</sup> As for *Alternative Business Structures* in England and Wales and (in future) in Scotland, as well as in Italy. An intermediate position is occupied by France, where in the *société d'exercice libéral* allows only the participation of related legal professions (including inter-professional) holding companies is allowed.

<sup>262</sup> However only with limitations, regarding the *Alternative Business Structures*, planned for Scotland which must be majority owned by *solicitors* or other regulated professions.

even for professional misconduct. Other Member States, for example the United Kingdom, allow possibilities of piercing the corporate veil.

**Inter-professional cooperation** is not exclusively regulated by the Statutory Audit Directive. The Statutory Audit Directive only sets out minimum requirements; in particular, the required majority in Article 3 section 2 lit b) Statutory Audit Directive. The detailed implementation is at the discretion of the Member States. A complete prohibition on inter-professional collaboration was not found in any of the Member States. In certain cases, (Germany and Austria) inter-professional collaboration is limited to certain liberal professions. In Sweden, inter-professional cooperation is not possible in the form of a partnership, but only as an incorporated company.

All Member States provide majority requirements for professionals, which usually refer to the capital shares, voting rights and seats in the administrative body. In all cases, audit services may be provided only by members of the profession. The majority requirements often refer to a simple majority, however many Member States also make use of the possibility opened by the Statutory Audit Directive to require a two-thirds majority (As in France, Italy and Portugal for example). A regulatory particularity is found in Denmark, where a shareholder external to the profession may hold a maximum equity share of only 10%.

Restrictions on the **participation** of third parties not actively participating in the auditing firm (Pure equity share) was found only in a small number of instances. Equity investments are permissible in all Member States, however these are at times limited to professions where partnerships are authorised (For example Austria).

### **5.6.3. Tax advisors**

In the majority of Member States studied, for which information was available on this question, tax advisors who wish to join together with other tax advisors in order to jointly exercise the profession may choose between all legal structures available in the country. Their choice is limited only in Slovakia and to some extent in Germany. This also applies to countries where the profession of tax advisor is mainly exercised by members of other professional groups. Only Portugal restricts the range of available legal structures.

In order to ensure the independence of the tax advisor, even when practicing within a firm, most of the Member States examined require a supervision of tax consulting firms by tax advisors. This is ensured by imposing control thresholds in terms of capital investments, voting rights and management.

Even **multi-professional groupings** of tax advisors are usually allowed in the Member States studied. Where such restrictions exist, they do not generally arise out of the professional law for tax advisors;

but instead from the other professional group with which a tax advisor would like to join together in a firm.<sup>263</sup>

Except in Italy, Poland and the Czech Republic, professionals offering tax advisory services in any of the examined Member States for which information was available on this matter, were able to limit their **personal liability** for errors in the context of professional practice in some way.

The possibility of a limitation of liability through an individual agreement is widespread (Possible in Belgium, Germany, Finland, France, Greece, the Netherlands, Austria, Portugal, Romania, Slovakia, Spain and Slovenia). Often, it is also possible to choose a limited liability company form (Belgium, Germany, Finland, France, Greece, Ireland, Latvia and the United Kingdom). Limitations of liability by general contract provisions are available to tax consultants in only a few of the Member States examined (Germany, Finland, the Netherlands, Austria and Romania). In Luxembourg and Malta, professionals providing tax advice are subject only to general contract law provisions, without information being available as to when and to what extent the limitation of liability is permitted.

#### **5.6.4. Notaries**

The possibilities for notaries to associate in firms for **joint practice** are generally very limited and highly dependent on the extent of public law organisation of the notary profession in the respective Member States. Strong state involvement generally reduces the possibilities for privately organised groupings. Where notary functions are exclusively carried out by state officials (For example in Finland), the question of social cooperation does not arise from the outset.

Certain Member States prohibit notaries from joining in firms outright. This is the case in Italy, Latvia and Slovenia. In many Member States, no "real" organisations for the joint exercise of the profession are permitted, which are mainly characterised by a uniform legal relationship with the clients and the pooling of profits made from the notary activity. Instead, each notary acts and bears liability in his or her own name. As a result, the purpose of such groupings is reduced to sharing office facilities and personnel. This is the case in Germany, Estonia, Lithuania, Poland and apparently in Romania and the Czech Republic. In addition, intermediate forms are found in which despite individual client relationships, earned income is transferred to the firm, as in Slovakia for example.

In the few countries that allow "real" professional practice groupings, the freedom of choice with regard to their legal form is generally restricted. Clear rules to this effect, could only be determined for Belgium, Bulgaria, France, Austria and Hungary. Bulgaria for example, only allows cooperation in a civil partnership; and in Hungary only a special notary firm may be established, which is modelled on a limited liability company but supplemented by specific professional regulations. Austria allows a joint exercise of the profession only in civil-law partnerships and limited partnerships, to the exclusion of incorporated companies. More extensive choices are available in Belgium, where only equity and

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<sup>263</sup> Cf. in particular the professional regulations for lawyers.

limited partnerships are prohibited; and in France, where in addition to two forms of partnership all forms of incorporated companies are available, however only in the specific form available to members of the liberal professions.

It appears that notaries are not permitted to exclude their **personal** by their choice of legal structure in any Member State. Often this is likely to be the result of the public law aspect of notary activity, but can also be an expression of special care owed by notaries in the exercise of their profession.

With the exception of the Netherlands, which allows joint practice with lawyers and tax advisors, only **mono-professional collaboration** with other notaries is permitted and generally only with other notaries within the same district, as is the case in Belgium, Bulgaria, France, Austria and the Czech Republic. In some instances, notary firms allow some advantages with regard to area restrictions. If only a limited number of notary positions are established by the state for a given area, the formation of a notary firm may in some cases allow a single notary position to be shared between several notaries. This is the case in Belgium<sup>264</sup> and Austria<sup>265</sup>, where it is sufficient if one of the partners has received an authorisation, while the others must only meet the other conditions for the exercise of the profession of notary. France on the other hand allows for the authorisation of the firm as such or the transfer of the authorisation from a partner to the firm.<sup>266</sup>

Pure **equity investments** in notary firms are, insofar as rules could be found on this matter; inadmissible in almost all instances. An exception is France, where *sociétés d'exercice libéral* allow a wide range of legal strategies. Notaries, notary companies and liberal professional holdings have an unlimited possibility of acquiring shares. A minority shareholding is permitted for retired notaries, their heirs as well as members of related legal and judicial professions.

#### 5.6.5. Architects

In the vast majority of Member States, architects have access to all or at least the most common **legal structures** in order to join together for the common practice of the profession. In some states, they have specific legal forms available to them which are reserved exclusively for members of the liberal professions. Examples are the German partnership company and the French *Sociétés d'exercice Libéral*, which are however only optional.

Through the establishment of an incorporated company, it is often possible to fully exclude **personal liability**, for example, in Germany, France and Austria. In some cases, such as in Spain, architects remain personally liable with all their assets, for their own professional errors, irrespectively of the chosen legal structure. Maltese law shows itself to be particularly strict, as the only jurisdiction which

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<sup>264</sup> Art. 11 para 3 règlement pour les sociétés de notaires; cf. also Art. 31 para 4 loi du 25 Ventôse An XI.

<sup>265</sup> Cf. § 25 Nr. 1 lit. b, Nr. 2 Notariatsordnung.

<sup>266</sup> For the société civile professionnelle cf. Art. 6 para 2 loi n° 66-879 in conjunction with Art. 2 et seq. décret n° 67-868; for the société d'exercice libéral s. Art. 3 para 2 loi n° 90-1258 in conjunction with Art. 2 et seq. décret n° 93-78.

allows the practice of the profession only in a partnership. This results in joint and several liability of all partners for the mistakes of their colleagues.

The majority of Member States generally allow the collaboration of architects with **members of other professions** within the same company (Excepting Belgium and Malta). Many states apply no restrictions at all. In some cases, the group of persons authorised to combine within a firm is limited, for example to the related engineering professions (Czech Republic, Cyprus), to other compatible professions (Germany, Italy, Spain) or to the exclusion of commercial entrepreneurs (Austria). Frequently limitations are also in place preventing persons external to the profession from holding a majority stake in architecture firms and limit and/or exclude their participation in the management (For example, in Germany, France, the Netherlands, Austria and the Czech Republic).

No quantitative statements can be made with regard to the possibility of pure **equity investments in architect firms**; in particular by investors external to the profession, due to insufficient available data. Some States have no explicit restrictions. Where there are legal requirements, persons not actively working in the firm are often only permitted to hold a minority stake of 33-50% (For example, in Belgium, France, Italy, Austria and the Czech Republic). In this manner, professional independence is protected from the dominant influence of persons not members of the profession.

#### **5.6.6. Dentists**

In almost all European countries, dentists are permitted to join together in mono-professional cooperation within a firm. In the majority of countries, they may choose all **legal structures** (Partnerships and incorporated companies<sup>267</sup>). However, certain jurisdictions provide that health professions must be exercised in an *"independent, autonomous and non-commercial"* manner.<sup>268</sup>

Through the establishment of an incorporated company, there is also the possibility to exclude **personal liability** for professional misconduct, to the extent that national law does not allow the piercing of the corporate veil in these cases. However, in some Member States, only certain legal structures are available to dentists (For example in Estonia, Ireland, Luxembourg, Austria, Poland, Spain and Hungary). In France, dentists can primarily join together in specific legal forms for liberal professionals which provide special safeguards for professional independence.

**Inter-professional cooperation** on the other hand is possible only to a limited extent in most Member States. In Germany for example, § 11 of the Professional Code of the Dental Association of North-Rhine Westphalia only allows self-employed and independent practice by dentists together with other health care professionals. In Austria, dentists may only work together with other health professionals, as provided by dentistry regulations (cf. § 24 paragraph 1 Austrian dentists Law - ZÄG). In case of collaboration between dentists and other health professionals, the law distinguishes between the joint

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<sup>267</sup> For the Dental GmbH in Germany cf. also BGH, judgement of .25/11/1993 - I ZR 281/91, NJW 1994, 786 et seq.

<sup>268</sup> As in Germany § 29 Abs. 2 S. 2 HeilBerG NRW.

use of practice space (E.g. Surgeries) in the form of a so-called practice association (§ 25 paragraph 1 item. 1 ZÄG) and the common use of dental or medical devices in the form of an apparatus association (§ 25 paragraph 1 item. 2 ZÄG). In both organisational types, safeguards must be put in place in order to ensure that professional autonomy is maintained.

Liberal professional members of the dental profession in Austria can found a so-called group practice (§ 26 ZÄG). The group practice has an autonomous registration in accordance with § 26 Section 1 ZÄG. It can be registered in the legal form of an unlimited partnership within the meaning of § 105 of the Commercial Code (UGB) or as a limited liability company (GmbH). However, § 26 sections 2 to 7 ZÄG contains detailed specifications on authorised modifications to the by-laws; in particular concerning membership of the legal entity and the transferability of corporate rights. Specifically, only members of the dentistry profession authorised to carry out independent practice may be members of group practices (§ 26 paragraph 3 point 1 ZÄG). § 26 section 3 point 2 prohibits other natural and legal persons not engaged in the dental profession, from holding an equity stake and receiving a respective share of revenue or profits. All participants are required to personally exercise the profession within the partnership or separate legal entity (§ 26 section 3 no. 5 ZÄG) legal structure.

In France, inter-professional collaboration is possible within a *"société professionnelle de soins ambulatoires"* (Article L. 4041-1 et seq. CSP). All medical and allied health professions as well as pharmacists are permitted to form such firms; however at least two doctors and one allied health professional must be participants. The purpose of the company is the *"joint exercise of activities relating to coordination of medical-treatment, medical-treatment education or cooperation between the health professions."*

In the United Kingdom, activity within an incorporated company is only permitted, if this is limited to the provision of dentistry services and related services, the majority of managing directors are registered as dentists and all the staff are registered as either dentists or as *"dental auxiliaries"* within the GDC (cf. section 43 paragraph 1 *Dentists Act* 1984).

**Pure equity investments** by persons external to the profession are excluded in some instances. This is the case in Austria, where members of the dental profession authorised for independent practice and actively engaged in the joint activity may hold a stake in the group practice (§ 26 section 3 points 1, 2 ZÄG). In the French *'sociétés d'exercice libéral'*, however, pure equity interests by dentists actively involved in the activity of the firm is permitted within narrow limits (Article 5 f *loi n ° 90-1258* in connection with Article R. 4113-14 CSP). Participation is open to other active dentists and dental firms, dentists formerly active in the firm, retired dentists or their heirs, as well as other health professionals except stomatologists, ear, nose and throat doctors, radiologists, laboratory physicians, pharmacists, physiotherapists and speech therapists. In Ireland, section 52 subsection 1 of the *Dentists Act* 1985 prohibits any involvement by corporate entities in the field of dentistry thus prohibiting pure

equity interests in dental practices. In Denmark<sup>269</sup> a pure equity interest in a dental surgery is allowed, but only up to a share of 49%.

#### 5.6.7. Pharmacists

As part of the regulation of professional and inter-professional collaboration between pharmacists the so-called external ownership and multiple ownership prohibitions play a central role.<sup>270</sup> The external ownership prohibition provides in principle that only pharmacists may be owners of a pharmacy. The basic idea is that the private ownership and the performance of public duties associated with the operation of the pharmacy should not be separated.<sup>271</sup> National law rules on the ownership structure serve to guarantee the independence of the profession from purely commercial interests, and the high quality of services provided by pharmacists.<sup>272</sup> In addition, the prohibition on majority ownership establishes that a pharmacist generally may only own one pharmacy. This is also intended to propagate the legislative model of 'one pharmacist in one pharmacy'.<sup>273</sup>

Strict ownership restrictions, which even prohibit pure equity participations by pharmacists themselves, are in force in Bulgaria, Denmark, Germany, Finland, France, Greece and Luxembourg. In Italy, Latvia and Slovenia (Local) government entities may serve as owners of pharmacies alongside pharmacists. Until 2009, all public pharmacies in Sweden were owned by the state through the *Apoteket AB*. With so-called "Re-regulation" however, the monopoly of *Apoteket AB* was abolished and two-thirds of pharmacies were transferred to individual private ownership.<sup>274</sup> In six Member States, there is a ban on ownership by persons who are not members of the profession, but minority shareholdings held by non-pharmacists are permitted. In Latvia for example, incorporated companies may be owners of a pharmacy, so long as at least 50% of the shares are held by a pharmacist or at least half of the members of the management board of the incorporated company is made up of pharmacists.<sup>275</sup> In Lithuania, 25% of the shares in a pharmacy may be held by non-pharmacists. Legal entities (Excepting joint stock companies) and individuals may own pharmacies in Austria, so long as a pharmacist holds more than 50% of the shares and is entitled to the exclusive management rights. In Spain and Cyprus, at least a 51% share of a pharmacy must be owned by a pharmacist. Since amendments to the law in 2011, the equity interest of a pharmacist in a pharmacy in Hungary must once again be at least 50%. In 11 of 27 countries, there are no restrictions on the ownership structure (Belgium, Estonia, Ireland, Malta, Netherlands, Poland, Portugal, Romania, Sweden, Czech Republic and United Kingdom).

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<sup>269</sup> Information based on an expert interview.

<sup>270</sup> Cf. Povel, Lara M., Das Fremd- und Mehrbesitzverbot für Apotheker, 2009; Wende, Peter, Das Fremdbesitzverbot in den freien Berufen, 2012.

<sup>271</sup> BVerfG, NJW 1964, 1067, 1069.

<sup>272</sup> Alfaro, Monica, Community pharmacy in Europe: Overview of key aspects of regulation, farm vestn 2006, p. 52.

<sup>273</sup> BVerfG, NJW 1964, 1067, 1069.

<sup>274</sup> Vogler, Sabine/Arts, Danielle/Sandberger, Katharina, Impact of pharmacy deregulation and regulation in European countries, 2012, p. 65.

<sup>275</sup> Latvian Law on pharmacy 2011.

It should be noted that the operation of a pharmacy is exclusively reserved for pharmacists in all Member States excluding Estonia and Slovakia. A pharmacist must in principle be present during the opening hours of the pharmacy, in order to supervise other employees and ensure the availability of professional pharmaceutical advice.

The intensity and scope of multiple ownership restrictions vary across the Member States. While almost half of the Member States (Belgium, Estonia, Ireland, Latvia, Lithuania, Malta, the Netherlands, Poland, Romania, Sweden, Slovenia, the Czech Republic and the United Kingdom) have no restrictions on the number of pharmacies a single owner may possess; multiple ownership is prohibited in Bulgaria, Greece, Italy, Luxembourg and Spain. Denmark, Germany, Finland, France, Austria, Portugal, Slovakia and Cyprus allow pharmacy owners to own other pharmacies or branches or minority stakes in other pharmacies in addition to their main pharmacy.

In addition to restrictions on ownership by non-pharmacists and multiple ownership, certain countries such as Belgium<sup>276</sup>, Denmark<sup>277</sup>, Germany<sup>278</sup>, France<sup>279</sup>, Ireland, Luxembourg<sup>280</sup>, Malta<sup>281</sup>, Portugal<sup>282</sup> and Sweden, prohibit pharmacists from simultaneously exercising the medical profession in order to avoid potential conflicts of interest.

Horizontal integration, meaning joining together with other pharmacies, is permitted in about half of the Member States. The positive effects of horizontal integration such as potential synergies and cost saving opportunities; are set aside in the other Member States, with the aim of protecting the professional freedom of pharmacists against restrictions imposed by pharmacy chains. This results in a total ban against horizontal integration in these countries. The vertical integration in the form of cooperation with pharmaceutical producers however, is permitted in rare instances, but also prohibited in the majority of cases.

In 15 of the 27 Member States, pharmacists are not subjected to any restrictions with regard to the choice of legal structure. In Germany, Luxembourg, Austria, Slovakia, Slovenia, Spain, Hungary and Cyprus a pharmacist may only exercise the profession individually or in some cases as a member of a pharmacy firm without limited liability.

### **5.7. Professional supervision and disciplinary measures**

One of the central tasks of professional self-administration, where it exists, is generally professional oversight of the administrated liberal profession. Where such a system has not been established in a certain Member State, the task of professional supervision is directly carried out by public bodies, or

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<sup>276</sup> Art. 4 § 1 A.R. no. 78 du 10.11.1967.

<sup>277</sup> § 3 Danish Pharmacy Act.

<sup>278</sup> I.e.: § 12 BerufO Apothekerkammer Nordrhein, § 3 Abs. 2 (Muster-)BerufsO für die in Deutschland tätigen Ärztinnen und Ärzte.

<sup>279</sup> Art. L. 5125-2 Code de la santé publique.

<sup>280</sup> Art. 12 loi du 31.7.1991.

<sup>281</sup> Art. 3 Pharmacy licence regulations.

<sup>282</sup> Decree-Law 307/2007.



in the case of certain health professions and the legal profession; entrusted to bodies independent of the profession (So called 'Councils'). The disciplinary measures which are imposed for violations of professional regulations begin with warnings and fines. The catalogue of sanctions continues, to include temporary suspension from the profession and exclusion from the profession for particularly serious professional misconduct.

#### **5.7.1. Lawyers**

In almost all Member States, the professional supervision of lawyers is entrusted to independent disciplinary boards established by professional associations or chambers. This supervisory body is responsible for the imposition of disciplinary sanctions in the majority of cases. Exceptions can be found for example in Germany, Lithuania and Sweden. In Germany, the chambers are only authorised to issue a complaint with respect to minor professional duties. In other cases, independent lawyers tribunals established within the ordinary courts have been set up with the participation of professional members who decide upon disciplinary measures (Such as fines, temporary suspension or permanent exclusion from the profession) in serious cases. In Sweden, a government agency, the 'Chancellor of Justice' (*Justitiekanslern*) decides on disciplinary measures. In Lithuania, in addition to the chamber, the Ministry of Justice is also competent for specific aspects of professional supervision and the imposition of disciplinary measures.

The types of disciplinary measures imposed by these bodies in the various Member States are largely similar. In particular warnings/complaints, fines of up to 45,000 Euros, a temporary suspension and the permanent exclusion from the profession of lawyer can be ordered. A permanent exclusion from the profession of lawyer is usually accompanied by removal from the lawyers' registry and exclusion from the chamber of lawyers. In addition to these basic forms of sanctions, national legal systems recognise various special forms of disciplinary action. For example, in Belgium it is possible to pronounce a ban on court appearances. In Austria in turn, a lawyer may be excluded from accepting trainee lawyers, while in Germany, suspension from the profession may be restricted to certain legal services (Such as exclusion from serving as a criminal defence lawyer).

#### **5.7.2. Auditors**

Questions of professional supervision and quality assurance are partly addressed by the Statutory Audit Directive. According to Article 29 of the Statutory Audit Directive, each Member State must ensure the existence of an effective quality assurance system, the details of which are established by the directive. Under Article 30 Statutory Audit Directive, Member States shall ensure that there are effective systems of investigation and penalties to detect, correct and prevent the inadequate execution of the statutory audit. In addition the 'EU Commission Recommendation of 6 May 2008 on external

quality assurance for statutory auditors and audit firms auditing public interest entities<sup>283</sup>, should also be taken into account.

General professional supervision is organised differently in the Member States. Where professional chambers have been formed, these have been entrusted with professional supervision, including ordering disciplinary measures. Responsibility for this lies either with the chambers themselves or with disciplinary boards established by them. Where professional chambers do not exist in a given Member State, professional supervision is carried out by a state agency. Sometimes these are in fact independent entities made up of representatives of various institutions and professions (As in Belgium, the Netherlands and Luxembourg).

Possible disciplinary consistently include warnings, fines, (Temporary) suspension and the (Final) exclusion from the profession of auditor. Certain Member States do without the possibility of fines.

#### **5.7.3. Tax advisors**

In the majority of Member States surveyed, professional supervision is carried out by the chambers or professional associations. They are also entrusted with punishing violations of professional rules (Germany, France, Greece, Ireland, Latvia, Luxembourg, Austria, Poland, Portugal, Romania, Slovakia, Slovenia and the Czech Republic). Only occasionally have independent disciplinary committees been established (Belgium, the United Kingdom). The possible sanctions range from a warning to fines, and up to a temporary suspension or permanent exclusion from the professional organisation. In States where membership in a chamber is a mandatory prerequisite for the practice of the profession, an exclusion from the chamber is in fact equivalent to a ban on the practice of the profession. In addition, criminal courts may to some extent prohibit the practice of the profession.

#### **5.7.4. Notaries**

In most Member States, the Ministry of Justice of the Member State is responsible for the professional supervision of notaries. The professional organisation is however oftentimes additionally empowered to monitor compliance with professional obligations. In most cases, this organisation may directly impose disciplinary sanctions on the professional; in case of a breach of notarial professional duties. Usually a specifically established committee or commission of the professional association is responsible for such matters.

#### **5.7.5. Architects**

In the majority of Member States, the professional organisation is responsible for monitoring compliance with professional duties. In most cases, this organisation may directly impose disciplinary measures against the professionals in the event of a breach of duty. Specific responsibility generally lies with a committee or commission of the professional organisation. In Germany this task is in the hands of specially convened professional tribunals.

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<sup>283</sup> OJ. EU No. L 120, p 20

#### **5.7.6. Dentists**

In terms of disciplinary law, responsibilities and potential penalties differ across the EU countries depending on the respective health system. In some cases, there are separate specific rules for violations of professional practice regulations within the framework of the state or state-funded health care system or the social security system. As a result, disciplinary authority is carried out by different institutions (For example in Germany). In other countries (For example the United Kingdom) the legal system does not distinguish between whether or not the dentist practices within the public health service. In these systems, all disciplinary proceedings are processed by a single body. In all EU countries dentists can seek court review of the disciplinary measures imposed on them.

#### **5.7.7. Pharmacists**

In the majority of Member States, it is not government authorities, but professional organisations that are responsible for monitoring compliance with professional duties. They can take disciplinary action against professionals for violations through their relevant committees/commissions. These range from a simple warning, the imposition of fines or provisional suspension, to permanent exclusion from the profession. In Germany professional supervision is the responsibility of specially convened professional tribunals. In addition to professional organisations, government agencies (Usually the Ministry of Health) carry out monitoring, either in addition to or instead of the professional organisation.

### **5.8. Quality assurance systems**

Liberal professions provide 'quality services' according to the traditional understanding of the term. The consistent quality of services offered is safeguarded by the multitude of professional regulations described in this study. In recent years, various quality assurance systems have been established for different professions in order to safeguard a consistent quality of service in each case. Quality assurance systems are widespread in the health professions, for auditors they are even required by European law. In other professions, such as for lawyers and tax advisors, quality assurance systems are however not widespread.

#### **5.8.1. Auditors**

The establishment of internal and external quality assurance systems is mandatory for auditors under Article 29 of the Statutory Audit Directive. The Directive was implemented into national law in all EU Member States. In particular, statutory auditors and audit firms must subject themselves to quality assurance carried out by an independent body subject to state supervision every six years at the latest. For audit firms that audit companies of public relevance, the deadline is every three years. Quality assurance tests focus in particular on the establishment and effectiveness of the internal quality assurance mechanisms, for example with regard to audit quality and independence.

#### **5.8.2. Tax advisors**

Institutionalised quality assurance is not very widespread in the area of tax advice. It exists only in a small number of Member States surveyed, for which information was available. Quality assurance is

mostly performed by the respective chamber of tax advisors or the professional association (cf. Denmark, France, Latvia and Poland).

### 5.8.3. Dentists

Across Europe, there are many different instruments of quality assurance. It is possible to distinguish between internal and external quality assurance. Internal quality assurance comprises all measures carried out by a dentist directly within the surgery together with colleagues and employees. This may include checklists as well as professional development activities. Also included are meetings with colleagues, for example in order to discuss problem cases (Possible medical malpractice or liability cases) and, if necessary, establish a procedure in order to avoid such errors in the future. Within the health care system, such measures are generally well known, particularly in the form of 'Critical Incident Reporting Systems' (CIRS); as used in hospitals, but which can also be found in private practice outside of major health facilities. Such internal quality assurance instruments must be distinguished from specific external quality assurance measures. External quality assurance refers to quality assurance measures which are applied to a surgery from the outside. This primarily includes treatment guidelines and directives. However, tests by external bodies and certification resulting in the issuance of a seal which must then be displayed also count as external quality assurance measures. Finally, inclusion in a quality register should also be mentioned.

In some countries, there is a professional law requirement for a particular form of quality assurance. This is partly of importance for the further right to participate in providing health care under the state social security system / public health insurance. In Austria for example, members of the dental profession must regularly conduct a comprehensive quality evaluation and report the results to the Austrian Dental Chamber (cf. § 22 of the Austrian Dental Law - ZÄG). Should the evaluation fail to take place for reasons within the responsibility of the professional, and should the evaluation or control find an immediate threat to health, this is considered a "serious breach of professional duty" within the meaning of § 22 section 2 ZÄG; and a reason for dismissal under the General Law on Social Security (ASVG), as a result of which the dentist in question may be excluded from treating patients in the public health care system.

In other countries, dentists are required to ensure a high level of quality in the interests of patient health and safety. However, the implementation of specific quality assurance 'instruments' is not mandatory. For instance, in the Netherlands in 2007, a public quality register<sup>284</sup> for dentists was introduced by the Dutch professional association of dentists.<sup>285</sup> All practicing dentists can be included in the quality register. It is intended to serve the purpose of a Quality Seal, with which dentists may especially recommend themselves on the basis of certain characteristics: *"A dentist who is registered with the KRT is a dentist who stands for quality and maintains a proper surgery, who updates his/her knowledge, who is open to the opinion, wishes and needs of patients and can communicate adequately*

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<sup>284</sup> Information available online at: <http://www.krt.nu/> (last accessed on 24/10/2013).

<sup>285</sup> Information available online at: <http://www.tandartsennet.nl/taal/qualitatsregister-zahnarzte.html> (last accessed on 24/10/2013).

in Dutch."<sup>286</sup> In Denmark, dentists have the possibility of obtaining 'ISO Certification' through the Danish professional association of dentists. In addition to this voluntary quality measure, the law requires quality assurance for dentists, leaving it to the Danish professional association of dentists to establish the requirements in cooperation with the regions.<sup>287</sup> Currently best-practice guidelines are in the process of being developed between the parties.<sup>288</sup>

#### 5.8.4. Pharmacists

Commonly quality assurance systems are in place in the Member States to ensure high standards in pharmacy practice. This is realised in particular through treatment guidelines, 'Critical Incident Reporting Systems' and checklists for organisational processes used as instruments for internal quality assurance. In many places there is also an external quality assurance in the form of government controls, inspections and test purchases; such as in Belgium (*Commission médicale*), Bulgaria (*Bulgarian Drug Agency*), Estonia (*State Agency of Medicines, Health Board*), Finland (*FIMEA*), Luxembourg (Ministry of Health), Malta (*Inspectorate and Enforcement Directorate of the Medicines Authority*<sup>289</sup>), the Netherlands (Health inspector), Austria<sup>290</sup> and Poland (Pharmaceutical Inspector).

Additionally in Denmark, the so-called '*Danish Healthcare Quality Program*' (*DDKM*) was established, which aims to promote quality assurance throughout the health sector. The intended high standard is monitored by special inspections, test-buyers and customer satisfaction surveys. In addition in 2007, the Danish pharmacies established general standards for pharmacy consultations.

German Pharmacists are required to take appropriate measures designed to ensure the quality of pharmaceutical practice<sup>291</sup> (Including participation in recommended inter-laboratory tests, the implementation of quality assurance guidelines of the Federal Chamber of Pharmacists or the establishment of a certified system of quality management).<sup>292</sup> For pharmacy managers, it is in any case mandatory to maintain a quality management system in which the operational processes are defined and documented.<sup>293</sup> In addition, the Federal Chamber of Pharmacists can issue a uniform national seal which guarantees the high quality of the services of a certified pharmacy.

In the United Kingdom, compliance with quality standards<sup>294</sup> is monitored by the inspectors of the 'General Pharmaceutical Council'.<sup>295</sup> If a pharmacy holds a 'specials' or 'wholesales' license it is additionally supervised by the 'Medicines and Healthcare Products Regulatory Agency' (*MHRA*).

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<sup>286</sup> Cf. <http://www.tandartsennet.nl/taal/qualitatsregister-zahnarzte.html> (last accessed on 24.10.2013).

<sup>287</sup> Information based on expert survey.

<sup>288</sup> Information based on expert survey.

<sup>289</sup> Medicines Act 2003.

<sup>290</sup> Pharmacy Act, Regulation on Operation of Pharmacies.

<sup>291</sup> I.e.: § 5 Abs. 1 BerufsO Apothekerkammer Nordrhein.

<sup>292</sup> I.e.: § 5 Abs. 3 BerufsO Apothekerkammer Nordrhein.

<sup>293</sup> § 2 a ApothekenbetriebsO.

<sup>294</sup> Medicines (Pharmacies) (Responsible Pharmacist) Regulations 2008.

<sup>295</sup> Art. 7 et seq. Pharmacy Order 2010.

In Romania and Slovenia compliance with quality standards is monitored by the respective professional organisations. ('Romanian College of Pharmacists' or 'Slovenian Chamber of Pharmacy').

## **Chapter 6: Summary**

The economic and social function and significance of the liberal professions is qualitatively based on their contribution to the creation and maintenance of important social infrastructure, which forms the basis of a prosperity-oriented economic and social division of labour. The services provided by liberal professionals are complex and require a high level of expertise. Recipients of such services are therefore unable to assess the quality of the liberal professional services provided or are only able to do so to a very limited extent, and are therefore compelled to trust the liberal professional. To what extent state regulation can help to establish such a relationship of trust or to reduce the existing information-deficit among consumers should be examined from case to case. The same applies to possible externalities associated with the provision of liberal professional services.

A quantification of the economic and social importance of the liberal professions can only ever be a rough approximation. For one thing, many contributions to the common good by liberal professionals are not open to arithmetical calculation, and in addition the existing official statistics regarding liberal professional activities are very imprecise. The highest quality data at the level of EU Member States is available from Eurostat. Based on the Labour Force Survey, the national accounts and the structural business statistics by Eurostat, liberal professional activities in the EU-27 can be described with the help of the following socio-economic indicators:

- In 2012, one in six self-employed persons was active in a liberal-professional dominated industry. Of these, 28.1 percent employed at least one employee. Almost every second self-employed person in a liberal-professional dominated industry (44.6 percent) was female. A total of 27.6 million persons were employed in a liberal-professional dominated industry. This corresponds to one in every six or seven employees.
- In 2010, almost one in six companies was active in the "provision of professional, scientific and technical services" sector. Of these, 96.5 percent were micro-enterprises with less than 10 employees. The majority of these companies operated as non-listed companies with limited liability.
- Gross-value-added generated by liberal professional dominated industries has risen from 1,050 billion Euros in 2005 to 1,220 billion Euros in 2008. The liberal professional dominated industries contributed more than one in ten Euros of gross-value-added generated in the EU-27. In the crisis year of 2009, the downturn in these industries was less than in the economy as a whole. Thus the liberal professional dominated industries contributed to the stabilisation of the economic situation.

- Across the EU-27 in 2012, on average more than a third of self-employed persons in the liberal professional dominated industries were between 50 and 64 years old. In certain countries, the proportion was even higher at approximately 50 percent. Hence there is a great need for sufficiently qualified persons in order to maintain the supply of liberal professionals, including in regional areas, over the years to come. As a liberal profession occupation usually requires a university degree, it is to be welcomed in view of future demand, that in 2012 one in four qualifications were obtained in the field of tertiary study with the trend set to increase. In 2008, a similarly high rate of tertiary education was also reported for employed persons born outside of the reporting country.
- The enterprises in the sector "provision of professional, scientific and technical services" plus pharmacies earned a 2010 gross operating surplus of 233 billion Euros. This is equivalent to 9.7 percent of the total gross operating surplus generated in trade and industry. Overall, these enterprises paid out 287 billion Euros in wages and salaries, which corresponds to 10.4 percent of wages and salaries in the whole commercial economy.
- The share of services exports in the Gross Domestic Product of the EU-27 has increased from 8.9 percent in 2005 to 11.1 percent in 2012. Unfortunately it is not possible to more clearly distinguish the liberal profession dominated sectors in the greater economy.
- The biggest potential obstacles to growth for the years 2011-2013 from the point of view of enterprises operating in the "provision of professional, scientific and technical services," are; the general economic climate, demand in domestic markets, price competition and high labour costs. Financing, succession planning, demand on foreign markets, the legal framework and tax incentives are, however, rarely perceived as a potential barrier to growth. The importance of concerns related to the availability of qualified personnel varies widely between countries.

With respect to the legislative framework of the liberal professions, the present study aims only to set out the legal framework in the Member States of the European Union regarding various regulatory issues, and to clarify the differences by making comparisons. Only limited conclusions can be drawn from this overview. It is however possible to make statements regarding the distribution of certain regulatory models. In this regard, the following can be noted:

1. All liberal professions examined here are predominantly subject to specific regulation in the Member States of the EU.
2. The density of regulation is strongly dependent on the particular profession. Lawyers, auditors and the health professions are subject to extensive regulation in all countries. Architects, engineers and to some extent tax advisors are on the other hand unregulated or subject only to light regulation in certain Northern and Eastern European Member States.
3. With a few exceptions in the Scandinavian Member States, the liberal professions are subject to a specific form of professional administration, which regulates and monitors admission to

the profession and professional practice. Mostly, this administration is not exercised by a government authority, but carried out by professional chambers or professional associations which have been empowered for this purpose by law.

4. Although professional organisation through professional chambers and associations differs from one Member State to another, a principle of self-administration in one form or another can be identified as a key characteristic of the liberal professions within the European Union. This is especially true considering the fact that even without compulsory membership in a professional chamber; the liberal professions achieve a high degree of organisation. In addition to representing the interests of the profession, they are generally also committed to upholding quality and ethical standards.
5. Elementary principles of professional ethics and professional duties such as independence and confidentiality, continuing and further education requirements, the mandatory establishment of quality assurance systems or special rules for the cooperation of liberal professionals within partnerships and incorporated companies can be found for many professions in the majority of Member States.
6. Through compulsory or voluntary membership in a professional chamber or professional association, the majority of liberal professionals are bound to autonomously established internal regulation in the form of by-laws or deontology codes. Such regulations codify particular ethical professional duties, for example with regard to professional conduct on matters of advertising or pricing.

The extent of professional regulation demonstrates that a majority of Member States deem the specific regulation of liberal professions necessary in order to ensure the quality of professional services. The objective of such regulation is to protect certain legal interests of consumers/service recipients (Such as health and physical integrity or property interests) and the general public (Such as a functioning health care system or the functioning of the administration of justice).

The wide-spread nature of a legal rule does not, however, allow certain conclusions to be drawn with regard to the quality and effectiveness of a particular regulation. The actual impact of regulations depends on a variety of factors. A final assessment may only be carried out once the criteria have been clarified according to which a legal rule may be considered effective.

This should be the starting point for future research projects. However, various groups are currently calling for more "deregulation" of the professional rules of the liberal professions in the hope of a better market structure and improved employment levels. This currently applies in particular to the questions of professional organisation (Especially the compulsory membership in professional associations) as well as special requirements for the collective exercise of the profession in liberal professional partnerships and incorporated corporations. On one hand it is suggested that the liberalisation of professional law would stimulate growth. While on the other hand, deregulation is considered to benefit services recipients, in particular by lowering prices for consumers. So far, these hypotheses have not been sufficiently verified from an empirical standpoint. In particular, it is



regrettable that previously conducted studies have so far always only addressed a part of the necessary questions, without presenting the economic considerations in reference to the basic legal questions. Future studies are faced with the task of developing scientific methods allowing an analysis of the efficiency and effectiveness of a legal rule from all relevant viewpoints and placing these in relation to one another. The aim is to provide the factual basis, allowing standard-setting bodies to make policy choices to optimise the regulation of liberal professions taking all aspects into account.

One insight which conceivably should also be taken into account is that different legal models, resulting from different legal traditions, can certainly lead to similar overall results. Strengths and weaknesses, such as cost advantages and quality deficits may cancel each other out in overall assessment. Different regulatory systems therefore need not be considered better or worse per se. The proper functioning of a system of professional law perceived as less " " therefore does not necessarily show a need for 'deregulation' of the remaining systems of professional law. Rather, in such cases, the Member States should be offered the opportunity to take national characteristics into consideration and to continue to develop their respective regulatory systems autonomously within the boundaries of the freedom to provide services and the freedom of establishment; provided that the rules benefit the common good and professional groups are not privileged at the expense of third parties.

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## Appendix

Table 27: Number of self-employed persons aged 20 to 64 years in liberal profession dominated sectors of the economy with their own employees as a proportion of all self-employed in this sector in the EU-27. Source: Own illustration according to data from the European Labour Force Survey by Eurostat

	2008	2009	2010	2011	2012
<b>European Union (27 countries)</b>	1486.5	1476.1	1,479.5	1524.5	1,453.5
<b>Belgium</b>	27.0	26.5	28.7	25.8	25.6
<b>Bulgaria</b>	11.2	11.5	12.6	11.4	
<b>Czech Republic</b>	22.4	25.8	25.3	24.2	24.1
<b>Denmark</b>	17.2	17.6	17.8	18.7	17.2
<b>Germany</b>	385.1	410.7	418.6	433.1	413.8
<b>Estonia</b>					
<b>Ireland</b>	15.4	17.0	16.3	14.9	14.2
<b>Greece</b>	38.7	35.8	33.4	36.5	34.4
<b>Spain</b>	103.4	111.4	107.2	99.5	91.4
<b>France</b>	234.3	227.3	213.0	222.6	216.8
<b>Italy</b>	187.3	167.6	170.8	164.8	155.9
<b>Cyprus</b>	2.0	2.1	2.6	2.2	2.2
<b>Latvia</b>					
<b>Lithuania</b>					
<b>Luxembourg</b>		1.6	2.1	1.8	2.2
<b>Hungary</b>	25.2	24.7	27.3	29.2	25.1
<b>Malta</b>					
<b>Netherlands</b>	67.4	64.2	64.0	62.0	
<b>Austria</b>	33.3	29.9	32.4	37.0	32.0
<b>Poland</b>	57.1	57.9	63.6	73.0	67.2
<b>Portugal</b>		19.5	19.2	28.8	25.0
<b>Romania</b>					
<b>Slovenia</b>	3.8	4.2	5.8	4.7	3.8
<b>Slovakia</b>	10.4	10.8	11.3	13.5	9.7
<b>Finland</b>	13.0	11.9	10.2	12.2	12.2
<b>Sweden</b>	22.2	21.3	23.4	24.5	23.9
<b>United Kingdom</b>	169.3	157.0	155.5	162.7	160.3

Table 28: Number of self-employed women aged 20 to 64 years in liberal profession dominated industries in the EU-27 (In 1000s). Source: Own illustration according to data from the European Labour Force Survey by Eurostat

	2008	2009	2010	2011	2012
<b>European Union (27 countries)</b>	1943.0	2097.8	2177.5	2223.1	2,303.7
<b>Belgium</b>	58.5	64.1	63.8	60.5	69.9
<b>Bulgaria</b>	19.0	21.1	23.4	19.0	18.9
<b>Czech Republic</b>	52.5	55.6	57.8	62.5	62.9
<b>Denmark</b>	18.7	22.2	25.7	23.3	23.4
<b>Germany</b>	339.3	393.3	412.0	437.3	437.4
<b>Estonia</b>				4.1	
<b>Ireland</b>	13.0	14.9	15.7	14.3	16.7
<b>Greece</b>	55.4	54.5	61.2	59.5	61.1
<b>Spain</b>	138.7	145.1	145.6	136.1	137.4
<b>France</b>	225.5	237.1	242.4	255.1	254.4
<b>Italy</b>	361.3	356.8	370.5	377.8	407.5
<b>Cyprus</b>	2.4	2.6	2.9	2.3	2.4
<b>Latvia</b>	5.1	7.2	5.9	5.7	7.4
<b>Lithuania</b>					
<b>Luxembourg</b>	2.1	2.0	1.9	2.4	2.9
<b>Hungary</b>	25.5	25.1	24.3	25.8	25.7
<b>Malta</b>					
<b>Netherlands</b>	104.9	102.4	105.4	112.1	
<b>Austria</b>	29.4	33.7	35.4	35.9	35.8
<b>Poland</b>	84.4	98.8	105.5	107.1	117.3
<b>Portugal</b>	31.4	29.8	27.8	30.5	30.7
<b>Romania</b>	14.3		17.3	19.6	21.9
<b>Slovenia</b>	4.4	4.8	7.2	7.8	5.9
<b>Slovakia</b>	22.4	29.4	26.9	32.5	32.1
<b>Finland</b>	23.6	24.6	22.2	23.2	26.4
<b>Sweden</b>	31.4	32.8	31.1	31.5	32.5
<b>United Kingdom</b>	274.2	317.8	337.9	333.0	344.5

Table 29: Number of employees in liberal profession dominated industries in the EU-27 aged 20-64 years (In 1000s), Source: Own illustration according to data from the European Labour Force Survey by Eurostat

	2008	2009	2010	2011	2012
<b>European Union (27)</b>	25856.8	26502.6	26747.3	27291.6	27552.2

countries)					
<b>Belgium</b>	617.1	639.0	650.0	673.0	701.9
<b>Bulgaria</b>	203.2	210.0	202.6	199.7	186.6
<b>Czech Republic</b>	399.4	403.3	406.9	391.6	407.1
<b>Denmark</b>	572.5	574.4	584.0	571.4	559.1
<b>Germany</b>	5088.4	5240.0	5382.0	5596.2	5680.4
<b>Estonia</b>	43.3	44.6	45.4	48.4	48.3
<b>Ireland</b>	288.7	285.9	288.5	291.8	293.8
<b>Greece</b>	300.5	298.6	292.7	277.6	274.4
<b>Spain</b>	1740.4	1794.0	1828.3	1867.1	1822.3
<b>France</b>	3915.9	3952.7	4021.3	4134.4	4229.6
<b>Italy</b>	2022.3	2020.5	2004.3	2018.7	2033.7
<b>Cyprus</b>	28.0	29.1	30.0	31.0	33.0
<b>Latvia</b>	66.2	56.8	60.6	62.3	65.6
<b>Lithuania</b>	128.1	124.9	121.8	119.9	121.9
<b>Luxembourg</b>	29.3	31.2	30.2	31.2	35.4
<b>Hungary</b>	332.9	321.2	334.2	329.3	343.7
<b>Malta</b>	15.1	16.2	16.7	18.1	19.4
<b>Netherlands</b>	1,596.5	1,583.0	1534.1	1536.4	
<b>Austria</b>	471.5	495.1	499.5	493.6	514.8
<b>Poland</b>	1059.4	1102.8	1114.1	1,111.5	1,143.4
<b>Portugal</b>	400.5	411.2	427.1	457.4	449.6
<b>Romania</b>	492.4	511.2	529.0	530.1	507.7
<b>Slovenia</b>	83.2	81.7	81.3	80.4	83.2
<b>Slovakia</b>	182.9	177.2	182.7	178.5	177.5
<b>Finland</b>	472.4	474.1	472.7	486.2	497.8
<b>Sweden</b>	925.8	914.4	917.8	949.7	947.1
<b>United Kingdom</b>	4381.1	4710.0	4689.1	4806.2	4839.2

Table 30: Number of enterprises operating in the "provision of professional, scientific and technical services" plus pharmacies in the EU-27. Source: Own representations according to reports from the structural business statistics by Eurostat

	2008	2009	2010
<b>European Union (27 countries)</b>	3562929	3564634	3827057
<b>Belgium</b>	83 699	89 981	107 771
<b>Bulgaria</b>	31 772	38 057	38,754

<b>Czech Republic</b>	164 229	170 612	163 782
<b>Denmark</b>	29,733	28 959	30 619
<b>Germany</b>	352 847	357 885	368 598
<b>Estonia</b>	8016	8495	8,638
<b>Ireland</b>	26,922	27 732	27,585
<b>Greece</b>		121 824	
<b>Spain</b>	400 045	390 778	384 391
<b>France</b>	329 162	330 684	433 636
<b>Italy</b>	718 794	724 273	734 074
<b>Cyprus</b>	3,715	4,155	5049
<b>Latvia</b>	10,513	11,578	12,790
<b>Lithuania</b>	13,413	13,039	14,527
<b>Luxembourg</b>	5941	6358	6848
<b>Hungary</b>	109 210	112 854	115 505
<b>Malta</b>			
<b>Netherlands</b>	130 711	142 237	202 852
<b>Austria</b>	56 422	57 293	61 261
<b>Poland</b>	193 922	190 021	194 926
<b>Portugal</b>	120 974	119 505	122 469
<b>Romania</b>	64 266	65,604	59 623
<b>Slovenia</b>	19,787	21 144	22,739
<b>Slovakia</b>	9,861	10,876	52 027
<b>Finland</b>	33 399	33 668	34 312
<b>Sweden</b>	141 757	146 381	155 843
<b>United Kingdom</b>	334 884	326 338	332 300

Table 31: Number of enterprises in selected professional fields of activity in each country in 2010 in the EU-27.  
Source: Own representations according to reports from the structural business statistics by Eurostat

	Business consulting	Engineering	Audit	Legal advice	Architectural firms
<b>Belgium</b>	29,494	6227	12,832	6149	15,846
<b>Bulgaria</b>	3916	5684	8934	1240	2468
<b>Czech Republic</b>					
<b>Denmark</b>	7,439	3,745	4,176	1702	1,907
<b>Germany</b>	43 928	62 989	47 751	48 662	32 446
<b>Estonia</b>	1988	1027	2116	563	343

<b>Ireland</b>		3,583	4722	4,373	2,249
<b>Greece</b>					
<b>Spain</b>		49 921	59 981	94 235	54 936
<b>France</b>	94 666	42,320	25,143	52,604	31 647
<b>Italy</b>	40 612	146 245	123 518	150 214	72 429
<b>Cyprus</b>	697	552	770	792	566
<b>Latvia</b>	1351	686	2,843	2,331	656
<b>Lithuania</b>	1386	1,854	1277	3003	727
<b>Luxembourg</b>	1382	649	1090	1492	543
<b>Hungary</b>	20,610	17,664	26 673	7,685	3,909
<b>Malta</b>					
<b>Netherlands</b>	62.780	24,633	24,723	11,513	4314
<b>Austria</b>	9598	9255	6,961	5123	5,535
<b>Poland</b>	21 521	32,670	28 947	23,044	14,732
<b>Portugal</b>	15,977	21,904	24,273	26 424	9,456
<b>Romania</b>	16,791	8,723	7896	289	4,280
<b>Slovenia</b>	5837	3849	4423	1,556	1390
<b>Slovakia</b>	6,779	8403	14,827	3785	1730
<b>Finland</b>	6934	6,274	4,844	1593	1577
<b>Sweden</b>	46.880	29,937	18,354	5,501	3,621
<b>United Kingdom</b>	113 188	54 342	32,838	29,390	10,700

Table 32: Number of enterprises operating in the "provision of professional, scientific and technical services" by size class. Source: Own representations according to reports from the structural business statistics by Eurostat

	0 to 9 Employees	10 to 19 Employees	20 to 49 Employees	50 to 249 Employees	250 Employees and more
<b>European Union (27 countries)</b>	3,561,266.04	79045.98	35,300	14,100	2,460
<b>Belgium</b>	100 682	1,266	569	278	57
<b>Bulgaria</b>	34,038	791	318	92	7
<b>Czech Republic</b>	160 968	1683	778	322	31
<b>Denmark</b>	28 527	963	565	275	50
<b>Germany</b>	313 732	21,884	9,088	2,781	508
<b>Estonia</b>	8,135	233	97	37	Personnel number

<b>Ireland</b>	24,550	976	416	153	36
<b>Spain</b>	352 885	6,911	2,760	1090	191
<b>France</b>	393 013	8932	4,421	1,816	347
<b>Italy</b>	708 480	5635	1,651	714	120
<b>Cyprus</b>	4,296	238	66	36	3
<b>Latvia</b>	11,900	272	119	41	2
<b>Lithuania</b>	13,348	468	213	Op. 58	4
<b>Luxembourg</b>	6,377	212	105	49	9
<b>Hungary</b>	111,250	1221	455	166	23
<b>Netherlands</b>	195 972	3,147	1708	742	146
<b>Austria</b>	56 467	2263	893	293	25
<b>Poland</b>	182 712	1673	991	498	94
<b>Portugal</b>	116 454	1352	534	198	23
<b>Romania</b>	51,996	1340	662	313	44
<b>Slovenia</b>	22.020	378	167	54	2
<b>Slovakia</b>	49 692	948	192	95	13
<b>Finland</b>	32,177	830	478	173	31
<b>Sweden</b>	152 462	1768	996	414	Op. 58
<b>United Kingdom</b>	305 173	12,554	6,472	3,072	613

**Table 33: Gross-value-added<sup>296</sup> in freelance dominated sectors and their share of total gross-value-added in million EUR. Source: Own illustration according to Eurostat from the national accounts**

	2008	2009	2010
<b>European Union (27 countries)</b>	1220634.5	1180840.7	1214911.0
<b>Belgium</b>	41094.0	42180.3	42896.4
<b>Bulgaria</b>	1398.4	1661.5	2023.1
<b>Czech Republic</b>	11581.7	10954.0	11540.4
<b>Denmark</b>	19702.7	20545.8	21319.9
<b>Germany</b>	259,110.0	247,290.0	257,060.0
<b>Estonia</b>	1114.5	1,019.4	1012.9
<b>Ireland</b>			
<b>Greece</b>	16824.7	18928.9	16618.7
<b>Spain</b>			

<sup>296</sup> Shown here is the gross-value-added at basic prices, which corresponds to the value of output at basic prices less intermediate consumption at purchasers' prices. The base price is the price receivable by the producers from the purchaser received in exchange for a unit of the product, net of taxes and subsidies on the product.

<b>France</b>	210,204.7	208,000.6	211,796.6
<b>Italy</b>	151,162.8	149,473.8	151,670.9
<b>Cyprus</b>	1,094.3	1,133.9	1382.5
<b>Latvia</b>	1549.8	1256.6	1164.0
<b>Lithuania</b>	1856.9	1789.0	1686.2
<b>Luxembourg</b>			
<b>Hungary</b>	7171.2	6370.8	6727.5
<b>Malta</b>			
<b>Netherlands</b>	59504.0	60163.0	60089.0
<b>Austria</b>	24121.5	24107.2	24575.4
<b>Poland</b>	27190.0	23791.2	26539.8
<b>Portugal</b>	12927.8	13419.7	13312.3
<b>Romania</b>	7391.5	6555.3	7226.0
<b>Slovenia</b>	3291.1	3289.9	3337.1
<b>Slovakia</b>	4248.9	4508.1	4790.8
<b>Finland</b>	15011.0	15032.0	15507.0
<b>Sweden</b>			
<b>United Kingdom</b>	201,218.2	179,077.1	191,553.1

Table 34: Enterprise revenue in the sector "provision of professional, scientific and technical services" plus pharmacies in the EU-27 in million EUR. Source: Own illustration according to the Business Statistics from Eurostat

	2008	2009	2010
<b>European Union (27 countries)</b>	1,335,215.41	1,261,316.26	1,340,132.34
<b>Belgium</b>	43596.90	45098.20	53143.50
<b>Bulgaria</b>	3298.50	3638.60	3233.10
<b>Czech Republic</b>	18691.50	16833.10	17452.10
<b>Denmark</b>	24485.10	22573.80	21642.80
<b>Germany</b>	227,203.80	240,851.30	245,949.40
<b>Estonia</b>	1077.90	1191.30	951.70
<b>Ireland</b>	17166.90	15038.50	14476.40
<b>Greece</b>		14817.80	
<b>Spain</b>	101,108.50	96558.20	95746.80
<b>France</b>	200,764.10	219,143.30	248,000.90
<b>Italy</b>	138,767.20	120,539.10	137,199.40
<b>Cyprus</b>	1133.20	1,138.00	1437.90
<b>Latvia</b>	1883.70	1444.20	1433.70



<b>Lithuania</b>	2317.20	1767.10	1854.60
<b>Luxembourg</b>	4614.40	4708.40	4931.10
<b>Hungary</b>	13007.90	12008.70	11939.60
<b>Malta</b>			
<b>Netherlands</b>	79077.50	81810.90	78771.30
<b>Austria</b>	28416.90	28391.20	28111.40
<b>Poland</b>	30835.00	26655.30	29874.90
<b>Portugal</b>	15661.00	15493.90	16308.60
<b>Romania</b>	10806.30	9375.60	9994.80
<b>Slovenia</b>	4533.00	4240.80	4564.80
<b>Slovakia</b>	3854.10	3643.10	5800.20
<b>Finland</b>	14390.30	13321.50	13712.80
<b>Sweden</b>	34347.20	30071.20	39702.50
<b>United Kingdom</b>	254,436.80	221,373.40	234,572.30

Table 35: Share of selected liberal professional occupations by revenue for the industry "provision of professional, scientific and technical services" in 2010 in the EU-27. Source: Own illustration according to the Business Statistics from Eurostat

	Engineering	Business consulting	Audit	Legal advice	Architectural firms
<b>EU 27</b>	18.8%	14.0%	10.9%	10.4%	3.6%
<b>Belgium</b>	9.4%	17.6%	7.4%	9.3%	4.3%
<b>Bulgaria</b>	22.4%	13.2%	8.8%	4.2%	3.3%
<b>Czech Republic</b>	:	:	:	:	:
<b>Denmark</b>	27.7%	10.1%	9.9%	8.2%	3.8%
<b>Germany</b>	17.9%	9.2%	11.1%	8.8%	3.7%
<b>Estonia</b>	17.3%	:	8.5%	7.5%	0.0%
<b>Ireland</b>	17.0%	:	16.1%	19.2%	4.3%
<b>Greece</b>	:	:	:	:	:
<b>Spain</b>	23.5%	0.0%	13.7%	13.2%	5.6%
<b>France</b>	19.9%	11.9%	7.4%	9.4%	3.5%
<b>Italy</b>	15.0%	12.5%	14.9%	14.8%	3.6%
<b>Cyprus</b>	6.3%	18.1%	31.6%	14.6%	6.7%
<b>Latvia</b>	9.7%	11.1%	10.1%	11.9%	5.4%
<b>Lithuania</b>	12.0%	17.3%	7.5%	13.9%	6.5%
<b>Luxembourg</b>	10.5%	8.4%	33.0%	20.8%	3.2%

<b>Hungary</b>	18.7%	23.0%	12.9%	5.3%	2.1%
<b>Malta</b>	:	:	:	:	:
<b>Netherlands</b>	16.4%	18.7%	13.6%	7.9%	1.7%
<b>Austria</b>	16.7%	9.2%	10.6%	8.6%	6.3%
<b>Poland</b>	13.6%	12.5%	12.6%	7.7%	6.8%
<b>Portugal</b>	22.2%	21.7%	10.5%	9.2%	3.8%
<b>Romania</b>	21.0%	30.1%	5.7%	0.1%	4.0%
<b>Slovenia</b>	33.9%	15.2%	8.4%	4.8%	5.5%
<b>Slovakia</b>	18.2%	19.4%	14.5%	6.8%	2.6%
<b>Finland</b>	28.5%	17.9%	10.4%	5.5%	2.9%
<b>Sweden</b>	26.3%	18.6%	8.6%	5.5%	1.9%
<b>United Kingdom</b>	19.3%	20.6%	10.2%	13.4%	2.3%

Table 36: Revenue within the industry "provision of professional, scientific and technical services" by size class in 2010 in million EUR.. Source: Compiled and calculated according to reports from the structural business statistics by Eurostat

	0 to 9 Employees	10 to 49 Employees	50 to 249 Employees	250 Employees and more
<b>European Union (27 countries)</b>	421,444.5	243,010.56	199,000	296,331.66
<b>Belgium</b>	18796.3	8469.80	10458.9	9592.3
<b>Bulgaria</b>	1,225.8	719.40	466.0	118.4
<b>Czech Republic</b>	7970.7	4155.20	3300.4	2025.7
<b>Denmark</b>	5354.3	4052.90	3915.2	6666.3
<b>Germany</b>	57517.2	51133.50	36079.9	59978.9
<b>Estonia</b>	537.4	295.90	118.4	0.0
<b>Ireland</b>	4115.6	3156.10	1885.3	2525.3
<b>Spain</b>	29548.5	17068.50	16627.2	15006.1
<b>France</b>	82054.3	43610.80	32055.2	51645.5
<b>Italy</b>	63184.5	18317.50	12033.9	21876.6
<b>Cyprus</b>	532.3	387,60	243.0	126.6
<b>Latvia</b>	709.1	:	140.3	:
<b>Lithuania</b>	619.8	473.10	169.3	61.4

<b>Luxembourg</b>	1332.6	1,187.50	1029.5	1,096.8
<b>Hungary</b>	4922.6	2675.60	1609.0	507.7
<b>Netherlands</b>	25219.7	14117.30	13187.8	20866.8
<b>Austria</b>	10217.2	7186.60	5495.2	1857.2
<b>Poland</b>	11326.6	3401.70	4982.1	5207.5
<b>Portugal</b>	5634.4	3115.80	2377.2	1366.3
<b>Romania</b>	2944.9	1734.80	1323.0	788.4
<b>Slovenia</b>	2309.4	:	553.2	:
<b>Slovakia</b>	24345.7	1364.00	654.5	450.6
<b>Finland</b>	4470.1	3152.30	2101.1	1774.0
<b>Sweden</b>	14133.9	8159.50	6150.2	7484.7
<b>United Kingdom</b>	57283.3	40718.20	40013.5	84540.1

Table 37: Gross operating surplus in the industry "provision of professional, scientific and technical services" plus pharmacies in million EUR. Source: Own illustration according to data from the structural business statistics by Eurostat

	2008	2009	2010
<b>European Union (27 countries)</b>	246,474.70	210,825.01	232,999.56
<b>Belgium</b>	6681.80	6814.00	7319.70
<b>Bulgaria</b>	642.00	508.10	524.70
<b>Czech Republic</b>	3425.00	2756.70	2598.70
<b>Denmark</b>	2283.40	2384.50	2323.60
<b>Germany</b>	52429.20	44912.10	48449.10
<b>Estonia</b>	166.80	177.00	122.40
<b>Ireland</b>	3576.80	2482.60	2498.60
<b>Greece</b>	0.00	3476.80	0.00
<b>Spain</b>	19213.70	17845.70	16706.70
<b>France</b>	21567.20	18686.30	24248.70
<b>Italy</b>	42549.90	30257.40	39781.50
<b>Cyprus</b>	305,70	280.40	349,10
<b>Latvia</b>	340.80	247,10	224.50
<b>Lithuania</b>	342.60	159.80	187.30
<b>Luxembourg</b>	996.60	930.30	859.30
<b>Hungary</b>	1,178.00	820.00	1341.40
<b>Malta</b>	0.00	0.00	0.00

<b>Netherlands</b>	12478.90	11590.80	11729.30
<b>Austria</b>	5112.20	4690.60	4722.50
<b>Poland</b>	6441.30	4871.60	6199.10
<b>Portugal</b>	2371.40	2223.10	2839.20
<b>Romania</b>	1765.50	1322.40	1317.50
<b>Slovenia</b>	653.00	499.70	463.00
<b>Slovakia</b>	552.60	392.20	1095.40
<b>Finland</b>	1749.60	1450.60	1479.80
<b>Sweden</b>	3145.30	1886.90	3295.60
<b>United Kingdom</b>	50434.00	48346.40	48596.90

**Table 38: Gross operating surplus in selected typical liberal professional occupations in million EUR. Source: Own calculations and presentation according to reports from the structural service statistics from Eurostat**

	Legal advice	Engineering	Business consulting	Audit	Architectural firms
<b>European Union (27 countries)</b>	51945.64	37461.11	36368.08	33795.7	12247.48
<b>Belgium</b>	1312.5	608.4	1911.9	732.2	581.7
<b>Bulgaria</b>	44.5	157.7	50.3	55.2	23.7
<b>Czech Republic</b>					
<b>Denmark</b>	589.5	635.4	244.6	322.3	65.5
<b>Germany</b>	8894.8	8040.3	4770.9	6138.2	2849.2
<b>Estonia</b>	18.5	29.2		10.5	
<b>Ireland</b>	981.6	81.3		547.1	31.5
<b>Greece</b>					
<b>Spain</b>	4452.5	2186.4		1908.3	1329.7
<b>France</b>	7108.8	2107.8	3224.5	1,849.2	1368.2
<b>Italy</b>	10628.7	6365.9	3206.3	7230.3	2988.2
<b>Cyprus</b>	52.8	22.8	72.5	119.3	21.3
<b>Latvia</b>	35.4	21.2	29.6	21.4	10.2
<b>Lithuania</b>	74.4	20.4	29.0	5.5	7.8
<b>Luxembourg</b>	390.0	60.9	113.8	231.4	18.9
<b>Hungary</b>	174.4	222.3	264.9	207.5	28.9
<b>Malta</b>					
<b>Netherlands</b>	1384.1	1793.6	3288.5	2285.2	182.8

<b>Austria</b>	922.8	720.7	461.3	738.4	425.1
<b>Poland</b>	816.9	896.1	719.9	1,085.0	335.1
<b>Portugal</b>	602.6	365.4	396.6	302.4	90.5
<b>Romania</b>	0.5	260.6	359.6	114.4	53.3
<b>Slovenia</b>	57.4	88.7	96.5	61.9	26.5
<b>Slovakia</b>	167.1	151.2	179.3	165.6	31.0
<b>Finland</b>	172.0	257.0	211.9	197.5	62.8
<b>Sweden</b>	404.2	833.2	646.8	503.8	72.7
<b>United Kingdom</b>	12068.3	10243.0	14415.9	7966.3	889.1

Table 39: Wages and salaries in the industry "provision of professional, scientific and technical services" plus pharmacies in million EUR.. Source: Own illustration according to data from the structural business statistics by Eurostat

	2008	2009	2010
<b>European Union (27 countries)</b>	285,371.47	273,070.53	287,457.24
<b>Belgium</b>	5742.20	5685.10	6341.70
<b>Bulgaria</b>	364.70	424.30	424.40
<b>Czech Republic</b>	2009.10	2024.60	2204.80
<b>Denmark</b>	7336.40	7109.20	7294.30
<b>Germany</b>	54036.60	55325.90	58869.90
<b>Estonia</b>	231,80	222.90	198.30
<b>Ireland</b>	4479.70	4144.40	3762.30
<b>Greece</b>	0.00	2689.40	0.00
<b>Spain</b>	20213.70	20554.20	20281.00
<b>France</b>	0.00	49062.70	53761.40
<b>Italy</b>	14619.40	14073.10	15257.20
<b>Cyprus</b>	349,80	365,30	510.00
<b>Latvia</b>	300.80	223,80	191,60
<b>Lithuania</b>	374.70	315.70	296,60
<b>Luxembourg</b>	1407.60	1390.10	1472.20
<b>Hungary</b>	1668.80	1481.50	1525.10
<b>Netherlands</b>	19546.30	21371.10	20519.80
<b>Austria</b>	5672.00	5790.60	5879.60
<b>Poland</b>	3521.10	3182.70	3567.80
<b>Portugal</b>	2539.20	2646.20	2763.00

<b>Romania</b>	1222.60	1171.60	1158.20
<b>Slovenia</b>	754.00	779.10	811.80
<b>Slovakia</b>	691,20	784.60	851.90
<b>Finland</b>	3599.70	3592.00	3671.00
<b>Sweden</b>	7919.40	7431.10	8843.80
<b>United Kingdom</b>	72689.50	60634.20	64177.70

**Table 40: Wage and salary costs in selected typical liberal professional occupations in million EUR.. Source: Own calculations and presentation according to reports from the structural business statistics by Eurostat**

	Legal advice	Audit	Business consulting	Architectural firms	Engineering
<b>European Union (27 countries)</b>	25326.82	41158.21	40958.16	8522.34	51992.04
<b>Belgium</b>	547.6	560.3	787.6	144.9	875.4
<b>Bulgaria</b>	15.1	75.6	69.1	12.7	73.9
<b>Czech Republic</b>					
<b>Denmark</b>	614.7	1,077.8	653.3	322.0	1787.9
<b>Germany</b>	3734.5	9010.2	5746.3	1832.5	10284.9
<b>Estonia</b>	18.7	26.3			37.5
<b>Ireland</b>	520.5	702.0		191.5	530.7
<b>Greece</b>					
<b>Spain</b>	2171.2	3832.4		700.5	4501.2
<b>France</b>	3884.6	5684.9	6851.9	1683.6	9806.1
<b>Italy</b>	1,137.3	3000.8	2406.2	76.2	1751.7
<b>Cyprus</b>	83.2	192.7	69.9	41.6	35.8
<b>Latvia</b>	7.3	25.9	16.0	8.8	20.6
<b>Lithuania</b>	24.0	31.4	40.7	19.7	40.5
<b>Luxembourg</b>	127.7	650.3	93.4	58.6	181.7
<b>Hungary</b>	77.1	338.6	270.7	31.1	231.9
<b>Malta</b>					
<b>Netherlands</b>	1830.5	3564.3	3852.4	448.0	3595.7
<b>Austria</b>	396.6	826.3	512.6	283.3	1078.0
<b>Poland</b>	207.2	563.5	614.3	220.0	471.5
<b>Portugal</b>	85.2	446.8	680.0	95.0	492.6
<b>Romania</b>	0.6	78.2	228.5	40.6	265.6

<b>Slovenia</b>	44.3	100.2	107.2	42.3	216.3
<b>Slovakia</b>	26.1	200.0	188.0	26.7	113.7
<b>Finland</b>	192.6	492.8	543.1	129.4	1,121.3
<b>Sweden</b>	530.1	1,028.9	1602.9	238.2	2466.9
<b>United Kingdom</b>	8916.4	7534.1	12645.6	1710.4	11396.9



*European Economic and Social Committee*

**INT/687**  
**The liberal professions**

Brussels, 25 March 2014

**OPINION**  
of the  
European Economic and Social Committee  
on  
**The role and future of the liberal professions in European civil society 2020**  
(own-initiative opinion)

\_\_\_\_\_  
Rapporteur: **Mr Metzler**  
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On 14 February 2013, the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on

*The role and future of the liberal professions in European civil society 2020*  
(own-initiative opinion)<sup>1</sup>.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 10 February 2014.

At its 497th plenary session, held on 25 and 26 March 2014 (meeting of 25 March), the European Economic and Social Committee adopted the following opinion by 210 votes to 8, with 11 abstentions:

\*

\*       \*

## 1.       **Conclusions and recommendations**

- 1.1       Provided certain social adjustments are made, the system of liberal professions has a significant contribution to make in the future to providing high-quality "social goods" such as healthcare, delivering public services, safeguarding civil rights and increasing economic prosperity. The liberal professions are a component of any democratic society, and offer significant potential for growth in terms of employment and GDP.
- 1.2       The term "liberal professions" is not used in all Member States, but the concept, and the associated societal problems and solutions, can be found throughout the EU. Criticisms are sometimes raised regarding shortcomings in oversight and quality assurance; these can usually be traced back to enforcement problems rather than to failures in the system.
- 1.3       Both "rules-based regulation" and "principles-based regulation" are capable of achieving optimal regulation for the liberal professions.
- 1.4       Provision of services by the liberal professions is characterised by an asymmetry of information between service providers and their clients. The services relate to existential matters of life and health, legal issues, and vital economic questions, and service providers therefore need to meet particularly stringent professional and ethical requirements.

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<sup>1</sup>

In the framework of the elaboration of the opinion, the EESC committed the realization of a study to the Europäischen Zentrum für Freie Berufe der Universität zu Köln (The State of Liberal Professions Concerning their Functions and Relevance to European Civil Society EESC/COMM/05/2013) whose publication is being finalized.

- 1.5 A number of countries have price regulation for certain professions, which can help to protect consumers. Price regulation needs to be properly justified, and should be designed to serve the public interest, not the interests of a particular group.
  - 1.6 In all Member States, professional organisations or associations represent the interests of their profession and play an advisory – or sometimes formative – role in State regulation. Through ongoing active cooperation with the institutions, they safeguard the general interests of the public. Administrative simplification is a priority for members of the liberal professions, who devote both economic and human resources to it without receiving any form of compensation from State coffers.
  - 1.7 EU Member States shape and monitor self-regulation in their own countries. In so doing, they must exclude the possibility of conflicts between regulatory powers and representation of interests, and ensure that consumers' expectations are met regarding the knowledge, ethics and character of service providers.
  - 1.8 The contribution of the liberal professions to the proper functioning of the administrative, political and economic life of a Member State is recognised at national and European level because they contribute to the modernisation and efficiency of public administrations and of services to citizens and consumers.
  - 1.9 The sector is vital because of the employment opportunities it offers young people who choose a future of free enterprise and of investment in their knowledge. Members of the liberal professions who run a professional practice or office must respect legislative provisions and/or collective agreements regarding persons for whom they act as employer and young people for whom they provide in-house vocational or specialist training or apprenticeships.
2. **From the 'artes liberales' to knowledge-based service provider**
- 2.1 The term 'liberal professions' refers back to the term "*artes liberales*", or "liberal arts", used in classical antiquity for occupations such as teaching, law, construction, architecture, engineering and medicine. The "*artes liberales*" were the preserve of free citizens and nobility.
  - 2.2 Since the 19th century, the liberal professions have no longer been defined on the basis of the "free birth" of a practitioner, but according to the activity performed.
  - 2.3 By the early 1800s, certain liberal professions had become very closely connected with the State; this prevented them from operating independently, which resulted in them being held in low esteem by society. Lawyers were particularly affected by this, as the courts were involved in appointing and transferring them, and in some cases also held supervisory and disciplinary authority over them.

- 2.4 In the 19th century, under the influence of liberalism, the liberal professions in a number of EU countries developed a consciousness of their status and established professional organisations independent of the State. For example, the legal profession managed to free itself from State influence, and the academic medical profession likewise achieved a degree of freedom from State regulation and monitoring.
- 2.5 Activities surrounding authorisation to practise, codes of conduct and professional supervision were often taken over by professional organisations. Later on, regulatory power was transferred to the self-governance organisations/professional associations.
- 2.6 The current concept of the liberal professions is a sociological description.
- 2.7 A liberal profession is characterised by: provision of a valuable intangible service that is distinctly intellectual in nature, based on advanced (academic) training; a service that is in the public interest; substantive and economic independence in executing tasks; provision of services in a personal capacity, on the provider's own responsibility and in a professionally independent manner; a particular relationship of trust between the client and the service provider; a focus on providing the best possible service rather than on maximising profit; and compliance with precise, strict professional regulations and codes of professional ethics.
- 2.8 An activity may also be regarded as a liberal profession in the absence of some of these elements, provided the principal characteristics are met: for example, in many countries an activity undertaken as an employee may be regarded as a liberal profession if substantive independence is maintained. The EESC notes that the liberal professions and the organisations which regulate such activity in Europe have branched out. The new liberal professions, such as psychologists, social workers, tax advisors, bankruptcy advisors, surveyors and mediators, which are not classified as liberal professions in all countries, require an inclusive approach.
- 2.9 There are significant differences between Member States in the definition of the term "liberal profession", and some do not use the term at all. In some countries, only a small group of occupations are regarded as liberal professions: medicine, advisory professions such as law, tax consultancy and auditing, employment consultancy and engineering and architecture. In other Member States artistic activities are also counted as liberal professions.
- 2.10 One objective that is common to all Member States is to ensure that the defining characteristic of the liberal professions – the asymmetry of information between service providers and their clients – is not abused. The services provided by the liberal professions are complex and require a high degree of expertise, which means that service recipients do not have enough information, specialist knowledge or experience to judge the quality of the service, either when choosing a provider or after the service has been provided.

- 2.11 Liberal professions are therefore based on trust. The asymmetry of information means that service recipients must be able to trust providers not to exploit this information deficit for their own benefit, but rather to provide the best possible service, tailored to the client's needs. Service recipients are thus making a leap of faith when they engage a service provider. Minimum professional standards and compliance with codes of professional ethics are appropriate ways of protecting service recipients' trust.

### 3. **Regulation and its objectives**

- 3.1 The Member States essentially use two different approaches to regulating the liberal professions: what is known as "principles-based regulation", and a more proscriptive and prescriptive approach referred to as "rules-based regulation".
- 3.2 Regulation of the liberal professions summarises the moral conditions for practising the profession, and standards of professional ethics; it is an expression of the liberal professions' social responsibility. Standards of professional ethics as a whole may be referred to as deontology.
- 3.3 Principles-based regulation involves drafting abstract principles of professional law, which then need to be fleshed out in individual cases ("outcomes-based regulation"). It is left to the discretion of those subject to the rules to decide how to achieve those goals in specific cases. In contrast, rules-based regulation is case-based.
- 3.4 Each approach has its advantages and disadvantages, but both fulfil the fundamental principle of meeting society's concern to ensure people receive independent advice and support. The particular issues and solutions may change over time, requiring changes to the rules or the creation of new ones.
- 3.5 The regular reviews of the rules carried out by the EU are useful in this connection, and should also be established at national level. This would allow older liberal professions to be "freed up" (e.g. in construction) and rules to be introduced, where appropriate, to cover new liberal professions (e.g. in intelligence gathering or banking).

### 4. **Economic aspects**

- 4.1 The liberal professions play a significant role in establishing and maintaining key social infrastructure. Approximately one in six self-employed people work in sectors dominated by liberal professions, and that figure is rising. The same is true of one in six employees.
- 4.2 The number and percentage of self-employed women working in sectors dominated by liberal professions increased over the reference period 2008-2012; the percentage of self-employed women in these sectors now stands at 45%, significantly higher than the percentage in the economy as a whole (31.1%).

4.3 More than one euro in 10 of gross value added comes from sectors dominated by liberal professions. The decline in value added during the crisis of 2009 was less marked in the liberal professions than in the economy as a whole. Figures for the EU are as follows: 600 000 undertakings in each of "management consultancy" and "engineering activities"; 550 000 undertakings in "legal consultancy" and "auditing"; 315 000 in "architectural activities"; and 270 000 in "marketing and market research".

4.4 In view of the sector's growth potential and the proportion of jobs that it provides – largely stable, highly qualified jobs – the entrepreneurial aspect of the liberal professions must be acknowledged and supported. The Committee is pleased that the Commission recognises members of the liberal professions as fully-fledged entrepreneurs and seeks to support the sector by including them in programmes to boost SME development and competitiveness. This approach entails examining and improving the conditions of the entire liberal professions system, as in fact required by the directive on services in the internal market. The liberal professions cannot develop solely by means of single-member companies or through individual action. They must distance themselves from the problem of false self-employment.

## 5. Ethics and the pursuit of profit

5.1 In all Member States, the public interest is integral to the liberal professions. The medical, psychological and social professions maintain infrastructure to protect the health of the whole population.

In a democratic state under the rule of law, the work of legal and tax advisors constitutes an element of civil liberties; together with auditors, they also ensure that economic processes run smoothly. This means that these professions are also directly related to fundamental rights.

5.2 In addition, this public interest basis means that the liberal professions have a particular ethical responsibility. Legal and tax advisors and auditors help uphold the rule of law, as well as protecting the financial interests of their clients. Social workers and psychologists provide Europeans with an inclusive and safer environment as regards relationship, psychological and social matters. Architects and engineers protect the community from risks arising from structures and technical equipment, and promote society's capacity to innovate and people's quality of life by developing infrastructure and technical equipment and inventing new technologies. Artistic professions maintain and create culture. These circumstances, along with the asymmetry of information referred to above, necessitate advanced training and particularly stringent ethical requirements.

5.3 The particular public interest of the liberal professions, and the associated requirements for the services they provide, need to be safeguarded through binding professional regulations and a raft of generally recognised standards of ethical behaviour for each profession. All the Member States therefore already have a minimum level of regulation. The EESC recommends

that all liberal profession organisations and associations should have codes of conduct and ethical standards as well as commissions of ethics within the profession.

- 5.4 Professional representative bodies should draft codes of professional ethics, where they do not currently exist, as non-binding professional guidelines for their respective Member States. In addition, the professional organisations and associations should draw up European codes of ethics highlighting and guaranteeing the rigorous requirements incumbent on the liberal professions throughout Europe. The drafting of codes of conduct is encouraged in Article 37 of the Services Directive<sup>2</sup>. The fact that the services provided by the liberal professions are so important to their clients, together with the level of trust that these clients need to put in the service providers, means that it is essential for such services to be provided in a personal capacity.
- 5.5 The relationship of personal trust between the provider and recipient of services, and the highly personal nature of the legal interests involved, mean that it is indispensable for professionals and their colleagues to have statutory protection of their professional secrecy and a statutory right to refuse to testify, and to be prohibited from giving evidence. These are characteristics of a free state under the rule of law.
- 5.6 The services of liberal professions that relate to key elements of the public interest – such as medical care, psychological and social services, pharmaceutical services and legal advice – must be provided across the board, even in rural areas.
- 5.7 The requirements presuppose that members of the liberal professions will always give preference to service quality over the maximisation of profit, in accordance with the ethics by which they are bound.
- 5.8 Further development of the law pertaining to the liberal professions therefore cannot focus solely on economic considerations: each and every regulation must aim to ensure comprehensive and highly skilled services that meet the highest quality requirements. It will, in each case, be necessary to look into whether existing regulations can achieve those aims or whether, in reality, they serve other interests.

## 6. **Present and future requirements for the liberal professions and their profile**

- 6.1 A common EU-wide definition of "liberal profession" should be developed, which simply sets out the general features of liberal professions and lists the categories of occupations covered. Any such definition must not prevent the creation of new liberal professions. The draft charter for the liberal professions drawn up by the various European professional organisations, led by the Council of European Dentists (CED), could be used as a model for this purpose.

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<sup>2</sup>

Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, p. 36).

- 6.2 Alongside national joint professional organisations and European joint professional representative bodies, a professional organisation should be established in each Member State for each liberal profession, to compile, publish and further develop principles of professional ethics – where existing professional organisations do not already do so. These organisations should also be responsible for ensuring that the profession complies with these principles.
- 6.3 The stringent ethical requirements on the liberal professions will, in future, also need to be guaranteed through practical guidelines and clearly defined ethical principles. This could involve both standardised and enforceable professional regulations and codes of ethical professional conduct. This will increase consumer confidence.
- 6.4 As well as enforcing technical and ethical requirements for the provision of professional services, it is also necessary to maintain and strengthen the competitiveness of the liberal professions and their ability to innovate. The challenge they currently face is that of being able to deal with different national standards and to compete with colleagues from other EU countries in an increasingly integrated single market.
- 6.5 Professional regulations must be compatible with Europe's fundamental freedoms, in particular with freedom to provide services, freedom of establishment and freedom of movement. They must therefore be non-discriminatory, proportionate, and serve an imperative requirement in the general interest, and also be compatible with national law. This should tie certain activities to specific qualifications.
- 6.6 Activities in the liberal professions often involve a particular risk to highly personal legal interests of the client, and it is therefore necessary to regulate access to the professions and to impose strict requirements for authorisation to practise. As well as training, this involves other personal characteristics such as reputation, health checks, and undertaking not to carry out conflicting activities simultaneously. At EU level, this requirement is adequately covered by the Professional Qualifications Directive<sup>3</sup> and by specific regulations such as the directives for doctors and dentists and Services Directive for lawyers<sup>4</sup> or the Statutory Audit Directive<sup>5</sup>.
- 6.7 In almost all Member States, professionals are required to undertake regular continuing professional development (CPD). There are differences regarding verification of CPD activities and the consequences for failure to undertake CPD. Given the increasingly complex knowledge requirements, ongoing developments in technical processes in medicine and

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<sup>3</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, p. 22).

<sup>4</sup> Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (OJ L 78, p. 17), and Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (OJ L 77, p. 36).

<sup>5</sup> Directive 2006/43/EC of the European Parliament and of the Council amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, p. 87).

technologies, and the constant expansion of national and international legal standards, it is the responsibility of the liberal professions to ensure that all professionals undertake proper CPD.

- 6.8 In most Member States, members of the liberal professions have practically no restrictions on cooperation with members of other professions. In some Member States, however, the group of partners or shareholders is restricted to specific liberal professions, certain majority requirements are imposed in respect of partners/shareholders, voting rights or managers, and third parties are prohibited from owning part of the business. Such provisions are one possible way of ensuring that the practice of a liberal profession is not guided purely by economic imperatives.
- 6.9 Professional cooperation with members of other professions may lead to conflicts regarding professional secrecy and the right to refuse to testify. It must be ensured that any professional cooperation engaged in does not compromise the protection of clients or patients. Such friction can be effectively avoided by restricting the group of permitted partners/shareholders.

## **7. Consumer protection and self-regulation**

- 7.1 All Member States regulate the liberal professions, through State or professional organisations or associations. In many Member States, the concept of self-regulation as an organisational principle is inextricably linked with the concept of a liberal profession.
- 7.2 The Member States take two different approaches to self-regulation. In one approach, professional organisations and associations represent the interests of their profession as a voluntary grouping, and play an advisory role in the (State) regulation of the profession. They also translate their members' views on standards of professional practice into codes of ethics. In the other approach, professional associations also undertake official duties such as authorisation to practise and professional supervision, as an indirect part of the public administration. Self-regulation does not stand in opposition to State regulation; rather, they both serve a common function.
- 7.3 Self-regulation of the liberal professions mediates between professionals' right to freedom from State interference in their activities and the State's right to lay down rules. Self-regulation by members of the liberal professions implements their right to freedom from State interference while at the same time safeguarding the general interest, and thus benefits service recipients and consumers.
- 7.4 Self-regulation of the liberal professions is in line with the subsidiarity principle, according to which a matter should always be handled by the body closest to it. Professionals are characterised by their particular subject knowledge, and are therefore the body in the best position to administer and regulate the liberal professions. This uses the principle of peer review.



- 7.5 Self-regulation does, for its part, restrict the activities of the members of professional associations. The regulations adopted are acts of indirect State administration, and require the transfer of State competences. All regulations adopted as part of self-regulation of the liberal professions are themselves subject to the fundamental freedoms, national law and European and national competition law.
- 7.6 For self-regulation to work, membership of professional associations must be compulsory in those countries where this is possible under current legislation. This restriction on the right to pursue a professional activity is justified by an overwhelming public interest.
- 7.7 The rules requiring membership of the professional associations must be designed to ensure that they do not prejudice freedom to provide services or freedom of establishment. Appropriate ways of doing this include recognising registration in another EU Member State, or registration (free of charge) for members of associations in another Member State.
- 7.8 It is safe to assume that, in 2020, there will still be tension between State and individual interests, and a need for independent advice and support. Therefore, the liberal professions are likely to remain viable as an institution, provided they are modernised in a timely manner, such that their essential nature, comparative edge in terms of knowledge, independence/transparency, and resulting trustworthiness, are not compromised.

Brussels, 25 March 2014

The President  
of the European Economic and Social Committee

**Henri Malosse**

**N.B.:** Appendix overleaf.

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**APPENDIX**  
**to the**  
**OPINION**  
**of the European Economic and Social Committee**

The following amendments, which received at least a quarter of the votes cast, were rejected in the course of the debate (Rule 39(2) of the Rules of Procedure):

**a) Point 1.1**

Amend as follows:

*1.1 Provided certain social adjustments are made, the system of liberal professions has a significant contribution to make in the future to providing high-quality "social goods" such as healthcare, psychological and social services, delivering public services, safeguarding civil rights and freedoms and increasing economic prosperity. The liberal professions are a component of any democratic society, and offer significant potential for growth in terms of employment and GDP and the capacity to keep adapting to Europeans' needs.*

**Reason**

To be given orally.

**Voting**

For:	56
Against:	128
Abstentions:	30

**b) Point 6.9**

Amend as follows:

*Professional cooperation with members of other professions may lead to conflicts regarding professional secrecy and the right to refuse to testify. It must be ensured that any professional cooperation engaged in does not compromise the protection of clients or patients. Confidentiality, as an ethical value, must be a priority for all liberal professions. Such friction can be effectively avoided by keeping to ethical values ~~restricting the group of permitted partners/shareholders~~.*

**Reason**

To be given orally.

**Voting**

For:	80	
Against:		116
Abstentions:	27	

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***European Economic and Social Committee***

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