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**Progress by Member States in reviewing and eliminating restrictions to Competition in  
the area of Professional Services**

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## 1. INTRODUCTION

1. The Commission Report on Competition in the Professions published in February 2004<sup>1</sup> (hereafter referred to as the ‘2004 Report’) targeted six professions - lawyers, notaries, engineers, architects, pharmacists and accountancy (including the neighbouring profession of tax advisers). This Report provides a detailed outline of progress made during 2004/05 by Member States in the review and removal of “unjustified restrictions”<sup>2</sup> on competition in these six professions. Section 2 deepens the economic analysis of the Commission’s 2004 Report. Section 3 explains the activities carried out by the Commission and national competition authorities. Section 4 examines the progress made in eliminating, or reviewing unjustified<sup>3</sup> rules and regulations, in the five main categories of restriction featured in the Commission’s 2004 Report (i) fixed prices, (ii) recommended prices, (iii) advertising regulations, (iv) entry requirements and reserved rights, and (v) regulations governing business structure and multi-disciplinary practices. Section 5 relates recent cases carried out by the Commission and within the European Competition Network.

## 2. ECONOMIC ANALYSIS: BETTER DEFINING THE PUBLIC INTEREST

2. The Commission concentrated on a limited number of professions in the 2004 Report and its analysis considered the markets for each of these professions as a whole with no attempt to differentiate the different types of markets and actors involved. Following further reflection and discussion with professionals, users and Member States (competition and regulatory authorities), the Commission has come to the conclusion that it would be useful to refine and deepen this analysis and, in particular, give further consideration to what is meant by the public interest in different markets. This would facilitate a better understanding of the interplay between supply and demand for each professional service under consideration. This section does this by identifying in general terms the different groups who are buying or using professional services, and then considering more precisely how existing regulatory practice impacts on these groups.
3. In general, the users of professional services can be categorised into three broad groups or headings: (i) business, (ii) the public sector, and (iii) households. Of these, some professional services will be required only by business and the public sector (e.g. most engineering services), and others only by private households (e.g. services

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<sup>1</sup> The Report is available at:

[http://www.europa.eu.int/comm/competition/liberal\\_professions/final\\_communication\\_en.pdf](http://www.europa.eu.int/comm/competition/liberal_professions/final_communication_en.pdf)

<sup>2</sup> In the 2004 Report, the Commission suggested that a proportionality test should be used to assess to what extent anti-competitive professional regulations and rules truly serve the public interest and can be objectively justified. The 2004 Report suggested that for this purpose it would be useful that each rule had an explicitly stated objective and an explanation of how the chosen regulatory measure was the least restrictive mechanism to effectively attain the stated objective. The Commission invited all to work in partnership – regulatory authorities in the Member States and professional bodies - to review existing rules taking into consideration whether those rules are necessary for the public interest, whether they are proportionate and whether they are justified. For the purpose of this Report, those restrictions that do not meet the proportionality test, as suggested in the 2004 Report, are called ‘unjustified’ or ‘disproportionate’.

<sup>3</sup> As defined in footnote 2 above.

supplied by pharmacists). In many other cases the same service is required by all users, but with differing levels of complexity (e.g. real estate and tax consultancy services).

## **2.1. The characteristics and needs of business users**

4. Big business normally requires a service that is tailored to their needs. This requires flexibility and personalised attention by service providers. Usually contracts are large and complex and negotiation covers not only price, but also quality and service level. Fixed prices or fee scales are therefore often less important.
5. It is less clear how small business fits into this picture and whether it is more comparable to big business or private household users. On the one hand, while small businesses might not have enough internal expertise to be considered ‘expert’ users, they are nonetheless repeat users of professional services and should be able to reduce the information asymmetry. On the other hand, they do not have the negotiating power of big business. Further economic analysis is needed to consider in more detail the needs of small business.
6. This leads to the broad conclusion that the issues to be considered in analysing the public interest in terms of business users may not so much be linked to the typical argument of asymmetry of information, but rather to ‘flexibility’ or ‘innovation’ arguments. Business users want flexibility. This may include outsourcing, or undertaking in-house, certain categories of activities, and also being able to choose and mix service providers. There is also a demand for more tailored services, and given the possibility, professionals would also likely find innovative ways of meeting their needs. To make this possible certain regulatory restrictions may need to be removed. It may also call for controls to maintain independence and avoid conflicts of interest; such conflicts could occur when the same professional is providing services which should be independent of each other (e.g. accountancy and audit).

## **2.2. The characteristics and needs of households**

7. As a generalisation, households are considered as not requiring services in a continuous manner and can be characterised as one-off customers. One-off customers are primarily hindered by a lack of information. They may indeed have difficulty in finding a good practitioner and assessing their quality. Consequently, to some extent it is reasonable to assume that asymmetry of information will always remain a problem for this kind of customer.
8. In trying to understand the view and needs of consumers, the Commission has started to talk to consumer associations specifically about the professional services sector. It has also had access to surveys carried out by consumer organisations across Europe<sup>4</sup> on the professions.
9. From these contacts, it is clear that there is an asymmetry of information which makes it difficult for the consumer to choose a professional. This is often due to their not having the expertise, or access to information, to be able to gauge ex ante the

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<sup>4</sup> These covered the legal profession in Scotland; lawyers in Italy and Belgium; notaries in Italy, Belgium and Spain; pharmacies in Spain, Scotland and Germany; estate agents in Scotland and Belgium.

competency, experience and level of professionalism of a practitioner. This difficulty is exacerbated by prohibitions or undue restrictions on advertising by professionals.

10. Consumers are also particularly eager to get information on the costs of a professional service ex ante - at the moment of giving the mandate - and lament the lack of its availability. In some cases customers would like to know the exact cost of a service in advance. This is often the rationale given for using fixed prices, which it is argued allow 'consumers to know in advance how much they will have to pay'.
11. A problem which particularly worries consumers is the accountability of the professional and the procedure in case of conflict. This problem is complicated by the fact that a professional has an obligation as to the means employed, not an obligation as to the result achieved. In this area consumer organisations believe that compulsory professional insurance should be viewed positively from the perspective of helping to protect both the professional and the consumer. They also regard qualitative entry controls as a way of safeguarding quality and professionalism.
12. In all of these scenarios, the key challenge seems to be finding ways to address the existing or perceived information gap between the professional and the consumer, irrespective of the current regulatory framework. Consumers want more information in order to be able to make informed choices. This means finding new and better ways to give them more information about services on offer and looking afresh at regulatory frameworks to see how this can be achieved.
13. Other considerations raised in the consumer surveys relate to the need to ensure greater accessibility to professional services by the whole population. This argument is brought up particularly concerning access to legal advice and representation.

### **2.3. The characteristics and needs of the public sector**

14. Finally, there is the public sector. For the technical professions (e.g. architectural and engineering services) the public sector is often the main user. In general, the public sector buys services via public tenders. A provider is usually chosen under strictly defined procedures and is then paid by the public purse. To ensure proper accountability to the tax payer, the procedures are consequently more cumbersome than those used in the private sector.
15. The public sector in many countries favours the existence of fixed or recommended tariffs whether by law or as internal reference points. For example in some Member States, recommended architectural tariffs still exist only for public works. It is also true that the move towards market oriented mechanisms for provider selection in the public sector is relatively recent in some countries. It seems that a change of approach to public administration in general would be necessary to bring about the removal of much of the existing restrictive regulation.
16. That said it is doubtful whether the public sector as a buyer needs a different method of assessing the public interest than that carried out for other users. In a context of competitive bidding for a public tender, the public sector could be considered as a repeat, informed customer, much the same as a business customer.

## 2.4. Evidence from available data

### 2.4.1. By type of client: Business, public sector and private households

17. The following pulls together disparate data from European and national sources to show the level of use of business services by business, the public sector and private households. Table 1 gives an overview of these statistics for (i) the accountancy/audit, business and management consultancy sector, and (ii) technical service sector. It shows clearly that the largest users in economic terms of business services in both sectors are business users.

Table 1

	<b>Accountants and related activities</b>	<b>Architects and related activities</b>
<b>Business</b>	86%	72%
<b>Public sector</b>	6%	15%
<b>Private households</b>	8%	13%

Source: Eurostat, architectural and engineering activities and related technical consultancy, Pekka Alajääskö and Owen Blackburn, Statistics in Focus 11/2004, and accounting, book-keeping, auditing activities, tax consultancy and business and management consultancy, Pekka Alajääskö, Statistics in Focus 24/2004.

18. In the legal sector too the majority of turnover of law firms is shown as coming from business. For example, a study by the Law Society<sup>5</sup> of England and Wales reports that in a sample of 585 solicitors firms, 37% of gross fee income in 2001 was from private individuals, and 42% from the private sector and public sector organisations. A study carried out by INDECON<sup>6</sup> for the competition authority in Ireland in 2003 reports similar findings. It finds that the average percentage of fee income from business clients for solicitors is 33%. In the case of barristers just under half of the fee income comes from business clients, while for professional engineers the figure is 79% and for architects it is 66.7%.
19. Professional associations also estimate that their members work mainly for business or the public sector rather than one-off users<sup>7</sup>.

### 2.4.2. By frequency of demand: Repeat vs. one-off consumers

20. The INDECON report also has useful information on the frequency of use of professional services by customers. In the report business customers are represented through a survey of insurance companies and private households by a random sample of members of the public. It too shows that business customers are by far the most

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<sup>5</sup> Law Society, Findings from the Law Society's 2001 Business Survey, (2002).

<sup>6</sup> INDECON (2003) INDECON's Assessment of Restrictions on the Supply of Professional Services, prepared for the Competition Authority, Dublin, March 2003.

<sup>7</sup> The Architects Council of Europe estimates that their members work 40% for businesses, 40% for the public sector and 20% for private households. Engineers estimate that they work equally for the public and the private sector (but not for private households). German tax advisors estimated their clients to be 75% business and 25% household.

frequent users. In the case of solicitors, 51% of private households had not used one in the previous five years<sup>8</sup> and a further 33% not more than five times over that period, whereas for insurance companies the corresponding figures were 7.7% and zero. 69.2% of insurance companies had used solicitors more than twenty times in the previous year. In the case of barristers 98% of the private households sampled had used a barrister less than five times in the previous five years, whilst 54% of the insurance companies had used a barrister more than twenty times per year. A study used by the Italian Antitrust Authority confirms these findings in the case of legal services<sup>9</sup>: when individual citizens consult a lawyer, in the vast majority of cases (75%) it is a one-off consultation, while business customers tend to consult lawyers on a continuous basis (68% of cases).

## **2.5. Key finding of analysis**

21. A further differentiation of the markets of professional services would allow a better identification of the public interest involved and of the degree of regulation indispensable to protect this. This can be arrived at by assessing what is needed for the different types of customer or user. The above analysis shows that one-off users – generally individual customers and households - may have a greater need of some carefully targeted protection (e.g. price regulation may be needed for the lower paid to ensure proper access to legal advice and representation in certain areas of law). On the other hand, the main users of business services – business and the public sector – may have no, or little, need given that they are better equipped to choose providers that best suit their needs. The position of small business users is however not entirely clear and further economic analysis is needed to arrive at a conclusion on this.

## **3. ACTIVITIES IN 2004/05 BY THE COMMISSION AND NATIONAL COMPETITION AUTHORITIES**

### **3.1. Commission activities**

22. During 2004/05 the Commission invited the European professional bodies of lawyers, notaries, accountants, tax advisers, architects, engineers and pharmacists to bilateral meetings to discuss the justification of existing professional rules and explore what can be done to make them less restrictive of competition. The level of receptiveness to reform varied between the professional bodies depending on how open and de-regulated the profession already was; some could see the benefits while others saw reform as a threat rather than an opportunity. Professional bodies representing the legal, notarial and pharmacy professions particularly had little appetite for change.
23. The Commission started to establish a structured dialogue with national regulatory authorities, especially in countries where the professions are heavily regulated. A start was made on the occasion of the European Competition Network Sub-Group

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<sup>8</sup> This contrasts with a Law Society survey of the public in England & Wales published in 1989 which reported that only 32% of the adult population had consulted a solicitor in the previous 3 years.

<sup>9</sup> LA REGOLAMENTAZIONE DEI SERVIZI PROFESSIONALI ASPETTI SETTORIALI, Autorità Garante della concorrenza e dei mercati.

meeting on 14 October 2004, which brought together representatives of national competition and regulatory authorities.

24. The Commission also held bilateral meetings with the regulatory authorities in some Member States (Austria, Germany, Hungary, Italy, Poland, Portugal and Spain). These meetings have provided an excellent opportunity to discuss specific national circumstances and explore possible ways to bring about change, as well as share best practice.

### **3.2. National competition authorities activities**

25. National competition authorities have been active and a step change has been seen in their activity with the majority reporting being engaged in work in this field during 2004/05<sup>10</sup>. Competition authorities in Denmark, Ireland, Netherlands and the UK have well established work programmes in this sector - Denmark as part of a wider governmental regulatory reform programme. Authorities in Belgium, Estonia, Hungary, Poland and Slovenia have also initiated structured work to bring reform to the professions.
26. A range of work has been undertaken, including bilateral discussions with national regulatory authorities and professional bodies, and the issuing of opinions on draft legislation, which contain provisions likely to be restrictive of competition. Competition authorities have also carried out stocktaking exercises and sector studies. The latter include studies carried out by the Danish, Irish and UK competition authorities covering a range of different professions, including the legal profession, engineers, pharmacists and architects<sup>11</sup>. The Polish competition authority produced a report aimed at highlighting factors that impede the development of competition in a number of professions. The Portuguese authority has undertaken a detailed study of the notary's profession since its privatisation in 2004 to identify any factors restricting competition and is currently in the process of producing a report to the government with proposals to remove or amend the restrictions identified. The Netherlands has concluded a detailed stocktaking exercise on rules adopted by the professional bodies of lawyers, notaries, accountants and architects, and is now consulting on its findings. The Belgium authority is also undertaking a stocktaking/investigation into rules existing in a range of professions, including lawyers and notaries, and the Czech Republic reports having undertaken a stocktaking exercise of rules in six professions and consulting a range of national regulatory authorities.
27. Cyprus reports having informal bilateral discussions with regulatory authorities, and Greece have been in contact bilaterally with the professional bodies, and the national regulatory authority, with responsibility for the legal and notarial professions. Germany, Italy and Hungary have met with various regulatory authorities and professional bodies to draw their attention to restrictive rules and laws and promote change. Following discussions, Italy has been successful in getting the professional

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<sup>10</sup> Information on advocacy and enforcement activity by national competition authorities was collected via questionnaires. Responses have not yet been received from all national competition authorities and this may mean that the information presented is incomplete in some cases and does not reflect all relevant activity.

<sup>11</sup> Other professions such as dentists and real estate agents have also been targeted.



bodies for architects and notaries to review their rules on advertising. Finland wrote to a range of actors to flag the findings of the Commission's 2004 Report and seek views. Belgium has reviewed certain ethical rules issued by the accountancy and tax advisers' professional body for compliance with competition law.

#### **Examples of analytical studies in the sector of professional services**

##### **Polish study<sup>12</sup>**

In the wake of the Commission's 2004 Report, the Polish competition authority undertook a detailed study into restrictions existing in five professions - barristers (advocates), legal advisers, notaries, pharmacists and tax advisers. The study gives a useful insight into the structure and regulation of the professions in Poland. Its objective was to highlight the factors that hinder the development of competition in the sector. The overall conclusion was that the regulation of the professions in Poland was excessively restrictive, especially in the field of legal services. Practices found included barriers to entry, price fixing or recommended pricing, advertising prohibitions and business structure restrictions. The study concluded that many of these were often disproportionate, unjustified and unnecessary to protect the public interest. The study was published in May 2004. Consideration is currently being given to extending the study to include other professions covering the real estate sector, dentists and others yet to be decided.

##### **Irish study on the legal profession<sup>13</sup>**

The Irish competition authority published its preliminary report on competition issues associated with legal services in Ireland on 24 February 2005. The report finds that the legal profession is permeated with "unjustified and disproportionate restrictions on competition". It analyses these restrictions and examines whether they are necessary, consistent and proportionate with the public interest objectives claimed. The transparency and accountability of the regulatory system that applies to the legal profession is also examined. The study proposes significant reform to the regulation of legal services and makes over forty proposals to remove or amend the restrictions identified.

28. National competition authorities have also pre-empted the adoption of new anti-competitive legislation in this sector. Lithuania intervened on an amendment to the pharmaceutical law to flag concerns about anti-competitive provisions on ownership, advertising and entry. It has also made a proposal to the government to abolish fixed minimum prices for notaries. Hungary has likewise submitted a proposal to amend the Notaries Act, proposing that the scope of reserved tasks and the use of fixed tariffs be reviewed. Latvia reports intervening on amendments to the Notary Law to object to the use of fixed fees.
29. This work has resulted both in change to remove anti-competitive restrictions and been a key factor in the setting up of government sponsored committees - for example in Denmark and the UK on the legal professions - to consider in detail recommendations made and bring forward proposals for more radical change.
30. Also, of note was the Luxembourg Presidency European Competition Day on 3 May 2005. This was dedicated to the topic of the professions and organised by the Luxembourg competition authority together with the responsible ministry. It brought together a range of representatives from the national competition authorities, national administrations and professions for a day in Luxembourg to discuss work in this area.

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<sup>12</sup> The Polish study can be found at: [http://www.uokik.gov.pl/pl/ochrona\\_konkurencji/analizyrynku/](http://www.uokik.gov.pl/pl/ochrona_konkurencji/analizyrynku/)

<sup>13</sup> The Irish study can be found at: [http://www.tca.ie/professions/legal\\_report\\_executive\\_summary.pdf](http://www.tca.ie/professions/legal_report_executive_summary.pdf)

#### Denmark's de-regulation project<sup>14</sup>

In 2003 the Danish government launched a de-regulation project aimed at reducing the number of rules restricting competition in Danish law. The project's objective was to analyse a number of selected areas and identify possible changes to regulation that restricted competition unnecessarily i.e. without deviating from other public interest considerations such as protecting consumers, health etc. The analyses were carried out by the Danish Ministry of Economics and Business Affairs, the Danish Competition Authority and the Danish Ministry of Finance in co-operation with other relevant ministries. Twelve areas were analysed including dentists, legal counselling, land registration and registered surveyors. This has resulted in pro-competitive changes to existing regulation.

31. The EFTA Surveillance Authority has also undertaken an analysis of the regulatory situation in the professional services in the EFTA countries (Iceland, Liechtenstein and Norway).<sup>15</sup> The professions investigated were lawyers, accountants, pharmacists, architects and engineers. This was prompted by the Commission's review of professional services in the EU.

#### 4. PROGRESS BY NATIONAL REGULATORS AND PROFESSIONAL BODIES TO REFORM

32. The information in this section and the annexes was gathered from national regulatory authorities in Member States via a questionnaire.<sup>16</sup> This asked for a brief description of restrictions to competition existing in February 2004 for each of the six professions and five categories of restrictions under study, along with details of legislative or other reforms (including to self-regulation by professional bodies), undertaken or planned to remove or modify these since that date. Where restrictions remained in place reasons were requested.

##### 4.1. Entry restrictions and reserved tasks

33. Entry restrictions fall broadly into two categories – qualitative and quantitative. The former are designed to ensure that only those with appropriate qualifications and expertise can practise, and hence act to safeguard quality of service. They are also often closely tied to reserved rights to provide certain services. Quantitative restrictions are largely designed to safeguard access to important services.

34. Progress in reviewing and removing overly restrictive controls on entry and the range of reserved rights is set out in detail in Annex 1.

##### 4.1.1. Quantitative restrictions

35. Strict entry controls in the form of quantitative limits (based both on demographic and geographical criteria) continue to exist in most Member States for the notary and pharmacy professions. Only Slovenia and the UK report any substantive reforms to quantitative entry controls. Slovenia reports that the competence to make nominations, and make the final decision on notary appointments, has passed to the

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<sup>14</sup> Further information on the Danish de-regulation project can be found at: <http://www.ks.dk/english/publications/2004/KBR-notat/>

<sup>15</sup> The EFTA report can be found at: <http://www.eftasurv.int/information/pressreleases/2005pr/dbaFile7456.html>

<sup>16</sup> Responses were not received from all Member States and those that were varied in completeness. As a result this may mean that the information presented is incomplete in some cases and does not reflect all relevant activity undertaken or underway.

national regulatory authority (Ministry of Justice) from the professional body thereby introducing more State control into the process. The UK slightly eased restrictions on the establishment of pharmacies. However, the relaxation falls short of the recommendations of the national competition authority.

36. Some planned activities in the pharmacy sector are reported by France, Latvia and Lithuania. France is planning to ask the national competition authority for an opinion on the existing rules contained in the professional ethical code regulating the right to establish a pharmacy, and work is underway in Latvia with the aim of increasing the responsibility on local administrators to ensure the availability of adequate health care in their area, including access to pharmacies. A draft amendment to the law on pharmacists has been prepared in Lithuania, which contains quantitative restrictions on establishment. These have been queried by the national competition authority. Belgium reports work on modifying legislation dealing with the location of pharmacies.
37. Following a proposal from the national competition authority, Hungary reports that it has plans to review the Law on Notaries, which amongst other things will consider existing quantitative restrictions on notaries. Included in Italy's profession's reform project are proposals to review entry requirements to all the professions.<sup>17</sup>
38. Reasons given for retaining quantitative restrictions in both the pharmacy and notarial professions focus on the need to ensure the adequate provision of these services to all citizens, especially in remote areas, and to safeguard quality by ensuring practitioners are rewarded appropriately for their services.

#### **Pharmacists in Greece**

In Greece, a decision to eliminate restrictions on the establishment of pharmacies was recently reversed in January 2005 after five years and a quota system was reintroduced. The effects of the quota system had been to provoke an increase of supply of pharmacies in Athens and a decrease of supply in the islands, thus leaving some islands without adequate pharmacy provision. There is no evidence that any alternative models to encourage the continuation of a more competitive environment were considered. One solution to ensure adequate provision to the islands could have been the payment of public subsidies, in accordance with the State Aid rules, to encourage the opening of island pharmacies whilst maintaining the increase in supply in Athens.

#### *4.1.2. Qualitative restrictions*

39. Qualitative entry requirements are widespread across most professions. These are often set by the State or by self-regulatory bodies and vary between countries.<sup>18</sup>

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<sup>17</sup> In Italy it is recognised by all parties that reform of the general framework for the professions is long over due and proposals are before parliament. These include reviewing access to the professions and business structure regulation. However, the current proposals retain fixed minimum tariffs for all professions.

<sup>18</sup> As far as professional qualifications are concerned, qualitative requirements imposed by Member States are in principle acceptable under Community law (see for example Case C-55/94 *Gebhard*). In order to facilitate the recognition of professional qualifications between Member States, Community law harmonised minimum training requirements for certain professions such as architects and pharmacists (see Directives 85/384/EEC and 85/432/EEC). When qualifications have not been harmonised, mechanisms have been put in place in order to facilitate the free movement of professionals while ensuring that these measures would not undermine quality: Community law allows host Member States to ensure a priori that the qualifications of migrants willing to work on their territory match national requirements for the same activity (see Directives 89/48/EEC, 92/51/EEC and 1999/42/EC).

There has been progress on developing the current framework for mutual recognition of qualifications with respect to the professions with the adoption of a new Directive on recognition of professional qualifications on 6 June 2005.<sup>19</sup> The Directive, proposed by the Commission in the framework of the Lisbon agenda, consolidates and improves the current regime of mutual recognition of professional qualifications. It simplifies cross-border provision of services. The Directive grants effective free movement of fully qualified professionals throughout the EU while guaranteeing the protection of consumers.

40. Four countries report substantive change (Italy, Latvia, Lithuania and Slovakia) to qualitative restrictions to facilitate entry to the legal, notarial and technical professions, but these seem to be of relatively low impact. However, work planned or currently underway by one or two countries promises to have a higher impact in a number of professions.
41. Italy has relaxed qualitative entry requirements to allow architectural and engineering graduates, who have completed a three year university course, to perform some reserved tasks previously only open to those having completed the five year course. Slovakia likewise reports having eased entry requirements for architects by reducing the level of professional experience required.
42. Latvia reports relaxing entry controls to the notary and legal professions by reducing the level of professional experience required, and those with doctorates are no longer required to take the professional entry examination to enter the legal profession. Lithuania likewise reports easing entry criteria for lawyers so that those with significant relevant professional experience do not have to take the professional entry examination.
43. Poland reports ongoing discussions on draft legislation to remove sole control of the entry examinations for the legal profession from the professional bodies, thus providing greater transparency and independent management of the entry process. The draft legislation also contains proposals to lower mobility barriers between the legal professions and create more avenues for entry. In the UK entry requirements to the Scottish legal profession are under review as part of the wider review of Scottish legal services. A government commission in the Netherlands has been set up to consider the Law on Notaries, which will review the way notaries are appointed. Work is also underway to allow candidate notaries to work as employees for existing notaries thereby increasing accessibility to the profession in the Netherlands.
44. As noted above, Italy's profession's reform project covers access requirements to all the professions. The UK reports that a general review of regulation in the construction sector is underway. Portugal is reviewing the law which regulates qualitative entry requirements for technicians (including architectural and engineering technicians) involved in construction projects, and is also reviewing some of the other legislation in the construction field. Slovakia is planning to review the law in the field of civil engineering to simplify procedures and reduce professional discrimination. France has started a project to modernise the

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<sup>19</sup> Details on the new Directive on recognition of professional qualifications can be found at: [http://www.europa.eu.int/comm/internal\\_market/qualifications/future\\_en.htm](http://www.europa.eu.int/comm/internal_market/qualifications/future_en.htm)

architectural profession. Ireland reports that it is considering reserving the title of 'architects' in such a way as to include practically trained as well as academically trained architects. Luxembourg has passed legislation to free up entry requirements with respect to the professions of landscape and interior designers.

45. Finland reports that new legislation on auditing is being prepared. Estonia, Lithuania and Slovenia are planning new auditing legislation to comply with the new EU Auditing Directive<sup>20</sup> when adopted, which could change some of the current restrictions. It is reasonable to assume that other Member States too may review existing legislation in the auditing field as a result of the adoption of this new Auditing Directive. In Italy work is underway to merge into one the two existing professional bodies in the accountancy sector. Spain plans to reform entry requirements for auditors. The UK reports having drawn up new draft ethical guidelines for auditors taking into account competition concerns to ensure that they do not affect the ability of smaller companies to compete for the business of larger clients.
46. Conversely, Luxembourg reports tightening of the entry requirements for accountants so that in future entrants will have to pass a professional test. Lithuania reports that educational entry requirements have increased for auditors. In Cyprus consideration is being given to increasing the level of professional experience required to qualify as a lawyer. Spain is planning to reform entry controls for lawyers by introducing a professional entry examination. Estonia reports a new law, which introduced a registration system for those wishing to practise as pharmacists, with the aim of ensuring that entrants have the necessary competence. Germany has also increased entry requirements for pharmacists and those wishing to practise in public or hospital pharmacies must now prove that they have a sufficient knowledge of the German language and law. Hungary has increased entry requirements for architects and engineers, and entrants must now pass a registration examination to become licensed and gain entry to the professional bodies.
47. Reasons given for the need to retain qualitative entry controls centre on the need to safeguard quality of services for the end user who is often not in a position to assess such quality, and protect the reputation and integrity of the profession.

#### 4.1.3. *Reserved tasks*

48. The scope of reserved tasks varies considerably between Member States and professions. No Member State reports substantive progress in changing the scope of reserved rights, although work is planned or underway in a number of countries in respect of the legal profession which could lead to change in some key reserved areas.
49. These include a committee established in Denmark to consider the current regulation of lawyers, including lawyers' exclusive right to represent parties before courts, and a German project with the aim of reviewing existing legislation to broaden its scope

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<sup>20</sup> See Commission proposal for a Directive on statutory audit of annual accounts and consolidated accounts and amending Council Directives 78/660/EEC and 83/349/EEC. This can be found at: [http://www.europa.eu.int/comm/internal\\_market/auditing/officialdocs\\_en.htm](http://www.europa.eu.int/comm/internal_market/auditing/officialdocs_en.htm)

to allow others rather than just lawyers to provide legal advice/counselling in certain areas.

50. In the Netherlands there are plans to establish a government commission for lawyers to consider a range of issues, including the lawyer's monopoly to represent parties in court, and the government commission on notaries will also consider the scope of the legal monopoly/reserved tasks of the notarial profession. The proposals under discussion in Poland provide for the creation of a 'routine' legal services sector by removing the exclusive right of legal advisers and advocates to provide legal advice and services (representation in court would however remain a reserved area). In the UK the review of Scottish legal services is considering the extension of the rights of audience and rights to conduct litigation in the higher courts. Hungary plans to review the Law on Notaries, including the scope of reserved tasks. Conversely, Portugal has introduced a law which reinforces lawyers' exclusive right to represent parties in court.
51. In other fields, the planned changes to legislation in the auditing field as a result of the proposed new Auditing Directive could change some of the current reserved areas, as could the ongoing work by some Member States in the construction sector. The Netherlands is reviewing the exclusive rights of pharmacists, and Sweden reports an ongoing review of the State retail monopoly on pharmaceutical products following the ruling by the European Court of Justice<sup>21</sup>. This monopoly prevents individual pharmacists from competing in the retail market for pharmaceutical products. Portugal is planning to free up the distribution and sale of over the counter medicines hitherto only supplied by pharmacists. France is considering modifying the law to remove certain products from the monopoly list so they can be sold outside pharmacies. Belgium also reports work to modify the scope of pharmacist's reserved tasks.

#### 4.1.4. *The case for the review of entry controls and reserved tasks*

52. Disproportionate<sup>22</sup> quantitative and qualitative entry controls, and the giving of reserved rights can constitute severe restrictions on competition. Overly restrictive regulation on what services can be provided and by whom may inhibit competition and the evolution of new types of services and products. This could lead to consumers not getting the choice in prices and services that would otherwise be available, or even their opting out and choosing not to avail themselves of services on offer.
53. While the Commission accepts that each Member State should be allowed to determine the level of qualification needed for entry to a profession in that country, such entrance requirements should be proportionate and reflect what is actually required to be able to perform the relevant service to an acceptable standard.
54. Poland provides an example of where excessive qualitative entry requirements in the legal profession have had a negative impact on consumers.<sup>23</sup> Figures show that

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<sup>21</sup> Case C-438/02 *Hanner*

<sup>22</sup> As defined in footnote 2 above.

<sup>23</sup> See the Polish competition authority's study at:  
<http://www.uokik.gov.pl/download/Raport%20wolne%20zawody.doc>

increases in the number of advocates has been well outpaced by the growth in the number of court cases.<sup>24</sup> It is widely contended that this has resulted in consumers choosing to go without professional legal advice and representation. This is likely due to higher prices being charged for legal services than would have been the case with greater numbers of advocates in the market place, and difficulties of access to services.

55. The unjustified giving of reserved tasks can have similar impacts on consumers by depriving them of new services and providers, and importantly, greater choice and lower prices. Some countries have seen the clear benefits to be derived from reducing the range of reserved tasks and in so doing have created new professions and innovative ways of providing services.<sup>25</sup>
56. One example of where this approach has proved beneficial is in the area of conveyancing services (i.e. transfer of property). Countries such as the Netherlands, UK and Australia have removed the monopoly rights for lawyers in this area. This has delivered benefits to consumers resulting in price falls and a wider range of services providers. In many other Member States this field remains a reserved area of activity for the legal and notarial professions.
57. The Commission Services invites Member States to review the continuing maintenance of disproportionate<sup>26</sup> quantitative and qualitative entry requirements, and to review the range of reserved tasks with a view to reducing them wherever feasible. In particular, when restrictions are deemed necessary to protect end consumers, increase their confidence, ensure accessibility and reduce transaction costs, Member States are encouraged to consider possible alternatives which safeguard the interest of consumers without depriving them of the benefits of a more competitive environment. The introduction of specific regulatory requirements for consumer transactions, where appropriate, may also deserve further consideration.

**Conveyancing services: An illustrative example of how removing monopoly rights has benefited consumers**

In the UK this monopoly right for lawyers was revoked in 1985 and by 1987 the first licensed conveyancers who were not lawyers had emerged and were operating in the market. This led to prices falling in the 1990s. In addition, providers are also now ready to give fixed quotes to consumers who may shop around.<sup>27</sup> In the Netherlands, research<sup>28</sup> found in 2002 that conveyancing fees had fallen as a result of introducing more competition. While, for Australia, research<sup>29</sup> in 1996 found that the introduction of competition in conveyancing resulted in a reduction of fees of 17% in real terms.

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<sup>24</sup> It is estimated that the number of court cases in Poland more than tripled during the 1990s while the number of advocates increased only slightly from 6900 to 7400.

<sup>25</sup> For an interesting critique on the need to modernise the two professions of pharmacists and notaries to meet modern demands - especially in relation to the most standard services - see paper by Prof. Benito Arruñada, 'Managing Competition in Professional Services and the Burden of Inertia', 2004 EU Competition Law and Policy Workshop Proceedings. The paper can be found at: <http://www.iue.it/RSCAS/Research/Competition/2004/200409-compet-Arrunada.pdf>.

<sup>26</sup> As defined in footnote 2 above.

<sup>27</sup> See UK government conclusions on the matters raised in its consultation paper, "[In the public interest?](#)" July 2002. These can be found at: <http://www.dca.gov.uk/consult/general/oftreptconc.htm#part6>

<sup>28</sup> The study by Fred Bruinsma can be found at: <http://www.uu.nl/content/dutchlawinaction2003.pdf>

<sup>29</sup> The study by J.Baker of the Justice Research Centre can be found at: [http://www.lawfoundation.net.au/publications/research/cfm/cfm\\_rep.pdfker.J](http://www.lawfoundation.net.au/publications/research/cfm/cfm_rep.pdfker.J)

## 4.2. Business structure regulation

58. Significant restrictions on the way professionals can practise continue to exist across most Member States. Professionals are often required to practise as individuals or in partnership with others in the same profession, and incorporation is widely forbidden. Even where incorporation is permitted, the 50% rule is common whereby persons in the same profession, or those professionals actually practising in a firm, must have the majority of share capital or voting rights. Restrictions are most widespread in the legal, notarial and pharmacy sectors. The usual reason given for these is to protect the independence of the profession and quality of service.<sup>30</sup>
59. Two countries (France and Slovakia) report positive substantive reform (see Annex 1). France reports some relaxation of the ownership rules in the legal and notarial professions. Slovakia reports that rules on the establishment of pharmacies were relaxed opening the way for pharmacies to be established by non-pharmacists (although health care professionals entitled to issue prescriptions are still barred from opening or owning shares). There are also plans by Slovakia to allow the entry of chain pharmacies. Conversely, Estonia reports that a new law introduced prohibits the ownership of pharmacists by drug manufacturers and health care professionals entitled to issue prescriptions.
60. Work is however reported as being underway by a number of countries. Austria is proposing to open the way to allow architectural and engineering firms to have a financial holding/shares in other firms in their respective sectors, and Belgium reports that work is underway to allow architects to form incorporated firms. Belgium also reports that a study is underway to examine the options for closer/joint working between the accountancy profession and other professions e.g. lawyers. Lithuania too reports plans to ease restrictions in the accountancy/audit sector.
61. Germany has started reviews to consider easing restrictions in the accountancy, engineering and legal sectors. Italy reports that its reform project includes proposals to revise business structure regulation in all professions<sup>31</sup>. Business structure restrictions in the accountancy/audit field in Member States may also change as a result of the new Auditing Directive when adopted, and the ongoing work in the construction field by some Member States could result in change in this sector.
62. The committee in Denmark on lawyers will also consider regulation on the ownership of law firms. The Clementi review (see box below) in the UK has considered the structure of the legal profession with a view to opening the way for new and more innovative business structures in the profession. A similar review is now also underway of Scottish legal services, and the Irish competition authority's report on legal services has called on the government to radically change the

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<sup>30</sup> In Case C-309/99 *Wouters* the ECJ recognised that a rule in the ethical code, which prohibited partnership between lawyers and accountants in the Netherlands, could reasonably be considered necessary for the proper practice of the profession as organised by the Member State concerned, despite the effects restrictive of competition that were inherent in it, and did not infringe the EC competition rules. It arrived at this conclusion having considered several factors, including the specific national set-up and whether the rule was proportionate in these circumstances.

<sup>31</sup> See footnote 17.



structure of the profession. The Netherlands' planned government commission on lawyers will consider business structure restrictions.

63. The Netherlands also reports that the gradual development of a more competitive market is being encouraged in the pharmacy sector, including the entry of pharmacy chains.

64. This is an area where many Member States shy away from reform given concerns about safeguarding the independence of the professions. But this should not mean that reform cannot and should not be made, rather that it may need to be addressed in a more holistic way. As noted above, there are already examples of such a holistic approach from Ireland and the UK, and experience shows that significant consumer benefits can flow from relaxing business structure restrictions. In the US, for example, relaxing controls has seen the emergence of legal 'clinics' making access to legal advice available to consumers who would otherwise have considered lawyers too expensive. The Commission Services call on Member States to pursue reform in this area imaginatively and proactively.

#### **The Clementi Review of legal services in the UK<sup>32</sup>**

Sir David Clementi was commissioned by the UK government to undertake a wide ranging review of the regulatory framework within which the UK legal profession operates. This is particularly notable because the scope of the review in the UK is total and the potential consequences of its findings could bring about the most significant wave of change to the UK legal profession in its history. Terms of Reference for the Review were:

- To consider what regulatory framework would best promote competition, innovation and the public and consumer interest in an efficient, effective and independent legal sector.
- To recommend a framework which will be independent in representing the public and consumer interest, comprehensive, accountable, consistent, flexible, transparent, and no more restrictive or burdensome than is needed.

Three key concerns lay behind the review:

- i. a concern about regulatory framework which was considered "outdated, inflexible, over complex and insufficiently accountable or transparent".
- ii. a concern about the complaints systems and how consumer complaints were dealt with.
- iii. a concern about the restrictive nature of business structures which had changed little over a significant period of time despite changing business practices.

The final Report was published in December 2004 and recommended extensive changes to existing practices to make legal services more consumer friendly, while at the same time enabling providers to develop better, more competitive, customer-focussed businesses. Principal recommendations are the creation of a new oversight regulator with significant powers, the separation of the representative and regulatory functions of the professional bodies, the creation of a single new complaints body and steps to enable the creation of Legal Disciplinary Practices (LDPs) which could see for the first time non-lawyers not only as managers of legal practices, but also as owners of and investors in LDPs. The UK government will now publish a White Paper on the proposals later in 2005, to be followed by legislation as soon as parliamentary time allows.

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<sup>32</sup> The Clementi Report can be found at: [www.legal-services-review.org.uk](http://www.legal-services-review.org.uk).

### 4.3. Fixed prices

#### 4.3.1. Reforms undertaken or planned

65. Of the Member States with fixed prices still in operation, Germany is the only one to report substantive progress (see Annex 2) in removing them. It reports that fixed tariffs will be removed for lawyers for outside court work from 2006, and that the professional rules for tax consultants have been changed to allow flexible tariff setting.
66. Germany further reports that work is underway in respect of architects and engineers with the intention of abolishing fixed minimum and maximum tariffs. Consideration is also being given to reforming the fixed tariff system in the notarial profession. Lithuania reports that it intends to launch a discussion on the replacement of fixed tariffs with maximum prices for notaries, and in Hungary, following on from the proposal of the national competition authority, the government intends to replace fixed tariffs with maximum prices.
67. Some Member States also report a number of other changes of relevance. Slovenia reports that the professional body for notaries has lost competence to propose fixed tariffs and that this has passed to the national regulatory authority. France is examining ways of reinforcing the requirement on lawyers to inform clients as fully as possible about how fees for legal services will be calculated. Conversely, Italy reports that new minimum and maximum tariffs were adopted for lawyers in April 2004 and that work is underway to revise tariffs for engineers and architects. Slovakia also reports that revised tariffs were introduced for notaries in 2005 for some reserved tasks.
68. Factoring in the actual changes, and assuming that the planned changes are brought into effect, means that there will be no fixed prices existing in any Member State for tax consultants/advisers, that only four Member States (Cyprus, Greece, Italy and Luxembourg) will continue to have fixed or minimum prices for architects and engineers, and three for the accountancy/audit profession (Greece, Italy and Portugal). That means that the legal and notarial professions will be the two areas where a significant number of countries continue to operate the practice of setting fixed, minimum or maximum tariffs.

#### 4.3.2. The legal and notarial professions and fixed prices – special cases?

69. Arguments for the maintenance of fixed prices for notaries and the legal profession centre on the need to protect consumers from excessive charges and protect the prestige and independence of the profession to ensure the delivery of a quality service.
70. The key concern underlying the latter reason is the notion that competent individuals would either leave or fail to enter the legal profession if they are not rewarded financially, or otherwise, as befitting their high level of expertise and skills, and hence quality would suffer. This argument, however, seems unsustainable when it is considered that fixed fee scales have been largely wiped away in the other professions with no marked decline in the quality of entrants or mass exodus of existing professionals.

71. In the case of the Latin notary profession<sup>33</sup>, it is argued that fixed prices are in fact akin to a public tax given that many notarial activities are an exercise of public authority. It is true that the notary profession is currently characterised by a general lack of effective competition stemming from significant regulation of many key aspects e.g. quantitative entry controls and advertising prohibitions. In such a highly regulated market, price regulation may be needed to protect consumers, but that does not mean that its removal is impossible. Rather, that price de-regulation may need to be accompanied by other broader reforms (e.g. relaxation of entry restrictions or removal of certain monopoly rights). An example of where de-regulation in the notarial profession has taken place is the Netherlands. This has led to the removal of many fixed fees and the easing of entry restrictions to facilitate the introduction of price competition.
72. Finally, it is worth reiterating that notaries are not exempt from the scope of the EC competition rules. Although the exercise of public authority is not an economic activity<sup>34</sup>, the concept of undertaking is relative. A given entity may be engaged partially in an economic activity and partially exercise public authority.<sup>35</sup> In so far as it is engaged in an economic activity, it is subject to the competition rules. Though certain activities of notaries are generally regarded as the exercise of public authority, it is clear that notaries also engage in commercial (economic) activities for which they compete with other professionals. Examples of this are the provision of legal advice and negotiation in the real estate area.

#### **Notaries in the Netherlands<sup>36</sup>**

The Netherlands is the only country where substantial de-regulation of the Latin notarial profession has taken place. Since the conditions for establishment were relaxed in 1999, there are 201 more candidate notaries and notaries' offices, and 77 more notaries' offices. New legislation, now in the drafting stage, will also allow notaries who do not wish to be independent, to become employees in a notary's office. This de-regulation has resulted in prices increasing in the family law area, but decreasing for real estate transactions. To ensure access to notarial services in the family law area by the lower paid, the Netherlands regulates prices for this group and has established fixed maximum tariffs in this area. These tariffs are adjusted on a yearly basis.

73. The Commission Services invites all Member States to take action to review particularly critically all fixed and minimum prices with a view to removing them wherever possible. Price fixing does not guarantee quality, and may serve to inhibit healthy competition between providers, discourage efficiency, or the development and introduction of new services and ways of doing things. This could be bad for the

<sup>33</sup> The so-called 'Latin' notary profession (sometimes referred to as 'civil law notaries') are independent professionals who advise private parties and draft contracts on their instruction, as well as partake in the issuing of public documents, and fulfil quasi-judicial duties. They are appointed by the state, entrusted with public functions and hold a public office. They are not however civil servants and remain independent from the state and economically self-reliant. This profession exists in AT, BE, CZ, DE, EE, EL, ES, FR, HU, IT, LT, LU, LV, MT, NL, PL, PT, SK and SI.

<sup>34</sup> Case C-364/92, *Eurocontrol*, [1994] ECR I -0043 para 30, and C-343/95, *Calì e Figli* 1997 ECR I -1547 paras 22-23.

<sup>35</sup> This was the case for the public employment office in Case C-41/90 *Höfner* [1991] ECR I-1979, para. 21, the airport authority in Case C-82/01 P *Aéroports de Paris* [2002] ECR II -3929 and the city of Trier in Case C-475/99 *Ambulanz Glöckner* [2001] ECR I-08089.

<sup>36</sup> Details on the de-regulation of the notarial profession in the Netherlands can be found at: [http://www.justitie.nl/pers/persberichten/archief/archief\\_2003/120203commissie\\_monitoring\\_notariaat\\_publiceert\\_eindrapport.asp](http://www.justitie.nl/pers/persberichten/archief/archief_2003/120203commissie_monitoring_notariaat_publiceert_eindrapport.asp)

professions who fail to adjust to new business practices or technologies, and could lead to consumers having to pay inflated prices for mediocre levels of service.

#### **4.4. Recommended prices**

74. Substantive change has been reported by six Member States (Austria, Hungary, Ireland, Lithuania, Slovakia and UK) (see Annex 3).
75. Austria reports that it has relaxed its policy on recommended prices for architects and engineers and that these have become guidelines. Hungary similarly reports that recommended minimum tariffs have become guidelines for architects. Ireland reports that the professional body for architects has ceased the practice of issuing recommended fee tables during the year. Changes have been made to the architect's professional code in the UK to allow architects to revise fee quotations to take into account quotations from other competing architects. In Slovakia recommended prices were abolished in 2005 for tax consultants, architects and engineers.
76. In the legal sector, Lithuania has abolished recommended prices for lawyers via a legislative amendment. In the UK the professional body for Scottish solicitors has agreed to withdraw its recommended prices for general business. The UK also reports that fee guidance has been withdrawn by the UK public notaries' professional body.<sup>37</sup>
77. Three other changes reported are of relevance. Luxembourg reports plans to link fees to the results of work for lawyers, and Slovenia, that recommended fees for architects are currently being prepared for introduction by the professional body. Revised recommended prices were introduced in Slovakia for lawyers during 2005.
78. This means that some progress has been made in reviewing and eliminating recommended prices for architects, engineers, lawyers and notaries. That said, there are still a significant number of Member States with recommended prices in operation, and as with fixed prices, it is the legal and notarial professions that have the largest number. As noted above, one Member State even reports plans by the professional body to introduce recommended fee scales for architects.
79. The key justifications given for maintaining recommended fee scales centre on the need to provide a guide to consumers on likely costs and protect against what is termed 'unfair' competition between practitioners<sup>38</sup>. Some Member States also point to the fact that the scales are non-binding and that client and provider are free to agree a fee without reference to such scales.

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<sup>37</sup> UK public notaries are to be distinguished from the Latin notary profession as defined in footnote 33. A UK Notary Public bridges the differences between the legal systems of one nation with that of another, so as to give lawful effect to arrangements made by parties from different countries. Within the UK, a Notary Public service will usually be available through a Solicitor who has been granted the authority to act in legal matters associated with foreign jurisdictions. The Notaries Society is the representative society for the 900 or so Notaries Public practising in England and Wales.

<sup>38</sup> In some countries professionals are barred from engaging in certain business practices such as price competition and advertising under ethical codes. Such practices are considered to undermine the dignity and prestige of a profession and to engage in them is deemed as 'unfair' competition.

80. Recommended fees and reference scales can still act to facilitate price co-ordination. There are other less distorting ways to provide consumers with a ‘guide’ to prices. For instance, active monitoring by consumer associations on pricing and the collection and publication of survey based historical price data by independent organisations. Ways can also be developed to provide customers with costs of the professional service ex ante, at the moment of giving the mandate. Certainly scales which do not help the consumer to know in advance how much they will have to pay (either because of their complexity or because they are not public) are totally unjustifiable. The Commission Services urge all involved to eliminate the use of recommended fee scales as soon as possible.

#### **4.5. Advertising restrictions**

81. The level of permissible advertising continues to vary considerably across Member States and professions. Five Member States report substantive change to advertising restrictions (France, Ireland, Italy, Lithuania and Portugal) (see Annex 4). The majority of these changes relate to provisions being relaxed in ethical codes and reflects the fact that a significant number of advertising restrictions are contained in such codes<sup>39</sup>.

82. In the accountancy profession, France has relaxed the law to allow informative personal advertising and work has started to bring the code of professional ethics into line. Germany also reports that a review is underway of the professional body’s rules on advertising in the accountancy sector with the aim of relaxing them.

83. In Ireland advertising restrictions have been removed for architects and engineers and in Italy the architect’s ethical code was reviewed and the restrictions relaxed. There are also plans in place in Italy to review the engineer’s code.

84. Lithuania and Portugal report substantive change in the legal profession and both have freed up the effective prohibition to allow some ‘publicity’ type activities (although proactive promotional advertising is still prohibited<sup>40</sup>). Five other countries report that work has started or is planned to examine or reform advertising restrictions in the legal profession (Denmark, Estonia, France, Germany, and UK in respect of Scottish legal services). Greece also reports plans to review the legislative rules on publicity (but not advertising). Italy reports work to create new ethical rules for notaries covering the provision of information to the public.

85. In the pharmaceutical sector, two countries report having plans to review the rules on advertising (Hungary and France). Luxembourg, however, reports plans to incorporate the effective prohibition on advertising into the professional ethical code thus making it binding.

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<sup>39</sup> In many countries a distinction is also made between ‘publicity’ or ‘informative advertising’, and ‘advertising’ or ‘promotional publicity’, the idea being that a wider dissemination of information on the part of professionals is accepted, or becoming accepted, while proactive promotional advertising is still prohibited. The latter may include in particular comparative advertising, cold-calling and soliciting. However, the line between what is considered ‘informative’ and what is considered ‘promotional’ varies between countries and professions.

<sup>40</sup> See footnote 39 above for explanation.

86. While these changes and plans are welcome, there are still widespread restrictions on advertising covering both manner (e.g. only printed advertising is permissible) and content (e.g. comparative advertising is prohibited). Of particular note is the effective blanket prohibition on advertising in place across the notarial profession in Europe.
87. Maintenance of such restrictions is defended on the basis of protecting consumers from misleading claims, preventing ‘unfair’ competition, and preserving professional integrity and independence.
88. Advertising can play a key role in informing and educating consumers. It provides a means by which they can compare and contrast services, and seek out services that best suit their needs and means. The existence of severe advertising restrictions in the professions can thus make it more difficult for the consumer to know where to find an expert, or determine the likely price of a given service, and hence contribute to consumer ignorance and confusion. It is especially difficult to see how advertising restrictions which cover both content and manner can be justifiable. As to protecting consumers from misleading advertising, there is general EU-wide legislation on deceptive and misleading advertising<sup>41</sup> that serves to protect consumers against such abuse, so it is questionable why there is a need for further sector specific restrictions.<sup>42</sup> All advertising restrictions allegedly based on the need to protect consumers against unfair claims, other than those foreseen in the EU unfair commercial practices legislation, should be reviewed urgently. Advertising restrictions designed to protect against unfair competition, and preserve the dignity and integrity of the profession, should also be reviewed<sup>43</sup> to ensure they are justified and proportionate<sup>43</sup>.

## 5. ENFORCEMENT BY THE COMMISSION, NATIONAL COMPETITION AUTHORITIES AND NATIONAL COURTS

89. In June 2004 the Commission issued a decision condemning the recommended minimum fee scale operated by the Belgian Architects’ Association<sup>44</sup>. This scale – described as a ‘guideline’ - laid down the minimum fees for architectural services performed by independent architects in Belgium. The Commission considered that the original decision of the Association in 1967 laying down the fee scale (which had subsequently been amended several times since), should be considered as an independent act of prescriptive character for which the Association, acting as an association of undertakings, was wholly responsible. The Commission also came to the conclusion that the Association intended to coordinate its members’ behaviour in

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<sup>41</sup> Directive 2005/29/EC of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market. .

<sup>42</sup> Member States are permitted by Article 7.5 of the Directive 84/450/EEC on misleading advertising, as amended by Directive 97/55/EC, to introduce bans or limitations on comparative advertising for professional services. This is intended to safeguard the interests of professionals and competitors. Any bans or limitations introduced must however be compatible with the provisions of the European Community Treaty (see judgement of the Court of First Instance in case T-144/99 *Institute of Professional Representatives before the European Patent Office v Commission* [2001] ECR II-01087 concerning comparative advertising).

<sup>43</sup> As defined in footnote 2 above.

<sup>44</sup> Decision of 26.06.2004, COMP/38.549 - PO / L'Ordre des Architectes belges, [http://www.europa.eu.int/comm/competition/antitrust/cases/index/by\\_nr\\_77.html#i38\\_549](http://www.europa.eu.int/comm/competition/antitrust/cases/index/by_nr_77.html#i38_549)

the market via this practice and that the fee scale had the restriction of competition as its object. This was even despite the fact that the Association described the scale as a 'guideline' and that not all architects had complied with the scale. The Commission imposed a fine of €100,000. The Association decided not to appeal this decision and withdrew the scale of fees, and took steps to publicise the fact.

90. National competition authorities have also been active. Annex 5 provides an overview of cases opened since publication of the Commission's 2004 Report under the EC competition rules in the six professions selected for study. Cases have also been opened covering other professions such as veterinaries and dentists.
91. Ten cases were opened during 2004/05. These cover a variety of restriction type and professions. All are against professional associations. Two were closed following satisfactory voluntary resolution of the competition concern identified. In the Austrian case against the Bundesinnung Bau (Austrian Builders Association) it was found that the so-called 'non-binding' recommended price scales were in effect binding and contrary to Article 81, and that these should be revoked<sup>45</sup>.
92. Member States are also pursuing further regionally confined cases under their national competition rules. Again, these cover a range of professions and restrictions. One interesting example is a case undertaken by the Finnish Competition Authority against the Association of Finnish Architects. This ended in the competition authority issuing a prohibition decision against the professional body which had banned its members from participating in architectural competitions that it had not approved.
93. Under Article 234, national courts can ask the European Court of Justice (ECJ) for a preliminary ruling on a question that is necessary to enable it to give a judgement on the application of Community law, including the EC competition rules. On 17 February 2005, the European Court of Justice made an order on a request for a preliminary ruling concerning the State examination for access to the Italian Bar (Case C-250/03, *Mauri*). In Italy, the examination committee, which oversees the access examination to the Bar, is composed of five members appointed by the Minister for Justice, namely, two judges, a professor of law and two advocates - the latter being nominated by the Consiglio Nazionale Forense (national bar council) on a joint proposal by the bar councils of the district concerned. The order assessed the facts on the basis of the criteria mentioned in Case C-35/99, *Arduino*. The ECJ concluded that Articles 81 EC, 82 EC and 43 EC do not preclude a rule which provides that the examination committee is to be composed as described. Since it appears that the Ministry of Justice maintains substantial supervision of the procedures for the State examination, the ECJ concluded that the State had not given up the exercise of its powers in favour of private economic operators. The reasoning was identical as in *Arduino*, i.e. the State has not given up the exercise of its powers in favour of private economic operators nor can that State be criticised for requiring or encouraging the adoption of agreements, decisions or concerted practices contrary to Article 81 EC or reinforcing their effects or for requiring or encouraging abuses of a dominant position contrary to Article 82 EC or reinforcing the effects of such abuses.

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<sup>45</sup> Case summary can be found at: [http://www.bwb.gv.at/BWB/Aktuell/widerruf\\_der\\_hob\\_baumeister.htm](http://www.bwb.gv.at/BWB/Aktuell/widerruf_der_hob_baumeister.htm)

94. Currently there is one preliminary ruling pending before the European Court of Justice on which the Commission has submitted observations asking the Court to refine its case-law in line with the Commission's 2004 Report (Case C-202/04, *Capodarte and Macrino/Meloni*.)

## 6. CONCLUSIONS

95. There has been some substantive progress in refining and eliminating disproportionate restrictions<sup>46</sup> to competition in legislation and in the rules and regulations of professional bodies during 2004/05. Two Member States (Slovenia and UK) report progress in easing quantitative entry restrictions and four (Italy, Latvia, Lithuania and Slovakia) in freeing up qualitative restrictions; two (France and Slovakia) in relaxing business structure regulation; one (Germany) in removing fixed or minimum prices; six (Austria, Hungary, Ireland, Lithuania, Slovakia and UK) in ending the use of recommended prices; five (France, Ireland, Italy, Lithuania and Portugal) in easing advertising restrictions. No substantive progress is reported on revising the scope of reserved tasks.
96. Some promising work is underway in a number of countries (Denmark, Netherlands, Poland and UK), which could lead to significant change in the structure of the legal professions, and in Germany in respect of a number of professions.
97. Most progress is being made in those countries where there is a structured programme of pro-competitive or regulatory reform in place - Denmark, Netherlands and UK. Moreover, it is notable that in these countries there is a close partnership between government and national competition authorities. In other countries the reform process has not yet got underway, or can best be described as haphazard.

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<sup>46</sup> As defined in footnote 2 above.



## Annex 1: Overview of reforms made or planned during 2004/05 to entry restrictions, reserved tasks or business structure regulation

Profession	Reforms to entry restrictions	Reforms to reserved tasks	Reforms to business structure
<b>Accountancy /audit</b>	<p><b>Estonia:</b> plans to draw up a new Auditing Act to comply with the new Auditing Directive due for adoption in 2005. This could change some of the current restrictions.</p> <p><b>Finland:</b> new law pending on auditing (currently in draft form).</p> <p><b>Italy:</b> it is recognised that reform of the general framework for the professions is long over due and proposals are before parliament. These include reviewing access to the professions and business structure regulation. Work is also underway to merge into one the two existing professional bodies for the accountancy profession ('dottori commercialisti' and 'ragionieri periti commerciali').</p> <p><b>Lithuania:</b> new Law on Audit introduced in 5/04 increased the entry requirements. Instead of higher education it became higher 'economic education' and the number of examinations required for professional qualification increased from 4 to 5. There are also plans to draw up an amended Law on Audit to comply with the requirements of the new Audit Directive when adopted.</p> <p><b>Luxembourg:</b> training requirements have been amended. In future entrants will be required to pass an aptitude/ professional test to practise as an accountant ('expert-comptable') - still to be implemented.</p> <p><b>Slovenia:</b> legislative reform is planned after adoption of the new Auditing Directive.</p> <p><b>Spain:</b> plans to reform entry requirements for auditors.</p> <p><b>UK:</b> new draft ethical standards for auditors have been formulated by the Auditing Practices Board (APB). Following intervention by the NCA these were revised to ensure that they did not affect the ability of small and medium sized audit firms to compete for the</p>	<p><b>Estonia:</b> plans to draw up a new Auditing Act to comply with the new Auditing Directive due for adoption in 2005. This could change some of the current restrictions.</p> <p><b>Lithuania:</b> plans to draw up an amended Law on Audit to comply with the requirements of the new Audit Directive when adopted.</p> <p><b>Slovenia:</b> legislative reform is planned after adoption of the new Auditing Directive.</p>	<p><b>Belgium:</b> study underway to examine the options for inter-professional co-operation/joint working between the accountancy profession (accountants/auditors/tax consultants) and other professions e.g. lawyers.</p> <p><b>Estonia:</b> plans to draw up a new Auditing Act to comply with the new Auditing Directive due for adoption in 2005. This could change some of the current restrictions.</p> <p><b>Germany:</b> review underway to consider relaxing business structure restrictions so that accountants can co-operate/work jointly e.g. form partnerships with those outside the professions too (e.g. Gewerbetreibenden).</p> <p><b>Italy:</b> reform project provides for establishment of professional corporations (currently incorporation is forbidden).</p> <p><b>Lithuania:</b> plans to widen the law and allow legal entities as well as natural persons to carry out audits (currently only legal entities are allowed to carry out audits in Lithuania). There are also plans to draw up an amended Law on Audit to comply with the requirements of the new Audit Directive when adopted.</p> <p><b>Slovenia:</b> legislative reform is planned after adoption of the new Auditing Directive.</p>

Profession	Reforms to entry restrictions	Reforms to reserved tasks	Reforms to business structure
	business of larger clients. The revised draft introduced exemptions for SME's and small audit firms to provide for this.		
<b>Tax Consultants</b> (where this profession exists separately)	None	None	<b>Belgium:</b> study underway to examine the options for inter-professional co-operation/joint working between the accountancy profession (accountants/auditors/tax consultants) and other professions e.g. lawyers.
<b>Architects</b>	<p><b>France:</b> project underway to reorganise and modernise the architectural profession.</p> <p><b>Hungary:</b> from 1/1/05 entry requirements were increased and entrants have to pass a new registration examination to become licensed and be able to join the professional body/chamber to practise as a licensed architect. This examination is regulated by the government.</p> <p><b>Ireland:</b> the government is proposing to reserve the title of 'architect' in a way so as to include practically trained as well as academically trained architects.</p> <p><b>Italy:</b> it is recognised that reform of the general framework for the professions is long over due and proposals are before parliament. These include reviewing access to the professions and business structure regulation. Access requirements have already been relaxed to allow graduates who have completed a 3 year university course to perform some reserved tasks previously only open to those having completed the 5 year course.</p> <p><b>Luxembourg:</b> law passed in 7/04 which freed up entry requirements with respect to landscape and interior designers. Only relevant study now required. No longer have to be admitted to a professional body, or take a professional examination, or do a period of traineeship (internship).</p> <p><b>Portugal:</b> review underway by the government of the law which regulates qualitative entry requirements for</p>	<p><b>Portugal:</b> government is reviewing some of the legislation in the construction area.</p> <p><b>UK:</b> general ongoing review of regulation in the construction industry by the government.</p>	<p><b>Austria:</b> work underway to allow architectural companies to have a financial holding/buy shares in other architectural companies (currently only natural persons may own shares in an architectural company).</p> <p><b>Belgium:</b> project in progress to allow architects to operate as incorporated entities (currently this is not allowed).</p> <p><b>Italy:</b> reform project provides for establishment of professional corporations (currently incorporation is forbidden, with some exceptions).</p> <p><b>Portugal:</b> government is reviewing some of the legislation in the construction area.</p> <p><b>UK:</b> general ongoing review of regulation in the construction industry by the Government.</p>

Profession	Reforms to entry restrictions	Reforms to reserved tasks	Reforms to business structure
	<p>'technicians' involved in construction work (this includes architectural and engineering technicians). Review will cover access requirements. The government is also reviewing some of the legislation in the construction area.</p> <p><b>Slovakia:</b> entry requirements relaxed. Professional training requirement now 3 instead of 5 years.</p> <p><b>UK:</b> general ongoing review of regulation in the construction industry by the government.</p>		
<b>Engineers</b>	<p><b>Hungary:</b> from 1/1/05 entry requirements have been increased and entrants have to pass a new registration examination to become licensed and be able to join the professional body/chamber to practise as a licensed engineer. This examination is regulated by the government.</p> <p><b>Italy:</b> it is recognised that reform of the general framework for the professions is long over due and proposals are before parliament. These include reviewing access to the professions and business structure regulation. Access requirements have already been relaxed to allow graduates who have completed a 3 year university course to perform some previously reserved tasks only open to those having completed the 5 year course.</p> <p><b>Portugal:</b> review underway by the government of the law which regulates qualitative entry requirements for 'technicians' involved in construction work (this includes architectural and engineering technicians). Review will cover access requirements. The government is also reviewing some of the legislation in the construction area.</p> <p><b>Slovakia:</b> plans to review and amend the Building Act with respect to the field of civil engineering to simplify procedures and reduce any kind of professional discrimination.</p> <p><b>UK:</b> general ongoing review of regulation in the construction industry by the government.</p>	<p><b>Portugal:</b> government is reviewing some of the legislation in the construction area.</p> <p><b>Slovakia:</b> plans to review and amend the Building Act with respect to the field of civil engineering to simplify procedures and reduce any kind of professional discrimination.</p> <p><b>UK:</b> general ongoing review of regulation in the construction industry by the government.</p>	<p><b>Austria:</b> work underway to allow engineering companies to have a financial holding/buy shares in other engineering companies (currently only natural persons may own shares in an engineering company).</p> <p><b>Germany:</b> review is underway in some regions at Länder level to consider relaxing business structure/ownership restrictions (currently the 50% rule operates in the case of certain types of engineering companies i.e. the majority of share capital must be owned by engineers).</p> <p><b>Italy:</b> reform project provides for establishment of professional corporations (currently incorporation is forbidden, with some exceptions).</p> <p><b>Portugal:</b> government is reviewing some of the legislation in the construction area.</p> <p><b>Slovakia:</b> plans to review and amend the Building Act with respect to the field of civil engineering to simplify procedures and reduce any kind of professional discrimination.</p> <p><b>UK:</b> general ongoing review of regulation in the construction industry by the government.</p>

Profession	Reforms to entry restrictions	Reforms to reserved tasks	Reforms to business structure
<b>Legal profession</b>	<p><b>Cyprus:</b> consideration being given to increasing the practical experience requirement to 2 years from the current 1 year.</p> <p><b>Italy:</b> it is recognised that reform of the general framework for the professions is long over due and proposals are before parliament. These include reviewing access to the professions and business structure regulation.</p> <p><b>Latvia:</b> requirements have been relaxed with regard to the level of professional experience required and the requirement to take the professional entry examination has been removed for those with PhDs. This is designed to facilitate entry.</p> <p><b>Lithuania:</b> entry criteria have been relaxed for those with significant professional legal experience (of at least 5 years) so that they do not have to take the professional entry examination. It is designed to facilitate access.</p> <p><b>Poland:</b> new law under discussion to promote greater access to the legal profession (it creates a new ministry commission to oversee the entry examinations thus providing more transparency and openness, and creates new routes of entry to the legal profession).</p> <p><b>Spain:</b> reforms planned to increase entry requirements for lawyers by introducing a professional entry examination.</p> <p><b>UK – Scotland:</b> entry requirements are under review by the Scottish Executive Working Group on Legal Services (this is due to report by Summer 2005).</p>	<p><b>Denmark:</b> a governmental committee was set up in 2004 to examine the rules on lawyers – among them the sole right to represent parties in court.</p> <p><b>Germany:</b> project underway by Ministry of Justice to consider changes to the law governing the provision of legal advice/counselling. The aim is to broaden the scope of the law to allow others rather than just lawyers the right to provide legal advice in certain areas.</p> <p><b>Denmark:</b> a governmental committee was set up in 2004 to examine the rules on lawyers – among them the sole right to represent parties in court.</p> <p><b>NL:</b> there are plans to set up a government commission to review the Law on Lawyers which will include considering whether lawyers’ monopoly for in court work should continue. This commission will report within 6 months of being set up.</p> <p><b>Poland:</b> new law under discussion also proposes creating a ‘routine’ legal services sector. The proposal would remove the monopoly rights of legal advisers/advocates to provide legal advice/services. Representation in court would remain a reserved area.</p> <p><b>Portugal:</b> law in 8/04 introduced notion of “actos próprios”, which are prohibited to other professions. This reinforces the sole right of lawyers to provide representation in court.</p> <p><b>UK – Scotland:</b> extending rights of audience and rights to conduct litigation in the higher courts to non-lawyers under review by Scottish Executive Working Group on the Legal Services.</p>	<p><b>Denmark:</b> the governmental committee will also consider current business structure regulation.</p> <p><b>France:</b> new décret in 2004 relaxed the ownership rules to allow the constitution of legal firms where the capital/shares can be held by other legal firms or natural persons in the legal profession (also see under notaries below). Changes have also been made to the law to allow financial participation by ‘sociétés’ in foreign legal firms.</p> <p><b>Germany:</b> project underway by the Ministry of Justice on a new law will also consider relaxing the current business structure/ownership restrictions on lawyers (lawyers can currently only co-operate/form partnerships etc. with patent lawyers, tax advisers and accountants).</p> <p><b>Italy:</b> reform project provides for establishment of professional corporations (currently incorporation is forbidden).</p> <p><b>NL:</b> the planned government commission to review the Law on Lawyers will also consider regulatory structure, including handling complaints and disciplinary issues, and permissible business structures.</p> <p><b>UK- England and Wales:</b> Clementi review has made proposals to relax current restrictions on business structure.</p> <p><b>UK – Scotland:</b> business structure restrictions under review by the Scottish Executive Working Group on Legal Services.</p>
<b>Notaries</b>	<p><b>Hungary:</b> following on from the proposal of the NCA, the Ministry of Justice intends to review the Law on Notaries. This will amongst other things consider the quantitative restrictions on notary numbers.</p> <p><b>Italy:</b> it is recognised that reform of the general framework for the professions is long over due and proposals are before parliament. These include reviewing access to the professions and business</p>	<p><b>Hungary:</b> the proposed review of the Law on Notaries will also consider the scope of reserved tasks.</p> <p><b>NL:</b> government commission established in July 2004 will also consider scope of legal monopoly/reserved tasks of notaries.</p>	<p><b>France:</b> new décret in 2004 relaxed the rules to allow notaries to form incorporated firms. Notaries are also now permitted to hold a minority share/financial holding in a legal firm. Changes have also been made to the law to allow financial participation by ‘sociétés’ in foreign notarial firms.</p> <p><b>Italy:</b> reform project provides for establishment of professional corporations (currently incorporation is</p>

Profession	Reforms to entry restrictions	Reforms to reserved tasks	Reforms to business structure
	<p>structure regulation.</p> <p><b>Latvia:</b> educational/qualitative entry requirements were relaxed from 11/04 to facilitate entry by a wider range of people.</p> <p><b>NL:</b> government established a commission in July 2004 to review the Law on Notaries. Amongst other things this will consider the current conditions of appointment to the notarial profession. It is due to report by July 2005. Also, work underway to open the way for candidate notaries to become employees of an existing notary – designed to increase accessibility to the profession.</p> <p><b>Slovenia:</b> the competence to make nominations and make the final decision on notarial appointments has passed to the national regulator (Ministry of Justice) from the professional body. The Ministry also now has a greater supervisory role.</p>		<p>forbidden).</p>
<b>Pharmacists</b>	<p><b>Belgium:</b> project to modify legislation on location of pharmacies. Also project to renew the ethical code.</p> <p><b>Estonia:</b> new law introduced registration system for pharmacists wishing to practise (took effect from 1/3/05). Aim being to ensure all entrants have the necessary competence.</p> <p><b>France:</b> plans to ask the NCA for an opinion on the rules and restrictions governing the right to establish a pharmacy contained in the ethical code.</p> <p><b>Germany:</b> entry requirements were increased from 15/7/05 as a result of a change to the law. This now requires pharmacists wanting to work in public or hospital pharmacies to prove that they have a ‘sufficient knowledge’ of the German language and law.</p> <p><b>Italy:</b> it is recognised that reform of the general framework for the liberal professions is long over due and proposals are before parliament. These include reviewing access to the professions and business structure regulation.</p> <p><b>Latvia:</b> plans to amend the law to increase the</p>	<p><b>Belgium:</b> project will also modify legislation on some reserved tasks. Also project to renew the ethical code.</p> <p><b>France:</b> discussions underway about modifying the law to remove certain products from the monopoly list so they can be sold outside pharmacies.</p> <p><b>NL:</b> evaluation of reserved tasks in process.</p> <p><b>Portugal:</b> plans to open up market for the sale of some medicines.</p> <p><b>Sweden:</b> government review of the structure and operation of the State owned monopoly on retail pharmacies following ECJ ruling.</p>	<p><b>Belgium:</b> project to renew the ethical code.</p> <p><b>Estonia:</b> new law introduced restrictions on ownership of pharmacists (took effect from 1/3/05). A drug manufacturer, or health care professional entitled to issue prescriptions, cannot be a shareholder of a pharmacy. This aims to ensure the independence of the practising pharmacist.</p> <p><b>Italy:</b> reform project provides for establishment of professional corporations (currently incorporation is forbidden).</p> <p><b>NL:</b> gradual development of a more competitive market is being encouraged, including entry by pharmacy chains.</p> <p><b>Slovakia:</b> rules on establishment were relaxed from 1/12/04 so that pharmacies can be established by non-pharmacists (previously only pharmacists were allowed to establish pharmacies), but with the exception of health care professionals entitled to issue prescriptions who are still barred from establishing or being shareholders in a pharmacy. Also, plans to allow the</p>

Profession	Reforms to entry restrictions	Reforms to reserved tasks	Reforms to business structure
	<p>responsibility on local administrators to ensure the availability of health care services in their area, including pharmacies.</p> <p><b>Lithuania:</b> draft amendment to the law has been prepared. NCA has queried the quantitative restrictions therein.</p> <p><b>UK:</b> NCA study suggested relaxing entry controls on number and location of pharmacists. Some initial reforms were announced by the government in 8/04.</p>		<p>creation of chain pharmacies (current rules allow ownership of one pharmacy and one branch only).</p>

Source: National regulators responses to Commission questionnaire dated December 2004.

## **Annex 2: Overview of countries and professions with fixed prices and reforms made during 2004/05 or planned**

<b>Profession</b>	<b>Fixed prices as @ February 2004</b>	<b>Minimum prices as @ February 2004</b>	<b>Maximum prices as @ February 2004</b>	<b>Reforms made or planned since February 2004</b>
<b>Accountancy /audit</b>	<i>Greece</i>	Italy (for public accountants only) Portugal (for statutory audit only)	Italy (for public accountants only)	
<b>Tax Consultants</b> (where this profession exists separately)		Germany (list of criteria that must be taken into account when setting prices)	Germany (list of criteria that must be taken into account when setting prices)	<b>Germany:</b> professional rule has been changed so that the criteria are now 'guidelines' and are not binding.
<b>Architects</b>	Luxembourg	Cyprus (for public projects and works only) Germany Italy (for specific services defined in law)	Germany Italy (for specific services defined in law)	<b>Germany:</b> work underway by the government to abolish fixed minimum and maximum tariffs. (First draft law from the Ministry proposing abolition of tariffs did not get a political majority.) <b>Italy:</b> work group set up in Ministry to revise tariff scales for both private and public works
<b>Engineers</b>	Luxembourg	Cyprus (for public projects and works only) Germany <i>Greece</i> Italy (for specific services defined in law)	Germany <i>Greece</i> Italy (for specific services defined in law)	<b>Germany:</b> work underway by the government to abolish fixed minimum and maximum tariffs. (First draft law from the Ministry proposing abolition of tariffs did not get a political majority.) <b>Italy:</b> work group set up in Ministry to revise tariff scales for both private and public works.
<b>Legal profession</b>	<i>Czech Republic</i> Estonia (for legal aid cases only) France (for technical and procedural aspects of court work only) Ireland (for legal aid cases only) Luxembourg (for legal aid cases only) Poland (for court work only) Slovenia Spain (for the profession of 'procuradores' only)	Cyprus Germany Greece Italy	Italy	<b>France:</b> work underway to legally reinforce the requirement on lawyers to inform clients fully as to how services will be priced. <b>Germany:</b> tariffs for out of court work to be removed from 1/7/06. <b>Italy:</b> on 8/4/04 revised tariffs were adopted.

Profession	Fixed prices as @ February 2004	Minimum prices as @ February 2004	Maximum prices as @ February 2004	Reforms made or planned since February 2004
<b>Notaries</b>	Belgium (for certain services defined in law) Estonia France Germany Greece Hungary Italy Latvia Lithuania Slovakia (for areas of work reserved to notaries and probate work only) Slovenia Spain (for certain services it is possible to negotiate a reduction of up to 10% on fees)	<i>Czech Republic</i> Portugal	Austria (for notarial acts only) <i>Czech Republic</i> Luxembourg (for notarial acts only) <i>Malta</i> Netherlands (for those on a low income and only in respect of family law) Poland Portugal	<b>Germany:</b> work has begun to reform the fixed tariff system. <b>Hungary:</b> following on from the proposal of the NCA, the Ministry of Justice intends to replace fixed tariffs with maximum prices. <b>Lithuania:</b> the government intends to launch a discussion on the replacement of fixed tariffs with maximum prices. <b>Slovakia:</b> revised fixed tariffs were introduced in 2005 for some reserved areas of work by the Ministry of Justice. <b>Slovenia:</b> professional body has lost competence to propose tariffs and this has passed to the Ministry of Justice who also has final say on level of tariff.

Source: National regulators responses to Commission questionnaire dated December 2004. Where responses were incomplete or not received information has been taken from the 2004 Report or the Stocktaking Report on the new EU Member States and the country name is shown in *italics*. Pharmacists are not included.



### **Annex 3: Overview of countries and professions with recommended prices and reforms made during 2004/05 or planned**

<b>Profession</b>	<b>Recommended prices as @ February 2004</b>	<b>Reforms made or planned since February 2004</b>
<b>Accountancy/audit</b>	Austria Greece Italy Portugal Slovakia Slovenia (for audit only)	
<b>Tax Consultants</b> (where this profession exists separately)	Slovakia Spain	<b>Slovakia:</b> recommended prices were abolished from 1/1/05.
<b>Architects</b>	Austria Czech Republic Denmark Hungary Ireland Luxembourg Portugal (for public works only and are non-binding) Slovakia Spain	<b>Austria:</b> from 12/04 recommended prices have become 'guidelines'. <b>Hungary:</b> recommended minimum tariffs set by the professional body/chamber were modified to become 'guidelines' in 12/04. <b>Ireland:</b> the practice by the professional body of providing recommended fee tables ceased during the year following intervention by the NCA. <b>Slovakia:</b> recommended tariffs were abolished from 14/5/05. <b>Slovenia:</b> new recommended tariffs are currently under preparation by the professional body. <b>UK:</b> the professional body's code was changed in 9/04 to allow architects to revise fee quotations to take into account fees quoted by other competing architects (this was formally forbidden) following intervention by the NCA.
<b>Engineers</b>	Austria Czech Republic Hungary Italy (for those services not covered by fixed prices) Luxembourg Portugal (for public works only and are non-binding) Slovakia Slovenia Spain (for some types of engineering services only)	<b>Austria:</b> from 12/04 recommended prices have become guidelines. <b>Slovakia:</b> recommended tariffs were abolished from 1/1//05.
<b>Legal profession</b>	Austria Denmark (for legal aid cases only) Greece (for legal consultancy services only) Latvia	<b>Lithuania:</b> recommended prices were abolished from 6/4/04 via an amendment to the Law on the Bar. <b>Luxembourg:</b> plans to link fees to results of work. <b>Slovakia:</b> revised recommended tariffs were introduced in 2005 by the Ministry of

Profession	Recommended prices as @ February 2004	Reforms made or planned since February 2004
	Lithuania Luxembourg (list of criteria that must be taken into account to calculate price) Portugal (list of criteria that must be taken into account to calculate price) Slovakia (for use when agreement cannot be reached independently on price) Spain UK – Scotland (for general business by solicitors)	Justice. <b>UK-Scotland:</b> under review by the Scottish Executive Working Party on the Legal Services Market in Scotland. As a result of the review, the Law Society of Scotland has agreed to withdraw price recommendations and to consult the NCA on a proposed alternative.
<b>Notaries</b>	Austria (for a small number of other services which are comparable in nature to those undertaken by lawyers) Belgium (for services where the price is not fixed) Portugal Slovakia (for other non-reserved areas) UK - England and Wales (for Notaries Public)	<b>UK:</b> fee guidance was withdrawn by the Notaries Society – the professional body for UK Notaries Public, in March 2004 following intervention by the NCA.

Source: National regulators responses to Commission questionnaire dated December 2004. Where responses were either incomplete or not received information has been taken from the 2004 Report, or the Stocktaking Report on the new EU Member States, and the country name is shown in *italics*. Pharmacists are not included.

#### **Annex 4: Overview of countries and professions with advertising restrictions and reforms made during 2004/05 or planned**

<b>Profession</b>	<b>Effective prohibition on advertising as @ February 2004</b>	<b>Some advertising restrictions @ February 2004</b>	<b>Reforms made or planned since February 2004</b>
<b>Accountancy /audit</b>	France Luxembourg (for audit) Portugal (for audit) Spain (for audit)	Belgium Cyprus Czech Republic (for audit) Germany <i>Greece</i> Hungary (for audit) Italy Lithuania (for audit) Luxembourg Netherlands (for audit) Poland (for audit) Portugal (for non-audit) Slovenia (for audit)	<b>France:</b> from 25/3/04 the law now allows personal informative advertising (cold calling and comparative advertising are still not permitted). Project also underway to modify the ethical code to relax advertising restrictions contained therein to allow 'solicitation'. <b>Germany:</b> review underway of rules of professional body on advertising with the aim of relaxing the restrictions.
<b>Tax Consultants</b> (where this profession exists separately)	Poland	Germany Spain	
<b>Architects</b>	Cyprus Italy	Belgium <i>Greece</i> Ireland Luxembourg Portugal	<b>Ireland:</b> professional body withdrew restrictions in 2004 following intervention by the NCA. <b>Italy:</b> ethical code was reviewed in 2004 to relax advertising restrictions contained therein in agreement with NCA.
<b>Engineers</b>	Cyprus	<i>Greece</i> Ireland Italy Luxembourg	<b>Ireland:</b> restrictions have been removed following publication of the NCA's report on engineers in 2004. <b>Italy:</b> there are plans to review the ethical code with the aim of relaxing the advertising restrictions contained therein
<b>Legal profession</b>	Estonia <i>Greece</i> Hungary Ireland (for barristers only) Lithuania Poland Portugal	Austria <i>Belgium</i> Cyprus <i>Czech Republic</i> Denmark France Germany Ireland (for solicitors)	<b>Denmark:</b> work is underway on legislation to remove the advertising restrictions. <b>Estonia:</b> consideration being given to amending the law to permit price lists to be published. <b>France:</b> project 'décret' underway to reform the ethical code so that lawyers will not have to get ex-ante authorisation from the professional body for the way they propose to advertise. The décret will also allow lawyers to publicise (provide information) on their services to prospective clients via for example a mail shot, but cold calling or canvassing will still not be allowed.

Profession	Effective prohibition on advertising as @ February 2004	Some advertising restrictions @ February 2004	Reforms made or planned since February 2004
		Italy Luxembourg Slovakia Slovenia Spain Sweden UK – Scotland (for solicitors only)	<b>Germany:</b> internal review underway of professional ethical rules by Federal Chamber of Lawyers, including advertising. <b>Greece:</b> new draft Lawyers Law has been proposed and the intention is to review rules on ‘publicity’ (but not advertising) contained therein. <b>Lithuania:</b> new Law on the Bar relaxed the effective prohibition on advertising to allow some limited ‘publicity’ by lawyers e.g. via business cards. Promotional activities by an individual lawyer of their practice are still prohibited. <b>Portugal:</b> new law enacted in 2005 modifying the Statute of the Portuguese Bar relaxed the advertising rules to allow ‘publicity’ type activities if objective and lawful. <b>UK – Scotland:</b> restrictions are under review by the Scottish Executive Working Group on the Legal Services Market in Scotland. The Law Society of Scotland has agreed to review the advertising restrictions identified in the review and to consult the NCA on proposed alternatives.
<b>Notaries</b>	<i>Czech Republic</i> Estonia France Greece Italy Latvia Lithuania Luxembourg <i>Malta</i> Poland Portugal Slovakia Slovenia Spain	Austria Germany <i>Hungary</i> UK – England and Wales (for Notaries Public)	<b>Italy:</b> project to elaborate new ethical rules on the provision of information to the public.
<b>Pharmacists</b>	Cyprus France (for prescription only products) Greece Hungary (for prescription only products) Ireland Lithuania (for prescription only products) Luxembourg	<i>Austria</i> <i>Czech Republic</i> Finland France (for non-prescription products only) Germany (advertising has to comply with professional rules) <i>Malta</i> Netherlands	<b>France:</b> plans to ask the NCA for an opinion on the rules on advertising included in the professional body’s deontological code. <b>Hungary:</b> plans to review the law on advertising in the pharmaceutical area to bring them into line with the revised ethical code which has been reformed and the provisions on advertising revised to the satisfaction of the NCA. <b>Luxembourg:</b> plans to incorporate the professional guidelines on advertising into the ethical code and make them binding (i.e. the rules are about to become more restrictive).

Profession	Effective prohibition on advertising as @ February 2004	Some advertising restrictions @ February 2004	Reforms made or planned since February 2004
	Portugal Spain	<i>Poland</i> Slovenia Sweden UK	

Source: National regulators responses to Commission questionnaire dated December 2004. Where responses were either incomplete or not received information has been taken from the 2004 Report, or the Stocktaking Report on the new EU Member States, and the country name is shown in *italics*.

**Annex 5: Cases opened by national competition authorities under the EC competition rules since February 2004 covering the six professions under study**

	Country	Profession	Restriction	Case status
<b>Fixed and recommended prices</b>	Austria	Architects and engineers (Austrian Builders Association)	Recommended prices	It was found that the ‘non-binding’ recommended price scales were in fact binding in effect and contrary to Art.81. Decision by the Cartel Court that the Bundesinnung Bau (Austrian Builders Association) has to revoke the recommended price scale and change it into a guideline.
	Netherlands	Lawyers (Dutch Bar Association)	Restrictions on fee agreements	Open
	Netherlands	Pharmacies (Dutch Association of Pharmacy)	Recommended prices, market sharing and joint selling/buying agreements	Open
<b>Advertising restrictions</b>	Hungary	Accountants (Hungarian Chamber of Accountants)	Advertising restrictions	Open
	Hungary	Lawyers (Hungarian Bar Association)	Advertising restrictions	Open
	Slovakia	Lawyers (Slovak Chamber of Advocates)	Advertising restrictions	Open
	UK	Solicitors (The Law Society of Northern Ireland)	Advertising restrictions	Closed due to satisfactory voluntary resolution of the competition concerns by the Law Society.
<b>Business structure restrictions</b>	Germany	Tax consultants (Federal Association of Tax Consultants)	Collaborative restrictions	Closed in Feb 05 due to satisfactory voluntary resolution of the competition concerns by the Association.
<b>Other</b>	UK	Barristers (General Council of the Bar of England and Wales Mutual Indemnity Fund)	Bar obligation on members to contribute to the Mutual Indemnity Fund for professional insurance	Closed in March 05 - insufficient evidence
	UK	Solicitors (Law Society of Scotland)	Law Society requires members to purchase professional insurance from the Law Society’s Master Policy	Closed in Feb 05 – insufficient evidence

N.B. A further case has just been reported as being opened by the Czech Republic. This relates to advertising restrictions by the Czech Chamber of Pharmacists.