



OECD Competition Assessment Reviews

PORTUGAL

VOLUME II - SELF-REGULATED PROFESSIONS



OECD Competition Assessment Reviews: Portugal

VOLUME II - SELF-REGULATED PROFESSIONS

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Foreword

Following a deep recession, Portugal has been recovering steadily since 2014. The economy is back on a positive growth path, with past structural reforms and more favourable global economic conditions all contributing to the upswing. The recovery has largely been sustained by strong export performance and now domestic demand is also picking up. After receding in the five years following the 2008 crisis, employment growth has also turned positive and wages are increasing, albeit at a modest pace.

Despite this encouraging outlook, the growth trajectory is projected to improve more modestly in the coming years with imbalances reappearing in the economy, especially supply bottlenecks and labour-market skills-mismatches. As such, a new wave of structural reforms is needed to strengthen Portugal's economic and social sustainability. Reducing still-high regulatory barriers to competition and market entry will foster innovation, efficiency and productivity. It will also lead to more firms and professionals entering the market, thus supporting more investments and ultimately job creation.

This is why, in 2016, the Portuguese Competition Authority asked the OECD to identify and assess the impact of regulatory barriers to competition in the land and maritime transport sectors and in self-regulated professions in Portugal. This report describes the outcome of the OECD's review of self-regulated professions; it was conducted in close co-ordination with the Portuguese authorities, bearing in mind their priorities and sensitivities. The professions covered by the review include: lawyers, notaries, solicitors and bailiffs; architects, engineers and technical engineers; auditors, certified accountants, customs brokers, economists; nutritionists and pharmacists.

In Portugal, self-regulated professions employed around 144 000 people (roughly 3% of total employment), and generated a gross value added of almost EUR 4.1 billion, or 2.3% of GDP, in 2016. In terms of services rendered to enterprises, they accounted for around EUR 13.2 billion.

Self-regulated professions play a role in the economy which far exceeds their share of value added and employment. For example, professional services make key contributions to firms in the form of knowledge intensive services. Independent research by the European Commission has demonstrated that the multiplier effect of these professional services can have a positive impact on the output of firms and therefore on the economy as a whole. Conversely, when self-regulated professions are subject to overly restrictive entry restrictions or onerous rules for conducting their business, a lack of competitive pressure may induce them to charge above-market prices, provide sub-optimal services, and fail to adapt to market changes and innovation. The unnecessary costs, time wasted and overly complicated procedures can result in a negative impact on society as a whole.

The access to and exercise of self-regulated professions in Portugal remains restricted even though some improvements have been made. This report provides detailed policy options to either mitigate or eliminate regulatory barriers, including those that constrain the ability of professionals to compete (e.g. by imposing exercise conditions); treat

competitors differently (e.g. by favouring specific categories of professionals); or, facilitate co-ordination among competitors (e.g. by imposing the same prices for certain acts).

The OECD Competition Assessment project, carried out in close collaboration with the Portuguese Competition Authority, examined around 700 pieces of legislation on the self-regulated professions. The project team identified 363 provisions as harming competition, and made 348 recommendations for change. If the recommendations in this report are implemented in full, the total positive impact on the Portuguese economy is estimated to be around **EUR 130 million per year**, equivalent to 0.07% of GDP. In addition to the directly quantifiable benefits, the multiplier and long-term effects on the Portuguese economy will produce positive long-term effects on employment, productivity and growth.

I congratulate the efforts undertaken by the Portuguese Government and the work of the Portuguese Competition Authority to reinforce competition law and simplify the business environment for the self-regulated professions reviewed. These are important and necessary steps towards designing, developing and delivering better policies for the benefit of all Portuguese citizens.



Angel Gurría
Secretary-General, OECD

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- Professional Association of Certified Auditors (OROC);
- Professional Association of Customs Brokers (ODO);
- Professional Association of Economists (OE);
- Professional Association of Engineers (OE);
- Professional Association of Pharmacists (OF);
- Professional Association of Notaries (ON);
- Professional Association of Nutritionists (ONUT);
- Professional Association of Technical Engineers (OET);
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Table of contents

Abbreviations and acronyms.....	13
Preface by Margarida Matos Rosa	17
Executive summary	19
Chapter 1. Assessment and recommendations.....	23
1.1. The benefits of competition	25
1.2. Main recommendations from the Competition Assessment Project	28
1.3. Horizontal findings	32
1.4. Benefits of lifting barriers and prioritisation of recommendations	33
Notes	37
References.....	39
Chapter 2. Overview of the regulated professions.....	43
2.1. Economic overview of the regulated professions in Portugal.....	45
2.2. Linkages between professional services and the rest of the economy	48
2.3. The rationale for regulating liberal professions	50
2.4. The competition implications of liberal profession regulations.....	51
2.5. Models of regulation for professional services	52
2.6. The current regulatory framework in Portugal and opportunities for reform	53
Notes	57
References.....	58
Chapter 3. Regulatory barriers common to self-regulated professions in Portugal	61
3.1. The representative and regulatory powers of public professional associations in Portugal.....	62
3.2. Academic qualifications to access the profession	70
3.3. Organisation and duration of internship	76
3.4. Reserved activities	84
3.5. Professional firms	98
Notes	112
References.....	124
Chapter 4. Legal professions in Portugal	127
4.1. Introduction.....	128
4.2. The particular need for regulation of legal services.....	128
4.3. Overview of legal services.....	133
Notes	141
References.....	144
Annex 4.A. Benefits to consumers	148
Chapter 5. Technical and scientific professions.....	149
5.1. Introduction.....	150

5.2. Designation of the technician responsible for determining the level of conservation of a structure.....	155
5.3. Price as a factor of competition for architects.....	156
5.4. Ambiguity of terminology used in provisions	157
Notes	158
References.....	159
Annex 5.A. Benefits to consumers	160
Chapter 6. Financial and economic professions	161
6.1. Introduction.....	162
6.2. Compulsory disclosure of information by auditors to the professional association	168
6.3. Publication of an annual transparency report by auditors and firms of auditors.....	169
6.4. Minimum financial requirements for customs brokers	170
Notes	171
References.....	172
Annex 6.A. Benefits to consumers	173
Chapter 7. Health professions	175
7.1. Introduction.....	176
7.2. Exclusivity of functions for pharmacists	181
7.3. Draft-Law 34/XIII: Reserved activities for healthcare professionals	181
Notes	184
References.....	186
Annex A. Methodology.....	187
Stage 1 – Mapping the sectors	188
Stage 2 – Screening of the legislation.....	189
Stage 3 – Analysis of the selected provisions	190
Stages 4 and 5 – Formulation of recommendations.....	191
Co-operation with the Portuguese administration.....	193
Annex A Notes.....	194
Annex B. Legislation screening by sector	195
Framework legislation of the self-regulated professions	196
Legal professions: Lawyers	204
Solicitors and Bailiffs	238
Notaries.....	256
Technical and scientific professions: Common provisions.....	294
Technical and scientific professions: Architects.....	301
Technical and scientific professions: Engineers	310
Technical and scientific professions: Technical Engineers	318
Financial and economic professions: Auditors	328
Financial and economic professions: Certified accountants	340
Financial and economic professions: Custom brokers.....	347
Financial and economic professions: Economists	355
Health professions: Nutritionists.....	360
Health professions: Pharmacists	373

Tables

Table 1.1. Summary of the legal provisions analysed by profession	25
Table 1.2. Synthesis of economic benefits to the economy by item, 2015.....	35
Table 4.1. Summary of analysed provisions applicable to the legal professions	128
Table 5.1. Summary of analysed provisions applicable to the technical and scientific professions ..	155
Table 6.1. Summary of analysed provisions applicable to the financial and economic professions ...	168
Table 7.1. Summary of analysed provisions applicable to the health professions	178
 Annex Table 4.A.1. Impacts of legal services on all firms in Portugal, 2015	 148
 Table A B.1. Framework legislation of the self-regulated professions	 196
Table A B.2. Legal professions: Lawyers	204
Table A B.3. Legal professions: Solicitors and Bailiffs	238
Table A B.4. Legal professions: Notaries.....	256
Table A B.5. Technical and scientific professions: Common provisions.....	294
Table A B.6. Technical and scientific professions: Architects.....	301
Table A B.7. Technical and scientific professions: Engineers	310
Table A B.8. Technical and scientific professions: Technical Engineers	318
Table A B.9. Financial and economic professions: Auditors	328
Table A B.10. Financial and economic professions: Certified accountants	340
Table A B.11. Financial and economic professions: Custom brokers.....	347
Table A B.12. Financial and economic professions: Economists	355
Table A B.13. Health professions: Nutritionists.....	360
Table A B.14. Health professions: Pharmacists	373

Figures

Figure 2.1. Gross value added of the regulated professions in Portugal (current prices).....	45
Figure 2.2. GVA of the regulated professions as a share of GDP	46
Figure 2.3. Regulated professions as % of total employment in Portugal.....	47
Figure 2.4. Share of regulated professions in total labour force in 2015.....	47
Figure 2.5. Distribution of turnover by regulated professions in Portugal, 2016	48
Figure 2.6. Distribution of the services rendered by regulated professions in Portugal, 2008-2015....	49
Figure 2.7. Product Market Regulation indicator for the legal professions.....	54
Figure 2.8. Product Market Regulation indicator for accounting-related professions.....	55
Figure 2.9. Product Market Regulation indicator for engineering professions	55
Figure 2.10. Product Market indicator for the architecture profession.....	56
Figure 4.1. Active lawyers per 100 000 inhabitants, 2015	133
Figure 5.1. Distribution of the engineering and architectural services provided to firms in Portugal, 2015	153
Figure 5.2. Distribution of members of the Professional Association of Engineers, 2015	154
Figure 5.3. Number of civil engineers for every 100 000 inhabitants, 2011	154
Figure 6.1. Distribution of the accounting, auditing and consulting services provided to firms in Portugal, 2015	166
Figure 7.1. Number of nutritionists distributed per area of practice in Portugal, 2015	177
Figure 7.2. Practising pharmacists, in 2000 and 2015.....	178
 Figure A A.1. Changes in consumer surplus.....	 192

Boxes

Box 1.1. Benefits of reform in the regulated professions, selected studies	27
Box 1.2. What is regulatory quality?	33
Box 1.3. Administrative burden	36
Box 2.1. Recent reforms in the field of regulated professions in other EU Member States	57
Box 3.1. Recognition of professional qualifications among EU Member States	63
Box 3.2. The powers of public professional associations in Portugal	64
Box 3.3. Rules for creating new public professional associations	65
Box 3.4. The role of the supervisory body	68
Box 3.5. Regulatory versus representative functions for professional associations in England and Wales	69
Box 3.6. Innovation in legal services	87
Box 3.7. Type the title here	92
Box 3.8. Engineering regulation: The case of Denmark	96
Box 3.9. Automatic recognition of pharmacists' qualifications	98
Box 4.1. Effect of deregulation of the legal professions, among others, in Poland	134
Box 4.2. Bailiffs	137
Box 4.3. Recommendation 1/2007 by the Portuguese Competition Authority	140
Box 4.4. Reform of the profession of notary in France (Loi Macron)	142
Box 5.1. The Ombudsman for architecture	154
Box 6.1. The protected professional title of "economist"	166
Box 7.1. Reforms of regulation of pharmacies in Portugal	182
Box A A.1. OECD competition checklist	192
Box A A.2. Measuring changes in consumer surplus	194

Abbreviations and acronyms

ABS	Alternative business structures
AdC	Portuguese Competition Authority (<i>Autoridade da Concorrência</i>)
AI	Artificial intelligence
ASAP	Portuguese Association of Law Firms (<i>Associação das Sociedades de Advogados de Portugal</i>)
AT	Tax and Customs Authority (<i>Autoridade Tributária e Aduaneira</i>)
CAAJ	Commission for the monitoring of Justice Assistants (<i>Comissão para o Acompanhamento dos Auxiliares de Justiça</i>)
CAN	Centre for Nutrition Advocacy (US)
CCB	Canadian Competition Bureau
CCBE	Council of Bars and Law Societies of Europe
CDN	National directive council
CDR	Regional directive council
CED	Council of European Dentists
CEDIPRE	Centre for Studies in Public Law and Regulation (<i>Centro de Estudos de Direito Público e Regulação</i>)
CLC	Council for Licensed Conveyancers (UK)
CMVM	Securities Market Commission (<i>Comissão do Mercado de Valores Mobiliários</i>)
CNEF	National Committee for Education and training (<i>Confederação Nacional de Educação e Formação</i>)
COICOP	Classification of individual consumption by purpose
CPE	Common Professional examination (UK)
CPI	Consumer Price Index
CPME	Standing Committee of European Doctors
CSJPS	Civil and Social Justice Panel Survey
CSMP <i>Público</i>)	High Council of the Public Prosecution Service (<i>Conselho Superior do Ministério</i>
CSN	High Council of French Notaries (<i>Conseil Supérieur du Notariat</i>)
DGERT	Directorate General for Employment and Labour Relations, Portugal (<i>Direção-Geral do Emprego e das Relações de Trabalho</i>)

ECTS	European Credit Transfer and Accumulation System
EFTA	European Free Trade Association
ERC	Enterprise Research Centre (UK)
FCA	French Competition Authority (<i>Autorité de la concurrence</i>)
FDI	Foreign direct investment
GDL	Graduate Diploma in Law (England and Wales), formerly CPE
GDP	Gross domestic product
GOR	Gross operating rate
GPA	Grade point average
GVA	Gross value added
HLC	High-level committee
ICAEW	Institute of Chartered Accountants in England and Wales
ICDA	International Confederation of Dietetic Associations
IFAC	International Federation of Accountants
ILP	Incorporated legal practices (New South Wales, Australia)
IMPIC	Institute of Public Markets, Real Estate and Construction (<i>Instituto dos Mercados Públicos, do Imobiliário e da Construção</i>)
INE	Portuguese Bureau of Statistics (<i>Instituto Nacional de Estatística</i>)
IPF	International Pharmaceutical Federation
IPR	Intellectual property rights
IT	Information technology
JD	Juris doctor
KIBS	knowledge-intensive business services
LDP	Legal disciplinary partnership
LSAT	Law School Admission Test (US)
LSB	Legal Services Board (England and Wales)
MDP	Multi-disciplinary partnership
MFP	Multifactor productivity
MoU	Memorandum of Understanding
n.e.c.	Not elsewhere classified
NACE	Statistical Classification of Economic Activities (European Union)
OCC	Professional Association of Certified Accountants (<i>Ordem dos Contabilistas Certificados</i>)
ODE	Professional Association of Economists (<i>Ordem dos Economistas</i>)
ODO	Professional Association of Customs Brokers (<i>Ordem dos Despachantes Oficiais</i>)

ODR	Online dispute resolution
OROC	Portuguese Association of Auditors (<i>Ordem dos Revisores Oficiais de Contas</i>)
PGEU	Pharmaceutical Group of the European Union
PMR	Product Market Regulation (indicators)
PSC	Points of Single Contact
QLD	Qualifying Law Degree (UK)
R&D	Research and development
SME	Small and medium-sized enterprises
SRA	Solicitors Regulation Authority (UK)
TFEU	Treaty on the Functioning of the European Union

Preface

by

Margarida Matos Rosa
President of the Board of the Portuguese Competition Authority

Ensuring compliance with the Portuguese competition law and advocating in favour of competition in the Portuguese economy is the core mission of the Autoridade da Concorrência (AdC) - Portuguese Competition Authority. The work of the AdC includes fostering healthy competition among market players and raising awareness among economic agents and relevant authorities about the benefits of competition.

In that context, the AdC is increasingly involved in contributing to the continued improvement of Portugal's regulatory environment through the use of competition impact assessment of legislation and regulation that may affect competition in all economic areas, in cooperation with public and private stakeholders.

The AdC's experience in this field has shown the importance of having the analytical capacity to assess the impact on competition of existing legislation and regulation, while also promoting the assessment of new public policies, *ex ante*, across the relevant bodies and institutions.

Ensuring that regulation is not needlessly burdensome is crucial to the dynamic and efficient functioning of markets, while giving effective responses to public needs. Good regulation of markets supports and enables wider consumer choice, which in turn generally leads to lower consumer prices and faster adoption of innovations.

In light of the longstanding experience of the OECD in assessing the regulatory impact of competition, the AdC embarked on a collaborative project with the OECD to carry out an in-depth competition assessment of regulations in two major sectors of the Portuguese economy. The project was based on the competition assessment methodology developed by the Competition Committee of the OECD.

The sectors chosen for analysis were transport (land and maritime), and 13 self-regulated (liberal) professions. This report is the result of this analysis which identifies and assesses the impact of existing regulatory barriers to competition in these two sectors. Based on the findings, the report sets out 765 recommendations for change to Portuguese regulations.

In addition to the recommendations, capacity-building was also a central objective of the project, both for the AdC, as well as the experts from sector regulators and Government that participated in the project. Indeed capacity-building within the institution and in the wider Portuguese institutional framework in reviewing competitive effects may ultimately prove to be one of the main benefits of this project in the long-term.

The AdC will now focus on the implementation of the recommendations, and on continuing the work to consolidate a culture of competition impact assessment to other sectors of the Portuguese economy. Following these recommendations, the AdC will make specific proposals for implementation and continuity of engagement with stakeholders.

In parallel, the AdC will also develop guidelines to support the regular assessment of Portuguese policies and regulations, aiming to promote a regulatory environment of smart regulation where efficient and dynamic markets coexist with the needs of society.

I would like to express my sincere gratitude to the OECD team, AdC staff, and to all stakeholders who were involved in the project, for carrying out this comprehensive, ambitious Competition Assessment Review. This project was carried out with the financial support of the COMPETE 2020 programme, to which we express our thanks.

The collaborative AdC/OECD project was a landmark in competition impact assessment in Portugal and will surely contribute to reinforcing change in the regulatory culture in Portugal, leading to a more competitive, dynamic and innovative business environment.

Margarida Matos Rosa

A handwritten signature in black ink, consisting of a large, stylized 'M' followed by a horizontal line.

President of the Board of the
Portuguese Competition Authority

Executive summary

In 2016, the OECD was asked by the Portuguese Competition Authority to carry out a study to identify and assess the impact of regulatory barriers to competition in the land and maritime transport sectors, and for 13 self-regulated professions in Portugal. This report describes the outcome of the Competition Assessment Project for the self-regulated professions.

Liberal or self-regulated professions are a central force in any economy. They provide key services to businesses and individuals and are indispensable for the good functioning of society. Well-regulated professions contribute to the respect of and the trust in the rule of law and support the business environment. Moreover, several liberal professions in themselves provide essential business inputs in the form of knowledge, skills and expertise in the production process, and as such act as multipliers in the production function.

However, when the good functioning of the professions is hampered by excessively protectionist regulation which reduces access and stifles the conduct to the benefit of vested interests, professionals have few incentives to improve their services. As a consequence, consumers and businesses may suffer from a lack of access, sub-optimal service provisions and, in many cases, high prices that do not reflect the real cost of providing those services.

Out of the 18 self-regulated professions in exercise when the Project started, 13 were chosen for analysis: lawyers, solicitors, bailiffs, notaries, engineers, technical engineers, architects, auditors, certified accountants, customs brokers, economists, pharmacists and nutritionists, as these all contribute to the business environment in one form or the other.

The Project was divided in five stages, using the OECD methodology of Competition Assessment. This included mapping the legislation with potential restrictions, identifying the policy objectives for each provision, in-depth analysis of the regulations, and an assessment of whether the barriers identified were proportional to the policy objective (such as public safety, etc.). When necessary the report proposes changes to regulations that are hampering market entry and access to the self-regulated professions beyond what is necessary to guarantee the public interest.

The report identifies 363 provisions as harming competition, and makes 348 recommendations for change. In addition, six provisions were found to constitute an administrative burden to consumers and society. Annex B of this report provides the full set of recommendations identified as harmful as well as analysis of other provisions that were found to contain only moderate barriers, or that were not considered harmful.

The most common restrictions found in the provisions analysed were the protective powers of the regulatory professional bodies, entry barriers (academic qualifications; long internships); exclusive rights (attribution of professional titles; reserved activities);

prohibition on advertising; and restrictions of organisational forms (prohibition of multi-disciplinary practice; restrictions on partnership or management). The report also outlines the expected benefits from lifting these restrictions and, whenever possible, provides a quantitative estimative of the benefits of these recommendations to the Portuguese economy or to consumers.

From lifting the restrictions that were identified, we calculate a total positive impact on the Portuguese economy of around EUR 128 million per year, based on a highly conservative estimate of a price reduction of 2.5% for some professional services. Moreover, we find a multiplier effect of 1.49 in the case of legal and accounting activities together. This means that EUR 1.00 of additional final demand for “legal and accounting services” leads to 1.49 times as much increase in output for business. This turnover effect should be added to the direct effect from a price decrease.

Provided the recommendations are fully implemented, we estimate that there will be more entry of newcomers into most professions; a reduction in the administrative burden for professionals; a decrease in prices for consumers; a wider offer of services and new business types (so-called alternative business structures); an increase in the demand for professional services due to lower prices and increased trust in those services; as well as better access to professional services, including legal support, for the most vulnerable consumers.

Key recommendations:

- Separate the regulatory function from the representative function for self-regulated professional associations. This could be either through the creation of an over-arching independent supervisory body by sector or trade—or through the creation of a supervisory body within the current professional orders with the necessary “Chinese walls”. The supervisory body would take on the main regulation of the profession such as regulating access to the profession, the upholding of standards and similar functions.
- The board of the supervisory body will include not only representative of the profession but also other people, including high-profile and experienced individuals from other regulators or organisations, representatives of consumer organisations and academia. The introduction of independent oversight will encourage better regulation of the sector, and create more incentives to innovate, to the benefit of clients.
- Open certain professions to individuals with a different education than a university degree in their profession. Candidates may be required to take a postgraduate degree in their desired profession or a conversion course, and should undergo the same on-the-job training as others, including passing the relevant exams administered by professional associations. This will open access to more individuals with different backgrounds, allowing for more diversity in the profession and in the services offered, as well as more innovation.
- The authorities should consider abolishing certain reserved activities (e.g. for engineers, technical engineers and architects) and replace them with output-focused regulation, such as quality standards for building works or materials, as is already the case in many jurisdictions in the European Union. Current strict entry requirements already guarantee that only qualified individuals may perform the work.

- Open up current regulatory restrictions, among others, on the reserved activities that may lead to the exclusion of alternative online services. Online provision of services, especially in standardised form such as testaments, not necessarily linked to the provision of services by a professional individual, (e.g. use of artificial intelligence and database services) may allow consumers easier, speedier and cheaper access to professional services.
- Partnership, ownership and management of professional firms should be open to individuals outside the profession and multidisciplinary firms should be allowed. The creation of "alternative business structures" will enable different forms of business models to emerge within the market, to cater for different types of market players whether innovative start-ups, one-person cabinets or traditional professional firms.
- The establishment criteria (quotas and territorial limitations) for notaries should be abolished to allow for competition between notarial offices. As an alternative, a technical study should reassess the demand for notarial services (in urban areas, on the coast, in touristic areas) and the viability of notarial offices. Based on this study, areas of free establishment should be created where demand and economic activity are high. Access would remain controlled in rural and weakly populated areas, where the viability of notarial offices is reduced.
- Remove the recently introduced requirement of a having a university degree for customs brokers to allow for easier access to the profession to those who may meet all other criteria including moral and financial criteria.

Chapter 1. Assessment and recommendations

This assessment identifies distortions to competition in the Portuguese legislation. It proposes recommendations for the removal of regulatory barriers to competition in the regulations of 13 self-regulated professions: lawyers, notaries, solicitors and bailiffs; architects, engineers and technical engineers; auditors, certified accountants, customs brokers, economists; nutritionists and pharmacists. The benefits resulting from the removal of regulatory barriers will lead to increased entry and facilitate business conduct, thereby bringing about lower prices, more innovative and diverse services and greater choice for consumers, and the ability to better meet wide-ranging demand as new, more efficient professional firms enter the market or existing professional firms adopt innovative forms of production and delivery of services. Provided the recommendations are implemented, the OECD estimates that the positive impact on the Portuguese economy will be around EUR 128 million.

Laws and regulations are key instruments in achieving public-policy objectives, such as consumer protection, public services and environmental protection. The regulations covering the liberal professions are particularly important in ensuring the protection of economic agents; trust in legal outcomes and public works, and as guarantors of public health and safety among others. However, when they are overly restrictive or onerous and impose strict rules for entry into or exercise of the profession, they may hamper the good functioning of the economy and prevent economic agents from choosing themselves the most efficient way to conduct their business. Consumers may suffer from needlessly high prices or sub-optimal services. Negative externalities may arise from time wasted on overly complicated procedures. A comprehensive review can help identify problematic areas and develop alternative policies that still achieve government objectives without harming competition.

The Competition Assessment of Laws and Regulations Project (the Project) has identified regulatory barriers to competition in 13 self-regulated professions, including regulations that restrict entry into a market, constrain professionals' ability to compete (e.g. by imposing exercise conditions), treat competitors differently (e.g. by favouring specific categories of professionals) or facilitate co-ordination among competitors. The methodology followed in this systematic exercise is summarised in Annex A, which also describes the stages of the Project and provides full references to the OECD Competition Assessment methodology. This report presents the resulting analysis and makes recommendations for legislative reform. These recommendations aim to either mitigate or eliminate those barriers while preserving the objectives pursued by the legal provisions.

The 13 professions included in this study are grouped as follows:

- **Legal professions:** lawyers (*advogados*), notaries (*notários*), solicitors (*solicitadores*) and bailiffs (*agentes de execução*);
- **Technical/scientific professions:** architects (*arquitectos*), engineers (*engenheiros*) and technical engineers (*engenheiros técnicos*);
- **Financial-economic professions:** Auditors (*revisores oficiais de contas*), Certified Accountants (*contabilistas certificados*), Economists (*economistas*) and Customs Brokers (*despachantes oficiais*);
- **Health professions:** nutritionists (*nutricionistas*) and pharmacists (*farmacêuticos*).

These professions are all self-regulated, within a broader regime of co-regulation of professional associations ("orders") in Portugal, and require of their members compulsory registration in the corresponding public professional association in order to practise their line of work. The access, exercise and conduct of professionals in these trades are subject to the regulatory and disciplinary power of those professional orders. The professions studied here were chosen because of their general contribution to the economy in the form of services to businesses.¹

Broader, more over-arching regulatory matters, such as labour or tax law were excluded from the analysis. The regulation of the establishment, retail or commercial activities of professionals is also excluded from study. Also, any procedures or rules for the access to public careers or public tenders are excluded from the study. While our study also identified a number of purely administrative burdens that professionals or consumers must face within the provision of or access to professional services, these are not directly addressed in this study. They are however listed in the annexes of this report, by profession.

Table 1.1. Summary of the legal provisions analysed by profession

		Pieces of legislation Analysed *	Recommendations (includes administrative burden)	Total number of provisions
Legal professions	Lawyers	103	75	76
	Notaries	168	63	65
	Solicitors and bailiffs	124	44	44
Financial professions	Auditors	54	24	24
	Certified accountants	74	12	12
	Customs brokers	14	13	13
	Economists	10	4	7
Health professions	Nutritionists	14	20	22
	Pharmacists	31	15	15
Technical/ scientific professions	Architects	41	17	19
	Engineers	15	16	16
	Applicable to several	14	14	14
	Technical engineers	19	21	22
	Framework	14	10	14
	Total	695	348	363

The following section presents the benefits of competition in the context of liberal professions, before giving the main findings from the Project, including the estimated benefits from removing the regulatory barriers.

1.1. The benefits of competition

Consumers' ability to choose between different providers of goods or services benefits not only consumers themselves, but also the economy as a whole. When customers can choose, firms are forced to compete with each other, innovate more and be more productive (Nickell, 1996; Blundell et al., 1999; Griffith et al., 2006; Haskel et al., 2012; Aghion et al., 2004). Industries in which there is greater competition experience faster productivity growth. These conclusions have been confirmed by a wide variety of empirical studies, as summarised in OECD (2014a). Other important benefits of competition include lower consumer prices, thus allowing the services to meet a wider demand, greater consumer choice, better quality of products and services, higher employment, greater investment in research and development (R&D) and faster adoption of innovation.

Competition stimulates productivity primarily because it provides the opportunity for more efficient firms to enter and gain market share at the expense of less efficient firms. Increased productivity from competition may arise as a result of both static and dynamic gains. Static gains follow from eliminating inefficiencies as the incumbents facing competitive pressures cease to live the "comfortable life". Dynamic efficiency improvements arise, for example, because competition improves the ability of owners or the financial market to monitor managers, by enhancing opportunities for comparing performance, thereby enhancing the incentive to innovate to gain market share or because competition leads managers to work harder to maintain profits (Nicoletti and Scarpetta, 2003).

In addition to the evidence that competition promotes growth, many studies have shown the positive effects of more flexible product market regulation, the area most relevant for this project.² The studies analyse the impact of regulation on productivity, employment, R&D and investment, among other variables. Differences in regulation also matter and can significantly reduce both trade and foreign direct investment (FDI) (Fournier et al., 2015; Fournier, 2015).³

There is a particularly large body of evidence on the productivity gains from more flexible product market regulation. At firm and industry level, restrictive product market regulation is associated with lower multifactor productivity (MFP) levels (e.g. Nicoletti and Scarpetta, 2003; Arnold et al., 2011).⁴ This result also holds at the aggregate level (Égert and Wanner, 2016).⁵ Anticompetitive regulations have an impact on productivity that goes beyond the sector in which they are applied and this effect is more important for the sectors closer to the productivity frontier (Bourlès et al., 2013).⁶ Specifically, a large part of the impact on productivity goes through the channel of investment in R&D.

Innovation and investment in knowledge-based capital, such as computerised information, intellectual property rights (IPRs) and economic competencies, are also negatively affected by stricter product market regulation (Andrews and Criscuolo, 2013; Andrews and Westmore, 2014). Lifting barriers also enables innovative firms to combine more efficiently the resources needed to market new ideas and products. Pro-competition reforms to product market regulation are associated with an increase in the number of patents (Westmore, 2014).

Greater flexibility can also lead to higher employment. Cahuc and Kamarz (2004) find that after deregulating the road transport sector in France, employment levels in road transport increased at a faster rate than before deregulation.⁷ In another study (Criscuolo et al. 2014) the authors find that small firms that are five years old or less on average contribute to about 42% of job creation.⁸ As noted in OECD (2015a), “such a disproportionately large role by young firms in job creation suggests that reducing barriers to entrepreneurship can contribute significantly to income equality via employment effects”.

Within the professional services, a high level of regulation seems to be positively correlated with a smaller number of professionals but higher turnover per professional (OECD, 2007). The impact of lifting anticompetitive regulations on income inequality is unclear, however. On the one hand, greater flexibility leads to higher employment; on the other, deregulation is also associated with greater wage dispersion.⁹ Nevertheless, it is clear that “restricting competition causes harm to the many, while the profits generally go the few” (OECD, 2014b, p. 3). Recent work (OECD, 2015b) investigates the relationship between competition and inequality. The authors calibrate a model to assess the redistributive effects of market power in eight countries.¹⁰ They find that market power benefits the wealthiest households and that the share of wealth of the top 10% of households deriving from market power is between 10% and 24%.

Roper et al. (2015) report that the introduction of other forms of business models, such as “alternative business structures – ABS”, leads to higher innovation in the provision of legal services. In particular, the Enterprise Research Centre (ERC) observed an increase in quality and a higher range of services provided. Additionally, as mentioned in the Dec 2016 Competition & Markets Authority (CMA) Final Report on Legal Services, in its July 2016 Report on innovation in the legal services in England and Wales, the ERC estimated that, all other things being equal, ABSs are 13% to 15% more likely to introduce new legal services. Moreover, ERC found that the major effect on innovation in

the legal services has been to extend the range of services, improve their quality and attract new clients.¹¹ In particular, the most innovative group of providers were the unregulated group.

To sum up, regulations that restrict competition and hinder entry and expansion in markets may be particularly damaging for the economy because they reduce productivity growth, limit investment and innovation and harm employment creation. Several studies demonstrate the economic benefits of reform in the regulated professions (see Box 1.1).

Box 1.1. Benefits of reform in the regulated professions, selected studies

- **Gains to GDP:** Paterson et al. (2007) carried out a comparative study about the regulation of four categories of professional services across the EU (legal, accounting, technical, and pharmacists) based on two indicators: entry and conduct regulation. This study demonstrates a negative correlation between the degree of regulation and productivity in legal, accounting and technical services (engineering and architects). Also, an empirical analysis of services regulation by Monteagudo et al. (2012) measured the results of regulatory changes on the barriers before and after the implementation of the Services Directive, and concluded that the implementation of the Directive has generated an extra 0.81% of EU GDP, ranging from 0.26% to 1.78%, depending on the Member State. The impact on the Portuguese GDP was 0.80%.
- **New professional entry and wages:** The impact of regulatory entry restrictions is significant. A study carried out in 2015 by the European Commission (COM 2017a, 820 final) show that removing regulatory barriers can lead to increased entry of professionals into a specific market, by between 3% and 9%. The study also demonstrates that the presence of entry barriers lead to an average wage premium of 4%, which can go up to 19.2% in some specific professional groups. These differences in wage premium across professional groups suggests that entry barriers and reserved activities can distort relative wages, which, in turn, will be translated into higher prices for consumers of these professional services.
- **Productivity:** In COM (2017b) 820 final, the EC also refers to a study carried out by the World Bank on liberal professions and so-called "reserved activities" (i.e. the fact that certain tasks are reserved exclusively for professionals that have obtained very particular qualifications) that suggests that "productivity could be raised by an estimated 5% if services barriers were reduced". For the Portuguese case, the World Bank Group (2016) points out that strict regulations in professional services are positively correlated with lower levels of total factor productivity and GDP per capita. Strong productivity gains can be expected from liberalising entry barriers.

The following chapter presents the context for the liberal professions, before discussing the main findings from the Project, including the estimated benefits from removing the regulatory barriers.

1.2. Main recommendations from the Competition Assessment Project

The access and exercise of liberal professions in Portugal remain restricted even though some attempts at liberalisation have been made. A part-liberalisation was timidly implemented in response to the EU Service Directives,¹² and the recommendations in the 2011 Memorandum of Understanding (MoU)¹³ between the Portuguese government and the three creditor institutions (the International Monetary Fund, the European Central Bank and the European Commission), but numerous barriers to competition and exercise remain.¹⁴

Law 2/2013, the main framework law, which was adapted after the MoU. Art. 26, prohibits the fixing of professional quotas (*numerus clausus*) in gaining access to a profession. It designates the exceptional nature of the establishment of reserved activities as exclusive rights of a profession, and the need to assess the proportionality of some restrictive measures. This seems to indicate that the desire of the policy maker was to create better and more open regulation in this sector. Even so, many restrictions remain in the law. Moreover, several of the clauses in the bylaws adapted by the professional associations (re)impose those very same restrictions that Art. 26 seeks to eliminate. This report analyses those restrictions and proposes changes for further reform.

The following recommendations were developed after a thorough analysis of the legislation and its impact on competition. While most of the recommendations concern several professional groups, others are specific to one group or one profession.

Common legal framework

The professional associations exercise all regulatory and disciplinary functions over their members, and control access to and the exercise of the profession. This may lead to tension between promoting the well-being of the professionals and the public interest. We recommend a separation between the regulatory and the representative functions of public professional associations. This separation will involve the creation of an independent over-arching supervisory body by sector or trade (e.g. legal professions) or the creation of a supervisory body inside the current professional orders (e.g. lawyers, notaries and solicitors) with the necessary “Chinese walls”.

The independent supervisory body takes on the main regulations of the profession such as those regarding access to the profession. In the case of an internal supervisory body, the body could also deal with disciplinary complaints and conduct oversight and similar functions.

The board of the supervisory body will be composed of representatives from the profession itself as well as lay people, including high-profile, experienced individuals from other regulators or organisations, representatives of consumer organisations and academia. The introduction of outside oversight will encourage better regulation of the sector, and more incentives to innovate, to the benefit of clients. This mitigates the inherent conflict of interest in the self-regulatory system and protects the public interest.

To register with a professional association specific academic qualifications are required. We recommend that professions should be opened to candidates with other backgrounds than the current compulsory university degree. For instance, the engineering professions should be opened to individuals with another background than an initial university degree in engineering. The new class of candidates may be required to hold a postgraduate degree or to take a conversion course on the specific profession subject, and should undergo the same training as other candidates, including the professional exam. This will

open access to more individuals with different backgrounds, allowing for more diversity in the offer of services, and more innovation.

The professional associations should work with the legislator to set a transparent, proportional and non-discriminatory process for identification of alternative routes to obtain the strictly necessary or adequate academic qualifications for the exercise of a profession. In certain cases, such as the one for customs brokers, the requirement of a university degree should be abolished.

Internships are intended to certify that candidates acquired the professional and ethical training required for the adequate exercise of a profession. According to the law the organisation and duration of professional internships should not be longer than 18 months. The theoretical training offered during the internship should avoid being a duplication of the subjects already covered and assessed during the academic qualification. This would have a beneficial impact on the duration and cost of internships. The final evaluation of the internship should be conducted by a board, independent of the professional association, which may include members of the latter, but must also include professionals of recognised merit (such as, in the case of the legal professions, law professors and magistrates, among others).

Along with the requirement of registration to obtain the professional title, some professions reserve activities for specific categories of qualified professionals (e.g. lawyers, auditors or engineers). This means that only registered and entitled professionals can perform those acts. Reserved activities for professionals should be reduced to be proportionate, necessary and adequate to the objectives of the professional regulation in question.

In general, reserved activities or tasks for specific categories of professionals should be abolished in cases where: (i) the protection is disproportionate to the policy objective because the tasks may already be performed by other well-qualified professionals or are not a danger to public safety; (ii) there is strong and well-regulated protection of the professional title which guarantees the quality of the professionals that are allowed to work; or (iii) the restriction is no longer required owing to legal, societal or professional developments that make the restriction obsolete by its objective.

Regulations should be adapted to become more output-focused and less prescriptive. The aim should be to ensure that the outcome (a building standard, for instance) is of the desired quality, rather than trying to restrict those allowed to work on the building. This will mean that several professionals with similar but not identical qualifications should be allowed to compete for the same work, subject to scrutiny by the professional association. In the case of the technical professions this may be done through a special regime of case-by-case evaluation of their curricula based on objective and transparent criteria (such as previous experience and training).

A different regulatory structure is also required to encourage the use of online and internet services and to prepare the professions for the future use of modern information technology, such artificial intelligence and blockchain, in service provision. The current regulatory system is ill-equipped to deal with radical or innovative technologies in the professions. A more open regulatory system will also help to bring professionals closer to consumers' needs and increase transparency on rules for access and exercise of the profession.

Portuguese professional firms face restrictive rules on partnerships, shareholding, management and associations among different professionals. We recommend that the ownership and partnership of all professional firms be opened to other professionals and non-professionals. We also recommend that other professionals and non-professionals be

allowed to hold a majority of a professional firm's social capital, together with a majority of voting rights. For instance, the number of partners in a notarial firm should be opened to notaries without a licence, and not limited to any maximum number.

The management of professional firms should include, if decided by the firm, only non-professionals members. The prohibition of multidisciplinary practice in professional firms should be removed, particularly in the case of the four legal professions, where the "professional partnership model" is the only model allowed for the practice of the profession in a collective way.

The creation of such "alternative business structures" will enable different forms of business models to emerge within the market, to cater for different types of market players, whether innovative start-ups, one-person cabinets or traditional professional firms. The interaction of many different players in the market will make the sector more dynamic, more innovative and offer a broader range of services, thereby allowing for better, cheaper and easier access to legal services and legal advice for businesses and consumers.

1.2.1. Legal professions

To register with a professional association in the legal area, a university degree in law or in solicitor's practice is required. We recommend that the professional associations should consider alternative routes to qualifying as a lawyer or solicitor, including if one does not hold a first university degree in these areas. Various ways of doing so, such as a conversion course could be studied by the professional associations. Candidates may also obtain the required academic qualification through other higher university degrees, with possible specialisation in law at the postgraduate level (e.g. studies in economics or philosophy with postgraduate studies in law). This solution would open the possibility for other graduates to access this activity, after undergoing the same training as other legal trainees, including passing the exam of the professional association. It is not uncommon in other countries for postgraduate studies to pave the way for professional practice.

In relation to reserved activities, we recommend that the profession of lawyer should review all its reserved activities with a view to opening the exercise of as many of them to the other legal professions under due supervision of the work performed, by using codes of conduct for instance. Such a review could use, among other things, an assessment of the extent of risk to the public interest from current restrictions to determine whether the restriction should remain in place. We also recommend opening the market of legal advice to professionals other than lawyers and solicitors (i.e. legal experts) and entities for whom they work that want to provide legal advice on a regular basis under due supervision of the professional association or the new supervisory body. This will broaden the offer of legal services, facilitate access to legal advice and spur competition between providers, eventually leading to more innovative services and possibly also lower fees for some standard services.

The exercise of the notarial profession in Portugal is subject to a dual licensing regime, including a geographic segmentation of notarial offices. The establishment criteria (quotas and territorial limitations) for notaries should be abolished to allow for competition between notarial offices. A technical study should be carried out to reassess the demand for notarial services (in urban areas, on the coast, in touristic areas) and the viability of notarial offices. Based on the identification of such high-density, high-demand areas, areas of free establishment should be created where demand and economic activity are high. Access would remain controlled in rural and weakly populated areas where the viability of notarial offices is reduced.

1.2.2. Technical and scientific professions

Architects, engineers and technical engineers are responsible for determining the level of conservation (strength and safety) of a construction. The procedure for choosing the professional who provides the service should be changed from a draw currently to a tendering (competitive award) procedure. This will encourage those who are included in the lists of professionals suitable for the task to compete with each other and will, consequently, create cost savings for entities interested in that service.

Engineers, technical engineers and architects must hold certain specialisations and a minimum number of years of experience to perform certain reserves of activities. We recommend the creation of a special regime to be applied on a case-by-case basis that would take into consideration the professional's work experience and any relevant specialised training, so as to open reserves of activities exceptionally to other technical professionals that meet the required technical knowledge and practice.

1.2.3. Financial/economic professions

Auditors must regularly send operational and confidential information to the Professional Association of Auditors where it may be seen by competing auditors. This increases the risk of collusive behaviour, or discrimination owing to the sharing of information on markets and other sensitive information. The provision should be eliminated and instead the bylaws of the professional association should stipulate that monitoring of the auditors' compliance with their legal obligations is carried out by an independent body (made up of auditors and, in particular, whose members are not auditors), that is competent and impartial.

To become a member of their professional, customs brokers must hold a university degree in several different academic fields. Until very recently a university degree was not considered necessary, and problems arising from the absence of a degree requirement were not well documented. We recommend that the requirement of a university degree be revoked. This will open the market and also allow for entry into the profession for candidates without a university degree, but who may meet other criteria for the profession, including moral and financial criteria.

1.2.4. Health professions

Draft-law 34/XIII currently in parliament reserves a set of acts for the holders of an academic degree in nutritional sciences, in dietetics or in dietetics and nutrition. We recommend that the proposed reserved "acts of nutritionists" should not be reserved only for nutritionists, as other health qualifications should be considered suitable for giving advice on nutrition. Allowing this restriction would exclude a large number of health professionals from providing nutritionist advice (such as school nurses, general practitioners, and so on). It would create a quasi-monopoly to the detriment of consumer welfare, leading to higher prices and more restricted access to dietary advice.

The same draft-law establishes a list of reserved activities for pharmacists. We also recommend revisiting the scope of reserved activities for pharmacists with a view to open them to other healthcare professionals, except in cases where public health might be at risk. This will allow for more entry into the market.

1.3. Horizontal findings

1.3.1. Obsolete legislation

Frequently, provisions superseded by more recent legislation have not yet been explicitly removed from the body of legislation. In its overview of Portugal, the OECD notes that “repealing old laws which are no longer necessary is not common practice” (OECD, 2015b). Obsolete, inactive or redundant legislation can act as a regulatory barrier by creating legal uncertainty and potentially raising regulatory and compliance costs facing suppliers and market players, notably increasing legal costs.

The OECD recommends that superseded legislation be explicitly abolished. By removing obsolete legislation from the body of legislation and the online legal libraries of competent authorities, market participants and potential entrants face a more transparent, less complex and more certain business environment, ensuring that both operation and entry are facilitated. Preferably, legislation should be streamlined in the context of codification of the sectoral legislation.

Regulatory quality

The regulations reviewed in this Project are often scattered across several legal texts and sometimes repeated across many different pieces of legislation. In order for businesses and consumers to have a comprehensive picture of the legislation applicable to a specific economic activity, they need to identify the relevant provisions in many separate texts and understand how these provisions interact with each other. In addition, subsequent modifications to core pieces of legislation result in further fragmentation and a lack of clear rules.

The streamlining and codification of the legislation in some areas would be especially beneficial to new entrants, who are less familiar with the legislation, and smaller competitors, for whom compliance costs are likely to be relatively more important than for larger companies.¹⁵

The implementation of regulation in a transparent way is one of the key tenets of regulatory quality (see **Error! Reference source not found.** below). Transparency and accountability to the public are among the requirements for the sound governance of regulators (OECD, 2014), while transparency enhances accountability and confidence in the regulator. In addition, transparency helps regulated firms understand regulators’ policies and expectations, and anticipate how these will be monitored and enforced. Transparency helps consumers, too. For instance, decisions on product recalls can affect consumers and public health, and should be published.

Since 2016, the Portuguese government has strengthened the “Simplex +” Programme, which aims, among others, to reduce administrative burdens and improve the quality of regulation. This programme includes the “Revoga +”, “Unilex” and “*quanto custa*” (how much it costs) projects. The first one is aimed at systematic and sectoral reduction of the legislative stock, and at this date resulted in the identification of 1 589 legal provisions that fell into disuse. In the framework of “Unilex” all new draft regulations are subject to a legislative consolidation test, and when possible new proposals for consolidation and unification of related legislation are adopted. Finally the last project (*quanto custa*) aims to quantify the costs to the private sector of any new regulations and measures those costs

against the expected benefits. Within the framework of the latter, an *ex-ante* regulatory impact assessment is made before the adoption of any new piece of legislation.

Box 1.2. What is regulatory quality?

Regulations are the rules that govern the everyday life of businesses and citizens. They are essential but they can also be costly in both economic and social terms. In this context, “regulatory quality” is about enhancing the performance, cost effectiveness and legal quality of regulatory and administrative formalities. The notion of regulatory quality covers process, i.e. the way regulations are developed and enforced, which should follow the key principles of consultation, transparency and accountability, and be evidence-based. The concept of regulatory quality also covers outcomes, i.e. regulations that are effective at achieving their objectives, efficient (do not impose unnecessary costs), coherent (when considered within the full regulatory regime), and simple (regulations themselves and the rules for their implementation are clear and easy for users to understand).

Building and expanding on the *Recommendation of the Council on Improving the Quality of Government Regulation* (OECD, 1995), it is possible to define regulatory quality by regulations that:

1. serve clearly identified policy goals, and are effective in achieving those goals;
2. are clear, simple and practical for users;
3. have a sound legal and empirical basis,
4. are consistent with other regulations and policies;
5. produce benefits that justify costs, considering the distribution of effects across society and taking economic, environmental and social effects into account;
6. are implemented in a fair, transparent and proportionate way;
7. minimize costs and market distortions;
8. promote innovation through market incentives and goal-based approaches;
9. are compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels.

Source: Reproduced from OECD (2015), OECD Regulatory Policy Outlook 2015, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264238770-en>.

1.4. Benefits of lifting barriers and prioritisation of recommendations

The OECD Competition Assessment Projects in general focus on laws and regulations relevant for the sectors under analysis. The focus is strongly on legislation and not its enforcement. This matters because changes in regulation can only have an impact if regulation is enforced. There are many reasons why regulation in practice may be less growth friendly than intended (O’Brien, 2013). Business environment is also important. Complementary to this analysis, there are measures of administrative burden and the ease

of doing business, which capture these broader issues, such as the OECD's Product Market Regulation index and the World Bank's Ease of Doing Business indicator.

The recommendations in this report address specific restrictions identified in the legislation: their impact is directly linked to lifting those restrictions and the consequent positive effect on competition in the relevant sectors. It was not possible to quantify the effects of all the individual restrictions identified, either because of lack of data, or because of the nature of the regulatory change. Therefore the OECD has considered whether the recommendations for the professions would be expected to have an impact on either consumer benefit, through lower prices, or on economic activity, in terms of greater efficiency and additional revenue. Overall we find that provided they are implemented, the recommendations can lead to sizeable economic benefits and to an increase in consumer welfare. These economic benefits will result from better allocation of resources, productive efficiency, and dynamic efficiency over time.

For the purposes of quantifying these benefits, we group together the different professions in four professional sectors, i.e., "legal", "technical and scientific" and "financial and economic". However, due to a lack of data we leave out the health professions – nutritionists and pharmacists – from the economic benefit assessment. The assessment is based on the methodology developed by the OECD Competition Assessment. When the methodology is applied to self-regulated professions, some assumptions have to be made, as the supply of professional services has some particular features that distinguishes it from the supply of most other goods and services (see Annex A).

We take a conservative approach, as there are many variables that will be simultaneously affected by the implementation of the recommendations, and which are not captured by the estimates here. We define several scenarios under which those economic benefits are estimated. Each of these scenarios is characterised by an expected percentage reduction in the prices/fees of the services offered by the different professions following the implementation of our recommendations.¹⁶

Using 2015 data from OECD, including its description of the different professional activities within each sector, the three professional sectors, "legal", "technical/scientific" and "financial/economic" employed around 144 000 people (roughly 3% of total employment), and generated a gross value added (GVA) of almost EUR 4.1 billion, or 2.3% of gross domestic product (GDP). In terms of services rendered to enterprises, according to data gathered at national level from INE, the three professional sectors accounted for around EUR 5 billion.

Table 1.1 summarises the annual estimated benefits to the economy from implementing the different recommendations that are discussed throughout this report. These benefits may tend to decrease over time. For lack of reliable data, we only take into account the three professional sectors defined above, representing 9 professions of the initial 13: lawyers, notaries, solicitors, bailiffs, engineers, technical engineers, architects, auditors and certified accountants. We estimate that total benefits from implementing the recommendations can reach EUR 128 million per year.

1.3.2. Output multiplier effects

In Canton et al. (2014), the authors find that legal, accounting, architectural and engineering professional services¹⁷ have a significant role in the economy which goes beyond their shares in value added and employment, as they act as key inputs in the

businesses and firms in the form of knowledge intensive services. This means that they have a significant multiplier effect in the economy as a whole.

The authors calculate the output multipliers from input-output tables from the World Input-Output Database (project) dataset. As reported in their work, EUR 1.00 extra of final demand for architectural and engineering activities generates EUR 1.9 of gross production in the whole economy. Concurrently, EUR 1.00 of final demand for legal and accounting activities generates EUR 1.8 of gross production.¹⁸ According to calculations carried out by the Project Team, with contributions from the CEGEA (Católica Porto Business School, a consultant) we estimated the multiplier effect in the case of legal and accounting activities at 1.49 (data for 2013). This means that EUR 1.00 of additional final demand for “legal and accounting services” leads to an increase of EUR 1.49 in Portuguese GVA.¹⁹

Table 1.2. Synthesis of economic benefits to the economy by item, 2015 (€)

Self-regulated professions	Rendered services EUR million (2015)	No. provisions with recommendations	Estimated annual benefits to the economy (*) (EUR million) [Demand elasticity = 2; Price reduction = 2.5%](††)
Legal services	1 245	182	32
Technical/scientific services	1 724	68	44
Financial/economic services	2 044	53	52
TOTAL(**)	5 013	303	128

Note: (†) The values in this table come from estimations carried out in the three chapters covering each of three professional areas: legal; technical/scientific; and financial/economic. Taking into account the description of the rendered services provided by the financial/economic professions, available at INE (see link above), several type of services were excluded from this quantification as they seem to be provided mostly by other professionals than the financial professionals under analysis (auditors, certified accountants, custom brokers, and economists). Hence, it was only considered the following services: (i) financial auditing services; (ii) accounting services; (iii) tax advice; (iv) strategic management consulting; and (v) consultancy in financial management, except tax consultancy.

(*) The “Estimated benefits to the economy”, in EUR millions, do not account for a loss of revenue to firms rendering these services, due to a drop in price.

(††) The values assumed for the direct demand elasticity are absolute values.

(**) The estimated total annual benefits may decrease over time along a trajectory towards a new equilibrium. Hence, we caution against assuming annual benefits will add up, unchanged, year after year.

https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaques&DESTAQUESdest_boui=281447433&DESTAQUESmodo=2 – see Excel table.

Source: National Statistics Institute/Instituto Nacional de Estatística (INE), Portugal: Data on “Services rendered to firms” (“Serviços Prestados às Empresas”, or SPE). The class “Services rendered to firms” which, according to INE, and despite its name, includes services rendered to households, comprises eight types of services: (i) IT, (ii) legal, (iii) accounting, auditing and consulting, (iv) architecture and engineering, (v) technical testing and analysis, (vi) advertising, (vii) market research and opinion polling, and (viii) employment activities.

The implementation of the different recommendations will lead mostly to a decrease in prices, which will then contribute to an increase in the provision of the professional services in the volume under analysis – legal, technical and scientific, and financial and economic. The total effect on turnover will depend on whether the value of the elasticity of demand is higher or lower than 1. If higher than 1, turnover (in EUR) will increase, as the demand for professional services will more than compensate the decrease in prices.

This additional turnover will then be multiplied throughout the economy, as it will be spent on other goods and services. If the elasticity is lower than 1, turnover (in EUR) of the corresponding sector will decrease, but the volume of the professional services provided will increase. This additional production of services will be multiplied throughout the economy, as firms will increase their outputs in response to an increase in the demand for their goods and services. In both cases, the impact on the economy is likely to exceed the estimated benefits to the economy shown above in Table 1.1.

Box 1.3. Administrative burden

In some cases we found multiple layers of regulation, which may indicate a risk of duplication or multiplication of regulations over the same objective or activity, or unjustified or excessive administrative “red tape” for services consumers.

The administrative burden has been identified as being a concern of Portuguese legislation on several occasions.

The 2011 Memorandum of Understanding (MoU)

In the MoU there is a reference to the administrative burden on the services sector particularly affecting the regulated professions: According to the MoU, Portugal should continue the simplification reform effort by making Points of Single Contact (PSC)/one-stop shopping more responsive to small and medium-size enterprises (SMEs) needs, extending online procedures to all sectors covered by the Services Directive.

In addition, Portugal should make the “Zero authorisations” project that abolishes authorisations/licensing fully operational and substitute them with a declaration to the PSC for the wholesale and retail sector and restaurants and bars. The project should include all levels of administration, including all municipalities.

Furthermore, Portugal should extend the PSC to services not covered by the Services Directive and extend the Zero authorisations project to other sectors of the economy.

OECD/ Country Fact Sheet/Portugal at a Glance 2017

According to the OECD, Portugal has made significant efforts to reduce administrative burdens and is now working to improve its broader regulatory policy. The “Simplex+” programme has made relevant contributions to reducing administrative burdens and modernising public administration.

Yet, there is still potential to improve the use of impact assessment (for primary laws) and consultation to inform the development of new regulations so as to close the gap with other OECD countries (average 2.08 and 2.07 out of 4, respectively).

Portugal has recently overhauled its impact assessment framework through the “How much?” (quanto custa) programme but would benefit from assessing more systematically whether regulations actually achieve their objectives.

Source: http://ec.europa.eu/economy_finance/eu_borrower/mou/2011-05-18-mou-portugal_en.pdf, <https://www.oecd.org/gov/gov-at-a-glance-2017-portugal.pdf>, <https://www.oecd.org/gov/regulatory->

policy/Portugal-web.pdf.

An alternative way of viewing this multiplication effect is via productivity gains. As regulatory barriers are reduced, one can expect productivity gains across the different self-regulated professions – there is good evidence that such linkages hold (see for instance Paterson et al., 2007). These productivity gains will be amplified throughout the economy given the ubiquity of professional services as intermediate goods for firms in general, also known as the forward linkages of professional services (Coruego and Ruiz, 2014).

The full implementation of the recommendations set out in this report is expected to deliver positive long-term effects on employment, productivity and growth in the sectors under analysis. The cumulative and long-term impact on the Portuguese economy of lifting the restrictions identified should not be underestimated provided that the recommendations are implemented fully. The further rationalisation of new legislation across the wider economy through the “*quanto custa*” programme, if fully implemented across all sectors, will also positively affect the operating environment of businesses.

The rest of the report describes the results of the assessment in each of the 13 professions, first by looking at the regulatory restrictions that are common to all or most of the professions, then grouped by family of services (legal, technical, financial and health).

Annex A to the report describes in detail the methodology followed in the process, both to screen the laws and regulations, and to assess the harm to competition.

Annex B provides the full list of all the potential barriers identified, by sector, and of the recommendations.

Notes

¹ In agreement with the Portuguese Competition Authority, most of the liberal health professions were not included in the Project as they were not seen as directly contributing to business services.

² The methodology followed in this project is consistent with the product market regulations (PMR) developed by the OECD, see OECD (2014), Box 2.1, page 67. To measure a country's regulatory stance and track reform progress over time, the OECD developed an economy-wide indicator set of PMRs in 1998 (Nicoletti et al., 1999). The indicator was updated in 2003, 2008 and 2013, and a new set of indicators will be published in 2018.

³ Fournier et al. (2015) find that national regulations, as measured by the economy-wide PMR index, have a negative impact on exports and reduce trade intensity (defined as trade divided by GDP). Differences in regulations between countries also reduce trade intensity. For example, convergence of PMR among EU Member States would increase trade intensity within the European Union by more than 10%. Fournier (2015) studies the impact of heterogeneous PMR in OECD countries. He finds that lowering regulatory divergence by 20% could increase FDI by about 15% on average across OECD countries. The paper investigates specific components of the PMR index and finds that command-and-control regulations and measures protecting incumbents (antitrust exemptions, entry barriers in networks and services) are especially harmful in reducing cross-border investments.

⁴ Arnold et al. (2011) analyse firm-level data in 10 countries from 1998 to 2004 using the OECD's PMR index at industry-level, and find that more stringent PMR reduces firms' multifactor productivity (MFP).

⁵ The author investigates the drivers of aggregate MFP in a sample of 30 OECD countries over a 30-year period.

⁶ The study of 15 countries and 20 sectors from 1985 to 2007 estimates the effect of regulation of upstream service sectors on downstream productivity growth.

⁷ Employment growth increased from its level of 1.2% per year between 1981 and 1985 to 5.2% per year between 1986 and 1990. Between 1976 and 2001, total employment in the road transport sector doubled, from 170 000 to 340 000.

⁸ The sample includes 18 countries over a ten-year period.

⁹ Using the OECD's summary index of PMR in seven non-manufacturing industries in the energy, telecom and transport sectors, Causa et al. (2015) find stringent PMR has a negative impact on household disposable income. This result holds both on average and across income distribution, and leads to greater inequality. The authors note that lower regulatory barriers to competition would "tend to boost household incomes and reduce income inequality, pointing to potential policy synergies between efficiency and equity objectives".

¹⁰ These are Australia, Canada, Germany, France, United Kingdom, Japan, Korea and the United States.

¹¹ See CMA Report, p. 94. However, note that this same report concludes that the introduction of ABSs has not yet changed the story on innovation – see pp. 95 ff.

¹² See https://ec.europa.eu/growth/single-market/services/services-directive_pt.

¹³ See at <https://www.imf.org/external/np/loi/2011/prt/051711.pdf>.

¹⁴ This is mentioned in the recital of Law 2/2013.

¹⁵ OECD (2015c) defines administrative burdens as "the costs involved in obtaining, reading and understanding regulations, developing compliance strategies and meeting mandated reporting requirements, including data collection, processing, reporting and storage, but not including the capital costs of measures taken to comply with the regulations, nor the costs to the public sector of administering the regulations".

¹⁶ Data on "Services rendered to firms" (*Serviços Prestados às Empresas* - SPE) were collected from the National Statistics Institute (INE) and from the Eurostat Structural Business Statistics. The INE class of "Services rendered to firms", includes not only services rendered to businesses but also services rendered to households. Data on SPE comprise eight types of rendered services, among which we select data on (i) legal services, (ii) accounting, auditing and consulting services, and (iii) architecture and engineering services.

¹⁷ See Canton, E., et al., 2014.

¹⁸ For a discussion of input/output matrices methodologies see the document (in PRT) "*Sistema Integrado de Matrizes Simétricas Input-Output, 2013*", available online in: https://www.ine.pt/ngt_server/attachfileu.jsp?look_parentBoui=294445743&att_display=n&att_do_wload=y; For the data in the matrices themselves, calculated for the year 2013, see: https://www.ine.pt/ngt_server/attachfileu.jsp?look_parentBoui=293112845&att_display=n&att_do_wload=y Contrary to Canton et al, we calculate the multiplier effect on Total GVA, or GDP, and not on gross production.

¹⁹ For a discussion of input/output matrices methodologies see the document (in PRT) "*Sistema Integrado de Matrizes Simétricas Input-Output, 2013*", available online in: https://www.ine.pt/ngt_server/attachfileu.jsp?look_parentBoui=294445743&att_display=n&att_do_wload=y; For the data in the matrices themselves, calculated for the year 2013, see: https://www.ine.pt/ngt_server/attachfileu.jsp?look_parentBoui=293112845&att_display=n&att_do_wload=y

[wnload=y](#). Contrary to Canton et al, we calculate the multiplier effect on Total GVA, or GDP, and not on gross production.

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Chapter 2. Overview of the regulated professions

The existence of a well-functioning professional services market ultimately affects most economic activities and is fundamental to enable productivity growth and welfare. Regulated professions play an important role in the Portuguese economy. The three professional sectors “legal”, “technical/scientific” and “financial/economic”, represent 2.3% of the gross domestic product (GDP) and employ around 144 000 people, with services that touch nearly every sector of economic activity. This section provides a brief overview of the rationale for regulating liberal professions and identifies the common market problems associated with them. It includes a description of the main regulatory frameworks and an economic overview of the regulated professions in Portugal. In sum, the current approach to the regulation of several professions is a prescriptive one, which leads to regulations that create several barriers to competition not justified by public interest concerns.

Liberal professions are professions that require particular training and skills. The European Commission Directive on the recognition of professional qualifications 2005/36/EC (revised 20 November 2013), defines “Liberal Professions” as activities “practiced on the basis of relevant professional qualifications in a personal, responsible and professionally independent capacity by those providing intellectual and conceptual services in the interest of the client and the public.”

Because of the nature of certain professional services, such as market failures stemming from limitations to consumer information, liberal professions tend to be highly regulated by national governments, supported by professional bodies. Examples of these regulated professions include lawyers, notaries, auditors and engineers. Liberal professions are often characterised by strict entry criteria and rules governing professional conduct, the rates or fees that can be charged, and the legal forms of professional businesses (Canton et al., 2014). In exchange, professionals are granted various exclusive rights. The precise range of restrictions and privileges enjoyed by professionals varies among jurisdictions.

Professional services contribute significantly to the development of any economy. Apart from their contribution to the GDP and employment of OECD countries, the existence of a well-functioning professional services market ultimately affects most economic activities and is fundamental to enable productivity growth. Thus, it is crucial to ensure that the regulatory framework for professional services encourages pro-competitive outcomes for consumers. In particular, well-designed regulations can improve market outcomes by addressing inherent market failures. However, regulation can also unnecessarily limit competition, both within professions and between professionals and other service providers, by going beyond what is necessary to address market failures. This generates consumer harm in the form of higher prices, stifled innovation or lower quality, among other effects.

The report identifies and evaluates the regulatory barriers to competition in 13 liberal professions in Portugal and makes recommendations for legislative reform. These recommendations aim to either mitigate or eliminate those barriers while preserving the objectives pursued by the legal provisions. The 13 professions included in this study are all self-regulated with their own professional associations (“orders”). They are:

- **Legal professions:** lawyers (*advogados*), notaries (*notários*), solicitors (*solicitadores*) and bailiffs (*agentes de execução*);
- **Technical/scientific professions :** architects (*arquitectos*), engineers (*engenheiros*) and technical engineers (*engenheiros técnicos*);
- **Financial-economic professions:** auditors (*revisores oficiais de contas*), certified accountants (*contabilistas certificados*), economists (*economistas*) and customs brokers (*despachantes oficiais*);
- **Health professions:** nutritionists (*nutricionistas*) and pharmacists (*farmacêuticos*).

This chapter provides a short overview of the regulated professions, focusing specifically on the framework in Portugal. Section 2.1 includes an economic overview of the regulated professions in Portugal supported by statistical data. Section 2.2 explains the rationale for regulating liberal professions, while Section 2.3 sets out the competition implications of those regulations. Section 2.4 sets out the various models for regulating liberal professions. Section 2.5 describes the current regulatory environment in Portugal. Finally, Section 2.6 provides general observations on the impact on competition of the

current regulatory approach to professional services in Portugal, which will be dealt with in detail in the following chapters, and existing opportunities for regulatory reform.

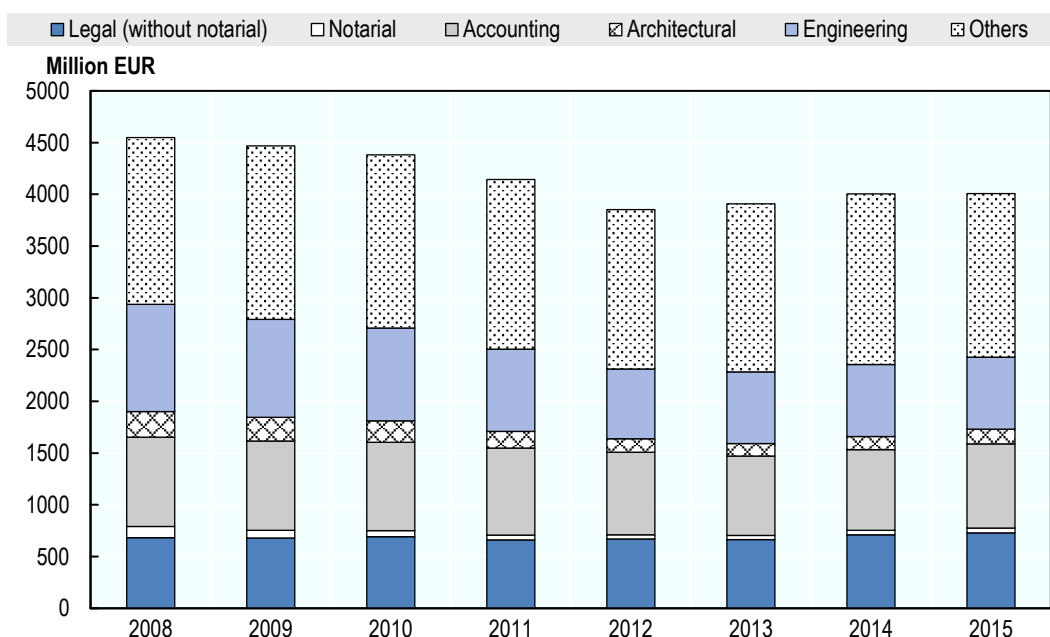
The overarching conclusion of this analysis is that there are several features of the current regulatory framework that are more restrictive than necessary, and which are not justified by the market failures that typically motivate regulations in professional services. In particular, they focus on specific behaviours at the expense of outcomes, and at times do not function in the interests of the consumers of professional services, nor the public interest more broadly.

2.1. Economic overview of the regulated professions in Portugal

The regulated professions are a crucial sector for the development of any economy. Apart from their contribution to the GDP and employment of OECD countries, the existence of a well-functioning professional services market ultimately affects most economic activities and is fundamental to enable productivity growth.

The regulated professions under analysis comprise four main areas: legal (lawyers, notaries, solicitors, and bailiffs), financial and economic (auditors, certified accountants, customs brokers, and economists), technical (architects, engineers and technical engineers), and health (nutritionists and pharmacists). Due to lack of data, this economic overview does not include health professions.

Figure 2.1. Gross value added of the regulated professions in Portugal (current prices)



Sources: OECD (2017), “Value Added and its Components by Activity, ISIC rev4”, National Accounts of OECD Countries, Vol. 2017, Issue 2: Detailed Tables; INE database, available at https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_indicadores&indOcorrCod=0008484&contexto=bd&selTab=tab2.

Note: “others” include activities related to management and consultancy, which might be developed by economists and accountants, and testing and technical analysis, which might be developed by engineers.

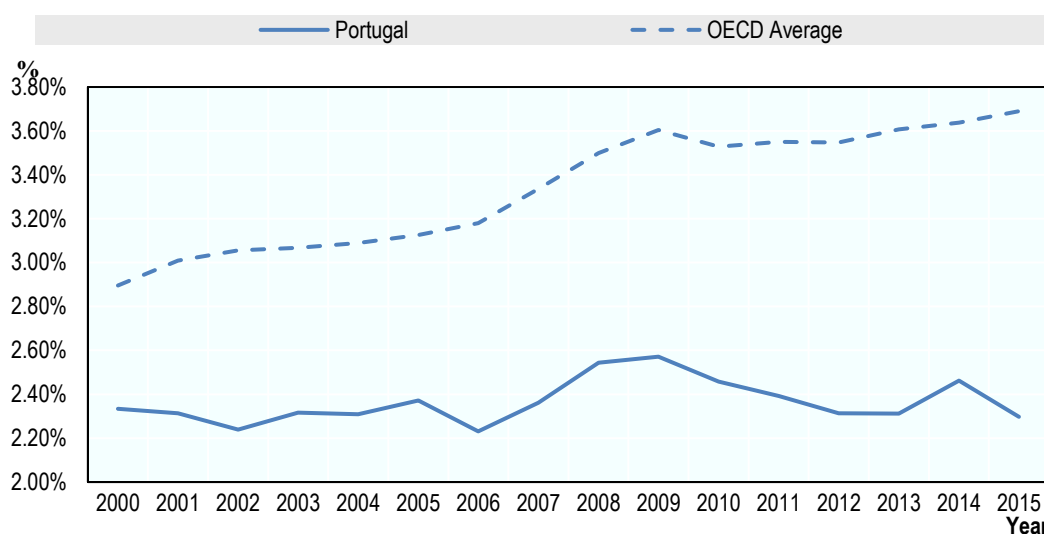
In 2015, the regulated professions generated a gross value-added (GVA) of almost EUR 4.1 billion for the Portuguese economy, corresponding to 2.3% of GDP. The three professional groups under analysis generated a GVA of almost EUR 2.54 billion, representing 1.35% of GDP. It employed more than 144 000 persons representing around 3% of the entire employed population. In the same year there were around 76 000 professional firms, one-third of which provided legal services.

In absolute terms, the value-added of these regulated professions in Portugal has been growing over the past 15 years, increasing from around EUR 3 billion in 2000 to EUR 4.1 billion 2015. This corresponds to an average annual growth rate of around 2%, below the average growth rate of the national GDP of 2.3% over the same time period.

Overall, the GVA of all professions with the exception of legal services decreased from 2008-12, reflecting difficult economic conditions in Portugal (Fig. 2.1). The engineering services were particularly hard hit, most likely owing to a concomitant dip in construction activity during that period. On the other hand, legal activities have been slowly increasing over time, only surpassed in 2015 by accounting activities, which represent almost 20% of the sector's value added.

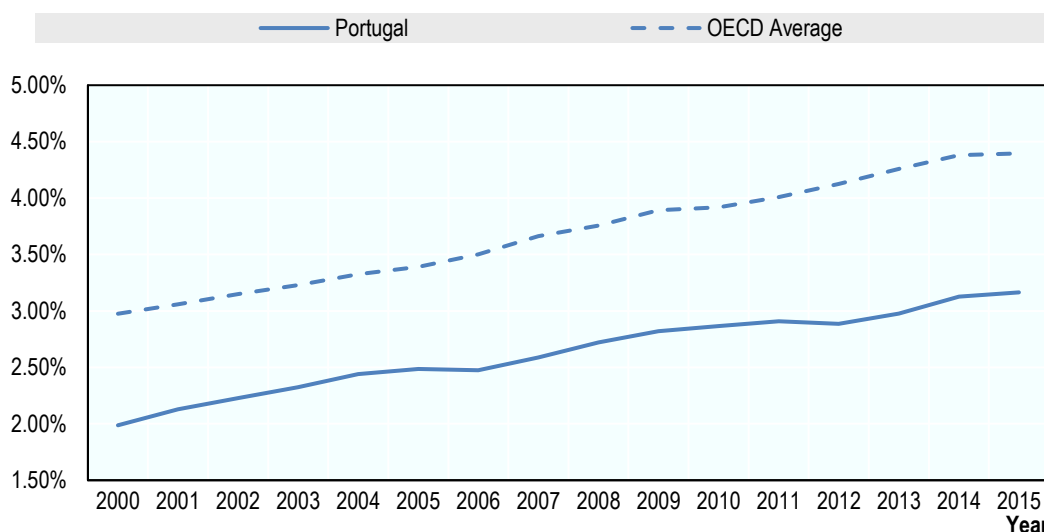
The contribution of the liberal professions analysed here to the Portuguese GDP is below the OECD average. Between 2000 and 2015, regulated professions in Portugal accounted on average for less than 2.5% of the GDP, while the share for OECD countries exceeded 3% for the same time period.

Figure 2.2. GVA of the regulated professions as a share of GDP



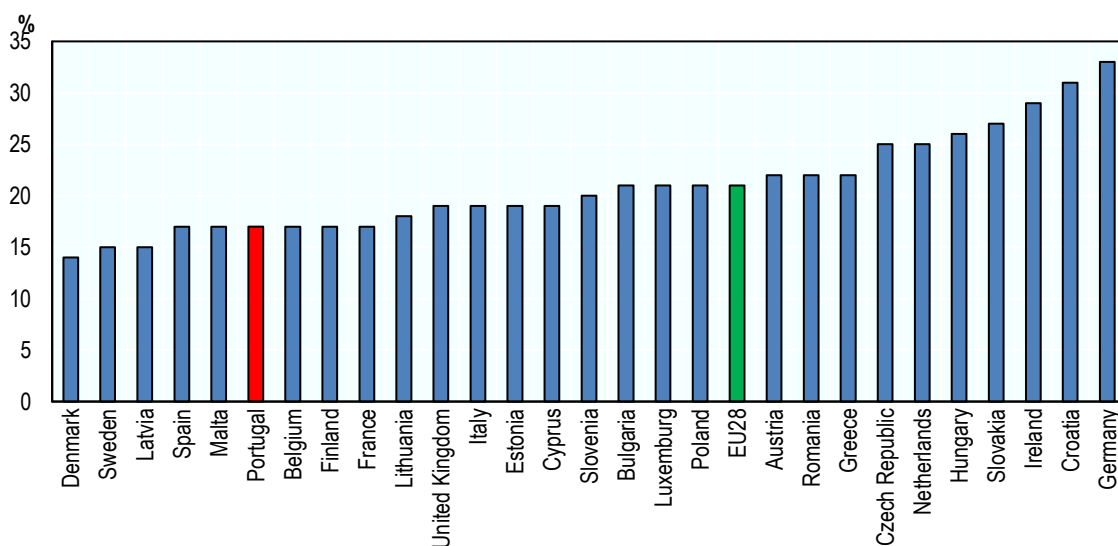
Source: OECD (2017), "Value Added and its Components by Activity, ISIC rev4", National Accounts of OECD Countries, Vol. 2017, Issue 2: Detailed Tables, OECD Publishing, Paris. http://dx.doi.org/10.1787/na_ma_dt-v2017-2-en.

The contribution of these professions to employment is also below the OECD average, but has been increasing over time. Between 2000 and 2015, they accounted on average for around 2.6% of total employment, while the share for OECD countries is 3.7% for the same time period.¹

Figure 2.3. Regulated professions as % of total employment in Portugal

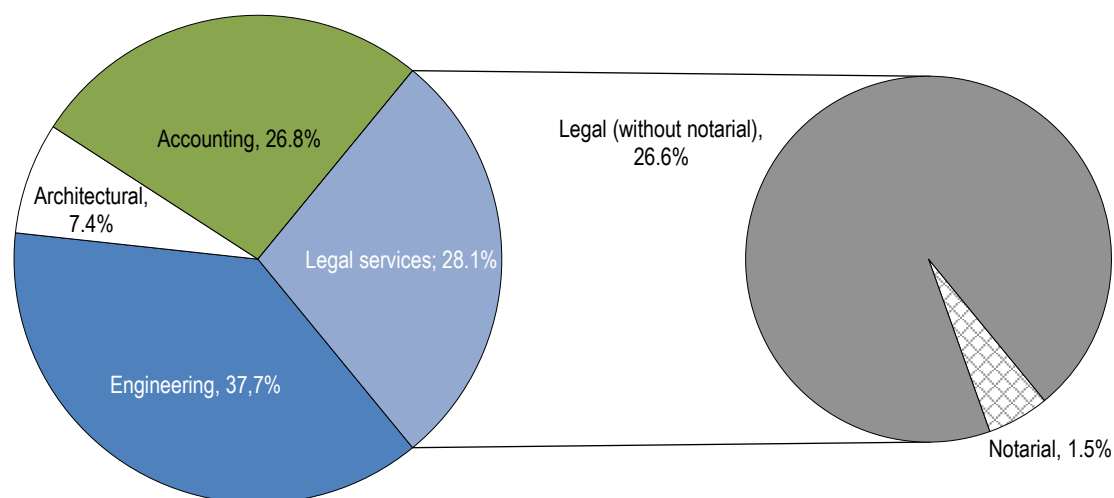
Source: OECD (2017), "Labour input by activity, ISIC rev4", National Accounts of OECD Countries, available at https://stats.oecd.org/Index.aspx?DataSetCode=SNA_TABLE6A.

Data from 2015 from the European Commission (2017) indicate that all regulated professions, i.e. also including health and other regulated profession not covered in this report, accounted for around 17% of the total labour force in Portugal, below the EU28 average of 21%.

Figure 2.4. Share of regulated professions in total labour force in 2015

Source: European Commission (2016), "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions on reform recommendations for the regulation in professional services", SWD (2016), 436 final.

In 2016 the regulated professions in Portugal generated almost EUR 5 billion in turnover, 38% of which from engineers).

Figure 2.5. Distribution of turnover by regulated professions in Portugal, 2016

Source: Data extracted from INE website, database "Turnover (€) of enterprises by Geographic localization (NUTS - 2013) and Economic activity (Subclass - CAE Rev. 3); Annual", https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_indicadores&indOcorrCod=0008484&contexto=bd&selTab=tab2&xlang=en.

In terms of the value of the services rendered to firms, the regulated professions under analysis accounted for 38% of all services. In particular, the accounting and auditing services alone accounted for around 15.5% in 2015 (see Figure 2.6).

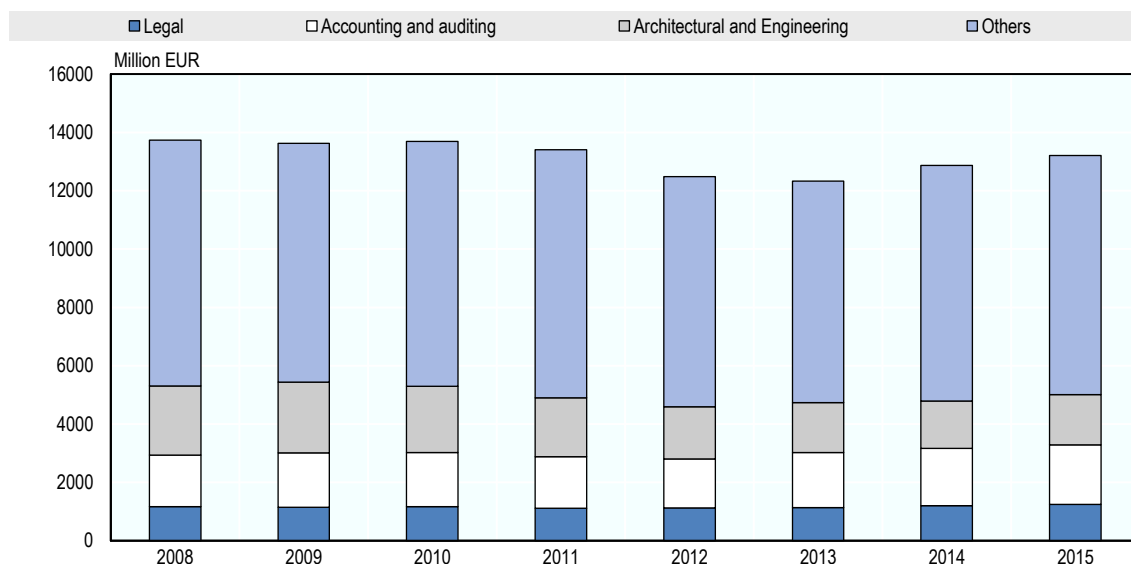
2.2. Linkages between professional services and the rest of the economy

There is an extensive theoretical and empirical literature on so-called knowledge intensive business services which include services such as legal, accounting, architectural, and engineering services in addition to various management consulting services, advertising and so on. These services are vital to the development and functioning of modern economies as inputs into innovation and technology (see Miles 2005 among others). They rely on professional knowledge, but they are also in themselves sources of knowledge and contribute to the competitiveness of their clients. They perform "services encompassing a high intellectual value-added" (Muller and Zenker, 2001). These services belong to the category of "knowledge-intensive business services" (KIBS) and have a strong impact on the general competitiveness of the economy, and direct relevance for consumers, whether firms or households (Boeheim, 2004).

Canton et al. (2014) quote a wide literature that demonstrates the significance of knowledge-intensive business services (legal, accounting, management consulting) in forwards and backwards (i.e. upstream) linkages with the rest of the economy as knowledge inputs in the production process in other sectors, but also as users of knowledge inputs (the "backwards" link). In other words, the legal profession along with other services to businesses has an important multiplier effect in the economy as an intermediate input. This economic effect consists of an output multiplier effect and is defined as the ratio of the change in total output induced by an increase in demand for a professional service. Canton et al. in their 2014 study analyse the output multipliers of four professions (including the legal, accounting, architecture and engineering profession), and they find that in the European Union (EU27), 1.00 Euro of final demand

for legal and accounting activities in the economy generate 1.8 Euros of gross production in downstream businesses, including manufacturing.

Figure 2.6. Distribution of the services rendered by regulated professions in Portugal, 2008-2015



Source: Data from INE (2017), “Principais indicadores económicos, segundo a atividade principal da empresa”, https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaques&DESTAQUESdest_boui=281447433&DESTAQUESmodo=2 (accessed on 23 March 2018) and methodology presented in Annex A.2.

Note: The class “Services rendered to firms” includes services rendered to households, despite its name. The item “Legal” includes all the activities related to clients' legal rights and obligations and which aim at their legal advice, i.e., it includes all juridical and notarial services, plus other services. Taking into account the description of the services rendered that are provided by the financial/economic professions, available at INE (see link above), several type of services were excluded from this quantification as they seem to be provided mostly by professionals other than the financial professionals under analysis (auditors, certified accountants, custom brokers, and economists). Hence, only the following services were considered: (i) financial auditing services; (ii) accounting services; (iii) tax advice; (iv) strategic management consulting; and (v) consultancy in financial management, except tax consultancy.

Paterson et al. (2007) carried out a comparative study on the regulation of four categories of professional services across the European Union (legal, accounting, technical, and pharmacists) based on two indicators: entry and conduct regulation. This study demonstrates a negative correlation between the degree of regulation and productivity in legal, accounting and technical services (engineering and architects).² Also, Monteagudo et al. (2012) carried out an empirical analysis of services regulation, measuring the results of the regulatory changes on the barriers before and after the implementation of the Services Directive,³ and concluded that the implementation of the directive has generated an extra 0.8% of EU GDP, ranging from 0.3% to 1.5%, depending on the Member State.⁴

Extensive OECD research, such as Arnold et al. (2008 and 2011), has demonstrated that restrictive product market regulations lead to an inefficient allocation of productive resources. Canton et al. (2014) find that in general for Europe, there appears to be an inefficient resource allocation in the regulated professions, which may be due to reduced competition connected with product market regulations. Other studies, such as Égert and Wanner (2016) demonstrate several positive impacts of regulatory reforms on labour productivity and economics in general.

2.3. The rationale for regulating liberal professions

One of the fundamental reasons for regulating the liberal professions is the potential emergence of market failures in their provision. These market failures consist of information asymmetries and externalities which, when left unaddressed, might lead to inefficient market outcomes. Liberal profession regulatory frameworks may also pursue additional policy goals. Each of these rationales will be described below.

2.3.1. *Information asymmetries and moral hazard*

The normal argument put forward in favour of regulation of the liberal profession is the existence of asymmetric information between the professional and the client because the client cannot assess the quality of the services in advance of procuring them. Many services provided by legal or other liberal professionals can be thought of as *experience goods*, as the quality of the service is not known by a consumer beforehand. For instance, a client seeking litigation services from a lawyer is generally not able to fully assess the skills of the litigator prior to observing their appearances in court. Other professional services are more appropriately classified as *credence goods* – goods for which the quality may never be observed but where the consumer needs to trust the professional to provide a good service. Even after buying a service the client may not be able to fully judge the quality, for instance in the drawing up of a will or a contract, hence they make their decisions based on trust, reputation and some expectations of the average quality they are likely to receive (OECD, 2016). This could create incentives for professional services providers to provide low quality services to consumers.

Because consumers are unable to assess beforehand the quality of professional services they are procuring, they may attempt to identify alternative indicators of quality. This can lead to *adverse selection*, where professionals are chosen by consumers for reasons unrelated, or in fact negatively associated with, quality. For example, consumers may perceive that a professional whose services are more expensive may offer higher quality than their less expensive peers, even if this is not true (OECD, 2016). As a result, consumers may pay too much for services that could be procured at a similar or better level of quality for a lower price, leading to an inefficient market outcome.

Another problem that can arise out of information asymmetries in professional services markets is *moral hazard*. Consumers rely on professionals to assess the exact nature and extent of services required for their particular situation. This relationship increases the potential for the professional (lawyer, architect etc.) to act against their clients' interest when there is a divergence between the professionals and clients' interests (OECD, 2016). For instance, in legal markets the professional might propose to their clients some additional services that they do not require; or an architect might suggest building features which are not strictly required. Clients without technical knowledge would not be well-placed to identify such behaviour. It should be noted that the likelihood of this varies significantly according to the client and service being procured. A large corporate client that employs legal advisors would be less likely to incur unnecessary costs than a small business owner with no legal training. Highly standardised notarial services would be less susceptible to such problems than technical, contentious areas of specialised law.

2.3.2. *Externalities*

The existence of externalities associated with professional services can also lead to inefficient market outcomes. Negative externalities for society arise when professional

services are of sub-optimal quality leading to costs for parties outside the professional-client relationship. For instance, a lawyer without an understanding of court procedures could lead to time wasting, imposing costs on the judge, courtroom staff and other parties (OECD, 2016). Furthermore, low-quality services in a court may result in decisions that do not reflect the underlying reality of a case ultimately leading to denial of justice to citizens. Similarly, an unskilled engineer might cause a building to be structurally unsound. Conversely, high-quality legal services can generate positive externalities, including a reduction in the burden on judges in court proceedings and greater legal certainty for parties to a transaction, just as good engineers should complete building works faster and on budget.

2.3.3. Other policy objectives

There are several other policy objectives that have led to regulation of professions and their services which are not specifically related to market failure. Some regulations are aimed at addressing certain fundamental legal principles such as universal health care, including ensuring that low-income consumers can access health; or legal aid in the case of low-income groups. These different professional services are regarded as “merit goods”, as they must be available to any individual regardless of his ability and willingness to pay, on the basis of a concept of “need” which society regards as meriting satisfaction due to a moral imperative.

Other objectives aim to uphold specific public interest objectives such as attorney-client confidentiality, or the integrity of auditing services (OECD, 2016).

2.4. The competition implications of liberal profession regulations

While well-designed regulations can help to address market failures and promote pro-competitive outcomes, disproportionate or unnecessary regulations for consumer protection or public interest objectives may harm competition between suppliers, and particularly between newcomers and established providers, which will have a negative impact on consumer welfare.

That is the case, for instance, when regulation upon professionals imposes the protection of title and reserved activity. There are many professions and activities that are self-regulated through the creation of a professional association. Some professional associations have the exclusive power to grant a title and along with it, define the activities that are exclusive to those professionals. These associations may restrict access to certain activities to those professionals registered with that professional association creating anticompetitive effects.

Another example of measures that may have counterproductive effects is the use of regulated prices, which may be intended to uphold high quality standards in professional services, or, in some cases, to guarantee universal access. However, no causal link has been established between a fixed price regime and higher quality of services (OECD 2009). Fee regulation is harmful to competition as it does not allow suppliers to compete freely on price in non-monopolistic markets, where such concern is mitigated and can be overcome with more transparency on the methods of calculating fees, for example. Moreover, the impossibility of providers to compete on prices means that clients are unable to seek out a professional with a lower fee, thereby effectively pricing a portion of consumers out of the market. This is particularly a problem with access to justice.

Hadfield and Rhode (2016) cite a recent study from New York where up to 95% of litigants appear in court without legal representation.

In general, the aim of competition assessment analysis is to identify such unnecessary or excessive regulations and to propose a well-developed regulatory framework to support innovation, cost-reduction and more efficient practices for the professions, while supporting better access to professional services for both firms and consumers.

2.5. Models of regulation for professional services

In order to achieve a policy goal, a regulatory framework requires an institutional structure (according to May, 2007) with explicitly allocated responsibilities. May defines an “institutional structure” as a set of rules that prescribe: (i) expected behaviours or outcomes, (ii) standards that are benchmarks against which compliance can be measured, (iii) a mechanism for determining the degree of regulatory compliance, and (iv) sanctions for failure to comply with the rules.

The various approaches to the regulation of services, including professional services, can be grouped into four categories (based on Hadfield and Rhode, 2016, and May, 2007): (i) prescriptive or command-and-control regulation; (ii) performance- or outcomes-based regulation; (iii) systems –or management-based regulation; and (iv) meta-regulation or competitive regulation. All four regulatory approaches aim to mitigate or solve market failures due to information asymmetries and externalities, in order to achieve economic efficiency while achieving certain public objectives, such as universal access to justice. The different types of regulation we observe across different countries and economic sectors may combine elements from these four approaches.

The “prescriptive regulation” approach sets specific and detailed rules about training and qualifications that providers must possess. It is also known as “command and control” regulation. It often establishes behavioural rules to be complied by professionals. The main advantages of the prescriptive model are that it may deliver better regulatory outcomes when there appears to be a strong relationship between training, practices and the conduct and skills of the professional. In this situation, regulators might be better than practitioners at determining what practices reduce bad outcomes. However, prescriptive regulations could be ineffective, excessive and might favour private or corporate interests over the public interest – particularly in the case of industry self-regulation. The risk of self-regulation leading to anticompetitive outcomes (by suppressing competition from non-members) was recognised in 2015 by the United States Supreme Court.⁵ The liberal professions in Portugal are very strictly regulated and mostly follow the prescriptive approach.

The “performance-based regulation” approach sets the results that a provider has to achieve, but does not specify how the provider has to achieve them. This approach can deliver better outcomes when there are multiple ways of reducing undesirable results or there is substantial uncertainty about the relationship between training, practices and outcomes. In contrast to a “prescriptive regulation” approach, which assumes that adherence to prescribed rules and guarantees that the desired goals are achieved, a “performance-based regulation” approach grants a higher degree of autonomy to the regulated entities (in our case, the professionals themselves) to determine how best to achieve the desired results. Within this model, practitioners are in a better position to innovate than state regulators. However, it might be difficult to set measurable goals and standards; and to assess or predict performance. Additionally, regulated entities may not

fully adhere to performance standards. Certain types of regulation covering the energy, telecoms, and transport sectors, as well as air and water quality, building and fire safety, and energy efficiency, usually follow this approach.

The “systems-based regulation” approach requires providers to set goals and engage in a process of reviewing practices and outcomes to develop internal procedures for achieving them. Both goals and procedures are then approved and monitored by the regulator. This approach provides a good answer to situations when the existing uncertainty extends to the determination of what constitutes appropriate performance standards. Nonetheless, this approach limits the regulatory actions when system defects are found. Certain types of regulation over food, health, safety and environment follow this approach.

Finally, the “meta-regulation” approach imposes rules and processes on providers that are developed by either public or private, individual or multiple, third-party regulators. These regulators are subject to oversight by the state. The government requires providers to specify a regulator from among a set of approved regulators. This approach has the advantage of promoting innovation and investment in better regulatory design, and of addressing any conflicts of interest that may be inherent in self-regulation. One shortfall is to ensure that the entity to which the state has effectively delegated regulatory oversight authority achieves results consistent with the state’s regulatory goals and is not captured by the entities within its mandate.

2.6. The current regulatory framework in Portugal and opportunities for reform

There are approximately 240 different regulated professions in Portugal, according to information submitted to the European Commission in November, 2016. This is above the EU-28 average of 198. Among those professions, 139 are regulated only by law, and 100 professions are also regulated by professional organisations. The latter professions are considered highly-regulated.

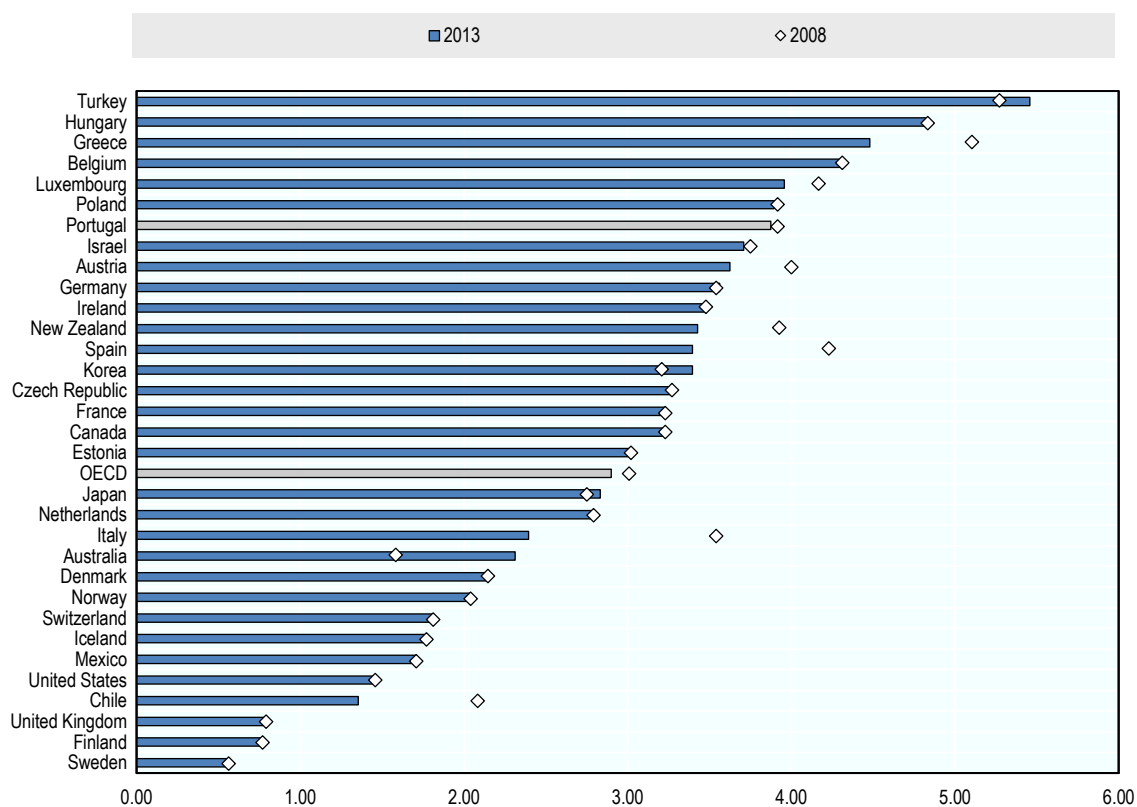
In Portugal, the broad regulatory framework for the professions is comprised of: Framework Law 2/2013, which establishes the legal regime for the creation, functioning and organisation of professional associations; Law 53/2015 on the constitution and functioning of societies of professionals who are subject to professional public associations; and the bylaws for each professional association (12 of which are addressed in this report). This framework is primarily rooted in a “prescriptive regulation” approach.

The overall degree of regulatory restrictiveness in Portuguese professional services markets can be measured by the OECD’s Product Market Regulation (PMR) indicators.⁶ Portuguese regulations in the legal, accounting, engineering and architect professions are more restrictive than the regulatory framework of most other OECD countries, as shown in Figure 2.7 to Figure 2.10. Moreover, the PMR indicators in Portugal for legal and accounting professions have not changed substantially between 2008 and 2013 (the last time this was measured), though there was a positive evolution of the PMR of the engineer and architect professions, meaning that the legal framework is currently more competitive and contains fewer barriers to competition.

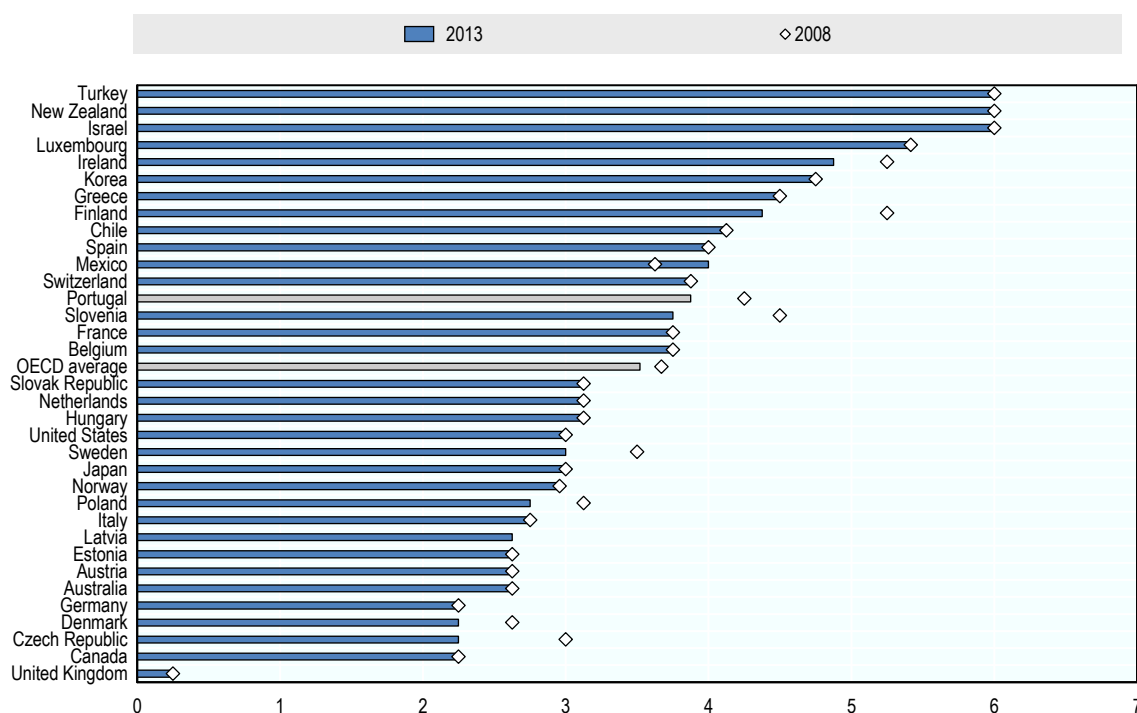
Looking inside the different components of the PMR, it is possible to identify the areas where regulatory reform would be more effective in promoting market entry and competition. In the accounting, engineer and architect professions, the high value of the PMR results from excessive barriers to entry, which could likely be reduced through pro-

competitive reforms. In the legal professions, the high PMR indicator results from several barriers to entry and highly restrictive conduct regulations.

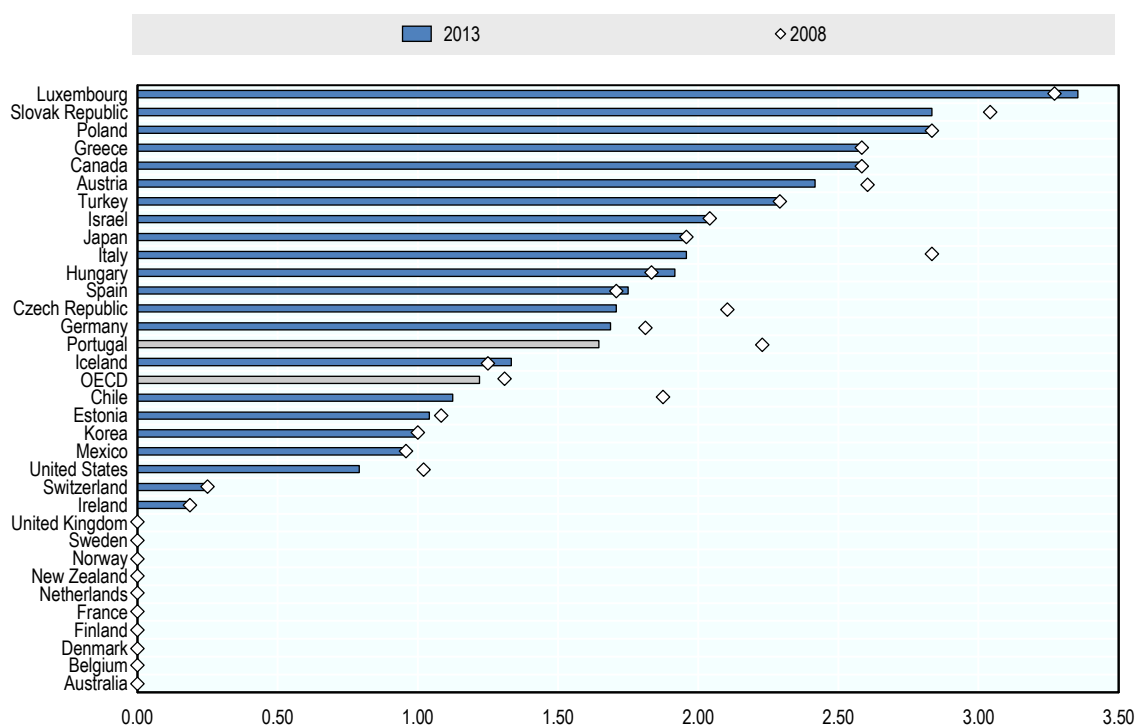
Figure 2.7. Product Market Regulation indicator for the legal professions



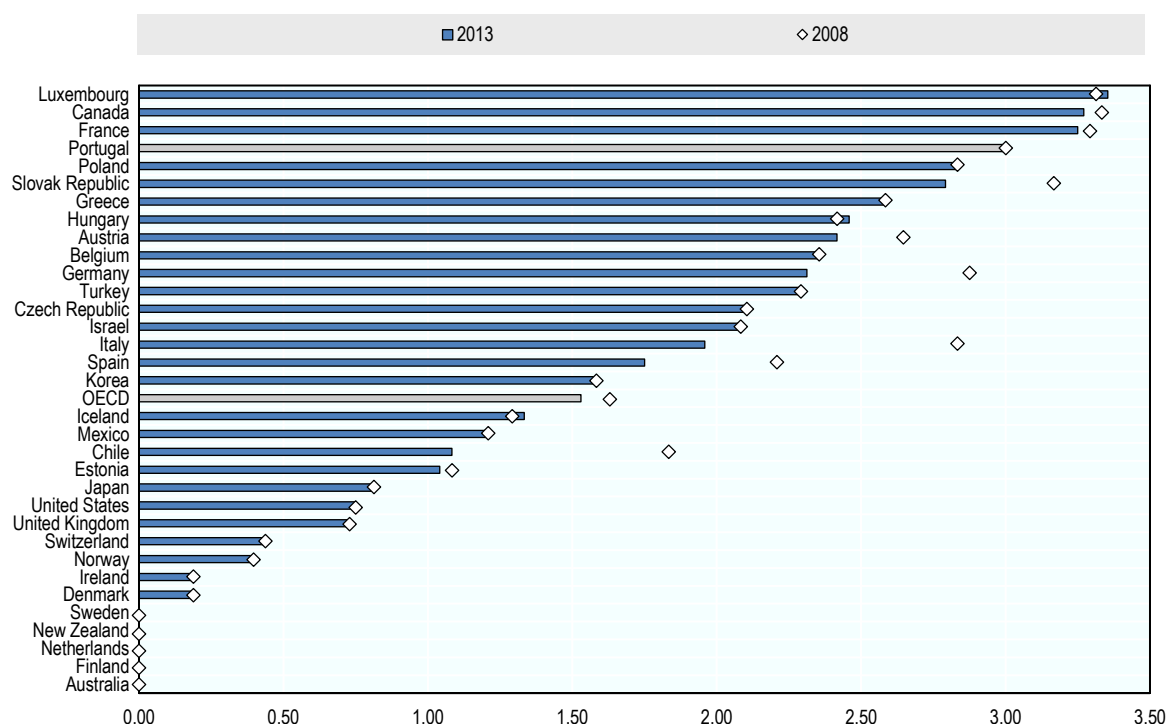
Source: OECD (2013), Product Market Regulation Database, www.oecd.org/economy/pmr.

Figure 2.8. Product Market Regulation indicator for accounting-related professions

Source: OECD (2013), Product Market Regulation Database, www.oecd.org/economy/pmr.

Figure 2.9. Product Market Regulation indicator for engineering professions

Source: OECD (2013), Product Market Regulation Database, www.oecd.org/economy/pmr.

Figure 2.10. Product Market indicator for the architecture profession

Source: OECD (2013), Product Market Regulation Database, www.oecd.org/economy/pmr.

Finally, the European Commission has also developed a restrictiveness indicator for the liberal professions, which does not measure the same aspects as the OECD PMR. In 2016 the EC restrictiveness indicator shows a higher value for Portugal than the EU average for engineers, architects and accountants. This is an indication that the regulatory framework for these professions is more limiting than the EU average. The EC indicator shows that within Portugal the regulation for lawyers is particularly restrictive compared with the other professions. However, on an EU average, the Portuguese value for lawyers is slightly lower (European Commission, 2017).

According to European Commission (2017a, p.9) "lower levels of regulatory restrictions coincide with better economic outcomes, specifically lower incumbents' rents and higher growth of the number of enterprises".

The breadth of the restrictions to competition in the regulated professions in Portugal, as well as the prescriptive approach that dominates, create a range of barriers to competition. In several cases, these barriers cannot be justified by the public interest arguments that tend to motivate professional services regulations; namely market failures or other broad policy goals.

We recommend that professional self-regulation in Portugal generally moves away from a "prescriptive regulation" towards a "performance-based regulation" approach, possibly coupled with some features from a "systems-based regulation" approach. Both households and firms will be better off as a result of this evolution.

In addition to the regulatory approach, this report contains numerous specific recommendations for regulatory reform. The overarching rationale for these changes is that,

while a certain level of regulation is justified for consumer protection reasons, it should not exceed the necessary and adequate level to ensure that protection. In general, the aim of this report's analysis was to identify such unnecessary or excessive regulations and to propose a well-developed regulatory framework to support innovation, cost-reduction and more efficient practices for the professions, while supporting better access to professional services for both firms and consumers. These changes take inspiration from recent reforms in the European Union, and economic studies demonstrating the broad economic benefits of regulatory reform in the liberal professions, described in Box 2.1.

**Box 2.1. Recent reforms in the field of regulated professions
in other EU Member States**

Several regulatory reforms have been undertaken by EU countries in the field of the regulated professions over the past decade.

Greece had one of the highest levels of regulatory barriers among OECD countries, some of those in conflict with the spirit of the Services Directive. In 2011, the country undertook a major reform on a large number of regulated professions (such as lawyers, notaries, accountants, and auditors) and created a new framework regime. Some changes included the abolishment of fixed prices and compulsory minimum fees. The licensing requirement to practise a profession was replaced with a simpler scheme of notification. Athanassiou et al (2015) demonstrate positive outcomes in the case of Greece on employment levels, reduction of costs to consumers and more entrants into the market from the liberalisation of access and conduct. In the case of notaries, there was an increase on the number of start-ups from 80 during the period 2007 to 2013 to 193 in 2014.

Spain established a new regulatory framework for the regulated professions after the transposition of the Services Directive in 2009. Professional associations are not entitled to fix tariff rates, restrictions on advertising were relaxed and for some professions it became easier to exercise different professions at the same time.

In Italy, several changes such as the abolishment of mandatory minimum tariffs and the adoption of less restrictive rules on compulsory traineeships were adopted in 2012. Additionally, the freedom of establishment of new firms and the rules on advertising were relaxed. In the case of lawyers, fixed tariffs were abolished and free advertising was adopted, which contributed to lower average fees.

In some cases, such as Greece, Spain and Italy, those reforms were intended to conform the legislation of the Member States to the agreements established with the “troika”. Other countries, such as Poland, Germany, Austria and the United Kingdom also undertook recent reforms on the liberalisation of professional requirements, with positive outcomes in employment rates and in the prices to consumers.

Sources: Athanassiou et al (2015), Canton et al (2014), Rojek et al (2016), Chini et al (2016), Davud Rostam-Afschar (2015), Koumenta et al (2015), and Pagliero (2015).

Additional benefits from a different regulatory structure would include the fact that taking innovative steps will be easier. Innovation in professional services is also required to encourage the use of online and internet services and to prepare the professions for the future use of modern information technology, such artificial intelligence and blockchain,

in service provision. The current regulatory system is ill-equipped to deal with radical or innovative technologies in the professions.

The next chapter analyses the regulation of professions in Portugal in general, with a particular focus on the regulatory barriers to competition that are common to several professions. Subsequent chapters then discuss barriers that are relevant only for one or a few professions, grouped by trade (legal, scientific and technical, financial and health).

Notes

¹ Note that these professional sectors may include employees and staff who are not themselves members of the professions. For instance, law firms employ secretarial staff, clerks and IT experts who are not lawyers themselves.

² In Canton et al. (2014).

³ https://ec.europa.eu/growth/single-market/services/services-directive_pt

⁴ In Canton et al. (2014), op. cit.

⁵ North Carolina Board of Dental Examiners vs The Federal Trade Commission. See www.ftc.gov/news-events/press-releases/2015/02/statement-ftc-chairwoman-edith-ramirez-us-supreme-court-ruling; and www.americanbar.org/groups/professional_responsibility/resources/client_protection/north-carolina-board-of-dental-examiners-decision-resources.html

⁶ See <http://www.oecd.org/eco/growth/indicatorsofproductmarketregulationhomepage.htm>.

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Chapter 3. Regulatory barriers common to self-regulated professions in Portugal

Law 2/2013 provides the framework for the establishment and functioning of professional associations in Portugal. This framework is premised on the protection of the public interest. Professional associations have representative and regulatory powers in relation to their members and candidates. These powers can include establishing mandatory academic qualifications and traineeship requirements for membership, as well as restrictions on partnerships, shareholding, management and multidisciplinary practice of professional firms. In exchange, professionals are granted the ability to provide certain services that are often exclusively reserved for them.

While each of the professions analysed in this report are unique, the regulatory frameworks that apply to them share several features. This chapter will identify five types of restrictions that apply to numerous professions in Portugal, and for which opportunities for pro-competitive reform exist. These restrictions are:

- the nature of the powers of professional associations
- academic requirements for entering a profession
- internship requirements for entering a profession
- the scope of exclusive rights granted to professionals
- ownership, shareholding, partnership, management and multidisciplinary practice of professional firms

3.1. The representative and regulatory powers of public professional associations in Portugal

The framework for the professional associations is established by Law 2/2013.¹ This regulation was adopted in the wake of Portugal's economic adjustment programme, and resulted from a set of political commitments agreed between Portugal and the “Troika”.²

Law 2/2013 aimed to remove several restrictions considered neither justified nor proportional by the legislator on matters of recognition of professional qualifications, advertising and access to regulated professions.³ This regime complements the rules already foreseen in several European directives; namely with respect to the recognition of professional qualifications,⁴ the free movement of persons⁵ and the provision of services in the internal market.⁶

Along with Law 2/2013, the legislature also adopted new bylaws for each specific public professional association of regulated professions through the following pieces of legislation:

- Law 15/2015, amending Law 47/2011 and Decree-Law 119/92, for the profession of engineer and of technical engineer;
- Law 101/2015, amending Decree-law 174/98, for the profession of economist;
- Law 112/2015 for the profession of customs broker;
- Law 113/2015 for the profession of architect;
- Law 126/2015, amending Law 51/2010, for the profession of nutritionist;
- Law 131/2015, amending Decree-law 188/2001, for the profession of pharmacist.
- Law 139/2015, amending Decree-law 452/99, for the profession of certified accountant;
- Law 140/2015 for the profession of auditor;
- Law 145/2015 for the profession of lawyer;
- Law 154/2015 for the professions of solicitor and bailiff;
- Law 155/2015 for the profession of notary.

Box 3.1. Recognition of professional qualifications among EU Member States

Directive 2005/36/EC, as amended by Directive 2013/55/EU, “establishes rules according to which a Member State which makes access to or pursuit of a regulated profession in its territory contingent upon possession of specific professional qualifications (...) shall recognise professional qualifications obtained in one or more other Member States (...) and which allow the holder of the said qualifications to pursue the same profession there, for access to and pursuit of that profession” (Art. 1).

This Directive is applicable to liberal professionals. The recognition of professional qualifications following the procedures established in the directive allows the beneficiary to gain access in another Member State to the same profession as that for which he is qualified in his home Member State. This aims to create greater mobility within the internal market and greater uniformity of formalities and rules of procedure among the Member States.

The directive determines two different regimes for the establishment of professionals in other Member States: a general system for the recognition of evidence of training (Chapter I of Title III) and an automatic mechanism of recognition on the basis of co-ordination of minimum training conditions (Chapter III of Title III). The automatic recognition applies, for instance, to architects and pharmacists, whenever they meet the requirements and provide evidence of the formal qualifications as established in the directive.

Some compensatory measures may be imposed by a Member State on professionals licensed in other Member States when substantial differences exist in the training or professional regulatory framework in the two jurisdictions. Specifically, these measures can be applied in the following cases:

- The training the applicant has received covers substantially different matters than those covered by evidence of formal qualifications required in the host Member State.
- The regulated profession in the host Member State comprises one or more regulated professional activities which do not exist in the corresponding profession in the applicant’s home Member State, and the training required in the host Member State covers substantially different matters from those covered by the applicant’s attestation of competence or evidence of formal qualifications.

These measures must be proportional, must take into account the applicant’s professional experience, and can include requiring the applicant to complete an adaptation period of up to three years or to take an aptitude test.

In Portugal, the Directives were transposed into the national legislation by Law 9/2009, as amended by Law 41/2012, Law 25/2014 and Law 26/2017. The national co-ordinator for the recognition of professional qualifications in Portugal is the Directorate General for Employment and Labour Relations (DGERT) (Order 13460/2012). For the self-regulated professions, the professional associations have been designated the competent authorities to recognise the foreigner qualifications of professionals applying to establish themselves in

Portugal (Law 2/2013 and Ordinances 107/2012, 96/2012, 90/2012, 89/2012, 81/2012 and 35/2012). When the recognition of qualifications is refused, the decision may be subject to a complaint submitted to the professional association or to the DGERT. The applicant may also use judicial means.

Source: “Direção-Geral do Emprego e das Relações de Trabalho” (DGERT) or “Directorate General for Employment and Labour Relations” in <http://www.dgert.gov.pt/> (site in PRT), and <http://eur-lex.europa.eu>).

The public associations are regulated by the Portuguese Constitution.⁷ They are considered “public associations” due to the legal nature of entities with public powers, i.e., powers transferred by the state through a mechanism of “devolution of powers”.⁸

Under the general regime, every professional association represents its members and regulates access to, and the exercise of, the profession. This includes regulating the conduct of its members and holding disciplinary powers. It also grants the professional title, establishes reserved activities and defends its members’ rights.⁹

Box 3.2. The powers of public professional associations in Portugal

- (a) Defence of the general interests of the recipients of the services;
- (b) Representation and defence of the general interests of the profession;
- (c) Regulation of access and exercise of the profession;
- (d) Exclusive concession of the professional titles of the professions they represent;
- (e) Concession, where they exist, of professional titles;
- (f) Attribution, where they exist, of awards or honorary titles;
- (g) Preparation and updating of the professional register;
- (h) Exercise of disciplinary power over its members;
- (i) Provision of services to its members with regard to professional practice, in particular as regards information and vocational training;
- (j) Collaboration with other entities of the public administration in the pursuit of the public interest related to the profession;
- (k) Participation in the drafting of legislation concerning access to and pursuit of their professions;
- (l) Participation in official accreditation processes and in the evaluation of the courses that give access to the profession;
- (m) Recognition of professional qualifications obtained outside the national territory, in accordance with the law, European Union law or international convention;
- (n) Any other that is committed to them by law.

Source: Art. 5 of Law 2/2013.

Box 3.3. Rules for creating new public professional associations

According to Article 3 of Law 2/2013, the creation of a new professional public association is to be regarded as exceptional, and may only take place when (i) the association seeks the protection of a special public interest that the state cannot directly guarantee; (ii) the establishment of an association is considered to be an adequate, necessary and proportional approach to protect certain legal rights; and (iii) only includes professions fulfilling the previous two requirements.

The creation of a public professional association must always be preceded by the following: (a) the presentation of a study, prepared by an independent entity with recognised merit, attesting to the fulfilment of the above requirements and containing an impact assessment on the regulation of the profession concerned; (b) the hearing of representative associations of the profession; (c) a public consultation, for a period of no less than 60 days, of the proposed legal acts on the creation and bylaws of the professional public association under consideration, together with the study referred to above. Nevertheless, according to public stakeholders, submitted draft-laws for the creation of professional associations have not always been preceded by the independent study referred to above.

The European Commission issued a proposal for a new directive of the European Parliament and the European Council in 2017 under which all new regulations concerning professional services should be subject to a proportionality test, to ensure that unnecessarily burdensome regulations are not implemented. This ex ante evaluation will allow the legislator to take into account the potential impact of a new regulation on consumers, businesses and professionals. It avoids the adoption of unnecessary burdens that later will represent higher costs and inefficiencies. Such burdens may manifest themselves as excessive qualification requirements or quality standards, compulsory membership associated with high costs and with reserved activities, or other conduct restrictions. Other reasons invoked include greater transparency and harmonisation among the different EU legal regimes. This procedure would preferably include consultation with stakeholders and relevant entities within the sector, an economic impact assessment and a detailed evaluation of the proportionality of the measures considering the policy objectives in question and the impact on competition.

As stated in the law, the legislator clearly intends that a self-regulatory regime must be the exception, and not the rule. The creation of new professional associations should therefore only take place in cases where public interest clearly justifies and requires its creation. The legislator must assess whether there are other alternatives, with less restrictive means of entry into and exercise of the profession than those introduced by the self-regulatory regime.

In the case of addition to associations representing the profession, it would be useful to consult the Portuguese Competition Authority, the relevant consumer representatives as well as other relevant regulators, before the public consultation period.

Source: Proposal for a Directive of the European Parliament and of the Council on a proportionality test before adoption of new regulation of professions, European Commission COM(2016) 822 final.

Professional associations can approve regulations applicable both to their members and candidates to be members. All internal regulations approved by professional associations, including rules for professional internships and admission exams, must be approved and confirmed by parliament.¹⁰ Regulations

that apply outside the professional association are published in the official journal after a public consultation period.¹¹

The regulatory framework for public professional associations is subject to rules: (i) regarding the procedural requirements for the creation of new professional associations; (ii) mandating internal democratic processes; (iii) establishing the professional supervision function and (iv) mandating associations to act in the public interest.

The Portuguese Constitution gives the Portuguese Parliament (*Assembleia da República*) the power to approve the specific bylaws of each public professional association.¹² The government exercises legal control only on the legality of professional associations,¹³ which excludes any control over the merits of decisions.¹⁴ As such, the powers of parliament over the professions may seem stronger on paper than in reality as it is rare for parliament not to endorse proposed legislation put forward by the professional associations. Formally, public professional associations cannot (i) participate in activities that are related to the regulation of the economic or professional relations of its members, (ii) establish restrictions on the freedom of access and exercise of the profession that are not provided for in the law, or (iii) infringe on the rules of competition in the provision of professional services, in national and EU law.¹⁵ Again, this may not always be a perfect reflection of reality, as was observed for instance with regard to internships (which tend to be much longer and arduous than provided for in the regulation), or for the addition of reserved activities in the by-laws, although Art. 26 of Law 2/2013 specifically stipulates the principle of competition.

The law foresees the creation of a specialised Ombudsman for each profession with advisory, mediation, advocacy and pedagogical functions.¹⁶ These functions do not include any disciplinary powers, although the Ombudsman might have the powers to refer cases of a disciplinary nature to the professional association. Architects have, since 2006, a dedicated Ombudsman, briefly described in Box 5.1.

3.1.1. Alternative policy options: Creation of independent supervision of professions

Description of the barrier

Professional associations in Portugal jointly hold representative and regulatory powers.¹⁷

Harm to competition

When a professional association exercises both the regulatory and disciplinary functions over its members, and controls all access to and exercise of the profession, there is necessarily a tension between promoting the well-being of the professionals and the wider public interest. Since the professional association represents the professionals and, at the same time, regulates the market, it has incentives to adopt anticompetitive measures to protect the associated professionals.

As stated by the US Supreme Court "[t]here is no doubt that the members of such associations often have economic incentives to restrain competition and

that the product standards set by such associations have a serious potential for anticompetitive harm." ¹⁸ This tension is particularly relevant when other types of professionals outside the professional association start providing a service initially provided exclusively by members of the professional association with the same quality but at lower prices. As an example, in North Carolina (United States), the dental board tentative of excluding non-dentists from the market for teeth-whitening services due to the low prices charged by the latter was considered an anticompetitive practice by a professional association.¹⁹

In Portugal, several professional associations were condemned for anticompetitive practices including setting of minimum prices, ²⁰ setting of minimum and maximum prices, ²¹ ²² and unclear and not transparent criteria related to compulsory training. ²³

Shaked and Sutton (1981) establishes a trade-off between consumer welfare and professional members' income, where restricting entry of other rival professionals decreases consumer welfare but increases its members' income.

The professional association can also introduce through their regulations unjustified requirements to access the profession (such as unnecessary internships or overly restrictive academic qualifications) acting as barriers to competition. These regulations or practices might limit the number of professionals in the market, protect incumbents and result in higher prices to consumers, as fewer professionals are available to provide the same services.

In certain cases, such as when a professional association (composed exclusively of professionals) is legally responsible for dealing with complaints from clients, such powers can be used to protect professionals to the detriment of customers, decreasing the transparent functioning of the market.

Alternative models of structuring the professional associations' powers might provide more independent, pro-competitive and transparent regulation of professional services, mitigating the inherent conflict of interest in the self-regulatory system and protecting the public interest.

The creation of an independent supervisory body, which would not possess an advocacy mandate on behalf of the professions that it regulates, may improve the alignment of the professional regulatory framework with its public interest objectives, and eliminate potential barriers to competition.

In particular, granting oversight functions to an independent over-arching body by sector or trade, or its creation inside the existing professional associations with the necessary "Chinese walls" could address potential conflicts of interest between professionals and the consumers they serve.

This independent supervisory body, external or internal to the professional association, would promote the interests of consumers and the public interest in general; promote competition in the provision of professional services; increase public understanding of citizens' legal rights and duties; and assist the professional association in the setting of standards of regulation, education and training. Specific powers could include:

- approval of changes to regulatory arrangements deemed to have a significant impact on the functioning of the profession and on consumers' welfare (households and firms);

- guidance for the purpose of meeting regulatory goals such as: protecting and promoting the interest of consumers and the public interest in general; promoting competition in the provision of professional services; increasing public understanding of citizens' legal rights and duties; assisting in the setting of standards of regulation, education and training.

The existing regulatory functions of professional associations would be shared with the independent body, which would take on a supervisory role vis-à-vis the professional association. Each individual professional association would keep its representative functions and a range of regulatory functions, such as implementing access to the profession regulations and supervising the internship process (see Box 3.4).

Box 3.4. The role of the supervisory body

What could be the role of the "supervisory body"?

- Act as an independent regulator of the profession;
- Regulate access to the profession;
- Protect and promote the public interest;
- Protect and promote the legitimate rights and interests of users (i.e. clients and consumers);
- Ensure the provision of quality professional services, by promoting standards for work including regulations;
- Ensure legality and transparency of economic relations between all agents of the system;
- Promote competition in the segments with no reserved activities, and in the access to the professions, in collaboration with the Competition Authority in the pursuit of its responsibilities related to this sector;
- Act as a complaint body in disciplinary matters (in the case of an internal supervisory body);
- Carry out other tasks as provided by law.

An external, independent supervisory body could be structured to benefit from the expertise of all the relevant professions while working in the interest of the public at large. For instance, it could be governed by a board that includes representatives from the self-regulated professions, high-profile and experienced individuals from other regulators or organisations and representatives of consumer organisations and academia. When common to a trade, the independent body could take responsibility for supervising the work of the different public professional associations within the same professional area (e.g. engineering).

Box 3.5. Regulatory versus representative functions for professional associations in England and Wales

The 2007 Legal Services Act aims to incorporate more transparency and independence into the regulation of the legal profession in England and Wales, by separating the regulation and the representation functions of the professional associations.

The creation of the Legal Services Board (LSB) as an oversight regulator changed the paradigm of regulation of legal professions within this jurisdiction. The key element of the 2007 Act was to oversee the various different frontline regulators and to assure their independence as far as possible within the framework set by the act. High-profile, experienced persons are appointed to the LSB, which has a majority of lay people. The regulator is charged with defining entry standards and requirements to practice, as well as deciding disciplinary cases and approving internship arrangements.

The representative functions of the legal professions have remained with their respective professional associations, whose structures have a majority or are totally composed of professionals, with one exception.

A similar separation of regulatory and representative functions exists for pharmacists in the United Kingdom. The regulatory framework for pharmacists features a structural separation between the competences of the regulator and the professional society. Specifically, the General Pharmaceutical Council is the independent regulator for pharmacists, pharmacy technicians and pharmacy premises. Its principal functions include: “approving qualifications for pharmacists and pharmacy technicians and accrediting education and training providers; maintaining a register of pharmacists, pharmacy technicians and pharmacy premises; setting standards for conduct, ethics, proficiency, education and training, and continuing professional development; establishing and promoting standards for the safe and effective practice of pharmacy at registered pharmacies; establishing fitness to practice requirements, monitoring pharmacy professionals' fitness to practice and dealing fairly and proportionately with complaints and concerns”.

The Royal Pharmaceutical Society is the professional membership body for pharmacists and pharmacies. The activities and competences of the society include: “Continuously advancing both pharmaceutical science and pharmacy practice to improve the safety and efficacy of medicines and the quality of pharmaceutical care; Promoting research and evaluation to inform professional practice and evidence-led patient benefit; Supporting the continuous professional development and improvement of our members; Leading and promoting the advancement of science, practice and education in pharmacy to shape and influence the future delivery of pharmacy; Providing timely and relevant medicines information and advice; Recognising professional development through the RPS Foundation and Faculty programmes; Ensuring the voice of the whole profession is heard at the highest levels of healthcare and government through direct advocacy, our

responses to consultations, policy developments, and the RPS expert advisory panels, forums and groups”.

Sources: (i) Legal Services Board website (<http://www.legalservicesboard.org.uk/>); (ii) General Pharmaceutical Council website (<https://www.pharmacyregulation.org/about-us/who-we-are>); (iii) Royal Pharmaceutical Society website (<https://www.rpharms.com/>); and (iv) Legal Services Act 2007, The Pharmacists and Pharmacy Technicians Order 2007 and The Pharmacy Order 2010 all in <https://www.legislation.gov.uk/>.

An internal supervisory body could consist of an independent “board” within each public professional association. In addition to the representatives from the professional association itself, the board would include among its members high-profile experienced individuals from other regulators or organisations and representatives from consumer organisations and academia. The board would have to be assured of its independence within the rules guaranteeing transparency and professionalism, with the implementation of the necessary “Chinese walls”.

This board would take over the regulatory function for the profession, for instance establishing the rules of entry and exercise of the profession. Moreover, it would exercise some of the existing disciplinary powers over the members of the professional associations, particularly in the case of lapses of professional association oversight, or when more serious offenses (e.g. cases of malpractice) are involved that can lead to a suspension of membership.

3.2. Academic qualifications to access the profession

To ensure an adequate quality of service, self-regulated professions are subject to regulations of entry and exercise in the market. Entry rules typically include academic qualification requirements, completion of an internship and membership in a professional body. In this section we address the academic qualifications criteria to access the profession.

According to the Directive on the mutual recognition of professional qualifications, transposed into the national legislation by Law 9/2009,²⁴ Member States maintain the right to set the level of qualifications required to enable professionals to exercise a given profession in each Member State.

In that context, in Portugal, professional associations were granted the power to determine rules of access for self-regulated professions and establish the rules on the access to that profession in their corresponding bylaws. In what follows, we will assess the regulations of each of the 13 self-regulated professions imposing restrictions on academic qualifications.

3.2.1. Legal professions

Description of the barriers

Only university law graduates may (after successful completion of an internship and final exam), register and exercise the profession as **a lawyer**²⁵ or as a notary.²⁶

Candidates for solicitors and bailiffs can alternatively hold a law degree or a university degree in a solicitor's practice.²⁷

Harm to competition

Requiring academic qualifications, i.e., a law university degree or experience in a solicitor's practice, in the case of solicitors and bailiffs, limits the number of professionals that can enter the market and offer their services in it. Owing to these entry restrictions, there is a smaller number of professionals to serve the same number of clients. This may lead to higher prices charged for those services as demand may outstrip supply. In addition, with little or no competitive pressure, professionals have few incentives to innovate and to provide a broader range of services. According to the European Commission (2017c, 10 January 2017, p. 15, para. 12),²⁸ this ultimately leads to a welfare loss for businesses, including small and medium-size enterprises (SMEs) and individual consumers.

As stated by the LSB (2016, p. 76/7)²⁹ research commissioned in 2013 to explore the reasons why people choose not to use lawyers, highlighted the importance of perception of cost and the lack of transparency of costs for legal services, as key barriers. It is believed that these barriers reduce the overall size of the potential market for legal services, especially when the demand for legal services is discretionary. This same 2016 LSB Report refers to the 2016 "legal need survey" targeting England and Wales, which found that for those who had a legal problem over the 2012-2015 period and considered using but did not in the end use a "solicitor", 28% assumed they would be too expensive. A further 11% did not think the solicitor would offer value for money.

Less restrictive access to the profession, for example of lawyer, may mitigate similar problems in Portugal, particularly when we consider middle-income households (and not the very rich; or the very poor who may benefit from legal aid) and SMEs.

In addition to that, in specific cases such as lawyers specialising in patents or construction disputes, they may benefit from having initial training in another field such as engineering, providing better services to consumers.

We note that a number of jurisdictions in OECD countries have different entry criteria for becoming lawyers, for example. There are two paths to becoming a barrister in England and Wales: a candidate to obtain a standard degree in law awarded by a university in the United Kingdom, or a degree awarded by a university or establishment of equivalent level outside England and Wales, accepted by the Bar Standards Board. An alternative path is designed for candidates having graduated in a subject other than law. These candidates may undertake a one-year full-time course (or two part-time years) and obtain a Graduate Diploma in Law (GDL), formerly known as the CPE (Common Professional Examination). Successful candidates may then access common legal practice for candidate solicitors or training for barristers. Similarly, in Germany no university law degree is necessary to enter the profession of "lawyer". Candidates must pass a 1st State Exam (after completion of university studies), followed by a two-year induction period common for all legal professions, then pass a second state exam and finally qualify as lawyers.³⁰

The England and Wales and German models open alternative access routes for entering the legal profession, to the benefit of both university graduates and final clients. Both the profession and clients benefit from a greater diversity of academic backgrounds, and are better able to meet demands for greater multidisciplinary practice and innovative approaches to increasingly complex legal problems. The benefits also accrue to law firms themselves, as they can better compete to attract new lawyers/entrants, and are in a better position to compete for clients when facing other law firms, including law firms from other EU Member States.

As with lawyers, there may be other ways to qualify as a solicitor, notary, or bailiff without requiring a university degree in law or experience in a solicitor's practice. For example, in Germany, to become a notary, one must pass a state exam, but no law degree is *a priori* required, and the candidate must have minimum of two or three years of experience as a notarial candidate or lawyer.³¹ Notaries are also divided into three types (the single profession notary, the advocate-notary and the state-employed or civil servant notary). The advocate-notaries are more common in Germany, since they are lawyers first of all, the notarial duty being exercised as a second profession.

If lawyers, notaries, solicitors are able to deliver or share several reserved activities, to open alternative qualifying routes to lawyers but not to solicitors and notaries would not make sense. As for bailiffs, since the scope of the law in which they work is smaller than in the case of lawyers, it would hardly be justified not to allow bailiffs the benefit of alternative qualifying routes.

Recommendations

We recommend that access to the professions of lawyer, solicitor, notary and bailiff be open to university degrees other than law and a solicitors' practice degree, as the case may be.

The professional associations should work with the legislator to set a transparent, proportional and non-discriminatory process for identification of alternative routes to obtain the strictly necessary or adequate qualifications for the exercise of legal profession. In this case, candidates may be required to hold a postgraduate degree in law or to take a conversion course, and should undergo the same training as other legal trainees, including passing the Bar Exam.

Benefits

The implementation of these recommendations will bring into the market new entrants, with different backgrounds and different professional approaches, resulting in improved market dynamics and new innovative services.

3.2.2. Financial professions

Description of the barriers

The bylaws applicable to the professional association of economists establish an academic degree in economics as a requirement for registration with the professional association.³²

For auditors, national provisions require a pre-2005 degree,³³ a master's or a doctorate in any field,³⁴ to access the profession (after successful completion of an entry exam followed by a practical internship).

Only those holding a university degree, master's or doctorate, in the area of accounting, management, economics, business sciences or taxation,³⁵ can access the profession of certified accountant.

To register with the professional association of customs brokers an applicant must hold a university degree in economics, management or business administration, law, international relations, international trade or logistics and customs.³⁶

Harm to competition

In spite of the fact that economists must hold an economics degree to register with the corresponding professional association and use the title of economist, they have no reserved activities (see Section 3.4.) meaning that, in fact, they do not need to be registered with the professional association of economists to exercise the profession. Hence, there is no harm to competition in such a provision.

For auditors, it is not enough for a candidate to hold a specific undergraduate degree (concluded before 2005). By contrast, according to Directive 2006/43/EC on Auditing Services, it suffices for educational qualifications that a natural person "holds a university entrance or equivalent level",³⁷ then completes a course of theoretical instruction, has undergone practical training and passed an examination of professional competence of university at the final or equivalent examination level. This must be organised or recognised by the Member State concerned. Directive 2006/43/EC also allows alternative educational qualification routes through long-term practical experience. A Member State may approve a person to become an auditor if he or she can show either: that they have engaged in professional activities which have enabled him or her to acquire sufficient experience in the fields of finance, law and accountancy, for at least 15 years and passed an examination of professional competence, or that he or she has engaged in professional activities in those fields for seven years and has, in addition, undergone practical training and passed an examination of professional competence.³⁸

A broad range of university degrees is considered for fulfilling the requirement on academic qualifications to register as a certified accountant with the professional association.³⁹ However, an exhaustive list of specific routes of academic qualifications represents a barrier to competition, especially when combined with reserved activities and mandatory registration. This limits the number of professionals who can carry out specific acts, excluding well-qualified professionals who might still have the appropriate professional experience to perform those tasks. A different academic background might also bring innovation to the services traditionally provided by these professionals.

Before the introduction of the bylaws in 2015, to become a customs broker there was no requirement for a university degree; secondary school level (12 years of schooling) was deemed sufficient as an academic qualification. To require such an academic qualification as compulsory excludes other well-qualified professionals who may have the experience and professional skills to perform the activities in question.

Recommendations

The university degree requirement for financial professions should be opened to include those with different academic backgrounds and adequate professional experience to perform those tasks. These alternative routes would follow transparent, proportional and non-discriminatory criteria set in advance, and give access to the training applicable to other candidates. In some cases the alternative routes would be applied through a conversion course or postgraduate studies. Those candidates should undergo the same on-the-job training or professional exams as others.

In the case of auditors, alternative routes of educational qualifications through long-term practical experience should be established in line with Art. 11 of Directive 2006/43/EC on auditing services.

Concerning the university degree requirement for customs brokers, we recommend to revoke the need of a university degree in order for candidates to register as a customs broker.

Benefits

The implementation of these recommendations will bring into the market new entrants, with different backgrounds and different professional approaches, resulting in improved market dynamics and new innovative services, rewarding consumers in terms of lower prices.

3.2.3. Technical and scientific professions

Description of the barriers

Engineers must hold a qualifying degree in engineering to register in the professional association.⁴⁰ Instead, technical engineers can hold an engineering degree or a bachelor's degree in engineering to register in their professional association.⁴¹

The bylaws of the architects' professional association establish that professionals registered with that professional association must hold a degree in architecture.⁴²

Harm to competition

In Portugal, the engineer profession is split into 12 different specialisations⁴³ and 16 specialisations for technical engineers.⁴⁴ Although all engineering academic degrees are accepted to become an engineer or technical engineer, they provide access to different specialisations and consequently to different engineering activities (see Section 3.4. on reserved activities).

Unlike engineers and technical engineers, there are no official specialisations in the undergraduate degree in architecture.⁴⁵

The bachelor's degree used by technical engineers was discontinued with reforms to Portuguese education,⁴⁶ following the Bologna Process. Hence, since 2005, all graduates can only obtain a qualifying engineering degree. As such, in the medium term, there will be no academic major differences between the two professionals (i.e. engineers and technical engineers). We confirm this common trend in other EU Member States (See GROW/E-5, 2015).⁴⁷

Recommendations

The technical professional associations should work with the legislator to set a transparent, proportional and non-discriminatory process for identification of alternative routes to obtain the strictly necessary or adequate qualifications for the exercise of a technical profession.

The specific technical profession should be open to professionals with different academic backgrounds. These alternative routes would promote vertical conversions (e.g. migration from an engineering university background to an architecture degree) and would be applied through a conversion course or postgraduate studies. Those candidates should undergo the same on-the-job training or professional exams as others. These alternative routes would also apply to engineers and technical engineers for horizontal conversions (in the case of migration among different engineers' specialisations and different technical engineers).

Benefits

The implementation of these recommendations will bring into the market new entrants, with different backgrounds and different professional approaches, resulting in improved market dynamics and new innovative services, rewarding consumers in terms of lower prices.

3.2.4. Health professions*Description of the barriers*

To be registered in the professional association of nutritionists it is necessary to hold a four-year academic degree in nutritional sciences, dietetics or dietetics and nutrition.^{48 49}

The professional association of pharmacists' bylaws require an academic degree in pharmacy, pharmaceutical science or a master's in pharmaceutical science.⁵⁰

Both provisions are confirmed by Draft-Law 34/XIII pending in parliament.^{51 52}

Harm to competition

The requirement of academic qualifications is argued to be established on the grounds of quality standards for the exercise of these profession, which have a strong technical content.

According to stakeholders, these three types of academic degrees are the only ones which provide the technical expertise required for the practice of the profession, considering the current programmes from national institutions of higher education. There are currently in Portugal other academic degrees with similar titles, but according to stakeholders, they do not match the minimum requirements of quality and educational standards for the exercise of the profession of nutritionist.

The condition for holding a specific academic degree to be a member of the professional association is an access requirement that excludes other graduates from the performance of the activities reserved for this group of professionals.

There may be other scientific professionals who hold adequate professional and academic skills enabling them to practise at least some of the reserved acts. This could be the case, for example, of a nurse wishing to act as a nutritionist, or a chemists wishing to act as a pharmacist.

Furthermore, the list of academic degrees accepted by the nutritionists' professional association may exclude professionals who have a certain number of years of professional experience, but do not have a four-year academic degree, but only a three-year (*bacharelato*). The transitional regime to include those professionals in the professional association has already expired.

Among the EU28, 24 Member States regulate the profession of nutritionist and dietician, including Portugal. Iceland, Liechtenstein, Norway and Switzerland also regulate the profession. The profession is not regulated in Belgium, Croatia, Estonia or Romania. Regulation may consist of protecting at least one of the professional titles (nutritionist or dietician) and/or reserved activities.⁵³

Among the EU28, nine Member States report that regulation of the profession of pharmacist includes the protection of the professional title (or titles) and reserved activities; in nine Member States there are reserved activities but the title is not protected; in two Member States the title is protected without reserved activities; in two Member States there are multiple types of regulation and five Member States have not submitted information. Within the European Free Trade Association (EFTA) countries, Iceland has reserved activities and protected title; Norway has only a protected title and Liechtenstein and Switzerland did not submit information.⁵⁴

Recommendations

The professional associations should work with the legislator to set up a transparent, proportional and non-discriminatory process for the identification of alternative routes for obtaining the strictly necessary or adequate qualifications for the exercise of the profession of nutritionist or pharmacist.

Such routes would apply to professionals with a different university background, through a "conversion" course or postgraduate studies, meeting all the necessary requirements to exercise the profession.

Benefits

The implementation of these recommendations will bring into the market individuals with different backgrounds and different professional approaches, resulting in improved market dynamics and new innovative services, rewarding consumers in terms of lower prices.

3.3. Organisation and duration of internship

Internships are intended to certify that a candidate has acquired the professional and ethical training required for the adequate exercise of a profession.

The horizontal framework law for professional associations (Law 2/2013) introduces limits on the organisation and duration of professional internships.

Internships should not last more than 18 months,⁵⁵ including the period for training and evaluation, if applicable. In fact, professional internships ought to be exceptional and limited to the rules defined by Art. 8(2)(3)(4) of Law 2/2013. However, EU law provides some exceptions, as in the case of auditors.⁵⁶ In addition, Law 2/2013 introduces the possibility of establishing mandatory internships as an access requirement to obtain the title of specialist.⁵⁷

Some rules are left to be determined and governed by the bylaws of professional associations, such as training programmes, exams, duties and rights of interns and their supervisors, the provision of insurance, and the regime of suspension and conclusion of the internships.

The existence of an internship as such is not questioned in itself but depending on its duration, subject matter and associated costs, it may be disproportionate and unnecessary to fulfil the policy objective.

3.3.1. Legal professions

Description of the barriers

1. Lawyers

To qualify for the profession of lawyer, candidates must successfully complete an internship that can last between 16 and 18 months.⁵⁸ The internship includes two stages, a theoretical stage of 6 months and a practical stage of up to 12 months, and includes the final exam evaluated by qualified lawyers. Candidates may apply twice a year. The internship fees amount to EUR 1 500.⁵⁹ Additionally, trainees must contribute to the lawyers' pension scheme, paid during the second stage of the internship.⁶⁰

2. Notaries

To qualify as a notary, candidates must complete an internship of 18 months with two stages, theoretical (6 months) and practical (12 months). The duration of each phase may be reduced by half and the internship reduced to nine months in several cases, e.g., the trainee has a PhD in law, is a judge or district attorney or a lawyer registered with the lawyers' professional association for at least five years.⁶¹ Candidates may apply once a year.⁶² To conclude the internship, a trainee is not subject to a final exam, but must rather submit a final report, together with a declaration submitted by the supervisor on the trainee's aptitude.⁶³ The internship fees amount to EUR 750.⁶⁴

3. Solicitors

To qualify as a solicitor, candidates must complete an internship of 12 to 18 months and includes two phases, theoretical and practical, and includes a national final exam evaluated by peers.⁶⁵ Certain categories of legal professionals, e. g., lawyers, notaries, judges and bailiffs, may be exempted from the internship or the final exam, if they demonstrate that they have professional experience of three years in the last five years, and their CV is considered suitable by a committee of the professional association.⁶⁶ Candidates may apply once a year. The internship fees amount to EUR 969.⁶⁷

4. Bailiffs

To qualify as a bailiff candidates must complete an internship of 18 months with two stages, theoretical and practical, and includes an exam evaluated by an external entity, independent of the professional association.⁶⁸ The periodicity and the quota to attend an internship is determined by the professional association considering the “effective need of bailiffs for an efficient functioning of the judicial system” taking into account the opinion of the Commission for the Follow Up of Justice Assistants (CAAJ)⁶⁹. The internship fees amount to EUR 1 530.⁷⁰

Harm to competition

With the exception of bailiffs, for whom there is an external entity independent of the professional association that evaluates the internships,⁷¹ in all the remaining legal professions this evaluation is carried out by peers from the professional association. This may give rise to a conflict of interest that may not ensure the required independence of the evaluators and result in fewer candidates joining the professions. In turn, this may have a negative impact on competition in the delivery of legal services in the market.

The actual duration of the internship to become a lawyer results from a recent Deliberation of the lawyers’ professional association dated 11 December 2017.⁷² It already includes the final exam which guarantees that the internship will not exceed 18 months, in line with the maximum duration set under the framework law, Art. 8(2) of Law 2/2013. Stakeholders reported that internships before the Deliberation adopted in December 2017, often lasted longer than the statutory duration, in some cases up to two years. The inclusion of subjects that are part of any university law degree curriculum during the first six months of internship rendered the theoretical training period longer than necessary.

The (almost) complete absence of the e-learning option covering the theoretical training period of any internship may extend the duration of this training beyond what is necessary. Moreover, it also increases the cost of providing face-to-face tutoring, hence, the internship fees. Additionally, it increases the opportunity costs a trainee must bear in attending those training courses in person.

If internship fees are too high for candidates, that might lead to fewer candidates joining the internship process and, therefore, resulting in a lower number of suppliers of legal services competing in the market.

Recommendations

The final evaluation of the **lawyers, notaries and solicitors** internship should be conducted by a board, independent of the professional association, which may include members of the latter but must also include professionals of recognised merit, such as law professors and magistrates, among others.

For **all the legal professions**, we recommend that the theoretical training should provide an e-learning option. This could lead to a reduction in internship fees, as well as reducing the opportunity costs of having to attend those training courses in person.

We recommend that subjects that are part of any required university curriculum (such as a law degree, a suggested conversion or a postgraduate course) should not be included in the theoretical training offered during the first six months of the internship. This would have a beneficial impact on the duration of the whole internship in cases such as that of lawyers.

All internship fees should be proportional and reflect the true costs of organising and providing the internships, following transparent and clear criteria that must be made public by the professional association.

3.3.2. *Financial professions*

Description of the barriers

1. Economists

The bylaws of the professional association of economists⁷³ requires the completion of a professional internship, when mandatory. The internship is not mandatory if candidates graduated before 26 April 1999, or if they hold a master's or PhD degree relevant to their application as a specialist.⁷⁴ The duration of the internship cannot be longer than 18 months, but if the candidate has a postgraduate diploma relevant to the area, the duration of the internship can be no longer than 12 months.⁷⁵ To complete the internship, there is no final exam; however, the candidate's supervisor must submit a final report evaluating the candidate. This report will be reviewed by a permanent commission of the professional association that will decide on the candidate's membership of the professional association.⁷⁶ However, since there are no reserved activities for economists, we consider that there is no barrier to competition.

2. Auditors

To become an auditor, an applicant must pass an entry exam and then complete a practical internship of at least three years.

The entry exam⁷⁷ is both written and oral and covers areas such as law, economy, maths, management and accountancy. Under national provisions, there are no exemptions, either with regard to the theoretical examinations or to the practical knowledge, in case applicants hold an academic qualification in one of the required subjects.⁷⁸ This examination takes place at least once a year.⁷⁹ The fee is around EUR 1 430.⁸⁰ By contrast, Directive 2006/43/EC on Auditing Services is less stringent, allowing Member States to grant exemptions, a prerogative not used by Portugal.⁸¹

The practical internship of at least three years, must include a minimum of 700 hours per year of activities within the scope of functions of public interest provided for in the Statutes of the professional association,⁸² and amount to EUR 2 310.⁸³ This period may be reduced by the internship committee to a minimum of one to two years, for trainees who have exercised relevant functions for at least five years in the public or private sector. The internship itself may be waived for trainees who have exercised relevant functions for at least 10 years in the public or private sector.⁸⁴ Directive 2006/43/EC confirms, as a rule, the minimum duration of three years for the practical training, and also allows for exemptions from this training.⁸⁵ Hence, with regard to the practical internship, the

national provisions are not more restrictive than EU law, and therefore, we consider that there are no barriers to competition in this matter.

3. Certified accountants

Certified accountants must also complete an internship of up to 18 months with a minimum of 800 hours,⁸⁶ after which they take a final exam, organised and evaluated by their peers.⁸⁷ The internship fee amounts to EUR 400.⁸⁸

4. Customs brokers

Access to the profession of customs broker depends on completion of an internship which is equivalent to a postgraduate degree, which lasts six months.⁸⁹ Candidates may or may not be accepted for the internship. The decision is taken by a committee headed by the president of the professional association and includes other members of recognised merit who can be external to the professional association.⁹⁰ This same committee is responsible for setting and grading the final exam.⁹¹ The total cost of this internship is EUR 3 200.⁹²

Harm to competition

With the exception of customs brokers, whose internships are evaluated by an independent body, for auditors and certified accountants the internship evaluation is carried out by peers from the professional association. This may give rise to a conflict of interest that may not ensure the required independence of the evaluators and may also result in fewer candidates joining the professions. This, in turn, can have a negative impact on competition in the delivery of financial services in the market.

The (almost) complete absence of an e-learning option covering the theoretical training period of any internship may extend the duration of this training beyond what is necessary. It also increases the cost of providing face-to-face tutoring, hence, the internship fees. In addition, it increases the opportunity costs a trainee must bear of having to attend those training courses in person. The professional association of certified accountants already offers training courses on line.⁹³

Additionally, if internship fees are too high for candidates, this might lead to fewer candidates joining the internship process, resulting in fewer suppliers of legal services competing in the market.

The fact that national provisions do not include an exemption mechanism for the auditors' entry exam poses a barrier to competition. In fact, and by contrast, Directive 2006/43/EC on Auditing Services allows Member States to exempt candidates from subjects in the test of their theoretical knowledge when they can provide evidence of university or equivalent examinations or hold a university degree or equivalent qualification in one or more of those subjects. Candidates are also exempt from the test if they have received practical training in those same subjects attested by an examination or diploma recognised by the state.⁹⁴ In turn, restricting competition may have a negative impact on suppliers available in the market, on prices and on the diversity and innovation of the services provided.

Recommendations

1. Auditors

For *auditors* and *certified accountants*, the final evaluation of the internship should be conducted by a board, independent of the professional association, which may include members of the latter, but must also include professionals, such as university professors and other people of recognised merit.

For *auditors* and *customs brokers* we recommend that the theoretical training should be opened to e-learning. This could lead to a reduction in internship fees, as well as the reduced opportunity costs of having to attend these training courses.

For *auditors*, *certified accountants* and *customs brokers* internship fees should be proportional and reflect the true costs of organising and providing the internships, following transparent and clear criteria that must be made public.

The national legislation should follow Directive 2006/43/EC on Auditing Services, exempting candidate for auditor from certain subjects in the test of theoretical knowledge when they can provide evidence of university or equivalent examinations or if they hold a university degree or equivalent qualification in one or more of those subjects. Candidate should also be exempt from the exam for entry into the profession if they have received practical training in those same subjects attested by an examination or diploma recognised by the state.⁹⁵

3.3.3. Technical and scientific professions

Description of the barriers

1. Architects

To qualify for the profession of architect, an applicant must attend an internship of 12 months, which has no formal final exam.⁹⁶ In order to become a member of the professional association its regional directive council (CDR) must validate the candidate's internship report which needs to be previously validated by the internship supervisor.⁹⁷ The internship fee amounts to EUR 200.⁹⁸

2. Engineers

The internship for engineers can last from 6 to 12 months for individuals holding a master's degree⁹⁹ and between 18 and 24 months for individuals holding an undergraduate university degree.¹⁰⁰ The internship concludes with a final exam organised and evaluated by peers.¹⁰¹ However, certain candidates may be exempted from the internship, as follows: a university graduate in any engineering specialisation with at least six years of experience in engineering, and a master's degree in any engineering specialisation with at least five years of experience in engineering.¹⁰² The internship fee is EUR 115.¹⁰³ In addition, trainees are obliged to contribute to the membership fees as trainee members of the professional association.¹⁰⁴

3. Technical engineers

The internship for technical engineers can last up to 18 months for individuals holding a post-Bologna Process university degree or a bachelor's degree,¹⁰⁵ and up to 6 months, if they hold a pre-Bologna Process university degree or a master's degree.¹⁰⁶ The internship concludes with an evaluation of the internship by the

supervisor and then by the national directive council (CDN) of the professional association.¹⁰⁷ Technical engineers do not take a final exam at the end of the internship. However, all university graduates in technical engineering who have at least five years of experience in engineering are exempted from the internship.¹⁰⁸ The internship fee is EUR 150.¹⁰⁹

Harm to competition

The internship process is controlled by members of each professional association, following the rules established and implemented by the same professional association. This intra-professional association procedure raises concerns over the independence of the current internship processes, including the different candidates' evaluation procedures.

Additionally, if internship fees are too high for candidates, this might lead to fewer candidates joining the internship process, thus resulting in a lower number of suppliers of legal services competing in the market.

The internship for engineers can last up to 24 months. Apart from exceeding the maximum of 18 months as established in Law 2/2013, it places a heavy burden on candidates in opportunity costs associated with those 24 months. A long and expensive internship process may discourage candidates from enrolling. In turn, this will reduce the number of professionals able to compete in the market, leading to higher prices, lower diversity and innovation and, ultimately, lower consumer welfare.

Recommendations

Engineers' internships should be reduced to 18 months or less as established in the framework Law 2/2013.¹¹⁰

For *all technical and scientific professions*, the final evaluation of the internship should be conducted by a board, independent of the professional association (see our comments in Section 3.1.1 on a supervisory board), which may include members of the latter, but must also include professionals such as university professors and other people of recognised merit.

For *all technical and scientific professions*, internship fees should be proportional and reflect the true costs of organising and providing the internships, following transparent and clear criteria that must be made public.

3.3.4. Health professions

Description of the barriers

Candidates to access the profession of nutritionist must follow two internships: one academic and one professional.

The first is included in the four-year academic degree in nutritional sciences, dietetics or dietetics and nutrition in a higher education institution,¹¹¹ typically in the last semester.

The professional internship lasts six months,¹¹² has a final evaluation period and concludes with an oral final exam.^{113 114} In case of failure in the oral presentation, interns must do another six months of internship and in case of failure in the

ethics exam they can repeat it in 30 days.^{115 116} The bylaws of the professional association of nutritionists entered into force in January 2011.¹¹⁷ All professionals exercising the activity before 2012 for more than one year were exempted from this access requirement, but all candidates who apply for registration after that period need to comply with this requirement. The internship fee amounts to EUR 240.¹¹⁸

University graduates in pharmacy are not required to take an internship. They can register with the pharmacists' professional association immediately after graduation and begin to carry out their activity. The attribution of the title of specialist depends on completing an internship and passing an examination at the end of the internship. However, since there are no reserved activities for pharmacists with specialisation, we consider that there is no barrier to competition.¹¹⁹

Harm to competition

The unnecessary duplication of internships for a candidate nutritionist creates fewer incentives for applicants to access the activity. Even if the internships apparently are of two kinds, they both aim to provide practical training and to prepare candidates to be autonomous in their activity.

The effective need and purpose of the professional internship required by the bylaws of the professional association of nutritionists was not demonstrated. This need is even more questionable in case of an existing duplication, i.e., when candidates had already attended an internship programme during the execution of their academic training. This also delays entry of new suppliers into the market.

Moreover, the monopoly of the professional association in the organisation of professional internships is potentially harmful to newcomers, as already qualified nutritionists essentially decide who their future competitors will be, and can restrict or grant access to the profession, seemingly at will. Professionals also tend to have fewer incentives to charge lower prices to consumers or indeed to increase the quality of the services provided.

Access requirements must be proportional and adequate to the policy objective of the regulation. Some recent economic studies published by the European Commission demonstrate that reforms implemented by EU Member States to abolish or reduce obstacles to the access of liberal professions led to job creation and lower prices for consumers, including in healthcare services.¹²⁰

Recommendations

We recommend eliminating the duplication of internships imposed on candidates for nutritionists, and consider admitting only one, either the academic or the professional internship.

Internship fees should be proportional and reflect the true costs of organising and providing the internships, following transparent and clear criteria that must be made public.

3.4. Reserved activities

All but two of the professions analysed in this report are granted the right to perform reserved activities, that is, exclusive rights to perform certain professional acts.¹²¹

Reserved activities are tied to the professional title granted by the corresponding professional association (such as lawyer, solicitor, engineer or pharmacist), meaning that only professionals holding such a title can practice those activities.

The practice of exclusive rights may also be segmented within the same profession, based on additional requirements such as the number of years of experience or holding a professional specialisation. This is the case of some of the technical professions, such as engineers and architects.

In Portugal, most professions have some degree of reserved activities with the exception of economists (see Box 6.1) and nutritionists.¹²² However, the latter is lobbying currently to obtain exclusive rights to provide dietary advice (see Chapter 7 and comments on Draft-Law.34/XIII). This does not mean that for certain purposes, such as to access specific positions or careers, the professional title of nutritionist or economist cannot be required.

The granting of reserved activities is generally associated with specific skills or qualifications, and is intended to maintain certain quality standards in the supply of professional services within the prescriptive regulatory model. This need traditionally arose from the information asymmetries between service providers and their clients regarding the quality level of services, and the public interest in preventing the emergence of negative externalities when professional services are of sub-optimal quality, normally imposing costs on parties outside the professional-client relationship (professional service market failures are described further in Section 2 above).

However, the granting of exclusive rights restricts the supply of professional services in the market, which negatively affects competition. These restrictions limit competitive pressure on incumbents, leading to higher prices, greater inefficiency and potentially lower levels of innovation, to the detriment of consumers of the service as well as the economy overall. The anticompetitive consequences of exclusive rights are most severe when individuals and firms are forced to buy the regulated services. Moreover, the prescriptive approach (fully determining who may work in a certain field), is not a guarantee of the desired outcome. The regulator can only supervise the input with such an approach, not the result.

The granting of exclusive rights for professions must balance restrictions to competition on the one hand and the public interest on the other, answering the following five questions:¹²³

- Are the reserves of activities effective in protecting consumers?
- Are the reserves of activities effective in supporting broader public interest considerations?
- Is the scope of the reservations appropriate and well targeted for securing either of the above two goals?

- Does the scope of the reservations still allow sufficient entry for unauthorised providers in the relevant professional areas?
- How strong is competition for current reserved activities and what alternatives are there to reserve professional activities, since there may be less restrictive ways to deliver consumer protection and secure the relevant considerations of public interest?

The European Commission (2017a) highlights that requirements concerning access to a profession must be proportionate, necessary and adequate to the objectives of the regulation in question. Otherwise, such regulations will lead to significant increases in prices as they limit the number of professionals that provide a certain service. The European Commission has been recommending that Member States critically review their provisions on reserved work and the rights given to certain professional groups. The regulations should be adapted to become more output-focused and less prescriptive.

In general, reserved activities or tasks for specific categories of professionals should be abolished in cases where: (i) the protection is disproportionate to the policy objective because the tasks may already be performed by other well-qualified professionals or are not a danger to public safety; (ii) there is strong and well-regulated protection of the professional title which guarantees the quality of the professionals that are allowed to work; or (iii) the restriction is no longer required owing to legal, societal or professional developments that make the restriction obsolete by its objective.

In some cases, such as that of auditors, the reserved activities follow from specific knowledge requirements and very strict rules imposed at European level on total independence of functions, which would not consider opening of such activities to other professionals not meeting such requirements. In the case of bailiffs (i.e. enforcement agents) the reserved activities result from their role as auxiliary agents of justice who, in pursuit of the public interest exercise powers of a judicial nature resulting from judicial and procedural provisions, for which total independence from third parties is required.¹²⁴

In several cases, however, opening up reserved activities to additional qualified professions could generate substantial consumer benefits, in the form of innovative and more diverse services at lower prices. For instance, alternative professionals with a lower level of qualifications could better serve consumers with simple needs, who could otherwise overpay when retaining professionals with qualifications suited to more complex needs. In the following sections we analyse specific reserved activities for professions and propose recommendations that, if implemented, would allow diversification of service providers and lead to a decrease in prices for at least the simpler services.

3.4.1. Legal professions

Description of the barrier

The following activities are reserved exclusively for lawyers and solicitors:¹²⁵

- exercise of the judicial mandate;
- provision of legal advice and consultation;

- drafting of contracts and the practice of preparatory acts aimed at the constitution, alteration or extinction of legal transactions, namely those practiced in conservatories and notary offices;
- negotiation aimed at collecting credits;
- exercise of the judicial mandate for the challenge of administrative or taxation acts.

Notaries have exclusive powers to issue five types of documents such as wills, notarial certificates, and credits claims, and to carry out inventory processes.¹²⁶

Harm to competition

The scope of reserved legal activities practised by the legal professions in Portugal is quite wide. It may unduly restrict competition from unauthorised legal providers and non-legal providers, potentially with lower cost, in which case the option to reserve activities may not be proportional to ensure consumer protection and to secure access to justice and legal advice. Given that the legal professions are already very restrictive, with tightly controlled entry, there seems little point in carving out the market for certain services. In this case, the scope of the reserved acts must be revised.

For comparison purposes it is worth mentioning that the 2007 Legal Services Act for England and Wales specifies six reserved legal activities that only “authorised persons” (or, in some cases, people supervised by an authorised person) can provide to the public for a fee. They are: (i) the exercise of a right of audience; (ii) the conduct of litigation; (iii) reserved instrument activities (undertaken when conveyancing property); (iv) probate activities; (v) notarial activities; and (vi) the administration of oath.¹²⁷

One of the main professional activities of lawyers and solicitors is to provide legal advice, understood as the provision of legal guidance on the interpretation and scope of the law to a client, often in written form.¹²⁸ Other than lawyers, professionals holding a master’s degree or a Doctorate in Law can also offer legal advice provided they register with the Bar Association. Law professors can provide legal advice without being registered with the Bar Association.¹²⁹ Legal experts (not working in professional firms) do not provide legal advice as defined above, but instead provide in-house counselling as company employee.

Reserving certain legal acts (e.g. drafting routine contracts for the purchase and sale of real estate) to lawyers and solicitors might also be unjustified. Specialised legal professionals (not registered as lawyers or solicitors), and entities for whom they work could be allowed to provide such legal advice to third parties. This could be done under due supervision of the professional association or the new supervisory body.

The recommended changes should be complemented by the elaboration of a professional conduct code applicable to all legal professions, along the lines of the England and Wales 2011 Solicitors Regulation Authority Code of Conduct.^{130 131} This code lays down outcomes-focused conduct requirements rather than certain behavioural characteristics such as honesty, loyalty, urbanity, probity and candour as is the case in e.g., the Bar Association Bylaws.¹³²

Such changes will broaden the offer of legal services, facilitate access to legal advice and spur competition between providers, eventually leading to more innovative services and possibly also lower fees for some standard services.

Moreover, reserved acts mean that there is no scope for using digital applications (such as artificial intelligence) systems or providing legal advice through online or digital systems. In fact, the entity that would make an algorithm as a legal research tool for obtaining legal advice commercially available, would be practising a reserved act illegally, unless he were a lawyer. Legal advice is a reserved activity of lawyers and solicitors.¹³³ The online market for services remains underdeveloped in Portugal, meaning that access to legal advice and services for low-income groups and small businesses might be limited.

Reserved acts for notaries have been significantly reduced since 2000 in the context of the Portuguese government's administrative simplification programme. The remaining issuance of five types of documents and the exclusive power to carry out inventory are analysed in Section 4 under the regime of maximum and fixed fees.¹³⁴

Recommendation

We recommend that the profession of lawyer should review all its reserved activities with a view to opening the exercise of them to the other legal professions under due supervision of the work performed. We also recommend opening the market of legal advice to professionals (i.e. legal experts) and entities for which they work that want to provide legal advice on a regular basis.

Box 3.6. . Innovation in legal services

Technology, machine learning, Artificial Intelligence (AI) and system process improvements are making some types of legal services more accessible and reducing (sometimes even eliminating) the costs of those services. For example, electronic tools for document review can decrease the cost of legal services by reducing time and money spent on the discovery process.

The Legal Services Board (LSB) carried out an evaluation study of the changes in the legal services market in England and Wales between 2006/07 and 2014/15, and concluded that variety and innovation in legal services have the potential to have positive impacts on a higher proportion of consumers. An updated survey of innovation in legal services is expected in the last quarter of 2018.

Owing to innovative legal services, a larger portion of consumers is able to access justice and legal services at an affordable cost. This is also directly linked to more competitiveness in the legal services market, because “the dynamics of competition create incentives for suppliers to increase productivity through innovation, which lowers costs and hence prices through time” (LSB).

Technology is also having an impact on legal services. According to The Law Society of England and Wales (2016) this impact is especially felt in five ways:

- enabling suppliers to become more efficient at procedural and commodity work
- reducing costs by replacing paid humans with machine-read or AI systems
- creating ideas for new models of firm and process innovation
- generating work around cybersecurity, data protection and new technology laws (including use, crime, corruption, online purchase rights, copyright)
- supporting changes to consumer decision-making and purchasing behaviours.

The Enterprise Research Centre (2015) states that the correlation between legal services and innovation has been different from other areas, influenced inevitably by regulation and legislation. In particular:

Although innovation has not been used typically to lower prices, it is used to extend service range, improve service quality and attract new clients.

- They define innovation in legal services as rather “closed”. Ideas for new innovative services rarely come from outside the organisations concerned, and they do not see in legal services the potential for extensive networking with external knowledge sources which characterises innovation in some other business and professional services.
- Innovation is more often than not incremental in nature with very few providers considering themselves to be radical innovators.
- Social media and the development of online activity has been a significant driver or enabler of innovation in the sector and its use for commercial purposes is now fairly widespread.
- Regulation and legislation can have either a positive or negative effect on innovation. On the one hand, excessive bureaucratic regulation can block new ideas and prevent their commercialisation; on the other hand, organisations may develop new products or ways of working to cope with the demands of regulation.

Online dispute resolution

Online dispute resolution (ODR) is being promoted as an area with enormous potential for meeting the needs of the legal system and its users. Its aim is to broaden access to justice and resolve disputes more easily, quickly and at lower cost. Such a system is already being successfully put into practice by sites such as eBay, Cybersettle and the Canadian Civil Resolution Tribunal.

For low-value claims, the current court system can be costly, slow and complex, especially for litigants in person. The UK’s Online Dispute Resolution Advisory Group, set up by the Civil Justice Council, explores the potential of ODR for civil disputes of value less than GBP 25 000. The group’s main recommendation is electronic interaction with parties and providing three tiers of services: online evaluation (advice); online facilitation (mediation); and online judges (managing and deciding cases).

Numbers in the current small-claims system have shrunk from 60 000 in 2001 to a mere 25 000 in 2014. eBay's ODR system is potentially one of the most successful arguments for looking at expanding where and how these processes are implemented. Some 60 million disagreements amongst traders on eBay are resolved every year using ODR (ODR Advisory Group 2015: 11-12).

Source: Legal Services Board (2016), Evaluation: Changes in the legal services market 2006/07 – 2014/15, p.55, <https://research.legalservicesboard.org.uk/wp-content/media/2015-2016-FINAL-Market-Evaluation-Main-report1.pdf>; The Law Society of England and Wales (2016), The Future of Legal Services, pp. 38 and 40, <https://www.google.pt/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwiqvbuHjM7ZAhVHbhQKHUVaBqoQFggnMAA&url=https%3A%2F%2Fwww.lawsociety.org.uk%2Fnews%2Fdocuments%2Ffuture-of-legal-services-pdf%2F&usg=AOvVaw0pWsyJ9XXv261iAqdYX4TF>; Enterprise Research Centre (2015), Innovation on Legal Services, pp. 72-73, <https://research.legalservicesboard.org.uk/wp-content/media/Innovation-Report.pdf>. Hodges, Christopher (2015) Online dispute resolution: answers? Law Society Gazette, <https://www.lawgazette.co.uk/%20law/practice-points/online-dispute-resolutionanswers/5048289.fullarticle>.

3.4.2. *Certified accountants*

Description of the barrier

The law reserves exclusively for certified accountants the following accounting activities:¹³⁵

- planning, organising and co-ordinating the accounting procedures of public or private entities which have or need to have organised accounting in accordance with the official accounting standardisation system;
- assuming responsibility for technical regularity in the accounting and tax matters of the entities referred to above;
- signing, together with the legal representative of the entities referred to above, the respective financial declarations and tax returns, proving quality, under the terms and conditions defined by the professional association, without prejudice to the competence and responsibilities of commercial law.

Harm to competition

The reserved activities of certified accountants exclude from the market of accounting activities other professionals, such as professionals with expertise in the same field but without registration or title of member of the Professional Association of Certified Accountants.

According to stakeholders, registered certified accountants are the only professionals with the necessary qualifications to perform such acts, taking into consideration the important role these professionals have in the tax system and management of SMEs. These reserved acts aim to reduce the negative effects stemming from information asymmetries between service providers and consumers, and to protect the public from unqualified practitioners.

Competition among professionals in accounting services can lead to a decrease in prices for at least the simpler accounting services. For instance, in the United Kingdom accountancy is a highly competitive sector, and even if the title is protected there are no reserved activities. In nine EU Member States (Cyprus, Denmark, Estonia, Finland, Lithuania, Latvia, Slovenia, Spain and Sweden) the profession is not regulated at all.

A narrower set of reserved activities for certified accountants would allow customers to choose between certified accountants and other professionals for accounting services, as recommended by the European Commission.¹³⁶

Recommendations

The competent authorities should open the simpler activities given to certified accountants (e.g. signing financial declarations and tax returns) to other qualified professionals.

3.4.3. Customs brokers

Description of barrier

Customs brokers have the exclusive right to:¹³⁷

- represent economic operators before the tax and customs authority and other entities with direct or indirect intervention in carrying out the customs formalities for goods and their means of transport;
- practise acts and other formalities with customs implications for goods and their means of transport, and declarations relating to goods subject to excise duty;
- draw up, on behalf of and at the request of economic operators, applications, petitions and requests to obtain simplified regimes as foreseen in the law.

Harm to competition

This requirement excludes from the market other professionals who might be equally qualified or capable (such as freight forward) but are not entitled and, therefore, cannot perform those services.

In a context where access to information and administrative fiscal requirements are increasingly simpler and communicated over the Internet, the role of the customs broker can just as well be performed by other professionals who would have a wider professional activity and probably lower costs. The requirements to register within the professional association of customs brokers are payment of EUR 3 200,¹³⁸ successful completion of a training, payment of an additional EUR 1 425,¹³⁹ provision of a financial guarantee and holding professional insurance.

Portuguese law seems to move away from the free customs representation that results from the spirit of EU law. In this context, the EU Court of Justice declared in 1991 that, by preventing shipping and forwarding undertakings from making

customs declarations in name and on behalf of another person as a regular part of their business activity, Portugal violated Council Regulation (EEC) N° 3632/85 of 12 December 1985.¹⁴⁰

Recommendations

Abolish the reserved activities for customs brokers.

3.4.4. Technical and scientific professions

Description of the relevant provisions

Only architects registered in the architects' professional association can develop or assess architectural studies, projects and plans.¹⁴¹ Only landscape architects may perform architectural landscape projects.¹⁴²

Only engineers registered in the engineers' professional association or technical engineers registered in the technical engineers' professional association may carry out engineering projects.¹⁴³

Additionally, each type of engineering project (among more than 90) requires their developers to hold a specific professional specialisation – electric, civil, mechanic, bridge, etc. – and, in some cases, a minimum number of years of experience such as 5, 10 or 13 years, depending on the nature of the activity.¹⁴⁴

Harm to competition

The regime of reserved activities for architects, engineers and technical engineers restricts access to and the ability for other professionals to exercise the profession.

This type of restriction reduces the overall supply of professionals able to perform the necessary professional functions, which in turn will tend to drive up prices and reduce service diversity and incentives for innovation. Ultimately it restricts competition in the market and may lead to a decrease in consumer and social welfare, as clients (in this case mainly business and possibly public firms) value low prices, high diversity and innovative services and products.

Several reserved activities could potentially be performed by professionals who are currently excluded at possibly lower prices without jeopardising safety, quality, diversity or innovation. In other words, it is possible to offer a better combination of all these aspects valued by consumers and by clients.

Professional colleges of specialisations within the architects' professional association may be created with functions of study, training and dissemination in the field of architecture and areas of particular scientific, technical, economic importance implying a specialisation of professional knowledge or practice. However, membership of one possible college does not differentiate one architect from all the others, namely and in particular, in relation to the possibility of practising any reserved act granted in exclusivity to the profession of architect.^{145 146}

Note that when comparing the regulation of architects with some EU Member States, the major difference between Portugal and the comparator countries is in the reserved activities and mandatory registration. In fact, out of the seven countries mentioned only five have a mandatory registration regime and only four have legally reserved activities for architects (see Box 3.7).

Box 3.7. Type the title here

	Architect			
	Academic qualifications	Protected title	Mandatory registration	Reserved activities
Denmark				
France	✓	✓	✓	✓
Germany		✓	✓	✓
Netherlands	✓	✓		
Portugal	✓	✓	✓	✓
Spain	✓	✓	✓	✓
United Kingdom	✓	✓	✓	

While the United Kingdom and the Netherlands rely solely upon title protection for architects without any reserved activity, Austria, Croatia, Ireland, Italy, Luxembourg, Portugal, Romania and Spain reserve a broad range of activities in addition to title protection.

According to the European Commission's Communication COM(2016), in November 2016 Portugal was highly ranked (4th), out of 28 for regulatory restrictiveness when considering access to and exercise of the profession of architect, following Luxembourg (most restrictive), Austria and Croatia. The least restrictive were Denmark, Estonia, Finland and Sweden which do not regulate the profession as such but rather rely upon other checks of competence within the construction environment. This contrasts with other Member States such as Portugal which establish that only qualified professionals with appropriate licences, certification or registration within a relevant body may legally practise architecture.

According to the European Commission, the difference between the two models may be less significant than it might appear in cases where “non-regulating” countries, i.e. Denmark, Estonia, Finland and Sweden use certification of competences of architects or ad hoc evaluation of competences or experience on a case-by-case basis as a condition for allowing architects to provide specific services (e.g. submission of plans for building permits).

Source:

<http://ec.europa.eu/growth/tools-databases/regprof/>

EU Commission's Communication COM (2016) 820 final

<http://ec.europa.eu/transparency/regdoc/?fuseaction=list&coteId=1&year=2016&number=820&version=ALL&language=en>

The only Member States where the profession of technical engineer exists are Portugal and Spain. The requirements in both countries are very similar: in both countries technical engineers find their title protected and hold reserved activities.¹⁴⁷

In Portugal, technical engineers are those who hold a lower academic qualification of a bachelor's degree¹⁴⁸ (discontinued in 2005) or an engineering qualifying degree. Professionals graduated after 2005 are free to register with any of the professional associations of engineers, face the same requirements and are allowed to practise the same activities. Technical engineers who graduated before 2005 normally have to accumulate additional years of experience before being allowed to execute the same task, when compared with their engineer colleagues. This restriction seems outdated and is highly distortionate.

In Portugal the engineer profession is split in 12 different specialisations¹⁴⁹ and 16 specialisations for technical engineers¹⁵⁰. Although all academic engineering degrees are allowed to become an engineer or a technical engineer, they provide different specialisations and consequently have their own reserved activities. For example, a civil engineer can exercise certain activities which cannot be practised by a mechanical engineer, and so on.

The existence of these different specialisations further segments the market for engineering services, creating harm to competition as it reduces the number of suppliers available in each of the specific markets. Reducing the reserved activities of the different specialisations of engineering or technical engineering will mitigate the harm as it would increase the number of suppliers competing for different services.

This report pays special attention to the legislation concerning professions involved in the construction sector as this is heavily regulated. Considering the significant share of civil engineers among engineers in Portugal (almost 50%), they are used here as benchmarking for the engineering profession.

There is only one type of civil engineer in Portugal. They are allowed to perform their activities in any area of civil engineering. In many other EU Member States, such as Bulgaria, Croatia, Italy, Poland, Spain and the United Kingdom, there are several classes of civil engineers, for example, a construction and civil engineer (able to build roads, bridges and railways) alongside a civil and environmental engineer, or even a consulting engineer. (See Box 3.8).

Box 3.8. Regulation of civil engineers in the European Union

According to the European Commission, in 2015 there were 99 different categories of civil engineer across the Member States. In many Member States this profession is regulated and sets specific reserved activities linked to professional qualifications.

In Belgium, France, Germany, Ireland and the United Kingdom, the use of the professional title is protected, which means that while access to the profession tends to be open, the service provider needs to hold the necessary qualification requirements to use the title. In practice and depending on the Member State, the use of the title may be necessary because of market expectations and acceptance by the public, taking into consideration the nature of the activities.

To provide an example, in France, the protected title is *ingénieur diplômé*. However engineers in the public service are not necessarily *ingénieur diplômé* and there is no regulation requiring a title to sign an official document. In general, in France, engineers are employed by construction firms, and the responsibility lies with the company they work for.

In other Member States there is a settlement of reserved activities, which can set only one class of civil engineers or several classes of civil engineers.

In Poland, design and construction activities are carried out either by two different types of engineer or by a single engineer, depending on their qualifications. In addition, depending on the level of qualification, civil engineers may carry out design and construction activities with limited or full capacity. These differences in

the organisation of the profession are also reflected in the reserved activity which varies from one country to another. In other countries such as Latvia, Spain and the United Kingdom, reservation of the activities (designing and construction) is applied only for some specific highly sensitive sectors, such as aviation and nuclear energy.

Other reserved activities are more specific to Member States such as the maintenance of work in Latvia, Poland, Portugal, Spain and Switzerland; building demolition in Greece and Spain. Assessing the energy performance of buildings in Denmark and Slovakia is reserved for energy engineers.

In Finland, only the supervision of the implementation of the design documentation of a building structure as well as the activity of the person in charge of the construction work of structures is reserved for engineers. In Italy, the control of road infrastructure is reserved for civil and environmental engineers with five years of enrolment in and attendance in a special course.

Sources:

Mutual evaluation of the regulated professions/Overview of the regulatory framework in the construction sector by using the example of civil engineers. GROW/E-5 – 18 September 2015.

<http://ec.europa.eu/transparency/regdoc/?fuseaction=list&coteId=1&year=2016&number=820&version=ALL&language=en>

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on reform recommendations for regulation in professional services {SWD(2016) 436 final}.

Professional experience can play an important role in the practical preparation of a professional. Acquisition of such experience may be difficult to assess, and requiring a minimum number of years of experience to perform a specific task may be a simpler way of ensuring that professionals are fully capable of carrying out that task.

However, the number of years of experience or of registration in a professional association does not necessarily imply that the person in question masters all the skills required. In addition, it automatically excludes younger qualified professionals from the market, although they may have more recent qualifications and more relevant experience for the project in question. Therefore, the requirement analysed leads to a reduction in the supply of professionals available to perform certain functions and, consequently, to an increase in prices.

According to EC (2015), professional experience is required in many EU Member States depending on the academic qualification and type of activities. For instance, in Denmark and Lithuania the legislator requires between three and five years of experience for activities within structures of significance. In Slovenia between three and ten years are required depending on the level of qualification. In Poland between one-and-a-half and four years are required, depending on the level of qualifications, the chosen profession and the level of responsibility and full or restricted capacity.

Recent studies have concluded that appropriate quality standards can improve efficiency in markets for professional services. The aim of the regulation should be to ensure that the outcome (a building standard, for instance) is of the desired quality, rather than trying to restrict those allowed to work on the building (see Box 3.9 on Denmark).

Box 3.8. Engineering regulation: The case of Denmark

In Denmark, engineers are not required to register in a professional association to perform engineering acts. The certification system is designed to ensure a high quality of design and execution of load-bearing structures in the construction sector and to facilitate the work of the authorities, reducing processing time when handling building projects without reducing the compulsory documentation of projects.

The authorities do not control the common housing structures when the project is prepared or verified and signed by a certified structural engineer. In the case of buildings where failure of the load-bearing structures would seriously endanger human life or have substantial economic, social or environmental consequences (“high hazard risk” buildings), the builder must enclose structural documentation accompanied by a declaration drafted and signed in person by a certified structural engineer who must have a certain number of years of experience to do so.

Structural engineers and fire and safety consultants undergo a verification and control procedure on the structural conditions and fire and safety aspects of the building they are working on. This procedure is enforced by the municipalities and the professionals in question take full responsibility for the documentation they present before the municipality in order to obtain the permit to develop the building. This procedure falls under the framework of the “Executive order on building regulations 2018”.

Certain requirements for the professionals who sign the structural conditions and fire/safety plans are imposed by building regulation in Denmark. These set categories/classes of construction, where tighter requirements are imposed for more complex categories of construction (classes 3 and 4). For these categories or classes of buildings, structural and fire and safety engineers face tougher requirements, such as: having 5 years of experience in that field and a certification with 210 ECTS, obtained academically or by another type of certification. For simpler constructions (classes 1 and 2), these requirements are less stringent and professionals may hold a certification with just 180 ECTS as long as the engineer who signs the project presented by the municipality is certified on the structural part and on fire and safety plans.

The “Executive order on building regulations 2018” also refers to the Danish Building Act in force and includes comprehensive references to other legal regulations applicable to each type of work and materials.

The owner of the work/building is liable in case of misconduct or negligence.

Regarding inspections and work supervision, the municipalities take a random 10% sample of the works under construction each year to check compliance with the law.

Source: The Danish Transport, Construction and Housing Authority. This authority operates under the Ministry of Transport, Building, and Housing in Denmark with responsibility and tasks across railway, road and air transport. This authority also sets the framework for the Danish construction sector. <https://www.trafikstyrelsen.dk/EN.aspx>.

Recommendation and benefits of implementation

We recommend that reserved activities should be opened to other professions from the same broad technical group. The aim of the regulation should be to ensure the quality of the output provided rather than to limit those who can perform such tasks. In particular, this may concern (list is not exhaustive and can be broadened): (i) tasks reserved for particular technical professions (i.e. architects, engineers or technical engineers), (ii) tasks reserved for specific specialisations within a profession (e.g. civil engineers, environmental engineers), and (iii) tasks reserved for professionals with a certain minimum number of years of experience.

We also recommend that the corresponding professional association reviews their qualification criteria in order to broaden membership to different kinds of engineers and other technical professionals. Finally, the technical professional associations should work with the appropriate authorities to review legislation to allow for a more output-focused legislative environment in the construction sector, better building standards and quality requirements, to allow for a broader qualification of engineers to work on building sites.

3.4.5. Pharmacists*Description of the barrier*

Only pharmacists can perform the 12 acts defined in the law as “pharmaceutical acts” (e.g. development and preparation of pharmaceutical forms of medicines; registration, manufacture and control of medicinal products for human medicine and medical devices).¹⁵¹ Others acts requiring specialisation in any fields of intervention of a pharmacist might also be considered a “pharmaceutical act”.¹⁵²

Harm to competition

On the one hand, the existence of reserved activities in the field of pharmacists aims to protect patients from possible misapplication of pharmaceutical acts by non-qualified suppliers and enforces more effective responsibility over professionals.

On the other hand, the establishment of reserves of activities restricts competition. It segments the market and provides exclusive rights to a certain group of suppliers. These provisions might result in higher prices to consumers, as fewer professionals are available to provide the same services. The prices of health services are of special importance for society as they have a direct impact on social welfare and relate to essential needs of the population.¹⁵³

According to stakeholders, the legislator used Directive 2005/36/EC that lists the pharmaceutical acts for the purpose of the automatic recognition of the qualifications of foreigners, as a benchmark to grant exclusive rights to pharmacists in the national territory (See Box 3.10).¹⁵⁴ Such an analogy might not always be justified. For instance, one of the specific reserved acts “harvesting of biological products, execution and interpretation of clinical analyses and determination of serum levels” is performed by several health professionals (medical pathologists and pharmacists specially qualified in clinical analyses) and should not be a reserved task.¹⁵⁵

Box 3.9. Automatic recognition of pharmacists' qualifications

Pharmacists benefit from an automatic procedure for the recognition of their qualifications in a Member State that is different from the one where they obtained their diploma, provided that the diploma meets the minimum requirements. In addition and especially after the recent enlargements of the European Union, some diplomas did not meet the minimum standards for mutual recognition. Thus, a system of “acquired rights” was created, to serve as a mechanism to allow the recognition of diplomas obtained before a certain date. In those cases, proof of professional experience can be required.

Member States are obliged to respond positively to the request for recognition in case the applicant's diploma is listed in the directive. Annex V (point 5.6.1.) determines the minimum subjects of the training programme in order to fulfil the requirements for academic recognition under this regime.

The abolishment of barriers related to the recognition of qualifications among EU health professionals is also an objective defined in Art. 53 of the Treaty on the Functioning of the European Union (TFEU): “(1) In order to make it easier for persons to take up and pursue activities as self-employed persons, the European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure, issue directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications and for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons. (2) In the case of the medical and allied and pharmaceutical professions, the progressive abolition of restrictions shall be dependent upon coordination of the conditions for their exercise in the various Member States.”

In 2006, Portugal was referred by the European Commission to the European Court of Justice, because when implementing Directive 89/48/EEC, it included in its domestic legislation an exhaustive list of specialist pharmacists, having excluded those of pharmacist-biologist (pharmacist specialised in análises clínicas). This created a barrier to the free movement of those individuals.

Sources; European Commission, “Professional qualifications: infringement proceedings against Portugal and Spain”, Press Release No. IP/06/1789, 13 December 2006, in http://europa.eu/rapid/press-release_IP-06-1789_en.htm

The Standing Committee of European Doctors, the Pharmaceutical Group of the European Union and the Council of European Dentists¹⁵⁶ have called on the European Commission to take into account the need for professional regulation for patient safety and, in a joint statement published by European dentists and pharmacists, they asked the Commission to exclude health professions from the future proportionality test for new regulation that is being discussed by the Council and the Commission.¹⁵⁷

The healthcare sector is excluded from the application of Services Directive 2006/123/EC. However, the need to regulate health professions must not lead to an excess of overly restrictive rules which lead to an anticompetitive legal environment among operators. Regulations should remain proportional and adequate to their purpose.

Recommendation

The legislator must revisit the scope of reserved activities for pharmacists, and remove from the provision (Art. 75 of Law 131/2015) any reference to the disposal of “medical devices” and para. g), k), l) and m), provided no conflict of interests arise that would jeopardise ethical principles.

3.5. Professional firms

In Portugal, professional firms are companies established under the terms of Portuguese law (Law 53/2015 on professional companies) or of European Union law for the joint exercise of professional activity, being held contractually and disciplinarily responsible for that exercise.¹⁵⁸ Those firms may have only professional partners (those that have company shares and exercise the professional activity there) or also non-professional partners (share partners that do not practise their professional activity in the company, although they might be entitled to do so).

Law 2/2013 establishes that restrictions on partnership, management and multidisciplinary practices may apply, in particular through the bylaws of the different professions,¹⁵⁹ justified by public interest or the exercise of public authority powers by a profession.

Under the Services Package,¹⁶⁰ the European Commission (2017a) makes several recommendations to Portugal to reform regulations of professional services including on shareholding requirements and restrictions to multidisciplinary activities.

Several other jurisdictions have taken steps to open up the partnership of professional firms to non-professionals, and to remove restrictions to multidisciplinary practice in professional firms.

It is important to stress that the European Union does not regulate or deregulate professions as this remains a national prerogative under the subsidiarity principle, stipulated in Art.5(3) of the TFEU. However, under EU law, a Member State still needs to establish national professional requirements for access to and exercise of professions that are non-discriminatory, proportionate and necessary to meet legitimate public policy objectives.

This section analyses three types of barriers to competition on professional firms, and the harm that results from disproportionate legislative and regulatory national provisions on (i) ownership, shareholding, partnership requirements, (ii) management requirements and (iii) restrictions on multidisciplinary activities, and presents less restrictive alternatives.

3.5.1. Restrictions on ownership, shareholding and partnership

Hereafter we present the several barriers identified in the horizontal framework law for professional associations (Law 2/2013), in the law on professional companies (Law 53/2015), and in the specific professional bylaws. In most cases the same barrier is repeated in several provisions.

Professional firms must have at least two professional partners belonging to the same profession (with the exception of those incorporated as sole-proprietor firms).¹⁶¹

The majority of social capital (above 50%) with voting rights (or, just the majority of voting rights, if applicable) must be owned by professionals or firms of such professionals who are members of the same professional association.¹⁶²

Additionally, an individual or firm cannot be a professional partner in more than one professional firm.¹⁶³

Restrictions in the legal professions bylaws

Only lawyers or other law firms, including from other EU countries, can be partners or associates in a law firm, which must be registered with the bar association.^{164 165} All voting rights in a law firm are thus in the hands of lawyers or other law firms through their participation in the law firm's sharing capital. Co-ownership or co-partnership with other professionals who are not lawyers are ruled out.¹⁶⁶

All partners in a notary's professional firm are notaries, and each firm cannot have more than three partners.¹⁶⁷ Only notaries with a licence to install a notarial office in the same municipality can form a partnership to install a notarial firm.¹⁶⁸ Additionally, a notary who is a partner in a notarial society cannot exercise his profession as an individual notary.¹⁶⁹

The bylaws of the professional association of solicitors and bailiffs allow the creation of professional firms of solicitors, or of bailiffs, or professional firms of solicitors and bailiffs.¹⁷⁰ These firms can include both equity and non-equity partners.

Restrictions in the financial professions bylaws

The majority of capital (i.e., above 50%) with voting rights (or, just the majority of voting rights, if applicable) of professional firms of economists must be owned by professionals or companies of such professionals, constituted by national law or other forms of associative organisation of professionals equated to economists and established in other EU/EEA Member States, provided the majority of capital and voting rights is held by those professionals.¹⁷¹

Certified accountants can exercise their profession in a collective way through two types of firms: professional firms of certified accountants and firms that supply accounting services. Barriers to competition are identified only in the case of professional firms of certified accountants.

Professional firms of certified accountants are subject to various requirements. Their sole corporate objective is the delivery of the activities reserved for certified accountants, as defined in their bylaws.¹⁷² At least 51% of the social capital and voting rights in these professional firms must be owned by certified accountants.¹⁷³ All partners of a professional firm of certified accountants who exercise this profession must be active members of their professional association.¹⁷⁴ Professional firms of certified accountants can hold social capital in another professional firm of the same kind.¹⁷⁵

The bylaws of auditors require that a majority of the share capital and voting rights in an audit firm must always belong to statutory auditors, audit firms, or auditors or audit firms from other EU Member States, and the remaining sharing capital can be held by any natural or legal person.¹⁷⁶ However, the rules imposed by the Directive on Auditing (Directive 2006/43/EC)¹⁷⁷ are less stringent as they only require that a majority of the voting rights in an audit firm must be held by other audit firms, approved in any EU Member State, or by natural persons who satisfy the requirements for access to the profession of auditor. This directive does not seem to allow Member States to impose additional requirements on ownership/shareholding such as requiring that a majority of the sharing capital be owned by professionals or audit, constituted under national law.¹⁷⁸

According to the bylaws for customs brokers, the majority of capital with voting rights in a professional firm of customs brokers must be owned by these professionals¹⁷⁹.

Restrictions in the technical and scientific professions bylaws

Architects can exercise their profession in a collective way in two types of firms: professional firms of architects and firms that supply architectural services. Barriers to competition are identified only in the case of professional firms of architects.

Professional firms of architects are subject to stringent requirements. Only architects, firms of architects registered within the professional association of architects, and associative organisations from other EU countries made up of professionals considered equivalent to architects under Portuguese law, can be partners in a professional firm of architects.¹⁸⁰ In contrast, EU associative organisations, when partners of a Portuguese professional firm of architects, are only required to guarantee that the majority of their capital or voting rights is owned by those professionals.¹⁸¹ Moreover, in a professional firm of architects, the majority of social capital or of voting rights (whenever voting rights are not proportional to capital shares) have to be owned by "professional partners",¹⁸² that is, partners who own sharing capital and exercise within the firm activities that are included in this firm's corporate objective.¹⁸³ These professional partners (i.e., architects, firms of architects, and associative organisations from other EU countries equated to firms of architects) are bound by an exclusivity rule: they can only be "professional partners" in a unique professional firm of architects registered with the Portuguese professional association of architects, and provided they are not professional partners in any associative organisation from other EU countries equated to a professional firm of architects.¹⁸⁴

Firms that supply architectural services¹⁸⁵ assume the form of commercial firms, and must include in their corporate objectives the delivery of architectural services, although the delivery of these services does not have to constitute their main corporate objective. These firms must register with the professional association of architects, but not as members of the association. They must include an architect as the professional responsible for the acts that are reserved for architects:¹⁸⁶ elaboration or evaluation of studies, projects and architectural plans, as well as the other acts foreseen in special legislation.¹⁸⁷ We conclude that these firms do not exhibit barriers to competition concerning ownership/shareholding/partnership.

The bylaws of engineers and of technical engineers are similar. They require that the majority of capital (i.e., above 50%) and voting rights¹⁸⁸ of a professional firm of engineers or of technical engineers are owned by these same professionals, or other professional firms of engineers or of technical engineers, created under national law and registered as a member of their respective professional associations, or other forms of associative organisation of professionals equated to engineers or technical engineers, respectively, established in other EU/EEA Member States (provided the majority of capital and voting rights in these organisations are held by those professionals¹⁸⁹).

Restrictions in the health professions bylaws

The only way that nutritionists can exercise their profession in a collective way is through professional firms constituted uniquely of nutritionists.¹⁹⁰ These firms can only have as partners nutritionists established in Portugal, other professional firms of nutritionists registered as members of the professional association of nutritionists, and other forms of associative organisations of professionals equated to nutritionists and established in other EU/EEA Member States, provided the majority of capital and voting rights are held by those professionals.¹⁹¹ The majority of the social capital with voting rights, or the majority of voting rights, as the case may be, must be owned by the professional society's professional partners (i.e., the partners who own sharing capital and exercise within the professional firm, activities that are included in this firm's corporate objective).¹⁹²

Collective entities that deliver nutritionist services and are not professional firms do not have to register with the professional association of nutritionists. However, a nutritionist exercising a professional activity in such a collective entity must be a member of the professional association of nutritionists.¹⁹³ Those collective entities do not present specific barriers to competition.

Pharmacists can exercise their profession in a collective way in a professional firm of pharmacists. Professional firms of pharmacists can only have as partners pharmacists established in Portugal, other professional firms of pharmacists registered as members of the professional association of pharmacists, and other forms of associative organisation of professionals equated to pharmacists and established in other EU/EEA Member States, provided the majority of capital and voting rights are held by those professionals.¹⁹⁴ The majority of the social capital with voting rights, or the majority of voting rights, as the case may be, must be owned by the professional society's professional partners (i.e., the partners who own sharing capital and exercise within the professional firm, activities that are included in this firm's corporate objective).¹⁹⁵ Apart from exercising their own activities of a pharmacist, a professional firm of pharmacists may also exercise other professional activities provided they are not incompatible with their own activities of a pharmacist and there is no impediment from the pharmacists' bylaws.¹⁹⁶

Collective entities that deliver pharmacist services and are not professional firms, do not have to register with the professional association of pharmacists. However, a pharmacist exercising this professional activity in such a collective entity must be a member of the professional association of pharmacists.¹⁹⁷ No barriers to competition are identified for these collective entities.

Harm to competition

Professional legal firms (lawyers, notaries, solicitors and bailiffs) follow the “professional partnership” model,¹⁹⁸ enforced by a “prescriptive regulation model” – see Chapter 2 – under which (i) only professionals regulated by the same professional association can own the firm – i.e., professional partners own 100% of the sharing capital or all the voting rights – and where (ii) the professional firm places the pursuit of the public interest above commercial interests. These professional partners can be individual professionals, professional firms or associative organisation of professionals established in other EU/EEA Member States. The professional partnership model is the only model allowed for the legal professions. Non-professionals can only work as employees (or as consultants) of the professional firm and are barred from participating in the relevant decision-making processes.

According to some stakeholders and literature on this subject,¹⁹⁹ such restrictions aim to guarantee professional independence, autonomy, adherence to professional ethical rules and the pursuit of the public interest (e.g., the good administration of justice). According to them, opening the partnership to people outside the profession could: (a) threaten the autonomy and independence of legal professionals; (b) threaten lawyer-client privilege; (c) give rise to conflicts of interest between the different partners within a same legal firm that would risk the pursuit of the social goal binding the legal professional firm, because non-professional partners would not be bound by the same professional obligations, as they are not members of the professional association.

Professional firms of notaries are subject to additional restrictions. A notary without a notarial office licence cannot be a partner in a firm. This restriction bars all notaries on the waiting list for a notarial office licence – 44 notaries in total at the last count – from becoming partners in a professional firm. Each firm cannot have more than three partners, and all partners have to hold licences in the same municipality. This is even more relevant as the number of municipalities with only one licence represents around 70% of all notarial licences. These restrictions clearly limit the creation of professional firms of notaries and might explain why there are so few of them (there are currently only two professional firms of notaries, and one of them is a sole proprietor firm). If these restrictions aim to respond to concerns about market power, they would be better dealt with through competition law.

To open up a professional firm to external ownership means to open the firm up to more investment, by allowing access to a wider pool of capital. External ownership, partial or total, means capital ownership by non-professionals, ownership of voting rights, or both.

This opening will enable professional firms to satisfy a greater pool of consumers and reap the benefits of a larger scale of operations. For younger professionals, not yet well established in their profession, it would also mean more opportunities to set up their own professional firm and compete in the market.

This will generate a greater ability by professional firms to compete in the single market and internationally. It would also improve risk management among the owners of a professional firm, hence, lowering operational costs and possibly

lowering prices charged to consumers for the different professional services being delivered in the market.

These effects would apply to all professional firms across all 13 professions. But their impact would be felt more strongly in the legal professions (lawyers, notaries, and solicitors and bailiffs), as the “professional partnership model” is the only professional organisational form allowed.

The removal of barriers to external ownership of law firms has taken place in England and Wales with the adoption in 2007 of the Legal Services Act, but also in the Australian state of New South Wales in 2001, as well as in Singapore, Denmark, Italy and Spain,²⁰⁰ although more modestly in these latter four countries.

Moreover, as pointed out among others by Stephen (2016), Hadfield (2008, 2017), and Hadfield and Rhode (2016), the traditional law firm model with partnerships restricted to lawyers, together with the fact that lawyers are educated according to the same standard model and train and work almost exclusively with other lawyers, has contributed to a lack of innovation in the provision of legal services (e.g., a poor supply of online legal services). It may also have contributed to driving a wedge between what the profession delivers and what firms and households demand from the suppliers of legal services. To open up legal firms to external ownership can be a vehicle for introducing innovation to the benefit of the firms’ clients.²⁰¹ This argument emphasises the importance of bringing in investors with an innovator’s mindset that will introduce and push for “game changing innovations” better able to respond to the legal needs of firms and households that depend on the legal infrastructure to carry out their economic activities.²⁰²

Ultimately, all these restrictions on ownership, shareholding and partnership for professional firms, are detrimental to firms across the entire economy, especially SMEs, and households, as their relaxation can be expected to lead to an increase in their welfare.

Recommendations

Ownership/partnership of all professional firms should be opened to other professionals and non-professionals. We also recommend that other professionals and non-professionals be allowed to hold a majority of a professional firm’s social capital, together with a majority of voting rights.

The number of partners in a notarial firm should be opened and not limited to any maximum number. Notaries without a notarial licence should be allowed to become partners in a professional firm of notaries.

The ownership/partnership of auditors’ professional firms should be opened to other professionals and non-professionals. While the majority of voting rights must be held by auditors (see Directive 2006/43/EC) the majority of the capital can be held by non-auditors.

3.5.2. *Restrictions on management*

The report considers both the barriers existing in the horizontal framework law for professional associations (Law 2/2013) and law on professional companies (Law 53/2015), as those in specific professional bylaws.

Description of the barriers

The professional firms must have at least one manager or administrator that is a member of or is registered with the professional association that defines the firm's main corporate objective. In case registration in the professional association is optional, that manager must comply with the requirements for access to the profession in the national territory.^{203 204}

1. Restrictions in the legal professions bylaws

The bar association bylaws require all members of management to be professionals (lawyers).²⁰⁵ Managers have to be established in Portugal, registered as lawyers or simply registered with the bar association using their own home country title.²⁰⁶

The bylaws of solicitors and bailiffs require that all members of management are professionals.²⁰⁷ The administration/management of a firm of bailiffs must include bailiffs only.²⁰⁸

2. Restrictions in the financial professions bylaws

The managers of professional companies of economists constituted by national law must be professionals of the respective professional association.²⁰⁹ The criteria for other forms of associative organisations of like-minded professionals established in other EU/EEA Member States, who hold the professional title, seem less excessive, needing only to ensure that at least one manager or administrator is a professional.²¹⁰

The bylaws of certified accountants require that the managers or administrators of such professional companies represent the majority of capital (expressly provided that it should be at least 51%) with voting rights, owned by professionals or companies of such professionals, constituted under national law, who have the required professional title.²¹¹

The Portuguese rules on management for auditing firms foresee that the majority of the managers are auditors or auditing firms.²¹² Those rules are aligned with the Directive on Auditing²¹³ that also requires that the majority of the members of the administrative or management body of an auditing firm must themselves be auditing firms or auditors.

For customs brokers, the bylaws require that at least one member of the management or administrative entity of the professional firm must be a customs broker with an active membership in the professional association.²¹⁴

3. Restrictions in the technical and scientific professions bylaws

The management of a professional firm of architects must be done by architects.²¹⁵ But firms that supply “architectural services” exhibit no barriers to competition concerning their management.

The bylaws of engineers require that all members of management of a professional firm of engineers must be engineers.²¹⁶ This is also the case for the bylaws of technical engineers.²¹⁷

4. Restrictions in the health professions bylaws

All members in the management of a professional firm of nutritionists must be nutritionists.²¹⁸ This is also the case for the bylaws of pharmacists.²¹⁹

Harm to competition from these rules

Requiring that professionals from the same profession must be exclusively or part of the management of professional firms is highly restrictive on the ability to conduct business effectively and efficiently.

A reason invoked to impose such restrictions is that only when the management is controlled by professional partners can it assure that the sole or main corporate objective of the professional firm will be pursued and that the autonomy of the professionals is maintained.²²⁰

However, Framework Law 2/2013 actually only requires that one of the managers or administrators of a professional firm be a member of the professional association.²²¹

Historically, corporations separated their ownership from management starting in the early 20th century. One of the main reasons was to professionalise management in increasingly competitive markets. Conflicts between owners (the principals) and managers (the agents) has been the subject of extensive literature, and various payment schemes have been adopted to align managers' interests as close as possible to the owners' interests.²²²

Hence, notwithstanding the fact that we deal with professional firms, there is no reasons for all managers to be owners or partners – as Law 2/2013 makes clear. Professional management, which ultimately answers to the owners of the professional firm, may be an option preferable for the professional partners themselves.

The existing rules severely limit the ability of professionals to seek out for themselves the optimal structure of their firms or groupings, including the ability to achieve economies of scope by providing joint services with other professionals.

Recommendations

We recommend that professional firms' management should include, if they decide so, only non-professionals members, except in the case of Auditing firms.

3.5.3. Restrictions on multidisciplinary practice

By multidisciplinary practice we mean the association of different self-regulated professionals who organise themselves within the same firm to supply services in the market, but where those professionals do not belong to the same professional association, nor even to any professional association.

To restrict multidisciplinary activity in a professional firm is to restrict the association of different professionals, belonging to different professional

associations (some may not even belong to a public professional association), who wish to exercise their professional activities within the same firm and in the pursuit of the firm's corporate or social objective(s). In a professional firm, this restriction takes the form of a restriction on partnership – restricting, or banning altogether, non-professional partners

The principle established in Law 2/2013 is to allow multidisciplinary professional firms, as long as the main corporate objective is the exercise of a profession organised in a single professional public association, jointly or separately with the exercise of other professions or activities. As for instance the case of economists, the exercise of other professions or activities in the same firm is allowed, provided that the applicable incompatibilities and impediments regime is observed.²²³

In fact, professional firm can engage in secondary corporate objective, including activities performed by other professionals in the same professional firm, who may even be organised in other professional public associations, provided the applicable incompatibilities and impediments regime are upheld.²²⁴

As in the previous subsections, hereafter we present the several barriers identified in the horizontal framework law for professional associations (Law 2/2013), in the law on professional companies (Law 53/2015), and in the specific professional bylaws. In most cases the same barrier is repeated in several provisions.

Description of the barriers

1. Restrictions in the legal professions bylaws

Multidisciplinary practice is not allowed in Legal firms, as those firms have a single and exclusive corporate objective:

- law firms: the exercise of legal advocacy;²²⁵
- solicitors and bailiffs firms: the practice of solicitor and bailiffs acts;²²⁶
- notarial firms: notarial practice.²²⁷

Even if legal professionals (except notaries) can share a legal office this does not mean that they can engage in a multidisciplinary practice.²²⁸

Even if bailiffs who are also solicitors or lawyers can participate in professional solicitors' firms or in professional law firms, they do so in their capacity of solicitor or lawyer, which means that they cannot act with different titles, which also affects multidisciplinary practice.²²⁹

2. Restrictions in the financial professions bylaws

The bylaws of certified accountants require that professional firms have as their exclusive social objective the activity performed by certified accountants. This means that multidisciplinary activity is not allowed for professional firms of certified accountants.²³⁰

By contrast, economist,²³¹ auditor²³² and customs broker²³³ firms can carry out multidisciplinary activities, as long as individual incompatibilities and impediments are respected.²³⁴

3. Restrictions in the technical and scientific professions bylaws

The corporate objective of professional firms of engineers, ²³⁵ technical engineers ²³⁶ and architects ²³⁷ allows these professional firms to carry out other activities, as long as individual incompatibilities and impediments are respected. ²³⁸

The regime for architects rules out the practice of activities whenever these are regulated by other professional associations that prevent the creation of professional firms that include architects or that deliver architects' own acts. ²³⁹

In 2017, there was only one active professional firm of architects in Portugal. This is due to the possibility that architects can practise their trade within firms that supply architectural services.

The corporate objective of professional firms of engineers is the exercise of engineering activities, as defined by what a professional engineer does, notwithstanding that engineers with different specialisations have different reserved engineering activities. ²⁴⁰ However, professional firms of engineers can also engage in other activities, provided that they are not incompatible with the profession of engineer and do not meet any impediments laid down by their bylaws. ²⁴¹ Identical restrictions apply to professional firms of technical engineers. ²⁴²

4. Restrictions in the health professions bylaws

The corporate objective of professional firms of nutritionists is the exercise of nutritionist activities. ²⁴³ However, professional firms of nutritionists can also engage in other activities, provided that they are not incompatible with the profession of nutritionist nor do they meet any incompatibility or impediments laid down by their bylaws. ²⁴⁴ Identical restrictions apply to professional firms of pharmacists. ²⁴⁵

Harm to competition

To rule out multidisciplinary activity in the same professional firm, between potentially complementary service providers, harms competition and can be detrimental to consumer welfare. In fact, this restriction does not allow for the full exploration of economies of scope that come with the offer of different services by a same “service delivery unit” that shares infrastructure and human capital. It foregoes gains from specialisation and service quality that would result from the interaction between a wider range of professionals. This also means foregoing the advantages of branding. It also does not allow for the mitigation of the double marginalisation (or double mark-up) problem that comes with multidisciplinary activities which can complement each other, by segmenting the services provided.

This means foregoing lower average costs in a multi-product firm, thereby leading to higher fees being charged to clients, while preventing clients from further benefits that could be gained from a more convenient “one-stop shop” for a wider range of professional services.

Ruling out multidisciplinary practices within a profession will reduce the scope for better risk management between different professional activities within the same professional firm, as they may be subject to non-identical demand volatility or uncertainty, i.e., reduction in the scope for internal risk spreading to be understood as the ability to transfer resources in response to fluctuations in

demand. Professional firms with lower risks can achieve higher levels of efficiency, and provide better services and lower prices to consumers.

To offer a wider range of professional services means to be better prepared to face market uncertainties. Furthermore, opening up a professional firm to multidisciplinary activities is likely to ease the introduction of innovative products but also to spur innovation in the delivery of already existing products or ranges of products.^{246 247}

1. Legal professions

The existing prohibition of multidisciplinary associations of law firms has already been questioned in literature and by some stakeholders in Portugal.^{248 249}

In February 2013, after Law 2/2013 was officially adopted, the President of the Bar Association and the Bar General Council sent to the government a proposal for new bylaws.²⁵⁰ This proposal put forth three options for the new wording to be given to Chapter VI on "Societies of lawyers and other forms of association". All these three options contemplated the creation of multidisciplinary professional societies involving lawyers and non-lawyers as partners. Two of these options barred non-professionals from being partners in such multidisciplinary societies, but not other professionals. These options also differed on who could exercise control over the society, i.e., who could own the majority of shares and voting rights in the society.

A Proposal for a "Professional Statute for Lawyers"²⁵¹ was also published during 2013. This proposal also contemplated the creation of multidisciplinary professional societies involving lawyers and non-lawyers. In its Art. 21, this proposal allowed for the creation of four types of professional societies: (a) societies composed only of lawyers; (b) societies composed of lawyers and other professionals; (c) societies composed of lawyers and non-professional societies; (d) societies composed of lawyers, other professionals and non-professionals. Moreover, and with regard to their legal form, societies of lawyers or with the participation of lawyers could take the form of civil or commercial companies. However, these alternative professional societies had to fulfil certain requirements such as adherence to the regime of reserved acts for lawyers and to the regime of incompatibilities and impediments established by law.

In the end the new Bar Association Bylaws, adopted by Law 145/2015, did not contemplate any of these proposals.

During the consultation period for Law 145/2015 (the Bar Association Bylaws), the *Conselho Superior do Ministério Público* raised doubts about such a multidisciplinary prohibition as being non-proportional to the pursued public objective and an illegitimate restraint on the constitutionally guaranteed principle of the free provision of services.²⁵² It added that when law firms engage the services of other professionals, the upholding of professional secrecy and privilege does not seem to be a problem. It also noted that the law already opens the possibility for law firms and other lawyers' associations established in other EU Member States to provide legal services in Portugal. Law 145/2015 would be prohibiting multidisciplinary activity in Portuguese law firms, while law firms from other EU Member States could be providing their services in Portugal at the same time.

The *Conselho Superior do Ministério Público* regarded this situation as paradoxical and untenable. In fact, multidisciplinary activity is allowed not only in Spain but also in other jurisdictions such as England and Wales, Scotland, Canada, France and Germany.^{253 254 255} A recent example shows the interest that exists in Portugal for the delivery of integrated services, where the legal dimension is joined by other dimensions.²⁵⁶ Other country experiences also show the benefits of multidisciplinary practices.²⁵⁷

In Spain, the exercise of the law in a multi-professional collaboration regime is allowed. Lawyers may associate in a multi-professional collaboration with other liberal professionals, provided they are not incompatible as professionals, under any lawful organisational form. Such collaborations must fulfil certain requirements such as: (i) the purpose of the grouping is to provide joint services, among which legal services must necessarily be included and complement those of the other professions; (ii) the activity that will be carried out does not affect the correct exercise of advocacy.²⁵⁸

Both the Law Society of Upper Canada and the Barreau du Québec allow lawyers to form partnerships with non-lawyers, under certain conditions and appropriate regulation. For instance, lawyers can split, share or divide clients' fees with non-lawyers; lawyers can enter into arrangements with non-lawyers regarding sharing fees or revenues generated by the practice of law; and law corporations can carry out activities other than that of providing legal services.

Since 2001, the state of New South Wales (NSW) in Australia allows the creation of "incorporated legal practices" (ILP, defined as a corporation that engages in legal practice in NSW, whether or not it also provides services that are not legal services) which could also include multidisciplinary practices. A legal service provider may become an ILP and provide legal services either alone or alongside other legal service providers who may, or may not be, "legal practitioners". In this case, at least one legal practitioner director must be appointed. A legal practitioner director is defined as a director of an ILP who must be an Australian legal practitioner holding an unrestricted practice certificate. The legal practitioner director is generally responsible for the management of the legal services provided by the law firm.

In the case of the State of Queensland, and as mentioned by this state's Legal Services Commission, The Legal Profession Act 2007 "allows law firms[...] to form multi-disciplinary partnerships (MDPs) or to form companies and to trade as incorporated legal practices (ILPs)".²⁵⁹

Box 3.11. Alternative business structures (ABS) for traditional law firms

In many countries regulations reserve partnership in legal firms for lawyers, with the aim of protecting consumers, professional secrecy and client-lawyer privilege.

For example, prior to the adoption of the 2007 Legal Services Act in England and Wales, unless providing legal services only to their employer, solicitors could practise only as sole traders or in partnerships with other solicitors, while barristers were prohibited from joining any form of partnership and could practice only as sole traders or as employees providing legal services in-house.

The Legal Services Board (LSB) approves and oversees the entities authorised to license ABSs. To date, these can be licensed by the Solicitors Regulatory Authority, the Bar Standards Board, the Council of Licensed Conveyancers, the Institute for Chartered Accountants, and the Intellectual Property Regulation Board.

The introduction of ABS increased flexibility even if, according to the Legal Services Act, ABSs must have a head of legal practice approved by the licensing authority and there must be at least one manager authorised to engage in the reserved activities for which the ABS is licensed. Moreover, in an ABS reserved activities must be performed only through people authorised to perform such activities. That is, ABSs are regulated and the authorised people within the entity are also regulated.

The ABSs allow for the delivery of more efficient and cost-effective legal services. Legal firms can now choose to join forces with other professional businesses such as accountants, estate agents or banks, to offer customers a wider range of professional services. ABSs also provide greater flexibility on how legal firms can raise finance and reward employees. For example, law firms can now raise finance by creating networks and sharing investment costs in overheads such as information technology (IT).

ABSs also allow for better risk sharing among new entrants, and better access to a wider pool of capital by tapping into external investment; they promote an increased efficiency by market valuation that follows from floating a stake in the stock market; they increase the ability of firms to compete internationally. The scale of these benefits may vary depending on the size of the organisation and the range of services they offer. In turn, these effects increase competition between existing suppliers and potential competition from new suppliers and forms of supply.

Ultimately this is expected to result in greater efficiency and more innovation. Consumers would benefit from lower prices and/or higher quality service provision. In addition, the introduction of ABSs offers greater convenience for consumers seeking a “one-stop shop”, and promote the introduction of innovative services, modes of production and delivery of services.

Through ABSs the UK approach substantially relaxed or eliminated the traditional restrictions on the business models within which lawyers can practise and defined the financial and managerial relationships they can enter into with non-lawyers, without sacrificing the professional values held by the profession (Hadfield and Rhode, 2016).

According to Enterprise Research Centre analysis of the impact of ABSs in innovative activities, solicitors with ABS status have higher levels of innovative activity of all types than other solicitors. Their econometric analysis suggests that ABS solicitors are between 12.9% and 14.8% more likely to introduce new legal services. They are also more likely to engage in strategic and organisational innovation.

Many EU countries have reviewed and relaxed restrictions on business structures. Currently, Scotland, England and Wales, Germany, France, Spain, Denmark, the Netherlands and Ireland (plus Switzerland) allow forms of non-lawyer involvement in the management of law firms (Oxera, 2011).

Sources: Chambers Student Guide (2014): “Alternative Business Structures (ABS) are a new type of legal entity brought into being by the 2007 Legal Services Act. What are they? And why do they matter?” February Newsletter <http://www.chambersstudent.co.uk/where-to-start/newsletter/alternative-business-structures>;

Office of Fair Trading (OFT) (2013), Economic Research into Regulatory Restrictions in the Legal Profession, A Report for the Office of Fair Trading, OFT No. 1460, London, pp. 54-69.

OXERA (2011), “Regulatory reform: changes and consequences in the legal services sector”, Agenda/Advancing Economics in Business, October, 2011.

Institute for Corporate Law, Governance and Innovation Policies (ICGI) and Institute for Transnational Legal Research (METRO) (2010), Restrictions on MDPs and Business Organization in the Legal Professions: A Literature Survey, Maastricht University, Maastricht.

Since the introduction of ABSs in the legal professions in England and Wales, some ex-post evaluation work has been carried out. As of December 2017, there were more than 1 000 ABSs in England and Wales, representing about 7% of all regulated law firms in England & Wales.

According to the findings by the LSB, published in July 2016 and looking more narrowly at the Solicitors Regulation Authority (SRA) regulated legal service providers, the LSB survey of ABSs indicated that they made greater use of technology to deliver services than other firms.²⁶⁰

As mentioned in the Competition and Markets Authority (CMA) (2016) Final Report on Legal Services, in its July 2016 Report on innovation in the legal services in England and Wales, the Enterprise Research Centre (ERC) estimated that, all other things being equal, ABSs are 13% to 15% more likely to introduce new legal services. Moreover, the ERC found that the major effect on innovation in legal services has been to extend the range of services, improve their quality and attract new clients.²⁶¹ In particular, the most innovative group of providers were the unregulated group.

Allowing multidisciplinary practices will enable different forms of business models to emerge within the market, to cater for different types of market players whether innovative start-ups, one-person cabinets or traditional law firms. The interaction of many different players in the market will make the sector more dynamic, more innovative and offer a broader range of services, thereby allowing for better, cheaper and easier access to justice.

Finally, and as established in the Bar Association Bylaws, the prohibition of fee-sharing between lawyers and other professionals, except other lawyers, law

interns or solicitors,²⁶² introduces a further restriction on the implementation of multidisciplinary practice within a professional law firm.

Recommendations

The prohibition of multidisciplinary practice in professional firms should be removed, particularly in the case of the four legal professions, where the “professional partnership model” is the only model allowed for the practice of the profession in a collective way.

Also, in view of this recommendation, we recommend the removal of the prohibition of fee-sharing between lawyers and other professionals, legal or non-legal, in law firms.

Notes

¹ Law 2/2013 revoked and replaced Law 6/2008.

² Law 2/2013 was adopted by the parliament following the signature of the 2011 Memorandum of Understanding (MoU) between the Portuguese government and the so-called Troika of creditor institutions (the IMF, the ECB and the EC). The MoU sets out the objectives for the regulation of professions: “eliminate entry barriers in order to increase competition in the services sector; soften existing authorisation requirements that hinder adjustment capacity and labour mobility; reduce administrative burden that imposes unnecessary costs on firms and hamper their ability to react to market conditions”. http://ec.europa.eu/economy_finance/eu_borrower/mou/2011-05-18-mou-portugal_en.pdf, p. 29.

³ See preparatory works of Law 2/2013.

⁴ Directive 2005/36/EC.

⁵ Directive 2006/100/EC.

⁶ Directive 2006/123/EC.

⁷ Art. 267 para. 4 of the Portuguese Constitution states that “Public associations can only be set up to meet specific needs, cannot perform trade union associations functions and have internal organisation based on respect for the rights of its members and the democratic formation of its organs”.

⁸ Freitas do Amaral states that: “public associations are public bodies created by the State by devolution of powers and to that extent its legal regime is close to that of the institutes public services, which are equally so; but public associations have, unlike the public institutes, associative structure and belonging to the autonomous administration - and to that extent their regime must be extended to that of associations of private law, provided that it is incompatible with the public nature of such entities”. Also, Bacelar Gouveia (2000): Public professional associations (“*associações públicas profissionais*” or “*ordens profissionais*”) belong to the “Autonomous state administration”, where the state exercises less control, under a principle of administrative decentralisation, when comparing with the bodies from the direct or indirect administration. They have indirect constitutional importance because they are admitted in the context of the limitation of professional freedom, in the name of the intervention of the public power in order to defend the collective interests.

⁹ Art. 2, Art. 5(1)(h), Art. 5(1)(m) and Art. 8(1)(o) of Law 2/2013, and Art. 18(1) of Law 2/2013.

¹⁰ Art. 45 paragraph 5 of Law 2/2013. The competent ministry must confirm the regulation under a procedure designated as “*homologação*”. The regulation is considered to be approved after 90 days without a negative decision, since the date of its receipt by the competent ministry.

¹¹ Art. 17 paragraph 3 of Law 2/2013. These regulations follow the legal regime applicable to the administrative regulations that must be subject to a period of public consultation.

¹² A principle which was upheld by Law 6/2008.

¹³ Art. 45 paragraph 2 of Law 2/2013.

¹⁴ Art. 45 paragraph 1 of Law 2/2013.

¹⁵ Art. 5(2) and Art. 5(3) of Law 2/2013.

¹⁶ See Art. 20 of Law 2/2013.

¹⁷ See both Framework Law 2/2013 and each professional association bylaws.

¹⁸ US Supreme Court *N.C. State Bd. of Dental Exam’rs*, 135 S. Ct. at 1114 (citing *Allied Tube*, 486 U.S., at 500, 108 S.Ct.).

¹⁹ *N.C. State Bd. of Dental Exam’rs*, 135 S. Ct. at 1116–17 (citing *Patrick*, 486 U.S. at 102–03; *Ticor Title Ins. Co.*, 504 U.S. at 638).

²⁰ Case PRC-2004/28, which was opened on 11 October 2004, concerned the establishment by the Professional Association of Veterinarians of minimum prices that the professionals could charge when exercising their profession under a liberal regime. It was concluded on 19 May 2005, with the adoption of a decision declaring that this had been a prohibited practice, which was upheld by a court ruling that is not subject to any appeal.

²¹ Case PRC-2004/29, which was opened on 11 October 2004, concerned the establishment by the Professional Association of Dentists of minimum and maximum prices that the professionals could charge. It was concluded on 30 June 2005, with the adoption of a decision declaring that this had been a prohibited practice, which was upheld by a court ruling that is not subject to any appeal.

²² Case PRC-2005/07, which was opened on 1 February 2005, concerned the establishment by the Professional Association of Doctors of minimum and maximum prices that the professionals could charge when exercising their profession under a liberal regime. It was concluded on 26 May 2006, with the adoption of a decision declaring that this had been a prohibited practice, which was upheld by a court ruling that is not subject to any appeal.

²³ Case PRC-2009/03, which was opened on 19 February 2009, concerned the artificial segmentation by the Professional Association of Certified Accountants of the market for professional training, the definition by that professional association of a minimum part of the training in question that had to be provided by it, the establishment by the same professional association of unclear and not transparent criteria to accept training entities other than it and to approve their training courses and the provision of professional training by the Professional Association of Certified Accountants simultaneously with the regulation of such activity. It was concluded on 7 May 2010, with the adoption of a decision declaring that this had been a prohibited practice.

²⁴ Law 9/2009, amended by Law 41/2012, Law 25/2014 and Law 26/2017.

²⁵ Art. 1 and Art. 5 of Law 49/2004.

²⁶ Art. 25 and Art. 26 of Decree-Law 26/2004.

²⁷ Art. 91, Art. 105 and Art. 158 of Law 154/2015.

²⁸ See European Commission (2017c, p. 15, para. 12), “Proposal for a Directive of the European Parliament and of the Council on a proportionality test before adoption of new regulation of professions”, COM(2016) 822 final, 10.1.2017.

²⁹ See Legal Services Board (2016, p. 76/7), referring to findings in the Legal Services Board (2013), “Consumer use of legal services – understanding consumers who don’t use, choose or don’t trust legal services providers”, by Optimisa Research, <https://research.legalservicesboard.org.uk/wpcontent/media/Understanding-Consumers-Final-Report.pdf>

³⁰ See CCBE and EIPA (2014), “Pilot Project – European Judicial Training: *Lot 2 – Study on the state of play of lawyers training in EU law*, carried out by the Council of Bars and Law Societies of Europe (CCBE) and the European Institute of Public Administration (EIPA)”, April 2014, <https://e-justice.europa.eu/>

³¹ <https://www.lawyersgermany.com/notary-services-in-germany>;
<https://guides.library.harvard.edu/c.php?g=310823&p=2079295>;
<http://www.bnotk.de/en/admission.php>

³² Art. 9 and Art. 15 of Decree-Law 174/98, amended by Law 101/2015.

³³ Due to the EU Bologna Process.

³⁴ Art. 148(1)(c) of Law 140/2015.

³⁵ Art. 17 of Decree-Law 452/99, amended by Law 139/2015.

³⁶ Art. 60(2)(a) of Law 112/2015.

³⁷ Art. 6, first paragraph, of Directive 2006/43/EC, amended by Directive 2014/56/EU.

³⁸ Art. 11 of Directive 2006/43/EC, amended by Directive 2014/56/EU.

³⁹ Art. 17 of Law 139/2015.

⁴⁰ Art. 15 of Law 123/2015.

⁴¹ Art. 3 of the Law approving Law 157/2015; and Art. 27 of Law 157/2015.

⁴² Art. 5 of Law 113/2015.

⁴³ <http://www.ordemengenheiros.pt/pt/a-ordem/colegios-e-especialidades/>

⁴⁴ <https://www.oet.pt/portal/index.php/a-oet/orgaos-da-oet/colegios-da-especialidade>

⁴⁵ www.ordemdosarquitectos.pt/documents/110536/270204/Lei+113+de+2015/82845099-4507-460c-8f1d-3500fbc81420

⁴⁶ See Law 49/2005.

⁴⁷ See European Commission (GROW/E-5, 18 September 2015), “Mutual evaluation of the regulated professions. *Overview of the regulatory framework in the construction sector by using the example of civil engineers*”, GROW/E-5, 18.09.2015, <https://ec.europa.eu/docsroom/documents/13382/attachments/1/translations/.../native>

⁴⁸ Art. 62(1) and Art. 62(2) of Law 51/2010, amended by Law 126/2015.

⁴⁹ Art. 2(1)(2) of Regulation 308/2016, Registration in the professional association of nutritionists.

- ⁵⁰ Art. 6(1) and Art. 5 of Decree-Law 288/2001, amended by Law 131/2015.
- ⁵¹ Art. 11 of Draft-Law 34/XIII.
- ⁵² Art. 2 of Regulation 308/2016, Registration in the professional association of nutritionists. Art. 14 of Draft-Law 34/XIII.
- ⁵³ European Commission website: http://ec.europa.eu/growth/toolsdatabases/regprof/index.cfm?action=map_complex&profession=1380 and information provided by stakeholders.
- ⁵⁴ http://ec.europa.eu/growth/toolsdatabases/regprof/index.cfm?action=map_complex&profession=12403.
- ⁵⁵ Art. 8(2) of Law 2/2013 is the subsidiary regime.
- ⁵⁶ Directive 2006/43/EC, amended by Directive 2014/56/EU.
- ⁵⁷ Art. 14(2) of Law 2/2013.
- ⁵⁸ Art. 195(2)(3)(4) of Law 145/2015 and Art. 2 of Regulation 913-A/2015, amended by Deliberation 1096-A/2017.
- ⁵⁹ Deliberation 2332 A/2015. The fee is divided between the first stage (EUR 1 000) and the second stage (EUR 500).
- ⁶⁰ In 2017, the minimum annually payment per trainee, amounted to EUR 317.52 in contributions to the CPAS (Caixa de Previdência dos Advogados e Solicitadores) (EUR 26.46 per month x 12 months).
- ⁶¹ Art 27 of Law 155/2015.
- ⁶² Art. 27-A of Law 155/2015.
- ⁶³ Art. 19 and Art. 20 of Internship Regulation for Notaries, <http://www.notarios.pt/NR/rdonlyres/ED6BA7A3-EFAE-4BD2-A8A9-844637F2F1D6/3480/RegEstagio.pdf>
- ⁶⁴ <http://www.notarios.pt/OrdemNotarios/PT/OrdemNotarios/TabelaDePrecos/>
- ⁶⁵ Art. 156 of Law 154/2015 and Art. 8, 10 and 11 of Regulation 105/2014.
- ⁶⁶ Art 12 do Regulation 105/2014.
- ⁶⁷ Art. 5 and Annex 1, Table (2), of Regulation 341/2017 (“EUR 102*9,5 UC”).
- ⁶⁸ Art. 163(7) of Law 154/2015.
- ⁶⁹ Art. 163(6) of Law 154/2015; <http://www.caaj-mj.pt/orgao-de-gestao/>
- ⁷⁰ See Regulation 341/2017. Information given by the professional association in a meeting with the Project team.
- ⁷¹ Art. 163(7) of Law 154/2015.
- ⁷² Deliberation 1096-A/2017.
- ⁷³ Decree-Law 174/98, amended by Law 101/2015.
- ⁷⁴ Art. 9(2)(3) and Art. 15 of Decree-Law 174/98, amended by Law 101/2015.
- ⁷⁵ Art. 15(1)(a) of Law 101/2015.
- ⁷⁶ Art. 15(1)(d) of Law 101/2015.
- ⁷⁷ Art. 148(1)(d) of Law 140/2015, Auditors Professional Association Bylaws.

⁷⁸ Art. 151 to Art. 154 *a contrario* of Law 140/2015.

⁷⁹ Art. 152(1) of Law 140/2015.

⁸⁰ Each group of modules is EUR 330 and the price of the exam is EUR 110. See regulation for internship in <http://www.oroc.pt/fotos/editor2/Inscricao/2017/AcessoROCREI.pdf>

⁸¹ Art. 9(1)(2) of Directive 2006/43/EC, amended by Directive 2014/56/EU.

⁸² Art. 157(2) of Law 140/2015.

⁸³ Corresponding to EUR 210 for inscription and EUR 700 per year. See “*tabela de emolumentos*” published by Board of OROC.

⁸⁴ Art. 157(4)(5) of Law 140/2015.

⁸⁵ Art. 6 to Art. 11 of Directive 2006/43/EC, amended by Directive 2014/56/EU.

⁸⁶ Art. 25(4) of Law 139/2015.

⁸⁷ Art. 31 of Law 139/2015.

⁸⁸ <https://www.occ.pt/pt/perguntas-frequentes/inscricao-de-novo-membro/>

⁸⁹ Art. 2 and Art 5(1) of Regulation 666/2016.

⁹⁰ Art. 11 of Regulation 666/2016.

⁹¹ Art. 13 of Regulation 666/2016.

⁹² Announcement 10774/2016 (EUR 100 for the internship candidacy plus EUR 3 100 as the internship fee proper).

⁹³ <https://www.occ.pt/pt/formacao/formacao-a-distancia-e-learning/>

⁹⁴ Art. 9(1)(2) of Directive 2006/43/EC, amended by Directive 2014/56/EU.

⁹⁵ Art. 9(1)(2) of Directive 2006/43/EC, amended by Directive 2014/56/EU.

⁹⁶ Art. 8(2) of Law 113/2015.

⁹⁷ Art. 5 and Annex I of Regulation 350/2016.

⁹⁸ Art. 2 (4) and Annex I of Regulation 350/2016, <http://www.arquitectos.pt/documentos/1463657629O2nIC6qi3Po17DG4.pdf>

⁹⁹ Art. 14(1)(a) of Regulation 1125/2016.

¹⁰⁰ Art. 14(1)(b) of Regulation 1125/2016.

¹⁰¹ Art 26 of Regulation 1125/2016 and Art. 20(6) of Law 123/2015.

¹⁰² Art. 20(7) of Law 123/2015.

¹⁰³ Art. 15(1)(c) and Art. 15(2)(c) of Law 123/2015, and <http://www.ordemengenheiros.pt/pt/admissao-a-ordem/procedimentos-para-admissao/membros-estagiarios-e-effectivos/>

¹⁰⁴ This value is EUR 60, <http://www.ordemengenheiros.pt/pt/a-ordem/centro/quotizacao/>

¹⁰⁵ Art. 16(1)(a) of Regulation 35/2017.

¹⁰⁶ Art. 16(1)(b) of Regulation 35/2017.

¹⁰⁷ Art. 26 of Law 157/2015.

¹⁰⁸ Art 17(1) of Law 157/2015.

¹⁰⁹ Deliberation 8/2017 in <https://www.oet.pt/downloads/TabelaEmolumentosOET.pdf>

¹¹⁰ Art 8(2) of Law 2/2013.

¹¹¹ Art. 62(1) of Law 51/2010, as amended by Law 126/2015.

¹¹² Art. 64 of Law 51/2010, as amended by Law 126/2015.

¹¹³ Art. 63(1) and Art. 69 of Law 51/2010, as amended by Law 126/2015.

¹¹⁴ Art. 24 of Regulation 484/2017.

¹¹⁵ Art. 69(3)(4) of Law 51/2010, as amended by Law 126/2015.

¹¹⁶ This process is also established in Art. 23 of Regulation 484/2017.

¹¹⁷ Art. 6 of Law 51/2010, as amended by Law 126/2015.

¹¹⁸ Regulation 273/2016 (EUR 120 for the internship and EUR 120 to take the compulsory seminar on ethics).

¹¹⁹ Art. 35(2) of Law 131/2015.

¹²⁰ European Commission (2015b), "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Upgrading the Single Market: more opportunities for people and Business", COM(2015)550 final, 28.10.2015. Several studies are refereed, for example, Koumenta and Humphris (2015).

¹²¹ Within the 13 professions in analysis, we observed that eleven of them – pharmacists, lawyers, solicitors, bailiffs, certified accountants, architects, engineers, technical engineers, auditors and customs brokers – have exclusive reserved work.

¹²² Note that Draft-Law 34/XIII, currently pending in parliament in its current version, has a proposal to describe the reserved activities to be performed by health professionals, including nutritionists. It also describes the reserved activities for pharmacists, but they are already established in the bylaws of the Professional Association of Pharmacists.

¹²³ See CMA (2016), page 170.

¹²⁴ Art. 162 (2) of Enforcement Agent bylaws.

¹²⁵ See Art. 1 of Law 49/2004.

¹²⁶ See Ordinance 574/2008 (which amended Directive 385/2004 that established fixed fees).

¹²⁷ See CMA (2016), pp. 32 and 168, 169, and Table 5.1., page 172.

¹²⁸ Art. 1 and Art. 3 of Law 49/2004.

¹²⁹ Those who are registered as lawyers in other EU and EEA Members States can also provide legal advice on a temporary and occasional basis using their home-country title, as provided for in Art. 5 of the Professional Qualifications Directive 2005/36/EC.

¹³⁰ See: <https://www.sra.org.uk/home/home.page>

¹³¹ Such a code would include the need to: (1) uphold the rule of law and the proper administration of justice; (2) act with integrity; (3) not allow your independence to be compromised; (4) act in the best interests of each client; (5) provide a proper standard of service to your clients; (6) behave in a way that maintains the trust the public places in you and in the provision of legal services; (7) comply with your legal and regulatory

obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner; (8) run your business/carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles; (9) run your business/carry out your role in the business in a way that promotes equality and diversity and does not discriminate unlawfully in connection with the provision of legal services; (10) protect client money and assets.

¹³² See Art. 88 of Law 145/2015.

¹³³ Ross Intelligence, a US-based firm, has developed an advanced legal research algorithm which, working with IBM's supercomputer Watson, harnesses the power of artificial intelligence (AI) to provide legal advice on intellectual property, bankruptcy, and labour and employment issues. See <https://rossintelligence.com/>

¹³⁴ Decree-Law 28/2000 and Decree-Law 237/2001 took the first steps by having withdrawn the exclusive activity of the certification of photocopies in conformity with the original documents and extended the competences to perform recognition of signatures, authentication of documents and certification of translations to other legal professions. Then, Decree-Law 76-A/2006 brought another simplification on sharing of notaries' acts through the elimination of double -checking of the legality made by the notary and the conservator in relation to several acts, such as: (i) creation of companies; (i) amendments to the companies' constitution regulation; (ii) division and assignment of shareholdings; (iii) merger or separation of companies; (iv) dissolution of companies and (v) creation of groups of companies, co-operatives, associations and foundations. More recently, the Administrative and Legislative Simplification Programme (Simplex 2007), through Decree-Law 263-A/2007 and Decree-Law 324/2007, extended to the land and civil registry offices procedures for (i) the registration of real estate; (ii) formalities regarding hereditary succession and (iii) marriage regimes (prenuptial agreements), becoming needless notarial interventions.

¹³⁵ Decree-Law 452/99 as amended by Law 139/2015 "Professional Association of the Certified Accountants Bylaws" Art. 9 (1) Art. 10 para. 1.

¹³⁶ See COM (2016) 820 Final.

¹³⁷ Arts. 63(a) and Art. 66 of the Professional Association of Customs Brokers.

¹³⁸ See Announcement 10774/2016.

¹³⁹ See article 23 from Regulation 66/2016.

¹⁴⁰ See Case C-323/90 Commission v Portugal on Art. 426 of Decree-Law N° 43 of 25 January 1983 (today revoked).

¹⁴¹ In accordance with Art. 44 (2) and Art. 44 (3) of the bylaws of the Architects Professional Association.

¹⁴² Art. 10 (4) of Law 31/2009.

¹⁴³ In accordance with: (i) Art. 7 (2) of the bylaws of the Engineers Professional Association; (ii) Art. 6 (3) of the bylaws of the Technical Engineers Professional Association; and (iii) Art. 10 (3) of Law 31/2009.

¹⁴⁴ In accordance with Annex III of Law 31/2009.

¹⁴⁵ Article 33(2) of Law 113/2015.

¹⁴⁶ Article 33 of Law 113/2015.

¹⁴⁷ https://ec.europa.eu/growth/single-market/services/free-movement-professionals/regulated-professions-database_en

¹⁴⁸ <http://www.oet.pt/downloads/PerguntasFrequentes.pdf>

¹⁴⁹ <http://www.ordemengenhheiros.pt/pt/a-ordem/colegios-e-especialidades/>

¹⁵⁰ <https://www.oet.pt/portal/index.php/a-oet/orgaos-da-oet/colegios-da-especialidade>

¹⁵¹ A list of reserved activities for pharmacists is established in the Professional Association of Pharmacists' bylaws (last version, Law 131/2015), Art. 75.

¹⁵² Art. 76 in the bylaws of the Professional Association of Pharmacists.

¹⁵³ In other words, traditionally they present a lower elasticity of demand.

¹⁵⁴ Amended by 2013/55/EU, and transposed into the national legislation by Laws 9/2009 and 26/2017.

¹⁵⁵ Art. 75 (k) of the bylaw of the Professional Association of Pharmacists.

¹⁵⁶ "The Pharmaceutical Group of the European Union (PGEU) is the association representing community pharmacists in 33 European countries. In Europe over 400 000 community pharmacists provide services throughout a network of more than 160 000 pharmacies, to an estimated 46 million European citizens daily. PGEU's objective is to promote the role of pharmacists as key players in healthcare systems throughout Europe and to ensure that the views of the pharmacy profession are taken into account in the EU decision-making process. The Council of European Dentists (CED) is a European not-for-profit association representing over 340 000 dental practitioners across Europe through 32 national dental associations and chambers in 30 European countries. Established in 1961 to advise the European Commission on matters relating to the dental profession, the CED aims to promote high standards on oral healthcare and dentistry with effective patient-safety centred professional practice, and to contribute to safeguarding the protection of public health. The CED is registered in the Transparency Register with the ID number 4885579968-84. The Standing Committee of European Doctors (CPME) represents national medical associations across Europe. They contribute the medical profession's point of view to EU institutions and European policy-making through proactive co-operation on a wide range of health and healthcare-related issues.

(in: http://doc.cpme.eu:591/adopted/2016/CPME_AD_EC_15092016_079_FINAL_EN_CED_PGEU_CPME_Joint_statement_proportionality_professional_regulation.pdf).

¹⁵⁷ CPME presentation in http://www.medical-chambers.org/documents/MicrosoftPowerPoint-14a_ZEVA_092016_JdH_Regulation.pdf.

¹⁵⁸ See Art. 3(d) of Law 53/2015.

¹⁵⁹ See Art. 27(4) of Law 2/2013.

¹⁶⁰ Services Directive 2006/123/EC.

¹⁶¹ Art. 8(1) of Law 53/2015.

¹⁶² Art. 27(3)(a)(4) of Law 2/2013; and Art. 9(2) of Law 53/2015.

¹⁶³ Art. 8(4) of Law 53/2015.

¹⁶⁴ Art. 213(2)(b) of Law 145/2015.

¹⁶⁵ European Commission (2017b, p. 124).

¹⁶⁶ Art. 213(2)(a) of Law 145/2015.

¹⁶⁷ Annex I, Art. 87(1) and Annex II, Art. 5(3) of Law 155/2015.

¹⁶⁸ Annex I, Art. 87(2) of Law 155/2015.

¹⁶⁹ Annex I, Art. 87(3) of Law 155/2015.

¹⁷⁰ Art. 95(1)(5); and Art. 225(5) of Law 154/2015.

¹⁷¹ Art. 12(1)(2)(3)(4)(9) and Art. 13(1)(2) of Decree-Law 174/98, amended by Law 101/2015.

¹⁷² Art. 115(2) of Law 139/2015.

¹⁷³ Art. 116(2) and Art. 117(2) of Decree-Law 452/99, amended by Law 139/2015.

¹⁷⁴ Art. 117(1) of Law 139/2015.

¹⁷⁵ Art. 117(2) of Law 139/2015.

¹⁷⁶ See Art. 118 (1)(a) of Law 140/2015.

¹⁷⁷ Art. 3(4)(b) of Directive 2006/43/EC, as amended by Directive 2014/56/EU.

¹⁷⁸ Art. 3(4) last paragraph, of Directive 2006/43/EC, as amended by Directive 2014/56/EU.

¹⁷⁹ Art. 95(3) of Law 112/2015.

¹⁸⁰ See Art. 47(1) and Art. 47 (2) of Decree-Law 176/98, amended by Law 113/2015.

¹⁸¹ Art. 47(2)(b) of Law 113/2015 and Art. 5(3)(b) of Regulation 322/2016.

¹⁸² See Art. 4(3) of Regulation 322/2016.

¹⁸³ Art. 3(e) of Law 53/2015.

¹⁸⁴ Art. 16(1) of Regulation 322/2016.

¹⁸⁵ See Art. 49(1) of Decree-Law 176/98, amended by Law 113/2015; and Art. 1(7) of Regulation 322/2016.

¹⁸⁶ Art. 14(1) of Regulation 322/2016.

¹⁸⁷ Art. 44(2) of Law 113/2015.

¹⁸⁸ Art. 11(9) of Decree-Law 119/92, amended by Law 123/2015 (engineers); and Art.10(9) of Decree-Law 349/99, amended by Law 157/2015 (technical engineers).

¹⁸⁹ Art. 11(2)(b) and Art. 12(1)(2) of Decree-Law 119/92, amended by Law 123/2015 (engineers); and Art. 10(2)(b) and Art.11(1)(2) of Decree-Law 349/99, amended by Law 157/2015 (technical engineers).

¹⁹⁰ Art. 75(1) of Law 126/2015.

¹⁹¹ Art. 75(1)(2) of Law 126/2015.

¹⁹² Art. 9(1) of Law 53/2015.

¹⁹³ Art. 77 of Law 126/2015.

¹⁹⁴ Art. 12(1)(2) of Law 131/2015.

¹⁹⁵ Art. 9(1) of Law 53/2015.

¹⁹⁶ Art. 12(8) of Law 131/2015.

¹⁹⁷ Art. 14 of Law 131/2015.

¹⁹⁸ See Aulakh and Kirkpatrick, 2016.

¹⁹⁹ The 2004 Clementi Report already presented options for opening up ownership of law firms to non-lawyers, and questioned whether there was a necessary conflict between

lawyers as professionals pursuing a public interest and lawyers as “business people”. See Aulakh and Kirkpatrick, *op. cit.*

²⁰⁰ See Aulakh and Kirkpatrick, *op. cit.*

²⁰¹ As G. Hadfield (2017, ch. 9) points out when discussing innovation in legal practice in the USA, “[presently] no one other than a lawyer can invest in a legal business (...). These rules mean that legal innovators have no access to venture capital.” Still according to G. Hadfield, “No other industry or sector in the economy could innovate in those circumstances (...).”

²⁰² See G. Hadfield, 2017.

²⁰³ Art. 27(3)(b)(4) of Law 2/2013; and Art. 9(3) of Law 53/2015.

²⁰⁴ The ON confirmed that, in absence of specific rule concerning the quality of the managers of notarial firms, they consider that the general rule applies: professional firms must have at least one manager or administrator that is a member of or is registered with the professional association that defines the firm's main corporate objective.

²⁰⁵ Art. 213(6) and Art. 221 of Law 145/2015.

²⁰⁶ European Commission (2017b, p. 124).

²⁰⁷ Art. 95(4) of Law 154/2015.

²⁰⁸ Art. 221(2) of Law 154/2015.

²⁰⁹ Art. 12(6) of Decree-Law 174/98, amended by Law 101/2015.

²¹⁰ Art. 13(1) of Decree-Law 174/98, amended by Law 101/2015

²¹¹ Art. 116(2) and Art. 117(2) of Decree-Law 452/99, amended by Law 139/2015.

²¹² Art. 118(1)(b) and Art. 130(1) of Law 140/2015.

²¹³ Art. 3(4)(c) of Directive 2006/43/EC, as amended by Directive 2014/56/EU.

²¹⁴ Art. 97 of Law 112/2015.

²¹⁵ Art. 47(7) of Law 113/2015; and Art. 4(2)(c) of Regulation 322/2016.

²¹⁶ Art. 11(6) of Law 123/2015.

²¹⁷ Art. 10(6) of Law 157/2015.

²¹⁸ Art. 75(7) of Law 126/2015.

²¹⁹ Art. 12(7) of Law 131/2015.

²²⁰ See e.g. Aulakh and Kirkpatrick, 2016, p. 279.

²²¹ Art. 27(3)(b) of Law 2/2013.

²²² For a brief history of the modern corporation and the separation of ownership and management see e.g., Carlton and Perloff, 2004.

²²³ See Art. 27(1) of Law 2/2013. See also Art. 118(6) of Law 142/2015.

²²⁴ Art. 27(1) of Law 2/2013; and Art. 2(1) and Art. 7(1)(2) of Law 53/2015.

²²⁵ Art. 213(7) of Law 145/2015.

²²⁶ Art. 95(5), Art. 221(1) of Law 154/2015.

²²⁷ Annex I, Art. 85 of Law 155/2015.

²²⁸ Art. 6(1) of Law 49/2004.

²²⁹ Art. 222(6) of Law 154/2015.

²³⁰ Art. 10(1) and Art. 115(2) of Decree-Law 452/99, amended by Law 139/2015.

²³¹ Art. 12(7) of Decree-Law 174/98, amended by Law 101/2015.

²³² Art. 117 of Law 140/2015.

²³³ Art. 94(1) of Law 112/2015.

²³⁴ Art. 8(7) and Art. 8 (8) of Law 53/2015.

²³⁵ Art. 11(7) of Law 123/2015.

²³⁶ Art. 10 (7) of Law 157/2015.

²³⁷ Art. 47 (8) of Law 113/2015.

²³⁸ Art. 8(7) and Art. 8 (8) of Law 53/2015.

²³⁹ Art. 4(2)(a)(5)(6) of Regulation 322/2016.

²⁴⁰ Art. 11(1) of Law 123/2015 and Art. 7(1) of Law 53/2015.

²⁴¹ Art. 75(8) of Law 126/2015.

²⁴² See Art. 10(1) of Law 157/2015, Art. 7(1) of Law 53/2015, and Art. 10(7) of Law 157/2015.

²⁴³ Art. 7 (1) of Law 126/2015 and Art. 7(1) of Law 53/2015.

²⁴⁴ Art. 117 (7) of Law 123/2015.

²⁴⁵ See Art. 12(1) of Law 131/2015, Art. 7(1) of Law 53/2015, and Art. 12(8) of Law 131/2015.

²⁴⁶ However, we should point out that “one-stop shopping”, when coupled with vertical integration, may also have anticompetitive effects – see Joskow, Paul J., 2005. See also the more recent paper Baker, L. C., et al., 2017 for the physician market.

²⁴⁷ Concerns over client protection were also raised when a separation between ownership and technical control of pharmacies was proposed in 2006 by the Portuguese Competition Authority. Concerns were raised that such separation could lead to vertical or horizontal integrations, a reduction in the number of pharmacists per pharmacy, an emigration abroad of “decision-making centres” in the medicine distribution market, greater concentration of pharmacies in areas of greater population density, and a decrease in the quality of services provided by pharmacies. This separation went ahead (see Decree-Laws no. 235/2006 and no. 307/2007), which allowed e.g., for the opening of the so-called para-pharmacies, including within supermarkets premises, and, according to some authors, better management and more client-friendly service. We have no knowledge of studies and surveys that may have assessed consumers’ reactions and opinions over such developments - See Barros, 2007. We have not found any study/survey on how consumers feel about this separation between property and technical supervision, or about consumers’ opinions on the services provided by the so-called para-pharmacies, whose creation came as a result of such separation.

²⁴⁸ As discussed in Van den Bergh (2007), the arguments for a ban on multidisciplinary practices are as follows: (i) guarding professional secrecy; (ii) preventing conflicts of interest; (iii) in relation to legal disciplinary partnerships (LDPs): barristers are more likely to give independent advice if they remain separate from solicitors; and, (iv) in relation to LDPs: prevention of mergers, which would result in (further) market concentration. The

arguments against a ban on multidisciplinary partnerships (MDPs) are as follows: (a) consumers cannot profit from “one-stop shopping”; (b) some economies of scope are not realized; (c) no internal risk spreading (e.g., the ability to transfer resources in response to fluctuations in demand); (d) perhaps less innovation: more difficult access to capital which may be needed to invest in equipment and infrastructure to improve consumer services; and, (e) in relation to LDPs: consumers will face a double mark-up on the services they receive, if barristers and solicitors are prevented from working together.

²⁴⁹ According to Hadfield (2008), when discussing the US regulatory model over lawyers, which has some similarities to the Portuguese mode, “The current regulatory model stands as a tremendous barrier to innovation in legal markets and thus as severe obstacle to the effort to meet the needs of a rapidly transforming globally competitive economy”.

²⁵⁰ See Preliminary draft from 2013 for new Bylaws of the Bar Association, to incorporate the modifications resulting from Law no. 2/2013, in:

<http://www.oa.pt/upl/%7Be298bc93-39d2-4dd6-ac03-9bba76a0361f%7D.pdf>

²⁵¹ See “Professional Statute for Lawyers” or “*Proposta de Estatuto Profissional do Advogado*”, 2013, in: <https://www.oa.pt/upl/%7B954bab01-e498-4e23-9e7b-33a2040273eb%7D.pdf>

²⁵² See Official Letters 1555/2015 and 9132/2015 sent by the “*Conselho Superior do Ministério Público*” to the Justice Minister and to Parliament, where the draft was being assessed, in: www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheIniciativa.aspx?BIID=39176

²⁵³ See Hill, Louise L., 2017.

²⁵⁴ Portuguese Law Firm SRS Advogados and RCF Protecting Innovation (RCF PI), a consulting firm created in 1929, have entered into an innovative agreement to co-ordinate their respective intellectual property (IP) practices.²⁵⁴ This agreement will provide clients of both entities with an integrated service for their IP requirements, whether from a technical perspective (RCF PI) or from a legal perspective (SRS Advogados).

²⁵⁵ In a 2007 report on self-regulated professions, including the profession of lawyer, the Canadian Competition Bureau (CCB) issue several recommendations on multidisciplinary activity.

²⁵⁶ Portuguese Law Firm SRS Advogados and RCF Protecting Innovation (RCF PI), a consulting firm created in 1929, have entered into an innovative agreement to co-ordinate their respective IP practices.²⁵⁶ This agreement will provide clients of both entities with an integrated service for their IP requirements, whether from a technical perspective (RCF PI) or from a legal perspective (SRS Advogados).

²⁵⁷ In a 2007 report on self-regulated professions, including the profession of lawyer, the Canadian Competition Bureau (CCB) issue several recommendations on multidisciplinary activity.

²⁵⁸ See the “*Estatuto General de la Abogacia Española*”, adopted by the *Real Decreto* 658/2001, of 22 June.

²⁵⁹ See <https://www.lsc.qld.gov.au/compliance/incorporated-legal-practices>

²⁶⁰ LSB, 2016.

²⁶¹ See CMA Report, p. 94. However, note that this same report concludes that the introduction of ABSs has not yet changed the story on innovation – see pp. 95 ff.

²⁶² Art. 107 of Law 145/2015.

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Chapter 4. Legal professions in Portugal

This chapter discusses barriers to competition in the legal professions: lawyers, notaries, solicitors and bailiffs. In 2016, the legal professions accounted for EUR 823 million, corresponding to 0.4% of Portuguese GDP, and employed 35 631 people. These professions play a decisive role in the administration of justice. There are significant economic arguments for regulations specific to the legal professions which, when left unaddressed, could lead to inefficient market outcomes and a direct impact on social welfare. The legal professions enjoy exclusive rights to provide specified services and access to these professions is restricted. In return, legal professionals are required to comply with a range of regulations restricting advertising, licence quotas and geographic limitations for notaries, and fixed and maximum fees. The report proposes recommendations to reduce the negative impact of such restrictions while addressing the policy objective identified.

4.1. Introduction

In Portugal, legal services are mostly provided by four types of professionals – lawyers, notaries, solicitors and bailiffs. These professions provide a variety of services such as advice and representation in court, drafting of legal documents, authentication of private contracts, filing patents and copyrights, drafting of deeds, execution of wills and legal arbitration.

Lawyers and the solicitors can practise the same legal acts, except in the case of judicial mandate (legal representation). Notaries serve the public in non-contentious legal matters, usually concerning legal documentation, estates, authentication and other formalities. Bailiffs (*agentes de execução*) ensure due diligence in the execution process, to execute individual citations and notifications and to promote evictions.¹

The four legal professions are represented by three professional associations: the Bar Association (public association of lawyers),² the Public Association of Notaries³ and the Public Association of Solicitors and Bailiffs.⁴ These professions are analysed together as they constitute the main supporting pillars of the legal infrastructure in Portugal. The activities carried out by each of these professions depend on activities performed by the others. Finally, since many of the regulatory barriers to competition that have been identified are common to several types of professionals (legal and otherwise), they are addressed together in Chapter 3.

The recommendations discussed in this section were developed after a thorough analysis of the relevant legislation and of its impact in terms of harm to competition. Overall, the review identified 185 potential regulatory barriers in the 395 legal texts selected for assessment. In total, the report makes 182 specific recommendations to mitigate harm to competition. These are listed analytically in Annex B of the report.

Table 4.1. Summary of analysed provisions applicable to the legal professions

	Lawyers	Notaries	Solicitors and bailiffs	Total
Pieces of legislation	103	168	124	395
Potential restrictions identified	76	65	44	185
Recommendations made	75	63	44	182

This chapter is divided into six subsections. After discussing the particular case of regulation of the legal services and providing an economic overview of such services, we describe each of the self-regulated regimes. The main regulatory barriers to competition in the legal professions are analysed next, identifying their harm to competition. Finally, we provide recommendations to mitigate or eliminate such harm. Barriers regarding the limits to advertising for legal professions are tackled in Section 4.3.4. Section 4.5 analyses the establishment of licensing quotas and geographical barriers. Section 4.6 deals with regulation on maximum and fixed fees.

4.2. The particular need for regulation of legal services

Legal services are tightly regulated through a social contract that one may think of as a "grand bargain" (Susskind and Susskind, 2015) between legal professionals and society. The bargain is intended to solve the problem of asymmetric information between professionals and clients (see also Chapter 2) by providing a codifying licensing system

to ensure quality and trust. However, this solution is weighed up against a certain loss of competition which may lead to above-normal rents. The "bargain" involves granting lawyers and notaries exclusivity to provide a set of prescribed services (see section 3.4.1.). Exclusivity is generally enforced through government recognition of the services provided (e.g. a requirement that certain documents are notarised) as well as legal prohibitions on providing services without a professional licence. In return for the exclusive right to provide legal services, professionals are required to comply with regulations seeking to address market failures and policy goals, such as:

- **Qualitative entry restrictions**, which set out minimum requirements for professionals permitted to offer legal services, including education, professional experience, internships, examinations and personal characteristics, such as citizenship, language competence and the absence of criminal or civil convictions. These regulations reflect a desire to address information asymmetries as well as externalities. Qualitative entry restrictions are intended to address market failures because alternative measures, such as minimum quality standards and consumer information regulations, may be more difficult to implement and monitor. Instead, these restrictions, or *prescriptive regulations*, attempt to exclude low-quality service providers from accessing the market rather than setting out required characteristics of their output (*outcome-based regulation*). However, as highlighted by Canton et al (2014) and others, this may also reflect a degree of *institutional capture*, as the professions themselves, through their professional associations, contribute to the definition and setting of entry barriers to the profession to such an extent that the number of professionals remains limited. This is a major contributing factor to the high cost of such services. In Portugal all legal professionals are required to have a law degree and do a professional internship before obtaining a professional licence (see Chapter 3).
- **Quantitative entry restrictions**, aiming at ensuring service availability, particularly in remote areas, by guaranteeing a certain level of profitability through restrictions on competition. These restrictions apply to the notarial profession in several countries. However, there is debate about whether there are less restrictive alternatives to achieving the same goal, since this type of measure limits supply, increases prices and can create local monopolies. This is also the case in Portugal, where quotas and geographic restrictions are intended to guarantee the availability of notarial services all over the country (see section 4.3.5).
- **Fee restrictions**, such as setting minimum fees, which were introduced in legal professions to prevent adverse selection on the basis of price and prevent moral hazard, while also reducing the burden of negotiation on the consumer. Economic theory suggests that price restrictions have an anticompetitive effect, which can be exacerbated by entry restrictions (see OECD, 2007). Specifically, fee restrictions can have a negative effect on market efficiency by reducing incentives to innovate and reduce costs. They may also facilitate market co-ordination and market sharing and not be proportional to the issues they purport to address. In Portugal, maximum and fixed fees are set for certain notarial activities (see Section 4.3.6).
- **Advertising restrictions**, which are designed to prevent consumers from being persuaded into making decisions when they lack sufficient information, and prevent negative externalities to society (judicial system). The market for legal services is characterised by information asymmetry in the context of a "credence

good" (see Chapter 2). Advertising can improve information available to consumers, reduce search costs and better enable prospective clients to choose among professionals, leading to more competition among established firms. The literature on advertising in the legal profession (Nelson, 1970, 1974; Grossman and Shapiro, 1984; Stahl 1994) suggests that advertising can have pro-competitive effects to facilitate entry. As OECD (2007) notes, there do not appear to be well-founded arguments against permitting advertising. Furthermore, studies have found that restrictions on advertising lead to higher prices (OECD, 2007). A similar analysis on the pro-competitive benefits of competition on consumer choice and market entry can be found in the *Competition Assessment on Greece* (OECD, 2014).

- **Restrictions on partnerships, ownership and management** consist of prohibitions on partnerships between different legal disciplines (e.g. solicitors and barristers) or with non-lawyers (such as accountants), as well as restrictions on ownership and management of law firms by non-lawyers. In many cases, these restrictions extend to a prohibition against sharing offices with non-practitioners. In Portugal, a lawyer cannot share an office with an economist or auditor, nor enter into a formal partnership with non-lawyers. These restrictions, ostensibly in place to protect client-lawyer confidentiality, may prevent a more cost-efficient use of office space (sharing of overheads); or prevent the creation of "one-stop-shops" for business-client services (joining together legal advice, accounting and auditing, for instance), and ultimately prevent productivity gains (see section 3.5).
- **Requirements to provide legal aid** are often imposed on lawyers and are aimed at providing low-income individuals with legal services to which they would not otherwise have access. Lawyers are compensated for their services, but often at a discounted rate compared to that which would be paid by other clients.

The enforcement and, to some extent, the development of these regulations for the legal professions are generally conducted through professional self-regulatory bodies that are recognised by the legislation. This approach reflects the view that members of a profession have information advantages over the lay person, and may be better positioned to enforce certain professional standards. However, self-regulation can create undue entry barriers while enabling the extraction of rents (OECD, 2007). In this regard, by increasing the level of difficulty to access the profession (by imposing an additional exam or a long internship), the supply of professionals will decrease which, in turn, will favour the arising of cartels and generate economic rents. The anticompetitive effects of self-regulation are also acknowledged by the US Federal Trade Commission: "Limits on state-action immunity are most essential when the state seeks to delegate its regulatory power to active market participants, for established ethical standards may blend with private anticompetitive motives in a way difficult even for market participants to discern. Dual allegiances are not always apparent to an actor. In consequence, active market participants cannot be allowed to regulate their own markets free from antitrust accountability."⁵

While the public policy objective of protecting consumers is clear, there is no guarantee that the thrust of much of the current regulation necessarily reduces the adverse effects of the imperfect information problem in the legal services market. As underscored by Canton et al. (2014), unless it is appropriately designed and implemented, regulation may in and by itself contribute to the creation of market restrictions and limit consumer choice.

More seriously, the barriers to competition imposed by regulation can also lead to reduced market performance as inefficient firms may remain in the market while efficient firms cannot grow, preventing an efficient allocation of resources in the market for legal services. There is ample empirical evidence that regulatory barriers may be used by incumbents to obtain higher margins, while a more competitive environment may be expected to drive prices down to competitive levels. Hence, certain population groups are excluded from access to legal services. This is one of the concerns raised about the legal services in several jurisdictions.

The Civil and Social Justice Panel Survey (CSJPS)⁶ found that 57% of participants who used a not-for-profit organisation rather than a lawyer did so because of the perceived or actual costs of a lawyer. As a consequence of perceptions around costs, the analysis found that individual consumers on lower incomes were less likely to take action or seek legal advice. In 2013, the Legal Services Bureau (LSB) in the UK explored the reasons why people choose not to use lawyers, noting the importance of perception of cost and the lack of transparency of costs as key barriers.

The effect of this is likely to reduce the overall size of the potential legal market, in particular where use of legal services is not mandatory. Further research carried out jointly by the UK Law Society and the LSB in 2016 found that for those who had a legal problem over the 2012-2015 period and considered but did not use a solicitor, 28% made the assumption they would be too expensive. A further 11% did not think the solicitor would offer value for money.⁷ Recent studies carried out for England and Wales found that the cost of legal services is a contributing factor in the decision to reject legal support.⁸ An ever-expanding legal aid programme is not necessarily the solution as it would weight too heavily on tax payers. A smarter solution, such as online service provisions and advice for frequently asked questions, would lead to lower prices being charged in at least the routine legal cases.⁹

Recent findings by the World Justice Project General Population Poll on the Dispute Resolution Mechanism administered in 45 countries and jurisdictions in the fall of 2017 show that in Portugal the average time to solve a legal problem is around 24 months. This is significantly higher than in countries such as Austria, Denmark, Greece, Hungary, Italy, the United Kingdom and the United States.¹⁰ The percentage of people involved in a legal problem who reported that it was difficult or impossible to pay the costs incurred to resolve it, was around 19%. This percentage is the same as in Italy, and lower than in Greece, from among the countries mentioned.

Poor access to legal services and protracted legal resolution processes, due to factors such as a lack of financial means, the adoption of delaying tactics by legal professionals, a lack of information on how best to address a legal problem, and a negative view on the cost effectiveness of legal professions, result in unmet legal needs which in turn lead to an overall welfare loss.

Box 4.1. Effect of deregulation of the legal professions, among others, in Poland

The study *The Effects of Reforms Liberalising Professional Requirement in Poland* (Rojek and Masior 2016), analyses the effects of professional deregulation (or changes in regulation) in Poland in a 10- year period (from 2005 to 2014), covering 22 different professions, including advocates, legal advisers and notaries.

For legal professions, deregulation initiatives took effect in 2005, 2009 and mid-2013. These initiatives introduced “objective and transparent” rules of access to the professions, and “disrupted” quantitative limits to access the profession, while slightly reinforcing governmental supervision to mitigate conflicts between self-corporate interests and the public interest.

In the case of advocates and legal advisers, changes were introduced in the examination procedures to join the professional associations to reduce the scope of discretion in the decisions over access. The Ministry of Justice was made responsible for the execution of access exams. Inter-professional mobility was increased, contributing to an inflow of judges and prosecutors into the advocate and legal adviser professions. For the period 2010 to 2015, prices of legal services increased at a rate comparable with other consumer services and the quality of advocate services seemed to increase between 2010 and 2013, based on a lower inflow of complaints, motions to disciplinary prosecutors and appeals to the National Bar Council. The number of active advocates during this same period more than doubled. The effects of these deregulation initiatives on the level of earnings enjoyed by advocates and legal advisers remain inconclusive.

In the case of notaries, deregulation initiatives took effect in 2005, 2006, 2009 and mid-2013. Simplified rules of entry resulted in higher numbers of new notaries supplying their services in the market. Between 2009 and 2014, notaries’ earnings decreased significantly and average profits for established notaries declined by 38%. The percentage of younger notaries increased during this same period 2009-2014.

As a consequence, from 2005 to 2016, the number of advocates and legal advisors almost doubled and the quality of advocate services increased between 2010 and 2013, based on the lower number of complaints, motions to disciplinary sanctions and appeals to National Bar Council, which between 1989 and 2010 was in a negative upward trend.

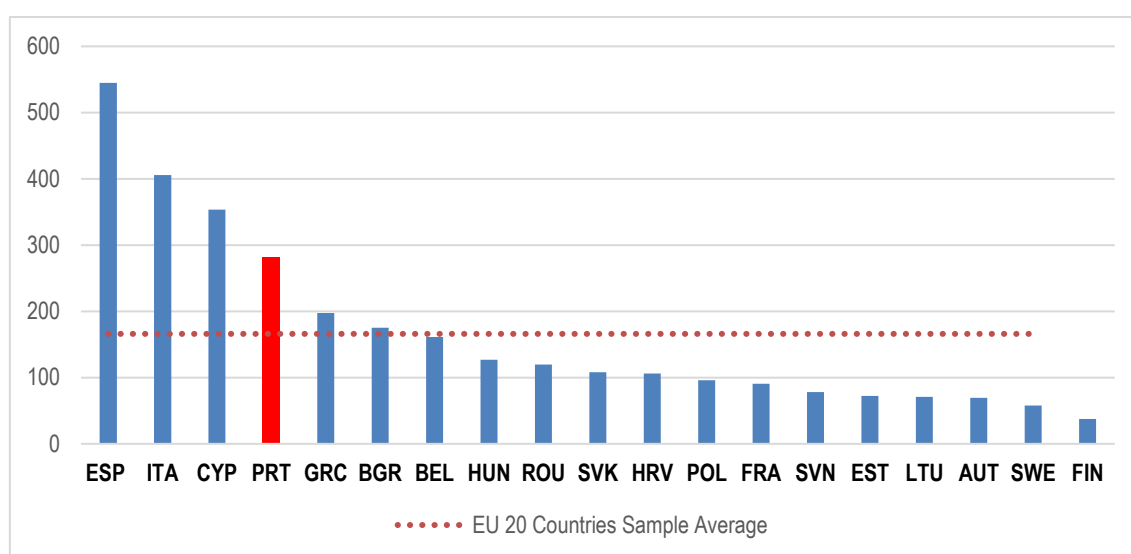
Source: Rojek et al, Warsaw School of Economics, 2016 “The Effects of Reforms liberalising Professional Requirements in Poland”, Report funded by the EC/DG Internal Market, Industry, Entrepreneurship and SMEs.

The regulation of the legal profession has been the topic of several OECD Roundtable discussions – see OECD (2016), Section 4. OECD (2007) also provides an in-depth discussion of the competition aspects of the regulation of professional services. Further discussion on the rationale for legal services regulation, and associated competition considerations, can also be found in the OECD (2007) report.¹¹

4.3. Overview of legal services

In 2015, legal services to firms accounted for EUR 1 245 million, almost 10% of all services to firms, an increase of 2% since 2008 (EUR 1 172 million).¹² In 2017 there were 1 765 law firms¹³ operating in Portugal and, in 2016, the most recent data available, there were 42 firms composed of solicitors and 25 of solicitors and bailiffs together. In 2017 there were 50 454 lawyers registered with the Bar Association, of which 30 593 lawyers were active members. Per 100 000 inhabitants, the number of active lawyers has grown from 96 in 1999 to 297 in 2017, almost twice the EU average (Figure 4.1).¹⁴ Regarding notaries, in 2017 there were around 375 active and 44 professionals waiting for a licence. In 2016, there were 3 559 solicitors active in Portugal.

Figure 4.1. Active lawyers per 100 000 inhabitants, 2015



Note: There is no information available for Germany and Denmark on the CCBE website. The United Kingdom was not considered due to the particularity of having barristers and solicitors.

Source: Council of Bars and Law Societies of Europe (CCBE) and AdC/OECD own calculations. For Greece only members of the Athens Bar Association are included. The numbers of lawyers for Spain is likely to include all registered lawyers, including those currently with suspended practice.

While there is a prevalent argument in Portugal claiming that there are "too many lawyers", this seems to be grounded in an erroneous interpretation of the way the market for legal services works or ought to work. This market is not static nor is its dimension pre-defined. Baarsma et. al. (2008) reports a positive relation between the level of regulation and the number of lawyers per inhabitant. In countries where the profession of lawyer is less regulated, the number of lawyers per 100 000 inhabitants is lower than in countries where the profession is more regulated. According to the same study, this result may be partially due to the stronger competition lawyers face in less regulated countries, from outside professionals, e.g., other qualified jurists. Also, the fact that there are more lawyers per 100 000 inhabitants does not lead to lower prices charged for services as long as the entry into the market is restricted and activities are reserved.

4.3.1. Regulation of lawyers

Practising lawyers in Portugal have to be registered members of the Portuguese Bar Association.¹⁵ The bar association is the professional regulatory body with control over access to and exercise of the law profession, including disciplinary powers over its members.¹⁶

The title of “lawyer” is a protected professional title. This means that the use of the title is subject to a particular professional qualification by virtue of legislative, regulatory or administrative provisions. Lawyers are assigned certain “reserved activities”, either exclusively, or in some cases shared with notaries and solicitors.¹⁷ The judicial mandate, whereby lawyers represent clients before administrative authorities including tax authorities, and before all courts, is a task exclusive to lawyers, except in cases specifically opened to solicitors (see below in the section on the latter).

Lawyers from other EU member states who wish to establish their legal practice in Portugal under the professional title gained in their home country, are subject to prior registration with the Portuguese Bar Association. They can then exercise their legal practice in Portugal under the Portuguese title of “*Advogado*”, and they are subject to the same professional and ethical rules applicable to all lawyers belonging to the Portuguese Bar Association. Should these lawyers wish to provide only occasional legal services, they should give notification of their activity in Portugal to the bar association.¹⁸

4.3.2. Regulation of notaries

In Portugal, the privatisation of notarial activity was initiated in 2004¹⁹ concomitantly with the creation of the Professional Association of Notaries (*Ordem dos Notários*)²⁰ that regulates access to and exercise of notarial activity. All practising notaries must be registered in the Association.^{21 22} Membership is open to those with the title of “notary” and professional firms formed exclusively by members of the Order.

The title of “notary” is granted to university law graduates who have successfully concluded their internship programme, after a public licence-awarding procedure run by the Ministry of Justice. This recruitment involves a written and oral exam to assess the candidates’ capacity to exercise the profession.

Notarial activity is necessarily performed in notarial offices. A titled notary can only exercise as such once a licence to run his own notarial office has been granted. Those licences are awarded by the Ministry of Justice following pre-established geographical quotas. Titled notaries without a licence may join a waiting list, which at the end of 2017 included around 44 professionals, or they may work in a notarial office run by a licensed notary. In general, each notary is only allowed to have one notarial office licence, but some notaries also run other notarial offices on a temporary basis (e.g. due to the retirement of their licensed notaries).

The professional association of notaries has created a Compensation Fund financed by members’ contributions and fines imposed on members by the association to ensure the coverage of notaries’ presence throughout Portugal. This Compensation Fund awards a benefit to notaries running a notarial office located in less populated municipalities. In 2017, 18 notarial offices benefited from the Compensation Fund representing 4.45% of the total number of active notarial offices.

Starting in 2011, there was a significant decrease in the notarial activity in GVA, from around EUR 112 million in 2007 to around EUR 40.5 million at current prices.²³ This can

be explained by the financial crises and the contraction in the volume of real estate commercialised in the country during the crisis.

4.3.3. Regulation of solicitors

Solicitors provide professional legal advice and act on behalf of their clients before a notary or a legal administrator representing the state.²⁴ However, when compared to lawyers, solicitors face some limitations on the judicial mandate they can practise, imposed by their professional association bylaws and by procedural law.

In civil proceedings, a solicitor can exercise a judicial mandate in cases in which a lawyer's participation is not mandatory, and as such the involved parties may also represent themselves or be represented by probationary lawyers. Solicitors by themselves cannot practise the judicial mandate in cases under court jurisdiction in which an ordinary appeal is admissible. This is the case when the amount at stake is above EUR 5 000; any cases in which an appeal is always admissible, regardless of the value; or proposed appeals and cases presented to higher courts. In criminal cases, the solicitor may exercise a judicial mandate when the intervention of a lawyer is not mandatory.^{25 26 27 28 29}

Solicitors' activities are regulated by the bylaws of the professional association of solicitors and bailiffs. These bylaws regulate the access to both professions as well as their exercise, and endow the professional association with disciplinary powers over its members.³⁰ The professional association includes two separate professional colleges, one for each profession.

Solicitors have to be a registered member of the College of Solicitors to exercise their profession. The candidates must have a degree in law or in solicitor's practice, and successfully complete a professional internship programme. Bailiffs must be registered in the College of Bailiffs (see Box 4.2).

Box 4.2. Bailiffs

The regulation of bailiffs aims to guarantee that they perform the procedural acts for which they are responsible in a diligent manner, provide the court and the different parties with the necessary information in accordance with the law, render an account of the performed activities, promptly deliver the amounts, objects or documents held by them as a result of their performance as executors, and assure they do not exercise activities that are incompatible with their profession of bailiff.

Mandatory enrolment in the college of bailiffs of the professional association depends on the following requirements: possession of Portuguese nationality and enrolment in the college up to three years after having successfully completed the internship programme.

The requirement of Portuguese nationality was taken by drawing a parallel with public magistrates. It excludes from the market professionals from other EU Member States who may understand and speak Portuguese fluently. This requirement should be replaced by one that requires clear evidence of their adequate knowledge of the Portuguese language and of the Portuguese judicial system.

Bailiffs, who have practised for more than three years up to the publication of these Bylaws, must undergo the examination provided for in no. 3 of Art. 115 and obtain a favourable opinion from the CAAJ to be exempted from the internship.

4.3.4. Restrictions on advertising

Advertising is defined as the making of a representation in any form in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations.³¹

Description of the barrier

Lawyers, solicitors, notaries and bailiffs are not allowed to:^{32 33 34}

- publicly advertise persuasive, ideological, self-aggrandizement and comparative contents;
- mention the quality level of the office or practice (this also applies to customs brokers);³⁵ and
- engage in unsolicited direct publicity.

Harm to competition

The regulatory restrictions mentioned above limit the freedom of legal professionals to advertise their own activity, which might be especially harmful for those not yet well established in the market. Advertising services to inform and potentially gain clients is crucial to promote competition and to establish a level playing field among professionals in the market. Advertising legal services may also lead to lower prices for legal services as it spurs competition among providers.

Advertising can improve consumer information and reduce search costs leading to more competition among established firms. Nelson (1970; 1974) Grossman and Shapiro (1984) and Stahl (1994) suggest that advertising can have pro-competitive effects to facilitate entry. Following OECD (2007), there are no well-founded arguments against permitting advertising that is truthful. Furthermore, studies have found that restrictions on advertising lead to higher prices (OECD, 2007).

In 2007, the Canadian Competition Bureau (CCB) stated that there is empirical evidence of the effect of advertising restrictions on the price and quality of professional services (including accountants, lawyers, optometrists, pharmacists and real estate agents). Restrictions on advertising increase the price of professional services, increase professionals' incomes and reduce the entry of certain types of firms. Additionally, there is little evidence of the positive relationship between advertising restrictions and quality of services, even though it may result in fewer consumers using the service.^{36 37}

Directive 2006/114/EC states that only misleading and unlawful comparative advertising can lead to distortion of competition within the internal market. The interdiction of misleading advertising is foreseen under national legal regimes.³⁸ To go beyond the EU benchmark, in particular ruling out publicity of comparative contents in a generic way for specific professions, will have an adverse effect on consumer choice and no clear benefits.³⁹

Recommendation

Any prohibition or restriction for legal professions beyond the prohibition on misleading and unlawful comparative advertising (already covered in other legal texts) should be removed.

4.3.5. *Licence quotas and geographical barriers for notaries*

Description of the barrier

To have a notarial office, the notary needs a licence from the Ministry of Justice, following the established quotas per region.⁴⁰ Notaries are restricted geographically as they cannot actively seek to exercise their practice over persons and property from another municipality. They are restricted to being a passive recipient of service requests from the clients.⁴¹ Additionally, several legal procedural rules also establish exclusive powers of notaries located within the boundaries of a municipality.⁴²

Harm to competition

Licence quotas for notaries seem to be grounded in the public interest. On the one hand, the state aims to ensure that all people across the national territory have access to notarial services, as these services are mandatory for certain acts, such as property transactions. On the other hand, to ensure that a notary is willing to establish an office in a remote or weakly populated area, the quota system aims to guarantee a minimum income for the local notary, complemented with the current Compensation Fund.

According to stakeholders, the mandatory geographical competence of a specific notary promotes procedural speed (e.g. if the notarial act relates to properties and courts within the same territorial jurisdiction). It may also protect economically disadvantaged parties from the possible relocation of the process to a notarial office too far from the centre of the succession interests.

The number of notaries and the localisation of their offices are included in a notarial map approved by a decree-law, after consultation with the Professional Association of Notaries and the Council of Notaries.⁴³ The state determines the total number of notaries to be licensed and the way they will be distributed across the different municipalities. It establishes a territorial segmentation for the attribution of notarial licences, where each notary can only hold one licence. The last version of the notarial map which determined the geographical quotas goes back to 2004.⁴⁴ According to stakeholders, this map ought to be changed to reflect new territorial and demographic characteristics. The 2004 map indicates that around 72% of all the municipalities across the country have only one licence (221 out of 310 municipalities).

The current quota model clearly restricts the number of notaries in the market and may reduce the incentives of existing notaries to compete on price and quality with each other for the provision of services. It also prevents competition between notaries in a one-licence area as no new notary can enter the market and seek custom.

Limiting the number of licences to operate a notarial office as defined in the notarial map restricts the overall number of professional titles that are available to be granted. This leads to long waiting times for prospective notaries working as clerks, while no competitive pressure is exerted on incumbents.

These restrictions are even more difficult to justify in the case of municipalities with higher population density and higher incomes (urban areas and along Portugal's attractive coastal and touristic areas). In these cases, quota restrictions currently allow incumbents to pick and choose their clients with little incentive to improve services, innovate or adapt to the market in other ways.

Box 4.3. Recommendation 1/2007 by the Portuguese Competition Authority

In 2007 the Portuguese Competition Authority (AdC), under its supervisory and regulatory powers, issued Recommendation 1/2007 containing several measures to reform the notaries' legal framework and promote competition in notarial services. This recommendation was the culmination of a series of initiatives taken since 2005, including the commission of a study on the notarial activity carried out by academics from the Centre for Studies in Public Law and Regulation (CEDIPE)/University of Coimbra, and the organisation of a workshop with the participation of several stakeholders.

The AdC issued the following recommendations: (i) eliminate the quota plus licensing model and the regime of territorial jurisdictions; (ii) establish the freedom to open extensions of notarial offices; (iii) eliminate the prohibition of collaboration between notaries and the possibility of the same notary managing more than one notarial office; (iv) eliminate the prohibition of the notary publicising his activity in order to attract clients; (v) liberalise the prices for services provided by private notaries; (vi) eliminate the Compensation Fund.

Regarding the existence of a quota regime in the attribution of notarial licences across the different municipalities, the public interest in securing an adequate geographic coverage of notarial services, in particular in less economically developed and less populated municipalities, can be ensured through measures less restrictive of competition. However, the AdC considered that if the implementation of recommendations (i) and (ii) did not ensure an adequate geographical coverage of notarial services, then a public tender could be launched for the provision of such services, regarded as public services, in the affected geographical areas, with the award of a compensation financed by the state.

Regarding recommendation (v), the AdC proposed the generalization of a free price regime to acts performed by private notaries who already face significant competition from other professionals. This competition resulted from the extension of the range of entities legally qualified to practise such acts or from the progressive reduction in the number of legal acts subject to public deed. However, the AdC also recommended the adoption, over a transitional period, of a system of maximum prices for services that remained within the exclusive competence of notaries and whose social relevance justified the need to guarantee universal access. At the same time, quantitative restrictions on access to the profession would be maintained, through the imposition of a quota regime.

The AdC also recommended a three-step timetable for the implementation of the above measures, lasting a total of five years plus the time needed to eliminate the existing table of fees, notary charges and the Compensation Fund.

Sources:

Recomendação N.º 1/2007 – “Medidas de reforma do quadro legal do notariado, com vista à promoção da concorrência nos serviços notariais” (in PRT).

http://www.concorrenca.pt/SiteCollectionDocuments/Estudos_e_Publicacoes/Recomendacoes_e_Pareceres/Anexos-Recomendacoes/13_Recomendacao2007_01.pdf.

A less restrictive and more market-oriented mechanism for the allocation of notaries throughout the national territory would encourage lower prices, higher quality and innovation as a result of greater competition. Such a mechanism is unlikely to imply more difficult or more expensive access to notarial services. On the contrary, greater consumer welfare would arise not only from more but also better services being available.

The need for quotas has largely been superseded by technology and the gradual removal of reserved activities as the exclusive preserve of notaries. The need for the physical presence of a notary is therefore less pressing, as many acts can be dealt with over the internet and by email, or by lawyers and solicitors. The Portuguese government has already recognised this. As part of the Portuguese "Simplex" e-government programme, citizens have been given a unique identity card and "e-identity" that can be used to officially sign documents remotely. The Portuguese government should consider internet availability and use their e-government programme to facilitate the use of notarial services remotely, thereby reducing the number of remote geographic areas identified as in need of notaries with a unique licence.

Such alternative solutions may better balance competition and universal access to notarial services, as twin public goods. One solution put forth by the Portuguese Competition Authority's Recommendation 1/2007 (see Box 4.3) calls for widening the range of legal services a notary may provide in a disadvantaged geographical area.

Recommendation

Following the AdC's Recommendation 1/2007 (see Box 4.3) and more recent international developments, such as the legal reform in France known as the Macron Law (*Loi Macron*, see Box 4.4 below), an overall technical study on the current organisation of notarial services in Portugal is necessary. The objectives of such a study are to explore alternatives that would increase professional mobility and clients' freedom of choice, while still guaranteeing universal access to notarial services. Therefore the following is recommended:

10. Abolish the existing licence quotas for establishment of a person(s) as a notary. Or alternatively,
11. Study the potential demand and economic viability for notarial services, taking into account population density, economic activity, dynamism of the local real-estate market, demand for other services provided by notaries and the existence of alternative internet solutions. Based on the data:
 - i. Identify areas that can sustain competition in notarial activities (typically Lisbon, Porto, Faro, high-tourism areas, highly-industrialised areas) and fully liberalise the establishment of notarial offices there.
 - ii. In low-density areas, allow for open competition for the establishment of one or two offices per areas (or whichever density is determined by the study).
12. Revisit the existing Compensation Fund and find alternative ways to guarantee the delivery of notarial services in low-density areas, taking into account the fact that many notarial acts can also be practised by both lawyers and solicitors who may also practise in those areas.

Box 4.4. Reform of the profession of notary in France (Loi Macron)

In June 2016, following the French Law 2015-990 of 6 August 2015 for the growth, activity and equality of economic opportunities (also known as the “Macron law”), the French Competition Authority (FCA) issued an opinion on the reform of the establishment of notarial offices in France.

The new reform should increase access to and competition in notarial services in France. “Three objectives guided the formulation of the recommendations:

- (1) To improve territorial coverage, in order to bring notaries closer to the population and the companies located in areas currently poorly served by public transportation;
- (2) To open up the notarial profession, giving newly graduated notaries the opportunity to set up their own offices and offer new services;
- (3) To preserve the economic viability of existing offices, especially in rural areas.”

This would lead to a more market-oriented and efficient allocation of a greater number of notarial offices across the country, resulting also in enhanced territorial coverage and better access to the profession

The FCA recommended the liberal establishment of 1 650 new notary offices by 2018, an increase of 20% compared with the current 8 600 (2017). Even taking into consideration the number of salaried notaries, this figure will remain below the one suggested by the Superior Council of French Notaries (Conseil Supérieur du Notariat - CSN) in 2008, which had publicly committed to reaching 12 000 notaries by 2015.

Across the entire country, the FCA has identified 247 so-called “green zones”, or free-establishment areas (out of a total of 307 areas). These are areas that were found to be economically viable and where demand for notarial services was found to be high. The 1 650 new offices will be attributed by a draw among qualified applicants, and shared out proportionally according to the needs identified locally.

The FCA made a further 23 recommendations to the Ministry of Justice in order to ensure the sustainability of the system, to improve access to notarial offices (particularly for women and the younger generation), to lower the barriers to entry for future applicants, and to ensure continuity in the quality of service, for the benefit of those who use it.

The FCA had undertaken its reform proposals based on data demonstrating a strong increase in notarial activities (up by 6.3% year on year in 2015, in France). This prompted an analysis of the need and demand for notarial services, which indicated that a large number of areas were lacking in notaries, whereas recent qualified notaries were not able to establish their own offices, but had to wait for existing offices to be vacant (mostly as a result of retirement).

Sources: French Competition Authority de la Concurrence (France), Press Release, 9 June 2016 “Freedom of establishment for notaries”.

Bylaw jointly by the Ministries of Justice and the Economy on 20 September 2016.

http://www.autoritedelaconcurrence.fr/user/standard.php?id_rub=630&id_article=2786&lang=en

4.3.6. Maximum fees for notaries

Description of the barrier

The notarial acts performed exclusively by notaries are governed by a maximum price regime, except those set for inventory procedures that are under a fixed fee regime.⁴⁵ All other acts have free fees.

Harm to competition

Maximum and fixed price regimes limit the incentives to compete and innovate. Even though maximum price regimes allow for price competition, they often serve as a focus point to co-ordinate prices.

Nevertheless, according to stakeholders, the regulation of fixed prices related to the inventory process, such as in a judicial separation process, might be justified on exceptional public interest grounds to guarantee economic access to inventory processes equally by all people.

The existence of maximum prices in exclusive notarial activities intends to guarantee universal access to these services independently of the clients' income level. Notary services exhibit characteristics of public goods, which can lead to positive externalities. Because public goods tend to be under-produced, the state usually establishes regulation on the provision of such services. Additionally, it is claimed that price control guarantees a notary's impartiality and independence in the provision of a public service, as they wouldn't have to negotiate prices with their clients.

In a competitive market, prices tend to reflect more closely the costs of the services provided, and do not necessarily jeopardise the quality of those services.

In its Recommendation 1/2007, the AdC proposed the adoption of a system of maximum prices during a transitional period for services which remain within the exclusive competence of notaries and whose social relevance justified the need to guarantee universal access. This regime would be phased out as the quantitative restrictions imposed by the quota system were phased out.

Other alternatives, rather than fixing maximum prices, may be adopted to overcome any lack of information from the demand side, such as the publication of historical or survey-based price information by independent parties, e.g. consumer associations. This would improve transparency and allow greater competition in prices.⁴⁶ The same principle applies when the regulator opts for establishing maximum prices, based on the attempt to avoid excessive prices charged to consumers, in particular when the regulator wants to guarantee universal access to notarial services.

Recommendation

The maximum prices regime should be revisited, with the aim to gradually phase them out as appropriate. This view is also echoed by the AdC, as discussed above.

Notes

¹ For an overview of legal professions across all EU Member States see: https://e-justice.europa.eu/content_legal_professions-29-en.do. The EU Single Market/Regulated Professions Database defines legal practice in Portugal as the exercise of the legal mandate; legal advice; preparation of contracts and the practice of preparatory acts leading to the establishment, modification or termination of legal transactions, particularly those charged with the registries and notary offices; negotiation aimed at credit recovery; terms of office under the claim or objection to administrative or tax acts. Furthermore, lawyers can also pursue activities related to the representation or defence of a client in legal proceedings. Moreover, lawyers can assist citizens before any kind of authorities in defence of citizens' rights. In addition lawyers are also

responsible for studying cases and processes and interpreting laws, ordinances, regulations regarding doctrine and case law.

See http://ec.europa.eu/growth/tools-databases/regprof/index.cfm?action=regprof&id_regprof=1481

² See Law 145/2015.

³ Created by Decree-Law 27/2004.

⁴ See Law no. 154/2015, from Sept 14th.

⁵ <https://www.ftc.gov/news-events/blogs/competition-matters/2015/02/supreme-court-self-interested-boards-must-be-actively>

⁶ See the Civil and Social Justice Panel Survey (CSJPS) results as reported in the Legal Services Board Report, 2016.

⁷ See Legal Services Board (2016), pp. 76 and 77.

⁸ See Optimisa Research (2013) for the Legal Services Board.

⁹ For a useful discussion of the impact of economic values on the legal profession, see Goldsmith, 2008. For an economic analysis of regulation of the legal profession and access to law, see Baarsma et al., 2008.

¹⁰ See <https://worldjusticeproject.org/sites/default/files/documents/Access-to-Justice-Portugal.pdf>.

¹¹ Most recently the issue was discussed in the OECD June 2016 Hearing on Disruptive Innovations in Legal Services in the Working Party 2 on Competition and Regulation. Further discussion on the rationale for legal services regulation and some of its impacts, can be found in Andrews, 2002; Decker and Yarrow, 2010; Garoupa, 2004, 2008, 2014; Iossa & Julien, 2012; Kanke, 2012; Kleiner, 2000, 2006, 2011; Kleiner & Kudrle, 2000; Kleiner & Krueger, 2008, 2009; Kox, 2012; Leland, 1979; Monteagudo et al., 2012; Pagliero, 2011; Paterson et al. 2007; Persico, 2014; Semple et al., 2013; Shaked & Sutton, 1981; Shapiro, 1986; Stephen, 2002, 2014, 2016; Thornton & Timmons, 2015.

¹² For lack of proper data, we have not been able to compute a “Consumer Price Sub-Index for Legal Services” for Portugal, as is available in the United States. The aim would be to compare the evolution of this Consumer Price Sub-Index with that of the Consumer Price Index (CPI) to determine whether legal services have become relatively more or less expensive for consumers over time when compared with the bundle of goods and services considered for the calculation of the CPI. The Portuguese Statistics Bureau (INE) adopts the COICOP (“Classification of individual consumption by purpose”) methodology, from which we can select the sub-category “Other services n.e.c. (i.e., not elsewhere classified)” from the category “Miscellaneous goods and services”. However, apart from including fees for legal services, this sub-category also includes charges and payments for several other miscellaneous services which renders its price index unsuitable as a proxy for the non-existent Consumer Price Sub-Index for Legal Services. An alternative would be to conduct a survey over a representative sample of legal service providers on the prices charged for the different services provided, which falls beyond the scope of this Project.

¹³ Of this total number of law firms, 14 are registered as branches of foreign law firms, either from Spain or from the United Kingdom.

¹⁴ In 2015, there were 106 other European lawyers working in Portugal, registered under their home-country professional title. This number compares with 80 in Austria, 125 in the Czech Republic, 1 020 in France, 123 in Greece, and 4 521 in Italy (as of July 2014). Out of those 106 lawyers, 75 were from Spain, 10 from Germany, 8 from the United Kingdom, 7 from France, 2 from Sweden, and 1 each from Italy, Austria, the Netherlands and Poland (see

http://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/Statistics/EN_STAT_2015_Number_of_lawyers_in_European_countries.pdf).

¹⁵ “As regards members of the Bar [i.e., of the various Bars in the different EU Member States], it has consistently been held that, in the absence of specific Community rules in the field, each Member State is in principle free to regulate the exercise of the legal profession in its territory (Case 107/83 Klopp [1984] ECR 2971) and Case C-3/95 Reisebüro Broede [1996] ECR I-6511). For that reason, the rules applicable to that profession may differ greatly from one Member State to another” - See Jones, A. & Sufrin, B., 2014. P. 217.

¹⁶ As established by its bylaws, approved by Law no. 145/2015.

¹⁷ See “*Proposal for a Directive of the European Parliament and of the Council on a proportionality test before adoption of new regulation of professions*,” COM(2016) 822 final, 10.Jan.2017, Art. 3, page 18.

¹⁸ Out of those 106 lawyers, 75 were from Spain, 10 from Germany, 8 from the United Kingdom, 7 from France, 2 from Sweden, and 1 each from Italy, Austria, the Netherlands, and Poland. In 2015, there were 106 other European lawyers working in Portugal, registered under their home-country professional title. This number compares with 80 in Austria, 125 in the Czech Republic and 123 in Greece (as of July 2014). Source : http://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/Statistics/EN_STAT_2015_Number_of_lawyers_in_European_countries.pdf

¹⁹ See Decree-Law 26/2004 and Decree-Law 27/2004.

²⁰ For an analysis of the recent reforms of Portuguese notaries, see Tavares and Rodrigues, 2013.

²¹ See the Professional Association of Notaries' own bylaws (in Annex I to Law 155/2015), the Notarial Statutory Law (in Annex II to Law 155/2015), and the legal framework for the inventory process (Law 23/2013).

²² By Decree-law 207/95, lawyers, solicitors and other entities were allowed to practice several notarial acts previously reserved for notaries.

²³ See INE (Instituto Nacional de Estatística/National Statistics Institute) and PORDATA. INE data on economic activity by subclass - CAE Rev. 3, was extracted on 22 Nov 22 2017.

²⁴ See Law 49/2004. It defines the meaning and scope of lawyers' and solicitors' own, or reserved, acts and typifies the crime of unlawful practice of legal acts.

²⁵ See Art. 40 of the Code of Civil Procedure, although in accordance with paragraph 2 of this article, the solicitor is authorised to submit certain requirements. In cases where a lawyer's participation is not mandatory, solicitors, law interns and the parties themselves may represent themselves in court – see Art. 42 of Code of Civil Procedure, adopted by Law 41/2013 with amendments.

²⁶ See Art. 1(5) of Law 49/2004, Art. 136 of Law 154/2015, and Art. 1(11) of Law 49/2004.

²⁷ Art. 42 Code of Civil Procedure, Law 41/2013 with amendments.

²⁸ See Art. 64 of the Code of Criminal Procedure, Decree-law 78/87 with amendments.

²⁹ On the role played by lawyers, see also Art. 20, Art. 32 and Art. 208 of the Constitution (CRP).

³⁰ See Law no. 154/2015, from Sept 14th.

³¹ Art. 3 (1) of the Decree-Law 330/90 (Portuguese publicity code).

³² Art. 94(4)(a) (b) (e) of the Law 145/2015.

³³ Annex I art. 82 of Law 155/2015 "Professional Association of Notaries Bylaws".

³⁴ Art. 4 to 14 of Regulation 786/2010 "Publicity and Image of solicitors and bailiffs".

³⁵ Art. 41 of Law 112/2015.

³⁶ See Canadian Competition Bureau, 2007, pp. 28-30, including Table 2.

<http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02523.html>

³⁷ Other professionals, such as nutritionists, are also forbidden to engage in publicity of a comparative nature as such practices may mislead users and encourage the acquisition of services without prior individual diagnosis. Art. 116 of Law 51/2010 as amended by Law 126/2015 "Nutritionists Professional Association Bylaws".

³⁸ See in particular the Advertising Code (which transposes Directive 2006/114 /EC), the Unfair Commercial Practices Act (which transposes Directive 2005/29/) and the Code of Industrial Property, focusing in particular on the Unfair Competition provided in Art. 317.

³⁹ Recitals 8 and 9 and Art. 4 of Directive 2006/114/EC. 'Misleading advertising' means any advertising which in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which, by reason of its deceptive nature, is likely to affect their economic behaviour or which, for those reasons, injures or is likely to injure a competitor. "Comparative advertising" means any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor. Comparative advertising is not forbidden when it compares material, relevant, verifiable and representative features and is not misleading. It is considered to be a legitimate means of informing consumers of their advantage. The directive stresses the need for EU Member States to include criteria of objective comparison of the features of goods and services, which may include price.

⁴⁰ Decree-Law 26/2004, Article 6 (1) (2).

⁴¹ Decree-Law 26/2004, Article 7.

⁴² For instance only notaries located in the municipality where a succession process is open can execute a legal inventory process (see Article. 3 of Law 23/2013).

⁴³ Art. 6(3) and Art. 53(f) Decree-Law 26/2004.

⁴⁴ See annex to Decree-Law 26/2004.

⁴⁵ Ordinance 574/2008.

⁴⁶ OECD, 2009, "Competition and Regulatory Reforms in Professional Services", in OECD Reviews of Regulatory Reform: Italy 2009: Better Regulation to Strengthen Market Dynamics, OECD Publishing.

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Annex 4.A. Benefits to consumers

Consumer welfare can increase to as much as EUR 31.90 million with the lifting of restrictions arising from regulations applicable to the legal professions, making them more competitive with regard to entry and exercise requirements, allowing for more competition between professionals.

Annex Table 4.A.1. Impacts of legal services on all firms in Portugal, 2015

Price changes	Increase in consumer welfare (\mathcal{W}) in EUR when $ePD=2$
$\frac{\Delta P}{P} = 0.20\%$	2 494 968
$\frac{\Delta P}{P} = 0.40\%$	4 999 896
$\frac{\Delta P}{P} = 0.50\%$	6 256 095
$\frac{\Delta P}{P} = 0.75\%$	9 407 486
$\frac{\Delta P}{P} = 1.00\%$	12 574 439
$\frac{\Delta P}{P} = 1.50\%$	18 955 034
$\frac{\Delta P}{P} = 2.00\%$	25 397 878
$\frac{\Delta P}{P} = 2.50\%$	31 902 971

Source: Data from INE (2017), “principais indicadores económicos, segundo a atividade principal da empresa”, https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaques&DESTAQUESdest_boui=281447433&DESTAQUESmodo=2 (accessed on 23 March 2018) and methodology presented in Annex A.2.

Chapter 5. Technical and scientific professions

This chapter discusses the regulation of architects, engineers and technical engineers. In 2015, the architectural and engineering services provided to Portuguese firms and households represented EUR 1 723.9 million and, in 2017 there were 96 690 individuals who were members of the professional associations related to architects, engineers and technical engineers. The exercise of these three professions and the legislation applicable to them are linked closely to public safety and health concerns. Nevertheless, several barriers to competition have been identified, including reservation of specific activities and specialisations for certain professions; requirement of a minimum number of years of experience in order to perform certain tasks; and limitation of freedom to establish prices. These barriers inhibit cost savings. They increase legal and regulatory uncertainty for potential and existing architects, engineers and technical engineers while also allowing some of them to be placed at a competitive disadvantage.

5.1. Introduction

The technical and scientific professions correspond to the professions that require specific scientific knowledge (such as mathematics and physics), practical skills and operating methods which will, in the exercise of the respective profession, be applied in the performance of tasks in areas such as construction, communications, industry and transport. Those professions include architects, engineers and technical engineers, which can perform several activities, in particular related to construction, such as surveying construction sites, or developing, managing and co-ordinating projects or works.

These professions are also confronted with similarly high levels of risk regarding public security, public safety and the environment. In fact, mitigating risk is the main driver behind the regulation of these professions.

5.1.1. The professions

Architects

Architects have a university degree in architecture and practical knowledge about planning, designing and overseeing the construction of buildings and surrounding space.

In Portugal, architects can only practise their profession if they are registered with the Professional Association of Architects (*Ordem dos Arquitectos*). In accordance with its bylaws,¹ the Professional Association of Architects regulates the exercise of the profession of architect in Portugal and, also, represents the professionals before other entities.

The bylaws of the Professional Association of Architects² state that an architect develops and assesses architectural studies, projects and plans and, also, participates in studies, projects, plans and activities carried out in the scope of activities of consultancy, management, supervision and management of works, planning, co-ordination and assessment related to the construction, urban planning, conception and design of the spatial framework of the population.

Engineers

Engineers have, at least, a university degree in engineering and also have practical skills specifically aimed at developing ways to use materials and forces of nature efficiently. The exercise of such a profession involves a wide range of activities, including conception, design, development and formulation of systems and products as well as the implementation, production and operation of systems.

In Portugal, engineers must register with the Professional Association of Engineers (*Ordem dos Engenheiros*) in order to practise their profession. According to its bylaws,³ the Professional Association of Engineers grants the title of engineer, ensures that engineers comply with the rules of professional ethics, regulates the exercise of the profession in Portugal and protects its members' rights.

The bylaws of the Professional Association of Engineers⁴ mention that an engineer applies engineering sciences and techniques to the activities of research, conception, study, design, manufacture, construction, production, assessment, supervision and control of quality and safety, expertise and audit and, also, co-ordinates and manages those activities and other activities related to them.

Technical engineers

Technical engineers are individuals who have, at least, a bachelor's degree (discontinued in 2005) in engineering and who also have practical skills specifically aimed at developing ways to economically use materials and forces of nature, similarly to engineers. Since 2005, technical engineers face the same requirements and are allowed to practise the same activities as engineers, with the exception of technical engineers who graduated before 2005.

In Portugal, technical engineers must register with the Professional Association of Technical Engineers (*Ordem dos Engenheiros Técnicos*) to practice their profession. According to its bylaws,⁵ the Professional Association of Technical Engineers is responsible for promoting the professional and scientific value of its members, defending their respective ethical principles, exercising disciplinary jurisdiction over technical engineers in the exercise of their profession and defending technical engineers' rights and interests.

5.1.2. The relevant institutional bodies

The activities performed by these technical and scientific professionals fall within the scope of the respective professional associations that are briefly described in Section 5.1.1, and of the Ministry of Planning and Infrastructures (*Ministério do Planeamento e das Infraestruturas*) and of the Institute of Public Markets, Real Estate and Construction, (*Instituto dos Mercados Públicos, do Imobiliário e da Construção, I.P.* – IMPIC).

The Ministry of Planning and Infrastructures is responsible for transport-related development and cohesion policies and infrastructure policies in the construction, real estate, transport and communications sectors.

The IMPIC is responsible for implementing and applying the regulation concerning the construction and real estate sectors and the regulation concerning public markets and contracts. It also supervises public electronic contracting platforms used for public procurement and develops manuals of good practice on public procurement.

5.1.3. Main applicable legal framework

Architects

The professional qualifications required of the professionals responsible for specific activities concerning several operations and works are defined in Law 31/2009. Those qualifications have been largely harmonized to allow for automatic recognition under the Directive 2005/36/EC of professional qualifications.

As mentioned in Section 5.1.1, architects are mainly governed by the bylaws of the Professional Association of Architects. Additionally, the regulation concerning ethics and disciplinary procedure applicable to architects⁶ establishes the rules, conditions, principles and procedures that those professionals need to comply with, as well as the sanctions in cases of transgression.

Since 2006, architects have a dedicated Ombudsman, briefly described in Box 5.1. The Ombudsman of Architecture has an important role in the profession of architects and in the relation between those professionals and consumers.

Box 5.1. The Ombudsman for architecture

In 2006, the Professional Association of Architects designated the Ombudsman of Architecture, an individual independent from the association governing bodies whose main role is to defend the interests of the recipients of the professional services provided by the members of the Professional Association of Architects, according to its bylaws (Art. 32 (1)). The Ombudsman's main tasks include analysing complaints and providing recommendations for their resolution, as well as recommendations for the improvement of the performance of the Professional Association of Architects, in accordance with the bylaws of that association (Art. 32 (3)).

The Ombudsman of Architecture, including the regulations applicable to him and his remunerations, is appointed by the assembly of delegates of the Professional Association of Architects, according to the bylaws of the Professional Association of Architects (Art. 19 (1) (i)). The individual appointed shall be a citizen with a proven reputation for integrity and independence and who enjoys full civil and political rights. If applicable, the Ombudsman must request the suspension of his registration in the Professional Association of Architects, in accordance with the bylaws of that association (Art. 32 (5)).

The Ombudsman of Architecture regularly publishes his recommendations, findings and opinions, which is in line with his informative and pedagogical functions, as well as with his aim of ensuring the implementation of correct procedures by architects and the Professional Association of Architects.

The involvement of the Ombudsman for Architecture in a specific situation does not preclude or limit a complainant's rights to involve the General Ombudsman and to appeal to Courts. Similarly, it does not prevent or limit the use by the Professional Association of Architects' competent bodies of their disciplinary powers.

Source: Professional Association of Architects (2018a).

Engineers and technical engineers

Engineers and technical engineers are mainly regulated by the bylaws of the Professional Association of Engineers and by the bylaws of the Professional Association of Technical Engineers, respectively. Each one of those regulations establishes the legal regime for the organisation and operation of the respective association and for access to and exercise of the profession in question.

Additionally, the code of ethics applicable to technical engineers⁷ establishes the rules, conditions, principles and procedures concerning ethics and behaviour that those professionals need to comply with.

Further Portuguese regulations relevant to the exercise of both professions are the following:

- Law 14/2015, which establishes the minimum requirements to access and carry-out the activity of entities and professionals responsible for electrical installations;
- Law 15/2015, which determines the minimum requirements to access and exercise the activity of entities and professionals which operate in the field of combustible gases;
- Law 31/2009, which approves the legal regime that establishes the professional qualifications required for technicians responsible for developing and signing

projects, inspecting works and directing works, as well as the duties applicable to them;

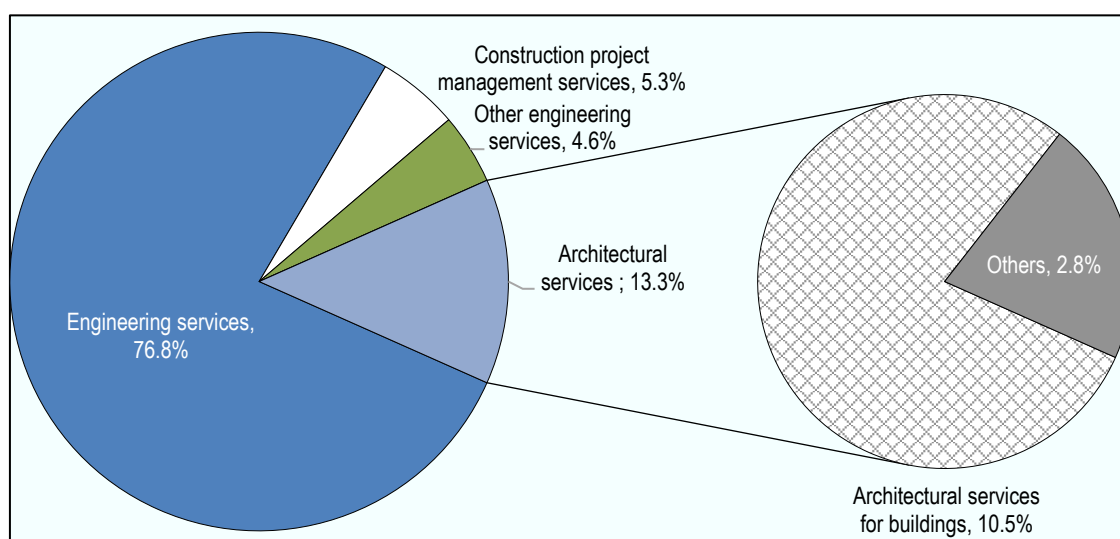
- Law 41/2015, which approves the legal regime applicable to the exercise of construction activity.

5.1.4. Economic overview

In 2015, the engineering and architectural services provided to firms in Portugal represented EUR 1 723.9 million,⁸ having decreased by 27.0% since 2008. That value corresponds to 13.0% of all services provided to firms in Portugal, a decrease from 17.2% in 2008.

The majority (76.8%) of the engineering and architectural services provided to firms in Portugal in 2015 related to engineering services, while 13.3% of them corresponded to architectural services, from which 10.5% related to architectural services for buildings (see Figure 5.1).

Figure 5.1. Distribution of the engineering and architectural services provided to firms in Portugal, 2015



Note: The class “Services provided to firms” includes services provided to households, despite its name.

Source: INE (2017), “principais indicadores económicos, segundo a atividade principal da empresa”, https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaques&DESTAQUESdest_boui=281447433&DESTAQUESmodo=2 (accessed on 23 March 2018).

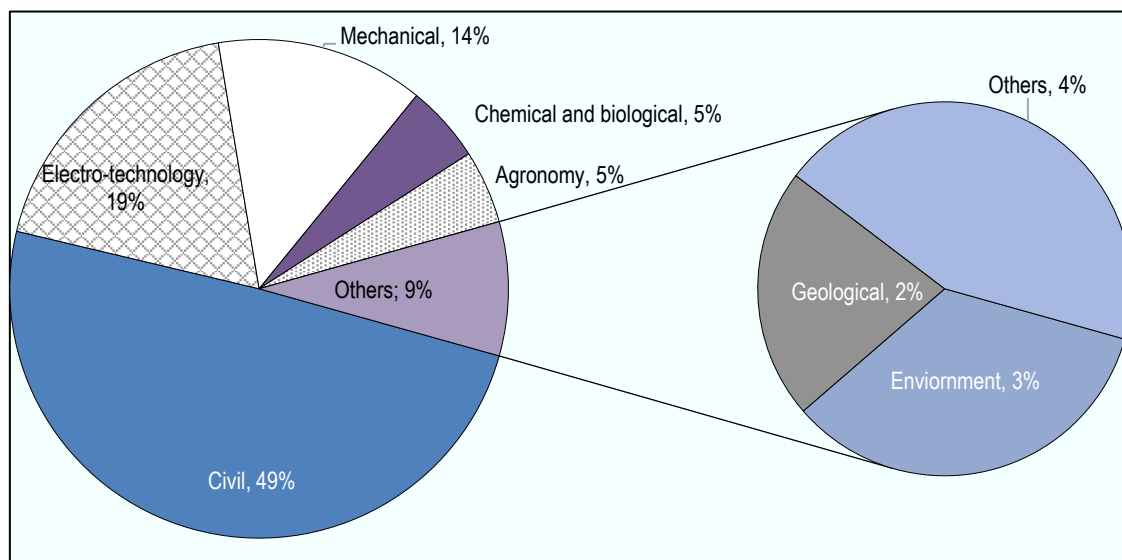
In November 2017, there were 23 396 members of the Professional Association of Architects,⁹ of which 17 398 practise the profession in Portugal. On the same date, the Professional Association of Engineers had 49 030 members,¹⁰ of which 49% were members of the Civil Specialisation College (see Figure 5.2). In 2017, the Professional Association of Technical Engineers had 24 264 members,¹¹ of which 5 044 may register with the Professional Association of Engineers, given that they fulfil the minimum requirements to do so.

In November 2017, there were 62 firms which provide architectural services registered in the Professional Association of Architects, although no firms of architects were registered in it. This is due to the possibility that architects can practise their trade within firms that

supply architectural services. In 2017, there were 290 architects from countries other than Portugal working in Portugal.¹²

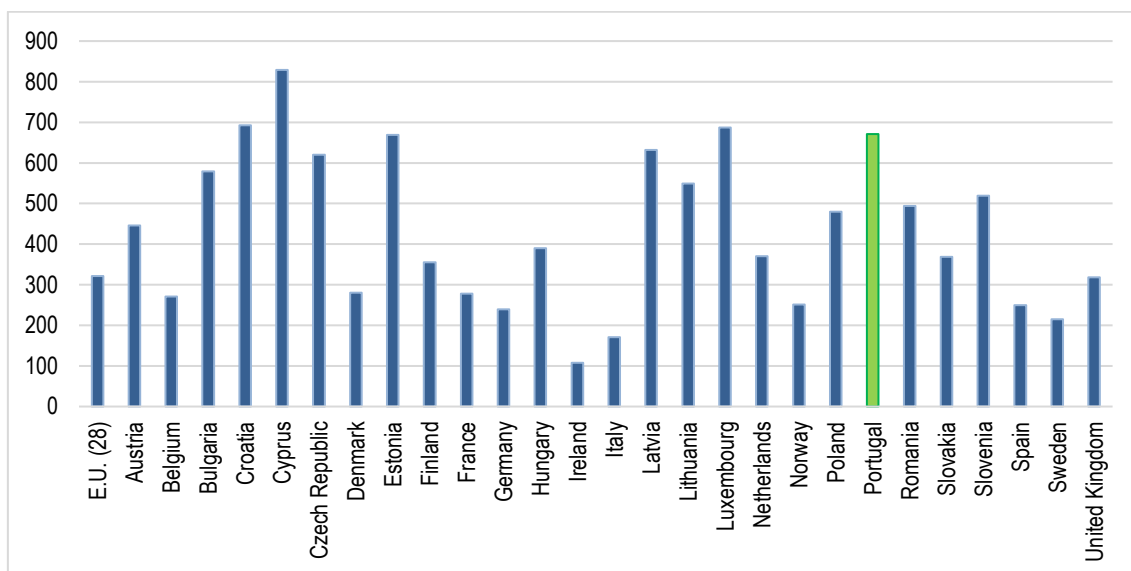
In 2011, there were 671 civil engineers working in Portugal for every 100 000 inhabitants, a penetration that is higher when compared with the respective EU28, of 321 civil engineers (see Figure 5.3).

Figure 5.2. Distribution of members of the Professional Association of Engineers, 2015



Source: Professional Association of Engineers (2017).

Figure 5.3. Number of civil engineers for every 100 000 inhabitants, 2011



Source: EC (2015).

5.1.5. Methodology for competition assessment

We analysed 89 Portuguese laws and regulations¹³ applicable to the technical and scientific professions. Among these, the project identified 71 provisions as potentially harmful to competition and 68 recommendations were made.

Table 5.1. Summary of analysed provisions applicable to the technical and scientific professions

	Total	Common to several professions	Architects	Engineers
Pieces of legislation analysed	89	14	41	15
Provisions identified as potentially harmful to competition	71	14	19	16
Recommendations formulated	68	14	17	16

Source: Some pieces of legislation analysed are applicable to more than one of the technical and scientific professions.

In some cases, barriers to competition in different professions are analogous to each other, as far as their scope is concerned. Therefore, those barriers to competition were analysed jointly in the scope of the Project and such analysis is presented in Chapter 3.

The majority of the provisions applicable to the technical and scientific professions identified by the Project as potentially harmful to competition concern reserves of activities and, as such, are analysed in Section 3.2, as mentioned above.

5.2. Designation of the technician responsible for determining the level of conservation of a structure

5.2.1. Description of the relevant provision

The designation of a technician responsible for determining the level of conservation (strength and safety) of an urban building or a flat for the purposes foreseen in the scope of urban lease, urban rehabilitation and building conservation¹⁴ is carried out through a random draw among the architects, engineers and technical engineers who are included in a list of qualified and available professionals, developed by the respective professional associations.¹⁵

5.2.2. Harm to competition

The use of a draw to choose the professional responsible for determining the level of conservation (strength and safety) of a construction does not guarantee that the outcome of the draw will correspond to the decision that the entity interested in the service would take if it could choose the professional freely. In fact, the individual selected to carry out that duty might not correspond to the individual best qualified to do so, given his suitability for the specific characteristics of the construction in question and the price he would charge to provide the service.

Additionally, the use of the above-mentioned procedure removes the incentives of professionals for establishing lower prices and better services. In fact, architects, engineers and technical engineers who are included in the lists of professionals suitable for the proper determination of the level of conservation of a construction know that the

characteristics of and the price applicable to the services provided by them do not influence their probability of being chosen.

As a result, the provision leads to an unsubstantiated and, consequently, avoidable increase in the costs incurred by entities interested in determining the level of conservation of a construction. This is driven by the inability (resulting from external and, in particular, regulatory factors) of those entities to choose professionals who apply lower prices or are better suited for carrying out the specific service to be provided. That, in turn, prevents professionals from competing with each other and, thus, discourages those who incur lower costs from passing on those savings to the entities in question.

Nevertheless, a minimum quality of the service provided is, in any case, ensured by the use of a list of professionals suitable for the proper determination of the level of conservation (strength and safety) of a construction developed by the respective professional associations.

5.2.3. Recommendation and benefits of implementation

The procedure for choosing the professional responsible for determining the level of conservation (strength and safety) of a structure should be changed from a draw to a tender (competitive award) procedure.

The implementation of this recommendation will encourage architects, engineers and technical engineers who are included in the lists of professionals suitable for the proper determination of the level of conservation of a construction to compete with each other and will, consequently, create cost savings for entities interested in that service.

5.3. Price as a factor of competition for architects

5.3.1. Description of the relevant provision

Architects are required to abstain from competing based solely on remuneration.¹⁶

Therefore, architects are required to use factors other than price, such as design, technical quality and swiftness of provision, to compete with each other.

5.3.2. Harm to competition

The price applicable to the provision of a service is one of the main factors used by consumers to decide on the supplier to use and, hence, on the service to purchase. Nevertheless, that decision may also depend on other factors, which tend to become more relevant in cases in which the services available to purchase are identical, in terms of their relevant characteristics.

Services provided by architects are, by nature, different depending on the architect that provides them. In fact, each architect has their own style and, because of that (if for no other reason), his work will necessarily differ from that of other architects, even if the service requested is the same.

Thus, architects will tend, on their own and without need for external intervention, not to compete based solely on remuneration.

Nevertheless, there are cases in which the service requested is so specific that the differences in the outcome of its provision arising from the supplier used do not influence

the consumer's choice of supplier. In those cases, price might be the determining factor used by consumers to choose the supplier and, hence, the service to purchase.

Therefore, the provision prevents architects from effectively and efficiently competing with each other and, as a result, reduces the benefits of businesses and consumers arising from services provided by those professionals. In fact, the provision prevents architects who incur lower costs from passing on those savings to businesses and consumers in cases in which the service provided does not differ between architects.

5.3.3. Recommendation and benefits of implementation

The prohibition on competition based solely on remuneration for architects should be abolished.

The implementation of this recommendation will allow those professionals to use only price to compete with each other and will, consequently, increase the benefits of businesses and consumers arising from services provided by the professionals in question.

5.4. Ambiguity of terminology used in provisions

5.4.1. Description of the relevant provisions

Several provisions included in the legislation applicable to the technical and scientific professions analysed establish rules and principles concerning, in particular, the professional and ethical duties to be followed by the respective professionals.

The implementation of many of those provisions requires the intervention of the professional association in question, in particular by taking the necessary and appropriate measures to punish any violation of the above-mentioned rules and principles by professionals. However, some of the same provisions use terminology with an ambiguous meaning, a situation which leaves it to the discretion of the professional association in question to choose the connotation to be applied in a specific situation.

Amongst those provisions are:

- Art. 52 (b) of the bylaws of the Professional Association of Architects and Art. 2 (b) of the Regulation concerning ethics and disciplinary procedures applicable to architects, which establish that architects must show themselves worthy of their responsibilities;
- Art. 10 (7) (b) of the Regulation concerning deontology and disciplinary procedure applicable to architects, which establishes that architects may not carry out any manoeuvre or pressure that may negatively affect the freedom of choice of a potential consumer;
- Art. 142 (4) of the bylaws of the Professional Association of Engineers, which establishes that engineers should determine the prices applicable to the services they provide taking into account their fair value;
- Art. 143 (3) of the bylaws of the Professional Association of Engineers, which establishes that engineers must use as much sobriety as possible in professional advertisements that he makes or authorizes;
- Art. 79 (d) of the bylaws of the Professional Association of Technical Engineers, which establishes that technical engineers must set a remuneration which is adequate to the services provided;

- Art. 13 (b) of the Code of ethics applicable to technical engineers, which establishes that technical engineers should be remunerated only for services that they have effectively provided and in proportion to their fair value, not distributing fees between themselves and other technical engineers.

5.4.2. *Harm to competition*

The lack of clear and specific language for the rules and principles to be followed by architects, engineers or technical engineers allows professional associations to be more arbitrary in their decisions. This makes it more difficult for potential and existing professionals to obtain accurate and timely information concerning the relevant operational context. It also creates regulatory uncertainty for those individuals and may lead to an unsubstantiated and, consequently, avoidable increase in the costs they incur. In fact, such a situation:

- allows a professional association to act differently in analogous circumstances, allowing it to apply dissimilar conditions to equivalent situations, potentially placing some professionals at a competitive disadvantage;
- results in a reduction in the necessary and adequate information available to professionals to decide and, in particular, to develop their business plans.

5.4.3. *Recommendation and benefits of implementation*

The provisions mentioned above should be amended to use as clear and specific language as possible. Furthermore, in cases in which the provisions have been superseded in their substance by more recent legislation, have lost their usefulness or have become obsolete as a result of technical developments, they should be expressly revoked.

The implementation of these recommendations will increase predictability and transparency in the application of provisions. As a result, it will create regulatory certainty and provide cost savings for those individuals who want to become architects, engineers or technical engineers and for existing professionals.

Notes

¹ Published in Decree-Law 176/98.

² In accordance with Art. 44 (2) and Art. 44 (3) of the bylaws of the Professional Association of Architects.

³ Approved by Decree-Law 119/92.

⁴ In accordance with Art. 7 (1) of the bylaws of the Professional Association of Engineers.

⁵ Published in Decree-Law 349/99.

⁶ Approved by Regulation 336/2016.

⁷ Published by Regulation 888/2016.

⁸ Source: INE (2017), “*principais indicadores económicos, segundo a atividade principal da empresa*”, https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaques&DESTAQUESdest_boui=281447433&DESTAQUESmodo=2 (accessed on 23 March 2018).

⁹ *Source*: Professional Association (2017) of Architects.

¹⁰ *Source*: Professional Association of Engineers (2017).

¹¹ *Source*: Professional Association of Architects (2018a).

¹² *Source*: Professional Association of Architects (2017).

¹³ Henceforth called “Pieces of Portuguese legislation”.

¹⁴ Henceforth called “Technician responsible for determining the level of conservation of a construction”.

¹⁵ In accordance with Art. 3 (3) of Decree-Law 266-B/2012.

¹⁶ In accordance with Art. 57 (c) of the bylaws of the Professional Association of Architects.

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Annex 5.A. Benefits to consumers

Consumer welfare can increase to as much as EUR 44.17 million with the lifting of restrictions arising from regulations applicable to the technical and scientific professions, making them more competitive with regard to entry and exercise requirements, allowing for more competition between professionals.

Table 5A.1. Impacts of the value of engineering and architectural services provided to all firms in Portugal, 2015

Price changes	Increase in consumers welfare (ΔW) in EUR when $ePD=2$
$\frac{\Delta P}{P} = 0.20\%$	3 454 631
$\frac{\Delta P}{P} = 0.40\%$	6 923 054
$\frac{\Delta P}{P} = 0.50\%$	8 662 437
$\frac{\Delta P}{P} = 0.75\%$	13 025 978
$\frac{\Delta P}{P} = 1.00\%$	17 411 067
$\frac{\Delta P}{P} = 1.50\%$	26 245 890
$\frac{\Delta P}{P} = 2.00\%$	35 166 907
$\frac{\Delta P}{P} = 2.50\%$	44 174 118

Source: Data from INE (2017), “Principais indicadores económicos, segundo a atividade principal da empresa”,

https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaques&DESTAQUESdest_boui=281447433&DESTAQUESmodo=2 (accessed on 23 March 2018) and methodology presented in Annex A.2.

Chapter 6. Financial and economic professions

This chapter covers the regulation of auditors, certified accountants, customs brokers and economists. In 2015, accounting, auditing and consulting services provided to Portuguese firms and households represented EUR 2 044 million which corresponds to 15.5% of all services provided to firms. Several barriers to competition were identified in the legislation applicable to access to, and the exercise of, the four professions in question, including: reserving certain activities for specific professions; requirements for minimum academic qualifications; requirements concerning partnerships, shareholding, management and multidisciplinary activities within professional firms; the minimum civil liability insurance coverage necessary for practising certain professions; and compulsory disclosure of operational information. Those barriers inflate costs and increase legal and regulatory uncertainty for potential and existing auditors, certified accountants, customs brokers and economists, while placing some members of these professions at a competitive disadvantage.

6.1. Introduction

The professional activities of auditors, certified accountants, customs brokers and economists, relate to the economic and financial decisions of firms, and were analysed as part of the Project "OECD Competition Assessment Review: Portugal" (the Project).

Some of their activities are similar. For example, similar activities are carried out by: (i) auditors and certified accountants; (ii) customs brokers and other customs representatives, such as freight forwarders; and (iii) economists and other professionals who apply economics in the performance of tasks.

These four regulated professions have a significant impact on the operations of businesses and, consequently, on the Portuguese economy. This is why overly restrictive regulations of these professions may have broader implications for the wider economy that go beyond the impact on the professionals themselves.

6.1.1. The professions

Auditors

Auditors have theoretical knowledge of and practical experience in auditing techniques. They review companies' or other entities' financial accounts and develop audit reports that are compliant with recognised standards.

In Portugal, auditors can only practise their profession if they are registered with the Professional Association of Auditors (*Ordem dos Revisores Oficiais de Contas* - OROC). In accordance with its bylaws,¹ the OROC represents its members before other entities, and is responsible for regulating the auditing profession, including regulating access to, and the exercise of, the profession of auditor in Portugal and controlling the quality of auditors and auditing services.

The bylaws of the OROC indicate that members of this profession conduct audits of firms' accounts in the public interest, provide advisory services in matters related to their professional training and qualification² and act as insolvency administrators and liquidators.³

Certified accountants

Certified accountants have, at minimum, a university degree in accounting, business management, economics, business sciences or taxation, as well as practical skills in planning, organising and co-ordinating the financial accounts of businesses. Members of this profession certify that the accounts they prepare comply with the applicable legal rules and accounting principles in force, and with the guidelines of entities responsible for accounting standardisation.

In Portugal, certified accountants must register with the Professional Association of Certified Accountants (*Ordem dos Contabilistas Certificados* - OCC) in order to practise their profession. In accordance with its bylaws,⁴ the OCC grants the professional title of certified accountant, regulates access to, and the exercise of, the profession of certified accountant in Portugal, establishes technical rules and regulations of professional activity, exercises disciplinary authority over its members and protects its members' interests and rights related to the exercise of their profession.

The bylaws of the OCC specify that certified accountants, in addition to planning, organising and co-ordinating companies' or other entities' accounts, may:⁵ (i) provide advice in matters related to accounting and taxation; and (ii) represent entities for which the accountant has prepared accounts in tax matters related to the accountant's specific competences.

Customs brokers

Customs brokers have, at minimum, a university degree in economics, business management or administration, law, international relations, international trade, logistics or customs management, as well as practical skills in representing economic agents before the Tax and Customs Authority (*Autoridade Tributária e Aduaneira* – AT) and other official bodies with a role in customs procedures. The exercise of such profession involves a wide range of activities in the framework of customs regulations.⁶

In Portugal, customs brokers must register with the Professional Association of Customs Brokers (*Ordem dos Despachantes Oficiais* – ODO) in order to practise the profession. In accordance with its bylaws,⁷ the ODO grants the professional title of customs broker, regulates access to, and the exercise of, the profession of customs broker in Portugal, exercises disciplinary authority on its members, protects the interests of the entities which use the services provided by customs brokers and protects its members' interests and rights related to the exercise of their profession.

The bylaws of the ODO indicate that customs brokers are required to guarantee any customs or other financial obligations stemming from the declarations submitted by the broker to the AT.⁸

Economists

Economists are individuals who have, at minimum, a university degree in any of the economic sciences⁹ and who also have practical skills specifically aimed at conducting economic analysis of the distribution of resources and the behaviour of economic actors. The exercise of this profession involves a wide range of activities, including analysing quantitative economic information and conceiving, developing and implementing scientific models in order to test theories and concepts, prepare forecasts and evaluate decisions.

In Portugal, economists can register with the Professional Association of Economists (*Ordem dos Economistas* – ODE) in order to practise their profession. In accordance with its bylaws,¹⁰ the ODE grants the professional title of economist, regulates access to, and the exercise of, the profession of economist in Portugal, represents and protects that profession's interests and its members' rights and interests related to the exercise of their profession and exercises disciplinary authority on its members.

The regulations applicable to the profession of economist do not foresee any exclusive activity reserved for individuals registered in the ODE. The professional title of economist merely prevents individuals who are not registered with that professional association from referring to themselves professionally as economists, and does not prevent them from performing any specific task.

Box 6.1. The protected professional title of “economist”

The bylaws of the Professional Association of Economists (ODE) (Art. 4) establish that only professionals registered in the ODE may use the professional title of “economist”, and only firms registered in the professional association can use the designation of an economists’ firm.

This provision introduces a protection of title. To use this title, individuals must register as full member in the ODE. They need to have a university degree in economics, or a foreign academic degree in the same field and have completed an internship (of 12 months for candidates with at least the master’s degree and 18 months for others).

In Portugal, the title of economist is not associated with reserved activities, which means that any professional can perform the activities of an economist. As such, the protection of the title of “economist” does not exclude other professionals from the performance of any specific economist activity.

Individuals with an academic degree in economics not registered in the Ordem may use any other title they please such as “graduate in economics”. When consulted, the stakeholders stated that the use of the title “economist” or “graduate in economics” had no influence in the market and on their image in the eyes of consumers. However, this does not mean that for certain purposes, such as to access specific positions or careers, the professional title of economist – and as such registry in the professional association – cannot be required.

Note that the profession of economist is only regulated in Portugal, Spain and Greece among the 28 EU Member States. European Commission website on regulated professions database: <http://ec.europa.eu/growth/tools-databases/regprof/index.cfm?action=homepage>.

6.1.2. The relevant institutional bodies

The activities performed by the financial and economic professionals described above fall within the scope of the professional associations described in Section 6.1.1 above, and of the following official authorities:

- the Ministry of Finances (*Ministério das Finanças*), which develops, co-ordinates, implements and assesses the financial policy of the state; and promotes the effective, efficient and equitable management of public resources;
- the Ministry of Economy (*Ministério da Economia*), which formulates, co-ordinates, executes and evaluates policies aimed at promoting economic growth, competitiveness, innovation, the internationalisation of enterprises, trade, industry and investment, as well as policies related to consumer protection, tourism, energy and geology;
- the Tax and Customs Authority (AT), the Portuguese body entrusted with administering taxes, including customs duties, and controlling the external border of the European Union as well as that of the national customs territory. The AT is subject to the oversight of the Ministry of Finances;

- the Securities Market Commission (*Comissão do Mercado de Valores Mobiliários* – CMVM), the Portuguese regulatory body for the profession of auditor, which is also tasked with regulating and monitoring securities markets, as well as the economic agents that operate in them. The CMVM has administrative, financial and managerial independence to conduct its work.

6.1.3. Main applicable legal framework

Auditors

Auditors are governed primarily by the bylaws of the OROC, which establish the legal regime for the organisation and its operation as well as for access to, and the exercise of, the profession of auditor.

Additionally, the code of ethics applicable to auditors¹¹ establishes the rules, conditions, principles and procedures with which those professionals must comply.

The other main Portuguese regulations relevant to the exercise of the profession of auditor are the following:

- Law 148/2015, which: approves the legal framework concerning audit reviews; and tasks the CMVM with monitoring auditors and auditing firms from countries other than Portugal registered in Portugal;
- Regulation 12/2017, which regulates the registration of individuals in the OROC and, the examinations concerning professional knowledge necessary for admittance into the association;
- Regulation 19/2017, which regulates the professional internship necessary for obtaining the professional title of auditor.

At the EU level, Regulation (EU) 537/2014, on specific requirements regarding statutory audits of public-interest entities, is also relevant. It establishes: (i) requirements for carrying out of statutory audits of annual and consolidated financial statements of public-interest entities; (ii) rules on the organisation and selection of auditors and firms of auditors by public-interest entities; and (iii) rules concerning the monitoring of compliance by auditors and firms of auditors with the applicable requirements.

Certified accountants

Certified accountants are mainly governed by the bylaws of the OCC, which establish the legal regime for the organisation and operation of that professional association and for access to, and the exercise of, the profession of certified accountant.

Furthermore, the code of ethics applicable to certified accountants¹² establishes the rules, conditions, principles and procedures with which those professionals must comply.

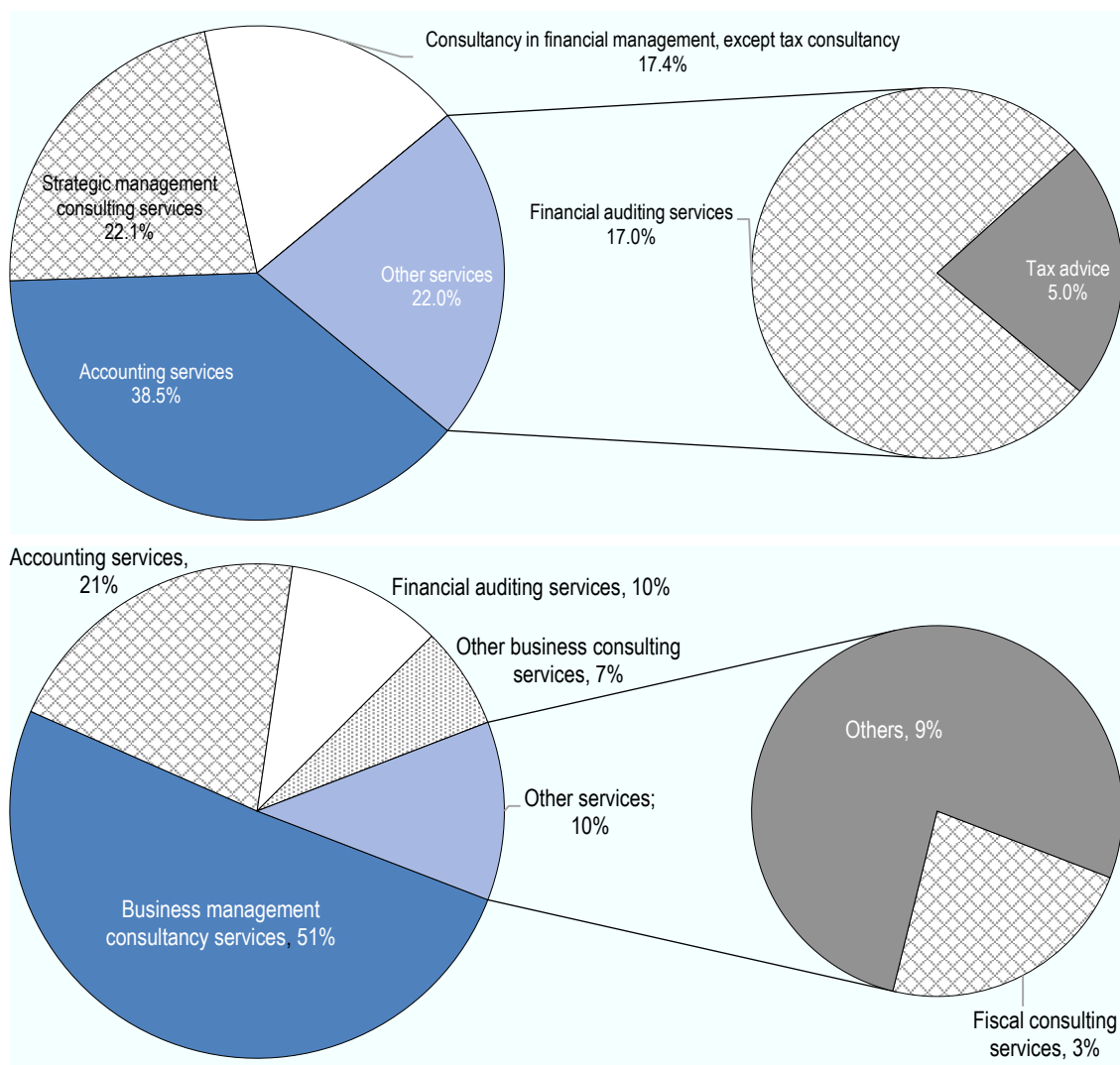
Customs brokers

Customs brokers are governed mainly by the bylaws of the ODO, which establish: the legal regime for the organisation and operation of that professional association; conditions for access to, and exercise of, the profession of customs broker; and the rules, conditions, principles and procedures concerning professional ethics for customs brokers.

Further Portuguese regulations relevant to the exercise of the profession of customs broker are the following:

- Regulation 666/2016, which regulates the professional internship necessary for obtaining the professional title of customs broker;
- Regulation 667/2016, which regulates the registration of individuals in the ODO; and
- Regulation 668/2016, which regulates the disciplinary procedure applicable to customs brokers.

Figure 6.1. Distribution of the accounting, auditing and consulting services provided to firms in Portugal, 2015



Source: INE (2017), “Principais indicadores económicos, segundo a atividade principal da empresa”, https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaques&DESTAQUESdest_boui=281447433&DESTAQUESmodo=2 (accessed on 23 March 2018).

Note: The class “Services provided to firms” includes services provided to households, despite its name. Taking into account the description of the services rendered that are provided by the financial/economic professions, available at INE (see link above), several type of services were excluded from this quantification as they seem to be provided mostly by professionals other than the financial professionals under analysis (auditors, certified accountants, custom brokers, and economists). Hence, only the following services were considered: (i) financial auditing services; (ii) accounting services; (iii) tax advice; (iv) strategic management consulting; and (v) consultancy in financial management, except tax consultancy.

Economists

Economists are governed mainly by the bylaws of the ODE, which establish the legal regime for the organisation and operation of that professional association, and for access to, as well as the exercise of, the profession of economist.

Further Portuguese regulations relevant to the exercise of the profession of economist are the following:

- the code of ethics applicable to economists,¹³ which establishes the rules, conditions, principles and procedures with which those professionals must to comply;
- Regulation 311/2016, which regulates the registration of individuals in the ODE;
- Regulation 554/2016, which regulates the professional internship necessary for obtaining the professional title of economist;
- Regulation 301/2016, which regulates the disciplinary procedure applicable to economists.

6.1.4. Economic overview

In 2015, the total value of accounting, auditing and consulting services provided to firms in Portugal was EUR 2 044 million,¹⁴ a 15.6% increase relative to 2008. This value corresponds to 15.47% of all services provided to firms in Portugal.

The majority (38.5%) of the value of accounting, auditing and consulting services provided to firms in Portugal in 2015 related accounting services, while 22.1% of the value corresponded to strategic management consulting services (see Figure 6.1).

In 2016, there were 1 400 members of the OROC,¹⁵ of which 935 were active members. In the same year, the OCC had 70 975 members.¹⁶ In September 2017, the ODO had 501 members,¹⁷ of which 267 actively practise the profession in Portugal.

In 2016, there were 177 firms of auditors registered in the OROC.¹⁸

6.1.5. Methodology for competition assessment

The Project analysed 152 Portuguese laws and regulations¹⁹ applicable to the financial and economic professions. Among these, the Project identified 49 provisions as potentially harmful to competition and 37 recommendations were made.

Table 6.1. Summary of analysed provisions applicable to the financial and economic professions

	Total	Auditors	Certified accountants	Customs brokers	Economists
Pieces of legislation analysed	152	54	74	14	10
Provisions identified as potentially harmful to competition	56	24	12	13	7
Recommendations formulated	53	24	12	13	4

In some cases, the regulatory barriers to competition across different professions, including the financial professions, are similar in scope. Therefore, those regulations were jointly analysed by the Project team. The bulk of this analysis is presented in Chapter 3.

The following sections analyse the restrictions found in the regulations for the various financial professions that were specific only to these professions.

6.2. Compulsory disclosure of information by auditors to the professional association

6.2.1. Description of the relevant provision

Auditors are required to inform the Professional Association of Auditors of: (i) the beginning and the end of all the contracts formalised, within 30 days of the event; and (ii) their professional activities carried out annually, including the identities of their clients, type of activities of the clients, the certifications of accounts issued and the fees charged as well as the period of time which they concern.²⁰

6.2.2. Harm to competition

The policy objective underlying this provision is to ensure that the Professional Association of Auditors can access information that is relevant for the monitoring of the legal obligations of auditors. According to stakeholders, in the first case this information is made public by the professional association. This might be intended to prevent auditors who are not members of the internal bodies of the association (which receive this information) from being at a competitive disadvantage. However, such information is by nature sensitive given that it contains business secrets. Specifically, the provision allows some auditors to have access to sensitive information about their competitors, creating significant incentives to use that information improperly in their own business decisions.

On the annual report of auditors' activities, including fees charged, it was reported by stakeholders that in recent years the executive board of the professional association only requested auditors to communicate their total fees for the year relating to public interest functions, without discrimination by client. This practice does not prevent such negative consequences from taking place.

From a competition point of view it seems clear that the provision could also enable collusion among auditors, given that it creates a mechanism for exchange of operational information. In either case, the provision potentially distorts competition, resulting in higher auditing fees or other adverse outcomes for clients.

Nevertheless, the need for an entity to verify the auditors' compliance with their legal obligations is considered to be reasonable, and in such cases sensitive information may be required and requested, for the exercise of those specific activities of oversight.

6.2.3. Recommendation and benefits of implementation

The requirement for auditors to send regularly operational and confidential information to the OROC should be abolished.

Moreover, the bylaws of the OROC should be amended to include a provision requiring:

- that monitoring of the auditors' compliance with their legal obligations should be carried out by an independent, competent and impartial body not composed of auditors;
- auditors shall provide to the independent body only that information which is strictly necessary for the purposes of monitoring compliance with the Act.

The implementation of these recommendations will remove the current risk of collusion among auditors, and protect confidential information that does not lead to unfair business advantages, while guaranteeing that auditors comply with their legal obligations.

6.3. Publication of an annual transparency report by auditors and firms of auditors

6.3.1. Description of the relevant provision

The names of the auditors (the persons) and auditing firms that carry out audits of public-interest entities are required to be published on their website in an annual transparency report within three months of the end of each financial year.²¹

6.3.2. Harm to competition

The maximum period of time for auditors and firms of auditors to publish an annual transparency report defined in the Portuguese provision is shorter than the period in Regulation (EU) 537/2014²² and in the legal framework concerning audit monitoring,²³ for which the period is four months.

The shortened period for the publication of an annual transparency report imposes costs on auditors and the auditing firm, and may lead to uncertainty about the accuracy of these reports. It also leads to some uncertainty for firms operating across national borders which must comply with varying requirements, also imposing additional costs. Because of the difference in requirements it may be considered discriminatory. At the very least it increases the human and financial resources necessary for individuals and businesses to comply with regulation in Portugal as they have to act (one month) faster in order to guarantee that they comply with all the applicable regulation; and this may be a disincentive for potential competitors to enter the market.

6.3.3. Recommendation and benefits of implementation

The provision should be aligned with Regulation (EU) 537/2014 and with the legal framework concerning audit monitoring, by increasing the maximum period of time after the end of each financial year for auditors and firms of auditors to publish an annual transparency report.

The implementation of this recommendation will improve legal and regulatory certainty and lead to compliance cost savings for auditors and audit firms.

6.4. Minimum financial requirements for customs brokers

6.4.1. Description of the relevant provisions

Customs brokers, in order to practise the profession, shall fulfil the following minimum financial requirements:

- provide a security to cover any outstanding obligations incurred in their brokerage activities, in the form of either a bank deposit, a bank guarantee or insurance of, at least, EUR 49 879.79;²⁴
- possess insurance against professional civil liability, in order to cover the risks arising from their brokerage activities, and insured capital of at least EUR 50 000.²⁵

6.4.2. Harm to competition

The provisions impose two separate types of financial requirements on brokers (to be held simultaneously): (i) a security aimed at covering liabilities incurred; and (ii) an insurance against civil liability. However, those requirements could be duplicative, as they seem to address similar risks.

Additionally, the minimum values applied to each requirement may not be appropriate to the levels of risks incurred by each customs broker.

As a result, the provisions may cause customs brokers to incur unnecessary costs. In fact, the provisions prevent customs brokers from matching their level of civil liability to the scale and risks of their activities, and the provisions require brokers to possess two forms of potentially overlapping financial assurance.

6.4.3. Recommendation and benefits of implementation

The provisions in their current form should be abolished.

The bylaws of the ODO should be amended to combine the financial security and civil liability requirement into a single financial requirement. This would allow brokers to cover their risks with a single financial instrument, such as insurance.

Furthermore, the minimum values for the financial requirements should be analysed to determine whether they are higher than necessary, given the level of risk incurred by customs brokers. If so, the required amount should be lowered from the seemingly arbitrary amount of EUR 49 879.79 at present, to a more suitable value.

The implementation of these recommendations will eliminate the imposition of duplicative requirements and therefore excess costs on customs brokers. In the event that the minimum values are found to be excessively high for some brokers, changes to these values would eliminate a substantial barrier to entry and the restriction on the ability of small brokers to compete.

Notes

¹ Approved by Law 140/2015.

² Such as evaluations, reports, arbitrations, studies on the reorganisation and restructuring of entities, financial analysis, economic and financial feasibility studies, studies and opinions on accounting matters, review of tax returns, studies and advice on tax and parafiscal matters and review of environmental and sustainability reports.

³ In accordance with Art. 41 (1) (a), Art. 48 (c) and Art. 48 (d) of the bylaws of the Professional Association of Auditors.

⁴ Approved by Decree-Law 452/99.

⁵ In accordance with Art. 10 (2) (a) and Art. 10 (2) (b) of the bylaws of the Professional Association of Certified Accountants.

⁶ Such as the submission of declarations to confer on goods a customs-approved treatment or use, of declarations with customs implications for goods and their means of transport and of declarations concerning goods subject to excise duties.

⁷ Approved by Decree-Law 173/98.

⁸ In accordance with Art. 66 (2) (b) of the bylaws of the Professional Association of Customs Brokers.

⁹ Which corresponds to a university degree whose main field is economics, business sciences or business management and administration and, if applicable, whose secondary fields are finances, banking and insurance, accounting and taxation, marketing and advertising or mathematics and statistics.

¹⁰ Published by Decree-Law 174/98.

¹¹ Approved by the General Meeting of the Professional Association of Auditors held on 29 September 2011.

¹² Approved by Decree-Law 310/2009.

¹³ Approved by the General Council of the Professional Association of Economists in its meeting held on 21 December 2012.

¹⁴ *Source*: INE (2017), “principais indicadores económicos, segundo a atividade principal da empresa”, https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaques&DESTAQUESdest_boui=281447433&DESTAQUESmodo=2 (accessed on 23 March 2018). Taking into account the description of the services rendered and provided by the financial/economic professions, available at INE (see link above), several type of services were excluded from this quantification as they seem to be provided mostly by professionals other than the financial professionals under analysis (auditors, certified accountants, custom brokers, and economists). Hence, only the following services were: (i) financial auditing services; (ii) accounting services; (iii) tax advice; (iv) strategic management consulting; and (v) consultancy in financial management, except tax consultancy.

¹⁵ *Source*: Professional Association of Auditors (2017).

¹⁶ *Source*: Professional Association of Certified Accountants (2017).

¹⁷ *Source*: Professional Association of Customs Brokers (2017).

¹⁸ *Source*: Professional Association of Auditors (2017).

¹⁹ Henceforth called “Pieces of Portuguese legislation”.

²⁰ In accordance with Art. 57 of the bylaws of the Professional Association of Auditors.

²¹ In accordance with Art. 62 (1) of the bylaws of the Professional Association of Auditors.

²² Specifically, in Art. 13 (1) (first paragraph) (first sentence) of Regulation (EU) 537/2014.

²³ Specifically, in Art. 23 of the legal framework concerning audit monitoring.

²⁴ In accordance with Art. 67 (1) of the bylaws of the Professional Association of Customs Brokers.

²⁵ In accordance with Art. 67 (5) of the bylaws of the Professional Association of Customs Brokers.

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Databases

INE (2017), “Principais indicadores económicos, segundo a atividade principal da empresa”,
https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaques&DESTAQUESdest_boui=281447433&DESTAQUESmodo=2 (accessed on 23 March 2018).

Annex 6.A. Benefits to consumers

Consumer welfare can increase to as much as EUR 52.34 million with the lifting of restrictions arising from regulations applicable to the financial and economic professions, making them more competitive with regard to entry and exercise requirements, allowing for more competition between professionals.

Table 6A.1. Impacts of financial and economic services on all firms in Portugal, 2015

Price changes	Increase in consumers welfare (ΔW) in EUR when $ePD=2$
$\frac{\Delta P}{P} = 0.20\%$	4 096 248
$\frac{\Delta P}{P} = 0.40\%$	8 208 849
$\frac{\Delta P}{P} = 0.50\%$	10 271 281
$\frac{\Delta P}{P} = 0.75\%$	15 455 247
$\frac{\Delta P}{P} = 1.00\%$	20 644 764
$\frac{\Delta P}{P} = 1.50\%$	31 120 448
$\frac{\Delta P}{P} = 2.00\%$	41 698 334
$\frac{\Delta P}{P} = 2.50\%$	52 378 423

Note: Taking into account the description of the services rendered and provided by the financial/economic professions, available at INE (see link above), several type of services were excluded from this quantification as they seem to be provided mostly by professionals other than the financial professionals under analysis (auditors, certified accountants, custom brokers, and economists). Hence, only the following services were considered: (i) financial auditing services; (ii) accounting services; (iii) tax advice; (iv) strategic management consulting; and (v) consultancy in financial management, except tax consultancy.

Source: Data from INE (2017), “principais indicadores económicos, segundo a atividade principal da empresa”,

https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaques&DESTAQUESdest_boui=281447433&DESTAQUESmodo=2 (accessed on 23 March 2018) and methodology presented in Annex A.2.

Chapter 7. Health professions

This chapter analyses the regulation of pharmacists and nutritionists. It focuses mainly on an important issue arising from the Draft-Law 34/XIII text, still pending in parliament, which aims to reserve acts for nutritionists and pharmacists. The provision of healthcare services is heavily regulated throughout the European Union and elsewhere to ensure the health and public safety of consumers overall, considering the positive externalities arising from healthcare services. In 2015, actively practising nutritionists were distributed mainly through clinical nutritionist services (51.97%) and hospitals (19.01%), among others. The majority of practising pharmacists in Portugal work in local community pharmacies (75%), followed by hospital pharmacies (13%). The regulatory barriers analysed here include reserved acts and exclusivity of functions.

7.1. Introduction

The provision of healthcare services is heavily regulated throughout the European Union. The main reason is the need to ensure health and safety for consumers and the community in general, considering the externalities arising from healthcare services.

The European Commission has defined the key challenges of EU health policy: to prevent disease, to promote healthier lifestyles, well-being and access to healthcare, to improve patient safety, to support dynamic health systems and new technologies, among others. Also the Standing Committee of European Doctors, the Pharmaceutical Group of the European Union (PGEU) and the Council of European Dentists have called on the European Commission to take into account the need for professional regulation for patient safety and, in a joint statement published with European dentists and pharmacists, they asked the Commission to exclude the health professions from the future proportionality test for new regulation that is being discussed by the Council and the Commission.¹ In fact, the healthcare sector is excluded from the application of the Services Directive 2006/123/EC.

The need to regulate health professions must however not lead to an excess of overly restrictive rules, which lead to an anticompetitive legal environment among operators. Regulations should always remain proportional and adequate to their purpose.

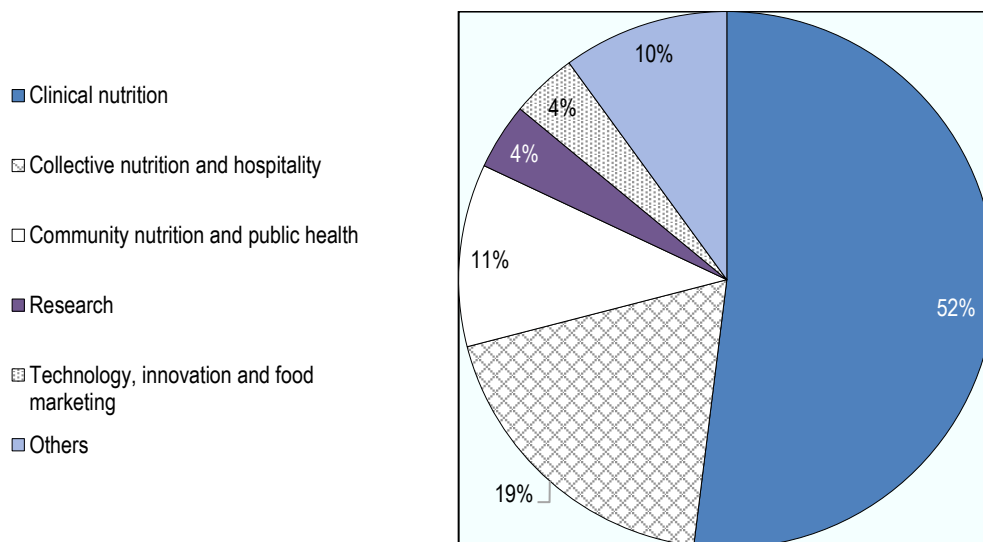
The self-regulated healthcare professions in Portugal are those regulated by a public professional association, in accordance with Law 2/2013, and include the professions of: doctors, veterinarians, pharmacists, nurses, dentists, nutritionists, biologists and psychologists. In October 2017, Parliament also approved the creation of the Professional Association of Physiotherapists. In this report, we focus on two of the health professions: nutritionists and pharmacists.² The nutritionists in Portugal typically apply and develop principles derived from nutrition science, food, communication and management, to attain and maintain the health status of individuals.

This chapter is divided into three subsections. Section 7.1. discusses the particular case of regulation of pharmacists and nutritionists, provides an economic overview of such services, and describes each of the self-regulated regimes. The specific regulatory barriers to competition in these professions are analysed next (Section 7.2), namely the exclusivity of pharmacists functions and the reserved activities proposed in Draft-Law 34/XIII (Section 7.3).

7.1.1. Economic overview

At the end of 2017, there were 3 748 nutritionists registered within the Portuguese professional association of nutritionists.³

In 2015, more than 50% were working within the area of clinical nutrition (51.97%) and almost 20% within the collective nutrition and hospitality (Figure 7.1).⁴

Figure 7.1. Number of nutritionists distributed per area of practice in Portugal, 2015

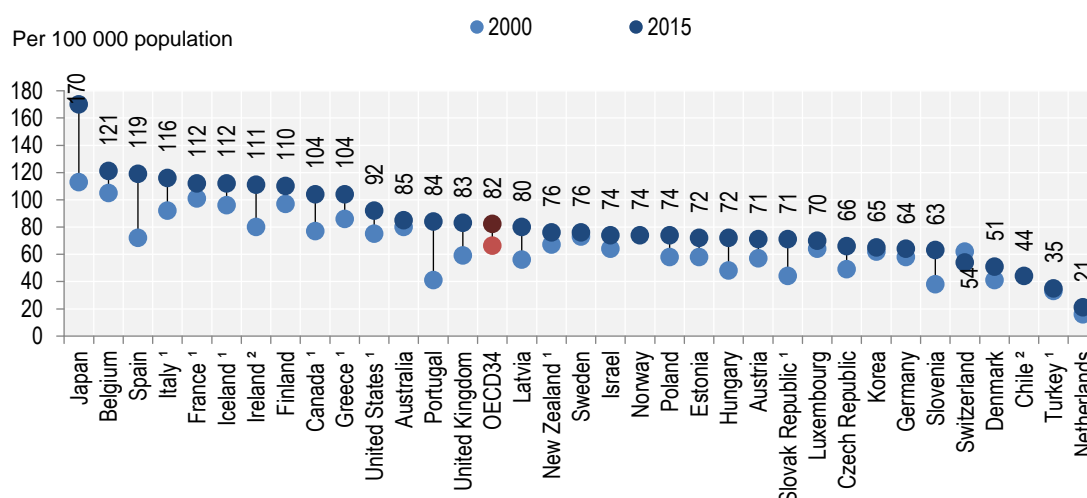
Source: Study by the Centre for Research in Higher Education Policies, published in the Professional Association of Nutritionists website (2015), <http://www.ordendosnutricionistas.pt/ver.php?cod=0V>.

The number of nutritionists working as employees is significantly higher (72.1% of effective members and 64.3% of interns) than the number of self-employed professionals, the number of independent workers or the number of employers. Also, 65.1% of the employed members have one paid job and 34.9% have more than one paid job (the average is 2.8 jobs), and 22% of interns have multiple jobs.⁵

Regarding pharmacists, in October 2016, there were 14 088 pharmacists registered in the respective professional association.⁶

Pharmacists are distributed by practice as follows: clinical analysis (901), pharmaceutical distribution (700), teaching (263), community pharmacy (9 669), hospital pharmacy (1 400), pharmaceutical industry (809), research (95), not exercising the profession (390), not indicated (1 219) and other areas (1 012) (see Figure 7.2). The total of active professionals resulting from the sum of the indicated numbers is superior to the total of active members registered in the Professional Association of Pharmacists because some members accumulate more than one activity, according to the Professional Association of Pharmacists. When compared with the world's average, it has also been verified that the majority of actively practising pharmacists work in community pharmacy (75%), followed by hospital pharmacy (13%) and other areas (12%).⁷

According to the International Pharmaceutical Federation (IPF),⁸ in 74 countries representing 76% of the world's population, there are a total of 4 067 718 licensed or registered pharmacists, of whom 2 824 984 are actively practising. The average number of pharmacists per 10 000 inhabitants is 5.09 out of the total of countries analysed by the IPF, the average in Europe being 8.28. In Portugal, the number of pharmacists practising per 10 000 inhabitants is higher (around 15). In Spain, Italy, Ireland, Australia and Japan there are around 12 pharmacists per 10 000 population. In 73 out of 79 countries⁹ it is mandatory to register in order to practise the profession.¹⁰

Figure 7.2. Practising pharmacists, in 2000 and 2015

Source: OECD (2017), *Health at a Glance 2017: OECD Indicators*, OECD Publishing, Paris.
http://dx.doi.org/10.1787/health_glance-2017-en

Notes: 1. Data include not only pharmacists providing direct services to patients, but also those working in the health sector as researchers, for pharmaceutical companies, etc. 2. Data refer to all pharmacists licensed to practise.

7.1.2. Methodology for competition assessment

The Project analysed 45 Portuguese laws and regulations¹¹ applicable to the health professions. Among these, the Project identified 37 provisions as potentially harmful to competition and 35 recommendations were made (see Table 7.1)

	Total	Nutritionists	Pharmacists
Pieces of legislation analysed	45	14	31
Provisions identified as potentially harmful to competition	37	22	15
Recommendations formulated	35	20	15

Table 7.1. Summary of analysed provisions applicable to the health professions

	Total	Nutritionists	Pharmacists
Pieces of legislation analysed	45	14	31
Provisions identified as potentially harmful to competition	37	22	15
Recommendations formulated	35	20	15

The legislation identified by the Project team as harmful to competition in relation to nutritionists and pharmacists stems mostly from the bylaws of the respective professional associations and their internal regulations on access requirements.

In some cases, the regulatory barriers to competition across different professions, including the health professions, are similar in scope. Therefore, those regulations were jointly analysed in Chapter 3.

The following sections analyse the restrictions found in the regulations for the various health professions that were specific only to these professions.

7.1.3. Regulation of nutritionists and pharmacists

The Professional Association of Nutritionists was created by Law 51/2010 with the mission to regulate access to and the exercise of the profession, to elaborate technical and ethical rules, to ensure compliance with the legal and regulatory framework and to exercise disciplinary powers over its members.¹²

This regime regulates both the professions of nutritionist and dietitian. These were historically two different professions, but the new bylaws, approved by Law 51/2010, amended by Law 126/2015, created a transitional regime for dietitians to converge into the Professional Association of Nutritionists within a three-year period. Currently, both professional titles are integrated and newcomers are registered as nutritionists.

Considering the profession of nutritionist and dietician, in EU-28, 24 Member States regulate the profession, including Portugal. Iceland, Liechtenstein, Norway and Switzerland also regulate the profession. The profession is not regulated in Belgium, Croatia, Estonia or Romania. The regulation may consist of protecting at least one of the professional titles (nutritionist or dietician) and/or reserved activities.¹³

The profession is also regulated in other countries, which are members of the International Confederation of Dietetic Associations (ICDA), such as Argentina, Brazil, Canada, Japan, South Korea and the United States. In some other cases, the professional title is not protected but the national professional association issues the professional title (in countries such as Singapore, India and Mexico).¹⁴

On pharmacists, the corresponding professional association regulates access to and the exercise of the profession in Portugal. The registration of pharmaceutical professionals operating in the national territory, the issuance of the professional title of pharmacist and the titles of specialists, the recognition of foreign qualifications, the application of disciplinary sanctions, among other regulatory powers are described in Professional Association of Pharmacists Bylaws (Decree-law 288/2001, as amended by Law 131/2015), in accordance with Law 2/2013.

Registration as a member of the Professional Association of Pharmacists is mandatory to exercise the profession.

According to the European Commission database, within the EU-28, nine Member States report that the regulation of the profession includes the protection of the professional title (or titles) and reserved activities; in nine Member States there are reserved activities but the title is not protected; in two Member States the title is protected without reserved activities; in two Member States there are multiple types of regulation and five Member States have not submitted information. Within the EFTA countries, Iceland establishes reserves of activities and protected title; Norway only establishes a protection of title and Liechtenstein and Switzerland did not submit information.¹⁵ Hence, the majority of the Single Market countries regulate the profession to some degree. In some of these countries, there is more than one professional title, mostly in cases where there is a disaggregation of titles through specialisation.

In the case of Portugal, according to the information submitted to the European Commission, there are the following titles: pharmacist, pharmacist specialised in hospital pharmacy, pharmacist specialised in clinical analysis, pharmacist specialised in the pharmaceutical industry and pharmacist specialised in regulatory affairs.¹⁶

Box 7.1. Reforms of regulation of pharmacies in Portugal

In 2006, the AdC recommended legislative reforms to liberalise access to the market in order to promote greater competition in this sector, such as eliminating restrictions on ownership of pharmacies, price and discounts regulation, advertising and others. In fact, the regulation of pharmacies before 2006 was conditioned by several restrictions on business organisation and licensing. For instance, the ownership of pharmacies was limited to graduates in pharmaceutical sciences and each could only own one licence.

Over the last decade certain reforms regarding the regulation of pharmacies and the distribution of medicines were implemented in Portugal. The government approved the new legal regime of community pharmacies through Decree-Law 307/2007, as well as other related regulations such as Ordinance 1430/2007. Important regulatory changes were adopted to liberalise the sector based on proportional adequacy of the regulation to new methods and business structures, including opening the ownership of community pharmacies to non-pharmacists. Also, advertising is now allowed.

The licensing requirements were also modified, depending on the quality of the owner of the pharmacy and the promotion of fair and equitable sharing of permits, based on the lowest ownership of establishments per competitor, within the limit of four pharmacies per owner.

Certain restrictions related to transmission and relocation of pharmacies were also eliminated, even though the transmission of the licence can only be done five years after the tender and should be opened to the public, except in some specific cases.

Several empirical studies demonstrated that the abolishment of such restrictions has a positive consequence on prices and increases the demand for pharmacists. The liberalisation of the distribution of over-the-counter drugs is likely to have a positive impact on new entrants into the market and to reduce the prices of these medicines for consumers.

However, some restrictions are still in force in the law, such as the one of four pharmacies per owner. The aim of this restriction is to balance free access to property and avoid concentration, through a proportional and adequate limitation to four pharmacies. The establishment of new pharmacies is still done through a public tender. Regulation of licensing is subject to a legal regime, in which the rules of capitation and distance have been adapted to the needs of the users in access to medicines.

Some incompatibilities are also still in force. Healthcare professionals prescribing medicines, associations representing pharmacies, distribution companies and medicinal product or pharmaceutical companies, or their respective workers, wholesale distributors of medicines, companies in the pharmaceutical industry, private health care companies, or subsystems that share in the price of medicines cannot hold or exercise, directly or indirectly, the ownership, operation or management of pharmacies.

Sources: (i) Portuguese Competition Authority (2006), “Medidas de reforma do quadro regulamentar da actividade das farmácias, com vista à promoção da concorrência no sector”, Recommendation 1/2006, http://www.concorrencia.pt/SiteCollectionDocuments/Estudos_e_Publicacoes/Recomendacoes_e_Pareceres/Anexos-Recomendacoes/10_Recomendacao2006_01.pdf;

(ii) Centro de Estudos de Gestão e Economia Aplicada of Universidade Católica Portuguesa (2005), “A situação Concorrencial no sector das farmácias” http://www.concorrencia.pt/vPT/Estudos_e_Publicacoes/Recomendacoes_e_Pareceres/Paginas/Recomendacao-01_2006.aspx?lst=1&pagenr=2&Cat=Recomenda%c3%a7%c3%b5es; and

(iii) Pagliero, M. (2015) “The effects of recent reforms liberalizing regulated professions in Italy”, University of Turin & Carlo Alberto College.

7.2. Exclusivity of functions for pharmacists

7.2.1. *Description of the barrier*

The pharmacist may only carry out another activity under a regime of accumulation, in cases and situations clearly established by the law.¹⁷

The pharmacist is prohibited from collaborating with any natural person or legal entity, public or private, if such collaboration may result in the violation of the laws and regulations governing the exercise and legitimate interests of the pharmaceutical profession.¹⁸

7.2.2. *Harm to competition*

This provision sets a general rule that the activity of pharmacist is incompatible with any other activity. It prevents pharmacists from carrying out other professional activities, which could be financially profitable.

By limiting the accumulation with other functions, this rule may discourage suppliers from entering the market. Potential newcomers may face fewer incentives to join the profession if there is a high level of restrictiveness of conduct or exercise regulation. Fewer suppliers in the market for the same services lead to higher prices and to less innovative solutions from the offer.

Strictly enforced incompatibilities of exercise without a full assessment of whether they are proportional or necessary to protect public interest restrict the exercise of the activity and investment in small and medium-size businesses. The activity of a pharmacist may be incompatible with some related business or activity, but not necessarily with all other economic sectors.

7.2.3. *Recommendations*

We recommend abolishing this rule.

The legislator must consider the introduction of the principle of compatibility of the profession of pharmacist with other activities. In case of a specific need based on public interest, a reason for the establishment of legal incompatibility must be stated. The law must expressly indicate the activities or functions considered as incompatible with the activity of pharmacist.

7.3. Draft-Law 34/XIII: Reserved activities for healthcare professionals

Draft-Law 34/XIII on the definition and regulation of the acts of the biologist, nurse, pharmacist, doctor, dentist, nutritionist and psychologist is currently pending in the national parliament. This project was submitted to the parliament on 14 October 2016¹⁹ and a final date for discussion and voting had not been confirmed by the time of writing this report.

This Draft-Law determines the academic qualifications necessary for professionals to become members of their corresponding professional association. Those minimum academic requirements are already established in the bylaws of both professional associations, for nutritionists and pharmacists (see Section 3.2.4).²⁰

Art. 11 of Draft-Law 34/XIII establishes that the exercise of pharmacist's acts is dependent on registration in the Professional Association of Pharmacists. Similarly, the

registration in the Professional Association of Nutritionists is a condition for attribution of the professional title.²¹ Compulsory registration in the professional association is also established as an access requirement in Art. 24 paragraph 1 of Law 2/2013.

The act of registration is not necessarily harmful as such. The problem is the direct relation between access to the professional title and the possible existence of reserved activities. Protection of the professional title results in being harmful to competition as it is associated with strong access requirements and reserved activities.²²

No additional training is needed to become a full member of the professional association, except if applying for the title of specialist pharmacist. In that case an internship and final test are required, unless the professional association exempts the candidate from doing the internship, considering his professional experience.²³

The draft-law aims to promote greater synergy between the different professionals providing health services. Arguably, the definition of reserved activities for health professions guarantees the quality of these services, especially considering the risks for public health and safety.

Discussing whether reserved activity on healthcare services should be allowed, and the degree of restrictiveness, is neither recent, nor consensual.

The list of reserved activities of pharmacists is already established in the Professional Association of Pharmacists bylaws (Law 131/2015). In contrast, there are no provisions in force establishing reserved activities for nutritionists.

The analyses hereafter focus on the proposed reserved activities presented by the draft-law.

7.3.1. On nutritionists

Description of the barrier

Draft-Law 34/XIII proposes a definition of the acts of nutritionists and their corresponding reserved activities.²⁴

Art. 7 of the same draft-law introduces a dual definition of the nutritionist's act.

Harm to competition

The provision of reserved activities bans other qualified professionals from the practice of the acts in question. In fact, neither doctors nor nurses, for instance, seem to be allowed to practice the acts listed as reserved activities for nutritionists (or for pharmacists) in this draft-law. As a consequence, it prevents entry into the market of other well-qualified professionals who do not hold the professional title of nutritionist. This will lead to less innovation and higher prices since there will be fewer professionals providing these activities.

Taking into account that other health professionals, with full knowledge and full capacity to give nutrition advice, have done it so far and have not brought any danger to public health, it is difficult to identify the need to protect public interest in the case for which it is intended – to grant exclusive acts to "nutritionists".

This draft-law creates exclusive (monopoly) rights by reserving activities with no flexibility. For example, it is difficult to understand why health promotion, prevention and treatment of the disease by evaluation, diagnosis, prescription and intervention and

nutritional support to individuals are exclusive activities, as these can also be performed by qualified nurses, school nurses and general medical practitioners. Although activities may typically be performed by a category of professionals, they do not necessarily justify the need to attribute exclusive rights, because that would mean the exclusion of other well-qualified professionals from the possibility of exercising those activities. It also means that consumers are not able to choose between nutritionists and other professionals, e.g. physicians, with regard to those acts, or to consult with only one professional (who could provide a plethora of services) instead of having to pay for more than one practitioner.

This goes against the idea of the Centre for Nutrition Advocacy (CAN) that “nutrition affects all systems and functions of the body. Therefore, many professionals appropriately serve their patients and clients by incorporating nutrition advice into their professional practice” (p. 4). Those professionals can include medical doctors and nurses, but also acupuncturists and health coaches. Additionally, there is “scant evidence of harm linked to nutrition care delivered by either those with or without state credentials” (p. 13).

Furthermore, by segmenting healthcare services by profession, this proposal does not allow consumers to benefit from receiving services by the same professional in a set of related activities. This would, in turn, reduce consumers’ costs and time and would create a stronger competitive environment between suppliers to increase innovative ways of providing complementary health services. It may also drive consumers to make more use of less monitored Internet services where, for instance, nutritionist advice is available from other jurisdictions or in other languages, as these will appear more accessible than a very closed and restrictive profession.

Moreover, although nutritionists are allowed to associate themselves with other professionals in corporative structures, this proposal would not allow them to provide other health services themselves, neither would it allow other professionals to provide services listed as reserved work for nutritionists.

Recommendations

For nutritionists, we recommend that the legal provision establishing reserved activities in the draft-law should be changed in such a way that the “act of nutritionist” is not exclusive to nutritionists, given that other health professionals with the academic knowledge and professional skills to provide nutritional advice do it as well. Allowing this restriction would be detrimental to the very substance of providing sound health advice by doctors and nurses.

7.3.2. On pharmacists

Description of the barrier

Draft-Law 34/XIII proposes the definition of the acts of pharmacist and reserved activities.²⁵ Art. 4 also presents a definition of the pharmacist’s act with dual criteria.

Harm to competition

Unlike other self-regulated health professions, the bylaws of the Professional Association of Pharmacists already define the reserved activities attributed to pharmacists. Hence, the proposal for this Art. 4 seems to be an unnecessary duplication of regulation.

On the one hand, according to Art. 4, pharmacists acts consists of the activity of manufacture, registration, quality assurance, acquisition, distribution and dispensing of medicines, validation of the prescription within the scope of dispensing and in the preparation and control of masterly formulas and with respect for the ethical and deontological values of the pharmaceutical profession (paragraph 1 of Art. 4).

On the other hand, the following activities, when practised by pharmacists, must also be considered as pharmacists' acts: (a) evaluation and pharmaceutical indication in self-limited pathologies, monitoring and surveillance of the use of medicines, information, promotion and implementation of the rational use of medicinal products, medical and other health technologies and the manufacture, registration, quality assurance and management-integrated circuit of medical devices and other health technologies, as well as the preparation, implementation, interpretation and validation of clinical analyses and biological, toxicological, hydrological, bromatological, genetic and environmental factors; and (b) the technical and scientific activities of research, education, training, education, regulation and organisation for health promotion and disease prevention (paragraph 2 of Art. 4).

For pharmacists, the wording of Art. 4 para. 2 is not very clear but it can be interpreted as a creation of a list of reserved activities, which limits competition by determining exclusive rights to a certain category of supplier. The adoption of exclusive rights for the practice of economic activities closes the market to potential operators who do not meet certain criteria or standards, banning other qualified professionals from the practice of the acts in question.

Similarly as explain for nutritionists, the creation of a list of reserved activities restricts competition by determining exclusive rights to a certain category of supplier. The adoption of exclusive rights hampers competition, confining the access to the market to a limited group of professionals.

Recommendations

We recommend revisiting the scope of reserved activities for pharmacists (including the proposed draft-law) with a view to opening them up to other healthcare professionals, except in cases where public health might be at risk. This will allow for more entry into the market.

Notes

¹ See PGEU press release in <https://www.pgeu.eu/en/press/237:joint-pr-on-proportionality-tests.html>.

² This decision was ratified by the High-Level Committee at its meeting on 16 November 2016.

³ Data provided by the Portuguese Professional Association of Nutritionists, 15 September 2017.

⁴ Centre for Research in Higher Education Policies (2015) study, published in the Professional Association of Nutritionists website.

⁵ Centre for Research in Higher Education Policies (2015) study, published in the Professional Association of Nutritionists website.

⁶ www.ordemfarmaceuticos.pt/fotos/editor2/Ordem_dos_Farmaceuticos/Farmaceuticos_em_Numeros/Evolucao_dos_Farmaceuticos_ativos.PNG

⁷ International Pharmaceutical Federation (2017), “Pharmacy at a glance - 2015-2017”, as an executive summary of the 2017 report “Pharmacy: A Global Overview – Workforce, medicines distribution, practice, regulation and remuneration 2015-2017”, p2. This data was analysed based on the responses of 58 countries and territories (86% of the population covered by the study), https://www.fip.org/files/fip/publications/2017-09-Pharmacy_at_a_Glance-2015-2017.pdf.

⁸ International Pharmaceutical Federation (2017), “Pharmacy at a glance - 2015-2017”, as an executive summary of the 2017 report “Pharmacy: A Global Overview – Workforce, medicines distribution, practice, regulation and remuneration 2015-2017”, https://www.fip.org/files/fip/publications/2017-09-Pharmacy_at_a_Glance-2015-2017.pdf.

⁹ Representing 92% of the total countries analysed in the 2017 study from the International Pharmaceutical Federation “Pharmacy: A Global Overview – Workforce, medicines distribution, practice, regulation and remuneration 2015-2017”.

¹⁰ International Pharmaceutical Federation (2017), “Pharmacy at a glance - 2015-2017”, as an executive summary of the 2017 report “Pharmacy: A Global Overview – Workforce, medicines distribution, practice, regulation and remuneration 2015-2017”, https://www.fip.org/files/fip/publications/2017-09-Pharmacy_at_a_Glance-2015-2017.pdf.

¹¹ Henceforth called “Pieces of Portuguese legislation”.

¹² Art. 4 of Law 51/2010 as amended by Law 126/2015.

¹³ European Commission website: http://ec.europa.eu/growth/toolsdatabases/regprof/index.cfm?action=map_complex&profession=1380 and information provided by stakeholders.

¹⁴ Information provided by stakeholders.

¹⁵ European Commission website on regulated professions database http://ec.europa.eu/growth/toolsdatabases/regprof/index.cfm?action=map_complex&profession=12403.

¹⁶ According to information published in the European Commission website, on regulated professions database http://ec.europa.eu/growth/toolsdatabases/regprof/index.cfm?action=map_complex&profession=12403.

¹⁷ Art. 89 of Law 131/2015.

¹⁸ Art. 89 of Law 131/2015.

¹⁹ The Portuguese Parliament website, Parliamentary Activity and Legislative Process, <https://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheIniciativa.aspx?BID=40717>

²⁰ Art. 14 establishes the qualifications for the professional title of nutritionist. According to this provision, the exercise of the nutritionist’s acts is dependent on minimum academic qualifications and on registration in the corresponding professional association. These same requirements are already established in the professional association bylaws (Law 51/2010, amended by Law 126/2015), and also in Regulation 308/2016.

²¹ Art. 4 (d) and Art. 61 (1), (5) and (6) of Law 51/2010 as amended by Law 126/2015.

²² Art. 5 of Law 131/2015.

²³ Art. 35 of Law 131/2015.

²⁴ Art. 1 (1) and Art. 7 (1) and (2) of Draft-Law 34/XIII.

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Annex A. Methodology

This study covers the Portuguese self-regulated professions. In particular, the study analyses 13 self-regulated professions and also framework legislation. The professions covered in this study are as follows, accompanied by the corresponding codes according to the Statistical Classification of Economic Activities in the European Community (NACE):

- *Legal professions*: lawyers, notaries, solicitors and bailiffs (NACE code M.69.10);
- *Technical/scientific professions* : architects (NACE code M.71.11), engineers and technical engineers (NACE code M.71.12);
- *Financial-economic professions*: auditors, certified Accountants (NACE code M.69.20).

The professions of “economist”, “customs broker and customs agent” and “nutritionist” are included in Eurostat statistical classes representing wider sets of economic activity, namely “Business and other management consultancy activities”, “Other transportation support activities” and “Other human health activities”. These classes represent the highest disaggregation for which we are able to gather data, and may include many activities other than the ones practised by those three professions. Hence, to avoid an overestimation of their weight, those three professions were excluded from our data on turnover, gross value added, number of employed people and gross operating rates.

As for pharmacists, the closest NACE code is G.47.73 for “Dispensing chemist in specialised stores”. The pharmaceutical retail activity in Portugal is subject to regulation that goes well beyond self-regulation by its professional association. This fact justifies some limitations in the analysis undertaken and is noted when necessary. Pharmacists as a profession are quite different from the remaining 12 professions analysed in this report. Their “profit margins” are regulated and most of their turnover comes from selling products and not from providing services.

In one case, that of notaries, the statistical information was complemented taking into account the Portuguese statistical code, CAE M.69102 (*Atividades dos cartórios notariais*) as it includes an additional level of classification when compared with NACE 69.10.

To better describe the activities performed by each of the professional categories, we used the information available from the INE.

The INE item “legal services (including notarial services)” includes all the activities related to clients' legal rights and obligations and which aim at their legal advice. I.e., this includes all juridical and notarial services, plus other services. Juridical services can be in civil, commercial, labour, criminal, and IP law. The activities included within this INE item are similar to the activities included within the Eurostat NACE code M.69.10 under the heading “Legal activities” and correspond to the professional activities carried out by the four legal professions under analysis: lawyers, notaries, solicitors and bailiffs.

The INE item “architecture and engineering services” includes activities that aim at the elaboration of drawings and architectural plans for buildings and other structures, drawing up projects and preparing dissemination and demonstration materials, preliminary studies on facilities, environmental and climatic concerns, occupancy, cost constraints, analysis of the selection of yards and elaboration and construction schedules. It also includes activities for the design of machines, apparatus and industrial plants; consultancy in the scope of the elaboration of projects of industrial engineering (electrical and electronic, mines, chemical, mechanical, systems, acoustics, refrigeration, geology, hydraulics, among others); construction; preparation of specialised technical studies for the industry (production processes, air conditioning, against pollution, refrigeration, static, among others); forecasting of atmospheric conditions; evaluation of geological conditions and prospecting (measures and observations on the structure of soil and subsoil and location of resources), geodetic surveying, hydrographic and soil boundaries; mapping and spatial information (including aerial mapping); and industrial and technical withdrawals. The activities included within this INE item correspond closely to the professional activities carried out by the three technical and scientific professions under analysis: engineers, technical engineers and architects.

Finally, the INE item “accounting, auditing and consulting services” includes activities that go beyond the activities that the financial/economic professions under analysis typically perform. This INE item comprises several services from which we select the following: financial auditing services; accounting services; auditing, compilation of balance sheets and bookkeeping; other accounting services; and tax consulting services. The value for the rendered services we find for these selected activities in the data from INE is still higher than the value we find for the turnover associated with the Eurostat NACE Code M.69. 20 under the heading “Accounting, bookkeeping and auditing activities; tax consultancy”. We will use the data from INE as it closely corresponds to the professional activities carried out by the two financial/economic professions of certified accountants and auditors.

The assessment of laws and regulations in these professions has been carried out in four stages, with a fifth stage for review and drafting of the final report. The present annex describes the methodology followed in each of these stages.

Stage 1 – Mapping the sectors

The objective of Stage 1 of the Project was to identify and collect all sector-relevant laws and regulations. As a prior condition, it was necessary to define the scope of the sectors in detail. Whenever possible, we adopted a definition consistent with the NACE classification in order to ensure consistency with international practice and to facilitate comparisons with other European countries. However this approach was not entirely sufficient to characterise all the professions. Hence, the definition was developed on the basis of the NACE in conjunction with other sources, such as the CAE, professional associations, EC directives and implementing Portuguese laws, past competition assessment studies, other relevant academic and non-academic literature, and consultations with ministerial experts from the Portuguese government.

The task of collecting the legislation relevant for these sectors was conducted by the OECD team using a variety of sources. The LegiX legal database¹ together with the website of the official gazette (*Diário da República*, www.dre.pt) were the main tools used to identify the applicable legislation. These were complemented by the websites of the relevant professional associations, and of

the main industry associations. In addition, in order to ensure that all important pieces of legislation were covered by the study, input was solicited from all the competent line ministries and public bodies involved in the sectors, from the members of the high-level committee (HLC) composed of senior government officials and from the industry.

Over the course of the Project, the mapping of the legislation was refined, as additional pieces of legislation were discovered by the team or were issued by the authorities, while other pieces initially identified were found not to be relevant to the sectors. In total, 393 pieces of legislation were selected for analysis (from a total of 11 986 relevant provisions for professions), including laws, ministerial decrees, ministerial decisions and circulars.

For each of the professions, we collected data and information, covering activity trends and main indicators such as turnover, employment, GVA and GOR. Input was solicited from professional associations, to improve the Project team's understanding of the sectors and the challenges faced by the Portuguese market for professional services. A very important task that started during Stage 1 and was continued for the entire duration of the Project was the establishment of contact with the different professions and key agents through professional associations, individual professionals and professional firms, among others. The interviews with market participants contributed to a better understanding of how the sectors under investigation work in practice and helped in the discussion of potential barriers deriving from the legislation or misinterpretation of specific provisions.

Stage 2 – Screening of the legislation

In the second stage of the Project, the main work stream was the screening of the legislation to identify potentially restrictive provisions. Pieces of legislation transposing EU directives were examined. EU directives need transposition into national legislation and grant Member States some flexibility with regard to their implementation, for instance flexibility to impose additional requirements. Therefore, when transposing directives, the national policy maker may establish a stricter regulatory framework than originally intended in the directive (i.e. so-called gold-plating). These provisions, introduced at national level, were examined from a competition point of view. EU rules that are directly applicable in Portuguese legislation and require no further national legislation, i.e. regulations, were not screened to assess if they restricted competition. In addition, the Project team checked Portuguese legislation for duplication with existing EU regulations.

The legislation collected in Stage 1 was analysed using the framework provided by the OECD "Competition Assessment Toolkit".² The Toolkit, developed by Working Party 2 of the OECD Competition Committee, provides a general methodology for identifying potential obstacles in laws and regulations. One of the main elements of the Toolkit is a "Competition Checklist" that asks a series of simple questions to screen laws and regulations that have the potential to unnecessarily restrain competition.

Following the methodology of the Toolkit, the OECD team compiled a list of all the provisions which answered any of the questions in the checklist positively. The government experts received draft lists and were given an opportunity to comment, as were the members of the HLC. After this stage, there were 1 143 individual articles remaining with the potential to restrict competition in the transport sectors in Portugal.

Box A A.1. OECD competition checklist

Further competition assessment should be conducted if a piece of legislation answers “yes” to any of the following questions:

(A) Limits the number or range of suppliers

This is likely to be the case if the piece of legislation:

1. grants exclusive rights for a supplier to provide goods or services
2. establishes a licence, permit or authorisation process as a requirement of operation
3. limits the ability of some types of suppliers to provide a good or service
4. significantly raises the cost of entry or exit by a supplier
5. creates a geographical barrier to the ability of companies to supply goods services or labour, or invest capital.

(B) Limits the ability of suppliers to compete

This is likely to be the case if the piece of legislation:

1. limits sellers’ ability to set the prices for goods or services
2. limits freedom of suppliers to advertise or market their goods or services
3. sets standards for product quality that provide an advantage to some suppliers over others or that are above the level that some well-informed customers would choose
4. significantly raises costs of production for some suppliers relative to others (especially by treating incumbents differently from new entrants).

(C) Reduces the incentive of suppliers to compete

This may be the case if the piece of legislation:

1. creates a self-regulatory or co-regulatory regime
2. requires or encourages information on supplier outputs, prices, sales or costs to be published
3. exempts the activity of a particular industry or group of suppliers from the operation of general competition law.

(D) Limits the choices and information available to customers

This may be the case if the piece of legislation:

1. limits the ability of consumers to decide from whom they purchase
2. reduces mobility of customers between suppliers of goods or services by increasing the explicit or implicit costs of changing suppliers
3. fundamentally changes information required by buyers to shop effectively.

Source : OECD (2011a)

Stage 3 – Analysis of the selected provisions

The provisions carried forward to Stage 3 were investigated in order to (i) identify the objective of the policy maker; and (ii) to assess whether they could result in harm to competition.

The team researched the policy objectives in order to examine the proportionality of the selected provisions with the intended policy objective. An additional purpose in identifying the objectives was to prepare for the formulation of alternatives to existing regulations, when required, taking into account the objective of the specific provisions. The objective of the policy maker was researched in the recitals of the legislation, when applicable, or through discussions with the relevant public authorities.

The analysis of the harm to competition was carried out qualitatively and involved a variety of tools, including economic analysis, collection of background information on the sector and its regulation, and research into the regulation applied in other OECD countries. All provisions were analysed, relying on the guidance provided by the OECD Competition Assessment Toolkit. Interviews with market participants and with government experts complemented the analysis, by providing crucial information on the actual implementation and effects of the provisions.

In the course of Stage 3, several more potential barriers were eliminated from the analysis because the boundaries of the sectors were further narrowed to focus exclusively on the most relevant services for business in the selected sectors. At the end of Stage 3, there were thus 393 barriers left which were deemed harmful to competition.

Stages 4 and 5 – Formulation of recommendations

The team developed draft recommendations for those provisions which were found to restrict competition. In this process, we relied on international experience whenever available. When it was not possible to identify from international practice examples of regulation with a lesser impact on competition, we favoured alternatives which were less restrictive for suppliers while still aiming at the initial objective of the policy maker. For instance, these could be policy changes likely to:

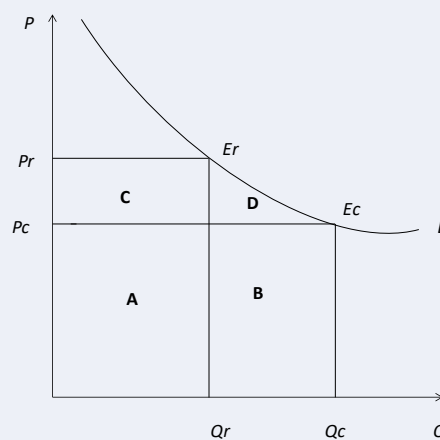
- lower barriers to entry into certain professions (e.g. when certain professionals were prevented from supplying certain professional services);
- improve the ability of suppliers to compete (e.g. restrictions on advertising and reserved activities), to form professional associations, and of third parties to invest and participate in the management of professional firms.

The benefits from removing barriers to competition were analysed qualitatively and, whenever feasible and meaningful, quantitatively. Whenever feasible and appropriate for the analysis of the issue under consideration, the OECD team gathered data that could be used for the quantification of the effects. In these cases, the data were analysed using statistical techniques. In other cases, the expected impact of lifting a regulatory restriction was not modelled directly, for instance because of the lack of sufficient data. Therefore, the OECD team relied on the standard methodology of measuring the effect of policy changes on consumer surplus. In particular, as a result of data limitations, we followed the approach in OECD (2015) which derives a formula for changes in consumer benefits when only sector revenue and the average price effect of the restriction found are available. This is explained in Box A.2 below.

Box A A.2. Measuring changes in consumer surplus

The effects of changing regulations can often be examined as movements from one point on the demand curve to another. For many regulations that have the effect of limiting supply or raising price, an estimate of consumer benefit or harm from the change from one equilibrium to another can be calculated. Graphically, the change is illustrated for a constant elasticity demand curve. E_r shows the equilibrium with the restrictive regulation, E_c shows the equilibrium point with the competitive regulation. The competitive equilibrium is different from the restrictive regulation equilibrium in two important ways: lower price and higher quantity. These properties are a well-known result of many models of competition.

Figure A A.1. Changes in consumer surplus



Source: OECD (2015).

Under the assumption of constant elasticity of demand the equation for consumer benefit is:

$$CB = C + D \approx (P_r - P_c) Q_r + \frac{1}{2} (P_r - P_c) (Q_c - Q_r)$$

Where price changes are expected, a basic formula for such a standard measure of consumer benefit from eliminating the restriction is:

$$CB = (\rho + \frac{1}{2} \epsilon \rho^2) R_r$$

Where CB: standard measure of consumer harm, ρ : percentage change in price related to restriction, R : sector revenue and ϵ : demand elasticity. When elasticity is not known, a relatively standard assumption is that $|\epsilon| = 2$. This value corresponds to more elastic demand than in a monopoly market, but also far from perfectly elastic as in a competitive market. Under this assumption, the expression above simplifies as:

$$CB = (\rho + \rho^2) R_r$$

Several economic assumptions were made:

1. We assume away any taxes, i.e., any implication resulting from the taxation regime on consumer surplus.
2. We assume a regular, linear (or near linear), demand function, with no random term.
3. We assume the set of services within each professional sector constitutes a

“composite service” with “volume” Q, for which a “composite price” P is charged in the market – hence, we can talk of a “composite legal service”, a “composite technical/scientific service”, and a “composite financial/economic service”.

4. We assume the balance among the different professional services within each “composite service” does not change, or changes only in a negligible way, following the price changes that may result from the implementation of the recommendations issued.
5. We do not factor in any interdependence between price and quality levels (although changes in any one of them may have an impact on the other). This is the equivalent of assuming that the “quality” of the different services remains constant or experiences non-significant changes. By “quality”, we mean a term that can involve a distribution of quality levels depending on who provides the service. The quality mean could remain unchanged as a result of implementing a certain recommendation, but the distribution of such quality over the different service providers could change (mean-preserving spread). In the latter case, even with an unchanged mean, there would be welfare effects just due to the change in the mean-preserving distribution of quality levels.
6. We make no distinction here between Marshallian (relation between price and income) and Hicksian (relation between price and utility) demand functions. In any case, since we will be assuming certain values for the demand elasticities ($\epsilon=2$); these values could be assumed for any of these two types of demand functions.

Source: OECD (2015)

Draft recommendations were submitted to the Portuguese administration. Following consultation with ministerial experts and the stakeholders, the recommendations were finalised. In total, 349 recommendations were submitted to the Portuguese administration:

- Framework: 10
- Legal: 182
- Technical/scientific: 68
- Financial/economic: 53
- Health: 35

Co-operation with the Portuguese administration

Another important component of the Project was to provide assistance in building up the competition assessment capabilities of the Portuguese administration. The OECD organised four workshops during the course of the Project, one in each of the stages. In Stage 1 of the Project, we covered an introduction to competition and regulation, and provided an overview of the Project and of our methodology in the mapping stage. In Stage 2, the team provided substantive training on the OECD Competition Assessment Toolkit applied in screening the legislation. In Stage 3, examples and applications of quantitative methods were presented. In Stage 4, OECD experts presented two topics relevant for the Project: (i) the Product Market Regulation (PMR) index compiled by the OECD and policy analysis which relies on this indicator; (ii) the OECD guidelines on fighting bid rigging in public procurement.

The government experts provided a significant contribution on the mapping exercise of the legislation by commenting on whether the regulations collected were comprehensive. Subsequently, the close co-operation with the government experts continued with the identification of the objectives of the legislation in their sectors of expertise and discussion on the provisions identified by the OECD as restrictive on the basis of the Competition Assessment Checklist. More than 100 meetings and phone calls were held to discuss the provisions in detail, to understand to what extent they were implemented in practice and to provide feedback on the OECD's draft analysis of the selected provisions.

Annex A Notes

¹ The LegiX database is owned, operated and managed by Priberam Informática, S.A.

² OECD (2011a), Competition Assessment Toolkit: Principles, OECD, www.oecd.org/daf/competition/46193173.pdf

OECD (2011b), Competition Assessment Toolkit: Guidance, OECD, www.oecd.org/daf/competition/45544507.pdf

OECD (2015), Competition Assessment Toolkit: Operational manual, OECD, http://www.oecd.org/daf/competition/COMP_Toolkit_Vol.3_ENG_2015.pdf

Annex B. Legislation screening by sector

Framework legislation of the self-regulated professions

Table A B.1. Framework legislation of the self-regulated professions

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendation
1	Law 2/2013 "Creation, organisation and functioning of Public Professional Associations"	Art. 2; Art. 5(1)(c)(d); (e) (h)(m); Art. 7(3)(c); Art. 8(1)	Self-regulatory regime	These provisions describe the attributions and competences given to public professional associations, allowing these to have control over access and exercise of self-regulated professions, including on i) the elaboration and implementation of technical rules, ii) definition of ethical principles, iii) criteria for internships, iv) definition of academic qualifications, v) recognition of professional qualifications obtained outside the national territory, vi) attribution of the exclusive right to grant professional titles, vii) determination of reserved activities and viii) exercise of disciplinary powers.	The recital of this Framework Law determines four fundamental ideas: (i) to establish the substantive and procedural requirements for the creation of new professional associations under public law; (ii) to ensure the essential requirements of its internal democratic organisation in accordance with the principles of representative democracy; (iii) to ensure the exercise of the professional supervision function, including the disciplinary function, by one body with conditions of independence within the associations; (iv) to take account of the interests of users of professional services. Professionals have the obligation of being registered within the professional association to practice the profession, which qualifies the nature of the regulation as being mandatory and unitary. In the Portuguese Constitution the autonomy and administrative decentralisation to the professional associations is recognised to ensure the defence of the public interest and the fundamental rights of the citizens, and also to guarantee the self-regulation of the professions that require technical independence. This regulatory model is based on the public interest of these professions, through the designation of state powers to those entities.	The harm to competition arising from the regulatory model established by Law 2/2013 stems from the centralisation in a single entity of the powers to regulate and represent the profession. Because each professional association, apart from representing the profession, controls access to it and its exercise, the regulations issued may create disproportional and anti-competitive restrictions. The freedom to choose and exercise a profession is a fundamental right of the citizen. Also, the freedom of movement of workers and their free establishment to provide services are fundamental principles of the EU internal market. Restrictions to these principles, in the pursuit of the public interest, must be well justified and proportional. When a professional association acquires full responsibility for regulating access to the profession and its exercise as well as the conduct of its members, this may have an anti-competitive impact. In fact, professional associations may adopt rules that reduce incentives or opportunities for stronger competition between operators, such as restrictions on i) the elaboration and implementation of technical rules, ii) definition of ethical principles, iii) criteria for internships, iv) definition of academic qualifications, v) recognition of professional qualifications obtained outside the national territory (even if bounded by the criteria set by Directive 2005/36/EC amended by Directive 2013/55/EC, transposed by Law 9/2009 and Law 26/2017), vi) attribution of the exclusive right to grant professional titles, vii) determination of reserved activities and viii) exercise of disciplinary powers. As the governing bodies of public professional associations are exclusively composed of their members, there is a risk that their members' interests will not coincide with the public interest. This is one significant reason for including within at least some governing bodies of a professional association, lay people representing the interests of relevant social groups, such as consumer associations, other professionals, and high-profile people with experience in regulatory issues.	We recommend that the regulatory function should be separated from the representative function for self-regulated professional associations, either through the creation of an over-arching supervisory body by sector or trade, or through the creation of a supervisory body inside the current professional orders with the necessary "Chinese walls". The supervisory body takes on the main regulation of the profession such as access to the profession and similar functions. The board of the regulatory body will include not only representative of the profession but also lay people, including high-profile experienced individuals from other regulators, representatives of consumer organisations and academia.
2	Law 2/2013 "Creation, organisation and functioning of Public Professional Associations"	Art. 3(2)(b)	Self-regulatory regime / Creation of new professional associations	The procedure for approval of a Law by the Parliament, that creates a new professional associations, includes the audition of the representative associations of the profession.	Law 2/2013 establishes the principle of exceptionality for the creation of public professional associations and sets a regime of application and proof of the exceptional public interest that is required to justify the new professional associations. The reserved jurisdiction of parliament is relevant as a legal mechanism to define limits of self-regulation	This provision introduced relevant principles for the creation of new professional associations. It creates a greater guarantee of transparency and reasonableness, considering that professional associations with the powers instituted by this Framework Law must be exceptionally created when strong evidence of public interest is verified. The European Union has recently recommended a "proportionality test" before the adoption of new regulation of professions (see Proposal for a Directive, COM(2016)	We recommend to enlarge the mechanism of audition (requirement b), so that before issuing its decision, the parliament should request other stakeholders as: i) the regulators of the professions under analysis; ii) the Portuguese Competition Authority and iii) consumer representatives, for their opinion on the creation

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendation
					on rules of access and exercise of the profession, that establishes the matters that should be regulated in the professional associations' bylaws, also approved by parliament. This legislative option created a certain level of guarantee that any further meaningful change in the regulatory framework has to be democratically decided by parliament, and not simply freely regulated by the bodies of the professional associations. This legal regime reinforces the nature of public interest of the professional associations and the need of strong cases to new professional associations in a self-regulation structure be approved.	822 final). According to this proposal, the final outcome of a less restrictive market would be the creation of new jobs, the promotion of productivity and ensuring an attractive climate for investment and innovation. Note that Portugal has 240 regulated professions (the European average is 180), and 18 public professional associations with self-regulatory powers. Since the approval of Law 2/2013, one new professional association was created, the recent case of physiotherapists. The mechanism of audition (requirement b) seems unbalanced as only guarantees the participation of the associations representing the professions. Any other stakeholders, wishing so, must issue their opinion within the public consultation. We consider that before issuing its decision, parliament should necessarily obtain the opinion of other stakeholders as: i) the regulators of the professions under analysis; ii) the Portuguese Competition Authority ; and iii) consumer representatives. Doing so, the parliament would be able to consider the regulatory and competition impact on the creation of such a new professional association, including taking into consideration the interests of final consumers. The audition/request for opinion should allow for a suitable time frame for all relevant stakeholders to submit their comments.	of such a new professional association. The audition/request for opinion should allow for a suitable time frame for all relevant stakeholders to submit their comments.
3	Law 2/2013 "Creation, organisation and functioning of Public Professional Associations"	Art. 24(1)(2)	Mandatory registration in a professional association	This provision establishes that the exercise of a self-regulated profession depends on previous registration in the respective public professional association, unless a different regime is established in the law that creates the professional association. The law can extend the obligation of registration to all professionals and professional firms, other organised associations, employers and subcontractors that provide services in the national territory, and all who practice acts of the profession, except if they have another mandatory regime of public registration.	Registration is a mechanism to organise the professionals with capacity to exercise the activity and also to validate those professionals before consumers. The objective criteria are to regulate access to and the exercise of the profession. Registration may be justified on grounds of legal certainty, so consumers are informed that the professionals are certified to provide those services. The professional association acts as entitled with public powers transferred by the state to this function.	Mandatory registration in a professional association in order to exercise the profession implies an administrative procedure/burden that results in entry costs (e. g. , time frame of the procedure itself, registration fees, and monthly fees, amongst others). Using mandatory registration as a mechanism to access the profession can be restrictive. The possibility of extending the obligation of registration to non-nationals providing services in the national territory and all who practice acts of the profession on a permanent basis can be exempted if they are already registered in a mandatory regime of public registration. Hence, the registration, if needed, is not necessarily harmful in itself, except when it is combined with the establishment of reserved work. For the exercise of some self-regulated professions, reserved work also follows the protection of the title. Protected title with reserved work may exclude other professionals from the exercise of the activity, reducing the number of suppliers in the market and increasing costs to consumers. In general, reserved activities or tasks for specific categories of professionals should be abolished in cases where: (i) the protection is disproportionate to the policy objective because the tasks may already be performed by other well-qualified professionals or are not a danger to public safety; (ii) there is strong and well-regulated protection of the professional title which guarantees the quality of the professionals that are allowed to work; or (iii) the restriction is no longer required owing to legal, societal or professional developments that make the restriction obsolete by objective.	No recommendation.
4	Law 2/2013 "Creation, organisation and functioning of Public Professional Associations"	Art. 27(1)	Multidisciplinary practice in professional firms	This provision allows multidisciplinary professional firms provided that the main corporate objective is the exercise of an activity that falls under the same professional association. This professional firm can engage in a	This provision aims to guarantee compliance with the ethical principles of each self-regulated profession, as well as, if applicable, the guarding of professional secrecy relating to professional-client privilege, as well as preventing conflicts of interest between different professionals.	Our interpretation of the horizontal framework law is that this provision does not by itself prohibit professional firms from performing multidisciplinary activities, since these firms do not have to have an exclusive social corporate objective and may engage in other activities. However, incompatibilities and impediments regimes may limit the range of professional activities within a same professional firm. Note that there is no unique and exhaustive list of incompatibilities and impediments for each profession, being spread out over several legislative acts. To restrict	No recommendation on the legal principle foreseen in this specific provision. However, we recommend that the legislator conducts a technical study to assess the proportionality of incompatibilities and impediments to pursue the exercise of a self-regulated profession that may be preventing the offer of multidisciplinary activities within the same professional firm,

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendation
				secondary corporate objective, with regard to activities performed by other professionals in the same professional firm, who may even be organised in other professional public associations, provided the applicable incompatibilities and impediments regime are upheld.		multidisciplinary activity in a professional firm is to restrict the association of different professionals, belonging to different professional associations (some may not even belong to a public professional association), who would exercise their professional activities within the same firm and in the pursuit of the firm's corporate or social objective(s). To rule out multidisciplinary activity in the same professional firm, between potentially complementary service providers, harms competition and can be detrimental to consumer welfare. In fact, this restriction does not allow for the full exploration of economies of scope that come with the offer of different services by a same "service delivery unit" that shares infrastructure and human capital. It foregoes specialisation gains and service quality gains resulting from the interaction between a wider range of professionals. This also means foregoing the exploitation of economies of scale and advantages in branding. It also does not allow for the mitigation of the double marginalisation (or double mark-up) problem that come with multidisciplinary activities which can complement each other, by segmenting the services provided. This means foregoing lower average costs in a multi-product firm, therefore leading to higher fees being charged to clients, while preventing clients from further benefits that could be gained from a more convenient "one-stop shop" for a wider range of professional services. Ruling out multidisciplinary activity within a professional can reduce the scope for better risk management between different professional activities within the same professional firm, as they may be subject to non-identical demand volatility or uncertainty - i. e. , reduction in the scope for internal risk spreading to be understood as the ability to transfer resources in response to fluctuations in demand. To offer a wider range of professional services means to be better prepared to face market uncertainties. Furthermore, opening up a professional firm to multidisciplinary activities is likely to ease the introduction of innovative products but also to spur innovation in the delivery of already existing products or range of products.	taking into consideration the policy objective. In case they are considered not to be proportional, they should be abolished.
5	Law 2/2013 "Creation, organisation and functioning of Public Professional Associations"	Art. 27(3)(a)(4)	Partnership / Ownership of professional firms	Professional firms may include non-professional partners. In this case, professional associations' bylaws may establish restrictions on this inclusion, invoking reasons of public interest. Compliance with the following rules must be observed:- The majority of the share capital with voting rights must belong to professional partners who are members or are registered with the professional association that defines the firm's main corporate objective, established in the national territory, and holding the	This provision opens up such professional firms to partnerships by other people besides professionals. However, such opening is subject to some restrictions and allows each professional association to impose additional restrictions to the way professional firms are organised, including the prohibition of professional firms to include non-professional (or other professional) partners and managers. These restrictions are to be grounded in the public interest, or in the powers of public authority a particular profession may exercise. They may also be grounded in other imperatives such as the professionals' independence and client privilege.	Ownership, shareholding and partnership rules of professional firms require that the majority of the share capital and voting rights must be owned by professional partners, members or registered with the professional association that defines the firm's main corporate objective. Non-professional partners may own the remaining capital and voting rights. Question arises as to why not open up a professional firm totally to external ownership. This would mean to open the firm to more investment, by allowing access to a wider pool of capital. This opening would enable professional firms to satisfy a greater pool of consumers and reap the benefits of a larger scale of operations. For younger professionals, not yet well established in their profession, it would also mean more opportunities to set up their own professional firm and compete in the market. This would also generate a greater ability by professional firms to compete in the Single Market and internationally. It would also allow for an improved risk management among the owners of a professional firm, hence, lower operational costs and possibly lower prices charged to consumers for the different professional services being delivered in the market. Ultimately, all these restrictions on ownership, shareholding and partnership over	We recommend that the ownership and partnership of all professional firms be opened to other professionals and non-professionals, that is, should be open to individuals outside the profession. We also recommend that other professionals and non-professionals be allowed to hold a majority of a professional firm's social capital, together with a majority of voting rights. Exceptionally, firms of auditors, in line with Art. 3(4)(b) of the Directive on Auditing Services (Directive 2006/43/EC), require that the majority of voting rights still be held by auditors, but open the majority of capital to be held by non-auditors.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendation
				professional title in question. The majority of the share capital may also be held by companies of such professionals, constituted by national law or other forms of associative organisation of like-minded professionals established in other EU/EEA Member States, whose capital and voting rights lie mainly with the professionals concerned.		professional firms, are detrimental to firms across all economy, especially SMEs, and to households, as their relaxation can be expected to lead to an increase in their welfare.	
6	Law 2/2013 "Creation, organisation and functioning of Public Professional Associations"	Art. 27(3)(b)(4)	Management of professional firms	Professional firms must ensure that at least one manager or administrator must be a member or be registered with the professional association that defines the firm's main corporate objective. In case registration in the professional association is optional, that manager must comply with the requirements on access to the profession in the national territory.	This provision opens up such professional firms to management by other people besides professionals. However, such opening is subject to some restrictions and allows each professional association to impose additional restrictions to the way professional firms are organised, including the prohibition of professional firms to include non-professional (or other professional) managers. These restrictions are to be grounded in the public interest, or in the powers of public authority a particular profession may exercise. They may also be grounded in other imperatives such as the professionals' independence and client privilege.	This provision requires that one of the managers or administrators of a professional firm be a member or be registered with the professional association that defines the firm's main corporate objective. Historically, corporations separated their ownership from management starting in the early 20th century. One of the main reasons was to professionalise management in increasingly competitive markets. Conflicts between owners (the principals) and managers (the agents) have been the subject of extensive literature, and various payment schemes have been adopted to align managers' interests as closely as possible to the owners' interests (see e. g. , Carlton and Perloff, 2004). A professional management, which ultimately answers to the owners of the professional firm, may be an option preferable to the professional partners themselves.	We recommend that the separation between ownership and management should be allowed in all professional firms and that their management include non-professionals, that is, should be open to individuals outside the professions.
7	Law 2/2013 "Creation, organisation and functioning of Public Professional Associations"	Art. 30(1)(2)	Reserved tasks	Reserved professional activities are allowed only when explicitly established by law due to compelling reasons of public interest and meeting proportionality criteria (para. 1). Own acts associated with a profession must only be performed by the professionals legally certified to practice those acts (para. 2).	This legal regime aims to control who is deemed to hold the necessary qualifications to practice as a professional, for the protection of consumers, considering the existence of significant information asymmetries and possible negative externalities to society from the exercise of such activities.	The definition and establishment of reserved activities restricts competition by determining exclusive rights to a certain category of suppliers. The adoption of legal exclusive rights on the practice of economic activities closes the market to potential operators who do not meet certain criteria or standards. The provision of reserved activities bans other qualified professionals from the practice of the acts in question. As a consequence, it prevents entry into the market of other well-qualified professionals who do not hold the professional title. This leads to less innovation, not opening room for innovative technologies or methodologies. It also leads to higher prices as there will be fewer professionals providing these activities. This allows the creation of exclusive (monopoly) rights. Note, that, in general, reserved activities or tasks for specific categories of professionals should be abolished in cases where: (i) the protection is disproportionate to the policy objective because the tasks may already be performed by other well-qualified professionals or are not a danger to public safety; (ii) there is strong and well-regulated protection of the professional title which	No recommendation.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendation
						<p>guarantees the quality of the professionals that are allowed to work; or (iii) the restriction is no longer required owing to legal, societal or professional developments that make the restriction obsolete by objective. However, the provision of the framework law already states the criteria that should be respected when establishing reserved activities, that is, it should be an exceptional regime, adopted by law due to compelling reasons of public interest and meeting proportionality criteria. Hence, this criterion is adequate and the provision in itself is not harmful. Respect of these principles must be analysed on a case-by-case basis of the legislative and regulatory framework of each reserved activity.</p>	
8	Law 2/2013 "Creation, organisation and functioning of Public Professional Associations"	Art. 33(1)	Self-regulatory regime / Quota regime (numerus clausus) Territorial segmentation / Number of suppliers / Prices / Exercise of the profession in a subordinate mode / Advertising	For professions pursuing a mission of public interest or having powers of public authority, the public professional associations can adopt, in their bylaws, requirements for access to and exercise of the profession as an exception to the main rules established in the following provisions of Framework Law: i) Art. 24(7): A quota regime can be imposed on access to a profession, associated or not with territorial restrictions (as a function of distance and population); ii) Art. 26(2): restrictions can allow the caducity or impose a term on the permit for exercise of the profession; iii) Art. 26(3): the establishment of restrictions such as territorial restrictions, number of establishments, minimum number of employees, prices; iii) Art. 28(2): restrictions can be imposed on the exercise of the activity under a system of legal subordination, where the employer can also be required to be a qualified professional or a professional firm; iv) Art. 32(1): restrictions can be imposed on modes of advertising concerning services provided by a profession subject to a public	These restrictions can only be applied to professions that pursue a mission of public interest or that have powers of public authority.	These restrictions are exceptional. But they may be unduly demanding and restrict competition, as they may exclude well-qualified professionals and non-professionals from the market. Such restrictions may drive up prices, lower innovation and diversity of services, and possibly reducing service quality levels, ultimately reducing social and consumer welfare. However, this legal provision establishes these requirements as exceptions under compelling public interest grounds. Provided that adherence to the principle of proportionality is guaranteed on a case-by-case basis of the legislative and regulatory provisions adopted by the different professional associations, these criteria seem adequate.	No recommendation.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendation
				professional association.			
9	Law 2/2013 "Creation, organisation and functioning of Public Professional Associations"	Art. 37(4)	Establishment	Professionals (associates, partners, managers or administrators) established in Portugal that provide self-regulated services for a professional firm or an organisation outside Portugal can only provide services on a regular basis in the national territory if that professional firm or organisation is also established in Portugal, through a professional firm or by the constitution of a permanent representation.	According to stakeholders, this rule ensures a level playing field between nationals and non-nationals. The permanent exercise of the activity must be registered in a public database.	On the one hand, this limits access to an economic activity hence restricting competition in the market, which in turn may reduce consumer and social welfare. In fact, this requirement prevents innovative online businesses from operating in the national territory without physical premises. On the other hand, according to stakeholders, this requirement is in practice simply related to the registration with a tax domicile. Taking this into account we found no harm to competition.	No recommendation.
10	Law 53/2015 "Legal regime for the constitution and functioning of societies of professionals who are subject to professional public associations"	Art. 7(2)	Multidisciplinary practice in professional firms	This provision permits multidisciplinary professional firms provided that the main corporate objective is the exercise of an activity that falls under the same professional association. This professional firm can engage in a secondary corporate objective, with regard to activities performed by other professionals in the same professional firm, who may even be organised in other professional public associations, provided the applicable incompatibilities and impediments regimes are upheld.	This provision aims to guarantee compliance with the ethical principles of each self-regulated profession, as well as, if applicable, the guarding of professional secrecy relating to professional-client privilege, as well as preventing conflicts of interest between different professionals.	Our interpretation of the horizontal framework law is that this provision does not by itself prohibit professional firms from performing multidisciplinary activities, since these firms do not have to have an exclusive social corporate objective and may engage in other activities. However, incompatibilities and impediments regimes may limit the range of professional activities within the same professional firm. Note that there is no unique and exhaustive list of incompatibilities and impediments for each profession, being spread out over several legislative acts. To restrict multidisciplinary activity in a professional firm is to restrict the association of different professionals, belonging to different professional associations (some may not even belong to a public professional association), who would exercise their professional activities within the same firm and in the pursuit of the firm's corporate or social objective(s). To rule out multidisciplinary activity in the same professional firm, between potentially complementary service providers, harms competition and can be detrimental to consumer welfare. In fact, this restriction does not allow for the full exploration of economies of scope that come with the offer of different services by a same "service delivery unit" that shares infrastructure and human capital. It foregoes specialisation gains and service quality gains resulting from the interaction between a wider range of professionals. This also means foregoing the exploitation of economies of scale and advantages in branding. It also does not allow for the mitigation of the double marginalisation (or double mark-up) problem that come with multidisciplinary activities which can complement each other, by segmenting the services provided. This means foregoing lower average costs in a multi-product firm, therefore leading to higher fees being charged to clients, while preventing clients from further benefits that could be gained from a more convenient "one-stop shop" for a wider range of professional services. Ruling out multidisciplinary activities within a professional can reduce the scope for better risk management between different professional activities within the same professional firm, as they may be subject to non-identical demand volatility or uncertainty - i. e., reduction in	No recommendation on the legal principle foreseen in this specific provision. However, we recommend that the legislator conducts a technical study to assess the proportionality of incompatibilities and impediments to pursue the exercise of a self-regulated profession that may be preventing the offer of multidisciplinary activities within the same professional firm, taking into consideration the policy objective. In case they are considered not to be proportional, they should be abolished.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendation
						the scope for internal risk spreading to be understood as the ability to transfer resources in response to fluctuations in demand. To offer a wider range of professional services means to be better prepared to face market uncertainties. Furthermore, opening up a professional firm to multidisciplinary activities is likely to ease the introduction of innovative products but also to spur innovation in the delivery of already existing products or range of products.	
11	Law 53/2015 "Legal regime for the constitution and functioning of societies of professionals who are subject to professional public associations"	Art. 8(1)(2)	Partnership / Ownership of professional firms	Professional firms must have at least two professional partners (individuals, firms or other forms of associative organisations of equivalent professionals established in other EU/EEA Member States, whose capital and voting rights lie mainly with the professionals concerned) belonging to the same self-regulated profession (with the exception of those that are incorporated as sole proprietor firms), unless prohibited by the statutes of the firm.	This provision opens up such professional firms to partnerships by other people besides professionals. However, such opening is subject to some restrictions and allows each professional association to impose additional restrictions to the way professional firms are organised, including the prohibition of professional firms to include non-professional (or other professional) partners and managers. These restrictions are to be grounded in the public interest, or in the powers of public authority a particular profession may exercise. They may also be grounded in other imperatives such as the professionals' independence and client privilege.	The traditional firm model with partnerships restricted to professionals from one single area together may contribute to a lack of innovation in the provision of services. It may also contribute to create a wedge between what the profession delivers and what firms and households demand from the suppliers of the services. To open up firms to external ownership can be a vehicle to introduce innovation to the benefit of the firms' clients. This argument emphasises the importance of bringing in investors with an innovator's mindset that will introduce and push for "game-changing innovations" better able to respond to the needs of firms and households that rely on those infrastructures to carry out their economic activities. Ultimately, all these restrictions on ownership, shareholding and partnership over professional firms, are detrimental to firms across the entire economy, especially SMEs, and to households, as their relaxation can be expected to lead to an increase in their welfare.	We recommend that the ownership and partnership of all professional firms be opened to other professionals and non-professionals, that is, should be open to individuals outside the profession. We also recommend that other professionals and non-professionals be allowed to hold a majority of a professional firm's social capital, together with a majority of voting rights. Exceptionally, firms of auditors, in line with Art. 3(4)(b) of the Directive on Auditing Services (Directive 2006/43/EC), require that the majority of voting rights still be held by auditors, but open the majority of capital to be held by non-auditors.
12	Law 53/2015 "Legal regime for the constitution and functioning of societies of professionals who are subject to professional public associations"	Art. 8(4)	Partnership / Ownership of professional firms	Individuals, firms or other forms of associative organisations of equivalent professionals established in other EU or EEA Member States, whose capital and voting rights lie mainly with the professionals concerned, cannot own shares in more than one professional firm with the same principal corporate objective, and provided they are not professional partners in professional firms with the same principal corporate objective in associative organisations from other EU/EEA Member States.	This restriction aims to ensure the independence of professionals and to avoid conflicts of interest. Such a conflict could arise from sharing confidential and sensitive information about clients and about the commercial strategies of professional firms.	This provision restricts the freedom of individuals and firms, and professionals, to participate in the capital of more than one professional firm, which may limit their profits, reduce their incentives to invest and benefit the companies that have clients with greater economic weight. This may ultimately result in higher prices and less social welfare. This also discourages innovation. Only one self-regulated profession analysed in the Project holds such a restriction, imposed both on individuals as well as on firms: a legislative act regulating the bylaws of architects [Art. 16(1) Regulation 322/2016] prohibits individuals (architects), firms of architects, and associative organisations from other EU/EEA countries, to be professional partners in more than one professional firm of architects, registered with the Portuguese association of architects and provided they are not professional partners in associative organisations from other EU/EEA countries. Two other self-regulated professions analysed in the project hold a mitigated version of such a provision: i) the bylaws of bailiffs [Art. 222(5)] prohibit professional firms of bailiffs of having other firms as partners; and ii) the bylaws of auditors [Art. 119(1)] forbid individuals (auditors) to be partners of more than one professional firm of auditors at the same time, but allow firms of auditors to be partners of other auditors' firms (Art. 120). The bylaws of the remaining 10 self-regulated professions analysed in the Project (nutritionists; pharmacists; certified accountants; customs brokers; economists; engineers; technical engineers; lawyers; notaries; and solicitors) do not have a provision with such a prohibition, either with regard to individuals or to firms. Hence, the Project equated whether different legislative and regulatory alternatives would be less restrictive, namely: allowing individuals (professionals) as well as	We recommend to abolish the limitation on legal persons (individuals or firms), nationals or from EU/EEA countries, to be limited to be a professional partner in one single professional firm with the same principal corporate objective, provided there are clear "Chinese walls" between the professional function and the investment decisions.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendation
						professional firms to be professional partners in more than one professional firm, belonging to the same public professional association, provided there are clear "Chinese walls" between the professional function and the investment decisions.	
13	Law 53/2015 "Legal regime for the constitution and functioning of societies of professionals who are subject to professional public associations"	Art. 9(2)	Partnership / Ownership of professional firms	Professional firms may include non-professional partners. In this case, professional associations' bylaws may establish restrictions on this inclusion, invoking reasons of public interest. Compliance with the following rules must be observed:- The majority of the share capital with voting rights must belong to professional partners who are members or are registered with the professional association that defines the firm's main corporate objective, established in the national territory, and holding the professional title in question. The majority of the share capital may also be held by companies of such professionals, constituted by national law or other forms of associative organisation of like-minded professionals established in other EU/EEA Member States, whose capital and voting rights lie mainly with the professionals concerned.	This provision opens up such professional firms to partnerships by other people besides professionals. However, such opening is subject to some restrictions and allows each professional association to impose additional restrictions to the way professional firms are organised, including the prohibition of professional firms to include non-professional (or other professional) partners and managers. These restrictions are to be grounded in the public interest, or in the powers of public authority a particular profession may exercise. They may also be grounded in other imperatives such as the professionals' independence and client privilege.	Ownership, shareholding and partnership rules of professional firms require that the majority of the share capital and voting rights must be owned by professional partners, members or registered with the professional association that defines the firm's main corporate objective. Non-professional partners may own the remaining capital and voting rights. Question arises as to why not open up a professional firm totally to external ownership. This would mean to open the firm to more investment, by allowing access to a wider pool of capital. This opening would enable professional firms to satisfy a greater pool of consumers and reap the benefits of a larger scale of operations. For younger professionals, not yet well established in their profession, it would also mean more opportunities to set up their own professional firm and compete in the market. This would also generate a greater ability by professional firms to compete in the Single Market and internationally. It would also allow for improved risk management among the owners of a professional firm, hence, lower operational costs and possibly lower prices charged to consumers for the different professional services being delivered in the market. Ultimately, all these restrictions on ownership, shareholding and partnership over professional firms, are detrimental to firms across the entire economy, especially SMEs, and to households, as their relaxation can be expected to lead to an increase in their welfare.	We recommend that the ownership and partnership of all professional firms be opened to other professionals and non-professionals, that is, should be open to individuals outside the profession. We also recommend that other professionals and non-professionals be allowed to hold a majority of a professional firm's social capital, together with a majority of voting rights. Exceptionally, firms of auditors, in line with Art. 3(4)(b) of the Directive on Auditing Services (Directive 2006/43/EC), require that the majority of voting rights still be held by auditors, but open the majority of capital to be held by non-auditors.
14	Law 53/2015 "Legal regime for the constitution and functioning of societies of professionals who are subject to professional public associations"	Art. 9(3)	Management of professional firms	Professional firms must ensure that at least one manager or administrator must be a member or be registered with the professional association that defines the firm's main corporate objective. In case registration in the professional association is optional, that manager must comply with the requirements on access to the profession in the national territory.	This provision opens up such professional firms to management by other people besides professionals. However, such opening is subject to some restrictions and allows each professional association to impose additional restrictions to the way professional firms are organised, including the prohibition of professional firms to include non-professional (or other professional) managers. These restrictions are to be grounded in the public interest, or in the powers of public authority a particular profession may exercise. They may also be grounded in other imperatives such as the professionals' independence and client privilege.	This provision requires that one of the managers or administrators of a professional firm be a member or be registered with the professional association that defines the firm's main corporate objective. Historically, corporations separated their ownership from management starting in the early 20th century. One of the main reasons was to professionalise management in increasingly competitive markets. Conflicts between owners (the principals) and managers (the agents) has been the subject of extensive literature, and various payment schemes have been adopted to align managers' interests as closely as possible to the owners' interests (see e. g. , Carlton and Perloff, 2004). A professional management, which ultimately answers to the owners of the professional firm, may be an option preferable to the professional partners themselves.	We recommend that that the separation between ownership and management should be allowed in all professional firms and that their management include non-professionals, that is, should be open to individuals outside the professions.

Legal professions: Lawyers

Table A B.2. Legal professions: Lawyers

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
1	Law 49/2004 "Acts of lawyers and solicitors and crime of unlawful prosecution"	Art. 1(1)	Reserved acts	Only law graduates registered with the Bar Association may practice the reserved acts of a lawyer .	The claim is that it is in the public interest to require that only professionals registered with the Professional Associations can provide such legal services. Some exceptions are listed in paras. 2, 3 & 4: professionals holding a master's or a doctorate in law can provide legal advice with titles recognised in Portugal and registered with the Bar Association; law professors can provide legal advice without being registered with the Bar Association; those who are registered as lawyers in other EU and EEA Member States can also provide legal advice on a temporary or occasional basis and using their home-country title.	This provision may limit the number of professionals who can offer legal services in the market. This may restrict access to legal services to the detriment of businesses and consumers and may lead to higher prices for those services and less diversity and innovation. The scope of reserved legal activities practised by the legal professions in Portugal is quite wide. It may unduly restrict competition from unauthorised legal providers and non-legal providers, potentially with lower cost, in which case the option to reserve activities may not be proportional to ensure consumer protection and to secure access to justice and legal advice. Given that the legal professions are already very restrictive, with tightly controlled entry, there seems little point in carving out the market for certain services. In this case, the scope of the reserved acts must be revised. In general, reserved activities or tasks for specific categories of professionals should be abolished in cases where: (i) the protection is disproportionate to the policy objective because the tasks may already be performed by other well-qualified professionals or are not a danger to public safety; (ii) there is strong and well-regulated protection of the professional title which guarantees the quality of the professionals that are allowed to work; or (iii) the restriction is no longer required owing to legal, societal or professional developments that make the restriction obsolete by its objective. In several cases, opening up reserved activities to additional qualified professions could generate substantial consumer benefits, in the form of innovative and more diverse services at lower prices. For instance, alternative professionals with a lower level of qualifications could better serve consumers with simple needs, who could otherwise overpay when retaining professionals with qualifications suited to more complex needs.	We recommend that the profession of lawyer should review all its reserved activities with a view to opening the exercise of them to the other legal professions under due supervision of the work performed. We also recommend opening the market of legal advice to professionals (i. e. legal experts) and entities for which they work that want to provide legal advice on a regular basis.
2	Law 49/2004 "Acts of lawyers and solicitors and crime of unlawful prosecution"	Art. 1(5)(6)(9)	Reserved acts	Lists the reserved acts of lawyers (and solicitors) such as managing the interests of the defence for which they are entrusted, by practicing, in the name and on behalf of the client, legal acts particular to the profession; legal advice; the drafting of contracts and	The claim is that it is in the public interest to require that only professionals registered with the Professional Associations can provide such legal services. Some exceptions are listed in paras. 2, 3 & 4: professionals holding a master's or a doctorate in law can provide legal advice with titles recognised in Portugal and registered with the Bar Association; law	This provision may limit the number of professionals who can offer legal services in the market. This may restrict access to legal services to the detriment of businesses and consumers and may lead to higher prices for those services and less diversity and innovation. The scope of reserved legal activities practised by the legal professions in Portugal is quite wide. It may unduly restrict competition from unauthorised legal providers and non-legal providers, potentially with lower cost, in which case the option to reserve activities may not be proportional to ensure consumer protection and to secure access to justice and legal advice.	We recommend that the profession of lawyer should review all its reserved activities with a view to opening the exercise of them to the other legal professions under due supervision of the work performed. We also recommend opening the market of legal advice to professionals (i. e. legal experts) and entities for which they

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
				the practice of preparatory acts tending to the constitution, modification or extinction of legal businesses; the negotiation process for the collection of credits; legal representation when claiming or challenging administrative or fiscal acts.	professors can provide legal advice without being registered with the Bar Association; those who are registered as lawyers in other EU and EEA Member States can also provide legal advice on a temporary or occasional basis and using their home-country title.	Given that the legal professions are already very restrictive, with tightly controlled entry, there seems little point in carving out the market for certain services. In this case, the scope of the reserved acts must be revised. In general, reserved activities or tasks for specific categories of professionals should be abolished in cases where: (i) the protection is disproportionate to the policy objective because the tasks may already be performed by other well-qualified professionals or are not a danger to public safety; (ii) there is strong and well-regulated protection of the professional title which guarantees the quality of the professionals that are allowed to work; or (iii) the restriction is no longer required owing to legal, societal or professional developments that make the restriction obsolete by its objective. In several cases, opening up reserved activities to additional qualified professions could generate substantial consumer benefits, in the form of innovative and more diverse services at lower prices. For instance, alternative professionals with a lower level of qualifications could better serve consumers with simple needs, who could otherwise overpay when retaining professionals with qualifications suited to more complex needs.	work that want to provide legal advice on a regular basis.
3	Law 49/2004 "Acts of lawyers and solicitors and crime of unlawful prosecution"	Art. 5(1)	Professional title / Academic qualification	The professional title of lawyer ("advogado") is exclusively reserved for law graduates with an active registration in the Bar Association, and to those who comply with the conditions set out in the bylaws.	This legal provision aims to guarantee that only those who comply with the Professional Association rules can use the title of lawyers lawfully. Such cases may include: (i) doctors in law, with effective practice of teaching law in an institution of higher education, (ii) former magistrates with an effective professional practice, in both cases after undergoing preparatory training in professional ethics, with a maximum duration of six months and under the supervision of a registered legal professional chosen by the candidate.	Setting exclusivity requirements for the use of the professional title of Lawyer, with all that implies in terms of reserved acts, limits the number of legal service suppliers which in turn may have a negative impact on prices charged, on innovation, and on the diversity of those services. This provision may limit the number of professionals who can offer legal services in the market. This may restrict access to legal services to the detriment of businesses and consumers and may lead to higher prices for those services and less diversity and innovation. The scope of reserved legal activities practised by the legal professions in Portugal is quite wide. It may unduly restrict competition from unauthorised legal providers and non-legal providers, potentially with lower cost, in which case the option to reserve activities may not be proportional to ensure consumer protection and to secure access to justice and legal advice. Given that the legal professions are already very restrictive, with tightly controlled entry, there seems little point in carving out the market for certain services. In this case, the scope of the reserved acts must be revised. In general, reserved activities or tasks for specific categories of professionals should be abolished in cases where: (i) the protection is disproportionate to the policy objective because the tasks may already be performed by other well-qualified professionals or are not a danger to public safety; (ii) there is strong and well-regulated protection of the professional title which guarantees the quality of the professionals that are allowed to work; or (iii) the restriction is no longer required owing to legal, societal or professional developments that make the restriction obsolete by its objective. In several cases, opening up reserved activities to	We recommend that the profession of lawyer should review all its reserved activities with a view to opening the exercise of them to the other legal professions under due supervision of the work performed. We also recommend opening the market of legal advice to professionals (i. e. legal experts) and entities for which they work that want to provide legal advice on a regular basis.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
						additional qualified professions could generate substantial consumer benefits, in the form of innovative and more diverse services at lower prices. For instance, alternative professionals with a lower level of qualifications could better serve consumers with simple needs, who could otherwise overpay when retaining professionals with qualifications suited to more complex needs.	
4	Law 49/2004 "Acts of lawyers and solicitors and crime of unlawful prosecution"	Art. 6(1)	Multidisciplinary practice in professional firms / Reserved acts	With the exception of bureaux and offices composed exclusively of lawyers, solicitors, or lawyers and solicitors (sharing premises), and of solicitor firms and law firms, and of legal consulting offices organised by either the Bar Association or by the Chamber of Solicitors, no other office or firm, constituted in any legal form, can provide to third parties services that include, even if isolated or marginal, the practice of "acts of lawyers and solicitors".	This legal provision aims to guarantee that only lawyers and solicitors lawfully practice reserved acts as identified in Art. 1, as that such reserved acts are practiced under a certain type of organisational forms that not allow the supply of multidisciplinary services.	By restricting certain legal acts to lawyers (and solicitors), this provision limits the number of professionals who can offer legal services in the market to the detriment of businesses and consumers. This restriction may lead to higher prices for those services and less diversity and innovation. This provision also limits the type of firms allowed to provide legal services, and should be read together with Art. 213 of the bylaws. For example, it prohibits multidisciplinary law firms. This prohibition has already been questioned by some stakeholders and by the Portuguese Association of Law Firms (ASAP) – see conclusions from ASAP 8th Annual Meeting in 2015. To restrict multidisciplinary activity in a professional firm is to restrict the association of different professionals, belonging to different professional associations (some may not even belong to a public professional association), who wish to exercise their professional activities within the same firm and in the pursuit of the firm's corporate or social objective(s). In a professional firm, this restriction takes the form of a restriction on partnership – restricting, or banning altogether, non-professional partners. This restriction is particularly acute in the case of the legal professions. To rule out multidisciplinary activity in the same professional firm, between potentially complementary service providers, harms competition and can be detrimental to consumer welfare. In fact, this restriction does not allow for the full exploration of economies of scope that come with the offer of different services by a same "service delivery unit" that shares infrastructure and human capital. It foregoes gains from specialisation and service quality that would result from the interaction between a wider range of professionals. This also means foregoing the exploitation of economies of scale and the advantages of branding. It also does not allow for the mitigation of the double marginalisation (or double mark-up) problem that comes with multidisciplinary activities which can complement each other, by segmenting the services provided. This means foregoing lower average costs in a multi-product firm, thereby leading to higher fees being charged to clients, while preventing clients from enjoying further benefits that could be gained from a more convenient "one-stop shop" for a wider range of professional services. Ruling out multidisciplinary activities within a profession can reduce the scope for better risk management between different professional activities within the same professional firm, as they may be subject to non-identical demand volatility or uncertainty, i. e., reduction in the scope for internal risk-spreading to be understood as the ability to transfer resources in response to fluctuations in demand. To offer a	We recommend that the prohibition of multidisciplinary practice in professional firms should be removed, particularly in the case of the legal professions, where the "professional partnership model" is the only model allowed for the practice of the profession in a collective way. The creation of "Alternative Business Structures" can lead to more innovation, a broader range of services and easier access to legal services and legal advice for businesses and consumers.

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						wider range of professional services means to be better prepared to face market uncertainties. Furthermore, opening up a professional firm to multidisciplinary activities is likely to ease the introduction of innovative products but also to spur innovation in the delivery of already existing products or ranges of products.	
5	Law 112/2009 "Legal regime applicable to the prevention of domestic violence"	Art. 25(1)	Reserved acts / Legal aid	Under the regime applicable to the prevention of domestic violence, legal advice is urgently provided by the state through a lawyer considering the client's (victim's) economic insufficiency, under the legal aid regime.	This provision aims to guarantee that victims of domestic violence are advised by Lawyers, and that a certain quality of service will be met. Due to the nature of the crime involved, only a Lawyer may represent the victim in the Court. For that reason the state provides consultation by a Lawyer and gives the possibility to the victim to be represented by the same professional (Lawyer) in the court, if needed.	This provision excludes other professionals, such as solicitors, who may be as qualified as lawyers to provide the same services, namely legal advice. These services do not include a judicial mandate. Furthermore, the legal aid regime establishes that legal advice can be given by lawyers and solicitors, in spite of the absence of a protocol signed between the two professional associations and the Ministry of Justice, which could be necessary to include solicitors in the regime of legal aid.	Amend the provision in order to allow victims to choose between Solicitors and Lawyers. However those citizens must be informed about any limitations that solicitors might have to act in the court.
6	Law 145/2015 "Bar Association Bylaws"	Art. 3 (Annex)	Self-regulatory regime	This provision describes the attributions and competences given to the Bar Association, guaranteeing it the power to control access to and the exercise of the profession, the elaboration and implementation of technical rules and ethical principles and the exercise of disciplinary powers.	It is our understanding that this provision aims to ensure the exercise of the regulatory function, including the disciplinary function and the representative function, taking into account the interests of users of the professional services, by one and the same single entity, the professional association. In the Portuguese Constitution the autonomy and administrative decentralisation to the professional associations is recognised to ensure the defence of the public interest and the fundamental rights of citizens, and also to guarantee the self-regulation of the professions that require technical independence. This regulatory model is based on the public interest of these professions, through the designation of state powers to those entities and with two main characteristics: the exclusivity on granting the professional title and the obligation of being registered within the professional association to practice the profession, which qualifies the nature of the regulation as being mandatory and unitary.	The harm to competition arising from the regulatory model, already established by the horizontal framework Law 2/2013 and considered in the bylaws of the professional association, stems from the centralisation in a single entity of the powers to regulate and represent the profession. Because each professional association, apart from representing the profession, controls access to it and its exercise, the regulations issued may create disproportional and anti-competitive restrictions. The freedom to choose and exercise a profession is a fundamental right of the citizen. Also, the freedom of movement of workers and their free establishment to provide services are fundamental principles of the EU internal market. Restrictions to these principles, in the pursuit of the public interest, must be well justified and proportional. When a professional association acquires full responsibility to regulate access to the profession and the conduct of its members, this may have an anti-competitive impact. In fact, professional associations may adopt rules that reduce incentives or H52opportunities for stronger competition between operators, such as restrictions on advertising and partnerships/ownerships, management or multidisciplinary activities, or restrictions when setting the minimum qualifications to enter the profession, amongst others. As the governing bodies of public professional associations are exclusively composed of their members, there is a risk that their members' interests will not coincide with the public interest. This is one significant reason for including within at least some governing bodies of a professional association, lay people representing the interests of relevant social groups, such as consumer associations, other professionals, and high-profile people with experience in regulatory issues.	We recommend that the regulatory function should be separated from the representative function for self-regulated professional associations, either through the creation of an over-arching supervisory body by sector or trade, or through the creation of a supervisory body inside the current professional orders with the necessary "Chinese walls". The supervisory body takes on the main regulation of the profession such as access to the profession and similar functions. The board of the regulatory body will include not only representative of the profession but also lay people, including high-profile experienced individuals from other regulators, representatives of consumer organisations and academia.

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7	Law 145/2015 "Bar Association Bylaws"	Art. 66(1) - Annex	Title/Reserved acts	The provision of "advocacy services" as own acts of lawyers (as defined by Law 49/2004) can only be undertaken by lawyers registered with the Bar Association.	The claim is that it is in the public interest that only a lawyer registered with the Bar Association lawyers has the necessary specific academic qualifications and training in the law to provide such acts.	This provision may limit the number of well-qualified professionals who can compete in the market for the provision of such services. In turn, this restriction may have negative impacts on the prices being charged, and possibly their diversity and innovativeness. The scope of reserved legal activities practiced by lawyers (and solicitors) in Portugal is quite wide. It may unduly restrict competition from unauthorised legal providers and non-legal providers, potentially with lower costs, in which case the option to reserve activities may not be proportional to ensure consumer protection and to secure access to justice and legal advice. Given that the legal professions are already very restrictive, with tightly controlled entry, there seems little point in carving out the market for certain services.	We recommend that the profession of lawyer should review all its reserved activities with a view to opening the exercise of them to the other legal professions under due supervision of the work performed. We also recommend opening the market of legal advice to professionals (i. e. legal experts) and entities for which they work that want to provide legal advice on a regular basis.
8	Law 145/2015 "Bar Association Bylaws"	Art. 68 - Annex	Reserved acts	The provision of legal advice constitutes a lawyer's own act as established in Art. 1 of Law 49/2004.	The claim is that it is in the public interest that lawyers can provide legal advice, due to their specific academic qualifications and training in the law.	This provision establishes that the supply of legal advice as an own act of lawyers. Law 49/2004 establishes that solicitors, together with lawyers, may also provide legal advice. This provision may limit the number of well-qualified professionals who can compete in the market for the provision of such services. In turn, this restriction may have negative impacts on the prices being charged, and possibly their diversity and innovativeness. The scope of reserved legal activities practiced by lawyers (and solicitors) in Portugal is quite wide. It may unduly restrict competition from unauthorised legal providers and non-legal providers, potentially with lower costs, in which case the option to reserve activities may not be proportional to ensure consumer protection and to secure access to justice and legal advice. Given that the legal professions are already very restrictive, with tightly controlled entry, there seems little point in carving out the market for certain services.	We recommend that the profession of lawyer should review all its reserved activities with a view to opening the exercise of them to the other legal professions under due supervision of the work performed. We also recommend opening the market of legal advice to professionals (i. e. legal experts) and entities for which they work that want to provide legal advice on a regular basis.
6	Law 145/2015 "Bar Association Bylaws"	Art. 70(1) - Annex	Title / Reserved acts	The title of Lawyer ("advogado") is exclusively reserved for professionals registered with the Bar Association.	Registration constitutes the administrative link between the lawyer and the bar. It grants the lawyer the required professional title that enables and validates his/her practice of legal services. Reserving the practice of such services for lawyers registered with the bar stems from the public good nature of their acts and the lawyer's role in the dispensation of justice.	In terms of competition, the title of lawyer is not problematic in itself. It becomes problematic whenever a set of exclusive legal acts require the professional to hold such a title. To hold the power to regulate access to and exercise of the profession may have a negative impact on competition in the market for legal services. Using mandatory registration as a mechanism to access the profession - protection of title - is restrictive, especially when accompanied by legislation that reserves certain professional acts for holders of the professional title. Professional licensing may remedy inefficiencies resulting from asymmetric information between clients and service providers. However, protection of title together with reserved work and restrictive access to the profession makes it more difficult for businesses and citizens to acquire legal services at affordable prices with innovative and diverse solutions, as it excludes other well-qualified professionals, although not registered with the Bar, from also competing in the market. This is particularly significant in the case of legal advice, more so than in the case of judicial mandate, which may demand specific legal	We recommend that the profession of lawyer should review all its reserved activities with a view to opening the exercise of them to the other legal professions under due supervision of the work performed. We also recommend opening the market of legal advice to professionals (i. e. legal experts) and entities for which they work that want to provide legal advice on a regular basis.

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10	Law 145/2015 "Bar Association Bylaws"	Art. 70(3) - Annex	Title of specialist	A lawyer can only be designated a "specialist" if the Bar Association grants that title. There are currently 14 types of specialties recognised by the Bar Association, such as administrative law, tax law, labour law, finance law, European law, constitutional law and environmental law.	Due to the increasing complexity of the economic and social environment, the law has also witnessed a need to differentiate between professionals by creating professional specialisations. This legal provision (Art. 70), together with Regulation 9/2016 from the Bar Association regulates the process for the attribution of the title of Specialist.	training. Such restrictions will ultimately lead to a loss in social welfare. The bar reserves the right to grant the title of specialist to publicly validate the practice of a specialist lawyer, in its attempt to overcome possible market failures due to information asymmetries and externalities in the provision of legal services. When the existence of a professional title of specialist is associated with reserved activities this will lead to a monopoly on the performance of those acts. A non-specialist lawyer can nonetheless practice law in any specialised area, but cannot use the title of specialist. The Bar Association has the power to grant the qualification of "specialist" in certain areas of legal practice (14 different specialty areas) to a lawyer. Such qualification is conditional on more than 10 years of practice in the area of specialisation and uninterrupted membership in the Bar, together with an evaluation of the candidate's CV, reference letters, plus an oral exam. The jury that assesses the submitted candidacy and the oral examiners are all members of the Bar. As the market may attach a premium to the title of specialist, the decisions by the juries can have a significant impact on the number of titled specialists are providing their services on the market. A very strict examination process may unduly limit the number of different specialists operating in the market, with negative impacts on prices/fees, diversity and innovation of legal services, and ultimately lead to a loss in social welfare.	On the composition of the juries assessing a candidate's CV and presiding over his/her oral exam, we recommend to be broadened to include legal professionals other than Bar Association members. These other legal professionals may include academics teaching and conducting research in different law faculties, possibly magistrates and other stakeholders. Even taking into consideration language barriers, legal professionals from other countries could introduce added value in the composition of the juries, by bringing in alternative approaches and greater intellectual diversity.
11	Law 145/2015 "Bar Association Bylaws"	Art. 81 (2) - Annex	Quality standards	The lawyer exercises the defence of the rights and interests that are entrusted to him always with full technical autonomy and in an exempt, independent and responsible manner. The exercise of the profession of lawyer is incompatible with other functions that could harm the rights, independence and dignity of the profession. Moreover, every employment contract a lawyer is party to, should respect those ethical principles.	To preserve a lawyer's full technical autonomy and independence, for the protection of the clients served.	The preservation of the so-called "dignity" of a lawyer, as laid down in para. 2, involves an ill-defined and open-ended term ("dignity"), and may allow for an abusive interpretation by the Bar. The inclusion of such a term in this provision does not even have a clear public objective. Moreover, the enforcement by the Bar of the incompatibility regime may also allow for over-zealousness and abuse given the Bar's disciplinary powers. If the end result is to reduce in a non-negligible way the number of lawyers able to compete in the market for legal services, there will be a negative impact on the number of lawyers able to perform legal acts, and consequently on charged prices/fees, on diversity and innovation of the services being offered on the market.	The term "dignity" should be either well-defined or dropped altogether. In defining this term, Jurisprudence can play an essential role. We call for this provision to be rewritten to eliminate its dubious content. One way to specify what the term "dignity" refers to will be to follow the example of Art. 188, para. 3 of the bylaws, which define what is meant by "moral suitability". We also question why the term "dignity", even if well defined, should be part of this provision.

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12	Law 145/2015 "Bar Association Bylaws"	Art. 85(1)(3) - Annex	Registration and licensing	It is forbidden to be a member of both the Bar Association and the Professional Association of Solicitors (and Bailiffs), except during the first stage of internship (referred in Art. 195 para. 3). However, lawyers registered with the Bar Association can register with the College of Bailiffs provided they do not practice the judicial mandate.	This legal provision does not set any policy objective justifying such incompatibilities. We may infer that to be a registered lawyer carrying out a judicial mandate and simultaneously registered as a bailiff could potentially raise questions regarding professional independence.	This provision restricts the scope of legal acts that a lawyer, a solicitor or a bailiff can practice. If such a restriction leads to a reduction in the number of legal service providers competing in the market, this will have a negative impact on prices/fees charged for the different legal services, and on the diversity and innovation of such services. Banning simultaneous registration with the Bar and with the Professional Association of Solicitors (and Bailiffs) is anti-competitive, as it divides up the market into exclusive areas for the supply of services.	We recommend that the legislator conducts a technical study to assess the proportionality of incompatibilities and impediments to pursue the exercise of a self-regulated profession, taking into consideration the policy objective. In case they are considered not to be proportional, they should be abolished.
13	Law 145/2015 "Bar Association Bylaws"	Art. 88(1)(2) - Annex	Quality standards	A lawyer must display public and professional behaviour appropriate to the dignity and responsibilities of the function, complying punctually and scrupulously with the duties set forth in these bylaws and all those that the law, customs and professional traditions impose on them. Honesty, probity, rectitude, loyalty, courtesy and sincerity are professional obligations.	We assume these requirements attempt to protect clients. Professional ethical rules in general can be understood as a set of behavioural norms that attempt to mitigate moral hazard problems in the delivery of professional services, stemming from information asymmetries between clients and service providers and possible externalities.	We do not question the need for lawyers and other professionals to conduct themselves according to widely accepted ethical principles. However, we question the disciplinary powers a professional association, such as the Bar, may have to punish deviations from such ethical principles, unless they imply civil or criminal responsibility, in which case it should be up to the courts to pass judgement and sanction such types of behaviour. In fact, these requirements are very open-ended and may potentially be misused by the Bar Association when exercising its disciplinary powers, including in what concerns a lawyer's behaviour within his private sphere (see Decision from the Bar on 11 Nov. 1962, in Revista da Ordem dos Advogados 23, 182). Such misuse may end up limiting the number of suppliers competing in the market for such services, even if only temporarily, with negative impacts on prices/fees, diversity and innovation of legal services, with an ultimate loss of social welfare.	We recommend that the regulatory function should be separated from the representative function for self-regulated professional associations, either through the creation of an overarching supervisory body by sector or trade, or through the creation of a supervisory body inside the current professional orders with the necessary "Chinese walls". The supervisory body takes on the main regulation of the profession such as access to the profession and similar functions. The board of the regulatory body will include not only representative of the profession but also lay people, including high-profile experienced individuals from other regulators, representatives of consumer organisations and academia.
14	Law 145/2015 "Bar Association Bylaws"	Art. 90(2)(h) - Annex	Advertising	Sets the duties of a lawyer before the community. Among these is the duty that lawyers should not solicit clients, either by themselves or by someone else on their behalf.	It is our understanding that this prohibition aims to ensure the principle of free choice of a lawyer by clients, to guarantee they will maintain a relation based on trust. It aims to prevent clients from being pressured or induced to choose a particular lawyer. Moreover, some professionals claim that soliciting clients may lead to an "excess demand for legal services" beyond what may be deemed reasonable (overlitigation), with negative externalities to the legal system.	This provision is anti-competitive. It prevents competition between lawyers in their search for clients, and raises clients' search costs for lawyers. It may particularly hurt young lawyers not yet well known in the market, by restricting their competitiveness. Following OECD (2007), there are no well-founded arguments against permitting advertising that is truthful. These effects will have negative impacts on charged prices/fees, and on the diversity and innovation of services offered in the market.	Any prohibition or restriction for legal professions beyond the prohibition on misleading and unlawful comparative advertising (already covered in other legal texts) should be removed.

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15	Law 145/2015 "Bar Association Bylaws"	Art. 94(4)(a)(b)(e) - Annex	Advertising	Lists the types of advertisement by lawyers about their services which are considered by the Bar as illicit. The following types are considered illicit: to publicly advertise persuasive, ideological, self-aggrandizement and comparative contents; to mention the quality level of a lawyer's office/practice; to advertise erroneous or misleading information; to promise or induce a belief over legal outcomes; to engage in unsolicited direct publicity.	It is our understanding that these types of advertising are prohibited to ensure that a legal service is not regarded as any other commercial service devoid of a public good nature, to protect potential clients from erroneous information, especially when that service has the characteristics of a "credence good", and to prevent overlitigation.	It limits the freedom of lawyers to advertise their own activity, which might be especially harmful for lawyers not yet well established in the market. Advertising one's services to gather clients is crucial to promoting competition and to establishing a level playing field among professionals in the market. Moreover, this type of restriction over a lawyer's advertisement may be particularly harmful in cases where innovative and online outlets are used, as legality or illegality may be harder to establish. It is true that, in general, the impact of advertising on retail prices is complex. Nevertheless, for many industries, there is substantial evidence that retail advertising leads to lower retail prices. Moreover, following OECD (2007), there are no well-founded arguments against permitting advertising that is truthful.	Any prohibition or restriction for legal professions beyond the prohibition on misleading and unlawful comparative advertising (already covered in other legal texts) should be removed.
16	Law 145/2015 "Bar Association Bylaws"	Art. 95 - Annex	Quality standards	In the exercise of the profession, a lawyer must proceed with civility, especially when dealing with colleagues, magistrates, arbitrators, experts, witnesses and other interveners in the proceedings, and also with bailiffs, notary officials, conservatorships and other departments, public or private entities.	It is our understanding that this requirement is meant to ensure a proper administration of the law by lawyers and other legal professionals. However, this does not exclude the use of forceful expressions when this may be helpful for the client in the course of a legal process (see also Art. 110(1) of bylaws and Art. 150(2) of the Civil Code).	This sets a general quality standard that should be internalised by any professional, lawyer or not. As it is, it risks being enforced in an arbitrary way by the Bar endowed with disciplinary powers, which could lead to disciplinary suspension or even disbarment of lawyers, removing them from the market and hampering competition between lawyers.	We recommend that non defined notions assisting the setting of standards of conduct, such as civility, be contained and circumscribed, relying on the existing jurisprudence (from the professional association itself or from the courts themselves) whenever possible. Otherwise, consider removing this provision altogether.
17	Law 145/2015 "Bar Association Bylaws"	Art. 105(1)(3) - Annex	Professional fees	A lawyer's fees must correspond to an adequate economic compensation for the services actually rendered, which must be paid in currency and may take the form of a fixed retribution, i. e. , regardless of the final outcome. In the absence of a prior written agreement, the lawyer shall submit to the client the respective fees account with a breakdown of the services rendered. In defining their fees, the lawyer must take into account the	It is our understanding that this provision is meant to protect both client and lawyer from arbitrariness in the prices/fees charged . The items listed in para. 3 are meant to establish the criteria for defining a price/fee which should correspond to the services effectively provided, as established in para. 1. This para 1. , does not exclude the provision of a legal service (within the framework of a mandate contract) free-of-charge per se (see Art. 1158 of the Civil Code).	Although the identification of objective criteria used to set fees (by Lawyers) may be advantageous when the Professional Associations is required (by clients) to revise or arbitrate on the fees charged, this list should not be exhaustive. This provision may restrict the contractual freedom between lawyer and client, when choosing the payment format for services rendered, as well as the criteria to determine the lawyer's fees. This restriction may reduce the scope for different lawyers to compete for clients, more so if the Bar Association adopts an active posture regarding how its members' services should be paid for. Hence, it may hamper competition in the market for legal services.	This legal provision should be modified to allow the use of more specific and objective criteria based on professional association previous decisions.

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				importance of the services provided, the difficulty and the urgency of the subject, the degree of intellectual creativity of his/her performance, the result obtained, the time spent, the responsibilities assumed and other professional uses. Note that this provision does not fix the fees charged by a lawyer.			
18	Law 145/2015 "Bar Association Bylaws"	Art. 107 - Annex	Professional fees	It is forbidden for lawyers to redistribute fees, albeit as a commission or another form of compensation, except with other lawyers, trainee lawyers and solicitors with whom they collaborate.	It is our understanding that this restriction aims to prevent unsolicited direct recruitment of clients by third parties on behalf of a lawyer in exchange for a payment to the former through a fee-sharing rule. If this type of recruitment were allowed it could jeopardise the lawyer's independence and allow others to coerce him/her.	This provision appears to be strongly anti-competitive. To gather clients it is crucial to promote competition and to establish a level playing field among professionals in the market. This legal provision restricts the type of client-gathering strategies a lawyer can engage in, by limiting the way he or she can share his/her fees with third parties - see art 94(4)(e) of the Bar bylaws. Hence, it hampers competition in the market for legal services. It also reduces the possibility of sharing costs and revenues if a multidisciplinary legal firm form would be allowed in Portugal.	In view of the recommendation to open law firms to multidisciplinary practice and to more flexible organisational forms, we recommend the removal of this provision that prohibits fee-sharing between lawyers and other professionals, legal or non-legal, in law firms.
19	Law 145/2015 "Bar Association Bylaws"	Art. 111 - Annex	Quality standards - Professional ethics	Professional solidarity imposes a relationship of trust and co-operation between lawyers for the benefit of clients and in order to avoid unnecessary litigation, reconciling as far as possible the interests of the profession with those of Justice or those who seek it.	We can verify in the Opinion of the Bar Association, dated 7 November 2006, that this duty of solidarity aims to have lawyers settle their own disputes, avoiding the migration of such disputes to other entities.	The term "professional solidarity" is dubious and unclear. Professional solidarity if misinterpreted and misapplied could harm competition between lawyers. This harm could stem from e. g. , market sharing, or inappropriate information sharing on fees charged to clients. Harm could also stem from other contractual conditions, or from other types of behaviour that jeopardise the desirable competition between lawyers based on prices charged, on quality of service, and on their diversity and innovativeness.	It is unclear what is meant by "professional solidarity" between lawyers. Since "professional solidarity" may restrict desirable competition between lawyers as providers of legal services to clients, notwithstanding other public interest dimensions of their professional activity. This legal provision should be removed.
20	Law 145/2015 "Bar Association Bylaws"	Art. 112(2) - Annex	Quality standards - Professional ethics	A lawyer who intends to take on a matter previously entrusted to another lawyer should not initiate action without first ensuring that the latter has been paid the fees and other amounts due, and must present to the colleague, orally or in written form, the reasons for the acceptance of the mandate and to report on the efforts made to that end.	This provision seems to fall within the principles of solidarity between lawyers.	Professional ethical rules in general can be understood as a set of behavioural norms that attempt to mitigate moral hazard problems in the delivery of professional services. However, this provision goes beyond what could be reasonably expected in a competitive market. It is hard to understand why a lawyer's actions should be conditioned on his/her new client paying due fees to a former lawyer or why a lawyer who is taking up a case from a new client should have to justify his/her choice to the latter's former lawyer. These requirements hinder competition between lawyers as they make it more difficult to switch between clients.	This legal provision should be removed. It should not be up to a lawyer to enforce legislation on due payments. Moreover, a lawyer should not be required to justify to another lawyer the reasons why he chooses to take up a legal case.

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21	Law 145/2015 "Bar Association Bylaws"	Art. 188(1) (a) (e) - Annex	Moral suitability and quality standards	Professionals who : (a) do not hold moral suitability for the exercise of the profession ; (e) magistrates and workers with a bond of public employment who, through disciplinary process, have been dismissed, retired, retired or placed in inactivity for lack of moral suitability cannot be registered with the Bar Association. There is a presumption that people convicted for seriously dishonourable crimes are considered to be morally unsuitable, according to Art. 188, para. 3. of the Bylaws. Art. 177, para. 2, of the Bylaws lists crimes considered to be seriously dishonourable. The decision of moral unsuitability follows an administrative procedure which may confirm the legal presumption or not.	Since the Bar considers that lawyers must meet strict standards of professional conduct, it reclaims the power to determine whether such standards are met by a candidate for membership in the Bar.	The list of seriously dishonourable crimes is not exhaustive. However, the type of crimes listed grants the legal certainty required. In any case, the decision of moral unsuitability follows an administrative procedure which may confirm the legal presumption or not . A misuse of the power held by the Bar Association to judge on moral unsuitability, notwithstanding the list of crimes mentioned above, may lead to the removal from the market of well-qualified professionals, with an impact on the level of competition between professionals, to the detriment of clients.	For paras. 1(a) and (e), we recommend that the assessment of "moral suitability" may benefit from the input of stakeholders such as representatives from other legal professional associations, magistrates and law professors. This option may be implemented by separating representative and regulatory powers, either through the creation of an overarching supervisory body by sector or trade, or through the creation of a supervisory body inside the current professional orders with the necessary 'Chinese walls'.
22	Law 145/2015 "Bar Association Bylaws"	Art. 191(1)(2) - Annex	Professional internship	The full and autonomous practice of the law depends on undergoing a professional internship conducted under the guidance of the Bar Association. The internship evaluation system is ensured and organised by the Bar Association Internship Services.	It aims to publicly certify that the candidate has obtained professional and ethical training appropriate to the activity, and that a candidate complies with the other requirements imposed by the Bar Association Bylaws to obtain the title of Lawyer. Organisation of the internship and the evaluation procedure is conducted solely by peers from the professional association as they regard themselves as the best qualified people to carry out such tasks.	Framework Law 2/2013 establishes that professional internships in any self-regulated profession should be required only when justified by the public interest. An internship constitutes a barrier to access the profession and may reduce the number of professionals competing in the market for legal services, whenever they unduly discourage well-qualified professionals from enrolling in the internship programme, or when they unduly reduce the number of professionals who successfully complete it. Hampering competition may drive prices/fees up and may reduce the diversity and innovativeness of legal services offered in the market, generating a loss in social welfare. However, there is proportionality between the policy objective and the harm to competition on the existence of the internship per se, without taking into account its duration, subject matter, evaluation model and associated costs. When the internship evaluation procedures is conducted solely by peers, its total independence may be compromised, as there is a latent conflict between the public interest a professional association pursues and its own private or corporate interest.	We recommend that the final evaluation of the internship should be conducted by a board, independent from the professional association, which may include members of the latter, but must include also professionals of recognised merit, such as law professors, magistrates, among others.

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23	Law 145/2015 "Bar Association Bylaws"	Art. 192(3) - Annex	Professional internship	Each internship supervisor can only supervise one trainee lawyer (designated by the Bar Association) at a time. Art. 16 l) of Regulation 913-A/2015 on the Internship establishes a maximum number of two trainee lawyers per supervisor at the same time.	According to some stakeholders, the limitation on the number of trainee lawyers/trainees per supervisor is too restrictive. However, according to others, this restriction is justified to avoid faulty supervision that may even imply the employment of trainee lawyers in routine work that does not constitute proper professional training. On the other hand, trainee lawyers who are not able to find a supervisor on their own can ask the Bar to appoint one. However the Bar can only appoint one trainee lawyer per supervisor to prevent overloading the latter.	This provision may constitute a barrier to accessing the internship, as it limits the number of trainee lawyers that a supervisor can host. Without a supervisor no trainee lawyer is able to join the Bar. This limit may be particularly restrictive given that many lawyers do not have a rich enough activity to offer a trainee lawyer the number of judicial interventions required to compete the second stage of his/her internship.	The decision on the number of trainees should rest with the supervisor, who is already required to be an experienced lawyer and to behave in a professionally ethical manner.
24	Law 145/2015 "Bar Association Bylaws"	Art. 194 - Annex	Academic qualifications	Only candidates that hold a university degree in law (a), or holders of a foreign higher academic degree in law that has been conferred as equivalence to the degree referred to in the previous paragraph or that has been recognised with the level of this one (b) can be required to register with the Bar Association.	It is our understanding that the Bar considers that only a university degree in law will provide the future lawyer with the required knowledge to practice the profession.	According to the bylaws of the Bar Association, trainee lawyers are required to hold a university degree in law. With membership in the Bar comes a whole set of reserved professional acts. These requirements may significantly reduce the number of professionals who could actively supply legal services in the market. In turn, this may have a negative impact on the prices charged for different types of legal services and on their diversity, and could lead to less innovation in the market. Barristers in the UK are not required to hold a law degree. There are two paths to becoming a barrister in the UK. One way is for a candidate to obtain a Qualifying Law Degree. This is a standard degree in law awarded by a university in the UK, or a degree awarded by a university or establishment of equivalent level outside the UK, accepted by the Bar Standards Board. An alternative path is designed for candidates having graduated in a subject other than law. These candidates may undertake a one-year law conversion course and obtain a Graduate Diploma in Law (GDL), formerly known as the CPE (Common Professional Examination). In Germany no university law degree is necessary to enter the profession of "lawyer". However, candidates must pass a 1st State Exam (after completion of university studies), followed by a two-year induction period common for all legal professions, to qualify as lawyers. In the USA, any university graduate can apply to any law school. Law schools in the USA are institutions where students obtain a professional education in law after first obtaining an undergraduate degree. Most US law schools require a satisfactory undergraduate grade point average (GPA), and a satisfactory score on the Law School Admission Test (LSAT) as prerequisites for admission. Although most US law schools only offer the traditional three-year programme, several US law schools offer an Accelerated JD (Juris Doctor) two-year programme. These other regimes	We recommend that access to this profession be open to university degrees other than law's practice degree. The professional associations should work with the legislator to set a transparent, proportional and non-discriminatory process for identification of alternative routes to obtain the strictly necessary or adequate qualifications for the exercise of legal profession. In this case, candidates may be required to hold a postgraduate degree in law or to take a conversion course, and should undergo the same training as other legal trainees, including passing the Bar Exam. This will open access to more individuals with different backgrounds, allowing for more diversity in the offer of services, and more innovation.

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						establish alternative access routes to the legal profession, benefiting the profession by allowing access to candidates with a greater diversity of academic backgrounds. Thus, competition in the provision of legal services will be stronger and legal services offered in the market will be more diverse and innovative and better able to meet the demands for a more multidisciplinary approach to increasingly complex problems.	
25	Law 145/2015 "Bar Association Bylaws"	Art. 195(2)(3)(4) - Annex	Professional internship	The internship lasts between 16 and 18 months and includes a six-month long first stage followed by a second stage lasting no more than 12 months, and includes the final exam evaluated by qualified lawyers. (see Deliberation 1096-A/2017). This first stage is intended to ensure training on technical aspects of the profession and on professional ethics essential to the exercise of the law, ensuring that the trainee lawyer, upon transition to the second stage, is able to carry out professional acts. The second stage of the internship aims at a broad and complementary training of trainee lawyers including their professional relationships with employers, judicial interventions, contacts with judicial life and other services related to the legal profession. It also aims to deepen technical knowledge and trainee development of an ethical conscience through the frequency of thematic training and participation in access to the law regime.	The 16 and 18 months' internship aims to provide the future lawyer with a solid knowledge of certain theoretical areas, practical procedures, and professional contact with other legal entities such as courts. It also aims to transmit to trainee lawyers the required professional ethical standards.	The actual duration of the internship to become a lawyer results from a recent Deliberation of the lawyers' professional association dated 11 December 2017. It already includes the final exam which guarantees that the internship will not exceed 18 months, in line with the maximum duration set under the Framework Law, Art. 8(2) of Law 2/2013. However, stakeholders reported that internships before the deliberation adopted in December 2017, often lasted longer than the statutory duration, in some cases up to two years. The additional time increases the opportunity costs for trainee lawyers and may discourage them from either finishing or even enter the internship process, which may have a negative impact on the number of lawyers actively competing in the market for legal services. Moreover, the first stage of the internship includes mandatory attendance of courses covering theoretical subjects that are already part of any university law degree curriculum, such as civil procedural practice and criminal procedural practice - see Art. 19(2) of Deliberation 1096-A/2017. The inclusion of such subjects increases the opportunity costs associated with the internship, and may further discourage university law graduates from enrolling in the internship programme, which in turn may have a negative impact on the number of lawyers actively competing in the market for legal services.	We recommend that the theoretical training should provide an e-learning option. This could lead to a reduction in internship fees, as well as reducing the opportunity costs of having to attend those training courses in person. We also recommend that subjects that are part of any required university curriculum (such as a law degree, a suggested conversion or a postgraduate course) should not be included in the theoretical training offered during the first six months of the internship. This would have a beneficial impact on the duration of the whole internship in cases such as that of lawyers.

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26	Law 145/2015 "Bar Association Bylaws"	Art. 195(9) - Annex	Professional internship	The General Council of the Bar Association has the competence to decide the organisation and model of the internship, the evaluation system and the organisation of the internship final exam.	The Bar, through its general council, regards itself as the most competent entity to carry out such organisational and evaluation tasks.	This provision gives the Bar Association the exclusive right to organise and regulate the internship programme. Moreover, the evaluation of interns is carried out exclusively by peers from the Bar Association. As the Bar Association pursues both public and private interests, and there is a latent conflict between both types of interests, this exclusivity may open the possibility for the Bar to control access to the profession for reasons other than the public interest. In turn, this control may reduce the number of lawyers competing in the market for legal services which may negatively impact innovation and diversity of such legal services, as well as the prices being charged, to the detriment of consumers.	We recommend that the final evaluation of the internship should be conducted by a board, independent from the professional association, which may include members of the latter, but must include also professionals of recognised merit, such as law professors, magistrates, among others.
27	Law 145/2015 "Bar Association Bylaws"	Art. 204 (2) - Annex	Registration and licensing	Lawyers from EU Member States are permitted to exercise the profession in Portugal as "lawyers from the EU" and must use their home-country professional title in the original language. The representation of clients in court can be performed by those lawyers, using their original professional title, but with the orientation of a Portuguese lawyer, registered with the Bar Association. If alternatively they wish to act as lawyers using the Portuguese title ("advogado"), they need to register within the Portuguese Bar Association.	It is our understanding that this provision might aim to address the lack of competence in the Portuguese language in the case of foreign lawyers, together with a lack of knowledge of national legislation, jurisprudence and legal procedures. The recognition of lawyers from EU Member States is dealt with in Art. 203. They are allowed to exercise the profession in Portugal, as "lawyers from the EU".	While the requirement that a lawyer from another Member State must be accompanied by a Portuguese lawyer ("advogado") to represent a client in a Portuguese court seems to be within the scope of Art. 5 (second paragraph) of the Directive 77/249/CEE, this directive does not impose such requirement, leaving the final decision to the Member State. The provision imposes an extra burden on lawyers from the EU to exercise their activity in Portugal and might dissuade or prevent non-Portuguese lawyers from acting as such in court.	We recommend reassessing this provision to allow foreign lawyers, the option to present evidence of their knowledge of the Portuguese language, national legislation and court procedures as an alternative mechanism to the obligation of being supervised by a Portuguese lawyer (or became a registered "advogado").
28	Law 145/2015 "Bar Association Bylaws"	Art. 213(1)(2) - Annex	Partnership / Ownership of professional firms	Partnership in law firms is restricted to lawyers, law firms previously constituted and registered with the Bar Association and associative organisations of professionals treated as lawyers and established in another EU Member State, whose capital and voting rights fall predominantly with the professionals concerned (except if the association does not have share capital).	Paras. 1 and 2 are to be read together. It is our understanding that such partnership restrictions follow from concerns with guarding professional secrecy/privilege, as opening partnerships to people outside the profession could threaten lawyer-client privilege, and with preventing conflicts of interest between different partners.	To open up a professional firm to external ownership means to open the firm up to more investment, thus allowing access to a wider pool of capital. External ownership, partial or total, means capital ownership by non-professionals, ownership of voting rights, or both. This opening will enable professional firms to satisfy a greater pool of consumers and reap the benefits of a larger scale of operations. For younger professionals, not yet well established in their profession, it would also mean more opportunities to set up their own professional firm and compete in the market. This will generate a greater ability by professional firms to compete in the single market and internationally. It would also improve risk management among the owners of a professional firm, hence, lowering operational costs and possibly lowering prices charged to consumers for the different professional services being delivered in the market. These effects would apply to all professional firms across all 13 professions. But their impact would be	Ownership/partnership of law firms should be opened to other professionals and non-professionals. We also recommend that other professionals and non-professionals be allowed to hold a majority of a professional firm's social capital, together with a majority of voting rights.

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29	Law 145/2015 "Bar Association Bylaws"	Art. 213(6)-Annex	Management of professional firms	The Bar association bylaws require that all members of a law firm's management are lawyers.	This restriction is deemed necessary to preserve lawyers' autonomy and independence and to guarantee the pursuit of the main corporate object of a law firm, which is not reduced to the single pursuit of commercial interests.	felt more strongly in the legal professions (lawyer s, notaries, and solicitors and bailiffs), as the "professional partnership model" is the only professional organisational form allowed. Framework Law 2/2013 only requires that one of the managers or administrators of a professional firm be a member of the professional association (or, in case registration in the professional association is not mandatory, fulfilment of all membership requirements). Conflicts between owners (the principals) and managers (the agents) has been the subject of extensive literature, and various payment schemes have been adopted to align managers' interests as close as possible to those of the owners. A professional management, which ultimately answers to the owners of the professional firm, may be a better option as it will benefit from the better knowledge managers have of the market, the types of services demanded by clients, the best ways to reach them, and the best way to introduce innovations into the delivery of legal services. Foregoing professional management will lead to less diversity and innovation of services, to a less successful match between services that are supplied and demanded, and possibly to higher prices.	We recommend that the separation between ownership and management should be allowed in all professional firms and that their management may include non-professionals.
30	Law 145/2015 "Bar Association Bylaws"	Art. 213(7) - Annexe	Multidisciplinary practice in professional firms	Law firms are not allowed to engage directly or indirectly in any type of association or integration with other professions, activities or entities whose corporate purpose is not the exclusive exercise of advocacy.	It is our understanding that such association restrictions follow from concerns with guarding professional secrecy, as opening partnerships to people outside the profession could threaten lawyer-client privilege, and with preventing conflicts of interest between different associates.	By restricting certain legal acts to lawyers (and solicitors), this provision limits the number of professionals who can offer legal services in the market to the detriment of businesses and consumers. This restriction may lead to higher prices for those services and less diversity and innovation. This provision also limits the type of firms allowed to provide legal services, and should be read together with Art. 213 of the laws. For example, it prohibits multidisciplinary law firms. This prohibition has already been questioned by some stakeholders and by the Portuguese Association of Law Firms (ASAP) – see conclusions from ASAP 8th Annual Meeting in 2015. To restrict multidisciplinary activity in a professional firm is to restrict the association of different professionals, belonging to different professional associations (some may not even belong to a public professional association), who wish to exercise their professional activities within the same firm and in the pursuit of the firm's corporate or social objective(s). In a professional firm, this restriction takes the form of a restriction on partnership – restricting, or banning altogether, non-professional partners. This restriction is particularly acute in the case of the legal professions. To rule out multidisciplinary activity in the same professional firm, between potentially complementary service providers, harms competition and can be detrimental to consumer welfare. In fact, this restriction does not allow for the full exploration of economies of scope that come with the offer of different services by a same "service delivery unit" that shares infrastructure and human capital. It foregoes gains from specialisation and service quality that would result from the interaction between a wider range of professionals. This also means	We recommend that the prohibition of multidisciplinary practice in professional firms should be removed, particularly in the case of the legal professions, where the "professional partnership model" is the only model allowed for the practice of the profession in a collective way. The creation of "Alternative Business Structures" can lead to more innovation, a broader range of services and easier access to legal services and legal advice for businesses and consumers.

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						foregoing the exploitation of economies of scale and the advantages of branding. It also does not allow for the mitigation of the double marginalisation (or double mark-up) problem that comes with multidisciplinary activities which can complement each other, by segmenting the services provided. This means foregoing lower average costs in a multi-product firm, thereby leading to higher fees being charged to clients, while preventing clients from further benefits that could be gained from a more convenient "one-stop shop" for a wider range of professional services. Ruling out multidisciplinary within a profession can reduce the scope for better risk management between different professional activities within the same professional firm, as they may be subject to non-identical demand volatility or uncertainty, i. e. , reduction in the scope for internal risk- spreading to be understood as the ability to transfer resources in response to fluctuations in demand. To offer a wider range of professional services means to be better prepared to face market uncertainties. Furthermore, opening up a professional firm to multidisciplinary activities is likely to ease the introduction of innovative products but also to spur innovation in the delivery of already existing products or ranges of products.	
31	Regulation 40/2005 "Report on fees to the Bar Association"	Art. 1, Annex 1	Professional fees	Creates a control regime over fees charged to clients by lawyers. The competence for the review of such fees lies with the Bar Association, in accordance with Art. 43(3)(e) of the former bylaws. This competence covers professional services provided by both national and foreign lawyers registered with the Bar Association and also those services legitimately provided by foreign lawyers registered with the Portuguese Bar under their professional title of origin. A report on fees (laudos) is defined in the Art. 2. It constitutes a technical opinion and judgment on the qualification and valuation of services provided by a lawyer, taking into account the rules of the Bar Association bylaws, other applicable legislation and these regulations. Fees (honorários) are defined in Art.	The policy objective is to offer redress for the charging of possibly inadequate prices by lawyers. The Bar Association is considered to be best suited to analyse the complaint.	We can question why the aggrieved party should not be able to dispute the fees charged directly in court or appeal to an independent third party, even admitting that the court might not be as knowledgeable as the Bar about the normally charged fees and their rationale. As the control mechanism stands, depending on the possible extent of an eventual price comparison between providers resulting from this fee control mechanism, this provision may be too permissive. In fact, this provision could facilitate price/fees comparisons between lawyers and law firms through some form of information dissemination centred in the Bar. Being this the case, it may result in an unjustified restriction of competition.	We recommend that the redress procedure should involve an independent third party, such as an Ombudsman for the legal professions, be set in place, thus avoiding the pitfalls described.

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32	Regulation 40/2005 "Report on fees to the Bar Association"	Art. 15(4)(5) of Annex 1	Professional fees	Under the control regime implemented by the Bar Association over fees charged by lawyers to their clients, if the rapporteur concludes that the fees considered reasonable would be inferior to the fees charged but by less than 10%, then he proposes no revision of fees. Otherwise, at the end of the procedure, the rapporteur must propose the amount of fees to be charged which, had they been applied, would have resulted in a favourable report.	We understand that this provision attempts to protect clients from excessive prices/fees. It introduces a rule that attempts to distinguish reasonable fees from excessive fees, but allowing at the same time for some leeway (the 10% rule) when considering whether the effectively charged fees are truly excessive. There may be a logical problem when we consider paras. 4 and 5 together. The point is that, in the case of a complaint by a client seeking redress from what they consider excessive fees, there might not be a unique fee amount which, if it had been charged, would have had a favourable report.	First, it is not clear whether the aggrieved party can appeal to a civil/administrative court about a decision by the rapporteur they do not agree with. Second, we could even question why the aggrieved party should not be able to dispute the fees charged directly in court or appeal to an independent third party, even admitting that the court might not be as knowledgeable as the Bar about the normally charged fees and their rationale. An Ombudsman, as an independent party, could be particularly helpful to assess and solve this type of conflict over charged fees, avoiding long disputes. As the control regime now stands, and since the rapporteur is also a member of the Bar, one cannot exclude at the outset the fact that some information on fees might circulate among members, even if the presence of some type of "Chinese wall", could then lead to practices restrictive to competition, possibly due to some form of collusion between Bar members as providers of legal services.	We recommend that the redress procedure should involve an independent third party, such as an Ombudsman for the legal professions, to be set in place, thus avoiding the pitfalls described.
33	Regulation 40/2005 "Report on fees to the Bar Association"	Annex II	Administrative costs	This annex II defines the fees to be paid to the Bar Association by whoever asks for a report on the fees charged by a lawyer or a law society, as established in Art. 23.	There is no recital providing information about the policy objective.	The Bar Association has monopoly power over these legal opinions called laudos and over the (administrative) fees charged by the Bar for requesting a report on the lawyer's fees/prices. The administrative fees should be clear, transparent, and proportional and should reflect the true costs of providing those services, including the drafting of a report on those legal fees/prices charged by the lawyer. It is not clear that these principles are adhered to in this provision (Annex II). Several stakeholders were asked about the rationale of these (administrative) fees, but no explanation was given for the values of the fees and the rationale for their values. Now, if these administrative fees are generally considered too high, clients or other entities may be reluctant to ask the Bar for redress. In which case, and given the high information asymmetry between lawyers and their clients on what are "reasonable fees", price competition between lawyers might not be enough to guarantee that competitive prices are charged for the different legal services offered in the market.	The value of these fees, as any other administrative fees, should be defined and justified in a clear and transparent way. They should also be proportional and reflect the true costs of providing those services, including the drafting of a report on those legal fees/prices charged by the lawyer.

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34	Regulation 913-A/2015 "Regulation of internship by the Bar", as amended by Deliberation 1096-A/2017 from the Bar Association	Art. 2-A(5)(6)	Professional internship	The first stage of the training is intended to initiate the trainee lawyer to technical aspects of the profession and to the theoretical subjects and professional ethical standards considered essential to the exercise of the profession, as he joins the second stage of the internship. The second stage of the internship aims to offer broad and complementary training to trainee lawyers including professional relationships with the intern's supervisor and the law firm where the internship takes place, contacts with judicial life and other services related to professional legal activity. It also aims to deepen technical knowledge and development of an ethical conscience through the frequency of thematic training and participation in access to the law regime.	The internship aims to provide the future lawyer with a solid knowledge of certain theoretical areas, practical procedures, and professional contact with other legal entities such as courts. It also aims to provide the trainee with an awareness of professional ethical standards.	The (two-stage) internship represents a barrier to access the profession as it represents an opportunity cost to become a lawyer. This may discourage some university graduates from either completing or even entering the internship process and is likely to have an impact on the number of lawyers actively competing in the market for legal services. The existence of a two-stage internship is a barrier to competition, but proportional when taking into consideration the policy objective and the harm to competition, and without taking into consideration its duration, subject matter, evaluation model and associated costs, where it may be disproportionate and unnecessary to fulfil the policy objective.	We recommend that the theoretical training (1st part of the stage) should provide an e-learning option. This could lead to a reduction in internship fees, as well as reducing the opportunity costs of having to attend those training courses in person. We also recommend that subjects that are part of any required university curriculum (such as a law degree, a suggested conversion or a postgraduate course) should not be included in the theoretical training offered during the first six months of the internship. This would have a beneficial impact on the duration of the whole internship in cases such as that of lawyers.
35	Regulation 913-A/2015 "Regulation of internship by the Bar", as amended by Deliberation 1096-A/2017 from the Bar Association	Art. 3 (2) (3)	Professional internship	(2) The National Committee for Internships - CNEF - is made up of fifteen members, eight of whom are nominated by the General Council, one of whom presides with a casting vote, and the other seven nominated by each of the Regional Councils. (3) All CNEF Lawyers members must have their active membership in the Bar Association and may not have been sanctioned with a disciplinary penalty higher than a fine	The National Committee for Internships - CNEF - of the Bar Association must organise internship rules in order to guarantee a rigorous professional training and ensure the implementation of a training and qualification system that is fair and proportionate to the demanding requirements of access to the profession (Art. 4). With that in view, the Professional Association nominates the Lawyers that will have those functions.	Given the aims and attributions of the National Committee on Internships (CNEF), this entity within the Bar Association also has the power to determine the scope, nature and timing of the whole evaluation procedure during the internship programme. Its attributions provide the CNEF with a significant role in controlling access to the profession through the control of the whole internship programme, including evaluation procedures. Such control could have a negative impact on the number of lawyers competing in the market for legal services.	We recommend that the evaluation procedures during the whole internship programme should be conducted by a board, independent of the professional association, which may include members of the latter, but must include also professionals of recognised merit, such as law professors and magistrates, among others.

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36	Regulation 913-A/2015 "Regulation of internship by the Bar", as amended by Deliberation 1096-A/2017 from the Bar Association	Art. 19(1)	Professional internship	During the first stage of the internship, the trainee lawyer works in his supervisor's office and attends the required training sessions. These training sessions are provided by the Bar Association Regional Internship Centres or determined by the CNEF (National Committee for Internships).	It is our understanding that the Bar, through CNEF, regards itself as the most competent entity to organise and co-ordinate the first stage's training sessions.	The six-month-long first stage of the internship, with attendance at the different training sessions by the intern, constitutes an opportunity cost and may discourage some university graduates from either completing or even entering the internship process. This is likely to have an impact on the eventual number of lawyers actively competing in the market for legal services. The existence of a two-stage internship is a barrier to competition, but proportional when taking into consideration the policy objective and the harm to competition, and without taking into consideration its duration, subject matter, evaluation model and associated costs, where it may be disproportionate and unnecessary to fulfil the policy objective. Making available e-learning options as alternatives to such attendance may reduce such opportunity costs, including a possible shortening of the six-month-long first stage.	We recommend that the theoretical training (1st part of the stage) should provide an e-learning option. This could lead to a reduction in internship fees, as well as reducing the opportunity costs of having to attend those training courses in person. We also recommend that subjects that are part of any required university curriculum (such as a law degree, a suggested conversion or a postgraduate course) should not be included in the theoretical training offered during the first 6 months of the internship. This would have a beneficial impact on the duration of the whole internship in cases such as that of lawyers.
37	Regulation 913-A/2015 "Regulation of internship by the Bar", as amended by Deliberation 1096-A/2017 from the Bar Association	Art. 19(2)	Professional internship	The Regional Internship Centres offer compulsory training sessions, namely in the areas of professional ethics, civil procedural practice and criminal procedural practice, according to programmes to be defined by the CNEF and approved by the General Council of the Bar Association.	It is our understanding that the Bar, through the Internship Centres, regards itself as best qualified to organise and offer such compulsory training courses and define their programmes through the CNEF.	This provision requires interns to attend course subjects that are part of any undergraduate law degree curriculum, such as civil procedural practice and criminal procedural practice, should not be repeated during the internship first stage theoretical training. This burden imposes an opportunity cost on trainees and may dissuade law university graduates from ever entering the internship programme and eventually becoming lawyers able to compete in the market for legal services. Moreover, mandatory attendance of such courses creates additional opportunity costs, which could be mitigated by offering e-learning options as alternatives to mandatory attendance.	We recommend that the theoretical training should provide an e-learning option. This could lead to a reduction in internship fees, as well as reducing the opportunity costs of having to attend those training courses in person. We also recommend that subjects that are part of any required university curriculum (such as a law degree, a suggested conversion or a postgraduate course) should not be included in the theoretical training offered during the first 6 months of the internship. This would have a beneficial impact on the duration of the whole internship in cases such as that of lawyers.
38	Regulation 913-A/2015 "Regulation of internship by the Bar", as amended by Deliberation 1096-A/2017 from the Bar Association	Art. 19(3)	Professional internship	Trainee lawyers must attend a minimum of 75% of the compulsory training sessions during the first stage, except in case of serious illness, maternity leave or similar situations. In these latter cases, the minimum can be reduced to 50%, pending approval by the Internship Centre.	It is our understanding that the Bar regards the attendance of training courses by the trainee to be an essential part of their training process.	The opportunity cost which such attendance rules impose on trainees may dissuade law university graduates from ever entering the internship programme and eventually becoming lawyers able to compete in the market for legal services. The development of e-learning options could lead to a reduction in internship fees, as well as in the opportunity costs of having to attend those training courses in person. This would imply revisiting the need to attend a minimum of 75% of the compulsory training sessions.	We recommend that the theoretical training be also available via e-learning as an alternative option. This alternative would reduce the opportunity costs of having to attend those training courses in person, and it would imply revisiting the need to attend a minimum of 75% of the compulsory training sessions.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
39	Regulation 913-A/2015 "Regulation of internship by the Bar", as amended by Deliberation 1096-A/2017 from the Bar Association	Art. 21	Professional Internship	The supervised practice and thematic training referred to in Art. 2(4) (i. e. , second stage of the internship) take place under the general and permanent direction of the supervisor and the orientation and intervention by the CNEF and the Regional Internship Centres.	It is our understanding that, notwithstanding the supervision carried out by the trainee supervisor, the Bar considers it important that CNEF and the Internship Centres offer guidance and intervene whenever necessary during the internship process, to guarantee that it fulfils the aims set by the Bar itself. It is our understanding that the Bar Association regards itself as the most competent entity to carry out such organisational steps.	This provision gives an exclusive right to the Bar Association for the organisation of internships. This organisation covers both the first and the second stage. This second stage includes an evaluation of the work carried out by the intern during this stage. As the Bar Association pursues both public and private/corporate interests, this exclusivity could provide the Association with an opportunity to eventually control access to the profession through the control of the whole internship programme. Such control could have a negative impact on the number of lawyers competing in the market for legal services.	We recommend that the evaluation procedures during the whole internship programme should be conducted by a board, independent of the professional association, which may include members of the latter, but must include also professionals of recognised merit, such as law professors and magistrates, among others.
40	Regulation 913-C/2015 "Regulation for Registration with the Bar of Lawyers and Trainee Lawyers"	Art. 2(1)(2)	Professional title	Only holders of an academic qualification as required by the Bar Association bylaws, who also meet the other registration requirements prescribed therein and the requirements laid down by this regulation, can register with the Bar Association. This registration and its maintenance are necessary to lawfully hold the title of Lawyer ("Advogado") and Trainee lawyer ("Advogado estagiário") and the enjoyment of the rights that come with these titles.	It is our understanding that the Bar considers that, apart from the other requirements, only a university law degree can provide the necessary theoretical knowledge required for a lawyer or a trainee lawyer.	Setting exclusivity requirements for the use of the professional title of Lawyer, with all that implies in terms of reserved acts, limits the number of legal service suppliers which in turn may have a negative impact on prices charged, on innovation, and on the diversity of those services. This provision may limit the number of professionals who can offer legal services in the market. This may restrict access to legal services to the detriment of businesses and consumers and may lead to higher prices for those services and less diversity and innovation. The scope of reserved legal activities practised by the legal professions in Portugal is quite wide. It may unduly restrict competition from unauthorised legal providers and non-legal providers, potentially with lower cost, in which case the option to reserve activities may not be proportional to ensure consumer protection and to secure access to justice and legal advice. Given that the legal professions are already very restrictive, with tightly controlled entry, there seems little point in carving out the market for certain services. In this case, the scope of the reserved acts must be revised. In general, reserved activities or tasks for specific categories of professionals should be abolished in cases where: (i) the protection is disproportionate to the policy objective because the tasks may already be performed by other well-qualified professionals or are not a danger to public safety; (ii) there is strong and well-regulated protection of the professional title which guarantees the quality of the professionals that are allowed to work; or (iii) the restriction is no longer required owing to legal, societal or professional developments that make the restriction obsolete by its objective. In several cases, opening up reserved activities to additional qualified professions could generate substantial consumer benefits, in the form of innovative and more diverse services at lower prices. For instance, alternative professionals with a lower level of qualifications could better serve consumers with simple needs, who could otherwise overpay when retaining professionals with qualifications suited to more complex needs.	We recommend that the profession of lawyer should review all its reserved activities with a view to opening the exercise of them to the other legal professions under due supervision of the work performed. We also recommend opening the market of legal advice to professionals (i. e. legal experts) and entities for which they work that want to provide legal advice on a regular basis.

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41	Regulation 913-C/2015 "Regulation for Registration with the Bar of Lawyers and Trainee Lawyers"	Art. 6(1)(2)	Registration and licensing	Lists the necessary documentation and the administrative requirements for the registration of a trainee lawyer in the Bar.	According to the stakeholders the documents required for the application procedure are relevant to prove compliance with the registration requirements.	One can question the need for certain documents to be handed (such as the trainee lawyer's birth certificate and at the same time ID card). This type of administrative burden is useless and costly, and accrues to a trainee lawyer's opportunity cost of registering with the Bar.	A clear effort must be taken to lighten the remaining burden of red tape, including a stronger reliance on e-documents. For instance, consider the possibility to remove the need to hand in a birth certificate.
42	Regulation 913-C/2015 "Regulation for Registration with the Bar of Lawyers and Trainee Lawyers"	Art. 8	Internship	Registration in the Bar Association as a lawyer depends on the fulfilment of internship obligations with approval in the aggregation test (final examination) in accordance with the internship regulations in force.	The professional internship aims to ensure that future lawyers have the adequate theoretical and practical training, experience and ethical posture to exercise the profession of lawyer, beyond the specialised knowledge they have acquired in any law school. The final examination purports to evaluate whether during this internship, under the direction of a supervisor and guidance from the Bar, each trainee has successfully acquired the required theoretical and practical training, the professional experience and ethical posture deemed necessary to fully exercise the profession of lawyer.	Framework Law 2/2013 establishes that professional internships in any self-regulated profession should be required only when justified by the public interest. An internship constitutes a barrier to access to the profession and may reduce the number of professionals competing in the market for legal services, whenever they unduly discourage well-qualified professionals from enrolling in the internship programme, or when they unduly reduce the number of professionals who successfully complete it. Hampering competition may drive prices/fees up and may reduce the diversity and innovativeness of legal services offered in the market, generating a loss in social welfare.	We recommend that the final evaluation of the internship should be conducted by a board, independent from the professional association, which may include members of the latter, but must include also professionals of recognised merit, such as law professors, magistrates, among others. We recommend that the fees required for internship be calculated under a transparent, non-discriminatory and cost-based criteria. These would have a beneficial impact on the duration and cost of internships.
43	Regulation 913-C/2015 "Regulation for Registration with the Bar of Lawyers and Trainee Lawyers"	Art. 9 (2) (c) (f) and Art. 12 (3) (b) €	Registration and licensing	Lists the necessary documentation and the administrative requirements for the registration of a lawyer with the Bar, as well as the formal steps to be taken for full registration.	According to the stakeholders the documents required for the application procedure are relevant to prove compliance with the registration requirements.	One can question the need for certain documents to be handed in such as the trainee lawyer's birth certificate (for national citizens), when the trainee lawyer also has to hand in a copy of their ID and show the original. This type of administrative burden is useless and costly, and accrues to a trainee lawyer's opportunity cost of registering with the Bar.	A clear effort must be taken to lighten the remaining burden of red tape, including a stronger reliance on e-documents. For instance, consider the possibility to remove the need to hand in a birth certificate.
44	Regulation 913-C/2015 "Regulation for Registration with the Bar of Lawyers and Trainee Lawyers"	Art. 18	Registration and licensing	These articles deal with the registration of lawyers of Brazilian nationality on a reciprocal basis, and list the necessary documentation and the administrative requirements for the registration.	This provision derives from the reciprocity agreement between the two countries.	One can question the need for certain documents to be handed in such as the candidate's university law degree final grade. This type of administrative burden can be useless and costly, and accrues to the opportunity cost of registering with the Bar.	A clear effort must be made to lighten the remaining burden of red tape, including a stronger reliance on e-documents. For instance, consider to remove the birth certificate on a mutual basis.
45	Regulation 913-C/2015 "Regulation for Registration with the Bar of Lawyers and Trainee Lawyers"	Art. 21	Registration and licensing	A foreign national's request to register with the Portuguese Bar as a trainee lawyer is submitted to the Bar Regional Council that corresponds to his/her internship supervisor's professional address. Such a request is accompanied by the	According to the stakeholders, these documents are necessary to fulfil the requirements established for the registration of trainee lawyers with the Bar Association. They aim to provide the Bar with information on the suitability and legal status of the applicant.	One can question the need for certain documents to be handed in such as the foreign professional's birth certificate. This type of administrative burden is useless and costly, and adds to a foreign lawyer's opportunity cost of registering with the Bar.	A clear effort must be taken to lighten the remaining burden of red tape, including a stronger reliance on e-documents. For instance, consider the possibility to remove the need to hand in a birth certificate.

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				necessary documentation as listed in this provision, including information on the supervisor, such as his/her name, address, phone and e-mail, and past professional activities, together with information on the applicant. After the Regional Council decides that the submitted documentation is complete, it sends a proposal to the General Council of the Bar Association on whether the foreign national is to become a member of the bar. The General Council will then issue its final decision. Note again that this provision is meant for foreign nationals from third countries with no reciprocity agreement with Portugal.			
46	Regulation 913-C/2015 "Regulation for Registration with the Bar of Lawyers and Trainee Lawyers"	Art. 22	Registration and licensing	This provision deals with the administrative steps a foreign national, from a country with no reciprocity agreement with Portugal, and that has completed his/her internship as a trainee lawyer with the Portuguese Bar, will have to follow to register as a lawyer with the bar. It also lists the documentation to be submitted by the candidate.	According to the stakeholders, these documents are necessary to fulfil the requirements established for the registration of a foreign lawyers with the Bar Association.	One can question the need for certain documents to be handed in such as the candidate's university law degree final grade, or residency permit in Portugal. Notice that a national does not have to include in his/her certificate the final grade in his/her law degree. This type of administrative burden is useless and costly, and accrues to the opportunity cost of registering with the Bar.	A clear effort must be taken to lighten the remaining burden of red tape, including a stronger reliance on e-documents. For instance, consider the possibility to remove the need to have a certificate with the final grade of the candidate degree.
47	Regulation 913-C/2015 "Regulation for Registration with the Bar of Lawyers and Trainee Lawyers"	Art. 29(1)	Exercise of legal acts by other EU lawyers	The representation and the judicial mandate before Portuguese courts can only be exercised by lawyers from other EU Member States who carry out their activity with their professional title of origin under the effective orientation of a lawyer ("advogado") with active membership in the Portuguese Bar Association.	We may assume that the Portuguese Bar aims to guarantee that a lawyer from another EU Member State who is representing some client in a Portuguese Court of Law on an occasional basis, can obtain advice and help from a Portuguese lawyer in what regards the relevant Portuguese legislation and the due process of law.	While the requirement that a lawyer from another Member State must be accompanied by a Portuguese lawyer ("advogado") to represent a client in a Portuguese court seems to be within the scope of Art. 5 of the Directive 77/249/CEE, this directive does not impose such requirement, leaving the final decision to the Member State. The provision imposes an extra burden on lawyers from the EU to exercise their activity in Portugal and might dissuade or prevent non-Portuguese lawyers from acting as such in court.	We recommend reassessing this provision to allow foreign lawyers, the option to present evidence of their knowledge of the Portuguese language, national legislation and court procedures as an alternative mechanism to the obligation of being supervised by a Portuguese lawyer (or became a registered "advogado").

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48	Regulation 913-C/2015 "Regulation for Registration with the Bar of Lawyers and Trainee Lawyers"	Art. 30	Registration and licensing	The establishment in Portugal of lawyers from other EU Member States as referred to in Art. 23, who wish to carry on their business with the professional title of "advogado" (Lawyer), in full equality of rights and duties with Portuguese lawyers, depends on prior registration with the Portuguese Bar on the same terms as the latter.	It is our understanding that this provision might aim to address the lack of competence in the Portuguese language in the case of foreign lawyers, together with a lack of knowledge of national legislation, jurisprudence and legal procedures. The recognition of lawyers from EU Member States is dealt with in Art. 203. They are allowed to exercise the profession in Portugal, as "lawyers from the EU".	While the requirement that a lawyer from another Member State must be accompanied by a Portuguese lawyer ("advogado") to represent a client in a Portuguese court seems to be within the scope of Art. 5 (second paragraph) of the Directive 77/249/CEE, this directive does not impose such requirement, leaving the final decision to the Member State. The provision imposes an extra burden on lawyers from the EU to exercise their activity in Portugal and might dissuade or prevent non-Portuguese lawyers from acting as such in court.	We recommend reassessing this provision to allow foreign lawyers, the option to present evidence of their knowledge of the Portuguese language, national legislation and court procedures as an alternative mechanism to the obligation of being supervised by a Portuguese lawyer (or became a registered "advogado").
49	Regulation 913-C/2015 "Regulation for Registration with the Bar of Lawyers and Trainee Lawyers"	Art. 31 and Art. 32	Registration and licensing	Lists the necessary documentation and the administrative requirements for the registration of a lawyer from another EU Member State.	According to the stakeholders, these documents are necessary to fulfil the requirements established for the registration of foreign lawyers with the Bar Association.	Arts. 30 & 31 seem to require excessive documentation from the candidate seeking to register with the Portuguese Bar Association. They represent an administrative burden that may discourage lawyers from other EU Member States from competing in the market for legal services in Portugal.	A clear effort must be taken to lighten the remaining burden of red tape, including a stronger reliance on e-documents.
50	Regulation 913-C/2015 "Regulation for Registration with the Bar of Lawyers and Trainee Lawyers"	Art. 51 and Art. 52	Self-regulatory regime	The professional association organs may cancel the lawyer registration for reasons other than the lawyer's own request, such as: when a definitive decision is made on the lack of suitability for the exercise of the profession; when a final decision is issued applying the disciplinary penalty of expulsion; in situations outlined in the National Statute Regulation and in other situations provided for by law or by the regulations in force.	The state has empowered the Bar with disciplinary powers over its members to enforce behavioural rules deemed necessary to the profession. Moreover, this empowerment avoids the migration of disciplinary disputes to courts, which would be an undesirable outcome, as it could set a judge against a lawyer in their daily interaction on behalf of the justice system.	The harm to competition arising from the regulatory model, already established by the horizontal framework Law 2/2013 and considered in the bylaws of the professional association, stems from the centralisation in a single entity of the powers to regulate and represent the profession. Because each professional association, apart from representing the profession, controls access to it and its exercise, the regulations issued may create disproportional and anti-competitive restrictions. The freedom to choose and exercise a profession is a fundamental right of the citizen. Also, the freedom of movement of workers and their free establishment to provide services are fundamental principles of the EU internal market. Restrictions to these principles, in the pursuit of the public interest, must be well justified and proportional. When a professional association acquires full responsibility to regulate access to the profession and the conduct of its members, this may have an anti-competitive impact. In fact, professional associations may adopt rules that reduce incentives or opportunities for stronger competition between operators, such as restrictions on advertising and partnerships/ownerships, management or multidisciplinary activities, or restrictions when setting the minimum qualifications to enter the profession, amongst others. As the governing bodies of public professional associations are exclusively composed of their members, there is a risk that their members' interests will not coincide with the public interest. This is one significant reason for	We recommend that the regulatory function should be separated from the representative function for self-regulated professional associations, either through the creation of an over-arching supervisory body by sector or trade, or through the creation of a supervisory body inside the current professional orders with the necessary "Chinese walls". The supervisory body takes on the main regulation of the profession such as access to the profession and similar functions. The board of the regulatory body will include not only representative of the profession but also lay people, including high-profile experienced individuals from other regulators, representatives of consumer organisations and academia.

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						including within at least some governing bodies of a professional association, lay people representing the interests of relevant social groups, such as consumer associations, other professionals, and high-profile people with experience in regulatory issues.	
51	Regulation 873/2016 "Regulation of the Office of Legal Consultation of the Municipality of Arruda dos Vinhos"	Art. 5 (1)	Geographical restrictions in the provision of legal aid and reserved acts	The municipal regulation sets a legal aid service office, to be used by local citizens who meet the necessary conditions to benefit from (free) legal aid. Only Lawyers who are registered in that county (comarca), with preference given to lawyers who live in that municipality, can be appointed by the Bar Association to provide legal advice services and represent citizens before the local "Justice of the Peace" (Julgado de Paz).	The geographical restrictions of the county where the lawyer is registered are also meant to ease the access of the lawyer to the office of legal consultation or court, and to ensure a close relationship between the lawyer and the citizens that they represent. Those citizens frequently will have to visit the lawyer office – at their own expenses - to meet them. According to stakeholders, the provision does not include solicitors in the legal aid scheme as at that time there was no legal agreement for them to practice such acts.	Preferring lawyers that reside in the municipality and appointing only lawyers who are registered in the county is restrictive. It constitutes a geographical barrier to competition, as it excludes lawyers from other municipalities or counties from providing these legal services. Even if lawyers may not compete for clients based on the prices they charge (the services provided are free of charge to local residents, even if the services are paid for by the municipalities), they may differ over the quality, diversity and innovation of the services they provide under the legal aid regime. Lawyers residing in other municipalities or registered in other counties may be interested in providing legal aid in this municipality. In addition, other legal professionals, such as solicitors, are also qualified to provide such legal aid services and, hence, should not be excluded from the provision of these services. Provided legal aid services are ensured for residents in this municipality, opening the provision of such legal aid services to a wider range of legal professionals could lead to greater consumer welfare due to more diverse and innovative services. An increased reliability on online services can mitigate the need for a face-to-face contact between the beneficiary of legal aid and the legal professional.	Amend the provisions so that the supply of such services is not restricted to legal professionals from the jurisdictional county that covers this specific municipality. Instead, the supply of such services should be opened to all legal professionals from neighbouring counties who may also be available to provide such services". Amend the provisions so that other legal professionals besides lawyers, such as solicitors, may provide these legal services within the legal aid framework, i. e. , legal advice and juridical representation.
52	Ordinance 993/91 "Regulation of the Office of Legal Consultation of the Municipality of Évora"	Art. 5(1)	Geographical restrictions in the provision of legal aid and reserved acts	The regulation sets a county legal aid service office, to be used by citizens who meet the necessary conditions to benefit from (free) legal aid. Only Lawyers who are registered in the Bar Association county council (conselho distrital), and have requested to provide such service, can be appointed by the Bar Association to provide legal advice services. This Ordinance was issued under the regime of article 13 (2) of Law 30-E/2000, nowadays replaced by Law 34/2004.	The geographical restrictions of the county where the lawyer is registered are also meant to ease the access of the lawyer to the office of legal consultation or court, and to ensure a close relationship between the lawyer and the citizens that they represent. Those citizens frequently will have to visit the lawyer office – at their own expenses - to meet them. According to stakeholders, the provision does not include solicitors in the legal aid scheme as at that time there was no legal agreement for them to practice such acts.	Appointing only lawyers who are registered in the county is restrictive. It constitutes a geographical barrier to competition, as it excludes lawyers from other municipalities or counties from providing these legal services. Even if lawyers may not compete for clients based on the prices they charge (the services provided are free of charge to local residents, even if the services are paid for by the municipalities), they may differ over the quality, diversity and innovation of the services they provide under the legal aid regime. Lawyers residing in other municipalities or registered in other counties may be interested in providing legal aid in this municipality. In addition, other legal professionals, such as solicitors, are also qualified to provide such legal aid services and, hence, should not be excluded from the provision of these services. Provided legal aid services are ensured for residents in this municipality, opening the provision of such legal aid services to a wider range of legal professionals could lead to greater consumer welfare due to more diverse and innovative services. An increased reliability on online services can mitigate the need for a face-to-face contact between the beneficiary of legal aid and the legal professional.	Amend the provisions so that the supply of such services is not restricted to legal professionals from the jurisdictional county that covers this specific municipality. Instead, the supply of such services should be opened to all legal professionals from neighbouring counties who may also be available to provide such services. In addition to that, amend the provisions so that other legal professionals besides lawyers, such as solicitors, may provide these legal services within the legal aid framework, i. e. , legal advice and juridical representation.

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53	Ordinance 1000/91 "Regulation of the Office of Legal Consultation of the Municipality of Lamego"	Art. 5(1)	Geographical restrictions in the provision of legal aid and reserved acts	The regulation sets a county legal aid service office, to be used by citizens who meet the necessary conditions to benefit from (free) legal aid. Only Lawyers who are registered in the Bar Association regional delegation, and have requested to provide such service, can be appointed by the Bar Association to provide legal advice services. This Ordinance was issued under the regime of article 13 (2) of Law 30-E/2000, nowadays replaced by Law 34/2004.	The geographical restrictions of the county where the lawyer is registered are also meant to ease the access of the lawyer to the office of legal consultation or court, and to ensure a close relationship between the lawyer and the citizens that they represent. Those citizens frequently will have to visit the lawyer office – at their own expenses - to meet them. According to stakeholders, the provision does not include solicitors in the legal aid scheme as at that time there was no legal agreement for them to practice such acts.	Preferring lawyers that reside in the municipality and appointing only lawyers who are registered in the county is restrictive. It constitutes a geographical barrier to competition, as it excludes lawyers from other municipalities or counties from providing these legal services. Even if lawyers may not compete for clients based on the prices they charge (the services provided are free of charge to local residents, even if the services are paid for by the municipalities), they may differ over the quality, diversity and innovation of the services they provide under the legal aid regime. Lawyers residing in other municipalities or registered in other counties may be interested in providing legal aid in this municipality. In addition, other legal professionals, such as solicitors, are also qualified to provide such legal aid services and, hence, should not be excluded from the provision of these services. Provided legal aid services are ensured for residents in this municipality, opening the provision of such legal aid services to a wider range of legal professionals could lead to greater consumer welfare due to more diverse and innovative services. An increased reliability on online services can mitigate the need for a face-to-face contact between the beneficiary of legal aid and the legal professional.	Amend the provisions so that the supply of such services is not restricted to legal professionals from the jurisdictional county that covers this specific municipality. Instead, the supply of such services should be opened to all legal professionals from neighbouring counties who may also be available to provide such services. In addition to that, amend the provisions so that other legal professionals besides lawyers, such as solicitors, may provide these legal services within the legal aid framework, i. e. , legal advice and juridical representation.
54	Ordinance 1207/92 "Regulation of the Office of Legal Consultation of the Municipality of Covilhã"	Art. 5(1)	Geographical restrictions in the provision of legal aid and reserved acts	The regulation sets a county legal aid service office, to be used by citizens who meet the necessary conditions to benefit from (free) legal aid. Only Lawyers who are registered in the Bar Association regional delegation, and have requested to provide such service, can be appointed by the Bar Association to provide legal advice services. This Ordinance was issued under the regime of article 13 (2) of Law 30-E/2000, nowadays replaced by Law 34/2004.	The geographical restrictions of the county where the lawyer is registered are also meant to ease the access of the lawyer to the office of legal consultation or court, and to ensure a close relationship between the lawyer and the citizens that they represent. Those citizens frequently will have to visit the lawyer office – at their own expenses - to meet them. According to stakeholders, the provision does not include solicitors in the legal aid scheme as at that time there was no legal agreement for them to practice such acts.	Appointing only lawyers who are registered in the county is restrictive. It constitutes a geographical barrier to competition, as it excludes lawyers from other municipalities or counties from providing these legal services. Even if lawyers may not compete for clients based on the prices they charge (the services provided are free of charge to local residents, even if the services are paid for by the municipalities), they may differ over the quality, diversity and innovation of the services they provide under the legal aid regime. Lawyers residing in other municipalities or registered in other counties may be interested in providing legal aid in this municipality. In addition, other legal professionals, such as solicitors, are also qualified to provide such legal aid services and, hence, should not be excluded from the provision of these services. Provided legal aid services are ensured for residents in this municipality, opening the provision of such legal aid services to a wider range of legal professionals could lead to greater consumer welfare due to more diverse and innovative services. An increased reliability on online services can mitigate the need for a face-to-face contact between the beneficiary of legal aid and the legal professional.	Amend the provisions so that the supply of such services is not restricted to legal professionals from the jurisdictional county that covers this specific municipality. Instead, the supply of such services should be opened to all legal professionals from neighbouring counties who may also be available to provide such services. In addition to that, amend the provisions so that other legal professionals besides lawyers, such as solicitors, may provide these legal services within the legal aid framework, i. e. , legal advice and juridical representation.

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55	Ordinance 679/93 "Regulation of the Office of Legal Consultation of the Municipality of Ponta Delgada"	Art. 7 (1)	Geographical restrictions in the provision of legal aid and reserved acts	The regulation sets a county legal aid service office, to be used by citizens who meet the necessary conditions to benefit from (free) legal aid. Only Lawyers who are registered in the Bar Association regional delegation, and have requested to provide such service, can be appointed by the Bar Association to provide legal advice services. This Ordinance was issued under the regime of article 13 (2) of Law 30-E/2000, nowadays replaced by Law 34/2004.	The geographical restrictions of the county where the lawyer is registered are also meant to ease the access of the lawyer to the office of legal consultation or court, and to ensure a close relationship between the lawyer and the citizens that they represent. Those citizens frequently will have to visit the lawyer office – at their own expenses - to meet them. According to stakeholders, the provision does not include solicitors in the legal aid scheme as at that time there was no legal agreement for them to practice such acts.	Appointing only lawyers who are registered in the county is restrictive. It constitutes a geographical barrier to competition, as it excludes lawyers from other municipalities or counties from providing these legal services. Even if lawyers may not compete for clients based on the prices they charge (the services provided are free of charge to local residents, even if the services are paid for by the municipalities), they may differ over the quality, diversity and innovation of the services they provide under the legal aid regime. Lawyers residing in other municipalities or registered in other counties may be interested in providing legal aid in this municipality. In addition, other legal professionals, such as solicitors, are also qualified to provide such legal aid services and, hence, should not be excluded from the provision of these services. Provided legal aid services are ensured for residents in this municipality, opening the provision of such legal aid services to a wider range of legal professionals could lead to greater consumer welfare due to more diverse and innovative services. An increased reliability on online services can mitigate the need for a face-to-face contact between the beneficiary of legal aid and the legal professional.	Amend the provisions so that the supply of such services is not restricted to legal professionals from the jurisdictional county that covers this specific municipality. Instead, the supply of such services should be opened to all legal professionals from neighbouring counties who may also be available to provide such services. In addition to that, amend the provisions so that other legal professionals besides lawyers, such as solicitors, may provide these legal services within the legal aid framework, i. e. , legal advice and juridical representation.
56	Ordinance 741/93 "Regulation of the Office of Legal Consultation of the Municipality of Vila do Conde"	Art. 7 (1)	Geographical restrictions in the provision of legal aid and reserved acts	The regulation sets a county legal aid service office, to be used by citizens who meet the necessary conditions to benefit from (free) legal aid. Only Lawyers who are registered in the Bar Association regional delegation, and have requested to provide such service, can be appointed by the Bar Association to provide legal advice services. This Ordinance was issued under the regime of article 13 (2) of Law 30-E/2000, nowadays replaced by Law 34/2004.	The geographical restrictions of the county where the lawyer is registered are also meant to ease the access of the lawyer to the office of legal consultation or court, and to ensure a close relationship between the lawyer and the citizens that they represent. Those citizens frequently will have to visit the lawyer office – at their own expenses - to meet them. According to stakeholders, the provision does not include solicitors in the legal aid scheme as at that time there was no legal agreement for them to practice such acts.	Appointing only lawyers who are registered in the county is restrictive. It constitutes a geographical barrier to competition, as it excludes lawyers from other municipalities or counties from providing these legal services. Even if lawyers may not compete for clients based on the prices they charge (the services provided are free of charge to local residents, even if the services are paid for by the municipalities), they may differ over the quality, diversity and innovation of the services they provide under the legal aid regime. Lawyers residing in other municipalities or registered in other counties may be interested in providing legal aid in this municipality. In addition, other legal professionals, such as solicitors, are also qualified to provide such legal aid services and, hence, should not be excluded from the provision of these services. Provided legal aid services are ensured for residents in this municipality, opening the provision of such legal aid services to a wider range of legal professionals could lead to greater consumer welfare due to more diverse and innovative services. An increased reliability on online services can mitigate the need for a face-to-face contact between the beneficiary of legal aid and the legal professional.	Amend the provisions so that the supply of such services is not restricted to legal professionals from the jurisdictional county that covers this specific municipality. Instead, the supply of such services should be opened to all legal professionals from neighbouring counties who may also be available to provide such services. In addition to that, amend the provisions so that other legal professionals besides lawyers, such as solicitors, may provide these legal services within the legal aid framework, i. e. , legal advice and juridical representation.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
57	Ordinance 1256/93 "Regulation of the Office of Legal Consultation of the Municipality of Faro"	Art. 7(1)	Reserved acts	The regulation sets a county legal aid service office, to be used by citizens who meet the necessary conditions to benefit from (free) legal aid. Only Lawyers who have requested to provide such service, can be appointed by the Bar Association to provide legal advice services. This Ordinance was issued under the regime of article 13 (2) of Law 30-E/2000, nowadays replaced by Law 34/2004.	The provision does not include solicitors in the legal aid scheme as at the time there was no legal agreement for them to practice such acts.	Other legal professionals, such as solicitors, are also qualified to provide such legal aid services and, hence, should not be excluded from the provision of these services. Provided legal aid services are ensured for residents in this municipality, opening the provision of such legal aid services to a wider range of legal professionals could lead to greater consumer welfare due to more diverse and innovative services. An increased reliability on online services can mitigate the need for a face-to-face contact between the beneficiary of legal aid and the legal professional.	Amend the provisions so that other legal professionals besides lawyers, such as solicitors, may provide these legal services within the legal aid framework, i. e. , legal advice and juridical representation.
58	Ordinance 506/95 "Regulation of the Office of Legal Consultation of the Municipality of Angra do Heroísmo"	Art. 7(1)	Geographical restrictions in the provision of legal aid and reserved acts	The regulation sets a county legal aid service office, to be used by citizens who meet the necessary conditions to benefit from (free) legal aid. Only Lawyers who are registered in the Bar Association regional delegation, and have requested to provide such service, can be appointed by the Bar Association to provide legal advice services. This Ordinance was issued under the regime of article 13 (2) of Law 30-E/2000, nowadays replaced by Law 34/2004.	The geographical restrictions of the county where the lawyer is registered are also meant to ease the access of the lawyer to the office of legal consultation or court, and to ensure a close relationship between the lawyer and the citizens that they represent. Those citizens frequently will have to visit the lawyer office – at their own expenses - to meet them. According to stakeholders, the provision does not include solicitors in the legal aid scheme as at that time there was no legal agreement for them to practice such acts.	Appointing only lawyers who are registered in the county is restrictive. It constitutes a geographical barrier to competition, as it excludes lawyers from other municipalities or counties from providing these legal services. Even if lawyers may not compete for clients based on the prices they charge (the services provided are free of charge to local residents, even if the services are paid for by the municipalities), they may differ over the quality, diversity and innovation of the services they provide under the legal aid regime. Lawyers residing in other municipalities or registered in other counties may be interested in providing legal aid in this municipality. In addition, other legal professionals, such as solicitors, are also qualified to provide such legal aid services and, hence, should not be excluded from the provision of these services. Provided legal aid services are ensured for residents in this municipality, opening the provision of such legal aid services to a wider range of legal professionals could lead to greater consumer welfare due to more diverse and innovative services. An increased reliability on online services can mitigate the need for a face-to-face contact between the beneficiary of legal aid and the legal professional.	Amend the provisions so that the supply of such services is not restricted to legal professionals from the jurisdictional county that covers this specific municipality. Instead, the supply of such services should be opened to all legal professionals from neighbouring counties who may also be available to provide such services. In addition to that, amend the provisions so that other legal professionals besides lawyers, such as solicitors, may provide these legal services within the legal aid framework, i. e. , legal advice and juridical representation.
59	Ordinance 511/95 "Regulation of the Office of Legal Consultation of the Municipality of Vila Nova de Gaia"	Art. 6(1)	Geographical restrictions in the provision of legal aid and reserved acts	The regulation sets a county legal aid service office, to be used by citizens who meet the necessary conditions to benefit from (free) legal aid. Only Lawyers who are registered in the Bar Association regional delegation, and have requested to provide such service, can be appointed by the Bar Association to provide	The geographical restrictions of the county where the lawyer is registered are also meant to ease the access of the lawyer to the office of legal consultation or court, and to ensure a close relationship between the lawyer and the citizens that they represent. Those citizens frequently will have to visit the lawyer office – at their own expenses - to meet them. According to stakeholders, the provision does not include solicitors in the legal aid scheme as at that time there was no legal agreement for them to practice such	Appointing only lawyers who are registered in the county is restrictive. It constitutes a geographical barrier to competition, as it excludes lawyers from other municipalities or counties from providing these legal services. Even if lawyers may not compete for clients based on the prices they charge (the services provided are free of charge to local residents, even if the services are paid for by the municipalities), they may differ over the quality, diversity and innovation of the services they provide under the legal aid regime. Lawyers residing in other municipalities or registered in other counties may be interested in providing legal aid in this municipality. In addition, other legal professionals, such as solicitors, are also qualified to provide such legal aid services and, hence, should not be	Amend the provisions so that the supply of such services is not restricted to legal professionals from the jurisdictional county that covers this specific municipality. Instead, the supply of such services should be opened to all legal professionals from neighbouring counties who may also be available to provide such services. In addition to that, amend the provisions so that other legal professionals besides lawyers, such as solicitors,

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				legal advice services. This Ordinance was issued under the regime of article 13 (2) of Law 30-E/2000, nowadays replaced by Law 34/2004.	acts.	excluded from the provision of these services. Provided legal aid services are ensured for residents in this municipality, opening the provision of such legal aid services to a wider range of legal professionals could lead to greater consumer welfare due to more diverse and innovative services. An increased reliability on online services can mitigate the need for a face-to-face contact between the beneficiary of legal aid and the legal professional.	may provide these legal services within the legal aid framework, i. e. , legal advice and juridical representation.
60	Ordinance 1471/95 "Regulation of the Office of Legal Consultation of the Municipality of Viana do Castelo"	Art. 6(1)	Geographical restrictions in the provision of legal aid and reserved acts	The regulation sets a county legal aid service office, to be used by citizens who meet the necessary conditions to benefit from (free) legal aid. Only Lawyers who are registered in the Bar Association regional delegation, and have requested to provide such service, can be appointed by the Bar Association to provide legal advice services. This Ordinance was issued under the regime of article 13 (2) of Law 30-E/2000, nowadays replaced by Law 34/2004.	The geographical restrictions of the county where the lawyer is registered are also meant to ease the access of the lawyer to the office of legal consultation or court, and to ensure a close relationship between the lawyer and the citizens that they represent. Those citizens frequently will have to visit the lawyer office – at their own expenses - to meet them. According to stakeholders, the provision does not include solicitors in the legal aid scheme as at that time there was no legal agreement for them to practice such acts.	Appointing only lawyers who are registered in the county is restrictive. It constitutes a geographical barrier to competition, as it excludes lawyers from other municipalities or counties from providing these legal services. Even if lawyers may not compete for clients based on the prices they charge (the services provided are free of charge to local residents, even if the services are paid for by the municipalities), they may differ over the quality, diversity and innovation of the services they provide under the legal aid regime. Lawyers residing in other municipalities or registered in other counties may be interested in providing legal aid in this municipality. In addition, other legal professionals, such as solicitors, are also qualified to provide such legal aid services and, hence, should not be excluded from the provision of these services. Provided legal aid services are ensured for residents in this municipality, opening the provision of such legal aid services to a wider range of legal professionals could lead to greater consumer welfare due to more diverse and innovative services. An increased reliability on online services can mitigate the need for a face-to-face contact between the beneficiary of legal aid and the legal professional.	Amend the provisions so that the supply of such services is not restricted to legal professionals from the jurisdictional county that covers this specific municipality. Instead, the supply of such services should be opened to all legal professionals from neighbouring counties who may also be available to provide such services. In addition to that, amend the provisions so that other legal professionals besides lawyers, such as solicitors, may provide these legal services within the legal aid framework, i. e. , legal advice and juridical representation.
61	Ordinance 403/97 "Regulation of the Office of Legal Consultation of the Municipality of Matosinhos"	Art. 5(1)	Geographical restrictions in the provision of legal aid and reserved acts	The regulation sets a county legal aid service office, to be used by citizens who meet the necessary conditions to benefit from (free) legal aid. Only Lawyers who are registered in the Bar Association regional delegation, and have requested to provide such service, can be appointed by the Bar Association to provide legal advice services. This Ordinance was issued under the regime of article 13 (2) of Law 30-E/2000, nowadays replaced by Law 34/2004.	The geographical restrictions of the county where the lawyer is registered are also meant to ease the access of the lawyer to the office of legal consultation or court, and to ensure a close relationship between the lawyer and the citizens that they represent. Those citizens frequently will have to visit the lawyer office – at their own expenses - to meet them. According to stakeholders, the provision does not include solicitors in the legal aid scheme as at that time there was no legal agreement for them to practice such acts.	Appointing only lawyers who are registered in the county is restrictive. It constitutes a geographical barrier to competition, as it excludes lawyers from other municipalities or counties from providing these legal services. Even if lawyers may not compete for clients based on the prices they charge (the services provided are free of charge to local residents, even if the services are paid for by the municipalities), they may differ over the quality, diversity and innovation of the services they provide under the legal aid regime. Lawyers residing in other municipalities or registered in other counties may be interested in providing legal aid in this municipality. In addition, other legal professionals, such as solicitors, are also qualified to provide such legal aid services and, hence, should not be excluded from the provision of these services. Provided legal aid services are ensured for residents in this municipality, opening the provision of such legal aid services to a wider range of legal professionals could lead to greater consumer welfare due to more diverse and innovative services. An increased reliability on online services can mitigate the need for a face-to-face contact between the beneficiary of legal aid and the legal professional.	Amend the provisions so that the supply of such services is not restricted to legal professionals from the jurisdictional county that covers this specific municipality. Instead, the supply of such services should be opened to all legal professionals from neighbouring counties who may also be available to provide such services. In addition to that, amend the provisions so that other legal professionals besides lawyers, such as solicitors, may provide these legal services within the legal aid framework, i. e. , legal advice and juridical representation.

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62	Ordinance 1233/97 "Regulation of the Office of Legal Consultation of the Municipality of Sintra"	Art. 5(1)	Geographical restrictions in the provision of legal aid and reserved acts	The regulation sets a county legal aid service office, to be used by citizens who meet the necessary conditions to benefit from (free) legal aid. Only Lawyers who are registered in the Bar Association regional delegation, and have requested to provide such service, can be appointed by the Bar Association to provide legal advice services. This Ordinance was issued under the regime of article 13 (2) of Law 30-E/2000, nowadays replaced by Law 34/2004.	The geographical restrictions of the county where the lawyer is registered are also meant to ease the access of the lawyer to the office of legal consultation or court, and to ensure a close relationship between the lawyer and the citizens that they represent. Those citizens frequently will have to visit the lawyer office – at their own expenses - to meet them. According to stakeholders, the provision does not include solicitors in the legal aid scheme as at that time there was no legal agreement for them to practice such acts.	Appointing only lawyers who are registered in the county is restrictive. It constitutes a geographical barrier to competition, as it excludes lawyers from other municipalities or counties from providing these legal services. Even if lawyers may not compete for clients based on the prices they charge (the services provided are free of charge to local residents, even if the services are paid for by the municipalities), they may differ over the quality, diversity and innovation of the services they provide under the legal aid regime. Lawyers residing in other municipalities or registered in other counties may be interested in providing legal aid in this municipality. In addition, other legal professionals, such as solicitors, are also qualified to provide such legal aid services and, hence, should not be excluded from the provision of these services. Provided legal aid services are ensured for residents in this municipality, opening the provision of such legal aid services to a wider range of legal professionals could lead to greater consumer welfare due to more diverse and innovative services. An increased reliability on online services can mitigate the need for a face-to-face contact between the beneficiary of legal aid and the legal professional.	Amend the provisions so that the supply of such services is not restricted to legal professionals from the jurisdictional county that covers this specific municipality. Instead, the supply of such services should be opened to all legal professionals from neighbouring counties who may also be available to provide such services. In addition to that, amend the provisions so that other legal professionals besides lawyers, such as solicitors, may provide these legal services within the legal aid framework, i. e. , legal advice and juridical representation.
63	Ordinance 621/98 "Regulation of the Office of Legal Consultation of the Municipality of Guarda"	Art. 5(1)	Geographical restrictions in the provision of legal aid and reserved acts	The regulation sets a county legal aid service office, to be used by citizens who meet the necessary conditions to benefit from (free) legal aid. Only Lawyers who are registered in the Bar Association regional delegation, and have requested to provide such service, can be appointed by the Bar Association to provide legal advice services. This Ordinance was issued under the regime of article 13 (2) of Law 30-E/2000, nowadays replaced by Law 34/2004.	The geographical restrictions of the county where the lawyer is registered are also meant to ease the access of the lawyer to the office of legal consultation or court, and to ensure a close relationship between the lawyer and the citizens that they represent. Those citizens frequently will have to visit the lawyer office – at their own expenses - to meet them. According to stakeholders, the provision does not include solicitors in the legal aid scheme as at that time there was no legal agreement for them to practice such acts.	Appointing only lawyers who are registered in the county is restrictive. It constitutes a geographical barrier to competition, as it excludes lawyers from other municipalities or counties from providing these legal services. Even if lawyers may not compete for clients based on the prices they charge (the services provided are free of charge to local residents, even if the services are paid for by the municipalities), they may differ over the quality, diversity and innovation of the services they provide under the legal aid regime. Lawyers residing in other municipalities or registered in other counties may be interested in providing legal aid in this municipality. In addition, other legal professionals, such as solicitors, are also qualified to provide such legal aid services and, hence, should not be excluded from the provision of these services. Provided legal aid services are ensured for residents in this municipality, opening the provision of such legal aid services to a wider range of legal professionals could lead to greater consumer welfare due to more diverse and innovative services. An increased reliability on online services can mitigate the need for a face-to-face contact between the beneficiary of legal aid and the legal professional.	Amend the provisions so that the supply of such services is not restricted to legal professionals from the jurisdictional county that covers this specific municipality. Instead, the supply of such services should be opened to all legal professionals from neighbouring counties who may also be available to provide such services. In addition to that, amend the provisions so that other legal professionals besides lawyers, such as solicitors, may provide these legal services within the legal aid framework, i. e. , legal advice and juridical representation.
64	Ordinance 272/99 "Regulation of the Office of Legal Consultation of the Municipality"	Art. 4(1)	Geographical restrictions in the provision of legal aid and reserved acts	The regulation sets a county legal aid service office, to be used by citizens who meet the necessary conditions to benefit from (free) legal aid. Only Lawyers who are registered in the Bar	The geographical restrictions of the county where the lawyer is registered are also meant to ease the access of the lawyer to the office of legal consultation or court, and to ensure a close relationship between the lawyer and the citizens that they represent. Those citizens frequently will have to visit the	Appointing only lawyers who are registered in the county is restrictive. It constitutes a geographical barrier to competition, as it excludes lawyers from other municipalities or counties from providing these legal services. Even if lawyers may not compete for clients based on the prices they charge (the services provided are free of charge to local residents, even if the services are paid for by the municipalities), they may differ over the quality, diversity and innovation of the services they	Amend the provisions so that the supply of such services is not restricted to legal professionals from the jurisdictional county that covers this specific municipality. Instead, the supply of such services should be opened to all legal professionals from

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	of Oliveira do Bairro"			Association regional delegation, and have requested to provide such service, can be appointed by the Bar Association to provide legal advice services. This Ordinance was issued under the regime of article 13 (2) of Law 30-E/2000, nowadays replaced by Law 34/2004.	lawyer office – at their own expenses - to meet them. According to stakeholders, the provision does not include solicitors in the legal aid scheme as at that time there was no legal agreement for them to practice such acts.	provide under the legal aid regime. Lawyers residing in other municipalities or registered in other counties may be interested in providing legal aid in this municipality. In addition, other legal professionals, such as solicitors, are also qualified to provide such legal aid services and, hence, should not be excluded from the provision of these services. Provided legal aid services are ensured for residents in this municipality, opening the provision of such legal aid services to a wider range of legal professionals could lead to greater consumer welfare due to more diverse and innovative services. An increased reliability on online services can mitigate the need for a face-to-face contact between the beneficiary of legal aid and the legal professional.	neighbouring counties who may also be available to provide such services. In addition to that, amend the provisions so that other legal professionals besides lawyers, such as solicitors, may provide these legal services within the legal aid framework, i. e. , legal advice and juridical representation.
65	Ordinance 722/2000 "Regulation of the Office of Legal Consultation of the Municipality of Horta"	Art. 7(1)	Geographical restrictions in the provision of legal aid and reserved acts	The regulation sets a county legal aid service office, to be used by citizens who meet the necessary conditions to benefit from (free) legal aid. Only Lawyers who are registered in the Bar Association regional delegation, and have requested to provide such service, can be appointed by the Bar Association to provide legal advice services. This Ordinance was issued under the regime of article 13 (2) of Law 30-E/2000, nowadays replaced by Law 34/2004.	The geographical restrictions of the county where the lawyer is registered are also meant to ease the access of the lawyer to the office of legal consultation or court, and to ensure a close relationship between the lawyer and the citizens that they represent. Those citizens frequently will have to visit the lawyer office – at their own expenses - to meet them. According to stakeholders, the provision does not include solicitors in the legal aid scheme as at that time there was no legal agreement for them to practice such acts.	Appointing only lawyers who are registered in the county is restrictive. It constitutes a geographical barrier to competition, as it excludes lawyers from other municipalities or counties from providing these legal services. Even if lawyers may not compete for clients based on the prices they charge (the services provided are free of charge to local residents, even if the services are paid for by the municipalities), they may differ over the quality, diversity and innovation of the services they provide under the legal aid regime. Lawyers residing in other municipalities or registered in other counties may be interested in providing legal aid in this municipality. In addition, other legal professionals, such as solicitors, are also qualified to provide such legal aid services and, hence, should not be excluded from the provision of these services. Provided legal aid services are ensured for residents in this municipality, opening the provision of such legal aid services to a wider range of legal professionals could lead to greater consumer welfare due to more diverse and innovative services. An increased reliability on online services can mitigate the need for a face-to-face contact between the beneficiary of legal aid and the legal professional.	Amend the provisions so that the supply of such services is not restricted to legal professionals from the jurisdictional county that covers this specific municipality. Instead, the supply of such services should be opened to all legal professionals from neighbouring counties who may also be available to provide such services. In addition to that, amend the provisions so that other legal professionals besides lawyers, such as solicitors, may provide these legal services within the legal aid framework, i. e. , legal advice and juridical representation.
66	Ordinance 238/2001 "Regulation of the Office of Legal Consultation of the Municipality of Barreiro"	Art. 8(1)	Geographical restrictions in the provision of legal aid	The regulation sets a county legal aid service office, to be used by citizens who meet the necessary conditions to benefit from (free) legal aid. Only Lawyers who are registered in the Bar Association regional delegation, and have requested to provide such service, can be appointed by the Bar Association to provide legal advice services. Solicitors may provide such services if a protocol with the professional association is	The geographical restrictions of the county where the lawyer is registered are also meant to ease the access of the lawyer to the office of legal consultation or court, and to ensure a close relationship between the lawyer and the citizens that they represent. Those citizens frequently will have to visit the lawyer office – at their own expenses - to meet them. According to stakeholders, the provision may include solicitors in the legal aid scheme upon conclusion of legal agreement for them to practice such acts.	Appointing only lawyers who are registered in the county is restrictive. It constitutes a geographical barrier to competition, as it excludes lawyers from other municipalities or counties from providing these legal services. Even if lawyers may not compete for clients based on the prices they charge (the services provided are free of charge to local residents, even if the services are paid for by the municipalities), they may differ over the quality, diversity and innovation of the services they provide under the legal aid regime. Lawyers residing in other municipalities or registered in other counties may be interested in providing legal aid in this municipality. An increased reliability on online services can mitigate the need for a face-to-face contact between the beneficiary of legal aid and the legal professional.	Amend the provisions so that the supply of such services is not restricted to legal professionals from the jurisdictional county that covers this specific municipality. Instead, the supply of such services should be opened to all legal professionals from neighbouring counties who may also be available to provide such services.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
				signed. This Ordinance was issued under the regime of article 13 (2) of Law 30-E/2000, nowadays replaced by Law 34/2004.			
67	Ordinance 239/2001 "Regulation of the Office of Legal Consultation of the Municipality of Albufeira"	Art. 7(1)	Geographical restrictions in the provision of legal aid	The regulation sets a county legal aid service office, to be used by citizens who meet the necessary conditions to benefit from (free) legal aid. Only Lawyers who are registered in the Bar Association regional delegation, and have requested to provide such service, can be appointed by the Bar Association to provide legal advice services. Solicitors may provide such services if a protocol with the professional association is signed. This Ordinance was issued under the regime of article 13 (2) of Law 30-E/2000, nowadays replaced by Law 34/2004.	The geographical restrictions of the county where the lawyer is registered are also meant to ease the access of the lawyer to the office of legal consultation or court, and to ensure a close relationship between the lawyer and the citizens that they represent. Those citizens frequently will have to visit the lawyer office – at their own expenses - to meet them. According to stakeholders, the provision may include solicitors in the legal aid scheme upon conclusion of legal agreement for them to practice such acts.	Appointing only lawyers who are registered in the county is restrictive. It constitutes a geographical barrier to competition, as it excludes lawyers from other municipalities or counties from providing these legal services. Even if lawyers may not compete for clients based on the prices they charge (the services provided are free of charge to local residents, even if the services are paid for by the municipalities), they may differ over the quality, diversity and innovation of the services they provide under the legal aid regime. Lawyers residing in other municipalities or registered in other counties may be interested in providing legal aid in this municipality. An increased reliability on online services can mitigate the need for a face-to-face contact between the beneficiary of legal aid and the legal professional.	Amend the provisions so that the supply of such services is not restricted to legal professionals from the jurisdictional county that covers this specific municipality. Instead, the supply of such services should be opened to all legal professionals from neighbouring counties who may also be available to provide such services.
68	Ordinance 1150/2001 "Regulation of the Office of Legal Consultation of the Municipality of Cadaval"	Art. 7(1)	Geographical restrictions in the provision of legal aid	The regulation sets a county legal aid service office, to be used by citizens who meet the necessary conditions to benefit from (free) legal aid. Only Lawyers who are registered in the Bar Association regional delegation, and have requested to provide such service, can be appointed by the Bar Association to provide legal advice services. Solicitors may provide such services if a protocol with the professional association is signed. This Ordinance was issued under the regime of article 13 (2) of Law 30-E/2000, nowadays replaced by Law 34/2004.	The geographical restrictions of the county where the lawyer is registered are also meant to ease the access of the lawyer to the office of legal consultation or court, and to ensure a close relationship between the lawyer and the citizens that they represent. Those citizens frequently will have to visit the lawyer office – at their own expenses - to meet them. According to stakeholders, the provision may include solicitors in the legal aid scheme upon conclusion of legal agreement for them to practice such acts.	Appointing only lawyers who are registered in the county is restrictive. It constitutes a geographical barrier to competition, as it excludes lawyers from other municipalities or counties from providing these legal services. Even if lawyers may not compete for clients based on the prices they charge (the services provided are free of charge to local residents, even if the services are paid for by the municipalities), they may differ over the quality, diversity and innovation of the services they provide under the legal aid regime. Lawyers residing in other municipalities or registered in other counties may be interested in providing legal aid in this municipality. An increased reliability on online services can mitigate the need for a face-to-face contact between the beneficiary of legal aid and the legal professional.	Amend the provisions so that the supply of such services is not restricted to legal professionals from the jurisdictional county that covers this specific municipality. Instead, the supply of such services should be opened to all legal professionals from neighbouring counties who may also be available to provide such services.

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69	Ordinance 1151/2001 "Regulation of the Office of Legal Consultation of the Municipality of Castelo Branco"	Art. 7(1)	Geographical restrictions in the provision of legal aid	The regulation sets a county legal aid service office, to be used by citizens who meet the necessary conditions to benefit from (free) legal aid. Only Lawyers who are registered in the Bar Association regional delegation, and have requested to provide such service, can be appointed by the Bar Association to provide legal advice services. Solicitors may provide such services if a protocol with the professional association is signed. This Ordinance was issued under the regime of article 13 (2) of Law 30-E/2000, nowadays replaced by Law 34/2004.	The geographical restrictions of the county where the lawyer is registered are also meant to ease the access of the lawyer to the office of legal consultation or court, and to ensure a close relationship between the lawyer and the citizens that they represent. Those citizens frequently will have to visit the lawyer office – at their own expenses - to meet them. According to stakeholders, the provision may include solicitors in the legal aid scheme upon conclusion of legal agreement for them to practice such acts.	Appointing only lawyers who are registered in the county is restrictive. It constitutes a geographical barrier to competition, as it excludes lawyers from other municipalities or counties from providing these legal services. Even if lawyers may not compete for clients based on the prices they charge (the services provided are free of charge to local residents, even if the services are paid for by the municipalities), they may differ over the quality, diversity and innovation of the services they provide under the legal aid regime. Lawyers residing in other municipalities or registered in other counties may be interested in providing legal aid in this municipality. An increased reliability on online services can mitigate the need for a face-to-face contact between the beneficiary of legal aid and the legal professional.	Amend the provisions so that the supply of such services is not restricted to legal professionals from the jurisdictional county that covers this specific municipality. Instead, the supply of such services should be opened to all legal professionals from neighbouring counties who may also be available to provide such services.
70	Ordinance 1152/2001 "Regulation of the Office of Legal Consultation of the Municipality of Seia"	Art. 7(1)	Geographical restrictions in the provision of legal aid	The regulation sets a county legal aid service office, to be used by citizens who meet the necessary conditions to benefit from (free) legal aid. Only Lawyers who are registered in the Bar Association regional delegation, and have requested to provide such service, can be appointed by the Bar Association to provide legal advice services. Solicitors may provide such services if a protocol with the professional association is signed. This Ordinance was issued under the regime of article 13 (2) of Law 30-E/2000, nowadays replaced by Law 34/2004.	The geographical restrictions of the county where the lawyer is registered are also meant to ease the access of the lawyer to the office of legal consultation or court, and to ensure a close relationship between the lawyer and the citizens that they represent. Those citizens frequently will have to visit the lawyer office – at their own expenses - to meet them. According to stakeholders, the provision may include solicitors in the legal aid scheme upon conclusion of legal agreement for them to practice such acts.	Appointing only lawyers who are registered in the county is restrictive. It constitutes a geographical barrier to competition, as it excludes lawyers from other municipalities or counties from providing these legal services. Even if lawyers may not compete for clients based on the prices they charge (the services provided are free of charge to local residents, even if the services are paid for by the municipalities), they may differ over the quality, diversity and innovation of the services they provide under the legal aid regime. Lawyers residing in other municipalities or registered in other counties may be interested in providing legal aid in this municipality. An increased reliability on online services can mitigate the need for a face-to-face contact between the beneficiary of legal aid and the legal professional.	Amend the provisions so that the supply of such services is not restricted to legal professionals from the jurisdictional county that covers this specific municipality. Instead, the supply of such services should be opened to all legal professionals from neighbouring counties who may also be available to provide such services.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
71	Ordinance 1153/2001 "Regulation of the Office of Legal Consultation of the Municipality of Coimbra"	Art. 7(1)	Geographical restrictions in the provision of legal aid	The regulation sets a county legal aid service office, to be used by citizens who meet the necessary conditions to benefit from (free) legal aid. Only Lawyers who are registered in the Bar Association regional delegation, and have requested to provide such service, can be appointed by the Bar Association to provide legal advice services. Solicitors may provide such services if a protocol with the professional association is signed. This Ordinance was issued under the regime of article 13 (2) of Law 30-E/2000, nowadays replaced by Law 34/2004.	The geographical restrictions of the county where the lawyer is registered are also meant to ease the access of the lawyer to the office of legal consultation or court, and to ensure a close relationship between the lawyer and the citizens that they represent. Those citizens frequently will have to visit the lawyer office – at their own expenses - to meet them. According to stakeholders, the provision may include solicitors in the legal aid scheme upon conclusion of legal agreement for them to practice such acts.	Appointing only lawyers who are registered in the county is restrictive. It constitutes a geographical barrier to competition, as it excludes lawyers from other municipalities or counties from providing these legal services. Even if lawyers may not compete for clients based on the prices they charge (the services provided are free of charge to local residents, even if the services are paid for by the municipalities), they may differ over the quality, diversity and innovation of the services they provide under the legal aid regime. Lawyers residing in other municipalities or registered in other counties may be interested in providing legal aid in this municipality. An increased reliability on online services can mitigate the need for a face-to-face contact between the beneficiary of legal aid and the legal professional.	Amend the provisions so that the supply of such services is not restricted to legal professionals from the jurisdictional county that covers this specific municipality. Instead, the supply of such services should be opened to all legal professionals from neighbouring counties who may also be available to provide such services.
72	Ordinance 1154/2001 "Regulation of the Office of Legal Consultation of the Municipality of Setúbal"	Art. 8(1)	Geographical restrictions in the provision of legal aid	The regulation sets a county legal aid service office, to be used by citizens who meet the necessary conditions to benefit from (free) legal aid. Only Lawyers who are registered in the Bar Association regional delegation, and have requested to provide such service, can be appointed by the Bar Association to provide legal advice services. Solicitors may provide such services if a protocol with the professional association is signed. This Ordinance was issued under the regime of article 13 (2) of Law 30-E/2000, nowadays replaced by Law 34/2004.	The geographical restrictions of the county where the lawyer is registered are also meant to ease the access of the lawyer to the office of legal consultation or court, and to ensure a close relationship between the lawyer and the citizens that they represent. Those citizens frequently will have to visit the lawyer office – at their own expenses - to meet them. According to stakeholders, the provision may include solicitors in the legal aid scheme upon conclusion of legal agreement for them to practice such acts.	Appointing only lawyers who are registered in the county is restrictive. It constitutes a geographical barrier to competition, as it excludes lawyers from other municipalities or counties from providing these legal services. Even if lawyers may not compete for clients based on the prices they charge (the services provided are free of charge to local residents, even if the services are paid for by the municipalities), they may differ over the quality, diversity and innovation of the services they provide under the legal aid regime. Lawyers residing in other municipalities or registered in other counties may be interested in providing legal aid in this municipality. An increased reliability on online services can mitigate the need for a face-to-face contact between the beneficiary of legal aid and the legal professional.	Amend the provisions so that the supply of such services is not restricted to legal professionals from the jurisdictional county that covers this specific municipality. Instead, the supply of such services should be opened to all legal professionals from neighbouring counties who may also be available to provide such services.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
73	Ordinance 1155/2001 "Regulation of the Office of Legal Consultation of the Municipality of Estremoz"	Art. 8(1)	Geographical restrictions in the provision of legal aid	The regulation sets a county legal aid service office, to be used by citizens who meet the necessary conditions to benefit from (free) legal aid. Only Lawyers who are registered in the Bar Association regional delegation, and have requested to provide such service, can be appointed by the Bar Association to provide legal advice services. Solicitors may provide such services if a protocol with the professional association is signed. This Ordinance was issued under the regime of article 13 (2) of Law 30-E/2000, nowadays replaced by Law 34/2004.	The geographical restrictions of the county where the lawyer is registered are also meant to ease the access of the lawyer to the office of legal consultation or court, and to ensure a close relationship between the lawyer and the citizens that they represent. Those citizens frequently will have to visit the lawyer office – at their own expenses - to meet them. According to stakeholders, the provision may include solicitors in the legal aid scheme upon conclusion of legal agreement for them to practice such acts.	Appointing only lawyers who are registered in the county is restrictive. It constitutes a geographical barrier to competition, as it excludes lawyers from other municipalities or counties from providing these legal services. Even if lawyers may not compete for clients based on the prices they charge (the services provided are free of charge to local residents, even if the services are paid for by the municipalities), they may differ over the quality, diversity and innovation of the services they provide under the legal aid regime. Lawyers residing in other municipalities or registered in other counties may be interested in providing legal aid in this municipality. An increased reliability on online services can mitigate the need for a face-to-face contact between the beneficiary of legal aid and the legal professional.	Amend the provisions so that the supply of such services is not restricted to legal professionals from the jurisdictional county that covers this specific municipality. Instead, the supply of such services should be opened to all legal professionals from neighbouring counties who may also be available to provide such services.
74	Ordinance 1156/2001 "Regulation of the Office of Legal Consultation of the Municipality of Pombal"	Art. 7(1)	Geographical restrictions in the provision of legal aid	The regulation sets a county legal aid service office, to be used by citizens who meet the necessary conditions to benefit from (free) legal aid. Only Lawyers who are registered in the Bar Association regional delegation, and have requested to provide such service, can be appointed by the Bar Association to provide legal advice services. Solicitors may provide such services if a protocol with the professional association is signed. This Ordinance was issued under the regime of article 13 (2) of Law 30-E/2000, nowadays replaced by Law 34/2004.	The geographical restrictions of the county where the lawyer is registered are also meant to ease the access of the lawyer to the office of legal consultation or court, and to ensure a close relationship between the lawyer and the citizens that they represent. Those citizens frequently will have to visit the lawyer office – at their own expenses - to meet them. According to stakeholders, the provision may include solicitors in the legal aid scheme upon conclusion of legal agreement for them to practice such acts.	Appointing only lawyers who are registered in the county is restrictive. It constitutes a geographical barrier to competition, as it excludes lawyers from other municipalities or counties from providing these legal services. Even if lawyers may not compete for clients based on the prices they charge (the services provided are free of charge to local residents, even if the services are paid for by the municipalities), they may differ over the quality, diversity and innovation of the services they provide under the legal aid regime. Lawyers residing in other municipalities or registered in other counties may be interested in providing legal aid in this municipality. An increased reliability on online services can mitigate the need for a face-to-face contact between the beneficiary of legal aid and the legal professional.	Amend the provisions so that the supply of such services is not restricted to legal professionals from the jurisdictional county that covers this specific municipality. Instead, the supply of such services should be opened to all legal professionals from neighbouring counties who may also be available to provide such services.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
75	Ordinance 10/2008 (as amended by Ordinances 210/2008, 654/2010 and 319/2011) "Regulates Law 34/2004 regarding Access to the Law and Courts - Legal Aid"	Art. 1(4)	Legal aid	Under the regime of legal aid, legal advice provided to victims of domestic violence is provided by a lawyer.	This provision aims to guarantee that victims of domestic violence are advised by Lawyers, and that a certain quality of service will be met. Due to the nature of the crime involved, only a Lawyer may represent the victim in the Court. For that reason the state provides consultation by a Lawyer and gives the possibility to the victim to be represented by the same professional (Lawyer) in the court, if needed.	This provision excludes other professionals, such as solicitors, who may be as qualified as lawyers to provide the same services, namely legal advice. These services do not include a judicial mandate. Furthermore, the legal aid regime establishes that legal advice can be given by lawyers and solicitors, in spite of the absence of a protocol signed between the two professional associations and the Ministry of Justice, which could be necessary to include solicitors in the regime of legal aid.	This provision excludes other professionals, such as solicitors, who may be as qualified as lawyers to provide the same services, namely legal advice. These services do not include a judicial mandate. Furthermore, the legal aid regime establishes that legal advice can be given by lawyers and solicitors, in spite of the absence of a protocol signed between the two professional associations and the Ministry of Justice, which could be necessary to include solicitors in the regime of legal aid.
76	Deliberation of the Bar Association General Council 2332-A/2015 regarding the Emoluments and Prices to pay to the Bar Association	Paragraph 1	Internship fees	Approves the list of fees to be paid to the Bar Association for different services such as registration as a trainee lawyer candidate or as a candidate to sit exams. For internships begun after the entry into force of Law 145/2015, the application for registration with the Bar Association as a candidate costs EUR 700; before the end of the first stage of the internship, a fee of EUR 300 will be charged; before the date set for the written test included in the final examination, a fee of EUR 500 will be charged.	The fees aim to finance the administrative costs of the services provided by the Bar Association, including the costs of the internship programmes.	If internship fees are too high for candidates, this might lead to fewer candidates joining the internship process and, therefore, result in a lower number of suppliers of legal services competing in the market.	We recommend that the fees required for internship be calculated using transparent, non-discriminatory and cost-based criteria.

Solicitors and Bailiffs

Table A B.3. Legal professions: Solicitors and Bailiffs

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
1	Law 49/2004 "Acts of lawyers and solicitors"	Art. 1 (2)	Recognition of qualification	Legal experts of recognised merit and individuals with Master's and Ph. D in Law, whose degree is recognised in Portugal, may also provide legal advice, once they register with the Bar Association for that purpose in accordance with a special procedure to be defined in the Bar Association bylaws.	It is our understanding that the legislator wants to guarantee that whoever provides legal advice has the required skills and qualifications to do so, for the protection of the public interest.	In addition to university law graduates who are members of the Bar Association and solicitors who are members of the (previously existing) Chamber of Solicitors, this provision establishes that legal experts (i. e. , juristas, who must necessarily hold a university law degree) of recognised merit, and Masters and Ph. Ds in Law can also provide legal advice. This provision may exclude university law graduates, who may have considerable work experience in specific legal matters but are not members of the Bar, from providing legal advice in their areas of expertise, either as individuals or as professionals working for a company/firm. These restrictions limit the number of professionals that can enter the market for legal advice, and who could compete in this market. This will have negative impacts on the prices being charged, and possibly on the diversity and innovativeness of the services being provided.	We recommend that the scope of reserved legal activities in Portugal be reduced, especially regarding the legal advice activity. Some activities should be opened to other legal professions and to other professionals even if the opening may be limited and confined to a specific area of knowledge or professional practice.
2	Law 49/2004 "Acts of lawyers and solicitors"	Art. 1 (5)(6)	Reserved acts	These paragraphs list the reserved acts of solicitors, which are: the exercise of the forensic mandate; to provide legal consultation; the elaboration of contracts and the practice of preparatory acts tending to the constitution, alteration or extinction of legal business, namely that practiced in conservatories and notary offices; negotiation for the collection of credits; exercising their mandate before administrative or tax authorities.	It is our understanding that this provision aims to prevent professionals other than lawyers and solicitors from lawfully carrying out reserved acts as identified, as it is in the public interest to require that only technically qualified professionals bound by legal privilege and other specific ethical principles can provide such legal services.	By reserving certain legal acts for solicitors, this provision may limit the number of well-qualified professionals who can offer legal services in the market, which in turn may have negative impacts on the prices being charged, and possibly their diversity and innovativeness. The scope of reserved legal activities practiced by the legal professions in Portugal is quite wide. It may unduly restrict competition from unauthorised legal providers and non-legal providers, potentially with lower cost, in which case the option to reserve activities may not be proportional to ensure consumer protection and to secure access to justice and legal advice. Given that the legal professions are already very restrictive, with tightly controlled entry, there seems little point in carving out the market for certain services. In general, reserved activities or tasks for specific categories of professionals should be abolished in cases where: (i) the protection is disproportionate to the policy objective because the tasks may already be performed by other well-qualified professionals or are not a danger to public safety; (ii) there is strong and well-regulated protection of the professional title which guarantees the quality of the professionals that are allowed to work; or (iii) the restriction is no longer required owing to legal, societal or professional developments that make the restriction obsolete by its objective. In several cases, opening up reserved activities to additional qualified professions could generate substantial consumer benefits, in the form of innovative and more diverse services at lower prices. For instance, alternative professionals with a lower level of qualifications could better serve consumers with simple needs, who could otherwise overpay when retaining professionals with qualifications suited to more complex needs.	We recommend that the scope of reserved legal activities in Portugal be reduced, especially regarding the legal advice activity. Some activities should be opened to other legal professions even if the opening may be limited and confined to a specific area of knowledge or professional practice.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
3	Law 49/2004 "Acts of lawyers and solicitors"	Art. 6 (1)	Multidisciplinary practice in professional firms / Reserved acts	With the exception of bureaus and offices composed exclusively of lawyers, solicitors, or lawyers and solicitors (sharing premises), and of solicitor firms and law firms, and of legal consulting offices organised by either the Bar Association or by the Chamber of Solicitors, no other office or firm, constituted in any legal form, can provide to third parties services that include, even if isolated or marginal, the practice of "acts of lawyers and solicitors".	This legal provision aims to guarantee that only lawyers and solicitors may lawfully practice reserved acts as identified in Art. 1, as such reserved acts are practiced under a certain type of organisational form that does not allow the supplying of multidisciplinary services.	By restricting certain legal acts to lawyers (and solicitors), this provision limits the number of professionals who can offer legal services in the market to the detriment of businesses and consumers. This restriction may lead to higher prices for those services and less diversity and innovation. This provision also limits the type of firms allowed to provide legal services, and should be read together with Art. 213 of the bylaws. For example, it prohibits multidisciplinary law firms. This prohibition has already been questioned by some stakeholders and by the Portuguese Association of Law Firms (ASAP) – see conclusions from ASAP 8th Annual Meeting in 2015. To restrict multidisciplinary activity in a professional firm is to restrict the association of different professionals, belonging to different professional associations (some may not even belong to a public professional association), who wish to exercise their professional activities within the same firm and in the pursuit of the firm's corporate or social objective(s). In a professional firm, this restriction takes the form of a restriction on partnership – restricting, or banning altogether, non-professional partners. This restriction is particularly acute in the case of the legal professions. To rule out multidisciplinary activity in the same professional firm, between potentially complementary service providers, harms competition and can be detrimental to consumer welfare. In fact, this restriction does not allow for the full exploration of economies of scope that come with the offer of different services by a same "service delivery unit" that shares infrastructure and human capital. It foregoes gains from specialisation and service quality that would result from the interaction between a wider range of professionals. This also means foregoing the exploitation of economies of scale and the advantages of branding. It also does not allow for the mitigation of the double marginalisation (or double mark-up) problem that comes with multidisciplinary activities which can complement each other, by segmenting the services provided. This means foregoing lower average costs in a multi-product firm, thereby leading to higher fees being charged to clients, while preventing clients from enjoying further benefits that could be gained from a more convenient "one-stop shop" for a wider range of professional services. Ruling out multidisciplinary activities within a profession can reduce the scope for better risk management between different professional activities within the same professional firm, as they may be subject to non-identical demand volatility or uncertainty, i. e., reduction in the scope for internal risk-spreading to be understood as the ability to transfer resources in response to fluctuations in demand. To offer a wider range of professional services means to be better prepared to face market uncertainties. Furthermore, opening up a professional firm to multidisciplinary activities is likely to ease the introduction of innovative products but also to spur innovation in the delivery of already existing products or ranges of products.	We recommend that the prohibition of multidisciplinary practice in professional firms should be removed, particularly in the case of the legal professions, where the "professional partnership model" is the only model allowed for the practice of the profession in a collective way. The creation of "Alternative Business Structures" can lead to more innovation, a broader range of services and easier access to legal services and legal advice for businesses and consumers.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
4	Law 32/2014 "Pre-executive extrajudicial procedure"	Art. 20	Bailiffs' fees	In the context of the pre-executive extrajudicial procedures, the bailiff is due certain amounts measured in UCs (Accounting Units or Unidades de Conta), plus the value added tax (VAT) at the legal rate in force, for different services rendered. For example, the applicant shall pay the bailiff 0. 25 UCs plus VAT for the remuneration of the entities involved in the management and maintenance of the IT platform and direct electronic services of consultations on the goods or location requested, when this remuneration is due in the execution process.	Fixed prices in those legal services were justified on public interest grounds. It was argued by the legislator that they guarantee universal access to these services by all users and that price control would protect the quality of services as it could possibly decrease if prices were the result of competition among bailiffs. According to the recital of Ordinance 282/2013, the adoption of a fixed tariff system aims to encourage healthy competition among bailiffs, based on the quality of the service provided and not on different amounts to be charged, on a case-by-case basis, by the bailiff to the applicant of the proceeding (client).	Fixed prices can have negative economic impacts. In general terms, and among other impacts, a fixed price regime may discourage innovation. In this case, the scope for innovation and greater service diversity may be slim. However, as innovation in itself is not often anticipated, we cannot rule out its possibility. For this reason, even if in this context, a fixed price regime hampers competition, this would be detrimental to consumer welfare.	This provision involves a type of activity performed by bailiffs. A technical study should be carried out to analyse to what extent a fixed price/fee regime is in the best public interest, where public interest should include the promotion of competitive markets.
5	Law 154/2015 "Solicitors and Bailiffs Professional Association Bylaws"	Art. 3	Self-regulatory regime	The professional association controls access to and exercise of the professions of solicitor and bailiff. It has the competence to elaborate the technical and ethical norms to be observed by professionals, over whom it has disciplinary powers. The professional association has the exclusive power to grant the professional titles of solicitor and bailiff.	It is our understanding that this provision aims to ensure the exercise of the regulatory function, including the disciplinary function and the representative function, taking into account the interests of users of the professional services, by one and the same single entity, the professional association. In the Portuguese Constitution the autonomy and administrative decentralisation to the professional associations is recognised to ensure the defence of the public interest and the fundamental rights of citizens, and also to guarantee the self-regulation of the professions that require technical independence. This regulatory model is based on the public interest of these professions, through the designation of state powers to	The harm to competition arising from the regulatory model, already established by the horizontal framework Law 2/2013 and considered in the bylaws of the professional association, stems from the centralisation in a single entity of the powers to regulate and represent the profession. Because each professional association, apart from representing the profession, controls access to it and its exercise, the regulations issued may create disproportional and anti-competitive restrictions. The freedom to choose and exercise a profession is a fundamental right of the citizen. Also, the freedom of movement of workers and their free establishment to provide services are fundamental principles of the EU internal market. Restrictions to these principles, in the pursuit of the public interest, must be well justified and proportional. When a professional association acquires full responsibility to regulate access to the profession and the conduct of its members, this may have an anti-competitive impact. In fact, professional associations may adopt rules that reduce incentives or opportunities for stronger competition between operators, such as restrictions on advertising and partnerships/ownerships, management or multidisciplinary activities, or restrictions when setting the minimum qualifications to enter the profession, amongst others. As the governing bodies of public professional associations are exclusively composed of their members, there is a risk that their members' interests will not coincide with the public interest. This is one significant reason for including within at least some governing bodies of a professional association, lay people representing the interests of relevant social	We recommend that the regulatory function should be separated from the representative function for self-regulated professional associations, either through the creation of an over-arching supervisory body by sector or trade, or through the creation of a supervisory body inside the current professional orders with the necessary "Chinese walls". The supervisory body takes on the main regulation of the profession such as access to the profession and similar functions. The board of the regulatory body will include not only representative of the profession but also lay people, including high-profile experienced individuals from other regulators, representatives of consumer organisations and academia.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
					those entities and with two main characteristics: the exclusivity on granting the professional title and the obligation of being registered within the professional association to practice the profession, which qualifies the nature of the regulation as being mandatory and unitary.	groups, such as consumer associations, other professionals, and high-profile people with experience in regulatory issues.	
6	Law 154/2015 "Solicitors and Bailiffs Professional Association Bylaws"	Art. 89	Registration and licensing	The professional titles of solicitor or bailiff and the effective exercise of these two professions are dependent on the enrolment of each professional as full members in the respective professional college (College of Solicitors or College of Bailiffs) within the same professional association.	It is our understanding that the legislator considers that only professionals fulfilling the requirements defined by the professional association have the capacity and necessary qualifications to exercise the acts of a solicitor and of a bailiff so as to safeguard the public interest.	Using mandatory registration as a mechanism to access the profession – protection of title – is restrictive, especially when accompanied by legislation that reserves certain professional acts for holders of the professional title. Professional licensing may remedy inefficiencies resulting from asymmetric information between clients and service providers. However, protection of title together with reserved work and restrictive access to the profession makes it more difficult for businesses and citizens to acquire legal services at affordable prices with innovative and diverse solutions, as it excludes other well-qualified professionals, although not registered with the professional associations, from also competing in the market. Such restrictions will ultimately lead to a loss in social welfare.	The existence of a professional title associated with reserves of activities leads to a monopoly on the performance of those acts. We recommend that the scope of reserved legal activities in Portugal be reduced. Some activities should be opened to other legal professions even if the opening may be limited and confined to a specific area of knowledge or professional practice.
7	Law 154/2015 "Solicitors and Bailiffs Professional Association Bylaws"	Art. 91 (1) 1st part	Academic qualifications	For admission to the Professional Association of Solicitors and Bailiffs a university degree in law or in a solicitor's practice (Solicitadoria) is required, as well as the completion of the required internship programmes.	It is our understanding that the legislator considers that only a university law degree or a university degree in solicitor's practice can provide the necessary theoretical knowledge required from a solicitor or a bailiff.	Requiring a law university degree or a solicitors' practice limits the number of professionals that can enter the market and offer their services in it. Owing to these entry restrictions, a smaller number of professionals have to serve the same number of clients. This may lead to higher prices charged for those services as demand may outstrip supply. In addition, with little or no competitive pressure, professionals have little incentive to innovate and to provide a broader range of services. According to the European Commission ("Proposal for a Directive of the European Parliament and of the Council on a proportionality test before adoption of new regulation of professions", COM(2016) 822 final, 10. 1. 2017, p. 15, para. 12), this ultimately leads to a welfare loss for businesses, including SMEs, and individual consumers. We note that solicitors in the UK are not required to hold a university law degree. University graduates in any subject other than law can access the profession. One way is for a candidate to obtain a Qualifying Law Degree. This is a standard degree in law awarded by a university in the UK, or a degree awarded by a university or establishment of equivalent level outside the UK, accepted by the Bar Standards Board. After obtaining the degree, the candidate will undertake a Legal Practice Course (LPC) and a 2-year training contract, which can be offered by a law firm, a public sector body or a company legal department. An alternative path is designed for candidates having graduated in a subject other than law. These candidates will undertake a one-year law conversion course and obtain a Graduate Diploma in Law (GDL), again followed by the LPC and a two-year training contract.	We recommend that the professional association should work with the legislator to set up a transparent, proportional and non-discriminatory process for identification of alternative academic routes to obtain the academic qualifications necessary for the exercise of the profession. We recommend that access to the professions of solicitor and bailiff be open to university degrees other than law and solicitor's practice, as the case may be. Other university graduates may be accepted to complete a "conversion" course in law or solicitor's practice or with postgraduate studies, meeting all the necessary academic requirements for the exercise of the profession in question before undertaking the compulsory internship and final exam. These alternative routes would follow a transparent, proportional and non-discriminatory criterion set in advance.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
8	Law 154/2015 "Solicitors and Bailiffs Professional Association Bylaws"	Art. 95 (1)(5) and Art. 212 (2)	Multidisciplinary practice in professional firms	Solicitors and bailiffs can create one single firm to exercise their profession together, each professional being subject to the duties and ethical rules established by the professional association applicable to each profession. This firm may pursue both corporate objectives (applicable to the exercise of the profession of bailiff and of solicitor). These firms can include both types of professionals but only these two types of professionals.	According to some stakeholders and to some literature on this subject, such restrictions aim to guarantee professional independence, autonomy, compliance with professional ethical rules and the pursuit of the public interest (e.g., the good administration of justice). According to them, opening the partnership to other professionals outside the profession could: (a) threaten the autonomy and independence of legal professionals; (b) threaten lawyer-client privilege; (c) give rise to conflicts of interest between the different partners within a same legal firm that would risk the pursuit of the social goal binding the legal professional firm. This is because non-professional partners would not be bound by the same professional obligations, as they are not members of the professional association.	To restrict multidisciplinary activity in a professional firm is to restrict the association of different professionals, belonging to different professional associations (some may not even belong to a public professional association), who wish to exercise their professional activities within the same firm and in the pursuit of the firm's corporate or social objective(s). In a professional firm, this restriction takes the form of a restriction on partnership – restricting, or banning altogether, non-professional partners. This restriction is particularly acute in the case of the legal professions. To rule out multidisciplinary activity in the same professional firm, between potentially complementary service providers, harms competition and can be detrimental to consumer welfare. In fact, this restriction does not allow for the full exploration of economies of scope that come with the offer of different services by a same "service delivery unit" that shares infrastructure and human capital. It foregoes gains from specialisation and service quality that would result from the interaction between a wider range of professionals. This also means foregoing the exploitation of economies of scale and the advantages of branding. It also does not allow for the mitigation of the double marginalisation (or double mark-up) problem that comes with multidisciplinary activities which can complement each other, by segmenting the services provided. This means foregoing lower average costs in a multi-product firm, thereby leading to higher fees being charged to clients, while preventing clients from enjoying further benefits that could be gained from a more convenient "one-stop shop" for a wider range of professional services. Ruling out multidisciplinary within a profession can reduce the scope for better risk management between different professional activities within the same professional firm, as they may be subject to non-identical demand volatility or uncertainty, i.e., reduction in the scope for internal risk-spreading to be understood as the ability to transfer resources in response to fluctuations in demand. To offer a wider range of professional services means to be better prepared to face market uncertainties. Furthermore, opening up a professional firm to multidisciplinary activities is likely to ease the introduction of innovative products but also to spur innovation in the delivery of already existing products or ranges of products.	We recommend that the prohibition of multidisciplinary practice in professional firms should be removed, particularly in the case of the legal professions, where the "professional partnership model" is the only model allowed for the practice of the profession in a collective way. The creation of "alternative business structures" will lead to more innovation, a broader range of services and easier access to legal services for businesses and consumers.
9	Law 154/2015 "Solicitors and Bailiffs Professional Association Bylaws"	Art. 95 (4)	Management of professional firms	The administration of any firm composed of both solicitors and bailiffs, of only solicitors or only bailiffs, can only include members of the Professional Association of Solicitors and Bailiffs.	In Draft Law 308/XII (which approved the Public Professional Association of Solicitors and Bailiffs Bylaws, and repealed the Chamber of Solicitors Statutory Laws) states in para. 2 of its recital (exposição de motivos) that, considering the special role of these professionals in the administration of justice,	Framework Law 2/2013 only requires that one of the managers or administrators of a professional firm be a member of the professional association (or, in case registration in the professional association is not mandatory, fulfilment of all membership requirements). Conflicts between owners (the principals) and managers (the agents) has been the subject of extensive literature, and various payment schemes have been adopted to align managers' interests as close as possible to those of the owners. A professional management, which ultimately answers to the owners of the professional firm, may be a better option as it will benefit from the better knowledge managers have of the market, the types of	We recommend that the separation between ownership and management should be allowed in all professional firms and that their management may include non-professionals.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
					professional societies that include either solicitors or bailiffs, or both, cannot include any other type of professionals, even legal ones such as lawyers. This restriction is similar to what is established in the bylaws of other public professional associations in the legal area. One reason for this ban is the fact that these professionals have access to personal data that ought to be protected and safeguarded, given the important values established in the Constitution, especially the right to privacy. In fact, the use of such sensitive personal data by professionals from other areas could facilitate the practice of criminal acts.	services demanded by clients, the best ways to reach them, and the best way to introduce innovations into the delivery of legal services. Foregoing professional management will lead to less diversity and innovation of services, to a less successful match between services that are supplied and demanded, and possibly to higher prices.	
10	Law 154/2015 "Solicitors and Bailiffs Professional Association Bylaws"	Art. 105 (1)	Academic qualifications	The following are requirements for the enrolment of professionals in the Professional Association of Solicitors and Bailiffs, in addition to passing the internship and its final exam: holding a university law degree or a higher degree in a solicitor's practice or an equivalent foreign higher academic degree.	We may assume that this provision attempts to protect clients from potential wrongdoing by solicitors and bailiffs, purportedly resulting from a lack of suitable academic training or a lack of legal suitability to perform their professional activity, harming the public interest.	Requiring a law university degree or a solicitors' practice limits the number of professionals that can enter the market and offer their services in it. Owing to these entry restrictions, a smaller number of professionals have to serve the same number of clients. This may lead to higher prices charged for those services as demand may outstrip supply. In addition, with little or no competitive pressure, professionals have little incentive to innovate and to provide a broader range of services. According to the European Commission ("Proposal for a Directive of the European Parliament and of the Council on a proportionality test before adoption of new regulation of professions", COM(2016) 822 final, 10. 1. 2017, p. 15, para. 12), this ultimately leads to a welfare loss for businesses, including SMEs, and individual consumers. We note that solicitors in the UK are not required to hold a university law degree. University graduates in any subject other than law can access the profession. One way is for a candidate to obtain a Qualifying Law Degree. This is a standard degree in law awarded by a university in the UK, or a degree awarded by a university or establishment of equivalent level outside the UK, accepted by the Bar Standards Board. After obtaining the degree, the candidate will undertake a Legal Practice Course (LPC) and a 2-year training contract, which can be offered by a law firm, a public sector body or a company legal department. An alternative path is designed for candidates having graduated in a subject other than law. These candidates will undertake a one-year law conversion course and obtain a Graduate Diploma in Law (GDL), again followed by the LPC and a two-year training contract.	We recommend that the professional association should work with the legislator to set up a transparent, proportional and non-discriminatory process for identification of alternative academic routes to obtain the academic qualifications necessary for the exercise of the profession. We recommend that access to the professions of solicitor and bailiff be open to university degrees other than law and solicitor's practice, as the case may be. Other university graduates may be accepted to complete a "conversion" course in law or solicitor's practice or with postgraduate studies, meeting all the necessary academic requirements for the exercise of the profession in question before undertaking the compulsory internship and final exam. These alternative routes would follow a transparent, proportional and non-discriminatory criterion set in advance.

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11	Law 154/2015 "Solicitors and Bailiffs Professional Association Bylaws"	Art. 105 (3)	Professional internship	Enrolment in the professional association college of bailiffs depends on the following requirements:- holding Portuguese nationality; - having successfully completed the internship programme; - applying for enrolment in the college up to three years after completion of the internship period. To be exempted from the internship, bailiffs who have practiced for more than three years up to the publication of these bylaws, must undergo the examination provided for in no. 3 of Art. 115 and obtain a favourable opinion from the CAAJ (Comissão para o Acompanhamento dos Auxiliares de Justiça or Commission for the Follow-up of Assistants of Justice", which is an independent administrative entity whose governing body is appointed by the government, as established in Law 77/2013).	The professional internship aims to ensure that future bailiffs have the adequate theoretical and practical training, experience and ethical posture to exercise their profession, beyond the specialised knowledge they have acquired at university. The three-year deadline attempts to ensure that the training received during the internship remains valid and up to date. As for holding Portuguese nationality, this was an option taken by the legislator by drawing a parallel with public magistrates. The exclusion of more recent debtors (10 years) constitutes a proxy for behavioural suitability and trustworthiness to perform this legal profession that involves dealing with public assets. According to the professional association, new internship guidelines for bailiffs have not been published since the 2011 version.	The existence of an internship is not questioned in itself but depending on its duration, subject matter, evaluation model and associated costs, it may be disproportionate and unnecessary to fulfil the policy objective. Mandatory internship may be justified, even if it constitutes a barrier to access to the profession. A major concern stems from the fact that the internship is governed by the professional association itself, which may dispense with the participation of third parties. This may result in an undue limitation of the number of professionals entering the market, with a negative impact on the level of competition and ultimately with a negative impact on consumers' choice over prices, diversity and innovativeness, as well as quality of services. Hence, this participation by law faculty members, and possibly by magistrates or representatives of the Ministry of Justice, should be institutionalised. The Portuguese nationality requirement is discriminatory. By excluding nationals of other countries, such as professionals from other EU Member States, there may be fewer people able to offer services in the market, even if the market is subject to several constraints imposed by the state in the name of the public interest.	We recommend that the subjects that are part of the academic qualification of professional internships should not be repeated in the theoretical training offered during the internship; also, we recommend that the theoretical training be conducted also via e-learning. We recommend that the final evaluation of the internship should be conducted by a board, independent from the professional association, which may include members of the latter, but must include also professionals of recognised merit, such as law professors, magistrates, among others. We recommend that the fees required for internship be calculated under a transparent, non-discriminatory and cost-based criteria. The Portuguese nationality requirement should be replaced by the requirement that non-nationals should provide evidence of their adequate knowledge of the Portuguese language and of the Portuguese judicial system.
12	Law 154/2015 "Solicitors and Bailiffs Professional Association Bylaws"	Art. 106 (3)(4)(5)	Registration and licensing	Registration may be refused or cancelled if the member is considered to be legally unfit for the exercise of the professional activity in cases such as: having been declared by a court decision taken in the last 15 years, as insolvent or responsible for insolvency of a company controlled by them or to whose management or supervisory bodies they belonged; having been subject to a disciplinary penalty exceeding the fine imposed while in the exercise of functions as a public servant or equivalent, as a lawyer or solicitor or a member of another public professional association.	The professional association demands of candidates for membership the behavioural standards deemed necessary for public interest reasons. The behavioural standards referred to are objective elements that allow the professional association to assess the candidate's behavioural and moral suitability for membership. The Portuguese Constitutional Court has already ruled that a person's criminal record cannot be used to directly exclude candidates from the professions. It can only be used as an element to be considered when assessing legal suitability.	This provision establishes several behavioural requirements that in some cases might be disproportional or even unrelated to the overall quality of the professional activity. As some of these requirements may lead to the exclusion of well-qualified candidates from accessing the profession, they may reduce the level of competition in the market for this type of legal service, ultimately resulting in lower consumer welfare.	A technical study on access to the professions of solicitor and bailiff and of their exercise should be carried out. This technical study should assess the proportionality of all these requirements taking into account the public interest, which includes the promotion of competitive markets.

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13	Law 154/2015 "Solicitors and Bailiffs Professional Association Bylaws"	Art. 115 (3)	Registration and licensing	Those whose registration has been cancelled by the professional association can enrol again as members. But they will be subject to an examination to evaluate their knowledge and competences. They will be required to enrol in the internship programme if they have not exercised their professional activity for more than five years in the case of solicitors or more than three years in the case of bailiffs.	The five-year and three-year deadlines attempt to ensure that professional skills remain valid and up to date, for the benefit of their clients and of the public interest.	This provision may lead to the imposition of an examination and even the internship programme on a professional who had been a member of the professional association (and supposedly already has concluded the internship or practiced for several years). These requirements may constitute a burden on professionals. In particular, requiring an internship constitutes a barrier to access to the profession and may reduce the number of professionals competing in the market. Hampering competition may drive prices/fees up and may reduce diversity and innovativeness of the services offered in the market, to the detriment of social welfare.	This legal provision should be modified so that enrolment in the internship programme is only mandatory if candidates fail the assessment test
14	Law 154/2015 "Solicitors and Bailiffs Professional Association Bylaws"	Art. 128	Advertising	Limits the types of advertisement by the professionals. Defines legal and illegal advertisement initiatives.	Some forms of advertising are not allowed. These restrictions aim to protect consumers from misleading or manipulative claims, not easily identifiable due to the asymmetry of information between professionals and clients.	The regulatory restrictions mentioned above limit the freedom of legal professionals to advertise their own activity, which might be especially harmful for those not yet well established in the market. Advertising services to inform and potentially gain clients is crucial to promoting competition and to establishing a level playing field among professionals in the market. Advertising legal services may also lead to lower prices for legal services as it spurs competition among providers. Advertising can improve consumer information and reduce search costs leading to more competition among established firms. Restrictions on advertising increase the price of professional services, increase professionals' incomes and reduce the entry of certain types of firms. Additionally, there is little evidence on the positive relationship between advertising restrictions and quality of services, even though it may result in fewer consumers using ServiceDirective 2006/114/EC which states that only misleading and unlawful comparative advertising can lead to distortion of competition within the internal market. The interdiction of misleading advertising is foreseen under the national legal regime. To go beyond the EU benchmark, in particular ruling out publicity of comparative contents in a generic way for specific professions, will have an adverse effect on consumer choice and no clear benefits.	Any prohibition or restriction for legal professions beyond the prohibition on misleading and unlawful comparative advertising should be removed.
15	Law 154/2015 "Solicitors and Bailiffs Professional Association Bylaws"	Art. 132, Art. 133 (2)	Professional internship	Establishes that the power to organise internships comes from the General Council of the professional association, including the selection of the supervisor (patrono).	It is our understanding that the professional association, through its general council, regards itself as the most competent entity for organising the internship programmes.	This provision gives the professional association the exclusive right to organise and regulate the internship programme. Moreover, the evaluation of interns is carried out exclusively by peers from the professional association. As the professional association pursues both public and private interests, and there is a latent conflict between both types of interests, this exclusivity may open the possibility for the professional association to control access to the profession for reasons other than the public interest. In turn, this control may reduce the number of professionals competing in the market for legal services which may negatively impact innovativeness and diversity of such legal services, as well as the prices being charged, to the detriment of consumers.	We recommend that the internship evaluation procedures be conducted by a board, independent of the professional association, which may include members of the latter, but must also include professionals of recognised merit, such as law professors and magistrates, among others.

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16	Law 154/2015 "Solicitors and Bailiffs Professional Association Bylaws"	Art. 136 (1)	Reserved acts	In addition to lawyers, only solicitors with registration in force in the Professional Association of Solicitors and Bailiffs, and professionals treated as solicitors under the freedom to provide services may, throughout the national territory and before any jurisdiction, body, authority or public or private entity, perform reserved acts of the profession, namely to exercise the judicial mandate, under the terms of the law, as a paid liberal profession.	It is our understanding that this provision aims to prevent professionals other than lawyers and solicitors from lawfully carrying out reserved acts as identified, as it is in the public interest to require that only technically qualified professionals bound by legal privilege and other specific ethical principles can provide such legal services. Art. 20 of the Constitution guarantees that any person, if so desires, has the right to be assisted by a lawyer before any authority.	The several listed acts are reserved for solicitors and lawyers. By reserving certain legal acts for solicitors, this provision may limit the number of well-qualified professionals who can offer legal services in the market, which in turn may have negative impacts on the prices being charged, and possibly diversity and innovation.	We recommend that the scope of reserved legal activities in Portugal be reduced. Some activities should be opened to other legal professions even if the opening may be limited and confined to a specific area of knowledge or professional practice.
17	Law 154/2015 "Solicitors and Bailiffs Professional Association Bylaws"	Art. 156	Professional internship	Defines the aims of the internship programme for solicitors and its duration, which can vary between 12 and 18 months. The internship includes two parts. The first part involves theoretical and practical training which includes professional ethics. During the second part of the internship, the trainee carries out the different professional acts of a solicitor.	This professional internship aims to ensure that the different candidates acquire the adequate training, experience and ethical posture required to exercise the profession of solicitor, beyond the specialised knowledge they have acquired in any law school.	The existence of an internship is not questioned in itself but depending on its duration, subject matter, evaluation model and associated costs, it may be disproportionate and unnecessary to fulfil the policy objective. Mandatory internship may be justified, even if constitutes a barrier to access to the profession. The horizontal framework law for professional associations (Law 2/2013) introduces limits on the organisation and duration of professional internships. Internships should not last more than 18 months, including the period for training and evaluation, if applicable. In this case, it is proportional. This evaluation made by peers may give rise to a conflict of interest that may not ensure the required independence of the evaluators and result in a lower number of candidates joining the professions. This, in turn, will have a negative impact on competition in the delivery of financial services in the market.	We recommend that the subjects that are part of the academic qualification of professional internships should not be repeated in the theoretical training offered during the internship; in addition, we recommend that the theoretical training also be conducted via e-learning. We recommend that the final evaluation of the internship should be conducted by a board, independent from the professional association, which may include members of the latter, but must include also professionals of recognised merit, such as law professors and magistrates, among others.
18	Law 154/2015 "Solicitors and Bailiffs Professional Association Bylaws"	Art. 158	Academic qualifications	Enrolment in the internship programme requires that candidates, either nationals or from other EU or EEA countries, hold a university degree in law or in a solicitor's practice, or an equivalent foreign higher academic degree.	It is our understanding that only a completed university law degree or a higher degree in solicitor's practice or an equivalent foreign higher academic degree provide the necessary theoretical knowledge required of a trainee to be able to fully benefit from the internship programme.	Requiring a law university degree or a solicitors' practice limits the number of professionals that can enter the market and offer their services in it. Owing to these entry restrictions, a smaller number of professionals have to serve the same number of clients. This may lead to higher prices charged for those services as demand may outstrip supply. In addition, with little or no competitive pressure, professionals have little incentive to innovate and to provide a broader range of services. According to the European Commission ("Proposal for a Directive of the European Parliament and of the Council on a proportionality test before adoption of new regulation of professions", COM(2016) 822 final, 10. 1. 2017, p. 15, para. 12), this ultimately leads to a welfare loss for businesses, including SMEs, and individual consumers.	We recommend that the professional association should work with the legislator to set up a transparent, proportional and non-discriminatory process for identification of alternative academic routes to obtain the academic qualifications necessary for the exercise of the profession. We recommend that access to the professions of solicitor and bailiff be open to university degrees other than law and solicitor's practice, as the case may be. Other university graduates may be accepted to complete a "conversion" course in law or solicitor's practice or with postgraduate studies, meeting all the necessary academic

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							requirements for the exercise of the profession in question before undertaking the compulsory internship and final exam. These alternative routes would follow a transparent, proportional and non-discriminatory criterion set in advance.
19	Law 154/2015 "Solicitors and Bailiffs Professional Association Bylaws"	Art. 163	Professional internship (bailiff)	It defines the aim of the internship programme for bailiff candidates. This programme is designed and organised by the professional association. It lasts 18 months and admission is subject to a quota regime established by the professional association (college of bailiffs). The final internship exam is conducted not by the professional association itself but by an independent external entity. Only candidates holding a university degree in law or a higher degree in a solicitors practice may be admitted into the internship programme. The periodicity and the number of quotas to attend an internship is determined by the professional association considering the "effective need of bailiffs for an efficient functioning of the judicial system" taking into account the opinion of the CAAJ.	This professional internship aims to ensure that the different candidates acquire the adequate training, experience and ethical posture to exercise the profession of bailiff, beyond the specialised knowledge they have acquired at university or other institutes of higher education. On the other hand, the internship programme is subject to quotas which are defined by the professional association general council. The definition of these quotas takes into account the effective needs of bailiffs for the efficient functioning of the justice system. According to information provided by stakeholders, the last time a candidacy process for filling the existing quotas was launched was in 2014.	The existence of an internship is not questioned in itself but depending on its duration, subject matter, evaluation model and associated costs, it may be disproportionate and unnecessary to fulfil the policy objective. Mandatory internship may be justified, even if constitutes a barrier to access to the profession. The horizontal framework law for professional associations (Law 2/2013) introduces limits on the organisation and duration of professional internships. Internships should not last more than 18 months, including the period for training and evaluation.	We recommend that the subjects that are part of the academic qualification of professional internships should not be repeated in the theoretical training offered during the internship; in addition, we recommend that the theoretical training also be conducted via e-learning.
20	Law 154/2015 "Solicitors and Bailiffs Professional Association Bylaws"	Art. 167 (1)	External regulatory regime	Up to June 15 of each year, CAAJ (the Commission for the Follow-up of Assistants of Justice) can define the maximum number and type of judicial procedures that bailiffs can be allocated and may hold, after the council of bailiffs has been consulted.	This provision intends to promote the allocation of judicial procedures among bailiffs in a balanced and equitable way. The aim is to prevent unmanageable concentrations of procedures in a few bailiffs that would delay the speedy administration of justice, which constitutes a public good. Deliberation 300/2016, as transcribed in Notice 7530-A/2016, defines the arithmetical formula used to calculate the maximum number of executive actions that can be allocated to a professional society of bailiffs.	A bailiff carries out the executive process and all due diligence, including citations, notifications and publications, pledges and sales and settlement of claims. Although not a representative or agent of the executor, the bailiff is chosen by the latter from a list provided by the Professional Association of Solicitors and Bailiffs. Bailiffs are supervised by this Professional Association and also by the Commission for the Follow-up of Assistants of Justice (CAAJ). As the CAAJ can define the maximum number and type of judicial procedures that bailiffs can be allocated and may hold, it is important to guarantee that this definition takes into account the importance of competition by merit, alongside with other public interest criteria. This is so that the current allocation of executive procedures among bailiffs is not entirely market-based. In fact, the provision under analysis may interfere with the way individual bailiffs manage their own workload, and limits their freedom to take on executive procedures. This being the case, competition will be hampered, and bailiffs may have lower incentives to offer services with greater diversity, higher quality and greater innovation.	A technical study should be carried out to assess to what extent the CAAJ's decision process places enough weight on competition by merit. When the CAAJ defines the maximum number of executive procedures that can be allocated to different bailiffs, the formula employed, including performance measures, should lead to an allocation of procedures as similar as possible to the one resulting from a competitive process.

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21	Law 154/2015 "Solicitors and Bailiffs Professional Association Bylaws"	Art. 173 (1)(2)	Professional fees	For the remuneration of their services, bailiffs apply the tariffs approved by an order from the government, after consulting the professional association. Each fee/tariff comprises a fixed and a variable part.	It is our understanding that the adoption of a two-part tariff may be justified as follows (see also Ordinance 282/2013). The fixed part is regarded as desirable, to prevent too strong a competition in prices that could lead to a deterioration in quality as, in the understanding of the legislator, would result from competing bailiffs attempting to cut costs. However, if fees were fixed with no variable part, incentives to deliver good quality services dependent on a higher level of effort, would be non-existent, as shirking would dominate. Hence, the legislator adopts a two-part tariff in an attempt to guarantee the delivery of good quality services by bailiffs. In addition, setting a reasonable fixed part may allow easier access to bailiff services by clients with lower incomes.	Although price control may be helpful to consumers in some cases, it can reduce suppliers' incentives to compete and innovate. A two part-tariff may mitigate this dilemma but it may still harm competition between bailiffs and reduce incentives to provide high-quality services leading to a loss in social welfare. We posit whether a two-part tariff is the best option to both promote competition and defend the public interest.	A technical study on the exercise of the profession of bailiff should be carried out in the short run, as mentioned above. This technical study should assess the whole pricing system as presently defined for the acts performed by bailiffs. This assessment must include a competitive assessment exercise, as the application of price controls raises serious competition concerns.
22	Law 154/2015 "Solicitors and Bailiffs Professional Association Bylaws"	Art. 212 (2)(4)	Partnership / Ownership of professional firms	In addition to solicitors and/or bailiffs, the following may be partners of solicitors firms: (a) companies of solicitors previously constituted and registered in the Professional Association of Solicitors and Bailiffs; (b) organisations of professionals treated as solicitors established in another EU Member State whose capital and voting rights belong exclusively to the professionals concerned. Societies of solicitors may also have solicitors as non-partners, designated as associates.	According to some stakeholders and to some literature on this subject, such restrictions aim to guarantee professional independence, autonomy, adherence to professional ethical rules and the pursuit of the public interest (e. g. , the proper administration of justice). According to them, opening the partnership to people outside the profession could: (a) threaten the autonomy and independence of legal professionals; (b) threaten lawyer-client privilege; (c) give rise to conflicts of interest between the different partners within the same legal firm that would risk the pursuit of the social goal binding the legal	To open up a professional firm to external ownership means to open the firm to more investment by allowing access to a wider pool of capital. External ownership, partial or total, means capital ownership by non-professionals, ownership of voting rights, or both. This opening will enable professional firms to satisfy a greater pool of consumers and reap the benefits of a larger scale of operations. For younger professionals, not yet well established in their profession, it would also mean more opportunities to set up their own professional firm and compete in the market. This will generate a greater ability by professional firms to compete in the Single Market and internationally. It would also allow for improved risk management among the owners of a professional firm, hence, lower operational costs and possibly lower prices charged to consumers for the different professional services being delivered in the market. Ultimately, all these restrictions on ownership, shareholding and partnership over professional firms, are detrimental to firms across the entire economy, especially SMEs, and households, as the relaxation of these restrictions can be expected to lead to an increase in their welfare.	We recommend that the ownership and partnership of all professional firms be opened to other professionals and non-professionals, that is, should be open to individuals outside the profession. We also recommend that other professionals and non-professionals be allowed to hold a majority of a professional firm's social capital, together with a majority of voting rights.

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					professional firm, because non-professional partners would not be bound by the same professional obligations, as they are not members of the professional association.		
23	Law 154/2015 "Solicitors and Bailiffs Professional Association Bylaws"	Art. 222 (3)	Incompatibilities with the exercise of the activity	Bailiffs in a firm of bailiffs cannot be appointed to conduct proceedings as individual professionals.	It is our understanding that this rule is established to prevent the existence of any conflicts of interest among different partners in the same firm.	The harm that comes from limiting the exercise of the activity in a collective practice instead of an individual practice when the bailiff is a partner in a firm is related to the impossibility of fully controlling the choice of their own appointments. It may limit the choice of those consumers who may wish to appoint a specific professional.	A technical study on the exercise of the profession of bailiff should be carried out in the short run. This technical study should assess to what extent this provision may be removed, taking into account the public interest which must include the promotion of competitive markets.
24	Law 154/2015 "Solicitors and Bailiffs Professional Association Bylaws"	Art. 222 (5)	Partnership / Ownership of professional firms	Firms of bailiffs cannot have other firms as partners.	It is our understanding that partnership restrictions result from concerns with maintaining professional privilege and also aim to prevent conflicts of interest between different partners. To open partnerships to people outside the profession could jeopardise the practice of professional privilege.	This provision does not allow firms of bailiffs to have other firms as partners, including other firms of bailiffs. This limits investment possibilities in those firms and impedes their own development into more integrated and innovative businesses, including multidisciplinary firms with an open partnership.	These restrictions may hamper competition and their removal should be considered. However, due to the specific public nature of the profession of bailiff, the technical study to be conducted on the exercise of this profession should also assess to what extent this provision may be removed, taking into account the public interest which should include the promotion of competitive markets.
25	Decree-Law 28/2000 "Certification of copies"	Art. 2 (1)(2)	Fixed prices	Solicitors can certify copies and may freely define the price they charge but cannot exceed the fixed price for notaries.	It is our understanding that to post prices in a clear and visible way is a requirement aimed at informing and protecting the client. It is also our understanding that not allowing prices charged by solicitors (and lawyers) to exceed the fixed price charged by notaries is also meant to protect clients from excessive prices.	We know that to set prices or to set maximum prices may hamper innovation and may facilitate price co-ordination around the maximum price. However, it is doubtful that there is much scope for innovation in the certification of copies. There remains the possibility for price co-ordination which can be serious and may go against the rationale for allowing lawyers and solicitors to also provide this type of service which until then was exclusive to notaries, namely, increasing the number and availability of providers of such services.	This legal provision should be removed.
26	Decree-Law 76-A/2006 (current version) "Simplification of certain notaries' acts"	Art. 38 (5)	Fixed prices	The amount to be charged by solicitors for the services referred to in paragraph 1 (such as certifying signatures, authenticating private documents, certifying translations of documents and certifying photocopies with original documents) may not exceed the amounts established for notaries.	It is our understanding that not allowing prices charged by lawyers, solicitors and other official entities to exceed the fixed price charged by notaries is meant to protect clients from the practice of excessive prices.	We know that to set prices or to set maximum prices may hamper innovation and may facilitate price co-ordination around the maximum price. However, it is doubtful that there is much scope for innovation in the certification of copies. There remains the possibility for price co-ordination which can be serious and may go against the rationale for allowing lawyers and solicitors to also provide this type of service which until then was exclusive to notaries, namely, increasing the number and availability of providers of such services.	This legal provision should be removed.

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27	Regulation 105/2014 "Regulation of Internship for Solicitors"	Art. 8, Art. 10, Art. 11 and Art. 12	Professional internship	To qualify as a solicitor, candidates must complete an internship that can last from 12 to 18 months and includes two phases, theoretical and practical, and includes a national final exam evaluated by peers. There are exemptions from the internship or the final exam, if the candidate demonstrates professional experience over three of the last five years, and their CV is considered suitable by a committee of the professional association.	This professional internship aims to ensure that the different candidates acquire the adequate training, experience and ethical posture required to exercise the profession of solicitor, beyond the specialised knowledge they have acquired in any law school.	The existence of an internship is not questioned in itself but depending on its duration, subject matter, evaluation model and associated costs, it may be disproportionate and unnecessary to fulfil the policy objective. The horizontal framework law for professional associations (Law 2/2013) introduces limits on the organisation and duration of professional internships. Internships should not last more than 18 months, including the period for training and evaluation, if applicable. In this case, it is proportional. This evaluation made by peers may give rise to a conflict of interest that may not ensure the required independence of the evaluators and result in a lower number of candidates joining the professions. This, in turn, will have a negative impact on competition in the delivery of financial services in the market.	We recommend that the subjects that are part of the academic qualification of professional internships should not be repeated in the theoretical training offered during the internship; in addition, we recommend that the theoretical training also be conducted via e-learning. We recommend that the final evaluation of the internship should be conducted by a board, independent from the professional association, which may include members of the latter, but must include also professionals of recognised merit, such as law professors and magistrates, among others.
28	Regulation 341/2017 "Regulation of Fees, Compulsory Insurance and Collection and Exemption of Quotas"	Art. 5 and Annex I	Internship fees	The solicitor internship fees amount to EUR 969. The bailiff internship fees amount to EUR 1530.	The fees aim to finance the administrative costs of the services provided by the Bar Association, including the costs of internship programmes.	If internship fees are too high for candidates, that might lead to fewer candidates joining the internship process and, therefore, result in a lower number of suppliers of legal services competing in the market.	We recommend that the fees required for internship be calculated using transparent, non-discriminatory and cost-based criteria.
29	Regulation 786/2010 "Publicity and Image of solicitors and bailiffs"	Art. 4 to Art. 14	Advertising	Limits the personal advertising that solicitors and bailiffs can engage in.	According to stakeholders these prohibitions are necessary to ensure that a legal service is not regarded as any other commercial service devoid of a public good, and to protect potential clients from erroneous information especially when that service has the characteristics of a "credence good".	The regulatory restrictions mentioned above limit the freedom of legal professionals to advertise their own activity, which might be especially harmful for those not yet well established in the market. Advertising services to inform and potentially gain clients is crucial to promoting competition and to establishing a level playing field among professionals in the market. Advertising legal services may also lead to lower prices for legal services as it spurs competition among providers. Advertising can improve consumer information and reduce search costs leading to more competition among established firms. Restrictions on advertising increase the price of professional services, increase professionals' incomes and reduce the entry of certain types of firms. Additionally, there is little evidence on the positive relationship between advertising restrictions and quality of the services, even though it may result in fewer consumers using the Services Directive 2006/114/EC which states that only misleading and unlawful comparative advertising can lead to distortion of competition within the internal market. The interdiction of misleading advertising is foreseen under the national legal regime. To go beyond the EU benchmark, in particular ruling out publicity of comparative contents in a generic way for specific professions, will have an adverse effect on consumer choice and no clear benefits.	Any prohibition or restriction for legal professions beyond the prohibition on misleading and unlawful comparative advertising should be removed.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
30	Regulation 275/2011 "Regulation of the internship of bailiffs"	Art. 1 to Art. 5, and Art. 8	Professional internship (bailiff)	The internship course is organised by the Professional Association of Solicitors and Bailiffs. An external and independent entity is responsible for preparing, conducting and evaluating the anonymous admission examinations.	It is our understanding that the professional association regards itself as the most competent entity to organise the internship programmes.	The existence of an internship is not questioned in itself but depending on its duration, subject matter, evaluation model and associated costs, it may be disproportionate and unnecessary to fulfil the policy objective. Mandatory internship may be justified, even if constitutes a barrier to access to the profession. The horizontal framework law for professional associations (Law 2/2013) introduces limits on the organisation and duration of professional internships. Internships should not last more than 18 months, including the period for training and evaluation.	We recommend that the subjects that are part of the academic qualification of professional internships should not be repeated in the theoretical training offered during the internship; in addition, we recommend that the theoretical training also be conducted via e-learning.
31	Regulation 275/2011 "Regulation of the internship of bailiffs"	Art. 16, Art. 20	Professional internship (bailiff)	This provision establishes procedural obligations to be submitted for the purpose of evaluating interns. Interns must submit proof of their intervention in 100 legal proceedings and must present a final internship report where the intern explains the activities performed during the internship.	It is our understanding that the professional association regards such interventions by the trainee as an integral part of their professional training as a future bailiff.	The existence of an internship as such is not questioned in itself but depending on its duration, subject matter, evaluation model and associated costs, it may be disproportionate and unnecessary to fulfil the policy objective. This provision creates a burden on interns as it may be difficult for them to find a supervisor who can guarantee their participation in the mandatory effective judicial interventions. This difficulty may delay the conclusion of the internship by the trainee and increase their opportunity costs. This may negatively affect their decision to either join an internship programme or to stick to it and conclude it during the required time frame. In which case there could be fewer bailiffs competing in the market, as concluding the internship programme is a necessary condition for becoming a bailiff.	Reassess the number of 100 legal interventions required from an intern, and consider its reduction.
32	Regulation 275/2011 "Regulation of the internship of bailiffs"	Art. 22 to Art. 26	Professional internship (bailiff)	There is a final evaluation made to the interns who are candidates to be bailiffs. The final evaluation comprises the evaluation of the work performed by the trainee during the internship and is carried out by the external and independent entity designated by the Enforcement Effectiveness Committee (Comissão para a Eficácia das Execuções).	This final evaluation includes a written part and an interview (which can be regarded as an oral examination), and the submission of reports from the different activities carried out during the two internship stages. It is meant to assess the trainee's scientific and technical knowledge together with their knowledge and awareness of the professional code of ethics.	This final exam represents another entry barrier to the profession. It increases the opportunity cost and may discourage some from either finishing or even enter the internship process, with the well-known impacts on the number of professionals actively competing in the market for such services. Moreover, it is doubtful whether a final exam can test whether the trainee has indeed internalised the existing code for ethical conduct.	Eliminate the written test.
33	Regulation 202/2015 "Code of ethics"	Art. 8	Advertising	It defines the forms of legal and illegal advertising for solicitors and bailiffs.	Some forms of advertising are not allowed. These restrictions aim to protect consumers from misleading or manipulative claims, not easily identifiable due to the asymmetry of information between professionals and clients.	The regulatory restrictions mentioned above limit the freedom of legal professionals to advertise their own activity, which might be especially harmful for those not yet well established in the market. Advertising services to inform and potentially gain clients is crucial to promote competition and to establish a level playing field among professionals in the market. Advertising legal services may also lead to lower prices for legal services as it spurs competition among providers. Advertising can improve consumer information and reduce search costs leading to more competition among established firms. Restrictions on advertising increase the price of professional services, increase professionals' incomes and reduce the entry of certain types of firms. Additionally, there is little evidence on the positive relationship between advertising restrictions and quality of the services, even though it may result in fewer consumers using the Service Directive 2006/114/EC which states that only misleading and unlawful comparative	Any prohibition or restriction for legal professions beyond the prohibition on misleading and unlawful comparative advertising should be removed.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
						advertising can lead to distortion of competition within the internal market. The interdiction of misleading advertising is foreseen under national legal regime. To go beyond the EU benchmark, in particular ruling out publicity of comparative contents in a generic way for specific professions, will have an adverse effect on consumer choice and no clear benefits.	
34	Regulation 1108/2016 "Regulation of the internship of solicitors"	Art. 1 (1)	Professional internship (solicitors)	It is within the competence of the Professional Association of Solicitors and Bailiffs to establish a model of internship for the suitable preparation of interns as future solicitors.	The conclusion of an internship programme as devised by the professional association is considered to be a requirement to become a member of the professional association. Even though Law 154/2015 does not define the policy objective of the internship programme, it is our understanding that the legislator considers that only an internship programme organised and supervised by the professional association can provide candidates with the practical and ethical training necessary to perform the professional acts in a way that safeguards the public interest.	This provision gives the professional association the exclusive right to organise and regulate the internship programme. Moreover, the evaluation of interns is carried out exclusively by peers from the professional association. As the professional association pursues both public and private interests, and there is a latent conflict between both types of interests, this exclusivity may open the possibility for the professional association to control access to the profession for reasons other than the public interest. In turn, this control may reduce the number of professionals competing in the market for legal services which may negatively impact innovativeness and diversity of such legal services, as well as the prices being charged, to the detriment of consumers.	We recommend that the internship evaluation procedures be conducted by a board, independent of the professional association, which may include members of the latter, but must also include professionals of recognised merit, such as law professors and magistrates, among others.
35	Regulation 1108/2016 "Regulation of the internship of solicitors"	Art. 1 (2), Art. 2, Art. 3	Professional internship (solicitors)	The internship has a maximum duration of 18 months. The first stage of the internship is six months long and is aimed to provide training for the intern. In this period, the intern is required to attend the training sessions. The second stage of the internship has a duration of 12 months and corresponds to integration into the profession with the supervision of a supervisor.	This professional internship aims to ensure that the different candidates acquire the adequate training, experience and ethical posture to exercise the profession of solicitor, beyond the specialised knowledge they have acquired in any law school. According to stakeholders, the internship programme for solicitors currently lasts 12 months. Law 2/2013 establishes that the creation of professional associations must be an exception and not the rule, and should only be created when they seek to protect the public interest while respecting the principle of proportionality.	Mandatory internship may be justified. A major concern stems from the fact that the internship is governed by the professional association itself, which may dispense with the participation of third parties. Hence, this participation by law faculty members, and possibly by magistrates or representatives from the Ministry of Justice, should be institutionalised.	The existence of an internship is not questioned in itself but depending on its duration, subject matter, evaluation model and associated costs, it may be disproportionate and unnecessary to fulfil the policy objective. With regard to the duration, up to 18 months, we have no recommendation. We recommend that the subjects that are part of the academic qualification of professional internships should not be repeated in the theoretical training offered during the internship; in addition, we recommend that the theoretical training also be conducted via e-learning. We recommend that the final evaluation of the internship should be conducted by a board, independent from the professional association, which may include members of the latter, but must include also professionals of recognised merit, e.g. law professors, magistrates among others.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
36	Regulation 1108/2016 "Regulation of the internship of solicitors"	Art. 12	Professional internship (solicitors)	Enrolment in the professional association depends on completion of the internship and final examination. The examination is composed of a written and an oral test.	The professional internship aims to ensure that future solicitors have the adequate theoretical and practical training, experience and ethical posture to exercise their profession, beyond the specialised knowledge they have acquired in any law school. Framework law 2/2013 establishes that professional internships should only exist when justified by reasons of public interest.	This final exam represents another entry barrier to the profession. It increases the opportunity cost of trainee lawyers and may discourage some from either finishing or even entering the internship process, with the well-known impacts on the number of lawyers actively competing in the market for legal services. Moreover, it is doubtful whether a final exam can test whether the trainee has indeed internalised the existing code for ethical conduct.	We recommend that the internship evaluation procedures be conducted by a board, independent of the professional association, which may include members of the latter, but must also include professionals of recognised merit, such as law professors and magistrates, among others.
37	Regulation 1108/2016 "Regulation of the internship of solicitors"	Art. 13	Professional internship (solicitors)	Non-approval in the final examination or in the internship implies new enrolment in the internship and its full repetition. However, the possibility exists of repeating the written and oral examinations in a second phase.	We may assume that this provision attempts to protect clients from potential wrongdoing by solicitors, purportedly resulting from a lack of suitable training to perform their professional activity, thus harming the public interest.	The existence of an internship is not questioned in itself but depending on its duration, subject matter, evaluation model and associated costs, it may be disproportionate and unnecessary to fulfil the policy objective. This provision raises costs for candidates and might have a dissuading effect since the candidate has to repeat the whole internship process if he fails to successfully finish it. This extra cost might limit entry into the market.	We recommend that the subjects that are part of the academic qualification of professional internships should not be repeated in the theoretical training offered during the internship; in addition, we recommend that the theoretical training also be conducted via e-learning. We recommend that the final evaluation of the internship should be conducted by a board, independent from the professional association, which may include members of the latter, but must also include professionals of recognised merit, such as law professors and magistrates, among others. We recommend that the fees required for internship be calculated using transparent, non-discriminatory and cost-based criteria.
38	Regulation 1108/2016 "Regulation of the internship of solicitors"	Art. 17, Art. 18, Art. 19, Art. 21	Professional internship (solicitors)	The internship is organised by the bodies of the professional association.	It is our understanding that the professional association regards itself as the most competent entity to organise the internship programmes.	This provision gives the professional association the exclusive right to organise and regulate the internship programme. Moreover, the evaluation of interns is carried out exclusively by peers from the professional association. As the professional association pursues both public and private interests, and there is a latent conflict between both types of interests, this exclusivity may open the possibility for the professional association to control access to the profession for reasons other than the public interest. In turn, this control may reduce the number of professionals competing in the market for legal services which may negatively impact innovativeness and diversity of such legal services, as well as the prices being charged, to the detriment of consumers.	We recommend that the internship evaluation procedures be conducted by a board, independent of the professional association, which may include members of the latter, but must also include professionals of recognised merit, such as law professors and magistrates, among others.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
39	Regulation 1108/2016 "Regulation of the internship of solicitors"	Art. 33 (5)(6)	Professional internship	Determines the fees to be paid for enrolment in the professional association, as well as other emoluments. This provision rules until the adoption of the new emoluments regulation. E. g. for enrolment in the internship programme a payment of 9. 5 Units of account (Unidades de Conta), which corresponds to EUR 969, will be required.	The fees aim to finance the administrative costs of the services provided by the professional association, including the costs associated with internship programmes.	The existence of an internship is not questioned in itself but depending on its duration, subject matter, evaluation model and associated costs, it may be disproportionate and unnecessary to fulfil the policy objective. This provision may dissuade potential entrants, restricting in this way entry into the market of new professionals.	We recommend that the fees required for internship be calculated using transparent, non-discriminatory and cost-based criteria.
40	Ordinance 9/2013 "Regulation of eviction proceedings"	Art. 22 (2) (b)	Geographical barrier	In the application for eviction, the appointment of the bailiff depends on the bailiff having a professional address in the municipality where the property to be vacated is located, or in the contiguous municipalities.	The petitioner can designate either a notary or a bailiff to conduct eviction proceedings. It is our understanding that the designation of a bailiff (or notary) aims to provide legal certainty and legitimacy to those professionals endowed with the power to conduct eviction proceedings. The geographical restrictions are related to the territorial competence of the courts for the judicial claims, which for reasons related to the proceedings and the proximity of those intervening in the property, must ensure that the bailiff is physically close to the location of the eviction.	One may ask why there is a need to designate a notary (or bailiff) to carry out the eviction proceedings. In England and in Wales, standard possession orders can be filled online, as in Portugal, if certain conditions are met. There is no need to appoint a notary or a bailiff to conduct eviction processes. The petitioner simply has to fill in, either in paper or online, a standard re-possession claim form and e-mail it or post it to the court that deals with housing re-possession. The costs involved are met by the petitioner. Only when tenants do not leave the property by the date given in an order for re-possession can there be need to obtain a warrant of re-possession from the court to arrange for a bailiff to evict them. In fact, territorial delimitations hamper competition. The limitation on the choice of bailiff to deliver services in the eviction proceeding restricts consumer choices. The applicant for the eviction is prevented from freely choosing a bailiff, who, for reasons of better service quality, speed, or other factors of competitiveness, could be preferred even if the bailiff does not live in the designated location.	A technical study on the exercise of the profession of bailiff should be carried out in the short run. This technical study should assess the geographical restrictions established by this legal provision. This assessment must include a competitive assessment exercise, as the appointment of a bailiff to be dependent on having a professional address in the municipality of the property to vacate or in the confined municipalities hampers competition.
41	Ordinance 282/2013 (as amended by Ordinance 349/2015) "Regulation of executive proceedings"	Art. 50, Art. 51, Art. 52	Professional fees	It fixes the professional fees charged by bailiffs for acts performed by them within the executive proceedings, and the forms and terms of payments. It also determines the amounts of professional expenses to be reimbursed to the professionals.	Fixed prices in those legal services were justified on public interest grounds. It was argued by the legislator that they guaranteed universal access to these services by all users and that price control would protect the quality of services as it could possibly decrease if prices were as a result of competition between bailiffs. According to the recital of Ordinance 282/2013, the adoption of a fixed tariff system aims to encourage healthy competition between bailiffs, based on the quality of the service	Fixed prices can have negative economic impacts. Fixed prices may discourage innovation and the provision of greater diversity of services and may hamper competition through prices. Moreover, maximum prices can induce price collusion, even if tacit, around their values, as they play the role of a strategic focal point, which is certainly damaging to consumer welfare.	A technical study on the exercise of the profession of bailiff should be carried out in the short run, as mentioned above. This technical study should assess the whole pricing system as presently defined for the acts performed by bailiffs. This assessment must include a competitive assessment exercise, as the application of price controls raises serious competitive concerns.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
					provided and not on different amounts to be charged, on a case-by-case basis, agreed between the bailiff and the applicant of the proceedings (client).		
42	Ordinance 282/2013 (as amended by Ordinance 349/2015) "Regulation of executive proceedings"	Annex VI, Annex VII, Annex VIII	Professional fees	Tables with fixed fees and the value of expenses to be charged by bailiffs to their clients, which pay for the professional acts performed in executive proceedings.	Fixed prices in those legal services were justified on public interest grounds. It was argued by the legislator that they guaranteed universal access to these services by all users and that price control would protect the quality of services as it could possibly decrease if prices were as a result of competition between bailiffs. According to the recital of Ordinance 282/2013, the adoption of a fixed tariff system aims to encourage healthy competition between bailiffs, based on the quality of the service provided and not on different amounts to be charged, on a case-by-case basis, agreed between the bailiff and the applicant of the proceedings (client).	Fixed prices can have negative economic impacts. Fixed prices may discourage innovation and the provision of greater diversity of services and may hamper competition through prices. Moreover, maximum prices can induce price collusion, even if tacit, around their values, as they play the role of a strategic focal point, which is certainly damaging to consumer welfare.	A technical study on the exercise of the profession of bailiff should be carried out in the short run, as mentioned above. This technical study should assess the whole pricing system as presently defined for the acts performed by bailiffs. This assessment must include a competitive assessment exercise, as the application of price controls raises serious competitive concerns.
43	Notice 5523-A/2016 "To create rules of distribution of procedures for bailiffs"	All	Awarding procedure for bailiffs	Announcement of the creation of rules for the distribution of procedures for the bailiffs, including their maximum number.	This provision intends to promote the allocation of judicial procedures among bailiffs in a balanced and equitable way. The aim is to prevent unmanageable concentrations of procedures in a few bailiffs that would delay the speedy administration of justice, which constitutes a public good.	This provision may result in unreasonable interference with the way each bailiff is able to manage their workload and freedom to take in judicial procedures when attempting to compete with other bailiffs operating in the market. In this way, competition will be hampered, and bailiffs may have lower incentives to offer services with greater diversity, higher quality and greater innovation.	A technical study on the exercise of the profession of bailiff should be carried out. This technical study should assess the public interest to which this provision may answer to, where the public interest must include the promotion of competition.
44	Notice 7530-A/2016 "Rules for setting the maximum number of cases for enforcement officers or companies"	All	Awarding procedure for bailiffs	Limits the maximum number of procedures for bailiffs.	This provision intends to promote the allocation of judicial procedures among bailiffs in a balanced and equitable way. The aim is to prevent unmanageable concentrations of procedures in a few bailiffs that would delay the speedy administration of justice, which constitutes a public good.	This provision may result in unreasonable interference with the way each bailiff is able to manage their workload and freedom to take in judicial procedures when attempting to compete with other bailiffs operating in the market. In this way, competition will be hampered, and bailiffs may have lower incentives to offer services with greater diversity, higher quality and greater innovation.	A technical study on the exercise of the profession of bailiff should be carried out. This technical study should assess the public interest to which this provision may answer to, where the public interest must include the promotion of competition.

Notaries

Table A B.4. Legal professions: Notaries

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
1	Law 23/2013 "Legal framework of the inventory process"	Art. 3(1)(2)(3) - Annex	Geographical barrier/ Reserved activities	The legal competence for the inventory process belongs to the notary's office located in the municipality where the opening of the succession/inheritance are located. If the notary has some impediment, another notary from the same municipality is legally competent to carry out the process. If there is no notary in this municipality, any office from a contiguous municipality is legally competent.	According to stakeholders, this criterion promotes not only procedural speed, but also protects economically disadvantaged parties from the possible relocation of the process in a notary's office too far from the centre of succession interests. The inventory process has been an attribution of notaries since 2009, following recommendations by the troika in the MoU related to the need to use out-of-court solutions for inheritance-succession processes. According to the recital of law proposal 105/XII recital (approved as Law 23/2013), this provision aimed to avoid an inventory process taking place in a municipality not connected with the deceased or his heirs. The rationale is equivalent to the one applicable to court jurisdictions, which follow a reasoning of territorial division. Lawsuits related to the division of assets must generally occur in the court that has jurisdiction over the location of the assets. In fact, there is a parallel with these rules of territorial competence with those related to the courts. The location for the opening of the inheritance process is determined by the Civil Code, and is defined as the last place where the person whose estate is being administered was residing (Art. 2031).	Restrictions on territorial competence exclude notaries located outside the municipality in question from the delivery of those services. In fact, this provision establishes a situation akin to exclusive territories or market segmentation in competition law (see vertical restraints literature). Such exclusions will hamper competition in the market for notarial services. Moreover, from the point of view of the demand, consumers of such services (the interested parties in the succession processes) do not have the power to freely choose the notary. Consumers cannot take in consideration the quality, innovation or other selective factors in their decision on the location of the notary's office, unless there is more than one office in such location (but in such case, the choice would be restricted to those as well).	Following the Portuguese Competition Authority's Recommendation 1/2007 and more recent international developments, such as the legal reform in France known as the Macron Law, an overall technical study on the current organisation of notarial services in Portugal is necessary. The objectives of such a study are to explore alternatives that would increase professional mobility and clients' freedom of choice, while still guaranteeing universal access to notarial services. The legislator should consider to apply the general principle of free choice of the notarial office also to these cases. In absence of such choice the notarial office identified in the provision would be competent.
2	Law 23/2013 "Legal framework of the inventory process"	Art. 3(5)(a)(b)	Geographical barrier/ Reserved activities	In case of a succession/inheritance process opened outside Portugal, the competence to carry it out lies with a notary whose notarial office is located in the municipality where the real estate, or the major part of it, is located. In the absence of real estate, it falls to the competence of the notary from the municipality where most of the movable assets are located. If there are no assets in Portugal, the competent notary is located	According to stakeholders, this criterion promotes not only procedural speed, but also protects economically disadvantaged parties from the possible relocation of the process in a notary's office too far from the centre of succession interests. The inventory process has been an attribution of notaries since 2009, following recommendations by the troika in the MoU related to the need to use out-of-court solutions for inheritance-succession processes. According to the recital of law proposal 105/XII recital (approved as Law 23/2013), this provision aimed to avoid an inventory process taking place in a municipality not connected with the deceased or his heirs. The rationale is equivalent to the one applicable to court jurisdictions, which follow a reasoning of territorial division. Lawsuits related to the division of assets must generally occur in the	Restrictions of territorial competence exclude notaries located outside the municipality in question from the delivery of those services. In fact, this provision establishes a situation akin to exclusive territories in competition law (see vertical restraints literature). Such exclusions will hamper competition in the market for notarial services. Moreover, from the point of view of the demand, consumers of such services (the interested parties in the succession processes) do not have the power to freely choose the notary. Consumers cannot take into consideration the quality, innovation or other selective factors in their decision of the location of the notary's office, unless there is more than one office in such a location (but in such case, the choice would be restricted to those as well). In this case, we can say that notaries within the same municipality compete with each other, in the first place, so the relevant geographic	Following the Portuguese Competition Authority's Recommendation 1/2007 and more recent international developments, such as the legal reform in France known as the Macron Law, an overall technical study on the current organisation of notarial services in Portugal is necessary. The objectives of such a study are to explore alternatives that would increase professional mobility and clients' freedom of choice, while still guaranteeing universal access to notarial services. The legislator should consider to apply the general principle of free choice of the notarial office also to these cases. In absence of such choice the notarial office identified in the provision would be competent.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
				in same the municipality where the inheritance beneficiary's place of residence is located.	court that has jurisdiction over the location of the assets. In fact, there is a parallel with these rules of territorial competence with those related to the courts. The location for the opening of the inheritance process is determined by the Civil Code, and is defined as the last place where the person whose estate is being administered was residing (Art. 2031).	market is the municipality.	
3	Law 23/2013 "Legal framework of the inventory process"	Art. 3(6)	Geographical barrier/ Reserved activities	In the case of an inventory process resulting from a separation, divorce, declaration of nullity or annulment of marriage, the legally competent notary is located in the municipality where the family residence is located, or in the absence thereof, the rule in paragraph 5 (a) of Art. 3 applies. This is, the legally competent notary will be located in the municipality where the real estate, or the major part of it, is located, or in the absence of any real estate, the municipality where most of the movable assets are located. In case of a succession/inheritance case outside Portugal, the legally competent notary must be located in the municipality where the real estate or most of it is located or, in the absence of any real estate, the municipality where most of the movable assets are located.	According to stakeholders, this criterion promotes not only procedural speed, but also protects economically disadvantaged parties from the possible relocation of the process in a notary's office too far from the centre of succession interests. The inventory process has been an attribution of notaries since 2009, following recommendations by the troika in the MoU related to the need to use out-of-court solutions for inheritance-succession processes. According to the recital of law proposal 105/XII recital (approved as Law 23/2013), this provision aimed to avoid an inventory process taking place in a municipality not connected with the deceased or his heirs. The rationale is equivalent to the one applicable to court jurisdictions, which follow a reasoning of territorial division. Lawsuits related to the division of assets must generally occur in the court that has jurisdiction over the location of the assets. In fact, there is a parallel with these rules of territorial competence with those related to the courts. The location for the opening of the inheritance process is determined by the Civil Code, and is defined as the last place where the person whose estate is being administered was residing (Art. 2031).	Restrictions of territorial competence exclude notaries located outside the municipality in question from the delivery of those services. In fact, this provision establishes a situation akin to exclusive territories in competition law (see vertical restraints literature). Such exclusions will hamper competition in the market for notarial services. Moreover, from the point of view of the demand, consumers of such services (the interested parties in the succession processes) do not have the power to freely choose the notary. Consumers cannot take into consideration the quality, innovation or other selective factors in their decision of the location of the notary's office, unless there is more than one office in such a location (but in such case, the choice would be restricted to those as well). In this case, we can say that notaries within the same municipality compete with each other, in the first place, so the relevant geographic market is the municipality.	Following the Portuguese Competition Authority's Recommendation 1/2007 and more recent international developments, such as the legal reform in France known as the Macron Law, an overall technical study on the current organisation of notarial services in Portugal is necessary. The objectives of such a study are to explore alternatives that would increase professional mobility and clients' freedom of choice, while still guaranteeing universal access to notarial services. The legislator should consider to apply the general principle of free choice of the notarial office also to these cases. In absence of such choice the notarial office identified in the provision would be competent.
4	Law 23/2013 "Legal framework of the inventory process"	Art. 83(2)	Professional fees / Inventory process	The government regulates the professional fees due to a notary for the inventory process, the payment scheme and the responsibility for payment.	According to stakeholders, the regulation of fixed prices related to the inventory process, such as in a judicial separation process, might be justified on exceptional public interest grounds to guarantee economic access to inventory processes equally by all people. The existence of maximum prices in exclusive notarial activities intends to guarantee	Maximum and fixed price regimes limit the incentives to compete and innovate. Even though maximum price regimes allow for price competition, they often serve as a focus point to co-ordinate prices. In a competitive market, prices tend to reflect more closely the costs of the services provided, and do not necessarily jeopardise the quality of those services. In its	The maximum prices regime should be revisited, with the aim to gradually phase them out as appropriate.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
					universal access to these services independently of the clients' income level. Notary services exhibit characteristics of public goods, which can lead to positive externalities. Because public goods tend to be under-produced, the state usually establishes regulation on the provision of such services. Additionally, it is claimed that price control guarantees a notary's impartiality and independence in the provision of a public service, as they wouldn't have to negotiate prices with their clients.	Recommendation 1/2007, the AdC proposed the adoption of a system of maximum prices during a transitional period for services which remain within the exclusive competence of notaries and whose social relevance justified the need to guarantee universal access. This regime would be phased out as the quantitative restrictions imposed by the quota system were phased out. Other alternatives, rather than fixing maximum prices, may be adopted to overcome any lack of information from the demand side, such as the publication of historical or survey-based price information by independent parties, e. g. consumer associations. This would improve transparency and allow greater competition in prices. The same principle applies when the regulator opts for establishing maximum prices, based on the attempt to avoid excessive prices charged to consumers, in particular when the regulator wants to guarantee universal access to notarial services.	
5	Law 155/2015 "Professional Association of Notaries Bylaws"	Annex I, Art. 3	Self-regulatory regime	This provision describes the attributions and competences given to the public professional association, guaranteeing it the power to control access to and the exercise of the profession, the elaboration and implementation of technical rules and ethical principles and the exercise of disciplinary powers.	It is our understanding that this provision aims to ensure the exercise of the regulatory function, including the disciplinary function and the representative function, taking into account the interests of users of the professional services, by one and the same single entity, the professional association. In the Portuguese Constitution the autonomy and administrative decentralisation to the professional associations is recognised to ensure the defence of the public interest and the fundamental rights of citizens, and also to guarantee the self-regulation of the professions that require technical independence. This regulatory model is based on the public interest of these professions, through the designation of state powers to those entities and with two main characteristics: the exclusivity on granting the professional title and the obligation of being registered within the professional association to practice the profession, which qualifies the nature of the regulation as being mandatory and unitary.	The harm to competition arising from the regulatory model, already established by the horizontal framework Law 2/2013 and considered into the bylaws of the professional association, stems from the centralisation in a single entity of the powers to regulate and represent the profession. Because each professional association, apart from representing the profession, controls access to it and its exercise, the regulations issued may create disproportional and anti-competitive restrictions. The freedom to choose and exercise a profession is a fundamental right of the citizen. Also, the freedom of movement of workers and the free establishment to provide services are fundamental principles of the EU internal market. Restrictions to these principles, in the pursuit of the public interest, must be well justified and proportional. When a professional association acquires full responsibility to regulate access to the profession and the conduct of its members, this may have an anti-competitive impact. In fact, professional associations may adopt rules that reduce incentives or opportunities for stronger competition between operators, such as restrictions on advertising and partnerships/ownerships, managements or multidisciplinary activities, or restrictions when setting the minimum qualifications to enter the profession, amongst others. As the governing bodies of public professional associations are exclusively composed of their members, there is a risk that their	We recommend that the regulatory function should be separated from the representative function for self-regulated professional associations, either through the creation of an over-arching supervisory body by sector or trade, or through the creation of a supervisory body inside the current professional orders with the necessary "Chinese walls". The supervisory body takes on the main regulation of the profession such as access to the profession and similar functions. The board of the regulatory body will include not only representative of the profession but also lay people, including high-profile experienced individuals from other regulators, representatives of consumer organisations and academia.

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						members' interests will not coincide with the public interest. This is one significant reason for including within at least some governing bodies of a professional association, lay people representing the interests of relevant social groups, such as consumer associations, other professionals, and high-profile people with experience in regulatory issues.	
6	Law 155/2015 "Professional Association of Notaries Bylaws"	Annex I, Art. 47 to Art. 50	Compensation fund	It defines the regime of the Compensation Fund for notaries. This Compensation Fund, managed by a financial institute, constitutes an autonomous patrimony whose purpose is to ensure the financial sustainability (on a quarterly basis) of all notaries across the country, where such sustainability means earning gross revenues above a minimum defined every year by the Professional Association of Notaries. The funds needed for such quarterly "revenue rebalancing" come from several sources, such as the mandatory fees paid by all association members for this purpose, the equivalent to 1% of their monthly gross revenue/income. To be a recipient of such financial help, a notary has to fulfil certain criteria.	The Compensation Fund aims to ensure the financial sustainability of all notaries across the country. To be eligible for such financial aid, notaries must meet certain criteria for what can be classified as a subsidy to guarantee a minimum professional income. It targets those notarial offices that provide services in sparsely populated and less economically interesting areas, in order to compensate such notaries. The fund is financed by the notaries.	This income redistribution mechanism limits the risk inherent to the economic activity and does not stimulate the right type of investment and service innovation that can lower costs and raise revenues, notwithstanding what is established in Art. 54 of the Professional Association of Notaries' bylaws. In the end, this income redistribution regime is akin to a minimum salary, which is not compatible with a liberal profession. The solution provided by this regime does not take into consideration other factors that can possibly justify the inefficiency of the notary, such as the lack of optimisation or management of existing resources. If the geographical restrictions and also the restrictions related to the number of licences each notary can have are abolished or reformed, the need of rebalance may be diminished. However, this is not a clear consequence. In fact, if the system of quotas were to be abolished, the need for notaries in less attractive locations could force the state to compensate such notaries. The current regime of the Compensation Fund is financed by the notaries and not by the state itself. Also, it is important to mention that both technology innovation and the progressive decrease of reserved acts of notaries are reasons to decrease the need for the physical presence of the notary. Also, for economically disadvantaged geographical areas other solutions may be more proportional, such as a different tender for licensing, as said, with a compensation from the state to the notaries in those locations, if necessary.	Following the Portuguese Competition Authority's Recommendation 1/2007 and more recent international developments, such as the legal reform in France known as the Macron Law, an overall technical study on the current organisation of notarial services in Portugal is necessary. The objectives of such a study are to explore alternatives that would increase professional mobility and clients' freedom of choice, while still guaranteeing universal access to notarial services. Therefore it is recommended to: 1. Abolish the licence quotas or the need to obtain a notarial office licence before establishing oneself as a notary. Or alternatively, 2. Study the potential demand for notarial services, taking into account: population density; economic activity, dynamism of the local real-estate market; demand for other services provided by notaries; existence of alternative internet solutions. Based on the data: Identify areas that can sustain competition in notarial activities (typically Lisbon, Porto, Faro, high-tourism areas, highly industrialised areas) and fully liberalise the establishment of notarial offices there; ii. In low-density areas, allow for open competition for the establishment of one or two offices per area (or whichever density is determined by the study). 3. Revisit the existing compensation fund and find alternative ways to guarantee the delivery of notarial services in low-density areas, taking into account the fact that many notarial acts can also be practiced by both lawyers and solicitors who may also practice in those areas.
7	Law 155/2015 "Professional Association of Notaries Bylaws"	Annex I Art. 51	Compensation fund	There is an obligation to communicate monthly to the Professional Association of Notaries the amount of professional fees billed from the previous month. This rule is integrated within the regime of the Compensation	This obligation is a condition for implementing the Compensation Fund regime. Otherwise, the professional association would not have the information required to calculate the percentage for the mandatory fee referred to in Art. 50, nor the information needed to identify the notarial offices eligible for financial compensation. The professional association has guaranteed that such information	Sharing information about fees and prices is not anti-competitive per se. However, if misused in an environment where there is competition between notaries or between notaries and other legal professionals offering the same type of services, sharing this information could potentially lead to undesirable outcomes with a negative impact on consumer welfare. Regulations that require market	Following the Portuguese Competition Authority's Recommendation 1/2007 and more recent international developments, such as the legal reform in France known as the Macron Law, an overall technical study on the current organisation of notarial services in Portugal is necessary. The objectives of such a study are to explore alternatives that would increase professional mobility and clients' freedom of choice,

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				Fund, established in Art. 47 of this bylaw.	remains confidential and protected.	participants to share information on output levels can significantly assist in the formation of cartels, since a key requirement for cartel operation is that participants in the cartel can effectively monitor their competitors' market behaviour. Cartels are more likely to arise where there are fewer participants in the market, where entry barriers are high, where suppliers' products are relatively homogeneous and where information about price or output changes is available either before or soon after the price or output changes.	while still guaranteeing universal access to notarial services. Therefore it is recommended to: 1. Abolish the licence quotas or the need to obtain a notarial office licence before establishing oneself as a notary. Or alternatively, 2. Study the potential demand for notarial services, taking into account: population density; economic activity, dynamism of the local real-estate market; demand for other services provided by notaries; existence of alternative internet solutions. Based on the data: Identify areas that can sustain competition in notarial activities (typically Lisbon, Porto, Faro, high-tourism areas, highly industrialised areas) and fully liberalise the establishment of notarial offices there; ii. In low-density areas, allow for open competition for the establishment of one or two offices per area (or whichever density is determined by the study). 3. Revisit the existing compensation fund and find alternative ways to guarantee the delivery of notarial services in low-density areas, taking into account the fact that many notarial acts can also be practiced by both lawyers and solicitors who may also practice in those areas.
8	Law 155/2015 "Professional Association of Notaries Bylaws"	Annex I Art. 52 and Art. 53	Compensation fund	These provisions define the criteria for notaries to be compensated under the Compensation Fund regime (defined in Art. 47), including the conditions for the payment of a subsidy to those notaries who have a quarterly income lower than the value defined every year by the General Assembly of the Professional Association of Notaries.	The Compensation Fund aims to ensure the financial sustainability of all notaries across the country. To be eligible for such financial aid, notaries must meet certain criteria for what can be classified as a subsidy to guarantee a minimum professional income. It targets those notarial offices that provide services in sparsely populated and less economically interesting areas, in order to compensate such notaries.	This income redistribution mechanism limits the risk inherent to the economic activity and does not stimulate the right type of investment and service innovation that can lower costs and raise revenues, notwithstanding what is established in Art. 54 of the Professional Association of Notaries' bylaws. In the end, this income redistribution regime is akin to a minimum salary, which is not compatible with a liberal profession. The solution provided by this regime does not take into consideration other factors that can possibly justify the inefficiency of the notary, such as a lack of optimisation or poor management of existing resources. If the geographical restrictions and also the restrictions related to the number of licences each notary can have are abolished or reformed, the need for rebalance may be diminished. However, this is not a clear consequence. In fact, if the system of quotas were abolished, the need for notaries in less attractive locations could force the state to compensate such notaries. The current regime of the Compensation Fund is financed by the notaries and not by the state itself. Also, it is important to mention that both technology innovation and the progressive decrease of reserved acts of notaries are reasons to decrease the	Following the Portuguese Competition Authority's Recommendation 1/2007 and more recent international developments, such as the legal reform in France known as the Macron Law, an overall technical study on the current organisation of notarial services in Portugal is necessary. The objectives of such a study are to explore alternatives that would increase professional mobility and clients' freedom of choice, while still guaranteeing universal access to notarial services. Therefore it is recommended to: 1. Abolish the licence quotas or the need to obtain a notarial office licence before establishing oneself as a notary. Or alternatively, 2. Study the potential demand for notarial services, taking into account: population density; economic activity, dynamism of the local real-estate market; demand for other services provided by notaries; existence of alternative internet solutions. Based on the data: Identify areas that can sustain competition in notarial activities (typically Lisbon, Porto, Faro, high-tourism areas, highly industrialised areas) and fully liberalise the establishment of notarial offices there; ii. In low-density areas, allow for open competition for the establishment of one or two offices per area (or whichever density is determined by the

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						need for the physical presence of the notary. Also, for economically disadvantaged geographical areas other solutions may be more proportional, such as a different tender for licensing, as said, with a compensation from the state for the notaries in those locations, if necessary. Only notarial offices exercising their activity in municipalities/counties endowed with a single notarial licence are eligible to benefit from the Compensation Fund. In this sense, they do not compete with any other notarial office.	study). 3. Revisit the existing compensation fund and find alternative ways to guarantee the delivery of notarial services in low-density areas, taking into account the fact that many notarial acts can also be practiced by both lawyers and solicitors who may also practice in those areas.
9	Law 155/2015 "Professional Association of Notaries Bylaws"	Annex I Art. 54	Compensation fund	The Professional Association of Notaries evaluates the performance of the notaries' offices that benefit from the compensation fund, to determine whether the responsible notaries fulfil the required professional quality standards and exercise enough effort and diligence in their activity. The Professional Association of Notaries will impose sanctions on notaries who do not meet the standard set up by the evaluation system.	This provision constitutes an attempt not only to enforce quality standards but also to mitigate the moral hazard that may result from the existence and implementation of the Compensation Fund regime.	The notaries subject to evaluation by the professional association will have to disclose sensitive and confidential information. If this information is not well protected, its contents may be disclosed to other professionals, even if inadvertently, and could eventually facilitate anti-trust practices. Because the entity responsible for the management of the Compensation Fund is the Professional Association of Notaries, this means that competitors (at least, those responsible for such management) have access to the information related to the incomes and the prices charged by other notaries (note that prices are not fixed).	Following the Portuguese Competition Authority's Recommendation 1/2007 and more recent international developments, such as the legal reform in France known as the Macron Law, an overall technical study on the current organisation of notarial services in Portugal is necessary. The objectives of such a study are to explore alternatives that would increase professional mobility and clients' freedom of choice, while still guaranteeing universal access to notarial services. Therefore it is recommended to: 1. Abolish the licence quotas or the need to obtain a notarial office licence before establishing oneself as a notary. Or alternatively, 2. Study the potential demand for notarial services, taking into account: population density; economic activity, dynamism of the local real-estate market; demand for other services provided by notaries; existence of alternative internet solutions. Based on the data: Identify areas that can sustain competition in notarial activities (typically Lisbon, Porto, Faro, high-tourism areas, highly industrialised areas) and fully liberalise the establishment of notarial offices there; ii. In low-density areas, allow for open competition for the establishment of one or two offices per area (or whichever density is determined by the study). 3. Revisit the existing compensation fund and find alternative ways to guarantee the delivery of notarial services in low-density areas, taking into account the fact that many notarial acts can also be practiced by both lawyers and solicitors who may also practice in those areas.

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10	Law 155/2015 "Professional Association of Notaries Bylaws"	Annex I Art. 69(2)(a)	Title / Registration and licensing	To exercise its activity the notary, as described in the Decree-law 26/2004, Art. 31: "The title of "Notary" is obtained through a public candidacy process, announced by the Ministry of Justice in the Official Journal, and after consultation with the professional association, must be registered with the Professional Association of Notaries. Only interns who have successfully concluded their internship can be candidates".	The tender process ensures that only qualified professionals will access the professional title through a licensing scheme. This aims to protect the professional title, considering the public functions of notaries. Consumers are, therefore, informed that the professionals are certified to provide such services. In this case, the professional association acts as a public entity empowered by the State to perform this function.	This procedure constitutes a mandatory additional burden on professionals who wish to access the notarial profession. It constitutes an extra opportunity cost that may dissuade some professionals from becoming notaries and compete in the market as such. This public candidacy procedure is part of the existing licensing regime for the attribution of the title of notary and the attribution of notarial offices. It is part of a system of quotas and geographical segmentation of notarial services, addressed by the Portuguese Competition Authority's Recommendation 1/2007. As such, it may hamper competition in the market for notarial services, with negative impacts on consumer welfare (households and firms, in particular SMEs). This does not seem generically implemented in other EU Member States. Such a public candidacy process could be considered proportional if there were no restrictions on the number of professional titles to be given, either formally or informally. However, and according to stakeholders, the limit of licences to operate notarial offices as defined in the notarial map (approved by this Decree-Law 26/2004) indirectly restricts the number of professional titles attributed in this public candidacy procedure. Moreover, the public candidacy procedure may allow for a control of the number of licensed notaries, as its timing is controlled by the Ministry of Justice. Overall, the current centralised/quota system to grant the professional title and licences to operate notarial offices restricts competition by restricting the number of notaries able to compete in the market and by segmenting the market. This leads to less diversity and innovation in the services being provided, in particular when these services are still exclusive to notaries, and may prevent the practice of lower prices for the different services that are not under a fixed price regime.	Following the Portuguese Competition Authority's Recommendation 1/2007 and more recent international developments, such as the legal reform in France known as the Macron Law, an overall technical study on the current organisation of notarial services in Portugal is necessary. The objectives of such a study are to explore alternatives that would increase professional mobility and clients' freedom of choice, while still guaranteeing universal access to notarial services. Therefore it is recommended to: 1. Abolish the licence quotas or the need to obtain a notarial office licence before establishing oneself as a notary. Or alternatively, 2. Study the potential demand for notarial services, taking into account: population density; economic activity, dynamism of the local real-estate market; demand for other services provided by notaries; existence of alternative internet solutions. Based on the data: Identify areas that can sustain competition in notarial activities (typically Lisbon, Porto, Faro, high-tourism areas, highly industrialised areas) and fully liberalise the establishment of notarial offices there; ii. In low-density areas, allow for open competition for the establishment of one or two offices per area (or whichever density is determined by the study). 3. Revisit the existing compensation fund and find alternative ways to guarantee the delivery of notarial services in low-density areas, taking into account the fact that many notarial acts can also be practiced by both lawyers and solicitors who may also practice in those areas.
11	Law 155/2015 "Professional Association of Notaries Bylaws"	Annex I Art. 72	Incompatibilities with the exercise of the activity	The exercise of the profession by a notary holding a license to operate a notarial office is incompatible with any other paid activity, public or private, with the exception of teaching activities, participation in conferences, seminars and copyrights.	The recital states that the exclusivity of the profession is related to the required high standards of technical competence, together with the need to ensure impartiality and independence of a notary in relation to the parties. This rule is intended to protect the client from possible conflicts of interest. It protects the public interest.	It prevents professionals from providing notarial services if they are already engaged in other activities or if they intend to be. Some professionals may exclude themselves from competing in the market for notarial services due to such incompatibilities, as the notarial practice may imply significant opportunity costs from foregoing paid activities.	"We recommend that this rule should be abolished. The legislator must consider the introduction of the principle of compatibility of the profession of notaries with other paid activities, public or private, unless there is clear and explicit conflict of interest with the practice of notarial acts. The law must then expressly indicate the activities or functions considered as incompatible with the activity of notaries. "

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12	Law 155/2015 "Professional Association of Notaries Bylaws"	Annex I Art. 73(1)(2)	Incompatibilities with the exercise of the activity	The exercise of the profession by notaries on the waiting list (Bolsa de Notários) or by interns is not compatible with any other paid public activity. The exercise of other private paid activity by notaries on the waiting list and by interns may be authorised by the Professional Association of Notaries. This authorisation will be granted pending an evaluation which will take into account the objectives of the notarial activity.	This rule is intended to protect the client from possible conflicts of interest. It protects the public interest. The recital of Decree-Law 26/2004 states that the exclusivity of the profession is related to the required high standards of technical competence, together with the need to ensure impartiality and independence of a notary in relation to the parties.	It prevents operators to provide notary services if they are already engaged in some other activities or if they intend to be. This rule is too inflexible. Potential operators may be excluded, or may exclude themselves, from the market due to such incompatibilities.	"We recommend that this rule should be abolished. The legislator must consider the introduction of the principle of compatibility of the profession of notaries with other paid activities, public or private, unless there is clear and explicit conflict of interest with the practice of notarial acts. The law must then expressly indicate the activities or functions considered as incompatible with the activity of notaries."
13	Law 155/2015 "Professional Association of Notaries Bylaws"	Annex I Art. 82	Advertising	This provision limits advertising of the activity to specific forms of advertising, which is objective advertising. Para. 5 names cases of illegal acts of advertising. These are, in particular, unlawful acts of publicity: (a) placement of persuasive, ideological, self-aggrandizing and comparative content; (b) mention of the quality of the notary's office; (c) provision of erroneous or misleading information; (d) the promise or induction of the production of results; (e) the use of unsolicited direct publicity; (f) reference to the value of services, gratuities or forms of payment.	These restrictions aim to protect consumers against misleading or manipulative claims from notaries, due to the asymmetry of information between practitioners and consumers and can create moral hazard.	The regulatory restrictions limit the freedom of professionals to advertise their own activity, which might be especially harmful for those not yet well established in the market. Advertising services to inform and potentially gain clients is crucial to promote competition and to establish a level playing field among professionals in the market. Advertising legal services may also lead to lower prices for legal services as it spurs competition among providers. Advertising can improve consumer information and reduce search costs leading to more competition among established firms. Nelson (1970; 1974) Grossman and Shapiro (1984) and Stahl (1994) suggest that advertising can have pro-competitive effects to facilitate entry. Following OECD (2007), there are no well-founded arguments against permitting advertising that is truthful. Furthermore, studies have found that restrictions on advertising lead to higher prices (OECD, 2007). In 2007, the Canadian Competition Bureau (CCB) stated that there is empirical evidence of the effect of advertising restrictions on the price and quality of professional services (including accountants, lawyers, optometrists, pharmacists and real estate agents). Restrictions on advertising increase the price of professional services, increase professionals' incomes and reduce the entry of certain types of firms. Additionally, there is little evidence of the positive relationship between advertising restrictions and quality	Any prohibition or restriction to legal professions beyond the prohibition on misleading and unlawful comparative advertising (already covered in other legal texts) should be removed.

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						of services, even though it may result in fewer consumers using the service. Directive 2006/114/EC states that only misleading and unlawful comparative advertising can lead to distortion of competition within the internal market. The interdiction of misleading advertising is foreseen under national legal regimes. To go beyond the EU benchmark, in particular ruling out publicity of comparative contents in a generic way for specific professions, will have an adverse effect on consumer choice and no clear benefits.	
14	Law 155/2015 "Professional Association of Notaries Bylaws"	Annex I Art. 85	Registration and licensing	Notarial firms must register as members of the professional association, enjoying the rights and subject to the duties, and in particular to the ethical principles and rules set forth in this bylaw for notaries.	According to some stakeholders and to some literature on this subject, such restrictions aim to guarantee professional independence, autonomy, adherence to professional ethical rules and the pursuit of the public interest (e. g. , the proper administration of justice). According to them, opening the partnership to people outside the profession could: (a) threaten the autonomy and independence of legal professionals; (b) threaten lawyer-client privilege; (c) give rise to conflicts of interest between the different partners within a same legal firm that would risk the pursuit of the social goal binding the legal professional firm, because non-professional partners would not be bound by the same professional obligations, as they are not members of the professional association.	Framework Law 2/2013 only requires that one of the managers or administrators of a professional firm be a member of the professional association. To open up a professional firm to external ownership means to open the firm to more investment, by allowing access to a wider pool of capital. External ownership, partial or total, means capital ownership by non-professionals, ownership of voting rights, or both. Ultimately, all these restrictions on ownership, shareholding and partnership over professional firms, are detrimental to firms across the entire economy, especially SMEs, and households, as their relaxation can be expected to lead to an increase in their welfare. Professional firms of notaries follow the "professional partnership" model, enforced by a "prescriptive regulation model" under which (i) only professionals regulated by the same professional association can own the firm – i. e. , professional partners own 100% of the sharing capital or all the voting rights – and where (ii) the professional firm places the pursuit of the public interest above commercial interests. These professional partners can be individual professionals, professional firms or associative organisation of professionals established in other EU/EEA Member States. The professional partnership model is the only model allowed for the legal professions. Non-professionals can only work as employees (or as consultants) of the professional firm, and are barred from participating in the relevant decision-making processes.	We recommend that the ownership and partnership of all professional firms be opened to other professionals and non-professionals, that is, open to individuals outside the profession. We also recommend that other professionals and non-professionals be allowed to hold a majority of a professional firm's social capital, together with a majority of voting rights. The number of partners in a notarial firm should be opened to notaries without a licence, and not limited to any maximum number.

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15	Law 155/2015 "Professional Association of Notaries Bylaws"	Annex I Art. 87 (1) and Annex II Art. 5(3)	Partnership/ownership of professional firms	The partners of a notary's professional firm should all be notaries, and each firm has the maximum limit of three partners.	According to some stakeholders and to some literature on this subject, such restrictions aim to guarantee professional independence, autonomy, adherence to professional ethical rules and the pursuit of the public interest (e. g. , the proper administration of justice). According to them, opening the partnership to people outside the profession could: (a) threaten the autonomy and independence of legal professionals; (b) threaten lawyer-client privilege; (c) give rise to conflicts of interest between the different partners within a same legal firm that would risk the pursuit of the social goal binding the legal professional firm, because non-professional partners would not be bound by the same professional obligations, as they are not members of the professional association.	Professional firms of notaries follow the "professional partnership" model, enforced by a "prescriptive regulation model" under which (i) only professionals regulated by the same professional association can own the firm – i. e. , professional partners own 100% of the sharing capital or all the voting rights – and where (ii) the professional firm places the pursuit of the public interest above commercial interests. These professional partners can be individual professionals, professional firms or associative organisation of professionals established in other EU/EEA Member States. The professional partnership model is the only model allowed for the legal professions. Non-professionals can only work as employees (or as consultants) of the professional firm, and are barred from participating in the relevant decision-making processes. Professional firms of notaries are subject to additional restrictions. A notary without a notarial office licence cannot be a partner in a firm. This restriction bars all notaries on the waiting list for a notarial office licence, 44 notaries in total at the last count, from becoming partners in a professional firm. Each firm cannot have more than three partners, and all partners have to hold licences in the same municipality. This is even more relevant as the number of municipalities with only one licence represents around 70% of all notarial licences. These restrictions clearly limit the creation of professional firms of notaries and might explain why there are so few of them (there are currently only two professional firms of notaries, and one of them is a sole proprietor firm). If these restrictions aim to respond to concerns about market power, they would be better dealt with through competition law. To open up a professional firm of notaries to external ownership means to open the firm up to more investment, by allowing access to a wider pool of capital. External ownership, partial or total, means capital ownership by non-professionals, ownership of voting rights, or both. This opening will enable professional firms to satisfy a greater pool of consumers and reap the benefits of a larger scale of operations. For younger professionals, not yet well established in their profession, it would also mean more opportunities to set up their own professional firm and compete in the market. This will generate a greater ability by professional firms of notaries to	We recommend that the ownership and partnership of all professional firms be opened to other professionals and non-professionals, that is, open to individuals outside the profession. We also recommend that other professionals and non-professionals be allowed to hold a majority of a professional firm's social capital, together with a majority of voting rights. The number of partners in a notarial firm should be opened to notaries without a licence, and not limited to any maximum number.

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						<p>compete in the single market and internationally. It would also improve risk management among the owners of a professional firm, hence, lowering operational costs and possibly lowering prices charged to consumers for the different notarial services being delivered in the market. Overall, the removal of ownership/partnership restrictions will ultimately lead to an increase in the welfare of consumers of notarial services, be them households or firms, in particular SMEs.</p>	
16	Law 155/2015 "Professional Association of Notaries Bylaws"	Annex I Art. 87(2)	Partnership/ownership of professional firms	Only those notaries who have a licence to install a notary's office in the same municipality can form a partnership to install a notarial firm.	This territorial restriction for notaries aims to ensure the availability of notarial services across the national territory.	<p>This constitutes a partnership restriction that limits competition. It limits the freedom to create new professional firms of notaries from different municipalities. The territorial restriction precludes notaries who run notarial offices in different municipalities to form professional partnerships and install a notarial firm. And it also excludes third parties, who are not notaries, to become partners in a professional notarial firm. These limitations restrict the number of professional firms that can be formed, restrict investment opportunities, limit cost saving strategies (which are not limited to savings in physical infrastructures), restrict opportunities for risk pooling and better risk management, and for the exploration of economies of scale and scope, which could lead to lower prices, more diversity and service quality, and greater innovation, to the benefit of consumers of notarial services. Moreover, there are currently 374 notaries with a licence to operate (to open an office), and 44 on the waiting list. The latter are not able to be partners of a notarial firm, which may limit the offer of notarial services and possibly new investment in notarial professional firms.</p>	<p>We recommend that the ownership and partnership of professional notarial firms be opened to other professionals and non-professionals. This means removing the geographic restriction on partnerships between notaries, and allowing third parties (parties outside the profession) to become partners in notarial firms. This means that partnerships in a notarial firm should be opened to notaries with notarial office licenses based in different municipalities. This recommendation can be regarded as part of a wider recommendation on the way the notarial activity is organised in Portugal.</p>
17	Law 155/2015 "Professional Association of Notaries Bylaws"	Annex I art. 87 (3)	Partnership incompatibilities	A notary who is a partner in a notarial society cannot exercise the profession as an individual notary.	The aim of this provision seems to be to prevent conflicts of interest.	<p>We believe that whether a partner in a notarial firm should be able to practice as an individual notary as well, should be decided by the partnership own statutory laws and not by the Professional Association. As it stands, this incompatibility prevents a licensed notary from working in his notarial office and e. g. , invest in another notarial office possibly located in another municipality and providing services to another set of clients. This could in turn lead to less investment, hence less innovation in notarial services in both his notarial office and in the notarial society where he is a partner.</p>	<p>We recommend that this provision should be removed, in view of the general recommendation that an overall technical study on the current organisation of notarial services in Portugal be carried out.</p>

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18	Law 155/2015 "Professional Association of Notaries Bylaws"	Annex I Art. 90	Partnership/ownership of professional firms	In addition to the cases provided for in the legal regime for the creation and operation of professional firms which are subject to the professional public associations regime, there are two other cases in which a notary is excluded as a partner of a professional firm of notaries. These are when the holder of a notarial office licence loses the licence, or when the notary obtains a licence to install an office in another municipality.	Art. 87 states that only notaries who have a licence to install a notarial office in the same municipality can be partners in a notarial firm. This Art. 90 should be interpreted in the same light, i. e. , as promoting market segmentation, which, together with the setting of territorial quotas, are meant to guarantee easier access to notarial services across the whole country.	The loss of the notarial license should not bar a notary from being a partner and from working in a notarial office. Also, a notary with a licence in a certain municipality be barred from becoming a partner in a notarial society located either in this same municipality or in another municipality. To connect the possibility to be a partner in a notarial professional firm with holding a notarial office licence restricts competition as it restricts partnerships in such firms. This makes it more difficult to create professional firms which will be able to compete in the market for notarial services. Weaker competition will in turn result in a consumer welfare loss.	We recommend that the ownership and partnership of professional notarial firms be opened to other professionals and non-professionals. This means removing the geographic restriction on partnerships between notaries, and allowing partnerships in a notarial firm to be opened to notaries without a licence to install a notarial office or with a notarial office licence based in another municipality. This recommendation can be regarded as part of a wider recommendation on the way the notarial activity is organised in Portugal.
19	Decree-Law 207/95 (last modification DL 125/2013) "Code of Notarial Acts"	Art. 1, Art. 2, Art. 3 and Art. 4	Reserved acts	Art. 1 describes the nature of a notarial act. Art. 2 states that notarial acts are to be performed by notaries. Art. 3 lists the special cases when officials other than notaries can perform notarial acts. Art. 4 lists the acts that are performed by notaries.	Arts. 2, 3 and 4 claim to reserve the performance of a series of notarial acts for notaries. Only under exceptional circumstances can notarial acts be performed by officials other than notaries. It is our understanding that such restrictions aim to guarantee that notarial acts meet high quality standards. After this DL 207/95, many notarial acts have been opened up to lawyers and solicitors.	Restricting the provision of a series of notarial acts to notaries excludes many professionals equally qualified to deliver such acts from the market and hampers competition in the market for such acts/services, with a negative impact on prices, when they can be freely set, and on diversity and innovation in the provision of notarial services.	We recommend that the scope of still reserved notarial acts in Portugal be revisited with the aim of opening them to other legal professions.
20	Decree-Law 26/2004 (as amended by Law 51/2004 and Decree-Law 15/2011 and republished by Law 155/2015 as Annex II) "Notaries Statutory Law"	Art. 5	Multidisciplinary practice in professional firms	Notaries exercise their professional acts in a notarial office. Notaries can associate themselves in professional firms composed exclusively of notaries.	The limitations regarding the form of businesses aim to prevent the application of commercial business forms to notarial professional services and to ensure practitioners take personal responsibility for their activity. Also there are rules of ethics, such as professional secrecy, that notaries are obliged to comply with, but others may not. The practice of notarial activity in a notarial office seems to aim at easy access to notarial services by the public.	To restrict multidisciplinary activity in a professional firm is to restrict the association of different professionals, belonging to different professional associations (some may not even belong to a public professional association), who wish to exercise their professional activities within the same firm and in the pursuit of the firm's corporate or social objective(s). In a professional firm, this restriction takes the form of a restriction on partnership – restricting, or banning altogether, non-professional partners. This restriction is particularly acute in the case of the legal professions. To rule out multidisciplinary activity in the same professional firm, between potentially complementary service providers, harms competition and can be detrimental to consumer welfare. In fact, this restriction does not allow for the full exploration of economies of scope that come with the offer of different services by a same "service delivery unit" that shares infrastructure	The prohibition of multidisciplinary practice in professional firms should be removed, particularly in the case of the four legal professions, where the "professional partnership model" is the only model allowed for the practice of the profession in a collective way.

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						and human capital. It foregoes gains from specialisation and service quality that would result from the interaction between a wider range of professionals. This also means foregoing the exploitation of economies of scale and the advantages of branding. It also does not allow for the mitigation of the double marginalisation (or double mark-up) problem that comes with multidisciplinary activities which can complement each other, by segmenting the services provided. This means foregoing lower average costs in a multi-product firm, thereby leading to higher fees being charged to clients, while preventing clients from further benefits that could be gained from a more convenient "one-stop shop" for a wider range of professional services. Ruling out multidisciplinary activity within a profession can reduce the scope for better risk management between different professional activities within the same professional firm, as they may be subject to non-identical demand volatility or uncertainty, i. e. , reduction in the scope for internal risk spreading to be understood as the ability to transfer resources in response to fluctuations in demand. To offer a wider range of professional services means to be better prepared to face market uncertainties. Furthermore, opening up a professional firm to multidisciplinary activities is likely to ease the introduction of innovative products but also to spur innovation in the delivery of already existing products or ranges of products.	
21	Decree-Law 26/2004 (as amended by Law 51/2004 and Decree-Law 15/2011 and republished by Law 155/2015 as Annex II) "Notaries Statutory Law"	Art. 6 (1)(2)	Registration and licensing	This provision determines that in each municipality there will be at least one notarial office, whose activity will depend on the attribution of a licence. The number of notaries and the localisation of their offices are included in a map approved by a decree-law, after consultation with the Professional Association of Notaries and the Council of Notaries.	Licence quotas for notaries seem to be grounded in the public interest. On the one hand, the state aims to ensure that all people across the national territory will have access to notarial services, as these services are provided under a public prerogative. On the other hand, to ensure that a notary is willing to establish an office in a remote or weakly populated area, the quota system aims to guarantee a minimum income for the local notary, complemented with the current Compensation Fund. The number of notaries and the localisation of their offices are included in a notarial map approved by a decree-law, after consultation with the Professional Association of Notaries and the Council of Notaries. The state determines the total number of notaries to be licensed and the way they will be distributed across the different municipalities. It establishes a territorial segmentation for the attribution of notarial licences, where each notary can only hold one licence. The last version of the notarial map which	The current quota model clearly restricts the number of notaries in the market and may reduce the incentives of existing notaries to compete on price and quality with each other for the provision of services. It also prevents competition between notaries in a one-licence area as no new notary can enter the market and seek custom. Limiting the number of licences to operate a notarial office as defined in the notarial map restricts the overall number of professional titles that are available to be granted. This leads to long waiting times for prospective notaries working as clerks, while no competitive pressure is exerted on incumbents. These restrictions are even more difficult to justify in the case of municipalities with higher population density and higher incomes (urban areas and along Portugal's attractive coastal and touristic areas). In these cases, quota restrictions currently allow incumbents to pick and choose their clients with little incentive to improve services, innovate or adapt to the market in other ways. A less restrictive and more market-	Following the Portuguese Competition Authority's Recommendation 1/2007 and more recent international developments, such as the legal reform in France known as the Macron Law, an overall technical study on the current organisation of notarial services in Portugal is necessary. The objectives of such a study are to explore alternatives that would increase professional mobility and clients' freedom of choice, while still guaranteeing universal access to notarial services. Therefore it is recommended to: 1. Abolish the licence quotas or the need to obtain a notarial office licence before establishing oneself as a notary. Or alternatively, 2. Study the potential demand for notarial services, taking into account: population density; economic activity, dynamism of the local real-estate market; demand for other services provided by notaries; existence of alternative internet solutions. Based on the data: Identify areas that can sustain competition in notarial activities (typically Lisbon,

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					<p>determined the geographical quotas is from 2004 (annex to Decree-Law 26/2004). According to stakeholders, this map ought to be changed to reflect new territorial and demographic characteristics. The 2004 map indicates that around 72% of all the municipalities across the country have only one licence (221 out of 310 municipalities). Also, according to stakeholders, the mandatory geographical competence of a specific notary promotes procedural speed (e. g. if the notarial act relates to properties and courts within the same territorial jurisdiction). It might also protect economically disadvantaged parties from the possible relocation of the process to a notarial office too far from the centre of the succession interests.</p>	<p>oriented mechanism for the allocation of notaries throughout the national territory would encourage lower prices, higher quality and innovation as a result of greater competition. Such a mechanism is unlikely to imply more difficult or more expensive access to notarial services. On the contrary, greater consumer welfare would arise not only from more but also better services being available. The need for quotas has largely been superseded by technology and the gradual removal of reserved activities as the exclusive preserve of notaries. The need for the physical presence of a notary is therefore less pressing, as many acts can be dealt with over the internet and by email, or by lawyers and solicitors. The Portuguese government has already recognised this. As part of the Portuguese "Simplex" e-government programme, citizens have been given a unique identity card and "e-identity" that can be used to officially sign documents remotely. The Portuguese government should consider internet availability and use their e-government programme to facilitate the use of notarial services remotely, thereby reducing the number of remote geographic areas identified as in need of notaries with a unique licence. Such alternative solutions may better balance competition and universal access to notarial services, as twin public goods. One solution put forth by the Portuguese Competition Authority's Recommendation 1/2007 (see Box 4. 3) calls for widening the range of legal services a notary may provide in a disadvantaged geographical area. Regarding the geographical barrier, more than 70% of the municipalities only have one notarial office. This restriction can potentially create monopolistic situations depending upon the competitive pressure exercised by lawyers and solicitors as well as how the single notary would respond to the requirements imposed by the Compensation Fund. If monopolistic situations were to arise, they would imply the charging of fees above competitive levels and a lower incentive to innovate and provide higher quality services. Finally, the existing Compensation Fund constitutes an income redistribution mechanism that limits the risk inherent to the economic activity and may not stimulate the right type of investment and service innovation that can lower costs and raise revenues.</p>	<p>Porto, Faro, high-tourism areas, highly industrialised areas) and fully liberalise the establishment of notarial offices there; ii. In low-density areas, allow for open competition for the establishment of one or two offices per area (or whichever density is determined by the study). 3. Revisit the existing compensation fund and find alternative ways to guarantee the delivery of notarial services in low-density areas, taking into account the fact that many notarial acts can also be practiced by both lawyers and solicitors who may also practice in those areas.</p>

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22	Decree-Law 26/2004 (as amended by Law 51/2004 and Decree-Law 15/2011 and republished by Law 155/2015 as Annex II) "Notaries Statutory Law"	Art. 7	Geographical barrier	Notaries exercise their activity in the municipal territory where their office is located and for which they have been granted a licence. However, they can also practice notarial acts over persons and property from another municipality. According to stakeholders, in such a case, the notary cannot actively seek out such services but is only a passive recipient of service requests from the clients. Exceptionally, a notary's jurisdiction may be exercised in more than one contiguous territorial circumscription, following authorisation of the Minister of Justice, after consultation with the Professional Association of Notaries.	Licence quotas for notaries seem to be grounded in the public interest. On the one hand, the state aims to ensure that all people across the national territory will have access to notarial services, as these services are provided under a public prerogative. On the other hand, to ensure that a notary is willing to establish an office in a remote or weakly populated area, the quota system aims to guarantee a minimum income for the local notary, complemented with the current Compensation Fund. The number of notaries and the localisation of their offices are included in a notarial map approved by a decree-law, after consultation with the Professional Association of Notaries and the Council of Notaries. The state determines the total number of notaries to be licensed and the way they will be distributed across the different municipalities. It establishes a territorial segmentation for the attribution of notarial licences, where each notary can only hold one licence. The last version of the notarial map which determined the geographical quotas is from 2004 (annex to Decree-Law 26/2004). According to stakeholders, this map ought to be changed to reflect new territorial and demographic characteristics. The 2004 map indicates that around 72% of all the municipalities across the country have only one licence (221 out of 310 municipalities). Also, according to stakeholders, the mandatory geographical competence of a specific notary promotes procedural speed (e. g. if the notarial act relates to properties and courts within the same territorial jurisdiction). It might also protect economically disadvantaged parties from the possible relocation of the process to a notarial office too far from the centre of the succession interests.	The current quota model clearly restricts the number of notaries in the market and may reduce the incentives of existing notaries to compete on price and quality with each other for the provision of services. It also prevents competition between notaries in a one-licence area as no new notary can enter the market and seek custom. Limiting the number of licences to operate a notarial office as defined in the notarial map restricts the overall number of professional titles that are available to be granted. This leads to long waiting times for prospective notaries working as clerks, while no competitive pressure is exerted on incumbents. These restrictions are even more difficult to justify in the case of municipalities with higher population density and higher incomes (urban areas and along Portugal's attractive coastal and touristic areas). In these cases, quota restrictions currently allow incumbents to pick and choose their clients with little incentive to improve services, innovate or adapt to the market in other ways. A less restrictive and more market-oriented mechanism for the allocation of notaries throughout the national territory would encourage lower prices, higher quality and innovation as a result of greater competition. Such a mechanism is unlikely to imply more difficult or more expensive access to notarial services. On the contrary, greater consumer welfare would arise not only from more but also better services being available. The need for quotas has largely been superseded by technology and the gradual removal of reserved activities as the exclusive preserve of notaries. The need for the physical presence of a notary is therefore less pressing, as many acts can be dealt with over the internet and by email, or by lawyers and solicitors. The Portuguese government has already recognised this. As part of the Portuguese "Simplex" e-government programme, citizens have been given a unique identity card and "e-identity" that can be used to officially sign documents remotely. The Portuguese government should consider internet availability and use their e-government programme to facilitate the use of notarial services remotely, thereby reducing the number of remote geographic areas identified as in need of notaries with a unique licence. Such alternative solutions may better balance competition and universal access to notarial services, as twin public goods. One	Following the Portuguese Competition Authority's Recommendation 1/2007 and more recent international developments, such as the legal reform in France known as the Macron Law, an overall technical study on the current organisation of notarial services in Portugal is necessary. The objectives of such a study are to explore alternatives that would increase professional mobility and clients' freedom of choice, while still guaranteeing universal access to notarial services. Therefore it is recommended to: 1. Abolish the licence quotas or the need to obtain a notarial office licence before establishing oneself as a notary. Or alternatively, 2. Study the potential demand for notarial services, taking into account: population density; economic activity, dynamism of the local real-estate market; demand for other services provided by notaries; existence of alternative internet solutions. Based on the data: Identify areas that can sustain competition in notarial activities (typically Lisbon, Porto, Faro, high-tourism areas, highly industrialised areas) and fully liberalise the establishment of notarial offices there; ii. In low-density areas, allow for open competition for the establishment of one or two offices per area (or whichever density is determined by the study). 3. Revisit the existing compensation fund and find alternative ways to guarantee the delivery of notarial services in low-density areas, taking into account the fact that many notarial acts can also be practiced by both lawyers and solicitors who may also practice in those areas.

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						<p>solution put forth by the Portuguese Competition Authority's Recommendation 1/2007 (see Box 4. 3) calls for widening the range of legal services a notary may provide in a disadvantaged geographical area. Regarding the geographical barrier, more than 70% of the municipalities only have one notarial office. This restriction can potentially create monopolistic situations depending upon the competitive pressure exercised by lawyers and solicitors as well as how the single notary would respond to the requirements imposed by the Compensation Fund. If monopolistic situations were to arise, they would imply the charging of fees above competitive levels and a lower incentive to innovate and provide higher quality services. Finally, the existing Compensation Fund constitutes an income redistribution mechanism that limits the risk inherent to the economic activity and may not stimulate the right type of investment and service innovation that can lower costs and raise revenues.</p>	
23	Decree-Law 26/2004 (as amended by Law 51/2004 and Decree-Law 15/2011 and republished by Law 155/2015 as Annex II) "Notaries Statutory Law"	Art. 15	Exclusivity of functions	The functions of a notary are exercised with exclusivity, and are incompatible with other paid functions, either public or private, except teaching activities, participation in conferences and copyright.	This rule is intended to protect the client from possible conflicts of interest and aims to protect the public interest. The recital from Decree-Law 26/2004 states that the exclusivity of the profession stems from the required high standards of technical competence, and from the need to ensure the notary's impartiality and independence in relation to the involved parties.	This prevents professionals from providing notarial services if they are already engaged in other activities or if they intend to be. As an example, we do not see a conflict arising from practising notarial acts and at the same time e. g. , being a partner in some other firm unrelated to the practice of such acts. This rule presents no flexibility, only allowing for three exceptions. Potential suppliers may be excluded from the market because of the lower financial incentive such a restriction implies.	We recommend that this provision be changed from imposing a general ban on engaging in paid public activities to allowing the practice of other paid activities, public or private, unless there is a clear and explicit conflict of interest with the practice of notarial acts.
24	Decree-Law 26/2004 (as amended by Law 51/2004 and Decree-Law 15/2011 and republished by Law 155/2015 as Annex II) "Notaries Statutory Law"	Art. 17(1)(2)	Professional fees	This provision states that professional fees for notarial acts are of three types: fixed fees (only for acts pertaining to inventory processes, with fees differing between different acts), fees subject to a maximum level (i. e. , price cap), and free fees. Fixed fees and maximum fees are defined in a table approved by the Ministry of Justice. This table is revised	According to stakeholders, the regulation of fixed prices related to the inventory process, such as in a judicial separation process, might be justified on exceptional public interest grounds to guarantee economic access to inventory processes equally by all people. The existence of maximum prices in exclusive notarial activities intends to guarantee universal access to these services independently of the clients' income level. Notary services exhibit characteristics of public goods, which can lead to positive externalities. Because public goods tend to be under-produced, the state usually establishes regulation on the provision of such services.	Maximum and fixed price regimes limit the incentives to compete and innovate. Even though maximum price regimes allow for price competition, they often serve as a focus point to co-ordinate prices. In a competitive market, prices tend to reflect more closely the costs of the services provided, and do not necessarily jeopardise the quality of those services. In its Recommendation 1/2007, the AdC proposed the adoption of a system of maximum prices during a transitional period for services which remain within the exclusive competence of notaries and whose social relevance justified the need to guarantee universal access. This regime would be phased out as the	The maximum prices regime should be revisited, with the aim to gradually phase them out as appropriate.

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				periodically, at least every two years. The existing table which still applies was approved by Ordinance 385/2004. Note that Ordinance 385/2004 established fixed fees for a very significant number of notarial acts. Free fees were only allowed for a small set of notarial acts. In the meantime, by Ordinance 1416-A/2006, the free fees regime was extended to the recognition of signatures, authentication of private documents and certification of translated documents. However, Ordinance 574/2008 has abolished fixed fees for notarial acts. Since then, notarial acts are subject to maximum fees or to a regime of free fees, except for acts pertaining to inventory processes, which are defined by the Ministry of Justice (see Ordinance 278/2013, amended by Ordinance 46/2015).	Additionally, it is claimed that price control guarantees a notary's impartiality and independence in the provision of a public service, as they wouldn't have to negotiate prices with their clients.	quantitative restrictions imposed by the quota system were phased out. Other alternatives, rather than fixing maximum prices, may be adopted to overcome any lack of information from the demand side, such as the publication of historical or survey-based price information by independent parties, e. g. consumer associations. This would improve transparency and allow greater competition in prices. The same principle applies when the regulator opts for establishing maximum prices, based on the attempt to avoid excessive prices charged to consumers, in particular when the regulator wants to guarantee universal access to notarial services.	
25	Decree-Law 26/2004 (as amended by Law 51/2004 and Decree-Law 15/2011 and republished by Law 155/2015 as Annex II) "Notaries Statutory Law"	Art. 17(3)	Professional fees	Notaries must charge their professional fees to their clients with moderation, taking into account the time spent, the difficulty of the subject, the importance of the service provided and the socio-economic context of the clients. These rules apply whether the amount of professional fees is free or variable. (Note that Art. 3 para. 2 of Ordinance 385/2004 establishes the same rule, but only for freely-established fees.	The criteria to fix professional fees, either free or variable, is established with the purpose of protecting clients from excessive prices, due to the existing information asymmetry between the client and the notary, that could lead to an outcome of moral hazard. On the one hand, notarial services exhibit characteristics of public goods, which can lead to positive externalities. Because public goods tend to be under-produced, the state usually establishes regulation on the provision of such services. On the other hand, as referred to above, such professional services tend to create difficulties for consumers to observe and judge the quality of work (information asymmetries). Because the quality of work is difficult to assess, price regulation tends to prevent quality deterioration of the services provided by the professionals.	Although the identification of objective criteria used to set fees (by solicitors) may be advantageous when the Professional Associations is required (by clients) to revise or arbitrate on the fees charged, this list should not be exhaustive. This provision may restrict the contractual freedom between solicitor and client, when choosing the payment format for services rendered, as well as the criteria to determine the solicitor's fees. This restriction may reduce the scope for different solicitors to compete for clients, more so if the Bar Association adopts an active posture regarding how its members' services should be paid for. Hence, it may hamper competition in the market for legal services.	This legal provision should be modified to allow the use of more specific and objective criteria based on professional association previous decisions.

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26	Decree-Law 26/2004 (as amended by Law 51/2004 and Decree-Law 15/2011 and republished by Law 155/2015 as Annex II) "Notaries Statutory Law"	Art. 20	Opening hours	The opening hours of notarial offices are decided by the Ministry of Justice after consulting the Professional Association of Notaries.	Setting operating hours is the norm for public services, such as in the case of record keepers and registers, who historically were linked to the notarial activity.	The setting of operating hours by the Ministry of Justice limits the free management of any business and its activity, reducing the scope for competition between service providers. This type of restriction is in part the result of a privatised self-regulated liberal profession being regarded as a provider of public services. The fact that notaries can provide services at a client's premises does not necessarily solve the problem.	This legal provision should be removed. An exception may be made for municipalities where there is a single notarial office. In this case, opening hours for notarial offices could still be decided by the Ministry of Justice, provided that there are grounds for fearing that, without such a measure, shorter hours would be kept to the detriment of consumers when there is no alternative notarial office and when the provision of notarial services over the internet is still incipient, due to limitation both on the supply side as on the demand side.
27	Decree-Law 26/2004 (as amended by Law 51/2004 and Decree-Law 15/2011 and republished by Law 155/2015 as Annex II) "Notaries Statutory Law"	Art. 25 and 26	Academic qualifications	The requirements to become a notary in Portugal are, amongst others, to hold a university law degree from a Portuguese university, or an equivalent university law degree from another country.	Entry requirements aim to ensure notaries will provide legal services with the necessary expertise and with quality outcomes. Notaries need to be well grounded in theoretical knowledge in law and in practical experience, which is obtained from the internship. Across the other EU Member States, law studies and the internship are entry requirements generically established by the applicable regulation. In some cases, the qualifying period after law studies are completed is 6 or 7 years, including, in some cases, experience at courts (e. g. Austria). Generically in the other EU Member States, an entry exam together with a competitive tender process is also required. The tender process ensures that only qualified notaries will access the professional title through a licensing scheme. This aims to protect the professional title, considering the public functions of notaries.	Requiring a law university degree limits the number of professionals that can enter the market and offer their services there. Owing to these entry restrictions, a smaller number of professionals have to serve the same number of clients. This may lead to higher prices charged for those services as demand may outstrip supply. In addition, with little or no competitive pressure, professionals have little incentive to innovate and to provide a larger range of services. According to the European Commission ("Proposal for a Directive of the European Parliament and of the Council on a proportionality test before adoption of new regulation of professions", COM(2016) 822 final, 10. 1. 2017, p. 15, para. 12), this ultimately leads to a welfare loss for businesses, including SMEs and individual consumers. E. g. , in Germany, to become a notary, one must pass a state exam, but no law degree is required beforehand, and have a minimum of two or three years' experience as notarial candidates or lawyers. Notaries are also divided into three types (the single profession notary, the advocate-notary and the state employed or civil servant notary). The advocate-notaries are the most common in Germany, since they are lawyers first of all, the notarial duty being exercised as a second profession.	We recommend that access to the professions of lawyer, solicitor, notary and bailiff be open to university degrees other than law and a solicitors' practice degree, as the case may be. The professional associations should work with the legislator to set a transparent, proportional and non-discriminatory process for identification of alternative routes to obtain the strictly necessary or adequate qualifications for the exercise of legal profession. In this case, candidates may be required to hold a postgraduate degree in law or to take a conversion course, and should undergo the same training as other legal trainees, including passing the Bar Exam.

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28	Decree-Law 26/2004 (as amended by Law 51/2004 and Decree-Law 15/2011 and republished by Law 155/2015 as Annex II) "Notaries Statutory Law"	Art. 27	Professional internship	The internship has a maximum duration of 18 months. An intern's supervisor must be a notary with at least five years of experience, freely chosen by the intern or appointed by the professional association. The internship includes a 6-month initial stage and a 12-month complementary stage. The initial stage aims to guarantee the intern acquires the required technical and professional ethics knowledge. The complementary stage aims to deepen and develop a familiarity with all practical aspects of the profession, with the way a notarial office works, and with all the institutions relevant for the notarial profession. These periods of time can be reduced by half when interns are Doctors in Law, magistrates from a court or from the public prosecutor's office with a high enough professional evaluation, registry officials with a high enough professional evaluation, lawyers who have been members of the Bar Association for at least 5 years, and notarial assistants in full exercise of delegated functions for at least 1 year. The internship is also halved if the trainee is a registrar or notary's helper or clerk with a high enough professional evaluation.	It is our understanding from meetings with stakeholders that these requirements aim to ensure internship candidates are fully prepared to successfully conclude the internship programme and to ensure they have the necessary academic qualifications and are legally suitable both as candidates and as future notaries, and that they will be able to provide notarial services meeting the required technical quality level.	Framework Law 2/2013 establishes that professional internships in any self-regulated profession should be required only when justified by the public interest. An internship constitutes a barrier to access the profession and may reduce the number of professionals competing in the market for legal services, whenever they unduly discourage well-qualified professionals from enrolling in the internship programme, or when they unduly reduce the number of professionals who successfully complete it. Hampering competition may drive prices/fees up and may reduce the diversity and innovativeness of legal services offered in the market, generating a loss in social welfare. However, there is proportionality between the policy objective and the harm to competition on the existence of the internship per se, without taking into account its duration, subject matter, evaluation model and associated costs. When the internship evaluation procedures is conducted solely by peers, its total independence may be compromised, as there is a latent conflict between the public interest a professional association pursues and its own private or corporate interest.	The final evaluation of the notaries' internship should be conducted by a board, independent of the professional association, which may include members of the latter but must also include professionals of recognised merit, such as law professors and magistrates, among others. We also recommend that the theoretical training should provide an e-learning option. This could lead to a reduction in internship fees, as well as reducing the opportunity costs of having to attend those training courses in person. We recommend that subjects that are part of any required university curriculum (such as a law degree, a suggested conversion or a postgraduate course) should not be included in the theoretical training offered during the first six months of the internship. All internship fees should be proportional and reflect the true costs of organising and providing the internships, following transparent and clear criteria that must be made public by the professional association.

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29	Decree-Law 26/2004 (as amended by Law 51/2004 and Decree-Law 15/2011 and republished by Law 155/2015 as Annex II) "Notaries Statutory Law"	Art. 31	Attribution of the title of notary	The title of "Notary" is obtained through a public candidacy process, announced by the Ministry of Justice in the Official Journal, and after consultation with the professional association. Only interns who have successfully concluded their internship can be candidates.	The tender process ensures that only qualified professionals will access the professional title through a licensing scheme. This aims to protect the professional title, considering the public functions of notaries. Consumers are, therefore, informed that the professionals are certified to provide such services. In this case, the professional association acts as a public entity empowered by the State to perform this function.	This procedure constitutes a mandatory additional burden on professionals who wish to access the notarial profession. It constitutes an extra opportunity cost that may dissuade some professionals from becoming notaries and compete in the market as such. This public candidacy procedure is part of the existing licensing regime for the attribution of the title of notary and the attribution of notarial offices. It is part of a system of quotas and geographical segmentation of notarial services, addressed by the Portuguese Competition Authority's Recommendation 1/2007. As such, it may hamper competition in the market for notarial services, with negative impacts on consumer welfare (households and firms, in particular SMEs). This does not seem generically implemented in other EU Member States. Such a public candidacy process could be considered proportional if there were no restrictions on the number of professional titles to be given, either formally or informally. However, and according to stakeholders, the limit of licences to operate notarial offices as defined in the notarial map (approved by this Decree-Law 26/2004) indirectly restricts the number of professional titles attributed in this public candidacy procedure. Moreover, the public candidacy procedure may allow for a control of the number of licensed notaries, as its timing is controlled by the Ministry of Justice. Overall, the current centralised/quota system to grant the professional title and licences to operate notarial offices restricts competition by restricting the number of notaries able to compete in the market and by segmenting the market. This leads to less diversity and innovation in the services being provided, in particular when these services are still exclusive to notaries, and may prevent the practice of lower prices for the different services that are not under a fixed price regime.	Following the Portuguese Competition Authority's Recommendation 1/2007 and more recent international developments, such as the legal reform in France known as the Macron Law, an overall technical study on the current organisation of notarial services in Portugal is necessary. The objectives of such a study are to explore alternatives that would increase professional mobility and clients' freedom of choice, while still guaranteeing universal access to notarial services. Therefore it is recommended to: 1. Abolish the licence quotas or the need to obtain a notarial office licence before establishing oneself as a notary. Or alternatively, 2. Study the potential demand for notarial services, taking into account: population density; economic activity, dynamism of the local real-estate market; demand for other services provided by notaries; existence of alternative internet solutions. Based on the data: Identify areas that can sustain competition in notarial activities (typically Lisbon, Porto, Faro, high-tourism areas, highly industrialised areas) and fully liberalise the establishment of notarial offices there; ii. In low-density areas, allow for open competition for the establishment of one or two offices per area (or whichever density is determined by the study). 3. Revisit the existing compensation fund and find alternative ways to guarantee the delivery of notarial services in low-density areas, taking into account the fact that many notarial acts can also be practiced by both lawyers and solicitors who may also practice in those areas.

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30	Decree-Law 26/2004 (as amended by Law 51/2004 and Decree-Law 15/2011 and republished by Law 155/2015 as Annex II) "Notaries Statutory Law"	Art. 3 2	Attribution of the title of notary	The public candidacy process for the award of the title of notary includes assessment tests to evaluate each candidate's capacity for the exercise of notarial functions. These tests include written and oral examinations.	The attribution of the title of notary by a public act is justified by the fact that notaries perform a public interest activity. As such the state is required to validate a candidate's capacity to become a notary.	These assessment tests constitute a mandatory additional burden on professionals who wish to access the notarial profession and may dissuade candidates from becoming titled notaries able to practice the profession. These represent an entry cost and can limit the number of competing professionals in the market. Additionally, note that candidates to the title are already required to hold a university law degree and to complete a professional internship.	Following the Portuguese Competition Authority's Recommendation 1/2007 and more recent international developments, such as the legal reform in France known as the Macron Law, an overall technical study on the current organisation of notarial services in Portugal is necessary. The objectives of such a study are to explore alternatives that would increase professional mobility and clients' freedom of choice, while still guaranteeing universal access to notarial services. This will include revisiting the current public candidacy procedure for the attribution of the title of notary.
31	Decree-Law 26/2004 (as amended by Law 51/2004 and Decree-Law 15/2011 and republished by Law 155/2015 as Annex II) "Notaries Statutory Law"	Art. 33	Title of notary	The title of notary is granted to any candidate approved in the public candidacy process. The newly titled notaries are ranked according to their merit, depending on the classification they obtain in the public application process and on their university law degree classification. This ranking stays valid for two years, with a possible extension to be decided by the professional association.	The attribution of the title of notary by a public act is justified by the fact that notaries perform a public interest activity. As such the state is required to validate a candidate's capacity to become a notary.	These assessment tests constitute a mandatory additional burden on professionals who wish to access the notarial profession and may dissuade candidates from becoming titled notaries able to practice the profession. These represent an entry cost and can limit the number of competing professionals in the market. Additionally, note that candidates to the title are already required to hold a university law degree and to complete a professional internship.	Following the Portuguese Competition Authority's Recommendation 1/2007 and more recent international developments, such as the legal reform in France known as the Macron Law, an overall technical study on the current organisation of notarial services in Portugal is necessary. The objectives of such a study are to explore alternatives that would increase professional mobility and clients' freedom of choice, while still guaranteeing universal access to notarial services. This will include revisiting the current public candidacy procedure for the attribution of the title of notary.
32	Decree-Law 26/2004 (as amended by Law 51/2004 and Decree-Law 15/2011 and republished by Law 155/2015 as Annex II) "Notaries Statutory Law"	Art. 34(1)(2)(3)	Registration and licensing	Licences for the installation of a notarial office are granted through a public candidacy procedure. The number of licences advertised depends on the number of existing vacancies across the national territory. These vacancies are filled following the ranking of the different candidates obtained from the public candidacy process for the	The quota system (numerus clausus) has been justified as a mechanism to ensure an equitable distribution of notarial services providers throughout the country. An argument that has been put forth is that in a free, competitive market, less populated or less economically attractive places would not have access to notarial services. This candidacy procedure is part of the existing model of quotas and geographic delimitations, which is meant to control the number of notarial offices and their geographic distribution across the national territory. It also aims to ensure that notarial licences are attributed to the more qualified notaries, and to provide legal certainty regarding their legitimacy as professionals.	The "notarial map", defined by the Ministry of Justice, establishes the number of notarial offices that should be licensed in each municipality. This map's last version is from 2004 (see annex of Decree-Law 26/2004). Law 155/2015 revoked this map, but the new map has not been approved yet, as established in Art. 6. According to stakeholders, the 2004 map is outdated and must be modified according to new territorial and demographical characteristics. Considering the 2004 map, in 72% of the municipalities across the country, there is only one licence to be issued (221 out of 310 municipalities only have one licence). This provision is part of the current system of quotas and territorial segmentation that condition the	Following the Portuguese Competition Authority's Recommendation 1/2007 and more recent international developments, such as the legal reform in France known as the Macron Law, an overall technical study on the current organisation of notarial services in Portugal is necessary. The objectives of such a study are to explore alternatives that would increase professional mobility and clients' freedom of choice, while still guaranteeing universal access to notarial services. Therefore it is recommended to: 1. Abolish the licence quotas and the need to obtain a notarial office licence before being established as a notary. Or alternatively, 2. Study the potential demand for notarial services, taking into account: population density;

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				granting of the title of notary, and following the territorial preferences for a notarial office that each candidate has submitted.		<p>exercise of the profession in notarial offices across the national territory. The Ministry of Justice defines the total number of notaries to be licensed and the way notarial offices, to be operated by notaries, will be distributed across the different municipalities. Each notary can only hold one licence to operate a notarial office. This system restricts the number of notaries able to compete in the market, and may reduce the incentives of existing notaries to compete with each other for the provision of services. These restrictions are difficult to justify, particularly in municipalities with a higher population density and higher incomes (big urban centres). Lower prices, higher quality and innovation as a result of greater competition would lead to greater consumer welfare leading not only to better services but also more services being provided. Even for notarial services with fixed prices, notaries can still compete in quality and innovation. The public interest may want to guarantee the universal provision of at least a minimum of notarial services. This means that the law would determine ex ante the existence of one licence in a certain territorial jurisdiction (which can be the municipality), but the law should not establish a fixed or maximum number of licences. Even such a solution would have to be analysed considering a possible compensation system. The licensing requirement by itself constitutes an entry barrier. The implicit model restricts the number of notaries and other equally qualified professionals from competing in the market for notarial services, reducing consumer choice. Finally, a notarial office should not have to operate from some physical premises, i. e. , to be a "bricks-and-mortar" facility. A notarial office should not only be able to offer online services but the office itself could be virtual. The notary with a notarial office licence should be able to choose between opening a physical facility or operating virtually, or a mixture of both, even under a regime mandating that a certain percentage of notarial offices have to operate from physical premises for public interest reasons.</p>	<p>economic activity, dynamism of the local real estate market; demand for other services provided by notaries; existence of alternative internet solutions. Based on the data: (i) Identify areas that can sustain competition in notarial activities (typically Lisbon, Porto, Faro, high-tourism areas, highly industrialised areas) and fully liberalise the establishment of notarial offices there; (ii) In low-density areas, allow for open competition for the establishment of one or two offices per area (or whatever density is determined by the study. 3. Revisit the existing Compensation Fund and find alternative ways to guarantee the delivery of notarial services in low-density areas, taking into account the fact that many notarial acts can also be practised by both lawyers and solicitors practising in those areas. Finally, even if this law and this provision do not clearly mandate that a notarial office has to operate from some physical premises, i. e. , to be a "bricks-and-mortar" facility, a notarial office should not only be able to offer online services but the office itself could be virtual. The notary with a notarial office licence should be able to choose between opening a physical facility or operating virtually, or a mixture of both, even under a regime mandating that a certain percentage of notarial offices have to operate from physical premises for public interest reasons.</p>

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33	Decree-Law 26/2004 (as amended by Law 51/2004 and Decree-Law 15/2011 and republished by Law 155/2015 as Annex II) "Notaries Statutory Law"	Art. 35(2)	Registration and licensing	Each notary can only hold one notarial licence at a time. Each licence is granted by the Ministry of Justice.	This limitation aims to allow the state to control the number of offices and their distribution within the national territory, ensuring that notary services are effectively provided in all parts of the country. It also aims to provide legal certainty regarding the legitimacy of the operators. It is doubtful whether this restriction was introduced to curtail possible market power that could result from only one or a few notaries holding many licences.	The prohibition to hold more than one notarial licence prevents the exploration of economies of scale, greater professional specialisations, and greater management efficiencies, with the consequence of cost reductions, both in fixed and variable costs. These foregone cost reductions imply that higher prices will be practiced in the market than otherwise. Achieving lower costs would also lead to fiercer competition as there would pressure on other notarial offices to lower their prices as well, and take other measures to attract clients, more so in a more open model than the existing one. Without this prohibition, possible concentrations of market power could be dealt with through competition policy, in particular through the control of mergers and acquisitions. An eventual concentration of several notarial licences and notarial offices under the same notary can be dealt with under existing competition law, to avoid the emergence of excessive market power in relevant markets.	Following the Portuguese Competition Authority's Recommendation 1/2007 and more recent international developments, such as the legal reform in France known as the Macron Law, an overall technical study on the current organisation of notarial services in Portugal is necessary. The objectives of such a study are to explore alternatives that would increase professional mobility and clients' freedom of choice, while still guaranteeing universal access to notarial services. Therefore it is recommended to: 1. Abolish the licence quotas and the need to obtain a notarial office licence before being established as a notary. Or alternatively, 2. Study the potential demand for notarial services, taking into account: population density; economic activity, dynamism of the local real estate market; demand for other services provided by notaries; existence of alternative internet solutions. Based on the data: (i) Identify areas that can sustain competition in notarial activities (typically Lisbon, Porto, Faro, high-tourism areas, highly industrialised areas) and fully liberalise the establishment of notarial offices there; (ii) In low-density areas, allow for open competition for the establishment of one or two offices per area (or whatever density is determined by the study). 3. Revisit the existing Compensation Fund and find alternative ways to guarantee the delivery of notarial services in low-density areas, taking into account the fact that many notarial acts can also be practised by both lawyers and solicitors practising in those areas.
34	Decree-Law 26/2004 (as amended by Law 51/2004 and Decree-Law 15/2011 and republished by Law 155/2015 as Annex II) "Notaries Statutory Law"	Art. 35 para. 3	Registration and licensing	Each licensed notary is obliged to exercise the notarial activity under such licence for a minimum period of two years and within the territory where the licence is valid. During that period the notary is not allowed to apply for another licence.	The fact that each licensed notary is not allowed to apply for another licence seems to follow from Art. 35 para. 2. That each licensed notary has to exercise his activity for at least two years, purportedly aims to avoid too high a mobility rate as licences, a scarce good, are granted through a time-consuming public candidacy procedure, within the existing quotas and territorial delimitation model.	This provision establishes requirements for the exercise of the profession that may discourage some professionals from entering the market. In fact, there is a fixed legal limitation on the minimum period for every licence. In some cases, it may be justified to set different periods. This rule presents no time flexibility. In some cases, this may discourage notaries from applying for a licence and may reduce the number of notaries competing in the market.	Following the Portuguese Competition Authority's Recommendation 1/2007 and more recent international developments, such as the legal reform in France known as the Macron Law, an overall technical study on the current organisation of notarial services in Portugal is necessary. The objectives of such a study are to explore alternatives that would increase professional mobility and clients' freedom of choice, while still guaranteeing universal access to notarial services. Therefore it is recommended to: 1. Abolish the licence quotas and the need to obtain a notarial office licence before being established as a notary. Or alternatively, 2. Study the potential demand for notarial services, taking into account: population density; economic activity, dynamism of the local real estate

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							market; demand for other services provided by notaries; existence of alternative internet solutions. Based on the data: (i) Identify areas that can sustain competition in notarial activities (typically Lisbon, Porto, Faro, high-tourism areas, highly industrialised areas) and fully liberalise the establishment of notarial offices there; (ii) In low-density areas, allow for open competition for the establishment of one or two offices per area (or whatever density is determined by the study. 3. Revisit the existing Compensation Fund and find alternative ways to guarantee the delivery of notarial services in low-density areas, taking into account the fact that many notarial acts can also be practised by both lawyers and solicitors practising in those areas. This provision, as part of the current organisation of notarial activity in Portugal, should be reassessed by the technical study.
35	Decree-Law 26/2004 (as amended by Law 51/2004 and Decree-Law 15/2011 and republished by Law 155/2015 as Annex II) "Notaries Statutory Law"	Art. 40-A(3)	Registration and licensing	In the case where a professional comes from a EU Member State that does not regulate the notarial activity beyond demanding a university law degree, this professional must have practiced the profession of notary for two years during the last 10 years to be able to exercise this profession in Portugal.	The national legislator may have intended to ensure that the services they provide in the national market meet certain quality standards that have to be met by national notaries and by notaries coming from other EU Member States where this profession is regulated.	The two-year requirement may constitute an entry barrier for exercising the profession in the national market by certain EU professionals. These professionals may be fully qualified notaries and such an additional requirement of two years of experience may reduce the number of qualified notaries established in the national territory. Furthermore, such professionals will need to have a professional title, equivalent to the one attributed in Portugal. There seems to be no reason for this additional entry requirement of a minimum of two years of professional experience.	If a professional from an EU Member State is a licensed notary in their home country, they should be allowed to practice their profession in Portugal, regardless of years of experience, provided they meet the required criteria in terms of theoretical and practical knowledge. Hence, this legal provision should be rewritten to accommodate notaries from other EU Member States, regardless of whether their home country regulates the profession of notary or not, even if they have less than two years' experience, but who meet the technical qualifications and knowledge as required by the profession.
36	Decree-Law 26/2004 (as amended by Law 51/2004 and Decree-Law 15/2011 and republished by Law 155/2015 as Annex II) "Notaries Statutory Law"	Art. 40-A(4)	Registration and licensing	To be established in Portugal, professionals from other EU Member States must apply for the title of "Notary" in Portugal in a public candidacy procedure as established in Art. 25(f)). In order to operate as notaries in Portugal, they must apply for a licence (under Arts. 34 and 35) or be registered on the waiting list (bolsa de notários) (under Art. 36). They must all be registered with the	These requirements intend to impose on non-nationals from EU Member States the requirements already imposed on nationals for the access and exercise of the profession of notary in Portugal.	One may question whether there is a need for the cumulative entry requirements of holding the professional title in the state of origin, as well as holding the national professional title. Regarding the exercise of the activity under a licence to operate, the same analysis is made for nationals. The establishment of quotas is harmful and limits the free establishment of professionals in the national territory. It will hamper competition by restricting the number of notaries in the market and by segmenting the market, limiting consumer choice and ultimately will reduce consumer welfare.	Following the AdC's Recommendation 1/2007 and more recent international developments, such as the Loi Macron, we strongly encourage the carrying out of an overall technical study on the way notarial services are currently organised in Portugal. The current quota and market segmentation system hamper competition in price and quality, reduce diversity of services and innovativeness, reduce consumer choice, leading ultimately to a reduction in social welfare.

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				Professional Association of Notaries. These requirements are applicable regardless of whether the profession is regulated in the notary's state of origin or not.			
37	Decree-Law 26/2004 (as amended by Law 51/2004 and Decree-Law 15/2011 and republished by Law 155/2015 as Annex II) "Notaries Statutory Law"	Art. 41(b) and Art. 43	Quality standards	Notaries are subject to an age limit of 70 years in the exercise of their profession. The notary should inform the professional association up to 90 days before reaching that age.	This provision aims to guarantee that all notaries exercising their profession are fully capable of performing their professional acts in a responsible way. But it may also attempt to mitigate an excess of notaries on the waiting list for the relative fewer number of notarial licences issued. There is an age limit in almost all Member States, of from 65 to 75 years of age; in many EU countries, the age limit is 70 years old, the same limit established in Portugal (e. g. Germany, Austria, Croatia, Spain, France, Greece, Hungary, Lithuania, Netherlands, etc.). In Malta, for instance, there is no age limit, but this is the exceptional regime across the EU Member States (according to information from the Notaries of Europe). Note that in Portugal the general retirement age is, currently, around 66, though it is likely to steadily increase over time.	An age limit to exercise the profession of notary reduces the number of notaries that could compete in the market. It is a generic requirement, which does not benefit from a case-to-case analysis. It may lead to an exit from the market of notaries that are still fully qualified and capable of operating in the market, despite their age. Under the current quota and market segmentation system and the fact that there is a list of notaries waiting to be granted a notarial office through a public tender, each notary that exits the market will likely be replaced by a notary on the waiting list, even if not in the short run. However, a simple one-to-one replacement does not constitute a pro-competitive procedure in itself. Hence, this age limit requirement is not pro-competitive.	This legal provision should be removed or replaced by a legal provision that establishes a retirement procedure based on a case-by-case analysis, not necessarily run by the Professional Association of Notaries. This analysis would be carried out every year, once the worker is 70 years-old.
38	Decree-Law 66/2005 "Reception of documents by electronic means"	Art. 8(1)	Professional fees	This provision establishes that fees charged by notaries for the use of the fax and for the electronic transmission of documents are regulated in a specific regulation.	Price regulation (including prices subject to maximum or fixed levels) aim to guarantee universal access to these services by all users and that a price control regime may protect the quality of services. The claim is that if prices were freely determined by the service providers (in this case, notarial offices and registry services) competition between them would drive quality down as part of a cost-cutting strategy.	Fixed prices and maximum price regimes are anti-competitive and can lead to negative economic impacts. Not allowing the free determination of fees/prices will hamper price competition, which could lead to lower prices for the benefit of consumers and still guarantee universal access to such services. Moreover, setting maximum prices may hamper innovation and may facilitate price co-ordination around the maximum price, which plays the role of a focal point in a strategic sense. Now, it may be doubtful that there is much scope for innovation in faxing documents. But price co-ordination, which is anti-competitive, remains a possibility and should not be allowed to take place. However, and following Recommendation 1/2007 issued by the AdC, Art. 5 from Ordinance 574/2008 defines two types of fees, namely maximum fees for those notarial acts exclusively performed by notaries and as listed, and free fees for all the other acts, including the ones also performed by lawyers and solicitors. Hence, fixed fees for notarial acts have been abolished by such an ordinance. Fixed fees are still in place for inventory legal processes only.	This legal provision should be removed given the aim of phasing out maximum price regimes and after fixed prices regimes have been eliminated.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
39	Ordinance 574/2008 "Table of fees and charges for the notarial activity"	All	Maximum fees	The notarial acts performed exclusively by notaries are governed by a maximum price regime, except those for inventory procedures that are under a fixed fee regime. All other acts are provided under a free price regime.	According to stakeholders, the regulation of fixed prices related to the inventory process, such as in a judicial separation process, might be justified on exceptional public interest grounds to guarantee economic access to inventory processes equally by all people. The existence of maximum prices in exclusive notarial activities intends to guarantee universal access to these services independently of the clients' income level. Notary services exhibit characteristics of public goods, which can lead to positive externalities. Because public goods tend to be under-produced, the state usually establishes regulation on the provision of such services. Additionally, it is claimed that price control guarantees a notary's impartiality and independence in the provision of a public service, as they wouldn't have to negotiate prices with their clients.	Maximum and fixed price regimes limit the incentives to compete and innovate. Even though maximum price regimes allow for price competition, they often serve as a focus point to co-ordinate prices. In a competitive market, prices tend to reflect more closely the costs of the services provided, and do not necessarily jeopardise the quality of those services. In its Recommendation 1/2007, the AdC proposed the adoption of a system of maximum prices during a transitional period for services which remain within the exclusive competence of notaries and whose social relevance justified the need to guarantee universal access. This regime would be phased out as the quantitative restrictions imposed by the quota system were phased out. Other alternatives, rather than fixing maximum prices, may be adopted to overcome any lack of information from the demand side, such as the publication of historical or survey-based price information by independent parties, e. g. consumer associations. This would improve transparency and allow greater competition in prices. The same principle applies when the regulator opts for establishing maximum prices, based on the attempt to avoid excessive prices charged to consumers, in particular when the regulator wants to guarantee universal access to notarial services.	The fixed fee regime for inventory processes should be revisited with the aim to gradually phase it out as appropriate. The maximum prices regime should be also revisited, with the aim to gradually phase them out as appropriate. This view is echoed by the Portuguese Competition Authority (AdC).
40	Regulation from 27/04/2013 "Report on fees"	Arts. 5	Professional fees	The Professional Association of Notaries has the competence to elaborate reports on the fees charged by notaries following a proposal by its Supervisory, Disciplinary and Ethical Council.	We understand that this provision attempts to protect clients from the practice of excessive prices/fees by notaries, drawing on the knowledge notaries themselves have over the type of work the delivery of notarial services might involve.	First, it is not clear whether the aggrieved party can appeal to a civil/administrative court about a decision by the rapporteur they do not agree with. Second, we could even question why the aggrieved party should not be able to dispute the fees charged directly in court or appeal to an independent third party, even admitting that the court might not be as knowledgeable as the Professional Association about the normally charged fees and their rationale. An Ombudsman, as an independent party, could be particularly helpful to assess and solve this type of conflicts over charged fees, avoiding long disputes. As the control regime now stands, and since the rapporteur is also a member of the Professional Association's Supervisory, Disciplinary and Ethical Council, one cannot exclude at the outset that some information dissemination on fees might circulate between the members, even in the presence of some type of "Chinese walls", could then lead to practices restrictive to competition, possibly	We recommend that a redress procedure involving an independent third party, such as an Ombudsman for the legal professions, be set in place, thus avoiding the described pitfalls, notwithstanding the fact that the court is ultimately the entity that collects the fees.

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41	Regulation as of 09/10/2017 "Internship of notaries"	Arts. 2 (d)	Academic qualifications	The requirements to become a notary in Portugal are, amongst others, to hold a university law degree from a Portuguese university, or an equivalent university law degree from another country.	Entry requirements aim to ensure that notaries will provide legal services with the necessary expertise and with quality outcomes. Notaries need to be well grounded in theoretical knowledge in law and in practical experience, which is obtained from the internship. Across the other EU Member States, law studies and the internship are entry requirements generically established by the applicable regulation. In some cases, the qualifying period after law studies are completed is six or seven years, including, in some cases, experience in court (e. g. Austria). Generically, in the other EU Member States an entry exam together with a competitive tender process is also required. The tender process ensures that only qualified notaries will access the professional title through a licensing scheme. This aims to protect the professional title, considering the public functions of notaries.	due to some form of collusion between members of the professional association as providers of notarial services. This notwithstanding the fact that Art. 20 of the same provision imposes that confidentiality, this must be upheld. Requiring a law university degree limits the number of professionals that can enter the market and offer their services there. Owing to these entry restrictions, a smaller number of professionals have to serve the same number of clients. This may lead to higher prices charged for those services as demand may outstrip supply. In addition, with little or no competitive pressure, professionals have little incentive to innovate and to provide a larger range of services. According to the European Commission ("Proposal for a Directive of the European Parliament and of the Council on a proportionality test before adoption of new regulation of professions", COM(2016) 822 final, 10. 1. 2017, p. 15, para. 12), this ultimately leads to a welfare loss for businesses, including SMEs and individual consumers. E. g. , in Germany, to become a notary, one must pass a state exam, but no law degree is required beforehand, and have a minimum of two or three years' experience as notarial candidates or lawyers. Notaries are also divided into three types (the single profession notary, the advocate-notary and the state employed or civil servant notary). The advocate-notaries are the most common in Germany, since they are lawyers first of all, the notarial duty being exercised as a second profession.	The professional association should work with the legislator to set up a transparent, proportional and non-discriminatory process for identification of alternative academic routes to obtain the academic qualifications necessary for the exercise of a profession. We recommend that the profession should be opened to candidates with backgrounds other than the current compulsory university degree. The legal profession should be opened to individuals with another background than an initial university degree in law. Candidates may be required to hold a postgraduate degree in law or take a conversion course, and should undergo the same training as other legal trainees, including passing the professional exam. This will open access to more individuals with different backgrounds, allowing for more diversity in the offer of services, and more innovation.
42	Regulation as of 09/10/2017 "Internship of notaries"	Art. 8 (1)	Professional internship	The internship has a duration of 18 months, and the supervisor must have at least 5 years of experience as a notary. This is already established in Art. 27 of the "Notaries Statutory Law".	According to our understanding, the 18-month internship aims to provide the future notary with an adequate technical, scientific and ethical training deemed necessary to become a competent and responsible notary. Also, only notaries with at least 5 years of experience are qualified enough to provide suitable training and supervision to interns.	Framework Law 2/2013 establishes that professional internships in any self-regulated profession should be required only when justified by the public interest. An internship constitutes a barrier to access the profession and may reduce the number of professionals competing in the market for legal services, whenever they unduly discourage well-qualified professionals from enrolling in the internship programme, or when they unduly reduce the number of professionals who successfully complete it. Hampering competition may drive prices/fees up and may reduce the diversity and innovativeness of legal services offered in the market, generating a loss in social welfare. However, there is proportionality between the policy objective and the harm to competition on the	The final evaluation of the notaries' internship should be conducted by a board, independent of the professional association, which may include members of the latter but must also include professionals of recognised merit, such as law professors and magistrates, among others. We also recommend that the theoretical training should provide an e-learning option. This could lead to a reduction in internship fees, as well as reducing the opportunity costs of having to attend those training courses in person. We recommend that subjects that are part of any required university curriculum (such as a law degree, a suggested conversion or a postgraduate course) should not be included in the theoretical training offered during the first six months of the internship.

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43	Regulation as of 09/10/2017 "Internship of notaries"	Art. 22, Art. 23 and Art. 26	Professional internship	To conclude the internship, a trainee is not subject to a final exam, but rather must submit a final report together with a declaration submitted by the supervisor on the trainee's aptitude. This documentation is then submitted to the Professional Association of Notaries which will then decide whether or not to grant a certificate on completion of the internship.	This professional internship aims to ensure that the different candidates acquire the adequate training, experience and ethical posture required to exercise the profession of solicitor, beyond the specialised knowledge they have acquired in any law school.	existence of the internship per se, without taking into account its duration, subject matter, evaluation model and associated costs. The five-year requirement might be somewhat restrictive but is proportional to the policy objective. When the internship evaluation procedures is conducted solely by peers, its total independence may be compromised, as there is a latent conflict between the public interest a professional association pursues and its own private or corporate interest. Framework Law 2/2013 establishes that professional internships in any self-regulated profession should be required only when justified by the public interest. An internship constitutes a barrier to access the profession and may reduce the number of professionals competing in the market for legal services, whenever they unduly discourage well-qualified professionals from enrolling in the internship programme, or when they unduly reduce the number of professionals who successfully complete it. Hampering competition may drive prices/fees up and may reduce the diversity and innovativeness of legal services offered in the market, generating a loss in social welfare. However, there is proportionality between the policy objective and the harm to competition on the existence of the internship per se, without taking into account its duration, subject matter, evaluation model and associated costs. The five-year requirement might be somewhat restrictive but is proportional to the policy objective. When the internship evaluation procedures is conducted solely by peers, its total independence may be compromised, as there is a latent conflict between the public interest a professional association pursues and its own private or corporate interest.	The final evaluation of the notaries' internship should be conducted by a board, independent of the professional association, which may include members of the latter but must also include professionals of recognised merit, such as law professors and magistrates, among others. We also recommend that the theoretical training should provide an e-learning option. This could lead to a reduction in internship fees, as well as reducing the opportunity costs of having to attend those training courses in person. We recommend that subjects that are part of any required university curriculum (such as a law degree, a suggested conversion or a postgraduate course) should not be included in the theoretical training offered during the first six months of the internship.
44	Professional Association of Notaries/ Table of Fees/ Internship fees	N. A.	Internship fees	The internship fees amount to EUR 750.	The fees aim to finance the administrative costs of the services provided by the Bar Association, including the costs of internship programmes.	If internship fees are too high for candidates, that might lead to fewer candidates joining the internship process and, therefore, result in a lower number of suppliers of legal services competing in the market.	We recommend that the fees required for internship be calculated using transparent, non-discriminatory and cost-based criteria.
45	Regulation from 23/04/2016 "Designation of a substitute notary"	Art. 5(1)(2)(3)	Restriction on consumer choices / Geographic limits on the exercise of	Whenever there is a need to substitute a notary, the substitution is made with a notary on the waiting list (Bolsa de Notários - see Annex II of Law 155/2015).	These conditions are in accordance with the existing model of quotas and territorial delimitations and with the need to obtain a licence to be in charge of a notarial office. These requirements imposed by the Professional Association of Notaries are meant to control access to the profession so as to guarantee	There is no freedom to choose a substitute notary from another municipality, outside the subsidiary rule expressed in this provision. The existing model of quotas and territorial delimitations and the need to obtain not only a licence to practice as a notary but also a licence to be in charge of a notarial office are a	Following the Portuguese Competition Authority's Recommendation 1/2007 and more recent international developments, such as the legal reform in France known as the Macron Law, an overall technical study on the current organisation of notarial services in Portugal is necessary. The objectives of such a study

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			the activity	In case such a substitution cannot be carried out, the eligibility conditions to be appointed as a substitute notary are as follows: the notary's financial situation with the Professional Association must be up to date; he or she must have a notarial office licence for the municipality where the need for substitution is verified or, when the notary to be replaced as the only one in the municipality, he or she must have a notarial office licence in the any of the contiguous municipalities; must not be the subject of a still ongoing appointment process as a substitute notary; must not have renounced or given up an appointment as a substitute in the last 12 months.	the quality of notarial services and to provide universal access to them across the national territory, regardless of a person's income. According to Arts. 1 to 3 of this Regulation, this ensures the principles of solidarity and public interest among the professionals.	way to control access to the supply of notarial services in the market. As such, these restrictions hamper competition between well-qualified professionals, leading to less innovation and diversity of services and possibly to higher prices for services when under a free pricing regime.	are to explore alternatives that would increase professional mobility and clients' freedom of choice, while still guaranteeing universal access to notarial services. Therefore it is recommended to: 1. Abolish the licence quotas or the need to obtain a notarial office licence before the establishment of oneself as a notary. Or alternatively, 2. Study the potential demand for notarial services, taking into account: population density; economic activity, dynamism of the local real-estate market; demand for other services provided by notaries; existence of alternative internet solutions. Based on the data: Identify areas that can sustain competition in notarial activities (typically Lisbon, Porto, Faro, high-tourism areas, highly industrialised areas) and fully liberalise the establishment of notarial offices there; ii. In low-density areas, allow for open competition for the establishment of one or two offices per area (or whichever density is determined by the study). 3. Revisit the existing Compensation Fund and find alternative ways to guarantee the delivery of notarial services in low-density areas, taking into account the fact that many notarial acts can also be practiced by both lawyers and solicitors who may practice in those areas.
46	Regulation from 23/04/2016 "Designation of a substitute notary"	Art. 6(2)(3)	Restriction on consumer choices / Geographic limits on the exercise of the activity	According to the rules for the appointment of a substitute notary, when the notary to be replaced is not the only one working within the municipality where the office is located, an invitation will be sent by the professional association to all notaries working in that same municipality to submit their candidacy as substitutes. Under exceptional circumstances, a notary already substituting for another notary, can accumulate the management of a second notarial office as a substitute notary.	These conditions are in accordance with the existing model of quotas and territorial delimitations and with the need to obtain a licence to be in charge of a notarial office. These requirements imposed by the Professional Association of Notaries are meant to control access to the profession so as to guarantee the quality of notarial services and provide universal access to them across the national territory, regardless of a person's income. According to Arts. 1 to 3 of this Regulation, this ensures the principles of solidarity and public interest among the professionals.	There is no freedom to choose a substitute notary from another municipality, outside the subsidiary rule expressed in this provision. The existing model of quotas and territorial delimitations and the need to obtain not only a licence to practice as a notary but also a licence to be in charge of a notarial office are a way to control access to the supply of notarial services in the market. As such, these restrictions hamper competition between well-qualified professionals, leading to less innovation and diversity of services and possibly to higher prices for services when under a free pricing regime.	Following the Portuguese Competition Authority's Recommendation 1/2007 and more recent international developments, such as the legal reform in France known as the Macron Law, an overall technical study on the current organisation of notarial services in Portugal is necessary. The objectives of such a study are to explore alternatives that would increase professional mobility and clients' freedom of choice, while still guaranteeing universal access to notarial services. Therefore it is recommended to: 1. Abolish the licence quotas or the need to obtain a notarial office licence before the establishment of oneself as a notary. Or alternatively, 2. Study the potential demand for notarial services, taking into account: population density; economic activity, dynamism of the local real-estate market; demand for other services provided by notaries; existence of alternative internet solutions. Based on the data: Identify areas that can sustain competition in notarial activities (typically Lisbon, Porto, Faro, high-tourism, highly industrialised areas) and fully liberalise the establishment of notarial offices

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47	Regulation from 23/04/2016 "Designation of a substitute notary"	Art. 7(1)	Restriction on consumer choices / Geographic limits on the exercise of the activity	This provision defines the criteria of selection of the substitute notary, if more than one notary "expresses an interest" for the function, such as to have earned a lower average income from last semester's billing, and to run a notarial office in closer proximity to the office of the notary to be replaced, who can also guarantee better logistics and operational capacity to guard the archive coming from the latter's office.	These conditions are in accordance with the existing model of quotas and territorial delimitations and with the need to obtain a licence to be in charge of a notarial office. These requirements imposed by the Professional Association of Notaries are meant to control access to the profession so as to guarantee the quality of notarial services and provide universal access to them across the national territory, regardless of a person's income. According to Arts. 1 to 3 of this Regulation, this ensures the respect of principles of solidarity and public interest among the professionals. Hence, this provision shows a preference for substitute notaries with offices as close as possible to the office of the notary to be replaced, which reveals a geographical preference, and shows a preference for notaries earning a lower income, which amounts to an income equalising policy.	There is no freedom to choose a substitute notary from another municipality, outside the subsidiary rule expressed in this provision. The existing model of quotas and territorial delimitations and the need to obtain not only a licence to practice as a notary but also a licence to be in charge of a notarial office are a way to control access to the supply of notarial services in the market. As such, these restrictions hamper competition between well-qualified professionals, leading to less innovation and diversity of services and possibly to higher prices for services when under a free pricing regime.	<p>there; ii. In low-density areas, allow for open competition for the establishment of one or two offices per areas (or whichever density is determined by the study). 3. Revisit the existing compensation fund and find alternative ways to guarantee the delivery of notarial services in low-density areas, taking into account the fact that many notarial acts can also be practiced by both lawyers and solicitors who may also practice in those areas.</p> <p>The established conditions for a replacement procedure should not necessarily favour notaries operating in offices that are closer geographically to the notarial office in need of a substitute notary. Moreover, notaries from the existing waiting list should be considered as potential substitutes. Following the Portuguese Competition Authority's Recommendation 1/2007 and more recent international developments, such as the legal reform in France known as the Macron Law, an overall technical study on the current organisation of notarial services in Portugal is necessary. The objectives of such a study are to explore alternatives that would increase professional mobility and clients' freedom of choice, while still guaranteeing universal access to notarial services. Therefore it is recommended to: 1. Abolish the licence quotas or the need to obtain a notarial office licence before the establishment of oneself as a notary. Or alternatively, 2. Study the potential demand for notarial services, taking into account: population density; economic activity, dynamism of the local real-estate market; demand for other services provided by notaries; existence of alternative internet solutions. Based on the data: Identify areas that can sustain competition in notarial activities (typically Lisbon, Porto, Faro, high-tourism, highly industrialised areas) and fully liberalise the establishment of notarial offices there; ii. In low-density areas, allow for open competition for the establishment of one or two offices per areas (or whichever density is determined by the study). 3. Revisit the existing compensation fund and find alternative ways to guarantee the delivery of notarial services in low-density areas, taking into account the fact that many notarial acts can also be practiced by both lawyers and solicitors who may also practice in those areas.</p>

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48	Regulation from 23/04/2016 "Designation of a substitute notary"	Art. 7(4)	Restriction on consumer choices / Geographic limits on the exercise of the activity	In case there is no other notary within the same municipality and none of the notaries from the contiguous municipalities express any interest in becoming substitutes, then the professional association appoints as a substitute the notary with the oldest notarial licence among those who have offices in the contiguous municipalities.	These conditions are in accordance with the existing model of quotas and territorial delimitations and with the need to obtain a licence to be in charge of a notarial office. These requirements imposed by the Professional Association of Notaries are meant to control access to the profession so as to guarantee the quality of notarial services and provide universal access to them across the national territory, regardless of a person's income. According to Arts. 1 to 3 of this Regulation, this ensures the respect of principles of solidarity and public interest among the professionals. Older licensed notaries prevail over younger ones as they may be regarded as more experienced, hence, preferable to younger ones.	This posture exacerbates the market competition restrictions introduced by the existing model with geographical restrictions, as is no freedom to choose a substitute notary from another municipality, outside the subsidiary rule expressed in this provision. The existing model of quotas and territorial delimitations and the need to obtain not only a licence to practice as a notary but also a licence to be in charge of a notarial office are a way to control access to the supply of notarial services in the market. As such, these restrictions hamper competition between well-qualified professionals, leading to less innovation and diversity of services and possibly to higher prices for services when under a free pricing regime.	Following the Portuguese Competition Authority's Recommendation 1/2007 and more recent international developments, such as the legal reform in France known as the Macron Law, an overall technical study on the current organisation of notarial services in Portugal is necessary. The objectives of such a study are to explore alternatives that would increase professional mobility and clients' freedom of choice, while still guaranteeing universal access to notarial services. Therefore it is recommended to: 1. Abolish the licence quotas or the need to obtain a notarial office licence before the establishment of oneself as a notary. Or alternatively, 2. Study the potential demand for notarial services, taking into account: population density; economic activity, dynamism of the local real-estate market; demand for other services provided by notaries; existence of alternative internet solutions. Based on the data: Identify areas that can sustain competition in notarial activities (typically Lisbon, Porto, Faro, high-tourism areas, highly industrialised areas) and fully liberalise the establishment of notarial offices there; ii. In low-density areas, allow for open competition for the establishment of one or two offices per area (or whichever density is determined by the study). 3. Revisit the existing compensation fund and find alternative ways to guarantee the delivery of notarial services in low-density areas, taking into account the fact that many notarial acts can also be practiced by both lawyers and solicitors who may also practice in those areas.
49	Regulation 06/05/2006 "Code of discipline and ethics"	Art. 4 (1), Art. 5, Art 6 and Art. 7	Disciplinary powers / Quality standards	This provision sets the conduct standards for notaries such as loyalty and integrity, independence, urbanity and legality.	Considering the nature of the duties of a notary, this regulation lists the general principles and rules to be observed by notaries when performing their duties. Professional ethics constitutes an attempt to overcome moral hazard problems stemming from information asymmetries between clients and service providers and possible externalities. The aim is to have these ethical principles internalised by lawyers.	Some of these requirements have been given a more precise meaning by the existing Jurisprudence. However, there remains a risk of misinterpretation by the Professional Association of Notaries when exercising its disciplinary powers. This could limit the number of suppliers of notarial services, even if only temporarily, with negative impacts on prices/fees and diversity and innovation of legal services, with an ultimate social welfare loss. Moreover, these requirements are common to many professions, and there is no need to establish them by law.	We recommend that concepts such as loyalty and integrity, independence, urbanity and legality, be given a contained and circumscribed interpretation, relying on the existing jurisprudence (from the professional association itself or from the courts themselves) whenever possible. Otherwise, consider removing this provision altogether.
50	Regulation 06/05/2006 "Code of discipline and ethics"	Art. 9	Advertising	It sets various limits to the types of advertisements that are allowed. It rules out any form advertisement with the aim to solicit clients.	These restrictions aim to protect consumers against misleading or manipulative claims, due to the asymmetry of information between practitioners and consumers and can create moral hazard.	These provisions limit the freedom of professionals to advertise their own activity, which might be especially harmful for those not yet well established in the market. Advertising services to inform and potentially gain clients is crucial to promote competition and to	Any prohibition or restriction to legal professions beyond the prohibition on misleading and unlawful comparative advertising (already covered in other legal texts) should be removed.

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						<p>establish a level playing field among professionals in the market. Advertising legal services may also lead to lower prices for legal services as it spurs competition among providers. Advertising can improve consumer information and reduce search costs leading to more competition among established firms. Nelson (1970; 1974) Grossman and Shapiro (1984) and Stahl (1994) suggest that advertising can have pro-competitive effects to facilitate entry. Following OECD (2007), there are no well-founded arguments against permitting advertising that is truthful. Furthermore, studies have found that restrictions on advertising lead to higher prices (OECD, 2007). In 2007, the Canadian Competition Bureau (CCB) stated that there is empirical evidence of the effect of advertising restrictions on the price and quality of professional services (including accountants, lawyers, optometrists, pharmacists and real estate agents). Restrictions on advertising increase the price of professional services, increase professionals' incomes and reduce the entry of certain types of firms. Additionally, there is little evidence of the positive relationship between advertising restrictions and quality of services, even though it may result in fewer consumers using the service. Directive 2006/114/EC states that only misleading and unlawful comparative advertising can lead to distortion of competition within the internal market. The interdiction of misleading advertising is foreseen under national legal regimes. To go beyond the EU benchmark, in particular ruling out publicity of comparative contents in a generic way for specific professions, will have an adverse effect on consumer choice and no clear benefits.</p>	
51	Ordinance 385/2004 (as amended by Ordinances 1416-A/2006 and 574/2008) "Table of fees"	Arts. 1, Art. 5(a), Art. 10, Art. 12 and Art. 13	Maximum fees	This provision determines that for notarial acts the fees corresponding to the table established in the present ordinance are charged. There are maximum prices and free prices. According to Art. 10, the maximum fees are applicable to the following acts: proxies (EUR 31. 09 plus EUR 10 for any extra claimant), wills (EUR 113. 45 or EUR 75. 63 to	The existence of maximum prices in exclusive notarial activities intends to guarantee universal access to these services independently of the clients' income level. Notary services exhibit characteristics of public goods, which can lead to positive externalities. Because public goods tend to be under-produced, the state usually establishes regulation on the provision of such services. Additionally, it is claimed that price control guarantees a notary's impartiality and independence in the provision of a public service, as they wouldn't have to negotiate prices with their clients.	Maximum and fixed price regimes limit the incentives to compete and innovate. Even though maximum price regimes allow for price competition, they often serve as a focus point to co-ordinate prices. In a competitive market, prices tend to reflect more closely the costs of the services provided, and do not necessarily jeopardise the quality of those services. In its Recommendation 1/2007, the AdC proposed the adoption of a system of maximum prices during a transitional period for services which remain within the exclusive competence of notaries and whose social relevance justified the need to guarantee universal access. This regime would be phased out as the	The maximum prices regime should be revisited, with the aim to phase them out as appropriate. This view is also echoed by the Portuguese Competition Authority (AdC) in its Recommendation 1/2007.

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				revoke it), and other separate instruments (EUR 31. 09), protests (EUR 7. 56), certifications and similar documents (EUR 16. 81 up to 4 pages and EUR 2. 10 for each additional page). The regime of maximum prices has been in force since 2008 (Ordinance 574/2008, which has replaced the fixed fees approved by Ordinance 384/2004 for maximum prices in almost every case).		quantitative restrictions imposed by the quota system were phased out. Other alternatives, rather than fixing maximum prices, may be adopted to overcome any lack of information from the demand side, such as the publication of historical or survey-based price information by independent parties, e. g. consumer associations. This would improve transparency and allow greater competition in prices. The same principle applies when the regulator opts for establishing maximum prices, based on the attempt to avoid excessive prices charged to consumers, in particular when the regulator wants to guarantee universal access to notarial services.	
52	Ordinance 385/2004 "Table of fees"	Art. 3(2)	Professional fees	Notaries must charge professional fees to their clients with moderation, taking into account the time spent, the difficulty of the subject, the importance of the service provided and the socio-economic context of the clients. According to this provision, those rules apply if the amount of professional fees is freely established. Note that Art. 17 para. 3 of Decree-law 26/2004 (as amended by Law 51/2004 and Decree-law 15/2011 and republished by Law 155/2015 as Annex II) establishes the same rule, but it is also applicable to variable prices.	The criteria to fix professional fees, whether they are free or variable, is established to protect clients from excessive prices, due to the existing information asymmetry between the client and the notary, which could lead to an outcome of moral hazard. On the one hand, notarial services exhibit characteristics of public goods, which can lead to positive externalities. Because public goods tend to be under-produced, the state usually establishes regulation on the provision of such services. On the other hand, as referred to above, such professional services tend to create difficulties for consumers to observe and judge the quality of work (information asymmetries). Because the quality of work is difficult to assess, price regulation tends to prevent a deterioration in the quality of the services provided by the professionals.	Although the identification of objective criteria used to set fees (by solicitors) may be advantageous when the Professional Associations is required (by clients) to revise or arbitrate on the fees charged, this list should not be exhaustive. This provision may restrict the contractual freedom between solicitor and client, when choosing the payment format for services rendered, as well as the criteria to determine the solicitor's fees. This restriction may reduce the scope for different solicitors to compete for clients, more so if the Bar Association adopts an active posture regarding how its members' services should be paid for. Hence, it may hamper competition in the market for legal services.	This legal provision should be modified to allow the use of more specific and objective criteria based on professional association previous decisions.
53	Ordinance 1535/2008 "Regulation of Electronic Certificates"	Art. 13(2)	Quality standards	The entities that make the electronic deposit of private documents must be authenticated by means of a digital certificate proving the professional quality of the user. Only digital certificates of lawyers, notaries and solicitors whose use for professional purposes is	According to the stakeholders the official certification of online documents serves the public interest. Hence, these extra requirements are needed to ascertain the authentication of such documents by notaries.	Competition will be enhanced by enlarging the type of professionals and entities that are entitled to deposit and certify online documentation. Prices will be lower, and the diversity and innovativeness of these services will be enhanced, benefiting final consumers.	This provision should be modified to enable other professionals and entities to store documents electronically. These other professionals and entities are to be defined by the Ministry of Justice together with other relevant entities. Their electronic access certificates can be issued by the Ministry of Justice itself.

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				confirmed through electronic lists of certificates, made available respectively by the Bar Association, the Public Association of Notaries and the Public Association of Solicitors (and Bailiffs), will be accepted.			
54	Ordinance 307/2009 "Registration of proxies and respective extinctions"	Art. 5(2)	Quality standards	This Ordinance establishes the regime for the registration of proxies and respective terminations and the terms in which electronic circulation of data and documents is processed. Art 5(2) states that for the purpose of electronic registration of proxies, only electronic access certificates issued by the respective professional associations for notaries, lawyers and solicitors are accepted.	According to the stakeholders the official certification of online documents serves the public interest. Hence, these extra requirements are needed to ascertain the authentication of such documents by notaries.	Competition will be enhanced by enlarging the type of professionals and entities that are entitled to deposit and certify online documentation. Prices will be lower, and the diversity and innovativeness of these services will be enhanced, benefitting final consumers.	This provision should be modified to enable other professionals and entities to store documents electronically. These other professionals and entities are to be defined by the Ministry of Justice together with other relevant entities. Their electronic access certificates can be issued by the Ministry of Justice itself.
55	Ordinance 55/2011 "Conditions for authorisation by notaries of practice by non-notary workers"	Art. 2	Quality standards	This provision establishes the conditions under which a notary may authorise the practice of certain acts by his employees, as well as the terms on which registration of that authorisation takes place. The authorisation to practice certain acts or certain categories of acts may be granted to an official of the registries and notariate who has opted for the new notary regime; to the holder of a university law degree with relevant experience in the notariate; an employee who has worked for a notarial office for more than two consecutive years; an	To grant authorisation to perform certain specific notarial acts which serve a public interest by certain professionals who are not licensed as notaries, certain requirements must be fulfilled. These requirements are regarded as necessary for the state to validate the legal standing of these professionals and the specific acts they are authorised to perform.	This provision limits the type of professionals that can be granted with the legal capacity to perform such specific notarial acts. Competition would be enhanced by enlarging the set of professionals who could be authorised by a notary to perform such acts, which would lead to lower prices and greater diversity and innovation in the notarial services being delivered. In any case, this provision refers to authorisations that will have to be granted by a notary. Competition would be enhanced if notarial acts could be performed by other qualified professionals (besides notaries, lawyers and solicitors), and different entities, without having to obtain authorisation from a notary.	The overall technical study on the way notarial services are currently organised in Portugal should address the issue of enlarging competencies to perform notarial acts to a wider set of professionals and entities.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
56	Ordinance 9/2013 "Regulation of eviction proceedings"	Art. 22(2)(a)	Restriction on consumer choices / Geographic limits on the exercise of the activity	<p>employee who has been approved by the Professional Association of Notaries in a specific examination on the subject, i. e. , the practice of such specific acts.</p> <p>This ordinance regulates matters pertaining to the so-called special eviction procedure. In a special eviction procedure, the petitioner can designate a notary to conduct the eviction proceedings, but this notary must hold a professional address in the municipality where the property to be vacated lies, or exercise jurisdiction in that municipality by virtue of authorisation granted pursuant to Art. 7(3) from Decree-Law no. 26/2004. This provision states that exceptionally, the jurisdiction of a notary may be exercised in more than one contiguous territorial area, provided the circumstances so warrant, by order of the Minister of Justice, after a hearing of the Professional Association of Notaries.</p>	It is our understanding that designation of a notary (or a bailiff) aims to provide legal certainty and legitimacy to these professionals endowed with the power to conduct eviction proceedings. The geographical restrictions are related to the territorial competence of the courts for the judicial claims.	On one hand, one may ask why there is a need to designate a notary or a bailiff to carry out eviction proceedings. In England and Wales, standard possession orders can be filled online, as in Portugal, if certain conditions are met. There is no need to appoint a notary or a bailiff to conduct eviction processes. The petitioner simply has to fill in, either on paper or online, the standard possession claim form and e-mail it or post it to the court that deals with housing re-possession. This obligation to designate a notary and bailiff leads to an increase in the costs paid by the petitioner. Only when tenants do not leave the property by the date given in an order for re-possession can there be need to obtain from the court a warrant of re-possession to arrange for a bailiff to evict them. On the other hand, the obligation to designate a notary with an address in the municipality in question reduces the number of providers and might lead to an increase in costs and reduction of efficiency. In fact, territorial delimitations hamper competition between service providers to the detriment of consumer welfare.	<p>The overall technical study on the way notarial services are currently organised in Portugal must address the way eviction proceedings are carried out to avoid the existing geographic restrictions which bar a larger number of notaries from carrying out these proceedings. A greater use of online services should be promoted so as to speed up procedures. Following the Portuguese Competition Authority's Recommendation 1/2007 and more recent international developments, such as the legal reform in France known as the Macron Law, an overall technical study on the current organisation of notarial services in Portugal is necessary. The objectives of such a study are to explore alternatives that would increase professional mobility and clients' freedom of choice, while still guaranteeing universal access to notarial services. Therefore it is recommended to: 1. Abolish the licence quotas or the need to obtain a notarial office licence before the establishment of oneself as a notary. Or alternatively, 2. Study the potential demand for notarial services, taking into account: population density; economic activity, dynamism of the local real-estate market; demand for other services provided by notaries; existence of alternative internet solutions. Based on the data: Identify areas that can sustain competition in notarial activities (typically Lisbon, Porto, Faro, high-tourism areas, highly industrialised areas) and fully liberalise the establishment of notarial offices there; ii. In low-density areas, allow for open competition for the establishment of one or two offices per areas (or whichever density is determined by the study). 3. Revisit the existing compensation fund and find alternative ways to guarantee the delivery of notarial services in low-density areas, taking into account the fact that many notarial acts can also be practiced by both lawyers and solicitors who may also practice in those areas.</p>

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
57	Ordinance 9/2013 "Regulation of eviction proceedings"	Art. 24(2)(3)(5)	Restriction on consumer choices / Geographic limits on the exercise of the activity	The appointment by the public office for eviction proceedings ("BNA") of a bailiff or a notary to participate in special eviction procedures requires that these professionals hold a professional address in the municipality where the property to be vacated is located. Preference will be given to those bailiffs and notaries who have been assigned fewer special eviction procedures.	This requirements seem to follow directly from the model of quotas and territorial delimitations that rule the notariate. Preference will be given to those bailiffs and notaries who have been assigned fewer special eviction procedures to avoid overburdening professionals and to balance income levels amongst them. The geographical restrictions are related to the territorial competence of the courts for the judicial claims.	The existing model of quotas and territorial delimitations hampers competition between well-qualified professionals, and can lead to less innovation and diversity of services and possibly to higher prices for services when under a free pricing regime.	This legal provision should be removed.
58	Ordinance 278/2013 (as amended by Ordinance 46/2015) "Regulation of the inventory process"	Art. 18(2)(3)	Professional fees / Inventory process	The fees of notaries for the inventory process and its incidents are set out in the tables in Annexes I and II to this ordinance and must be paid by all interested parties. ("Incidents" are questions and secondary proceedings concerning the main proceedings, which must be settled before the final decision.)	Regulation of prices related to the inventory process must be justified on public interest grounds, considering this was a competence of the courts. It is our understanding that this price regulation aims to avoid the practice of excessive prices, particularly when there may be serious information asymmetry between the notary and the client. Moreover, it is meant to guarantee access to inventory services by lower income people. However, we should note that this provision does not seem to follow what is established in Ordinance 574/2008. In fact, its recital states that fees charged for acts practiced by notaries under the Notaries Statutory Law would be subject either to maximum prices or to prices freely set by the professionals. In the present case (Ordinance 278/2013, Art. 1(g)), for each inventory value, the fee to be charged by the notary who carries out its inventory process is fixed.	Annex I defines fixed prices/fees that increase with the value of the inventory. Annex II fixes prices for some services and defines price intervals for other services. Price regulation should be considered anti-competitive and incompatible with the exercise of a liberal profession. By hampering competition, it may imply higher prices are charged than if notaries were free to compete on prices. It may also reduce incentives to innovate the services provided.	The overall technical study on the way notarial services are currently organised in Portugal must address the existing regime of fixed fees for inventory procedures. This fixed fee regime should be revisited with the aim to gradually phase it out as appropriate.
59	Ordinance 278/2013 (as amended by Ordinance 46/2015) "Regulation of the inventory process"	Art. 18(4)	Professional fees / Inventory process	For cases and incidents with more complexity, the already-defined fees are applied by the judge, at the request of the notary who has conducted the inventory process.	The objective is to give some flexibility to notaries to charge more in complex cases, assuming respect for the principle of justice and equity among professionals. The option taken is the decision by the Court, considering its authority to establish a fair price and also considering that this is the option which could better ensure the public interest.	Notaries are not free to establish the prices for their services, although this rule gives some flexibility that allows them to charge more for more complex services. However, it is the Court that will fix the final fee and not the notary. Hence, notarial fees for inventory processes, are still not freely set, thus hampering competition.	The overall technical study on the way notarial services are currently organised in Portugal must address the existing regime of fixed fees for inventory procedures. This fixed fee regime should be revisited with the aim to gradually phase it out as appropriate.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
60	Ordinance 278/2013 (as amended by Ordinance 46/2015) "Regulation of the inventory process"	Art. 18(5)	Professional fees / Inventory process	In the case of incidents, the fixing of the amount of fees listed in Annex II as a variable, is done by the notary.	Fixing price intervals for certain types of notarial acts might be justified on public interest grounds. It has been argued by the legislator that it prevents the practice of excessive prices and guarantees universal access of these services to all users.	Although the option of defining price intervals is not as restrictive as fixing prices, it still limits the notaries' freedom to set prices for the services they provide. Hence, to define price intervals still hampers full competition among notaries.	The overall technical study on the way notarial services are currently organised in Portugal must address the existing regime of fixed fees for inventory procedures. This fixed fee regime should be revisited with the aim to gradually phase it out as appropriate, including the revision or removal of the existing instalment payment scheme.
61	Ordinance 278/2013 (as amended by Ordinance 46/2015) "Regulation of the inventory process"	Art. 18(6)-(10)	Professional fees / Inventory process	These provisions set the regime for the payment of fees to notaries in inventory procedures, in three different mandatory instalments, and the application of other rules.	These provisions establish that payments to notaries are made in instalments, and aims to guarantee that they will be paid at each stage of the process, avoiding delays. On the other hand, it allows clients to split their payments over time. Clients can file a complaint against the fees charged by the notary.	It is a rigid system, not giving notaries and their clients the freedom to contract other modes of payment and deadlines. In this sense, it hampers competition between notaries over terms and modes of payment, even if the total fee is defined at the outset by this same ordinance.	The overall technical study on the way notarial services are currently organised in Portugal must address the existing instalment regime for the payment of inventory fees. In fact, the current regime may be too inflexible for at least some clients, and could be made more adaptable whenever a client demonstrates his difficulty in sustaining the instalment regime as defined.
62	Ordinance 278/2013 (as amended by Ordinance 46/2015) "Regulation of the inventory process"	Art. 18(11)-(12)(13)	Professional fees / Inventory process	After complaining to the notary about the amount of the payment, if the notary does not change it, the interested party may ask the judge to fix the amount of the fees, and the interested party does not pay until this decision. The notary may be subject to the payment of a penalty.	After a client files a complaint against the fees charged, the notary should ask the court to rule on those fees. Payment are due only after the court's decision. If the decision is against the complainant, the court can impose a fine on the notary or on his client (the complainant).	That the Court can impose a fine on the complainant, if it finds the complaint unfounded, is certain to discourage filing complaints against what may be perceived as excessive fees. In turn, this may hamper competition between notaries, as clients may fear submitting a complaint. It may be akin to tacit collusion between notaries, as they may feel more comfortable charging higher fees. The possibility the complainant has for submitting an appeal to the appropriate court may by itself not mitigate the discouragement to file a complaint in the first place, as such appeals take time to be concluded and are onerous.	The overall technical study on the way notarial services are currently organised in Portugal, should remove the possible imposition of a fine on the complainant by the court in those cases where the complaint is deemed unfounded.
63	Ordinance 278/2013 (as amended by Ordinance 46/2015) "Regulation of the inventory process"	Art. 19	Professional fees / Inventory process	This provision sets the regime for the payment of fees to notaries in inventory procedures in three different mandatory instalments, defining which party is responsible for each instalment.	This provision establishes who is responsible for the payment of each instalment, and aims to guarantee that notaries will be paid at each stage of the process, avoiding delays. On the other hand, it allows clients to split their payments over time.	This provision hardens the payment regime to be followed during an inventory process. It further hampers competition between notaries over terms and modes of payment, even if the total fee is defined at the outset by this same ordinance.	The overall technical study on the way notarial services are currently organised in Portugal must address the existing instalment regime for the payment of inventory fees. In fact, the current regime on who has to pay what and when, may be too inflexible for at least some clients, and could be made more adaptable whenever a client demonstrates his difficulty in complying with the instalment regime as defined.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
64	Ordinance 278/2013 (as amended by Ordinance 46/2015) "Regulation of the inventory process"	Art. 20	Professional fees / Inventory process	This provision regulates deadlines and the different modes of payment of the three instalments, already defined in previous articles.	It is our understanding that this provision aims to guarantee there will be no doubt whatsoever as to how and when each instalment is to be paid. This avoids situations where the notary would carry on with an activity that would not be paid.	This provision hardens the relation between a notary conducting an inventory process and his client(s), as if attempting to eliminate any unforeseen event or disagreement between the two parties. It removes any freedom the two parties may want to have to conduct their business in a way they see fit, including on modes of payment, instalments and deadlines. In this sense, it hampers competition between notaries over terms and modes of payment, even if the total fee is defined at the outset by this same ordinance.	The overall technical study on the way notarial services are currently organised in Portugal must address the existing regime of fixed fees for inventory procedures, including the modes of payment established by law. In fact, the current regime on who has to pay what, when, and how, may be too inflexible for at least some clients, and could be made more adaptable whenever a client demonstrates his difficulty in complying with the instalment regime as defined.
65	Ordinance 278/2013 (as amended by Ordinance 46/2015) "Regulation of the inventory process"	Art. 24	Professional fees / Inventory process	This provision pertains to the regulation of complaints by the client(s) over the final bill of fees and expenses on the basis of non-compliance with Law 23/2013 or with this ordinance. The notary revises the final bill or can send it to court for a final decision. The judge may order the notary to pay a fine if the complaint is upheld, or the client if the complaint is deemed unfounded.	The objective is to prevent notaries from charging excessive prices to clients. The client can present a complaint to the notary and the latter can either accept it or appeal to the Court. Both parties are subject to a fine by the Court. This last step is somewhat worrisome as it may discourage either of the two parties to exercise a right which is at the core of a contractual freedom. In this sense it may hamper competition by raising the possibility of punishing complainants.	That the Court can impose a fine on the complainant, if it finds the complaint unfounded, is certain to discourage filing complaints against what may be perceived as excessive fees. In turn, this may hamper competition between notaries, as clients may fear submitting a complaint. It may be akin to tacit collusion between notaries, as they may feel more comfortable charging higher fees. The possibility the complainant has for submitting an appeal to the appropriate court may by itself not mitigate the discouragement to file a complaint in the first place, as such appeals take time to be concluded and are onerous.	The overall technical study on the way notarial services are currently organised in Portugal, should remove the possible imposition of a fine on the complainant by the court in those cases where the complaint is deemed unfounded.

Technical and scientific professions: Common provisions

Table A B.5. Technical and scientific professions: Common provisions

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
1	Law 41/2015 "Legal regime concerning the carrying out of activities in the construction sector"	Art. 6 and Annex I	Reserved activities	Certain activities in the construction sector can only be carried out by specific professionals and, in particular, by specific architects, engineers and/or technical engineers.	The policy objective of the provision seems to be to ensure a high level of safety of the operations and works and, within that scope, to ensure the technical suitability of the individuals to perform the tasks assigned to them.	Reserved activities restrict the supply of professional services in the market, which negatively affects competition. In fact, professionals not registered in the respective professional association or that do not have the additional requirements needed to perform a certain task are prevented from carrying out those activities. This leads to higher prices (in particular through output restriction) and less diversity and innovation (including through the use of new techniques), with a negative impact on businesses and consumers, restricting the choices available to them. Moreover, it tends to lead to a worse match between the type of professional services offered and the type of services demanded, as some services demanded require a lesser degree of specialisation of the individuals who provide them. These effects are aggravated by (additional) restrictions on entry into a certain profession.	We recommend that: (i) tasks reserved for particular technical professions (i. e. architects, engineers or technical engineers), (ii) tasks reserved for specific specialisations within a profession (e. g. civil engineers, environmental engineers), and (iii) tasks reserved for professionals with a certain minimum number of years of experience should be reviewed in order to open such acts to other professions from the same technical group, taking into consideration the aim to ensure the quality of the output provided rather than to limit those who can perform such tasks. We also recommend that the corresponding professional association foresees a special regime where other technical professionals can meet the qualifications required for the exercise of particular reserved tasks after a case-by case evaluation of their curricula. This should be based on objective and transparent criteria (such as previous experience and additional training).
2	Law 15/2015 "Requirements necessary to access to and carry out the activity of entities and professionals which operate in the field of petroleum products"	Art. 12, Art. 20, Art. 27, Art. 32, Art. 44, Art. 46 and Art. 47	Reserved activities	The activity of entities and professionals which operate in the field of petroleum products can only be carried out by specific professionals and, in particular, by specific engineers and / or technical engineers.	The policy objective of the provision seems to be to ensure a high level of safety of the operations and works and, within that scope, to ensure the technical suitability of the individuals to perform the tasks assigned to them.	Reserved activities restrict the supply of professional services in the market, which negatively affects competition. In fact, professionals not registered in the respective professional association or that do not have the additional requirements needed to perform a certain task are prevented from carrying out those activities. This leads to higher prices (in particular through output restriction) and less diversity and innovation (including through the use of new techniques), with a negative impact on businesses and consumers, restricting the choices available to them. Moreover, it tends to lead to a worse match between the type of professional services offered and the type of services demanded, as some services demanded require a lesser degree of specialisation of the individuals who provide them. These effects are aggravated by (additional) restrictions on entry into a certain profession.	We recommend that: (i) tasks reserved for particular technical professions (i. e. engineers or technical engineers), (ii) tasks reserved for specific specialisations within a profession (e. g. civil engineers, environmental engineers), and (iii) tasks reserved for professionals with a certain minimum number of years of experience should be reviewed in order to open such acts to other professions from the same technical group, taking into consideration the aim to ensure the quality of the output provided rather than to limit those who can perform such tasks. We also recommend that the corresponding professional association foresees a special regime where other technical professionals can meet the qualifications required for the exercise of particular reserved tasks after a case-by case evaluation of their curricula. This should be based on objective and transparent criteria (such as previous experience and additional training).

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
3	Law 14/2015 "Requirements necessary to access to and carry out the activity of entities and professionals responsible for electrical systems"	Art. 5, Art. 7, Art. 19 and Art. 20	Reserved activities	The activity of entities and professionals responsible for electrical systems can only be carried out by specific professionals and, in particular, by specific engineers and / or technical engineers.	The policy objective of the provision seems to be to ensure a high level of safety of the operations and works and, within that scope, to ensure the technical suitability of the individuals to perform the tasks assigned to them.	Reserved activities restrict the supply of professional services in the market, which negatively affects competition. In fact, professionals not registered in the respective professional association or that do not have the additional requirements needed to perform a certain task are prevented from carrying out those activities. This leads to higher prices (in particular through output restriction) and less diversity and innovation (including through the use of new techniques), with a negative impact on businesses and consumers, restricting the choices available to them. Moreover, it tends to lead to a worse match between the type of professional services offered and the type of services demanded, as some services demanded require a lesser degree of specialisation of the individuals who provide them. These effects are aggravated by (additional) restrictions on entry into a certain profession.	We recommend that: (i) tasks reserved for particular technical professions (i. e. engineers or technical engineers), (ii) tasks reserved for specific specialisations within a profession (e. g. civil engineers, environmental engineers), and (iii) tasks reserved for professionals with a certain minimum number of years of experience should be reviewed in order to open such acts to other professions from the same technical group, taking into consideration the aim to ensure the quality of the output provided rather than to limit those who can perform such tasks. We also recommend that the corresponding professional association foresees a special regime where other technical professionals can meet the qualifications required for the exercise of particular reserved tasks after a case-by case evaluation of their curricula. This should be based on objective and transparent criteria (such as previous experience and additional training).
4	Law 65/2013 "Requirements necessary to access to and carry out the activity of entities that provide maintenance of lifting equipments services and entities that inspect those equipments and their respective professionals"	Art. 6, Art. 18 and Art. 38	Reserved activities	The activity of entities and professionals that provide maintenance of lifting equipments services and entities that inspect those equipments can only be carried out by specific professionals and, in particular, by specific engineers and / or technical engineers.	The policy objective of the provision seems to be to ensure a high level of safety of the operations and works and, within that scope, to ensure the technical suitability of the individuals to perform the tasks assigned to them.	Reserved activities restrict the supply of professional services in the market, which negatively affects competition. In fact, professionals not registered in the respective professional association or that do not have the additional requirements needed to perform a certain task are prevented from carrying out those activities. This leads to higher prices (in particular through output restriction) and less diversity and innovation (including through the use of new techniques), with a negative impact on businesses and consumers, restricting the choices available to them. Moreover, it tends to lead to a worse match between the type of professional services offered and the type of services demanded, as some services demanded require a lesser degree of specialisation of the individuals who provide them. These effects are aggravated by (additional) restrictions on entry into a certain profession.	We recommend that: (i) tasks reserved for particular technical professions (i. e. engineers or technical engineers), (ii) tasks reserved for specific specialisations within a profession (e. g. civil engineers, environmental engineers), and (iii) tasks reserved for professionals with a certain minimum number of years of experience should be reviewed in order to open such acts to other professions from the same technical group, taking into consideration the aim to ensure the quality of the output provided rather than to limit those who can perform such tasks. We also recommend that the corresponding professional association foresees a special regime where other technical professionals can meet the qualifications required for the exercise of particular reserved tasks after a case-by case evaluation of their curricula. This should be based on objective and transparent criteria (such as previous experience and additional training).

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
5	Law 58/2013 "Requirements necessary to access to and carry out the activity of qualified expert in the field of energy certification and of technician in the fields of construction and maintenance of buildings and systems"	Art. 2	Reserved activities	The activity of qualified expert in the field of energy certification and of technician in the fields of construction and maintenance of buildings and systems can only be carried out by specific professionals and, in particular, by specific architects, engineers and / or technical engineers.	The policy objective of the provision seems to be to ensure a high level of safety of the operations and works and, within that scope, to ensure the technical suitability of the individuals to perform the tasks assigned to them.	Reserved activities restrict the supply of professional services in the market, which negatively affects competition. In fact, professionals not registered in the respective professional association or that do not have the additional requirements needed to perform a certain task are prevented from carrying out those activities. This leads to higher prices (in particular through output restriction) and less diversity and innovation (including through the use of new techniques), with a negative impact on businesses and consumers, restricting the choices available to them. Moreover, it tends to lead to a worse match between the type of professional services offered and the type of services demanded, as some services demanded require a lesser degree of specialisation of the individuals who provide them. These effects are aggravated by (additional) restrictions on entry into a certain profession.	We recommend that: (i) tasks reserved for particular technical professions (i. e. architects, engineers or technical engineers), (ii) tasks reserved for specific specialisations within a profession (e. g. civil engineers, environmental engineers), and (iii) tasks reserved for professionals with a certain minimum number of years of experience should be reviewed in order to open such acts to other professions from the same technical group, taking into consideration the aim to ensure the quality of the output provided rather than to limit those who can perform such tasks. We also recommend that the corresponding professional association foresees a special regime where other technical professionals can meet the qualifications required for the exercise of particular reserved tasks after a case-by case evaluation of their curricula. This should be based on objective and transparent criteria (such as previous experience and additional training).
6	Law 7/2013 "Regime concerning the access to and carrying out of certain activities in the scope of the Energy-Intensive Consumption Management System and of the regulation on the management of the energy consumption in the transport sector"	Annex I - Art. 3 and Art. 4 and Annex II - Art. 3, Art. 4 and Art. 19	Reserved activities	Certain activities in the scope of the Energy-Intensive Consumption Management System and of the regulation on the management of the energy consumption in the transport sector can only be carried out by specific professionals and, in particular, by specific engineers and/or technical engineers.	The policy objective of the provision seems to be to ensure a high level of safety of the operations and works and, within that scope, to ensure the technical suitability of the individuals to perform the tasks assigned to them.	Reserved activities restrict the supply of professional services in the market, which negatively affects competition. In fact, professionals not registered in the respective professional association or that do not have the additional requirements needed to perform a certain task are prevented from carrying out those activities. This leads to higher prices (in particular through output restriction) and less diversity and innovation (including through the use of new techniques), with a negative impact on businesses and consumers, restricting the choices available to them. Moreover, it tends to lead to a worse match between the type of professional services offered and the type of services demanded, as some services demanded require a lesser degree of specialisation of the individuals who provide them. These effects are aggravated by (additional) restrictions on entry into a certain profession.	We recommend that: (i) tasks reserved for particular technical professions (i. e. , engineers or technical engineers), (ii) tasks reserved for specific specialisations within a profession (e. g. civil engineers, environmental engineers), and (iii) tasks reserved for professionals with a certain minimum number of years of experience should be reviewed in order to open such acts to other professions from the same technical group, taking into consideration the aim to ensure the quality of the output provided rather than to limit those who can perform such tasks. We also recommend that the corresponding professional association foresees a special regime where other technical professionals can meet the qualifications required for the exercise of particular reserved tasks after a case-by case evaluation of their curricula. This should be based on objective and transparent criteria (such as previous experience and additional training).

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
7	Law 31/2009 (last modification by Law 40/2015) "Legal regime concerning the professional qualifications required for carrying out certain activities related to specific operations and works and the professional duties and responsibilities applicable in that scope"	All	Reserved activities	Certain activities related to specific operations and works can only be carried out by specific professionals and, in particular, by specific architects, engineers and / or technical engineers.	The policy objective of the provision seems to be to ensure a high level of safety of the operations and works and, within that scope, to ensure the technical suitability of the individuals to perform the tasks assigned to them.	Reserved activities restrict the supply of professional services in the market, which negatively affects competition. In fact, professionals not registered in the respective professional association or that do not have the additional requirements needed to perform a certain task are prevented from carrying out those activities. This leads to higher prices (in particular through output restriction) and less diversity and innovation (including through the use of new techniques), with a negative impact on businesses and consumers, restricting the choices available to them. Moreover, it tends to lead to a worse match between the type of professional services offered and the type of services demanded, as some services demanded require a lesser degree of specialisation of the individuals who provide them. These effects are aggravated by (additional) restrictions on entry into a certain profession.	We recommend that: (i) tasks reserved for particular technical professions (i. e. architects, engineers or technical engineers), (ii) tasks reserved for specific specialisations within a profession (e. g. civil engineers, environmental engineers), and (iii) tasks reserved for professionals with a certain minimum number of years of experience should be reviewed in order to open such acts to other professions from the same technical group, taking into consideration the aim to ensure the quality of the output provided rather than to limit those who can perform such tasks. We also recommend that the corresponding professional association foresees a special regime where other technical professionals can meet the qualifications required for the exercise of particular reserved tasks after a case-by case evaluation of their curricula. This should be based on objective and transparent criteria (such as previous experience and additional training).
8	Decree-Law 266-B/2012 "Regime concerning the determination of the level of conservation of urban buildings and autonomous fractions for the purposes foreseen in the scope of urban lease, urban rehabilitation and building conservation"	Art. 3 (3)	Methods of selecting professionals	The designation of the technician responsible for determining the level of conservation (strength and safety) of an urban building or an autonomous fraction for the purposes foreseen in the scope of urban lease, urban rehabilitation and building conservation is carried out through a draw among the architects, engineers and technical engineers who are included in a list of qualified and available professionals, developed by the respective professional associations.	The policy objective of the provision is to ensure a level playing field among all professionals qualified and available for the carrying out of works.	The use of a draw to choose the professional responsible for determining the level of conservation of a construction does not guarantee that the outcome of the draw will correspond to the decision that the entity interested in the service would take if it could choose the professional freely. In fact, the individual selected to carry out that duty might not correspond to the individual better positioned to do such, given his suitability for the specific characteristics of the construction in question and the price he would charge to provide the service. Additionally, the use of the above-mentioned procedure removes the incentives of professionals for establishing lower prices and better services. In fact, architects, engineers and technical engineers who are included in the lists of professionals suitable for the proper determination of the level of conservation of a construction know that the characteristics of and the price applicable to the services provided by them do not influence their probability of being chosen. As a result, the provision leads to an unsubstantiated and, consequently, avoidable increase in the costs incurred by entities interested in determining the level of conservation of a construction. This is driven by the inability (resulting from external and, in particular, regulatory factors) of those entities to choose professionals who apply lower prices or are better suited for carrying out the specific	The procedure for choosing the professional responsible for determining the level of conservation (strength and safety) of a structure should be changed from a draw to a tender (competitive award) procedure. The implementation of this recommendation will encourage architects, engineers and technical engineers who are included in the lists of professionals suitable for the proper determination of the level of conservation of a construction to compete with each other and will, consequently, create cost savings for entities interested in that service.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
						service to be provided. That, in turn, prevents professionals from competing with each other and, thus, discourages the ones that incur lower costs from passing on those savings to the entities in question. Nevertheless, a minimum quality of the service provided is, in any case, ensured by the use of a list of professionals suitable for the proper determination of the level of conservation of a construction developed by the respective professional associations.	
9	Decree-Law 90/2010 "Regulation concerning the installation, operation, repair and alteration of pressure equipments"	Annex - Art. 18 (2) and Annex - Art. 5 (e)	Reserved activities	The development of projects concerning the repair and alteration of pressure equipments and the signing of a formal declaration confirming responsibility for the installation of those equipments can only be carried out by specific professionals and, in particular, by specific engineers and / or technical engineers.	The policy objective of the provision seems to be to ensure a high level of safety of the operations and works and, within that scope, to ensure the technical suitability of the individuals to perform the tasks assigned to them.	Reserved activities restrict the supply of professional services in the market, which negatively affects competition. In fact, professionals not registered in the respective professional association or that do not have the additional requirements needed to perform a certain task are prevented from carrying out those activities. This leads to higher prices (in particular through output restriction) and less diversity and innovation (including through the use of new techniques), with a negative impact on businesses and consumers, restricting the choices available to them. Moreover, it tends to lead to a worse match between the type of professional services offered and the type of services demanded, as some services demanded require a lesser degree of specialisation of the individuals who provide them. These effects are aggravated by (additional) restrictions on entry into a certain profession.	We recommend that: (i) tasks reserved for particular technical professions (i. e. engineers or technical engineers), (ii) tasks reserved for specific specialisations within a profession (e. g. civil engineers, environmental engineers), and (iii) tasks reserved for professionals with a certain minimum number of years of experience should be reviewed in order to open such acts to other professions from the same technical group, taking into consideration the aim to ensure the quality of the output provided rather than to limit those who can perform such tasks. We also recommend that the corresponding professional association foresees a special regime where other technical professionals can meet the qualifications required for the exercise of particular reserved tasks after a case-by case evaluation of their curricula. This should be based on objective and transparent criteria (such as previous experience and additional training).
10	Decree-Law 123/2009 (last modification by Decree-Law 92/2017) "Regime concerning the construction of infrastructure capable of holding electronic communications networks, the setting up of those networks and the construction of telecommunications infrastructure"	Art. 37 (1), Art. 67 (1) and Art. 67 (2)	Reserved activities	The development of technical projects concerning the setting up of telecommunications infrastructure in certain spaces can only be carried out by specific professionals and, in particular, by specific engineers and / or technical engineers.	The policy objective of the provision seems to be to ensure a high level of safety of the operations and works and, within that scope, to ensure the technical suitability of the individuals to perform the tasks assigned to them.	Reserved activities restrict the supply of professional services in the market, which negatively affects competition. In fact, professionals not registered in the respective professional association or that do not have the additional requirements needed to perform a certain task are prevented from carrying out those activities. This leads to higher prices (in particular through output restriction) and less diversity and innovation (including through the use of new techniques), with a negative impact on businesses and consumers, restricting the choices available to them. Moreover, it tends to lead to a worse match between the type of professional services offered and the type of services demanded, as some services demanded require a lesser degree of specialisation of the individuals who provide them. These effects are aggravated by (additional) restrictions on entry into a certain profession.	We recommend that: (i) tasks reserved for particular technical professions (i. e. engineers or technical engineers), (ii) tasks reserved for specific specialisations within a profession (e. g. civil engineers, environmental engineers), and (iii) tasks reserved for professionals with a certain minimum number of years of experience should be reviewed in order to open such acts to other professions from the same technical group, taking into consideration the aim to ensure the quality of the output provided rather than to limit those who can perform such tasks. We also recommend that the corresponding professional association foresees a special regime where other technical professionals can meet the qualifications required for the exercise of particular reserved tasks after a case-by case evaluation of their curricula. This should be based on objective and transparent criteria (such as previous experience and additional training).

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
11	Decree-Law 152/2005 (last modification by Decree-Law 145/2017) "Rules, conditions, principles and procedures applicable in the scope of recovery for recycling, reclamation and destruction of substances that deplete the ozone layer contained in specific equipments and of maintenance and servicing of those equipments"	Art. 5 (1) (a) and Art. 5 (3)	Reserved activities	Certain activities related to the recovery for recycling, reclamation and destruction of substances that deplete the ozone layer contained in specific equipments and to the maintenance and servicing of those equipments can only be carried out by specific professionals and, in particular, by specific engineers and / or technical engineers.	The policy objective of the provision seems to be to ensure a high level of safety of the operations and works and, within that scope, to ensure the technical suitability of the individuals to perform the tasks assigned to them.	Reserved activities restrict the supply of professional services in the market, which negatively affects competition. In fact, professionals not registered in the respective professional association or that do not have the additional requirements needed to perform a certain task are prevented from carrying out those activities. This leads to higher prices (in particular through output restriction) and less diversity and innovation (including through the use of new techniques), with a negative impact on businesses and consumers, restricting the choices available to them. Moreover, it tends to lead to a worse match between the type of professional services offered and the type of services demanded, as some services demanded require a lesser degree of specialisation of the individuals who provide them. These effects are aggravated by (additional) restrictions on entry into a certain profession.	We recommend that: (i) tasks reserved for particular technical professions (i. e. engineers or technical engineers), (ii) tasks reserved for specific specialisations within a profession (e. g. civil engineers, environmental engineers), and (iii) tasks reserved for professionals with a certain minimum number of years of experience should be reviewed in order to open such acts to other professions from the same technical group, taking into consideration the aim to ensure the quality of the output provided rather than to limit those who can perform such tasks. We also recommend that the corresponding professional association foresees a special regime where other technical professionals can meet the qualifications required for the exercise of particular reserved tasks after a case-by case evaluation of their curricula. This should be based on objective and transparent criteria (such as previous experience and additional training).
12	Decree-Law 379/80 (last modification by Decree-Law 98/2001) "Rules, conditions, principles and procedures applicable in the scope of the construction and operation of the electrical system of vessels"	Art. 3	Reserved activities	Certain activities in the scope of the construction and operation of the electrical system of vessels can only be carried out by specific professionals and, in particular, by specific engineers and / or technical engineers.	The policy objective of the provision seems to be to ensure a high level of safety of the operations and works and, within that scope, to ensure the technical suitability of the individuals to perform the tasks assigned to them.	Reserved activities restrict the supply of professional services in the market, which negatively affects competition. In fact, professionals not registered in the respective professional association or that do not have the additional requirements needed to perform a certain task are prevented from carrying out those activities. This leads to higher prices (in particular through output restriction) and less diversity and innovation (including through the use of new techniques), with a negative impact on businesses and consumers, restricting the choices available to them. Moreover, it tends to lead to a worse match between the type of professional services offered and the type of services demanded, as some services demanded require a lesser degree of specialisation of the individuals who provide them. These effects are aggravated by (additional) restrictions on entry into a certain profession.	We recommend that: (i) tasks reserved for particular technical professions (i. e. engineers or technical engineers), (ii) tasks reserved for specific specialisations within a profession (e. g. civil engineers, environmental engineers), and (iii) tasks reserved for professionals with a certain minimum number of years of experience should be reviewed in order to open such acts to other professions from the same technical group, taking into consideration the aim to ensure the quality of the output provided rather than to limit those who can perform such tasks. We also recommend that the corresponding professional association foresees a special regime where other technical professionals can meet the qualifications required for the exercise of particular reserved tasks after a case-by case evaluation of their curricula. This should be based on objective and transparent criteria (such as previous experience and additional training).

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
13	Decree-Law 39600 (last modification by Decree-Law 39847) "Professional qualifications required for signing projects concerning new constructions and significant reconstructions to be implemented in certain zones"	All	Reserved activities	The signing of projects concerning new constructions and significant reconstructions to be implemented in certain zones can only be carried out by specific professionals and, in particular, by specific architects and / or engineers.	The policy objective of the provision seems to be to ensure a high level of safety of the operations and works and, within that scope, to ensure the technical suitability of the individuals to perform the tasks assigned to them.	Reserved activities restrict the supply of professional services in the market, which negatively affects competition. In fact, professionals not registered in the respective professional association or that do not have the additional requirements needed to perform a certain task are prevented from carrying out those activities. This leads to higher prices (in particular through output restriction) and less diversity and innovation (including through the use of new techniques), with a negative impact on businesses and consumers, restricting the choices available to them. Moreover, it tends to lead to a worse match between the type of professional services offered and the type of services demanded, as some services demanded require a lesser degree of specialisation of the individuals who provide them. These effects are aggravated by (additional) restrictions on entry into a certain profession.	We recommend that: (i) tasks reserved for particular technical professions (i. e. architects, engineers or technical engineers), (ii) tasks reserved for specific specialisations within a profession (e. g. civil engineers, environmental engineers), and (iii) tasks reserved for professionals with a certain minimum number of years of experience should be reviewed in order to open such acts to other professions from the same technical group, taking into consideration the aim to ensure the quality of the output provided rather than to limit those who can perform such tasks. We also recommend that the corresponding professional association foresees a special regime where other technical professionals can meet the qualifications required for the exercise of particular reserved tasks after a case-by case evaluation of their curricula. This should be based on objective and transparent criteria (such as previous experience and additional training).
14	Decree-Law 23:511 "Professional qualifications required for developing water supply and construction of sewage systems projects of City Councils and projects concerning works of urban and rural improvements"	All	Reserved activities	The development of water supply and construction of sewage systems projects of City Councils and of projects concerning works of urban and rural improvements can only be carried out by specific professionals and, in particular, by specific architects, engineers and / or technical engineers.	The policy objective of the provision seems to be to ensure a high level of safety of the operations and works and, within that scope, to ensure the technical suitability of the individuals to perform the tasks assigned to them.	Reserved activities restrict the supply of professional services in the market, which negatively affects competition. In fact, professionals not registered in the respective professional association or that do not have the additional requirements needed to perform a certain task are prevented from carrying out those activities. This leads to higher prices (in particular through output restriction) and less diversity and innovation (including through the use of new techniques), with a negative impact on businesses and consumers, restricting the choices available to them. Moreover, it tends to lead to a worse match between the type of professional services offered and the type of services demanded, as some services demanded require a lesser degree of specialisation of the individuals who provide them. These effects are aggravated by (additional) restrictions on entry into a certain profession.	We recommend that: (i) tasks reserved for particular technical professions (i. e. architects, engineers or technical engineers), (ii) tasks reserved for specific specialisations within a profession (e. g. civil engineers, environmental engineers), and (iii) tasks reserved for professionals with a certain minimum number of years of experience should be reviewed in order to open such acts to other professions from the same technical group, taking into consideration the aim to ensure the quality of the output provided rather than to limit those who can perform such tasks. We also recommend that the corresponding professional association foresees a special regime where other technical professionals can meet the qualifications required for the exercise of particular reserved tasks after a case-by case evaluation of their curricula. This should be based on objective and transparent criteria (such as previous experience and additional training).

Technical and scientific professions: Architects

Table A B.6. Technical and scientific professions: Architects

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
1	Decree-Law 176/98 (last modification by Law 113/2015) "Bylaws of the Professional Association of Architects"	Annex - Art. 3 (2)	Professional associations	The Professional Association of Architects shall carry out: (i) tasks in the scope of the representation of the architects before others; and(ii) tasks in the scope of the regulation of the profession of architect.	The policy objective of the provision seems to be to ensure suitability of the regulation of the profession of architect for the needs of businesses and consumers and, also, of professionals.	The regulation of the profession of architect is controlled by the Professional Association of Architects and, consequently, by architects, given that the governing bodies of the professional association in question are made entirely by those professionals. Since the exercise of the profession of architect involves very specific educational and training qualifications, that is expected to increase the quality of regulation. Consequently, the provision can be considered to indicate that the policy objective underlying it is fully achieved. However, the same situation allows conflicts of interest inherent in situations in which architects are, simultaneously, regulators and regulated entities. Hence, the provision may make applicants for the professional title of architect incur unnecessary costs. In fact, the provision leaves to the discretion of the Professional Association of Architects the definition of rules, conditions, principles and procedures applicable in the scope of the profession of architect and, consequently, requires applicants for the professional title of architect to comply with requirements that are not clearly motivated, potentially reducing the supply of architects available to businesses and consumers.	We recommend that the regulatory function should be separated from the representative function for self-regulated professional associations, either through the creation of an over-arching supervisory body by sector or trade, or through the creation of a supervisory body inside the current professional orders with the necessary "Chinese walls". The supervisory body takes on the main regulation of the profession such as access to the profession and similar functions. The board of the regulatory body will include not only representative of the profession but also lay people, including high-profile experienced individuals from other regulators, representatives of consumer organisations and academia.
2	Decree-Law 176/98 (last modification by Law 113/2015) "Bylaws of the Professional Association of Architects"	Annex - Art. 5 (1)	Academic qualifications	Individuals registered in the Professional Association of Architects as a full member shall have, at least, a university degree in Architecture.	The policy objective of the provision seems to be to ensure a high level of safety of the operations and works and, within that scope, to ensure the technical suitability of the individuals to perform the tasks assigned to them.	The provision limits the academic qualifications necessary for practising the profession of architect and the acceptable routes to obtain them. Hence, the provision may make professionals incur unnecessary costs. In fact, the provision prevents individuals that have an academic background other than a university degree in architecture which ensures their technical suitability for performing the tasks assigned to them from becoming architects in Portugal and, consequently, reduces the supply of those professionals available to businesses and consumers. This leads to higher prices (in particular, through output restriction) and less diversity and innovation (including through the use of new techniques), with a negative impact on businesses and consumers, restricting the choices available to them. These effects are aggravated by the (additional) existence of restrictions on entry into a certain profession.	The technical professional associations should work with the legislator to set a transparent, proportional and non-discriminatory process for identification of alternative routes to obtain the strictly necessary or adequate qualifications for the exercise of a technical profession. The specific technical profession should be open to professionals with different academic backgrounds. These alternative routes would promote vertical conversions (e. g. migration from an engineering university background to an architecture degree) and would be applied through a conversion course or postgraduate studies. Those candidates should undergo the same on-the-job training or professional exams as others.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
3	Decree-Law 176/98 (last modification by Law 113/2015) "Bylaws of the Professional Association of Architects"	Annex - Art. 8 (1) and Art. 8 (2)	Professional internship	Applicants for the professional title of architect shall have successfully completed a professional traineeship which shall last 12 months.	The policy objective of the provision seems to be to ensure a high level of safety of the operations and works and, within that scope, to ensure the technical suitability of the individuals to perform the tasks assigned to them.	The provision determines the need for architects to carry out a professional internship and, thus, it may increase costs for professionals. However, the work-based practical experience gained by applicants for professional titles throughout a professional internship is expected to have a direct and significant positive impact on the level of safety of the services provided by those professionals. In fact, one of the main variables that influence the level of safety of the services provided by professionals is the fulfilment by them of the minimum knowledge requirements necessary for practising their respective profession and, intrinsically, their ability to apply this knowledge. Additionally, the duration of the professional internship defined in the provision conforms with the respective duration foreseen in Law 2/2013 (Art. 8 (2) (a)) (at most, 18 months).	No recommendation.
4	Decree-Law 176/98 (last modification by Law 113/2015) "Bylaws of the Professional Association of Architects"	Annex - Art. 44 (1) and Art. 44 (2)	Reserved activities	The development and assessment of architectural studies, projects and plans can only be carried out by architects.	The policy objective of the provision seems to be to ensure a high level of safety of the operations and works and, within that scope, to ensure the technical suitability of the individuals to perform the tasks assigned to them.	Reserved activities restrict the supply of professional services in the market, which negatively affects competition. In fact, professionals not registered in the respective professional association or that do not have the additional requirements needed to perform a certain task are prevented from carrying out those activities. This leads to higher prices (in particular through output restriction) and less diversity and innovation (including through the use of new techniques), with a negative impact on businesses and consumers, restricting the choices available to them. Moreover, it tends to lead to a worse match between the type of professional services offered and the type of services demanded, as some services demanded require a lesser degree of specialisation of the individuals who provide them. These effects are aggravated by (additional) restrictions on entry into a certain profession.	We recommend that: (i) tasks reserved for particular technical professions (i. e. architects, engineers or technical engineers), (ii) tasks reserved for specific specialisations within a profession (e. g. civil engineers, environmental engineers), and (iii) tasks reserved for professionals with a certain minimum number of years of experience should be reviewed in order to open such acts to other professions from the same technical group, taking into consideration the aim to ensure the quality of the output provided rather than to limit those who can perform such tasks. We also recommend that the corresponding professional association foresees a special regime where other technical professionals can meet the qualifications required for the exercise of particular reserved tasks after a case-by case evaluation of their curricula. This should be based on objective and transparent criteria (such as previous experience and additional training).
5	Decree-Law 176/98 (last modification by Law 113/2015) "Bylaws of the Professional Association of Architects"	Annex - Art. 47 (1) and Art. 47 (2)	Partnership and ownership of professional firms	Partners of professional firms of architects shall be: (i) architects established in Portugal; (ii) professional firms of architects; or (iii) associations of professionals equivalent to the profession of architects established in a country from the EU or the EEA other than Portugal whose majority of capital and voting rights is held by those professionals.	The policy objective of the provision seems to be to ensure a high level of safety of the operations and works and, within that scope, to ensure the technical suitability of the individuals to perform the tasks assigned to them.	The provision prevents individuals other than architects from owning professional firms of architects or holding the majority of those firms' capital and voting rights. Hence, the provision may make businesses incur unnecessary costs. In fact, the provision: (i) reduces the sources of investment available to professional firms of architects and, consequently, unduly hinders them from entering the market or operating in it; and (ii) prevents entities with business knowledge from participating in the decision-making process of professional firms of architects and, as such, may prevent decisions by them that are duly weighed and based on all relevant information.	Ownership/partnership of all professional firms should be opened to other professionals and non-professionals. We also recommend that other professionals and non-professionals be allowed to hold a majority of a professional firm's social capital, together with a majority of voting rights.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
6	Decree-Law 176/98 (last modification by Law 113/2015) "Bylaws of the Professional Association of Architects"	Annex - Art. 47 (7)	Management of professional firms	Members of the executive body of the professional firms of architects, regardless of their capacity as members of that Professional Association, shall respect the ethical principles and rules, the technical and scientific independence and the guarantees applicable to architects foreseen in laws and regulations.	The policy objective of the provision seems to be to ensure a high level of safety of the operations and works and, within that scope, to ensure the technical suitability of the individuals to perform the tasks assigned to them.	The provision prevents individuals other than architects from managing professional firms of architects. Hence, the provision may make businesses incur unnecessary costs. In fact: (i) the managers of professional firms of architects defined in the provision differ from the respective managers foreseen in Law 2/2013 (Art. 27 (3) (b)) and in Directive 2008/57/EC (Art. 13 (4) (first sentence)) (only one of the executive managers or administrators of professional firms has to be registered in the respective professional association); and (ii) the provision prevents individuals with business knowledge from participating in the decision-making process of professional firms of architects and, as such, may prevent decisions by them that are duly weighed and based on all relevant information.	We recommend that a separation between ownership and management be allowed in all professional firms and that their management may include non-professionals.
7	Decree-Law 176/98 (last modification by Law 113/2015) "Bylaws of the Professional Association of Architects"	Annex - Art. 47 (8)	Multidisciplinarity in professional firms	Professional firms of architects can carry out activities other than the activity of architect as long as they are not incompatible with that activity and for which the Bylaws of the Professional Association of Architects do not foresee any impediment.	The policy objective of the provision seems to be to ensure a high level of safety of the operations and works and, within that scope, to ensure the technical suitability of the individuals to perform the tasks assigned to them.	The provision, in itself, does not prevent multidisciplinary activities in professional firms of architects, given that it allows them to carry out activities other than the activity of architect. However, incompatibilities and impediments related to the profession of architect foreseen in the regulations may lead to an incompatibility between certain activities and the activity of architect and, consequently, may prevent professional firms of architects from carrying out those activities. As a consequence, firms are unduly hindered from entering the market or operating in it. In fact, that situation leads to: (i) a reduction of the potential sources of revenue available to firms and, as such, a reduction of their potential to recover costs; and (ii) an increase in the costs incurred by firms, in particular through the limitation or prevention of their ability to exploit economies of scale and economies of scope. This leads to higher prices and less diversity and innovation (including through the use of new techniques) in the scope of the activity of architect and, also, of the activities legally considered to be incompatible with it, with a negative impact on businesses and consumers, restricting the choices available to them. Moreover, it tends to lead to a worse match between the type of professional services offered by professional firms of architects and the type of services demanded from them. In fact, some businesses and consumers prefer to have only one service provider than to have several service providers (each one providing services in the scope of a specific profession).	No recommendation on the legal principle foreseen in this specific provision. However, we recommend that the legislator conducts a technical study to assess the proportionality of incompatibilities and impediments to pursue the exercise of a self-regulated profession that may be preventing the offer of multidisciplinary activities within the same professional firm, taking into consideration the policy objective. In case they are considered not to be proportional, they should be abolished.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
8	Decree-Law 176/98 (last modification by Law 113/2015) "Bylaws of the Professional Association of Architects"	Annex - Art. 52 (b)	Ethical principles	Architects must show themselves worthy of their responsibilities.	The policy objective of the provision seems to be to ensure suitability of professional services for the needs of businesses and consumers.	The lack of clear and specific language for the rules and principles to be followed by architects and to be monitored by the Professional Association of Architects allows these entities to be more arbitrary in their decisions. This makes it more difficult for potential and existing professionals to obtain accurate and timely information concerning the relevant operational context. It also creates regulatory uncertainty for those individuals and may lead to an unsubstantiated and, consequently, avoidable increase in the costs they incur. In fact, such a situation: (i) allows the Professional Association of Architects to act differently in analogous circumstances, allowing it to apply dissimilar conditions to equivalent situations, potentially placing some professionals at a competitive disadvantage; and (ii) results in a reduction in the necessary and adequate information available to professionals to decide and, in particular, to develop their business plans.	The provision should be amended in such a way as to use as much clear and specific language as possible. Moreover, the provision should be expressly revoked, if it has been superseded in its substance by more recent legislation, has lost its usefulness or has become obsolete as a result of technological developments.
9	Decree-Law 176/98 (last modification by Law 113/2015) "Bylaws of the Professional Association of Architects"	Annex - Art. 56 (2) (e)	Ethical principles	Architects should refuse financial conditions that do not allow them to provide satisfactory professional services.	The policy objective of the provision seems to be to ensure suitability of professional services for the needs of businesses and consumers.	The lack of clear and specific language for the rules and principles to be followed by architects and to be monitored by the Professional Association of Architects allows these entities to be more arbitrary in their decisions. This makes it more difficult for potential and existing professionals to obtain accurate and timely information concerning the relevant operational context. It also creates regulatory uncertainty for those individuals and may lead to an unsubstantiated and, consequently, avoidable increase in the costs they incur. In fact, such a situation: (i) allows the Professional Association of Architects to act differently in analogous circumstances, allowing it to apply dissimilar conditions to equivalent situations, potentially placing some professionals at a competitive disadvantage; and (ii) results in a reduction in the necessary and adequate information available to professionals to decide and, in particular, to develop their business plans.	The provision should be amended in such a way as to use as much clear and specific language as possible. Moreover, the provision should be expressly revoked, if it has been superseded in its substance by more recent legislation, has lost its usefulness or has become obsolete as a result of technological developments.
10	Decree-Law 176/98 (last modification by Law 113/2015) "Bylaws of the Professional Association of Architects"	Annex - Art. 57 (c)	Ethical principles	Architects must abstain from competing based solely on remuneration.	The policy objective of the provision seems to be to ensure suitability of professional services for the needs of businesses and consumers.	The price applicable to the provision of a service is one of the main factors used by businesses and consumers to decide on the supplier to use and, hence, on the service to purchase. Nevertheless, that decision may also depend on other factors, which tend to become more relevant in cases in which the services available to purchase are identical, in terms of their relevant characteristics, to each other. Services provided by architects are, by nature, different depending on the	The prohibition on competition based solely on remuneration for architects should be abolished. The implementation of this recommendation will allow those professionals to use only price to compete with each other and will, consequently, increase the benefits of businesses and consumers arising from services provided by the professionals in question.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
						<p>architect that provides them. In fact, each architect has its own esthetical style and, because of that (if not for other reasons), his work will necessarily differ from the work of other architects, even if the service requested of all of them is the same. Given that, architects, on their own and, as such, without need for external intervention, will tend to not compete based solely on remuneration. Nevertheless, there are cases in which the service requested is so specific that the differences in the outcome of its provision arising from the supplier used do not influence the consumer's choice of supplier. In those cases, price might be the determining factor used by businesses and consumers to choose the supplier to use and, hence, the service to purchase. Therefore, the provision prevents architects from effectively and efficiently competing with each other and, as a result, reduces the benefits of businesses and consumers arising from services provided by those professionals. In fact, the provision prevents architects that incur lower costs from passing on those savings to businesses and consumers in cases in which the service provided does not differ between architects.</p>	
11	Regulation 350/2016 "Rules, conditions, principles and procedures applicable in the scope of the registration in the Professional Association of Architects"	Annex I - Art. 1 (1)	Professional internship	Applicants for the professional title of architect shall have successfully completed a professional traineeship which shall last 12 months.	The policy objective of the provision seems to be to ensure a high level of safety of the operations and works and, within that scope, to ensure the technical suitability of the individuals to perform the tasks assigned to them.	<p>The provision determines the need for architects to carry out a professional internship and, thus, it may increase costs for professionals. However, the work-based practical experience gained by applicants for professional titles throughout a professional internship is expected to have a direct and significant positive impact on the level of safety of the services provided by those professionals. In fact, one of the main variables that influence the level of safety of the services provided by professionals is the fulfilment by them of the minimum knowledge requirements necessary for practising their respective profession and, intrinsically, their ability to apply this knowledge. Additionally, the duration of the professional internship defined in the provision conforms with the respective duration foreseen in Law 2/2013 (Art. 8 (2) (a)) (at most, 18 months).</p>	No recommendation.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
12	Decree-Law 152/2005 (last modification by Decree-Law 145/2017) "Rules, conditions, principles and procedures applicable in the scope of recovery for recycling, reclamation and destruction of substances that deplete the ozone layer contained in specific equipments and of maintenance and servicing of those equipments"	Art. 2 (b)	Ethical principles	Architects must show themselves worthy of their responsibilities.	The policy objective of the provision seems to be to ensure suitability of professional services for the needs of businesses and consumers.	The lack of clear and specific language for the rules and principles to be followed by architects and to be monitored by the Professional Association of Architects allows these entities to be more arbitrary in their decisions. This makes it more difficult for potential and existing professionals to obtain accurate and timely information concerning the relevant operational context. It also creates regulatory uncertainty for those individuals and may lead to an unsubstantiated and, consequently, avoidable increase in the costs they incur. In fact, such a situation: (i) allows the Professional Association of Architects to act differently in analogous circumstances, allowing it to apply dissimilar conditions to equivalent situations, potentially placing some professionals at a competitive disadvantage; and (ii) results in a reduction in the necessary and adequate information available to professionals to decide and, in particular, to develop their business plans.	The provision should be amended in such a way as to use as much clear and specific language as possible. Moreover, the provision should be expressly revoked, if it has been superseded in its substance by more recent legislation, has lost its usefulness or has become obsolete as a result of technological developments.
13	Regulation 336/2016 "Regulation concerning ethics and disciplinary procedure applicable to architects"	Art. 10 (7) (b)	Ethical principles	Architects may not carry out any manoeuvre or pressure that may negatively affect the freedom of choice of a potential business or consumer.	The policy objective of the provision seems to be to ensure suitability of professional services for the needs of businesses and consumers.	The lack of clear and specific language for the rules and principles to be followed by architects and to be monitored by the Professional Association of Architects allows these entities to be more arbitrary in their decisions. This makes it more difficult for potential and existing professionals to obtain accurate and timely information concerning the relevant operational context. It also creates regulatory uncertainty for those individuals and may lead to an unsubstantiated and, consequently, avoidable increase in the costs they incur. In fact, such a situation: (i) allows the Professional Association of Architects to act differently in analogous circumstances, allowing it to apply dissimilar conditions to equivalent situations, potentially placing some professionals at a competitive disadvantage; and (ii) results in a reduction in the necessary and adequate information available to professionals to decide and, in particular, to develop their business plans.	The provision should be amended in such a way as to use as much clear and specific language as possible. Moreover, the provision should be expressly revoked, if it has been superseded in its substance by more recent legislation, has lost its usefulness or has become obsolete as a result of technological developments.
14	Regulation 322/2016 "Regulation concerning the establishment and operation of firms of architects"	Art. 4 (2) (c)	Management of professional firms	The registration of professional firms of architects in the Professional Association of Architects can only be carried out by professional firms of architects that have, at least, one executive manager or administrator established in Portugal.	The policy objective of the provision seems to be to prevent conflicts of interest between the different professional firms on behalf of which a certain professional carries out an activity.	The provision prevents individuals other than architects from managing professional firms of architects. Hence, the provision may make businesses incur unnecessary costs. In fact: (i) the managers of professional firms of architects defined in the provision differ from the respective managers foreseen in Law 2/2013 (Art. 27 (3) (b)) and in Directive 2008/57/EC (Art. 13 (4) (first sentence)) (only one of the executive managers or administrators of professional firms has to be registered	We recommend that a separation between ownership and management be allowed in all professional firms and that their management may include non-professionals.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
15	Regulation 322/2016 "Regulation concerning the establishment and operation of firms of architects"	Art. 4 (3)	Partnership and ownership of professional firms	The majority of capital or voting rights of professional firms of architects shall be held by partners of those firms which provide professional services included in the main social object of the firms in question on their behalf.	The policy objective of the provision seems to be to ensure actions by the professional firms that are consonant with the ethical principles applicable to the respective profession and independent.	in the respective professional association); and (ii) the provision prevents individuals with business knowledge from participating in the decision-making process of professional firms of architects and, as such, may prevent decisions by them that are duly weighed and based on all relevant information. The provision prevents individuals other than architects from owning professional firms of architects or holding the majority of those firms' capital and voting rights. Hence, the provision may make businesses incur unnecessary costs. In fact, the provision: (i) reduces the sources of investment available to professional firms of architects and, consequently, unduly hinder them from entering the market or operating in it; and (ii) prevents entities with business knowledge from participating in the decision-making process of professional firms of architects and, as such, may prevent decisions by them that are duly weighed and based on all relevant information.	Ownership/partnership of all professional firms should be opened to other professionals and non-professionals. We also recommend that other professionals and non-professionals be allowed to hold a majority of a professional firm's social capital, together with a majority of voting rights.
16	Regulation 322/2016 "Regulation concerning the establishment and operation of firms of architects"	Art. 4 (5) and Art. 4 (6)	Multidisciplinary activities in professional firms	Professional firms of architects can carry out activities other than the activity of architect as long as they are compatible with that activity. In particular, activities that characterise the practice of regulated professions other than the profession of architect or of professions under the jurisdiction of Professional Associations other than the Professional Association of Architects are incompatible with the activity of architect if the Professional Association in question prevents the establishment of professional firms which include architects or that carry out activities reserved for the profession of architect.	The policy objective of the provision seems to be to ensure actions by the professional firms that are consonant with the ethical principles applicable to the respective profession and independent.	The provision, in itself, does not prevent multidisciplinary activity in professional firms of architects, given that it allows them to carry out activities other than the activity of architect. However, incompatibilities and impediments related to the profession of architect foreseen in regulations may lead to an incompatibility between certain activities and the activity of architect and, consequently, may prevent professional firms of architects from carrying out those activities. As a consequence, firms are unduly hindered from entering the market or operating in it. In fact, the situation leads to: (i) a reduction of the potential sources of revenue available to firms and, as such, a reduction of their potential to recover costs; and (ii) an increase in the costs incurred by firms, in particular through the limitation or prevention of their ability to exploit economies of scale and economies of scope. This leads to higher prices and less diversity and innovation (including through the use of new techniques) in the scope of the activity of architect and, also, of the activities legally considered to be incompatible with it. This has a negative impact on businesses and consumers, restricting the choices available to them. Moreover, it tends to lead to a worse match between the type of professional services offered by professional firms of architects and the type of services demanded of	No recommendation on the legal principle foreseen in this specific provision. However, we recommend that the legislator conducts a technical study to assess the proportionality of incompatibilities and impediments to pursue the exercise of a self-regulated profession that may be preventing the offer of multidisciplinary activities within the same professional firm, taking into consideration the policy objective. In case they are considered not to be proportional, they should be abolished.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
17	Regulation 322/2016 "Regulation concerning the establishment and operation of firms of architects"	Art. 5 (3) (b)	Partnership and ownership of professional firms	Associations of architects or professionals equivalent to the profession of architects established in a country from the EU or the EEA other than Portugal registered in the Professional Association of Architects or whose respective permanent representation in Portugal is registered in that Professional Association shall have the majority of social capital or voting power held by: (i) architects or professionals equivalent to architects with full enjoyment of their rights; or (ii) associations of architects or professionals equivalent to architects whose majority of voting rights is held by those professionals with full enjoyment of their rights.	The policy objective of the provision seems to be to ensure actions by the professional firms that are consonant with the ethical principles applicable to the respective profession and independent.	<p>them. In fact, some businesses and consumers prefer to have only one service provider than several (each one providing services within the scope of a specific profession).</p> <p>The provision prevents some associations of architects or professionals equivalent to architects firms established in a country from the EU or the EEA other than Portugal from entering the market and, consequently, reduces the supply of professional services available to businesses and consumers. This leads to higher prices (in particular, through output restriction) and less diversity and innovation (including through the use of new techniques), with a negative impact on businesses and consumers, restricting the choices available to them.</p>	Associations of architects or professionals equivalent to architects established in a country from the EU or the EEA other than Portugal should not be prevented from entering the market merely because the majority of social capital or voting power is not held by specific individuals or entities.
18	Regulation 322/2016 "Regulation concerning the establishment and operation of firms of architects"	Art. 16 (1)	Partnership and ownership of professional firms	Architects, professional firms of architects and associations of professionals equivalent to the profession of architects may be partners of professional firms of architects and provide services of architect on their behalf in only one professional firm of architects and only in cases in which they do not participate in any association equivalent to a professional firm of architects established in a country from the EU or the EEA other than Portugal.	The policy objective of the provision seems to be to prevent conflicts of interest between the different professional firms on behalf of which a certain professional carries out an activity.	The provision prevents architects, professional firms of architects and associations of professionals equivalent to architects from providing architectural services, simultaneously, on behalf of several professional firms of architects. Therefore, the provision, in fact, fully achieves the policy objective underlying it. However, that objective can also be achieved by merely: (i) including in the articles of the association of professional firms of architects a clause precluding the partners that carry out professional activities on their behalf from performing those activities on behalf of other professional firms of architects in which they are also partners (the firms in question might not even want this clause); and (ii) complying with the ethical principles, incompatibilities and impediments applicable to the profession. Consequently, the provision may make professionals and businesses incur unnecessary costs. In fact, the provision requires professionals to determine the professional firm on behalf of which they will practise	The provision should be abolished.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
19	No number applicable "Table of fees and charges charged by the Professional Association of Architects in 2016 "	Art. 8 (1)	Professional internship	The fee charged by the Professional Association of Architects for the enrolment of applicants in the professional internship leading to the professional title of architect is EUR 200.	The policy objective of the provision seems to be the economic sustainability of the operation of the Professional Association of Architects.	<p>the profession, which is expected to have a direct and significant impact on the level of investment that they are willing to make in professional firms of architects. As such, the provision reduces the sources of investment and of professionals available to professional firms of architects and, consequently, unduly hinders them from entering the market or operating in it.</p> <p>A fee in favour of a public entity is the value due for the provision of a specific public service, for the use of a property in the public domain or for the removal of a legal obstacle to the behaviour of private entities (General Tax Law (Art. 4 (2)), approved by Decree-Law 398/98). Administrative fees lead to an increase in the costs incurred by the economic agents, potentially leading to higher prices. Therefore, they might prevent agents from entering the market or they might make it significantly more difficult for them to operate in it. The administrative bodies and agents should act, in the exercise of their functions, so as to respect the principle of proportionality (Constitution of the Portuguese Republic (CRP) (Art. 266 (2)), approved by Decree of 10 April 1976), that also applies to administrative fees. As such, those fees should be correlated with the costs incurred with the provision of the underlying services (and, consequently, should not be a means for the administrative bodies and agents to collect revenues), should be based on transparent methodology and should not be discriminatory. However, there is no publicly available information concerning the specific criteria that were used to calculate the administrative fee established in the provision and it was not possible to identify an economic rationale for that fee. Therefore, the provision may make individuals that want to be architects incur unnecessary costs. In fact, the provision requires them to pay more for the professional internship and, consequently, may reduce the supply of architects available to businesses and consumers.</p>	The fee established in the provision should be calculated using transparent, non-discriminatory and cost-based criteria.

Technical and scientific professions: Engineers

Table A B.7. Technical and scientific professions: Engineers

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
1	Decree-Law 129/2002 (last modification by Decree-Law 96/2008) "Regulation on the acoustic requirements applicable to buildings"	Annex - Art. 3 (2)	Reserved activities	The development and signing of projects concerning acoustic conditioning of buildings can only be carried out by specific professionals and, in particular, by specific engineers.	The policy objective of the provision seems to be to ensure a high level of safety of the operations and works and, within that scope, to ensure the technical suitability of the individuals to perform the tasks assigned to them.	Reserved activities restrict the supply of professional services in the market, which negatively affects competition. In fact, professionals not registered in the respective professional association or that do not have the additional requirements needed to perform a certain task are prevented from carrying out those activities. This leads to higher prices (in particular, through output restriction) and less diversity and innovation (including through the use of new techniques), with a negative impact on businesses and consumers, restricting the choices available to them. Moreover, it tends to lead to a worse match between the type of professional services offered and the type of services demanded, as some services demanded require a lesser degree of specialisation of the individuals who provide them. These effects are aggravated by (additional) restrictions on entry into a certain profession.	We recommend that: (i) tasks reserved for particular technical professions (i. e. engineers or technical engineers), (ii) tasks reserved for specific specialisations within a profession (e. g. civil engineers, environmental engineers), and (iii) tasks reserved for professionals with a certain minimum number of years of experience should be reviewed in order to open such acts to other professions from the same technical group, taking into consideration the aim to ensure the quality of the output provided rather than to limit those who can perform such tasks. We also recommend that the corresponding professional association foresees a special regime where other technical professionals can meet the qualifications required for the exercise of particular reserved tasks after a case-by case evaluation of their curricula. This should be based on objective and transparent criteria (such as previous experience and additional training).
2	Decree-Law 119/92 (last modification by Law 123/2015) "Bylaws of the Professional Association of Engineers"	Annex - Art. 4 (2)	Professional associations	The Professional Association of Engineers shall carry out: (i) tasks in the scope of the representation of the engineers before others; and(ii) tasks in the scope of the regulation of the profession of engineer.	The policy objective of the provision seems to be to ensure suitability of the regulation of the profession of engineer for the needs of businesses and consumers and, also, of professionals.	The regulation of the profession of engineer is controlled by the Professional Association of Engineers and, consequently, by engineers, given that the governing bodies of the professional association in question are made up entirely by those professionals. Since the exercise of the profession of engineer involves very specific educational and training qualifications, that is expected to increase the quality of regulation. Consequently, the provision can be considered to indicate that the policy objective underlying it is fully achieved. However, the same situation allows conflicts of interest inherent in situations in which engineers are, simultaneously, regulators and regulated entities. Hence, the provision may make applicants for the professional title of engineer incur unnecessary costs. In fact, the provision leaves to the discretion of the Professional Association of Engineers the definition of rules, conditions, principles and procedures applicable in the scope of the profession of engineer and, consequently, requires applicants for the professional title of engineer to comply with requirements that	We recommend that the regulatory function should be separated from the representative function for self-regulated professional associations, either through the creation of an over-arching supervisory body by sector or trade, or through the creation of a supervisory body inside the current professional orders with the necessary "Chinese walls". The supervisory body takes on the main regulation of the profession such as access to the profession and similar functions. The board of the regulatory body will include not only representative of the profession but also lay people, including high-profile experienced individuals from other regulators, representatives of consumer organisations and academia.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
3	Decree-Law 119/92 (last modification by Law 123/2015) "Bylaws of the Professional Association of Engineers"	Annex - Art. 6	Professional titles and reserved activities	The professional title of engineer can only be granted to individuals registered in the Professional Association of Engineers as a full member.	The policy objective of the provision seems to be to ensure a high level of safety of the operations and works and, within that scope, to ensure the technical suitability of the individuals to perform the tasks assigned to them.	<p>are not clearly motivated, potentially reducing the supply of engineers available to businesses and consumers.</p> <p>The need for registration in the Professional Association of Engineers as defined in the provision reduces the supply of engineers in the market and, as such, negatively affects competition. In fact, the provision prevents some of the individuals who comply with the minimum educational and training qualifications necessary for practising the profession of engineer from practising that profession in Portugal. However, that registration is expected to significantly reduce the asymmetry of information between businesses and consumers and professionals, each one of whom has perfect information about the quality of its performance of the assigned tasks. The association of the registration in question to the reserved activities leads to a monopoly (formed by the individuals registered in the Professional Association of Engineers) on the practise of the profession of engineer. Reserved activities also restrict the supply of professional services in the market, which negatively affects competition. In fact, professionals not registered in the respective professional association or that do not have the additional requirements needed to perform a certain task are prevented from carrying out those activities. This leads to higher prices (in particular, through output restriction) and less diversity and innovation (including through the use of new techniques), with a negative impact on businesses and consumers, restricting the choices available to them. Moreover, it tends to lead to a worse match between the type of professional services offered and the type of services demanded, as some services demanded require a high degree of specialisation of the individuals who provide them. These effects are aggravated by the (additional) existence of restrictions on entry into a certain profession.</p>	We recommend that: (i) tasks reserved for particular technical professions (i. e. architects, engineers or technical engineers), (ii) tasks reserved for specific specialisations within a profession (e. g. civil engineers, environmental engineers), and (iii) tasks reserved for professionals with a certain minimum number of years of experience should be reviewed in order to open such acts to other professions from the same technical group, taking into consideration the aim to ensure the quality of the output provided rather than to limit those who can perform such tasks. We also recommend that the corresponding professional association foresees a special regime where other technical professionals can meet the qualifications required for the exercise of particular reserved tasks after a case-by case evaluation of their curricula. This should be based on objective and transparent criteria (such as previous experience and additional training).
4	Decree-Law 119/92 (last modification by Law 123/2015) "Bylaws of the Professional Association of Engineers"	Annex - Art. 7 (2)	Reserved activities	The development of certain engineering projects can only be carried out by specific professionals and, in particular, by specific engineers.	The policy objective of the provision seems to be to ensure a high level of safety of the operations and works and, within that scope, to ensure the technical suitability of the individuals to perform the tasks assigned to them.	Reserved activities restrict the supply of professional services in the market, which negatively affects competition. In fact, professionals not registered in the respective professional association or who do not have the additional requirements needed to perform a certain task are prevented from carrying out those activities. This leads to higher prices (in particular, through output restriction) and less diversity and innovation (including through the use of new techniques), with a negative impact on businesses and consumers, restricting the choices available to them. Moreover, it tends to lead to a worse	We recommend that: (i) tasks reserved for particular technical professions (i. e. engineers or technical engineers), (ii) tasks reserved for specific specialisations within a profession (e. g. civil engineers, environmental engineers), and (iii) tasks reserved for professionals with a certain minimum number of years of experience should be reviewed in order to open such acts to other professions from the same technical group, taking into consideration the aim to ensure the quality of the output

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
						match between the type of professional services offered and the type of services demanded, as some services demanded require a lesser degree of specialisation of the individuals who provide them. These effects are aggravated by the (additional) restrictions on entry into a certain profession.	provided rather than to limit those who can perform such tasks. We also recommend that the corresponding professional association foresees a special regime where other technical professionals can meet the qualifications required for the exercise of particular reserved tasks after a case-by case evaluation of their curricula. This should be based on objective and transparent criteria (such as previous experience and additional training).
5	Decree-Law 119/92 (last modification by Law 123/2015) "Bylaws of the Professional Association of Engineers"	Annex - Art. 11 (6)	Management of professional firms	Members of the executive body of the professional firms of Engineers, regardless of their capacity as members of that Professional Association, shall respect the ethical principles and rules, the technical and scientific independence and the guarantees applicable to engineers foreseen in laws and regulations.	The policy objective of the provision seems to be to prevent conflicts of interest between the different professional firms on behalf of which a certain professional carries out an activity.	The provision prevents individuals other than engineers from managing professional firms of engineers. Hence, the provision may make businesses incur unnecessary costs. In fact: (i) the managers of professional firms of engineers as defined in the provision differ from the respective managers foreseen in Law 2/2013 (Art. 27 (3) (b)) and in Directive 2008/57/EC (Art. 13 (4) (first sentence)) (only one of the executive managers or administrators of professional firms has to be registered in the respective professional association); and (ii) the provision prevents individuals with business knowledge from participating in the decision-making process of professional firms of engineers and, as such, may prevent decisions by the them that are duly weighed and based on all relevant information.	We recommend that a separation between ownership and management be allowed in all professional firms and that their management may include non-professionals.
6	Decree-Law 119/92 (last modification by Law 123/2015) "Bylaws of the Professional Association of Engineers"	Annex - Art. 11 (7)	Multidisciplinary activity in professional firms	Professional firms of engineers can carry out activities other than the activity of engineer as long as they are not incompatible with that activity and for which the bylaws of the Professional Association of Engineers do not foresee any impediment.	The policy objective of the provision seems to be to ensure actions by the professional firms that are consonant with the ethical principles applicable to the respective profession and independent.	The provision, in itself, does not prevent multidisciplinary activities in professional firms of engineers, given that it allows them to carry out activities other than the activity of engineer. However, incompatibilities and impediments related to the profession of engineer foreseen in regulations may lead to an incompatibility between certain activities and the activity of engineer and, consequently, may prevent professional firms of engineers from carrying out those activities. As a consequence, firms are unduly hindered from entering the market or operating in it. In fact, that situation leads to: (i) a reduction of the potential sources of revenue available to firms and, as such, a reduction of their potential to recover costs; and (ii) an increase in the costs incurred by firms, in particular through the limitation or prevention of their ability to exploit economies of scale and economies of scope. This leads to higher prices and less diversity and innovation (including through the use of new techniques) in the scope of the activity of engineer and, also, of the activities legally considered to be incompatible with it, with a negative impact on businesses and consumers, restricting the	No recommendation on the legal principle foreseen in this specific provision. However, we recommend that the legislator conducts a technical study to assess the proportionality of incompatibilities and impediments to pursue the exercise of a self-regulated profession that may be preventing the offer of multidisciplinary activities within the same professional firm, taking into consideration the policy objective. In case they are considered not to be proportional, they should be abolished.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
						choices available to them. Moreover, it tends to lead to a worse match between the type of professional services offered by professional firms of engineers and the type of services demanded from them. In fact, some businesses and consumers prefer to have only one service provider than to have several (each one of which is providing services in the scope of a specific profession).	
7	Decree-Law 119/92 (last modification by Law 123/2015) "Bylaws of the Professional Association of Engineers"	Annex - Art. 11 (9)	Partnership and ownership of professional firms	The majority of capital with voting rights of professional firms of engineers shall be held by: (i) engineers established in Portugal; (ii) professional firms of engineers; or (iii) certain associations of professionals equivalent to the profession of engineers established in a country from the EU or the EEA other than Portugal.	The policy objective of the provision seems to be to ensure actions by the professional firms that are consonant with the ethical principles applicable to the respective profession and independent.	The provision prevents individuals other than engineers from owning professional firms of engineers or holding the majority of those firms' capital and voting rights. Hence, the provision may make businesses incur unnecessary costs. In fact, the provision: (i) reduces the sources of investment available to professional firms of engineers and, consequently, unduly hinders them from entering the market or operating in it; and (ii) prevents entities with business knowledge from participating in the decision-making process of professional firms of engineers and, as such, may prevent decisions by them that are duly weighed and based on all relevant information.	Ownership/partnership of all professional firms should be opened to other professionals and non-professionals. We also recommend that other professionals and non-professionals be allowed to hold a majority of a professional firm's social capital, together with a majority of voting rights.
8	Decree-Law 119/92 (last modification by Law 123/2015) "Bylaws of the Professional Association of Engineers"	Annex - Art. 12 (1) and Art. 12 (2)	Partnership and ownership of professional firms	Associations of professionals equivalent to engineers established in a country from the EU or the EEA other than Portugal whose respective permanent representation in Portugal is registered in the Professional Association of Engineers shall have the majority of capital with voting rights or, in cases in which those associations do not have social capital, voting rights held by: (i) professionals equivalent to engineers; or (ii) associations of professionals equivalent to engineers whose majority of capital and voting rights is held by those professionals.	The policy objective of the provision seems to be to ensure actions by the professional firms that are consonant with the ethical principles applicable to the respective profession and independent.	The provision prevents some associations of professionals equivalent to engineers established in a country from the EU or the EEA other than Portugal from entering the market and, consequently, reduces the supply of professional services available to businesses and consumers. This leads to higher prices (in particular, through output restriction) and less diversity and innovation (including through the use of new techniques), with a negative impact on businesses and consumers, restricting the choices available to them.	Associations of professionals equivalent to engineers established in a country from the EU or the EEA other than Portugal should not be prevented from entering the market merely because the majority of social capital or voting power is not held by specific individuals or entities.
9	Decree-Law 119/92 (last modification by Law 123/2015) "Bylaws of the Professional Association of Engineers"	Annex - Art. 15 (1) (a)	Academic qualifications	Individuals registered in the Professional Association of Engineers as a full member shall have, at least, a university master's degree in engineering.	The policy objective of the provision seems to be to ensure a high level of safety of the operations and works and, within that scope, to ensure the technical suitability of the individuals to perform the tasks assigned to them.	The provision limits the academic qualifications necessary for practising the profession of engineer and the acceptable routes to obtain them. Hence, the provision may make professionals incur unnecessary costs. In fact, the provision prevents individuals who have an academic background other than a university master's degree in engineering, which ensures their technical suitability for performing the tasks assigned to them, from becoming engineers in Portugal and, consequently, reduces the supply of those professionals available to businesses and	The technical professional associations should work with the legislator to set a transparent, proportional and non-discriminatory process for identification of alternative routes to obtain the strictly necessary or adequate qualifications for the exercise of a technical profession. The specific technical profession should be open to professionals with different academic backgrounds. These alternative routes would promote vertical conversions (e. g. migration

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
						consumers. This leads to higher prices (in particular, through output restriction) and less diversity and innovation (including through the use of new techniques), with a negative impact on businesses and consumers, restricting the choices available to them. These effects are aggravated by the (additional) restrictions on entry into a certain profession.	from an engineering university background to an architecture degree) and would be applied through a conversion course or postgraduate studies. Those candidates should undergo the same on-the-job training or professional exams as others. These alternative routes would also apply to engineers and technical engineers for horizontal conversions (in the case of migration among different engineers' specialisations and different technical engineers).
10	Decree-Law 119/92 (last modification by Law 123/2015) "Bylaws of the Professional Association of Engineers"	Annex - Art. 142 (4)	Ethical principles	Engineers should determine the prices applicable to the services they provide taking into account their fair value.	The policy objective of the provision seems to be to ensure universality of access to professional services while guaranteeing economic sustainability of the operation of the professionals.	The lack of clear and specific language for the rules and principles to be followed by engineers and to be monitored by the Professional Association of Engineers allows these entities to be more arbitrary in their decisions. This makes it more difficult for potential and existing professionals to obtain accurate and timely information concerning the relevant operational context. It also creates regulatory uncertainty for those individuals and may lead to an unsubstantiated and, consequently, avoidable increase in the costs they incur. In fact, such a situation: (i) allows the Professional Association of Engineers to act differently in analogous circumstances, allowing it to apply dissimilar conditions to equivalent situations, potentially placing some professionals at a competitive disadvantage; and (ii) results in a reduction in the necessary and adequate information available to professionals to decide and, in particular, to develop their business plans.	The provision should be amended in such a way as to use as much clear and specific language as possible. Moreover, the provision should be expressly revoked, if it has been superseded in its substance by more recent legislation, has lost its usefulness or has become obsolete as a result of technological developments.
11	Decree-Law 119/92 (last modification by Law 123/2015) "Bylaws of the Professional Association of Engineers"	Annex - Art. 143 (3)	Ethical principles	Engineers must use as much sobriety as possible in professional advertisements that they make or authorise.	The policy objective of the provision seems to be to ensure suitability of professional services for the needs of businesses and consumers.	The lack of clear and specific language for the rules and principles to be followed by engineers and to be monitored by the Professional Association of Engineers allows these entities to be more arbitrary in their decisions. This makes it more difficult for potential and existing professionals to obtain accurate and timely information concerning the relevant operational context. It also creates regulatory uncertainty for those individuals and may lead to an unsubstantiated and, consequently, avoidable increase in the costs they incur. In fact, such a situation: (i) allows the Professional Association of Engineers to act differently in analogous circumstances, allowing it to apply dissimilar conditions to equivalent situations, potentially placing some professionals at a competitive disadvantage; and (ii) results in a reduction in the necessary and adequate information available to professionals to decide and, in particular, to develop their business plans.	The provision should be amended in such a way as to use as much clear and specific language as possible. Moreover, the provision should be expressly revoked, if it has been superseded in its substance by more recent legislation, has lost its usefulness or has become obsolete as a result of technological developments.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
12	Decree-Law 152/2005 (last modification by Decree-Law 145/2017) "Rules, conditions, principles and procedures applicable in the scope of recovery for recycling, reclamation and destruction of substances that deplete the ozone layer contained in specific equipments and of maintenance and servicing of those equipments"	Art. 16, Art. 19 and Art. 20	Professional levels, professional titles and reserved activities	The professional levels of level 1 engineer and of level 2 engineer and the professional titles of senior engineer and of counsellor engineer can only be granted to specific engineers.	The policy objective of the provision seems to be to ensure a high level of safety of the operations and works and, within that scope, to ensure the technical suitability of the individuals to perform the tasks assigned to them.	The granting of the specific professional levels of engineer and of the specific professional titles of engineer as defined in the provisions reduces the supply of engineers that can perform certain tasks in the market and, as such, negatively affects competition. In fact, the provision prevents some individuals who comply with the minimum educational and training qualifications necessary for performing certain tasks in the scope of the profession of engineer from carrying out those tasks in Portugal. However, those professional levels and titles are expected to significantly reduce the asymmetry of information between businesses and consumers and professionals, each one of whom has perfect information about the quality of performance of the assigned tasks. The association of the professional levels and titles in question to the reserved activities leads to a monopoly (formed by the individuals holding a certain professional level or title of engineer) on the performance of certain tasks in the scope of the profession of engineer. Reserved activities also restrict the supply of professional services in the market, which negatively affects competition. In fact, professionals not registered in the respective professional association or that do not have the additional requirements needed to perform a certain task are prevented from carrying out those activities. This leads to higher prices (in particular, through output restriction) and less diversity and innovation (including through the use of new techniques), with a negative impact on businesses and consumers, restricting the choices available to them. Moreover, it tends to lead to a worse match between the type of professional services offered and the type of services demanded, as some of the services demanded require a lesser degree of specialisation of the individuals who provide them. These effects are aggravated by the (additional) restrictions on entry into a certain profession.	We recommend that: (i) tasks reserved for particular technical professions (i. e. architects, engineers or technical engineers), (ii) tasks reserved for specific specialisations within a profession (e. g. civil engineers, environmental engineers), and (iii) tasks reserved for professionals with a certain minimum number of years of experience should be reviewed in order to open such acts to other professions from the same technical group, taking into consideration the aim to ensure the quality of the output provided rather than to limit those who can perform such tasks. We also recommend that the corresponding professional association foresees a special regime where other technical professionals can meet the qualifications required for the exercise of particular reserved tasks after a case-by case evaluation of their curricula. This should be based on objective and transparent criteria (such as previous experience and additional training).
13	Regulation 1125/2016"Rules, conditions, principles and procedures applicable in the scope of the internship to be undertaken by individuals who want to register in the Professional Association of Engineers"	Art. 14 (1)	Professional internship	Applicants for the professional title of engineer shall have successfully completed a professional traineeship which shall last:(i) between 6 and 12 months in cases in which the individuals have a university master's degree in engineering; and(ii) between 18 and 24 months in cases in which the individuals have a university degree in engineering.	The policy objective of the provision is to ensure a high level of safety of the services provided by professionals and, within that scope, to ensure adequate ability of those individuals to apply knowledge in order to perform the tasks assigned to them.	The provision determines the need for engineers to carry out a professional internship and, thus, it may increase costs for professionals. However, the work-based practical experience gained by applicants for professional titles throughout a professional internship is expected to have a direct and significant positive impact on the level of safety of the services provided by those professionals. In fact, one of the main variables that influence the level of safety of the services provided by professionals is their fulfilment of the minimum knowledge requirements necessary for practising the respective profession and, intrinsically, their	The provision should be aligned with Law 2/2013, by changing the maximum duration of the professional internship in cases in which individuals have a university degree in engineering from between 18 and 24 months to a maximum of 18 months.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
						ability to apply this knowledge. Additionally, the maximum duration of the professional internship in cases in which the individuals have a university master's degree in engineering as defined in the provision conforms with the maximum duration of the professional internship foreseen in Law 2/2013 (Art. 8 (2) (a)) (18 months). On the contrary, the maximum duration of the professional internship in cases in which the individuals have a university degree in engineering does not conform with the maximum duration of the professional internship foreseen in Law 2/2013 (Art. 8 (2) (a)). Hence, the provision increases regulatory uncertainty for professionals and may make them incur unnecessary costs. In fact, the provision requires professionals to wait longer for the opportunity to practice the respective profession and, as such, to be limited in their activities for longer.	
14	Regulation 1125/2016 "Rules, conditions, principles and procedures applicable in the scope of the internship to be undertaken by individuals who want to register in the Professional Association of Engineers"	Art. 26 (2)	Professional internship	The examination necessary for concluding professional internships in the scope of granting the professional title of engineer shall be carried out by three engineers registered in the Professional Association of Engineers for more than five years, one of whom is the supervisor of the respective internship.	The policy objective of the provision is to ensure a high level of safety of the services provided by professionals and, within that scope, to ensure adequate ability of those individuals to apply knowledge in order to perform the tasks assigned to them.	The evaluation of the internship undertaken by individuals who want to register in the Professional Association of Engineers is controlled by engineers. Therefore, the provision allows conflicts of interest inherent in situations in which engineers are, simultaneously, supply-side economic agents and entities responsible for determining the maximum number of professionals entering the market.	The final evaluation of the internship should be conducted by a board, independent of the professional association (see our comments in section 3 on a supervisory board), which may include members of the latter, but must also include other professionals such as university professors and other people of recognised merit and experience.
15	Regulation 147/2013 "Regulation on the specialisations in the field of engineering"	Art. 9	Professional titles and reserved activities	The professional title of specialist engineer can only be granted to specific engineers.	The policy objective of the provision seems to be to ensure a high level of safety of the operations and works and, within that scope, to ensure the technical suitability of the individuals to perform the tasks assigned to them.	The granting of the specific professional title of engineer as defined in the provision reduces the supply of engineers that can perform certain tasks in the market and, as such, negatively affects competition. In fact, the provision prevents some individuals who comply with the minimum educational and training qualifications necessary for performing certain tasks in the scope of the profession of engineer from carrying out those tasks in Portugal. However, that professional title is expected to significantly reduce the asymmetry of information between businesses and consumers and professionals, each one of whom has perfect information about the quality of its performance of the assigned tasks. The association of the professional title in question to the reserved activities leads to a monopoly (formed by the individuals holding a certain professional title of engineer) on the performance of certain tasks in the scope of the profession of engineer. Reserved activities also restrict the supply of professional services in the market, which negatively affects competition. In fact,	We recommend that: (i) tasks reserved for particular technical professions (i. e. engineers or technical engineers), (ii) tasks reserved for specific specialisations within a profession (e. g. civil engineers, environmental engineers), and (iii) tasks reserved for professionals with a certain minimum number of years of experience should be reviewed in order to open such acts to other professions from the same technical group, taking into consideration the aim to ensure the quality of the output provided rather than to limit those who can perform such tasks. We also recommend that the corresponding professional association foresees a special regime where other technical professionals can meet the qualifications required for the exercise of particular reserved tasks after a case-by case evaluation of their curricula. This should be

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
						professionals not registered in the respective professional association or that do not have the additional requirements needed to perform a certain task are prevented from carrying out those activities. This leads to higher prices (in particular, through output restriction) and less diversity and innovation (including through the use of new techniques), with a negative impact on businesses and consumers, restricting the choices available to them. Moreover, it tends to lead to a worse match between the type of professional services offered and the type of services demanded, as some services demanded require a lesser degree of specialisation of the individuals who provide them. These effects are aggravated by the (additional) restrictions on entry in a certain profession.	based on objective and transparent criteria (such as previous experience and additional training).
16	No number applicable "Registration in the Professional Association of Engineers as trainee member or as a full member"	Art. 2 (3)	Professional internship	The fee charged by the Professional Association of Engineers for the enrolment of applicants in the professional internship leading to the professional title is EUR 80.	The policy objective of the provision seems to be the economic sustainability of the operation of the Professional Association of Engineers.	A fee in favour of a public entity is the value due for the provision of a specific public service, for the use of a property in the public domain or for the removal of a legal obstacle to the behaviour of private entities (General Tax Law (Art. 4 (2)), approved by Decree-law 398/98). Administrative fees lead to an increase in the costs incurred by the economic agents, potentially leading to higher prices. Therefore, they might prevent agents from entering the market or they might make it significantly more difficult for them to operate in it. The administrative bodies and agents should act, in the exercise of their functions, so as to respect the principle of proportionality (Constitution of the Portuguese Republic (CRP) (Art. 266 (2)), approved by Decree of 10 April 1976), that also applies to administrative fees. As such, those fees should be correlated with the costs incurred with the provision of the underlying services (and, consequently, should not be a means for the administrative bodies and agents to collect revenues), should be based on transparent methodology and should not be discriminatory. However, there is no publicly available information concerning the specific criteria that were used to calculate the administrative fee established in the provision and it was not possible to identify an economic rationale for that fee. Therefore, the provision may make individuals who want to be engineers incur unnecessary costs. In fact, the provision requires them to pay more for the professional internship and, consequently, may reduce the supply of engineers available to businesses and consumers.	The fee established in the provision should be calculated using transparent, non-discriminatory and cost-based criteria.

Technical and scientific professions: Technical Engineers

Table A B.8. Technical and scientific professions: Technical Engineers

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
1	Law 47/2011 (last modification by Law 157/2015) "Bylaws of the Professional Association of Technical Engineers"	Annex - Art 3	Professional associations	The Professional Association of Technical Engineers shall carry out: (i) tasks within the scope of representation of technical engineers before others; and(ii) tasks within the scope of the regulation of the profession of technical engineer.	The policy objective of the provision seems to be to ensure suitability of the regulation of the profession of technical engineer for the needs of businesses and consumers and, also, of professionals.	The regulation of the profession of technical engineer is controlled by the Professional Association of Technical Engineers and, consequently, by technical engineers, given that the governing bodies of the Professional Association in question are made entirely of those professionals. Since the exercise of the profession of technical engineer involves very specific educational and training qualifications, that is expected to increase the quality of regulation. Consequently, the provision can be considered to indicate that the policy objective underlying it is fully achieved. However, the same situation allows conflicts of interest inherent in situations in which technical engineers are, simultaneously, regulators and regulated entities. Hence, the provision may make applicants for the professional title of technical engineer incur unnecessary costs. In fact, the provision leaves to the discretion of the Professional Association of Technical Engineers the definition of the rules, conditions, principles and procedures applicable in the scope of the profession of technical engineer and, consequently, requires applicants for the professional title of technical engineer to comply with requirements that are not clearly motivated, potentially reducing the supply of technical engineers available to businesses and consumers.	We recommend that the regulatory function should be separated from the representative function for self-regulated professional associations, either through the creation of an over-arching supervisory body by sector or trade, or through the creation of a supervisory body inside the current professional orders with the necessary "Chinese walls". The supervisory body takes on the main regulation of the profession such as access to the profession and similar functions. The board of the regulatory body will include not only representative of the profession but also lay people, including high-profile experienced individuals from other regulators, representatives of consumer organisations and academia.
2	Law 47/2011 (last modification by Law 157/2015) "Bylaws of the Professional Association of Technical Engineers"	Annex - Art. 6 (1)	Professional titles and reserved activities	The professional title of technical engineer can only be granted to individuals registered in the Professional Association of Technical Engineers as a full member.	The policy objective of the provision seems to be to ensure a high level of safety of the operations and works and, within that scope, to ensure the technical suitability of the individuals to perform the tasks assigned to them.	The need for registration in the Professional Association of Technical Engineers as defined in the provision reduces the supply of technical engineers in the market and, as such, negatively affects competition. In fact, the provision prevents some individuals who comply with the minimum necessary educational and training qualifications for practising the profession of technical engineer from practising that profession in Portugal. However, that registration is expected to significantly reduce the asymmetry of information between businesses and consumers and professionals, each one of whom has perfect information about the quality of its performance of the assigned tasks. The association of the registration in question to the reserved activities leads to a monopoly (formed by the individuals registered in the Professional Association of Technical Engineers) on the practice of the profession of technical engineer. Reserved activities also restrict the supply of professional services in the market, which negatively affects	We recommend that: (i) tasks reserved for particular technical professions (i. e. architects, engineers or technical engineers), (ii) tasks reserved for specific specialisations within a profession (e. g. civil engineers, environmental engineers), and (iii) tasks reserved for professionals with a certain minimum number of years of experience should be reviewed in order to open such acts to other professions from the same technical group, taking into consideration the aim to ensure the quality of the output provided rather than to limit those who can perform such tasks. We also recommend that the corresponding professional association foresees a special regime where other technical professionals can meet the qualifications required for the exercise of particular reserved tasks after a case-by case evaluation of their curricula. This should be based on objective

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
						competition. In fact, professionals not registered in the respective professional association or that do not have the additional requirements needed to perform a certain task are prevented from carrying out those activities. This leads to higher prices (in particular, through output restriction) and less diversity and innovation (including through the use of new techniques), with a negative impact on businesses and consumers, restricting the choices available to them. Moreover, it tends to lead to a worse match between the type of professional services offered and the type of services demanded, as some services demanded require a lesser degree of specialisation of the individuals who provide them. These effects are aggravated by the (additional) restrictions on entry into a certain profession.	and transparent criteria (such as previous experience and additional training).
3	Law 47/2011 (last modification by Law 157/2015) "Bylaws of the Professional Association of Technical Engineers"	Annex - Art. 6 (3)	Reserved activities	Certain activities related to specific operations and works can only be carried out by specific professionals and, in particular, by specific technical engineers.	The policy objective of the provision seems to be to ensure a high level of safety of the operations and works and, within that scope, to ensure the technical suitability of the individuals to perform the tasks assigned to them.	Reserved activities restrict the supply of professional services in the market, which negatively affects competition. In fact, professionals not registered in the respective professional association or that do not have the additional requirements needed to perform a certain task are prevented from carrying out those activities. This leads to higher prices (in particular, through output restriction) and less diversity and innovation (including through the use of new techniques), with a negative impact on businesses and consumers, restricting the choices available to them. Moreover, it tends to lead to a worse match between the type of professional services offered and the type of services demanded, as some services demanded require a lesser degree of specialisation of the individuals who provide them. These effects are aggravated by (additional) restrictions on entry into a certain profession.	We recommend that: (i) tasks reserved for particular technical professions (i. e. technical engineers), (ii) tasks reserved for specific specialisations within a profession (e. g. civil engineers, environmental engineers), and (iii) tasks reserved for professionals with a certain minimum number of years of experience should be reviewed in order to open such acts to other professions from the same technical group, taking into consideration the aim to ensure the quality of the output provided rather than to limit those who can perform such tasks. We also recommend that the corresponding professional association foresees a special regime where other technical professionals can meet the qualifications required for the exercise of particular reserved tasks after a case-by case evaluation of their curricula. This should be based on objective and transparent criteria (such as previous experience and additional training).
4	Law 47/2011 (last modification by Law 157/2015) "Bylaws of the Professional Association of Technical Engineers"	Annex - Art. 10 (6)	Management of professional firms	Members of the executive body of the professional firms of Technical Engineers, regardless of their capacity as members of that professional association, shall respect the ethical principles and rules, the technical and scientific independence and the guarantees applicable to technical engineers foreseen in laws and regulations.	The policy objective of the provision seems to be to prevent conflicts of interest between the different professional firms on behalf of which a certain professional carries out an activity.	The provision prevents individuals other than technical engineers from managing professional firms of technical engineers. Hence, the provision may make businesses incur unnecessary costs. In fact: (i) the managers of professional firms of technical engineers as defined in the provision differ from the respective managers foreseen in Law 2/2013 (Art. 27 (3) (b)) and in Directive 2008/57/EC (Art. 13 (4) (first sentence)) (only one of the executive managers or administrators of professional firms has to be registered in the respective professional association); and (ii) the provision prevents individuals with business knowledge from participating in the decision-making process of professional firms of technical engineers and, as such, may prevent decisions by them that are duly weighed and based on all relevant information.	We recommend that a separation between ownership and management be allowed in all professional firms and that their management may include non-professionals.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
5	Law 47/2011 (last modification by Law 157/2015) "Bylaws of the Professional Association of Technical Engineers"	Annex - Art. 10 (7)	Multidisciplinary activity in professional firms	Professional firms of technical engineers can carry out activities other than the activity of technical engineer as long as they are not incompatible with that activity and for which the bylaws of the Professional Association of Technical Engineers do not foresee any impediment.	The policy objective of the provision seems to be to ensure actions by the professional firms that are consonant with the ethical principles applicable to the respective profession and independent.	The provision, in itself, does not prevent multidisciplinary activities in professional firms of technical engineers, given that it allows them to carry out activities other than the activity of technical engineer. However, incompatibilities and impediments related to the profession of technical engineer foreseen in regulations may lead to an incompatibility between certain activities and the activity of technical engineer and, consequently, may prevent professional firms of technical engineers from carrying out those activities. As a consequence, firms are unduly hindered from entering the market or operating in it. In fact, that situation leads to: (i) a reduction of the potential sources of revenue available to firms and, as such, a reduction of their potential to recover costs; and (ii) an increase in the costs incurred by firms, in particular through the limitation or prevention of their ability to exploit economies of scale and economies of scope. This leads to higher prices and less diversity and innovation (including through the use of new techniques) in the scope of the activity of technical engineer and, also, of the activities legally considered to be incompatible with it, with a negative impact on businesses and consumers, restricting the choices available to them. Moreover, it tends to lead to a worse match between the type of professional services offered by professional firms of technical engineers and the type of services demanded from them. In fact, some businesses and consumers prefer to have only one service provider than to have several (each one of which is providing services in the scope of a specific profession).	No recommendation on the legal principle foreseen in this specific provision. However, we recommend that the legislator conducts a technical study to assess the proportionality of incompatibilities and impediments to pursue the exercise of a self-regulated profession that may be preventing the offer of multidisciplinary activities within the same professional firm, taking into consideration the policy objective. In case they are considered not to be proportional, they should be abolished.
6	Law 47/2011 (last modification by Law 157/2015) "Bylaws of the Professional Association of Technical Engineers"	Annex - Art. 10 (9)	Partnership and ownership of professional firms	The majority of capital with voting rights of professional firms of technical engineers shall be held by: (i) technical engineers established in Portugal; (ii) professional firms of technical engineers; or (iii) certain associations of professionals equivalent to those of technical engineers established in a country from the EU or the EEA other than Portugal.	The policy objective of the provision seems to be to ensure actions by the professional firms that are consonant with the ethical principles applicable to the respective profession and independent.	The provision prevents individuals other than technical engineers from owning professional firms of technical engineers or holding the majority of those firms' capital and voting rights. Hence, the provision may make businesses incur unnecessary costs. In fact, the provision: (i) reduces the sources of investment available to professional firms of technical engineers and, consequently, unduly hinders them from entering the market or operating in it; and (ii) prevents entities with business knowledge from participating in the decision-making process of professional firms of technical engineers and, as such, may prevent decisions by them that are duly weighed and based on all relevant information.	Ownership/partnership of all professional firms should be opened to other professionals and non-professionals. We also recommend that other professionals and non-professionals be allowed to hold a majority of a professional firm's social capital, together with a majority of voting rights.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
7	Law 47/2011 (last modification by Law 157/2015) "Bylaws of the Professional Association of Technical Engineers"	Annex - Art. 11 (1) and Art. 11 (2)	Partnership and ownership of professional firms	Associations of professionals equivalent to technical engineers established in a country from the EU or the EEA other than Portugal whose respective permanent representation in Portugal is registered in the Professional Association of Technical Engineers shall have the majority of capital with voting rights or, in cases in which those associations do not have social capital, voting rights held by: (i) professionals equivalent to the profession of technical engineers; or (ii) associations of professionals equivalent to the profession of technical engineers whose majority of capital and voting rights is held by those professionals.	The policy objective of the provision seems to be to ensure actions by the professional firms that are consonant with the ethical principles applicable to the respective profession and independent.	The provision prevents some associations of professionals equivalent to technical engineers established in a country from the EU or the EEA other than Portugal from entering the market and, consequently, reduces the supply of professional services available to businesses and consumers. This leads to higher prices (in particular, through output restriction) and less diversity and innovation (including through the use of new techniques), with a negative impact on businesses and consumers, restricting the choices available to them.	Associations of professionals equivalent to technical engineers established in a country from the EU or the EEA other than Portugal should not be prevented from entering the market merely because the majority of social capital or voting power is not held by specific individuals or entities.
8	Law 47/2011 (last modification by Law 157/2015) "Bylaws of the Professional Association of Technical Engineers"	Annex - Art. 26 (1) and Art. 26 (2)	Professional internship	The examination necessary for concluding professional internships in the scope of the granting of the professional title of technical engineer shall be carried out by the supervisor of the respective internship and approved by the national governing board of the Professional Association of Technical Engineers.	The policy objective of the provision is to ensure a high level of safety of the services provided by professionals and, within that scope, to ensure adequate ability of those individuals to apply knowledge in order to perform the tasks assigned to them.	The evaluation of the internship undertaken by individuals who want to register in the Professional Association of Technical Engineers is controlled by technical engineers. Therefore, the provision allows conflicts of interest inherent in situations in which technical engineers are, simultaneously, supply-side economic agents and entities responsible for determining the maximum number of professionals entering the market.	The final evaluation of the internship should be conducted by a board, independent of the professional association (see our comments in section 3 on a supervisory board), which may include members of the latter, but must also include professionals such as university professors and other people of recognised merit.
9	Law 47/2011 (last modification by Law 157/2015) "Bylaws of the Professional Association of Technical Engineers"	Annex - Art. 27 (2)	Academic qualifications	Individuals registered in the Professional Association of Technical Engineers as a full member shall have, at least, a bachelor's degree or a university degree in engineering conforming to the Bologna Process.	The policy objective of the provision seems to be to ensure a high level of safety of the operations and works and, within that scope, to ensure the technical suitability of the individuals to perform the tasks assigned to them.	The provision limits the academic qualifications necessary for practising the profession of technical engineer and the acceptable routes to obtain them. Hence, the provision may make professionals incur unnecessary costs. In fact, the provision prevents individuals who have an academic background other than a bachelor's degree or a university degree (that conforms with the Bologna Process) in Engineering which ensures their technical suitability for performing the tasks assigned to them from becoming technical engineers in Portugal and, consequently, reduces the supply of those professionals available to businesses and consumers. This leads to higher prices (in particular, through output restriction) and less diversity and innovation (including through the use of new techniques), with a negative impact on businesses and consumers, restricting the choices available to them. These effects are aggravated by the (additional) restrictions on entry into a certain profession.	The technical professional associations should work with the legislator to set a transparent, proportional and non-discriminatory process for identification of alternative routes to obtain the strictly necessary or adequate qualifications for the exercise of a technical profession. The specific technical profession should be open to professionals with different academic backgrounds. These alternative routes would promote vertical conversions (e. g. migration from an engineering university background to an architecture degree) and would be applied through a conversion course or postgraduate studies. Those candidates should undergo the same on-the-job training or professional exams as others. These alternative routes would also apply to engineers and technical engineers for horizontal

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
							conversions (in the case of migration among different engineers' specialisations and different technical engineers).
10	Law 47/2011 (last modification by Law 157/2015) "Bylaws of the Professional Association of Technical Engineers"	Annex - Art. 30	Professional titles and reserved activities	The professional titles of Senior Technical Engineer and of Specialist Technical Engineer can only be granted to specific technical engineers.	The policy objective of the provision seems to be to ensure a high level of safety of the operations and works and, within that scope, to ensure the technical suitability of the individuals to perform the tasks assigned to them.	The granting of the specific professional titles of technical engineer as defined in the provision reduces the supply of technical engineers that can perform certain tasks in the market and, as such, negatively affects competition. In fact, the provision prevents some individuals that comply with the minimum educational and training qualifications necessary for performing certain tasks in the scope of the profession of technical engineer from carrying out those tasks in Portugal. However, those professional titles are expected to significantly reduce the asymmetry of information between businesses and consumers and professionals, each one of whom has perfect information about the quality of its performance of the assigned tasks. The association of the professional titles in question to the reserved activities leads to a monopoly (formed by the individuals holding a certain professional title of technical engineer) on the performance of certain tasks in the scope of the profession of technical engineer. Reserved activities also restrict the supply of professional services in the market, which negatively affects competition. In fact, professionals not registered in the respective professional association or that do not have the additional requirements needed to perform a certain task are prevented from carrying out those activities. This leads to higher prices (in particular, through output restriction) and less diversity and innovation (including through the use of new techniques), with a negative impact on businesses and consumers, restricting the choices available to them. Moreover, it tends to lead to a worse match between the type of professional services offered and the type of services demanded, as some services demanded require a lesser degree of specialisation of the individuals who provide them. These effects are aggravated by the (additional) restrictions on entry into a certain profession.	We recommend that: (i) tasks reserved for particular technical professions (i. e. architects, engineers or technical engineers), (ii) tasks reserved for specific specialisations within a profession (e. g. civil engineers, environmental engineers), and (iii) tasks reserved for professionals with a certain minimum number of years of experience should be reviewed in order to open such acts to other professions from the same technical group, taking into consideration the aim to ensure the quality of the output provided rather than to limit those who can perform such tasks. We also recommend that the corresponding professional association foresees a special regime where other technical professionals can meet the qualifications required for the exercise of particular reserved tasks after a case-by case evaluation of their curricula. This should be based on objective and transparent criteria (such as previous experience and additional training).
11	Law 47/2011 (last modification by Law 157/2015) "Bylaws of the Professional Association of Technical Engineers"	Annex - Art. 81 (d)	Ethical principles	Technical engineers should not accept to replace other technical engineers in the carrying out of works without informing them in advance.	The policy objective of the provision is not clear.	The provision determines the need for technical engineers who will replace other technical engineers in the carrying out of works to inform them of that in advance. Therefore, the provision increases operational uncertainty for professionals and may make them incur unnecessary costs. In fact, the provision allows the professionals who are carrying out works to be aware of their consumers' intentions of changing their suppliers and, as a result, places them at a competitive advantage.	The provision should be abolished.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
12	Law 47/2011 (last modification by Law 157/2015) "Bylaws of the Professional Association of Technical Engineers"	Annex - Art. 79 (d)	Ethical principles	Technical engineers must set a remuneration which is adequate to the services provided.	The policy objective of the provision seems to be to ensure universality of access to professional services while guaranteeing the economic sustainability of the operation of the professionals.	The lack of clear and specific language for the rules and principles to be followed by technical engineers and to be monitored by the Professional Association of Technical Engineers allows these entities to be more arbitrary in their decisions. This makes it more difficult for potential and existing professionals to obtain accurate and timely information concerning the relevant operational context. It also creates regulatory uncertainty for those individuals and may lead to an unsubstantiated and, consequently, avoidable increase in the costs they incur. In fact, such a situation: (i) allows the Professional Association of Technical Engineers to act differently in analogous circumstances, allowing it to apply dissimilar conditions to equivalent situations, potentially placing some professionals at a competitive disadvantage; and (ii) results in a reduction in the necessary and adequate information available to professionals to decide and, in particular, to develop their business plans.	The provision should be amended in such a way as to use as much clear and specific language as possible. Moreover, the provision should be expressly revoked, if it has been superseded in its substance by more recent legislation, has lost its usefulness or has become obsolete as a result of technological developments.
13	Regulation 35/2017 "Rules, conditions, principles and procedures applicable in the scope of the internship to be undertaken by individuals who want to register in the Professional Association of Technical Engineers"	Art. 16 (1)	Professional internship	Applicants for the professional title of Technical Engineer shall have successfully completed a professional traineeship which shall last, at most: (i) 18 months in cases in which the individuals have a bachelor's degree or a university degree conforming with the Bologna Process in engineering; and (ii) six months in cases in which the individuals have a university degree prior to the Bologna Process or a university master's degree in engineering.	The policy objective of the provision is to ensure a high level of safety of the services provided by professionals and, within that scope, to ensure adequate ability of those individuals to apply knowledge in order to perform the tasks assigned to them.	The provision determines the need for technical engineers to carry out a professional internship and, thus, it may increase costs for professionals. However, the work-based practical experience gained by applicants for professional titles throughout a professional internship is expected to have a direct and significant positive impact on the level of safety of the services provided by those professionals. In fact, one of the main variables that influence the level of safety of the services provided by professionals is their fulfilment of the minimum necessary knowledge requirements for practising the respective profession and, intrinsically, their ability to apply this knowledge. Additionally, the maximum duration of the professional internships defined in the provision conforms with the respective duration foreseen in Law 2/2013 (Art. 8 (2) (a)) (18 months).	No recommendation.
14	Regulation 889/2016 "Rules, conditions, principles and procedures applicable in the scope of admission of individuals in the experts pool of technical engineers"	Art. 4	Reserved activities	The registration of individuals in the experts pool of technical engineers can only be carried out by specific technical engineers.	The policy objective of the provision seems to be to ensure a high level of safety of the operations and works and, within that scope, to ensure the technical suitability of the individuals to perform the tasks assigned to them.	Reserved activities restrict the supply of professional services in the market, which negatively affects competition. In fact, professionals not registered in the respective professional association or that do not have the additional requirements needed to perform a certain task are prevented from carrying out those activities. This leads to higher prices (in particular, through output restriction) and less diversity and innovation (including through the use of new techniques), with a negative impact on businesses and consumers, restricting the choices available to them. Moreover, it tends to lead to a worse match between the type of professional services offered and the type of services demanded, as some services demanded require a lesser degree of specialisation of the individuals who provide them. These effects are aggravated by (additional) restrictions on entry into a certain profession.	We recommend that: (i) tasks reserved for particular technical professions (i. e. architects, engineers or technical engineers), (ii) tasks reserved for specific specialisations within a profession (e. g. civil engineers, environmental engineers), and (iii) tasks reserved for professionals with a certain minimum number of years of experience should be reviewed in order to open such acts to other professions from the same technical group, taking into consideration the aim to ensure the quality of the output provided rather than to limit those who can perform such tasks. We also recommend that the corresponding professional association foresees a special regime where other technical professionals can meet the

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
							qualifications required for the exercise of particular reserved tasks after a case-by case evaluation of their curricula. This should be based on objective and transparent criteria (such as previous experience and additional training).
15	Regulation 889/2016 "Rules, conditions, principles and procedures applicable in the scope of admission of individuals in the experts pool of technical engineers"	Art. 9	Professional experts	The national governing board of the Professional Association of Technical Engineers shall nominate expert technical engineers, upon request, preferably taking into consideration criteria related to proximity between: (i) the place of residence or of professional activity of the expert; and (ii) the place of headquarters of the entity which requested the experts or the place of performance of tasks by them.	The policy objective of the provision seems to be to ensure suitability of professional services for the needs of businesses and consumers.	The entity which seeks expert technical engineers to carry out a specific activity is the only entity with perfect information about the variables that influence its decision, which may or may not include the place of residence or of professional activity of the experts. Consequently, the choice of those experts will tend to correspond to the best match between the type of professional services offered and the type of services demanded in cases in which it is made by the entity in question. In those cases, that entity will be able to assess the suitability of each available expert for the activity to be carried out and to negotiate the terms (in particular, the financial conditions) of provision of the services. Additionally, the governing board of the Professional Association of Technical Engineers is made up entirely of those technical engineers. Therefore, the (total or partial) limitation of the above-mentioned choice by the Professional Association in question allows conflicts of interest inherent in situations in which some technical engineers are, simultaneously, regulators and service providers. The occurrence of these situations is aggravated by the (additional) lack of regulations establishing the criteria that the Professional Association of Technical Engineers needs to fulfil when selecting the expert technical engineers suitable for a specific activity (in particular, criteria related to non-discrimination and uniformity).	The provision should be amended in such a way so as to determine that the answer to a request for nomination of expert technical engineers to carry out specific activities shall consist of an exhaustive list of individuals registered in the relevant professional areas of the experts' pool of technical engineers. That list should include, at least, the following information concerning each individual: (i) professional areas of the experts pool of technical engineers in which the individual is registered; (ii) place of residence; and (iii) place of professional activity.
16	Regulation 888/2016 "Code of ethics applicable to technical engineers"	Art. 3 (g)	Ethical principles	Technical engineers must use sobriety in their professional advertisements.	The policy objective of the provision seems to be to ensure suitability of professional services for the needs of businesses and consumers.	The lack of clear and specific language for the rules and principles to be followed by technical engineers and to be monitored by the Professional Association of Technical Engineers allows these entities to be more arbitrary in their decisions. This makes it more difficult for potential and existing professionals to obtain accurate and timely information concerning the relevant operational context. It also creates regulatory uncertainty for those individuals and may lead to an unsubstantiated and, consequently, avoidable increase in the costs they incur. In fact, such a situation: (i) allows the Professional Association of Technical Engineers to act differently in analogous circumstances, allowing it to apply dissimilar conditions to equivalent situations, potentially placing some professionals at a competitive disadvantage; and (ii) results in a reduction in the necessary and adequate information available to professionals to decide and, in particular, to develop their business plans.	The provision should be amended in such a way as to use as much clear and specific language as possible. Moreover, the provision should be expressly revoked, if it has been superseded in its substance by more recent legislation, has lost its usefulness or has become obsolete as a result of technological developments.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
17	Regulation 888/2016 "Code of ethics applicable to technical engineers"	Art. 8 (f)	Ethical principles	Technical engineers should not accept to review, change or continue works carried out by other technical engineers without informing them of that in advance.	The policy objective of the provision is not clear.	The provision determines the need for technical engineers who will replace other technical engineers in carrying out works to inform them of that in advance. Therefore, the provision increases operational uncertainty for professionals and may make them incur unnecessary costs. In fact, the provision allows the professionals who are carrying out works to be aware of their consumers' intentions of changing their suppliers and, as a result, places them at a competitive advantage.	The provision should be abolished.
18	Regulation 888/2016 "Code of ethics applicable to technical engineers"	Art. 9 (d)	Ethical principles	Technical engineers should not accept to perform activities that compete with the activities performed by their employers without their prior agreement.	The policy objective of the provision seems to be to prevent conflicts of interest between the professionals who carry out an activity as employees of enterprises and, also, on their own account and as employers.	The provision, in fact, prevents conflicts of interest inherent in situations in which technical engineers are, simultaneously, supply-side economic agents and employees of other supply-side economic agents. However, that objective can also be achieved by merely including in the work contracts a clause precluding the professionals from performing activities that compete with the activities performed by their employers without their prior agreement. Consequently, the provision increases the administrative burden of professionals and may make them incur unnecessary costs. In fact, the provision requires professionals to make a request which might not be wanted by their employers.	The provision should be abolished.
19	Regulation 888/2016 "Code of ethics applicable to technical engineers"	Art. 13 (b)	Ethical principles	Technical engineers should be remunerated only for services that they have effectively provided and in proportion to their fair value, not distributing fees among themselves and other technical engineers.	The policy objective of the provision seems to be to ensure universality of access to professional services while guaranteeing the economic sustainability of the operation of the professionals.	The lack of clear and specific language for the rules and principles to be followed by technical engineers and to be monitored by the Professional Association of Technical Engineers allows these entities to be more arbitrary in their decisions. This makes it more difficult for potential and existing professionals to obtain accurate and timely information concerning the relevant operational context. It also creates regulatory uncertainty for those individuals and may lead to an unsubstantiated and, consequently, avoidable increase in the costs they incur. In fact, such a situation: (i) allows the Professional Association of Technical Engineers to act differently in analogous circumstances, allowing it to apply dissimilar conditions to equivalent situations, potentially placing some professionals at a competitive disadvantage; and (ii) results in a reduction in the necessary and adequate information available to professionals to decide and, in particular, to develop their business plans.	The provision should be amended in such a way as to use as much clear and specific language as possible. Moreover, the provision should be expressly revoked, if it has been superseded in its substance by more recent legislation, has lost its usefulness or has become obsolete as a result of technological developments.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
20	Regulation 360/2012 (last modification by Regulation 496/2016) "Rules, conditions, principles and procedures applicable in the scope of granting of the professional title of specialist technical engineer"	All	Professional titles and reserved activities	The professional title of Specialist Technical Engineer can only be granted to specific technical engineers.	The policy objective of the provision seems to be to ensure a high level of safety of the operations and works and, within that scope, to ensure the technical suitability of the individuals to perform the tasks assigned to them.	The granting of the specific professional title of technical engineer defined in the provision reduces the supply of technical engineers that can perform certain tasks in the market and, as such, negatively affects competition. In fact, the provision prevents some individuals who comply with the minimum educational and training qualifications necessary for performing certain tasks in the scope of the profession of technical engineer from carrying out those tasks in Portugal. However, that professional title is expected to significantly reduce the asymmetry of information between businesses and consumers and professionals, each one of whom has perfect information about the quality of its performance of the assigned tasks. The association of the professional title in question to the reserved activities leads to a monopoly (formed by the individuals holding a certain professional title of technical engineer) on the performance of certain tasks in the scope of the profession of technical engineer. Reserved activities also restrict the supply of professional services in the market, which negatively affects competition. In fact, professionals not registered in the respective professional association or that do not have the additional requirements needed to perform a certain task are prevented from carrying out those activities. This leads to higher prices (in particular, through output restriction) and less diversity and innovation (including through the use of new techniques), with a negative impact on businesses and consumers, restricting the available choices. Moreover, it tends to lead to a worse match between the type of professional services offered and the type of services demanded, as some services demanded require a lesser degree of specialisation of the individuals who provide them. These effects are aggravated by the (additional) restrictions on entry into a certain profession.	We recommend that: (i) tasks reserved for particular technical professions (i. e. architects, engineers or technical engineers), (ii) tasks reserved for specific specialisations within a profession (e. g. civil engineers, environmental engineers), and (iii) tasks reserved for professionals with a certain minimum number of years of experience should be reviewed in order to open such acts to other professions from the same technical group, taking into consideration the aim to ensure the quality of the output provided rather than to limit those who can perform such tasks. We also recommend that the corresponding professional association foresees a special regime where other technical professionals can meet the qualifications required for the exercise of particular reserved tasks after a case-by case evaluation of their curricula. This should be based on objective and transparent criteria (such as previous experience and additional training).
21	Regulation 359/2012 (last modification by Regulation 497/2016) "Rules, conditions, principles and procedures applicable in the scope of granting of the professional title of senior technical engineer"	All	Professional titles and reserved activities	The professional title of Senior Technical Engineer can only be granted to specific technical engineers.	The policy objective of the provision seems to be to ensure a high level of safety of the operations and works and, within that scope, to ensure the technical suitability of the individuals to perform the tasks assigned to them.	The granting of the specific professional title of technical engineer defined in the provision reduces the supply of technical engineers that can perform certain tasks in the market and, as such, negatively affects competition. In fact, the provision prevents some individuals who comply with the minimum educational and training qualifications necessary for performing certain tasks in the scope of the profession of technical engineer from carrying out those tasks in Portugal. However, that professional title is expected to significantly reduce the asymmetry of information between businesses and consumers and professionals, each one of whom has perfect information about the quality of its performance of the assigned tasks. The association of the professional title in question to the reserved activities leads to a monopoly (formed by the individuals holding	We recommend that: (i) tasks reserved for particular technical professions (i. e. architects, engineers or technical engineers), (ii) tasks reserved for specific specialisations within a profession (e. g. civil engineers, environmental engineers), and (iii) tasks reserved for professionals with a certain minimum number of years of experience should be reviewed in order to open such acts to other professions from the same technical group, taking into consideration the aim to ensure the quality of the output provided rather than to limit those who can perform such tasks. We also recommend that the corresponding professional association foresees a special regime where other technical professionals can meet the

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
						a certain professional title of technical engineer) on the performance of certain tasks in the scope of the profession of technical engineer. Reserved activities also restrict the supply of professional services in the market, which negatively affects competition. In fact, professionals not registered in the respective professional association or that do not have the additional requirements needed to perform a certain task are prevented from carrying out those activities. This leads to higher prices (in particular, through output restriction) and less diversity and innovation (including through the use of new techniques), with a negative impact on businesses and consumers, restricting the choices available to them. Moreover, it tends to lead to a worse match between the type of professional services offered and the type of services demanded, as some services demanded require a lesser degree of specialisation of the individuals who provide them. These effects are aggravated by the (additional) restrictions on entry in a certain profession.	qualifications required for the exercise of particular reserved tasks after a case-by case evaluation of their curricula. This should be based on objective and transparent criteria (such as previous experience and additional training).
22	Decision 8/2017 ("Table of fees charged by the Professional Association of Technical Engineers in 2017")	Art. 2 (1), Art. 2 (2), Art. 3 (2) and Art. 3 (3)	Professional internship	The fee charged by the Professional Association of Technical Engineers for the enrolment of applicants for the professional title of Technical Engineer in the professional internship is:(i) EUR 25 in cases in which the individuals enrol before finishing their degree and the internship begins within six months of the date of finishing their degree; and(ii) EUR 150 in cases in which the individuals enrol after finishing their degree or the internship begins within a period that exceeds six months from the date of finishing their degree.	The policy objective of the provision seems to be the economic sustainability of the operation of the Professional Association of Technical Engineers.	A fee in favour of a public entity is the value due for the provision of a specific public service, for the use of a property in the public domain or for the removal of a legal obstacle to the behaviour of private entities (General Tax Law (Art. 4 (2)), approved by Decree-Law 398/98). Administrative fees lead to an increase in the costs incurred by the economic agents, potentially leading to higher prices. Therefore, they might prevent agents from entering the market or they might make it significantly more difficult for them to operate in it. The administrative bodies and agents should act, in the exercise of their functions, so as to respect the principle of proportionality (Constitution of the Portuguese Republic (CRP) (Art. 266 (2)), approved by Decree of 10 April 1976), that also applies to administrative fees. As such, those fees should be correlated with the costs incurred with the provision of the underlying services (and, consequently, should not be a means for the administrative bodies and agents to collect revenues), should be based on transparent methodology and should not be discriminatory. However, there is no publicly available information concerning the specific criteria that were used to calculate the administrative fee established in the provision and it was not possible to identify an economic rationale for that fee. Therefore, the provision may make individuals who want to be technical engineers incur unnecessary costs. In fact, the provision requires them to pay more for the professional internship and, consequently, may reduce the supply of technical engineers available to businesses and consumers.	The fee established in the provision should be calculated using transparent, non-discriminatory and cost-based criteria.

Financial and economic professions: Auditors

Table A B.9. Financial and economic professions: Auditors

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
1	Law 140/2015 "Bylaws of the Professional Association of Auditors"	Art. 6	Self-regulating regime	This provision describes the attributions and competences given to the public professional association, allowing it to have control over access and exercise of the self-regulated profession, including on i) the elaboration and implementation of technical rules, ii) definition of ethical principles, iii) criteria for internships, iv) definition of academic qualifications, v) recognition of professional qualifications obtained outside the national territory, vi) attribution of the exclusive right to grant professional titles, vii) determination of reserved activities and viii) exercise of disciplinary powers.	It is our understanding that this provision aims to ensure the exercise of the regulatory function, including the disciplinary function, as well as the representative function, taking into account the interests of users of the professional services, by one and the same single entity, the professional association. In the Portuguese Constitution the autonomy and administrative decentralisation to the professional associations is recognised to ensure the defence of public interest and the fundamental rights of citizens, and also to guarantee the self-regulation of the professions that require technical independence. This regulatory model is based on the public interest of these professions, through the designation of state powers to those entities and with two main characteristics: the exclusivity on granting the professional title and the obligation of being registered within the professional association to practice the profession, which qualifies the nature of the regulation as being mandatory and unitary.	The harm to competition arising from the regulatory model established by Law 2/2013 stems from the centralisation in a single entity of the powers to regulate and represent the profession. Because each professional association, apart from representing the profession, controls access to it and its exercise, the regulations issued may create disproportional and anti-competitive restrictions. The freedom to choose and exercise a profession is a fundamental right of the citizen. Also, the freedom of movement of workers and free establishment to provide services are fundamental principles of the EU internal market. Restrictions to these principles, in the pursuit of the public interest, must be well justified and proportional. When a professional association acquires full responsibility to regulate access to the profession and its exercise as well as the conduct of its members, this may have an anti-competitive impact. In fact, professional associations may adopt rules that reduce incentives or opportunities for stronger competition between operators, such as restrictions on i) the elaboration and implementation of technical rules, ii) definition of ethical principles, iii) criteria for internships, iv) definition of academic qualifications v) recognition of professional qualifications obtained outside the national territory (even if bounded by the criteria set by Directive 2005/36/EC amended by Directive 2013/55/EC, transposed by Law 9/2009 and Law 26/2017), vi) attribution of the exclusive right to grant professional titles, vii) determination of reserved activities and viii) exercise of disciplinary powers. As the governing bodies of public professional associations are exclusively composed of their members, there is a risk that their members' interests will not coincide with the public interest. This is one significant reason for including within at least some governing bodies of a professional association, lay people representing the interests of relevant social groups, such as consumer associations, other professionals, and high-profile people with experience in regulatory issues.	We recommend that the regulatory function should be separated from the representative function for self-regulated professional associations, either through the creation of an over-arching supervisory body by sector or trade, or through the creation of a supervisory body inside the current professional orders with the necessary "Chinese walls". The supervisory body takes on the main regulation of the profession such as access to the profession and similar functions. The board of the regulatory body will include not only representative of the profession but also lay people, including high-profile experienced individuals from other regulators, representatives of consumer organisations and academia.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
2	Law 140/2015 "Bylaws of the Professional Association of Auditors"	Art. 9	Mandatory registration / Protected professional title / Reserved activities	Only those registered in the professional association can use the professional title of auditors or of firms of auditors and exercise the profession.	Registration is a mechanism to organise professionals with the capacity to exercise the activity and also to validate those professionals before consumers. The objective criteria are to regulate access to and the exercise of the profession. Registration may be justified on grounds of legal certainty, so consumers are informed that the professionals are certified to provide those services. The professional association acts as being endowed with public powers transferred by the state to this function. The professional association's exclusive power to attribute the professional title was adopted in Framework Law 2/2013, which established a self-regulatory model for several professions. Registration and the use of the title enable consumers to be assured that the professionals are certified to provide those services.	Mandatory registration in a professional association in order to exercise the profession implies an administrative procedure/burden that results in entry costs (e.g., time frame of the procedure itself, registration fees and monthly fees, amongst others). Using mandatory registration as a mechanism to access the profession can be restrictive. The possibility of extending the obligation of registration to non-nationals providing services in the national territory and to all those who practice acts of the profession on a permanent basis can be exempted if they are already registered in a mandatory regime of public registration. Hence, the registration, if needed, is not necessarily harmful in itself, except when it is combined with the establishment of reserved work. For the exercise of the reserved work of auditors, it also follows the protection of the title. Protected title with reserved work may exclude other professionals from the exercise of the activity, reducing the number of suppliers in the market and increasing costs to consumers. In general, reserved activities or tasks should be abolished in cases where: (i) the protection is disproportionate to the policy objective because the tasks may already be performed by other well-qualified professionals or are not a danger to public safety; (ii) there is strong and well-regulated protection of the professional title which guarantees the quality of the professionals that are allowed to work; or (iii) the restriction is no longer required owing to legal, societal or professional developments that make the restriction obsolete by its objective.	There is no recommendation regarding the mandatory registration in the professional association. However, the professional title combined with reserved activities is harmful and we recommend that the provisions should be revised as a whole with a view to reduce or lift reserved activities.
3	Law 140/2015 "Bylaws of the Professional Association of Auditors"	Art. 49(3)	Limit in years of activity	When working under a contract with another individual auditor or with an auditing firm, an auditor can only exercise without exclusivity his/her activity as a dependent worker for a maximum period of 3 years.	This rule aims to guarantee the quality of service, transparency, stability and quality control of auditing firms. This rule is related to Art. 91 para. 1 of the bylaws, which establishes an exclusivity principle on the exercise of the activity (although not mandatory). It is stated in the recital of the Bill 292/XII (approved as Law 140/2015), that the contractual limitations of this profession are justified by the high standards of independence.	This regulation has a negative impact on the mobility of professionals between jobs or employers, as it prevents them from reacting quickly to market opportunities. After three years of the initial contract, the professional is obliged to practice this activity with exclusivity, which can lead to a lower incentive to innovate and less opportunity to compete with others. This may outweigh eventual positive effects gained from exclusivity, such as a stronger incentive by the employer to invest in the acquisition of human capital by the employee. Moreover, there was no justification presented on the need to change the non-exclusivity status after 3 years.	We recommend that the legislator conducts a technical study to assess the proportionality of limitations to the non-exclusivity exercise of the auditors profession taking into consideration the policy objective as well as the EU Directive of (Auditing) 2006/43/EC (amended by EU Directive 2014/56/EC) and the EU Regulation (of Auditing) 537/2014.
4	Law 140/2015 "Bylaws of the Professional Association of Auditors"	Art. 55(1)(2)	Information sharing	Clients must inform the Professional Association of Auditors about the details of the contract they sign with an auditor or an auditing firm, whenever the activity to be audited pursues a public interest as	The policy objective underlying this provision is considered by several stakeholders to ensure that the Professional Association of Auditors can access information that is relevant	The provision determines the need for clients to regularly send operational information concerning the auditors they hire to the Professional Association of Auditors. Such information is, by nature, sensitive (as far as its underlying operational relevancy is concerned) and, consequently, it tends to be	The requirement for clients to regularly send operational information to the Professional Association of Auditors should be abolished. Furthermore, the bylaws should be amended to include a

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
				defined by law: the name of the auditing firm or professional, nature and duration of the service provided.	for the monitoring of the legal obligations of auditors.	considered by economic agents as confidential, given that it contains business secrets. However, the members of the bodies of the Professional Association of Auditors are, essentially, members of that professional association and, as such, auditors. Those auditors compete (not only with each other, but also and most importantly) with the other auditors, who are not members of the bodies in question. Therefore, the provision places the auditors who are not members of the bodies of the Professional Association of Auditors at a competitive disadvantage. In fact, the provision allows the other auditors to have access to sensitive information about their competitors, who have significant incentives for (improperly) using that information to adjust their business decisions. Alternatively, the provision increases auditors' incentives to collude or to concert behaviours, instead of competing, given that it allows them to have access to a mechanism of exchange of operational information. As a result, the provision may lead to an avoidable increase in costs incurred by consumers of services provided by auditors. In fact, the provision potentially increases fees charged by auditors and reduces, quantitatively and qualitatively, the offers provided by those professionals. Nevertheless, the need for an entity to verify the auditors' compliance with their legal obligations is considered to be reasonable. Hence, the need for auditors to regularly send operational information, which is, by nature, sensitive and, therefore, confidential, to such entity is also considered to be reasonable.	provision requiring: i) that monitoring of the auditors' compliance with their legal obligations should be carried out by an independent, competent and impartial body not composed of licensed auditors; and ii) auditors shall provide to the independent body only that information which is strictly necessary for the purposes of monitoring compliance with the bylaws.
5	Law 140/2015 "Bylaws of the Professional Association of Auditors"	Art. 57	Information sharing	Auditors must inform the Professional Association of Auditors about the details of the contracts signed with their clients: (i) in the beginning and the end of all the contracts formalised in the scope of the fulfilment of their public interest mission, within 30 days from the respective event; and (ii) the professional activity that is carried out annually, including the identification of their clients, the characterisation of the activities of the clients, the listing of certifications of accounts issued and the fees charged and the period of time to which they concern.	The policy objective underlying this provision is considered by several stakeholders to ensure that the Professional Association of Auditors can access information that is relevant for the monitoring of the legal obligations of auditors.	The provision determines the need for auditors to regularly send operational information to the Professional Association of Auditors. Such information is, by nature, sensitive (as far as its underlying operational relevancy is concerned) and, consequently, it tends to be considered by economic agents as confidential, given that it contains business secrets. However, the members of the bodies of the Professional Association of Auditors are, essentially, members of that professional association and, as such, auditors. Those auditors compete (not only with each other, but also and most importantly) with the other auditors, who are not members of the bodies in question. Therefore, the provision places the auditors who are not members of the bodies of the Professional Association of Auditors at a competitive disadvantage. In fact, the provision allows the other auditors to have access to sensitive information about their competitors, who have significant incentives for (improperly) using that information to adjust their business decisions. Alternatively, the provision increases auditors' incentives to	The requirement for clients to regularly send operational information to the Professional Association of Auditors should be abolished. Furthermore, the bylaws should be amended to include a provision requiring: i) that monitoring of the auditors' compliance with their legal obligations should be carried out by an independent, competent and impartial body not composed of licensed auditors; and ii) auditors shall provide to the independent body only that information which is strictly necessary for the purposes of monitoring compliance with the bylaws.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
						collude or to concert behaviours, instead of competing, given that it allows them to have access to a mechanism of exchange of operational information. As a result, the provision may lead to an avoidable increase in costs incurred by consumers of services provided by auditors. In fact, the provision potentially increases fees charged by auditors and reduces, quantitatively and qualitatively, the offers provided by those professionals. Nevertheless, the need for an entity to verify the auditors' compliance with their legal obligations is considered to be reasonable. Hence, the need for auditors to regularly send operational information, which is, by nature, sensitive and, therefore, confidential, to such entity is also considered to be reasonable.	
6	Law 140/2015 "Bylaws of the Professional Association of Auditors"	Art. 62(1)	Transparency report	Auditors and auditing firms that provide services to public entities must present an annual transparency report, which must be published on their website within 3 months of the end of each financial exercise.	This provision intends to ensure control by the Professional Association of Auditors on the transparency and conflict of interests when auditors and auditing firms provide services to public entities.	The maximum period of time for auditors and firms of auditors to publish an annual transparency report defined in the Portuguese provision is shorter than the period in Regulation (EU) 537/2014, Art. 13, and in the legal framework concerning audit monitoring, for which the period is four months. The shortened period for the publication of an annual transparency report imposes costs on auditors and auditing firms, and may lead to uncertainty about the accuracy of these reports. It also leads to some uncertainty for firms operating across national borders which must comply with varying requirements, also imposing additional costs. Because of the difference in requirements it may be considered discriminatory. At the very least it increases the human and financial resources necessary for individuals and businesses to comply with regulation in Portugal as they have to act (one month) faster in order to guarantee that they comply with all the applicable regulations; this may be a disincentive for potential competitors to enter the market.	Change the period to four months, in accordance with Art. 13 of of European Regulation (EU) 537/2014.
7	Law 140/2015 "Bylaws of the Professional Association of Auditors"	Art. 89	Incompatibilities	Defines several specific incompatibilities to the exercise of the auditor profession.	It intends to guarantee the independence of the professional on the exercise of his/her activity.	Incompatibilities clauses are necessary to guarantee transparency, professional independence and professional ethical values. However, such provisions limits the activity of the professional, which can result in an increase in prices charged by the professionals.	We recommend that the legislator conducts a technical study to assess the proportionality of the auditors incompatibility regime taking into consideration the policy objective as well as the EU Directive of (Auditing) 2006/43/EC (amended by EU Directive 2014/56/EC) and the EU Regulation (of Auditing) 537/2014.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
8	Law 140/2015 "Bylaws of the Professional Association of Auditors"	Art. 91(2)	Exclusivity regime	The activity of auditing must as a general rule be exercised with exclusivity. If it is not, the following impediments apply: the impossibility of auditing public entities; the accumulation of services in relation to more than 10 companies/entities, or in companies that in total present indicators that exceed the quintuplets of 2 of the limits indicated in Art. 262 of the Companies Code (balance sheet total: EUR 1 500 000; total net sales and other income: EUR 3 000 000; number of employees employed on average during the year: 50).	According to the stakeholder consulted (a public entity), this provision intends to guarantee the quality of the professional service by ensuring that the auditor is available for the assigned work.	Incompatibilities clauses are necessary to guarantee transparency, professional independence and professional ethical values. However, such provisions limits the activity of the professional, which can result in an increase in prices charged by the professionals.	We recommend that the legislator conducts a technical study to assess the proportionality of limitations to the non-exclusivity exercise of the auditors profession taking into consideration the policy objective as well as the EU Directive of (Auditing) 2006/43/EC (amended by EU Directive 2014/56/EC) and the EU Regulation (of Auditing) 537/2014.
9	Law 140/2015 "Bylaws of the Professional Association of Auditors"	Art. 91(5)	Impediments	The auditors or partners in auditing firms that have served as administrators or directors of a public entity within the last four years, cannot provide auditing services to this same public entity.	This provision intends to guarantee the independence of professionals and to avoid a situation of self-review, although stakeholders were not able to justify the choice of the four-year period.	This provision limits the activity of professionals and their freedom of mobility between jobs or employers, as it prevents them from reacting quickly to market opportunities. This requirement can reduce the incentive to enter the market of auditing if better opportunities appear, reducing in this way the number of players.	We recommend that the legislator conducts a technical study to assess the proportionality of the auditors incompatibility regime taking into consideration the policy objective as well as the EU Directive of (Auditing) 2006/43/EC (amended by EU Directive 2014/56/EC) and the EU Regulation (of Auditing) 537/2014.
10	Law 140/2015 "Bylaws of the Professional Association of Auditors"	Art. 91(6)	Impediments	The auditor or the partners of an auditing firm that have provided auditing services to an entity of public interest are not allowed to sign labour contracts with those audited entities during his/her mandate as well as within three years after the mandate is over.	This provision intends to guarantee the independence of professionals and to avoid a situation of self-review, although the stakeholders were not able to justify the choice of the three-year period.	This provision limits the activity of professionals and their freedom of mobility between jobs or employers, as it prevents them from reacting quickly to market opportunities. This requirement can reduce the incentive to enter the market of auditing if better opportunities appear, reducing in this way the number of players. However, employment by audited entities of former statutory auditors or of employees of statutory auditors or audit firms is subject matter that is regulated by the EU Directive of Auditing 2006/43/EC (amended by EU Directive 2014/56/EC). Art. 22-A (1)(2) imposes only a prohibition that a statutory auditor or a key audit partner who carries out a statutory audit on behalf of an auditing firm does not, before a period of at least one year, or in the case of statutory audit of public-interest entities a period of at least two years, has elapsed since he or she ceased to act as a statutory auditor or key audit partner in connection with the audit engagement: "(a) take up a key management position in the audited entity; (b) where applicable, become a member of the audit committee of the audited entity or, where such committee does not exist, of the body performing equivalent functions to an audit committee; (c) become a non-executive member of the administrative body or a member of the supervisory body of	We recommend that the legislator conducts a technical study to assess the proportionality of the impediment to pursue the exercise of a self-regulated profession that may be limiting the activity of the professionals taking into consideration the policy objective, and take into consideration Art. 22-A (1) (2) of EU Directive 2006/43/EC (amended by EU Directive 2014/56/EC), considering limiting the period to a maximum of two years.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
11	Law 140/2015 "Bylaws of the Professional Association of Auditors"	Art. 117	Multidisciplinary activities of professional firms	Professional firms of auditors have as their sole corporate objective the delivery of the activities reserved for auditors, namely of those public interest functions (Art. 41 to Art. 47 of the bylaws). Auditors (and firms) are also allowed to perform ancillary functions to the sole corporate objective (Art. 48 of the bylaws - teaching; being members of audit committees and supervisory or oversight bodies; consultancy in matters related to their training and professional qualifications; insolvency administrators and liquidators; administrators or managers of companies owned by auditing firms).	This provision prohibits the establishment of multidisciplinary professional firms, except in the cases identified in article 48. These restrictions are grounded in the public interest, professionals' independence and client privilege.	<p>the audited entity". Member States shall ensure that employees and partners other than key audit partners of a statutory auditor or of an auditing firm carrying out a statutory audit, as well as any other natural person whose services are placed at the disposal or under the control of such a statutory auditor or auditing firm, do not, when such employees, partners or other natural persons are personally approved as statutory auditors, take up any of the duties referred to in points (a), (b) and (c) of paragraph 1 before a period of at least one year has elapsed since he or she was directly involved in the statutory audit engagement.</p> <p>To restrict multidisciplinary activity in a professional firm is to restrict the association of different professionals, belonging to different professional associations (some may not even belong to a public professional association), who would exercise their professional activities within the same firm and in the pursuit of the firm's corporate or social objective(s). In a professional firm, this restriction takes the form of a restriction on partnership – restricting, or banning altogether, non-professional partners. To rule out multidisciplinary activity in the same professional firm, between potentially complementary service providers, harms competition and can be detrimental to consumer welfare. In fact, this restriction does not allow for the full exploration of economies of scope that come with the offer of different services by a same "service delivery unit" that shares infrastructure and human capital. It foregoes specialisation gains and service quality gains resulting from the interaction between a wider range of professionals. This also means foregoing the exploitation of economies of scale and the advantages of branding. It also does not allow for the mitigation of the double marginalisation (or double mark-up) problem that come with multidisciplinary activities which can complement each other, by segmenting the services provided. This means foregoing lower average costs in a multi-product firm, therefore leading to higher fees being charged to clients, while preventing clients from further accruing benefits that could be gained from a more convenient "one-stop shop" for a wider range of professional services. Ruling out multidisciplinary activities within a professional firm can reduce the scope for better risk management between different professional activities within the same professional firm, as they may be subject to non-identical demand volatility or uncertainty - i.e., reduction in the scope for internal risk-spreading to be understood as the ability to transfer resources in response to fluctuations in demand. To</p>	We recommend that the prohibition of multidisciplinary practice in professional firms should be removed. The creation of such "alternative business structures" (ABS) will lead to more innovation, a broader range of services and easier access to services for businesses and consumers.

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						offer a wider range of professional services means to be better prepared to face market uncertainties. Furthermore, opening up a professional firm to multidisciplinary activities is likely to ease the introduction of innovative products but also to spur innovation in the delivery of already existing products or range of products.	
12	Law 140/2015 "Bylaws of the Professional Association of Auditors"	Art. 118(1)(a)	Partnership/ownership of professional firms	The majority of the share capital and voting rights in an audit firm must always belong to statutory auditors, audit firms, or auditors or audit firms from other EU Member States, and the remaining share of capital can be detained by any natural or legal person.	Such restriction aims to guarantee professional independence, autonomy, adherence to professional ethical rules and the pursuit of the public interest.	Ownership, shareholding and partnership rules in financial professional firms (for economists, auditors, certified accountants and customs brokers), are less stringent than in other professions, e.g. legal professions, since only the majority of their sharing capital and voting rights must be owned by professional partners (and not the total). Non-professional partners may own the remaining capital and voting rights. This option follows what is stated in Framework Law 2/2013. However, the rules imposed by the Directive on Auditing (Directive 2006/43/EC, as amended) are less stringent as they only require that a majority of the voting rights in an auditing firm must be held by other auditing firms, approved in any EU Member State, or by natural persons who satisfy the requirements for access to the profession of auditor (see Art. 3(4)(b) of Directive 2006/43/EC). This directive seems not to allow Members States to impose additional requirements on ownership/shareholding such as requiring that a majority of the sharing capital be owned by professionals or auditors, constituted under national law (see Art. 3(4) last paragraph, of Directive 2006/43/EC). To open up a professional firm to external ownership means to open up the firm to more investment, by allowing access to a wider pool of capital. External ownership, partial or total, means capital ownership by non-professionals, ownership of voting rights, or both. This opening will enable professional firms to satisfy a greater pool of consumers and reap the benefits of a larger scale of operations. For younger professionals, not yet well established in their profession, it would also mean more opportunities to set up their own professional firm and compete in the market. This will generate a greater ability by professional firms to compete in the Single Market and internationally. It would also allow for improved risk management among the owners of a professional firm, hence, lower operational costs and possibly lower prices charged to consumers for the different professional services being delivered in the market. Ultimately, all these restrictions on ownership, shareholding and partnership over professional firms, are detrimental to firms across the entire economy, especially SMEs, and to households, as their relaxation can be expected to lead to an increase in their welfare.	We recommend that the ownership and partnership of all professional firms be opened to other professionals and non-professionals, that is, they should be open to individuals outside the profession. We also recommend that other professionals and non-professionals be allowed to hold a majority of an auditors' professional firm's social capital. In line with Art. 3(4)(b) of the Directive on Auditing Services (Directive 2006/43/EC) only the majority of voting rights must be held by auditors.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
13	Law 140/2015 "Bylaws of the Professional Association of Auditors"	Art. 119(1)	Partnership / Ownership of professional firms	The auditor (individual) cannot be a partner in more than one auditing firm at the same time, except during the period when leaving one firm to join another.	This restriction aims to ensure the independence of auditors and to avoid conflicts of interest. Such a conflict could arise from sharing confidential and sensitive information about clients and about the commercial strategies of auditing firms.	This provision restricts the freedom of individual professionals to participate in the capital of more than one auditing firm, which may limit their profits, reduce their incentives to invest and benefit the companies that have clients with greater economic weight. This may ultimately result in higher prices and less social welfare. This also discourages innovation. Moreover, during the period of transition, the auditor is not allowed to sign auditing reports in both companies, which limits his activity. However, the same bylaws allow that auditing firms can be partners of another auditing firm(s) - see Art. 120 of the bylaws. Our interpretation is that individuals may, indirectly, be partners of one auditing firm that can be, by itself, a partner of more than one auditing firm. Therefore, taking into consideration the policy objective that auditors (the individual) should remain impartial and not be able to share information across other companies, we envisage alternatives and less restrictive solutions whereby these individuals can own or participate in other auditing firms, provided there are clear "Chinese walls" between the auditing function and the investment decisions.	We recommend that the provision allowing auditors (the individual) to be a partner in more than one auditing firm, be amended and redrafted, provided there are clear "Chinese walls" between the auditing function and investment decisions.
14	Law 140/2015 "Bylaws of the Professional Association of Auditors"	Art. 148(1)(c)	Academic qualifications	A pre-Bologna degree, a masters or a PhD, in any field, is required to access the auditor profession.	To ensure an adequate quality of service, self-regulated professions are subject to regulations of entry and exercise in the market. Entry rules typically include academic qualification requirements, completion of an internship and membership in a professional body.	For auditors, it is not enough for a candidate to hold a specific undergraduate degree (under the Bologna system). By contrast, according to Directive 2006/43/EC on Auditing Services, it suffices for educational qualifications that a natural person "holds a university entrance or equivalent level", then completed a course of theoretical instruction, underwent practical training and passed an examination of professional competence at university final or equivalent examination level, organised or recognised by the Member State concerned. Directive 2006/43/EC also allows alternative routes concerning education qualifications through long-term practical experience. A Member State may approve a person to become an auditor if he or she can show either that for 15 years, they have engaged in professional activities which have enabled them to acquire sufficient experience in the fields of finance, law and accountancy, and have passed an examination of professional competence, or that they have, for seven years, engaged in professional activities in those fields and have, in addition, undergone practical training and passed an examination of professional competence.	We recommend that the professional association should work with the legislator to set a transparent, proportional and non-discriminatory process for identification of alternative routes of educational qualifications through long-term practical experience (in line with Art. 11 of Directive 2006/43/EC on Auditing Services). This will allow the following to register as auditors: professionals with over 15 years of professional experience in the fields of finance, law or accountancy and having passed an examination of professional competence; professionals who have engaged in professional activities in those fields for seven years and have, in addition, undergone practical training and passed an examination of a professional nature.

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15	Law 140/2015 "Bylaws of the Professional Association of Auditors"	Art. 149(1)(b)	Residence requirements	To register with the professional association foreign professionals need to have legal residence in Portugal for at least three years and provide proof of this.	This provision intends to ensure that foreign auditors meet international standards (IFAC). Items b) and c) of paragraph 1 establish requirements to ensure that foreign auditors are familiar with the national language and law. Paragraph 3 establishes a reciprocity requirement, as a common practice to guarantee equal rights and conditions among citizens of different states.	This provision establishes a criterion that may exclude some well-qualified foreign professionals from the Portuguese market. As such, this provision represents a geographical barrier to access the profession. The three-year residency requirement is harmful as it excludes from the market foreign professionals with less than three years of legal residence in Portugal. In fact, this requirement may not be the most suitable or adequate to assess the competences required (knowledge of the national language or law and the tax system).	Taking into account that attendance in the preparatory course and approval in the aptitude test is already mandatory for the professional, which guarantees the policy objective (knowledge of the language, national legislation and the tax system), we recommend that the requirement of the three-year residency in Portugal should be removed.
16	Law 140/2015 "Bylaws of the Professional Association of Auditors"	Art. 153 (3)(4)	Entry exam	In order to start the internship the candidate must successfully pass an entry exam (organised, prepared and revised by the OROC) divided into a theoretical part and a practical part.	The mandatory admission exam prior to the internship is intended to guarantee that all candidates have the technical knowledge to exercise the profession with a minimum level of quality, considering that candidates can hold any Pre-Bologna university degree, a master's or a PhD, in any field. An admission exam is also required by Directive 2006/43/EC in its Arts. 6, 7 and 8. According to stakeholders, if exemptions from the admission exam were introduced in the bylaws, possible discrimination among candidates would follow. Furthermore, it would be necessary for the professional association or other entity to assess to what extent the different university degree programmes include the required subjects/disciplines and standards. Note that although the admission exam is mandatory, the preparation for the exam (the course provided by the professional association or any other training) is not mandatory; the candidate could simply apply to take the exam.	This provision establishes a requirement to access the professional internship that may dissuade candidates from attempting to join the profession. Arts. 6, 7, 8 and 10 of Directive 2006/43/EC establish practical training for three years and an admission exam as a prerequisite for the exercise of the activity. However, Art. 9 para. 1 of this directive allows "by way of derogation from articles 7 and 8, a Member State may provide that a person who has passed a university or equivalent examination or holds a university degree or equivalent qualification in one or more of the subjects referred to in article 8 may be exempted from the test of theoretical knowledge in the subjects covered by that examination or degree" and para. 2 "by way of derogation from article 7, a Member State may provide that a holder of a university degree or equivalent qualification in one or more of the subjects referred to in article 8 may be exempted from the test of the ability to apply in practice his or her theoretical knowledge of such subjects if he or she has received practical training in those subjects attested by an examination or diploma recognised by the State", thus granting exemption from the admission exam, in case the candidate holds one or more determined qualifications or practice in those fields (e.g. general accounting theory and principles; legal requirements and standards relating to the preparation of annual and consolidated accounts; international accounting standards; etc.). This restriction may reduce the number of professionals available in the market of auditing activities, which is likely to cause the prices charged to customers to be higher than they would otherwise be.	We recommend that the entry exam into the profession follows Art. 9(1)(2) of Directive 2006/43/EC on Auditing Services, exempting candidates from certain subjects in the test of theoretical knowledge when they can provide evidence of: i) a university degree or equivalent qualification in one or more of those subjects; ii) of receiving practical training in those same subjects attested by an examination or diploma recognised by the state.
17	Law 140/2015 "Bylaws of the Professional Association of Auditors"	Art. 155	Entry exam	Inscription to perform a professional internship in the Professional Association of Auditors depends on passing an admission exam.	The mandatory admission exam prior to the internship is intended to guarantee that all candidates have the technical knowledge to exercise the profession with a minimum level of quality, considering that candidates can	This provision establishes a requirement to access the professional internship that may dissuade candidates from attempting to join the profession. Arts. 6, 7, 8 and 10 of Directive 2006/43/EC establish practical training for three years and an admission exam as a prerequisite for the exercise of the activity. However, Art. 9 para. 1 of this	We recommend that the entry exam into the profession follows Art. 9(1)(2) of Directive 2006/43/EC on Auditing Services, exempting candidates from certain subjects in the test of theoretical knowledge when they can provide

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					hold any Pre-Bologna university degree, a master's or a PhD, in any field. An admission exam is also required by Directive 2006/43/EC in its Arts. 6, 7 and 8. According to stakeholders, if exemptions from the admission exam were introduced in the bylaws, possible discrimination among candidates would follow. Furthermore, it would be necessary for the professional association or other entity to assess to what extent the different university degree programmes include the required subjects/disciplines and standards. Note that although the admission exam is mandatory, the preparation for the exam (the course provided by the professional association or any other training) is not mandatory; the candidate could simply apply to take the exam.	directive allows "by way of derogation from articles 7 and 8, a Member State may provide that a person who has passed a university or equivalent examination or holds a university degree or equivalent qualification in one or more of the subjects referred to in article 8 may be exempted from the test of theoretical knowledge in the subjects covered by that examination or degree" and para. 2 "by way of derogation from article 7, a Member State may provide that a holder of a university degree or equivalent qualification in one or more of the subjects referred to in article 8 may be exempted from the test of the ability to apply in practice his or her theoretical knowledge of such subjects if he or she has received practical training in those subjects attested by an examination or diploma recognised by the State", thus granting exemption from the admission exam, in case the candidate holds one or more determined qualifications or practice in those fields (e.g. general accounting theory and principles; legal requirements and standards relating to the preparation of annual and consolidated accounts; international accounting standards; etc.). This restriction may reduce the number of professionals available in the market of auditing activities, which is likely to cause the prices charged to customers to be higher than they would otherwise be.	evidence of: i) a university degree or equivalent qualification in one or more of those subjects; ii) of receiving practical training in those same subjects attested by an examination or diploma recognised by the state.
18	Law 140/2015 "Bylaws of the Professional Association of Auditors"	Art. 157(1)	Professional internship	The internship must begin within 3 years of passing the entry exam.	We have the information from the stakeholder consulted that this provision intends to ensure that professionals keep their knowledge up to date.	This provision may delay the entrance into the market of new professionals, who for some reason do not have the possibility of starting the internship within this period.	We recommend to study, probably using benchmarking, the extension of the deadline, especially in fully justified cases.
19	Law 140/2015 "Bylaws of the Professional Association of Auditors"	Art. 157(2)(4)(5); and Art. 159(3)(8)	Professional internship	The practical internship lasts at least three years, and must include a minimum of 700 hours per year of activities within the scope of functions of public interest provided for in the statutes of the professional association. This period may be reduced by the internship committee to a minimum of one to two years, for trainees who have exercised relevant functions in the public or private sector for at least five years. The internship itself may be waived for trainees who have exercised relevant functions in the public or private sector for at least 10 years.	We have the information from the stakeholder consulted that this provision intends to ensure that professionals keep their knowledge up to date.	Directive 2006/43/EC confirms as a rule, the minimum duration of three years for the practical training, and also allows for exemptions of this training. The internship evaluation is carried out by peers from the professional association. This may give rise to a conflict of interest that may not ensure the required independence of the evaluators and may also result in a lower number of candidates joining the professions. This, in turn, can have a negative impact on competition in the delivery of financial services in the market. The (almost) complete absence of an e-learning option covering the theoretical training period of any internship may extend the duration of this training beyond what is necessary. It also increases the cost of providing face-to-face tutoring, hence, the internship fees. In addition, it increases the opportunity costs a trainee must bear of having to attend those training courses in person.	No recommendation with regard to the duration of the internship. However, we recommend that the subjects that are part of the academic qualification of the internship should not be repeated in the theoretical training offered during the internship; also, we recommend that the theoretical training also be conducted via e-learning. We recommend that the final evaluation of the internship is conducted by a board, independent of the professional association, which may include members of the latter, but must also include professionals, such as university professors and other lay people of recognised merit.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
20	Law 140/2015 "Bylaws of the Professional Association of Auditors"	Art. 177(1); and Art. 182(2)(3)	Mandatory registration of foreign professionals / Requirements	Auditors from other EU/EEA countries have to take an aptitude test identified in Art. 182 of the bylaws to be able to register in the professional association in Portugal, and exercise the profession. Before that, the candidate must attend a compulsory preparatory course (with a minimum of 80% individual attendance time for each module). Those professionals who have exercised any related activity in Portugal for the last 10 years can be exempted from attending the preparatory course.	The Auditing Directive (amended by Directive 2014/56/EU) and the European Regulation (EU) 537/2014 impose on Member States the duty to ensure that an auditor has the adequate knowledge to exercise the profession in the host Member State.	The need to pass an aptitude test is a requirement that may exclude from the market some professionals and increase entry costs, which can lead to a restriction in the market of qualified professionals and can lead to increased prices compared to those entering in the market. Note that Art. 14 of the Auditing Directive (amended by Directive 2014/56/EU) states: "The competent authorities shall establish procedures for the approval of statutory auditors that have been approved in other Member States. These procedures may not go beyond the obligation to carry out an adaptation period [shall not exceed three years] as defined in Article 3 (1) (g) of Directive 2005/36/EC or to pass an aptitude test defined in point (h) of that provision." The host Member State shall decide whether the applicant seeking approval is to be subject to an adjustment period or an aptitude test. Hence, Portugal had to take a decision between choosing the aptitude test or the adaptation period. Without further evidence from stakeholders arguing to the contrary, it seems that the legislator has chosen an adequate requirement. With regard to the compulsory attendance of the preparatory course (with a minimum of 80% individual attendance time for each module) we suggest that the preparatory course could not be mandatory but rather optional for the access to the mandatory aptitude test.	We recommend that the requirement to attend the preparatory course should not be necessary to access the professional aptitude test that is already mandatory in Portugal.
21	Regulation 12/2017 "Rules, conditions, principles and procedures applicable in the scope of registration of individuals in the Professional Association of Auditors"	Art. 6(1)(b) and (3)(d)	Minimum residence period of foreign professionals	It sets as a requirement for registration of foreign auditors in Portugal, presentation of evidence of residence in Portugal for at least three years.	The recital of this Regulation states that Directive 2014/56/EU and the European Regulation (EU) 537/2014 impose on Member States the duty to ensure that an auditor has the adequate knowledge to exercise the profession.	This provision establishes a criterion that may exclude well-qualified professionals from the Portuguese market. As such, this provision represents a geographical barrier to accessing the profession. The three-year residency requirement may dissuade well-qualified professionals from entering the national market and competing for auditing services. In turn, restricting competition may have a negative impact on prices as well as on the diversity and innovativeness of the services provided.	Taking into account that attendance in the preparatory course and approval in the aptitude test are already mandatory for the professional, which guarantees the policy objective (knowledge of the language; and knowledge of the national legislation and tax system), we recommend that the requirement of proof of the three-year residency in Portugal should be removed.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
22	Regulation 12/2017 "Rules, conditions, principles and procedures applicable in the scope of registration of individuals in the Professional Association of Auditors"	Art. 7(1)(b)	Preparatory course for foreign professionals	This provision sets as a requirement for the registration of auditors from EU/EEA countries in Portugal attendance in two modules: module 2 (civil law, commercial law, partnership law and labour law) and module 4 (taxation) of the preparatory course (as listed in the table referred to in Art. 20 para. 1). This corresponds to attendance in the preparatory course (with a minimum of 80% individual attendance for each module) as stated in Art. 182 of the bylaws.	It is stated in the recital of this Regulation that Directive 2014/56/EU and European Regulation (EU) 537/2014 impose on Member States the duty to ensure that an auditor has the adequate knowledge to exercise the profession. Art. 14 of the Directive 2014/56/EU establishes as an option for a Member State to require an adjustment/ adaptation period. The concept of "adaptation period" is defined in Art. 3 para. 1 g) of the Directive 2005/36/EC, as a period of supervised practice. According to the directive, the rules for this adaptation period are determined by the Member States.	This provision establishes the obligation for registration in Portugal of EU or EEA auditors to attend a preparatory course, thus creating an extra cost and an extra burden for these professionals. This can act as a disincentive to entering the market of auditing in Portugal.	Even if the preparatory course is made available, taking into account the disposal in Art. 14 of Directive 2014/56/EU and the fact that the professional aptitude test is already mandatory in Portugal, we recommend that the requirement to attend modules 2 (civil law, commercial law, partnership law and labour law) and 4 (taxation) of the preparatory course should not be mandatory for the registration of EU or EEA auditors in Portugal.
23	Regulation 12/2017 "Rules, conditions, principles and procedures applicable in the scope of registration of individuals in the Professional Association of Auditors"	Art. 9(2)(d)	Mandatory registration requirements	The application for registration of firms of auditors with the professional association must be accompanied by any information that the Registration Commission considers relevant.	Policy objective is not clear.	This provision establishes a requirement to provide any information or document that the Registration Commission considers relevant, which may lead to arbitrary decisions concerning the necessary documents, thus preventing the registration of these firms of auditors.	Abolish para. 2 d) of this provision.
24	Regulation 19/2017 "Rules, conditions, principles and procedures applicable in the scope of the internship to be undertaken by individuals who want to register in the Professional Association of Auditors"; and Tabelas de fees and emolumentos published by Board of OROC.	Art. 4(1)5(1); and Para 1. and Para 12.	Entry exam and professional internship fees	To be registered as an auditor in the Professional Association of Auditors, the candidate must be approved: a) in an aptitude/admission exam that costs EUR 1 430 (each group of modules is EUR 330 and the price of the exam is EUR 110); b) as well as in the internship that costs EUR 2 310 (EUR 210 for inscription and EUR 700 per year).	The internship aims to be a professional initiation, implying not only the integration of the knowledge acquired in school education and the experience of its practical application, but also the perception of the ethical, legal, economic, environmental and human resources, and of management in general that characterise the exercise of the profession, so as to enable the profession to perform competently and responsibly.	Additionally, if the entry exam and the internship fees are too high for candidates, this might lead to fewer candidates joining the registration process, resulting in a lower number of suppliers of legal services competing in the market.	We recommend that the fees required for the entry exam as well as for the internships be calculated using transparent, non-discriminatory and cost-based criteria.

Financial and economic professions: Certified accountants

Table A B.10. Financial and economic professions: Certified accountants

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
1	Decree-Law 452/99 (last modification by Law 139/2015) "Bylaws of the Professional Association of the Certified Accountants"	Art. 3	Self-regulating regime	This provision describes the attributions and competences given to the public professional association, allowing it to have control over access and exercise of the self-regulated profession, including on i) the elaboration and implementation of technical rules, ii) definition of ethical principles, iii) criteria for internships, iv) definition of academic qualifications, v) recognition of professional qualifications obtained outside the national territory, vi) attribution of the exclusive right to grant professional titles, vii) determination of reserved activities and viii) exercise of disciplinary powers.	It is our understanding that this provision aims to ensure the exercise of the regulatory function, including the disciplinary function, as well as the representative function, taking into account the interests of users of the professional services, by one and the same single entity, the professional association. In the Portuguese Constitution the autonomy and administrative decentralisation to the professional associations is recognised to ensure the defence of public interest and the fundamental rights of citizens, and also to guarantee the self-regulation of the professions that require technical independence. This regulatory model is based on the public interest of these professions, through the designation of state powers to those entities and with two main characteristics: exclusivity on granting the professional title and the obligation of being registered within the professional association to practice the profession, which qualifies the nature of the regulation as being mandatory and unitary.	The harm to competition arising from the regulatory model established by Law 2/2013 stems from the centralisation into a single entity of the powers to regulate and represent the profession. Because each professional association, apart from representing the profession, controls access to it and its exercise, the regulations issued may create disproportional and anti-competitive restrictions. The freedom to choose and exercise a profession is a fundamental right of the citizen. Also, the freedom of movement of workers and the free establishment to provide services are fundamental principles of the EU internal market. Restrictions to these principles, in the pursuit of the public interest, must be well justified and proportional. When a professional association acquires full responsibility to regulate access to the profession and its exercise as well as the conduct of its members, this may have an anti-competitive impact. In fact, professional associations may adopt rules that reduce incentives or opportunities for stronger competition between operators, such as restrictions on i) the elaboration and implementation of technical rules, ii) definition of ethical principles, iii) criteria for internships, iv) definition of academic qualifications and v) recognition of professional qualifications obtained outside the national territory (even if bounded by the criteria set by Directive 2005/36/EC amended by Directive 2013/55/EC, transposed by Law 9/2009 and Law 26/2017), vi) attribution of the exclusive right to grant professional titles, vii) determination of reserved activities and viii) exercise of disciplinary powers. As the governing bodies of public professional associations are exclusively composed of their members, there is a risk that their members' interests will not coincide with the public interest. This is one significant reason for including, within at least some governing bodies of a professional association, lay people representing the interests of relevant social groups, such as consumer associations, other professionals, and high-profile people with experience in regulatory issues.	We recommend that the regulatory function should be separated from the representative function for self-regulated professional associations, either through the creation of an over-arching supervisory body by sector or trade, or through the creation of a supervisory body inside the current professional orders with the necessary "Chinese walls". The supervisory body takes on the main regulation of the profession such as access to the profession and similar functions. The board of the regulatory body will include not only representative of the profession but also lay people, including high-profile experienced individuals from other regulators, representatives of consumer organisations and academia.

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2	Decree-Law 452/99 (last modification by Law 139/2015) "Bylaws of the Professional Association of the Certified Accountants"	Art. 9 (1)	Mandatory registration in the professional association/Protected professional title /Reserved activities	Only those registered in the professional association can use the professional title of certified accountant and exercise the profession.	Registration is a mechanism to organise professionals with the capacity to exercise the activity and also to validate those professionals before consumers. The objective criteria are to regulate access to and the exercise of the profession. Registration may be justified on grounds of legal certainty, so consumers are informed that the professionals are certified to provide those services. The professional association acts as being endowed with public powers transferred by the state to this function. The professional association's exclusive power to attribute the professional title was adopted in Framework Law 2/2013, which established a self-regulatory model for several professions. Registration and the use of the title enable consumers to be informed that the professionals are certified to provide those services.	Mandatory registration in a professional association in order to exercise the profession implies an administrative procedure/burden that results in entry costs (e. g. , time frame of the procedure itself, registration fees and monthly fees, amongst others). Using mandatory registration as a mechanism to access the profession can be restrictive. The possibility of extending the obligation of registration to non-nationals providing services in the national territory and all who practice acts of the profession on a permanent basis can be exempted if they are already registered in a mandatory regime of public registration. Hence, the registration, if needed, is not necessarily harmful in itself, except when it is combined with the establishment of reserved work. For the exercise of the reserved work of certified accountants, the protection of the title also follows. Protected title with reserved work may exclude other professionals from the exercise of the activity, reducing the number of suppliers in the market and increasing costs to consumers. In general, reserved activities or tasks should be abolished in cases where: (i) the protection is disproportionate to the policy objective because the tasks may already be performed by other well-qualified professionals or are not a danger to public safety; (ii) there is strong and well-regulated protection of the professional title which guarantees the quality of the professionals who are allowed to work; or (iii) the restriction is no longer required owing to legal, societal or professional developments that make the restriction obsolete by objective.	There is no recommendation regarding the mandatory registration in the professional association. However, the professional title combined with reserved activities is harmful and we recommend that the provisions should be revised as a whole with a view to reduce or lift reserved activities.
3	Decree-Law 452/99 (last modification by Law 139/2015) "Bylaws of the Professional Association of the Certified Accountants"	Art. 10 (1)(a)(b)(c)	Reserved activities	It reserves the following accounting activities for certified accountants who must be registered in the professional association: to plan, organise and co-ordinate the accounting procedures of public or private entities, which have or need to have organised accounting in accordance with the official accounting standardisation system; to assume responsibility for technical regularity in accounting and tax matters of the entities referred to above; to sign, together with the legal representatives of the entities referred to above, the respective financial declarations and tax returns, proving quality, under the	Registered certified accountants are considered to be the only professionals with the necessary qualifications to perform such acts, taking into account the important role these professionals have in the tax system and management of SMEs.	The reserved activities of certified accountants exclude other professionals from the market of accounting activities and from the practice of those acts. These can be professionals with expertise in the same field but without registration or the title of member of the Professional Association of Certified Accountants. The performance of simpler tasks could be opened to other professionals. A narrower set of reserved activities of certified accountants would allow customers to choose between certified accountants and others professionals for accounting services that could be provided by any professional. The competition between professionals can lead to a decrease in prices for at least the simpler accounting services. In the United Kingdom there are no reserved activities established by law. In Portugal accountancy is a highly competitive sector, even if the	The simpler activities given to certified accountants (e. g. to sign financial declarations and tax returns) should be open to other qualified professionals.

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				terms and conditions defined by the professional association, without prejudice to the competence and responsibilities of commercial and tax law.		title is protected. In nine EU Member States (Cyprus, Denmark, Estonia, Finland, Lithuania, Latvia, Slovenia, Spain and Sweden) the profession is not even regulated as such. In general, reserved activities or tasks for specific categories of professionals should be abolished in cases where: (i) the protection is disproportional to the policy objective because the tasks may already be performed by other well-qualified professionals or are not a danger to public safety; (ii) there is strong and well-regulated protection of the professional title which guarantees the quality of the professionals that are allowed to work; or (iii) the restriction is no longer required owing to legal, societal or professional developments that make the restriction obsolete by object.	
4	Decree-Law 452/99 (last modification by Law 139/2015) "Bylaws of the Professional Association of the Certified Accountants"	Art. 115 (2)	Multidisciplinary activities of professional firms	The sole corporate objective of the professional firm of certified accountants is the delivery of the activities reserved for certified accountants.	This provision prohibits the establishment of multidisciplinary professional firms. It allows the professional association to impose restrictions on the way professional firms are organised. These restrictions are to be grounded in the public interest, or in the powers of public authority that a particular profession may exercise. They may also be grounded in other imperatives such as the professionals' independence and client privilege.	To restrict multidisciplinary activity in a professional firm is to restrict the association of different professionals, belonging to different professional associations (some may not even belong to a public professional association), who would exercise their professional activities within the same firm and in the pursuit of the firm's corporate or social objective(s). In a professional firm, this restriction takes the form of a restriction on partnership – restricting, or banning altogether, non-professional partners. To rule out multidisciplinary activity in the same professional firm, between potentially complementary service providers, harms competition and can be detrimental to consumer welfare. In fact, this restriction does not allow for the full exploration of economies of scope that come with the offer of different services by a same "service delivery unit" that shares infrastructure and human capital. It foregoes specialisation gains and service quality gains resulting from the interaction between a wider range of professionals. This also means foregoing the exploitation of economies of scale and the advantages in branding. It also does not allow for the mitigation of the double marginalisation (or double mark-up) problem that come with multidisciplinary activities which can complement each other, by segmenting the services provided. This means foregoing lower average costs in a multi-product firm, therefore leading to higher fees being charged to clients, while preventing clients from further benefits that could be gained from a more convenient "one-stop shop" for a wider range of professional services. Ruling out multidisciplinary activities within a profession can reduce the scope for	We recommend that the prohibition of multidisciplinary practice in professional firms should be removed, particularly where the "professional partnership model" is the only model allowed for the practice of the profession in a collective way. The creation of such "alternative business structures" (ABS) will lead to more innovation, a broader range of services and easier access to services for businesses and consumers.

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						<p>better risk management between different professional activities within the same professional firm, as they may be subject to non-identical demand volatility or uncertainty – i. e. , reduction in the scope for internal risk-spreading to be understood as the ability to transfer resources in response to fluctuations in demand. To offer a wider range of professional services means to be better prepared to face market uncertainties. Furthermore, opening up a professional firm to multidisciplinary activities is likely to ease the introduction of innovative products but also to spur innovation in the delivery of already existing products or range of products.</p>	
5	Decree-Law 452/99 (last modification by Law 139/2015) "Bylaws of the Professional Association of the Certified Accountants"	Art. 116 (2); Art. 117(1); and Art. 117(2)	Partnership/ownership of professional firms	At least 51% of the social capital and voting rights of these professional firms must be owned by certified accountants. All partners of a firm of certified accountants who exercise the profession of certified accountant must be active members of their professional association. Professional firms of certified accountants can hold social capital in another professional firm of the same kind.	Such restriction aims to guarantee professional independence, autonomy, adherence to professional ethical rules and the pursuit of the public interest.	<p>Ownership, shareholding and partnership rules in certified accountants professional firms are less stringent than in other professions, e. g. legal professions, since only the majority of their sharing capital and voting rights must be owned by professional partners (and not the totally). Non-professional partners may own the remaining capital and voting rights. This option follows what is stated in Framework Law 2/2013. To open up a professional firm to external ownership means to open the firm to more investment, by allowing access to a wider pool of capital. External ownership, partial or total, means capital ownership by non-professionals, ownership of voting rights, or both. This opening will enable professional firms to satisfy a greater pool of consumers and reap the benefits of a larger scale of operations. For younger professionals, not yet well established in their profession, it would also mean more opportunities to set up their own professional firm and compete in the market. This will generate a greater ability by professional firms to compete in the Single Market and internationally. It would also allow for an improved risk management among the owners of a professional firm, hence, lower operational costs and possibly lower prices charged to consumers for the different professional services being delivered in the market. Ultimately, all these restrictions on ownership, shareholding and partnership over professional firms, are detrimental to firms across all economy, especially SMEs, and to households, as their relaxation can be expected to lead to an increase in their welfare.</p>	We recommend that the ownership and partnership of all professional firms be opened to other professionals and non-professionals, that is, should be open to individuals outside the profession. We also recommend that other professionals and non-professionals be allowed to hold a majority of a professional firm's social capital, together with a majority of voting rights.

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6	Decree-Law 452/99 (last modification by Law 139/2015) "Bylaws of the Professional Association of the Certified Accountants"	Art. 116 (2)	Management of professional firms	In the case of professional firms of certified accountants the majority of members in the management of professional firms must be professionals.	Such a restriction aims to guarantee professional independence, autonomy, adherence to professional ethical rules and the pursuit of the public interest.	In the case of professional firms of certified accountants the majority of members in the management of professional firms must be professionals. A reason invoked to impose such a restriction is that only when the management is controlled by professional partners will there be assurance that the sole or main corporate objective of the professional firm will be pursued and that the autonomy of the professionals is maintained. However, Framework Law 2/2013 is less stringent, as it only requires that one of the managers or administrators of a professional firm must be a member of the professional association (or, in case registration in the professional association is not mandatory, that person has to fulfil all membership requirements). Historically, corporations separated their ownership from management starting in the early 20th century. One of the main reasons was to professionalise management in increasingly competitive markets. Conflicts between owners (the principals) and managers (the agents) has been the subject of extensive literature, and various payment schemes have been adopted to align managers' interests as close as possible to the owners' interests (see e. g. , Carlton and Perloff, 2004). Hence, notwithstanding the fact that we deal with professional firms, there is no reason for all managers to be owners or partners – as Law 2/2013 makes clear. A professional management, which ultimately answers to the owners of the professional firm, may be an option preferable to the professional partners themselves.	We recommend that the separation between ownership and management should be allowed in all professional firms and that their management may include non-professionals, that is, should be open to individuals outside the professions.
7	Decree-Law 452/99 (last modification by Law 139/2015) "Bylaws of the Professional Association of the Certified Accountants"	Art. 17	Academic qualification	This provision sets the specific academic qualifications in order for candidates to register in the Professional Association of Certified Accountants: only those holding a university degree, masters or doctorate, in the area of accounting, management, economics, business sciences or taxation.	To ensure an adequate quality of service, self-regulated professions are subject to regulations of entry and exercise in the market. Entry rules typically include academic qualification requirements.	An exhaustive list of specific routes of academic qualifications represent a barrier to competition especially when combined with reserved activities and mandatory registration, limiting this way the number of professionals that can perform specific acts, restricting the market only to those professionals and excluding other well-qualified professionals who might still have adequate professional experience to perform those tasks. A different academic background might also bring innovation to the services traditionally provided by these professionals. This type of restriction limits access of professionals to the market of accounting activities, reducing the number of available certified accountants and of professionals allowed to practice the reserved activities of certified accountants. Excessive entry restrictions tend to lead to higher prices charged to	We recommend that the professional association should work with the legislator to set up a transparent, proportional and non-discriminatory process for identification of alternative academic routes to obtain the qualifications necessary to the exercise of a profession. We recommend that professions should be opened to candidates with other backgrounds than the current compulsory university degree. Candidates may be required to hold a post-graduate degree or take a conversion course, and should undergo the same training as other trainees, including passing a final exam. This will

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						clients without necessarily increasing the quality of services. Entry barriers allow prices to stay above competitive levels.	open access to more individuals with different backgrounds, allowing for more diversity in the offer of services, and more innovation.
8	Decree-Law 452/99 (last modification by Law 139/2015) "Bylaws of the Professional Association of the Certified Accountants"	Art. 31	Professional internship	To exercise the profession certified accountants have to complete a practical internship of up to 18 months with a minimum of 800 hours. They must take a final exam, organised and evaluated by their peers.	The internship aims to be a professional initiation, implying not only the integration of the knowledge acquired in school education and the experience of its practical application, but also the perception of the ethical, legal, economic, environmental, human resources, and of management in general that characterise the exercise of the profession, so as to enable the profession to perform competently and responsibly.	The horizontal framework law for professional associations (Framework Law 2/2013) introduces limits on the organisation and duration of professional internships. Internships should not last for more than 18 months, including the period for training and evaluation, if applicable. In this case, it is proportional. This evaluation made by peers may give rise to a conflict of interest that may not ensure the required independence of the evaluators and result in a lower number of candidates joining the professions, and in turn, have a negative impact on competition in the delivery of financial services in the market.	We recommend that the final evaluation of the internship should be conducted by a board, independent from the professional association, which may include members of the latter, but must also include professionals of recognised merit, such as professors and magistrates, among others.
9	Decree-Law 452/99 (last modification by Law 139/2015) "Bylaws of the Professional Association of the Certified Accountants"	Art. 32	Professional specialisation	The professional association has a range of specialty colleges. To be considered a specialist the professional accountant must have 10 years of professional experience and demonstrate relevant knowledge and experience in the specialised area. Access to the title of specialist is subject to the acceptance of an application submitted to the professional association and the completion of examinations.	The Professional Association is the best-placed entity to recognise and control who is qualified to be a specialist; considering the high level of technical knowledge to support such a decision, this title is only relevant for curriculum purposes.	The title of specialist does not imply any reservation of activities, although it may negatively influence their presentation in the market and their image to consumers. This provision might artificially reduce the number of suppliers in the market when specialisation is required. The requirement of years of experience may not be sufficient as a proxy for professional knowledge. An exception should be made available to professionals who do not have the 10 years of experience, but have a strong professional background in that specific specialty. In this way, well-qualified professionals who have the knowledge to be granted the title of specialist, but do not meet the requirement of years of experience, are not excluded.	We recommend establishing an exceptional procedure for those professionals with less than 10 years of experience in the domain. The inclusion on the jury board elements that are not members of the OTOC with a capacity to evaluate the knowledge of the candidates should also be considered, as long as this does not create an extra burden in terms of costs and timing for the attribution of the title.
10	Announcement 6106/2010 (last modification by Announcement 11692/2011)"Regulation on the registration, internship and examination of individuals in the Professional Association of Certified Accountants"	Art. 3; and Art. 4	Registration and licensing/Quality standards	It sets requirements for registration in the Professional Association of Certified Accountants, such as moral suitability.	The exercise of this profession creates a significant risk for clients and professionals. Quality standards are meant to ensure that only morally suitable professionals access the profession. This requirement aims to decrease the risks of non-compliance with the rules to ensure the proper functioning of the tax system.	The use of generic and vague concepts, such as moral suitability, grants a discretionary power to the professional association. It can be misused and lead to a decrease in the number of professionals able to operate in the market.	We recommend that the term "moral suitability" must be clarified.

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11	Announcement 6106/2010 (last modification by Announcement 11692/2011)"Regulation on the registration, internship and examination of individuals in the Professional Association of Certified Accountants"	Art. 14	Professional internship	The internship supervisor must be a certified accountant with 5 years of experience and without any prior sanction. There is a limit of 2 interns per supervisor.	The internship supervisor must be someone with adequate experience in accounting activities. The limitation on the number of interns aims to ensure that the supervisor is available to provide quality training which is suitable to the objectives of the internship.	This requirement restricts access to the market as it limits the number of available supervisors and constitutes a bottleneck at the entry stage into the market. By possibly discouraging entry it will lead to a price increase in the market for accounting services and reduce consumer choice. This requirement takes away from supervisors their freedom to take in more trainees whenever they consider appropriate.	We recommend to amend the provision, since the decision on the number of trainees should rest with the supervisor, who is already required to be an experienced certified accountant and to behave in a professionally ethical manner.
12	Announcement 54/2003 (last modification by Announcement 9772/2010)"Regulation on fees and charges charged by the Professional Association of Certified Accountants"	Art. 12	Professional internship / Administrative costs	This regulation establishes the administrative fees charged by the professional association, e. g. EUR 400 for the internship fee.	The administrative fees charged to the candidates usually have the purpose of financing the administrative costs of the registration procedures, the training (including the payment to the trainers), etc. It does not include the mandatory professional insurance, which is paid by the professional association and financed by the annual membership fees, according to the stakeholders.	The mandatory payment of fees, e. g. for internship, can restrict access to the profession by potential entrants. These provisions do not demonstrate the methodology or the criteria used to adopt such fees, and there is no other entity supervising the setting of prices. The fees must be proportional and adequate to pay for the services in question, and may not be charged to finance other types of services.	We recommend that the fees required for internships be calculated using transparent, non-discriminatory and cost-based criteria.

Financial and economic professions: Custom brokers

Table A B.11. Financial and economic professions: Custom brokers

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
1	Decree-Law 173/98 (last modification by Law 112/2015) "Bylaws of the Professional Association of Customs Brokers"	Art. 3	Self-regulating regime	This provision describes the attributions and competences given to the public professional association, allowing it to have control over access and exercise of the self-regulated profession, including on i) the elaboration and implementation of technical rules, ii) definition of ethical principles, iii) criteria for internships, iv) definition of academic qualifications, v) recognition of professional qualifications obtained outside the national territory, vi) attribution of the exclusive right to grant professional titles, vii) determination of reserved activities and viii) exercise of disciplinary powers.	It is our understanding that this provision aims to ensure the exercise of the regulatory function, including the disciplinary function, as well as the representative function, taking into account the interests of users of the professional services, by one and the same single entity, the professional association. In the Portuguese Constitution the autonomy and administrative decentralisation to the professional associations is recognised to ensure the defence of the public interest and the fundamental rights of citizens, and also to guarantee the self-regulation of the professions that require technical independence. This regulatory model is based on the public interest of these professions, through the designation of state powers to those entities and with two main characteristics: the exclusivity on granting the professional title and the obligation of being registered within the professional association to practice the profession, which qualifies the nature of the regulation as being mandatory and unitary.	The harm to competition arising from the regulatory model established by Law 2/2013 stems from the centralisation in a single entity of the powers to regulate and represent the profession. Because each professional association, apart from representing the profession, controls access to it and its exercise, the regulations issued may create disproportional and anti-competitive restrictions. The freedom to choose and exercise a profession is a fundamental right of the citizen. Also, freedom of movement of workers and free establishment to provide services are fundamental principles of the EU internal market. Restrictions of these principles, in the pursuit of the public interest, must be well justified and proportional. When a professional association acquires full responsibility to regulate access to the profession and its exercise as well as the conduct of its members, this may have an anti-competitive impact. In fact, professional associations may adopt rules that reduce incentives or opportunities for stronger competition between operators, such as restrictions on i) the elaboration and implementation of technical rules, ii) definition of ethical principles, iii) criteria for internships, iv) definition of academic qualifications, v) recognition of professional qualifications obtained outside the national territory (even if bounded by the criteria set by Directive 2005/36/EC amended by Directive 2013/55/EC, transposed by Law 9/2009 and Law 26/2017), vi) attribution of the exclusive right to grant professional titles, vii) determination of reserved activities and viii) exercise of disciplinary powers. As the governing bodies of public professional associations are exclusively composed of their members, there is a risk that their members' interests will not coincide with the public interest. This is one significant reason for including within at least some governing bodies of a professional association, lay people representing the interests of relevant social groups, such as consumer associations, other professionals, and high-profile people with experience in regulatory issues.	We recommend that the regulatory function should be separated from the representative function for self-regulated professional associations, either through the creation of an over-arching supervisory body by sector or trade, or through the creation of a supervisory body inside the current professional orders with the necessary "Chinese walls". The supervisory body takes on the main regulation of the profession such as access to the profession and similar functions. The board of the regulatory body will include not only representative of the profession but also lay people, including high-profile experienced individuals from other regulators, representatives of consumer organisations and academia.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
2	Decree-Law 173/98 (last modification by Law 112/2015) "Bylaws of the Professional Association of Customs Brokers"	Art. 60 (1)	Mandatory registration in the professional association / Protected professional title / Reserved activities	Customs brokers have to be registered with the Professional Association of Customs Brokers to obtain the professional title and exercise the profession.	Registration is a mechanism to organise the professionals with capacity to exercise the activity and also to validate those professionals before consumers. The objective criteria are to regulate access to and the exercise of the profession. Registration may be justified on grounds of legal certainty, so consumers are informed that the professionals are certified to provide those services. The professional association acts as endowed with public powers transferred by the state to this function. The professional association's exclusive power to attribute the professional title was adopted in Framework Law 2/2013, which established a self-regulatory model for several professions. Registration and the use of the title enables consumers to be assured that the professionals are certified to provide those services.	Mandatory registration in a professional association in order to exercise the profession implies an administrative procedure/burden that results in entry costs (e. g. , time frame of the procedure itself, registration fees, and monthly fees, amongst others). Using mandatory registration as a mechanism to access the profession can be restrictive. The possibility of extending the obligation of registration to non-nationals providing services on national territory and all who practice acts of the profession on a permanent basis can be exempted if they are already registered in a mandatory regime of public registration. Hence, the registration, if needed, is not necessarily harmful in itself, except when it is combined with the establishment of reserved work. The exercise of the reserved work of customs brokers also follows the protection of the title. Protected title with reserved work may exclude other professionals from the exercise of the activity, reducing the number of suppliers in the market and increasing costs to consumers. In general, reserved activities or tasks should be abolished in cases where: (i) the protection is disproportionate to the policy objective because the tasks may already be performed by other well-qualified professionals or are not a danger to public safety; (ii) there is strong and well-regulated protection of the professional title which guarantees the quality of the professionals that are allowed to work; or (iii) the restriction is no longer required owing to legal, societal or professional developments that make the restriction obsolete by its objective.	There is no recommendation regarding the mandatory registration in the professional association. However, the professional title combined with reserved activities is harmful and we recommend that the provisions should be revised as a whole with a view to lift reserved activities.
3	Decree-Law 173/98 (last modification by Law 112/2015) "Bylaws of the Professional Association of Customs Brokers"	Art. 60 (2)(a)	Academic qualifications	Access to the profession of customs broker depends on the candidate holding a university degree: in economics, management or business administration, law, international relations, international trade or logistics and customs.	The academic fields are the ones considered by the professional association as adequate for providing the necessary knowledge to exercise the profession. This is a recent requirement adopted as a response to the challenges brought about by international trade, according to the recital of Bill 291/XII (approved as Law 112/2015). This current list of six admissible university degrees extends the previous list of only three. For those experienced professionals not meeting even the requirements established by the previous Chamber Bylaws, a transitional regime was applied.	The need for candidates to hold a degree in specific academic fields, considered by the professional association as adequate for providing the necessary knowledge to exercise the profession, establishes a requirement that restricts access to the professional title for those who do not have the required academic background. Although a university degree is not something negative to hold, to make such an academic qualification compulsory excludes other well-qualified professionals who may have the appropriate experience and professional skills to perform the activities in question. Before the introduction of the bylaws in 2015, there was no requirement for a university degree to become a customs broker, and secondary school level (12 years of schooling) was deemed sufficient as an academic qualification. We also consider that the use of the protected title is not indispensable to practice the activity of a customs representative.	We recommend revoking the recently introduced requirement of having a university degree for customs brokers to allow for easier access to the profession to those who may meet all other criteria including moral and financial criteria.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
4	Decree-Law 173/98 (last modification by Law 112/2015) "Bylaws of the Professional Association of Customs Brokers"	Art. 60(2)(b); Art. 61(1)(2); Art. 62	Professional internship	Access to the profession of customs brokers depends on the attendance of an internship, with a duration of six months, with a theoretical and a practical components. Candidates are subject to a final exam. The jury is composed of the president of the professional association and includes other members of recognised merit who can be external to the professional association. This same committee is responsible to elaborate the final exams and to grade them (see Regulation 666/2016).	The internship aims to be a professional initiation, implying not only the integration of the knowledge acquired in school education and the experience of its practical application, but also the perception of the ethical, legal, economic, environmental, human resources, and of management in general that characterise the exercise of the profession, so as to enable the profession to perform competently and responsibly.	The existence of an internship is a barrier to competition, and depending on its duration, subject matter, evaluation model and associated costs, may result disproportionate and unnecessary to fulfil the policy objective. The horizontal framework law for professional associations (Law 2/2013) introduces limits on the organisation and duration of professional internships. Internships should not last for more than 18 months, including the period for training and evaluation, if applicable. In this case, the duration is proportional. The final evaluation of the internship is already conducted by a board composed of independent members from the professional association, which may include members of the latter, but must include also professionals of recognised merit.	We recommend that the subjects that are part of the academic qualification of the internship should not be repeated in the theoretical training offered during the internship; also, we recommend that the theoretical training also be conducted via e-learning.
5	Decree-Law 173/98 (last modification by Law 112/2015) "Bylaws of the Professional Association of Customs Brokers"	Art. 63 (a); Art. 66; and Art. 94 (2)	Reserved activities	Art. 66 defines the acts of customs brokers, which are: (1) (a) the representation of economic operators towards the tax and customs authority and other public or private entities with direct or indirect intervention in the fulfilment of the customs formalities underlying the goods and their means of transport; (b) the practice of acts and other formalities provided for in customs legislation, including the submission of declarations for the allocation of customs-approved treatment or use, declarations with customs implications for goods and their means of transport, and declarations relating to goods subject to excise duty; (2) (a) the drawing up, on behalf and at the request of economic operators, of applications, petitions and exhibitions aimed at obtaining simplified economic or other arrangements provided for in customs legislation; (b) presentation, to the tax and customs authority of the	If the customer chooses to appoint a representative to perform customs activities, they do not necessarily have to choose a customs broker, enrolled in the Professional Association of Customs Brokers; in fact, there are other professionals acting as customs representatives, simply registered as such with the tax authority. These provisions intend to ensure that such professionals are qualified to perform these activities, which might involve great financial risk to their clients. According to the Union Customs Code, it is not mandatory for a customer to appoint a customs representative, and one may choose to carry out the act personally, without the use of a representative.	The activities described in Art. 66 are considered by Arts. 63 para. a) and 94 para. 2 as tasks reserved for customs brokers. Reserved activities ban other professionals from the practice of those acts. They also ban from the market other well-qualified professionals who do not hold the professional title. In a context where access to information and administrative fiscal requirements are increasingly simpler and made over the Internet, the role of the custom broker can be performed by other professionals with a broader professional activity and probably lower costs. Furthermore, these provisions are not in accordance with the Union Customs Code, Art. 18. This article establishes that customers may execute customs acts by themselves, or may indicate a customs representative if they prefer. This customs representative may or may not be a customs broker. In general, reserved activities or tasks for specific categories of professionals should be abolished in cases where: (i) the protection is disproportional to the policy objective because the tasks may already be performed by other well-qualified professionals or are not a danger to public safety; (ii) there is strong and well-regulated protection of the professional title which guarantees the quality of the professionals that are allowed to work; or (iii) the restriction is no longer required owing to legal, societal or professional developments that make the restriction obsolete by object. In this case The competent authorities should open the simpler activities given to certified accountants (e. g. to sign financial declarations and tax returns) to other qualified professionals.	We recommend abolishing the acts reserved for customs brokers.

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				guarantees of the customs or fiscal debt generated by the declarations that they submit. Arts. 63 a) and 94 para. 2 refer to such acts as being reserved for customs brokers.			
6	Decree-Law 173/98 (last modification by Law 112/2015) "Bylaws of the Professional Association of Customs Brokers"	Art. 67 (1); and Art. 67 (5)	Minimum financial requirements	Customs brokers, in order to practise the profession, shall fulfil the following minimum financial requirements: i) provide a security deposit to cover any outstanding obligations incurred in their activities, in the form of either a bank deposit, a bank guarantee or insurance of, at least, EUR 49 879. 79; 24 and ii) possess insurance against professional civil liability, in order to cover the risks arising from their activities, and insured capital of at least EUR 50 000. 00.	This payment aims to address the financial risk of the activity. According to the stakeholders, this is an extremely high cost to the professionals.	The provisions impose two separate types of financial requirements on brokers (to be held simultaneously): (i) a security aimed at covering liabilities incurred; and (ii) an insurance against civil liability. However, those requirements could be duplicative, as they seem to address similar risks. Additionally, the minimum values applied to each requirement may not be appropriate to the levels of risks incurred by each customs broker. In the event that the minimum values are found to be excessively high for some brokers, changes to these values would eliminate a substantial barrier to entry and restriction on the ability of small brokers to compete. As a result, the provisions may cause customs brokers to incur unnecessary costs. In fact, the provisions prevent customs brokers from matching their level of civil liability to the scale and risks of their activities, and the provisions require brokers to possess two forms of potentially overlapping financial assurance.	The bylaws should be amended to combine the financial security and professional civil liability requirement into a single financial requirement. This would allow brokers to cover their risks with a single financial instrument, such as insurance. Furthermore, the minimum values for the financial requirements should be analysed to determine whether they are higher than necessary, given the level of risk incurred by customs brokers. If so, the required amount should be lowered from the seemingly arbitrary amount of EUR 49 879. 79 at present, to a more suitable value.
7	Decree-Law 173/98 (last modification by Law 112/2015) "Bylaws of the Professional Association of Customs Brokers"	Art. 95 (3)	Partnership / Ownership of professional firms	The majority of capital with voting rights in a professional firm of customs brokers must be owned by these professionals.	Such restriction aims to guarantee professional independence, autonomy, adherence to professional ethical rules and the pursuit of the public interest.	Ownership, shareholding and partnership rules in financial professional firms (for economists, auditors, certified accountants and customs brokers), are less stringent than in other professions, e. g. legal professions, since only the majority of their sharing capital and voting rights must be owned by professional partners (and not the total). Non-professional partners may own the remaining capital and voting rights. This option follows what is stated in Framework Law 2/2013. To open up a professional firm to external ownership means to open the firm to more investment, by allowing access to a wider pool of capital. External ownership, partial or total, means capital ownership by non-professionals, ownership of voting rights, or both. This opening will enable professional firms to satisfy a greater pool of consumers and reap the benefits of a larger scale of operations. For younger professionals, not yet well established in their profession, it would also mean more opportunities to set up their own professional firm and compete in the market. This will generate a greater ability by professional firms to compete in the Single Market and internationally. It would also allow for an improved risk management among the owners of a professional firm, hence, lower operational costs and possibly lower prices	We recommend that the ownership and partnership of all professional firms be opened to other professionals and non-professionals, that is, should be open to individuals outside the profession. We also recommend that other professionals and non-professionals be allowed to hold a majority of a professional firm's social capital, together with a majority of voting rights.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
						charged to consumers for the different professional services being delivered in the market. Ultimately, all these restrictions on ownership, shareholding and partnership over professional firms, are detrimental to firms across all economy, especially SMEs, and to households, as their relaxation can be expected to lead to an increase in their welfare.	
8	Decree-Law 173/98 (last modification by Law 112/2015) "Bylaws of the Professional Association of Customs Brokers"	Art. 97	Management of professional firms	At least one member of the management or administrative entity of the professional firm must be a customs broker with an active membership in the professional association.	Such restriction aims to guarantee professional independence, autonomy, adherence to professional ethical rules and the pursuit of the public interest.	In the case of professional firms of customs brokers, only one member of the management must be a professional with an active membership in the professional association. A reason invoked to impose such a restriction is that only when the management is controlled by professional partners will there be assurance that the sole or main corporate object of the professional firm will be pursued and that the autonomy of the professionals is maintained. However, Framework Law 2/2013 is less stringent, as it only requires that one of the managers or administrators of a professional firm be a member of the professional association (or, in case registration in the professional association is not mandatory, he or she has to fulfil all membership requirements). Historically, corporations separated their ownership from management starting in the early 20th century. One of the main reasons was to professionalise management in increasingly competitive markets. Conflicts between owners (the principals) and managers (the agents) has been the subject of extensive literature, and various payment schemes have been adopted to align managers' interests as closely as possible to the owners' interests (see e. g. , Carlton and Perloff, 2004). Hence, notwithstanding the fact that we deal with professional firms, there is no reason for all managers to be owners or partners – as Law 2/2013 makes clear. A professional management, which ultimately answers to the owners of the professional firm, may be an option that is preferable to the professional partners themselves.	We recommend that the separation between ownership and management should be allowed in all professional firms and that their management may include non-professionals, that is, should be open to individuals outside the professions.
9	Decree-Law 173/98 (last modification by Law 112/2015) "Bylaws of the Professional Association of Customs Brokers"	Art. 94(1)	Multidisciplinary activities of professional firms	This provision allows multidisciplinary professional firms provided that the main corporate objective is the exercise of an activity that falls under the same professional association. This professional firm can engage in a secondary corporate objective, with regard to activities performed by other professionals in the same professional firm, who may even	This provision aims to guarantee compliance with the ethical principles of each self-regulated profession, as well as, if applicable, the guarding of professional secrecy relating to professional-client privilege, as well as preventing conflicts of interest between different professionals.	Our interpretation of the bylaws is that this provision does not by itself prohibit professional firms from performing multidisciplinary activities, since these firms do not have to have an exclusive social corporate objective and may engage in other activities. However, incompatibilities and impediments regimes may limit the range of professional activities within a same professional firm. Note that there is no unique and exhaustive list of incompatibilities and impediments for each profession, being spread out over several legislative acts. To restrict multidisciplinary activity in a professional firm is to restrict the association of different professionals, belonging to different professional associations (some may not even belong	No recommendation on the legal principle foreseen in this specific provision. However, we recommend that the legislator conducts a technical study to assess the proportionality of incompatibilities and impediments to pursue the exercise of a self-regulated profession that may be preventing the offer of multidisciplinary activities within the same professional firm, taking into consideration the policy objective. In case they are considered not to be

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				be organised in other professional public associations, provided the applicable incompatibilities and impediments regimes are upheld.		to a public professional association), who would exercise their professional activities within the same firm and in the pursuit of the firm's corporate or social objective(s). To rule out multidisciplinary activity in the same professional firm between potentially complementary service providers, harms competition and can be detrimental to consumer welfare. In fact, this restriction does not allow for the full exploration of economies of scope that come with the offer of different services by a same "service delivery unit" that shares infrastructure and human capital. It foregoes specialisation gains and service quality gains resulting from the interaction between a wider range of professionals. This also means foregoing the exploitation of economies of scale and the advantages in branding. It also does not allow for the mitigation of the double marginalisation (or double mark-up) problem that come with multidisciplinary activities which can complement each other, by segmenting the services provided. This means foregoing lower average costs in a multi-product firm, therefore leading to higher fees being charged to clients, while preventing clients from further benefits that could be gained from a more convenient "one-stop shop" for a wider range of professional services. Ruling out multidisciplinary within a professional can reduce the scope for a better risk management between different professional activities within the same professional firm, as they may be subject to non-identical demand volatility or uncertainty - i. e. , reduction in the scope for internal risk spreading to be understood as the ability to transfer resources in response to fluctuations in demand. To offer a wider range of professional services means to be better prepared to face market uncertainties. Furthermore, opening up a professional firm to multidisciplinary activities is likely to ease the introduction of innovative products but also to spur innovation in the delivery of already existing products or range of products.	proportional, they should be abolished.
10	Announcement 10774/2016"Rules, conditions, principles and procedures applicable in the scope of the internship to be undertaken by individuals who want to register in the Professional Association of Customs Brokers"	Para. 1	Academic qualification	Access to the profession of customs broker depends on the candidate holding a university degree: in economics, management or business administration, law, international relations, international trade or logistics and customs.	The academic fields are the ones considered by the professional association as adequate for providing the necessary knowledge to exercise the profession. This is a recent requirement adopted as a response to the challenges brought about by international trade, according to the recital of Bill 291/XII (approved as Law 112/2015). This current list of six admissible university degrees extends the previous list of only three. For those experienced professionals not meeting	The need for candidates to hold a degree in specific academic fields, considered by the professional association as adequate for providing the necessary knowledge to exercise the profession, establishes a requirement that restricts access to the professional title for those who do not have the required academic background. Although a university degree is not something negative to hold, to compulsorily require such an academic qualification excludes other well-qualified professionals who may have the appropriate experience and professional skills to perform the activities in question. Before the introduction of the bylaws in 2015, there was no requirement for a university degree to become a customs broker, and secondary school level (12 years of schooling) was	We recommend revoking the recently introduced requirement of having a university degree for customs brokers to allow for easier access to the profession to those who may meet all other criteria including moral and financial criteria.

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					even the requirements established by the previous Chamber Bylaws, a transitional regime was applied.	deemed sufficient as an academic qualification. We consider also that the use of the protected title is not indispensable to practice the activity of a customs representative.	
11	Announcement 10774/2016"Rules, conditions, principles and procedures applicable in the scope of the internship to be undertaken by individuals who want to register in the Professional Association of Customs Brokers"	Para. 2; Para. 5; Para. 6	Professional internship	Access to the profession of customs broker depends on the completion of an internship, with a duration of six months, with a theoretical and a practical components. Candidates may or may not be accepted to enrol in the internship. The decision to be accepted to enrol in the internship is taken by a committee headed by the president of the professional association and includes other members of recognised merit who can be external to the professional association. This same committee is responsible for setting and grading the final exams. The internship fee amounts to EUR 3200.	The internship aims to be a professional initiation, implying not only the integration of the knowledge acquired in school education and the experience of its practical application, but also the perception of the ethical, legal, economic, environmental, human resources, and of management in general that characterise the exercise of the profession, so as to enable the profession to perform competently and responsibly.	The existence of an internship is a barrier to competition, and depending on its duration, subject matter, evaluation model and associated costs, may result disproportionate and unnecessary to fulfil the policy objective. The horizontal framework law for professional associations (Law 2/2013) introduces limits on the organisation and duration of professional internships. Internships should not last for more than 18 months, including the period for training and evaluation, if applicable. In this case, the duration is proportional. The final evaluation of the internship is already conducted by a board composed of independent members from the professional association, which may include members of the latter, but must include also professionals of recognised merit.	We recommend that the subjects that are part of the academic qualification of the internship should not be repeated in the theoretical training offered during the internship; also, we recommend that the theoretical training also be conducted via e-learning. We recommend that the fees required for internships be calculated using transparent, non-discriminatory and cost-based criteria.
12	Regulation 666/2016 "Rules, conditions, principles and procedures applicable in the scope of the internship to be undertaken by individuals who want to register in the Professional Association of Customs Brokers"	Art. 6	Academic qualification	Access to the profession of customs broker depends on the candidate holding a university degree: in economics, management or business administration, law, international relations, international trade or logistics and customs.	The academic fields are the ones considered by the professional association as adequate for providing the necessary knowledge to exercise the profession. This is a recent requirement adopted as a response to the challenges brought about by international trade, according to the recital of Bill 291/XII (approved as Law 112/2015). This current list of six admissible university degrees extends the previous list of only three. For those experienced professionals not meeting even the requirements established by the previous Chamber Bylaws, a transitional regime was applied.	The need for candidates to hold a degree in specific academic fields, considered by the professional association as adequate for providing the necessary knowledge to exercise the profession, establishes a requirement that restricts access to the professional title for those who do not have the required academic background. Although a university degree is not something negative to hold, to compulsorily require such an academic qualification excludes other well-qualified professionals who may have the appropriate experience and professional skills to perform the activities in question. Before the introduction of the bylaws in 2015, there was no requirement for a university degree to become a customs broker, and secondary school level (12 years of schooling) was deemed sufficient as an academic qualification. We consider also that the use of the protected title is not indispensable to practice the activity of a customs representative.	We recommend revoking the recently introduced requirement of having a university degree for customs brokers to allow for easier access to the profession to those who may meet all other criteria including moral and financial criteria.

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13	Regulation 666/2016 "Rules, conditions, principles and procedures applicable in the scope of the internship to be undertaken by individuals who want to register in the Professional Association of Customs Brokers"	Art. 2; Art. 3(1); Art. 4(2); Art. 5(1); Art. 10; Art. 11(1); and Art. 13(1)	Professional internship	Access to the profession of customs broker depends on the completion of an internship, with a duration of six months, with a theoretical and a practical components. Candidates may or may not be accepted to enrol in the internship. The decision to be accepted to enrol in the internship is taken by a committee headed by the president of the professional association and includes other members of recognised merit who can be external to the professional association. This same committee is responsible for setting and grading the final exams.	The internship aims to be a professional initiation, implying not only the integration of the knowledge acquired in school education and the experience of its practical application, but also the perception of the ethical, legal, economic, environmental, human resources, and of management in general that characterise the exercise of the profession, so as to enable the profession to perform competently and responsibly.	The existence of an internship is a barrier to competition, and depending on its duration, subject matter, evaluation model and associated costs, may result disproportionate and unnecessary to fulfil the policy objective. The horizontal framework law for professional associations (Law 2/2013) introduces limits on the organisation and duration of professional internships. Internships should not last for more than 18 months, including the period for training and evaluation, if applicable. In this case, the duration is proportional. The final evaluation of the internship is already conducted by a board composed of independent members from the professional association, which may include members of the latter, but must include also professionals of recognised merit.	We recommend that the subjects that are part of the academic qualification of the internship should not be repeated in the theoretical training offered during the internship; also, we recommend that the theoretical training also be conducted via e-learning.

Financial and economic professions: Economists

Table A B.12. Financial and economic professions: Economists

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
1	Decree-Law 174/98 (last modification by Law 101/2015)"Bylaws of the Professional Association of Economists"	Art. 3	Self-regulating regime	This provision describe the attributions and competences given to the public professional association, allowing it to have control over access and exercise of self-regulated professions, including on i) the elaboration and implementation of technical rules, ii) definition of ethical principles, iii) criteria for internships, iv) definition of academic qualifications, v) recognition of professional qualifications obtained outside the national territory, vi) attribution of the exclusive right to grant professional titles and vii) exercise of disciplinary powers.	It is our understanding that this provision aims to ensure the exercise of the regulatory function, including the disciplinary function, as well as the representative function, taking into account the interests of users of the professional services, by one and the same single entity, the professional association. In the Portuguese Constitution autonomy and administrative decentralisation to the professional associations is recognised to ensure the defence of the public interest and the fundamental rights of citizens, and also to guarantee the self-regulation of the professions that require technical independence. This regulatory model is based on the public interest of these professions, through the designation of state powers to those entities and with two main characteristics: the exclusivity on granting the professional title and the obligation of being registered within the professional association to practice the profession, which qualifies the nature of the regulation as being mandatory and unitary.	The harm to competition arising from the regulatory model established by Law 2/2013 stems from the centralisation in a single entity of the powers to regulate and represent the profession. Because each professional association, apart from representing the profession, controls access to it and its exercise, the regulations issued may create disproportional and anti-competitive restrictions. The freedom to choose and exercise a profession is a fundamental right of the citizen. Also, the freedom of movement of workers and the free establishment to provide services are fundamental principles of the EU internal market. Restrictions to these principles, in the pursuit of the public interest, must be well justified and proportional. When a professional association acquires full responsibility to regulate access to the profession and its exercise as well as the conduct of its members, this may have an anti-competitive impact. In fact, professional associations may adopt rules that reduce incentives or opportunities for stronger competition between operators, such as restrictions on i) the elaboration and implementation of technical rules, ii) definition of ethical principles, iii) criteria for internships, iv) definition of academic qualifications, v) recognition of professional qualifications obtained outside the national territory (even if bounded by the criteria set by Directive 2005/36/EC amended by Directive 2013/55/EC, transposed by Law 9/2009 and Law 26/2017), vi) attribution of the exclusive right to grant professional titles, vii) determination of reserved activities and viii) exercise of disciplinary powers. As the governing bodies of public professional associations are exclusively composed of their members, there is a risk that their members' interests will not coincide with the public interest. This is one significant reason for including within at least some governing bodies of a professional association, lay people representing the interests of relevant social groups, such as consumer associations, other professionals, and high-profile people with experience in regulatory issues.	We recommend that the regulatory function should be separated from the representative function for self-regulated professional associations, either through the creation of an over-arching supervisory body by sector or trade, or through the creation of a supervisory body inside the current professional orders with the necessary "Chinese walls". The supervisory body takes on the main regulation of the profession such as access to the profession and similar functions. The board of the regulatory body will include not only representative of the profession but also lay people, including high-profile experienced individuals from other regulators, representatives of consumer organisations and academia.

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2	Decree-Law 174/98 (last modification by Law 101/2015)"Bylaws of the Professional Association of Economists"	Art. 4(2)(3)	Protected professional title	Only those who are registered in the Professional Association of Economists are allowed to use the professional title of economist. Only those firms registered in the professional association can use the designation of an economists' firm.	This professional association was created to add value to the profession of economist, which has acquired strong economic and social importance and, to that extent, requires an entity that disciplines it, safeguards its values and creates framework conditions and technical-professional evaluation. Registration and the use of the title enables consumers to be assured that the professionals are certified to provide those services.	Mandatory registration in the professional association in order to obtain the professional title implies an administrative procedure that results in entry costs. Professional licensing may remedy the inefficiencies resulting from asymmetric information and provide incentives to invest in skills, but it also limits employment, increases prices and weakens competition. Using mandatory registration as a mechanism to access the profession can be restrictive. An operator may face lower direct or indirect costs by not participating in a registry, even if still fulfilling the requirements to exercise the activity. However, simple registration is not necessarily harmful, except when it is related to the establishment of reserved work. This means that the protection of the title when combined with reserved activities excludes other professionals from the activity, reduces the number of suppliers in the market and increases costs to consumers. However, in the case of economists the current bylaws do not state any reserved tasks. Besides the exclusivity to grant the professional title, to natural persons or firms, this provision does not exclude other professionals or firms of these professionals from the performance of any activity that can be performed by economists, as there are no reserved tasks for these professionals. Hence, we considered there is no harm to competition.	No recommendation.
3	Decree-Law 174/98 (last modification by Law 101/2015)"Bylaws of the Professional Association of Economists"	Art. 9(2)(a)	Academic qualification	The professional association of economists requires that candidates to use the title have a university degree, a masters or PhD in economic sciences.	To ensure an adequate quality of service, self-regulated professions are subject to regulations of entry and exercise in the market. Entry rules typically include academic qualification requirements.	In spite of the fact that economists must hold an economics degree to register with the corresponding professional association, and to then be able to use the title of economist, they do not have any reserved activities, meaning they, in fact, do not need to be registered in the professional association of economists to exercise the profession.	No recommendation.

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4	Decree-Law 174/98 (last modification by Law 101/2015)"Bylaws of the Professional Association of Economists"	Art. 9(2)(b); Art. 15 (1)	Professional internship	The professional association of economists requires that candidates who use the title have a university degree, a master's or PhD in economic sciences, and the completion of a professional internship, when mandatory. The internship is not mandatory if the candidate graduated before 26 April 1999 holding a university degree in economic sciences, or if he or she holds a master's or PhD degree. The duration of the internship cannot be longer than 18 months, but if the candidate has a postgraduate diploma relevant to the area, the duration of the internship can be no longer than 12 months. To complete the internship, there is no final exam; however, the candidate's supervisor must submit a final report evaluating the candidate. This report will be reviewed by a permanent commission of the professional association that will decide on the candidate's membership of the professional association. There is no internship fee.	To ensure an adequate quality of service, self-regulated professions are subject to regulations of entry and exercise in the market. Entry rules typically include the completion of an internship.	The internship is not mandatory following certain conditions. Even in cases where the internship is mandatory, it does not represent a barrier to competition since there are no reserved activities for economists. Moreover, the duration of it is below 18 months (the maximum period settle in Law 2/2013). Also, it is not subject to final evaluation by peers. There is also no internship fee. Hence, we consider that there is no barrier to competition when the internship is mandatory.	No recommendation.
5	Decree-Law 174/98 (last modification by Law 101/2015)"Bylaws of the Professional Association of Economists"	Art. 12(1)(2)(3)(4)(9); and Art. 13(1)(2)	Partnership / Ownership of professional firms	The bylaws of the Professional Association of Economists require that the majority of capital (i. e. , above 50%) with voting rights (or, just the majority of voting rights, if applicable) of professional firms of economists are owned by professionals or companies of such professionals, constituted by national law or other forms of associative organisation of professionals equated to economists and established in other Member States, provided the majority of capital and voting rights are held by those professionals.	Such a restriction aims to guarantee professional independence, autonomy, adherence to professional ethical rules and the pursuit of the public interest.	Ownership, shareholding and partnership rules in financial professional firms (for economists, auditors, certified accountants and customs brokers), are less stringent than in other professions, e. g. legal professions, since only the majority of their sharing capital and voting rights must be owned by professional partners (and not the total). Non-professional partners may own the remaining capital and voting rights. This option follows what is stated in Framework Law 2/2013. To open up a professional firm to external ownership means to open the firm to more investment, by allowing access to a wider pool of capital. External ownership, partial or total, means capital ownership by non-professionals, ownership of voting rights, or both. This opening will enable professional firms to satisfy a greater pool of consumers and reap the benefits of a larger scale of operations. For younger professionals, not yet well established in their profession, it would also mean more opportunities to set up their own professional firm and compete in the market. This will generate a greater ability by professional firms to compete in the	We recommend that the ownership and partnership of all professional firms be opened to other professionals and non-professionals, that is, should be open to individuals outside the profession. We also recommend that other professionals and non-professionals be allowed to hold a majority of a professional firm's social capital, together with a majority of voting rights.

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						Single Market and internationally. It would also allow for an improved risk management among the owners of a professional firm, hence, lower operational costs and possibly lower prices charged to consumers for the different professional services being delivered in the market. Ultimately, all these restrictions on ownership, shareholding and partnership over professional firms, are detrimental to firms across all economy, especially SMEs, and to households, as their relaxation can be expected to lead to an increase in their welfare.	
6	Decree-Law 174/98 (last modification by Law 101/2015)"Bylaws of the Professional Association of Economists"	Art. 12(6); and Art. 13(1)	Management of professional firms	The bylaws of the Professional Association of Economists require that all the managers of professional companies of economists constituted by national law must be professionals of the respective professional association. The criteria for other forms of associative organisations of equivalent professionals established in other EU/EEA Member States, who hold the professional title, seem less excessive, needing only to ensure that at least one manager or administrator is a professional.	A reason invoked by the stakeholders to impose such restrictions on who can be a member of a professional firm's management team is that only when the management is controlled by professional partners can it be assured that the sole or main corporate objective of the professional firm will be pursued and that the autonomy of the professionals is maintained.	In the case of professional firms of economists, all the management members of these professional firms must be in the hands of professional partners. A reason invoked to impose such a restriction is that only when the management is controlled by professional partners can it be assured that the sole or main corporate objective of the professional firm will be pursued and that the autonomy of the professionals is maintained. However, Framework Law 2/2013 is less stringent, as only requires that one of managers or administrators of a professional firm be a member of the professional association (or, in case registration in the professional association is not mandatory, he has to fulfil all membership requirements). Historically, corporations separated their ownership from management starting in the early 20th century. One of the main reasons was to professionalise management in increasingly competitive markets. Conflicts between owners (the principals) and managers (the agents) has been the subject of extensive literature, and various payment schemes have been adopted to align managers' interests as closely as possible to the owners' interests (see e. g. , Carlton and Perloff, 2004). Hence, notwithstanding the fact that we deal with professional firms, there is no reason for all managers to be owners or partners – as Law 2/2013 makes clear. A professional management, which ultimately answers to the owners of the professional firm, may be an option preferable to the professional partners themselves.	We recommend that that the separation between ownership and management should be allowed in all professional firms and that their management may include non-professionals, that is, should be open to individuals outside the professions.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
7	Decree-Law 174/98 (last modification by Law 101/2015)"Bylaws of the Professional Association of Economists"	Art. 12(7)	Multidisciplinary activities of professional firms	This provision allows multidisciplinary professional firms provided that the main corporate objective is the exercise of an activity that falls under the same professional association. This professional firm can engage in a secondary corporate objective, with regard to activities performed by other professionals in the same professional firm, who may even be organised in other professional public associations, provided the applicable incompatibilities and impediments regime is upheld.	This provision aims to guarantee compliance with the ethical principles of each self-regulated profession, as well as, if applicable, the guarding of professional secrecy relating to professional-client privilege, as well as preventing conflicts of interest between different professionals.	Our interpretation of the bylaws is that this provision does not by itself prohibit professional firms from performing multidisciplinary activities, since these firms do not have to have an exclusive social corporate objective and may engage in other activities. However, incompatibilities and impediments regimes may limit the range of professional activities within a same professional firm. Note that there is not a unique and exhaustive list of incompatibilities and impediments for each profession, being spread out through several legislative acts. To restrict multidisciplinary activity in a professional firm is to restrict the association of different professionals, belonging to different professional associations (some may not even belong to a public professional association), who would exercise their professional activities within the same firm and in the pursuit of the firm's corporate or social object(s). To rule out multidisciplinary activity in the same professional firm, between potentially complementary service providers, harms competition and can be detrimental to consumer welfare. In fact, this restriction does not allow for the full exploration of economies of scope that come with the offer of different services by a same "service delivery unit" that shares infrastructure and human capital. It foregoes specialisation gains and service quality gains resulting from the interaction between a wider range of professionals. This also means foregoing the exploitation of economies of scale and the advantages in branding. It also does not allow for the mitigation of the double marginalisation (or double mark-up) problem that come with multidisciplinary activities which can complement each other, by segmenting the services provided. This means foregoing lower average costs in a multi-product firm, therefore leading to higher fees being charged to clients, while preventing clients from further benefits that could be gained from a more convenient "one-stop shop" for a wider range of professional services. Ruling out multidisciplinary within a professional can reduce the scope for a better risk management between different professional activities within the same professional firm, as they may be subject to non-identical demand volatility or uncertainty - i. e. , reduction in the scope for internal risk spreading to be understood as the ability to transfer resources in response to fluctuations in demand. To offer a wider range of professional services means to be better prepared to face market uncertainties. Furthermore, opening up a professional firm to multidisciplinary activities is likely to ease the introduction of innovative products but also to spur innovation in the delivery of already existing products or range of products.	No recommendation on the legal principle foreseen in this specific provision. However, we recommend that the legislator conducts a technical study to assess the proportionality of incompatibilities and impediments to pursue the exercise of a self-regulated profession that may be preventing the offer of multidisciplinary activities within the same professional firm, taking into consideration the policy objective. In case they are considered not to be proportional, they should be abolished.

Health professions: Nutritionists

Table A B.13. Health professions: Nutritionists

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
1	Law 51/2010 as amended by Law 126/2015 "Nutritionists Professional Association Bylaws"	Art. 4	Self-regulating regime	This provision describes the attributions and competences given to the public professional association, guaranteeing it the power to control access to and exercise of the profession, the elaboration and implementation of technical rules and ethical principles and the exercise of disciplinary powers.	It is our understanding that this provision aims to ensure the exercise of the regulatory function, including the disciplinary function, as well as the representative function, taking into account the interests of users of the professional services, by one and the same single entity, the professional association. In the Portuguese Constitution the autonomy and administrative decentralisation to the professional associations is recognised to ensure the defence of the public interest and the fundamental rights of citizens, and also to guarantee the self-regulation of the professions that require technical independence. This regulatory model is based on the public interest of these professions, through the designation of state powers to those entities and with two main characteristics: the exclusivity on granting the professional title and the obligation of being registered within the professional association to practice the profession, which qualifies the nature of the regulation as being mandatory and unitary.	The harm to competition arising from the regulatory model, already established by the horizontal Framework Law 2/2013 and considered in the bylaws of the professional association, stems from the centralisation in a single entity of the powers to regulate and represent the profession. Because each professional association, apart from representing the profession, controls access to it and its exercise, the regulations issued may create disproportional and anti-competitive restrictions. The freedom to choose and exercise a profession is a fundamental right of the citizen. Also, the freedom of movement of workers and their free establishment to provide services are fundamental principles of the EU internal market. Restrictions to these principles, in the pursuit of the public interest, must be well justified and proportional. When a professional association acquires full responsibility to regulate access to the profession and the conduct of its members, this may have an anti-competitive impact. In fact, professional associations may adopt rules that reduce incentives or opportunities for stronger competition between operators, such as restrictions on advertising and partnerships/ownerships, managements or multidisciplinary activities, or restrictions when setting the minimum qualifications to enter the profession, amongst others. As the governing bodies of public professional associations are exclusively composed of their members, there is a risk that their members' interests will not coincide with the public interest. This is one significant reason for including within at least some governing bodies of a professional association, lay people representing the interests of relevant social groups, such as consumer associations, other professionals, and high-profile people with experience in regulatory issues.	We recommend that the regulatory function should be separated from the representative function for self-regulated professional associations, either through the creation of an over-arching supervisory body by sector or trade, or through the creation of a supervisory body inside the current professional orders with the necessary "Chinese walls". The supervisory body takes on the main regulation of the profession such as access to the profession and similar functions. The board of the regulatory body will include not only representative of the profession but also lay people, including high-profile experienced individuals from other regulators, representatives of consumer organisations and academia.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
2	Law 51/2010 as amended by Law 126/2015 "Nutritionists Professional Association Bylaws"	Art. 61 (1); and (5)/(6)	Protected professional title	To use of the professional title of Nutritionists depends on registration with the professional association. Nobody can hire or use the services of a professional who is not registered with the Professional Association of Nutritionists. Those who hire professionals not registered in the Professional Association of Nutritionists may be charged with fines.	This rule enforces the provision that gives exclusivity to the professional association to attribute the professional title. It has been argued that the use of services from those who are not registered with the professional association may constitute a danger to public health, because they are not certified as capable professionals by the professional association (they have not passed the ethical exams or probably do not have any training other than the university integrated internship).	The condition of holding the professional title to exercise the profession reduces the number of suppliers in the market, which increases the costs of the services. However, simple registration is not necessarily harmful, except when it is related to the establishment of other restrictions, such as reserved work. This means that the protection of the title when combined with reserved activities excludes other professionals from the activity, reduces the number of suppliers in the market and increases costs to consumers. At present, there is no regulation in force reserving activities for nutritionists. In this context, the effective meaning of this provision is not harmful. Note, in this context, that only in the Draft Law 34/XII pending in the Parliament for approval there is a proposal for reserved activities to nutritionists. However, the prohibition of hiring a professional if registration in the professional association is not verified, constitutes a limitation of consumer choice to freely choose to consult with someone who has a suitable qualification. Moreover, the provisions limit clients from having advice on nutrition by other health professionals not registered in the Professional Association of Nutritionists, subjecting these customers with the possibility to be charged with fines. Such a restriction also leads to a reduction in the number of nutritionist service providers competing in the market, which may have a negative impact on prices/fees charged, and on the diversity and innovation of such services. It should also be noted that we find no proportionality on the policy objective to fine consumers that seek services supplied by professionals without registration in the professional association.	No recommendation regarding the protected title since at present there is no regulation in force reserving activities for nutritionists. Abolish the provision in order to allow consumers to choose between a professional registered or not registered in the Professional Association of Nutritionists. In that context, no fines can be set.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
3	Law 51/2010 as amended by Law 126/2015 "Nutritionists Professional Association Bylaws"	Art. 62 (1)(2)	Academic qualifications	To be registered with the Professional Association of Nutritionists it is necessary to hold an academic degree in nutritional sciences, dietetics or dietetics and nutrition. The academic degree must have a minimum duration of four years in a Portuguese institution of higher education, or the equivalent abroad, under conditions of reciprocity in the case of third states.	It is argued that the requirement of academic qualifications is on the grounds of quality standards for the exercise of the profession, which has a strong technical content. The academic degree cannot be substituted by professional experience by new entrants into the profession. The stakeholders consider these academic courses as the only acceptable options to provide the necessary theoretical knowledge, considering existing courses in Portugal. The requirement of reciprocity on the recognition of educational training may be justified for political reasons, pending a decision of the Portuguese state.	Two points may be raised regarding this type of restriction in relation to nutritionists. First, the list of academic degrees accepted by the professional association may exclude other candidates who graduated in similar courses, e. g. a nurse or a doctor, but are not recognised to be registered in the professional association. Second, it excludes professionals who have a certain number of years of professional experience, but do not have a four-year academic degree, but only three years (bacharelato), since the transitional regime to include those professionals in the professional association has already expired.	We recommend that the professional association should work with the legislator to set up a transparent, proportional and non-discriminatory process for identification of alternative academic routes to obtain the qualifications necessary for the exercise of a profession. We recommend that the profession should be opened to candidates with other backgrounds than the current compulsory university degree regime. Candidates may be required to hold a post-graduate degree or take a conversion course, and should undergo the same training as other trainees, including passing the final exam to access the profession. This will open access to more individuals with different backgrounds, allowing for more diversity in the offer of services, and more innovation.
4	Law 51/2010 as amended by Law 126/2015 "Nutritionists Professional Association Bylaws"	Art. 63 (1), and Art. 69	Professional internship	Interns must take the professional qualification tests (consisting of an oral exam on ethics) in order to be registered as full members of the Professional Association of Nutritionists (Art. 63), and obtain the professional title of nutritionist (Art. 69).	All interns are subject to the presentation of a final paper after the internship and oral exams to evaluate their knowledge on ethical subjects, after the completion of their training on ethics. These exams are intended to evaluate the candidates after the conclusion of their internship and to ensure that they have acquired the knowledge related to ethical principles, which will give them the tools to exercise the profession according to such values.	The effective need and purpose of the professional internship required by the Professional Association of Nutritionists' bylaws was not demonstrated. This need is even more questionable in case of an existing duplication, i.e., when candidates had already attended an internship programme during the execution of their academic training. This also delays entry into the market of new suppliers. An unnecessary duplication of internships creates fewer incentives for the applicants to access the activity. Even if the internships apparently are of two kinds, so-called professional and academic, they aim to provide practical training and to prepare candidates to be autonomous in their activity. Moreover, the monopoly of the professional association on the organisation of professional internships is potentially harmful to newcomers, as already qualified nutritionists essentially decide who their future competitors will be, and can restrict or grant access to the profession, seemingly at will. Professionals also tend to have fewer incentives to charge lower prices to consumers or indeed to increase the quality of the services provided. Note that access requirements must be proportional and adequate to the policy objective of the regulation. Some recent economic studies published by the EC demonstrate that reforms implemented by EU Member States to abolish or reduce obstacles to the access of liberal professions led to job creation and lower prices to consumers, including in healthcare	We recommend eliminating the duplication of internships imposed on candidates for nutritionists, and consider admitting only one, either the academic or the professional internship. We recommend that the theoretical training also be conducted via e-learning. We recommend that the final evaluation of the internship should be conducted by a board, independent from the professional association, which may include members of the latter, but must also include professionals of recognised merit, such as law professors and magistrates, among others.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
5	Law 51/2010 as amended by Law 126/2015 "Nutritionists Professional Association Bylaws"	Art. 64(1)(2)	Professional internship	To become a full member of the Professional Association of Nutritionists it is mandatory to enrol in a professional internship under the supervision of the professional association. The internship has a duration of six months.	According to Art. 3 of Regulation 484/2017 of the Professional Association of Nutritionists (which specifically regulates internships), with the completion of the internship, the trainee nutritionist will apply, in a real work context, the theoretical knowledge resulting from their academic training, as well as developing the ability to solve real problems and to acquire the skills and working methods for the competent and responsible exercise of the activity of nutritional sciences, in technical, scientific, ethical and interpersonal relationships.	<p>services. Internship fees should be proportional and reflect the true costs of organising and providing the internships, following transparent and clear criteria that must be made public.</p> <p>The effective need and purpose of the professional internship required by the Professional Association of Nutritionists' bylaws was not demonstrated. This need is even more questionable in case of an existing duplication, i. e. , when candidates had already attended an internship programme during the execution of their academic training. This also delays entry into the market of new suppliers. An unnecessary duplication of internships creates fewer incentives for the applicants to access the activity. Even if the internships apparently are of two kinds, so-called professional and academic, they aim to provide practical training and to prepare candidates to be autonomous in their activity. Moreover, the monopoly of the professional association on the organisation of professional internships is potentially harmful to newcomers, as already qualified nutritionists essentially decide who their future competitors will be, and can restrict or grant access to the profession, seemingly at will. Professionals also tend to have fewer incentives to charge lower prices to consumers or indeed to increase the quality of the services provided. Note that access requirements must be proportional and adequate to the policy objective of the regulation. Some recent economic studies published by the EC demonstrate that reforms implemented by EU Member States to abolish or reduce obstacles to the access of liberal professions led to job creation and lower prices to consumers, including in healthcare services. Internship fees should be proportional and reflect the true costs of organising and providing the internships, following transparent and clear criteria that must be made public.</p>	We recommend eliminating the duplication of internships imposed on candidates for nutritionists, and consider admitting only one, either the academic or the professional internship. We recommend that the theoretical training also be conducted via e-learning. We recommend that the final evaluation of the internship should be conducted by a board, independent from the professional association, which may include members of the latter, but must also include professionals of recognised merit, such as law professors and magistrates, among others.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
6	Law 51/2010 as amended by Law 126/2015 "Nutritionists Professional Association Bylaws"	Art. 75(1)(2)	Partnership/Ownership of professional firms	Nutritionists can exercise their profession in a collective way through professional firms of nutritionists. Professional firms of nutritionists can only have as partners nutritionists established in Portugal, other professional firms of nutritionists registered as members of the professional association of nutritionists, and other forms of associative organisations of professionals equated to nutritionists and established in other EU/EEA Member States, provided the majority of capital and voting rights are held by those professionals.	A reason invoked to impose such restrictions on who can be a member of a professional firm's management team is that only when the management is controlled by professional partners can it be assured that the sole or main corporate objective of the professional firm will be pursued and that the autonomy of the professionals is maintained.	The traditional firm model with partnerships restricted to professionals from one single area together may contribute to a lack of innovation in the provision of services. It may also contribute to creating a wedge between what the profession delivers and what firms and households demand from the suppliers of the services. Opening up firms to external ownership can be a vehicle to introduce innovation to the benefit of the firms' clients. This argument emphasises the importance of bringing in investors with an innovator's mindset that will introduce and push for "game-changing innovations" better able to respond to the needs of firms and households that rely on those infrastructures to carry out their economic activities. Ultimately, all these restrictions on ownership, shareholding and partnership over professional firms, are detrimental to firms across the entire economy, especially SMEs, and to households, as their relaxation can be expected to lead to an increase in their welfare.	We recommend that the ownership and partnership of all professional firms be opened to other professionals and non-professionals, that is, should be open to individuals outside the profession. We also recommend that other professionals and non-professionals be allowed to hold a majority of a professional firm's social capital, together with a majority of voting rights.
7	Law 51/2010 as amended by Law 126/2015 "Nutritionists Professional Association Bylaws"	Art. 75(8)	Multidisciplinary practice in professional firms	The corporate objective of professional firms of nutritionists is the exercise of nutritionist activities, as defined by what a professional nutritionist does. However, professional firms of nutritionists can also engage in other activities, provided that in this case they are not incompatible with the profession of nutritionist nor do they meet any impediments laid down by their bylaws.	This provision aims to guarantee compliance with the ethical principles of each self-regulated profession, as well as, if applicable, the guarding of professional secrecy relating to professional-client privilege, as well as preventing conflicts of interest between different professionals.	Our interpretation of the horizontal framework law is that this provision does not by itself prohibit professional firms from performing multidisciplinary activities, since these firms do not have to have an exclusive social corporate objective and may engage in other activities. However, incompatibilities and impediments regimes may limit the range of professional activities within a same professional firm. Note that there is no unique and exhaustive list of incompatibilities and impediments for each profession, being spread out over several legislative acts. To restrict multidisciplinary activity in a professional firm is to restrict the association of different professionals, belonging to different professional associations (some may not even belong to a public professional association), who would exercise their professional activities within the same firm and in the pursuit of the firm's corporate or social objective(s). To rule out multidisciplinary activity in the same professional firm, between potentially complementary service providers, harms competition and can be detrimental to consumer welfare. In fact, this restriction does not allow for the full exploration of economies of scope that come with the offer of different services by a same "service delivery unit" that shares infrastructure and human capital. It foregoes specialisation gains and service quality gains resulting from the interaction between a wider range of professionals. This also means foregoing the exploitation of economies of scale and the advantages of branding. It also does not allow for the mitigation of the double marginalisation (or double mark-up) problem that come with multidisciplinary activities which can complement each other, by segmenting the services provided. This means foregoing lower average costs in a	No recommendation on the legal principle foreseen in this specific provision. However, we recommend that the legislator conducts a technical study to assess the proportionality of incompatibilities and impediments to pursue the exercise of a self-regulated profession that may be preventing the offer of multidisciplinary activities within the same professional firm, taking into consideration the policy objective. In case they are considered not to be proportional, they should be abolished.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
						multi-product firm, therefore leading to higher fees being charged to clients, while preventing clients from enjoying further benefits that could be gained from a more convenient "one-stop shop" for a wider range of professional services. Ruling out multidisciplinary activities within a profession can reduce the scope for better risk management between different professional activities within the same professional firm, as they may be subject to non-identical demand volatility or uncertainty - i. e. , reduction in the scope for internal risk spreading to be understood as the ability to transfer resources in response to fluctuations in demand. To offer a wider range of professional services means to be better prepared to face market uncertainties. Furthermore, opening up a professional firm to multidisciplinary activities is likely to ease the introduction of innovative products but also to spur innovation in the delivery of already existing products or range of products.	
8	Law 51/2010 as amended by Law 126/2015 "Nutritionists Professional Association Bylaws"	Art. 75(7)	Management of professional firms	The bylaws of nutritionists impose that all members in the management of a professional firm of nutritionist must themselves be nutritionists.	A reason invoked to impose such restrictions on who can be a member of a professional firm's management team is that only when the management is controlled by professional partners can it be assured that the sole or main corporate objective of the professional firm will be pursued and that the autonomy of the professionals is maintained.	The Framework Law 2/2013 only requires that one of managers or administrators of a professional firm be a member of the professional association (or, in case registration in the professional association is not mandatory, that individual has to fulfil all membership requirements. Historically, corporations separated their ownership from management starting in the early 20th century. One of the main reasons was to professionalise management in increasingly competitive markets. Conflict between owners (the principals) and managers (the agents) has been the subject of an extensive literature, and various payment schemes have been adopted to align managers' interests as closely as possible to the owners' interests. Hence, notwithstanding the fact that we deal with professional firms, there is no reasons for all managers to be owners or partners – as Law 2/2013 makes clear. A professional management, which ultimately answers to the owners of the professional firm, may be an option preferable to the professional partners themselves. The existing rules severely limit the ability of professionals to seek out for themselves the optimal structure of their firms or groupings, including the ability to achieve economies of scope by providing joint services with other professionals.	We recommend that that the separation between ownership and management should be allowed in all professional firms and that their management may include non-professionals, that is, should be open to individuals outside the profession.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
9	Law 51/2010 as amended by Law 126/2015 "Nutritionists Professional Association Bylaws"	Arts. 109 to 115	Quality standards / Duties of conduct	These provisions establish the general principles and duties of professional conduct applicable to the professionals in their relation with the Professional Association of Nutritionists, their clients, their colleagues and other professionals. They also set duties of confidentiality.	These provisions aim to guarantee that professionals are bound to perform ethical duties, for the safety of consumers and protection of the public interest. One of the reasons for self-regulation is to make professionals comply with rules of ethics. Since there is a problem of asymmetric information, customers may not be in a position to correctly evaluate the services provided.	The provision of vague and undefined moral conduct in a self-regulated profession may increase the possibility of the misuse and over-interpretation of those concepts by the internal bodies of the professional association. Non-compliance with those duties leads to the application of disciplinary powers. The criterion may not be sufficiently objective to avoid discretion in the application of disciplinary powers. Such duties potentially increase discretion on the decisions of the professional association when applying internal discipline. Vague concepts cause legal uncertainty. Furthermore, ethical duties are often already established as a moral standard of behaviour, and do not necessary relate to a specific profession. A more objective way to assess quality control increases transparency and fairness.	We recommend limiting (reducing) these duties to those that are specific to nutritionists and are necessary to be established in this regulation. Additionally, consider whether it is possible to better determine vague concepts, in order to guarantee more legal certainty and avoid uneven interpretations of the concepts used in these provisions.
10	Law 51/2010 as amended by Law 126/2015 "Nutritionists Professional Association Bylaws"	Art. 116	Advertising	Nutritionists can advertise their services in an objective way using description and rigour, and must refrain from subjective publicity, such as of a comparative nature.	Some forms of advertising are not allowed by the European Directive 2005/29/EC (Art. 6), and Directive 84/459/CEE, such as comparative advertising that creates confusion among consumers, or provides false information. These restrictions aim to protect consumers against misleading or manipulative claims, due to the asymmetry of information between practitioners and consumers. It also may aim to mitigate an effect of moral hazard. Besides, the services provided by nutritionists are healthcare services, and therefore require additional care in the transmission of information and the assurance that it is reliable.	The restrictions on advertising discourage the differentiation of services between nutritionists. Restrictions on advertising limit their ability to present different solutions, products or methods, creating less incentive for innovation and investment. Advertising the characteristics and prices of services is an important instrument to overcome information asymmetries. It helps to differentiate service providers, and allows clients to make informed choices if they have better knowledge of the quality of services offered. Furthermore, restrictions on advertising are likely to be onerous for potential new entrants who will face stronger challenges to inform consumers of their presence in the market. Unnecessary and disproportionate restrictions on advertising of professional services should be abolished. Furthermore, unnecessary duplication of regulations should be avoided. Therefore the need to regulate professional advertising in this law must be re-assessed, considering the general rules on advertising already in place (the general national framework for advertising), and Decree-law 238/2015 on the advertising of healthcare services.	Any prohibition or restriction for professional advertising beyond the prohibition on misleading and unlawful comparative advertising (already covered in other legal texts) should be removed.
11	Draft Law 34/XIII "Definition and regulation of the acts of healthcare professionals", currently pending in parliament	Art. 7(1)(2)	Reserved tasks	This Draft law, currently pending in parliament, proposes a definition of reserved activities for healthcare professionals, including nutritionists. Art. 7 para. 1 specifically establishes the definition of the "nutritionist act". It consists of the activities of health promotion, prevention and treatment of the disease by evaluation, diagnosis, prescription and intervention and nutritional support to individuals, groups, organisations	According to the recital, this Draft Law aims to promote greater synergy between the different professionals within the health services. Stakeholders have argued in favour of activities reserved for healthcare professions stating the need to ensure the health safety of patients.	The creation of reserved activities restricts competition by determining exclusive rights to a certain category of suppliers. The adoption of exclusive rights hampers competition confining access to the market to a limited group of professionals. The provision of reserved activities bans other qualified professionals from the practice of the acts in question. As a consequence, it prevents entry into the market of other well-qualified professionals who do not hold the professional title of nutritionist. However, related scientific fields may also provide the technical expertise for all or some of the acts in question. If the Draft-Law is approved as it stands, consumers will significantly reduce any choice between different healthcare	We recommend that the legal provision establishing reserved activities in the Draft-Law should be changed in such a way that the "acts of nutritionist" is not exclusive to nutritionists, given that other health professionals with the academic knowledge and professional skills to provide nutritional advice do it as well. Allowing this restriction would be detrimental to the very substance of providing sound health advice by doctors and nurses.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
				and communities, as well as the planning, implementation and management of communication, safety and sustainability. According to Art. 7 para. 2, also considered a "nutritionist act" are the technical and scientific activities of teaching, training, education and organisation for health promotion and disease prevention, when practiced by nutritionists.		professionals when purchasing nutritional services. Taking into account that other health professionals with full knowledge and full capacity to give nutritional advice have done it so far and have not brought any danger to public health, it is difficult to identify the need to protect public interest in the case in which it is intended to grant exclusive acts to "Nutritionists". By segmenting healthcare services by profession, this proposal does not allow consumers to benefit from receiving services by the same professional in a set of related activities. This would, in turn, reduce consumers' costs and time and it would create a stronger competitive environment between suppliers to increase innovative ways of providing complementary health services. It may also drive consumers to make more use of less monitored Internet services where, for instance, nutritionist advice is available from other jurisdictions or in other languages, as these will appear more accessible than a very closed and restrictive profession.	
12	Draft Law 34/XIII "Definition and regulation of the acts of healthcare professionals", currently pending in parliament	Art. 14	Academic qualifications	The exercise of the "nutritionist act", as defined in Art. 7 of this draft law, is the competence of the holders of an academic degree in nutritional sciences, dietetics or dietetics and nutrition, that lasted no less than four years, issued by a Portuguese institution of higher education and holders of qualifications equivalent to those issued in Portugal, regularly enrolled in the Professional Association of Nutritionists. These same academic qualifications requirements are already established in the bylaws of the Professional Association of Pharmacists, approved by Law 51/2010 as amended by Law 126/2015 (Art. 62).	It is argued that the requirement of academic qualifications is on the grounds of quality standards for the exercise of the profession, which has a strong technical content. The academic degree cannot be substituted by professional experience by new entrants into the profession. The stakeholders consider these academic courses as the only acceptable options to provide the necessary theoretical knowledge, considering existing courses in Portugal. The requirement of reciprocity on the recognition of educational training may be justified for political reasons, pending a decision of the Portuguese state.	Two points may be raised. First, the list of academic degrees accepted by the professional association may exclude other candidates who graduated in similar courses, but are not recognised as registered with the professional association. Second, it excludes those professionals who have a certain number of years of professional experience, but instead of an academic degree of four years, they have only a three-year degree (bacharelato), since the transitional regime to include those professionals in the professional association has already expired. Note that in some EU Member States, an academic degree is not required (e. g. Belgium, Czech Republic, France, Germany, Slovakia). The legislator also did not establish any less restrictive regime of registration as a nutritionist or other healthcare professional, considering their close academic backgrounds, imposing, if necessary, possible compensation measures.	We recommend that the professional association should work with the legislator to set a transparent, proportional and non-discriminatory process for identification of alternative academic routes to obtain the academic qualifications necessary for the exercise of the profession. We recommend that the profession should be opened to candidates with backgrounds other than the current compulsory university degree regime. Candidates may be required to hold a postgraduate degree or take a conversion course, and should undergo the same training as other trainees, including passing the final exam to access the profession. This will open access to more individuals with different backgrounds, allowing for more diversity in the offer of services, and more innovation.
13	Decree-law 238/2015 "Advertising in health services"	Art. 7	Advertising	This provision sets restrictions on advertising health products and health services, which, for any reason, induce or are susceptible of misleading the user as to the decision to be taken. The list of restrictions includes: the prohibition of advertising practices that are	Some forms of advertising are not allowed by the European Directive 2005/29/EC (Art. 6), and Directive 84/459/CEE, such as comparative advertising that creates confusion among consumers, or provides false information. These restrictions aim to protect consumers against misleading or manipulative claims, due to the asymmetry of information between	The restrictions on advertising discourage the differentiation of services between nutritionists. Restrictions on advertising limit their ability to present different solutions, products or methods, creating less incentive for innovation and investment. Advertising the characteristics and prices of services is an important instrument to overcome information asymmetries. It helps to differentiate service providers, and allows clients to make informed choices if they have better knowledge of the	We recommend reducing the limitations on advertising to those specific cases not covered by the general prohibition on advertising, and only after a careful analysis of its proportionality.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
				likely to mislead users; advising or encouraging the acquisition of health services, without taking into account the specific requirements and without prior individual diagnosis.	practitioners and consumers. It also may aim to mitigate an effect of moral hazard. Besides, the services provided by nutritionists are healthcare services, and therefore require additional care in the transmission of information and the assurance that it is reliable.	quality of services offered. Furthermore, restrictions on advertising are likely to be onerous for potential new entrants who will face stronger challenges to inform consumers of their presence in the market. Unnecessary and disproportionate restrictions on advertising of professional services should be abolished. Furthermore, unnecessary duplication of regulations should be avoided. Therefore the need to regulate professional advertising in this law must be re-assessed, considering the general rules on advertising already in place (the general national framework for advertising), and Decree-law 238/2015 on the advertising of healthcare services.	
14	Regulation 308/2016 "Registration in the Professional Association of Nutritionists"	Art. 1(1)(3)	Protected professional title	The attribution of the professional title, its use and the exercise of the profession depend on registration in the Professional Association of Nutritionists as a full member. This same rule is established in Art. 61 para. 1 of Law 51/2010 as amended by Law 126/2015 (Professional Association of Nutritionists bylaws).	This provision is derived from Law 2/2013 (Art. 51/d), as a self-regulation model has been adopted. According to the recital of Draft law 161/XI (approved as Law 51/2010), the creation of the professional association and the mandatory registration is related to the difficulties in appreciation of the profession. Due to public interest within this activity, the recital argued the importance of guaranteeing the quality of the professionals and their respect for ethical values, in order to protect citizens and their health. The professional association aims to ensure the promotion of ethics and the technical, scientific and social conditions required for the exercise of the profession. According to official information, there are currently 3 748 nutritionists registered in the professional association (3 240 effective members and 347 interns); around 3 200 are estimated to be operating in Portugal (161 nutritionists have had their register suspended mostly because of emigration). According to official data, this is a regulated profession (including dietitians) in almost all EU Member States, but in the majority of them regulated by the ministry of health or a public body.	Mandatory registration in the Professional Association of Nutritionists in order to obtain the professional title implies an administrative procedure that results in entry costs. Professional licensing may remedy the inefficiencies resulting from asymmetric information and provide incentives to invest in skills, but it also limits employment, increases prices and weakens competition. Using mandatory registration as a mechanism to access the profession can be restrictive. An operator may face lower direct or indirect costs by not participating in a registry, even if still fulfilling the requirements to exercise the activity. However, simple registration is not necessarily harmful, except when it is related to the establishment of reserved work. This means that the protection of the title when combined with reserved activities excludes other professionals from the activity, reduces the number of suppliers in the market and increases costs to consumers. However, in the case of nutritionists the current bylaws do not state any reserved tasks. Note, although, that these professionals are currently lobbying to obtain exclusive rights to provide dietary advice (Draft-Law 34/XIII).	No recommendation.
15	Regulation 308/2016 "Registration in the Professional Association of Nutritionists"	Art. 2(1)(2)	Academic qualifications	To be registered in the professional association it is necessary to have a degree in nutritional sciences, dietetics or dietetics and nutrition, and the course must have a minimum duration of four years in a Portuguese institution of higher education, or the equivalent abroad,	It is argued that the requirement of academic qualifications should be established on the grounds of quality standards for the exercise of the profession, which has a strong technical content. The academic degree cannot be substituted by professional experience for new entries into the profession. These academic courses are considered to be the only	Two points may be raised. First, the list of academic degrees accepted by the professional association may exclude other candidates who graduated in similar courses, but are not recognised as registered with the professional association. Second, it excludes those professionals who have a certain number of years of professional experience, but instead of an academic degree of four years, they have only a three-year (bacharelato), since the transitional regime to include those	We recommend that the professional association should work with the legislator to set a transparent, proportional and non-discriminatory process for identification of alternative academic routes to obtain the academic qualifications necessary for the exercise of the profession. We recommend that the profession should be opened to

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
				under conditions of reciprocity in the case of third states. This same rule is established in Art. 62 of Law 51/2010 as amended by Law 126/2015 (Professional Association of Nutritionists bylaws).	acceptable options for providing the necessary theoretical knowledge, considering the existing courses in Portugal. The requirement of reciprocity in the recognition of educational training may be justified by political reasons, pending a decision of the Portuguese state.	professionals in the professional association has already expired. Note that in some EU Member States, an academic degree is not required (e. g. Belgium, Czech Republic, France, Germany, Slovakia). The legislator also did not establish any less restrictive regime of registration as a nutritionist of other healthcare professional, considering their close academic backgrounds, imposing, if necessary, possible compensation measures.	candidates with other backgrounds than the current compulsory university degree regime. Candidates may be required to hold a post-graduate degree or take a conversion course, and should undergo the same training as other trainees, including passing the final exam to access the profession. This will open the access to more individuals with different backgrounds, allowing for more diversity in the offer of services, and more innovation.
16	Regulation 484/2017 "Professional internship"	Art. 2(1)	Professional internship	The professional internship is an indispensable requirement for the candidate to become a nutritionist. This rule comes from the provision of Art. 64 of Law 51/2010 as amended by Law 126/2015 (Professional Association of Nutritionists bylaws).	According to Art. 3 of Regulation 484/2017 of the Professional Association of Nutritionists (which specifically regulates internships), with the completion of the internship, trainee nutritionists will apply, in a real work context, the theoretical knowledge resulting from their academic training. They will also develop the ability to solve real problems and to acquire the skills and working methods for the competent and responsible exercise of the activity of nutritional sciences, in their technical, scientific, ethical and interpersonal relationships.	An unnecessary duplication of internships creates fewer incentives for the applicants to access the activity. Even if the internships apparently are of two kinds, so-called professional and academic, they aim to provide practical training and to prepare candidates to be autonomous in their activity. The effective need and purpose of the professional internship required by the Professional Association of Nutritionists' bylaws was not demonstrated. This need is even more questionable in case of an existing duplication, i. e. , when candidates had already attended an internship programme during the execution of their academic training. This also delays entry into the market of new suppliers. Moreover, the monopoly of the professional association on the organisation of professional internships is potentially harmful to newcomers, as already qualified nutritionists essentially decide who their future competitors will be, and can restrict or grant access to the profession, seemingly at will. Professionals also tend to have fewer incentives to charge lower prices to consumers or indeed to increase the quality of the services provided. Note that access requirements must be proportional and adequate to the policy objective of the regulation. Some recent economic studies published by the EC demonstrate that reforms implemented by EU Member States to abolish or reduce obstacles to the access of liberal professions led to job creation and lower prices to consumers, including in healthcare services. Internship fees should be proportional and reflect the true costs of organising and providing the internships, following transparent and clear criteria that must be made public.	We recommend eliminating the duplication of internships imposed on candidates for nutritionists, and consider admitting only one, either the academic or the professional internship. We recommend that the theoretical training also be conducted via e-learning. We recommend that the final evaluation of the internship should be conducted by a board, independent from the professional association, which may include members of the latter, but must also include professionals of recognised merit, such as law professors and magistrates, among others.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
17	Regulation 484/2017 "Professional internship"	Art. 2(2)	Protected professional title	To be a full member of the Professional Association of Nutritionists depends on registration with the professional association. This rule comes from the provision of Art. 61 of Law 51/2010 as amended by Law 126/2015 (Professional Association of Nutritionists bylaws).	This provision derives from Law 2/2013 (Art. 5/1/d), as a self-regulation model has been adopted. According to the recital of Draft law 161/XI (approved as Law 51/2010), the creation of the professional association and mandatory registration is related to the difficulties in appreciation of the profession. Due to the public interest within this activity, the importance of guaranteeing the quality of the professionals and their respect for ethical values, in order to protect citizens and the public health was argued in the recital. The professional association aims to ensure the promotion of ethics and the technical, scientific and social conditions required for the exercise of the profession. According to official information, there are currently 3 748 nutritionists registered in the Professional Association (3 240 full members and 347 interns); around 3 200 are estimated to be operating in Portugal (161 nutritionists have had their registration suspended mostly because of emigration). According to official data, this is a regulated profession (including dietitians) in almost all EU Member States, but the majority of them regulated by the ministry of health or a public body.	Mandatory registration in the Professional Association of Nutritionists in order to obtain the professional title implies an administrative procedure that results in entry costs. Professional licensing may remedy the inefficiencies resulting from asymmetric information and provide incentives to invest in skills, but it also limits employment, increases prices, and weakens competition. Using mandatory registration as a mechanism to access the profession can be restrictive. An operator may face lower direct or indirect costs by not participating in a registry, even if still fulfilling the requirements to exercise the activity. However, the simple registration is not necessarily harmful, unless it is related to the establishment of reserved work. This means that the protection of the title when combined with academic qualifications or reserved activities, or other access or conduct restrictions, excludes other professionals from the activity, reduces the number of suppliers in the market and increases costs to consumers.	No recommendation.
18	Regulation 484/2017 "Professional internship"	Art. 12(1)(8)	Professional Internship	The professional internship has a duration of six months, and the intern must have carried out 800 hours of work related to the profession. This rule comes from the provision of Art. 64 of Law 51/2010 as amended by Law 126/2015 (Professional Association of Nutritionists bylaws).	According to Art. 3 of Regulation 484/2017 of the Professional Association of Nutritionists (which specifically regulates internships), with the completion of the internship, trainee nutritionists will apply, in a real work context, the theoretical knowledge resulting from their academic training. They will also develop the ability to solve real problems and to acquire the skills and working methods for the competent and responsible exercise of the activity of nutritional sciences, in its technical, scientific, ethical and interpersonal relationships.	An unnecessary duplication of internships creates fewer incentives for the applicants to access the activity. Even if the internships apparently are of two kinds, so-called professional and academic, they aim to provide practical training and to prepare candidates to be autonomous in their activity. The effective need and purpose of the professional internship required by the Professional Association of Nutritionists' bylaws was not demonstrated. This need is even more questionable in case of an existing duplication, i. e. , when candidates had already attended an internship programme during the execution of their academic training. This also delays entry into the market of new suppliers. Moreover, the monopoly of the professional association on the organisation of professional internships is potentially harmful to newcomers, as already qualified nutritionists essentially decide who their future competitors will be, and can restrict or grant access to the profession, seemingly at will. Professionals also tend to have fewer incentives to charge lower prices to consumers or indeed to increase the quality of the services provided. Note	We recommend eliminating the duplication of internships imposed on candidates for nutritionists, and consider admitting only one, either the academic or the professional internship. We recommend that the theoretical training also be conducted via e-learning. We recommend that the final evaluation of the internship should be conducted by a board, independent from the professional association, which may include members of the latter, but must also include professionals of recognised merit, such as law professors and magistrates, among others.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
19	Regulation 484/2017 "Professional internship"	Art. 23, Art. 24 and Annex I	Professional Internship	This provision requires a final test for candidates to the profession to conclude the internship and become a full member. The jury of the internship exams is appointed by the board of directors, composed of three professionals with more than five years of professional activity and who have attended a seminar on ethics and professional deontology promoted by the Professional Association of Nutritionists. The internship fee amounts to EUR 240.	The first rule comes from the provision of Art. 63 of Law 51/2010 as amended by Law 126/2015 (Professional Association of Nutritionists bylaws). Following completion of the training on ethics, all interns are subject to presentation of a final paper at the end of the internship and oral exams to evaluate their knowledge on ethical subjects. These exams are intended to evaluate the candidates after the conclusion of their internship and to ensure that they have acquired the knowledge related to ethical principles, which will give them the tools to exercise the profession according to such values.	that access requirements must be proportional and adequate to the policy objective of the regulation. Some recent economic studies published by the EC demonstrate that reforms implemented by EU Member States to abolish or reduce obstacles to the access of liberal professions led to job creation and lower prices to consumers, including in healthcare services. Internship fees should be proportional and reflect the true costs of organising and providing the internships, following transparent and clear criteria that must be made public. An unnecessary duplication of internships creates fewer incentives for the applicants to access the activity. Even if the internships apparently are of two kinds, so-called professional and academic, they aim to provide practical training and to prepare candidates to be autonomous in their activity. The effective need and purpose of the professional internship required by the Professional Association of Nutritionists' bylaws was not demonstrated. This need is even more questionable in case of an existing duplication, i. e. , when candidates had already attended an internship programme during the execution of their academic training. This also delays entry into the market of new suppliers. Moreover, the monopoly of the professional association on the organisation of professional internships is potentially harmful to newcomers, as already qualified nutritionists essentially decide who their future competitors will be, and can restrict or grant access to the profession, seemingly at will. Professionals also tend to have fewer incentives to charge lower prices to consumers or indeed to increase the quality of the services provided. Note that access requirements must be proportional and adequate to the policy objective of the regulation. Some recent economic studies published by the EC demonstrate that reforms implemented by EU Member States to abolish or reduce obstacles to the access of liberal professions led to job creation and lower prices to consumers, including in healthcare services. Internship fees should be proportional and reflect the true costs of organising and providing the internships, following transparent and clear criteria that must be made public.	We recommend eliminating the duplication of internships imposed on candidates for nutritionists, and consider admitting only one, either the academic or the professional internship. We recommend that the theoretical training also be conducted via e-learning. We recommend that the final evaluation of the internship should be conducted by a board, independent from the professional association, which may include members of the latter, but must also include professionals of recognised merit, such as law professors and magistrates, among others.
20	Regulation 587/2016 "Code of ethics of the Professional Association of Nutritionists"	Art. 10	Professional fees	The professional fees charged by a nutritionist should be a "fair payment" for the services provided.	The requirement of price fairness is a general legal principle to protect (less informed) consumers against possible abuses or disproportional prices.	Fairness is a subjective concept that can be decided in a discretionary way by the professional association, and may introduce undue restrictions on the professional's pricing policy. This restriction could be equivalent to a resale price maintenance practice whereby maximum prices, or even minimum prices, are set by a regulator.	We recommend abolishing this provision.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendations
21	Ordinance 150/2015 "Fees for the establishment of an office"	Art. 1	Administrative costs	To establish an office requires registration in the Regulatory Authority of Health (Entidade Reguladora da Saúde) and the payment of a registration fee between EUR 1 000 and EUR 5 000, depending on the number of health professionals working in the office in question. According to para. 3 that amount can be reduced to EUR 200 in the case of legally recognised patient associations and liberal professionals with no associated employees providing part-time health care on their own premises.	These fees are charged to cover the administrative costs of the regulator for its regulatory services. The formula to calculate the fee is: $TR = EUR\ 900 + EUR\ 25 \times NPS$ (TR is the registration fee and NPS is the number of health professionals)	The amounts seem substantial and mandatory for the establishment of offices, so for those reasons, they may restrict exercise of the activity. This provision does not show the methodology or the criteria used to adopt such prices, and there is no other entity supervising the setting of prices. The fees must be proportional and adequate to pay for the services in question.	Adopt objective criteria for calculation of the fees, adequate and proportionate, reflecting the true administrative costs.
22	Ordinance 150/2015 "Fees for the establishment of an office"	Art. 2	Administrative costs	The payment of an annual contribution to the Regulatory Authority of Health (Entidade Reguladora da Saúde) is required, with the minimum of EUR 500 and maximum of EUR 25 000, depending on the annual number of professionals. According to para. 6 the amount could be reduced to EUR 200 in some cases.	The regulatory contribution is intended to compensate for the specific costs incurred by ERS in the exercise of its regulatory, supervisory, and competition promotion and defence activities related to economic activities in the private, public, co-operative and social sectors, according to Art. 2 para. 2 of this ordinance. The formula to calculate the fee is: $CR = 450\ \text{euros} + 12,50\ \text{euros} \times NMPS$ (CR is the regulatory fee and NMPS is the average annual number of health professionals)	The amounts seem substantial and mandatory for the establishment of offices, so for those reasons, they may restrict exercise of the activity. This provision does not show the methodology or the criteria used to adopt such prices, and there is no other entity supervising the setting of prices. The fees must be proportional and adequate to pay for the services in question.	Adopt objective criteria for calculation of the fees, adequate and proportionate, reflecting the true administrative costs.

Health professions: Pharmacists

Table A B.14. Health professions: Pharmacists

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to the competition	Recommendations
1	Decree-Law 288/2001, as amended by Law 131/2015 "Pharmacists Professional Association Bylaws"	Art. 3	Self-regulating regime	This provision describes the attributions and competences given to the public professional association, guaranteeing it the power to control access to and exercise of the profession, the elaboration and implementation of technical rules and ethical principles and the exercise of disciplinary powers.	It is our understanding that this provision aims to ensure the exercise of the regulatory function, including the disciplinary function, as well as the representative function, taking into account the interests of users of the professional services, by one and the same single entity, the professional association. In the Portuguese Constitution the autonomy and administrative decentralisation to the professional associations is recognised to ensure the defence of the public interest and the fundamental rights of citizens, and also to guarantee the self-regulation of the professions that require technical independence. This regulatory model is based on the public interest of these professions, through the designation of state powers to those entities and with two main characteristics: the exclusivity on granting the professional title and the obligation of being registered within the professional association to practice the profession, which qualifies the nature of the regulation as being mandatory and unitary.	The harm to competition arising from the regulatory model, already established by the horizontal framework Law 2/2013 and considered in the bylaws of the professional association, stems from the centralisation in a single entity of the powers to regulate and represent the profession. Because each professional association, apart from representing the profession, controls access to it and its exercise, the regulations issued may create disproportional and anti-competitive restrictions. The freedom to choose and exercise a profession is a fundamental right of the citizen. Also, the freedom of movement of workers and their free establishment to provide services are fundamental principles of the EU internal market. Restrictions to these principles, in the pursuit of the public interest, must be well justified and proportional. When a professional association acquires full responsibility to regulate access to the profession and the conduct of its members, this may have an anti-competitive impact. In fact, professional associations may adopt rules that reduce incentives or opportunities for stronger competition between operators, such as restrictions on advertising and partnerships/ownerships, managements or multidisciplinary activities, or restrictions when setting the minimum qualifications to enter the profession, amongst others. As the governing bodies of public professional associations are exclusively composed of their members, there is a risk that their members' interests will not coincide with the public interest. This is one significant reason for including within at least some governing bodies of a professional association, lay people representing the interests of relevant social groups, such as consumer associations, other professionals, and high-profile people with experience in regulatory issues.	We recommend that the regulatory function should be separated from the representative function for self-regulated professional associations, either through the creation of an over-arching supervisory body by sector or trade, or through the creation of a supervisory body inside the current professional orders with the necessary "Chinese walls". The supervisory body takes on the main regulation of the profession such as access to the profession and similar functions. The board of the regulatory body will include not only representative of the profession but also lay people, including high-profile experienced individuals from other regulators, representatives of consumer organisations and academia.
2	Decree-Law 288/2001, as amended by Law 131/2015 "Pharmacists Professional Association Bylaws"	Art. 5	Protected professional title	The use of the title of "pharmacist" and the exercise of the profession require enrolment in the Professional Association of Pharmacists as a member.	This provision derives from Law 2/2013 (Art. 5/1/d), and has been adopted as a self-regulation model. Due to the public interest attached to this activity, it was argued that it was important to guarantee the quality of the professionals and their respect for ethical values, in order to protect	The existence of a reserve of professional title is not in itself a barrier, except if associated with reserve of acts (as in this case). In general, reserved activities or tasks for specific categories of professionals should be abolished in cases where: (i) the protection is disproportional to the policy objective because the tasks may already be performed by other well-qualified professionals or are	The legislator must revisit the scope of reserved activities for pharmacists, and remove from the provision (Art. 75 of Law 131/2015) any reference to the disposal of "medical devices" and para. g), k), l) and m), provided no conflict of interests arise that

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to the competition	Recommendations
	Association Bylaws"				citizens and public health. The professional association aims to ensure the promotion of ethics and the technical, scientific and social conditions for the exercise of the profession. We note that in all EU Member States the profession of pharmacist is regulated with the exception of Greece, Luxembourg, Malta and Romania: the EC website states that the regulation in these countries is "undefined" (http://ec.europa.eu/growth/tools-databases/regprof/index.cfm). According to official information, there are currently 15 628 pharmacists registered in Portugal, and 1 895 with suspended registration.	not a danger to public safety; (ii) there is strong and well-regulated protection of the professional title which guarantees the quality of the professionals that are allowed to work; or (iii) the restriction is no longer required owing to legal, societal or professional developments that make the restriction obsolete by objective.	would jeopardise ethical principles.
3	Decree-Law 288/2001, as amended by Law 131/2015 "Pharmacists Professional Association Bylaws"	Art. 6 (1)(5)	Academic qualifications	Paragraph 1 of this provision establishes academic requirements for registration as a member of the Professional Association of Pharmacists: academic degree in pharmacy, in pharmaceutical sciences or a master's in pharmaceutical science. Paragraph 5 requires evidence of language knowledge for foreigner pharmacists, under the regime established in Law 9/2009.	Art. 44 of Directive 2013/55/EU requires an academic degree in pharmacy for the automatic recognition of EU professionals. It is argued that the requirement of academic qualifications is established on grounds of quality standards for the exercise of the profession, which has a strong technical content.	The requirement of a specific academic degree to become a member of the Professional Association of Pharmacists, is an access requirement that, when combined with reserved acts, excludes from that market other professionals who do not hold such a required degree. First, the list of academic degrees accepted by the professional association may exclude other candidates who graduated in similar courses, e. g. chemistry, but are not recognised to be registered with the professional association. According to the EC database, within the EU28 nine Member States report that the regulation of the profession includes the protection of the professional title (or titles) and reserved activities; in nine Member States there are reserved activities but the title is not protected; in two Member States the title is protected without reserved activities; in two Member States there are multiple types of regulation and five Member States have not submitted information. Within the EFTA countries, Iceland has reserved activities and protected title; Norway has only a protected title and Liechtenstein and Switzerland did not submit information. Moreover, Art. 44 of Directive 2005/36/EC, amended by Directive 2013/55/EU states that admission to a course of training as a pharmacist shall be contingent upon possession of a diploma or certificate giving access, in a Member State, to the studies in question, (i. e. pharmacy, in Portugal), at universities or institutes of higher learning of a level recognised as equivalent in order to benefit from the automatic recognition of EU professionals. The requirement of academic qualifications is argued to be established on grounds of quality standards for exercise of the profession, which has a strong technical content. The condition of holding one specific academic degree to be member of the Professional Association of Pharmacists is an access requirement that exclude others from the performance of the activities reserved for this group of professionals. There may be other scientific professionals who hold the adequate professional and academic skills enabling such professionals to practice at least some of the reserved acts. This could be the case, for example, of chemists. Access requirements combined with reserved activities harm competition, because they	We recommend that the professional association should work with the legislator to set up a transparent, proportional and non-discriminatory process for identification of alternative academic routes to obtain the academic qualifications necessary for the exercise of a profession. We recommend that the profession should be opened to candidates with other backgrounds than the current compulsory university degree regime. Candidates may be required to hold a post-graduate degree or take a conversion course, and should undergo the same training as other trainees, including passing the final exam to access the profession. This will open access to more individuals with different backgrounds, allowing for more diversity in the offer of services, and more innovation.

No	No and title of Regulation	Article	Thematic Category	Brief description of the potential obstacle	Policy objective	Harm to the competition	Recommendations
4	Decree-Law 288/2001, as amended by Law 131/2015 "Pharmacists Professional Association Bylaws"	Art. 12 (1)(2)	Partnership / Ownership of professional firms	The corporate objective of professional firms of pharmacists is the exercise of pharmaceutical activities. Professional firms of pharmacists can only have as partners pharmacists established in Portugal, other professional firms of pharmacists registered as members of the professional association of pharmacists, and other forms of associative organisation of professionals equated to pharmacists and established in other EU/EEA Member States, provided the majority of capital and voting rights are held by those professionals.	A reason invoked for imposing restrictions on who can be a member of a professional firm's management team is that only when the management is controlled by professional partners can it be assured that the sole or main corporate objective of the professional firm will be pursued and that the autonomy of the professionals will be maintained.	create exclusive rights for only a specific group of graduates. The traditional firm model with partnerships restricted to professionals from one single area together may contribute to a lack of innovation in the provision of services. It may also contribute to creating a wedge between what the profession delivers and what firms and households demand from the suppliers of the services. Opening up firms to external ownership can be a vehicle to introduce innovation to the benefit of the firms' clients. This argument emphasises the importance of bringing in investors with an innovator's mindset that will introduce and push for "game-changing innovations" better able to respond to the needs of firms and households that rely on those infrastructures to carry out their economic activities. Ultimately, all these restrictions on ownership, shareholding and partnership over professional firms, are detrimental to firms across the entire economy, especially SMEs, and to households, as their relaxation can be expected to lead to an increase in their welfare.	We recommend that the ownership and partnership of all professional firms be opened to other professionals and non-professionals, that is, should be open to individuals outside the profession. We also recommend that other professionals and non-professionals be allowed to hold a majority of a professional firm's social capital, together with a majority of voting rights.
5	Decree-Law 288/2001, as amended by Law 131/2015 "Pharmacists Professional Association Bylaws"	Art. 12 (7)	Management of professional firms	The bylaws of pharmacists impose that all members in the management of a professional firm of pharmacists must themselves be pharmacists.	A reason invoked for imposing restrictions on who can be a member of a professional firm's management team is that only when the management is controlled by professional partners can it be assured that the sole or main corporate objective of the professional firm will be pursued and that the autonomy of the professionals will be maintained.	The Framework Law 2/2013 only requires that one of the managers or administrators of a professional firm must be a member of the professional association (or, in case registration in the professional association is not mandatory, they must fulfil all membership requirements. Historically, corporations separated their ownership from management starting in the early 20th century. One of the main reasons was to professionalise management in increasingly competitive markets. Conflicts between owners (the principals) and managers (the agents) has been the subject of extensive literature, and various payment schemes have been adopted to align managers' interests as close as possible to the owners' interests. Hence, notwithstanding the fact that we deal with professional firms, there is no reasons for all managers to be owners or partners, as Law 2/2013 makes clear. A professional management, which ultimately answers to the owners of the professional firm, may be an option preferable to the professional partners themselves. The existing rules severely limit the ability of professionals to seek out for themselves the optimal structure of their firms or groupings, including the ability to achieve economies of scope by providing joint services with other professionals.	We recommend that that the separation between ownership and management should be allowed in all professional firms and that their management may include non-professionals, that is, should be open to individuals outside these professions.
6	Decree-Law 288/2001, as amended by Law 131/2015 "Pharmacists Professional Association Bylaws"	Art. 12 (8)	Multidisciplinary practice in professional firms	However, professional firms can also engage in other activities, provided that they are not incompatible with the profession nor do they meet any impediments laid down by the bylaws.	This provision aims to guarantee compliance with the ethical principles of each self-regulated profession, as well as, if applicable, the guarding of professional secrecy relating to professional-client privilege, as well as preventing conflicts of interest between different professionals.	Our interpretation of the horizontal framework law is that this provision does not by itself prohibits professional firms from performing multidisciplinary activities, since these firms do not have to have an exclusive social corporate objective and may engage in other activities. However, incompatibilities and impediments regimes may limit the range of professional activities within a same professional firm. Note that there is no unique or exhaustive list of incompatibilities and impediments for each profession, being spread out through several legislative acts. To restrict multidisciplinary activity in a professional firm is to restrict the association of different professionals, belonging to different professional associations (some may not even belong to a public professional association), who would exercise their	No recommendation on the legal principle foreseen in this specific provision. However, we recommend that the legislator conducts a technical study to assess the proportionality of incompatibilities and impediments to pursue the exercise of a self-regulated profession that may be preventing the offer of multidisciplinary activities within the same professional firm, taking into consideration the policy objective. In case they are considered not to be proportional, they should be abolished.

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						<p>professional activities within the same firm and in the pursuit of the firm's corporate or social objective(s). To rule out multidisciplinary activity in the same professional firm, between potentially complementary service providers, harms competition and can be detrimental to consumer welfare. In fact, this restriction does not allow for the full exploration of economies of scope that come with the offer of different services by a same "service delivery unit" that shares infrastructure and human capital. It foregoes specialisation gains and service quality gains resulting from the interaction between a wider range of professionals. This also means foregoing the exploitation of economies of scale and the advantages of branding. It also does not allow for the mitigation of the double marginalisation (or double mark-up) problem that come with multidisciplinary activities which can complement each other, by segmenting the services provided. This means foregoing lower average costs in a multi-product firm, therefore leading to higher fees being charged to clients, while preventing clients from enjoying further benefits that could be gained from a more convenient "one-stop shop" for a wider range of professional services. Ruling out multidisciplinary within a professional can reduce the scope for a better risk management between different professional activities within the same professional firm, as they may be subject to non-identical demand volatility or uncertainty - i. e. , reduction in the scope for internal risk spreading to be understood as the ability to transfer resources in response to fluctuations in demand. To offer a wider range of professional services means to be better prepared to face market uncertainties. Furthermore, opening up a professional firm to multidisciplinary activities is likely to ease the introduction of innovative products but also to spur innovation in the delivery of already existing products or range of products.</p>	
7	Decree-Law 288/2001, as amended by Law 131/2015 "Pharmacists Professional Association Bylaws"	Art. 74 (1)	Reserved tasks	The pharmaceutical act is within the exclusive competence and responsibility of pharmacists [except medicine for veterinary use].	It has been stated by stakeholders that the definition of reserved acts ensures that only qualified people can exercise the profession, especially considering the associated risks to public health and safety. Stakeholders also argued that some acts can be delegated to assistants under the supervision of the pharmacist, such as: the preparation of oncological therapy in the hospital (by hospital pharmacy technicians), the dispensing of medicines in community pharmacies (by pharmacy technicians), and haematological analysis in the context of clinical analyses (by biologists).	<p>On one hand, the existence of reserved activities in the field of pharmacists aims to protect patients from possible misapplication of pharmaceutical acts from non-qualified suppliers and it allows the enforcement of a more effective responsibility system over professionals. On the other hand, the establishment of reserves of activities restricts competition. It segments the market and provides exclusive rights to a certain group of suppliers. These provisions might result in higher prices to consumers, as there are fewer professionals available to provide the same services. The prices of health services are of special importance for society as they have direct impact on social welfare and are related to essential needs of the population. The provision of reserved activities bans other qualified professionals from the practice of the acts in question. The healthcare sector is excluded from the application of the Services Directive 2006/123/EC. However, the need to regulate health professions must not lead to an excess of overly restrictive rules which lead to an anti-competitive legal environment among operators. Regulations should remain proportional and adequate to their purpose.</p>	The legislator must revisit the scope of reserved activities for pharmacists, and remove from the provision (Art. 75 of Law 131/2015) any reference to the disposal of "medical devices" and para. g), k), l) and m), provided no conflicts of interest arise that would jeopardise ethical principles.
8	Decree-Law	Art. 75	Reserved tasks	These provisions list the activities	According to stakeholders, this rule aims to protect	On one hand, the existence of reserved activities in the field of	The legislator must revisit the scope of

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	288/2001, as amended by Law 131/2015 "Pharmacists Professional Association Bylaws"	and Art. 76		considered as being pharmaceutical acts [Art. 75], and all those which are related [76]: (a) development and preparation of pharmaceutical forms of medicine; (b) registration, manufacture and control of medicines for human and animal use; (c) quality control of medicines and medical devices; (d) storage, preservation and wholesale distribution of medicine for human and animal use and of medical devices; (e) preparation, control, selection, management, sourcing, storage, distribution and dispensing of medicine in community pharmacies, hospital pharmacies and other healthcare units; (f) preparation and control of compound-medicines formulae; (g) interpretation and evaluation of prescriptions; (h) informing and counselling patients and health professionals on the appropriate use of medicines; (i) monitoring and control of distribution, dispensing and use of medicinal products and medical devices; (j) drug monitoring, including pharmacokinetics determinations and interpretation; (k) performance, interpretation and validation of clinical analyses and determination of serum levels; (l) performance, interpretation and validation of toxicological, hydrological and bromatological analyses; (m) all the acts or functions directly related to the activities described above.	patients from possible misapplication of pharmaceutical acts by non-qualified suppliers. Note that in Art. 45 para. 2 of EU Directive 2005/36/EC, for the purpose of automatic recognition of professional qualifications among EU Member States, it is established that "Member States shall ensure that the holders of evidence of formal qualifications in pharmacy at university level or a level deemed to be equivalent, which satisfies the provisions of Art. 44, are able to gain access to and pursue at least the following activities, subject to the requirement, where appropriate, of supplementary professional experience; (a) preparation of the pharmaceutical form of medicinal products; (b) manufacture and testing of medicinal products; (c) testing of medicinal products in a laboratory for the testing of medicinal products; (d) storage, preservation and distribution of medicinal products at the wholesale stage; (e) preparation, testing, storage and supply of medicinal products in pharmacies open to the public; (f) preparation, testing, storage and dispensing of medicinal products in hospitals; (g) provision of information and advice on medicinal products. "	pharmacists aims to protect patients from possible misapplication of pharmaceutical acts from non-qualified suppliers and it allows the enforcement of a more effective responsibility system over professionals. On the other hand, the establishment of reserves of activities restricts competition. It segments the market and provides exclusive rights to a certain group of suppliers. These provisions might result in higher prices to consumers, as there are fewer professionals available to provide the same services. The prices of health services are of special importance for society as they have direct impact on social welfare and are related to essential needs of the population. The provision of reserved activities bans other qualified professionals from the practice of the acts in question. The healthcare sector is excluded from the application of the Services Directive 2006/123/EC. However, the need to regulate health professions must not lead to an excess of overly restrictive rules which lead to an anti-competitive legal environment among operators. Regulations should remain proportional and adequate to their purpose.	reserved activities for pharmacists, and remove from the provision (Art. 75 of Law 131/2015) any reference to the disposal of "medical devices" and para. g), k), l) and m), provided no conflicts of interest arise that would jeopardise ethical principles.
9	Decree-Law 288/2001, as amended by Law 131/2015 "Pharmacists Professional Association Bylaws"	Art. 81, Art. 82 and Art. 83	Quality standards	These provisions set some duties of professional conduct to be respected by the professionals in their relation with the Professional Association of Pharmacists and their colleagues, and also certain duties related to teaching activities.	The establishment of professional conduct duties aims to ensure consumer protection and the provision of services with minimum moral or ethical standards in the relation between professionals and their clients. One of the reasons for self-regulation is to make professionals comply with rules of conduct. Since there is a problem of asymmetric information, the customers may not be in a position to correctly evaluate the services provided; those rules may also aim to mitigate an effect of moral hazard.	This excludes potential operators in the market. The criteria may not be sufficiently objective and vague concepts are used. Such duties potentially increase discretion in the decisions of the professional association when applying internal discipline. Vague concepts cause legal uncertainty. Furthermore, ethical duties are often already established as a moral standard of behaviour, and are not necessarily related to a specific profession. A more objective way to assess quality control increases transparency and fairness.	These provisions may be revised so as to assess the need to regulate such duties in the law.
10	Decree-Law 288/2001, as amended by Law 131/2015 "Pharmacists Professional Association Bylaws"	Art. 89(1)	Incompatibilities	The pharmacist may only carry out another activity under a regime of accumulation, in cases and situations clearly established by law [there is no information on any law approving the cumulative functions].	According to stakeholders, this rule aims to avoid conflicts of interest, and to avoid other interests which may interfere with the activity of pharmacist, for consumer protection, social well-being, public health and to promote transparency. It is a safeguard rule for situations of potential bias in the	By limiting integration with other functions, this rule may discourage suppliers from entering the market. Potential newcomers may face fewer incentives to join the profession if there is a high level of restrictiveness of conduct or exercise regulation. Fewer suppliers in the market for the same services lead to higher prices and to less innovative solutions from the offer.	We recommend that this rule should be abolished. The legislator must consider the introduction of the principle of compatibility of the profession of pharmacist with other activities. In case of a specific need based on public interest, a reason for the

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	Association Bylaws"				commercial circuit of drugs, with a risk of preferential disposal through a certain channel (e. g. , a pharmacist might have higher incentives to sell a specific drug from a brand if he/she also works for that brand) or the transaction or use of inside information. Also, stakeholders raised the issue that the activity deserves full attention and dedication, especially when the pharmacist in question is the technical director of an establishment or unit of production.		establishment of legal incompatibility must be stated. The law must expressly indicate the activities or functions considered as incompatible with the activity of pharmacist.
11	Law 53/2015	Art. 7 (1)	Management of professional firms	This provision imposes that all members in the management of a professional firm of pharmacists must themselves be pharmacists.	A reason invoked for imposing such restrictions on who can be a member of a professional firm's management team is that only when the management is controlled by professional partners can it be assured that the sole or main corporate object of the professional firm will be pursued and that the autonomy of the professionals is maintained.	The Framework Law 2/2013 only requires that one of the managers or administrators of a professional firm must be a member of the professional association (or, in case registration in the professional association is not mandatory, they must fulfil all membership requirements. Historically, corporations separated their ownership from management starting in the early 20th century. One of the main reasons was to professionalise management in increasingly competitive markets. Conflicts between owners (the principals) and managers (the agents) has been the subject of extensive literature, and various payment schemes have been adopted to align managers' interests as close as possible to the owners' interests. Hence, notwithstanding the fact that we deal with professional firms, there is no reasons for all managers to be owners or partners, as Law 2/2013 makes clear. A professional management, which ultimately answers to the owners of the professional firm, may be an option preferable to the professional partners themselves. The existing rules severely limit the ability of professionals to seek out for themselves the optimal structure of their firms or groupings, including the ability to achieve economies of scope by providing joint services with other professionals.	We recommend that that the separation between ownership and management should be allowed in all professional firms and that their management may include non-professionals, that is, should be open to individuals outside these professions.
12	Draft-Law 34/XIII "Definition and regulation of the acts of the healthcare professionals", currently pending in parliament	Art. 4 (2)	Reserved tasks	This draft law, currently pending in Parliament, proposes a definition of reserved activities for healthcare professionals, including pharmacists. It establishes the definition of the "pharmaceutical act", as following: (2) It also constitutes pharmaceutical acts, when pharmacists practice: a) the evaluation and pharmaceutical indication in self-limited pathologies, the monitoring and surveillance of the use of medicines, informing on, promoting and implementing the rational use of medicinal products, medical devices and other medical health technologies and the manufacture, registration, quality assurance and management-integrated circuit of the medical device and other health technologies, as well as the preparation, implementation, interpretation and	The official recital states that this draft law aims to promote greater synergy between the different professionals of health services. Note that Art. 45 para. 2 of Directive 2005/36/EC establishes a list of acts performed by a professional qualified in pharmaceutical sciences. The essential competences required to exercise the profession of pharmacist are listed in Art. 44. of the directive, which corresponds to Arts. 41 and 42 of Law 9/2009. This regime, transposed into national legislation by Law 9/2009, is designed for the purpose of the automatic recognition of professional qualifications of non-national pharmacists within national territory. Moreover, it has been stated by stakeholders that the definition of reserved acts ensures that only those who are qualified can exercise the profession, especially considering the risks associated with public health and safety. Stakeholders also argued that some acts can be delegated to assistants under the supervision of the pharmacist, such as: the	The writing of this provision is not crystal clear and can be interpreted as a definition and establishment of a list of reserved activities, which restricts competition by determining exclusive rights to a certain category of suppliers. The adoption of legal exclusive rights on the practice of economic activities closes the market to potential operators who do not meet certain criteria or standards, banning other qualified professionals from the practice of the acts in question. In general, reserved activities or tasks for specific categories of professionals should be abolished in cases where: (i) the protection is disproportional to the policy objective because the tasks may already be performed by other well-qualified professionals or are not a danger to public safety; (ii) there is strong and well-regulated protection of the professional title which guarantees the quality of the professionals that are allowed to work; or (iii) the restriction is no longer required owing to legal, societal or professional developments that make the restriction obsolete by objective.	In this case, we recommend revisiting the scope of reserved activities for pharmacists with a view to opening them to other healthcare professionals, except in cases where public health might be at risk. This will allow for more entry into the market.

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				validation of clinical analyses, biological, toxicological, hydrological, bromatological, genetic and environmental factors; b) the technical and scientific activities of research, education, training, regulation and organisation for health promotion and disease prevention.	preparation of oncological therapy in the hospital (by hospital pharmacy technicians), the dispensing of medicines in community pharmacies (by pharmacy technicians), and haematological analysis in the context of clinical analyses (by biologists).		
13	Draft-Law 34/XIII "Definition and regulation of the acts of the healthcare professionals", currently pending in parliament	Art. 11	Academic qualifications	The exercise of the "pharmaceutical act", as defined in Art. 4 of this draft law, is the competence of the holders of an academic degree in pharmacy, in pharmaceutical sciences or a master in pharmaceutical science, issued by a Portuguese institution of higher education, following a study cycle carried out within the framework of the organisation of study, respectively, prior to the regime introduced by Decree 111/78, before or after the application of Decree-Law 74/2006, as amended and republished by Decree-Law 115/2013, and holders of qualifications equivalent to those issued in Portugal, regularly enrolled in the Professional Association of Pharmacists.	The official recital states that this draft law aims to promote greater synergy between the different professionals of health services. But our understanding is that this rule aims to preserve quality standards. Art. 44 of Directive 2013/55/EU requires an academic degree in pharmacy for the automatic recognition of EU professionals. The requirement of academic qualifications is argued to be established on grounds of quality standards for the exercise of the profession, which has a strong technical content. These same academic qualifications requirements are already established in the Professional Association of Pharmacists bylaws, approved by Decree-Law 288/2001, as amended by Law 131/2015 (Art. 6).	The requirement of a specific academic degree to become a member of the Professional Association of Pharmacists, is an access requirement that, when combined with reserved acts, excludes from that market other professionals who do not hold such a required degree. First, the list of academic degrees accepted by the professional association may exclude other candidates who graduated in similar courses, e. g. chemistry, but are not recognised to be registered with the professional association. According to the EC database, within the EU28, nine Member States report that the regulation of the profession includes the protection of the professional title (or titles) and reserved activities; in nine Member States there are reserved activities but the title is not protected; in two Member States the title is protected without reserved activities; in two Member States there are multiple types of regulation and five Member States have not submitted information. Within the EFTA countries, Iceland has reserved activities and protected title; Norway has only a protected title and Liechtenstein and Switzerland did not submit information. Moreover, Art. 44 of Directive 2005/36/EC, amended by Directive 2013/55/EU states that admission to a course of training as a pharmacist shall be contingent upon possession of a diploma or certificate giving access, in a Member State, to the studies in question, (i. e. pharmacy, in Portugal), at universities or institutes of higher learning of a level recognised as equivalent in order to benefit from the automatic recognition of EU professionals. The requirement of academic qualifications is argued to be established on grounds of quality standards for the exercise of the profession, which has a strong technical content. The condition of holding one specific academic degree to be member of the Professional Association of Pharmacists is an access requirement that exclude others from performance of the activities reserved for this group of professionals. There may be other scientific professionals who hold adequate professional and academic skills enabling such professionals to practice at least some of the reserved acts. This could be the case, for example, of chemists. Access requirements combined with reserved activities harm competition, because they create exclusive rights for only a specific group of graduates.	We recommend that the professional association should work with the legislator to set up a transparent, proportional and non-discriminatory process for identification of alternative academic routes to obtain the qualifications necessary for the exercise of a profession. We recommend that the profession should be opened to candidates with other backgrounds than the current compulsory university degree regime. Candidates may be required to hold a post-graduate degree or take a conversion course, and should undergo the same training as other trainees, including passing the final exam to access the profession. This will open access to more individuals with different backgrounds, allowing for more diversity in the offer of services, and more innovation.
14	Ordinance 150/2015 "Fees for the establishment"	Art. 1	Administrative costs	Establishing an office registration is required by the Regulatory Authority of Health (Entidade Reguladora da Saúde) and the payment of a registration fee of between EUR 1 000 and EUR 50 000, depending on the number of health	These fees are charged to cover the administrative costs of the regulator for regulatory services.	The amounts seem substantial and mandatory for the establishment of offices, so for those reasons, they may restrict the exercise of the activity. This provision does not show the methodology or the criteria used to adopt such prices, and there is no other entity supervising the setting of prices. The fees must be proportional and adequate to pay for the services in question.	Consider whether the fees are required, adequate and proportional, reflecting the true administrative costs.

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				professionals working in the office in question. According to para. 3, that amount can be reduced to EUR 200 in the case of legally recognised patient associations and liberal professionals with no associated employees providing part-time health care on their own premises. The formula to calculate the fee is: $TR = EUR\ 900 + EUR\ 25 \times NPS$ (TR is the registration fee and NPS is the number of health professionals)			
15	Ordinance 150/2015 "Fees for the establishment"	Art. 2	Administrative costs	Payment of an annual contribution to the Regulatory Authority of Health (Entidade Reguladora da Saúde) is required, with the minimum of EUR 500 and a maximum of EUR 25 000, depending on the annual number of professionals. According to para. 6 the amount could be reduced to EUR 200 in some cases. The formula to calculate the fee is: $CR = 450\ \text{euros} + 12,50\ \text{euros} \times NMPS$ (CR is the regulatory fee and NMPS is the average annual number of health professionals)	The regulatory contribution is intended to compensate for the specific costs incurred by ERS in the exercise of its regulatory, supervisory, and competition promotion and defence activities related to economic activities in the private, public, co-operative and social sectors, according to Art. 2 para. 2 of this ordinance.	The amounts seem substantial and mandatory for the establishment of offices, so for those reasons, they restrict the exercise of the activity. This provision does not demonstrate the methodology or the criteria used to adopt such prices, and there is no other entity supervising the setting of prices. The fees must be proportional and adequate to pay for the services in question.	Consider whether the fees are required, adequate and proportional, reflecting the true administrative costs.

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