



INVITATION TO COMMENT

REGULATION IN LIBERAL PROFESSIONS AND ITS EFFECTS

SUMMARY OF RESPONSES

I. OVERVIEW

1. In March 2003 the European Commission's Competition Directorate General published an invitation for interested parties to comment on regulation of professional services in the EU Member States¹. The exercise, which ran until 15 June, attracted a high level of interest from across the EU. In total, the Commission received 246 responses, with greatest numbers coming from Belgium, Germany, Italy and the United Kingdom.
2. The majority of respondents focused on six major professions: accountants, lawyers, notaries, architects, engineers and pharmacists. There were a particularly large number of submissions on notaries in Germany and engineers and pharmacists in Italy, suggesting that the exercise has gained wider exposure within specific groups in these Member States.
3. The vast majority of responses came from professionals and professional associations, many of whom were satisfied with the existing rules in their Member State. The majority of respondents argued that a certain level of regulation is needed to ensure the good functioning of the professions. However, there was a lack of consensus as to which regulations are genuinely essential for the protection of consumers.
4. A majority of respondents were in favour of appropriate entry requirements and rules which protect the core values of the professions. However, they disagreed on the need for regulations such as price fixing, recommended prices, advertising prohibitions and restrictions on inter-professional co-operation. In many cases, a minority of respondents were in favour of the most restrictive rules.
5. A number of professionals argued that consumers would be better served within a more flexible regime. The *Institute of Chartered Accountants of England and Wales* argues that certain rules are designed to protect practitioners' interests rather than their clients. Italian pharmacists indicate that strict entry regulation is having a negative impact on prices and service. A number of major companies suggest that rules on multi-disciplinary practices hinder the development of new services.

¹ The Invitation to Comment is available on the DG Competition website at:
http://europa.eu.int/comm/competition/general_info/consultation.html

6. There was a smaller number of responses from consumers and consumer organisations. The *Bundesarbeitskammer*, an Austrian consumer association, argues that anti-competitive regulations in Austria are having negative effects on prices and quality of service. The United Kingdom's *Consumer Association*, meanwhile, suggests that fee regulation can have the same effects as a pricing cartel and that advertising prohibitions can dampen competition to the detriment of consumers.

Accountancy, Audit and Tax Consultancy

7. The majority of respondents agreed on the need to maintain appropriate entry requirements for statutory auditors. However, they disagreed on whether qualified professionals should have exclusive rights to offer other accountancy services.
8. A large majority considered price regulation to be inappropriate for accountancy services. Only two respondents supported fixed prices. However, they did not provide detailed arguments in favour of such rules.
9. A large number of respondents suggested that there was a need for some regulation of advertising of accountancy services. However, many believed that members of the profession should be able to advertise their services. Only a small minority appeared to support strict rules limiting advertising.
10. A significant number of respondents argued that there was a need for some regulation of co-operation between accountants and other professions. However, few suggested that there should be a prohibition of inter-professional co-operation and some emphasised the benefits of multi-disciplinary practices.

The Legal Professions

11. A large majority of respondents considered price regulation to be inappropriate for legal services. A number of professional bodies argued that fixed and recommended prices were not in the interests of consumers.
12. A significant number of respondents were in favour of some regulation of advertising of legal services. However, most believed that lawyers ought to be able to advertise their services. Only a small minority was in favour of highly restrictive rules.
13. A large number of respondents were in favour of regulation of co-operation between lawyers and other groups. However, some suggested that current rules are overly restrictive and that they are hindering the development of multi-disciplinary practices.

Notaries

14. A large number of respondents suggested that notaries are not commercial service providers and that they should be exempted from normal competition rules. They argued that stringent regulation of entry and prices are essential to the good functioning of the profession.

15. The respondents did not, in general, discuss the scope for or potential benefits of greater competition in the notary profession.

Architects

16. The majority of respondents supported appropriate entry regulation to ensure that architects are competent to carry out their functions and respect safety standards. Some commented on the impact that architects' services can have on society in general.
17. A large number argued in favour of price regulation and recommended prices for architects' services. Most suggested that these regulations are necessary to ensure quality. In our view, however, they did not explain why price regulation, as opposed to other mechanisms, should offer an effective means of quality control.

Engineers

18. A large number of respondents commented on the need for appropriate regulation of entry into the profession. Some commented on the difficulties that consumers face in assessing the quality of engineering services.
19. The Commission received 30 responses from Italy which argued in favour of price regulation for engineering services. However, they did not provide detailed or robust arguments to suggest that price regulation is necessary or in the interests of consumers.

Pharmacists

20. A significant number of respondents argued that pharmacists should be treated differently to other professions and that the sale of medicines should not be subject to normal competition rules. As they explained, there is a need for regulation to ensure that consumers have universal access to healthcare and that pharmacists ensure the appropriate distribution of medicines rather than maximising sales.
21. For these reasons, some respondents supported regulations such as advertising restrictions, strict entry requirements and rules limiting business structure and inter-professional co-operation. However 17 Italian respondents and 2 Spanish respondents were highly critical of rules restricting the opening of new pharmacies in their Member States. They suggested that these rules protect the monopoly held by existing pharmacists to the detriment of competition and consumers.

II. SUMMARY OF RESPONSES BY PROFESSION

ACCOUNTANCY, AUDIT AND TAX CONSULTANCY

22. The Commission received 20 responses on the regulation of accountants and auditors. These included responses from 16 professional organisations from across the EU Member States. We also received 10 submissions on the regulation of tax consultants, of which 9 came from professional bodies.
23. There was a broad consensus among the associations that a certain level of regulation is needed to ensure the good functioning of these professions. A large number drew attention to the role that auditors play in ensuring reliable financial reporting and transparent capital markets. Others pointed to the complexity of accountancy work and the need to protect consumers from poor quality services.
24. However, there appears to be considerable disagreement among the associations about the justification for and effects of specific rules. While they agree on the importance of adequate qualifications and appropriate entry requirements, the associations differ - often widely - on the need for price regulation, fee scales, advertising restrictions and rules limiting or prohibiting inter-professional co-operation.

Entry and exclusive rights

25. A large majority of respondents agreed on the need to maintain appropriate entry and qualification requirements for statutory auditors, as set out in the 8th Company Law Directive (84/253/EEC). As they explain, these regulations are necessary to ensure that statutory auditors have the knowledge and competence to provide reliable financial reporting. However, there was less agreement on whether entry and qualification standards should also be compulsory for other accountancy activities.
26. The *Fédération des Experts Comptables Européens* (FEE), for example, appears to suggest that a high level of professional training should be a requirement for the provision of non-audit services such as accountancy and tax advice. They argue that asymmetry of knowledge between professionals and their clients makes it difficult for consumers to assess the quality of accountancy services. Minimum educational standards are therefore necessary to safeguard quality and protect consumers.
27. Another professional association, which chose to remain anonymous, also argues that entry and qualification requirements are necessary for non-audit services. This is because of the complexity of accountancy work and the difficulties that customers face in evaluating the quality of accountancy services. According to this respondent, even large business customers are unable to assess the quality of accountancy services or to decide the appropriate level of quality for their needs.
28. In contrast, the United Kingdom's *Chartered Institute of Taxation* suggests that entry rules are not essential for the provision of tax consultancy services. They

argue that it is helpful for consumers to have independent evidence of a tax consultant's technical knowledge and to know whether he is bound by a code of conduct. In the United Kingdom, however, anybody is free to practice as a tax advisor. Customers are therefore free to choose whether or not they wish to appoint an advisor who is a member of a professional body.

29. Likewise, an association for German company accountants, the *Bundesverband der Bilanzbuchhalter und Controller*, argues that there are unnecessarily restrictive regulations for provision of certain accountancy services in Germany. They suggest that the purpose of these rules is not to protect consumers but to shield tax advisors from competition with other groups. They also suggest that businesses are capable of judging for themselves the quality of the accountancy services they receive.

Price regulation

30. A large majority of respondents considered price regulation to be inappropriate for both audit and other accountancy-related services. The *Fédération des Experts Comptables Européens* (FEE), for example, states that the purpose of price regulation is to dampen price competition and that it can not be justified as a measure to protect either businesses or individual consumers.
31. The only respondents in favour of price regulation were associations from Italy and Greece. However, none explained why the profession should, in this respect, be treated differently to other groups. Likewise, none commented on the fact that the profession appears to function effectively without fixed prices in the vast majority of Member States. One respondent suggests that price regulation is necessary to prevent unfairly low prices. However, they do not explain why accountants, in contrast with other commercial actors, would be willing or able to provide services at less than a reasonable profit level.
32. There was no clear consensus among respondents regarding the need or justification for recommended prices. Some respondents from Austria, Germany and Italy were in favour of recommended prices. Others from France, the United Kingdom, and the Netherlands did not consider such regulations to be necessary for the proper functioning of the profession. The *Bundesarbeitskammer*, an Austrian consumer organisation, suggested that Austrian professions sometimes lead consumers to believe that recommended prices are fixed prices in order to avoid giving discounts.
33. The *Fédération des Experts Comptables Européens* (FEE) commented that, according to some practitioners, recommended prices protect the quality of services by avoiding excessive price competition. However, it concluded that recommended prices hinder competition and are not in the interests of the profession.

Contingency Fees

34. A large number of respondents commented on the need to prohibit contingency fees for statutory audit in order to safeguard auditors' independence and the

reliability of financial reporting. However, there was less clear consensus regarding whether contingency fees should be prohibited for other accountancy-related services.

35. Certain professional bodies such as Germany's *Bundesverband der vereidigten Buchprüfer* and *Institut der Wirtschaftsprüfer* seem to suggest that there should be a blanket prohibition of contingency fees regarding all accountancy-related services.
36. The *Fédération des Experts Comptables Européens* (FEE) comments on the need to regulate contingency fees in cases where they are related to additional services provided for an audit client. They also argue that contingency fees should be prohibited in relation to certain services such as compliance work. However, they state that the payment of contingency fees is appropriate and common practice for other accountancy-related services.
37. The *Conseil Supérieur de l'Ordre des Experts-Comptables* in France suggests that prohibition of contingency fees is necessary to safeguard accountants' neutrality and objectivity in the provision of certain services such as tax advice. However, they argue that a blanket prohibition of contingency fees would unnecessarily inhibit the development of other services.
38. The United Kingdom's *Association of Chartered and Certified Accountants* (ACCA) argues that contingency fees should be prohibited with respect to most accountancy-related services in order to ensure practitioners' objectivity and independence. However, they suggest that contingency fees should not be prohibited for services such as insolvency and some corporate finance work.

Advertising Restrictions

39. A large number of respondents suggested that there was a need for some regulation of advertising for accountancy services. However, they appeared to differ considerably regarding the level of regulation that was necessary to ensure the correct functioning of the profession.
40. For the most part, respondents draw attention to the need for advertising to be trustworthy and in keeping with the ethical standards of the profession. The *Association of Chartered and Certified Accountants*, for example, comments that practitioners in the United Kingdom are permitted to advertise but not to make misleading statements or bring the profession into disrepute.
41. Likewise, the *Fédération des Experts Comptables Européens* (FEE) comments that advertising should be permitted provided that it is consistent with the dignity and ethical standards of the profession. It adds that additional restrictions on advertising limit communication with potential clients and hence hamper competition.
42. A few professional bodies suggest that more stringent restrictions are necessary. The *Conseil Supérieur de l'Ordre des Experts-Comptables* suggests that France's strict advertising rules are necessary to protect small firms and to ensure that

consumers are not manipulated. It argues that the rules do not restrict competition because accountants can publicise their services using alternative methods.

43. However, the *Compagnie Nationale des Commissaires aux Comptes* suggests that the current rules are not needed to protect businesses or consumers. It argues that they reduce competition by restricting communication between practitioners and potential clients.

Business Structure and Inter-Professional Co-operation

44. A small number of professional bodies commented on the need for regulation of the ownership of audit companies. As established in EU law, this is necessary to protect audit companies' independence and respect for the profession's ethical standards.
45. Likewise, a small number of respondents commented on rules governing the form or structure of audit and accountancy companies. The *Wirtschaftsprüferkammer*, for example, suggests that rules restricting the form of audit or accountancy companies are not necessary, pointing out that German accountants are allowed, in principle, to form all types of undertaking. The *Fédération des Experts Comptables Européens* is also doubtful about the need to regulate the form of audit or accountancy companies.
46. A number of respondents suggest that there was a need for some regulation of multi-disciplinary practices involving accountancy professionals. The *Fédération des Experts Comptables Européens* comments, for example, on the need to organise the relationships between professionals who may not be bound by the same ethical rules on confidentiality, independence or conflicts of interest.
47. However, very few respondents suggested that there should be a prohibition of inter-professional co-operation. The *Fédération des Experts Comptables*, for example, argues that a blanket prohibition would reduce competition unnecessarily.
48. The *Bundessteuerberaterkammer*, an association for German tax consultants, comments that inter-professional co-operation allows practitioners to provide better services for consumers. This is because multi-disciplinary companies are, in certain circumstances, better placed to offer comprehensive advice to their clients.
49. Likewise, the *Orde van Belastingadviseurs*, an association for Dutch tax consultants, argues that rules that prohibit Dutch lawyers' participation in multi-disciplinary practices with tax consultants are unnecessary and hamper competition. The association suggests that it would be possible to allow inter-professional co-operation while safeguarding confidentiality and respect for the professions' ethical principles.
50. Finally, a number of respondents, including the *Institute of Chartered Accountants in England and Wales* and France's *Conseil Supérieur de l'Ordre des Experts-Comptables* suggest that the accountancy professions can function effectively

without the need for any restriction of inter-professional co-operation other than the rules governing ownership of audit companies.

LEGAL SERVICES

51. The Commission received 33 responses on the regulation of the legal professions. These included submissions from 18 professional bodies for legal practitioners from across the EU. The other responses came from a consumer association, business users and practitioners.
52. There was a consensus among respondents that a certain level of regulation is needed to ensure that legal practitioners have appropriate training and that they abide by core professional values such as integrity, professional secrecy and avoidance of conflicts of interest. A number of respondents drew attention to the role that the legal profession plays in facilitating the good functioning of the judicial system.
53. However, there was considerable disagreement regarding the level of regulation that is needed to protect the profession's values and the extent to which lawyers should be subject to competition. The majority of respondents appeared to accept that legal services should, to a large extent, be provided on competitive terms. A small number, in contrast, suggested that lawyers do not provide commercial services and that they should benefit from a wholesale derogation from the normal competition rules.
54. Likewise, there was a lack of consensus regarding the need for specific professional rules. There appeared to be general agreement that legal fees should be set freely without the need for price fixing or recommended tariffs. However, the professional bodies differed on the regulation of contingency fees, the appropriate level of advertising restrictions, and the extent to which practitioners are able co-operate with non-lawyers without compromising the values of the profession.

Entry and exclusive rights

55. A large number of respondents commented on the need to maintain appropriate entry requirements for members of the legal professions. As they explain, these regulations are necessary to ensure that lawyers have appropriate knowledge and competencies and to ensure that they are aware of the profession's ethical rules.
56. Many respondents suggested that new entrants to the profession should be required to hold an appropriate academic qualification and to complete a period of training within a law firm. In certain cases, they also suggested that lawyers should be required to pass a professional entrance examination.
57. Few respondents commented on the extent to which lawyers should have exclusive rights to provide legal services. The *Wirtschaftskammer Österreich*, the Austrian Federal Economic Chamber, commented that lawyers' exclusive rights should be limited to the profession's core tasks and suggested that other professional groups could provide a wider range of legal services. A German consumer organisation suggested that German lawyers' exclusive right to provide legal advice and representation in court should be abolished.

Price regulation

58. The vast majority of respondents did not express support for fixed or recommended prices for legal services. Italy's *Associazione Nazionale Forense* and the *Netherlands Bar Association*, for example, argue that price regulation and recommended prices are not necessary for the functioning of the profession and do not serve the interests of lawyers' clients.
59. The *Bundesarbeitskammer*, an Austrian consumer organisation, argued that fixed prices for legal services in Austria were not in the consumer interest. Legal services in Austria are relatively expensive and this discourages consumers from using them. They add that the profession does not explain why price fixing is necessary for legal services when it is not needed for other services such as banking and insurance.
60. The only exception was the *Deutscher Anwaltverein*, a professional body for German lawyers. They argue that price regulation is needed to guarantee the high quality of legal services. However, they do not explain why price setting should, in itself, be expected to safeguard quality.

Contingency fees

61. The *Deutscher Anwaltverein* and the *Österreichischer Rechtsanwaltskammertag*, an association for Austrian lawyers, argued that lawyers should be prohibited from charging any form of contingency fee for their services. They suggested that such agreements would compromise lawyers' independence or create a conflict of interest between lawyers and their clients.
62. The *Council of the Bars and Law Societies of Europe (CCBE)*, likewise, suggests that it is a widely acknowledged principle that lawyers should not have a financial interest in the outcome of a client's case. It argues that a prohibition of contingency fees is necessary to avoid situations where the lawyer's interests might conflict with those of his client.
63. However other respondents suggested that contingency fees may be acceptable under certain circumstances. The *Netherlands Bar Association*, for example, suggests that lawyers ought to be allowed to link the price of their services to results to a limited degree.
64. The *Athens Bar Association* and *Athens Lawyers' Association* explain that in Greece lawyers are allowed to make agreements whereby 20% of the total fee for a legal service depends on the outcome of the action. They suggest that this mechanism helps consumers with limited financial resources to access legal services.
65. The *Conseil National des Barreaux* and the *Barreau de Paris* comment on the regulation of contingency fees in France, whereby lawyers are allowed to charge a supplementary contingency fee in addition to an initial fee that is not dependent on the results of an action. They likewise suggest that this mechanism is sufficient to

protect lawyers' independence while facilitating access to justice by clients with limited means to pay for legal services.

Advertising restrictions

66. A large number of respondents suggested that there was a need for some regulation of advertising by members of the legal profession. This is necessary, they argue, in order to ensure that consumers are not misled or manipulated and that practitioners' publicity does not compromise the core values of the profession. However, they differ considerably regarding the appropriate level of regulation to meet these aims.
67. The *Athens Bar Association*, for example, comments that lawyers in Greece are not allowed to advertise in the press or through other mass media channels. They are only permitted to print business cards and to place a notice bearing their name and professional status outside their offices. They argue that these stringent restrictions are necessary to protect practitioners' status as officers of justice.
68. One Italian association also supported a blanket prohibition of advertising by legal practitioners, arguing that this is necessary to protect the dignity of the profession. However, they do not explain why advertising should be incompatible with dignity. Nor do they comment on the impact of an advertising prohibition on competition or the benefits for consumers of more accessible information on legal services.
69. The *Council of Bars and Law Societies of Europe* explains that, according to its code of conduct, lawyers should be entitled to publicise their services in any form of media, providing that the information they provide is accurate and not misleading and providing that it is in keeping with the core values of the profession.
70. The *Law Society of England and Wales* also argues that legal practitioners should be able to participate in most forms of truthful advertising. In England and Wales, solicitors can use all advertising media. The rules in place are intended to avoid advertising that is misleading or inaccurate. The *Society* argues that these rules provide sufficient consumer protection while promoting healthy competition in the legal sector.
71. The *Law Society's* rules prohibit lawyers from making direct, unsolicited contact with individual members of the public. However, they are allowed to "cold call" potential business customers. The other respondents did not comment on whether it is appropriate to put in place less stringent regulations with regard to business clients.

Business structure

72. Only a small number of respondents commented on rules governing the structure of legal services companies. The *Law Society of Ireland*, for example, suggests that rules prohibiting Irish solicitors from forming limited liability partnerships are unnecessarily restricting competition.

73. The *Law Society of England and Wales*, meanwhile, comments that its members may practice in corporate form, subject to compliance on specific rules. The purpose of these rules is to ensure that certain legal services can only be delivered by independent professionals who are subject to the same client protections as solicitor practices. They argue that solicitors should be allowed to provide any legal service, using any business structure, providing that appropriate safeguards are put in place.

Inter-professional co-operation

74. A large number of respondents commented on rules that restrict co-operation between lawyers and other groups. Many suggested that more or less strict rules are necessary to protect lawyers' independence and respect for ethical values such as independence, professional secrecy and avoidance of conflicts of interest.

75. The *Netherlands Bar Association*, for example, argues that prohibition of integrated collaboration between lawyers and accountants is necessary to protect the independence of the legal profession. The *Athens Bar Association*, meanwhile, suggests that a blanket prohibition of inter-professional co-operation is necessary to prevent conflicts of interest.

76. The *Council of Bars and Law Societies of Europe* also argues in favour of regulation limiting multi-disciplinary practices. They suggest that such rules protect the core values of the profession by ensuring that practitioners are subject to a single consistent code of conduct enforced by the local bar. However, they suggest out that certain Member States have developed mechanisms which permit multi-disciplinary practices while safeguarding the ethical values of the profession.

77. Others maintain that it is increasingly important for lawyers and other professionals to be able to provide a range of services within a single company. The *Ordre des barreaux francophones et germanophone de Belgique*, for example, suggests that inter-professional co-operation could be envisaged to the extent that it does not endanger lawyers' ethical values. They suggest that co-operation might be permitted between lawyers and other professions that are subject to similar deontological rules.

78. The *Conseil National des Barreaux* comments that it is particularly important for companies and major clients to be able to access a wide range of specialist services within a single professional services business. For this reason, lawyers in France will be permitted to form multi-disciplinary practices as long as they do not undermine practitioners' ability to respect the essential values of the profession. The profession is currently working on clarifying the rules governing inter-professional co-operation.

79. The law firm *Clifford Chance* argues that different rules on inter-professional co-operation in the EU Member States cause significant obstacles for international legal services companies. In particular, they comment on the rules of the *Law Society of England and Wales* which, they suggest, inhibit them from co-operating

with other professions in countries such as Germany where limited forms of inter-professional co-operation are allowed.

80. The *Law Society of England and Wales*, meanwhile, comments that multi-disciplinary practices could bring advantages for consumers and facilitate innovation in the market for legal services. However, it considers that the current rules on multi-disciplinary practices do play some role in protecting consumers and that any relaxation of the rules should be undertaken with care.
81. Finally, the *Wirtschaftskammer Österreich* indicates that Austria's laws on inter-professional co-operation are holding back its professional services sector. They suggest that large Austrian companies have to purchase certain services in less regulated countries because of the inability of Austrian service providers to offer multi-disciplinary skills.

NOTARIES

82. The Commission received 49 responses on the regulation of the notary profession. These included 38 submissions from Germany, eight from France and two from Spain. The *Conference des Notariats de l'Union Européenne* commented on the regulation of the profession across the continental Member States.
83. The 38 German responses included submissions from businesses, practitioners and professional bodies. However, the vast majority of these respondents stated that they were individual consumers. The responses were in many cases very similar in content. The vast majority did not provide detailed arguments but provided general support for the current rules.
84. The majority of respondents from all countries argued in favour of a high level of regulation in order to ensure that notaries carry out their duties with competence and integrity. A large number suggested that notaries are not commercial service providers but public officers responsible for the exercise of state authority. Others commented on the role that notaries play in guaranteeing the legal certainty of documents and, thereby, the good functioning of the justice system.
85. The vast majority of respondents indicated that they were satisfied with the services provided within the current framework. However, one exception, *l'Association Force Ouvrière Consommateurs*, suggested that the number of notaries in France is insufficient and that their tariffs are excessive. They argue that there should be some form of independent assessment of the quality of notaries' services.

Entry and exclusive rights

86. A large number of respondents were in favour of strict entry requirements. These are necessary, they argue, to ensure that notaries have the necessary competence and integrity to carry out their functions and that consumers can be confident in the quality of their services. However, respondents did not comment on the appropriate level of entry regulation or on the differences in requirements between the Member States.
87. Likewise, few of the respondents commented on rules that restrict the number of notaries in each Member State or on the effects that restriction of supply can have on the availability, quality and price of services. Neither did they comment on the extent of notaries' exclusive rights.
88. However, the *Bundesarbeitskammer*, an Austrian consumer organisation, suggested that current rules of establishment unnecessarily limit competition between Austrian notaries. As a result, notaries' prices are often high in comparison with those of other groups. They suggest that while there may be a need for minimum numbers of professionals in certain areas, there seems to be little justification for maximum limits.

Price Regulation

89. A large majority of respondents were in favour of regulated prices for notaries' services. For the most part, they maintain that fixed prices are necessary to protect practitioners' independence and neutrality, to ensure quality, and to safeguard access to notaries services.
90. Certain respondents suggested that price regulation is necessary to ensure that poorer consumers are able to afford notaries' services. However, they do not explain how, in the absence of subsidies or cross-subsidies, notaries could afford to provide services for a lower fee than the price that would be determined by a competitive market.
91. Others argue that price regulation is necessary to ensure that the notaries themselves are fairly remunerated for their services. However, they do not explain why notaries, in contrast with other service providers, would be willing or able to provide their services at less than a reasonable profit level.
92. A number of respondents argue that price regulation ensures competition on quality rather than on price. However, they do not explain why fixed prices should, in themselves, be expected to safeguard quality, or comment on the fact that in most markets consumers depend on price as a key indicator of the quality of a service.
93. Certain respondents suggested that price regulation is necessary to protect notaries' impartiality and independence from their clients. Notaries are, they remind us, public officers responsible for the authentication of acts. It would, they argue, compromise notaries' independence if they were to negotiate prices with their clients.
94. These respondents did not comment on whether alternative regulatory mechanisms might be used to ensure practitioners' trustworthiness and integrity.
95. One respondent warned that it would not be possible to remove price restrictions without also changing other aspects of the regulatory structure for the profession.

Advertising Restrictions

96. A small number of respondents indicated support of rules that restrict advertising by members of the profession. However, they did not comment in detail on these rules.

Business Structure and inter-professional co-operation

97. A large majority of respondents were in favour of rules that restrict the structure of notaries' businesses and the scope for co-operation between notaries and other professions. Few commented in detail on this type of regulation. However, some indicated that the rules were necessary to protect the independence of the profession.

ARCHITECTS

98. The Commission received 21 responses on the regulation of architectural services. These included submissions from 13 professional organisations for architects from across the EU. Some of the professional bodies commented on both architectural and construction services, reflecting the lack of division between these activities in certain Member States.
99. A number of respondents suggested that regulation is needed to ensure the quality of architectural services. The *Architects' Council of Europe*, for example, comments that control mechanisms are essential because the quality of architectural services is only discernible after the construction process. The *Bayerische Architektenkammer*, a regional association for German architects, argues in favour of regulation on the basis that architects' services affect the environment and society in general.
100. However, the associations differed regarding the level and type of regulation that is needed to ensure the correct functioning of the profession. There was considerable disagreement regarding the need for price regulation, advertising restrictions and rules limiting inter-professional co-operation.

Entry and exclusive rights

101. A large number of respondents commented on the need to maintain appropriate entry and educational requirements for licensed or certified architects. The majority argued that this regulation is needed to ensure that architects respect safety standards and offer a high quality of service.
102. According to the *Conseil de l'Ordre des Architectes de la Province de Namur*, for example, entry requirements are necessary to ensure that architects respect standards of security and aesthetic quality. Meanwhile, the *Verband Privater Bauherren*, a German consumer association, argues that entry regulation is needed to ensure that consumers have confidence in the quality of architects' services.
103. The Finnish Association of Architects suggests that some rules are necessary to guarantee that professionals have the prerequisite qualifications and to regulate the provision of architectural services by other professions. They suggest that the absence of entry requirements in Finland has led to variable quality and made consumer choice more difficult.
104. The *Architects' Council of Europe* also argues in favour of entry requirements coupled with rules preventing unqualified practitioners from offering certain services. These regulations are needed because of the dangers associated with construction and the need to ensure a high-quality urban environment. It also argues in favour of mandatory continuing professional development for members of the profession.
105. However, few respondents commented in detail on the extent to which licensed or certified architects should hold exclusive or reserved rights. Likewise, very few discussed the regulatory framework in countries such as Denmark,

Ireland and the Netherlands where unqualified practitioners are permitted to offer a range of architectural services.

106. One exception was the *Wirtschaftskammer Österreich*, the Austrian Federal Economic Chamber, who argue that current exclusive rights held by Civil Technicians in Austria are unnecessarily distorting competition. They suggest that chartered builders are sufficiently well trained to provide a variety of architectural services in competition with the Technicians.

Price regulation

107. A significant number of professional associations oppose the application of fixed fees for architects' services. These include the *Union Nationale des Syndicats Français d'Architectes* and Italy's *Associazione Liberi Architetti* and *Comitato per la difesa degli interessi degli architetti*. The latter both argue that current price regulation in Italy significantly restricts competition to the detriment of consumers.
108. However, the majority of respondents argued in favour of price regulation for architectural services. For the most part, they suggested that price regulation is needed to protect the quality and safety of construction work. Unrestricted price competition would, they maintain, force prices to levels at which it would be impossible to respect quality and safety standards.
109. According to the *Architect' Council of Europe*, for example, reasonable fixed prices are necessary to ensure that professionals compete on quality rather than on price. Without fixed prices, service providers would be tempted to offer the lowest price in order to gain contracts, leading to a reduction in the quality of constructions.
110. Belgium's *Orde van Architecten* argues that fixed prices are necessary to allow architects to make a reasonable profit and to exercise their functions in honour and dignity. They suggest that price competition would force architects to use inferior material that would reduce the strength and security of buildings.
111. However, none of the respondents explain why price regulation should be expected, in itself, to improve or safeguard construction standards. They do not, for example, explain why architects subject to price regulation would not have strong motivations to reduce quality in order to maximise profits.
112. Likewise, they do not comment on whether other mechanisms such as planning permission procedures, construction standards and monitoring might offer a more appropriate means of quality control. No evidence was provided to suggest that standards are higher in the minority of Member States that have minimum or fixed fees.
113. A large majority of respondents were also in favour of recommended prices for architectural services. However, few commented in detail on the justification for this type of regulation. The *Finnish Association of Architects* suggested that the absence of indicative fee scales in Finland has led to considerable variations in

prices and has made consumer choice more difficult. Another respondent suggested that recommended prices offered a guide to consumers.

114. Few of the respondents commented on the concern that recommended prices may facilitate collusion. Likewise, they did not explain why consumers should need recommended prices for architects' services, despite the fact that they do not rely on recommended prices when purchasing other complex products.
115. As mentioned above, the *Bundesarbeitskammer*, an Austrian consumer organisation, suggested that the Austrian professions sometimes lead consumers to believe that recommended prices are fixed prices in order to avoid giving discounts. They added that Austrian architects face few incentives to reduced prices and costs.

Advertising Restrictions

116. Only a small number of respondents commented specifically on the need for advertising restrictions with regard to architectural services. The majority appeared to believe that architects should be free to engage in truthful advertising. The *Comitato per la difesa degli interessi degli Architetti* argued that Italy's blanket prohibition on advertising by architects restricts competition unnecessarily.

Business Structure and inter-professional co-operation

117. A small number of respondents commented on the types of businesses that architects are permitted to form. The majority believes that there is a need for regulation to ensure transparency of ownership of architectural services companies and to preserve architects' independence from other groups.
118. The *Architects' Council of Europe*, for example, argues that, given the complex nature and potential impact of architectural services, it is important for clients to be aware of the ultimate ownership of architectural services companies. They also suggest that architects' independence should not be compromised as a result of co-operation with other groups.
119. Austria's *Bundeskammer der Architekten und Ingenieurkonsulenten* also argues that practitioners' independence and objectivity should not be endangered by co-operation with other professions.
120. The respondents did not comment on the potential economic advantages of co-operation between architects and other groups such as engineers and builders. Nor did they comment on service provision in the majority of EU Member States where there are no significant regulations restricting architects' participation in multi-disciplinary practices.
121. The *Comitato per la difesa degli interessi degli architetti*, in contrast, argues that Italy's rigid legislation on business structure is having negative consequences for competition and consumers.

ENGINEERS

122. The Commission received 36 responses on the regulation of engineering services. These included 30 submissions from consultant engineers and colleges of consultant engineers in Italy. The other responses included submissions from professional associations in Finland, Germany, Portugal and the United Kingdom.
123. The 30 submissions from Italy were similar in content. In brief, respondents supported their national Council's deontological rules on the basis that they protect the core values of the profession. They argue in favour of a number of restrictive regulations, including price fixing, rules on business structure and rules on inter-professional co-operation.
124. The professional bodies from Portugal and the United Kingdom argued that there is a need for some regulation to ensure the good functioning of the profession. Given the nature of engineers' activities, rules are necessary to ensure that they respect health and safety requirements, work within their competencies and avoid adverse impact on the environment.
125. The *Union of Professional Engineers in Finland*, meanwhile, argued that the EU should take the lead in ensuring the deregulation and harmonisation of engineers' professional rules. They suggest that the current regulatory framework is likely to place EU professionals at a disadvantage in the face of foreign competition.

Entry and exclusive rights

126. A large number of the respondents commented in favour of appropriate entry regulations for members of the profession. Portugal's *Ordem dos Engenheiros*, for example, argued that entry requirements are necessary to ensure that practitioners are able to respect technical, safety and environmental standards.
127. The United Kingdom's *Engineering Council* suggested that consumers are often ill equipped to judge the quality of engineering services. Regulation is therefore needed so that consumers can be sure that members of the profession will provide a good quality of service.
128. The 30 Italian respondents all commented on recent reforms of the entry requirements for the profession in Italy. They argue that the changes introduce a confusion between engineering practitioners with five years of secondary education and engineering experts with a university degree.
129. The respondents did not comment in detail on the extent to which licensed or certified engineers should hold exclusive rights.

Price regulation

130. The *Ordem dos Engenheiros* suggests that price regulation is not necessary for the functioning of the profession. The United Kingdom's *Engineering Council*

comments that price regulation might be in the commercial interests of the profession itself but suggests that it is not in the wider public interest.

131. The 30 Italian respondents all expressed support for price regulation on the basis that it ensures that practitioners receive a fair remuneration and that it protects consumers. However, they do not explain why price regulation can be expected to protect consumers.

132. Likewise, none commented on the fact that the profession appears to function effectively without fixed prices in the vast majority of Member States. Nor did they why the profession should, in this respect, be treated differently to other commercial service providers.

Advertising Restrictions

133. None of the respondents commented in any detail on the need for advertising restrictions with regard to engineering services.

Business Structure and Inter-Professional Co-operation

134. The respondents did not comment in detail on rules governing business structure or inter-professional co-operation.

PHARMACISTS

135. The Commission received 32 responses on the regulation of pharmacists. These included 17 responses from pharmacists and consumers in Italy. It also received submissions from professional associations in Austria, Belgium, Denmark, Germany and Spain. The *Pharmaceutical Group of the European Union* (PGEU) commented on regulation across the Member States.
136. A large number of respondents commented on the role that pharmacists play in promoting public health. They argued in favour of appropriate regulation to ensure the safe supply of medicines to the general public. In many cases, they argued that pharmacists should not be treated in the same way as other professions and that they should not be subject to normal rules of competition.
137. The *Pharmaceutical Group of the European Union*, for example, stressed the importance of placing public health above purely economic objectives. They comment that the final objective of the pharmacy market is not to maximise sales but to ensure the appropriate distribution of medicines. As they noted, the European Commission has acknowledged the specificity of the pharmacy profession on a number of occasions and has recognised the need not to treat pharmaceuticals as ordinary consumer products.
138. The 17 responses from Italy all argued that regulation of the profession in Italy is overly rigid. In particular, they expressed concern about the restriction of numbers of pharmacists in Italy and suggested that this regulation was having a negative impact on competition and quality of service.

Entry, exclusive rights and territorial restrictions

139. The 17 Italian respondents were highly critical of rules restricting the creation of new pharmacies in Italy. As they explained, the number of pharmacies in Italy is fixed and it is effectively necessary either to buy or to inherit an existing pharmacy in order to enter the market.
140. The respondents suggest that as a result of this restriction, consumers have little ability to choose between different local pharmacists and there is therefore very little competition. The *Movimento Nazionale Liberi Farmacisti* argues that the effect of the regulations is to protect established pharmacists from competition from new entrants.
141. Two Spanish respondents also commented on the negative effects that strict entry regulation could have on competition. The *Association of Unemployed Pharmacists*, for example, argued that rigid rules on the number of pharmacies in Spain were not in the interests of consumers. They also suggested that the rules served to protect the monopoly held by established pharmacists.
142. The *Pharmaceutical Group of the European Union* commented on the need to ensure that healthcare services are universally accessible for consumers. They suggested that rules establishing territorial restrictions are essential for the adequate and safe provision of pharmacy services.

143. The *Österreichische Apothekerkammer*, a professional body for pharmacists in Austria, commented that the Austrian Government regulates the establishment of new pharmacies in order to ensure a proportionate distribution of pharmacies and access to a pharmacy in rural areas.
144. Respondents did not comment on the exclusive rights of pharmacists in certain countries to sell “over the counter” non-prescription medicines.

Price regulation and fixed profit margins

145. Certain respondents supported regulated prices or fixed profit margins as a means of ensuring that all consumers are able to purchase healthcare products. The *Österreichische Apothekerkammer* and the *Association Pharmaceutique Belge*, for example, suggested that regulation was needed to protect consumers from excessive prices. In their comments on price regulation, the respondents did not make a distinction between prescription-only and “over the counter” products.

Advertising restrictions

146. A small number of respondents supported restrictions on advertising by members of the profession. The *Österreichische Apothekerkammer*, for example, suggested that advertising should not encourage patients to take unnecessary or inappropriate medicines.
147. The *Pharmaceutical Group of the European Union* commented on the vulnerability of healthcare patients and the need to avoid encouraging inappropriate use of medicines. They stress the importance of clear and proportionate rules on advertising that ensure that patients are not misled about the benefits of specific products. They add that aggressive marketing techniques aimed at increasing sales would be highly inappropriate in the healthcare sector.

Business structure and inter-professional co-operation

148. The *Österreichische Apothekerkammer* argued that pharmacy chains and other forms of business structure need to be prohibited to ensure that pharmacists practice independently of economic influence from outside the profession.
149. The *Pharmaceutical Group of the European Union* also argued that it is important to preserve the independence of the profession. They commented on the need to avoid direct links or dependence between pharmacists and other sectors of the pharmaceutical chain. They also argued that pharmacists should be directly responsible and liable for the management of a pharmacy. They suggested that it is not desirable to separate the financial and professional management of a pharmacy as this can lead to external interference in the pharmacist’s provision of services.

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