



ZENTRUM FÜR  
EUROPAISCHE RECHTSPOLITIK  
AN DER UNIVERSITÄT BREMEN

**Centre of European Law and Politics (ZERP)  
University of Bremen**

Christoph U. Schmid (Legal and General Co-ordinator)

**International Real Estate Business School  
University of Regensburg**

Steffen Sebastian (Economic Co-ordinator)  
and Gabriel S. Lee

**University of Vienna, Department of Government**

Marcel Fink

**Institute for Advanced Studies (IHS), Vienna**

Iain Paterson

Study

**COMP/2006/D3/003**

**Summary of the comparative legal and  
economic study into the EU conveyancing  
services market**

December 2007

## Contents

<b>1. Introduction</b>	<b>5</b>
<b>2. Part I of the study: The Legal Part</b>	<b>7</b>
2.1 The different regulatory models	8
2.2 Types of restrictive regulation and its justifications	9
<b>3. Part II of the study: The Economic Part</b>	<b>12</b>
3.1. Regulatory indices	13
3.2. Transaction costs	15
3.3. Assessment of service	21
3.4. Econometric analysis	23
<b>4. Case Studies</b>	<b>28</b>
4.1 England and Wales: Lawyers and Licensed Conveyancers System	28
4.2 Germany: Latin Notary System	30
4.3 Netherlands: Deregulated Notary System	31
4.4 Sweden: Licensed Real Estate Agent System	32
<b>5. Conclusions and Way Forward</b>	<b>33</b>

## Tables

<b>Table 1:</b>	<b>Overall Regulation Indices for Legal Services in Conveyancing: Four “Worlds of Regulation”</b>	<b>15</b>
<b>Table 2:</b>	<b>Absolute Legal Fees by Country for Different Transaction Values and Average House Price (including 70% mortgage)</b>	<b>18</b>
<b>Table 3:</b>	<b>Service Assessment Indices ranked by Overall Service Assessment Index (OSA)</b>	<b>22</b>
<b>Table 4:</b>	<b>Overall Service Assessment by “Worlds of Regulation”</b>	<b>23</b>
<b>Table 5:</b>	<b>Pearson’s Correlation between Regulation and Fees Resp. between Regulation and Service Assessment (n=15)</b>	<b>25</b>
<b>Table 6:</b>	<b>Pearson’s Correlation between Fees and Service Assessment Indices</b>	<b>27</b>

## Figures

<b>Figure 1:</b>	<b>Comparison of Legal Fees by Regulatory Model</b>	<b>16</b>
<b>Figure 2:</b>	<b>Legal Fees for Conveyancing</b>	<b>18</b>
<b>Figure 3:</b>	<b>Legal Fees Adjusted by Net Earning Factor by Regulatory Model</b>	<b>19</b>
<b>Figure 4:</b>	<b>Legal Fees for Average House for Different Regulatory Models – As a Percentage of Average House Price, and Indexed by Price Levels and Net Earnings</b>	<b>20</b>
<b>Figure 5:</b>	<b>PTV100k vs. Regulation Indices (Regulatory Models)</b>	<b>21</b>
<b>Figure 6:</b>	<b>Overall Regulation (MERI+MCRI+MII), Overall Service Assessment (OSA) and Average Fees Adjusted by Net Earnings (for 20 EU Countries)</b>	<b>24</b>
<b>Figure 7:</b>	<b>Overall Regulation (MERI+MCRI+MII) and Overall Service Assessment (OSA) (for 4 Regulatory Models)</b>	<b>25</b>
<b>Figure 8:</b>	<b>Correlations between Overall Regulation Indices (<i>ORI</i>) and <i>Quality</i></b>	<b>27</b>

## 1. Introduction

- 1 The European Commission has been working to promote reform and modernisation of restrictive regulation in the professional services area since 2002. In a first step research was carried out which included an independent study of professional regulation by the Institute for Advanced Studies in Vienna published in March 2003<sup>1</sup>. This underlines wide disparities in levels of regulation across the EU and reveals links between excessive regulation and economic inefficiency. Drawing on the IHS study and other fact finding work, the Commission then published two policy reports<sup>2</sup>, which summarise the Commission's thinking on the scope to reform or modernise specific professional regulation and rules in the professions. Whilst the Commission is not opposed to all regulation of professional services as there are legitimate arguments in favour of certain regulations in this area e.g. to protect consumer interests or safeguard the independence and integrity of a profession, the Commission argues that restrictive regulation needs to meet a strict proportionality test. This means that it is only justified if it serves a clearly defined public interest goal, is objectively suitable to obtain that goal and is the means least restrictive of competition to achieve this goal<sup>3</sup>. This is because such regulations eliminate or limit competition between service providers and thus reduce the incentives for professionals to work cost-efficiently, lower prices, increase quality or offer innovative services. However, a considerable part of current professional regulation does not meet this test.
  
- 2 In order to explore the economic impact of such restrictive professional regulation on specific markets, the Commission has now chosen to examine one key market in more detail – that of conveyancing services (i.e. services associated with buying and selling land and buildings) with a particular focus on legal related conveyancing services. This market is obviously of direct interest to consumers and of high overall economic significance. Indeed, it is estimated that property turnover in the EU27 for 2005 was almost 1,800 billion Euro (around 16% of the EU27 GDP) with the

---

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

[http://ec.europa.eu/comm/competition/sectors/professional\\_services/studies/studies.html](http://ec.europa.eu/comm/competition/sectors/professional_services/studies/studies.html).

<sup>2</sup> Report on Competition in Professional Services (COM(2004) 83) of 9 February 2004 and Commission Communication 'Professional Services – scope for more reform' (COM(2005) 405) of 5 September 2005 to be found at:

[http://ec.europa.eu/comm/competition/sectors/professional\\_services/reports/reports.html](http://ec.europa.eu/comm/competition/sectors/professional_services/reports/reports.html)

<sup>3</sup> See e.g. ECJ joined cases C-94/04 and 202/04 Cipolla and Macrino, para 64.

corresponding turnover in property related legal services being around 16.7 billion Euro. Land and buildings also account for between half and three quarters of country wealth in most European economies. Given the substantial size of this market, it is obvious that any reduction in conveyancing related legal fees as a result of pro-competitive reforms will bring significant financial benefits to consumers all over Europe.

- 3** Furthermore, the inefficiency of some EU countries' property transfer systems is illustrated in a World Bank Report 'Doing Business' in 2005<sup>4</sup>, which shows wide disparities in costs and the time taken to register property transfers. In other EU countries including England and Wales, the Netherlands and Italy, deregulatory reforms have been undertaken in recent times to deliver better services to citizens, business and consumers. Yet the economics of deregulation in conveyancing services remains controversial. Whilst the majority of economists expect competition benefits in this field, there are also some warning voices who raise concerns about the quality and integrity of service providers - and especially Latin style continental notaries - following deregulatory reforms.
- 4** Against this background, in August 2006 DG Competition commissioned the present comparative study, integrating a legal and an economic perspective, on professional and related regulation and its impact on the efficiency and performance of the conveyancing services market. 21 countries<sup>5</sup> are surveyed in the study: Austria, Belgium, the Czech Republic, Denmark, England and Wales, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Poland, Portugal, Scotland, Slovakia, Slovenia, Spain and Sweden.
- 5** In terms of methodology, in a first step, the study gathered reliable and detailed information on the regulation currently existing in the Member States. This was achieved by means of a detailed questionnaire covering legal and economic topics, which was sent to selected national reporters, in most cases leading professionals, academics or both. This questionnaire was accompanied by a survey, answered by about 700 persons from 22 countries (this included one reply on the US system which is outside the scope of this study). It asked for the opinions of professionals and consumers on choice, professional quality, speed and costs of services as well

---

<sup>4</sup> This report can be found at:  
<http://www.doingbusiness.org/documents/DoingBusiness2005.pdf>

<sup>5</sup> Please note that while Scotland is not a separate EU Member State it has its own legal system and is therefore analysed as a separate country for the purposes of this study.

as on problems such as legal disputes between the contracting parties and between parties and professionals. Finally, interested parties and stakeholders were consulted extensively.

- 6 The study consists of a general legal part, an economic part and case studies on four countries (England and Wales, Germany, the Netherlands and Sweden), representing different regulatory systems. The final conclusions summarise the key findings of the study and develop some recommendations on de-regulation and reform of conveyancing services regulation with a view to promoting greater choice and the delivery of more cost-effective legal services in conveyancing. Published alongside this study are a set of "country fiches", which set out key legal and economic findings. These served as a source of information for the study, although other sources have also been drawn on.
- 7 It should also be noted that the study is by no means premised on a wholesale rejection of all regulation of professional services because as noted above there are legitimate arguments in favour of certain regulations (e.g. consumer protection). The study therefore aims at distinguishing regulation which clearly furthers the public interest from regulation which is disproportionate and unnecessarily eliminates or limits competition between service providers.

## **2. Part I of the study: The Legal Part**

- 8 The legal analysis starts by giving an overview of the involvement, be it mandatory, usual or occasional, of the different kinds of professionals involved with buying and selling real estate. The analysis then focuses down to consider in detail the professions involved in providing legal conveyancing services and the regulatory environment in which they operate. Two sets of conclusions are reached: First, four different regulatory models can be distinguished, and second, the justifications brought forward for existing regulation point towards numerous instances of overregulation incompatible with proportionality rationales.

## 2.1 The different regulatory models

- 9 In order to compare and evaluate the different regulatory systems the study categorises the systems in the different Member States examined into four distinct regulatory models:
- 10 The **traditional, highly regulated Latin notary system**, which reflects the public office characterisation of notarial activities. This model may be found in the vast majority of continental European countries including Spain, Portugal, France, Italy, Luxembourg, Belgium, Germany, Poland, Austria and Slovenia. In addition, Latin notaries exist also in Greece and Hungary but these countries have been classified as a hybrid for the purposes of this study given that the additional presence of one or two lawyers is also required in an average transaction. The Latin notary model is characterised by mandatory involvement of notaries, even though the scope of involvement (contract and deed of conveyance, only deed or just the authentication of signatures) differs widely. Other important features include *numerus clausus* of professionals, fixed fees and strict regulation on market conduct.
- 11 The **deregulated Dutch notary system**, which reflects a more modern vision of the notary as a private entrepreneur fulfilling public tasks. Under this model, no *numerus clausus* exists, fees are negotiable and market structure and conduct regulation is generally less strict.
- 12 The **lawyer system** existing in the UK and Ireland, the Czech Republic and Slovakia and – to a lesser extent – also in Austria (where both notaries and lawyers have a high presence on the market). The lawyer system is characterised by quality control of professionals through licensing and professional exams only, negotiable fees and lower levels of regulation on market structure and conduct.
- 13 The **Scandinavian licensed real estate agent system** under which real estate agents also provide legal services. This model is also characterised by quality control of professionals through professional exams and licensing only, negotiable fees and a lower level of regulation on market structure and conduct. This system can be found in Sweden, Finland and Denmark, however, each has its own characteristics.



## 2.2 *Types of restrictive regulation and its justifications*

- 14 The study assesses the justifications for restrictive professional regulation. It looks in detail at the arguments put forward by national regulators and professional associations to justify:
- Mandatory intervention of a notary or lawyer in conveyancing.
  - The granting of exclusive rights to certain professions for conveyancing.
  - *Numerus clausus* and fixed locations.
  - Fixed fees.
  - Market conduct regulation (including business structure, inter-professional co-operation and advertising).
- 15 It comes to the conclusion that, when critically assessed and subjected to a proportionality test, most, if not all, of the arguments put forward to justify the restrictions can be rebutted.
- 16 It finds that the regulation of Latin notaries poses most problems in terms of free and undistorted markets and the application of EC internal market law and to some extent EC competition law. Assuming that notarial services in conveyancing do not constitute the exercise of public authority exempted from the application of EC Treaty law, large parts of their regulation are shown to be unjustifiable under the proportionality principle.
- 17 First, **mandatory intervention** by legal professionals may only be proportional on consumer protection grounds and legal security grounds in transactions involving consumers and/or small enterprises in those countries (including Germany, Poland, Greece and Hungary) where it extends to the drafting of the contract. This is because it is difficult to see how consumer rights are adequately protected under current notary systems where mandatory involvement is limited to the drafting of the deed of property transfer (e.g. Spain, the Netherlands), the registration process (e.g. in France and Belgium) or to the certification of signatures (e.g. Slovenia, Slovakia). Indeed if the contract is drafted by the parties themselves, or by a third party (e.g. real estate agent), considerable dangers may exist for the buyer e.g. on the existence and reach of guarantees and burdens. The posterior control by a professional of a contract which is already binding, and may also have entailed the transfer of property applying for registration, is certainly not suitable to ensure

consumer protection. To the contrary, the mandatory involvement of a professional e.g. in the registration procedure might even mislead a consumer who deems him- or herself protected believing that a trustworthy professional will thoroughly check and control all aspects of the transaction, whereas in reality posterior control can never be fully effective. So this serves to substantially undermine the consumer protection argument used by many Member States for mandatory intervention by Latin notaries and in turn the giving to notaries of extensive exclusive rights for conveyancing. To some extent, this criticism also applies to countries such as Germany where a notary must draft the contract, but does not usually take care of all legally relevant parts of a transaction such as building permits and other zoning and construction law provisos.

- 18** More broadly, it also remains questionable whether mandatory involvement by legal professionals is actually necessary in standard property transactions. As shown by countries such as Sweden or Austria it is possible for informed consumers to handle standard contracts and procedures themselves by filling in pre-formulated forms (made available by housing associations or the Ministry of Justice) and by applying for registration personally. This is even more so as almost all purchase contracts need to be presented to banks and the land registry who check them carefully. Irrespective of this, mandatory intervention, for example, by notaries is not justifiable in larger commercial transactions in which all parties are usually represented by lawyers and even in relation to some consumer transactions where it is usual in some EU countries for consumers to employ a lawyer to represent their interests.
- 19** Second, **exclusive rights** for notaries with regard to conveyancing are not justifiable, which does not mean that the professional title of notaries which may point to high expertise and experience could not be protected. Considering that real estate transactions are to a large extent standardised, lawyers possessing a general law degree and legal training as well as specialised professionals such as English style licensed conveyancers or Scandinavian style licensed real estate agents should also be admitted.
- 20** Third, **numerus clausus** and **fixed locations** which widely entail the consequence that less professionals are appointed than the market would actually support are very difficult to justify. An adequate geographical coverage of legal conveyancing services could be achieved by admitting other legally trained professions (i.e. lawyers, English style licensed conveyancers or Scandinavian style licensed real estate agents) too as recommended here, or – if this were not desired – by State

intervention such as income supplements to notary candidates willing to establish themselves in insufficiently covered areas.

- 21** The fourth element of notarial regulation – **fixed fees** – encounters similar objections. The cross-subsidisation argument (i.e. that notaries need higher fees for high value transactions to compensate for lower fees for low value transactions) does not provide a valid justification for their use, as it is impossible to operate cross-subsidisation in a fair and targeted way. Indeed, “cross-subsidisable” transactions with high and low values, and in subsidised and lucrative legal fields, are not at all distributed in a roughly equal way among professionals. In order to ensure the provision of services at affordable cost to vulnerable groups of consumers, a State should therefore again resort to direct subsidies to that group or use targeted pricing regulation (e.g. maximum prices for family law matters for lower income groups).
- 22** Moreover, fixed fees may not be justified by quality concerns either as a reliable correlation between fixed fees and quality does not exist. Instead, there are other mechanisms with a greater bearing on a professional’s willingness to deliver adequate quality which include subjective requirements of access to the profession, professional honour and deontology rules, reputation, peer pressure, disciplinary rules controlled by professional associations and effective complaint procedures for consumers, as well as the danger of incurring liability.
- 23** The last ground on which fixed fees are based, fee information and transparency, may also be ensured by less restrictive means. These include the publication of historical and survey-based price information by independent parties (such as consumer organisations) or State authorities.
- 24** Regarding other kinds of market conduct regulation of Latin notaries (on business form, inter-professional cooperation and advertising) further instances of overregulation incompatible with proportionality rationales have been found. All the other regulatory models (Dutch style deregulated notaries, lawyers and licensed real estate agents) pose fewer problems from a free market, EC internal market and EC competition law perspective.

### 3. Part II of the study: The Economic Part

- 25** Economic theory is clear on competitive markets and prices: any regulation leading to lack of competition would lead to higher prices. The conveyance service industry is no exception: the fees for legal services are expected to fall with suitable deregulation. The theory, however, is not clear on the effect of deregulation with regards to the quality of the service provided. There are two schools of thought on deregulation and the quality of products/services. The free market school of thought argues that with higher competition not only prices but also quality is going to change in favour of the consumer. The other school of thought claims that market participants would only compete on price and offer a lower quality of service. Competition, for the latter school of thought, would not only then lead to lower prices but also lower the quality due to asymmetric information between sellers and buyers (i.e. consumers are *ex ante* unable to assess the quality of services and unable to judge the need for high-quality-service and/or the qualification of the legal service provider). Rather than letting market forces determine the quality of marketed services, the proponents of regulation often argue that regulation is needed to provide a high level of quality for the good of consumers.
- 26** The objective of the following economic analysis of this report is to examine empirically how regulation affects the market for legal services in conveyancing. More specifically, we analyse the effects of regulation on legal fees, quality and other elements of market efficiency for the 21 EU countries' conveyancing markets surveyed. For research purposes, we first need to measure three elements of the conveyancing market: regulation, the quality of services and fees. In order to quantitatively capture the degree of regulation, we use the information about the regulatory systems provided by the national reporters in 21 countries of the EU. The different elements of regulation are condensed in three sub-indices: a Market Entry Regulation Index (MERI), a Market Conduct Regulation Index (MCRI) and a Mandatory Intervention Index (MII). These indexes together form an Overall Regulation Index (ORI). In addition a Consumer Protection Index (CPI) is calculated. To measure the quality of service, we construct quantitative variables on four topics of Service Assessment, namely Choice, Quality, Certainty, and Speed which form together an Overall Service Assessment Average Index (OSA). Fees are relatively easy to measure in absolute terms, but one has to take into account the different economic environments of the national property markets as well. We therefore not

only analyse the fees for properties of different values (€100.000, €250.000 and €500.000) but also the fees for the conveyance of an average property for each national market. This fee is further adjusted for price level and net earnings, thus producing a set of six fees for each country. Finally, we analyse the relationship between the regulation indices, the service assessment indices and the fees for legal services with different classical econometric methods, i.e. correlations as well as simple regressions<sup>6</sup>.

- 27** We show that consumer welfare is enhanced under deregulated systems whereas highly regulated Latin notary systems with fixed prices and *numerus clausus* result in significant consumer detriment in the form of higher prices, without any comparable quality gains.

### 3.1 *Regulatory indices*

- 28** In order to capture the essential structure of conveyancing services in EU countries with different regulatory models (Latin notary, solicitor/lawyer etc.) four regulation indices for each country and each profession providing legal services in the conveyancing process were constructed. Each index has a range of “0” (no regulation) to “6” (highest degree of regulation). The methodology builds on the widely used regulation indices of professional services developed in IHS (2003), here specifically tailored, and further extended, to account for conveyancing tasks.
- 29** In addition to a Market Entry Regulation Index (MERI) and Market Conduct Regulation Index (MCRI), the binding involvement of legal professions in real estate transactions is reflected in a Mandatory Intervention Index (MII), and, additionally, specific regulations and instruments of quality control are captured in a Consumer Protection Index” (CPI) for each relevant profession in every country.
- 30** As well as providing common scales for comparison of the level of regulation of conveyancing systems between countries, the regulation indices provide a fundamental quantitative input for further econometric analysis.
- 31** Based on regulation indices for each relevant *profession* overall regulation indices for every *country/system* have been computed via inter-professional weighting

---

<sup>6</sup> Regressions are used to quantify the relationship between one variable and the other variables that are thought to explain it; regressions can also identify how close and well determined the relationship is.

(according to the respective market structures in the different countries). MERI and MCRI are by far most restrictive in the group of Latin notary countries, whereas in regimes dominated by lawyers and licensed real estate agents much more liberal rules are in place. The Netherlands is a paradigmatic example for a deregulated Latin-notary system. The differences between the notary systems and the other three groups become even more visible (in all three models of weighting), when the Mandatory Intervention Index (MII) is taken into account as well.

- 32** Regarding the Consumer Protection Index (CPI) the Netherlands exhibits one of the highest levels and the average level for the groups of “lawyers” and “notaries” countries is close. Average CPI in the Scandinavian countries is somewhat lower than in the other three groups, but this applies mainly due to the ratings for just one country, Finland.
- 33** The suitability of our indices has been tested against plausible alternative schemes, with the result that, overall, the two alternative models of weighting confirm to a high degree the original outcomes obtained from our regulation indices. In other words: sensitivity towards different forms of weighting is low in our regulation indices. This supports the validity and robustness of the regulation indices calculated according to our model of weighting. There is no large distortion of results caused by particular “subjective weightings”. **Table 1** summarizes the indices for the 21 EU countries examined.

**Table 1: Overall Regulation Indices for Legal Services in Conveyancing: Four “Worlds of Regulation”**

Group		MERI Market Entry	MCRI Market Conduct	MERI +MCRI	MII Mandatory Intervention	MERI +MCRI MII	CPI Consumer Protection
Hybrid	Greece	6.0	6.0	12.0	6.0	18.0	2.4
	Hungary	3.3	2.3	5.6	4.0	9.6	3.0
N	Luxembourg	5.4	n.a.	n.a.	4.0	n.a.	2.3
	Portugal	5.0	6.0	11.0	4.0	15.0	4.5
	Belgium	5.7	5.0	10.7	4.0	14.7	4.7
	Poland	5.6	4.7	10.3	4.0	14.3	3.2
	France	5.1	5.2	10.3	4.0	14.3	5.2
	Germany	5.7	4.5	10.2	4.0	14.2	5.3
	Italy	5.4	4.7	10.1	4.0	14.1	5.6
	Spain	4.8	5.2	10.0	4.0	14.0	4.4
	Slovenia	4.9	5.0	9.9	2.0	11.9	5.0
	Austria	5.9	3.2	9.0	2.0	11.0	5.9
	<i>Average</i>	<i>5.3</i>	<i>4.8</i>	<i>10.2</i>	<i>3.6</i>	<i>13.7</i>	<i>4.6</i>
D	Netherlands	1.9	1.2	3.1	4.0	7.1	5.6
	<i>Average</i>	<i>1.9</i>	<i>1.2</i>	<i>3.1</i>	<i>4.0</i>	<i>7.1</i>	<i>5.6</i>
L	Czech Republic	3.8	3.6	7.4	2.0	9.4	3.4
	Slovakia	2.9	2.9	5.8	0.0	5.8	2.8
	Ireland	2.0	1.3	3.3	0.0	3.3	4.5
	Scotland	1.9	1.0	2.9	0.0	2.9	5.0
	England/Wales	2.0	0.8	2.8	0.0	2.8	4.5
	<i>Average</i>	<i>2.5</i>	<i>1.9</i>	<i>4.4</i>	<i>0.4</i>	<i>4.8</i>	<i>4.0</i>
S	Denmark	2.0	0.8	2.8	0.0	2.8	4.0
	Sweden	1.2	0.0	1.2	0.0	1.2	4.4
	Finland	0.5	0.0	0.5	0.0	0.5	2.1
	<i>Average</i>	<i>1.2</i>	<i>0.3</i>	<i>1.5</i>	<i>0.0</i>	<i>1.5</i>	<i>3.5</i>

**Key**

N = Latin notary system

D = Dutch deregulated notary system

L = Lawyer system

S = Scandinavian licensed real estate agent system

**3.2 Transaction costs<sup>7</sup>**

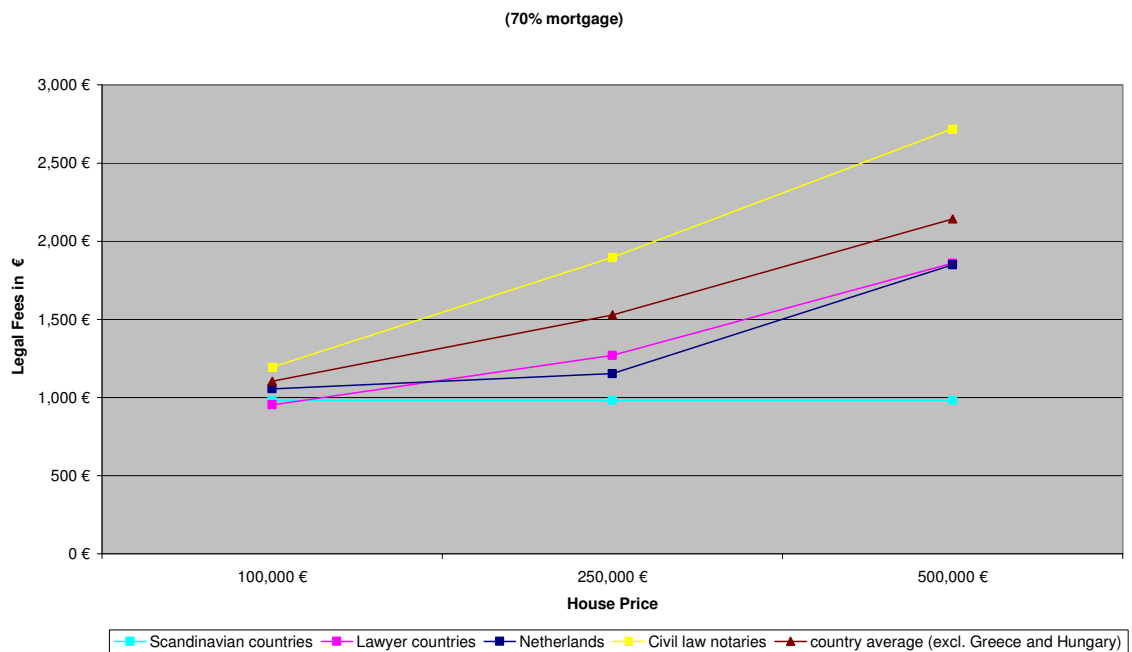
**34** The next section looks at the level of transaction costs and assesses in detail the link between the level of regulation and the level of legal fees.

**35** Transaction costs incurred by the buyer and/or seller of property or land comprise fees to professionals, such as real estate agents, for technical services (surveyor etc.) and for legal services (lawyers, notaries, licensed conveyancers), and, in addition, fees for land registration and taxes. In this study the focus is on fees for legal services.

<sup>7</sup> Luxembourg is not included in this section due to non-availability of fee data and so the fees in 20 EU countries only are analysed.

**36** To arrive at the fees for legal services in each country and in order to make a cross country comparison, the average steps and costs associated with buying real estate and obtaining proper legal title in each country were assessed: Legal fees typically represent 15%-25% of all professional fees, accounting for about 7%-13% of transaction costs (without mortgage) or around 12% of transaction costs for an average house transaction with a 100% mortgage. This represents a sizeable cost for consumers, and a notable feature is the variation in legal fees between different countries.

**Figure 1: Comparison of Legal Fees by Regulatory Model**



**37** **Figure 1** (excluding Greece and Hungary) shows the legal fees for the different regulatory models. A comparison is made of how fee levels for the four different regulatory systems develop with increasing transaction values. The results are striking. The figure shows that traditional Latin notary countries are on *average*, particularly for high transaction values, substantially more expensive than the other systems. In this case *absolute fees* are used (i.e. unadjusted for spending power or net earnings).

**38** A comparison based on a benchmark transaction value of **€250,000** demonstrates this point even more clearly. It shows that legal fees in Scandinavian countries and the Dutch deregulated notary system are lowest, followed by the lawyer-based conveyancing countries. Latin notary countries are generally the most expensive. Among these, the surveyed new Member States of Eastern and Central Europe



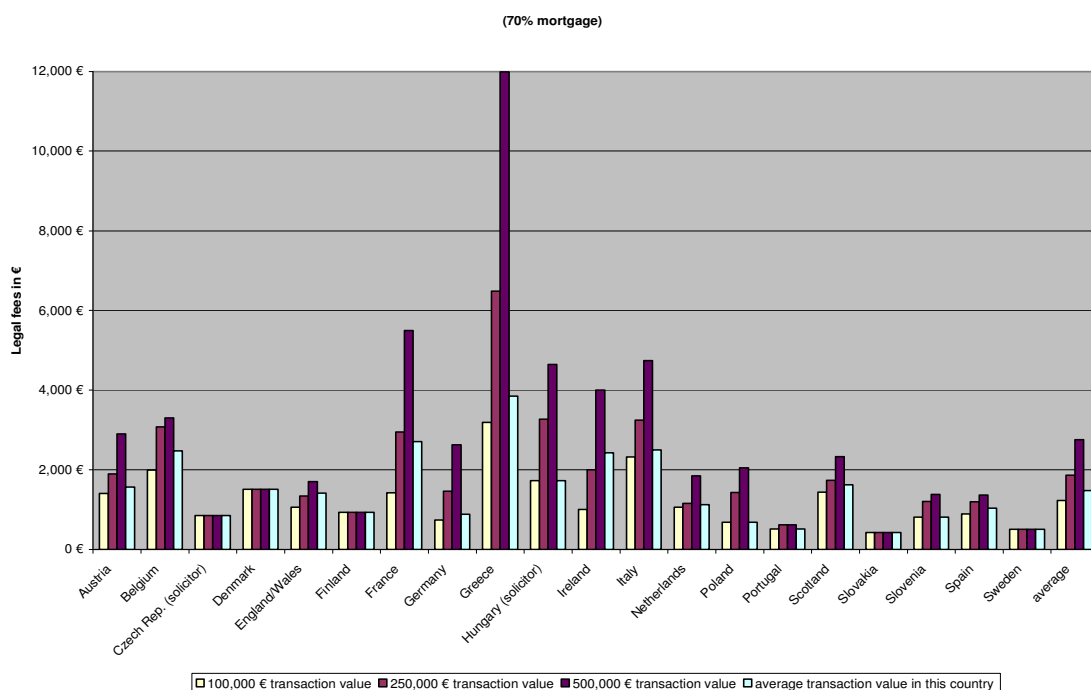
have markedly lower fees in absolute terms than the Western European States. However, fees within the various systems vary widely as shown by Table 2 below, so that, for example, there are some Latin notary systems where fees are lower than in the lawyer- system countries of Ireland and Scotland (e.g. Spain and Portugal).

- 39 It should also be noted that whereas in the notary countries legal fees are incremental conditional on the value of the transaction, particularly in Scandinavian countries as well as the UK and Ireland, and to a certain extent in the Netherlands, fee schedules are nearly flat.
- 40 To further illustrate the differences in legal fees in the 20 EU countries<sup>8</sup>, **Figure 2** shows graphically the level of *absolute legal fees* for a range of property values while **Table 2** lists the *absolute legal fees* for these different property values.

---

<sup>8</sup> It should be noted that for the Scandinavian countries of Finland and Sweden where real estate agents also perform legal tasks, a single fee is usually charged covering both broker fees and legal tasks. For the purpose of this study, it has been necessary to determine the amount of this fee which relates to the legal part of their performance. A simple, but accurate way to do this, is to look at the fees a lawyer would charge for drafting the contract to transfer the property. This is also logical given that the parties have the option to consult a lawyer when for example the buyer and seller have met without the intervention of an agent, but nevertheless require legal help. Accordingly, a flat fee of €500 is taken to represent the legal part of the real estate agent's performance and is based on the information provided by the national reporters. For Finland, €77 and €353 are added to this to take account of notary fees for the verification of signature and the bank fee for the mortgage respectively. For Denmark, where the seller is usually represented by a real estate agent and the buyer by a lawyer, it is assumed that the legal part of the real estate agent's services would correspond to a fee of €500. As another peculiarity, the costs of the Spanish *gestor administrativo*, whose involvement in contract execution is usual, have been added to the notaries' fees.

**Figure 2: Legal Fees for Conveyancing**



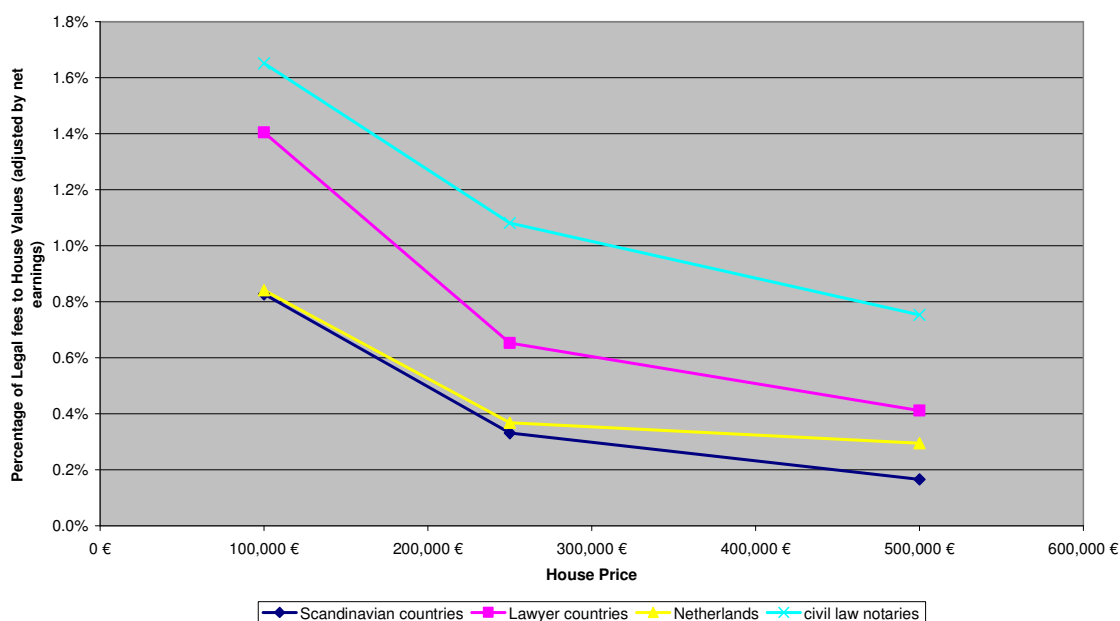
**Table 2: Absolute Legal Fees by Country for Different Transaction Values and Average House price (including 70% mortgage)**

Country	Regulatory system	100,000 €	250,000 €	500,000 €	Average price of house	Estimated fee for average house	Fee as a % of average house price
Austria	Notary	1,400 €	1,900 €	2,900 €	150,000 €	1,567 €	1.04 %
Belgium	Notary	1,987 €	3,081 €	3,304 €	167,000 €	2,475 €	1.48 %
Czech Republic	Lawyer	850 €	850 €	850 €	100,000 €	850 €	0.85 %
Denmark	Scandinavian	1,513 €	1,513 €	1,513 €	221,743 €	1,513 €	0.68 %
England/Wales	Lawyer	1,060 €	1,345 €	1,700 €	297,750 €	1,413 €	0.47%
Finland	Scandinavian	930 €	930 €	930 €	123,756 €	930 €	0.75 %
France	Notary	1,423 €	2,949 €	5,493 €	226,630 €	2,711 €	1.20 %
Germany	Notary	738 €	1,459 €	2,627 €	130,863 €	886 €	0.68 %
Greece	Hybrid	3,190 €	6,490 €	11,990 €	130,000 €	3,850 €	2.96%
Hungary	Hybrid	2,280 €	2,380 €	3,210 €	100,000 €	1,728 €	1.73 %
Ireland	Lawyer	1,000 €	2,000 €	4,000 €	303,310 €	2,426 €	0.80 %
Italy	Notary	2,319 €	3,245 €	4,745 €	129,532 €	2,501 €	1.93 %
Netherlands	Dereg. Notary	1,056 €	1,153 €	1,849 €	202,000 €	1,122 €	0.56 %

Country	Regulatory system	100,000 €	250,000 €	500,000 €	Average price of house	Estimated fee for average house	Fee as a % of average house price
Poland	Notary	677 €	1,430 €	2,050 €	100,000 €	677 €	0.68 %
Portugal	Notary	510 €	616 €	616 €	100,000 €	510 €	0.51 %
Scotland	Lawyer	1,438 €	1,735 €	2,328 €	193,860 €	1,624 €	0.84 %
Slovakia	Lawyer	420 €	420 €	420 €	100,000 €	420 €	0.42 %
Slovenia	Notary	810 €	1,204 €	1,377 €	100,000 €	810 €	0.81 %
Spain	Notary	891 €	1,194 €	1,364 €	172,630 €	1,038 €	0.60 %
Sweden	Scandinavian	500 €	500 €	500 €	147,500 €	500 €	0.34 %
<i>Average</i>		<i>1,232 €</i>	<i>1,802 €</i>	<i>2,671 €</i>	<i>159,829 €</i>	<i>1,478 €</i>	<i>0.92 %</i>

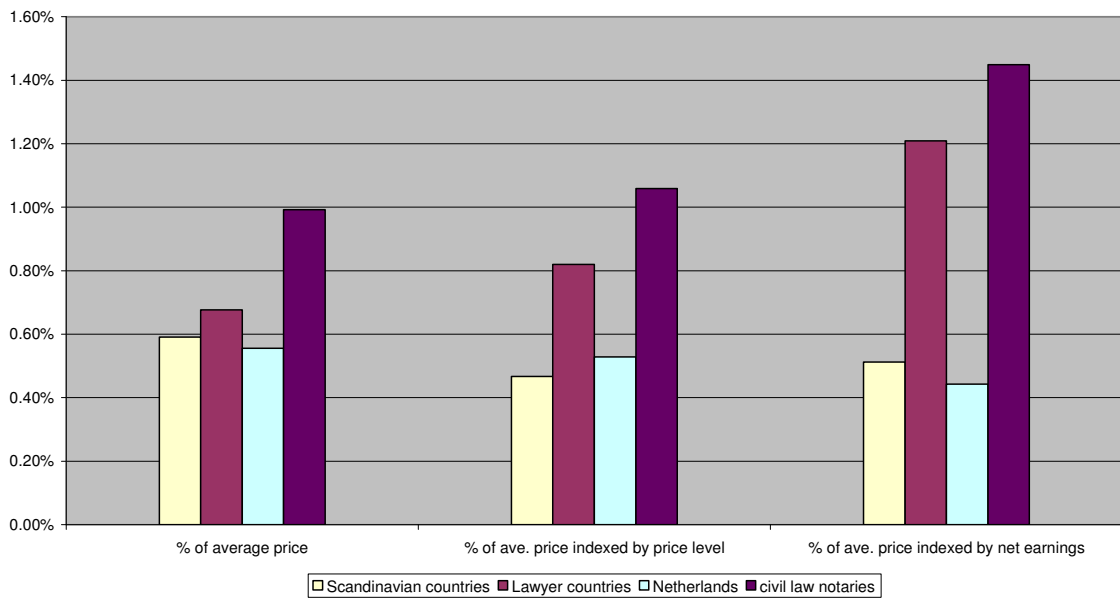
41 A comparison is then made using *relative fee levels* i.e. fees that are adjusted by net earnings across countries. The results are shown in **Figure 3**, which indicates in a convincing way that traditional Latin notary systems are on *average* more expensive across the board. This comparison also shows little evidence to substantiate the cross-subsidisation argument i.e. that notaries need higher fees for high value transactions to compensate for lower fees for low value transactions. This is because even for lower value transactions fees adjusted by net earnings in Latin notary countries are on average higher than those under other systems where service providers manage to provide economically viable services.

**Figure 3: Legal Fees Adjusted by Net Earning Factor by Regulatory Model**



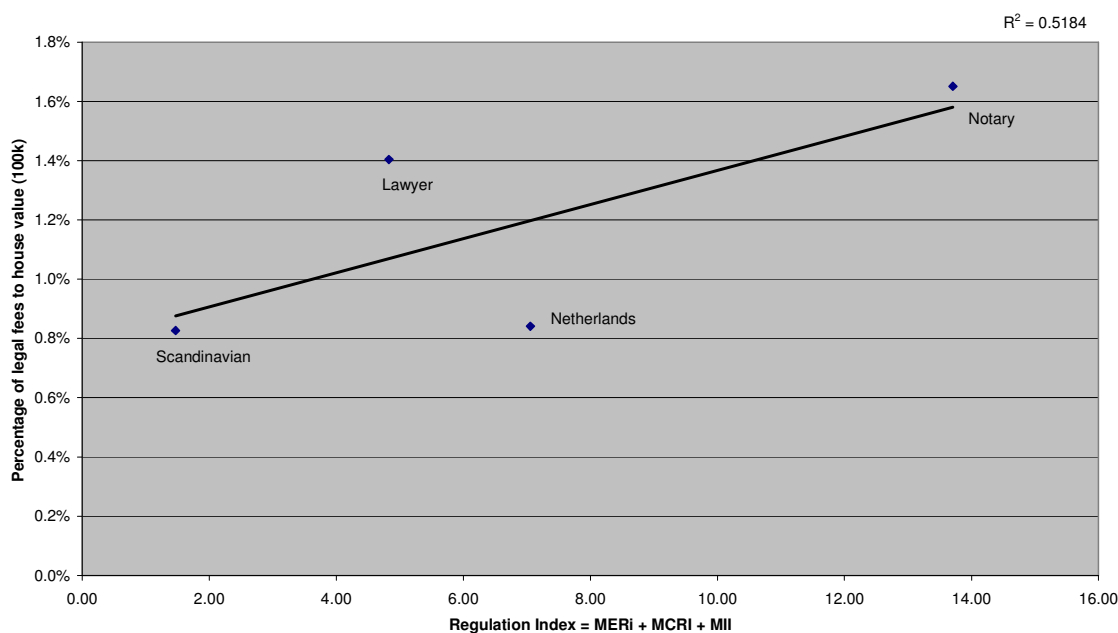
**42** **Figure 4** shows for the 4 different regulatory systems, legal fees for average priced houses (expressed as a percentage of the respective average house prices); and adjusted by the price level and net earnings. The message from Figure 4 is clear: regardless how one adjusts the average house price, traditional Latin notary systems are on *average* always more expensive.

**Figure 4: Legal Fees for Average House for Different Regulatory Models – As a Percentage of Average House Price, and Indexed by Price Levels and Net Earnings**



**43** **Figure 5** shows that countries exhibiting higher fees tend also to be those countries with a high degree of regulation. The figure shows the correlation between the legal fee adjusted by the net earnings for a transaction value of €100,000, expressed as a percentage of the transaction value (PTV100k) and the combined regulation indices for the 4 different regulatory systems. This clearly shows the positive relationship between the percentage fees and regulation indices: the higher the regulation indices, the higher the percentage fees.

**Figure 5: PTV100k vs. Regulation Indices (Regulatory Models)**



**44** The conclusion is that high fee levels go hand in hand with high levels of regulation. So it is clear that the traditional highly regulated Latin notary system results in higher fees.

**45** The question is then: *do consumers get better services for the extra money?* This is considered in the next part of the study under "service assessment".

### 3.3. Assessment of service

**46** As has often been claimed, higher levels of regulation leading to higher prices could be economically efficient if the levels of service quality (in a broad sense of the term) were also higher. Survey data was gathered for this study for the purpose of testing such claims. Respondents in EU countries (comprising a high proportion of professionals) made assessments of services provided by the professions involved in conveyancing in their country in four basic areas - reflecting on the amount of choice available to consumers, (professional) quality including value for money, legal certainty and speed of transaction.

**47** Answers to survey questions addressing each of these aspects of service provided raw data for mathematical conversion into specific variables of service assessment, thereafter aggregated into *choice*, *quality*, *certainty* and *speed assessments*, each computed per response. We construct the quantitative variables on a scale of 0 to 6,

where 0 represents least desirable outcome and 6 the most desirable outcome. For each country studied the average score of each of the four service assessment variables provides a country index. Giving equal importance to these four facets of service provision, an Overall Service Assessment Index (OSA) was calculated for each country. **Table 3** summarizes the results.

**Table 3: Service Assessment Indices ranked by Overall Service Assessment Index (OSA)**

Country	CHOICE	QUALITY	CERTAINTY	SPEED	OSA
	Index	Index	Index	Index	Index
Germany	4.01	5.06	5.19	5.35	4.91
Finland	4.55	3.89	4.84	5.68	4.74
Ireland	4.64	3.86	5.40	4.88	4.70
Czech R	4.56	4.78	3.68	5.40	4.61
Sweden	4.33	4.22	4.18	5.69	4.48
England & Wales	4.42	3.73	4.26	5.18	4.40
Greece	3.75	4.96	3.58	5.69	4.33
Netherlands	4.75	4.19	3.08	5.14	4.29
Portugal	3.16	4.04	4.43	5.52	4.18
Italy	3.40	3.91	3.81	5.56	4.16
Slovenia	2.59	4.41	4.19	5.31	4.13
Slovakia	3.93	4.49	2.28	5.27	3.99
Spain	3.16	3.87	3.07	5.27	3.84
Poland	2.75	4.00	3.56	4.73	3.76
Belgium	3.07	3.65	2.74	4.67	3.53
France	3.23	3.52	2.55	4.47	3.44

Note: Only countries with response  $N > 10$  are shown in this table

- 48 The OSA index is robust to the sample size as well as the distributional effects. Further, the ranking of countries implied by overall service assessment shows that nearly all places in the ‘bottom half’ of the ranking are taken by Latin notary countries, with the notable exception of Germany. The difference in index values between mainly (non Latin notary) countries and most Latin notary countries is statistically significant. This result is in itself dramatic: **not only does the empirical assessment of service in EU countries, by professionals, associations and consumers not support claims of ‘better’ service in more regulated systems, it indicates that the opposite seems to be happening – namely, that better service in less regulated countries represents the norm.**
- 49 A comparison between the four different regulatory models or "Worlds of Regulation" as shown in **Table 4** below further illustrates this point. The rows of this table are arranged in order of decreasing mean of the OSA. The Scandinavian

group has the highest assessment, and the Latin Notary group of countries the lowest, having a mean score of less than 4 that is less than the whole sample mean of 4.14.

**Table 4: Overall Service Assessment by “Worlds of Regulation”**

	N	Mean	Minimum	Maximum
Scandinavian	60	4.617	3.24	5.31
Lawyer based	134	4.401	3.20	5.29
NL Dereg Notary	59	4.291	2.38	5.48
Hybrid	13	4.253	3.33	5.07
Latin Notary	414	3.966	1.90	5.52
Total	680	4.143	1.90	5.52

**Note:** N indicates the number of answers to survey questions

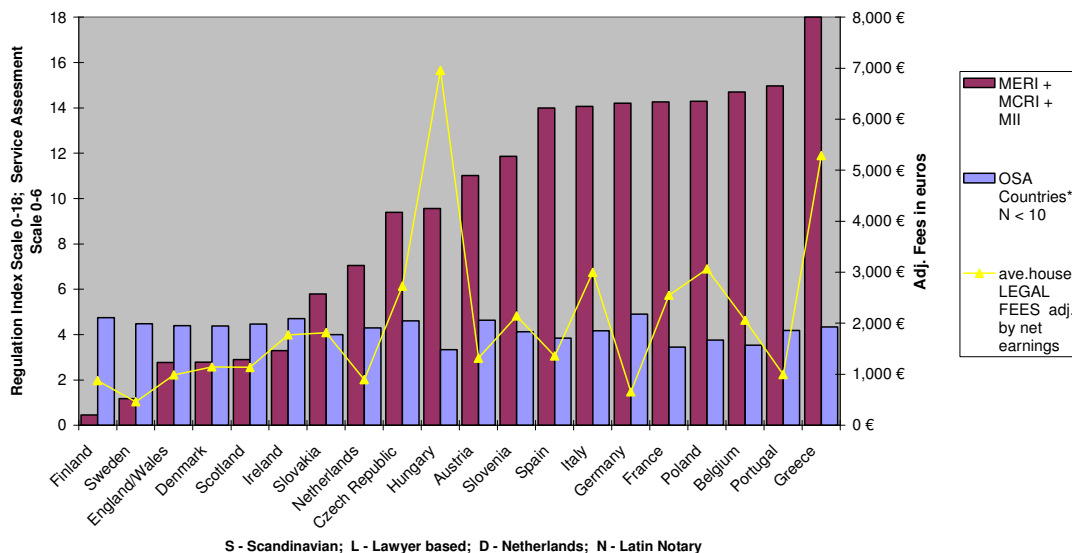
### 3.4. Econometric analysis<sup>9</sup>

- 50 The connections between regulation, legal fees and service assessments of conveyancing in EU countries are the subject of econometrical cross-section analysis in the final part of the economic section of the study.
- 51 The relationship between regulation, price and service perception, here measured, respectively, by regulation indices, by different price categories (fees) and a set of service assessment indices was analysed empirically. Correlations between these three sets or variables were inspected and various regressions measuring the effect of regulation on prices (fees) were estimated. **The main finding demonstrates empirical evidence that low regulation leads to lower prices thus showing a potential financial benefit for consumers by deregulation. No empirical support for a connection between high regulation and high service assessment of choice, quality, certainty and speed was found.** To the contrary, the results support more a slightly negative relationship between regulation and service assessment than the existence of a positive one. Consequently, the empirical results do not support the argument that high prices are needed to assure high levels of service assessment.
- 52 Empirical support for our finding can be observed in Figures 6 and 7. **Figure 6** shows the relationship between the overall levels of regulation (*ORI*

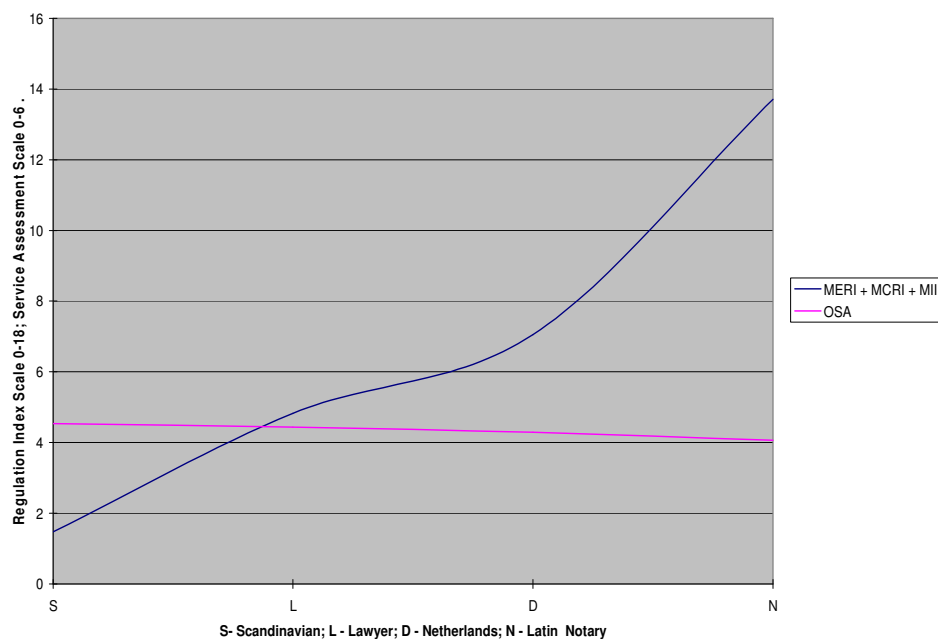
<sup>9</sup> Luxembourg is also excluded from this section due to non-availability of fee information.

(MERI+MCRI+MII)), overall service assessment (*OSA* (choice, quality, certainty, speed)) and fees (for average house adjusted by net earnings) across the 20 EU countries. The main message is that while the level of regulation (*ORI*) differs widely, the overall service assessment (*OSA*) remains relatively constant or declines somewhat, and that fees tend to increase, with higher levels of regulation. **Figure 7** shows the relationships between the overall levels of regulation (*ORI* (MERI+MCRI+MII)) and overall service assessment (*OSA* (choice, quality, certainty, speed)) across the four different regulatory models. It clearly shows that higher levels of regulation do not lead to higher levels of overall service assessment.

**Figure 6: Overall Regulation (MERI+MCRI+MII), Overall Service Assessment (OSA) and Average Fees Adjusted by Net Earnings (for 20 EU Countries)**





**Figure 7: Overall Regulation (MERI+MCRI+MII) and Overall Service Assessment (OSA) (for 4 Regulatory Models)**

53 To obtain a quantitative and clear analysis, we calculate the *Bravais-Pearson* correlation<sup>10</sup> between regulation and fees and between regulation and service assessment. Table 5 shows the correlation results.

**Table 5: Pearson's Correlation between Regulation and Fees Resp. between Regulation and Service Assessment (n=15)**

Fees for House Price	MERI	MCRI	MII	ORI (MERI+MCRI+MII)
100.000 €	0.319	0.222	0.379	0.320
250.000 €	0.473	0.360	0.449	0.449
500.000 €	0.384	0.282	0.387	0.368
Average Price	0.212	0.145	0.221	0.201
Net Income Adjusted	0.543*	0.511	0.311	0.482
Price Level Adjusted	0.383	0.313	0.323	0.358
CHOICE	-0.801**	-0.829**	-0.572*	-0.779**
QUALITY	0.072	0.028	-0.049	0.018
CERTAINTY	-0.268	-0.309	-0.319	-0.316
SPEED	-0.374	-0.314	-0.330	-0.358

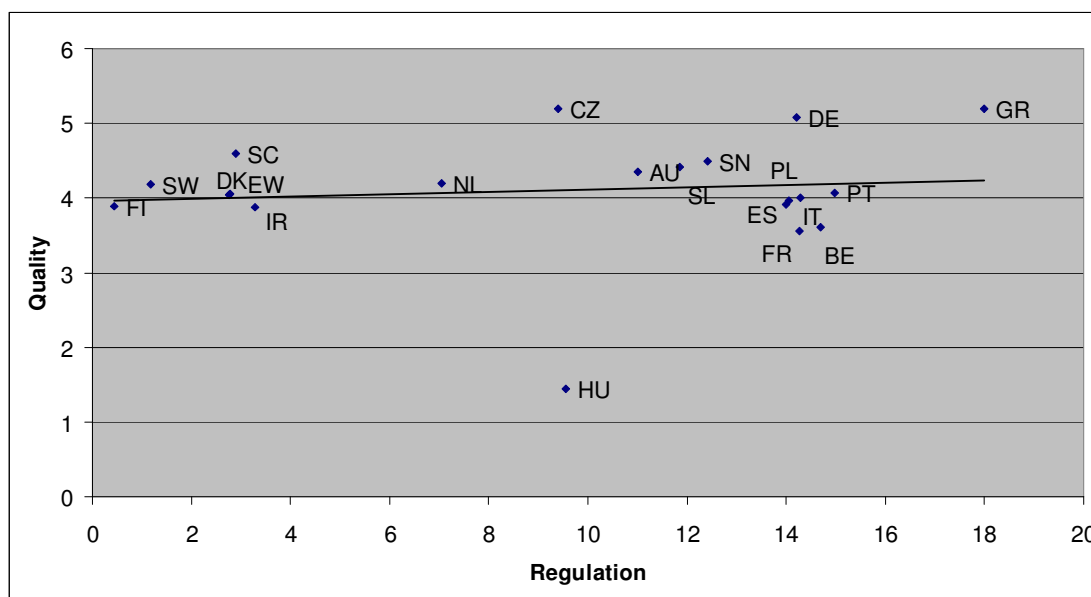
<sup>10</sup> The *Bravais-Pearson* correlation (or sometimes known as a linear correlation) represents the degree of linear dependence between the two variables. This correlation is most appropriate when it is suspected that there is a linear relationship between the two variables.

OSA (CHOICE+QUALITY+ CERTAINTY+SPEED)	-0.539*	-0.571*	-0.489	-0.564*
---	---------	---------	--------	---------

\*\* /\* indicates significance on the 1%-/5%-level (two-side).

- 54** The linear correlation between the regulation indices (overall (*ORI*) and sub indices (MERI, MCRI, MII)) and *fees* are positive in all cases, confirming the economic hypotheses that regulation has a positive relationship with price (i.e. the higher the level of regulation, the higher the price).
- 55** For the service assessment indices (overall (*OSA*) and sub indices (choice, quality, certainty, speed)), 17 out of 20 correlation coefficients are negative, indicating that high levels of regulation have a negative relationship with service assessment as measured by the indices (i.e. the higher the level of regulation, the lower the assessment of the service). The results especially show a clear picture for *choice* and the overall average service index (*OSA*) where 7 out of 8 estimations are significant at least on the 5%-level, indicating that higher levels of regulation lead to less choice and a lower overall service assessment. For *quality*, *certainty* and *speed* we observe estimations which are not significantly different from zero, indicating the level of regulation has no real impact on the level of *quality*, *certainty* or *speed*.
- 56** Maintenance of quality is a core argument for regulation in the legal services sector. Therefore we have a closer look at the relationship between regulation and quality. **Figure 8** shows the relationship between regulation (measured by the Overall Regulatory Index (*ORI*)) and the single service assessment variable *quality*. Whilst regulation differs a lot across countries, there is no major variation in the level of *quality* across countries. Obviously there does not seem to be a correlation between regulation and *quality*; **so there is no empirical evidence to support the hypotheses that a high level of regulation is needed to assure *quality*.**

**Figure 8: Correlations between Overall Regulation Indices (ORI) and Quality**



57 Finally, **Table 6** shows the correlation between fees and the service assessment indices. It is interesting that this also indicates a negative correlation between fees and service assessment as all correlation coefficients are negative even if only some of these are significant. **The results clearly show that prices have a negative correlation with the level of service assessment and thus again do not support the argument that high prices are needed to assure high service assessment. On the contrary, the results indicate that higher prices are associated with lower levels of choice, quality, certainty or speed.**

**Table 6: Pearson’s Correlation between Fees and Service Assessment Indices**

House Price	CHOICE	QUALITY	CERT	SPEED	OSA
100.000 €	-0.180	-0.491	-0.216	-0.284	-0.366
250.000 €	-0.320	-0.517*	-0.182	-0.560*	-0.470
500.000 €	-0.190	-0.447	-0.072	-0.599*	-0.349
Average Price	-0.073	-0.605*	-0.113	-0.562*	-0.352
Net Income Adjusted	-0.480	-0.161	-0.386	-0.459	-0.540*
Price Level Adjusted	-0.201	-0.516*	-0.267	-0.613*	-0.476

\*\* /\* indicates significance on the 1%-/5%-level (two-side).

58 To summarise, an empirical analysis has been made to examine the relationship between regulation and fees and between regulation and service perception, here

measured by regulation indices, by different price categories and a set of service assessment indices. Correlations have been calculated between these three set of variables and various regressions estimated to assess the effect of regulation on fees and on service assessment. Despite a small dataset with only 15 observations, which limits considerably the complexity of any econometric analysis, results have been generated which, nevertheless, point towards some enlightening conclusions:

- First, evidence has been found that high levels of regulation lead to high prices and low levels of regulation lead to lower prices thus showing a potential financial benefit for consumers from deregulation.
- Second, the results do not show any proof that high prices have a positive correlation with high service assessment. The results do therefore not support the argument that high prices are needed to assure high levels of service assessment. When looking at the different components of the overall service assessment, it becomes clear that there does not seem to be a correlation between the level of regulation and the level of quality. There is therefore no empirical evidence to support the hypotheses that high levels of regulation are needed to assure high quality.

59 So, the analysis indicates – within the limits of our approach – that high levels of regulation lead to higher fees whilst not leading to a better outcome in terms of choice for consumers, quality, certainty or speed.

## 4. Case Studies

### 4.1 *England and Wales: Lawyers and Licensed Conveyancers System*

60 In England and Wales, legal conveyancing services are provided today by lawyers (solicitors) as well as a para-legal profession called licensed conveyancers. Until the mid-1980s in England and Wales there was no significant competition on the conveyancing market because of the regulatory framework: conveyancing for gain was restricted to the legal profession and advertising of legal services was prohibited by the Law Society, ensuring that there was no overt price competition between law firms. The major reform was the creation of licensed conveyancers thus allowing conveyancing to be done by non-solicitors - a reform driven by the Consumers' Association. Actual entry of these licensed conveyancers took place in

1987. Until then solicitors had a monopoly on conveyancing, or more strictly on conveyancing for gain that is for payment. At that time conveyancing fees were commonly perceived to be high.

**61 Research shows that fees fell immediately prior to the reform seeing the introduction of licensed conveyancers, that is in 1986, because of the potential for enhanced competition in conveyancing services.** Thereafter the price analysis is contradictory: it seems clear that licensed conveyancers were generally cheaper than solicitors but not invariably so and that the entry of licensed conveyancers into a local market often, but not invariably, reduced solicitors' prices. This seems to suggest that after a few years of cohabitation within the market a mutual adjustment occurred. Several factors have been offered to explain this: the fact that entry of licensed conveyancers was rather low and that licensed conveyancers have more limited opportunity for business development and risk spreading across different services, and also a slump in the housing market. **The research also shows that price discrimination (i.e. fees based on the value of the transaction) had diminished in a contestable market and a flatter fee structure emerged, and that prices had fallen in real terms since the entry of licensed conveyancers.** This has worked to the significant benefit of consumers over the past two decades as house prices have risen massively in England and Wales. The relaxation of advertising controls in 1984 was also found to have had a positive effect on price competition. The Government hopes that further competition will be realised when other multi-service providers (e.g. banks, supermarkets) enter this market as a result of the recent reforms that have just completed their passage through the UK Parliament. With regard to the qualitative changes of conveyancing services in the course of the reform process, the literature finds that average satisfaction ratings rose between 1983 and 1986 with respect to access to a solicitor, information provided from the solicitor and time the conveyancing took. Although this is a clear indication of quality improvements in later years, the absence of any significant interaction effects suggests that they are essentially independent of the fee levels paid by the clients. More recent research shows high levels of satisfaction with conveyancers and it is generally considered that standards are high. **The estimated welfare gain, i.e. a comparison with the fees which consumers in England and Wales would have paid under a traditional Latin notary system, using the French notary system as a comparator, amounts to**

**at least 3,749 million Euro in 2006, and shows clearly the advantages of a deregulated competitive system.**

#### 4.2 *Germany: Latin Notary System*

- 62 Using the data set that contains information on the 96 Bavarian districts, the entry effects on competitive conduct (mark-ups) in the notary profession in Bavaria, Germany, are analysed. There are two key issues in the German case study. First, an estimate is made of the entry impact on the current competitiveness in the Bavarian notary profession. Using the Bresnahan-Reiss Ratio, which measures the rate at which mark-ups or variable profits fall with additional firm entry, an estimate is made of the mark-up reduction of additional firm entry. Second, an analysis is made of the effects of lowering the mark-ups on the number of existing notaries that are located across different districts in Bavaria. In order to analyse the effects of geographic entry restriction on the notary profession in Bavaria, the 96 districts in Bavaria are used. Bavaria is chosen as the "representative" German case for two reasons. First, from a statistical point of view, Bavaria provides the largest data set for Germany. Second, Bavaria is known to have, along with other single profession notary regimes in German regions, the most restrictive entry requirements (both professionally and geographically) for the regional notary profession in Germany.
- 63 The main results can be summarized as follows. First, entry does affect conduct in the notary market. **Empirical results indicate that the current Bavarian notary profession imposes net mark-up in the range of 53 to 116 percent over the competitive benchmark (i.e. this is the pricing level at which it is not economically viable for a new competitor to enter the market). Second, the geographic coverage would not decrease significantly if the net mark-ups were to be lowered: A large reduction in net mark-up is met with a slight decrease in the number of geographic districts that are covered (in the sense of the number of markets with at least one notary office).** For example, if the net mark-ups are reduced by 10, 20 and 30 percent then the number of geographic districts covered by at least one notary would decrease only by 1, 3 and 4 percents respectively. Consequently, the case study shows that the argument for a geographic entry restriction with high mark-ups to ensure a high geographic coverage cannot be robustly supported. **Thus, from the policy point of view, to**

**improve the welfare of consumers, it might be economically wise to deregulate the profession as the benefits clearly outweigh the costs.**

#### 4.3 *Netherlands: Deregulated Notary System*

- 64 **In 1999, the Netherlands undertook partial deregulation of the Latin notarial profession to create a competitive market in notary services. The Dutch government’s objective has been to promote innovation, service and lower fees, and to provide greater choice for clients.** The 1999 reforms have had numerous effects on the conveyancing service market in the Netherlands. First, the *numerus clausus* system was replaced by one that responds more directly to the market. Consequently, the requirements for appointment to the office of notary were modified (i.e. requirement to submit a business plan for approval was introduced and the mandatory work placement for junior notaries doubled from three to six years). The other important change was the abolition of the fixed fee system. In addition the possibility for notaries to perform official activities outside their place of practice was introduced; the Royal Netherlands Notarial Organization (KNB) went from being a professional association to being a public body, its powers and duties being modified accordingly; a statutory basis was provided for collaboration with two related professions in the Netherlands as well as in other countries, with strict rules for enforcing independence and impartiality; a “designated client account” was introduced, along with guarantees to safeguard clients’ monies; the possibility for a notary to be in the salaried employ of another notary (entrepreneur) was introduced.
- 65 **The reforms have improved customer service, innovation, the use of technology, efficiency and customer friendliness.** With regard to the pricing, fees are now calculated using cost-based pricing and consequently fees in the real-estate practice have generally fallen. Consumers can now shop around and thus they are able to reduce their costs substantially for conveyancing services compared with the period before deregulation. Internet sites providing pricing information have emerged to facilitate this. Furthermore, neither the continuity nor the accessibility of the notarial profession has been jeopardised by the deregulation of fees and there is no hard evidence to show that quality has suffered. **There has also been a positive increase in the number of notaries (+12%) since 1999 and their employees (+22%) despite the economic downturn, which has seen the number of deeds fall.** The welfare gains from the reform can be summarized as follows. **The**

**amounts of 927.2 and 579.6 million Euro respectively, represent the amount of total fees that Dutch customers would have paid before and after the reform for a typical basket of notary services, including family law and property related services. In other words, due to the reform, the total amount of fees has dropped by 37.5%: an annual welfare gain to consumers of 347.64 million Euro.**

#### *4.4 Sweden: Licensed Real Estate Agent System*

- 66** **Conveyancing in Sweden has always been done in a fairly free contract form. The parties are free to create the contract and the deed and the use of experts is voluntary.** There is, however, also a long tradition for the majority of sellers to sell the property through a real estate agent who also takes care of the legal side of the sale, having received specialist training for this. Conveyancing has also always been a matter where the professional service most of the time is handled by non-lawyers. A consequence – as well as a pre-requisite – of this is that Swedish law tends to simplify matters. This is done by using standardised contracts and by trying to avoid the creation of new contract types.
- 67** The commission (transaction fee) is almost always paid by the seller. A reason for this is that it is difficult to legally tie a buyer to an obligation to pay commission to the real estate agent. This probably benefits competition in the settling of commissions, since the seller clearly can see how big the agent's cut of the price will be. Moreover, there have never been any fixed commissions in law. In other words, the seller has great possibilities to negotiate with the agent in order to get a favourable commission rate. Estimating the proportion of the agent's commission which relates to the legal work is not easy, but inquiries indicate this to be around €500. This figure is based on the charges that a lawyer would make for preparing a sales contract for the property transfer.
- 68** With regard to the quality of conveyancing services, in Sweden, the profession has gone from internal quality control (optional, since membership in an association has never been compulsory) to public control. The Real Estate Agents' Board supervises the agents in several ways. The Board handles the licensing of agents as well as the expulsion of unworthy professionals and it gives statements on what constitutes good professional conduct. It also deals with complaints and the Board's decisions on cases are published in a yearbook. They are often also mentioned in



newspapers. Consequently, the system creates pressure on agents to behave ethically and also helps maintain the public's trust in agents. The biggest advantage of the Swedish system, particularly when compared with the Latin notary system, is that it involves fewer professional actors in the transfer of real estate. The agent handles the marketing as well as the legal searches and the drawing up of contracts ("one-stop-shop"). Fewer practitioners mean lower costs for consumers. The absence of price regulation might be another reason for low costs. For a thought experiment, the consumer welfare gains were estimated by working out how much more consumers would be paying in legal fees if Sweden had a Latin style notary system where prices are fixed and based on the value of the property. Using the French notary system as a comparator, it was calculated that Swedish consumers would be paying legal fees in the amount of 266 million Euro per year. **This amount is about 191 million Euro higher than the current annual level of Swedish conveyancing fees. In other words, the welfare gains for not having a typical Latin style notary system would be of the amount of 191 million Euro for Swedish consumers.**

## 5. Conclusions and Way Forward

69 The following provides an overview of the main conclusions of the study.

- The study provides convincing evidence that deregulated systems (or systems with lower levels of restrictive regulation) produce better outcomes for consumers overall in terms of price and choice. It also concludes that there is no evidence to support claims that higher levels of regulation and higher prices, lead to higher levels of service quality (measured in a broad sense).
- Of the four types of regulatory systems examined (i.e. traditional, highly regulated Latin notary system, the deregulated Dutch notary system, the lawyer system and the Scandinavian licensed real estate agent system), the study finds that the traditional Latin notary system, which has the highest levels of restrictive regulation, including the use of fixed fees scales and *numerus clausus* performs the worst on all counts:
  - Latin notary countries are generally more expensive than the deregulated Dutch system, the lawyer system or the Scandinavian system especially for higher value transactions (i.e. those €250,000

and over) and have some of the highest absolute legal fees (e.g. France, Belgium and Italy). The fixed fees scales used are often very arbitrary in nature and hardly reflect the real costs of providing the services given they are usually calculated as a percentage of the transaction value. This also leads to vast distortions in notary incomes, which reflect the overall wealth of the area in which their office is situated. The cross-subsidisation argument (whereby high fees for high value transactions subsidise lower fees for lower value transactions) also does not hold in all cases surveyed with the possible exception of one country.

- It is also very striking that in the service assessment nearly all the places in the "bottom half" of the ranking are taken by Latin notary countries. This is significant indicating that users of Latin notary systems are paying high prices without getting "better services". Indeed the results overall point to the conclusion that better service is provided in the less regulated countries where services are also generally less expensive. This explodes the theory that high levels of regulation lead to better services and outcomes for consumers. It points to the conclusion that consumers who have no choice but to use the services of Latin notaries, are currently often not getting a good deal.
- The Netherlands case study provides a useful insight into what happens with some deregulation of notary services and provides empirical evidence of the positive effects deregulation can have on consumer welfare. The Dutch model is a modernised version of the Latin notary system where fixed pricing and *numerus clausus* (two of the most radical forms of regulation) have been abolished. On pricing this has resulted in price differentiation and the possibility for consumers to negotiate on fees. The case study shows that the average consumer buying a basket of notary services is considerably better off. There has also been a rise in the number of notaries and innovation is on the up with the emergence of new business structures and the greater use of IT. Importantly quality has not been compromised and in fact the evidence points to better customer service and satisfaction as the removal of fixed fees has made notaries compete on standard of service.
- The German case study shows that the current regulatory set-up for notaries in Bavaria with geographic entry restrictions and high mark-ups to ensure

high geographic coverage, cannot be supported empirically and again proves the point that deregulation of prices and of restrictions on entry would enhance consumer welfare.

- The evidence is compelling that the regulation of the Latin notary system in many Member States is in need of an overhaul and that current regulation, especially the use of fixed fee scales and absolute restrictions on entry (e.g. *numerus clausus*), is having an overall negative rather than positive effect on consumer welfare and the standard of notary services (i.e. quality measured in the broad sense). The study finds that this regulation cannot be justified under the proportionality test (i.e. that it serves a clearly defined public interest goal, is objectively suitable to obtain that goal and is the means least restrictive of competition to achieve this goal) and is problematic from an internal market and also a competition perspective.
- The study raises broader questions too about whether conveyancing should continue to be an exclusive right for certain professions only. It does not seem proportionate or justifiable that lawyers are barred from performing conveyancing services in Latin notary countries, as they are entitled to deal with substantially much more complex issues like mergers and acquisitions. That said, it is also highly arguable that conveyancing services should be reserved only to notaries and lawyers. As the English and Swedish case studies show, other suitable qualified and licensed professionals (e.g. licensed conveyancers and licensed real estate agents) can also provide good quality services. This can promote competition to the benefit of consumers as shown in the English case study where the introduction of licensed conveyancers helped reduce price discrimination and a flat pricing structure emerged which has worked to the significant advantage of consumers. The UK Government is now going further with legislation to open the way for supermarkets and financial providers to provide one-stop shops for professional services, including home buying services thus opening the way for greater competition in the conveyancing services market.
- It seems especially hard to understand why the mandatory involvement of notaries in commercial transactions is necessary where often notaries simply take over contracts prepared by the parties' lawyers and their participation merely amounts to an additional layer of bureaucracy and cost. This also applies to consumer transactions in some Latin notary countries (e.g.

Slovenia and Portugal) where consumers may employ a lawyer to represent them and take care of their interests, but who are still compelled to use the services of a notary for some elements of the transaction. The lawyer often prepares the contracts and undertakes the necessary checks and simply then passes these to the notary who may then transfer the information into a notary deed for signature by the parties.

- There is also the further question of whether mandatory intervention by professionals in conveyancing transactions is justified at all on grounds of consumer protection and of ensuring legal certainty. In countries such as Austria and Sweden it is possible for consumers to handle standard contracts and procedures themselves by using pre-formulated forms and by applying for registration personally. In Denmark work is underway to examine how to support private parties in handling real estate transactions themselves as part of the government's efforts to lower the costs associated with buying real estate.

**70** In conclusion, this study raises a host of issues about the current regulation of this market and especially the regulation of the Latin notary profession (e.g. fixed prices and *numerus clausus*), the mandatory involvement of certain professionals in conveyancing and their exclusive rights in this field. It shows that consumer welfare is enhanced under deregulated systems and highly regulated Latin notary systems with fixed prices and *numerus clausus* can be singled out for special criticism as they result in significant consumer detriment in the form of higher prices, without any comparable quality gains.

### **Way forward**

**71** “The Freedom to Choose” is the essence of every well functioning market and is the fundamental right of every informed consumer. For most households, the house is their largest asset. Deciding whether to buy a house is one of the most important financial decisions a household faces. Jean-Pierre Ferret, vice-president of the higher Council of the French notariat, states in the Council of the Notariats of the European Union’s Press Release (October 1, 2007) that

“... the deed that he signs is not only the most important financial investment of his life, not only the heaviest and longest debt to which he binds himself, but also an

act through which he expects to live a tranquil family life. For this single reason, this act must be girded by the strongest guarantees and these come at a cost."

- 72** This comprehensive analysis, both qualitatively and quantitatively, of the conveyancing services market in 21 EU countries clearly shows that the signing of a house deed is indeed "girded or safeguarded by the strongest guarantees" even when the market is deregulated. The question then is: *must this guarantee come at a disproportionately high cost and are there better ways of delivering this guarantee to consumers?*
- 73** From the evidence we have found, it is our opinion that Member States with the Latin notary system would do well to increase the choice of conveyancing related legal services and to promote the provision of more cost-effective services for consumers. To do this they should act to dismantle overly restrictive regulation such as fixed pricing and *numerus clausus* for Latin notaries. There is also the question of reserving this market to notaries in many Member States and whether this market should be opened up to lawyers and other suitably licensed professions (e.g. licensed conveyancers and real estate agents). We would urge Member States to consider opening up this market to these other professionals. The study has also raised broader questions about whether the mandatory use of professionals in conveyancing is really necessary at all or whether it places an unnecessary financial burden on consumers and business.