

Research Report

Economic impact of regulation in the field of liberal professions in different Member States

Regulation of Professional Services

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* (Case Studies: Germany, France)

**The contents of the study do not necessarily reflect the opinion
or position of the European Commission.

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Part 2 - Case Studies

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The following chapters give detailed information on the regulation – both for market entry and conduct – on a heterogeneous selection (subset) of member states, along with further detailed information on the economic characteristics of each branch of professional services.

Part 2 is divided into five sections: one for each of the four professional services fields covered by the study (Chapters 7,8,9 and 11), and a section outlining the special retail trade background of pharmacy services (Chapter 10).

The subset of member states is different for each profession. Within professional fields the following member states are studied:

- ***Legal profession (lawyers, notaries): 5 member states***

Denmark, Italy, UK/England and Wales, Germany, France

- ***Accountancy (+Tax advisers): 4 member states***

Italy, Netherlands, Germany, France

- ***Technical professions (engineers, architects): 4 member states***

Austria, Finland, France, Spain,

- ***Pharmacists: 4 member states***

Ireland, Portugal, Sweden, Germany.

7. Case Studies Legal Services

7.1 Legal professions in Denmark: an overview

The legal profession in Denmark is, apart from judges, the *Advokat* (lawyer). There are no notaries in form of a liberal profession, i.e. in the form of the so-called “latin notaries system”, whereby deeds certified by notaries have absolute probative force.

Advokats in Denmark have the exclusive right to represent parties before courts. But in most cases the representation by an *Advokat* is not obligatory: With certain narrow exceptions there is, in civil cases, no necessity for individuals to employ *Advokats* to plead the case in Court, as they have the right to plead the case themselves. In criminal cases the court will appoint a counsel for the defence if the defendant does not engage one himself. Should parties decide not to represent themselves before the civil courts, they may only be represented by a lawyer (*Advokat*). Accordingly, lawyers (*Advokats*) have a monopoly where representation of clients in court is concerned.

In Denmark there does not exist a monopoly for lawyers for legal advice (given for reward). This subject-field is not regulated and legal advice may be provided by other professions as well.

Denmark is one of the countries for which we calculated are relatively low over-all regulation index for legal professions (3,005). The entry index counts 2.08 (only Sweden, Finland and Ireland have lower ones). The conduct index with 0.925 is – together with the ones of Finland and Sweden – one of the lowest in the European Community. All in all the conduct-regulations for Lawyers in Denmark appear – at least from an international comparative point of view – to be of rather liberal character. Concerning market entry there are some basic regulations that are more rigid than for example in Finland. However, there are not many tasks which by law are reserved to *Advokats* and the regulations for education are not of excessive nature.

The Danish Bar and Law Society (*Advokatsamfundet*) has a membership of lawyers holding the Danish title “*Advokat*” authorised to practice law whether conducted in Denmark or abroad. The membership of the Society is mandatory and the Society today comprises approximately 4,000 lawyers. The Society was established in 1919. By law it is vested in the Society to supervise that lawyers adhere to the legal and ethical rules regulating the legal profession. The Board of the Society has in that capacity adopted a professional Code of Conduct with guidelines stating the rights and duties of lawyers.

Within the Society, the Council has founded the “*Advokaternes Serviceselskab*”, a company offering services and information to the members on a subscription basis, with seminars and

educational courses on legal subjects as the primary services. Further, the company conducts the mandatory pre-lawyer education and the bar exam.

Separated from the Society is The Disciplinary Board which handles complaints lodged against lawyers. The Disciplinary Board is chaired by a Supreme Court Judge and the members are representatives of the public and the legal profession. The chairman and the vice-chairmen are appointed by the Ministry of Justice on the request and the nomination of private organisations. Complaints regarding fees chartered by lawyers are handled by the local complaints boards of the 11 constituencies, the decisions of which may be appealed to The Disciplinary Board.

Market Entry

Tasks and exclusive tasks provided by legal professions in Denmark

As already mentioned above, the only important exclusive task performed by Danish lawyers is the representation of clients before courts, whereby in most cases one has the right to plead the case oneself. Two other fields reserved to *Advokats* are, according to information by the *Advokatsamfundet*, real estate sales (may as well be done by estate agents and debt collection (may as well be done by Debt-collecting offices with public authorisation).

Notwithstanding the situation in some other countries of the European Community legal advice (for reward) in Denmark is not a monopoly of lawyers or other professions. – any profession may perform this task.

The profession of *Advokat* is unified, with no distinction being made between attorneys operating in different legal areas. While any qualified attorney has a right of audience before City Courts, attorneys must pass an additional examination in order to obtain rights of audience before the High Courts. Rights of audience before the Supreme Court are granted to any attorney, who has been admitted to the High Courts for at least five years and holds a certificate stating same from the High Court.

Education and Entry to the Profession

There are several requirements to become an *Advokat* in Denmark.

First, an attorney must hold a university law degree. There are only two universities that provide Law Degrees, the University of Copenhagen and the University of Aarhus. The law degree is divided into two parts. The first, three year, "basic" part (*grunduddannelsen*) consists of all compulsory courses. The major examinations are taken at the end of the first and third years (BA Law). The second part (*candidatus (candidata) juris or cand.jur.*) has 12

courses including two obligatory elements (Tax Law and Economics). The Law Faculty will typically offer between fifty and fifty-five courses to choose from. These are examined at the end of each semester in the fourth and fifth years.

Once the individual has the *cand. jur.* law degree there follows a three year period of post-graduate training which consists of practical training with an advocate, including going to court.

The Administration of Justice Act Section 119(3) specifies:

"The training in practising law referred to in paragraph 4) of sub-section (2) above shall consist of participating in general legal practice, including conducting (Note: broad interpretation, t. a.) cases as an Articled Clerk of an advocate practising law, or through employment in a legal position with the courts, the Director of Public Prosecutions, or the police, provided that conducting cases forms a substantial part of such employment."

The Minister of Justice is empowered to decide that work in legal positions other than those mentioned in Article 119(3) can be included in the time required by Article 119(2)(4), provided that such work does not account for more than two years. Article 119(5) allows the Ministry of Justice to certify a person as trained "in practising law at a level fully comparable with that referred to in sub-section (3) above".

Before the end of 1996, once one had fulfilled this three year post-graduate legal training (more or less equivalent to traineeship) the individual could get his practising certificate from the Ministry of Justice. Since Jan. 1 1997 the rules require that the series of professional training courses are taken and a professional law exam is passed, unless specially exempted by the Minister of Justice. The course lasts for 36 days over 4 terms.

Regarding the professional examination it is the Minister of Justice who appoints an examination committee.

As mentioned above a special test in advocacy must be passed for the right of audience before the High Court (*Landsret*) and Maritime and Commercial Court of Copenhagen (*Soe-og Handelsretten*). The right of audience before the Supreme Court (*Højesteret*) is granted to those with at least five years experience of practice as advocates having a right to appear before the High Court (*Landsret*).

Conduct Regulation

Prices and Fees

In determining the fee, *Advokats* have, until recently, followed the guidelines on fee calculation set out by the *Advokatsamfundet*. However, these guidelines were revoked (as of 1 August 1996) by a decision of the Danish Board of Competition and, consequently, the calculation of attorneys' fees is now regulated solely by the Administration of Justice Act. This means that the only criterion for determining a fee is that it must be reasonable. It must be assumed, however, that the factors for fee calculation mentioned in the old guidelines, such as the value of the case, the amount of time needed, and the outcome of the case, can probably be used as a basis for assessing a reasonable fee. Complaints concerning attorneys' fees are dealt with by the law society's regional boards. Appeals are lodged with the disciplinary tribunal.

Generally a lawyer is not entitled to make a "*pactum de quota litis*" agreement, i.e. an agreement whereby the lawyer is to receive a share of the result regardless of whether this is represented by a sum of money or by any other benefit achieved by the client upon the conclusion of the matter.

Advertising

Until the mid-1990s there existed rather broad regulations on advertising by lawyers. Major changes have been set in order as from 1 July 1995. Together with later changes this lead to a situation, whereby now, according to the Code of Good Conduct, only is stated, that advertising and personal publicity must not contain incorrect, misleading or unreasonably faulty information. The regulation is similar to the regulations contained in the Marketing Act.

Forms of Business, Inter--professional Co-operation, Location and Diversification

Danish law firms may be organised as individual law practices or partnerships of two or more sole practitioners. However, since 1990, law firms can be set up as limited companies. Both forms of incorporated forms (A/S or ApS) are public limited companies, but with different requirements as to capital invested. As a general rule law firms shall have no other purpose than to practise as lawyers. This means that partnerships as well as incorporated firms may only be owned by lawyers being members of the bar, and the only business to be carried out in these companies is legal counselling. As a consequence inter-professional co-operation in a joint firm is forbidden (c.f. *Retsplejeloven* Article 124 and Ethic Rules of the Danish Bar, Article 2.4.1.).

According to information provided by the *Advokatsamfundet* the question of business structures at the moment is under consideration for re-regulation.

Continuing Education

Continuing education is not an obligation for members of the profession, as there is no specific regulation concerning this.

Specialisation in the Profession

Concerning specialisation in the profession there are separately organised groupings in the profession, e.g. concerning handling of real estate and mediation. This kind of specialisation may be advertised.

Compulsory Indemnity Insurance

Every attorney is required to have professional indemnity insurance with a coverage of EUR 190,000 per case in order to cover any financial losses caused to a client or to a third party. Most firms hold policies with much higher coverage.

Economic Characteristics

Denmark – Structure and dynamics (NACE 7411)

*Enterprises, Turnover, Employment:*¹ The nominal turnover of legal services enterprises in the Denmark reached a level of nearly 900 million Euro in 2000, equivalent to exactly 0.5% of GDP, the second lowest share after Finland. Although the median value is only 0.69% in the member states surveyed (c.f. corresponding Overview-table in Chapter 5). Output of the sector rose however at a yearly average of 5.7% during the 1990's, exactly the same rate of annual growth in GDP per annum over the same period 1992-2000). This represents a real growth in legal services of just 2.3% per annum, narrowly behind the growth in employment which has been calculated to be 2.4% over the period 1992-2000; so productivity has been virtually stagnant. In fact, the real turnover per employed person was slightly down by just 1.4% over the whole period.

¹ EUROSTAT; Danmarks Statistik (Statistics Denmark)

Table 7-1 Firms, Turnover and Employment; Denmark 7411

	Number of Firms	Turnover in Mio. EUR	Employment	No. of Professionals
1992	2 051	561	11 963	
1993	2 147	590	11 873	
1999	1 673	782	14 035	
2000	1 658	876	14 507	4 359

Source: EUROSTAT, Danmarks Statistik, IHS

The exact development of employment in this branch in Denmark is unclear, however, due to it being “practically impossible to produce time series which are reliable and coherent from 1990 and onwards, due to a lot of changes in methods, sources, definitions, etc. during this period”.² Our estimate of employment figures for 2000 shows a rise of 3.4% over 1999. This estimate is based on data for employees measured in full-time-equivalents,³ which increased by 5.4% from 1999 to 2000.

The number of legal firms in Denmark decreased remarkably in the 1990s from a number around 2000 in 1992 to about 1650 in 2000, an average yearly rate of decrease of 2.6% (see Table), which is to be compared with the corresponding yearly growth rate for employment over the period 1995-2000 of 2.4%. The decline in the number of enterprises and simultaneous increase in employment means that a concentration has taken place in legal services such that fewer, but larger, firms exist at the start of 2000 than a decade earlier: indeed the average firm gave employment to 8.8 persons in 2002, up by an average of 3 from 5.8 persons in 1992. The relative number of enterprises, at 311 per million of population, is the third lowest in our surveyed countries, being ahead only of the Netherlands and Finland.

The average turnover (2000) per legal services firm in Denmark of 528,000 Euro is higher than the correspondingly value for accountancy services firms (335,000 Euro) but considerably less than the corresponding value for technical services (664,000 Euro). The growth rate in the 1990s (a nominal yearly average of 8.6%) was less than for accountancy services (11.3%), but much lower than for technical services (16%). However the level of business of Danish legal enterprises is the fifth highest of the 13 member states surveyed here, behind UK, Netherlands, Ireland and Belgium, but considerably higher than the median value of 387,000 Euro.

² Communication with Danmarks Statistik

³ IHS estimate of employment for 1999 and 2000 converts full-time-equivalent data to an employment figure in line with the EUROSTAT data used in the study and takes into account studies of the empirical relationship between these variables and also the general decline in the number of self-employed and assisting spouses in Denmark since 1995 (Denmark Statistics Yearbook 2002.) The full-time-equivalent employees figures are 8796 in 1999 and 9272 in 2000.

The level of employment, at approximately 2.7 in 1000 of the population in 2000, is just above the median and the turnover per employed person of 60,000 Euro is the third lowest after Germany and Spain in nominal terms, and indeed the lowest in our survey after adjusting for relative prices and economic output.

Table 7-2 Key Statistics, Legal Services; Denmark 7411

	Turnover per Firm	Employment per 1000 firms	Turnover per person employed	Employment per Mio. of Pop	Firms per Mio. of Population
	1000 EURO		1000 EURO		
1992	274	5 833	47	2 317	397
1993	275	5 530	50	2 292	414
1999	467	8 389	56	2 641	315
2000	528	8 750	60	2 722	311

Source: EUROSTAT, Danmarks Statistik, IHS

The differential rates of growth in enterprises, turnover and employment are illustrated in the chart below, with the 1992 values indexed at 100.

Chart 7-1 Relative Growth Rates, Denmark 7411



Source: EUROSTAT, Danmarks Statistik, IHS

*Profit Ratios:*⁴ Despite the low turnover per employed person relative to other member states referred to above, the legal services branch in Denmark appears to be in a healthy state: this can be seen in the profit ratios in the table, where the Danish legal services are compared to the other branches studied in this report, namely pharmacies, accountancy services, and architecture and consulting engineering services.

⁴ Source: Danmarks Statistik; IHS.

Table 7-3 Profit Ratios in Professional Services, Denmark

Year 2000	5231 Pharmacy	7411 Legal services	7412 Accounting services	7420 Architecture/ engineering
Turnover in mio. EUR	876	651	1 024	2 822
Profit or loss before tax in mio. EUR	28	211	210	248
PLBT as % of turnover	3.2%	32.4%	20.6%	8.8%
Number of firms	288	1 658	4 104	5 719
PLBT per firm in 1000 €	98.4	127.4	51.3	43.4
Employed persons (full time equivalent)	4 262	9 272	17 024	29 742
PLBT per person employed in 1000 €	6.6	22.8	12.4	8.3

Source: EUROSTAT, Danmarks Statistik, IHS

The profit before tax in legal services, over 30% of turnover in 2000, went beyond the 20% achieved by accountancy services, the next most profitable branch. The profit per Danish legal firm was in fact more than twice that of accounting firms, the profit per person employed in Danish legal practices not quite twice that of that for Danish accounting firms.

*Legal Form of Companies*⁴: The legal form structure of legal services enterprises is shown here in conjunction with the other professional services for Denmark. The concentration referred to above is clearly evident in the trend away from sole proprietorship in all four branches during the 1990s, as well as by a decline in partnerships, and is marked by a corresponding increase in the prevalence of private companies and joint-stock companies throughout the 1990s (see table on next page).

Single professional practices are evidently least common among legal firms compared with the other services studied; the rate of partnerships, while declining, is still higher, while the trend towards private and stock companies has been strongest.

Professionals: The Danish Bar and Law Society, *Advokatsamfund*, reports a membership of 4,359 in 2000/01, 63% of whom work in their own single-professional firm. At the other end of the scale as regards firm size, there are over 20 firms employing over 30 professionals⁵.

⁵ Source: IHS Questionnaire from *Advokatsamfund*..

Table 7-4 Legal Form of enterprises, Professional Services, Denmark

		Business units registered for VAT purposes									% in 1999
		% in 1999	1992	1993	1994	1995	1996	1997	1998	1999	
5231 Pharmacy	Ordinary joint-stock company	0%	0	0	0	0	0	0	0	0	0%
	Other	2%	6	5	6	12	16	17	16	16	5%
	Sole proprietorship	97%	321	313	311	311	308	292	295	289	95%
	Partnership	0%	1	1	0	0	0	0	0	0	0%
	Private (close) company	1%	3	1	0	0	0	0	0	0	0%
	Co-operative society	0%	0	0	0	0	0	0	0	0	0%
7411 Legal services	Ordinary joint-stock company	3%	59	92	94	95	91	89	98	98	5%
	Other	2%	39	35	31	27	30	43	32	25	1%
	Sole proprietorship	64%	1 177	1 165	1 139	1 137	1 124	1 126	1 105	1 079	61%
	Partnership	24%	444	400	378	357	350	339	345	334	19%
	Private (close) company	6%	112	192	225	230	231	239	242	246	14%
	Co-operative society	0%	0	0	1	0	1	0	0	0	0%
7412 Accounting etc.	Ordinary joint-stock company	5%	363	383	400	414	410	386	364	363	6%
	Other	2%	118	108	46	45	42	37	35	28	0%
	Sole proprietorship	72%	4 804	4 845	4 895	4 896	4 691	4 704	4 686	4 688	75%
	Partnership	6%	380	374	349	340	308	288	272	261	4%
	Private (close) company	15%	1 023	1 092	1 077	1 045	986	967	940	941	15%
	Co-operative society	0%	14	11	7	3	4	7	5	4	0%
7420 Architecture/ engineering	Ordinary joint-stock company	7%	735	737	743	776	784	746	750	785	8%
	Other	3%	265	260	181	177	174	175	167	165	2%
	Sole proprietorship	71%	7 183	7 055	7 055	7 075	6 717	6 797	6 743	6 825	71%
	Partnership	5%	506	484	456	430	420	413	390	389	4%
	Private (close) company	14%	1 471	1 425	1 408	1 361	1 370	1 313	1 357	1 414	15%
	Co-operative society	0%	28	25	20	20	15	13	12	12	0%

Source: Danmarks Statistik

Summary

Denmark today is a good example for a country with medium grade market entry regulation, and, after some steps of liberalisation, low grade conduct regulation. Interestingly the liberalisation concerning prices and advertising, and, to some degree concerning forms of business etc., was combined with some complication of the process of market-entry. A new final admittance examination has been introduced in 1996, exactly the time when some regulations concerning conduct were liberalised to some degree. Currently there are considerations under way to reform the regulations of business form and inter-professional co-operation. The outcome will show, if the legal professions, after a long period of opposition on this point, will go a step further than opening up some possibilities in respect of business form; they may allow inter-professional co-operation.

7.2 Legal professions in Italy: an overview

The statute governing the legal profession dates back to 1933. Subsequent amendments until recently have not substantially modified its provisions. Following heavy criticism of the formulation of the statute, recently attempts have been made to introduce various programs of reform to the legal profession.

Traditionally the most relevant in legal professions in Italy have been two groups of lawyers (the *avvocati* and *procuratori legali*) and the notaries (*notaio*). According to the Law of 24 February 1997 (*Legge 24 febbraio 1997, n.27 GU 27 Febb. 1997*), the distinction between two groups of attorneys - *avvocati* and *procuratori legali* is no longer made. The profession of the *Procuratore Legale* has been abolished.

From an international comparative point of view the market entry regulation for Italian Lawyers is rather strict, conduct regulation is even more rigid. Our market entry index is 2.66 and in the upper medium field of the EU. The conduct regulation index is as high as 3.88 – the highest of all EU-Member States.

The other important legal profession in Italy are the notaries (*notaio*). There are many occasions in Italy where the consultation of a notary is obligatory. It must be stressed that the access to public registers (immovable, ships, cars, enterprises) is possible only for public deeds or private deeds with authentication of the signature by a Notary.

For both professions (notaries and lawyers) membership in the respective professional bodies is compulsory.

For Notaries both national (*Consiglio Nazionale del Notariato, CNN*, National Board of Notaries) and local (*Consigli Notarili Distrettuali*, Notarial District Boards) associations are established by law, and their members are elected democratically by the notaries themselves. The National Board of Notaries represents Notaries at a national level and has many functions, among them the production of ethical rules. Furthermore, the C.N.N., with a formal resolution, formulates the Notaries professional fees (honorarium, accessory rights, allowances and principles for reimbursement of expenses); this resolution is submitted to the final approval of the Minister of Justice (Law 5th March 1973, n. 41). The Notarial District Boards hold the register of Notaries and has many functions concerning the regularity of the exercise of the profession.

Italian lawyers are organised in regional/local Bar Associations, which are unified at national level in the *Consiglio Nazionale dell'Ordine Forense* on national level. Every lawyer has to be admitted to the *albo* (roll or register) of the *avvocati*. All *Avvocati* are obliged to become a member of and be registered with one of the regional *Consigli dell'Ordine degli Avvocati e Procuratori*.

Market Entry

Tasks and exclusive tasks provided by Italian legal professions

The Italian judiciary system is divided into three types of courts: ordinary courts, administrative courts and tax courts. In the given context the ordinary courts are of highest relevance. They deal with civil as well as criminal matters. Each branch of jurisdiction has its own stages of appeal. Generally, there is a first instance, an appeal instance and a hearing before the Court of Cassation - *Corte di cassazione*. The *Corte di cassazione* merely performs a judicial review of issues of law rather than fact.

With few exceptions parties must be represented before the court by a lawyer. In civil matters, one of these exceptions was that parties may represent themselves merely in proceedings before the *Giudice Conciliatore* - now the *Giudice di Pace* - that is, as long as the value in dispute does not exceed Lire 1,000,000.

The task of the attorney is to assist and advise his client in judicial as well as extra-judicial matters, and to represent him in civil and criminal, as well as in all other proceedings.

Only members of the legal profession have rights of audience before the courts. An exception to this rule are proceedings before the Tax Revenue Commissions; here, members of other professions may take over the representation of clients (see chapter on accountants in Italy).

As already mentioned above, according to the Law of 24 February 1997 (*Legge 24 febbraio 1997, n.27 GU 27 Febb. 1997*) regarding lawyers the distinction between two groups of attorneys - *avvocati* and *procuratori legali* is no longer made. In the past, noticeable differences existed between the activity permitted for *Avvocati* as compared to those of the *Procuratori Legali*, but, pursuant to the Law n. 406 of 1985, art. 4, the only difference was that while a *Procuratore Legale* might exercise his activity in his Court of Appeal district only, an *Avvocato*, under specific preconditions (see below), could practise in all the territory of the Italian Republic. As to the non juridical activity, this limitation did not apply even for the *Procuratore Legale*. According to the former legislation an *Avvocato* was a lawyer who had practised as a *Procuratore Legale* for at least six years and then was admitted to the *albo* (roll or register) of the *avvocati*. Now potential Italian lawyers become *avvocati* straight away, if they fulfil the relevant preconditions (see below).

Not all *avvocati* are allowed to appear in every court. The audience at so-called superior jurisdictions is reserved to specially qualified lawyers. Only those attorneys (all of whom are now called "*avvocati*") who have practised for twelve years as *Avvocato* (*legge 1997/12, art. 4*), or those who have passed a special examination have rights of audience before the *Corte di cassazione* and other superior jurisdictions (Constitutional Court - *Corte*

Costituzionale, Council of State-*Consiglio di Stato*). Such lawyers are listed in a special register. In order to take the above-mentioned special exam, an *Avvocato* must have practised as such for at least five years.

Regarding extra-judicial activity, no reserved tasks in favour of attorneys exist. There are many specialised law firms in fields such as contract, corporate or tax law. These firms employ experts in commercial law, as well as accountants and auditors. There has been some discussion on the need to regulate extra-judicial advice; however, up to the present, no formal restrictions on non-attorneys operating in this field have been enacted.

There are many situations in Italy, where it is obligatory to employ a notary. It has been mentioned above, that the access to public registers (immovable, ships, cars, enterprises) is for public deeds or private deeds only possible with authentication of the signature by a notary.

In addition the Italian Notary is the only “official” in Italy who can legally public deeds concerning private rights. As from the 4th of September 1993 (Act n. 310/1993) a notarial deed is compulsory for all transfers of property or firm management and for the transfer of shares of limited liability companies. A public deed is the only legal form for gifts, marriage conventions, public will, articles of association and incorporation of a recognised association, foundation, company limited by shares, company with limited responsibility, limited partnership by shares and a co-operative.

Other certifications also can only be authenticated by notaries, but in most cases they are not ‘compulsory’ (i.e., it is the parties to an agreement that want their signatures certified,). Additionally as from the 8th of September 1998 (Act n. 302/1998) the tribunals may delegate the transactions of auction sales of movables and immovables to notaries.

The following table gives an overview over the services provided by notaries.

Table 7-5 Demand of notary services by type and category of client (%)

Notary services	Enterprises, lib profs.	tot. population
Buying/Selling	74.5	66.0
Establishing Acts	47.2	17.3
Mortgages	19.8	15.9
Heritages (wills)	19.8	21.6
Donations	4.7	7.4
Marital Agreements	9.4	6.8
Certifications	21.7	11.2
Consulting	12.3	6.3
Other	--	0.8

Total is not equal to 100 because multiple replies were possible.

Source: Report on the liberal professions in Italy by the Italian Competition Authority.

Education and entrance to the profession

In order to become *Avvocato*, one normally must hold a degree in law from an Italian university – *laurea*. The law degree takes a minimum of four years study. The law student is required to pass at least 26 examinations, 14 compulsory and 12 optional subjects. The law graduate who intends to become an *Avvocato* is requested first of all to enter the register. In order to do this, he has to

- file a request to the Law Society Office of the district where he resides together with
- evidence of his Italian citizenship (this condition cannot apply to EC nationals as a matter of EC law, and has been suppressed for others by the effect of the law of 6 march 1998) art. 35,
- have an Italian law degree and
- be of an upright conduct.

After completion of university education and registration with the bar the candidate has to complete a two-year traineeship as *praticante Avvocato* in the law firm of an *Avvocato*. An examination, which is held once a year at the various Appellate Courts - *Corti d'Appello* - must be passed by the candidate at the end of the traineeship. Following this examination, it is possible to request directly admission as an *Avvocato*.

After completion of the first year of traineeship and fulfilling certain prerequisites, the candidate may be admitted as *praticante Avvocato*. As such, he may request rights of audience - *patrocinio* - before the *Giudice di Pace* and the *Pretore* of his own district. The "Justice of the Peace" - *Giudice di Pace* (which has replaced the former *Giudice conciliatore*) deals with disputes with a value of up to *Lire* 5,000,000 (ca. EUR 2.500) and all claims involving damages arising from road traffic accidents with a value of up to *Lire* 30,000,000 (ca. EUR 15.000). The first instance for disputes with a value of up to *Lire* 50,000,000 (ca.

EUR 26.000) the so-called the *Pretore* (the Magistrate). A candidate may not practise as a *praticante Avvocato* for a period longer than six years.

The exams take place in the month of December of each year in all the appellate Courts (Art. 2 of the Law of 20 April 1989 n. 142). The board of examiners is appointed by the Ministry of Justice; in each board there are two lawyers (practising for at least 8 years), two judges and a university professor in law (art. 22 LPF as amended by the provisions of art. 1 of the Law dated 27 June 1988 n. 242). The tests are written and oral. The candidates that pass the written test are admitted to the oral test.

In order to become a *notaio* the following steps are required (Law 16th February 1913, n. 89 and 6 August 1926, n. 1365):

- First one has to gain the *Laurea in Giurisprudenza* (university graduation in law). This takes a minimum of four years. There are many Notarial Schools, organised by the Notarial District Boards. They do not issue diplomas or certificates and have only a private nature and function. They prepare candidates for the notarial examination.
- Second, the candidates have to complete a two year traineeship period.
- In a third step candidates have to succeed in several examinations. The examinations, all in all, consist of seven different tests: one admission test is held as electronically-organised examination based on the choice among multiple answers to single elementary legal questions. After that, to become a self-employed notary, it is necessary to pass a national examination for the fixed number of positions of *notaio*. The examination is organised by the Ministry of Justice. The subsequent exam is based on three written tests (one about a *inter vivos* deed, another about a *mortis causa* deed and a third one about "*jurisdiction gracieuse*" (*volontaria giurisdizione*)). Those who succeed the three written tests pass to the oral exam, which has three parts as well. The Examining Commission is composed of two judges, two notaries (even retired) and one university professor in law.

The successful candidates can choose which of the *vacant* seats they would like, and they are attributed in order of priority on the basis of the results of the exam. According to information submitted by the *Consiglio Nazionale del Notariato* exams to get a notaries seat are taken by over 3,000 candidates for a normally small number of available posts (200-300).

As already mentioned above the number of notaries seats is fixed. The overall distribution of notary seats maybe revised every 10 years by decree of the head of State, after consultation with the Notary professional bodies. In any case, a new seat can only be created if it corresponds to at least 8000 inhabitants.

Currently there are attempts under way to reform the education of legal professions in Italy. *Decreto legislativo* 398/97 (17 November 1997) establishes the principle of specialised schools for the legal professions (*scuola di specializzazione per le professioni legali*) (art.16). The professions in question being judges, *avvocati* and *notaio*. The new schools shall be run by universities in co-operation with these three professions. There will be a competitive entry by exam (art. 16(5)). according to these plans, once the schools are established would-be legal professionals will have to take a two year course there. The first year will be common for the three professions. The second year will provide separate courses for notaries on the one hand and magistrates and *avvocati* on the other. After successfully passing the course, the candidate will have only one year of *pratica* instead of the current two year requirement.

Conduct Regulation

Prices and Fees

In Italy lawyers' fees are regulated. They are set out in special tariff scales issued by the Italian Ministry of Justice. However, parties are free to negotiate fees which depart from those contained in the table, as long as the minimum and maximum rates given for each service are followed.

The calculation of the attorney's fee is a somewhat complex procedure. The official tariffs differentiate between the attorney's services in and out of court, as well as whether the matter pertains to criminal or civil law. The tariffs depend on:

- the outcome of the proceedings,
- the value of the litigious matter
- as well as on the court that is competent for the proceedings.

The different legal services are classified disregarding the amount of time invested in the case. There are minimum and maximum rates given for each service; this allows the lawyer a certain amount of discretion in determining his fee. In addition, there are specific rules for the calculation of travel and office expenses, as well as those for the preparation of legal documents. According to the code of conduct, the Italian lawyer is required to issue bills for their services that are very detailed, so that clients or other attorneys can examine these bills more easily.

It is important to note that Italian law prohibits any agreement on a contingency fee - *pactum quota litis*. Any agreement on such a contingency fee is null and void according to art. 2233, s.2, of the Italian *codice civile*, and therefore not binding on the parties.

Up to now all fees of notaries in Italy have been fixed as min/max prices . There exists a discussion on “modernising” the notaries fee system (proposed by the profession). The outcomes are not foreseeable at the moment. The arguments for reform, as stated by the professional organisations, are “modernise the system and make fees for notarial activities more transparent” (Questionnaire provided to IHS by the *Consiglio Nazionale del Notariato*). However, in the public discussion fear of an increase of the fees themselves dominates.

Advertising

Advertising by lawyers in Italy traditionally has been totally prohibited. But in October 2002 Art. 17 of the code was changed to allow some types of publicity, in particular concerning the form:

As to form: Allowed are now: signs outside one’s office, brochures, internet sites, juridical publications or ‘annuaires’, brochures etc. as well as relationship with the press/media about a case, where the relevant information is non confidential. Such contacts with the press/media for self-publicity are not allowed, even indirectly.

Still forbidden are: publicity in print media, TV or radio. Forbidden is also advertising via billboards or flyers as well as soliciting by phone call, sponsorships, using the internet to offer free advice, either on one’s own website or on a third party’s website.

Seminars and conferences organised directly by lawyers’ cabinets are allowed forms of publicity in some cases, but prior authorisation by the professional body is obligatory.

Concerning the substance: Allowed are: personal information, listing of publications, information on the professional practice, a logo, indication of ‘quality certificates’ (this has to be approved by the professional body). It is also allowed to offer consultancy services via internet. Preconditions are that the service is not offered for free and that the lawyer that will treat the case is clearly identified. Additionally it is allowed to continue the name of a dead partner if he (or his heirs) expressly agreed to it.

Still forbidden are: all information regarding third parties, the name of clients (even if they have given their permission), specialisation (except those allowed by law), prices of each service (it is forbidden to indicate that the first meeting is free), the percentage of cases won, the turnover of the cabinet, the offer of services.

For notaries all forms of advertising are still forbidden.

Forms of Business, Inter-professional Co-operation, Location and Diversification

The subject of forms of business for lawyers has traditionally been regulated very rigorously by a statute of 1939. This statute contained a provision whereby law firms may not be established in the form of a company of any kind. As a consequence, attorneys according to this statute were only able to work together in partnerships known as the *associazione professionale*. The relevant Article 2 of the *legge 23 novembre 1939 n.1815*, which forbade the practice of law except in a *Studio legale*, has been repealed by article 24 of *legge n.266 of 7 August 1997*. However the replacement law has not yet been adopted. It was expected to allow incorporated practice and partnerships between lawyers, and may even contemplate multidisciplinary practice (*Disegno di legge: agosto 1998*). In fact the law does not yet provide positive rules on what is allowed, and paralleling the situation for accountants it is evident that “there still is a blank space to fill through legislation”. This means that at the moment for lawyer neither incorporation nor inter-professional co-operation (in a joint firm) is possible.

The lawyer is obliged to notify the competent Bar Council - the *Albo* - of his seat of practice. Admission must be requested in the district, in which the attorney resides. However, this does not prevent an *Avvocato* from setting up practice at other law firms in different locations.

Similar regulations apply for notaries. The Law provides only for notarial associations, provided that the notary's seal and his activity is strictly personal and so is his responsibility. As for lawyers also for notaries the Law that forbade every professional society (no matter which profession could be involved) has been abolished (see above) and has been delegated to issue a decree which will discipline the subject, but what it will provide is still an open question. Apart from formal co-operation in companies and partnerships, Notaries can collaborate with all professionals, provided that their professional activity remains strictly personal. Notaries in Italy are not allowed to open branch offices.

Continuing Education

For notaries in Italy there is no mandatory continuing education. However, the National Board of Notaries, through its institutions, frequently promotes seminars and congresses about legal issues and releases studies about diverse matters that are of interest to the notarial profession.

For lawyers we do not have any relevant information at the moment.

Specialisation in the Profession

Traditionally lawyers in Italy were not allowed to call themselves “Specialists” in the one or other field of professional activity. Each legal professional can undertake the defence of the party without any limitations with regard to the subject matter he normally deals with. This means that customarily no "specialist" *avvocati* existed as a matter of law. The *disegna di legge* (agosto 1998) proposed to allow some *avvocati* to call themselves specialists (*articolo 7*). As to our current knowledge, lawyers are allowed to call themselves specialist only for specialisations that exist in the law.

For notaries there are no specific regulations for specialisation in the profession.

Compulsory Indemnity Insurance

For notaries there is no obligation of professional insurance, but the *Consiglio Nazionale Notariato* has already signed a national insurance scheme on a voluntary basis. It is planned to impose a system of mandatory professional indemnity insurance for all notaries.

For lawyers we do not have any relevant information at the moment.

Economic Characteristics

Italy – Structure and dynamics (NACE 7411)

*Enterprises, Turnover, Employment*⁶: The nominal turnover of legal services enterprises in Italy reached a level of nearly 11,300 million Euro in 2000, equivalent to just under 1% of GDP, the highest share after the UK and with the exception of Belgium (c.f. Overview-tables in Chapter 5). Output of the sector rose however at a very high yearly average of 14.1% during second half of the 1990's, faster than the growth in GDP (an average of 6.8% p.a. over the same period 1995-2000). This represents a real growth in legal services of 11%, outstripping the growth in employment of just 2.5% over the period 1995-2000; so large productivity gains have also been made. In fact, the real turnover per employed person rose by an enormous 49% over the period.

⁶ EUROSTAT; Istituto Nazionale di Statistica (ISTAT)

Table 7-6 Firms, Turnover and Employment; Italy 7411

	Number of Firms	Turnover in Mio EUR	Employment	No. of Professionals
1995	74 158	5 818	131 184	
1996	77 367	7 824	131 409	
1997	80 241	7 824	136 694	
1998	70 254	8 222	128 185	
1999	79 093	9 104	135 842	
2000	87 608	11 273	148 665	
2001				139 500

Source: EUROSTAT

The number of firms increased correspondingly from about 74,000 in 1995 to approximately 88,000 in 2000, an average rate of 3.4 % p.a. (see Table) - also above the corresponding yearly growth rates over the period 1995-2000 for employment of 2.5% . The higher rate of increase in enterprises relative to employment is indicative of a slight trend towards *less* concentration i.e. relatively more firms with fewer employees: indeed the average firm gave employment to 1.70 persons in 2002, down from an average of 1.77 persons in 1995. The relative number of enterprises is typical, being the median of the member states in our survey, at over about 2600 per million of population.

The average turnover (1999) per legal services firm in Italy of 129,000 Euro is more than the corresponding figure for accountancy services (105,000 Euro) and considerably more than the corresponding value for technical services (81,000 Euro), and growth rates in the second half of the 1990s (a yearly average of 10.4%) were also much higher than for accountancy services, and for technical services. However the level of business of Italian legal enterprises is the second lowest after Spain of all the 12 member states surveyed here (and third lowest, ahead of only Spain and Luxembourg after the branch output figures are adjusted for relative price levels and the overall production of the economy).

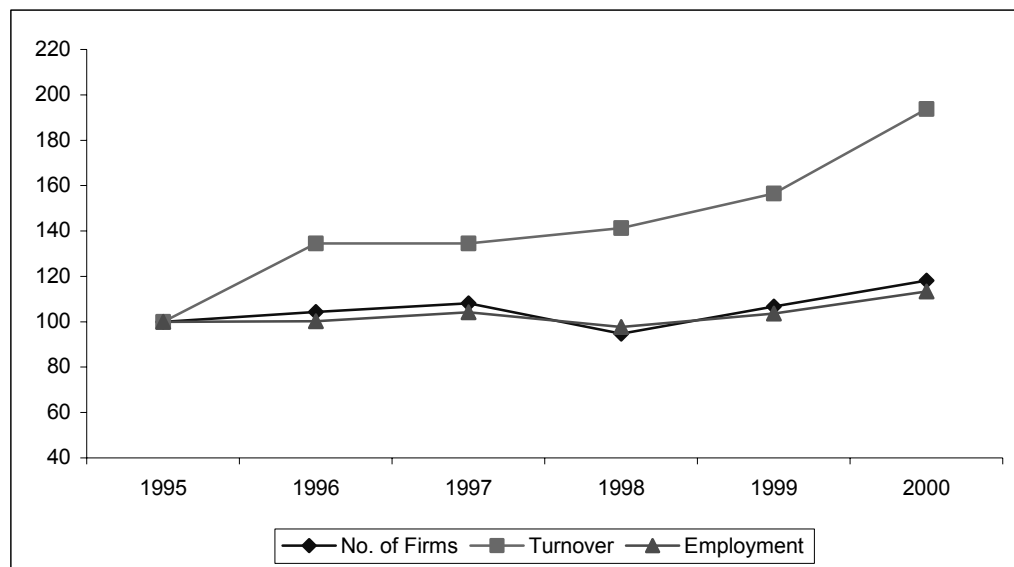
The level of employment, at over 1.7 per 1000 of the population in 2000 is low by international comparison (only Spain employing relatively fewer persons), but the level of productivity, as measured by a turnover of 76,000 Euro of per employed person, is fairly typical for the survey, being the median value, in relative terms, after adjusting for relative prices and overall level of economic output. It is the third highest in the survey after Belgium and Finland.

Table 7-7 Key Statistics, Legal Services, Italy 7411

	Turnover per Firm	Employment per 1000 firms	Turnover per person employed	Employment per Mio. of Pop	Firms per Mio. of Population
	1000 EURO	1000 EURO	1000 EURO		
1995	78	1 769	44	2 291	1 295
1996	101	1 699	60	2 292	1 349
1997	98	1 704	57	2 379	1 396
1998	117	1 825	64	2 227	1 220
1999	115	1 717	67	2 358	1 373
2000	129	1 697	76	2 577	1 519

Source: EUROSTAT

The differential rates of growth in enterprises, turnover and employment are illustrated in the chart, with the 1995 values indexed at 100.

Chart 7-2 Relative Growth Rates, Italy 7411

Source: EUROSTAT

*Growth of Sole Proprietors:*⁷ The high growth rate of legal services firms in the early part of the 1990s is reflected in a correspondingly yearly increase in employment of over 6.5%. The growth in the number of self-employed, at over 10%, is especially remarkable, so that the proportion of self-employed in the legal services workforce rose from approximately 57% to approximately 68%.

⁷ Source: ISTAT: Censimento intermedio industria e servizi. Note: some figures for 1996 differ slightly from previous section; IHS.

Table 7-8 Self-employment and Employees, Italy

	1991	in %	1996	in %	% Change p.a. 91-96
Firms	45 454	45.7%	79 423	57.9%	11.8
Self-employed	56 406	56.7%	92 960	67.8%	10.5
Employees	43 019	43.3%	44 198	32.2%	0.5
Total	99 425	100.0%	137 158	100.0%	6.6

Source: Istituto Nazionale di Statistica (ISTAT)

That this development was due to an overwhelming increase in sole practitioners is shown in the table below.

Table 7-9 Legal Form of Companies

	1991	in %	1996	in %
Sole Practitioners	41 300	90.9%	75 335	94.9%
Partnerships	965	2.1%	3 892	4.9%
Private* Companies	122	0.3%	176	0.2%
Co-operatives	12	0.03%	9	0.01%
others	3 055	6.7%	11	0.01%
Total	45 454	100.0%	79 423	100.0%

* definition unclear

Source: Istituto Nazionale di Statistica (ISTAT)

This trend was also accompanied by an increase in the percentage of partnerships among firms, but also by a relative decline in joint-stock enterprises. These trends are also reflected in the statistics of one office versus multi-office firms.

The *Consiglio Nazionale del Notariato* reports in the IHS questionnaire, however, that 80% of notaries' firms have one qualified professional, 18% have two qualified professionals, and 2% have between 3 and 5 qualified professionals. The *Consiglio Nazionale* also reports 32% notaries' firms as having 2-5 offices. This contrasts with overall statistics shown below.

Table 7-10 Offices

	1991	in %	1996	in %
one office	43 018	94.6%	79 031	99.5%
more than one office	2 436	5.4%	392	0.5%
Total	45 454	100.0%	79 423	100.0%

Source: Istituto Nazionale di Statistica (ISTAT)

Starting from a very high percentage by 1991 – 95%, by 1996 nearly all firms operated out of one office, a mere 0.5% having other branch offices.

The trend to de-concentration is ultimately demonstrated in the breakdown of firms by size, in terms of employment: the sole practitioner category has increased its majority dramatically in the five years to 1996, so that it may be regarded as the norm for the profession.

Table 7-11 Firm Size by Employment

Employment	1991	in %	1996	in %
1	24 292	53.4%	57 075	71.9%
2	10 609	23.3%	11 075	13.9%
3 -- 5	7 771	17.1%	8 120	10.2%
6 -- 9	1 936	4.3%	2 280	2.9%
10 -- 15	655	1.4%	705	0.9%
16 -- 19	100	0.2%	104	0.1%
20 -- 49	85	0.2%	56	0.1%
50 -- 99	6	0.0%	7	0.0%
100 -- 199	0	0.0%	1	0.0%
Total	45 454	100.0%	79 423	100.0%

Source: Istituto Nazionale di Statistica (ISTAT)

Among notaries' firms the *Consiglio Nazionale del Notariato* reports, however, that 74% of firms have between 3 to 10 employees, and 19% have between 10 and 50 employees⁸.

Professionals: Whereas the number of lawyers has more than doubled during the 1990s, only a small increase in the number of notaries has occurred. For this reason the percentage of lawyers within the legal professions has risen to over 96% from around 92% in 1990.

Table 7-12 Number of Legal Professionals

	1990*	in %	1995*	in %	2001**	in %
Notaries*	4 473	8.2%	4 551	5.2%	4 620	3.3%
Lawyers	50 000	91.8%	83 090	94.8%	135 000 **	96.7%
Total	54 473		87 641		139 620	

Source: Lawyers - "La regolamentazione dei servizi professionali - aspetti settoriali", Italian Competition Authority, 1997;

* Notaries - Questionnaire from Consiglio Nazionale del Notariato

** Source: based on a communication with the Italian Competition Authority

Trainee Notaries: The *Consiglio Nazionale del Notariato* reports a two thirds increase in trainees, from approx. 3,000 in 1990 to approx. 5,000 in 2000, out of a constant number of law graduates of 18,000-20,000. The pass rate for trainees taking final qualifying examinations varied from 6.1% of 2,296 in 1990 to 11.5% of 1,560 in 2000.

⁸ IHS Questionnaire.

Summary

As for the accounting professions several attempts have been made in the recent years to deregulate the legal professions in Italy. The system of market entry has been changed (and liberalised to some degree). The same is true for regulations on marketing and advertising as well as the system of fee setting and the regulations for business structures and inter-professional co-operation (also the last point has not been implemented up to know). Also the overall picture points to the direction of some liberalisation, however, the overall regulatory system for legal professions in Italy is still rather rigid. Currently new rules concerning the educational system are under consideration. It is not yet clear if this will lead to some liberalisation in market entry or not.

We have the impression that regulatory changes in Italy take a very long time to be decided, and if they are decided, it takes even longer to implement them, if they are implemented (and not abolished at a later stage) at all. This leads to a considerable lack of transparency and insecurity, whereby it is unclear how a more dynamic market should evolve in such a situation. The respective professional bodies of established licensed professions appear to be rather defensive in regards to liberalisation, whereas some other professions make attempts to be equipped with reserved rights to offer services as well. In such a situation it appears to be rather difficult to liberalise the respective markets to a certain degree, especially concerning market entry, the questions of business-forms and inter-professional co-operation. However, in the long run the rather small-scale structure of legal (and accounting) services will not be competitive, even more in an increasingly internationalised market.

7.3 Legal professions in England & Wales: an overview

Legal services are regulated separately in the three jurisdictions of England & Wales, Scotland and Northern Ireland. In each jurisdiction there is a separate profession of solicitor, regulated and unified by/in the relevant Law Society, and of barrister (in Scotland “advocate”), regulated by and unified in the relevant bar Council (in Scotland “Faculty of Advocates”). The rules are broadly similar for solicitors and barristers (advocates) respectively in each jurisdiction. Also several differences are obvious, in this report we decided to provide information on the regulatory systems in England & Wales only.

As already mentioned above in England & Wales there exist two main legal professions: the solicitors and the barristers. The solicitor is the first point of contact for individuals or organisations seeking legal advice and he may be called upon to deal with a wide variety of problems. Solicitors now are, under specific preconditions, allowed to represent parties before all kinds of courts (see below for details).

A Barrister is essentially a consultant offering specialised services as an advocate and an adviser in all matters involving litigation and, as a main field of activity, the practice of the courts. A barrister does not normally deal directly with members of the public but is instructed by a solicitor. (However, reform of this under consideration.)

Generally speaking only those who are qualified as a lawyer (solicitor or barrister) may represent parties before English Courts. But the rules in relation to the capacity of the representative before some specialised tribunals are considerably more relaxed. In Industrial Tribunals, for instance, the representative needs no specific qualification and, in practice, parties are often represented by trade union officials. It should also be noted that parties to small claim arbitrations can be represented by anyone they wish.

There is no monopoly on the giving of legal advice in the United Kingdom. The only limitations to this are areas restricted to solicitors and barristers by statute, that is the formalities concerning real property transfer and conduct of litigation (see below for details) and the representation of clients before the courts. Anyone, whether a qualified lawyer or not, is able to give legal advice. Extra-judicial legal advice is often given by non-lawyers in, for instance, the fields of tax, business and planning.

The market entry-index we have calculated for legal professions for England & Wales with a value of 2.82 is considerably higher than for example those for Finland (0), Sweden (1.98), Denmark (2.08) or even Belgium (2.52), but still lower than e. g. the one for Austria (4.08) or Germany (3.7). The figure for the conduct-index is 1.175, which is towards the lower end of our ranking.

For solicitors the membership of the relevant professional association (Law Society of England & Wales) is *not* compulsory. However, the Law Society is the representative and regulatory body for solicitors of England and Wales. In order to practice, all solicitors must have a Practising Certificate, which is issued by the Law Society on an annual basis. The Law Society governs admission to the Roll, that is entry to the profession, ensuring that all new solicitors are fit and proper persons and have undergone the necessary training. Currently, there are over 85,000 solicitors on the Roll.

Anyone wishing to train for the Bar must join one of the four "Inns of Court" in London. Although barristers are primarily regulated by the Bar Council, the Inns of Court have an important role in their education and training. Indeed, you can only be a barrister if you have been "Called to the Bar" by an Inn of Court. The Inns provide support for barristers and student barristers through a range of educational activities, lunching and dining facilities and provision of various grants and scholarships etc. The Bar Councils' functions as the governing body include laying down and implementing policies affecting the Bar on Education and Training, rules of conduct particularly with regard to rights of audience as required under the Courts and Legal Services Act 1990 and the Access to Justice Act. The Council represents a wide variety of interests at the Bar and is made up of 115 barristers who are elected or represent the Inns, Circuits and Specialist Bar Associations.

Market Entry

Tasks and exclusive tasks provided by Legal Professions in England & Wales

Solicitors act as legal advisers to clients and conduct legal proceedings on their behalf. Until 1990, they had rights of audience only in the County Court, Magistrates' Court, and certain other tribunals. The Courts and Legal Services Act 1990 removed the monopoly which allowed only barristers to appear as advocates in higher courts, and solicitors are now acquiring rights of audience in the higher as well as the lower courts. They have now been given rights of audience in the High Court, Crown Court and appellate courts, subject to obtaining a special additional qualification. At present, however, it remains common practice for a solicitor to instruct a barrister to appear in these courts. In this respect, although most advocacy is undertaken by solicitors, barristers are often instructed to conduct a case because of their expertise and experience in pleading before the courts. It is worth mentioning that parties may represent themselves before any court in England, except, in the absence of special permission, the House of Lords.

Apart from representation of clients before courts the formalities involved in real property transfer and succession form a significant share of the work of solicitors in general practice. This field of activity, conveyance, until the beginning of the 1990s was a service reserved to the profession of solicitors. This monopoly has been abolished with the „Administration of

Justice Act 1990“ and now several other professions are allowed to offer that kind of service as well.

As already mentioned legal advice is not an exclusive task of specific professions in the United Kingdom. However, it is the solicitors who are the main profession doing this kind of service. Solicitors advise private persons on all kinds of legal questions as well as businesses on such issues as employment, contracts, company formation and competition policy.

Barristers (also known as counsel) have rights of audience before all courts and tribunals. They are specialist advocates. They also act as legal consultants. Barristers will generally draft the written pleadings used in litigation and advise on particular points of law and, in addition, as to the conduct of the case. Barristers are legal consultants offering specialist services, in particular as advocates or advisors in matters involving litigation. Many barristers are specialists in one area of law almost to the exclusion of all others. Barristers as a general rule can only receive instructions to appear or advise in cases before the English courts from solicitors and members of certain other professions. For example an accountant or a tax specialist could approach a barrister for advice directly on a taxation problem or an architect could approach a barrister directly in relation to a planning matter. In relation to matters before foreign courts and the European Court of Justice, they are allowed to receive instructions directly from lay clients and foreign lawyers. They can, and often do, advise on questions of English law which fall to be considered in foreign courts. Barristers' training concentrates on the art of advocacy, court procedure and the rules of evidence.

Since 1999 in specific cases there exists the possibility of direct access to barristers without the need first to instruct a solicitor, mainly for advice work by individuals or organisations licensed by the Bar Council. This deregulation has occurred to enable those equipped to instruct barristers without the intervention of a solicitor to do so, in cases where the law does not require a solicitor to be on the record.

Currently there are regulatory changes in preparation to permit access to barristers by lay clients without the need first to instruct a solicitor, for competition reasons. In opinion of the Council of the Bar there is potential for difficulty with clients who are ill-equipped to carry out themselves the role that would normally fall to a solicitor if one were instructed. Another potential problem could be that barristers would be taking on an administrative role for which they currently have no training or support infrastructure, neither of which is necessary as they currently operate (source: questionnaire forwarded by the General Council of the Bar of England and Wales). This regulatory change has been proposed by the Office of Fair Trading.

As Solicitors, apart from representation of clients before court, barristers have the (reserved) right to offer conveyancing services.

Education and Entrance to the Profession

There are two main routes for admission into the solicitors' profession in England & Wales: one via a university degree (in law or an other subject) and an other via obtaining employment in a legal office and joining the Institute of Legal Executives.

The quickest and most common route to qualification is by means of a qualifying law degree. If a student decides to take a degree in a subject other than law, he will have to complete a one year full-time (or two years part-time) course leading to the Common Professional Examination (CPE) or the post-graduate Diploma in Law. These courses are offered at a number of institutions. The course gives the basic grounding in law to qualify as a solicitor.

After successful completion of the law degree, or CPE, or Diploma in Law, would-be Solicitors have to undertake the Legal Practice Course (LPC), which is the professional training for solicitors. This course takes one academic year, or two years if studied part-time. Again, competition for a place on the LPC is very tough. Good academic grades are essential. The course is offered by a number of different colleges and universities.

Having successfully completed the Legal Practice Course, the candidate enters a two year training contract with a firm of solicitors or other approved organisation (such as a local authority or the Crown Prosecution Service), gaining practical experience in a variety of areas of law. At this stage, the candidate is paid a salary. He holds the title of a trainee solicitor.

Furthermore the Training Regulations 1990 require everyone wishing to qualify as a solicitor to have successfully completed the Professional Skills Course (PSC) after the Legal Practice Course and during the course of the training contract prior to admission. The course is offered by a number of different institutions.

For those who do not wish to take a degree, it is possible to qualify as a solicitor by obtaining employment in a legal office, joining the Institute of Legal Executives and taking the examinations to qualify as a member and subsequently a Fellow of the Institute of Legal Executives. The process is lengthy and demanding, but enables the non-graduate to qualify as a solicitor. Would-be solicitors have to provide a minimum of five years of relevant practise, and visit two courses and sit the respective examinations. The first course is the so-called MILEX: "Member of the Institute of Legal Executives" (MILEX). This course normally takes four years. The second course is called FILEX. With this the candidate gets „Fellow of the Institute of Legal Executives". After this, as for other would-be Solicitors, the LPC has to be done (see above), but the need for further training and PSC is waived.

To qualify as a barrister there are 3 main stages to be completed:

1. Academic Stage: undergraduate degree in law, or undergraduate degree in any other subject plus a CPE conversion course (see above).

2. Vocational Stage: the Bar Vocational Course, one year full time or two years part time. This course combines practical assessed work and examinations at all stages. Once the would-be Barrister has successfully completed the BVC he will be called to the Bar by the respective Inn. Competition for places on the Bar Vocational Course is highly competitive. For the 2001/2002 course, approximately 2,116 candidates applied for 1,540 places. Course fees for the 2001/2 intake range from £ 6400 to £ 8750. The course is offered by several institutions (c.f. <http://www.legaleducation.org.uk/BVC/thebvc.php>). A would-be Barrister also has to undertake 12 qualifying sessions (previously known as "dining") before Call to the Bar.

3. Pupillage: a year's supervised practical experience, which is generally taken with a barrister in practice, although part of it can be completed in another approved legal environment.

The chart below provides an overview on the entrance schemes for solicitors and barristers in England & Wales. Although the respective systems appear to be rather complicated, they appear to be of rather flexible nature as well.

BARRISTERS		SOLICITORS		
law graduate	graduate	law graduate	graduate	non-graduate
A Levels	A Levels	A Levels	A Levels	4 GCSE Passes
degree in law	Degree in any subject	Degree in law	degree in any subject	MILEX I + II (min 3 years)
BVC; 1 year	CPE or Diploma in Law; 1 year	LPC; 1 year	CPE or Diploma in Law; 1 year	
Pupillage; 1 year	BVC; 1 year	2 years practise incl. PSC	LPC; 1 year	2 years qualifying + over 25; FILEX
	Pupillage; 1 year		2 years practise incl. PSC	LPC; 1 year
				(training contract waved)

Conduct Regulation

Prices and Fees

As a basic principle the prices and fees of Solicitors in England & Wales are not regulated and freely negotiable. Usually a solicitor's fees will be calculated on the basis of an hourly rate agreed between the client and solicitor and will not correlate directly with the value of the claim. Some solicitors will work on the basis of a fixed fee for the conduct of a piece of work, most often for non-contentious business. If a solicitor and client disagree as to the level of fees ultimately incurred in relation to contentious business, the solicitor's bill may be assessed at the request of the client. The bill is subjected to an independent evaluation of its reasonableness by an officer of the court and the excess assessed off. In the case of non-contentious business, a similar process will be carried out at the client's request by the Law Society. It is, however, unusual for a client to take either of these steps if the basis of payment was made clear from the outset, the case has been properly handled and he has been kept fully informed about all matters as it proceeded.

It should be noted that the basis of assessment of a bill between a solicitor and his own client is more generous to the solicitor than that of the assessment of costs awarded against an unsuccessful party at the conclusion of a case (see below). In particular, any costs which have been impliedly or expressly authorised by the client will be allowed, although they might strictly be considered unnecessary. It is unusual, therefore, for the successful party to litigation to have all his costs paid by the party who is unsuccessful.

Many solicitors will also undertake work on the basis of a contentious business agreement. Under this arrangement, the client cannot apply for assessment of the bill. The solicitor enforces the agreement by applying to the court in which the business was done, not by suing for the debt owed. The court will only allow enforcement if the agreement is fair and reasonable. The agreement will be considered unfair, if it is unreasonable and the client did not fully understand and appreciate its effect before making it and/or, if it amounts to excessive profiteering by the solicitor. The court only examines the agreement, not the sum payable under it, unlike an assessment, where the court inquires into the reasonableness of the bill ultimately submitted and each item thereon. If, however, the number of hours claimed under a contentious business agreement is excessive, the court may not allow enforcement of the agreement as regards that excessive time. A non-contentious business agreement may also be made under which the fees payable are sued for as a debt, but the client only has a limited entitlement to assessment. In court actions, solicitors may not enter into contingency fee agreements under which their fees will be a percentage of the damages or the property gained. Even a conditional fee agreement ("no win no fee") is banned in criminal and matrimonial cases. However, in civil cases, a conditional fee may be agreed.

Barristers' fees are generally negotiated between the solicitor and the barrister's clerk. In relation to drafting and advising barristers generally charge an hourly rate. For appearances

in court, a lump sum fee will be charged (a brief fee) for the preparation and first day in court together with an appropriate daily sum for each day in court thereafter (a *refresher*). The *brief fee* must, in general, be agreed in advance of any attendance at court.

Advertising

Broadly speaking, solicitors are allowed to advertise their services to potential clients subject to certain limited controls. Publicity Code 2001 for Solicitors states that publicity must not be misleading or inaccurate. Any publicity as to charges or a basis of charging must be clearly expressed and it must be clear whether disbursements and VAT are included. Practitioners must not publicise their practices by making unsolicited visits or telephone calls to a member of the public. "Member of the public" does not include: (a) a current or former client, (b) another lawyer; (c) an existing or potential professional or business connection; or (d) a commercial organisation or public body. As for Solicitors also for Barristers the regulations on advertising recently have been liberalised. The most recent liberalisation was to allow comparative fee advertising (2002). According to information provided by the Council of the Bar of England and Wales for barristers now only adverts including statements about a barrister's success rate are forbidden (c.f. paragraph 710.2 of the Code of Conduct).

Forms of Business, Inter-Professional Co-operation, Location and Diversification

Solicitors' firms can comprise either sole practitioners, private company ("unlimited company") or limited liability partnership. In case of the latter two the firm may only be held by members of the profession. This means that inter-professional co-operation in a joint firm (incorporation or partnership) has not been allowed up to now.

In respect of the question of location following occurs: Solicitors in general serve the local community, solving the legal problems of the public. They are not however, nor indeed are barristers, tied to any particular court: a solicitor can act throughout England and Wales.

Barristers are all self-employed, but generally join together in sets of chambers in order to share office accommodation and administrative staff. Barristers' clerks act for a set of chambers in negotiating and collecting fees on behalf of each member of the set. Partnerships between barristers are not allowed, nor are they allowed to form limited companies for the purpose of providing legal services. Inter-professional co-operation is forbidden. Furthermore employed barristers until recently had only very limited rights to practise. But as from 2000 employed barristers got allowed to exercise full rights of audience.

For Solicitors there are no specific regulations on the opening branch offices. The same is true for Barristers (Source for both professions: questionnaires provided to IHS by the respective professional bodies).

Continuing Education

Continuing Professional Development (CPD) for Solicitors in England & Wales is compulsory. Solicitors must complete 16 hours of CPD each year. At least 25% must be from attendance at accredited courses; the remainder can be obtained from research, writing, speaking at conferences etc. Solicitors must keep their own records and are asked each year to confirm on the renewal of their practising certificate that they are in compliance. They may be asked at any time for their CPD records and persistent non compliance may result in disciplinary action. These requirements are waived for solicitors in practice overseas. Accredited courses are provided by market providers who are quality controlled by the Law Society.

For Barristers there now exists an obligation for continuing education as well (recently introduced: 2001). The Bar Council requires established practitioners to complete a record card of their continuing professional development (CPD) hours and submit this to the Education & Training Department on an annual basis. These records are randomly checked and if a barrister is found not to have completed their hours they will not be issued with a practising certificate. Those subject to the New Practitioners Programme (NPP) have their records logged on a database at the Bar Council. Providers of NPP courses are required to confirm the barristers' attendance with the CPD Department who ensures their records are up to date. The Bar Council introduced the New Practitioners' Programme on 1 October 1997 for barristers in their first three years of independent practice. This was extended on 1 October 1998 to barristers entering employed practice. The Bar Council has also introduced a continuing professional development scheme for established practitioners. This was introduced from Jan. 1 2001 for all barristers who have completed the New Practitioners' Programme. Other practitioners will be phased in by year of Call as follows: In or after 1990 - from January 2003, between 1980 and 1989 - from January 2004, before 1980 - from January 2005.

Specialisation in the Profession

While a single firm might offer a full range of services, increasingly, individual solicitors and firms are specialising in areas of law in which they are experts. This is particularly true of firms dealing with business clients, more often found in the major cities: their specialisms include banking law, entertainment law, corporate and commercial law, construction, trusts, environmental law, insurance, intellectual property, tax, competition, shipping and arbitration.

As the law has become more complex, barristers increasingly specialise in particular areas of work. A number of Specialist Bar Associations (SBAs) exist to provide support, training and representation for their members.

Compulsory Indemnity Insurance

For Solicitors a professional indemnity insurance is compulsory. It has to cover a minimum sum of 1.6 Million EUR per case. For Barristers professional insurance is mandatory as well. Minimum sum of insurance is 392,419 EUR per case (£ 250,000)

Economic Characteristics

United Kingdom – Structure and dynamics (NACE 7411)

*Enterprises, Turnover, Employment:*⁹ The nominal turnover of legal services enterprises in the UK reached a level of nearly 28,000 million Euro in 2001, equivalent to over 1.8% of GDP, the highest share after the exception of Belgium (c.f. Overview-tables in Chapter 5). Output of the sector rose however at a very high yearly average of 16.3% during second half of the 1990's, faster than the growth in nominal GDP (an average of 9.9% p.a. over the same period 1995-2001). The annual growth rate from 1998 to 2001 continued at 16.1%. This represents a real growth in legal services of 12.5%, outstripping the growth in employment of 4% over the period 1998-2001, so large productivity gains have also been made. In fact, the real turnover per employed person rose by as much as 27% over this period.

Table 7-13 Firms, Turnover and Employment; U.K. 7411

	Number of Firms	Turnover in Mio EUR	Employment	No. of Professionals
1995	21 620	11 326		
1996	22 490	13 047		
1997	22 988	16 217		
1998	23 491	17 894	254 000	
1999	24 106	21 077	276 000	
2000	24 416	25 062	272 000	
2001	24 763	28 032	286 000	111 772

Source: Office of National Statistics, IHS

The number of firms increased correspondingly from about 21,600 in 1995 to 23,500 in 1998 to approximately 24,800 in 2001, an average growth rate of 1.8 % p.a. from 1998 to 2001

⁹ EUROSTAT; Office of National Statistics, ONS

(see Table), below the corresponding yearly growth rates over the period 1998-2001 for employment of 4% . The lower rate of increase in enterprises relative to employment is indicative of a trend towards more concentration i.e. more firms with relatively more employees: indeed the average firm gave employment to 11.6 persons in 2001, up from an average of 10.8 persons in 1998. The UK is indeed the second largest employer of personnel in legal enterprises after the Netherlands (see chapter 4). The relative number of enterprises is however typical, being the median of the member states in our survey, at over 410 per million of population.

The average turnover (2001) per legal services firm in UK of 1,132,000 Euro is considerably higher than the correspondingly values for both legal services and for technical services, which have similar outputs per firm (795,000 Euro and 779,000 Euro respectively). The recent nominal growth rate since the second half of the 1990s - a yearly average of 13.7% - were also a little higher than for accountancy services (11.6%) and for technical services (12.3%). Along with this strong growth in enterprises, the level of business per firm in UK is by far the highest among all the 12 member states surveyed here even after the branch output figures are adjusted for relative price levels and the overall production of the economy.)

The level of employment generated by UK legal firms, at over 4.6 per 1000 of population in 2000 is also the second highest in our international comparison (only Belgium employing relatively more persons) and the turnover per employed person of 92,000 Euro in 2000 is third in absolute terms after Belgium and Finland, but only fourth highest after adjusting for relative prices and economic output and not greatly higher than the median value of the member states in the survey.

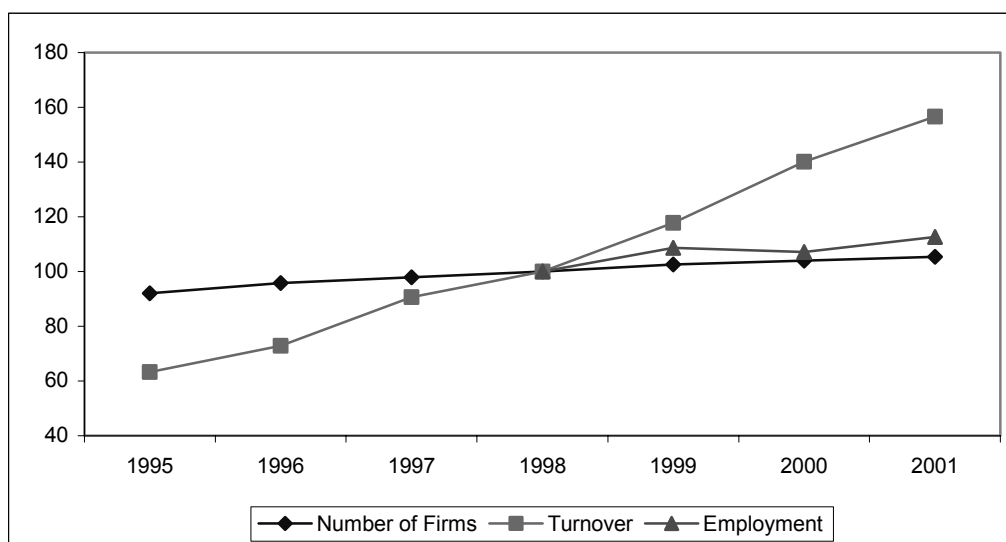
Table 7-14 Key Statistics, Legal Services; U.K. 7411

	Turnover per Firm	Employment per 1000 firms	Turnover per person employed	Employment per Mio. of Pop	Firms per Mio. of Population
	1000 EURO		1000 EURO		
1995	524				370
1996	580				383
1997	705				390
1998	762	10 813	70	4 299	398
1999	874	11 449	76	4 647	406
2000	1 026	11 140	92	4 562	410
2001	1 132	11 549	98	4 780	414

Source: Office of National Statistics, IHS

The differential rates of growth in enterprises, turnover and employment are illustrated in the chart, with the 1998 values indexed at 100.

Chart 7-3 Relative Growth Rates, U.K. 7411



Source: Office of National Statistics, IHS

*Turnover Size Class of Firms:*¹⁰ Unlike the situation in many other EU member states, the largest proportion of legal firms are not to be found in the smallest categories (The high proportion of small accounting services category is certainly influenced by the inclusion of tax advice services in this 4-digit NACE (SIC) code). There are in comparison, however, relatively less large legal services firms with a turnover in excess of ca. 7,400 euro (500,000 GBP).

Table 7-15 Professional Services Firms: Size Class by Turnover, UK

as of April 1998	Turnover classes ¹ in 1 000 GBP							
	0-49	50-99	100-249	250-499	500-999	1000-4999	5000+	TOTAL
SIC (NACE) Code	Equivalent turnover classes ² in 1 000 EUR							
	0-72	73-146	147-368	369-738	739-1477	1478-7390	7391+	TOTAL
7411 Legal	4 475	5 535	5 890	3 030	1 740	1 400	275	22345
7412 Accounting	6 520	5 195	3 980	1 775	945	625	90	19135
7413	305	315	330	195	150	170	45	1510
7414	13 280	13 790	7 310	2 420	1 245	1 045	245	39340
7415	310	480	840	875	630	685	135	3950
7420 Arch/Eng	16 950	13 525	7 400	3 610	2 200	1 935	440	46065
	as percentages of total							
7411 Legal	0.20	0.25	0.26	0.14	0.08	0.06	0.01	100%
7412 Accounting	0.34	0.27	0.21	0.09	0.05	0.03	0.00	100%
7413	0.20	0.21	0.22	0.13	0.10	0.11	0.03	100%
7414	0.34	0.35	0.19	0.06	0.03	0.03	0.01	100%
7415	0.08	0.12	0.21	0.22	0.16	0.17	0.03	100%
7420 Arch/Eng	0.37	0.29	0.16	0.08	0.05	0.04	0.01	100%

¹Excludes units with zero VAT turnover and all enterprises without a VAT basis.

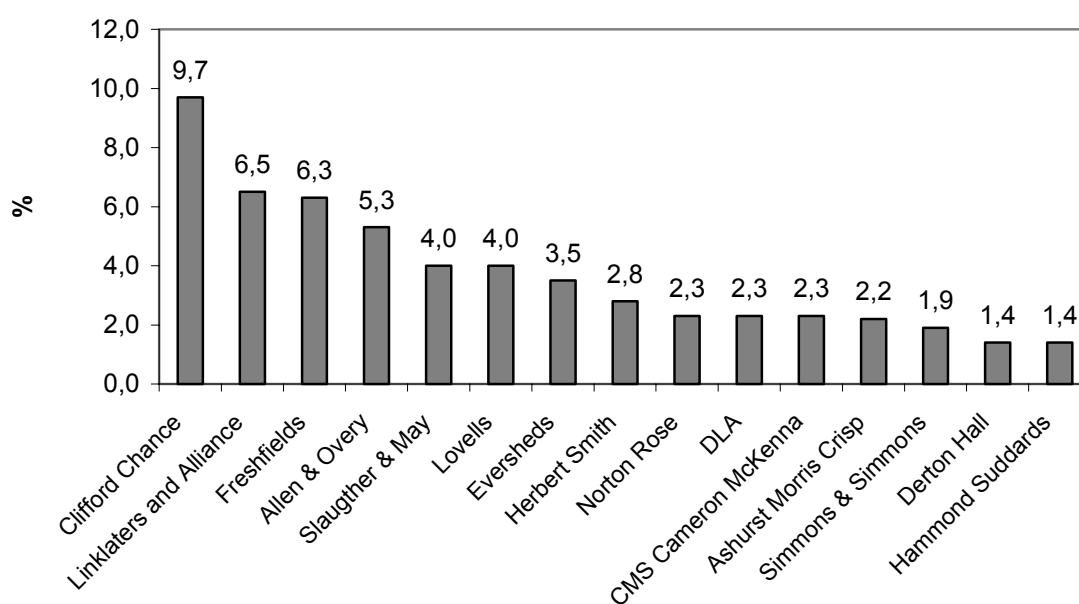
²Approximated by 1998 ECU/GBP exchange rates.

Source: Office of National Statistics

¹⁰ Source: ONS, IHS.

England and Wales: Solicitors¹¹

Concentration: The market for solicitors' legal services nevertheless does not exhibit as high a degree of concentration as has been reached in the market for accountancy services in UK. Whereas the 'big 5 accountancy firms' (in 2000) had a market share above 70%, the top 5 solicitors' firms had a share of 32%, increasing to nearly 47% for the share of the top 10 firms.

Chart 7-4 Market Share of Top 15 Law Firms by Turnover in 2000

Source: The Lawyer op. cit. LECG Report, see footnote.

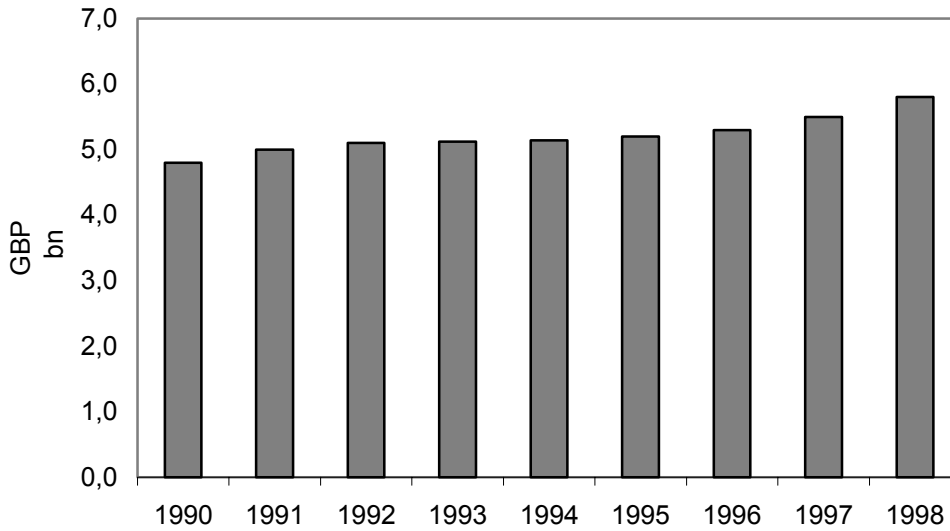
Solicitors' Revenue and Profit: The single major contributing area to revenue is business and commercial law (28%), followed by commercial property (15%). Civil law areas such as personal injury, conveyancing, probate, family, housing and employment together make up 39%, crime another 7%, and sundry others 11%.

Solicitors' fees increased by 31% in real terms from a gross fee revenue of 6,600 Mio. EUR (4,700 million GBP) in 1990 to 9,200 Mio. EUR (6,200 million GBP) in 1998. The increase was steady and evenly spread over these years. Real growth in fees exceeds real growth in GDP from 1990-92 and again from 1996-98. In the most recent year reported, 1998, revenue from fees grew in real terms 3.5 percentage points more than GDP, at around 5%.

¹¹ Source: LECG Report "Restrictions on Competition in the Provision of Professional Services", for OFT, 2001, including the graphics.

Depending on GDP growth, solicitors' fees have been more or less around 1% of GDP since 1991 (+/- 0.02 percentage points).

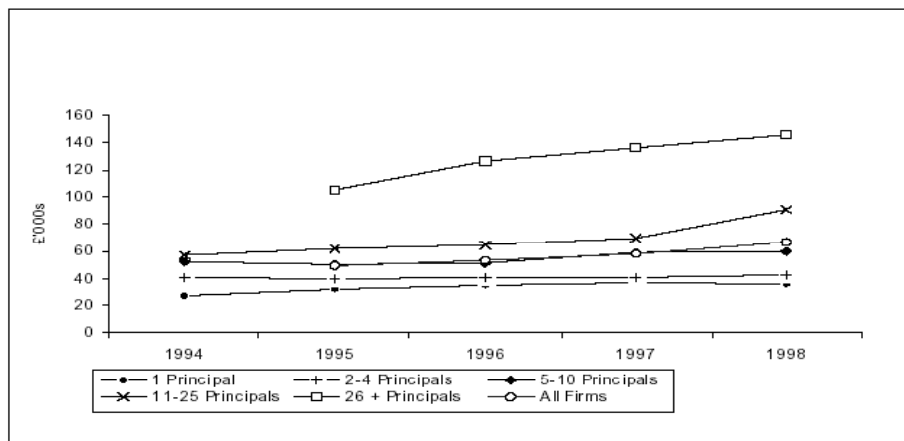
Chart 7-5 Solicitors' Real Gross Revenue



Source: Trends in the Solicitors Profession 1995-98, *ibid.*

In the following charts law firms are broken down by their number of 'principals', defined as equity or salaried partners. In general, the larger the firm in terms of its principals, the larger the profit, whether gauged by a profit per equity partner or profit per solicitor in the firm.

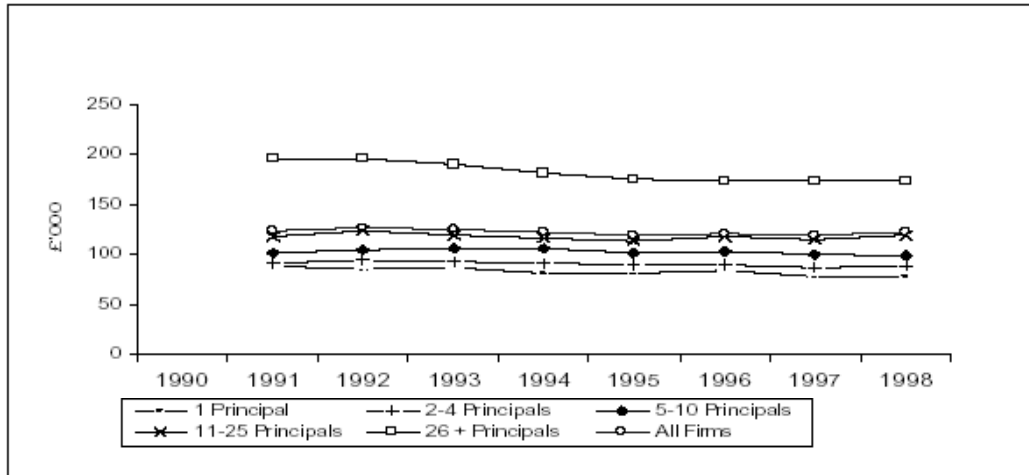
Chart 7-6 Average real profits per equity partner – by size of firm (Principals)



Source: Trends in the Solicitors Profession 1995-99 and Economic Trends 1999 Annual Supplement (ONS), *ibid.*

Whereas the profit on a per equity partner basis increased in recent years, this is not the case when the profit per solicitor in the firm is calculated.

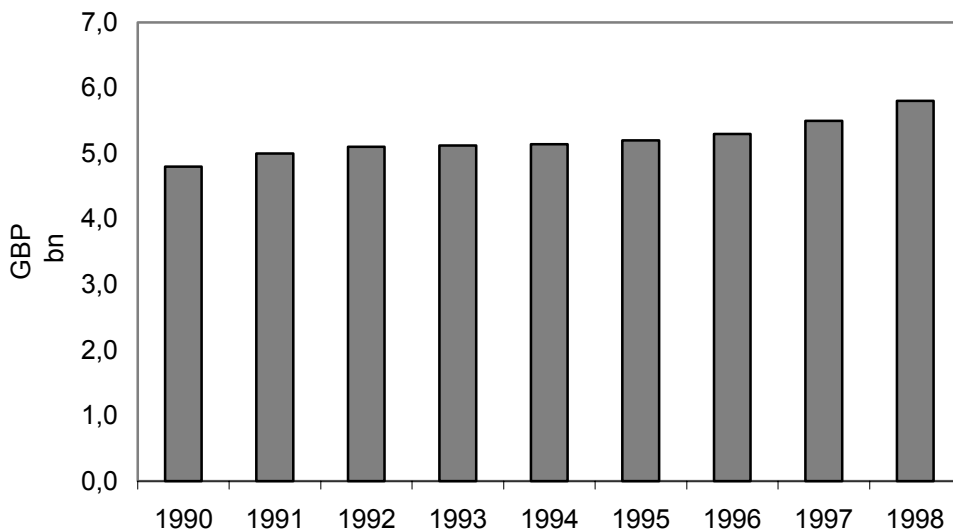
Chart 7-7 Average real profits per solicitor – by size of firm (Principals)



Source: Trends in the Solicitors Profession 1995-98, *ibid.*

Average earnings for solicitors are by far the highest of comparable professional groups, at 787.90 GBP per week being 26% higher than those for certified and chartered accountants, and 42% higher than the average earnings of architects.

Chart 7-8 Average weekly earnings by occupation

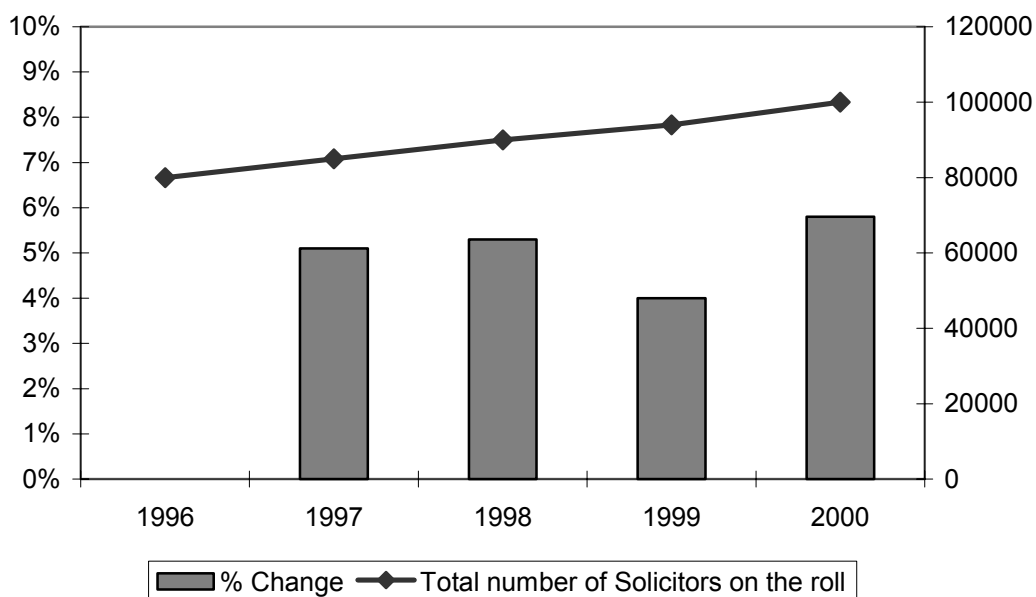


Source: New Earnings Survey 1995-99, *ibid.*

The growth in nominal earning of solicitors between 1995 and 1999 was 19%, a little behind the figure for chartered and certified accountants – 23%, but ahead of architects – 15%, and the average of all professional occupations, of 17%.

Solicitors – members and entrants: The total number of registered solicitors rose steadily at a (compound) average annual rate of increase of 5.1% from 1996 to 2000, reaching a total number of just under 101,000 by 2000.

Chart 7-9 Growth in the number of solicitors



Source: Trends in the Solicitors Profession 1995-99, *ibid*.

The intake of newly registered solicitors was 3,058 in 1989 and rose to 4,827 in 1999, an average annual increase of 4.7%. The year to year variation can deviate a lot from this average as is illustrated by the intake rates of 17%, 2% and 0% for the three years 1997-99.

The Law Society of England and Wales reports a membership of 86,603 with certificates, and 22,950 without practising certificates, in 2001.¹²

England and Wales: Barristers:¹³

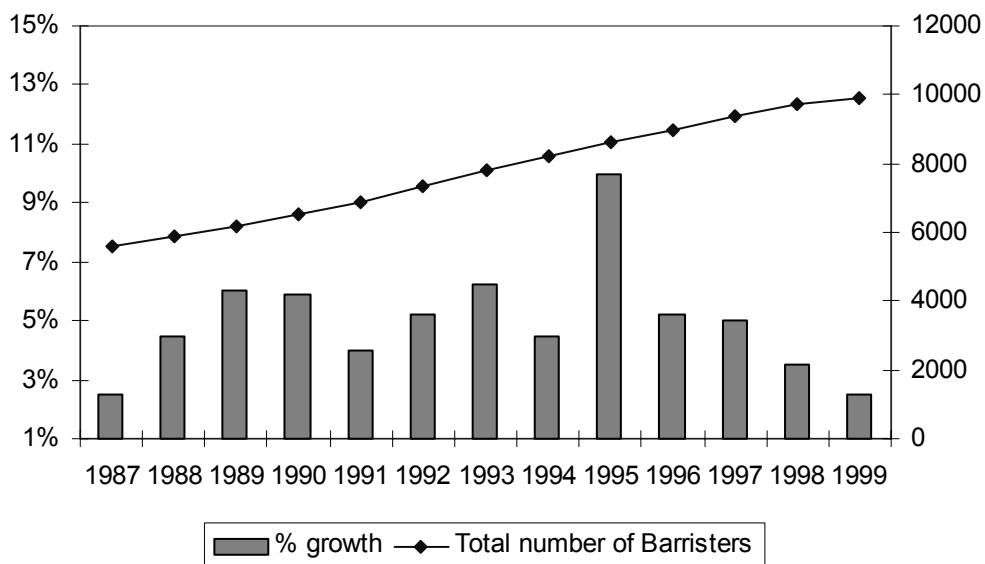
Barristers – members and entrants: The increase in the total number of barristers has been steady, just as for solicitors, as is shown in the chart, even if the percentage growth rate in individual years varies somewhat.

¹² IHS Questionnaire.

¹³ Source: LECG Report "Restrictions on Competition in the Provision of Professional Services", for OFT, 2001, including the graphics.

The average growth rate of barristers over more than a decade to 1999 was 4.8%: in the second half of the 1990s the rate of 5.2% p.a. was comparable with that for solicitors.

Chart 7-10 Growth in the number of barristers



Source: Report on the survey of Barristers Chambers 1999 and 2000, BDO Stoy Hayward, *ibid.*

In recent years, starting in 1997, the net growth in barristers has diminished. This reflects a net change in the number of barristers (i.e. new entrants less the number of those exiting the profession, for example retirees) of around 440 in 1997 down to around 240 in 1999. This kind of variation in numbers is fairly typical, but the LECG report suggests that the decline may be due to recent regulatory changes, namely the increased costs of qualifying to enter the profession and the impact of the government's recent reform programme ('Woolf'), among a number of other factors.

"Thus it is possible that a combination of the Woolf reforms promoting settlement of litigation at an early stage, government promotion of alternative dispute resolution (ADR) and the extension of rights of audience to solicitors, have together reduced the demand for advocacy services in litigation. Solicitors may be less likely to use barristers, following the emergence of solicitor-advocates, and because solicitors are tending to do traditional barrister work in-house (such as drafting pleadings). A report by the Goldsmith Working Party on Financing Entry to the Bar (July 1998) illustrated the recent increase in the costs of qualifying. In 1990-91 over 60% of students taking the Bar Vocational Course (BVC) received some kind of local

authority grant, and over 50% received a full grant. By 1996-97, however, only 6% of BVC students received a grant, fewer than 3% received a full grant.”¹⁴

Table 7-16 Growth rates of solicitors and barristers in the 1990s

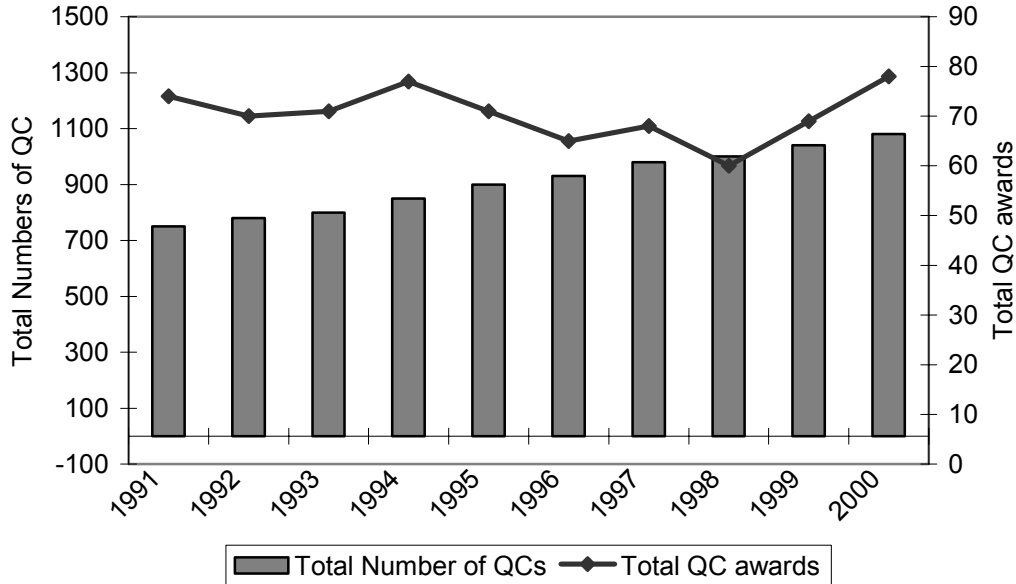
	Solicitors		Barristers		
	total	entrants	total	QCs	QC applications
1987			5 642		
1988					
1989		3 058			
1990					
1991				736	
1992					
1993					
1994					
1995			8 095		
1996	82 820				
1997					
1998					
1999		4 827	9 932		
2000	100 957			1 072	
c.a. growth rate period	5.1% 95-00	4.7% 89-99	4.8% 87-99	4.3% 91-00	5.75%* 92-99
c.a. growth rate period			5.2% 95-99		

Source: LECG Report; *average rate

The above table shows that the rate of growth in the number of Queen’s Counsel (QCs) has fallen behind that of barristers in general: the increase in QCs has, however, also been steady as the chart below illustrates. Once again, the size of intake varies from year to year, from a low of 60 new QCs in 1998, to a high of 78 in 2000 (average intake of 70 over the period).

¹⁴ Source: LECG Report “Competition in professions” para. 230, 231.

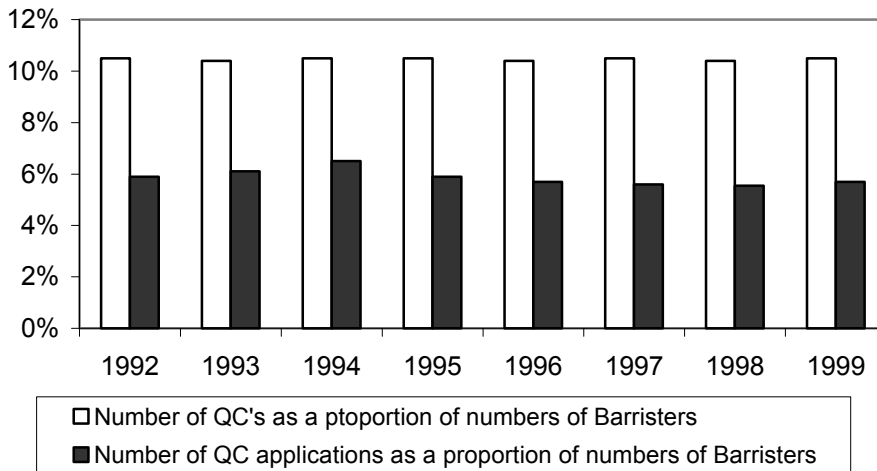
Chart 7-11 Total number of QCs vs. Total QC awards



Source: The Lord Chancellors Department and Parliamentary Questions, Andrew Dismore MP, *ibid.*

The chart below shows that the number of QCs as proportion of barristers remained constant around a figure just over 10% throughout the 1990s. The average rate of applications for QC status, which was 5.8%, exceeded the growth rate of barristers, unlike the growth rate in actual appointments of QCs (see Table above).

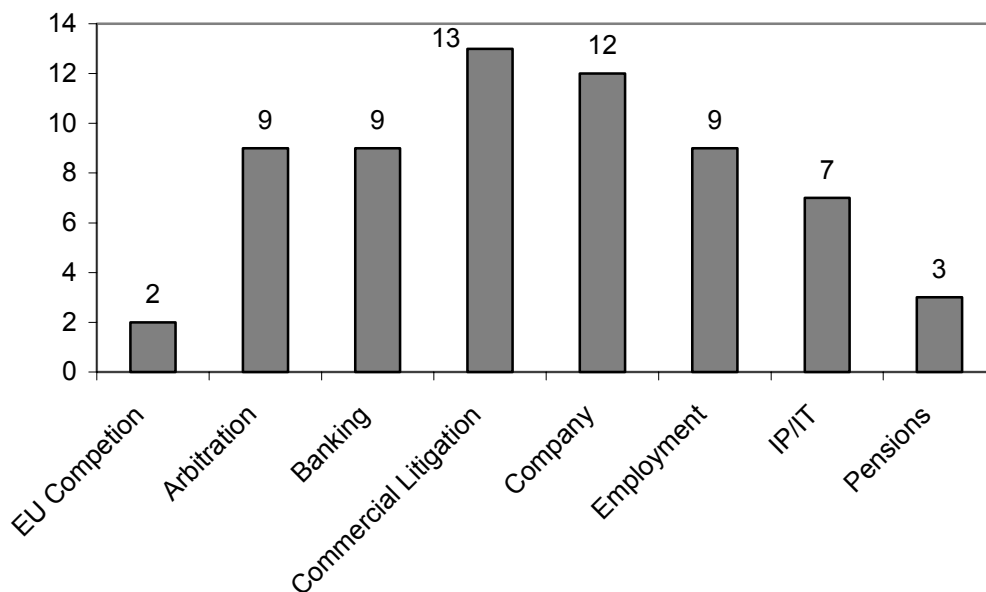
Chart 7-12 Number of QCs



Source: The Lord Chancellors Department and Parliamentary Questions, Andrew Dismore MP. *Ibid.*

Barristers' Chambers: Barristers are organised into Chambers, i.e. groups separately negotiating on behalf of barristers within certain units of specialism. The LECG report makes the observation that competition takes place at the level of Chambers rather than at the level of individual barristers. The numbers of chambers competing within each specialism is shown in the chart below. Unlike, say the field of competition legislation, there is thus less competition in the areas of EU Competition Law or Pensions: LECG believes that mergers between Chambers are likely in future because there will be increased competition from solicitor-advocates.

Chart 7-13 Number of chambers by specialism



Source: www.chambersandpartners.com

*Professionals:*¹⁵ Altogether there are 86,603 practising professionals, a rise of over 50% in the years since 1990 reported by the Law Society of England and Wales (LSEW). This development is accompanied in a increase in the percentage of non self-employed from 15.8% to 20.9%. Further, the number of holders of LSEW practising certificates who practise abroad has nearly doubled to about 3,100 since 1995.

Firms: LSEW reports the number of private practice firms varying between ca. 8,100 and 8,700 over the last decade. The trend towards a higher proportion of large firms (with 11 or more partners) – 5.7% of firms in 2001 compared to 4.9% in 1990 – that is also indicated by the increase in non self-employed, has also been accompanied by an increase from 37% to

¹⁵ IHS Questionnaire

42% in the number of single qualified professional firms. Together with two partner firms, these account for over 82% of all lawyers' firms.

Turnover. LSEW reports a branch for legal services firms turnover before tax of 10,552 million GBP (approx. 17,500 euro) in 2001¹⁶. In terms of prevailing Euro/ECU rates, this represents an increase of over 70% in nominal terms from 6,977 million GBP in 1995, a very high rate of growth indeed.

Summary

Like Denmark, England & Wales from an international comparative point of view shows a medium grade of entry regulation and, after several steps of liberalisation, a rather low grade of conduct regulation. A peculiarity of the entry regulation system in force is, that it is rather flexible and that there are several different routes of entry. At the same time it appears to be cost intensive and places for education appear to be rather scarce.

The professional division between Solicitors and Barristers has been discussed for quite a while now. Whereas at first instance there may be no direct negative outcomes of this separation (as a monopoly for barristers in representation in high jurisdiction does not exist any more), for the external observer it is rather unclear what, apart from tradition, the advantage of this separation is.

¹⁶ c.f. a figure of 28,032 mill. Euro reported for entire UK 7411 branch in 2001 – see Overview table in Chapter 5.

7.4 Legal professions in Germany

Lawyers

The lawyer today is an independent adviser in legal matters and representative of the interests of individual persons, legal entities, and public institutions in and out of court and before authorities. The lawyer renders, as an independent organ of the judicature, as stipulated in §1 of the Federal Lawyer Order (BRAO), in judicial proceedings an independent contribution to the finding of justice. As representative of his client's interest he has to prevent that his client from suffering disadvantages that are not justified according to the law.

Every lawyer becomes a member of the lawyer chamber (*Rechtsanwaltskammer*) by act of law when he is accredited as a lawyer. In the Federal Republic of Germany there are 28 such lawyer chambers. The lawyer chamber is a statutory body for self-administration of the legal profession and as such guarantees the independence of the law profession and protects it from the influence of the state and at the same time accentuates the status of the lawyer as an independent organ of the judicature. The German lawyer chamber system is thus based on obligatory membership of every lawyer in a lawyer chamber. The duty of the Federal Lawyer Chamber (*Bundesrechtsanwaltskammer* – BRAK) is to safeguard, advance and represent the interests of its members. The administrative tasks of the regional lawyer chambers are the participation in the procedures of accreditation for new lawyers, reprimanding in case of misconduct and the involvement in procedures regarding professional issues. Furthermore the lawyer chambers perform social duties for their members, they are responsible for the vocational and professional competences and duties as well as further education and training of its members.

Besides the lawyer chambers there exist the so-called lawyer societies (*Anwaltsvereine*) which are voluntary associations, based on the German society law (*Vereinsrecht*). The umbrella organisation of the approximately 190 associations in Germany is the German Lawyer Association (*Deutscher Anwaltverein* – DAV) based in Berlin.

Market Entry

Tasks and exclusive tasks provided by German Lawyers

The lawyer is according to § 1 BORA, paragraph. 3 (professional code of conduct - *Berufsordnung Rechtsanwälte*) an independent adviser and representative in all aspects of law. The main tasks are: advising and consulting in matters of taxation, pensions and insurance, collecting of claims, patents and insolvency administration.

The tasks of lawyers today do not only encompass the judicial procedural aspects. Rather the modern occupational image is characterised, and this despite a rise in cases that come before courts, mainly by task that involve advising, consulting and helping.

According to § 1 Legal Advice Law (*“Rechtsberatungsgesetz”*) the agency and procuration of legal matters for others, including the consulting and getting claims, can only be carried out with an official licence. At the same time the §§ 1 et sqq. BRAO not only regulate the title (name) security in terms of the certificate model (*“Bezeichnungsschutz i.S. des Zertifikationsmodells”*) but it is also a strong prohibition with an approval provision (*“Verbot mit Erlaubnisvorbehalt”*) (Herrmann 1996: 346). For the field of activity of legal advice it means that legal advisers that are not lawyers need a specially permission of the provincial court president of the state, where the job is carried out (§ 11 Abs. 1 RBerV). Exempted from this rule are primarily patent lawyers, notaries, public appointed tax consultants and certified public accountants, public authority representatives, liquidators, cooperative auditors (*“genossenschaftliche Rechnungslegerprüfer”*).

The lawyer chambers are not involved in the otherwise applicable licensing procedure, (cp. Herrmann 1996: 347). The accreditation is given only for a specific subject field and regional area. According to the law (§ 1 Nr. 1-6 RBerG) the following subject areas come into question: pension advisers, insurance advisers for the out of court representation of clients against insurance companies, out of court collection of claims and lawyers versed in foreign law.

To be able to represent a client before court the lawyer has to be registered as a lawyer in the respective register (for more details see par. Location below). Exceptions are when cases are brought before the Court of Finance where - even up to the Supreme Court for Financial Issues (*Bundesfinanzhof*) - tax advisers, auditors and certified public accountants are allowed to represent their clients without being officially registered as lawyers.

Education and Entrance to the Profession

The judicial schooling and education in the Federal Republic of Germany is traditionally based on a dual step procedure of university education and following this legal clerkship (*“Referendariat”*). The university study is the first phase which provides the theoretic, academic knowledge and lasts for at least seven semesters (usually far longer) and ends with the first state exam (*“Erstes Staatsexamen”*). The focus of the second phase, the legal clerkship (*“Referendariat”*) is on the practical implementation of the gained theoretic knowledge and the gaining of experience. The prescribed length of the clerkship is two years and ends with the second state exam (*“Zweites Staatsexamen”*). It is important to note that in Germany, as a key difference from other systems relying on university education, there are no university exams as such for the law degree. The *Staatsexamen* are, as their name

already indicates, carried out by the state, which implies comparatively stronger state control. The clerkship encompasses several stations, e.g. the jurisdiction (“*ordentliche Gerichtsbarkeit*”), public prosecutor, public service and law firms. The duration of the stay at a law firm can be varied between four and twelve months. Normally it lies between four and six months. The two state exams have to be taken before a public authority, the judicial examination board and not at the university or lawyer chamber. The judicial examination board is part of the state justice department.

A jurist that has been educated according to this system may call himself a “complete jurist” (“*Volljurist*”), another term often used is that of “*Einheitsjurist*”, which roughly translated means “unity-jurist”. With this education he has fulfilled the requirements to become a lawyer, a notary, a state prosecutor or a judge in the Federal republic of Germany. After passing the second state exam the “complete jurist” can endeavour to become accredited as a lawyer at a specific court at the relevant state justice department. The accreditation can principally be refused when one of the grounds mentioned in § 7 BRAO exist: the forfeiture of a basic right, previous convictions, dwindling of assets or if gainful employment (“*erwerbswirtschaftliche Tätigkeit*”) is exercised. Before accreditation of the lawyer an approval by the executive board of the responsible lawyer chamber is needed. Even if the lawyer chamber rejects the accreditation for no apparent reasons the state justice department cannot just overrule this rejection. The affected jurist in this case can apply at the Lawyer Court (“*Anwaltsgerichtshof*”-AGH) for a court order for his instatement as a lawyer. The same procedure is to be followed if the state federal department refuses the accreditation (§ 11 BRAO).

Conduct Regulation

Prices and Fees

Basically one has to distinguish in Germany between extra judicial (out of court) representation and client representation before court. In legal matters that are settled out of court the lawyer is free to determine his rates (§ 3 Abs. 5 BRAGO), there are no minimum or maximum fees that he may charge. Nearly 70% of all cases in which a lawyer is active can be settled out of court. Despite being able to charge flexible rates in out of court cases, more than 80% of lawyers charge rates according to the Federal Tariff for Lawyers (*Bundesgebührenordnung für Rechtsanwälte*) according to information provided by the Federal Lawyer Chamber.

For court cases the rule is that the prices set by the state in the Federal Tariff for Lawyers (“*Bundesrechtsanwaltsgebührenordnung*”) are minimum tariffs that have to be charged (§ 49b *Bundesrechtsanwaltsordnung*). This principle stipulates that the party losing the case has to cover the cost of the lawsuit. This does not only include the court costs, but also the

cost for own lawyer and for the lawyer of the opponent. However, only the fees that the loser has to pay for the lawyer of the winning opponent are fixed as a maximum rate. From their “own clients” lawyers are permitted to charge higher rates.

In Germany it is however forbidden to link the price to the outcome of the case (§ 49b *Bundesrechtsanwaltsordnung*) or to demand a certain part of the remuneration if the case is won (*quota litis*, § 49b *Bundesrechtsanwaltsordnung*).

Advertising

Until 1994 there existed a far reaching prohibition of advertising for lawyers. § 43b BRAO (since September 9, 1994 in effect) loosened the very strict advertising ban that was based on traditional professional class status law. However the direct and targeted advertisement for a lawyer or law firm is still prohibited according to § 43b BRAO, as well as and especially deceptive and impertinent or un-objective advertisement. In § 6 paragraph 1 of the BORA (professional code of conduct - “*Berufsordnung*”) it is stipulated that the lawyer may inform about himself as a person and the service he offers. According to paragraph 2 booklets of the practise or law firm, circular letters and other equivalent forms of information material are allowed. It is however forbidden to mention success rates or revenue volumes according to paragraph 3. Details of clients may only be published with their express consent. Apart from mentioning the respective specialisation or specialist title (see below) a lawyer is only allowed to mention a maximum of five areas of special interest and/or focus of activity, of which only three may be areas of main activity.

Regarding an internet presence (homepage) attention has to be paid to the new regulations according to law on online services, § 6 (*n.F. des Teledienstegesetzes* - TDG) where the identification and information requirements have been extended. Under the new law the following information generally has to be provided: address, contact details, public oversight, register entry details, sales tax identification). Lawyers especially have to list the following: lawyer chamber, occupational title and professional regulations. Reference also has to be made of the Federal Lawyer Order (“*Bundesrechtsanwaltsordnung* - BRAO), the Federal Tariff for Lawyers (“*Bundesgebührenordnung für Rechtsanwälte*” - BRAGO) and the Professional Regulatory Order for Lawyers (“*Berufsordnung für Rechtsanwälte* - BORA).

Forms of Business

Lawyers can practise as an individual lawyer, in the form of a co-partnership / joint practise (“*Sozietät*”), as an office partnership, as a freelancer, as employee or as a syndic-lawyer. The office-partnership or -sharing is simply a cooperation in terms of combined usage of technical and personnel resources to lower costs. In the case of a joint practise (“*Sozietät*”) the lawyers join forces to practice their profession together as one entity and practice. They

accept and represent the clients together, fees and remuneration are received collectively and they are collectively liable. Apart from the practising as an individual lawyer it is technically also possible to practise one's profession in the form of a company according to civil law ("*Gesellschaft bürgerlichen Rechts*" - *GbR*). Since 1998 it is furthermore possible to form a limited liability company ("*Gesellschaft mit beschränkter Haftung*" - *GmbH*) and lastly it is possible to form a cooperation with other professions, as is described in detail in the next chapter.

Inter-professional Co-operation

German lawyers can form, since the mid nineties, national and even international co-operations with tax advisers, chartered accountants, legal advisers ("*Rechtsbeiständen*") and patent lawyers (also in the form of a limited liability company). The limitation to these professions is made to protect the consumer says the Federal Lawyer Chamber. Consumers in Germany enjoy a number of protective measures. The lawyer may not disclose any information out of the counselling interview with the client to a third party. The documentation of the lawyer is protected from access or confiscation by other parties (freedom of confiscation). The lawyer has above these the duty to deny testimony if the client does not allow him to give this information to others. With the argument that these clients' protective rights and measures could be circumvented if the lawyer cooperates with persons who's professional relationships and contacts do not have these protective rights and obligations, the cooperation possibilities are limited to the above mentioned professions

Location and Diversification

The lawyer is obliged to open a practice to carry out her/his business. If a lawyer works in an EU state he can exempt himself from this duty according to § 29a *Bundesrechtsanwaltsordnung*.

Until the year 2000 a localisation imperative existed. The admittance of a case to a county /magistrates court ("*Landesgericht*") or the higher regional court ("*Oberlandesgericht*") was based on the localisation of the law practise. This rule, which implied a certain territorial protection, was finally scrapped in 2000 as far as the county/magistrate courts ("*Landesgericht*") are concerned. If a lawyer is registered at one county/magistrate court, he is automatically authorised to represent clients before the other similar German courts as well. However, lawyers licensed at one higher regional court ("*Oberlandesgericht*", OLG) are still not automatically authorised to represent before other OLGs, as the licensing procedure before OLGs is more comprehensive.

Furthermore until now it is forbidden for lawyers to run several branch offices (§ 28 BRAGO). On the other hand it is allowed that every lawyer may cooperate with other lawyers, not only within Germany, but also worldwide.

Continuing Education

Every lawyer is obliged to continue his education on a permanent basis according to § 43a Abs. 6 *Bundesrechtsanwaltsordnung*. How and on what scale is not stipulated further in the professional code of conduct.

Specialist lawyers (*Fachanwälte*, see par. Specialisation below) have to study yearly a certain amount of hours in their field of speciality. If they don't comply with this regulation their licence can be withdrawn.

To acquire this further and specialised knowledge various courses are offered. The German Lawyers Institute (*Deutsche Anwaltsinstitut e.V.*) of the Federal Lawyer Chamber offers every year a huge number of courses and lectures for this purpose. The same applies to the German Lawyers Association (*Deutscher Anwaltverein* - DAV).

Specialisation in the Profession

Lawyers in Germany can acquire so called specialised lawyer titles (*Fachanwaltsbezeichnungen*). The rules and regulations of these specialised lawyers are stipulated in the Federal Specialised Lawyers Order (*Fachanwaltsordnung* - FAO). According to § 1 FAO and § 43 c paragraph 1 sentence 2 BRAO there are currently the following specialisations: tax law, labour law, social law, family law, criminal law and insolvency law. According to § 43c Abs. 1 BRAO a lawyer may only specialise in a maximum number of two areas.

The decision to grant a specialised lawyer title rests with the lawyer chambers. Pre-requisites to obtain such a title are that the lawyer has gathered special theoretical knowledge in the particular field of law. Mostly this qualification is obtained by writing an exam about this subject after having attended courses on it for at least 120 hours. Besides this practical experiences in the relevant field have to be documented. In the particular field a minimum number of cases has to be completed and the lawyer must at least have practised for three years.

That it is allowed to advertise with further "fields of interest and specialisation" has already been mentioned above.

Compulsory Indemnity Insurance

For lawyers in Germany indemnity insurance is compulsory. The minimum amount for which professionals must be insured is 250,000 € per case and 1,000,000 € per business and year. If the risk is higher than this amount, then the lawyer, according to § 51 BRAO, has the obligation to insure himself for a higher amount. For many lawyers, especially those who are doing international business, the insurance covers much higher sums than those mentioned above.

Actual challenges and recent changes in regulations

There are possibilities of widening the activity field of lawyers in the future, in particular in the field of preventing law advice, which is supported by outsourcing of entrepreneurial services due to cost and flexibility considerations. Because firm successor problems will definitely endure in the coming years, additional lawyer activities will be demanded.

With regard to future market fields according to the environment, labour, social and data processing laws and according to economic consulting an increase in consulting needs can be expected.

During the next years a change in the kind of services is to be expected. Catchwords are: specialisation, inter-professional joined work and fusion.

In the last years an extension of the specialised lawyers denominations were discussed. According to §1 FAO (1.1.2003) denominations now can be awarded for: administrative law, tax law, labour law, social law, family law, criminal law and insolvency law with respective specialised knowledge according to the regulations of the specialised lawyers (FAO).

Lawyers, but also accountants and tax advisers, face a growing competition via economic jurists (*Wirtschaftsjuristen*): Law faculties in Germany are starting to certificate a diploma for the examined person receiving practical training in judicial or other legal work after having passed the first state examination (*Rechtsreferendar*), if they did not continue their education within the last ten years to achieve an „Assessor“.

One of the essential legal changes with regard to an inter-professional joint work in the 1990s in Germany was the "*Partnerschaftsgesellschaftsgesetz*". This law was amended 1998 and provides a regulation frame for partnerships among professionals.

The lawyers' organisation is asking for a structural revision of the Federal Tariff for Lawyers (*Bundesgebührenordnung für Rechtsanwälte*). An expert commission of the Federal Ministry of Justice (BRAGO structure reform commission) presented in August 2001 a concept. This

concept now is the basis of the recent government law concept „*Gesetzes zur Neuordnung des Rechtsanwaltsvergütungsrechts – RVNeuOG*“ (BT-Drucksache 14/9037).

Notaries

The German Federal Notarial Code - the relevant statute for the whole profession - classifies the Notary as a holder of a public office. A constitutional state owes a duty of legal security to its citizens, and therefore disputes have to be settled, or prevented from happening. An essential precondition for this security is the reliability of legal documents and other important legal statements.

The legislator has entrusted the function of an impartial, public institution primarily to Notaries. This special status is marked by the official seal, which is applied to all instruments issued by a Notary.

The importance of such notarial deeds is shown for example in court where they are accepted as one of the best means of evidence. This is also the case in enforcement proceedings: since it is an extremely severe intrusion into a person's privacy, it is only legally possible based on a final judgement or a notarial deed. Furthermore, public registration authorities – the companies' registry, land registry, register of associations - rely on the correctness of notarial deeds when they make an entry. Such bodies are thereby relieved of the manpower and time-consuming examination of often very complex facts, whilst still retaining their controlling function.

Notarial deeds have a special warning function: citizens are protected from the consequences of hasty actions by statutory provisions stipulating special formalities before taking important steps such as the purchase of real estate or the setting up of a binding mutual will.

Organisational structure of Notaries

The independence of Notaries is traditionally reflected in their self-governing bodies, the Notarial Associations. They represent the interests of the profession with regard to third parties, and at the same time operate as a regulatory authority for their members. In this way the Associations supervise professional compliance within their districts, and are authorised to issue binding professional ethical guidelines. Further, if a client has a complaint, he can apply to the Notarial Association. They also provide professional education to single-profession Notaries.

The *Bundesnotarkammer* (Federal Chamber of Notaries) in Cologne is the umbrella organisation for all the Associations. It works out common guidelines to all notarially relevant

questions, develops new concepts and acts on behalf of Notaries, in particular with political and economical institutions. The Federal Chamber of Notaries consists of the Council of Representatives with delegates sent by 21 associations. The members of the chambers, with around 11.000 Notaries (Dec. 2002), elect the Boards of the Chambers.

The Federal Association of Notaries also advises on legislation. Beyond this, many Notaries have joined together in Notaries' Societies.

Notaries, like advocates and tax advisers, have professional indemnity insurance. However such insurance generally excludes responsibility for intentionally caused damage. Contrary to other advisory professions, the clients of a Notary are protected in these situations: every Notarial Association has fidelity insurance, which covers such damages. Since 1981 a fund exists in Cologne into which every Notary contributes.

The Deutsches Notarinstitut (German Institute of Notaries) was created in Würzburg in 1993 as an initiative and institution of the *Bundesnotarkammer*. Any Notary can refer to it when he comes across an unusual or particularly complicated legal problem in his practice. The Institute supplies Notaries with technical publications and other professional information.

There is the *Fachinstitut für Notare* (Notarial Institute) within the *Deutsches Anwaltsinstitut* (German Institute of Advocates) in Bochum. The Institute offers continuing education and specialist courses to Advocates who wish to go on to become a Notary, and also to trainee Notaries.

Controlling Notaries

As a rule the Notary is not a civil servant, but is self-employed. He works at his own risk: the Notary is liable with all his property for damage caused by him. Because he is not a civil servant, the Notary works independently from any directions of a public authority. Unlike an Advocate, the Notary does not have to focus on the interests of only one party. Thus in a real estate purchase contract the Notary must have to point out the consequences of a clause to both parties involved.

Conditions for admission: Each Notary must be personally and professionally qualified and must swear an oath that he will conscientiously conduct his office. Periodically the President of the competent Regional Court inspects for compliance with all relevant statutes and regulations, as well as correct billing of the Notary's clients. In the case of complaints a disciplinary procedure can be instituted, and for very grave offences the Notary may even be dismissed from office.

Notaries international

In the light of increasingly complex international structures and integration fewer and fewer legal problems can be solved on a mere national level. As a consequence German Notaries have co-operated with foreign partner organisations. Thus the *Bundesnotarkammer* also has an office in Brussels. For example, a close interchange of experience and work on common concepts takes place in subjects such as electronic commerce, data security or cross border conveyance.

On a European level, in order to represent common interests to the consumer, various European notarial organisations have formed the Conference of the Notarial Associations of the European Union which runs an office in Brussels. There Notaries co-operate in the law-making process and give expert opinions in close contact with EU Institutions.

Notaries strive to introduce common standards of service on a European level. A first step in this direction was the European Code of the Notarial Professional Ethics (Deontology) adopted in 1995 by the Conference of the Notarial Associations of the European Union in Naples. It sets out ethical principles such as independence, confidentiality, impartiality and also conditions of a Notary's function such as training or professional indemnity insurance.

On an international level the *Union Internationale du Notariat Latin* - U.I.N.L. - serves as a forum for information and exchange of opinion. More than 60 national Notaries' organisations belong to the U.I.N.L.

Market Entry**Tasks and exclusive tasks provided by German Notaries**

At first sight, notarial activity is restricted to certification and authentication. However before certifying a document, the Notary must ascertain the real intentions of the parties, draft and read out the relevant contracts and statements, advise on the consequences and point out any risks and dangers. When authenticating, that is to say when confirming the authenticity of a signature or a document, the Notary examines the identity of the signatory or the conformity of the copy to the original produced and thereby protects commerce from forgeries and the parties involved from damage. In practice, Notaries act in many fields. Some examples:

Real estate law

This is one of the main areas of a Notary's activity. He acts in purchase contracts for land, houses and apartments, as well as in real estate donations, either in connection with estate

planning or the transfer of a business to the next generation. The Notary not only drafts the necessary documents and certifies them but also impartially assists the parties involved in the execution of these contracts. Thus, he obtains - if necessary – consents from public authorities, sees to the removal of charges in the land register, protects the buyer by lodging a caution in the land register and handles monies entrusted to him in a client account. For the security of loans he certifies land charges and mortgages. Finally the Notary is competent to auction real estate and to partition real estate rights in the new federal states between owners deriving their ownership from titles acquired before 1945 and the actual users of such real estate.

Commercial law and the law of associations

If a person or a company wants to do business at large, it must be registered in the companies' register. The Notary drafts and arranges the notifications and authenticates the signatures of the persons involved. Furthermore he drafts, produces and certifies the statutes for partnerships and limited partnerships (personal corporations), and for private and public limited companies (capital corporations).

Alterations to the statutes of a corporation such as the change of domicile or an increase in capital must be certified by a Notary and notified to the companies' register, as do changes in the management or the board.

Advice on foundation, registration in the register of associations and help with changes in the statutes in addition has to be done for the law of associations.

Family law

When parents adopt a child, the Notary drafts the necessary applications to the Guardian's Court.

Before or after a marriage he advises on and certifies the marriage contract, which for example may provide for the separation of the spouses' property, maintenance and custody. The Notary can draft a tailor-made agreement on the distribution of the assets earned by the spouses during their marriage. If the marriage should fail, the Notary can certify agreements on the distribution of assets, pension rights or maintenance. In doing this he is legally bound to remain impartial.

Law of succession

In consultation, Notaries not only focus upon the fiscal aspects of wills and contracts of inheritance, but also consider family matters such as support to dependants or the

avoidance of quarrels and disputes within the family. Also when passing a business on to a suitable successor, a contrived succession arrangement can avoid protracted and costly conflicts. Finally, but not least, the Notary can assist in the issue of the Certificate of Inheritance, or, generally in the case of insolvent estates, if the inheritance is to be declined. He drafts and submits the relevant applications to the Probate Court.

Education and Entrance to the Professions

A Notary has to be a German citizen with qualification to be a justice according the German Justice Law (§5 BNotO).

In Germany, for historical reasons, three different types of Notaries have been evolved: the "single profession Notary", the "Advocate Notary" and the "state-employed Notary".

As the name implies, single profession Notaries practise exclusively as Notaries, Advocate Notaries exercise the profession of a Notary alongside the profession of an Advocate. Both of them are still self-employed, and therefore practise independently and at their own risk. State-employed Notaries are paid by the state.

Whatever the type of Notary may be, all have studied law and undergone practical training with above average grades, and are qualified to be judges (except for the state-employed Notaries in the district of the Higher Regional Court of Stuttgart who receive special legal training). Furthermore, the personality of applicants for the position of a Notary must be suitable for an office that is considered by the general public as especially trustworthy.

If there are several applicants for a single vacant notarial office, the Minister of Justice for the relevant federal state will decide according to the merit principle.

Prospective single profession Notaries must pass the Second State Examination with particularly good grades in order to be admitted to the three years of preparatory training as a trainee Notary, during which they have to prove their practical suitability for the profession.

Prospective Advocate Notaries must have practised at the bar for five years successfully and without any complaints. During this time they have to undergo continuing education by acting as locum Notaries and attending courses in order to acquire the professional knowledge especially relevant for work as a Notary. Their marks in the Second State Examination are also taken into consideration when they are appointed.

State-employed Notaries are selected in accordance with the principles applying to civil servants.

Further detailed information for the entrance conditions for notaries are given in: *Bundesnotarkammer 2002, Der Zugang zum Anwaltsnotariat*, Köln (available via the secretariat of the *Bundesnotarkammer*).

Conduct Regulation

Prices and Fees

Notarial tariffs are regulated by law. The fees are determined solely on the basis of the importance and value of the business transaction and not by the amount of the notary's work input necessary. There is a single federal system of costs, related to the kind of business transaction. Actual fees are calculated from the corresponding tariff schedule. The fee for certifying a document takes into account the notary's advice, production of the document, and the act of certification as such.

Further detailed information: *Gesetz über die Kosten in Angelegenheiten der freiwilligen Gerichtsbarkeit (Kostenordnung) in der Fassung vom 26. Juli 1957* (BGBl. I S. 960), last change by the law of July 23, 2002 (BGBl. I S. 2850).

Advertising

The law on notaries - §29 BNotO (April 2002) - forbids any commercial undertakings, especially advertising that contradicts the notary's public office status.

Advertising is under discussion for almost all liberal professions. Advertising (so called information advertising) is discussed with respect to notaries by the following foci:

- Internet presentation
- Headlines according to catch-up advertising (*„Blickfangwerbung“*)
- Tendency: Development and care of office (*„Kanzlei“*)-images will be allowed, if the professional background is visible
- No self-evaluation
- There are acceptance problems with regard to the new European § 2 UWG (Comparable Advertising)

Forms of Business

As mentioned before, single profession Notaries practise exclusively as Notaries, Advocate Notaries exercise the profession of a Notary alongside the profession of an Advocate. Both of them are still self-employed, and therefore practise independently and at their own risk. State-employed Notaries are paid by the state. The type of Notary varies from federal state to federal state.

The single profession Notary is preferred by Bavaria, Brandenburg, Hamburg, Mecklenburg-Western Pomerania, Rhineland-Palatinate, Saarland, Saxony, Saxony-Anhalt, Thuringia and the Rhine territories of North-Rhine/Westphalia. Overall there are 1700 single profession Notaries.

Around 9,000 Advocate Notaries practise in Berlin, Bremen, Hessen, Lower Saxony, Schleswig-Holstein and the Westphalian territories of North-Rhine/Westphalia.

State-employed Notaries - around 630 - are found in Baden-Württemberg, in the district of the Higher Regional Court of Stuttgart all three types of Notaries co-exist, and in the district of the Higher Regional Court of Karlsruhe judges act as Notaries.

Forms of business is described in §20 pp BNotO with its areas

- Recording (*Beurkundungen und Beglaubigungen* (§20 BNotO))
- Other legal forms (*Sonstige Bescheinigungen* (§21 BNotO))
- Taking oaths (*Abnahme von Eiden; Aufnahme eidesstattlicher Versicherungen* (§22 BNotO))
- Keeping of values (*Aufbewahrung und Ablieferung von Wertgegenständen* (§23 BNotO))
- Care and representation (*Betreuung und Vertretung der Beteiligten* (§24 BNotO))

Inter-professional Co-operation

Though in many liberal professions the question of co-operation among professions is discussed, there is no co-operation allowed by the BNotO. I.e.: single profession Notaries practise exclusively as Notaries, Advocate Notaries exercise the profession of a Notary alongside the profession of an Advocate. Both of them are still self-employed, and therefore practise independently and at their own risk. State-employed Notaries are paid by the state.

Location and Diversification

Though the location is under discussion in the legal services in general, there is still a strict regulation concerning the location of a Notary.

A certain location (*Amtssitz*) is assigned for the Notary (§10 BNotO).

The authority area (*Amtsbereich*) is the area of the respective court (*Amtsgericht*).

The *Amtsbezirk* of a Notary §11 BNotO is the *Oberlandesgerichtsbezirk* of the *Amtssitz*.

According to §11 BNotO it is allowed to support a foreign notary.

Continuing Education

The Chamber of Notaries provides guidelines for the continuing education (§ 67 BNotO, *Absatz 2, 10*) notaries have to follow (§14 BNotO General Occupational Duties).

Specialisation in the Profession

According to the BNotO no specialisation is allowed. Thus, the entire tasks of a Notary as described above have to be fulfilled.

There is a compulsory indemnity insurance (§19 BNotO *Berufshaftpflichtversicherung*) via the state specific justice administration.

Actual challenges and recent changes in regulations

Since the particular situation of notaries within the field of liberal professions is strongly regulated, and changes in the tasks of notaries only can be made by law, there are little changes with respect to the entrance conditions and the notary tasks to be expected.

Though recent changes in different laws (*Verfahrensrecht, Bürgerliches Recht, Handels- und Gesellschaftsrecht und Steuerrecht*) will affect notaries in different ways, however, not changing their already defined tasks and dues (see internet page of BRAK: *Gesetzgebungsübersicht*). According to their occupational law (BNotO) only the conversion from DM to EURO and the novelation 1998 with a systematic new ordering with regulations of a computer assisted accounting or new regulation of the storage of documents has to be mentioned.

Economic Characteristics (Lawyers and Notaries)

Germany – Structure and dynamics (NACE 7411)

*Enterprises, Turnover, Employment*¹⁷: The only data available for Germany at the 4-digit level are those recently made available by EUROSTAT for the year 2000.

Table 7-17 Firms, Turnover and Employment; Germany 7411

Year	Number of Firms	Turnover in Mio. EUR	Employment	No. of Professionals
2000	31 195	11 863	200 461	105 724

Source: EUROSTAT, IHS

The key indicators are thus also restricted to the year 2000:

Table 7-18 Key Statistics, Legal Services: Germany 7411

Year	Turnover per Firm	Employment per 1000 firms	Turnover per person employed	Employment per Mio. of Pop	Firms per Mio. of Population
	1000 EURO		1000 EURO		
2000	380	6 426	59	2 440	380

Source: EUROSTAT, IHS

Number of enterprises: In 2000 there are 31,195 enterprises in the legal services (NACE classification 7411). Dominant are the 22,922 single enterprises (*Einzelunternehmen*) (73.5%) followed by 8,152 personal associations (*Personengesellschaften*) (26.1%), 83 capital associations (0.3%) and 37 other legal forms (0.1%).

Active persons (as of September 30, 2000): Altogether there are 200,461 persons active in the legal services with 151,532 wage and salary earners (76% of all active persons).

Expenditures: Total expenditures are 6,162,876 EUR which are 51.4% of total turnover. Among the expenditures personal expenditures are dominant with 3,283,472 EUR, i.e. 53.3% of all expenditures. 2,879,404 EUR are material expenditures, i.e. 46.7% of all expenditures. Among the material expenditures let and lease is the main expenditure block with 849,112 EUR (74.1% of material expenditures).

Wages and salaries: 15,532 persons are wage and salary receivers in the legal services. The total personal expenditures are 3,283 Bill. EUR (3,283,472,000 EUR). Among these expenditures wage and salaries count for 2.712 Bill. EUR, i.e. 82,6% of total personal

¹⁷ EUROSTAT

expenditures. Social expenditures are 571,430,000 EUR, i.e. 17.4% of total personal expenditures.

Lawyers

Members of the profession: Within the re-united Germany in the last decade the number of lawyers increased continuously. From 1990 with 56,638 lawyers to 2002 with 116,305 this is more than a doubling.

It is to be noted that the Federal Chamber of Lawyers includes advocate notaries in their statistics of total number of lawyers. Remarkably there is a pronounced decrease in the relative proportion of advocate notaries (but still an increase in absolute numbers) over the years: the advocate notaries quota in 1980 of 18.4% decreased to 7.5% in 2002. Note, that there is no access to an advocate notary licence in the five new Federal states.

Table 7-19 Quantitative development of lawyers 1980 to 2002 in Germany

Year*	Lawyers (1)	Among them Advocate Notaries (2)	Lawyers without Advocate Notaries (1)-(2)	Advocate Notaries %
1980	36 077	6 633	29 444	18.4
1985	46 933	7 174	39 759	15.3
1990	56 638	7 877	48 761	13.9
1991	59 446	8 180	51 266	13.8
1992	64 311	8 657	55 654	13.5
1993	67 120	8 616	58 504	12.8
1994	70 438	8 650	61 788	12.3
1995	74 291	8 715	65 576	11.7
1996	78 456	8 857	69 599	11.3
1997	85 105	9 031	76 074	10.6
1998	91 516	9 045	82 471	9.9
1999	97 791	8 925	88 866	9.1
2000	104 067	8 838	95 229	8.5
2001	110 367	8 897	101 470	8.1
2002	116 305	8 765	107 540	7.5

* per 1.1. of each year, since 1992 with the new five Federal states

Source: Federal Chamber of Lawyers (Bundesrechtsanwaltskammer, BRAK) 1.1.2002

The *Bundesnotarkammer* reported a total membership of 10,562 in 2001, up just slightly from 10,343 in 1995, having been 8,890 in 1990, (IHS Questionnaire). The *Deutscher Anwaltverein* reported a membership of 55,000 in 2001, up from 33,500 in 1990 (IHS Questionnaire).

Women in the profession: Women increasingly participate in the labour market; the general female labour force participation rate increases from 31.3% in 1950 via 39.2% in 1990 (West

Germany) to now 44% in 2001 (West and East Germany). In the former DDR (East Germany) the female labour participation rate was always higher from 52.5% in 1950 to 78% in 1990. The gap between West and East Germany is diminishing: the female labour force participation rate in East Germany now is 45.5% in 2001, in West Germany about 43.6% in 2001. All over Germany the general female participation rate now is 44% (2001).

The importance of female lawyers increased within the last years by the absolute numbers as well as in its relative portion to all lawyers. As in the last years the female lawyer quota increased more than proportionally compared to the overall lawyer's growth rate. Per 1.1.2002 there are 31.482 female lawyers with a female lawyer quota of about 27%¹⁸. An additional 358 female lawyers were licensed compared to 2001, the year before. That is a growth rate of 12.7% compared to 5.4% for all lawyers. The Federal Chamber of Lawyers (*Bundesrechtsanwaltskammer*, BRAK) expects a further increase because the number of female law students is still increasing.

Age structure: The average starting age when for lawyers is about 30 years. The profession's exit age is about 70 years (*Rechtsanwaltskammer* Koblenz 1992). The average age of active lawyers was about 44 years in the eighties with an increase within the last 30 years (Braun 1986).

Economic Situation: The following economic indicators are based on the Cost Structure Statistic for lawyers of the Federal Statistical Office and on the Statistical Information System for Lawyers STAR 2001 of Institute for Liberal Professions (IFB, Nürnberg). Further information for the entire legal services is given in the notary chapter based on the Service Statistics of the Federal Statistical Office.

In the following two tables: the personal yearly charge (fee) turnovers (without sales tax) of lawyers in self-employed activity are specified for the 1990s. In some Federal States (*Bundesländer*) there are no advocate notaries but only single notaries; i.e. a lawyer can not be a lawyer and a notary simultaneously. The numbers refer exclusively to lawyer activities without being a notary. Other income figures like from a syndic activity are not regarded.

We inspect two groups: on the one hand lawyers exclusively active in an own office, and on the other hand exclusively self-employed with at least 40 working hours a week (so called full time lawyers).

¹⁸ Note, the BRAK lawyers data here encompasses advocate notaries.

Table 7-20 Personal yearly fee turnover of lawyers exclusively active in own offices (without advocate notaries) in West and East Germany 1993 to 1999

Personal Yearly Fee Turnover of Lawyers Exclusively Active in Own Offices						
Year	Lawyers in single offices active		Lawyers in local co-partnership active		Lawyers in regional co-partnership active	
	West in DM	East in DM	West in DM	East in DM	West in DM	East in DM
1993	212 000	175 000	291 000	219 000	800 000	-
1994	236 000	216 000	314 000	226 000	762 000	-
1995	251 000	204 000	322 000	257 000	1 069 000	-
1996	232 000	254 000	331 000	263 000	630 000	435 000
1997	241 000	233 000	344 000	274 000	519 000	394 000
1998	210 000	220 000	333 000	256 000	654 000	365 000
1999	218 000	216 000	329 000	215 000	549 000	298 000

Source: Statistisches Berichtssystem für Rechtsanwälte STAR 2001, Schmucker 2002

The personal yearly fee turnover of West German lawyers in own offices decreased till 1998 with a recent slight increase to 218,000 DM in 1999. Whereas in East Germany the decline is continuing: in 1999 they gained on average 216,000 DM, i.e. 1.8% less than the year before. Though East German lawyers turnover is lower now than their West German's colleagues the discrepancy is only marginal now.

The average turnover in local co-partnerships (*lokale Sozietäten*) in the last years is more than a third higher than in a single office situation. There is a recent decrease in both parts of Germany which is remarkably higher in East Germany with -16.1% than in West Germany - 1.3%.

The highest reduction in turnover recently has occurred in regional co-partnerships (*überörtliche Sozietäten*) 1998 to 1999: West Germany by 16.1% and East Germany by 18.4%. Here the West East differences are most distinguished with 549,000 DM in 1999 for West Germany and 298,000 DM for East Germany in 1999.

The full time lawyers show a similar turnover picture compared to the situation of lawyers exclusively with an own office (see table).

Table 7-21 Personal yearly charge turnover of full time lawyers (without advocate notaries) in West and East Germany 1993 to 1999

Year	Personal Yearly Charge Turnover of Full Time Lawyers					
	Lawyers in single offices active		Lawyers in local co-partnership active		Lawyers in regional co-partnership active	
	West in DM	East in DM	West in DM	East in DM	West in DM	East in DM
1993	246 000	179 000	293 000	219 000	800 000	-
1994	265 000	217 000	326 000	226 000	931 000	-
1995	289 000	209 000	325 000	262 000	867 000	-
1996	266 000	268 000	346 000	267 000	668 000	465 000
1997	280 000	243 000	355 000	274 000	485 000	394 000
1998	254 000	231 000	348 000	260 000	654 000	376 000
1999	267 000	227 000	342 000	218 000	568 000	308 000

Source: Statistisches Berichtssystem für Rechtsanwälte STAR 2001, Schmucker 2002

Again, the turnovers in East Germany are lower than in West Germany with a larger recent difference between West and East Germany compared to the own office lawyers.

In 1999 finally this gap was -15% for lawyers in single offices, 27.3% for lawyers in local co-partnerships and even 45.8% in regional co-partnerships.

Fee revenue: Besides the personal fee revenue the personal turnover of lawyers is of interest. The following Tables show the development in the 1990s.

Table 7-22 Personal yearly turnover of lawyers exclusively active in own offices (without advocate notaries) in West and East Germany 1993 to 1999

Year	Personal Yearly Turnover of Lawyers exclusively active in own offices					
	in single offices active		in local co-partnership active		in regional co-partnership active	
	West in DM	East in DM	West in DM	East in DM	West in DM	East in DM
1993	92 000	71 000	151 000	99 000	351 000	-
1994	92 000	73 000	166 000	112 000	338 000	-
1995	107 000	84 000	161 000	108 000	306 000	-
1996	94 000	93 000	162 000	115 000	249 000	164 000
1997	94 000	84 000	171 000	116 000	243 000	168 000
1998	84 000	84 000	161 000	124 000	273 000	148 000
1999	83 000	78 000	159 000	92 000	279 000	127 000

Source: Statistisches Berichtssystem für Rechtsanwälte STAR 2001, Schmucker 2002

The general picture: after a period of increasing turnovers in the early 1990s, from 1997 onwards the personal yearly turnover decreased regardless whether there is a single office, local or regional co-partnership activity. There is one exception: the growing regional co-partnership personal yearly turnover in West Germany, which showed a slight increase from 1998 to 1999 by 9.9% to 279,000 DM.

With regard to full time lawyers, the general picture is one of increased turnovers in the early 1990s but decreasing turnovers from 1997 onwards (see table).

Table 7-23 Personal yearly turnover of full time lawyers (without advocate notaries) in West and East Germany 1993 to 1999

Year	Personal Yearly Turnover of Full Time Lawyers					
	Lawyers in single offices active		Lawyers in local co-partnership active		Lawyers in regional co-partnership active	
	West in DM	East in DM	West in DM	East in DM	West in DM	East in DM
1993	104 000	73 000	158 000	101 000	342 000	-
1994	104 000	76 000	164 000	111 000	323 000	-
1995	123 000	86 000	162 000	110 000	327 000	-
1996	107 000	99 000	168 000	120 000	262 000	172 000
1997	108 000	87 000	175 000	116 000	240 000	168 000
1998	101 000	89 000	169 000	126 000	273 000	151 000
1999	101 000	83 000	168 000	93 000	294 000	133 000

Source: Statistisches Berichtssystem für Rechtsanwälte STAR 2001, Schmucker 2002

However, the average personal yearly turnover of full time lawyers in all of the different partnerships is higher than for those lawyers who are exclusively active in an own office.

The gap between West and East Germany is evident: in 1999 for the single office situation – 17.9%, for local co-partnerships – 45.6% and for regional co-partnerships even – 54.8% compared to West Germany.

To summarize: the partnership situation results in quite different personal turnovers (charge turnovers or just turnovers) with higher turnovers in more widespread activities. Simultaneously, the gap between the turnover situation between West and East Germany is increasing in more widespread activities. The characteristic picture for all respective turnovers over the 1990s: after a period of growing turnovers from 1997 on turnovers are decreasing.

The above figures may be compared with information from BRAK regarding the breakdown of turnover for 1999.¹⁹ For the three categories of lawyers - in single offices (55% of lawyers), local co-partnerships (35% of lawyers), and regional co-partnerships (10% of lawyers) - the average personal turnover was 76,694 Euro (150,000 DM), 146,229 Euro (286,000 DM) and 214,743 Euro (420,000 DM) respectively. Total costs amounted to 52%, 57% and 51% of total turnover, of which the costs of personnel accounted for approximately 47%, 49% and 54% of total costs, respectively. The average surplus before tax in 1999 was thus 29,655 Euro (58,000 DM), 63,400 Euro (124,000 DM) and 106,349 Euro (208,000 DM) for these three groups of lawyers respectively, while the 1999 after tax surplus amounted to

¹⁹ Accompanying information to IHS Questionnaire.

22,673 Euro (44.344 DM), 41,504 Euro (81,175 DM), and 61,698 Euro (120,671 DM) on average, respectively.

Function as instructors: For the analysis of the importance of lawyers as instructors there are data available from 1990 to 2000 (see table).

In 2000 the number of apprentices was 16,561. The new regulations for qualifying as a lawyer assistant (*Rechtsanwaltsgehilfe/in*) started 1995 with a crossover from two years to 1997. Over the 1990s decade the number all of the different legal apprentices increased by 12.4%.

Relatively constant is the female apprentice quota, which remarkably is about 97% from 1980 on to 2000. In West Germany legal advising professions together instructed between 23.000 in 1980 to 27,000 persons in 2000.

Table 7-24 Apprentice lawyers - Germany, 1990 to 2000

Germany	1990	1995	2000
<i>Rechtsanwaltsgehilfe/in bzw. Rechtsanwaltsfachangestellte/r</i>	13 400	15 869	16 561
<i>Notargehilfe/in bzw. Notarfachangestellte/r</i>	720	1 513	1 043
<i>Rechtsanwalts- und Notargehilfe/in bzw. Rechtsanwalts- und Notarfachangestellte/r</i>	10 719	11 280	10 424
<i>Rechts- und Patentanwaltsgehilfe/in bzw. Rechts- und Patentanwaltsfachangestellte/r</i>	131	168	282
Total	26 960	30 825	30 310

Source: Statistisches Bundesamt 1991, 1996, 2001: Bildung und Kultur, Reihe 3, Berufliche Bildung

Altogether there are approximately 1,600,000 apprentices (all occupations) in Germany. The percentage of legal apprentices in this total is about 2%.. Advocates instruct about 21% of all apprentices instructed by liberal professions.

Students: Information about law students as beginners and about passed examinations (first and second legal exams) from 1959 to 2001 is shown in the table below.

As the table shows there are distinct fluctuations, including, of course, a specific increase since the re-unification of Germany in 1990. A peak of law studies beginners was reached in 1995. Since then a slight decrease to more than 18,000 beginners in 2001 can be observed. Note that the average study duration is around 10 to 11 semesters. Thus, roughly speaking, the 1995 beginners should have their second examination around 2001. If we compare two figures (20,153 beginners in 1995 and 10,697 in 2001 with passed second examination) we can estimate the drop out quota to be around 50%.

Table 7-25 Law Students in Germany 1959 to 2001

Year	Beginners	Passed examinations	
	Law studies First Specialized Semester	First Legal Federal Examination	Second Legal Federal Examination
1959	3 916	3 153	2 308
1960	3 173	3 400	2 173
1965	4 805	2 698	2 919
1970	6 703	3 712	2 758
1975	12 206	4 326	5 353
1980	14 446	5 750	4 123
1985	11 995	6 015	5 265
1990	15 953	8 127	6 853
1995	20 153	11 380	10 653
1996	19 907	12 573	10 689
1997	19 210	12 393	9 761
1998	19 198	12 153	10 397
1999	18 836	12 099	10 710
2000	18 455	11 893	10 366
2001	18 143	11 139	10 697

From 1992 including new Federal States; winter term (Semester)

Source: Statistisches Bundesamt: Fachserie 11, Reihe 4.1. Studenten an Hochschulen

In addition to university studies there are at least two years of being a referent (*Referendar*) for the prospective lawyer. Thus, there are at least 8 years of education and training: so, for example, study beginners in 2001 will enter the labour market around 2009. Even if we account for a constant drop-out quota of 50%, at the end of this decade nine to ten thousand new lawyers will enter the arena. Assuming that over the years there is an approximately constant distribution of 'where to go' among the new 'full jurists' (*Volljuristen* with second legal examination), then: 45% of these graduates will be lawyers, 45% will be in the civil service (with 18% as judges or attorneys) and 10% will be in the economic sector *per se* (Sahner et al. 1989, Hommerich 1988).

Notaries

Members of the Profession: The development from 1980 to 2002 of the number of notaries in Germany, is shown in the table below.

The number of single professional notaries (further abbreviated as single notaries) increased from 942 in 1980 to 1,609 in 1994 (Jan. 1 1994). In considering this remarkable increase of about 70% till the mid 1990s one has to take into account the fact that there were 368 'new'

single notaries in 1991 as a result of re-unification (485 in 1992). Since 1994 the number of single notaries in Germany has changed only slightly, a result of the regulations. Now and in the last years the number of single notaries is 1,663 in Germany.

Table 7-26 Number of notaries in Germany 1980 to 2002

Year ¹	Total	Advocate Notaries ²	Single Profession Notary
1980	7 567	6 625	942
1982	7 844	6 881	963
1984	7 968	7 000	968
1985	8 164	7 174	990
1986	8 347	7 345	1 002
1987	8 493	7 490	1 003
1988	8 640	7 639	1 011
1989	8 724	7 710	1 014
1990	8 890	7 877	1 013
1991	9 562	8 180	1 382
1992	10 141	8 657	1 484
1993	10 179	8 616	1 563
1994	10 259	8 650	1 609
1995	10 343	8 715	1 628
1996	10 439	8 857	1 636
1997	10 691	9 031	1 660
1998	10 701	9 045	1 656
1999	10 588	8 925	1 663
2000	10 495	8 838	1 657
2001	10 562	8 897	1 665
2002	10 428	8 765	1 663

¹From 1992 inclusive the new five Federal states; - no information available.

²There is no access to the profession of advocate notaries in the new Federal states.

Source: Bundesrechtsanwaltskammer, Bundesnotarkammer: Notarstatistik (per 01.01. of each year)

The highest number of advocate notaries was reached in 1998 with 9,045 persons. Since then there has been a slight decrease to 8,765 advocate notaries in 2002. Because the number of advocate notaries is dominant within all notaries, the total number of notaries has its peak 1998 too, with a slight decrease to 10,428 notaries in 2001 in Germany.

Age structure: There is no individual age information about notaries in Germany available. However, the regional notary chambers estimate a starting age of ca. 35 years. In former times the profession's retirement age was not limited. Now the profession's retirement age is 70 years. The Federal Notary Chamber estimates the average age of leaving the profession at about 67 years. The average age of the active notaries in Germany is between 45 and 55 years.

Women in the profession: There is a relatively low percentage of female notaries in the old Federal States (*alte Bundesländer*, former West Germany); the recent female quota is 5.9%

per Jan. 1 2002. In contrast, there is a quite high percentage of female notaries in the new Federal States (*neue Bundesländer*, former GDR, East Germany), about 45.3% per Jan. 1 2002. Altogether in Germany the female notary quota per 1.1.2002 was 18.6%.

Function as employer: Statistics about the employment situation of notaries are neither available from the regional chambers, the federal notary chamber nor official statistics. The notary chamber of Koblenz estimates an average number of between five and seven employees in their region. The percentage of women seems to be as high as in ordinary bureau occupations.

Function as instructors: Notaries educate and qualify specialised notary's employees (*Notarfachangestellte*). 1995 the qualification changed: until 1997 there was a qualification as a notary assistant (*Notargehilfe*). The qualification period was two and a half years until 1988, since then three years.

Since 1995 the number of apprentices is decreasing continuously. It decreased from 1,582 apprentices in 1995 via 1,321 in 1997 to 1,034 in 2000, where the number of notaries as instructors remains constant that period about 1,663 notaries.

With several types of notaries as single notaries and advocate notaries the final qualification can be notary assistant or lawyer and notary assistant.

Legal Services, Germany 7411**Table 7-27 Firms per legal form (2000)**

NACE	Branch	total	individual enterprise	Firms		
				business partnership in units	joint-stock company	other forms
74.11	Legal services	31 195	22 922	8 152	83	37

Source: Statistisches Bundesamt

Table 7-28 Turnover and persons employed (2000)

NACE	Branch	Total turnover	Total employment in units - point in time (Sept. 30th)		Employees in % of employment
		in 1 000 EUR	total	Employees	
74.11	Legal services	11 982 441	200 461	151 532	76

Source: Statistisches Bundesamt

Table 7-29 Total expenditure (2000)

NACE	Branch	Total expenditure	personnel costs	material expenditure	thereof leasing and renting	Expenditure in % of total turnover	Personnel costs in % of total expenditure	Material expenditure in % of total expenditure
74.11	Legal services	6 162 876	3 283 472	2 879 404	849 112	51.4	53.3	46.7

Source: Statistisches Bundesamt

Table 7-30 Number of employees and personnel costs (2000)

NACE	Branch	Number of employees (Sept. 30th) in units	total	personnel costs	social costs to employer	social costs to employer
				gross wages and salaries in 1 000 EUR		as % of personnel costs in %
74.11	Legal services	151 532	3 283 472	2 712 042	571 430	17.4

Source: Statistisches Bundesamt

Table 7-31 Turnover, stocks and material costs (2000)

NACE	Branch	Total turnover	stocks in 1 000 EUR	
			at the beginning of the year	at the end of the year
74.11	Legal services	11 982 441	378 045	451 126

Source: Statistisches Bundesamt

Table 7-32 Investment, taxes and subsidies (2000)

	material expenditure	total investment	all taxes	subsidies
74.11	2 879 404	344 275	94 461	6 923

Source: Statistisches Bundesamt

Table 7-33 Firms in turnover size classes (2000)

NACE 74.11	Firms in units	Turnover in 1 000 EUR	Employment - (Sept. 30th)		total expenditure	personnel costs	material expenditure	thereof leasing and renting	total investment	all taxes	subsidies	
			total	number of employees								
total	31 195	11 982 441	200 461	151 532	6 162 876	3 283 472	2 879 404	849 112	344 275	94 461	6 923	
more than	less than	thereof in turnover size classes										
16 620-	50 000	4 374	144 047	6 745	2 377	237 860	139 780	98 080	48609	6903	2248	389
50 000-	100 000	6 382	462 468	14 365	7 906	221 218	88 876	132 342	44415	36464	8025	982
100 000-	250 000	9 964	1 607 842	39 889	27 312	829 718	421 619	408 099	146746	53919	22613	2168
250 000-	500 000	5 586	1 973 613	42 260	32 546	1 050 639	613 505	437 134	141033	67592	16308	1875
500 000-	1 Mio.	3 016	2 068 980	39 138	31 861	1 099 221	651 698	447 523	131675	59341	15661	660
1 Mio.-	2 Mio.	1 222	1 636 480	28 632	24 845	833 909	458 679	375 230	93448	40502	9008	420
2 Mio.-	5 Mio.	486	1 439 596	14 927	12 177	710 148	343 444	366 704	85408	33837	6469	291
5 Mio.-	10 Mio.	95	659 691	6 362	5 511	373 640	166 270	207 370	33411	15324	4930	35
10 Mio. -	25 Mio.	28	425 221	2 891	2 503	224 636	115 962	108 673	19400	9290	251	1
25 Mio.	and more	41	1 564 504	5 249	4 494	581 887	283 639	298 248	104967	21103	8948	102

Source: Statistisches Bundesamt

Table 7-34 Firms in employment size classes (number of persons employed) (2000)

NACE 74.11	Firms in units	Turnover in 1 000 EUR	Employment - (Sept. 30th)		total expenditure	personnel costs	material expenditure	thereof leasing and renting	total investment	all taxes	subsidies	
			total in units	number of employees								
total	31 195	11 982 441	200 461	151 532	6 162 876	3 283 472	2 879 404	849 112	344 275	94 461	6 923	
more than	less than	thereof in employment size classes										
bis	4	17 467	1 858 198	38 811	21 879	851 378	355 974	495 403	160 387	84 085	34 367	2 561
5-	9	8 262	3 222 067	53 484	39 924	1 494 961	821 016	673 944	240 334	78 317	22 835	2 080
10-	19	4 169	2 978 308	54 626	43 471	1 764 721	1 012 715	752 006	220 255	80 778	18 304	1 628
20-	49	1 105	2 137 208	29 926	25 240	1 017 604	574 223	443 381	113 500	48 335	8 647	626
50-	99	122	708 269	8 156	6 793	414 346	194 922	219 424	44 748	20 567	1 329	26
100-	249	61	498 501	11 029	10 407	300 426	161 658	138 768	33 654	12 982	244	2
250-	499	.	.	.	.	.	.	.	.	.	.	.
500-	999	.	.	.	.	.	.	.	.	.	.	.
1000	and more	.	.	.	.	.	.	.	.	.	.	.

Source: Statistisches Bundesamt

7.5. Legal Professions in France: an overview

Lawyers

The lawyers in France – as in other countries – generally are independent advisers in legal matters and representative of the interests of individual persons, legal entities, and public institutions in and out of court and before authorities.

Following the reform in 1990, the differentiation between “*avocats*” and “*conseil juridiques*” has disappeared. The consequence is that basically there is just the description “*avocat*” in this matter. The title “*avocat*” can just be used by persons if the person meets the professional requirements given by law. The title-protection is coupled with a strict ban from the profession if the requirements for the protection are not fulfilled.

With the registration in the register of lawyers the lawyer becomes a member of a chamber (*Barreau*). The chamber has its own law identity and is situated within each “*tribunal de grande instance*”, i.e. court area. As well as exerting an encompassing control, the chambers attend to the interests of their members. In particular they verify if the requirements for registration are fulfilled and check if the professionals carry out their duty. The chambers are allowed to impose administrative or disciplinary sanctions if they find offences against that. The organisational structure of chambers on a local level (*conseil de l'ordre, le bâtonnier* as well as *l'assemblée générale*) and the election procedure are defined by law not by the chambers themselves.

In addition to the chambers, on a regional level there exists a national association for lawyers (*Conseil national des barreaux*). This association also has its own law identity established by the reform of 1990. Their functions are the representation of all lawyers in public and to harmonise the different regulations for professionalism given by the different chambers. Besides this, the association has the task of standardising vocational education, particularly in the matter of training centres, to improve the co-operation between them and to give regulations concerning job-specialisation of lawyers.

Another institution for lawyers is the national lawyers association (*Association Nationale des Avocats, A.N.A.*). Their main task is the further development of job-related legislation. Moreover there are professional associations e.g. for lawyers specialised in taxation (“*Institut Français Des Avocats Spécialistes Du Droit Fiscal*”). The lawyer voluntarily can be a member of this association.

Notaries

The notary (*notaire*) is a public officer appointed by the *Garde des Sceaux*, Minister of Justice. He has a monopoly on documents that must be authenticated by deed, i.e. wills, marriage, contracts, document dealing with transfer of real property, and conveyancing. Furthermore he is allowed to give advice in these fields. Although he is a public servant the “*notaire*” runs his office on his own economic responsibility as his enterprise.

Notaries are general practitioners of the law and the advice they give, as well as the instruments they draft, concern all legal areas including international and tax law (see www.notaires.fr). The competence of notaries covers the family, property, real estate, companies in all branches of activity, whether commercial, industrial, rural or a liberal profession, international private law, town planning, consumer law, the law of obligations, obligations in contract, tort and quasi-contract and statutory obligations, tax law, mortgage law and many others.

The primary public tasks of the *chambre de notaires* are to control the professional exertion and to ensure the compliance with professional regulations. Besides they have the task of specifying the professional regulation, which has not to be against the *Règlement du Conseil supérieur du Notariat*.

The present organisation of the profession is based on a plan set out in the order of 2 November 1945 and the decree of 19 December 1945. France's 7,600 notaries operate under the aegis of several structures. 95 *Chambres* operate at the level of the department [French administrative area] (sometimes between departments), 33 Regional Councils operate at regional level, and the Superior Council has authority nationwide (see www.notaires.fr, Jan. 7 2003).

Several other bodies also contribute, each in their own way, to the life and development of the profession: the *Assemblée de Liaison des notaires de France* (Assembly of French notaries); *Association pour le développement du service notarial* (Association for the development of the notarial service) (A.D.S.N.); Centres for research, information and notarial documentation (C.R.I.D.O.N.); training bodies for notaries and their staff; company organisations etc.).

Market Entry

Tasks and exclusive tasks

Lawyers

The advocate (*avocat*) has exclusive rights of audience in all courts of general jurisdiction:

- *Tribunaux de Grande Instance*
- *Cours d'Assises*
- *Cours d'Appel*
- *Tribunaux Administratifs*
- *Cours Administratives d'Appel*

The *avocat* also has the exclusive right to represent a client in the pre-trial stage of a criminal case and may complete acts of procedure on his behalf.

Since 1992 (merger between the professions of *avocat* and *conseils juridiques et fiscaux*), the *avocat* has a monopoly of giving legal advice, though this new legal monopoly contains a long list of exceptions.

Notaries

Notaries will typically assist those constructing properties: in the purchase of land suitable for construction, advise on the value of land, provide the appropriate legal form of tenancies and/or deal with mortgage arrangements. He also has some duties in the field of company law (as to declare the subscription of the capital of private companies).

Notarial certificates are directly executable. These functions are different with regard to the different laws: association, real estates, family, donation and heir law:

Association law: notaries are not as important as in other countries, because the foundation of an association does not need a notarial certificate.

Real estate law: This is the most important area for notaries. Each sale needs a notarial certificate. A peculiar feature within the real estate business is that each partner – even the bank - has its own notary.

Family law: Marriage contracts need a notarial certificate.

Donation law: Within the French law system there is not only a "donation" (gift) but also a *contrat de bienfaisance*, a gratuitous contract. Both have to be certified by a notary.

Heir law: Evidently, the notarial testament (last will) needs a notarial certification.

Education and Entry to the profession

Lawyers

Since 1977, the intending *avocats* must first obtain the university law degree *Maitrise de droits* (Master of Laws) which requires four years of study. The first three years entitle the successful candidate to the degree of *Licence en droit*. The four-year programme for the degree follows the aim of guaranteeing a comprehensive knowledge of French law and procedure.

It includes: Administrative Law, Business Law, Civil Law and Procedure, Company Law, Constitutional Law, Criminal Law and Procedure, EC Law, Economic Sciences, History of Law, Labour Law, Public Finances, Public Freedoms, International Law, Tax Law.

In addition to the *Maitrise* (law degree), the intending *avocat* must obtain the certificate of aptitude for the profession of *avocat* (CAPA). The rules require the candidate for the CAPA to follow a one-year course of study of both theory and practice, after the passing of an examination. The programme consists of practical courses in oral expression, interviewing clients and preparing opinions, drafting of procedural requirements and pleadings, drafting of other legal documents and studying the rules of professional conduct. During the year, the candidate also undertakes periods of training in the office of an *avocat* or other practising lawyer, or accountant, or in legal departments of a commercial company, or court, or with a trade-union, or with a central or local government department in France or abroad.

The entrance examination comprises both written and oral tests. In addition, the certificate for the CAPA is, of course, only granted after a further examination at the conclusion of the course. Once he has obtained his certificate, the intending *avocat* must undertake the period of practical training (stage). Admission to the stage is dependent on evidence of good character; the *stagiaire* must also show that he is going to serve his stage in the office of an *avocat* situated in the area of that particular Bar.

He then takes the oath of admission to the Bar and becomes an *avocat stagiaire* (trainee) under the supervision of the centre of professional training of the regional Court of Appeal. The centre provides the practical course of tuition in the rules and customs of the profession; it arranges for each *stagiaire* to attend court hearings and generally ensures that he receives

an effective training. The period of training of a *stagiaire* is usually for a minimum period of two years, and a number of alternatives are allowed for where the training may take place.

During his training, a *stagiaire* is entitled to do all acts which a full member of the profession can do. He may plead in court or give advice in chambers without restriction, although naturally subject to the supervision of his principal.

Finally, the *stagiaire* receives her/his *certificat de stage* (training certificate) at the completion of his period of practical training, provided the governing body of the centre considers that he has satisfactorily fulfilled the requirements. The certificate is not subject to his passing any additional professional examinations.

Each lawyer has to be registered in the profession's register (*tableau*). The prerequisite is a *certificat de fin de stage*, which is the final exam of the legal studies in France. If a lawyer is coming from another European country, the lawyer can be registered if the foreign certification is comparable.

Notaries

For Notaries entry into the profession can be done by different routes and requires the completion of a professional examination process: university examination *Maitrise en droit*, or a similar valued examination, or, after the practical education the examination as *Certificat d'aptitude aux fonctions de notaire*, or, the examination as *Diplôme supérieur de notariat*. Furthermore it requires a permanent education, appointment and conditions of practise, governing bodies, professional activities, multidisciplinary activities.

The nomination to a lifetime notary by the Ministry of Justice requires in addition one of the following situations: 1. An applicant wants to continue a given notariat (*nomination sur présentation*); 2. A notariat is vacant (*nomination dans un office vacant*); 3. A new notariat has to be opened (*nomination dans un office crée*).

In France entry to the profession is subject to various general conditions set out in a decree of 5 July 1973 (see www.notaires.fr):

Candidates who already have a Master of Law degree (or a qualification which is recognised as the equivalent) are eligible to take a three-year course leading to the notaries' diploma (Total seven years' study after the baccalauréat (high school certificate)).

Candidates who are working as notaries' clerks (who hold the clerks' first diploma) may be eligible to take the examination leading to the *Certificat d'aptitude aux fonctions de notaire* (Notaries' certificate) provided they have sufficient professional experience.

Candidates who are working as legal professionals either as lawyers in a practice, in the public service or in a company, may become notaries provided they fulfil certain conditions.

The initial training for notaries' clerks is open to candidates holding the *baccalauréat* (high school certificate) or candidates who have completed the first part of a degree course.

Conduct Regulation

Prices and Fees

Lawyers

Because there is no regulation of honoraria in France, each lawyer is free to negotiate his remuneration. However, he has to take into account the principles of the chamber. In addition, each lawyer has to give account to the question of the president of the chamber.

Fees are generally negotiated with the client in advance. The majority of firms work on an hourly rate basis. Hourly billing rates range from € 140 for junior lawyers to € 360 for senior partners, though in some cases € 420 may be charged on particularly complex issues.

Notaries

The remuneration of notaries is defined by Art. 44 *Décret* 1973. There are fees and a honorarium. The fees can be divided in "*Émoluments proportionels*" and "*Émoluments fixes*". In principle a notary can ask for a honorarium in addition to the defined fees.

To be noted are (voluntary) public auctions of real estates which is done by the notary chamber of Paris. Fees amount to 2.5% for a value above 45,735 EUR (below that limit: 5%).

Advertising

Lawyers

It is one of the lawyers' chambers duties to give information about the tasks of the chamber as well as about the services of *avocats*. In contrast to the chambers, direct advertising for a single *avocat* is prohibited. „Necessary advertising“ is allowed but restricted, e.g., to information on opening and removal of an office or company plaque. Information about dominant areas of practice is not allowed to be given about a lawyer, singly; however, this is allowed for the chamber.

Though the French legal profession is governed by a strict code of professional ethics (especially with regard to publicity), law firms are increasingly opening up to marketing.

Notaries

Whereas there is no advertising allowed for single notaries – he only is allowed to a starting announcement in two local newspapers within the first three months after beginning – the chambers are allowed to advertise.

Forms of Business, inter-professional co-operation, location and diversification

Notaries

There are two traditional forms of a notary association: The "*Société civile de moyens*" which is an office community, and a "*Société civile professionnelle*", which has legal personality. Both forms a private companies. Since 1990 also incorporation in form of a capital company is allowed. However, inter-professional co-operation of any form is forbidden for notaries. There are no geographical restrictions on offering services in France, but it is forbidden to run branch offices.

Lawyers

Same as notaries lawyers are allowed to run private companies and capital companies. but, as in the case of notaries, inter-professional co-operation of any kind is forbidden. There are no geographical restrictions on offering services and – as to our current knowledge – no restrictions on opening branch-offices.

Continuing Education

Lawyers

The continuing education centre offers at least one course each year for all lawyers in their region. Up to now there is no compulsory requirement to participate. However, obligatory continuing education of 20 hours/year is under consideration.

Notaries

According to the questionnaire sent back by the French Notaries an obligation for continuing education exists. No more detailed information has been provided.

Specialisation in the Profession

For lawyers a list of specialisations is announced by the Ministry of Justice based on the proposal of the *Conseil national des barreaux*. In the 1990s 15 different specialized lawyer labels existed. A prerequisite is a four year practice within the office of an appropriate colleague, or within an enterprise or University institution with a respective specialized alignment. There is a special examination at the end of that time. If the examination is successful, the specialisation is marked in the professional register.

For notaries no specific models of specialisation exist.

Compulsory Indemnity Insurance

Both for notaries and for lawyers, an obligation for professional indemnity insurance exists. The minimum insurance sum for lawyers is 300.000 EUR/year.

Concerning notaries, further to the general principles of French law, each professional is responsible to his clients for all loss resulting from any fault he commits in the course of his professional duties (see also in the following www.notaires.fr). If the notary's obligations were limited to this one principle, they would be the same as those incumbent on all citizens. But apart from the fact that the courts apply the law of liability with greater severity when a professional person is liable, the notary has two other obligations: first of all he must insure the financial consequences of his business activity with a reputable insurance company; second, he is also responsible, along with all the other members of the profession, for all clients.

While the obligation to have insurance for civil liability is not unusual in itself as other professions of all kinds are in a similar position, the solidarity rule which exists in the profession is specific to notaries, which makes it unique.

In order to cover all the risks which may arise from notarial practice, the profession has set up: regional guarantee funds, financed by contributions from notaries operating in the region concerned; a central guarantee fund, financed by contributions from all French notaries.

Economic Characteristics

France – Structure and dynamics (NACE 7411)

*Enterprises, Turnover, Employment:*²⁰: Note - In discussing the turnover of firms it is to be noted that only enterprises above 76.000 EUR turnover per year are incorporated in the French national statistics (INSEE), for which data on average turnover are available. Furthermore, statistics on employment include only units with 1 or more employees, so that single-person self-employed enterprises are left out.

For that reason the tables below contain 1994 data from Eurostat, and 2000 figures based on extrapolation on the basis of growth rates from the INSEE statistics.

Table 7-35 Firms, Turnover and Employment; France 7411

	Number of Firms	Turnover in Mio. EUR	Employment	No. of Professionals
1994	24 776	9 585	132 884	
2000*	30 340	13 352	146 018	
2001				39 940

* extrapolated value based on INSEE definitions (except No. of Professionals)

Source: EUROSTAT, INSEE, IHS

Table 7-36 Key Statistics, Legal Services: France 7411

	Turnover per Firm	Employment per 1000 firms	Turnover per person employed	Employment per Mio. of Pop	Firms per Mio. of Population
	1000 EURO		1000 EURO		
1994	387	5 363	72	2 300	429
2000*	440	4 813	91	2 465	512

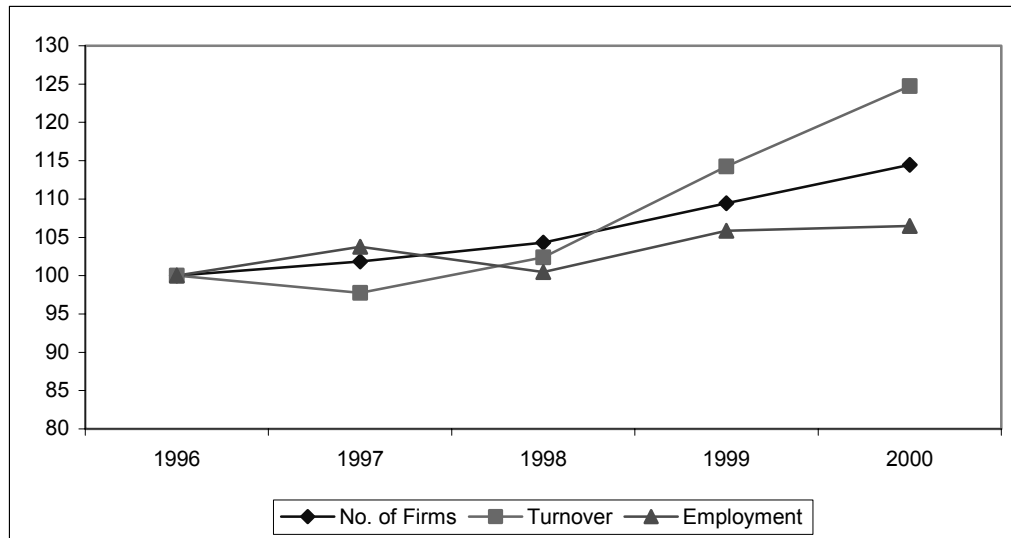
* extrapolated value based on INSEE definitions (except No. of Professionals)

Source:EUROSTAT, IHS

The differential rates of growth in enterprises, turnover, and employment are illustrated in the chart, with the 1996 values indexed at 100.

²⁰ EUROSTAT, SIRENE (Système informatique pour le répertoire des entreprises et des établissements - Computer system for the companies and establishments directory) (INSEE) 2002

Chart 7-14 Relative Growth Rates*, France 7411



Source: INSEE, *based on INSEE definitions

The following further analysis is based on the data obtained from INSEE.

The quantitative development of enterprises in legal services in France from 1996 to 2001 is shown in the table.

Table 7-37 Development of legal services enterprises in France 1996 to 2001

Year	Legal active at 31/12 Enterprise demography			
	Sum	Individual entrepreneur	Company	Other
1996	34 855	26 642	1 589	6 624
1997	35 495	27 086	1 619	6 790
1998	36 358	27 823	1 625	6 910
1999	38 151	29 408	1 643	7 100
2000	39 895	30 979	1 677	7 239
2001	41 989	32 812	1 767	7 410

Source: SIRENE (INSEE) (2002)

From the mid 1990s to 2001 there was a growth rate for all legal service units in France of 20.5%, from 3,855 in 1996 to 41,989 in 2001. The dominant group is individual entrepreneurs which count for 76.4% of all units in 1996 and 78.1% in 2001. Their growth rate is 23.2%. Thus, compared to the overall growth rate this is more than proportional and the development of companies and other units is correspondingly less than proportional.

Size of enterprises: The number of enterprises by numbers of employee classes in France from 1996 to 2001 is shown in the table.

Table 7-38 Number of legal services' enterprises in employee classes in France 1996 to 2001

Year	Number of enterprises active at 31/12						
	0-5	Jun.19	20-49	50-249	250-499	500-1999	>=2000
1996	29 490	4 863	455	42	4	1	0
1997	29 936	5 032	477	44	5	1	0
1998	30 739	5 090	478	44	6	1	0
1999	32 514	5 110	473	45	7	1	1
2000	34 167	5 152	517	51	6	1	1
2001	36 164	5 180	578	57	8	1	1

Source: SIRENE (INSEE) (2002)

Small enterprises are still dominant. Typically there are small legal services enterprises in the 1990s and at the beginning of this century with a growth rate of 22.6%. However, larger enterprises, though relative small in their absolute number, show higher growth rates (27% in the 20-49 employee category, 36% in the 50-249 category). Thus, larger legal services enterprises are to be expected in the next years.

Table 7-39 The average turnover in legal services' enterprises in employee classes in France 1996 to 2000

Year	Average turnover					
	Legal active	0-9 employees	10-19 employees	20-49 employees	50-249 employees	>=250 employees
	EUR	EUR	EUR	EUR	EUR	EUR
1996	546 000	304 000	1 227 000	2 584 000	6 475 000	47 695 000
1997	524 000	309 000	1 120 000	2 689 000	6 844 000	58 605 000
1998	536 000	302 000	1 119 000	2 670 000	6 735 000	53 874 000
1999	570 000	311 000	1 174 000	2 878 000	6 390 000	55 400 000
2000	595 000	313 000	na	na	na	na

Threshold: Turnover > 76.000 EUR ; na: not available

Source: Système unifié de statistiques d'entreprises (SUSE-INSEE)

Average Turnover: For all legal activities in 2000 there was an average turnover of 595,000 EUR and since the mid 1990s the growth rate was about 9%. There was a particularly high rate of growth of firms with more than 250 employees (16%). Among these largest enterprises (>=250 employees) the highest turnover within the last years was in 1997 and amounted to 58,605,000 EUR. Turnover per employee would appear to increase with size of firm (but exact calculation is uncertain from these data).

Employment structure by gender: The legal services employment structure measured as salary receivers by gender in France from 1996 to 2000 is shown in the table.

Altogether in 2000 there were 92,068 salary receivers with a high female proportion of 81.6%. The employment grew by 6.4% with 86,461 salary receivers in 1996. The gender structure has remained constant over recent years in the French legal services employment.

Table 7-40 Employment structure in legal services' enterprises by gender in France from 1996 to 2000

Year	Total employees at 31/12		
	All	Men	Women
1996	86 461	16 310	70 151
1997	89 715	16 682	73 033
1998	86 873	16 257	70 616
1999	91 523	16 986	74 537
2000	92 068	16 971	75 097

Threshold: Enterprises with 1 or more employees

Source: Déclaration annuelle de données sociales (données d'entreprises) (DADS-INSEE)

It should be noted that the above data applies to firms with more than 1 employee, hence there is a discrepancy with Eurostat data.

The following information about lawyers and notaries was received via IHS questionnaires.

Professionals: The membership of the *Conseil national des barreaux* rose by 66% from approx. 23,000 in 1990 to 38,140 in 2001.²¹ Of this number, registered professionals (*Inscrits au tableau*) account for 32,076 in 2001, 6,064 being *stagiaires*. The proportion of self employed *avocats* was 92.5% in 2001. Just under half (475) of 1,034 *avocats* practising abroad in 2001 were in EU member states.

The membership of the *Conseil Supérieur du Notariat* rose under 5% from approx. 7,500 in 1990 to 7,864 in 2001.²² Of this number, 1,274 were *notaires assistants*. The number of new entrants has varied around the 300 mark per year since 1990, whereas the number of new *stagiaires* entrants has increased from around 400 in 1990 to around 700 in 2001. Total employment (professionals and non-professionals) rose from 47,263 in 1990 to 50,052 in 2001.

Firms: There were 19,020 *avocats* firms in 2001 (IHS Questionnaire)²³ 21.5% of which had incorporated status. Over 96.5% of *avocats* firms had between 3 and 10 non-professional employees in 2001, just under 3% had 10-50 employees, and 0.5% were very large firms with over 50 employees.

²¹ IHS Questionnaire.

²² IHS Questionnaire.

²³ C.f. the higher figures above for all legal firms (INSEE).

There has been a reduction in the total number of notaries' firms, from 4,865 in 1990 to 4,540 in 2001, accompanied by a decline in the percentage of firms with incorporated status from 57.6% to 43.9%. A trend to larger firms on average is noticeable – only 52% of notary firms were single professionals in 2001, down from 62% in 1990. Likewise the proportion of firms with 3-5 professionals rose over the same period from 11.5% to 17%. Slightly more notaries' firms (21.8%) have branch offices (i.e. 2 or more offices) in 2001, than the corresponding figure in 1990 (19%).

Turnover. The *Conseil national des barreaux* reports a branch turnover for legal services in 2001 of 12.4 bill. FRF (1,890 million Euro), which is considerably less than the estimates we have made from the INSEE data (see above²⁴). The *Conseil national* reports the remuneration of professionals in 2001 in the 'median' firm as being 52,577 Euro.

The *Conseil Supérieur du Notariat* reports a branch turnover of 4.324 bill. Euro in 2001, up in nominal terms by a third since 1990. Despite the trend towards larger notary firms noted above, the data from the *Conseil Supérieur* shows a de-concentration process between 1990 and 1995: the market share of the 5 largest firms was 3% and 1.8% respectively; the market share of the 10% largest firms was 40.4% and 33% respectively; and the market share of the 30% largest firms was 65.3% and 61.3% respectively. In 2001 the situation regarding concentration was more or less unchanged from 1995.

²⁴ The Eurostat data for turnover in legal services in France was 9.6 bill. Euro/ECU in 1994, so the figure reported seems unreliable.

8. Case Studies Accounting

8.1 The Accountancy Professions in Italy: an overview

The “*Steuerberater Handbuch Europa*” (“Tax Advisers handbook Europe”), which is edited by the International Bureau of Fiscal Documentation, lists more than 15 different professions that can be found in the Italian accounting-market. But most of these terms for professions or even tasks are not “official” names for different professional groups.

There exist two professions that are licensed by public law: The *Dottori Commercialisti* (Certified Public Accountants) and the *Ragionieri e Periti Commerciali* (Accountants and Trade Experts). Both groups show a long professional tradition, but both have undergone changes at the beginning of the 1990s, concerning their respective educational market entry systems. These changes were primarily induced by the adoption of EU-law on accounting standards.

Both professional groups are – even from an international point of view – rather heavily regulated. This is reflected in a relatively high market-entry-index (3.16) and a very high conduct-index (2.925). Even though other countries in the European Union have stronger market-entry regulation (due to broader exclusive tasks reserved to the profession), conduct regulation in Italy is strongest from an international comparative point of view.

For both professional groups membership in a professional association is compulsory: the *Dottori Commercialisti* with the relevant regional “*Ordini di Dottori Commercialisti*”. The Ministry of Grace and Justice, through the Directorate-General for Civil Affairs and Professions, supervises the practice of the profession. The management of the profession is, on the other hand, entrusted to the local branch of the association, with the same territorial area as the local Courts of Justice. Each Branch is headed by a Council elected by those included in the local rolls. There are currently 124 local Branches. The Branches have wide organizational and disciplinary powers over their members.

A comparable structure of professional organisation is in place for the *Ragionieri e Periti Commerciali*, who are also registered on the regional level. The head organisation of this profession on a national level is the “*Consiglio Nazionale die Ragionieri e Periti Commerciali*”.

Market Entry

Tasks and exclusive tasks provided by Italian Accounting Professions

In principle Italian accountants provide the same services as their colleagues in other European countries. Traditionally the *Ragionieri* primarily serve the smaller companies or single persons. The *Dottori Commercialisti* are the typical advisers of the medium business sector as well as larger companies. Both professions have the same authorisations in regard to the services they may offer on the market. With three exemptions, all these tasks are not reserved to one or more professions. The first exclusive task provided by *Ragionieri* and *Dottori Commercialisti* is that of statutory audit. Both professions are licensed to be members of boards of auditors and function as auditors in commercial companies and in bodies where auditing is required by law (according to legislative decree n. 88/1992 acknowledging EC directive no. 8). The second is tax representation (in proceedings before the Tax Revenue Commissions) and the certification of tax declarations, whereas tax advice may be offered by any other profession. Apart from this, both professions are also licensed to work as trustees nominated by court, including insolvency trustees (lawyers may also execute this task).

Important other services offered by both professions are not reserved tasks, but may be offered by any profession::

- administration and liquidation of business, estates and individual assets;
- technical expert assessments and consulting;
- administrative inspections and audits;
- company and contractual advice;
- organisation of companies, groups and legal-commercial assistance;
- verification and inquiries regarding the credibility of balance sheets, accounts, book entries and other accountancy documents used by a business;
- settlements and payments of damages.

Education and Entry to the profession

Both forms of accountants are academic professions, applicants for which must have an university degree in a relevant subject and several years of professional experience. After this they are allowed to do the State Exams in accounting.

State exams *Ragionieri e Periti Commerciali* may be taken by those who have an Accounting and Trade Expert Diploma as well as a University degree in: Foreign trade, Economy of co-operative enterprises and non-profit organisations, Economy and Administration of

enterprises, Economy and Management of tourist services, Management of Public Administration, Management of Food Enterprises, Marketing and Corporate Communication, Degree in Business and Economics or in Law. Those that have started practising the profession after the Law dated 12.2.1992, n.183 came into force and before 21.12.1993 are admitted to take the State Exam whether or not they have a University degree or diploma, as long as they have obtained the diploma as Accountant and Trade Expert (art. 6 of Law 12.2.1992, n. 183). It takes a minimum of three years to obtain one of the mentioned university diplomas. A further requirement for being admitted to the exam is the training prescribed by Law 12.2.1992, n. 183. This has to be undergone under the control of a registered member of one of the two professions (*Ragionieri* or *Dottori Commercialisti*). Before 1993, only two years of accounting experience were required (by the ACA). The exams consist of a written and oral part. Only those who pass the written exam may take the second oral exam.

State exams for Certified Public Accountant (*Dottori Commercialisti*) may be taken by those who have a University degree in: Degree in Business and Economics, Degree in Economic and Business Sciences, Degree in Economic, Political and Social Sciences, Degree in Economic-Maritime Sciences, Degree in Corporate Economy and Economic Politics, Degree in Economic and Banking Sciences, Degree in Economic and Social Sciences, Degree in Economic and Social subjects. On the basis of the decision dated 11.5.1990 of the State Council, graduates with a degree in Political Sciences may also be admitted to the State Exam for Certified Public Accountant. It takes a minimum of 4 years to obtain one of these university degrees.

As for the *Ragionieri*, a further requirement for taking the exam is the completion of the training prescribed by Law of 17.02.92, n.206 and by ministerial decree n. 327/95. For this, each trainee is supervised by a practitioner who is considered as trainer and ethically responsible for the training. Every six months the professional who supervises the trainee signs a statement that the trainee has regularly followed the training tasks and assignments. This documentation is sent to the competent local branch. During the training period the training may be suspended for a maximum of 18 months. The trainer – practitioner has to attest the reasons and give his consent.

As for the *Ragionieri*, the exams for the *Dottori Commercialisti* have two parts: a written and an oral. Only those who pass the written exam may take the second step, the oral exam.

Up to 1992/93 applicants to the profession of *Dottori Commercialisti* were not obliged to undertake the above mentioned three years of professional practice: a university degree was required, but no related work experience.

Conduct Regulation

Prices and Fees

The professional bodies of both professions indicated to us in the respective questionnaires that for the services offered only recommended non-binding reference prices exist. In fact before 2000 the fees of both accounting professions in Italy were “fixed” as a minimum and a maximum price for every service. In these margins the parties were allowed to agree freely on the respective price. Since 2000, for the concrete determination of price one has to take into account the characteristics and value of the service. These regulations are non-binding in nature, because the parties are allowed to agree on a different price. This kind of recommended tariff only applies if there is no agreement and applies to both professions.

In 1997 the *Ragionieri* revised their tariffs. They are basically the same now as for *Dottori Commercialisti*.

In 1998 the Italian Antitrust attacked the two professional bodies for co-ordinating the tariffs, but the decision was reversed on appeal, since the professional bodies have to fix a tariff according to the law. In November 1998 the Italian Antitrust Authority completed an investigation aimed at verifying possible violations of the prohibition on agreements restricting competition by the two professions. The object of the investigation primarily concerned the following practices: a) the active role played by the two bodies in determining professional fees, which – in the opinion of the Authority – went well beyond the advisory function attributed to them under current law; b) the invitation by the *Consiglio Nazionale dei Ragionieri e Periti Commerciali* to its members to apply the fee schedule it had approved before it was authorised by the Ministry of Justice; and c) the joint determination of fees by the two professional bodies in order to align their pricing policies. As regards the role played by the two bodies in determining fees for professional services, the Authority found that both bodies had engaged in the formulation and approval of schedules, not only to update existing price lists but also for the purpose of completely reorganising their form and contents. The Authority concluded that the resolutions adopted by the two bodies regarding the reformulation of the schedules for the various professional services, the invitation by the *Consiglio Nazionale dei Ragionieri e Periti Commerciali* to its members to apply fees in the absence of ministerial approval and the co-ordination practised by the two bodies to harmonise the fees applied by the two professions violated the prohibition of anti-competitive agreements. As mentioned above, the decision was reversed on appeal.

Advertising

Advertising for auditors has long been very rigidly regulated. Nearly all forms of advertising by Italian accountants have been forbidden. But now there is no general prohibition, rather,

the relevant codes provide guidance on forms and means that have to be respected. All in all the respective regulations are somewhat less restrictive than for Italian lawyers.

Concerning form, everything is allowed except billboards, flyers, sending email/post/fax messages indiscriminately, soliciting by direct visits or phone call. Concerning substance, the following is forbidden: name of clients, the tariffs applied, academic or professional titles not linked to the profession. Organisation of and participation in conferences and seminars is allowed, as well as professional publications. Apart from that, a general mailing of technical information may be made to existing clients and to third parties who have explicitly requested it.

Forms of Business, Inter-professional Co-operation, Location and Diversification

According to the questionnaire responses by the *Consiglio Nazionale di Ragionieri e Periti Commercial* and the *Consiglio Nazionale di Dottori Commercialisti*, accountants in Italy currently may not incorporate in the form of a limited liability partnership or a public limited company. Nor may they form a private company. This means that an accountancy firm may not be established in the form of a company of any kind. As a consequence, accountants are only able to work together in partnerships known as the *associazione professionale*, and in consequence the form of the business is that of a sole practitioner.

According to the questionnaire response of the *Consiglio Nazionale di Dottori Commercialisti*, the elimination of the prohibition on partnerships between professionals (in form of a corporation) in principle has been enacted by regulatory reform in 1997. But the law does not yet provide positive rules on what is allowed, so, according to the *Consiglio Nazionale di Dottori Commercialisti* “there still is a blank space to fill through legislation”.

Currently there is no way for accountants in Italy to incorporate with other accountants, nor is it possible to form a company with members of other professions. Apart from this, to the best of our knowledge there are no further specific regulations on inter-professional co-operation. The same applies to the questions of location and diversification: there are no special rules in that respect. So Italian accountants may offer their services all over Italy and open branch offices.

Continuing Education

Continuing education for Italian accountants became mandatory only recently. The obligation for continuing education for both professions starts as from January 2003. Each professional has to comply with a minimum of 30 hours (credits) per year according to specific programs adopted by the national professional bodies, that co-ordinate the local branches' activities.

Specialisation in the Profession

In Italy there are no specific regulations on specialization in the profession of accountants.

Compulsory Indemnity Insurance

According to the questionnaires responses, professional indemnity insurance is not obligatory for *Ragionieri*, nor for *Dottori Commercialisti*.

Economic Characteristics

Italy – Structure and dynamics (NACE 7412)

*Enterprises, Turnover, Employment*¹: The nominal turnover of accountancy enterprises in Italy reached a level of nearly 9,500 million Euro in 2000, equivalent to over 0,8% of GDP, which is slightly below the median of the sample of member states surveyed in terms of share of GDP. (c.f. Overview-tables in Chapter 5). Output of the sector rose however at a high yearly average of 10.3% during second half of the 1990's, faster than the growth in GDP (an average of 6.8% p.a. over the same period 1995-2000). This represents a real growth in accountancy services of 7.2%, higher than the growth in employment of 5.1% over the period, 1995-2000, so slight productivity gains have also been made. In fact, the real turnover per employed person rose by 10% over the period.

Table 8-1 Firms, Turnover and Employment; Italy 7412

	Number of Firms	Turnover in Mio EUR	Employment	No. of Professionals
1995	68 030	5 805	141 768	
1996	70 677	6 654	144 684	
1997	73 157	7 393	149 021	
1998	72 785	7 954	148 673	
1999	83 205	10 791	167 766	
2000	90 216	9 460	182 211	
2001				88 421

Source: EUROSTAT, IHS

The number of firms increased correspondingly from about 68,000 in 1995 to just over 90,000 in 2000, an average rate of 5.8% p.a. (see Table). The corresponding yearly growth rates over the period 1995-2000 are 10.3% for turnover, and 5.1% for employment.

¹ EUROSTAT; Istituto Nazionale di Statistica (ISTAT)

The higher rate of increase in enterprises relative to employment is indicative of a extremely slight trend towards *less* concentration i.e. relatively more firms with fewer employees: indeed the average firm gave employment to 2.02 persons, down from an average of 2.08 in 1995. The relative number of enterprises is very high, at over 1,560 per million of population, nearly double the median of 795 in our survey, and almost as high as for the special case of Luxembourg, which has a very large banking and financial sector for its size.

The average turnover (1999) per accountancy firm in the Italy of 105,000 Euro is less than the correspondingly figure for legal services (129,000 Euro) but considerably more than the corresponding figure for technical services (81,000 Euro). Growth rates in the second half of the 1990s (a yearly average of 4.2%) have also been lower than for legal services, but higher than those for technical services. The level of business of Italian accountancy enterprises is the lowest of all the 12 member states surveyed here, even when the branch output figures are adjusted for relative price levels and the overall production of the economy.

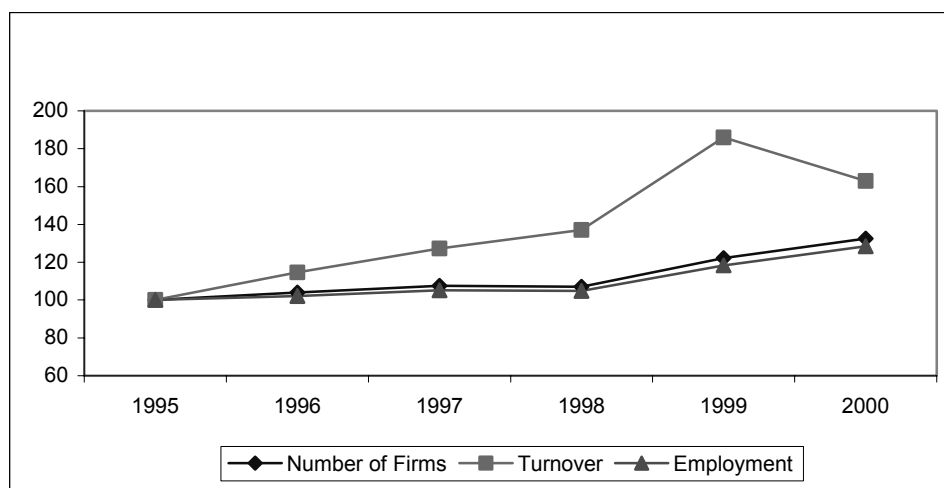
The level of employment, at over 3.2 in 1,000 of the population in 2000 is fairly 'average' by international comparison (just under the median value), but the level of productivity, as measured by a turnover of 52,000 Euro per employed person, is the second lowest in the survey after Spain in absolute terms, and second lowest in relative terms after Luxembourg after adjusting for relative prices and economic output.

Table 8-2 Key Statistics, Accountancy, Italy 7412

	Turnover per Firm	Employment per 1000 firms	Turnover per person employed	Employment per Mio. of Pop	Firms per Mio. of Population
	1000 EURO		1000 EURO		
1995	85	2 084	41	2 475	1 188
1996	94	2 047	46	2 524	1 233
1997	101	2 037	50	2 593	1 273
1998	109	2 043	54	2 583	1 264
1999	130	2 016	64	2 912	1 444
2000	105	2 020	52	3 159	1 564

Source: EUROSTAT

The differential rates of growth in enterprises, turnover and employment are illustrated in the chart, with the 1995 values indexed at 100.

Chart 8-1 Relative Growth Rates, Italy 7412

Source: EUROSTAT, IHS

*Growth of Sole Proprietors.*² The high growth rate of accounting firms in the early part of the 1990s is reflected in a correspondingly yearly increase in employment of over 7%. The growth in the number of self-employed, at over 10%, is especially remarkable, the proportion of self-employed in the accounting workforce rising from approximately 50% to approximately 60%.

Table 8-3 Self-employment and Employees, Italy

	1991	in %	1996	in % of Total	% Change p.a. 91-96
Firms	40 007	39.3%	71 003	49.2%	12.2
Self-employed	51 838	50.9%	86 537	59.9%	10.8
Employees	50 083	49.1%	57 863	40.1%	2.9
Total	101 921	100.0%	144 400	100.0%	7.2

Source: Istituto Nazionale di Statistica (ISTAT)

² Source: ISTAT: Censimento intermedio industria e servizi. Note: some figures for 1996 differ slightly from previous section; IHS.

That this development was due to an overwhelming increase in sole practitioners is shown in the table below.

Table 8-4 Legal Form of Companies

	1991	in %	1996	in %
Sole Practitioners	32 615	81.5%	61 087	86.0%
Partnerships	3 293	8.2%	7 281	10.3%
Private Companies	1 448	3.6%	2 188	3.1%
Co-operatives	291	0.7%	332	0.5%
others	2 360	5.9%	115	0.2%
Total	40 007	100.0%	71 003	100.0%

Source: Istituto Nazionale di Statistica (ISTAT)

This trend was also accompanied by an increase in the percentage of partnerships among firms, but also by a relative decline in joint-stock enterprises. These trends are also reflected in the statistics of single-office versus multi-office firms.

Table 8-5 Offices

	1991	in %	1996	in %
one office	38 452	96.1%	70 276	99.0%
more than one office	1 555	3.9%	727	1.0%
Total	40 007	100.0%	71 003	100.0%

Source: Istituto Nazionale di Statistica (ISTAT)

Starting from a very high percentage in 1991 – 96%, in 1996 nearly all firms operated out of one office, a mere 1% having other branch offices.

Professionals: Membership of the two key professional bodies increased over the latter half of the 1990s, but the annual rate of increase of 2.6% is well below the rate of increase in the overall number of firms, a clear indication that the trend of the early 90s towards single professional firms continued, even if at a slower rate. While membership is split fairly evenly, the slight numerical superiority of the *Dottori Commercialisti* continued.

Table 8-6 Membership

	1995	in %	1996	in %	2001*	in %	% Change p.a. 91-96
ragionieri	35 021	46.3%	36 881	45.8%	39 421	44.6%	2.0
dottori commercialisti	40 600	53.7%	43 678	54.2%	49 000	55.4%	3.2
Total	75 621	100.0%	80 559	100.0%	88 421	100.0%	2.6

Source: consiglio nazionale dottori commercialisti e consiglio nazionale dei ragionieri e periti

* from IHS Questionnaires

Consiglio Nazionale dei Dottori Commercialisti: The number of firms is approximately 4,000 (IHS Questionnaire). Clearly the number total number of firms recorded in the statistics of firms in the NACE 7412 branch cited in the preceding paragraphs includes a large number of tax advisers' firms. Among these firms, 10% have 3-5 qualified professionals, and 5% have 5-30 qualified professionals. Approximately the same proportion of firms have 2 qualified professionals³ as single office firms (85%), and this 'typical firm' employs 1-2 persons.

The *Consiglio Nazionale* reports that of accountancy and auditing firms whose head office is not in Italy, the highest number are from the USA, followed by UK, then Germany and France.

Summary

In February 1999, in response to a request from the Ministry of Justice under Article 22 of Law no. 287/1990, the Italian Competition Authority sent the Parliament and the Government a report with its opinion on bill no. 5092 delegating the reorganisation of the professions to the Government. This report dealt not only with accounting professions but also with lawyers, notaries and others.

The Authority reaffirmed that the reserved activities system and the related professional orders should be an exception.

As regards the regulation of the performance of reserved activities, the Competition Authority reaffirmed that it should be designed primarily to correct possible information asymmetries in markets and should avoid introducing unjustified limits to competition. The Authority accordingly expressed a favourable opinion on the publication and dissemination of quality standards for services and codes of conduct, the elimination of the prohibition on advertising professional services and the dissemination of information on their prices, provided such

³ It appears that 'qualified professionals' includes trainees in the IHS Questionnaire from *Consiglio Nazionale*.

information is gathered ex post by independent observers. On the other hand, it objected to the provision permitting professional orders to adopt non-binding price schedules, albeit only as guidelines, since this was more likely to limit competition among members of the profession than safeguard users. The adoption of binding price schedules that the bill prescribes for obligatory services should be limited to the cases where the prices are the maximum allowed and users are in an especially weak position.

The Authority considered that the contents of the codes of conduct that professional orders are required to prescribe should not cover the economic behaviour of the members of the professions. It also recommended that the legislation governing professional firms should permit a wide range of organizational solutions from which members of the professions would be free to choose. Lastly, the Authority recommended easing the current rigid rules on the incompatibility between professions, which are often unjustified or disproportionate with respect to the objectives they are intended to achieve.

The regulatory system of accountants in Italy in the last ten years has undergone several changes. Some of them led to a higher degree of freedom for professionals. Regulatory changes of this kind primarily occurred concerning prices and fees, forms of advertising and forms of business (the last one also has not really been implemented yet). However, the market for accountants in Italy still is rather heavily regulated and liberalisation reforms in most cases have been opposed by the relevant professions. The regulations that still occur e.g. in respect of advertising and especially in respect of business forms may impede a more dynamic development of the market. It is obvious that they contribute to the perpetuation of a rather small-scale market structure that may be sub-optimal in respect of innovation in the professional field, as scale-effects stay unused, which may lead to only limited product innovation.

8.2 Accounting professions in the Netherlands: an overview

The Dutch accountancy profession was officially created when the Netherlands *Instituut van Accountants* (NivA) was founded in 1895.

Two bodies currently represent the accounting profession in the Netherlands: Royal NivRA (*Nederlands Instituut van Registeraccountants*), whose members use the title RA (*Registeraccountants*), and NOvAA (*Nederlandse Orde van Accountants-Administratieconsulenten*), whose members use the title AA (*Accountants-Administratieconsulenten*). Both have the status of public bodies and both are responsible for parts of the qualifications and regulation of the profession. The title of both bodies is covered by law.

The accounting profession in the Netherlands was regulated by law under the “*Registeraccountants*”-Act (*Wet op de Register accountants*) in 1967, which, inter alia, authorised the incorporation of the Royal NivRA. A subsequent law was enacted in 1974, authorising the incorporation of NOvAA.

Although both professions in principle fulfil the same tasks, for a long time there have been some differences between them. The activity field of accountants organised with NivRA traditionally includes the auditing of large enterprises, whereas the AA (members of NOvAA) concentrates on small- and medium-sized firms (SMEs) and apart from auditing do lots of advice work and consultancy in that field. But things have begun to change in recent years. Also 98 percent of statutory audits are still performed by an RA but the role of adviser to small and medium-sized enterprises is getting more important for this profession as well.

Up to August 1993, NivRA members were the only professional accountants who could give an audit opinion on the truth and fairness of financial statements (statutory audit). Since August 1993, NOvAA members also have been authorised, as a result of the incorporation into Dutch law of the 8th Directive. For this the nature of NOvAA has been changed from a private certification authority to a quasi-public licensing professional organisation. AAs who qualified before August 1993 are also entitled to issue audit reports if they have appropriate practical experience and pass an additional examination. Membership in NOvAA is compulsory for *all Accountants-Administratieconsulent*, and is, together with enrolment in the official register of AA's, an essential prerequisite for using the AA title. For the RA a membership in the NivRA is compulsory.

The rigidity of regulations concerning market entry in the Netherlands lies – from an international point of view – in the medium field. Our entry index is 3,08. It is higher than in England & Wales, Sweden or Denmark, but at the same time considerably lower than, for example, in Austria, Germany or Belgium. The entry index and also the conduct index

are of medium level. With a value of 1,425 it is higher than in England & Wales, Ireland, Denmark or Sweden but much lower than in Italy, Austria, Belgium or Germany.

As mentioned above, nowadays for both bodies of accountants membership is compulsory for the respective professionals and only members of one of the both professions are authorised to offer statutory audits. The internal organisation of both professional bodies is rather similar. The highest body in both organisations is the general meeting, held yearly. The general meeting elects the members of the executive board as well as the president. At the same time the general meeting defines rules for the members through decree. The executive board consists of members of the general meeting. They are elected for a period of 4 years and responsible to the general meeting.

Market Entry

Tasks and exclusive tasks provided by accounting professions in the Netherlands

In the Netherlands statutory auditing is reserved to the two categories of professional public accountants: *Registeraccountants* and *Accountants-Administratieconsulenten*. Apart from this, two other fields of activity appear to be exclusive tasks of the RA and the AA: Audit of mergers and contributions in kind as well as public sector audit. Contrary to this, non-statutory audit, accounting (incl. public-sector accounting and book-keeping), insolvency practise, tax advice and tax representation, management consultancy, investment advice as well as expert witness in accounting may be performed by any profession. These fields of activity are not exclusive tasks reserved to accountants. For the professions of *Administrateur* (bookkeeper), *Belasting-adviseur* (tax consultant) as well as Organisational advisor (management consultant) no legal qualification requirements exist in the Netherlands.

Unfortunately none of the two professional organisations of accountants in the Netherlands returned a completed questionnaire. Therefore we are not able to give any further details.

Education and entrance to the profession

To qualify as a *Registeraccountant* (NivRA) as a principle requires a university-level education, which can be obtained through various streams:

- VWO (pre-university education) followed by a part-time accountancy course organised by NivRA and the Nijenrode University;

- for business school graduates, an accountancy course run by NivRA/Nijenrode University, or a post-graduate accountancy course at the university, and
- for graduates in economics, a post-graduate accountancy course that can be taken at the University of Amsterdam, Free University Amsterdam, University of Groningen, University of Limburg (Maastricht), Erasmus University (Rotterdam) or Brabant University (Tilburg). It takes four years to become a university graduate in economics, and another three years to do the post-graduate accountancy course.

Most candidates follow the recently revised NivRA/Nijenrode University Accounting and Auditing study programme, leading to the qualification of *doctorandus* and *Registeraccountant*. The course is structured to combine work and study, covering the various levels within the accountancy practice. The entire course takes seven and a half years.

In compliance with the EC 8th Directive, candidates studying to become Registeraccountant must have three years' practical experience, although this can run concurrently with the final phase of the accountancy course run by NivRA/Nijenrode University.

The educational programme required by candidates to become NOvAA members takes 4 years of theoretical training, followed by a period of practical training of 3 years, of which two years under the supervision of an *Accountant-Administratieconsulent*. There are moves to restructure the educational programme, stipulating a three-year full-time training course followed by a further 3 years of part-time theoretical studies. Given its particular exposure vis-à-vis the SME sector, the courses on small- and medium-sized enterprises comprise a major section of the training programme.

For both professions, would-be accountants at the end of their professional education have to take a specific professional entry examination (see Art 71ff of the Register Accountants Act, which can be found in English at <http://www.nivra.nl/>).

Conduct Regulation

Prices and Fees

Prices and fees for accountants regarding all kinds of services are primarily a matter of free negotiation between the accountant and the client. The relevant rules only say that the price-performance payoff has to be acceptable according to the professional code. In cases of doubt clients can have the fees reviewed by the NivRA or the NOvAA.

Advertising

In principle the advertising rules for accountants in the Netherlands are very liberal, especially from an international comparative point of view. According to information we collected earlier from the relevant professional organisations (NlvRA, NOvAA) (c.f. Felderer et al. 1998), the uncalled direct contacting of clients (cold calling) is not allowed. The same regulations apply to lawyers. There have been negotiations concerning the abolition of this rule for accountants, but we are not sure about the final outcomes.

Forms of Business, Inter-professional Co-operation, Location and Diversification

According to the information of the professional organisation, there exist no specific rules concerning the type of business. Therefore accountants can work as independent small-scale entrepreneurs, as employees as well as in a corporation, which can also be a private limited liability company. But as a general rule, up to now, in the case of a corporation, the majority of the owners/directors have to be accountants. At the same time statutory audit duties only can be done by a natural person although this can be an employee or a legal person, i.e. the owner of an accounting firm.

According to our current knowledge, as a general rule inter-professional co-operation is only possible with other liberal professions. But corporations combining accountants and lawyers are not allowed. According to wide-spread interpretation, the reason for this is the apprehension of lawyers for competition from the big accounting corporations. Anyhow corporations are possible with notaries, patent lawyers and tax-advisers which are members of a relevant professional organisation. As mentioned above, in the case of a corporation, accountants have to be the majority of the owners. Co-partnership with other professions is possible. In this case, however, the company is not allowed to act under a joint name.

In the Netherlands there is an ongoing discussion on the question of inter-professional co-operation. As the Annual report 2000-2001 of the NlvRA states it:

„One of the more protracted issues concerns the opportunities for and barriers to interdisciplinary collaboration. NlvRA has been discussing this for a considerable time with the professional organisations of tax advisers, attorneys at law and civil-law notaries. Collaboration between accountants and lawyers in particular is a delicate issue for the lawyers. NlvRA's basic view is that such collaboration must be possible. (...)‘The essential test for collaboration is that it should allow each professional group involved to continue providing its professional services without any hindrance. If this can be safeguarded, we have no objection to collaboration. And this by no means implies that, as a professional group, you must always have a voting majority. (...) And there are no examples of harmful interdisciplinary collaboration. On the contrary, the available information indicates that the quality of the audit is in fact enhanced.“ (p. 5).

The operation of branch offices is, according to the information available, allowed. It is permissible to have offices in every *Arondissement* in the country, as well as abroad.

Continuing Education

The obligation for further education exists for both professions. Members of NOvAA have to prove 40 hours further education per year. There is no detailed information for members of NivRA.

Specialisation in the Profession and Compulsory Indemnity Insurance

As both professional organisations (NOvAA and NivRA) did not complete the questionnaire we have no specific information on these points.

Economic Characteristics

Netherlands – Structure and dynamics (NACE 7412)

*Enterprises, Turnover, Employment*⁴: The nominal turnover of accountancy enterprises in the Netherlands reached a level over 5300 million Euro in 1999, equivalent to over 1.4% of GDP, which represents the third highest percentage share of GDP, just behind UK and the high outlier, Luxembourg, among other countries surveyed (c.f. Overview-tables in Chapter 5). Output of the sector thus rose at a yearly average of 7.2% during most of the 1990's, faster than the growth in GDP (an average of 5.1% p.a. over the same period 1993-1999). This represents a real growth in accountancy services of 6.5%, higher than the growth in employment of 3.5% over the same period, 1993 to 1999; so slight productivity gains have also been made. In fact, the real turnover per employed person rose 18% over the period.

⁴ EUROSTAT; Centraal Bureau voor de Statistiek

Table 8-7 Firms, Turnover and Employment; Netherlands 7412

	Number of Firms	Turnover in Mio EUR	Employment	No. of Professionals
1993	10 435	3 501	67 000	
1994	11 879	3 624	67 601	
1995		3 816		
1996	12 030	3 844	70 600	
1997	13 410	4 200	76 500	
1998	13 630	4 717	81 200	
1999	13 680	5 310	82 400	
2000				
2001				6 359

Source: EUROSTAT, Centraal Bureau voor de Statistiek, IHS

The number of firms increased from about 12,000 in 1996 to almost 13,700 in 1999, an average rate of 4.4% p.a. (see table). The corresponding yearly growth rates over the period 1996-1999 are 11.4% for turnover, and 5.3% for employment. The lower rate of increase in enterprises relative to employment is indicative of a slight trend towards concentration i.e. relatively fewer firms with more employees: indeed the average firm gave employment to 6 persons in 1999, up from an average of 5.7 at a low-point in 1997. The number of enterprises, over 13,600 since 1998, which represents over 860 firms per million of population, is somewhat above the median of 770 in our survey, but far less in relative terms than Luxembourg, Italy and Sweden among member states in our survey.

The average turnover (1999) per accountancy firm in the Netherlands of 388,000 Euro is less than the correspondingly figure for technical services (490,000 Euro) and far less than the corresponding value for legal services (959,000 Euro), resulting from average yearly growth levels of 2.5%, 1.8%, and a huge 12.8% in these respective branches over the period 1993-1999. This level of business of Dutch accountancy enterprises is the median of the 12 member states surveyed here.

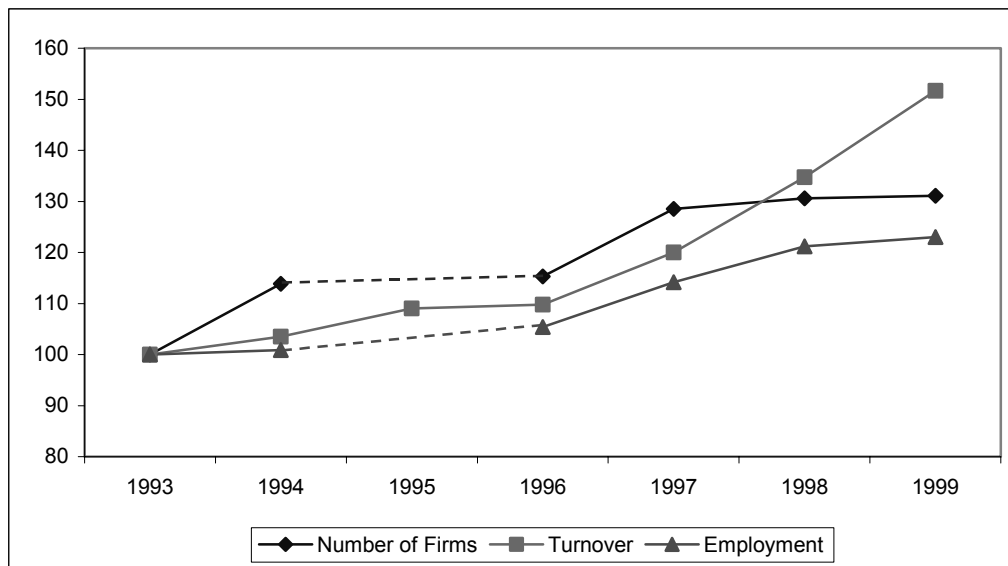
The level of employment, at over 5.2 in 1000 of the population in 1999, is very high in international comparison (after only Luxembourg with its large finance sector). Nevertheless, the level of productivity, as measured by a turnover of around 64,000 Euro of per employed person, is above the median of our survey, having greatly increased in the 1990s. As mentioned above, it is, however, considerably lower than the corresponding figures for Luxembourg, Sweden and Denmark.

Table 8-8 Key Statistics, Accountancy, Netherlands 7412

	Turnover per Firm	Employment per 1000 firms	Turnover per person employed	Employment per Mio. of Pop	Firms per Mio. of Population
	1000 EURO		1000 EURO		
1993	335	6 421	52	4 397	685
1994	305	5 691	54	4 406	774
1996	320	5 869	54	4 557	776
1997	313	5 705	55	4 914	861
1998	346	5 957	58	5 187	871
1999	388	6 023	64	5 228	868

Source: Source: EUROSTAT, Centraal Bureau voor de Statistiek, IHS

The differential rates of growth in enterprises, turnover, and employment are illustrated in the chart, with the 1993 values indexed at 100.

Chart 8-2 Relative Growth Rates, Netherlands 7412

Source: Centraal Bureau voor de Statistiek

*Recent Performance:*⁵ The costs of employment typically account for over 50% of turnover, nearly 80% of which covers remuneration, although this percentage was reduced in the years 1996-1999. The rate of growth of average wage and salaries, at just over 4% p.a. during the period, fell slightly behind the growth in employment in the branch. It is assumed that this effect is in part conditioned by the trend towards atypical employment, which has been a feature, especially in the Netherlands, in recent years.

⁵ Centraal Bureau voor de Statistiek, IHS

Investment in accountancy accounts for around 6.5-7% of turnover, a substantial third of which is accounted for by investment in information technology.

Table 8-9 Performance of Accountancy Services, Netherlands

	Firms	Turnover	Employment	Profit Margin before Tax	Total Personnel Costs	Gross Wages and Salaries	Avg. Wage / Salary	Total Investment	Computers
		mio. euro		% of Turnover	% of Turnover	% of Personnel Costs	euro	% of Turnover	% of investments
1996	12 030	3 844	70 600	14.9	54	79.5	23 377	7.0	38.2
1997	13 410	4 200	76 500	15.5	54	79.8	23 784	6.9	29.6
1998	13 630	4 717	81 200	15.3	53	77	23 707	6.3	35.9
1999	13 680	5 310	82 400	13.6	53	76.9	26 336	6.4	37.2
Change 96-99	4.4	11.4	5.3	-3.0	-0.5	-1.1	4.1	-2.8	-0.9

Source: Centraal Bureau voor de Statistiek

Concentration: Trends in the development of accountancy firms in the Netherlands are apparent in the data from the late 1990s. As the table shows, the most notable change is the relative increase in the number of large firms that have a turnover exceeding one million Euro. Such firms have grown in number at a rate more than twice overall rate of 4.4% p.a. Interestingly, the number of small firms has more or less increased apace.

The relative decline of the number of middle sized firms, i.e. enterprises with an annual turnover of between 250,000 Euro and one million Euro, indicates that certain merger or acquisition activity has taken place. It is assumed that this fusion process is part of a longer enduring trend, but this will have to wait for confirmation when more recent data is available.

Table 8-10 Netherlands Accountancy Firms and Employment by Turnover Size Class

		1996	1997	1998	1999	% change 96-99
Total	Firms	12 030	13 410	13 630	13 680	4.4
	Employment	70 600	76 500	81 200	82 400	5.3
	E / F	5.9	5.7	6.0	6.0	
less than 250 000 euro	Firms	10 610	11 890	12 080	12 160	4.7
	Employment	19 000	21 300	21 700	20 100	1.9
	E / F	1.8	1.8	1.8	1.7	
250 000 to 500 000 euro	Firms	700	790	750	700	0.0
	Employment	5 100	6 100	5 600	4 700	-2.7
	E / F	7.3	7.7	7.5	6.7	
500 000 to 1 000 000 euro	Firms	420	420	440	440	1.6
	Employment	5 700	5 400	5 400	5 600	-0.6
	E / F	13.6	12.9	12.3	12.7	
1 000 000 euro or more	Firms	290	310	360	380	9.4
	Employment	40 900	43 700	48 500	51 900	8.3
	E / F	141.0	141.0	134.7	136.6	

Source: Centraal Bureau voor de Statistiek

Legal Form: In addition to a trend in concentration, some accompanying trends in the types of legal form in which accountancy firms take place are noticeable. The table shows that, although sole proprietors account for nearly half of all enterprises, the relative growth area over the last decade is partnerships of various kinds, as well as plc's.

Table 8-11 Legal Form of Accountancy Enterprises, Netherlands

	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	% in change 2002	% in change 93-02
public limited companies	35	50	45	50	55	65	65	80	85	85	0.1	10%
limited liability partnerships	15 150	15 810	16 285	18 510	18 930	22 635	25 815	27 850	29 540	32 380	33.5	9%
general partnerships	5 700	6 625	6 590	7 800	9 045	9 765	10 815	11 705	12 220	12 335	12.8	9%
cooperative associations	150	195	185	215	315	330	355	365	375	370	0.4	11%
sole proprietors	29 005	30 905	32 065	33 455	37 770	40 045	43 735	44 915	44 370	47 090	48.7	6%
private company	1 385	1 320	1 295	1 390	1 640	1 570	1 555	1 600	1 580	1 550	1.6	1%
public authority	30	10	40	10	15	10	10	10	15	15	0.0	-7%
foundations	880	970	995	1 070	1 180	1 115	1 070	1 105	1 230	1 225	1.3	4%
other	1 035	1 325	1 385	1 655	1 895	1 830	1 865	1 830	1 705	1 600	1.7	5%

Source: Centraal Bureau voor de Statistiek

*Entrance to the Accountancy Profession.*⁶ Data available in a long time series from the 1980s to 1997 shows the extent to which the accountancy profession in the Netherlands opened itself to new members. The statistics refer to the largest of the accounting professional bodies NivRA, 'Registered Accountants'.

Table 8-12 Entrance to the Accountancy Profession, Netherlands, NivRA

	NIVRA Trainees	Newly Qualified Entrants	Entry Rate	Newly Qualified per Firm	Entrants as % of NIVRA Members	Trainees per Firm
1980	4 908	222	4.5%	0.82	4.9%	18.1
1981	5 457	230	4.2%	0.86	4.9%	20.4
1982	5 845	228	3.9%	0.81	4.7%	20.7
1983	5 423	230	4.2%	0.77	4.6%	18.1
1984	5 073	261	5.1%	0.80	5.0%	15.5
1985	5 611	287	5.1%	0.85	5.3%	16.6
1986	5 863	324	5.5%	0.93	5.7%	16.8
1987	5 962	341	5.7%	0.93	5.7%	16.2
1988	6 199	371	6.0%	0.93	5.9%	15.6
1989	6 091	412	6.8%	1.00	6.2%	14.8
1990	5 607	544	9.7%	1.14	7.6%	11.8
1991	5 689	551	9.7%	1.05	7.3%	10.8
1992	5 707	598	10.5%	1.01	7.4%	9.6
1993	4 988	479	9.6%	0.77	5.6%	8.1
1994	4 399	464	10.5%	0.69	5.2%	6.5
1995	3 679	683	18.6%	0.93	7.1%	5.0
1996	3 260	744	22.8%	0.96	7.3%	4.2
1997	3 169	651	20.5%	0.81	6.0%	3.9

Source: NIVRA, IHS

Although the number of NivRA trainees varies from year to year, and shows a decline in the mid 1990s, the number of newly qualified entrants to the profession increased continuously. The entry rate, i.e. the ratio of new entrants to trainees was under 5% in 1980 and successively increased to over 20% in 1996. As the number of firms increased, the ratio of trainees employed per firm went down, but significantly the ratio of new entrants per year to firms remained close to 1:1. Overall, the accountancy profession has been opened successively to new entrants, as witnessed by the gradual increase in the number of entrants as a percentage of the NivRA professional membership.

⁶ NIVRA, IHS

Summary

The regulatory systems for accountants in the Netherlands are a rather good example for a country where the market-entry regulations basically fulfil the minimum requirements of the EC 8th Directive on auditing, and where the conduct-regulations are rather liberal. This is especially true for regulation on fees and prices as well as advertising and, with some limitation, also for inter-professional co-operation. At the same time, in the case of the Netherlands, the co-existence of two professional bodies does not lead to specific problems of professional organisation (as has sometimes been argued in the case of Italy or for legal professions in the case of England & Wales). If the organisational separation of professions does not lead to monopoly structures regarding tasks provided by the two professions, some competition between the two professions may occur, which should certainly lead to a more dynamic market. From this example, it is evident that it is more the contents of regulations which make the difference, rather than the question of the number of professional bodies. Furthermore, the existence of more than one professional body may limit the lobbying-power of both of them and for this may help to prevent excessive economic and political power of the relevant professional organisations, c.f. Ogus (1995).

Both professional bodies (the NOvAA and the NivRA) appear to be rather open-minded as regards further liberalisation, especially concerning inter-professional co-operation. However, this, up to now, is strongly opposed by the Dutch lawyers, who worry about a possible market dominating position of the big accounting firms in legal services.

8.3 Accounting Professions in Germany

Accountants and sworn-in auditors

With the introduction compulsory auditing for incorporated companies („*Aktiengesellschaften*“) and other companies in 1931 the profession of accountancy was born and the legal form of the accounting firm was created. In 1943 the title of sworn-in auditor („*vereidigter Buchprüfer*“) was established and in 1961 the professional code of conduct for the accountants was enacted with the Accountants Ordinance („*Wirtschaftsprüferordnung*“ - WPO). Apart from the professional rules and regulations for accountants, the professional ordinance for a second occupation, that of sworn-in auditor, who has limited auditing authorisation, was also established and regulated uniformly for the whole Federal Republic. With this enactment the Chamber of Accountants („*Wirtschaftsprüferkammer*“) was also established as a self-governing and self-regulating body for the accounting profession. In 1961 the profession of sworn-in auditors was abolished, with the possibility for those affected to be appointed as accountants for seven years to come if they had already passed the exam as a chartered public accountant. However, this profession was again reinstated – albeit with other duties – in 1986 with the adoption of the Balance Sheet Directive Law („*Bilanzrichtliniengesetz*“). The occupational titles accountant and sworn-in auditor and the term accounting firm („*Wirtschaftsprüfungsgesellschaft*“) and auditing firm („*Buchprüfungsgesellschaft*“) are protected by law.

The accountants as well as the sworn-in auditors are obliged to organise themselves in the Chamber of Accountants („*Wirtschaftsprüferkammer*“ - WPK). The WPK is a public statutory body („*Körperschaft des öffentlichen Rechts*“). Besides this statutory association under public law there are two main private organisations of which accountants and auditors can become members: the Institute of Accountants („*Institut der Wirtschaftsprüfer in Deutschland e. V.*“) and the Federal Association of Sworn-in Auditors („*Bundesverband der vereidigten Buchprüfer e. V.*“)

Market Entry

Tasks and exclusive tasks provided by German Accountants

Fundamentally one has to distinguish between statutory professional duties of accountants according to § 2 WPO and those tasks that can still be regarded as similar with the accounting profession (§ 43 WPO).

The original professional duties of accountants encompass the field of annual auditing of financial statements, tax advising and legal consulting and representation relating to the profession.

The central exclusive task of accountants is the auditing of the financial statements as prescribed by law for companies. Accountants are entitled to audit all forms of companies, e.g. large incorporated companies, banks and credit institutions, insurance companies, cooperatives (*“Genossenschaften”*), public enterprises, to name the most important forms. Additionally legally required audits (*“Pflichtprüfungen”*) of other companies and organisations that are subject to publication requirements are undertaken. Beside these audits required by law, accountants perform other audits and examinations that may be prescribed by other laws or that are done on a freely agreed contractual basis. The exclusivity of performance of audits (*“Tätigkeitsvorbehalt”*) however extends only to the audits prescribed by law. According to § 129 WPO sworn-in auditors also have authority to perform the statutory prescribed audits. This covers especially the auditing of so called “medium sized companies” (*“mittelgroße GmbHs”*). Sworn-in auditors are however not entitled to audit those companies (“GmbHs”) that fall under the company disclosure law (*“Publizitätsgesetz”*) and those medium sized companies that have to be audited according to the Insurance Supervision Law (*“Versicherungsaufsichtsgesetz”*) or the Banking Law (*“Kreditwesengesetz”*). Exempt are public enterprises (*“Wirtschaftsbetriebe der öffentlichen Hand”*) and other private enterprises.

Accountants are also entitled, according to § 2 Abs. 2 WPO, to function as consultants and representatives in tax related issues (cp. Wasilewski 1997: 221). Generally this field of activity is reserved for sworn-in auditors and tax advisers (cp. in detail the chapter on tax advisers). In criminal tax-law cases professionals of these two groups (accountants and sworn-in auditors) can appear as defence counsel, but only together with a lawyer. This is however not the case if the revenue service conducts the case on its own.

Besides this, accountants can be consulting experts in general economic and commercial issues, law advisers (allowed, when the consulting is done in fields relating to accounting, financial statements etc.) as well as trustees (§ 43 Abs. 4 Nr. 4 WPO). These activities do not fall within the exclusive activities and thus they are freely negotiable services.

Education and Entrance to the Profession

There is no uniform education for accountants, however, but there are pre-requisites laid down by law for taking the accountant exam (*“Wirtschaftsprüferexamen”*).

The conditions for taking the exam for applicants with a university degree (which form by far the biggest group) are stipulated in the WPO. According to these specifications the candidate

must have a university degree in business economics, law, engineering or agriculture or another university course with emphasis on economic and business matters. A second pre-condition for admission to the examination is that the candidate has at least 3 years experience in auditing, of these two years under supervision of a licensed auditor. The obligatory practising times have been reduced recently. Previously at least five years experience, of these two years under the supervision of a licensed auditor, were compulsory.

The proof that a university course has been successfully completed obtains if:

a) the candidate has successfully completed a curriculum in business economics or another curriculum with emphasis on business matters at higher technical colleges (*“Fachhochschulen”*) and has completed in addition at least six years service at the organisations/persons mentioned in b) or has completed this education with another curriculum with emphasis on business matters at higher technical colleges (*“Fachhochschulen”*) and graduation as a "Master" or "Magister";

b) the candidate has completed at least ten years service with an accountant (*“Wirtschaftsprüfer”*), an accounting firm (*“Wirtschaftsprüfungsgesellschaft”*), a Cooperative Audit Association (*“genossenschaftlicher Prüfungsverband”*), a sworn-in auditor (*“Vereidigter Buchprüfer”*) or a firm of licensed auditors, the cooperative auditing office of the German Public Savings Bank (*“Prüfungsstelle des Sparkassen- und Giroverbands”*) or a nationwide auditing body for public statutory institutions (*“überörtliche Prüfungseinrichtung für Körperschaften und Anstalten des öffentlichen Rechts”*);

c) the candidate has served at least five years as a tax adviser (*“Steuerberater”*) or as sworn-in auditor (*“Vereidigter Buchprüfer”*). In this case it is again a pre-condition for admission to the examination that the candidate has at least 3 years experience in auditing, of these 2 years under the supervision of a licensed auditor. No proof of auditing experience has to be submitted by applicants that have practised at least 15 years as tax advisers or sworn-in auditors. A maximum of ten years can be accredited towards these years for time worked as “tax authorised person” (*“Steuerbevollmächtigter”*).

This exam has to be taken before a board of examiners that is constituted by the relevant provincial authority and comprises the following persons: a representative of the provincial authority, a university lecturer for business management, a jurist qualified for becoming a judge, a representative of the tax authorities (*“Finanzverwaltung”*), a representative of the business community, three chartered accountants, one of which must have experiences in auditing cooperatives (*“genossenschaftliches Prüfungswesen”*).

To cite Klos (1991: 363), the accounting exam (*“Wirtschaftsprüferexamen”*) is one of the most difficult and challenging vocational exams in Germany. The pass rate is only about 50 – 60 % (cp. Bartels 1996: 217), however nearly half of the failed candidates are granted a

second chance, the so called supplementary exam (“*Ergänzungsprüfung*”) (cp. Bartels 1996: 217).

The requirements to take the exam for a sworn-in auditor are that the candidate is a tax adviser (“*Steuerberater*”) or lawyer and that he has worked as such for at least five years and that he has at least 3 years experience in auditing (§ 131 Abs 1 WPO). No proof of auditing experience has to be submitted by applicants who have practised at least 15 years as tax advisers or sworn-in auditors. A maximum of ten years can be accredited towards these years for time worked as tax authorised person (“*Steuerbevollmächtigter*”).

This exam takes place before a board of examiners that comprises the following persons: a representative of the provincial government finance department (“*Landeswirtschaftsbehörde*”) as chairperson, a representative of the business community, one chartered accountant and one sworn-in auditor or a second accountant who also is a tax adviser or lawyer.

Conduct Regulation

Prices and Fees

For the auditing profession there exists no special fee regulation or tariff as for the lawyers in the BRAGO or for tax advisers in the StBGebV (see the chapters on lawyers and tax advisers in Germany for details). The fees are freely negotiable (except if tax advice is part of the service offered); there is – theoretically – a price-competition in the market. Provision for a uniform fee-scale have been made in § 55 *Wirtschaftsprüferordnung* (WPO): the Federal Ministry of Economics with the approval of the Federal Council and after consultation with the Chamber of Accountants (“*Wirtschaftsprüferkammer*”) and the working party on financial auditing may issue a scale of fees for statutory audits. Such a scale has however not yet been issued. However for tax advice given there is a general tariff, the “*Steuerberatergebührenverordnung*”.

In addition the accountant is not permitted to enter into an agreement whereby the amount of his remuneration is dependent on the result of his work as accountant and he is not permitted to receive commissions for referrals and other such services.

Advertising

Advertising by accountants is regulated in § 52 WPO („*Wirtschaftsprüferordnung*”). With the 1995 enacted “Third Law to Change the Accountants Regulation” (“*Dritte Gesetz zur Änderung der Wirtschaftsprüferordnung*”) the ban on advertising by accountants has been eased. The WPO now stipulates that it is only forbidden to engage in advertising that is

“contrary to the ethics of the profession” (“*berufswidrige Werbung*”). § 57 (4) Nr. 4 WPO stipulates that rules and regulations regarding advertising can be prescribed by the professional chambers in the form of a professional ordinance. This ordinance however defines advertising that is contrary to the professional ethics fairly broadly. For example § 34 paragraph 2 of this ordinance prohibits the use of “commercial methods” (“*gewerbsmässiger Methoden*”) in advertising. Further fairly rigid rules of the professional ordinance (§ 33 *Berufssatzung*) imply that advertising is still largely forbidden for members of the Chamber of Accountants. This means that the advertising possibilities for accountants are fairly wide as far as the law is concerned, but largely restricted by the self-imposed rules of the Chamber of Accountants.

Forms of Business and inter-professional Co-operation

According to § 27 WPO accounting firms can have the legal form of a public limited liability company (“*Aktiengesellschaft*”), a limited partnership company based on shares (“*Kommanditgesellschaft auf Aktien*”), limited liability company (“*Gesellschaft mit beschränkter Haftung – GmbH*”), an ordinary partnership company (“*Offene Handelsgesellschaft – OHG*”), a limited partnership company (“*Kommanditgesellschaft*”) and partnership (“*Partnerschaftsgesellschaften*”). This means that virtually any form of company is possible.

Pre-requisite for approval is that all members of the board, the executives, the partners liable to unlimited extent (“*persönlich haftenden Gesellschafter*”) or the partners are accountants. At least one accountant who is also a member of the board, CEO or partner must have his practise at the registered domicile of the company. Apart from accountants, sworn-in auditors, tax advisers and lawyers are permitted to be members of the board, to be chief executive officer or partner of the accounting firm. The Chamber of Accountants can approve that specially qualified persons, that are not accountants, sworn-in auditors, tax advisers or lawyers and whose occupation is closely related to the one of accounting can become members of the board, executives, the partners liable to unlimited extent or partners of the firm.

The number of members of the board, executives, partners liable to unlimited extent or normal partners that are not accountants may not rise above that of those that are accountants. If the firm has only two members of the board, executives or partners, then at least one must be an accountant.

Location and Diversification

Until 1995 accountants were only allowed to open a single branch (previously § 3 paragraph 2 WPO). Accounting firms however were already permitted to have an unlimited number of

branches before 1995. Since 1995 this “privilege” has also been extended to single accountants.

Continuing Education

Accountants are obliged to extend and enhance their professional knowledge continually. The obligation of permanent education is stipulated in the Quality Assurance Standards (VO 1/1995 and VO 1/1993) and the Rules of the Professional Conduct of the profession.

Specialisation in the Profession

There are no specific forms of specialisation for accountants and sworn-in auditors comparable to those of German lawyers (*Fachanwälte*). According to §32 Professional Charter of the *Wirtschaftsprüferkammer*, both professions are only entitled to use designations of professional specialisation which they have legally acquired by the statutory prescribed process. They may publicise certain fields of specialisation in their professional activities. Other areas of specialisation may not be publicised.

Compulsory Indemnity Insurance

For accountants and sworn-in auditors in Germany an indemnity insurance is compulsory (*Wirtschaftsprüfer-Berufshauptpflichtversicherungsordnung* – WPHBV, enacted December 18, 1998). The minimum amount for which professionals must be insured is 1 Million Euro per case (§ 323 Commercial Code).

Actual challenges and recent changes in regulations

Until now the appointment as certified public accountant or as sworn-in auditor, as well as the accreditation of the respective professional associations, were done by the provincial ministries of commerce. With the fourth amendment of the Accountants Ordinance (*Wirtschaftsprüferordnung*), effective as from January 1, 2002, this duty was transferred to the professional organisations of the accountants and sworn-in auditors.

Tax advisers

The profession of tax advisers is still a „young” liberal profession, a first legal basis can be found in the *„Reichsabgabenordnung”* from 1919. The original job title ‘tax adviser’ was first used in 1933. Compared with most of the other EU member countries the services of tax advisers in Germany (as well as in Austria, Luxembourg and France) are subject to special regulations, through which relevant exclusive tasks are established.

With regard to the organisation of tax advisers in Germany, there exists a compulsory membership of a profession chamber. The compulsory membership in one of corresponding regional Tax Adviser Chambers (*„Steuerberaterkammer”*) is stipulated in § 73 StBerG. The membership automatically begins with the appointment to tax adviser, or to be precise, with the acknowledgement of the tax adviser. The 21 regional Tax Adviser Chambers (*„Steuerberaterkammer”*) (16 in the old and five in the new federal states) build the Federal Tax Adviser Chamber (*„Bundessteuerberaterkammer”*). The Federal Tax Adviser Chamber is the professional association and elaborates such rules.

The *Bundessteuerberaterkammer* – a public law corporation – is the statutory umbrella organisation for all tax advisers, authorised tax representatives and tax consultancies in Germany. The *Steuerberatungsgesetz* (“Tax Consultancy Act”) lays down and authorises its status and duties.

The *Bundessteuerberaterkammer* has, in its capacity as a professional self-regulating association, been representing the interests of over 72,000 (Sept. 2002) German tax advisers at federal and European level since 1961 and adopts an active stance when any professional and tax law issues arise.

Market Entry

Tasks and exclusive tasks provided by German Tax Advisers

The right for commercial help with tax questions *„geschäftsmäßigen Hilfe in Steuersachen”* is determined by §§ 2 and 3 StBerG. The main task of tax advisers is the tax declaration advice (help with the tax return and other declaration obligations: making of the bookkeeping, making of annual accounts, making of payroll accounting and wage-slip, making of tax return, list of all balance sheets, and so on). For the enforcement of tax advice belongs essentially the assistance when having an argument with the Inland Revenue or the Court dealing with tax disputes. As a third *„Vorbehaltspflicht”* (reserved task) we have to mention the arranging of the tax advice. It should be emphasized that tasks of day-to-day accountancy do not count as primary tasks for a tax adviser in Germany, in contrast to Austria.

Besides tax advisers also lawyers, established European lawyers, auditors, sworn-in auditors, as well as corresponding profession societies are authorised according to § 2 Abs 1 StBERG. This authorisation is described by the phrase “unlimited help in tax issues” (“*unbeschränkter Hilfeleistung in Steuersachen*“). A restrictive authorisation for help with tax issues has existed for some other professions and organisations. The corresponding regulations are stipulated in § 4 StBERG. According to the Federal Notary Rules (*Bundesnotarordnung*) notaries are allowed to act as tax advisers in correspondence with their authorities. Almost the same applies to patent attorneys, to public corporations or cooperative auditorial.

A general exception to the prohibition of unauthorised help with tax issues exists for the following activities (compare § 6 StBERG):

- The reimbursement of scientifically based expert opinions,
- The help of relatives in tax affairs free of charge in terms of the § 15 of the General Tax Code (“*Abgabenordnung*“),
- The execution of mechanical processes to keep accounts and records, which are important for taxation; this does not include the assignment of documents, receipts and the assignation of accounting instructions,
- Under certain conditions the accounting of current business transactions, the current payroll accounting and the making of the wage-tax return.

Education and Entrance to the Profession

According to § 36 StBERG, aspirants for the tax adviser examination can choose between the following qualification possibilities in order to fulfil the admission standards: On the one hand a university education on the condition that the aspirant has finished a jurisprudential or economical study; alternatively another study at university with the field in economics and afterwards working as the main occupation in the area of taxation for two years (until the end of the nineties three years) (with a weekly work schedule of at least 16 hours). For alumni of a college of higher education with a jurisprudential study the time of their main occupation increases up to three years (before four years). On the other hand this profession can be achieved with a professional training / vocational education. Here, persons fulfil the requirements if they pass a final examination in tax and economical advising or a pursue a commercial career with working afterwards for ten years as a main occupation in the taxation field.

After a successful examination for a „*Sturfachwirt*“ or to a certified balance-sheet auditor there are at least seven years practical work. On the other hand the prerequisites are also fulfilled by civil servants or employees of higher services of public finance departments

(*gehobener Dienst*) (§ 36 StBerG), which have been occupied in the field of taxation for at least ten years.

The examinations is organised according to the relevant prior education Accountants and sworn-in auditors are allowed a shortened tax adviser examination on application. There is no tax examination necessary for: university professors, with relevant teaching for at least ten years, former finance judges with ten years relevant experience, former civil servants or employees of the finance departments or other fields of public services with years of relevant experience.

All others have to pass a full examination. The examination is divided into a written part of three supervised workings and an oral examination. The examination committee consists of two tax advisers, three civil servants of higher services of public finance departments and a deputy of the economy. The tax adviser members of the examination committee are proposed by the Tax Adviser Chamber.

Conduct Regulation

Prices and Fees

Tax advisers in Germany, in principle, are tied to a legal tariff, which is given by the Ministry of Finance via executive order with acceptance of the Federal Assembly. Pestke (1997a: 13) states that such a legal regulation for tax advisers is exceptional for Europe.

On the substantial level the Tax Adviser Tariff Regulation (*Steuerberatergebührenverordnung*, StBGebV) – similar to the former Austrian regulation – constitutes a lower limit of the charge.

An upper tariff limit is only effective if there is no written acceptance by the client for a free charge contract (§4 StBGebV). A contract with regard to a successful activity is – similar to Austria – not allowed. The same is true for relating payment to outcome, i.e. for the charge as a part of the tax savings to be achieved.

Basically the charge be commensurate and has to reflect time expenses, value of the object and nature of the task. In principle there are three ways for accounting charges: value and time fees and a lump sum charge.

Advertising

Tax advisers have to exercise their profession according to § 57 StBerG independently, , faithfully, discreetly and without advertising § 57a StBerG only allows advertising if it is

reporting in form and substance about the professional activity and if it is not directed to a single determination.

More details are given by the article assembly of the Federal Tax Adviser Chamber in their profession's regulations. This "*Satzung über die Rechte und Pflichten bei der Ausübung der Berufe der Steuerberater und der Steuerbevollmächtigten*" was changed at last October 24, 2001.

Tax advisers are allowed to provide information about their profession and their activities. The information, however, must be technically correct. The description has not to be ostentatious. Comparing, evaluating or misleading statements are not allowed. Advertising is not allowed if it is directed to a single determination. This is the case in particular if the directed person needs consulting or representation and this is the reason for the advertising. Tax advisers are allowed to make public areas of their professional fields or activities.

In general the regulations on advertising were significantly liberalised for tax advisers in Germany in the 1990s. The former regulations were much more rigid.

Forms of Business and Inter-Professional Co-operation

Most of the tax adviser offices are offices of single tax advisers. Professional societies are allowed. Corporations, associations limited by shares, ltd. associations, general partnerships, limited partnerships and partnerships according the partnership associations are allowed to be tax adviser associations. .

To be accepted by the Tax Adviser Chamber, the members of the board or the chairman has to be a tax adviser. At least one tax adviser which is a member of the board, a chair man or a personal liable chair man has to have its professional domicile where the organisation is based or in its vicinity. In this case the number of its members of the board, chair men and personal liable chair men has not to exceed the tax advisers in the board, within the chair men and within personal liable chair men. Besides tax advisers, also lawyers, settled European lawyers, accountants, sworn-in auditors and tax authorised persons ("*Steuerbevollmächtigte*") are allowed to be members of the board, chair men or personal liable chair men.

By a capital obligation ("*Kapitalbindung*") (§ 50a StBerG) it should be assured that tax adviser associations are not controlled by externals. Associates therefore can be only tax advisers, lawyers, accountants, sworn-in auditors, tax authorised persons, tax adviser associations or persons occupied within the association.

Location and Diversification

Basically a tax adviser can have only one place of business. However, he can maintain another place of business, if the head of the other place of business is a tax adviser. This is the custom in particular with tax adviser associations. There is the possibility of an exemption to be the head of the other place of business.

Localisation regulations, like those for lawyers in Germany, are not imposed on tax advisers.

Continuing Education

The tax adviser is obliged to undertake continuing education in an appropriate manner (§ 4 Abs. 2 BOSTB). However, there are no distinct legal guidelines. No certification is required for attending continuing education.

Specialisation in the Profession

There are no specific forms of specialisation for tax advisers comparable to those of German lawyers (*Fachanwälte*). Tax advisers are allowed to advertise with their main tasks /offered areas of specialisation.

Compulsory Indemnity Insurance

For tax advisers in Germany an indemnity insurance is compulsory. The minimum amount for which professionals must be insured is 250,000 Euro per case. The maximum amount insured may be fixed at 1,000,000 Euro per year.

Actual challenges and recent changes in regulations

The Federal Tax Adviser Chamber ("*Bundessteuerberaterkammer*") emphasizes by a recent letter to the members of the European Convention (September 5, 2002) that "in a future Europe, it is crucial to strike the right balance between state and its citizens. Structures therefore need to be developed which ensure that there is a proper balance between state regulation and freedom to exercise a profession. In Europe there is already a system which achieves this aim and which has also proved itself in the past, namely the professional chambers, which act as self-regulating and monitoring bodies for the liberal professions in Germany."

The “*Bundessteuerberaterkammer*” in this recent statement further emphasizes that the self-regulation system has crucial advantages over regulation by the state of total absence of regulation which recommend it as a model for the European Union.

With regard to the liberalisation in the field of advertising, several instructions in the professional regulations were revised (see 4.3.2 Advertising). With the adaptation to the last judgement of the Federal Court of Justice e.g. brochures may be sent to non clients also without their demand.

Economic Characteristics (Accountants, Sworn-in Auditors and Tax advisers)

Germany – Structure and dynamics (NACE 7412)

*Enterprises, Turnover, Employment*⁷: The only data available for Germany at the 4-digit level are those recently made available by EUROSTAT for the year 2000.

Table 8-13 Firms, Turnover and Employment; Germany 7412

	Number of Firms	Turnover in Mio EUR	Employment	No. of Professionals
2000	35 070	17 038	283 087	14 078

Source:EUROSTAT, IHS

The key indicators are thus also restricted to the year 2000:

Table 8-14 Key Statistics, Accountancy Services: Germany 7412

	Turnover per Firm	Employment per 1000 firms	Turnover per person employed	Employment per Mio. of Pop	Firms per Mio. of Population
	1000 EURO		1000 EURO		
2000	486	8 072	60	3 445	427

Source: EUROSTAT; IHS

Turnover and Expenditure: Accountants and tax advisers (NACE 7412) together produced an turnover altogether of 17 Bill. EUR (17,038,727 in 1.000 EUR) in the year 2000. (See Tables – Accountancy Services 7411 - at end of this section.)

⁷ EUROSTAT

The expenditures (i.e. costs of personnel, buildings etc.) in the accountancy services of about 12 Bill. EUR (12,383,780 in 1,000 EUR) amounts to 72.7% of the aggregate turnover. The dominant expenditure item is personal expenditure: their share of all expenditure is 64.8% with a total amount of 8 Bill. EUR (8,026 million EUR). The dominant part within personal expenditure is the wages and salaries with 82.7%; social expenditures counts for the remaining 17.3% (1,387,011 in 1,000 EUR).

Accountants and Sworn-in Auditors

Members of the Profession: The development of the number of accountants, accountant societies (*Wirtschaftsprüfungsgesellschaften, WPG*) and sworn-in auditors and sworn-in auditors societies (*Buchprüfungsgesellschaften, BPG*) from 1980 to 2002 is shown below.

Table 8-15 Quantitative development of accountants, accountants societies, sworn-in auditors and sworn-in auditors societies in Germany 1980 to 2002.

Year*	Accountants	Accountants Societies	Sworn-in Auditors	Sworn-in Auditors Societies
1980	3 821	651	-	-
1985	4 637	920	-	-
1990	6 344	1 215	2 782	32
1991	6 680	1 301	3 421	50
1992	6 953	1 363	3 831	70
1993	7 313	1 409	4 094	83
1994	7 617	1 471	4 225	94
1995	7 994	1 541	4 233	108
1996	8 352	1 615	4 205	113
1997	8 707	1 683	4 217	121
1998	9 156	1 759	4 238	135
1999	9 611	1 829	4 205	146
2000	9 984	1 879	4 094	166
2001	10 355	1 949	4 091	169
2002	10 881	2 032	4 068	166

* per 1.1. of each year, since 1992 with the new five federal states

Source: Federal Chamber of Accountants (www.wpk.de, 2.1.2003) and Federal Chamber of Lawyers 1.1.2002

Accountants: As the table shows, there is a relatively small number of accountants in Germany. From 1990, the year of German's re-unification the number rose steadily to 10,881 accountants in 2002 by a remarkable growth of 71.5%. Note that according to the statistical information given by the Federal Chamber of Lawyers (which serves the accountants statistics as well) the five new federal states are accounted for only since 1992. However, the re-unification certainly has had consequences on the growing number of accountants in the early 1990s in Germany. The growth rate of the number of accountants in the 1990s is even higher than in the 1980s with 66% from 1980 to 1990.

With regard to accountants' firms, the number rose from 1990 to 2002 by 2,032, a growth rate of 67.2%.. However, this growth rate is less pronounced than in the 1980s from 1980 to 1990 with 86.6%. Thus, this development is in contrast to the developments of accountants with their higher growth rate in the 1990s than in the 1980s.

- *Sworn-in auditors:* Before 1986 there were only 89 sworn-in auditors in Germany. With the new opening of the profession according to the balance-sheet directions law

(*Bilanzrichtliniengesetz*) 1986 the number of sworn-in auditors increased significantly to 2,782 in 1990. This increase continued from 1990 to the mid 1990s with 4,233 sworn-in auditors by 52.2% and another peak 1998 with 4,238 auditors. Since 1998 the number of sworn-in auditors has stagnated. There is only a small number of sworn-in auditors firms which rose from 50 in 1990 to 166 in 2002 with almost no changes from 2000 onwards.

Women in the profession: The actual gender specific situation of accountants and sworn-in auditors, domestic and abroad, is shown in the table. The female quota for domestic sworn-in auditors with 15.2% is slightly higher than the female quota for the domestic accountants with 11.4%. In absolute numbers there are more than twice the number of female accountants (n = 1,150) compared to female sworn-in auditors (n = 537).

Table 8-16 Women in the profession: accountants and sworn-in auditors in Germany, 2002

Region	Accountants			Sworn-in Auditors		
	Men	Women	Female Quota %	Men	Women	Female Quota %
Domestic	10 101	1 150	11.4	3 530	537	15.2
Among them in own offices	6 053	549	9.1	3 256	489	15
Abroad	48	7	14.6	3	0	0
Among them in own offices	46	7	15.2	3	0	0
Total	10 149	1 157	11.4	3 533	537	15.2
Among them in own offices	6 099	556	9.1	3 259	489	15

Source: Federal Chamber of Accountants (www.wpk.de, 2.1.2003)

There are gender specific differences with regard to the numbers having their own office: the accountants' own office quota for men is 60%, for women 48%. Such a gender specific difference is not seen within the sworn-in auditors. There, more than 90% (men: 92%, women 91%) are active in their own office.

Age structure - Accountants: The accountants' age structure by gender in 2002 is shown in the table. According to a relatively long study time and additional practicing there are only some (3) accountants under 30 years. The modal age class, the age class with the highest frequency of accountants is 35-39 years, altogether (19.5% of all accountants) and both for men (17.6% of all male accountants) and women (36.7% of all female accountants).

As this age group demonstrates, there is a distinctly different age profile between male and female accountants. In the table and chart the differences in the relative age frequencies is

shown: in younger age group (up to 45 years) there are relatively more female accountants than in older age group.

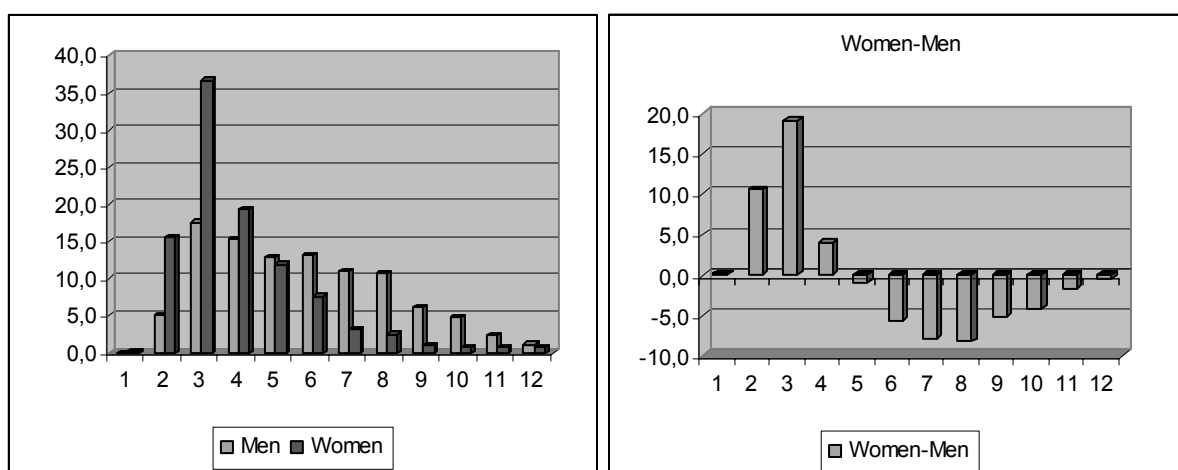
In particular, the peak of those differences in younger years is between 35 and 40 years where female accountants show 19,2 percentage points more than their male colleagues. Between 55 and 59 years, in contrast, female accountants show 8.2 percentage points less than their male colleagues.

Table 8-17 Accountants: Age structure by gender in Germany 2002

	Age	Absolute n			Relative %		
		All	Men	Women	All	Men	Women
1	under 30	3	1	2	0.0	0.0	0.2
2	30-34	693	512	181	6.1	5.0	15.6
3	35-39	2 209	1 783	426	19.5	17.6	36.7
4	40-44	1 772	1 548	224	15.7	15.3	19.3
5	45-49	1 446	1 308	138	12.8	12.9	11.9
6	50-54	1 427	1 339	88	12.6	13.2	7.6
7	55-59	1 155	1 119	36	10.2	11.0	3.1
8	60-64	1 114	1 085	29	9.9	10.7	2.5
9	65-69	627	615	12	5.5	6.1	1
10	70-74	488	480	8	4.3	4.7	0.7
11	75-79	253	245	8	2.2	2.4	0.7
12	80 and more	121	113	8	1.1	1.1	0.7
		11 308	10 148	1 160	100	100	100

Source: Federal Chamber of Accountants (www.wpk.de, 2.1.2003), own calculations

Chart 8-3 Accountants: Age structure by gender in Germany 2002



Note: x-axis according age classes of the table
 Source: Federal Chamber of Accountants (www.wpk.de, 2.1.2003)

- *Sworn-in Auditors*: The age structure by gender in 2002 for sworn-in auditors is shown in the following table. Whereas for accountants the age frequencies are more or less declining

after 35 to 39 years (right skewed distribution), the age structure of sworn-in auditors is roughly bell shaped with a peak for all, and both for men and women, between 50 and 54.

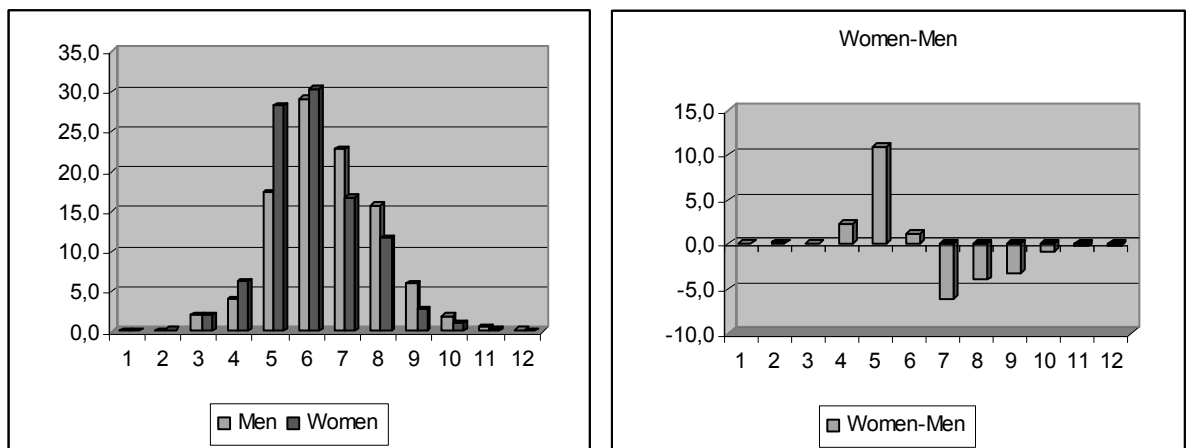
Table 8-18 Sworn-in Auditors: Age structure by gender in Germany 2002

Age	Absolute <i>n</i>			Percentage %		
	All	Men	Women	All	Men	Women
under 30	0	0	0	0.0	0.0	0.0
30-34	1	0	1	0.0	0.0	0.2
35-39	82	71	11	2.0	2.0	2.0
40-44	177	143	34	4.3	4.0	6.3
45-49	765	613	152	18.8	17.4	28.3
50-54	1 192	1 029	163	29.3	29.1	30.4
55-59	898	808	90	22.1	22.9	16.8
60-64	621	558	63	15.3	15.8	11.7
65-69	228	213	15	5.6	6.0	2.8
70-74	75	69	6	1.8	2.0	1.1
75-79	24	22	2	0.6	0.6	0.4
80 and more	7	7	0	0.2	0.2	0.0
	4 070	3 533	537	100.0	100.0	100.0

Source: Federal Chamber of Accountants (www.wpk.de, 2.1.2003), own calculations

According to the gender specific differences in the age profile the male and female age profile is more similar than for accountants. Nevertheless, there are distinct differences between 45 and 49 years (women minus men percentage points: 11%) and between 55 and 59 years (women minus men percentage points: -6.1%).

Chart 8-4 Sworn-in auditors: Age structure by gender 2002 in Germany



Note: x-axis according age classes of the table

Source: Federal Chamber of Accountants (www.wpk.de, 2.1.2003).

Legal Form: There are 25,405 firms in the dominant sole ownership category (84.5% of firms), followed by personal associations (*Personengesellschaften*) with 4,764 associations

(15.8%) and capital associations with 4,692 (15.6%) associations; associations of other legal forms counting 209 units (0.7%). These numbers of firms tally approximately with the overall total for the NACE 7412 classification for 2000 (35,070).

The total number of firms in the statistics certainly includes a large number of tax advising firms (c.f. the section following). According to the IHS questionnaires from the *Wirtschaftsprüferkammer* and the *Institut der Wirtschaftsprüfer in Deutschland* the number of auditing firms rose from 1,247 in 1990 to 2,118 in 2001, a total increase of nearly 70% in this period.⁸ In 2002, just one such firm also had offices outwith Germany. The largest proportion of these firms have up to 4 qualified professionals (86.8%), 9.2% have 5-10 professionals, 2.3% have 11-20 professionals, 1.2% have 21-50 professionals, and 0.2% have 51-100 professionals.

Function as employer and instructor. The number of active persons in the accountancy services per September 30, 2000, is 283,087. Among them there are 85.6% wage and salary earners with 242,306 persons.

The Federal Chamber of Tax Advisers looks after the directive to the '*Fachgehilfen in wirtschafts- und steuerberatenden Berufen*'.

Students: Due to the heterogeneity of the recruitment areas – in accordance with the Federal Chamber of Accountants – no forecasts can be made.

Tax Advisers

Members of the profession: The development of the number of tax advisers, tax lawyers ("*Steuerbevollmächtigte*") and tax advisory associations from 1980 to 2002 in Germany is given in the table and chart. After the re-unification the number of tax advisers increased by 52.5% from 39,997 in 1990 to 60,999 in 2002. Though this rate includes two more growth years, the growth rate in the 1980s was even higher: from 1980 to 1990 the growth rate was 90.2% from 21,030 to 39,997 tax advisers.

The number of tax lawyers strongly decreased. The reason: the profession of a tax attorney was abolished by the law of August 18, 1990 (BGBl., I, 1537, 1543). However, based on the Unification Contract Law (*Einigungsvertragsgesetz* – BGBl. 1990 II, 885, 970) for the new federal states tax lawyers are licensed again, but only preliminary.

Tax advisory associations increased by 65% from 3,901 in 1990 to 6,436 in 2002. As for tax advisers, the growth rate in the 1980s was even higher: the number of tax advisory associations in 1990 was almost three times as much (2.96) as in 1980 (1,319 associations).

⁸ This number appears to be comprised of 'capital associations' only.

Table 8-19 Quantitative development of tax advisers, tax lawyers, others and tax advisory associations 1980 to 2002 in Germany

Year*	Tax Advisers	Tax Attornies ¹	Others ²	Tax Advisory Associations	Total: Members of the Chamber
1980	21 030	16 175	197	1 319	38 721
1985	28 882	14 373	214	2 600	46 069
1990	39 997	5 145	252	3 901	49 295
1991	40 927	4 969	353	4 059	50 308
1992	42 631	6 208	185	4 358	53 382
1993	43 939	6 012	216	4 539	54 706
1994	45 644	5 813	225	4 680	56 362
1995	47 067	5 440	242	4 877	57 626
1996	49 525	5 093	419	5 015	60 052
1997	51 217	4 677	386	5 206	61 486
1998	53 193	4 000	397	5 413	63 003
1999	55 702	3 833	403	5 748	65 686
2000	57 806	3 626	413	6 056	67 901
2001	59 702	3 475	411	6 257	69 845
2002	60 999	3 332	431	6 436	71 198

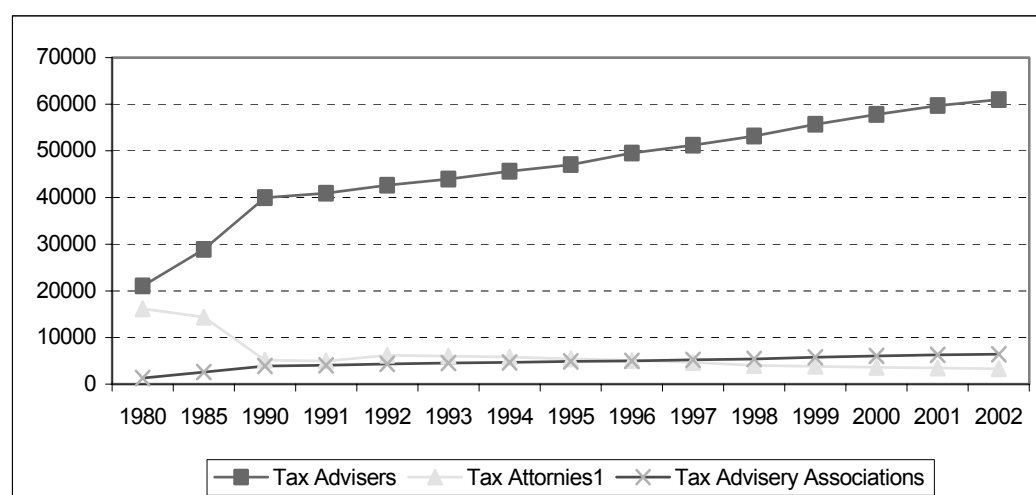
per 1.1. of each year, since 1992 with the new five Federal states

¹ (Steuerbevollmächtigte), the profession of a tax attorney was closed by law of August 18, 1980 (BGBl., 1, 1537, 1543). However, by the Unification Contract Law (Einigungsvertragsgesetz – BGBl. 1990 II, 885, 970) for the new Federal states tax lawyers are licensed again but preliminary only.

² Persons according § 74 Par. 2 StBerG

Source: Federal Chamber of Lawyers (Bundesrechtsanwaltskammer, BRAK) 1.1.2002 and Federal Chamber of Tax Advisers (Bundessteuerberaterkammer) 1.1.2002

Chart 8-5 Development of tax advisers, tax lawyers and tax advisory associations 1980 to 2002 in Germany



Source: Federal Chamber of Lawyers (Bundesrechtsanwaltskammer, BRAK) 1.1.2002 and Federal Chamber of Tax Advisers (Bundessteuerberaterkammer) 1.1.2002.

The table also includes the category „Others“, which means persons allowed to provide limited help in tax affairs (*„Befugnis zu beschränkter Hilfeleistung in Steuersachen“*)

according § 74 Par. 2 StBerG. Though the number of these persons also increased in the 1990s by 71%, the total amount is relatively small with 431 in 2002.

Practices: There are different types of offices (practices, *Praxen*). Tax advisers are organized: as a single office (*Einzelpraxis*), as a company (*Sozietät*) or as a tax advisory association (*Steuerberatungsgesellschaft*).

The table provides current information about the number of such offices. Dominant are single offices with 32,351 offices in 2002; this is 75% of all office types. Next in line are tax advisory associations with a number of 6,436 units (14.9%) followed by companies with 4,320 units (10%). The relative strongest change to 2001 is seen for companies (+3.6%), whereas single societies slightly decreased by -0.3%.

Table 8-20 Offices of tax advisers in Germany 2001 and 2002

Office Type	01.01.2001	01.01.2002	
Single Offices	32 446	32 351	-0.3
Companies (Sozietäten)	4 172	4 320	3.6
Tax Advisory Associations	6 257	6 436	2.9
Total	42 875	43 107	0.5

Source: Federal Chamber of Tax Advisers (Bundessteuerberaterkammer) (www.stbk.de, January 2, 2003)

Per 1.1.2002 360 so called partnership association (*Partnerschaftsgesellschaften*) were registered according the appropriate law.

Women in the profession: The tax adviser female quota 1991 (per 31.12.1990) was 22.3%. The available actual quotas are 27.8% in 2001 and still increased to 28.2% in 2002.

There is a wide range over the 16 German Federal states: Sachsen-Anhalt shows the highest tax adviser female quota with 45,5%, the lowest quota is shown in the Saarland with 20.3% (Federal Chamber of Tax Advisers (*Bundessteuerberaterkammer*) (www.stbk.de, January 2, 2003).

Age structure - tax advisers:* The actual age structure of tax advisers*⁹ is provided in the table. The most frequented age category is 41 to 50, closely followed by the thirties.

The mean over all age of tax advisers* is 49 years.

⁹Only here tax advisers* encompasses tax advisers, tax lawyers and others as persons according § 74 Par. 2 StBerG.

Table 8-21 Age structure of tax advisers*¹ 2002 in Germany

Tax advisers* 01.01.2002		
Age Classes	Absolute n	Age Class Quota %
Under 30	68	1
30-40	1 893	28
41-50	1 961	29
51-60	1 623	24
61-70	811	12
70 and more	406	6
Total	64 762	100

¹ Only here tax advisers * encompasses tax advisers,

tax lawyers and others as persons according § 74 Par. 2 StBerG

Source: Federal Chamber of Tax Advisers (Bundessteuerberaterkammer) (www.stbk.de, January 2, 2003)

Function as employer: According to the Federal Chamber of Tax Advisers, the actual percentage of employed persons of all active persons within the tax adviser profession is 24.9% in 2002; the number is 21,472 employees out of 86,234: in other words: 75.1% are self-employed in the tax advisers profession.

Again there is a wide range and heterogeneity of all active persons in this profession: the lowest employee quota has Rheinland-Pfalz (16.6%), the highest employee quota has Mecklenburg-Vorpommern with 44.4%.

Function as instructors: Tax advisers and tax lawyers act as instructors for an assistants in tax and economic consulting professions (*Fachgehilfen in steuer- und wirtschaftsberatenden Berufen*).¹⁰ Thus, the instruction is not only for tax advisers but also for accountants. The regular apprenticeship period is 3 years. According to the Profession Training Law (*Berufsbildungsgesetz*, § 89 BBiG) the single tax adviser chambers of the Federal states are responsible for the instruction.

As the next table shows, at the end of year 2001 there were 23,248 apprentices for an assistant in tax and economic consulting professions.

¹⁰ Since 1992 assistants in tax and economic consulting professions with at least three years full professional work for a tax adviser, tax attorney, tax accountant or sworn-in auditor as well as the appropriate associations of these professions are allowed to yield an additional qualification as a specialized tax assistant (Steuerfachassistent). The tax advisory chamber of Rheinland-Pfalz is responsible for this continuing education examination.

Table 8-22 Apprentices for an assistant in tax and economic consulting professions (*Fachgehilfen in steuer- und wirtschaftsberatenden Berufen*)* in Germany 1980 to 2001 (end of year)

Year 31.12.	Apprentices			
	Total	Men	Women	Female Quota %
1980	20 785	4 080	16 705	80.4
1982	23 560	4 243	19 317	82.0
1984	24 794	4 792	20 002	80.7
1986	24 212	4 811	19 401	80.1
1988	23 303	4 229	19 074	81.9
1990	23 496	4 796	18 700	79.6
1993	28 283	7 015	21 268	75.2
1994	28 740	7 430	21 310	74.1
1995	27 951	7 194	20 757	74.3
1996	26 908	6 974	19 934	74.1
1997	25 478	6 337	19 141	75.1
1998	23 546	5 974	17 572	74.6
1999	23 146	5 565	17 581	76.0
2000	23 325	5 381	17 944	76.9
2001	23 248	5 276	17 972	77.3

*Since 1996 the new label is tax specialized employee (Steuerfachangestellte).

Because there is a new systematic about professions since 1992/1993, the information is not fully comparable with former years.

Source: Bundessteuerberaterkammer 1992, Federal Statistical Office.

An increase in the number of apprentices by 12.0% was observed in the 1980s: from 20,785 in 1980 to 23,496 in 1990. However, in the 1990s a decrease in apprentices from 28,283 in 1993 to 23,248 in 2001 by a remarkable 17.8% took place. This decrease is different according to gender: male apprentices decreased by 24.8% and female apprentices not as strong by 15.5%.

Though the female apprentice quota is quite high in the 1990s, around 75%, in the 1980s the female quota was even higher, about 80%.

New members: According to the IHS questionnaires¹¹ 2,772 new members were admitted in 2001. There were 2,250 persons who passed the final qualifying examinations, out of 4,693 examinees, i.e. the pass rate was 48%.

Because of the heterogeneous conditions in accessing the profession¹² no concrete statements on students can be given about their development.

¹¹ Bundessteuerberaterkammer and Bundessteuerberaterkammer.

¹² E.g. there were 23 different diploma of the active tax advisers and professional relatives in Rheinland-Pfalz already in the early 1990s.

Accounting, Germany 7412**Table 8-23 Firms per legal form (2000)**

NACE	Branch	total	individual enterprise	Firms		
				business partnership in units	joint-stock company	other forms
74.12	Accountancy	30 070	25 405	4 764	4 692	209

Source: Statistisches Bundesamt

Table 8-24 Turnover and persons employed (2000)

NACE	Branch	Total turnover in 1 000 EUR	Total employment in units - point in time (Sept. 30th)		Employees in % of employment
			total	Employees	
74.12	Accountancy	17 038 727	283 087	242 306	86

Source: Statistisches Bundesamt

Table 8-25 Total expenditure (2000)

NACE	Branch	Total turnover in 1 000 EUR	Total employment in units - point in time (Sept. 30th)		Employees in % of employment
			total	Employees	
74.12	Accountancy	17 038 727	283 087	242 306	86

Source: Statistisches Bundesamt

Table 8-26 Number of employees and personnel costs (2000)

NACE	Branch	Number of employees (Sept. 30th) in units	total	personnel costs		social costs to employer as % of personnel costs in %
				gross wages and salaries in 1 000 EUR	social costs to employer	
74.12	Accountancy	242 306	8 026 617	6 639 607	1 387 011	17.3

Source: Statistisches Bundesamt

Table 8-27 Turnover, stocks and material costs (2000)

NACE	Branch	Total turnover	stocks in 1 000 EUR	
			at the beginning of the year	at the end
74.12	Accountancy	17 038 727	675 021	705 801

Source: Statistisches Bundesamt

Table 8-28 Investment, taxes and subsidies (2000)

NACE	material expenditure	total investment	all taxes	subsidies
74.12	681 406	110 858	8 541	74.12

Source: Statistisches Bundesamt

Table 8-29 Firms in turnover size classes (2000)

NACE 74.12	Firms in units	Turnover in 1 000 EUR	Employment - (Sept. 30th)		total expenditure	personnel costs	material expenditure	thereof leasing and renting	total investment	all taxes	subsidies	
			total	number of employees								
			in units		in 1 000 EUR							
total	35 070	17 038 727	283 087	242 306	12 383 780	8 026 617	4 357 163	923 204	681 406	110 858	8 541	
more than	less than	thereof in turnover size classes										
16 620-	50 000	5 206	173 492	7 270	2 383	104 613	17 450	87 163	11 524	14 048	1 965	402
50 000-	100 000	4 902	353 482	9 252	4 557	134 785	55 722	79 063	20 953	14 284	2 853	431
100 000-	250 000	9 173	1 548 276	34 489	25 262	852 819	501 357	351 461	83 364	64 111	8 143	2 161
250 000-	500 000	7 990	2 894 862	59 661	50 331	1 873 306	1 232 732	640 574	145 259	108 593	17 137	2 251
500 000-	1 Mio.	5 246	3 589 093	67 510	60 325	2 520 900	1 717 132	803 767	195 046	121 353	16 399	1 839
1 Mio.-	2 Mio.	1 862	2 448 157	40 008	36 554	1 723 264	1 171 322	551 941	115 232	95 806	14 607	768
2 Mio.-	5 Mio.	574	1 724 631	23 759	22 346	1 241 340	796 464	444 876	84 864	62 161	11 964	301
5 Mio.-	10 Mio.	65	466 233	6 233	5 921	385 768	253 394	132 374	20 292	12 979	4 193	218
10 Mio. -	25 Mio.	35	520 239	6 851	6 678	405 582	281 585	123 997	25 775	22 329	9 755	85
25 Mio.	and more	15	3 320 262	28 053	27 948	3 141 403	1 999 458	1 141 946	220 894	165 743	23 840	85

Source: Statistisches Bundesamt

Table 8-30 Firms in employment size classes (number of persons employed) (2000)

NACE 74.12	Firms in units	Turnover in 1 000 EUR	Employment - (Sept. 30th)		total expenditure	personnel costs	material expenditure	thereof leasing and renting	total investment	all taxes	subsidies	
			total in units	number of employees in units								
total	35 070	17 038 727	283 087	242 306	12 383 780	8 026 617	4 357 163	923 204	681 406	110 858	8 541	
more than	less than	thereof in employment size classes										
bis	4	17 534	1 988 103	37 050	20 620	1 015 258	444 471	570 786	106 268	82 675	17 053	1 469
5-	9	9 434	3 311 941	63 800	53 107	2 089 086	1 342 018	747 068	171 507	121 384	16 343	2 574
10-	19	5 869	3 932 705	76 734	68 551	2 698 100	1 882 549	815 551	200 207	135 610	22 993	2 877
20-	49	1 959	3 069 067	53 306	48 628	2 171 686	1 4170 318	701 368	140 510	115 835	15 467	1 174
50-	99	197	757 456	13 030	12 630	705 220	499 037	206 183	46 753	31 241	4 338	181
100-	249	51	508 790	7 172	6 947	399 575	272 836	126 738	25 922	21 737	8 323	98
250-	499	15	264 565	5 100	5 034	244 144	176 197	67 947	13 307	10 523	3 387	82
500-	999	4	195 175	3 084	3 084	191 875	148 666	43 210	12 644	6 920	2 127	85
1000	and more	8	3 010 925	23 810	23 705	2 868 836	1 790 526	1 078 311	206 087	155 479	20 826	.

Source: Statistisches Bundesamt

8.4 The Professions of Accountants and Auditors in France: an overview

The French accounting and auditing environment is divided into two separate professions, both of which are government regulated. French law prevents a statutory auditor and a public accountant from working for the same client. The auditing profession is regulated by the Institute of Statutory Auditors (*La Compagnie Nationale des Commissaires aux Comptes* – CNCC), and the accounting profession by the Order of Chartered Accountants (*l'Ordre des Experts-Comptables* - OEC). The *Ordre des experts-comptables* (OEC) is the professional body which regulates practising accountants in France who hold the title *Experts-Comptables*. The auditors are supervised by the Ministry of Justice (*Garde des Sceaux*) and accountants come under the supervision of the Ministry of Economy and Finance (see www.acca.co.uk, January 7, 2003).

Although the *Commissariat aux Comptes* has existed as an institution since 1863, rapid economic expansion in the post-war period and the concomitant growth of the financial markets in France, established the obligation to inspect accounts, enforced under the Companies Act of 24 July 1966. A subsequent decree of 12 August 1969 created the *Compagnie Nationale des Commissaires aux Comptes* under the aegis of the Ministry of Justice.

All statutory auditors must be inscribed on the official list of the CNCC, although the majority of them are also members of the OEC. The CNCC is organised on a regional basis and members can be registered in any one of the 34 offices throughout France.

The CNCC has seen its role greatly enlarged over the years to cover inspection of accounts in all categories of organisations, both profit- and non-profit-generating concerns. Beyond the statutory mission of attesting that the financial statements are a true and fair presentation, the French auditor is also called upon to intervene when companies seek additional capital or to trigger an early warning procedure for companies likely to encounter financial difficulties.

The OEC is divided into eight sectors of professional interest under the aegis of a National Council made up of 66 members, 22 members of which represent the regional councils. The body has been mandated to represent the French accounting profession in its dealings with the other international accounting bodies, in particular the IASC (International Accounting Standards Committee).

The two bodies in France co-operate on issues of common professional interest, such as adopting a joint approach to the organisation and monitoring of peer reviews, and co-participate in a number of working parties. Both bodies are members of the *Fédération des Experts-Comptables Européens* (FEE).

The CNCC and the OEC formulate and enforce ethical standards, issue technical standards and recommendations in their respective fields, and oversee the peer reviews to ensure compliance with these standards. They also issue accounting and reporting recommendations, which they encourage their members to apply, and which have contributed to the updating and modification of existing regulations.

Other bodies associated with the accountancy profession include *the Institut des Diplômés d'Expertise Comptables en Entreprise* (ECE), which represents qualified accountants working in industry, and the *Union des Diplômés d'Expertise Comptable* (UDEC), which functions as the trade union of the ECE under the aegis of the IFEC-UNCC. The trainee accountants are represented by *the Association Nationale des Experts Comptables Stagiaires* (ANECS), who has become a powerful force in France of over 4400 members with 800 members in the Paris region alone. ANECS holds its own annual conference, and has links with other EU trainee accountants' bodies.

Market Entry

Tasks and exclusive tasks provided by French Accounting Professions

The original professional duties of accountants encompass the field of year end auditing of financial statements, tax advising and juristic consulting and representation relating to the profession.

In both SMEs and large enterprises, French professional accountants have seen their role broadened beyond accounting and related tasks into areas associated with inheritance/transmission of firms, company restructuring, acquisitions and mergers, and IT projects. French regulation allows accountants to provide tax and legal advice only when they are retained as accounting advisers to a client. They play a major part in tax and labour law compliance and tax consultancy. Legal advice, contrary to statutory audit and tax advice, is not reserved to specific professions in France.

The statutory auditor fulfils a legal obligation to audit and give an opinion on the annual accounts of entities subject to audit, as well as on consolidated accounts where required to be drawn up. The standard statutory audit mission applicable to commercial enterprises comprises the following elements: expression of an audit opinion, specific verifications and review, presentation of an audit report, indicating of inaccuracies.

With the exception of local public sector enterprises, the statutory auditor in France may not exercise a statutory audit mission in the public sector.

Education and Entrance to the Profession

To be a member of the *Ordre* (OEC) it is necessary to have passed the *diplôme d'expertise comptable*, a national diploma delivered by the Ministry of Education. The *diplôme d'expertise comptable* also gives automatic access to registration as a statutory auditor with the *Compagnie Nationale des Commissaires aux comptes* (CNCC).

Qualification as an *Expert-Comptable* involves passing a set of multi-stage exams and completing an internship. This requires a period of at least 7 years. The examination syllabus is co-managed by the State and the accountancy profession. The examinations are organised by the Ministry of Education but members of the *Ordre* and of the CNCC sit on the examination boards. The *Ordre* organises the traineeship (www.experts-comptables.fr, January 7, 2003).

The accounting and auditing professions in France are accessible via a common study programme leading to the *Diplôme d'expertise-comptable*. It consists of a protracted period of multi-stage exams spread over a minimum of 7 years in both public and private institutions. The first level is the *DPECF* (*Diplôme préparatoire aux études comptables et financières*), requiring one to two years of study after secondary school; the *DECF* (*Diplôme d'études comptables et financières*), requiring a further two years upon completion of the *DPECF*; the *DESCF* (*Diplôme d'études supérieures comptables et financières*), which can be completed in one year. Having successfully passed the three exams, these qualifications provide access to careers as head of an accounting or finance unit or service within industrial and commercial corporations.

The last step, leading to the *diplôme d'expertise-comptable*, requires the candidate to undertake a three year traineeship in a professional accountancy firm monitored by a qualified principal, and the preparation of a thesis, a written exam and an oral test. Holders of the final *diplôme d'expertise-comptable*, who are in public practice are automatically eligible, once they have taken the professional oath, to enrol with the *Ordre*.

France is one of the EU states (along with Belgium, Germany and Greece) that restricts membership of professional associations to those working in public practice. Membership is thus associated with a given function and not with a certain educational background in accountancy or auditing; upon leaving public practice in France to work in industry or retire, the individual is obliged to rescind his/her membership of the OEC and CNCC.

The most popular route to the CNCC is by obtaining the *diplôme d'expertise-comptable*, thus explaining why the majority of practitioners belong to both bodies. Nevertheless, a specific and very restrictive route exists for French nationals to the CNCC, comprising of a qualifying examination open to persons holding a university degree or an equivalent degree from a higher commercial college (*Ecole Supérieur de Commerce*) and practical professional

training of at least three years, very similar to the traineeship required to obtain *the diplôme d'expertise-comptable*. Both streams can be undertaken at the same time.

Quality control

Quality control of the auditing profession falls under the responsibility of the CNCC's Regional Councils, who have developed a peer review system for members registered with their designated regional institute. The Regional Council selects the auditors to carry out the quality control, under the denomination of "*contrôleurs article 66*", named after the section of company law which regulates the statutory audit profession. Each Regional Council appoints a member from its Board to supervise the control function at regional level. Reviews are carried out on individually registered auditors as well as the organisation of the audit firms in which they practice.

As a result of pressure from the COB, the French stock exchange watchdog, a separate external quality control function is directed at auditors of listed companies on a national level. This is also conducted as a peer review. Separate professional unions exist in France representing the two professions who take an active role in defending the interests of its members: first, there is the *Institut Français des Experts Comptables* (IFEC) and the *Union Nationale des Commissaires aux Comptes* (UNCC), which is a single trade union, with two branches of members. The second union is *Experts Comptables de France*, which is a member of EFAA (the European Federation of accountants & auditors of small to medium sized enterprises). Based on voluntary membership and considered as an optional extra to the obligatory OEC and/or CNCC membership, the unions hold annual conferences, provide technical information to members via their journals and seminars. Dual membership to both unions by practicing accountants is rare.

Conduct Regulation

Prices and Fees

Generally, according to information provided by the OEC, in France there do not exist any general regulations on prices and fees of accountants and/or auditors. At the same time statutory auditors are required by law to be independent vis-à-vis their clients. This applies equally to an individual or a firm. Statutory auditors are forbidden to receive remuneration from any of the following sources: the audited company for services other than auditing; any company that holds 10% or more of the capital of the audited company; a company in which the audited company holds 10% or more of the capital.

Advertising

According to information provided by the OEC several forms of advertising are forbidden for accountants in France. These are: direct mailing, price advertising in any form (incl. comparative price advertising), as well as commercial advertising via print- or other media. All in all the regulations concerning advertising for French accountants appear to be rather restrictive. A re-regulation in the direction of liberalisation is currently under consideration.

Forms of Business

For cultural and historical reasons, individual statutory auditors have usually been designated rather than firms. Increasingly, however, firms are being appointed as statutory auditors, including French accounting companies and professional auditing partnerships.

The notion of a management accountant does not exist in France and has been the subject of much debate within the accountancy unions, anxious to introduce enhanced skills in management accounting in the mainstream accountancy curriculum.

Unlike the UK, there is only one category of membership of accountant in France: the individual who, having obtained the *diplôme d'expertise comptable* and works in public practice, is eligible for membership to the OEC. Those accountants working in industry and commerce may, however, refer to themselves as *diplômés experts comptables*. However, according to information provided by the OEC accountants in France can incorporate in different legal forms, whereby even public limited companies are allowed (but not limited liability companies).

Location and Diversification

According to information provided by the OEC there are no special regulations on location and diversification. This means that there are no restrictions regarding the geographical area of offering services, nor is it forbidden to open branch offices. However, for branch offices there is a prohibition of handling cash, prohibition of own commercial activities, and a prohibition of offering in subsidiaries services prohibited for the parent company.

Inter-professional Co-operation

According to information provided by the OEC, inter-professional co-operation for accountants in France is not generally forbidden. However, they are allowed to incorporate with other professions only under specific preconditions. To the best of our knowledge (OEC did not provide detailed information) firms must be owned at 75% by locally licensed professionals as regards companies in the form of SARL (see case study on technical

professions in France), at 66% as regards companies in the form of SA. In the case of a *Société d'Exercice Libéral* (professional corporation), 40% of capital must be with professionals active with the company, 25% with professionals, and 25% are entirely open. As for statutory audit, firms must be owned 75% by locally licensed *commissaires aux comptes* in the case of SARL or SA and 75% at least of the shareholders must be *licensed commissaires aux comptes*.

Continuing Education

Membership to the *Ordre des Experts-Comptables* involves a commitment to continuing professional education. The relevant standard requires a minimum of 120 hours CPE per three year period. The *Ordre* provides continuing education seminars through its regional councils. Other courses are also available from various private organizations.

Specialisation in the Profession

There are no specific regulations on specialisation in the profession.

Compulsory Indemnity Insurance

In France professional indemnity insurance for accountants is mandatory. The minimum amount of coverage is 500.000 € per case and firm.

Recent Trends in regulation and conclusion

Regulation for French auditors appears to be rather rigid in respect to entry regulation. The education takes a comparatively long time and the reserved areas of service are rather broad. At the same time conduct regulation appears to be *rather* liberal. This is especially true in respect of price regulation and partially as regards the form of firm and inter-professional co-operation. At the same time the profession has made large efforts in relation to professional quality management (peer reviews etc.) and continuing education.

According to ACCA in the field of public practice, the profession is dominated by the Big Five (Four) firms in France, whilst the smaller practices serving the SME sector have merged to strengthen their position vis-à-vis the former groups. In the past 30 years, the image of the local accountant and auditor serving the SME type of business has given way to the emergence of large practices. The Big Four have absorbed the smaller French firms and now certify the accounts of the French corporations listed on the French stock exchange. They have expanded into management consultancy and other advisory services, and have moved into the provincial regions of France in pursuit of the SME business.

Economic Characteristics

France – Structure and dynamics (NACE 7412)

*Enterprises, Turnover, Employment:*¹³ In discussing the firms' turnover it is to be noted that only enterprises above 76.000 EUR turnover per year are included in the French statistics, for which data on average turnover are available. Furthermore, statistics on employment include only units with 1 or more employees, so that single-person self-employed enterprises are omitted.

For that reason the tables below contain 1994 data from Eurostat, and a 2000 figure based on extrapolation on the basis of growth rates from the INSEE statistics

Table 8-31 Firms, Turnover and Employment; France 7412

	Number of Firms	Turnover in Mio. EUR	Employment	No. of Professionals
1994	14 524	7 229	117 690	
2000*	15 800	9 023	135 476	14 800

* extrapolated value based on INSEE definitions (except No. of Professionals)

Source: EUROSTAT, INSEE, IHS

Table 8-32 Key Statistics, Accountancy Services: France 7412

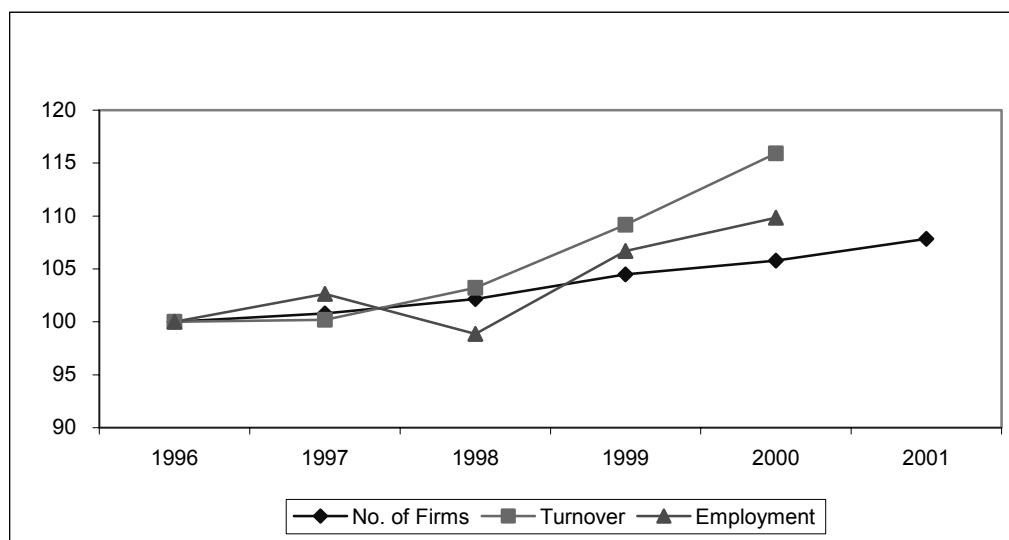
	Turnover per Firm 1000 EURO	Employment per 1000 firms	Turnover per person employed 1000 EURO	Employment per Mio. of Pop	Firms per Mio. of Population
1994	498	8 103	61	2 037	251
2000*	571	8 574	67	2 287	267

* extrapolated value based on INSEE definitions (except No. of Professionals)

Source: EUROSTAT, INSEE, IHS

The differential rates of growth in enterprises, turnover, and employment are illustrated in the chart, with the 1996 values indexed at 100.

¹³ EUROSTAT, SIRENE (Système informatique pour le répertoire des entreprises et des établissements - Computer system for the companies and establishments directory) (INSEE) 2002

Chart 8-6 Relative Growth, France 7412

Source: INSEE

*based on INSEE definitions

The following analysis is based on the data obtained from INSEE

Accountancy services in France encompasses accounting, book-keeping, auditing services and tax advising.

Table 8-33 Number of companies

Year	Accounting active at 31/12	Enterprise demography ¹		
		Individual entrepreneur	Company	Other
1996	17 854	9 097	8 467	290
1997	17 995	8 941	8 775	279
1998	18 237	8 900	9 080	257
1999	18 654	9 058	9 336	260
2000	18 885	8 988	9 645	252
2001	19 254	8 991	10 018	245

¹ Number of companies economically active in the inventory at the end of year.

Source: SIRENE (INSEE) (2002)

As the table shows the number of accounting firms active increased by 7.8% from 17,854 in 1996 to 19,254 in 2001. Dominant groups are individual entrepreneurs and companies. Whereas in 1996 there were more individual entrepreneurs (9,097) than companies (8,467)

in 2001 this relation was reversed: in 2001 there are more accounting companies (10,018) than individual entrepreneurs (8,991). Other forms are relatively small and diminishing.

Number of enterprises: The development of accountancy enterprises in employee classes in France from 1996 to 2001 is shown in the table.

Table 8-34 The number of accountancy enterprises in employee classes in France 1996 to 2001

Year	Enterprise demography: Number of enterprises active at 31/12							Other
	0-5	Jun.19	20-49	50-249	250-499	500-1999	>=2000	
1996	12 997	4 014	710	116	9	6	2	0
1997	13 085	4 058	717	118	8	7	2	0
1998	13 301	4 112	697	110	9	6	2	0
1999	13 726	4 084	712	112	10	8	2	0
2000	13 784	4 244	719	117	9	10	2	0
2001	13 931	4 372	782	147	11	9	2	0

Source: SIRENE (INSEE) (2002)

In accountancy services small enterprises are obviously dominant, in particular enterprises with up to 5 employees. Their growth rate from 1996 to 2001 is 7.2% with 13,931 small enterprises in total. Next in line are enterprises with 6 - 19 employees. Their growth rate is 8.9% with 4,372 enterprises in this second class; a growth rate, which is higher than that of the group of small enterprises. An even higher growth rate of 10.1% is given for enterprises with 20 - 49 employees.

To summarize: in France from 1996 to 2001 larger accountancy enterprises grew faster than smaller ones.

Average Turnover: The accountancy services produced an average turnover of 734,300 EUR in 2000 (see table).

The accountancy services showed a growth rate of 9.6% from 670,000 in 1996. The larger the accountancy enterprises the larger is their average turnover: the highest turnover can be found in enterprises with more than 250 employees with a maximum of 85,559,650 EUR in 2000. In contrast: the smallest enterprises (0 - 9 employees) produced 310,880 EUR in 2000 as its highest average turnover from 1996 to 2000.

Table 8-35 The average turnover in accountancy enterprises in employee classes in France 1996 to 2000

Year	Average turnover					
	Accounting	0-9 employees	10-19 employees	20-49 employees	50-249 employees	>=250 employees
	EUR	EUR	EUR	EUR	EUR	EUR
1996	670 000	303 000	891 000	1 998 000	5 444 000	68 475 000
1997	666 000	300 000	896 000	1 912 000	6 343 000	70 887 000
1998	677 000	297 000	890 000	1 912 000	5 935 000	71 278 000
1999	700 000	305 000	906 000	2 098 000	6 416 000	77 109 000
2000	734 300	310 880	912 130	2 178 350	6 272 010	85 559 650

Threshold: Turnover > 76.000 EUR

Source: Système unifié de statistiques d'entreprises (SUSE-INSEE)

Employment structure by gender. The accountancy services employment structure measured as salaried staff by gender in France from 1996 to 2000 is shown in the table.

In 2000 there are 112,687 salaried staff altogether with a relatively high female quota of 64.3%, a quota lower than that of legal services. Employment grew by 9.8% with 102,595 salary receivers in 1996. The female quota in the mid 1990s of 64.1% is similar to the quota five years later. Thus – as in the legal services - the gender structure remained constant over the last years in French accountancy services employment.

Table 8-36 Employment structure in accountancy enterprises by gender in France from 1996 to 2000

Year	Total employee at 31/12		
	All	Men	Women
1996	102 595	36 857	65 738
1997	105 316	38 009	67 307
1998	101 415	37 087	64 328
1999	109 471	39 231	70 240
2000	112 687	40 173	72 514

Threshold: Enterprises with 1 or more employees

Source: Déclaration annuelle de données sociales (données d'entreprises) (DADS-INSEE)

Enterprise Structure: In the field of public practice, the profession is dominated by the Big Five firms in France, whilst the smaller practices serving the SME sector have merged to strengthen their position *vis-à-vis* the former groups. In the past 30 years, the image of the local accountant and auditor serving the SME type of business has given way to the emergence of large practices. The Big Five have absorbed the smaller French firms and now certify the accounts of the French corporations listed on the French stock exchange. They have expanded into management consultancy and other advisory services, and have moved into the provincial regions of France in pursuit of the SME business.

Table 8-37 Size of Firms

	Size of Firm		
	small	medium	large
% Firms	34.2%	46.0%	18.3%

Source: Le Figaro economie

The market shares of the Big Five audit and accountancy companies are: KPMG (34.5%), PWC (25.5%), AA (15.7%), E&Y (13.3%), DTT (11.0%)¹⁴

Despite the dominance of the Big Five, the bulk of the French accounting profession, numerically, remains as small to medium-sized firms serving the many owner-managed SME businesses in France. Over 10,000 accountancy firms employing 130,000 people now compete in France generating 20% of their fees from audit work and 80% from accountancy services. Overall, the fee split profiles have remained more or less consistent over the past few years, with a slight increase in consultancy arising from the conversion to the Euro, the impact of new technologies and the implementation of the 35-hour working week in France.

The focus has become one of achieving improved price/quality service in a highly competitive market. In response, small to medium-sized practices are offering a broader range of services, already enjoyed by the bigger firms, in areas like general business consultancy and investment advice. They have also forged regional partnerships, trimmed their overheads and looked beyond France to export their expertise.

But restrictions still exist in France, preventing accountants from offering certain services; for example, insolvency services - except in very limited circumstances - cannot be provided by accountants, as these activities are restricted to other professions.

Table 8-38 Number of employees

	Number of employees		
	< 10	11-100	> 100
% Firms	78%	18%	3.5%

Source: Le Figaro economie, May 1996

Most of the Big Five in France have downsized over the early part of the 1990's. In the past three years, French accountancy firms have shed 6,000 staff - over 5,000 alone between 1993 and 1994. The first signs of a revival in the recruitment of accountants and auditors appeared in 1996; a total of 1,195 new recruits were hired by the big firms, many of which were employed directly from the *grandes écoles* at entry level.

Conseil supérieur de l'Ordre des Experts Comptables: Complete structure data on accounting services to enterprises and other organisations (including statutory audit) was made available in the IHS questionnaire by the *Conseil supérieur de l'Ordre des Experts Comptables*. In addition to its 12,215 corporate members in 2001, the *Conseil supérieur* had a membership of 16,906 individual accountants. This figure is an increase of 64% over the number of members in 1990 (10,297). Approximately 90% of the *experts comptables* are self-employed. Only 10 members were practising abroad in 2001, 6 of these in non EU or EU-candidate countries. From 1990 to 2001 the number of professional trainees increased by 75% from 3,212 to 5,621. There have been around 1000 persons (+/- 25%) annually passing the final qualification examinations – in 1990 this represented a pass rate of 74.4%. There were over 1,500 new trainee entrants in 2001, indicating that the period as trainee lasts for upwards of 4 years.

In 2001 there were 14,600 accountancy firms giving employment to a total of 120,000 professionals and non-professionals, this latter figure being up by just 9% on the corresponding figure for 1990. (Registration with the *Conseil supérieur* is high - 12,215 accountancy companies are registered, i.e. 84% of all firms.) Full-time employees account for 90% of the total. More than half, 58%, of firms have incorporated status. Large firms having more than 5 offices are rare, making up only 0.3% of the total - only 4 firms hold more than 50 offices throughout France - as are firms with more than 30 qualified professionals (2% of the total). There is, however, a broad distribution of small and medium sized firms – 35% single accountant firms, 30% with 2 professionals, 28% with 3-5 professionals, and 15% with between 5 and 30 professionals. Likewise, one quarter of firms consist only of the accountant, 22% have 1-2 non-professional employees, 36% have 3-10 other employees, 15% have 10-50 employees, whereas only 2% of firms have more than 50 employees.

Total turnover reported by the *Conseil supérieur* was 8.4 bill. Euro in 2001, up 58.5% in nominal terms since 1990. The five largest firms had a market share of 18% and the first 50 firms in size (0.3% of the number of practices) realize 31% of the total turnover of the profession in the regulated activities (accounting and auditing).

¹⁴ Source. Financial Times 1998.

9. Case Studies: Technical Professions

9.1 Technical Professions in Austria: an overview

The professional group of the “Civil Technicians” (*Ziviltechniker*) was first regulated in the *Staatsministerialverordnung 11. 12. 1860, Z. 36.413*. The main relevant law for a long time was the “Civil Technician Law”, BGBl. 1957/146 (“ZTG”). The last important amendment is of 1993 (“*Ziviltechnikergesetz 1993, ZTG 1993*” – “Civil Technician Law 1993”, BGBl. Nr. 156/1994).

Since this amendment “Civil Technicians” are divided into “Architects” and “Chartered Engineering Consultants” (§ 1 Abs. 2 ZTG). At the same time as this amendment, the profession of the “Civil Engineer” (*Zivilingenieur*) has been abolished: no new licenses are issued for this profession. In contrast to the Architects and Engineering Consultants this profession (the Civil Engineers) according to the “Civil Technician Law” 1957 (superseded through the ZTG 1993) was not only entitled to “planning and co-ordinating activities”, but also to “executive activities” (“*ausführende Tätigkeiten*”).

In comparison, the activities of “Architects” and “Engineering Consultants” are primarily of a planning, consulting and controlling character and they are not entitled to perform tasks of executive character. The aim of the more strict separation of planning and implementation activities is, according to the intention of the law, that the professional service provider should be active with the highest possible objectivity and independence. It should be mentioned that a multiplicity of Civil Technicians titles exists (not less than 35!). This is caused by the fact that there is a multitude of different types of Engineering Consultants. In respect of authorisation to offer services on the market, many of these titles have overlapping entitlements.

As demonstrated above, the regulatory situation for Engineers and Architects in the European Union appears to be bi-polar. On the one hand, there are several countries with very low, or, as in some cases, nearly no specific regulation on market entry and conduct. On the other hand there exist several countries, where the regulation for these professions is rather rigid. Austria is one of them. The total market entry index we computed for technical professions in Austria is as high as 3.84 and the highest of all countries compared. The conduct index, with a value of 1.175, lies in the medium field. However, only Luxembourg, Italy and Germany show higher conduct indexes (although figures for Spain and Portugal, two rather high-regulation countries, are not available).

The entry index is very high because there is a rather broad range of tasks that is reserved for Architects and Engineering Consultants (and sometimes some other professions) by law.¹ In respect of conduct in recent years several measures of liberalisation have been implemented.

Civil Technicians are members of the Chamber of Architects and Chartered Engineering Consultants. According to § 5 Abs. 1 of the “Chamber of Civil Technicians Law” (*Ziviltechnikerkammergesetz* 1993 (BGBl. Nr. 157/1994)) this membership is obligatory. The organisation of the profession shows some federal elements. Civil Technicians are members of the regional chamber (*Länderkammer*), according to the geographic area in which the relevant firm is located. Altogether four regional chambers (*Länderkammer*) exist. The provinces Lower Austria, Vienna and Burgenland are pooled in one chamber. The same applies to Styria and Carinthia, Upper Austria and Salzburg as well as Vorarlberg and Tyrol. These chambers, as well as the Federal Chamber of Architects and Chartered Engineering Consultants (below: “Federal Chamber”), which is incorporated in Vienna, are public corporations (*Körperschaften öffentlichen Rechts*) (§ 1 Abs. 3 “Chamber of Civil Technicians Law”). The Austrian regulation system for the profession of the “Civil Technicians” therefore follows the principle of obligatory membership in a professional association with licensing and not the principle of non-obligatory certification.

Market Entry

Tasks and exclusive tasks provided by Austrian technical professions

With certification as a Civil Technician (Architect or Engineering Consultant) it is possible to offer a more or less wide range of specific tasks to third parties. Thereby the status as Civil Technician is normally a mandatory requirement for the independent practice of the respective service. But in several cases there are also other professions authorised to offer the same services. These professions include for example the technical bureaus and chartered builders, which are not liberal professions. These professions are “chartered craftsmen” (*Gewerbetreibende*) and the market entry for them is regulated as well through public law (via the *Gewerbeordnung*).

Different exclusive tasks exist for the professions of Civil Technicians. Before 1993 these tasks were directly listed in the law. Henceforth only general enumeration can be found in the law as well as some more detailed descriptions for a few professional services (Architects, Engineering Consultants for surveying, Engineering Consultants for subterranean geometry). For all the other types of Engineers the detailed regulations of entitlements to fulfil different

¹ Notwithstanding with this some other professions may perform some of the respective tasks as well. Such professional groups are for example so-called Technical bureaus or chartered builders, which are no liberal professions. For details see below.

tasks can now be found in different relevant laws, concerning directly to the various activities.

Generally § 4 Abs. 1 ZTG provides that Civil Technicians, if there is no other entitlement defined by law, are authorised to carry out planning, consulting, co-ordinating, examining supervisory and fiduciary activities. Civil Technicians are particularly authorised to do measurements, prepare surveys, to take on functional representations and general planning mandates. Beside this Civil Technicians are acknowledged as public commissioner of deeds. This is an completely reserved activity, which chartered craftsmen (*Gewerbetreibende*) are not allowed to fulfil. Furthermore it is stated by law, that Architects, regardless of the appurtenant rights of chartered craftsmen for planning, are especially authorised for the planning of cultural and other public buildings (e.g. churches, schools, theatres).

Education and Entry to the Profession

Civil Technicians in Austria require a university education. The field of study has to correspond to the subject area for which the title is intended (§ 7 ZTG). This means that especially technical, scientific and mining studies qualify for the professions of the Civil Technician. The minimum study duration is 4 years. For Austrian Civil Technicians a relevant university degree is necessary. There are no other possibilities of entering the profession, for example after comparatively long periods of professional practice.

Would-be Civil Technicians require practical experience after finishing the university. Three years of such professional experience are obligatory. Of this three years, a minimum of one year has to be undertaken as a wage earner. The others – maximum two years – can be undertaken as an independent contractor. This practical experience has to be achieved in a full time position, which is appropriate to convey the necessary skills, but it does not make a difference in which economic sector and in which country this is done.

For architects, for “engineering consultants for building and construction”, “engineering consultants in the field of economics of building and construction” as well as for “engineering consultants in the field of economics of water supply and distribution and cultural techniques” a minimum of one year practice on a construction site is mandatory (§ 8 Abs. 2 ZTG). Comparable specific rules apply to the “Engineering consultants for surveying”. The fulfilment of the practical experiences have to be authenticated by a detailed testimonial.

If the requirements listed above are fulfilled (university degree and professional practise), the candidate can submit an application for admission to the professional exam to the relevant regional *Kammer für Architekten and Ingenieurkonsulenten*. The relevant regional Chamber is the one competent for the area where the candidate lives. The relevant dossier is – in several steps – transmitted to the Ministry of economics, which in the last instance decides if

the relevant preconditions are fulfilled. The examination is open to the public, held in German language and can be repeated only twice.

The examination commission is made up of two high grade civil servants, of whom one is the chairperson, and two Civil Technicians, active in the field of examination or in a nearby subject area (§ 10 Abs. 2 ZTG).

The contents of the examination are codified by § 9 Abs. 3 ZTG. These are:

- Austrian administrative law
- Business economics
- Legal and professional rules of the subject field
- Rules, Regulations and professional by-law applicable to the Civil Technician
- Particular objects, according to the practical and university experiences, can be taken into account.

After successful completion of the examination, the professional authorisation is given to work as a self-employed *Ziviltechniker* (Architect or Engineering Consultant) and/or establish a firm (§ 12 Abs. 1 ZTG). For this a registration with the relevant regional Chamber of Architects and Consulting Engineers is necessary. However, the license is valid all over Austria. Additionally the Civil Technician candidate has to give a professional oath (§ 13 Abs. 1 ZTG).

Conduct Regulation

Prices and Fees

For “Architects” and “Engineers” different fee scales exist. These are prescribed, according to § 33 Abs. 1 ZTG by the Federal Chamber. However, today they have no binding effect any more. Before the law of 1993 came into force this professional fee directive was a de facto minimum price. The current directives have to be seen as guidelines. Price competition is therefore possible, the honorarium being a matter for negotiation. The code of ethics only provides that the calculated price has to be “on the basis of the various fee scales” and must not be disproportionate to the real output.

Advertising

Advertising in Austria for Civil Technicians is allowed. The relevant regulations state that Civil Technicians have to use their correct professional title. So it is forbidden to advertise without

giving notice of one's exact powers. Furthermore, disparaging advertising and misleading advertising are not allowed.

Forms of Business, Inter-professional Co-operation, Location and Diversification

Since 1994 Civil Technicians may establish Civil Technician Corporations. Two different types of business organisation exist: incorporated enterprises (limited liability company or public limited company) and limited private partnerships/companies (*Eingetragene Erwerbsgesellschaft: Kommandit-Erwerbsgesellschaft* or *Offene Gesellschaft*). The founding of a private company in co-operation with chartered craftsmen is allowed only in cases where the latter are *not* authorised to carry out activities in the subject-field of the relevant Civil Technician. This rule applies due to the above mentioned principle of separation of planning and executive tasks, which was implemented as from 1993/94.

In the case of an incorporated firm, Civil Technicians have to hold more than 50% of the shares and it must be Civil Technicians with a valid license who fulfil the management and representation functions. If the corporation is a limited partnership (*Eingetragene Erwerbsgesellschaft*), shareholders that are not members of the profession may only be partners (*Kommanditisten*) (§ 28 Abs. 4 ZTG). Special regulations also exist for public companies (*Aktiengesellschaften*) (cf. § 28 Abs. 5 ZTG).

As a consequence of the regulations described above, the possibilities for inter-professional co-operation for Civil Technicians are – at least from an international comparative point of view – highly restricted. This applies in the first place to the prohibition of co-operation with chartered craftsmen if there are overlapping powers (i.e. if the respective chartered craftsmen are allowed to perform executive tasks in the respective field). Secondly, restrictions occur due to the regulation of shareholding and firm management. Nevertheless the possibilities for inter-professional co-operation for Civil Technicians in Austria have for a long time been broader than those for other liberal professions. According to information provided by the Federal Chamber of Architects and Chartered Engineering Consultants, a further liberalisation of respective rules is currently under consideration.

The opening of local branch offices is allowed since the implementation of ZTG 1993. The former restrictions have been abolished. Furthermore, the ZTG does not contain any specific rules concerning the management/guidance of such branch offices. It does not say that every branch office has to be managed by a licensed Civil Technician.

Continuing Education

Hitherto there has not been an obligation for continuing education for Architects and Chartered Engineering Consultants. A change of the relevant rules is currently under consideration.

Specialisation in the Profession

No measures exist which would allow a further job specialization beyond the rules set up by the ZTG. This would of course, in connection with the actual splitting-up of the professions and the high number of different kinds of Chartered Engineering Consultants, not make much sense. On the contrary, a consolidation of powers/different types of authorisation/licensing would maybe be beneficial.

Compulsory Indemnity Insurance

Up to now a professional indemnity insurance for Architects and the different types of Chartered Engineering Consultants is not mandatory. According to information provided by the Federal Chamber of Architects and Chartered Engineering Consultants, a reform of this subject is currently under consideration.

Economic Characteristics

Austria – Structure and dynamics (NACE 7420)

*Enterprises, Turnover, Employment:*² The nominal turnover of architectural and engineering enterprises in Austria was around 4,500 million euro in 2000, equivalent to 2.2% of GDP, above the median value of the ten EU countries surveyed (c.f. Overview-tables in Chapter 5). Output of the sector rose at a very high yearly average of 15.1% from 1997 to 2000, a rate well above that of GDP in the same period (an average of 4.1% p.a.), as well as that of the rate of GDP growth in the 1990s (4.6%). This represents a real growth in architectural and engineering services of 13.6%, which is considerably higher than the growth in employment – 10.4% - over the same period, 1997 to 2000, so definitely productivity increased. In fact, the turnover per employed person rose 8.9% in total in real terms over this period. Unfortunately the rate of productivity growth in the early part of the 90s can not be calculated from the data – only the yearly average growth in employment is

² Sources: EUROSTAT, Statistik Austria.

available, a considerably lower annual figure of 3.0% from 1991 to 1997. Altogether the average yearly increase in employment from 1991 to 2000 was 5.4%.

Table 9-1 Firms, Turnover and Employment, Austria 7420

	Number of Firms	Turnover in Mio. EUR	Employment	No. of Professionals
1991	5 739		23 306	
1997	6 009	2 959	27 805	
1998	7 131	3 185	31 648	
1999	7 610	3 294	33 598	
2000	7 932	4 517	37 385	7 673

Source: EUROSTAT, Statistik Austria, IHS

The number of firms increased correspondingly from over 5,700 in 1991 to over 7,900 in 2000, an average rate of 3.7% p.a. (see Table). The higher rate of increase in the number of enterprises relative to employment is indicative of a trend towards concentration i.e. relatively fewer firms with more employees: indeed the average firm gave employment to 4.7 persons in 2000, up a little from an average of 4.1 persons in 1993. However the total number of enterprises in this branch, now certainly exceeding 8,000, is not high in international comparison, being less than median value.

The average turnover per firm (in 2000) of almost 569,000 euro was considerably higher than the correspondingly value for accounting services (390,000 euro) in Austria, but closer to the turnover for legal services firms - 442,000 euro³. This is a relatively high level of business, only firms in Denmark and the UK of the countries in our survey having higher valued outputs. In fact when adjusted for level of prices and output of the whole economy, only the UK has a higher volume per firm in the sample; unlike the UK, however, Austria does not have an exceptionally high level of architectural and engineering business measured in per capita volume.

The level of employment is somewhat low for the branch, at nearly 4,600 persons per million of the population in 2000 below the median value, whereas the level of productivity, as measured by the turnover per employed person is, at 121,000 euro in 2000 in absolute terms among the highest of countries included in our survey. Even when adjusted for price levels as well as for economic output level (in terms of GDP in PPS per capita), the volume per employee of the architectural and engineering consultancy branch in Austria is second only to that of Sweden; unlike Sweden, however, as mentioned above, Austria does not have an exceptionally high level of architectural and engineering business measured in per capita volume.

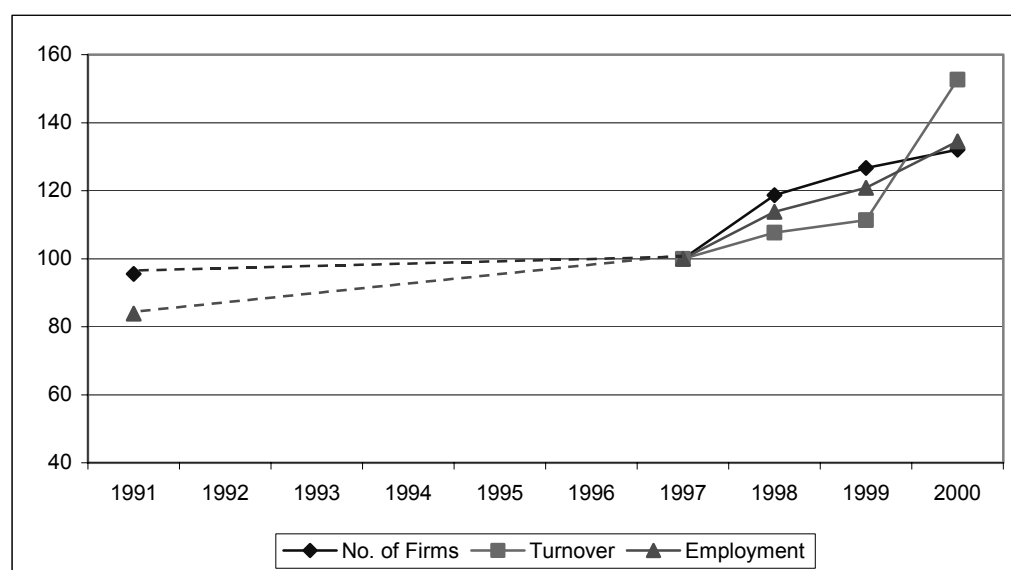
³ Note: Value Added is typically 70-75% of turnover for legal and accounting services, 50-55% of turnover for technical services.

Table 9-2 Key Statistics, Legal Services; Austria 7420

	Turnover per Firm	Employment per 1000 firms	Turnover per person employed	Employment per Mio. of Pop	Firms per Mio. of Population
	1000 EURO		1000 EURO		
1991		4 061		3 000	739
1997	492	4 627	106	3 446	745
1998	447	4 438	101	3 919	883
1999	433	4 415	98	4 157	942
2000	569	4 713	121	4 614	979

Source: EUROSTAT, Statistik Austria, IHS

The differential rates of growth in enterprises, turnover, and employment are illustrated in the chart, with the 1997 values indexed at 100.

Chart 9-1 Relative Growth Rates, Austria 7420

Source: EUROSTAT, Statistik Austria, IHS

Relative to other professions: the next table shows the size and structure of the technical services branch in Austria relative to other related professional services (NACE 2-digit 74). Architects and engineering consultants account for the highest share of the professional services.⁴ Altogether technical services account for 26% of firms, 27% of turnover, and 18% of employment in the 74-branch.

⁴ The only larger 4-digit category is cleaning services.

Along with the legal services professions and accountancy services, other non liberal professions such as market and opinion research and advertising are included. The productive output of the branch is also relatively high: 120 Euro per employee, in comparison to 109 Euro per employee in the consulting branch (7414) – a non-regulated branch employing a high proportion of highly qualified persons.

Professionals: The *Bundeskammer der Architekten und Ingenieurkonsulenten* provided statistics on membership of its two sections, i.e. architects and chartered engineering consultants (IHS questionnaire). These two sections have almost identical strength of membership and show parallel changes in membership structure (since 1990 at least). Whereas there were 3,158 architects in 2000 (up by 39.5% from 2,263 in 1990, there were 3,056 consulting engineers in 2000 (up by 30.5% from 2,341 in 1990. Of this number, However, only 67% of architects (2,112), and 64% of chartered consulting engineers (1,961) were practising in 2000. (It should be noted that there are also 4,480 members of the *Fachverband Technische Büros* (as of 2000/01), not classed as a liberal profession, and this number has increased by 262% since 1990.)

There were 220 newly admitted architects in 2000, 26% more than in 1990, out of a total of 950 trainees, indicating that persons have the trainee status upwards of 5 years. Correspondingly, There were 210 newly admitted consulting engineers qualifying through entrance examinations in 2000, 24% more than in 1990, out of a total of 900 trainees, indicating a similar period of trainee status. The pass rates in final qualifying examinations are high for both architects and consulting engineers – these were, for example, 96% and 93% respectively in 2000.

Table 9-3 Structure data for professional services. Austria 2000

NACE	Branch	firms	Employment (31.12.2000)		personnel costs	Earnings	Revenues	Production value	Buying of goods and services		gross value added	gross investment
			total	therof employees					total	thereof for resale		
in 1.000 EURO												
k74	Other business activities	29 977	202 903	173 504	5 299 770	18 390 508	16 574 163	12 461 094	8 298 126	3 421 786	7 566 824	893 245
k7411	Legal activities	2 791	16 456	12 694	331 817	1 236 027	1 234 123	1 204 625	348 450	30 265	884 885	46 503
k7412	Account., book-keep. & audit. activities; tax consult.	3 529	22 663	19 260	630 430	1 386 672	1 377 419	1 243 830	456 291	136 659	921 469	68 246
k7413	Market research and public opinion polling	186	1 182	1 016	44 847	163 461	161 805	119 471	94 861	43 305	67 133	6 915
k7414	Business and management consultancy activities	3 126	10 394	7 239	335 197	1 154 865	1 134 178	893 396	623 862	245 692	513 608	79 262
k7415	Management activities of holding companies	381	3 956	3 861	272 786	2 395 385	861 307	742 057	493 535	123 002	369 532	182 358
k7420	Architectural and engineering activities	7 932	37 385	28 807	1 176 154	4 677 756	4 516 539	2 763 938	2 556 186	1 058 610	1 259 284	169 437
k743	Technical testing and analysis	1 588	5 818	4 361	164 623	440 671	431 842	384 748	179 950	45 702	252 432	54 040
k744	Advertising	3 553	13 935	10 934	389 863	2 724 974	2 691 709	1 342 432	1 911 667	1 357 541	783 252	82 834

Source: Statistik Austria

*Size of Firms, Legal Form, Self-employment*⁵: The following table shows that both architects' and engineers' enterprises overwhelmingly consist of small business with less than four employees. A slight trend towards slightly bigger companies is just discernable, mainly to the size category, 5-9 employees.

Table 9-4 Firms by Number of Employees – Technical Services. Austria

Year	Number of Employees									Sum
	1-4	5-9	10-19	20-49	50-99	100-249	250-499	500-999	> 1000	
1997	4 660	873	321	128	19	6	0	0	2	6 009
1998	5 464	1 004	479	154	22	6	0	0	2	7 131
1999	5 749	1 228	449	140	29	14	0	0	1	7 610
2000	5 946	1 327	409	214	24	10	0	0	2	7 932
% in 1997	78%	15%	5%	2.1%	0.3%	0.1%	0%	0%	0.03%	100%
% in 1998	77%	14%	7%	2.2%	0.3%	0.1%	0%	0%	0.03%	100%
% in 1999	76%	16%	6%	1.8%	0.4%	0.2%	0%	0%	0.01%	100%
% in 2000	75%	17%	5%	2.7%	0.3%	0.1%	0%	0%	0.03%	100%

Source: Statistik Austria, IHS

The proportion of self-employed professionals has remained more or less constant in recent years, at around 22-23% of total employment in the branch.

Table 9-5 Self-employed professionals, Technical services, Austria

	Total	Employees	Self-employed	as %
1997	27 805	21 275	6 531	23.5%
1998	31 648	24 311	7 337	23.2%
1999	33 598	25 686	7 913	23.6%
2000	37 385	28 807	8 579	22.9%

Source: Statistik Austria, IHS

Data on legal form only exists for one year, and the statistical basis used was different⁶, but it offers an insight into the types of firms present in the market for technical services (see table following).

It is interesting that there are proportionately more sole proprietors (83% of all technical services firms) than in the accountancy, legal or pharmacy professions. This indeed characterises the enterprise structure among the liberal professions in Austria.

⁵ Source: Statistik Austria; IHS

⁶ Data from 1995, ÖNACE norm.

Table 9-6 Types of Firm Ownership

1995	Pharmacy	%	Accountancy Services	%	Legal Services	%	Technical Services	%
Sole Proprietors	450	50%	2 491	69%	2 348	81%	5 182	83%
Private company	444	49%	264	7%	554	19%	311	5%
Limited Liability Partnerships	13	1%	856	24%	4	0.1%	740	12%
Public limited companies	0		8		0		1	
others	1		1		0		3	
Totals	908		3 620		2 906		6 237	

Source: Statistik Austria, IHS

Summary

Austria is one of the Countries in the European Union where Technical professions are highly regulated. This is especially true concerning market entry. Architects and Consulting Engineers in Austria are equipped with broad exclusive tasks (whereby some of them may be provided by selective licensed chartered craftsmen as well) and the regulations concerning educational preconditions to enter the relevant professions are very rigid. At the same time for Engineering Consultants there exists a multitude of different titles and rules concerning the (exclusive) tasks that the relevant type of Engineering Consultant may provide. This leads to a high level of non-transparency which may retard an even more dynamic development of the sector (not only in quantitative but also in qualitative measures). Conduct regulation for technical professions has been liberalised to a certain degree in recent years. This is especially true for prices and fees, and, to lesser degree, forms of business.

A first step in reforming the market could be to advance transparency by reducing the large number of different kinds of Engineering Consultants. Specialisation is not *per se* a bad thing, but it should be understandable for the public. At the same time the exclusive tasks reserved to technical professions should be displayed in a clear form. Furthermore, from an international-comparative point of view it is not clear why licensed technical professions should be equipped with such a multitude of exclusive tasks, as is the case in Austria.

9.2 Technical Professions in Finland: an overview

As already stated above the field of technical professions in the European Union shows up as a kind of bi-polar phenomenon. On the one hand, there are countries with rather “comprehensive” systems of regulation; on the other hand, there are several countries where such regulations do not exist at all. Finland is part of the latter group with a rather liberal professional regime.

It occurs for both Architects and Engineers that not even their professional title is protected and according to the questionnaires provided to us no exclusive or shared exclusive tasks exist for these professions. So specific market entry regulation is not, or, as will be shown below, nearly non-existent. The same is true for conduct regulation.

Both professionals are not obliged to become members of or be registered with a professional association. The associations of architects (SAFA), construction engineers and architects (RIA) as well as civil engineers (RIL) have been set up on a voluntary basis.

The Finnish Association of Architects, SAFA, is a non-profit, professional organisation which is open to all architects with a university degree from a Finnish university or equivalent qualifications. Membership of SAFA accounts for approx. 85% of all Finnish architects with a university degree. The Association of Finnish Construction Engineers and Architects RIA is a professional organisation for the construction engineers (B.Sc.), architects (B.Sc.) and environmental engineers (B.Sc.) graduated from technical colleges and polytechnics. There are 17 local associations and 1 labour market organisation that belongs to RIA. In those associations there are about 8,500 members. RIL, the Association of Finnish Civil Engineers, is an organisation for civil engineers with Master of Science degree and university students of civil engineering. RIL has more than 5,000 members. Over 60% of all who have a MSc degree in civil engineering in Finland belong to the Association. Nearly 100% of the civil engineering students are enrolled as junior members of RIL.

Market Entry

Tasks and exclusive tasks provided by Finnish Engineers and Architects

Engineers and Architects in Finland generally provide the same services as they do in other countries. Main fields of activity are for example design and planning, project management including execution management, preparation and monitoring of constructions, urban and landscape planning, requests for construction permits etc. Generally these tasks are not reserved to Architects or Engineers. This is stated unanimously by different sources (the questionnaires returned to us, publications by the OECD, different web-pages etc.).

Notwithstanding this, we found the following rules in the Use and Building Decree Issued in Helsinki, September 10, 1999:

“Section 48

Qualifications of planners

Persons drawing up a building design or special design shall have a construction-related university degree appropriate for the planning functions in question, or an earlier construction-related higher-level vocational or other degree, and sufficient experience of working on the type of planning in question.

Buildings that are small or have ordinary technical properties may also be designed by persons with a college-level qualification in construction or in the relevant line of special study, or a corresponding earlier qualification if they are sufficiently experienced.

In addition, a person who does not possess one of the aforementioned qualifications but is deemed to have the skill required in view of the type and extent of the construction work or design task may also carry out minor design works.”

Although the formulation of this rule is rather “open”, it appears to be clear, that there exists a kind of exclusive or shared exclusive task for engineers and architects at least in the field of planning. Similar rules can be found in Section 70. The relevant paragraphs say that “the site manager of a construction works shall have a construction-related university degree or a degree required of a responsible foreman in sections (...), hereinafter earlier decree, that is appropriate for the task. In addition, the site manager shall have the construction experience required in view of the type and extent of the construction project. When the building in question is smallish and structurally straightforward, the site manager may also be a person who does not possess one of the aforementioned qualifications but is otherwise deemed to meet the preconditions for the task”.

All in all this points in the direction that there are areas in the field of technical professions in Finland that require more or less specific qualifications on the grounds of public law. At the same time these regulations seem to be handled rather flexibly. For that, we gave Finland a rather low market entry regulation index in chapter 2.

Education and Entrance to the Profession

In Finland there are three levels of engineering qualifications:

- the highest level is the one of *diplomi-Insinööri* - MSc equivalent - which may be taken at one of five universities. In principle the course lasts for five years with 3 - 6 months of practical training: in practice it lasts seven years on average;
- in the non-university sector there are institutes of technology and polytechnics which offer the equivalent of a BSc after a nominal four years of study including 20 weeks of 'practical training'. Education toward an engineering diploma is given at 23 polytechnics in Finland, out of a total of 29. The number of starting places is over 9,000, of which close to 8,000 are at the undergraduate level and the rest are for adult education;
- at the lowest level, Technician courses are also available at the polytechnics: they take four years with 20 - 40 weeks of practical training.

As already mentioned, there is no register of engineers, nor is there any protection of title. Professional engineers may start to practice as soon as they graduate.

The same is true for the profession of Architects. Courses in Architecture are offered at Helsinki University of Technology, the University of Oulu, and Tampere University of Technology. Places are limited and placement is highly competitive. There is a pre-test for admission. The program takes 4.5 – 5.5 years, depending on the university. An unification to a 5-year course is envisaged (2+3 years). A short-term training is envisaged during the course, but it is not compulsory for the membership in the SAFA (which is not obligatory after all, see above).

Conduct Regulation

Prices and Fees

According to our present knowledge there are no specific price regulations for technical professions in Finland. There are no minimum, maximum or in any other way fixed prices. Additionally, no systems of reference prices exist. Fees and prices of technical professions are freely negotiable.

Advertising

No special regulations for marketing and advertising apply to technical professions in Finland.

Forms of Business, Inter-professional Co-operation, Location and Diversification

There are no special regulations in respect of these points. Technical professions are allowed to establish all forms of business. Inter-professional Co-operation is allowed in all kinds and there are no special rules on Location and Diversification.

Continuing Education

Continuing education is not compulsory for Architects and Engineers in Finland.

Specialisation in the Profession

There are no special rules for specialisation in technical professions in Finland (as there are for example for lawyers in Germany). But since 2002 several postgraduate degree programmes are available for polytechnic graduates. The admission criteria for postgraduate studies is a polytechnic degree and three years' related practical experience after graduation.

Compulsory Indemnity Insurance

In Finland an obligation for a compulsory indemnity insurance does not exist.

Economic Characteristics

Finland – Structure and dynamics (NACE 7420)

*Enterprises, Turnover, Employment:*⁷ The nominal turnover of architectural and engineering enterprises in Finland reached a level approaching 2,800 million euro in 2000, equivalent to over 2.1% of GDP, which represents the fifth highest share of GDP, after Sweden, the UK, Austria and Denmark, among the 13 EU member states surveyed (c.f. Overview-tables in Chapter 5). Output of the sector thus rose at a yearly compounded average of 10.1% during most of the 1990's, faster than the growth in GDP (an average of 8.7% p.a.). This represents a real growth in architectural and engineering services in Finland of 7.8%, which is higher than the growth in employment - 5.5% - over the same period, 1993 to 2000, so productivity gains have also been made. In fact, the turnover per employed person rose in total 17% in real terms over this period.

⁷ Sources: EUROSTAT, Tilastokeskus – Statistics Finland.

Table 9-7 Firms, Turnover and Employment; Finland 7420

	Number of Firms	Turnover in Mio. EUR	Employment	No. of Professionals
1993	4 818	1 423	18 115	
1994	4 928	1 671	18 174	
1995	5 150	1 853	19 341	
1996	5 642	2 032	20 525	
1997	5 997	1 980	22 767	
1998	6 275	2 199	24 277	
1999	6 222	2 396	25 120	
2000	6 337	2 784	26 355	
2001				6 500

Source: Statistics Finland

The number of firms increased correspondingly from about 4,800 in 1993 to over 6,300 in 2000, an average compound rate of 4.0% p.a. (see above Table). The lower rate of increase in the number of enterprises relative to employment is indicative of a slight trend towards concentration i.e. relatively fewer firms with more employees: indeed the average firm gave employment to 4.2 persons in 2000, up from an average of 3.8 in 1993.

The total number of enterprises in this branch, over 6,000 since 1998, is relatively high, however, at 1,225 per million of population compared to the median value in our survey of 1,073 – although Italy, Sweden, Spain, Luxembourg and Belgium have a greater density of architecture and engineering firms in our survey relative to the size of population.

Table 9-8 Key Statistics, Technical Services; Finland 7420

	Turnover per Firm 1000 EURO	Employment per 1000 firms	Turnover per person employed 1000 EURO	Employment per Mio. of Pop	Firms per Mio. of Population
1993	295	3 760	79	3 584	953
1994	339	3 688	92	3 579	970
1995	360	3 756	96	3 793	1 010
1996	360	3 638	99	4 011	1 103
1997	330	3 796	87	4 436	1 168
1998	350	3 869	91	4 716	1 219
1999	385	4 037	95	4 869	1 206
2000	439	4 159	106	5 097	1 225

Source: Statistics Finland; IHS

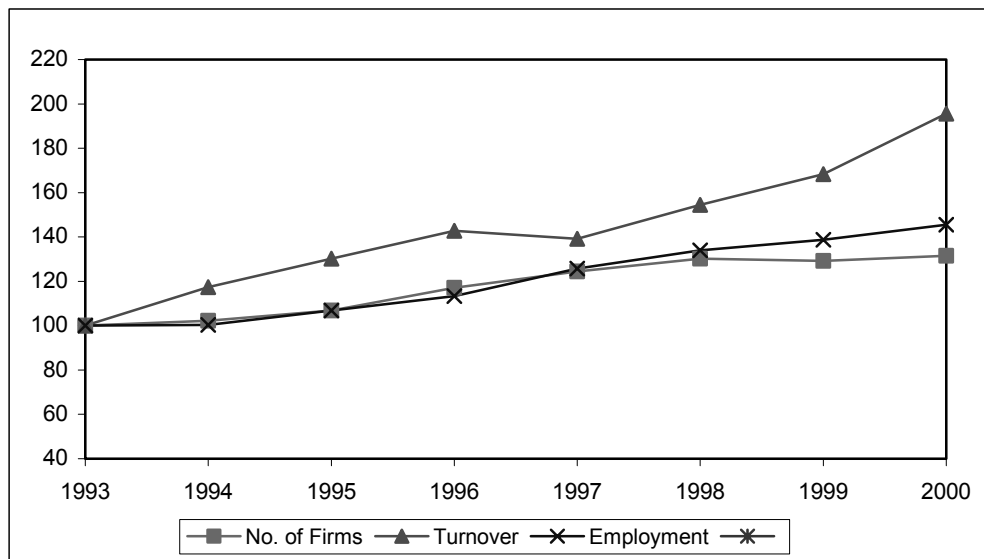
The average turnover per firm (in 2000) over 439,000 euro is considerably higher than the correspondingly value for firms offering accounting services (140,000 euro) or legal services

(247,000 euro) in Finland, but this level of business is typical, being the median value in our survey and well below the turnover per architecture/engineering firm in Austria, Denmark, Ireland and UK⁸.

Although the level of employment, approximately 5,100 persons per million of the population in 2000 is somewhat high in international comparison (after Sweden, the Netherlands, the UK and Denmark) the turnover per employed person is, at 106,000 euro in 2000, well above the median but equally well below the equivalent values for Sweden, Denmark, Austria and the UK, the leaders in terms of this indicator in our survey.

The differential rates of growth in enterprises, turnover and employment are illustrated in the chart with the 1993 values indexed at 100.

Chart 9-2 Relative Growth Rates, Finland 7420



Source: Statistics Finland

*Engineering*⁹: 85 per cent of engineers in Finland are employed in the private sector, 12% in the public sector (state, local authorities) whereas 3% are self-employed. A more detailed breakdown of employment by task is shown in the graphic.

⁸ Note: Value Added is typically 70-75% of turnover for legal and accounting services, 50-55% of turnover for technical services.

⁹ Source: Insinööriliitto - the Union of Professional Engineers in Finland



Source: Insinööriliitto - Union of Professional Engineers in Finland

The average age at which an engineer in Finland had completed his/her education is 26. The median monthly gross salary of qualified engineers, 10% of whom are women, is ca. 3,000 euro. A breakdown of positions held by engineers is shown in the chart.



Source: Insinööriliitto - Union of Professional Engineers in Finland

The Finnish Association of Consulting Firms SKOL.¹⁰ SKOL is a professional and employers' organization for independent and private consulting companies. SKOL has a membership of 257 consulting engineering, architect and management consulting firms. Member firms are independent from commercial, manufacturing and contracting interests and must have practised in independent engineering, architecture or other consulting for at least one year. The executives and leading consultants of a member firm must be full-time consultants and have an adequate education and experience in their special fields.

¹⁰ Sources: IHS-Questionnaire; SKOLry website

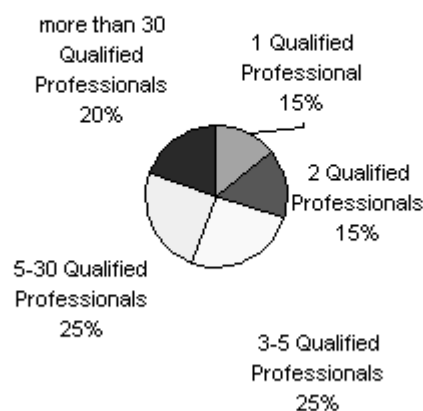
Currently, the yearly invoicing of members of SKOL amounts to about 700 M €. About one third of this amount (220 M €). comes from foreign operations, of which 80 M € originates in other EU or EU candidate countries, and 140 M € in other countries. Building construction accounts for 35% of Finnish consulting, municipal engineering 25% , and industrial projects 40%. SKOL capacity represents two thirds of the total consulting engineering capacity in Finland. SKOL members offer services in the 33 fields defined by SKOL. About 70 per cent of the personnel in the member companies have a university or technical college degree.

The five largest firms have a market share of 28%; altogether the top 10% of large firms account for 60%, and 30% of firms for 80% of the market. Ten companies have offices outside Finland, half of these in EU or EU candidate countries. Swedish (head-office) firms have the largest number of offices in Finland, followed by UK enterprises.

The SKOL member companies employ about 9,500 people in Finland and their sixty foreign subsidiaries employ some 5,000 people abroad. Compared to the 6,400 or so firms in the architectural and engineering branch in Finland, which altogether give employment to ca. 30,000 people altogether (cf. Enterprises, Turnover, Employment), it is evident that large companies are proportionately higher represented in this organisation. Over a third of firms has only one or two employees, half employ less than 10 people, but 10% of firms have 10 - 50 employees, and 5% employ more than 50 persons. Correspondingly 80% of firms operate from a single office, 15% have between 2 and 5 offices, and 5% of firms have 5 - 20 offices.

The typical number of professionals employed by the enterprises is shown in the chart below.

Size of Firms (in terms of Professionals)



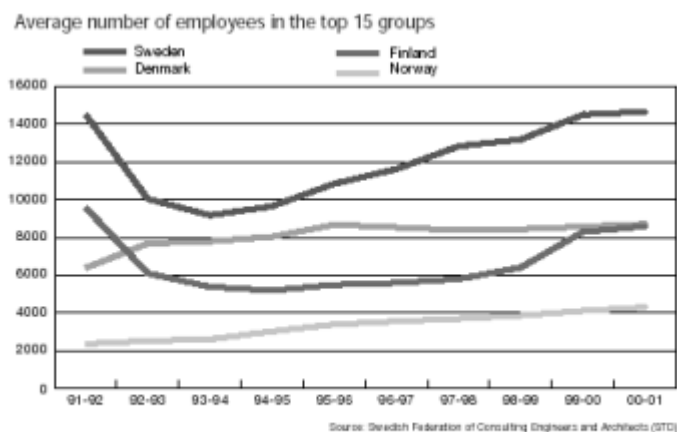
Source: IHS-Questionnaire, SKOLry

*Architects:*¹¹ The Finnish Association of Architects, SAFA: had 2500 members at the beginning of 2001, split 63% male and 37% female., encompassing 85% of all Finnish architects with a university degree. Membership is voluntary, and is not a condition for practising in the profession.

*Students and Graduates:*¹² There were 1,400 students of architecture in Finland in 2001, i.e. 1% out of a university student population of 140,000. The population of graduates (degree holders) in Civil Engineering was estimated at 13,000.

*The Architecture and Consulting Engineering Sector:*¹³ The large Finnish consulting firms have generally had a good market for their services in 2000 and expanded rapidly. The giant Jaakko Pöyry Group has, however, mainly expanded on the international market – almost 70% of its turnover is attributable to markets outside the Nordic region. The areas expanding most were the energy and forestry sectors. Jaakko Pöyry is also setting up business on the world's third largest market for forest products, Japan.

The Jaakko Pöyry Group, with a turnover of 475 mill. €, twelve times the size of the next largest consulting firm in Finland, is not only the largest Scandinavian consulting firm but is also the seventh largest in Europe and seventeenth in the world in terms of its workforce (over 4,700 employees). In general, however the employment in Finland of consulting groups, compared to other Scandinavian countries, is more or less proportionate to the size of it's population (see graphic)



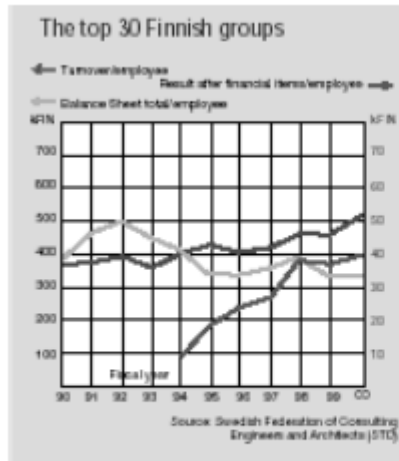
Nevertheless, altogether 11 consulting firms are listed in the top 200 European architectural and consulting engineering companies (by number of employees).

¹¹ Source: The Finnish Association of Architects, SAFA

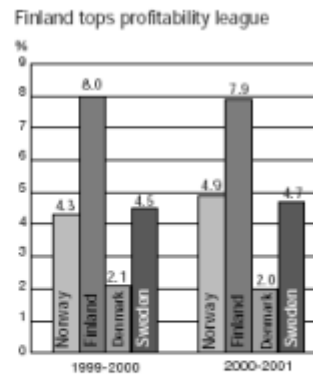
¹² Source: ArchiWorld Network Website.

¹³ Source: Swedish Federation of Consulting Engineers and Architects (STD Svensk Teknik och Design), Sector Report 2001.

In the Scandinavian context alone, the relative strength of the Finnish architectural and consulting engineering sector is evidence in the following graphics:



Source: Swedish Federation of Consulting Engineers and Architects (STD)



The Finnish consulting firms are more profitable than consulting firms in the other Nordic countries. The diagram shows profit margins, measured in terms of pre-tax profit in relation to turnover, for the 30 largest groups.

Source: Swedish Federation of Consulting Engineers and Architects (STD)

It is notable that the relatively high profitability of the sector by no means is due only to the performance of the dominating consulting engineering group, as the table below bears witness to.

Table 9-9 Turnover Top 30 groups

Key figures 2000/2001	for the top 30 groups		for the top 30 groups	
	all	excl. JP*		
Turnover/employee in 1000 EUR	84.9	70.5	505	419
Result after financial items/employee in 1000 EUR	6.7	6.6	40	39

* Excluding Jaakko Pöyry Group

Source: Swedish Federation of Consulting Engineers and Architects (STD)

The total turnover for the top 30 groups increased with some 15% during 2000/01 (previous year 6%). If Jaakko Pöyry Group is excluded the turnover increased with some 4,5% (previous year 7%).

Summary

Finland is one of the Countries in the European Union with very liberal regulations in the field of Technical Services. It is a good example for the fact that the quality of services may be guided by market mechanisms instead of extensive professional regulations without obvious sub-optimal outcomes or, as some argue, even a “breakdown” of the market due to adverse selection.

The Finnish regulatory system is also a good example for the fact that the phenomenon of path-dependency (meaning that a system is hard to change once it is in place, and any changes that do occur are made up of gradual moves from the initial start position) not only occurs in respect of rigid regulations but also regarding relatively liberal ones. Up to now there have not been any serious far-going attempts to reform the technical professions in Finland in the sense of setting up more rigid rules. However, from our point of view, no good reasons occur to do so.

9.3 Technical Professions in France

Architects

France has today more than 28,000 architects registered in the “*tableau de l'Ordre*”; that corresponds to approximately 4.7 architects per 1,000 inhabitant.

The profession of the architect is exercised in France under the job title “architect”. Only the persons, who are registered in the occupation register of the architects (*tableau régional des architectes*), are allowed to call themselves “architect”; and only “architects” may assume architectural tasks (exclusion principle). The occupational register is kept by the established *conseils régionaux* on a local level, which should not be confused with the chambers (“*ordres*” see below).

This profession is strictly regulated in France. The laws, rules and regulations tend to protect the monopoly of architects on one hand, and the title of Architect on the other (Law 77-2 of January 3, 1977 amended by the Law of July 12, 1985; Ordinance 78-67 of January 19, 1978; Ordinance 80-217 of March 20, 1980, establishing a Code of Professional Responsibility of Architects).

Architects are required to obtain insurance covering their professional responsibility (see chapter Compulsory Indemnity Insurance).

Market Entry

A condition for the entry is that the applicant possesses either the French nationality or belongs to a member country of the European Union. Furthermore the applicant must show either a diploma or another French degree of architecture; if he comes from the European Union, he must be in the possession of an equivalent and recognized diploma. Exceptionally also an acknowledgement is sufficient by the Minister of Education, as far as the candidate has on suggestion of a commission sufficient vocational experiences. An applicant coming from another country has only access to the profession of the architect, if a mutual agreement exists with the country of origin and if he can submit an appropriate diploma.

Tasks and exclusive tasks provided by French Architects

The architect, according to French Law, is defined as the prime contractor to whom the owner must address himself for any construction or renovation job which requires a building permit. In all cases where a building permit is necessary (i.e., for all new constructions, for all changes in the purpose of an existing construction or all modifications carried out on its

volume or its outer appearance), the architect has to establish an architectural plan before such permit can be issued.

Such a plan consists of drawings and documents defining “the positions of the building, their content, organization and volume, as well as the choice of materials and colours”. The execution of the work may be entrusted to a contractor, but the architect must always ensure that the project is being followed as it has been approved by the authorities who have issued the building permit.

Furthermore, the architect may participate in the following exclusive tasks: Town planning and development including preparation of drawings, allotment of land, preparation of programs, consulting of firms, preparation of public calls for bids, coordination and direction of works, providing assistance to owners, consultancy and expert appraisal, teaching.

Education and Entry to the profession

There are three types of diplomas which give access to the profession of architect:

- D.P.L.G. (*diplômé par le Gouvernement*; graduate by the Government) delivered by one of the 24 schools of architecture which depend on the *Ministère de la Culture*,
- E.N.S.A.I.S. (*l'Ecole Nationale Supérieure des Arts et Industries de Strasbourg* which depends on the *Ministère de l'Education Nationale*),
- D.E.S.A. (*Diplôme de l'Ecole Spéciale d'Architecture*, which is a private school).

The teaching in the schools of architecture has been reformed. From now on the studies are organized in three cycles:

- A first cycle of two years of general studies leading to the diploma of first cycle of the studies of architecture: It is a national diploma of the higher education (DEUG en architecture). It has the aim of initiating the student in architecture and its methods, to give him the bases of its architectural culture, and to enable him to work out a simplified project. At the end of the first cycle, the student will be able, either to continue his formation in the second cycle, or to direct himself towards other higher education or towards short professional trainings leading to the working life.
- A second cycle of two years fundamental studies leading to the diploma of 2nd cycle of the studies of architecture. It is a national diploma of the higher education (*maîtrise en architecture*). It has the aim of giving to the student the mastery of essential concepts, tools and methods of the architectural work. It allows the student, either to continue his formation

in the third cycle leading to diploma D.P.L.G., or to orientate towards other formations of 3rd cycle of the higher education in the respect of the particular conditions of access to these dies.

- A third cycle of deepening of knowledge leading either to the D.P.L.G., or to a national diploma of the higher education in the fields of architecture (D.E.S.S., D.E.A., *Doctorat*). The 3rd cycle leading to the D.P.L.G. takes two years. It includes a practical training course of six months which can be carried out in France or abroad, in an agency, in a local authority, in an administration, in a company, or with other partners with whom the schools of architecture undertake an agreement.

This reform whose decrees of application were published at the end of November 1997, came into force, for all the courses, in 1999/2000.

The *formation continue* of the architects is one of the axes of study and priority reflexion of the *Conseil National de l'Ordre des Architectes* (National Council of the Order of the Architects). In accordance with the legislation in force (Art 26 de la Loi de 77 et Décret du 20/03/80, Art. 4 du *Code des Devoirs Professionnels*) the architect maintains and improves his competence and takes part for this purpose with activities of information, training and improvement. The *Conseils régionaux de l'Ordre des architectes* (regional Councils of the Order of the architects) are, either by internal delegation, or by creation under their aegis of independent structures, on the initiative of actions or organizations of *formation professionnelle continue* (vocational continuous training) which answer by their expected programs and the requests of their professional colleagues. These organisations of formation also endeavour to answer the invitations to tender launched by FAF PL (*pour la formation des collaborateurs d'architectes*; for the training of the collaborators of architects) by FIF PL (*pour la formation des architectes eux-mêmes*; for the training of the architects themselves) or by the *Direction de l'Architecture et du patrimoine du Ministère de la Culture* (Management of the Architecture and the inheritance of the Ministry for the Culture), in particular for the training of the applicant for work architects.

Protection of the title

The illegal use of the title of architect is subject to criminal sanction. To ensure the protection of the title, there is a professional body which guarantees the application of professional rules and regulations. It has the authority to take disciplinary action and controls the access to the profession through inscription on the Roll.

Furthermore, a code of ethics enumerates the architect's obligations.

Thus, in principle, to join this profession, three conditions must be fulfilled: (1) To possess one's civil rights and provide evidence of good moral character. (2) To have obtained a degree, certificate, or other title recognized by the French government. (3) To be French, or the national of another Member State of the European Community, or the national of a third country which has signed a convention of reciprocity with France. There is no such convention between France and Canada, or the United States. A North American cannot therefore practice as an architect in France, unless he has dual nationality, one of which is of an EU country. In the latter case, the degree he or she holds must appear on the list of foreign degrees recognized as being equivalent to French diplomas by an order of the *Ministre de l'Urbanisme, du Logement et des Transports* (Ministry of Urbanism, Housing and Transport).

Nevertheless, the Law of January 3, 1977 and the Ordinance of January 16, 1978, mention four exceptions to the condition regarding French nationality:

(1) A foreign architect can be authorized to practice by a decision of *the Ministre de l'Urbanisme*, whose decision is taken after hearing the opinion of *the Ministre des Relations Extérieures* (Secretary of State). But in practice, the *Ministre des Relations Extérieures* bases his decision mainly on the existence of a convention of reciprocity with the country of origin of the candidate.

(2) The *Ministre de l'Urbanisme* may allow a foreign architect to register in France, upon presentation of professional references, and after taking into account the opinion of a national commission. But this rule only concerns exceptional cases, where the candidate has already completed works of great importance.

(3) The *Ministre de l'Urbanisme* can authorize an architect to carry out a specific project in France, either after hearing the opinion of the *Conseil National de l'Ordre des Architectes*, or as a result of a contest of which he or she was the prize-winner. Within this context, then, the authorization of the Minister is practically automatic. It is to be noted that competitions are advertised in the bulletin of the *Union Internationale des Architectes* (U.I.A. - International Union of Architects).

(4) Finally, the law provides for persons having effectively practiced as architects in France before 1977 to be recognized and approved by the *Ministre de l'Urbanisme*, after receiving the opinion of a regional commission, and on these grounds to be authorized to work as an architect. However, this procedure seems quite impractical at the moment as 2,000 applications have already been submitted, and *l'Ordre des Architectes* is not at all favourable to this procedure. The application to register should be made to *the Conseil Régional de l'Ordre des Architectes* of the area in which the candidate wishes to practice.

In cases (1), (2), and (3), however, if the candidate is the prize-winner of a competition, the application should be made directly to the *Direction de l' Architecture du Ministère de l'Urbanisme*.

In all cases, the application must be accompanied by the documents which prove that the candidate fulfils the statutory conditions.

In practice, foreign architects in France practice in partnership with French architects. Indeed, the real problem is not the access to the profession, but the lack of knowledge of French rules and regulations and of French practice, especially regarding the employment of salaried workers, the making of contracts, the technical regulations (control of materials, etc.) and the possibility of entering into a partnership with an engineering firm.

Conduct Regulation

Prices and Fees

There is no regulation of charges for architects. Rather the remuneration of the architect between the parties is in principle freely agreed upon. The “*Union Nationale des Syndicats Français d'Architectes*” however developed principles, which should be considered with the calculation and fixing of the architect fee. Since there are no restrictions of co-operation for architects, they have a competition advantage opposite other self-employed persons, which can lie in particular in the capital applying by financially strong partners.

Advertising (publicité)

Art. 26-4 du décret n° 80-217 of March 20, 1980 which regulated in a restrictive way the possibility for an architect of making advertising was repealed by Art. 2-II du décret of September 17, 1992 carrying various regulations concerning the profession of architects. This decree, on the other hand, introduced with the *Code des devoirs professionnels*, a new article “10 bis” (10 a) authorizing the architects to turn towards advertising.

Thus the recourse to advertising is to practise under the conditions of the common right which, according to Art. 44 de la loi n° 73-1193 of December 27, 1973, prohibits any misleading or comparative advertising.

The architect is, in addition, supposed to continue to comply with the rules enacted by the *Code des devoirs professionnels*.

In addition to opinions and advice, the architect must provide to his customer the explanations necessary to comprehension and judgement of the services. He must thus announce all the risks and disadvantages which the project of construction may imply.

Forms of Business and Inter-professional Co-operation

Architects can group themselves and form a partnership with others of different means or professions, or form a corporation for which they will work. In the latter case the partners must comply with the following rules: (1) the shares of the company must be nominative shares, (2) more than 50% of the nominative capital must be held by architects, (3) the membership of a new partner is subject to the prior agreement of the General Meeting of shareholders; the decision must be taken by a two-third majority, (4) none of the partners can hold more than 50% of the nominative capital, (5) the chairman of the board of directors, the general manager (if he is alone), at least half of the managers and members of the board of directors, as well as the majority of the board of directors and administrators must be architects.

According to the *Loi de l'Architecture* architects can operate according to one or several of the following legal forms:

- (1) Individually, in liberal form (on a liberal basis)
- (2) As *associé* (joint-proprietor) of a private company of architecture
- (3) As *salaré* (employee) of a private company of architecture
- (4) As civil/public servant or employee by the government
- (5) As *salaré d'organismes d'études* carrying on their activities for the account of the state or the local communities in the field of arrangement and urban development.
- (6) As *associé* (joint-proprietor) or *salaré* (employee) of a person that is making constructions for its characteristic and exclusive use and whose area of responsibility does not correspond with the blueprint of projects, the financing, the construction, the restoration, the sale or the hiring of buildings, or the buying and the sale of grounds or materials and structural components
- (7) As *salaré* (employee) of a *société d'intérêt collectif agricole d'habitat rural* (kind of co-operative)

The large majority of the architects exerts on a purely liberal basis, but the practise in a company, in particular in the form of limited liability company (SARL= *société à responsabilité limitée*) which offers many advantages, becomes more and more successful. These companies obey a certain number of common rules:

- They are registered in the *tableau de l'Ordre*.

- They may exercise the professional service of architects; even when their form is commercial, their object remains civil and for this reason, they cannot concern e.g. the exercise of financial or commercial real activities.

- The companies of architecture must be mainly made up by architects (physical people). One architect cannot hold more than 50% of the capital.

- On decision of the *assemblée générale*, an associated architect can continue to follow his occupation on a purely liberal basis or as *associé* of another architecture company.

Location and Diversification

Architects in France are not subject of any restrictions concerning this point.

Continuing Education

The architect is not obliged to continue his professional education as there does not exist any legal arrangement as far as this is concerned.

Compulsory Indemnity Insurance

Each occupation carrier is obligated to acquire an occupation liability insurance.

Any architect, person or entity, who has responsibility for his/her own professional actions or of the actions of his/her employees, must be covered by an insurance. A certificate of insurance is joined, in all the cases, with the contract signed between the architect and building owner or, if necessary, his employer.

Whatever the adopted form, any company of architecture is jointly responsible for the accomplished professional acts for its account by architects.

Actual challenges and recent changes in regulations

The text of the proposed reform of the French *Loi de l'architecture* of January 1977 covers new areas of practice for architects, the conditions governing practice, and reform of the organisation of the profession. A few of the proposals are highlighted:

(1) Legal requirement to commission an architect

The legal requirement to commission an architect for planning and listed building consent applications will apply to buildings with a gross surface area in excess of 20 m² instead of the previous threshold of 170 m² of net surface area, providing in effect a complete monopoly on all such work for architects. This will now also apply to all categories of buildings, including private dwellings and agricultural buildings. The legal requirement will not be met (and the application will then be refused) unless the architect has been entrusted with a complete mission, except where agreed otherwise under contract (in which instance, this would exempt the architect, in the event of litigation, from the risk of joint condemnation).

(2) Outline and full planning consents

The role of the architect will also be reinforced with respect to applications for outline planning consent to build and to demolish. These would be subject to the presentation of a study of the architecture and heritage of the buildings. Again, full planning consents (this is a proposal annexed to the proposed law) would evolve towards a consent in two stages, the "planning consent" and the "building consent", the latter corresponding to the stage when contract documentation has been prepared in order to obtain competitive tenders.

Finally, a "transformation consent" (rehabilitation etc.) would also be created. This would have to be accompanied by a study on interior and exterior architecture and on insertion. This new concern for the interior of buildings reflects the desire not only to increase potential areas of work for architects generally but also to recognise and regulate interior designers known in France as *architecte d'intérieur*. The text also proposes in exchange that interior designers should be able to intervene on works subject to the proposed new "building consent". Their activity would be carried out (without a monopoly) under the same conditions affecting architects with registration under a separate panel managed by the *Ordre des Architectes*.

(3) Contract administrators registered by the *Ordre des Architectes*

These developments are accompanied by new measures in the organisation of the professional role known as the *Maitre d'Oeuvre* or contract administrator and, more specifically, in the registration and regulation of the different professions fulfilling this role with registration under further separate panels managed by the *Ordre des Architectes*.

Amongst these professions, the *agrés en architecture* and the *détenteurs de récépissé* constitute two groups of professionals which are allowed to practice as if they were registered architects. The *agrés en architecture* and the *détenteurs de récépissé* may continue to practise as before and benefit from the same rights under certain conditions (valid decennial PI insurance and the payment of the tax levied on this professional role). These 600 to 700 professionals concerned would be registered under the title of *équivalents agrés en architecture*.

As for the other 10,000 *maitres d'oeuvre* offering full “building works” services and contract administration on projects involving buildings up to 170 m² (and 800 m² on agricultural buildings), they would also be registered under another separate panel within the *Ordre des Architectes* but which would allow them to pursue practice until retirement subject to the same limits on the size of the buildings.

The registration of this last category of professionals would also be subject to conditions and, more specifically, be limited to those *maitres d'oeuvres* who have exercised a design activity in France for at least two years prior to the application of the new law.

(4) French architects in building contracting and in estate agency

The areas of practice open to this profession are also increased. Architects will be able to organise themselves as architectural practices with commercial subsidiaries in order that they could work, amongst other activities, as general building contractors, as estate agents or as management agents, the last thanks to a bank offering financial guarantee deposit bonding.

Engineers

The comprehensive term for all engineers is the *ingénieur diplômé*. The profession advisory engineer in France is practised under the term *ingénieur conseil*. The title *ingénieur diplômé* is legally protected since 1934. The diploma is awarded either as national diploma, or of nationally recognized training centres.

There is not any list obligation for *ingénieurs diplômés* and no market admission limiting obligation membership in a chamber mechanism. But there is a distinction between prohibition and certification models. One who is not certified, but who is independently active as a consulting engineer, in whatever speciality, may practise. Even without certificate he is accepted as member of a *profession libérale* in different regard.

In France the title *ingénieur* is used in a much more holistic sense than in German speaking countries. It is therefore not surprising that members of this profession have attained leading

positions in both business and politics with a great operational range. The total market for engineering services in France can be split up into the areas building/construction trade (*ingénierie bâtiment*), infrastructure (*ingénierie infrastructure*) and industry (*ingénierie industrie*). Most of the employed as well as two-thirds of the total turnover are concentrated in the industry sector. Characteristic for the French educational system we find here a highly differentiated university landscape in spite of a very centralistic organised educational system.

Market Entry

Tasks and exclusive tasks provided by French Engineers

The profession of engineer comprises one or more of the following tasks: The engineer ensures the design, the realization, the exploitation, maintenance, the distribution, the technical sale or the after-sales service of equipments, of products, processes, logical systems or services with dominant technique. The engineer takes part in research relating to sciences and technology or uses the new knowledge obtained in these fields for the search and the development for new equipment, products or services. Moreover the engineer transmits his knowledge to other people and the assistance to use their capacities for better exerting their professional or civic functions, and allowing them to reach the functions corresponding best to their potential and the needs for the company.

Education and Entrance to the Profession

After the highest school leaving examination (*baccalauréat*) those willing to study have a number of alternatives regarding engineering education: Universities, *Instituts Universitaires de Technologie* (IUT), *Instituts Universitaires Professionnalisés* (IUP), 120 smaller engineering schools (*Ecoles d'Ingénieurs*) as well as a few *Grandes Ecoles* which are under government supervision by the ministry of Education and around 60 further *Ecoles d'Ingénieurs* that are administrated by other ministries or private owners. Parallel to and often in competition with state education the other *Grandes Ecoles* and *Sections des Techniciens Supérieurs* have developed their educational programmes. The central instances in France exercise a strong influence on university education. However, the provisions of this centrally organised French education system don't apply equally to all sectors of university education.

Due to the fact that the universities managed by separate ministries often boast a high financial backing and autonomy in terms of political decision making the French university landscape is characterised by a broad variety of institutions. It is therefore more difficult to assess the quality of the different French degrees and diplomas. For this reason an

independent and very successful evaluating commission, the *Comité National d'Evaluation* was instituted in 1985 to conduct a quality review of all French Universities.

Intellectually gifted school leavers have the opportunity to prepare themselves for the difficult entrance exam (*Concours d'entrée*) of the distinguished *Grandes Ecoles* by means of a two years course ("CPGE"). The *Grandes Ecoles* deliberately position themselves as elitist educational institutions to prepare candidates for leading positions in industry, business, military and the public service. Mass education in France is a task assigned to the universities. Entrance to the universities long-time courses (five years) is not regulated in principle and therefore an entrance exam is not mandatory. The first three year-end exams are however highly selective and low pass rates are not uncommon. A high increase in the number of students has however led to the introduction of a *numerus clausus* in many courses.

Furthermore there is the possibility to be trained as a higher-qualified technician, the *Technicien Supérieur* after completing the *baccalauréat*. This two-year job related educational course is offered by technical schools (STS) and has been positively accepted by both students and industry alike. The work scope of the *Technicien Supérieur* is centred around technical problem solving. The equally practically oriented *Diplôme Universitaire de Technologie* (DUT) can be attained after two years at *Instituts Universitaires de Technologie* (IUT).

Due to the strict separation of research, elitist and mass education in the French system, higher positions on the corporate ladder remain unattainable to the *Technicien Supérieur*. Despite extensive practical experience these positions are the exclusive domain of the Diploma Engineer. Especially when changing companies the rank-value of an Engineering Diploma becomes evident. Notwithstanding this fact students that have completed the *Technicien Supérieur* outnumber those with an university diploma. Above that, the importance of the *Technicien Supérieur* for the industrial sector has increased due to the fact that academically schooled graduates from the *Grandes Ecoles* more often than not don't see their role as that of practical problem solvers.

The studies at the *Ecoles d'Ingénieurs* in France follow a very generalist conception, mainly focussing on Theoretical Mathematics and Physics, institutions in other EU countries emphasize the importance of technical disciplines and early specialisation in the complete spectrum of Engineering Sciences from manufacturing system to chemical engineering. Coupled with that, the idea that research and teaching should be conducted in parallel is underdeveloped in France. For a long time now, a stronger orientation towards the problems encountered in business has been called for. Due to the fact that students are too closely accustomed to academic thinking they have lost the pragmatism required in order to solve practical problems.

In recent time there have been efforts to intensify the cooperation between industry and university. Under the impression of an engineer-deficit in the late eighties a few governmental bodies have initiated the foundation of *Instituts Universitaires Professionnalisés* (IUP) against the opposition of engineering associations. After completion of their *baccalauréat* students can attain the title of *Ingénieur Maître* in a job related course at these Institutions. This Diploma, which is not academically approved by the *Commission des Titres* is awarded to students who have specialised in either Engineering or Management for example after completing one year of general education.

After completing this four year course students have the opportunity to go on to engineering school where they can attain the title of *Ingénieur Diplôme*. In doing this, it was hoped to counteract the lack of practically oriented junior executives below the level of the *Grandes Ecoles* graduates.

In closing one can say, that the French educational system is characterised by a large variety of admission standards and study regulations of the different institutions which in turn leads to a very dynamic vitality in the educational landscape. Only those courses instituted in the last couples of years are more oriented towards the needs of the job market and the everyday vocational requirements.

Conduct Regulation

Prices and Fees

For professional services offered in the public service sector there has been a legally fixed scale of charges and fees *Maîtrise d'Ouvrage Publique* ("MOP") in existence since 1988. Its concrete application however is not precisely defined. In general the remuneration is still calculated in accordance with a decree from 1974, which was used for a basis for calculating detailed remuneration scales and tables. There is always a lump-sum payment accorded to the whole team responsible for a project with the individual split-up amongst the team members calculated according to a separate set of rules and regulations – known as the "Guide GELI-REC".

In the private sector however no state-regulated tariff scales are known. The remuneration is always individually negotiated for every project. Only in the case of para-statal or state-subsidised parties entering the contract negotiations, administrative regulations such as the *Code des Marchés Publics* for example come into application. Contracts with consultant engineers are mostly calculated on a blanket payment basis.

Advertising

As the relevant professional bodies did not send back a completed questionnaire we do not have any reliable information on this point at the time of writing.

Forms of Business and inter-professional Co-operation

In France two forms of legal accreditation dominate amongst engineering consultancies, the *Bureaux d'Etudes Techniques* (BET) and the free-lance engineering consultancies.

The term "BET" includes all professional operations from simple drawing offices to highly qualified engineering practices excluding the building and construction industry where specialists from very different skill fields work in combined teams. In comparison to the independently operating free-lance consultancies the "BET" are mostly offshoots of big construction, finance or industrial corporations.

Therefore the total of 11,000 total employees in engineering is dominated by ten large corporations, covering mostly the vast field of industry needs. Ninety percent of all engineering consultancies have 50 employees or less and are mostly engaged in the areas of construction and infrastructure planning. The more regionalised need for engineering consulting in the construction industry outside of the large cities is mainly covered by many smaller firms. But also in this sector some concentration tendencies could be observed over the last couple of years.

The *Chambre des Ingénieurs-Conseils de France*, according to their own figures, represents approximately 1,000 independent Engineers and Consulting Engineers with about 6,000 employees and a revenue of 3 Billion francs in total.

Problems arise mainly in areas related to tariff and liability issues because in public works infrastructure projects the project responsibility has to be shared equally between architects and engineers. Possible cases of conflict are therefore discussed prior to project commencement by way of informal arrangements.

Continuing Education

The future prospects for engineers are not all that bad. The job-market in France at present offers both engineers and *Technicien Supérieurs* ample opportunities. University graduates, especially those from *Grandes Ecoles*, currently find sufficient job opportunities in the private sector. Engineers with work experiences ranging from 3 to 5 years are specifically much sought after. Especially the Radio and Telecommunication industries are diagnosed as

having the highest potential for growth, providing engineers with the appropriate specialisation in this field with countless job opportunities.

As can be witnessed in other European countries also, the occupational image of the engineer in France has changed a lot. Only a few engineers are able to distinguish themselves solely on the grounds of technical competence. Geographical flexibility and company-internal mobility as well as sound management knowledge have become part of the day-to-day working routine of most French engineers and becoming even more important prerequisites for success in the future. Many companies are urging their employees to participate in continuing education programmes aimed at furthering management skills.

Due to the fact that most French companies have less pronounced hierarchies, engineers are continuously forced to deal with a number of problems not related to their field of expertise or specialisation. As their careers progress, more and more French engineers realise that their academic training has not sufficiently prepared them for the specific requirements their job-reality entails, i.e. with regard to solving problems relating to management and financing issues.

Many engineers in France therefore opt for enrolling in a commercial college to address their knowledge deficits in the areas already mentioned above. That a number of engineers have already decided to pursue this option is evident from the fact that nearly fifty percent of participants in evening classes at said colleges are engineers.

Specialisation in the Profession

Candidates who are planning a career as consultant engineer must, according to the provisions of the chamber of consultant engineers of France (*Chambre des Ingénieurs-Conseils de France*), be in possession of an engineering diploma in addition to providing proof about numerous years practical experience. A membership in this representative body is mandatory for all free-lance consultant engineers. The title *Ingenieur Conseil* (Consultant Engineer) is not legally protected in France and in comparison to Architects for instance there exists no formal professional code of conduct.

Compulsory Indemnity Insurance

If there is a problem involving dissatisfactory project delivery in the construction industry, the Provisions of the *Code Civil* (last amended in 1978) apply: a twelve months liability is set for the completeness of building construction, two years for the ascertainment of satisfactory functionality as well as a ten year liability in conjunction with the general planning and project responsibility.

A legal clarification of contractual liabilities usually takes years to complete. Above the mandatory insurance for the Executor (*Maitre d'Oeuvre*) therefore exists an additional obligation for the awarding authority (*Maitre d'ouvrage*) to cover possible events of damage or loss by means of insurance. As far as projects outside of the construction industry are concerned no proof of special insurance is required, usually however there is a voluntary insurance against possible damage claims arising from the project liabilities entered into.

In order to objectively clarify liability matters a number of independent and state-approved consulting engineers offer their services such as Bureaux Veritas, SOCETEC or CEP for example.

Actual challenges and Conclusion

Due to the fierce competition within the French market itself, foreign companies have not been able to make substantial inroads. This can be further attributed to the fact, that foreign participants in infrastructure planning procedures are often required to submit additional documentation for approval.

A positive signal for foreign contractors can be seen in the fact that public works development projects are no longer solely handled by state owned or para-statal technical divisions but that the market has increasingly been opened up to private tenders.

Economic Characteristics

France – Structure and dynamics (NACE 7420)

Enterprises, Turnover, Employment.¹⁴: In discussing the firms' turnover it is to be noted that only enterprises above 76,000 EUR turnover per year are included in the French statistics, for which data on average turnover are available. Furthermore, statistics on employment include only units with 1 or more employees, so that single-person self-employed enterprises are left out.

For that reason the tables below contain 1993 and 1994 data from Eurostat, and a 2000 figure based on extrapolation on the basis of growth rates from the INSEE statistics

¹⁴ EUROSTAT, SIRENE (Système informatique pour le répertoire des entreprises et des établissements - Computer system for the companies and establishments directory) (INSEE) 2002

Table 9-10 Firms, Turnover and Employment; France 7420

	Number of Firms	Turnover in Mio. EUR	Employment	No. of Professionals
1993	44 559	18 503	194 625	
1994	43 704	18 796	202 151	
2000*	50 376	29 662	287 698	80 300

* extrapolated value based on INSEE definitions (except No. of Professionals)

Source: EUROSTAT, INSEE, IHS

Table 9-11 Key Statistics, Accountancy Services: France 7420

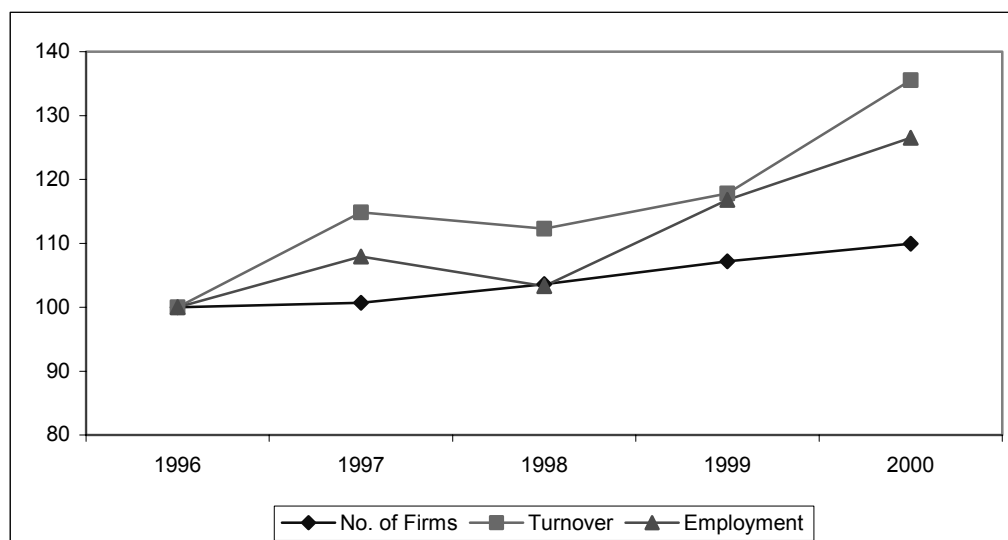
	Turnover per Firm 1000 EURO	Employment per 1000 firms	Turnover per person employed 1000 EURO	Employment per Mio. of Pop	Firms per Mio. of Population
1993	415	4 368	95	3 383	775
1994	430	4 625	93	3 499	756
2000*	589	5 711	103	4 858	851

* extrapolated value based on INSEE definitions (except No. of Professionals)

Source: EUROSTAT, INSEE, IHS

The differential rates of growth in enterprises, turnover, and employment are illustrated in the chart, with the 1996 values indexed at 100.

Chart 9-3 Relative Growth Rates, France 7420



Source: INSEE

The following analysis is based on the data obtained from INSEE.

In France there were 28.212 architects active working in 2001 (see table)¹⁵. About 21,449 (76%) architects work as individual entrepreneur, about 5,611 (19.9%) work in a company, and about 1,152 (4.1%) in other categories (end of year 2001).

Table 9-12 Number of Architects active in France 1996 to 2001

End of Year	Architects active at 31/12	Enterprise demography ¹		
		Individual entrepreneur	Company	Other
1996	25 228	19 886	4 074	1 268
1997	25 421	19 876	4 321	1 224
1998	26 151	20 318	4 630	1 203
1999	27 085	21 018	4 866	1 201
2000	27 517	21 190	5 150	1 177
2001	28 212	21 449	5 611	1 152

¹Number of companies economically active in the inventory at the end of year.

Source: SIRENE (INSEE) 2002.

This structure has not changed substantially as compared with six years ago: From all architects at the end of year 1996 about 78.8% worked in the single firm category, 16.1% in a company and about 5% in other organisations.

In fact there was almost exactly the same number members newly admitted to the architects profession in 2000/1 i.e. 985, as in 1990 – 984 (IHS questionnaire from *Ministère Culture - Direction de l'architecture et du patrimoine - Bureau des professions*) The number of architecture graduates was, however, 2,861, an increase of approx 250% over the numbers for each of the years 1990 and 1995.

Regarding engineers, the sector engineering and technical studies does not contain land surveyors, building consultants and building supervisors. In the following table the quantitative development of engineers active in France from 1996 to 2001 is shown.

Altogether the 31,813 engineering enterprises in 2001 show a growth rate of 15.9% from 1996 onwards. Dominant are companies with 20,862 enterprises in 2001, which is almost the double compared to individual entrepreneurs. The companies' growth rate is 21.2%, the growth rate of individual entrepreneurs is much lower with 6.9%.

¹⁵ The number of architects in this statistic agrees broadly with the figures supplied by the *Conseil national de l'ordre des architectes* (IHS Questionnaire).

Table 9-13 Number of engineers active in France 1996 to 2001 (on 31/12)

Year	Engineers active at 31/12 Enterprise demography ¹			
	All	Individual entrepreneur	Company	Other
1996	27 453	9 839	17 199	415
1997	27 619	9 491	17 716	412
1998	28 437	9 719	18 312	406
1999	29 365	10 033	18 896	436
2000	30 398	10 174	19 785	439
2001	31 813	10 516	20 862	435

¹Number of companies economically active in the inventory at the end of year.

Source: SIRENE (INSEE) 2002.

Thus, the main quantitative development occurred for engineering companies in France from 1996 to 2001.

Ordre des Geometres-Experts: In 2001 there were 1,937 chartered land surveyors, a decrease in number –10% since 1990 (data from IHS questionnaire). It appears that typically less than 100 new members have been admitted each year: in 2001 there were 69 new members and 83 new *stagiaires*. The number of surveyors' firms has also decreased to 1,528 over this period by 17% from 1,848 in 1990. At the same time the proportion of firms with incorporated status has risen from 16% to 40%. However, the distribution of firms size by non-professional employees has shown just a slight trend towards larger enterprises. In 2001 there were 45% of firms with 1-2 employees (47% in 1990), 41% with 3-10 employees (40% in 1990), and 14% with 10-50 employees (115 in 1990). Branch turnover was 427 million Euro (3.8 Bill. FRF) in 2001, up in nominal terms by 22.5% from the corresponding figure of 1990. The *Ordre* estimates the breakdown of turnover in 2001 as follows: remuneration of professionals - 24%, other salaries and wages - 42%, cover for professional insurance and risk – 6%, investment in office premises – 5%, investment in technology (computers) - 3%. on-going professional education (courses) - 3% , and other costs - 17%.

Number of enterprises: the development of engineering enterprises in employee classes in France from 1996 to 2001 is shown in the following table.

Table 9-14 The number of engineers enterprises in employee classes in France 1996 to 2001

Year	Enterprise demography: Number of enterprises active at 31/12							
	0-5	Jun.19	20-49	50-249	250-499	500-1999	>2000	Other
1996	23 779	2 697	650	268	38	20	1	0
1997	23 781	2 834	660	278	42	23	1	0
1998	24 523	2 873	704	273	40	23	1	0
1999	25 308	2 966	750	282	32	25	2	0
2000	25 989	3 248	782	308	41	28	2	0
2001	27 166	3 367	864	342	42	29	3	0

SIRENE (INSEE) (2002)

There were 27,166 engineer enterprises in 2001. Small enterprises in the engineering services are obviously dominant, in particular enterprises with up to 5 employees. Their growth rate from 1996 to 2001 was 14.2% with 23,779 small enterprises in 1996. Next in line are enterprises with 6-19 employees. Their growth rate is 24.8% with 3,367 enterprises in this second class in 2001, a growth rate which is higher than that of the smallest group. An even higher growth rate of 32.9% was achieved by enterprises with 20-49 employees. Note however, the relatively small number of enterprises in this third class. Beyond 250 employees only a small number of firms are apparent.

To summarize: larger engineering enterprises grew faster than smaller engineering enterprises in France from 1996 to 2001. Compared to the other services enterprises' results. Further, there is also general tendency that larger firms grow faster than smaller firms in the legal services and in the accountancy services.

Average Turnover: The engineering services produced an average turnover of 1,935,890 EUR in 2000 (see table). They showed a growth rate of 26.4% in 1996 with an average turnover of 1,532,000 EUR.

Table 9-15 The average turnover of engineering enterprises in employee classes in France 1996 to 2000

Year	Average turnover					
	0-9 employees	10-19 employees	20-49 employees	50-249 employees	>250 employees	
	EUR	EUR	EUR	EUR	EUR	
1996	1 532 000	513 000	1 524 000	3 520 000	11 985 000	106 579 000
1997	1 788 000	536 000	2 721 000	3 567 000	12 321 000	125 155 000
1998	1 684 000	504 000	1 621 000	4 947 000	12 358 000	109 329 000
1999	1 705 000	601 000	1 989 000	4 164 000	11 680 000	108 188 000
2000	1 935 890	685 490	2 096 120	4 387 150	16 529 580	97 605 760

Threshold: Turnover > 76.000 EUR

Source: Système unifié de statistiques d'entreprises (SUSE-INSEE)

The highest turnover can be found in enterprises with more than 250 employees with a maximum of 109,329,000 EUR in 1998. In contrast: the smallest enterprises (0-9 employees) produced 685,490 EUR in 2000 as its highest average turnover between 1996 and 2000.

Employment structure by gender: The engineering services employment structure by gender in France from 1996 to 2000 is shown in the following table.

Table 9-16 Employment structure in engineering enterprises by gender in France

Year	Total employee at 31/12		
	All	Men	Women
1996	123 002	90 532	32 470
1997	133 104	97 889	35 215
1998	126 599	93 804	32 795
1999	143 452	106 891	36 561
2000	156 274	116 462	39 813

Threshold: Enterprises with 1 or more employees

Source: Déclaration annuelle de données sociales (données d'entreprises) (DADS-INSEE)

In 2000 there were 156,274 employees altogether with a relatively high male quota of 74.5%. The employment grew by 27.1% with 123,002 employees in 1996. The male quota in the mid 1990s of 73.6% is similar to the quota five years later. Thus, the gender structure remained constant over the last years in the French accountancy services employment. Compared to the legal and accountancy services where it is the female quota, here the male quota is pronounced.

Architectural and engineering services, France 7420**Table 9-17 Number of companies economically active at the end of year**

NACE	Branch	Year	active at 31.12	Enterprise demography		
				Individual entrepreneur	Company in units	Other
74.2	Architectural and engineering activities	1996	52 681	29 725	21 273	1 683
74.2	Architectural and engineering activities	1997	53 040	29 367	22 037	1 636
74.2	Architectural and engineering activities	1998	54 588	30 037	22 942	1 609
74.2	Architectural and engineering activities	1999	56 450	31 051	23 762	1 637
74.2	Architectural and engineering activities	2000	57 915	31 364	24 935	1 616
74.2	Architectural and engineering activities	2001	60 025	31 965	26 473	1 587

Source: INSEE

Table 9-18 Number of employees

NACE	Branch	Year	number of employees (31.12)	Men Women	
				in units	
74.2	Architectural and engineering activities	1996	143 767	101 409	42 358
74.2	Architectural and engineering activities	1997	155 187	109 488	45 699
74.2	Architectural and engineering activities	1998	148 531	105 427	43 104
74.2	Architectural and engineering activities	1999	167 912	119 688	48 224
74.2	Architectural and engineering activities	2000	181 900	129 753	52 148

Threshold: Enterprises with 1 or more employees

Source: INSEE

Table 9-19 Average turnover by size class of employment

NACE	Branch	Year	Average turnover				
			Average turnover EUR	0-9 employees EUR	10-19 employees EUR	20-49 employees EUR	50-249 employees EUR
74.2	Architectural and engineering activities	1996	1 822 000	750 000	2 655 000	6 284 000	16 645 000
74.2	Architectural and engineering activities	1997	2 078 000	773 000	3 860 000	7 190 000	16 663 000
74.2	Architectural and engineering activities	1998	1 974 000	741 000	2 669 000	7 670 000	16 602 000
74.2	Architectural and engineering activities	1999	2 003 000	845 000	3 135 000	7 007 000	16 884 000
74.2	Architectural and engineering activities	2000	2 246 510	934 910	3 255 440	7 226 050	21 511 880

Threshold: Turnover >76 000 EUR

Source: INSEE

Table 9-20 Enterprise demography

NACE	Branch	Year	Enterprise demography: Nber of enterprises active at 31/12							Other
			0-5	6-19	20-49	50-249	250-499	500-1999	>=2000	
74.2	Architectural and engineering activities	1996	48 051	3 607	691	273	38	20	1	0
74.2	Architectural and engineering activities	1997	48 230	3 760	700	284	42	23	1	0
74.2	Architectural and engineering activities	1998	49 682	3 812	752	278	40	23	1	0
74.2	Architectural and engineering activities	1999	51 365	3 940	797	289	32	25	2	0
74.2	Architectural and engineering activities	2000	52 382	4 314	831	317	41	28	2	0
74.2	Architectural and engineering activities	2001	54 045	4 612	943	351	42	29	3	0

Source: INSEE

9.4 Technical Professions in Spain

Technical professions in Spain: an overview

As in other European countries technical professions in Spain are divided into architects and engineers. But - and this makes the overall picture rather complicated in respect of engineers - several sub-categories exist. .

For engineers one at first has to differentiate between “superior engineers” and “technical engineers”. The following types of superior engineers are known:

Ingeniero

- *Caminos, Canales y Puertos*
- *de Telecomunicaciones*
- *Aeronautico*
- *Industrial*
- *Informatico*
- *Agrícola*
- *de Montes*
- *Naval.*

Apart from this there exist several types of “technical engineers” (*Ingeniero Tecnico*).

The profession of Architects is divided into two professions only: architects and technical architects.

For all these professions a membership in the relevant professional association is compulsory. There exists a rather large number of respective bodies for engineers – organised by type of title and by regional differentiation. For architects and technical architects the situation is less complicated, as there are only two types of respective professions.

Market Entry

Tasks and exclusive tasks provided by Spanish Engineers and Architects

The regulations concerning tasks and exclusive tasks of engineers and architects in Spain are, as to our knowledge at the time of writing, very restrictive. Tasks like design and planning, project management including monitoring of execution, feasibility studies, environmental assessments, tender and contract administration, representation for obtaining permits, requests for construction permits, construction cost management, planning and managing maintenance, urban and landscape planning and even interior design are exclusive tasks of the relevant professions. In fact, in respect of exclusive tasks from an

international comparative point of view Spain (possibly together with Greece) appears to be the most regulated case in all the European Union.

As a general rule, engineers and architects are allowed to practise in the fields related to their previous studies. However, Superior Engineers have competence related to all academic courses and specialities taught in their Universities, even if they have not taken these courses as specialization (when optional). In contrast, technical engineers have their competence limited to their respective academic training and specialities.

The architect generally speaking may fulfil all tasks related to building and planning. The technical architect is normally the manager of the building construction, under the instructions of the architect, in charge of the supervision of the construction in order to achieve the quality and costs specified in a project. However, the technical architect may also have the competencies that in principle are reserved for architects, if works do not require an architectural plan (i.e. minor works, consolidations etc.).

Education and Entrance to the Profession

Superior Engineers have to obtain a relevant University degree, for which the studies normally take five years. Once the university degree is obtained, professionals may practice in the fields related to their studies. No further professional practice or examinations are required. The same is true for technical engineers, for whom studies at the university take a minimum of three years. The education system for architects and engineers follows the same structure: 5 years University education for architects, three years for technical architects. No further professional training or professional entry examinations are required. In all cases the studies at University are normally finalised with a "*proyecto*" (something like a practical thesis).

As already mentioned above, there is a general requisite of membership to the pertinent professional body. This membership is territorial, but the *Real Decreto-Ley 6/2000, de 23 de junio, de Medidas Urgentes de Intensificación de la Competencia en los Mercados de Bienes y Servicios* codifies, for all professional bodies organised on a territorial basis, that membership to one territorial body is enough to practice in the entire State.

Conduct Regulation

Prices and Fees

The *Ley 7/1997, de 14 de abril, de medidas liberalizadoras en materia de Suelo y Colegios Profesionales* for engineers and architects abolished all precedent fix prices scales of a State nature. However some professional bodies issue recommended prices for some particular works (although this may well not be longer the case). According to information provided by Tecniberia currently no special regulations on fees and prices exist for engineers and architects in Spain.

Advertising

According to information provided by Tecniberia currently no special regulations on advertising exist for engineers and architects in Spain. All forms of advertising are allowed.

Forms of Business, inter-professional Co-operation, location and diversification

Engineers and Architects can, (and do) enter into associations of all forms with other professionals, but a *Société anonyme* (public limited company) cannot provide for engineers' or architects' services (accurately speaking: it can provide for the services, but it is always the engineer or architect who undertakes all the responsibility, not the society). The respective firm has to inform the customer of the fact that they have entered into such associations.

There are no special regulations concerning branch offices and regulations restricting the offering of services in geographical terms have been abolished recently. *Real Decreto-Ley 6/2000, de 23 de junio, de Medidas Urgentes de Intensificación de la Competencia en los Mercados de Bienes y Servicios* codifies, for all professional bodies organised on a territorial basis, that membership to one territorial body is enough to practice in the entire state.

Continuing Education

As to information provided by Tecniberia continuing education for architects and engineers in Spain is not mandatory.

Specialisation in the Profession

No measures exist, which would allow a further job specialization beyond the different types of engineers and architects described above. This would of course, in connection with the actual splitting-up of the professions and the high number of different kinds of engineers

make not much sense. On the contrary, a consolidation of powers/different types of authorisation/licensing would maybe be beneficial.

Compulsory Indemnity Insurance

For engineers as well as for architects a professional indemnity insurance is mandatory.

Actual challenges and Conclusion

The most important regulatory changes for engineers and architects in Spain were the 1997 and 2000 Acts (mentioned above) that abolished fixed prices and regulations restricting the offering of services in geographical terms.. They were enacted following a report of the Spanish National Competition Authority. These reforms intended to promote more competition in the field of technical professions (as well as other liberal professions). However, as regards to market entry regulation technical professions in Spain are still heavily regulated. This is especially true in respect of the extremely broad exclusive rights possessed by engineers and architects. In fact, the sector is completely reserved to the respective professions, whereas in other countries, like Finland or Sweden, no equivalent market entry regulations are in place. At the same time the regulatory system for the engineering sector (not so much for architects) in Spain appears to be very fragmented and non-transparent.

On the other hand conduct regulation for architects and engineers now is rather liberal, as regulations on prices and location have been abolished by the end of the 90s and only few specific regulations exist in respect of business forms etc.

Economic Characteristics

Spain – Structure and dynamics (NACE 7420)

*Enterprises, Turnover, Employment:*¹⁶ The nominal turnover of architectural and engineering enterprises in Spain was more than 11,900 million euro in 2000, equivalent to nearly 2% of GDP, the median value of the ten EU countries surveyed. (c.f. Overview-tables in Chapter 5). Output of the sector rose at a yearly average of 7.6% during most of the 1990's, at a rate more than twice that of GDP (an average of 3.5% p.a.). This represents a real growth in architectural and engineering services of 5.6%, which is a little higher than the growth in employment - 5.1%. - over the same period, 1992 to 2000; therefore modest productivity

¹⁶ Sources: EUROSTAT, INE -Instituto Nacional de Estadística, Spain

gains have also been made, but less than the gains in Finland or Austria. In fact, the turnover per employed person rose 4.5% in total in real terms over this period.

Table 9-21 Firms, Turnover and Employment; Spain 7420

	Number of Firms	Turnover in Mio EUR	Employment	No. of Professionals
1992	57 634	6 644	124 491	
1994	61 020			
1997	70 841	7 824	151 195	
1999	77 378	10 457	170 232	
2000	79 679	11 911	184 682	
2001				48 723

Source: EUROSTAT, Instituto Nacional de Estadística, IHS

The number of firms increased correspondingly from about 57,600 in 1992 to almost 79,700 in 2000, an average rate of 4.1% p.a. (see Table). The lower rate of increase in enterprises relative to employment is indicative of a slight trend towards concentration i.e. relatively fewer firms with more employees: indeed the average firm gave employment to 2.3 persons in 2000, up a little from an average of 2.2 persons in 1993. However the total number of enterprises in this branch, now certainly upwards of 80,000, is very high – only Italy has a higher density of architecture and engineering firms in our survey – so that the market structure is dominated by small firms of consultants.

The average turnover per firm (in 2000) of almost 150,000 euro was not much higher than the correspondingly value for accounting services (136,000 euro) in Spain - turnover for legal services' firms was 63,000 thousand euro. Only Italy has a lower level of business in the member states in our survey¹⁷.

The level of employment is typical for the branch, at nearly 4700 persons per million of the population in 2000 whereas the level of productivity, as measured by the turnover per employed person is, at 65,000 euro in 2000 in absolute terms well below the median value of countries included in our survey. However, when adjusted for the lower price levels in Spain, as well as for the lower output of the whole economy (in terms of GDP in PPS per capita), the relative volume per employee of the architectural and engineering consultancy branch in Spain is the highest among the member states surveyed.

¹⁷ Note: Value Added is typically 70-75% of turnover for legal and accounting services, 50-55% of turnover for technical services.

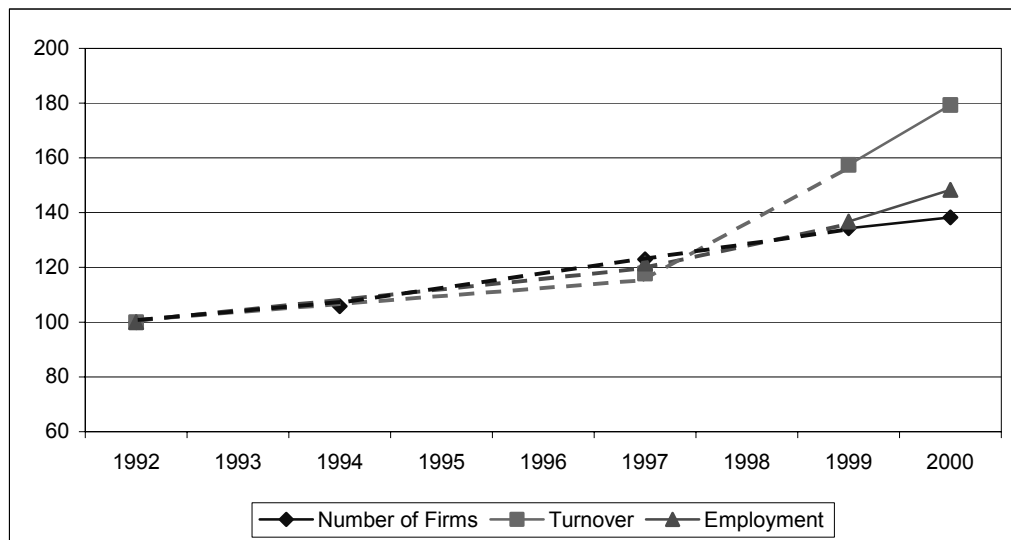
Table 9-22 Key Statistics, Technical Services; Spain 7420

	Turnover per Firm 1000 EURO	Employment per 1000 firms	Turnover per person employed 1000 EURO	Employment per Mio. of Pop	Firms per Mio. of Population
1992	115	2 160	53	3 195	1 479
1994					1 560
1997	110	2 134	52	3 847	1 803
1999	135	2 200	61	4 321	1 964
2000	149	2 318	64	4 682	2 020

Source: EUROSTAT, Instituto Nacional de Estadística, IHS

The differential rates of growth in enterprises, turnover, and employment are illustrated in the chart, with the 1992 values indexed at 100:

Chart 9-4 Relative Growth Rates, Spain 7420



Source: EUROSTAT, Instituto Nacional de Estadística, IHS

*Architects and Engineers*¹⁸: The following table for 1997 shows clearly that both architects' and engineers' enterprises consist overwhelmingly of single office units. The large percentage of unremunerated employment includes not only self-employed professionals, but is conjectured that it includes a relatively higher proportion of family members than in other countries in these case-studies.

¹⁸ Source: INE - Instituto Nacional de Estadística, Spain

Table 9-23 Architects and engineers, 1997

1997	Architects		Engineers		
		%		%	
Number of Firms	70 841	47 085	66.5	23 757	33.5
Number of Offices	72 646	47 507	65.4	25 140	34.6
Employment	151 195	66 143	43.7	85 052	56.3
Paid Employment	81 753	18 261	22.3	63 492	77.7
Turnover in Mio. Euros	7 824	2 731	34.9	5 093	65.1
Value Added in Mio. Euros	6 155	2 273	36.9	3 882	63.1

Source: INE

Although consulting engineers account for only a third of the branch, their economic output in terms employment and value added is much higher than for architects: this observation is of course not only specific to Spain. Unfortunately the breakdown between architects and engineers is not generally available for the member states in our survey.

Likewise the economies of scale measured by turnover per employee are illustrated in the following breakdown of enterprises in the 7420 sector by firm size (number of employees):

Table 9-24 Breakdown of 7420 branch by Size of employment of firms

	Breakdown of 7420 by Size of Employment of Firms					
	Total	1 or less	2 - 4	5 - 19	20 - 99	more than 99
F	79 679	64 224	11 266	3 430	646	112
%		80.6	14.1	4.3	0.8	0.1
T	11 910 515	2 719 201	1 851 762	1 965 295	2 249 562	3 124 695
%		22.8	15.5	16.5	18.9	26.2
E	184 682	62 960	30 422	28 923	26 207	36 171
%		34.1	16.5	15.7	14.2	19.6
T/E	64	43	61	68	86	86

Source: INE

The breakdown of firms by employment statistics shows that legal status as a physical person holds the balance with companies, limited or otherwise. Evidently the percentage of women working as self-employed professionals is considerably less than overall proportion of employees.

Table 9-25 Legal Form of enterprises and employment

	Total	Sole Practitioners	Private Companies	Limited Liability Partnerships	Others
Total Employment	151 195	67 558	44 635	30 015	8 987
in percent		45	30	20	6
Paid Employment	81 753	10 390	43 238	22 895	5 230
Full-time	54 678	6 830	28 558	15 231	4 059
Men	38 368	3 410	22 094	10 388	2 476
Women	16 309	3 421	6 463	4 843	1 583
Part-time	27 075	3 560	14 680	7 664	1 171
Men	19 314	2 138	11 242	5 210	724
Women	7 761	1 422	3 438	2 454	447
Non-Paid Employment	69 442	57 168	1 397	7 120	3 757
Men	61 346	51 253	1 226	5 689	3 179
Women	8 096	5 915	172	1 431	578

Source: INE

Civil Engineering Consultants¹⁹:

The membership of *Tecniberia Civil* has grown from 6000 in 1990, to 10,000 in 1995 and 15,000 in 2000/2001 a large yearly average increase of 9.6%. This growth has been driven by an upsurge in the intake of new trainees entrants and new members of over 20% per annum.

Table 9-26 Professionals

Professionals :	1990	1995	2000/01
Total, with Professional Affiliation	6 000	10 000	15 000
Percentage of self-employed	25	35	40
Percentage of non-self-employed	75	65	60
No. of professionals with professional affiliation in Spain...			
... practicing abroad	100	200	250
... practicing in rest of EU or EU candidate countries	50	125	180
... practicing in other (non EU/Candidate) countries	50	75	70

Source: TECNIBERIA CIVIL, IHS Questionnaire

These developments have also been accompanied by a strong increase in the proportion of self employed civil engineers. Corresponding increases in the number of firms and employment are shown below.

¹⁹ Source: TECNIBERIA CIVIL - Asociación Espanola de Empresas Consultoras de Ingenieria Civil, IHS Questionnaire

Table 9-27 Employees and Firms

<i>Enterprises:</i>	1990	1995	2000/01
Number of Firms	12 000	15 000	20 000
Percentage with			
non-incorporated status	99	99	99
incorporated status	1	1	1
Percentage of Firms with...			
1 Qualified Professional	80	81	82
2 Qualified Professionals	15	15	14
3-5 Qualified Professionals	3	2	1
5-30 Qualified Professionals	2	2	2
more than 30 Qualified Professionals	1	1	1
0 Employees	50	50	50
1-2 Employee	40	40	40
3-10 Employees	7	7	7
10-50 Employees	2	2	2
more than 50 Employees	1	1	1
1 Office	84	84	84
2-5 Offices	15	15	15
5-20 Offices	1	1	1
20-50 Offices	0	0	0
more than 50 Offices	0	0	0

Source: TECNIBERIA CIVIL, IHS Questionnaire

According to these data, however the relative structure of firms in terms of legal status, and number of professionals or size has remained unchanged throughout the last decade.

The effects of internationalisation of architectural and engineering consulting business are also evident, particularly with other EU member countries.

Table 9-28 Firms, International

<i>International:</i>	1990	1995	2000/01
Firms with offices outwith your country in...			
All countries	10	15	40
rest of EU or EU Candidate countries	4	10	30
other countries	6	5	10
Firms with head office in other countries:			
Country with largest no. of offices	United States of America		
Country with second largest no. of offices	Netherlands		
Country with third largest no. of offices	France		

Source: TECNIBERIA CIVIL, IHS Questionnaire

Civil Engineering thus accounts for almost a quarter of the revenue of the architectural and civil engineering branch. And has apparently outstripped the growth in the branch as a whole (cf. data on turnover for the 7420 branch above).

A certain concentration process has also been observed, with the top five firms now accounting for 40% of the market.

Whereas the lion's share of expenditure still cover professionals' remuneration, a doubling in the share of technological investments from 4% to 8% of costs has also occurred in the previous ten years.

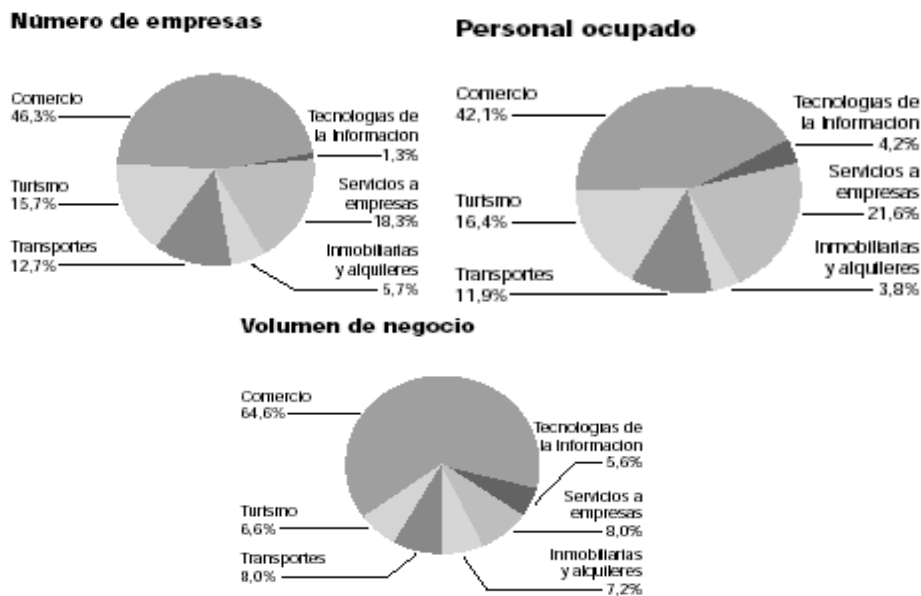
Table 9-29 Output / Input

	1990	1995	2000/01
Turnover before tax of branch in...	Mio. EUR	Mio. EUR	Mio. EUR
Spain	450	1 000	2 500
Rest of EU and EU Candidate countries	100	200	350
other countries	100	100	150
Concentration :	in percent		
Market Share of the 5 (five) largest firms	30	35	40
Market Share of top 10% largest firms	60	70	75
Market Share of top 30% largest firms	98	99	99
Cost Structure of Firms :	in percent		
The 'median firm' has costs broken down into...	in percent		
Remuneration of Professionals	70	68	65
other Salaries and Wages	5	5	5
Cover for Professional Insurance and Risk	0	1	2
Investment in office premises	10	12	15
Investment in technology (Computers)	4	6	8
on-going professional education (courses)	5	6	5
other costs	6	2	0

Source: TECNIBERIA CIVIL, IHS Questionnaire

*Legal, Accounting and Technical Services:*²⁰ This group of professional services, corresponding to the 4-digit codes, 7411, 7412 and 7420 accounted for 67% of firms, 43% of turnover, and 33% of employment of all *business services* in 2000. Only the advertising branch has a higher production value than these three groups of services. The overall standing of all business services is shown in the graphics.

²⁰ INE -Instituto Nacional de Estadística, Spain



Source: INE

The relatively high rate of employment generated by firms in the business services sector is clearly in evidence: only the (smaller number of) information technology enterprises employ higher numbers of persons. Taken together, legal, accounting and technical services account for 12,3% of all service enterprises in the economy, 3,4% of the turnover, and 7,2% of total employment in the service sector, whereas architectural and engineering services alone account for 4,7% of enterprises, 1,6% of the turnover, and 2,8% of total employment in the service sector of Spain.

*European Dimension*²¹: Eight enterprises in Spain are listed among the top 200 European architecture and engineering consulting firms (ranked by employment), the highest being Técnicas Reunidas, S.A, in 30th place. This firm is also among the top 100 architectural and engineering consulting firms in the world in 2000, along with another Spanish firm, Sener Group.

Architects

The *Consejo Superior de los Colegios de Arquitectos de España*, CSCAE, reported the number of architects at 34,000, of which 1,600 were newly admitted, in 2002 (IHS questionnaire). About 95% of firms (actual total not specified) have between 1 and 5 professionals.

²¹ Source: Swedish Federation of Consulting Engineers and Architects (STD Svensk Teknik och Design), Sector Report 2001.

10. Price Structure in EU Pharmaceutical Retail Markets

Background

Unlike the other professional services in this study, pharmacy professionals are engaged in retail trade: Statistics on branch turnover thus reflect various stages in the production and distribution of pharmaceutical products, some parts of which are outwith the direct influence of pharmacists. In order to compare the market volume in pharmacy services in EU member states in the following section and chapter, we would rather focus on the value added at the pharmacy level.

In this section prices in the pharmaceutical area are surveyed in order to obtain an international comparison of relative pharmacy margins, from which related volume statistics on shares of turnover attributable to pharmacy activity can be derived. The country-specific analysis of price structure shows up differences in the level of ex-factory prices, wholesale margins, pharmacy margins and value added taxes.

The survey of the pharmaceutical market begins with a description in terms of market actors from production to point of sale. The structure of prices within and between member states is reviewed. The last stage covers pharmacists' share of retail price and turnover.

In general measures including quantities and those that are based on price alone have to be distinguished. Real comparisons in prices generally have to be viewed against the backdrop of different levels of consumption of medicines.

Health Expenditures in Percent GDP: Expenditures on health in member states show the specific background of pharmacy services in each country. The following chart (Share of Total/Public Healthcare Expenditures 2000 in % of GDP) shows the various proportions of the total and the public healthcare expenditures in 2000 in the EU member states. The highest share in terms of percent of the GDP for total as well public expenditures occurs in Germany. The data for Germany is from 1998, and although there has been a general trend since 1996 to reduce the public share in percent on health spending, Germany's share has been the highest of all EU members over the previous ten years.

In the following tables the development of expenditures on pharmaceuticals¹ in member states is shown for the period starting 1991 in terms of share of GDP and in euro PPP (i.e. relative to general price levels in each country).

¹ Expenditure on pharmaceuticals and other medical non-durables (Total, Public, Private) = Total expenditure on prescription medicines + Total expenditure on over-the-counter medicines (OTCs) + Other medical non-durables.

Table 10-1 Total Pharmaceutical Expenditure in % of GDP

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Austria									1.3		
Belgium	1.2	1.3	1.4	1.4	1.4	1.4	1.4				
Denmark	0.7	0.7	0.7	0.8	0.7	0.7	0.7	0.8	0.8	0.8	
Finland	0.9	1.0	1.0	1.0	1.1	1.1	1.1	1.0	1.0	1.0	
France	1.5	1.5	1.7	1.6	1.7	1.7	1.7	1.7	1.8	1.9	
Germany	1.3	1.4	1.2	1.2	1.3	1.3	1.3	1.3			
Greece	1.1	1.3	1.4	1.5	1.5	1.6	1.5	1.2	1.4	1.5	
Ireland	0.8	0.8	0.7	0.7	0.7	0.7	0.6	0.7	0.7	0.6	
Italy	1.7	1.7	1.6	1.6	1.5	1.6	1.6	1.7	1.7	1.8	1.9
Luxembourg	0.9			0.7	0.8	0.7	0.7	0.7	0.7		
Netherlands	0.8	0.9	0.9	0.9	0.9	0.9	0.9	0.9	1.0	1.0	
Portugal	1.6	1.7	1.9	1.8	1.9	2.0	2.0	2.0			
Spain	1.2	1.3	1.4	1.3	1.4	1.4	1.4				
Sweden	0.7	0.8	0.9	1.0	1.0	1.1	1.0				
UK	0.9	1.0	1.0	1.1	1.1	1.1	1.1				

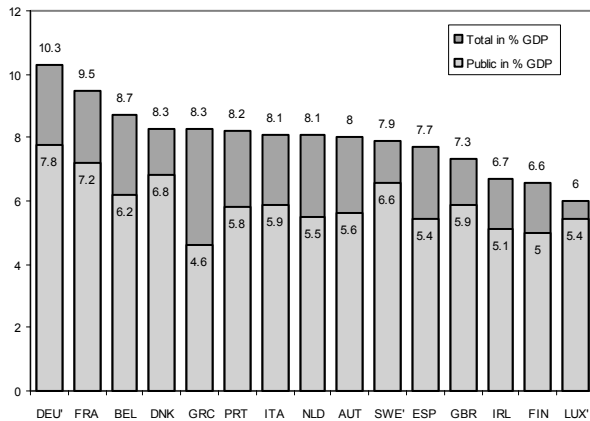
Source: OECD HEALTH DATA 2002; ÖBIG

Table 10-2 Total Pharmaceutical Expenditures per capita, Euro PPP

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Austria										
Belgium	265	320	325	343	405	394	371			
Denmark	151	164	172	190	224	226	214	232	227	205
Finland	174	195	192	206	261	272	259	250	259	238
France	350	390	371	382	453	443	414	438	459	435
Germany	283	338	266	290	352	361	334	349		
Greece	140	177	188	209	255	268	237	205	233	237
Ireland	118	142	128	142	165	161	160	171	185	172
Italy	365	408	338	350	407	419	406	435	447	422
Luxembourg	290			281	334	321	315	326	328	
Netherlands	167	208	202	212	257	254	243	260	271	243
Portugal	219	257	263	281	348	363	362	354		
Spain	206	235	221	224	275	287	278			
Sweden	156	190	188	213	265	282	257			
UK	175	217	207	226	263	282	267			

Source: OECD HEALTH DATA 2002

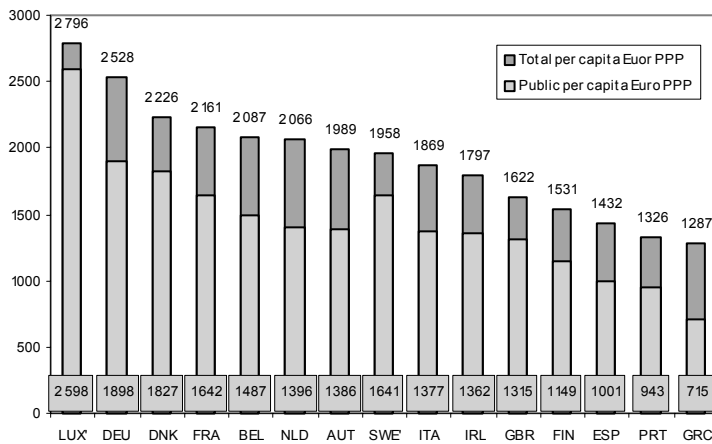
Chart 10-1 Share of Total/Public Healthcare Expenditures 2000 in % of GDP²



Source: OECD HEALTH DATA 2002

Health Expenditures per Capita: In terms of purchasing power parity (PPP) Greece spent the lowest amount per capita in total and public expenditures on health in 2000, closely followed by Portugal, and Spain is well below the EU average of 1.912 euros per capita³. For the last years only Germany expended more money in terms of Euro PPP per capita on health.

Chart 10-2 Total/Public Expenditures on Health 2000 - per capita, Euro PPP⁴



Source: OECD HEALTH DATA 2002

Pharmaceutical Expenditures in percent Total Expenditures on Health: Comparing the pharmaceutical expenditures in percent of total expenditures on health results in a similar

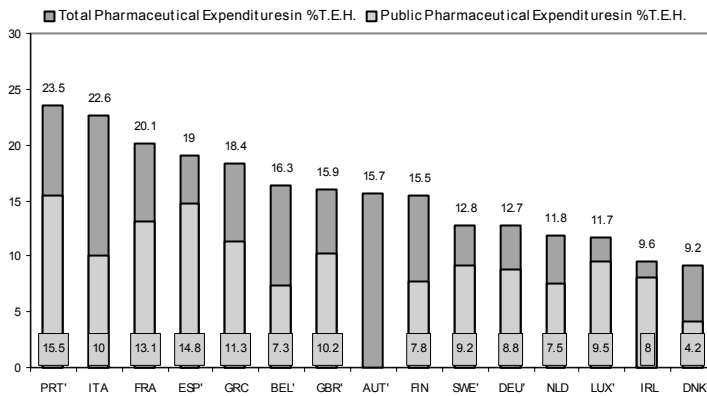
² 1998: Germany and Sweden, 1999: Luxembourg

³ For Luxembourg the value is for 1999

⁴ 1998: Sweden, 1999: Luxembourg

state with total pharmaceutical expenditures in terms of percent of GDP: again Portugal, Italy and France are the leaders. The average percent value differs around 15%. Observing the development over time results in the conclusion that the public share does not decrease.

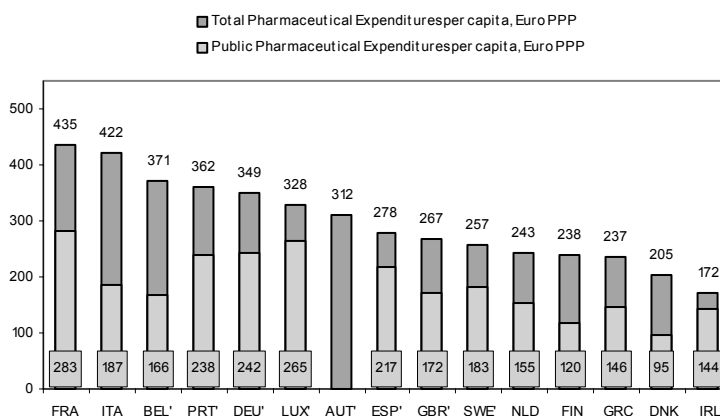
Chart 10-3 Total/Public Pharmaceutical Expenditures 2000 in percent of Total Expenditures on Health⁵



Source: OECD HEALTH DATA 2002

Pharmaceutical expenditure per capita: Observing the total expenditures on pharmaceuticals per capita in purchasing power parities France is leading joined by Italy. Also Belgium (1997), Portugal (1997) and Germany (1998) are clearly above the average. The five countries the Netherlands, Finland, Greece, Denmark and Ireland in the rear range only shift their positions slightly when ignoring PPP.

Chart 10-4 Total/Public Pharmaceutical Expenditures 2000 per capita, Euro PPP⁵



Source: OECD HEALTH DATA 2002

⁵ 1997: Belgium, Portugal, Spain, Sweden, UK; 1998: Germany; 1999: Luxembourg, Austria (ÖBIG)

The Pharmaceutical Market

Pharmaceutical Industry / Wholesaler / Pharmacies

The pharmacy health care markets are first described by the following table, which lists the absolute number of manufacturers, wholesalers and pharmacies.

Table 10-3 Numbers of Manufacturers, Wholesalers and Pharmacies

	Manufacturers	Wholesaler	Pharmacy	Pharmacies per firm
Austria	103	39	1 086	1
Belgium	150	41	5 273	1
Denmark	194	10	1 556	5
Finland	21	13	795	1
France	305	203	22 689	1
Germany	1 100	118	21 590	1
Greece	189	424	8 348	
Ireland	100	18	1 186	1
Italy	287	489	16 382	1
Luxembourg	1	6	79	1
Netherlands	120	37	1 600	1
Portugal	45	400	2 778	1
Spain	368	285	19 439	1
Sweden	195	9	1 889	1 889
United Kingdom	375	70	12 311	2

Source: ÖBIG

Excepting the special case of state monopoly in Sweden, the concentration of ownership of pharmacy outlets is highest in Denmark followed by the UK. Otherwise the market is overwhelmingly divided into single outlet pharmacies.

On a per capita basis the pharmaceutical industry is strong in terms of number of manufacturers per capita in Denmark, Ireland and Sweden. 8 out of 15 countries are below a value of 10 manufacturers per million capita. Greece and Portugal attain the high value of 40 wholesalers per capita. For all other member states except Luxembourg the value is beneath 10. The extremes in number of pharmacies are represented on the lower end by the Netherlands and on the upper end by Greece.

Table 10-4 Manufacturers, Wholesalers and Pharmacies per million capita

Manufacturers / Mio. capita		Wholesalers / Mio capita		Pharmacies / Mio capita	
Denmark	36.6	Greece	40.0	Greece	787.5
Ireland	27.0	Portugal	40.0	Belgium	517.0
Sweden	21.9	Luxembourg	15.0	Spain	493.4
Greece	17.8	Italy	8.6	France	383.9
Belgium	14.7	Spain	7.2	Ireland	320.5
Germany	13.4	Ireland	4.9	Denmark	293.6
Austria	12.7	Austria	4.8	Italy	287.4
Spain	9.3	Belgium	4.0	Portugal	277.8
Netherlands	7.6	France	3.4	Germany	263.0
UK	6.3	Finland	2.5	Sweden	212.2
France	5.2	Netherlands	2.3	UK	207.6
Italy	5.0	Denmark	1.9	Luxembourg	197.5
Portugal	4.5	Germany	1.4	Finland	152.9
Finland	4.0	UK	1.2	Austria	134.1
Luxembourg	2.5	Sweden	1.0	Netherlands	101.3

Source: ÖBIG, own calculation

The high number of manufacturers and pharmacies per wholesalers in Sweden, Germany and Denmark indicates strong market power for the wholesalers, and correspondingly, competition is strong in this level in Portugal, Luxembourg and Greece.

Table 10-5 Numbers of Manufacturers and Pharmacies per Wholesaler

Manufacturers / Wholesaler		Pharmacies / Wholesaler	
Sweden	21.7	Sweden	209.9
Denmark	19.4	Germany	183.0
Germany	9.3	United Kingdom	175.9
Ireland	5.6	Denmark	155.6
United Kingdom	5.4	Belgium	128.6
Belgium	3.7	France	111.8
Netherlands	3.2	Spain	68.2
Austria	2.6	Ireland	65.9
Finland	1.6	Finland	61.2
France	1.5	Netherlands	43.2
Spain	1.3	Italy	33.5
Italy	0.6	Austria	27.8
Greece	0.4	Greece	19.7
Luxembourg	0.2	Luxembourg	13.2
Portugal	0.1	Portugal	6.9

Source: ÖBIG, own calculation

Drug Consumption and Sales

Differences in several countries can be partly ascribed to unequal consumer behaviour. The figures on average drug pack consumption on their own can be misleading. Studies concentrating on consumer behaviour point out that the average drug pack contains different quantities in different countries. In France the pack tends to be small, and on the other hand the average pack in the UK contains the highest value of so called "Standard Units"⁶. The spread of deviation in this indicator is not as large: only the Netherlands consumes considerably less than other member states. Consumption of standard units is highest in France, followed by Germany and the UK.⁷

Table 10-6 Average drug consumption per capita

Drug pack / capita 1999*	Standard Units / capita**	Standard Units / pack**
France 48.8	France 1 634.0	United Kingdom 65.5
Italy 26.6	Germany 1 088.0	Germany 56.2
Spain 26.1	United Kingdom 1 022.0	Finland 54.6
Portugal 23.3	Spain 991.0	Ireland 50.6
Greece 22.9	Belgium 984.0	Netherlands 48.0
Belgium 22.7	Portugal 904.0	Belgium 43.2
Austria 20.5	Finland 884.0	Austria 43.1
Germany 19.4	Austria 881.0	Portugal 38.9
Ireland 16.8	Ireland 848.0	Spain 38.0
Finland 16.2	Italy 759.0	France 33.5
United Kingdom 15.6	Netherlands 672.0	Italy 28.5
Netherlands 14.0		
Sweden 12.5		
Denmark 12.1		

** Sweden, Denmark, Greece - no data

* Luxembourg - no data

Source: IWI

Structure of Drug Prices

All member states of the European Union regard medicaments as extraordinary products, whose production and distribution is not left exclusively to market processes. Regulation of the market occurs in all countries. Justifications are an appropriate supply for inhabitants in all regions of the country, avoidance of cases of social hardship, as well as control of the quality of medicaments.

In most member states manufacturers are formally free to set prices. In practice this is limited by the fact that in all member states one authority (the national health system or social health insurances) is the principal customer in terms of expenditures on drugs. Regulations settling the reimbursement of individual medicaments or their purchase by a

⁶ Standard units are the smallest units distributed in the medicament market, i.e. tablets, drops, capsules etc.

⁷ Any differences in dosage are not taken into account here.

national authority to fulfil price obligations, clearly limit the actual price setting by pharmaceutical producers.

There are several factors to be considered for direct price or isolated price margin comparison at the retail level:

- Drug packages contain different amounts of standard units.
- The drug range differs.
- The drug consumption differs.
- The pharmacy retail price consists of four parts
 - Different ex-factory prices.
 - Different wholesale margins.
 - Different pharmacy margins.
 - Different value added tax rates.

Factory Level: The reference price system is important for reimbursement as well as for price-setting. Germany introduced a reference price system in 1989, followed by Denmark, the Netherlands and Sweden in the early 1990s.

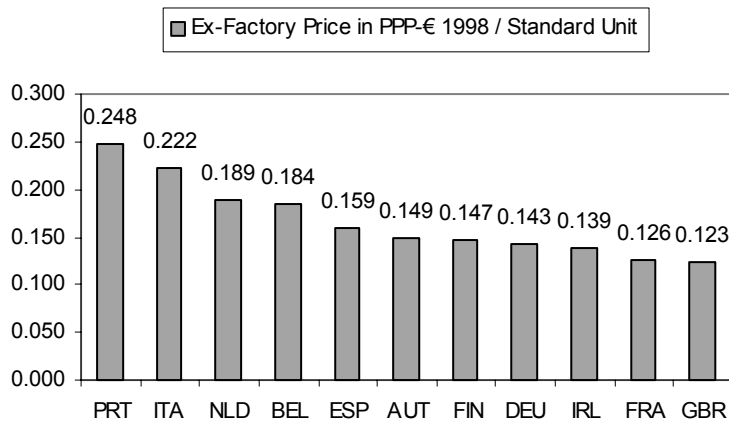
Table 10-7 Regulations for Price Setting at the Ex-Factory Level 2000 / 2001

Country	Reference Price System	Price fixing		
		free	Negotiations	governmental price fixing
AUT	-	-	reimbursement drugs	all drugs
BEL	planned	OTC	-	prescription-only drugs
DNK	1983	non-reimbursement drugs	reimbursement drugs	reimbursement drugs
FIN	-	non-reimbursement drugs	-	reimbursement drugs
FRA	-	non-reimbursement drugs	reimbursement drugs	-
DEU	1989	non-reference price market	-	-
GRC	-	-	-	all drugs
IRL	-	OTC	prescription-only drugs	-
ITA	planned	non-reimbursement drugs	reimbursement drugs	national authorization of reimbursement drugs
LUX	-	non-reimbursement drugs	-	reimbursement drugs
NLD	1991	non-reimbursement drugs	-	reimbursement drugs
PRT	-	OTC	-	prescription-only drugs
ESP	2001	non-reimbursement OTC	-	prescription-only drugs and reimbursement OTC
SWE	1993	non-reimbursement drugs	-	reimbursement drugs
GBR	-	non-reimbursement drugs	reimbursement drugs	non proprietary products

Source: ÖBIG, OTC = Over-the-Counter = prescription-free drugs

Ex-Factory Prices: The price for one Standard Unit in PPP € varies between 0.248 € in Portugal and 0.123 € in the UK. In the case of Italy and Portugal the relative high price can be partly explained by the strong market power of the manufacturers, which are small in number per capita and in relation to the number of wholesalers.

Chart 10-5 Ex-Factory Price per Standard Unit in PPP-€ 1998

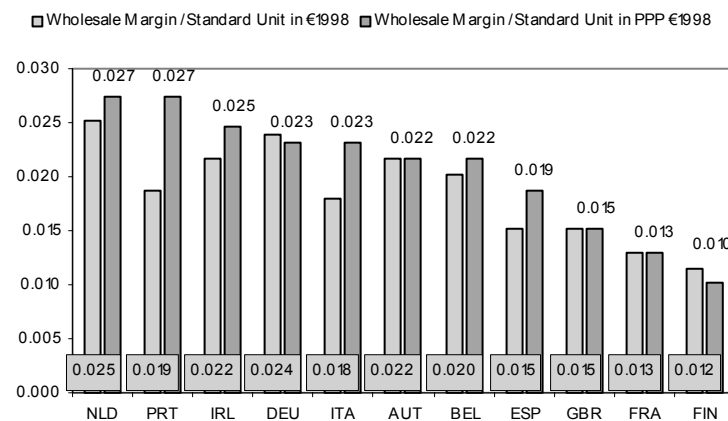


Source: IWI

Wholesale Level: In most countries price control is implemented by legally regulated trade margins. On the wholesale level only Denmark has no regulated wholesale margin within the EU. In Finland, the Netherlands, Sweden and the UK regulation of margins are settled indirectly.

Wholesale Margins: Wholesale margins are usually quoted as a percentage of pharmacy cost price. Thus both the ex-factory price and the wholesale margin vary across countries so that the pharmacy cost price varies considerably too. On this basis, therefore, only a conditional comparison of wholesale margins is possible. Later on we transform the wholesale margin to a wholesale share, which shows how much of the retail price level inclusive VAT is earned in wholesale.

Chart 10-6 Wholesale Share per Standard Unit in euro and PPP-€ 1998



Source: IWI

Table 10-8 Regulations for Wholesale Margins 2000/2001

	All Drugs	Governmental Regulations for Reimbursement Drugs	Prescription-Only Drugs
AUT	degressive margins with maximum markup values		
BEL	linear margin (in percent of the pharmacy cost price), maximum value at pharmacy retail price of €25,43		
DNK	<i>free price fixing</i>		
FIN		<i>(implicitly ruled by wholesale reimbursement prices)</i>	
FRA		2 degressive margins	
DEU	degressive margins with maximum markup values		
GRC	linear margin (in percent of the pharmacy cost price)		
IRL	linear margin (in percent of the pharmacy cost price)		
ITA		linear rate in percent of ex-factory price	
LUX	linear margin (in percent of the pharmacy cost price), maximum value for Belgian drugs at pharmacy retail price of €25,70		
NLD		<i>(implicitly rule by maximum wholesale price)</i>	
PRT			linear rate in percent of pharmacy retail price
ESP	2 degressive rate in percent of pharmacy cost price or absolute value dependent to the ex-factory price		
SWE		<i>(implicitly ruled by wholesale reimbursement prices)</i>	
GBR		<i>(implicitly ruled by pharma price regulation scheme - linear margin in percent of the pharmacy cost price)</i>	

Source: ÖBIG 2001

A more meaningful ranking is given by wholesale share per standard unit in power purchasing parities, whereby different ex-factory prices are implicitly considered. As with ex-factory price per standard unit in PPP-€, Portugal and the Netherlands are two of the top three countries in terms of price. The UK and France are once more among the bottom three countries.

Pharmacy Level: The pharmacy margins are regulated by law in all EU member states. Most countries have a unique set of regulations that applies to all drugs. In France, the UK, Italy

and the Netherlands the rules only cover the reimbursable market, in Portugal the prescription-only market. After 1995 the regulation of the pharmacy margins has been changed in many countries. To control the medicaments market not only have the margins been decreased, but also the regulations for margins have been newly implemented.

Table 10-9 Regulations for Pharmacy Margins 2000/2001

	All Drugs	Governmental Regulations for	
		Reimbursement Drugs	Prescription-Only Drugs
AUT	degressive margins with maximum markup values		
BEL	linear margin (in percent of the pharmacy cost price), maximum value at pharmacy retail price of €25.43		
DNK	degressive margins with maximum markup values		
FIN	degressive margins with maximum markup values		
FRA		2 degressive margins (same margin for generic drugs)	
DEU	degressive margins with maximum markup values		
GRC	linear margin (in percent of the pharmacy cost price excl. VAT)		
IRL	flat charge / €2.40 for reimbursable drugs or maximum rates between 33 to 50 %		
ITA		degressive rate for central authorized drugs, else linear margins (for non-reimbursable drugs minimum margin)	
LUX	linear margin (in percent of the pharmacy cost price), maximum value for Belgian drugs at pharmacy retail price of €25.70		
NLD		flat charge / €5.69 a third of the savings using generic products	
PRT			linear rate in percent of pharmacy retail price
ESP	2 degressive rate in percent of pharmacy cost price or absolute value dependent to the ex-factory price		
SWE	degressive margins with maximum markup values		
GBR		reimbursement of flat charge and product costs	

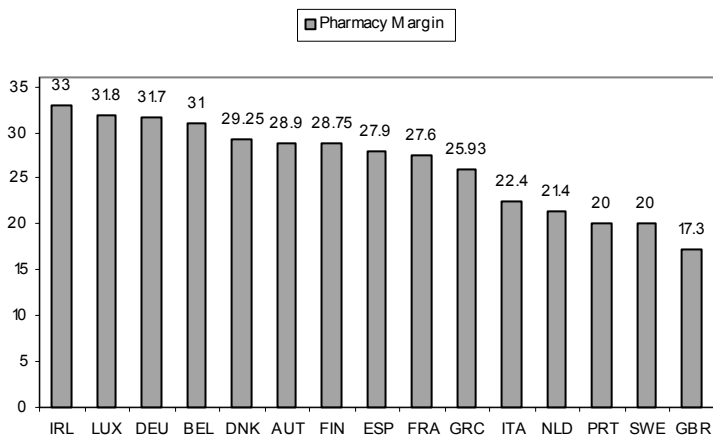
Source: ÖBIG 2001

Pharmacy Margin

The pharmacy margin as a percentage of retail price *exclusive VAT* is used in Chapter 5 and in the pharmacy case studies to calculate the pharmacists' share of turnover, (prescription medicines or OTCs) obtained from statistics on branch turnover of dispensing chemists exclusive of VAT.⁸ In the following graphic average pharmacy margins are listed that have been calculated in previous studies.

The pharmacy margin (excl. VAT) in 1999 in EU member states was between 33% in Ireland and 17.3% in the UK. An average margin over 30% exists in Luxembourg, Germany and Belgium. In Portugal, Sweden and the UK the average margin was below or equal to 20%.

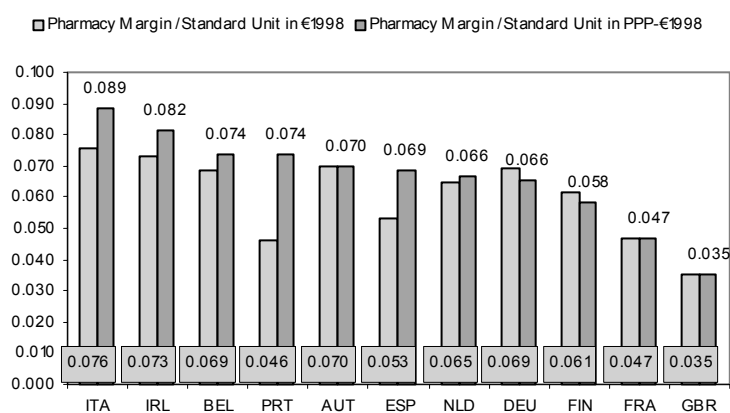
Chart 10-7 Average Pharmacy Margins in terms of Pharmacy Net Retail Price



Source: ÖBIG, own calculation

In Italy the margin is below the median EU margin, but the value of pharmacy margin per standard unit in PPP-€ is not exceeded by any other country. Ireland is in both rankings in the top two. The broad middle range consists of Belgium, Portugal, Austria, Spain, the Netherlands and Germany. Finland and France are clearly below the average.

⁸ Note: Pharmacists' share of turnover is calculated for comparative analysis on the basis of dispensed pharmaceuticals. Items belonging to the categories 'Retail sale of medical and orthopaedic goods' (NACE 5232) and 'Retail sale of cosmetic and toilet articles' (NACE 5233) that may be sold in pharmacy outlets are not included.

Chart 10-8 Pharmacy Share per Standard Unit in € and PPP-€ 1998

Source: IWI

Value Added Tax: Governments not only set reference price systems, refunding regulations and other procedures; there is also direct intervention regarding the surcharge on net pharmacy retail price i.e. value added tax. Here there are substantial differences in the European Union, both in the systematic classification of medicaments and in the amount of the value added tax raised on these classes of drugs.

Table 10-10 Value Added Tax for Pharmaceuticals in Contrast to VAT in general

	Value Added Tax in percent	
	normal	pharmaceutical
Austria	20	20
Belgium	21	6
Denmark	25	25
Finland	22	8
France	20.6	2.1/5.5 ¹⁾
Germany	16	16
Greece	18	8
Ireland	21	0/21 ²⁾
Italy	20	10
Luxembourg	15	3
Netherlands	17.5	6
Portugal	17	5
Spain	16	4
Sweden	25	0/25.0 ³⁾
United Kingdom	17.5	0/17.5 ⁴⁾

¹⁾ 2.1 % on reimbursable drugs²⁾ 0 % on drugs for oral application³⁾ no VAT on prescription-only medicines⁴⁾ 0 % within the framework of the National Health Service
/17.5% on drugs for self-medication

Source: ÖBIG

Overview of Total Prices

Shares of gross turnover are presented here as percentages of retail price incl. VAT (sums up to 100% in each member state separately), in decreasing order of pharmacy share. *Manufacturer level:* In Sweden manufacturers earn the largest part of overall sales of drugs. Manufacturers earn the least share in Germany, Austria and Denmark.

Wholesale level: The Netherlands, the UK and Ireland have high wholesale shares. Only Sweden and Finland are considerably below the median share.

Pharmacy level: The pharmacies of Ireland, Luxembourg and Belgium earn the most on each euro of medicaments sold. At the lower end of the scale are Portugal and the UK.

VAT level: There are three countries where VAT is absent on almost all drugs: UK, Sweden and Ireland. The state obtains highest tax revenue from pharmaceuticals sold in Germany, Austria and Denmark.

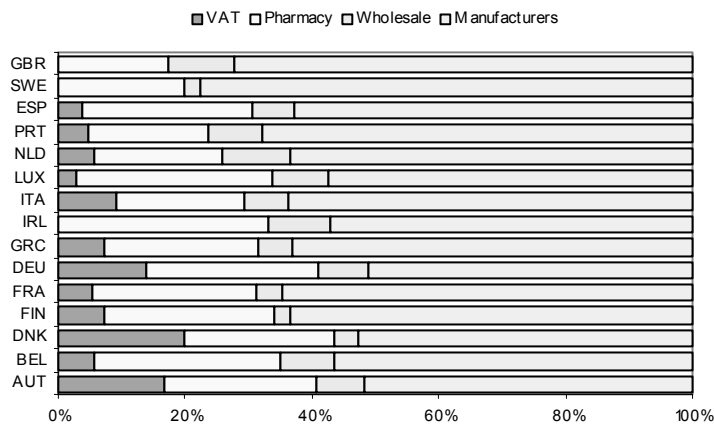
Table 10-11 Product Shares of Drug Prices

Country	VAT	Pharmacy	Wholesale	Manufacture
Ireland	0.0	33.0	10.1	57.0
Luxembourg	2.9	30.9	8.7	57.5
Belgium	5.7	29.2	8.5	56.6
Germany	13.8	27.3	7.7	51.2
Spain	3.8	26.8	6.7	62.7
Finland	7.4	26.6	2.6	63.3
France	5.2	26.2	3.8	64.8
Austria	16.7	24.1	7.5	51.8
Greece	7.4	24.0	5.5	63.1
Denmark	20.0	23.4	4.1	52.5
Italy	9.1	20.4	6.7	63.8
Netherlands	5.7	20.2	10.8	63.4
Sweden	0.0	20.0	2.4	77.6
Portugal	4.8	19.0	8.4	67.8
United Kingdom	0.0	17.3	10.3	72.4

Source: ÖBIG, IHS

The chart below illustrates the information of the table above – in both the member states are shown in order of decreasing pharmacy share of retail price.

Chart 10-9 Product Shares in the Pharmaceutical Market



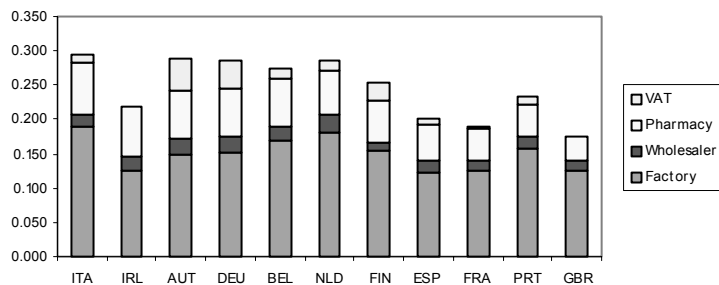
Source: ÖBIG, IHS

The actual price of medicaments sold in pharmacies varies across EU Member states. This can be taken into account on a comparable basis by looking at the breakdown of retail price per standard unit of drug sold. In the following graphic countries are shown left to right in order of decreasing pharmacy share of price per standard unit.

In terms of total price, Spain, France and the UK lie at the lower end, while Italy, Austria (high tax rate), the Netherlands and Germany are in the group of most expensive countries for pharmacy products. This comparison is based on absolute euro values – the effect on consumers in each country is, of course dependent on consumers’ purchasing power.

Chart 10-10 Pharmacy retail price incl. VAT / Standard Unit in € 1998

Pharmacy retail price incl. VAT / Standard Unit in € 1998, in decreasing order of pharmacy price share



Source: IWI

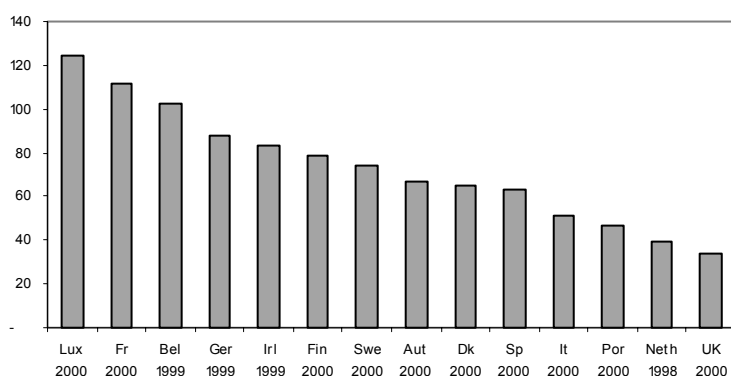
Turnover Share

In the benchmarking analysis (Chapter 5 of Part 1) and in the following pharmacy case studies, we wish to use a measure of turnover attributable to the pharmacy level. The available statistical data (Eurostat, member states' statistical offices) records the overall turnover of dispensing chemists, net of VAT. The missing link between the pharmacy price level and actual revenues of pharmacists (from dispensing) is the factor of demand level, which, as we have seen earlier, varies considerably. By applying the average pharmacy margins (net retail price) described above to the overall net turnover we calculate the variable we call pharmacists' *turnover share* for use in comparative analysis of the pharmacy profession in EU member states. This measure is broadly equivalent to the turnover used in the studies of the legal, accountancy and technical services, under the assumption that these latter professions have a very low level of purchases from suppliers.

The absolute figures from turnover share (TS) for each country surveyed may be found in the corresponding pharmacy Overview table in chapter 5. The relative turnover share is shown in the chart below by the share of actual net turnover per capita accruing to pharmacists in each member state (except for Greece), in decreasing order, based on data available for the nearest year to 2000.

France shows the second largest turnover share, although the pharmacist's price is one of the lowest in the EU, due to the high volume of medicines sold. An opposite effect is seen in the case of Italy, the Netherlands and Austria, where the actual turnover share is relatively lower than the price share. In both rankings the UK, Portugal and Spain are at the low end of the scale. These values of turnover share here are expressed in absolute euros. For a comparative view of turnover share that takes general price levels and economic output into account, these may be compared with the pharmacists' 'volume per capita' in the Overview-table for pharmacy professional services (Chapter 5 of Part 1).

Chart 10-11 Actual Pharmacists (Net) Turnover Share per capita



Source: Eurostat; IWI; IHS

11. Case Studies Pharmacy

11.1 The Profession of Pharmacists in Ireland: an overview

The Pharmaceutical Society was established under the 1875 Pharmacy Act. This act oversees the qualification of pharmaceutical chemists. Under the provisions of this legislation, a person cannot operate an outlet for the 'dispensing or compounding of medical prescriptions' unless that person is a pharmacist. In addition the outlet, the dispensing, and the compounding of medical prescriptions must be personally supervised by a pharmacist. This basic characterisation could lead one to the solution, that the sector of pharmacies is highly regulated. As already mentioned earlier in this report in fact today this is not the case, at least from an international point of view.

On the one hand pharmacists provide some exclusive tasks especially concerning the dispensation of medicines (also not all of them; see below). On the other hand, after an interplay of more rigid regulations between 1996 and 2001, the number and locality of pharmacies today is not restricted (as it was before 1996). Also the circumstances to become a pharmacist in the Irish educational system are rather rigid, still the market entry system is all in all – at least from an international comparative point of view – of a rather liberal nature. This has led, as will be shown below, to a rather high density of pharmacies in Ireland. But it is not only the market entry regulation for pharmacists in Ireland that is comparatively (!) liberal; the same applies to some fields of conduct regulation.

Market Entry

Tasks and exclusive tasks provided by Irish Pharmacists

“Scheduled” prescription medicines for human use in Ireland can only be supplied under prescription, some of these may only be dispensed in a hospital, and most medicines may only be dispensed in a pharmacy by or under supervision of a pharmacist. Some substances are specifically exempted from the pharmacist-supervised sale requirement, and thus these may be sold in non-pharmacies. They are, notably, aspirin, paracetamol, nicotinic acid, certain vitamins and toothpaste components. Medicines of this type are commonly described as "general sales list" medicines. The supply of medicines by mail order is prohibited.

The dispensing and compounding of medical prescriptions and the sale/supply of medicines may also be carried out by Medical/Dental Practitioners for patients under their care as well as Veterinary Surgeons for animals under their care.

Education and Entrance to the Profession

Education

The conditions for becoming a pharmacist in the Irish educational system are rather rigid. Whereas anyone that has graduated in pharmaceutical sciences in Ireland may open a pharmacy, there exist rather high entry barriers to the relevant educational system.

A student who wishes to become a pharmacist (pharmaceutical chemist) must:

- (a) obtain preliminary registration with the Pharmaceutical Society of Ireland (forms available from the Registrar);
- (b) enrol at Trinity College Dublin for the four-year course leading to the Degree of Bachelor of Science (Pharmacy) (see below for further details);
- (c) complete twelve months' practical training in an approved establishment under the supervision of a tutor pharmacist;
- (d) and pass the Society's Licence Examination.

As a general rule, all pharmacy degree courses must be accredited by the Pharmaceutical Society of Ireland if graduates of these courses are to proceed to registration with the Society. As of April 2002, the pharmacy degree course at Trinity College Dublin was the only course accredited by the Society! A new pharmacy degree course now is offered at the Royal College of Surgeons in Ireland (from October 2002 onwards). University College Cork is also considering offering a new pharmacy degree course.

To enter one of the respective courses specific entry requirements have to be fulfilled. The entry requirements for the School of Pharmacy, Trinity College, Dublin, are the following (based on Leaving Certificate Examination): Please note these are minimum requirements.

1. A pass in English.
2. A Grade C on the lower or Grade D on the higher Leaving Certificate paper in Mathematics.
3. A pass in a language other than English.
4. A pass in three further subjects.
5. Six subjects must be presented in all and three of these subjects must be of a standard of at least Grade C on higher Leaving Certificate papers.
6. A Grade C on higher Leaving Certificate Chemistry paper.

7. A Grade C on the higher Leaving Certificate paper in one of Physics, Biology, Mathematics, Geology, Geography, Applied Mathematics and Agricultural Science.

There are only seventy places available annually (at Trinity College) and, because of demand, applicants generally require qualifications which are substantially higher than the minimum. Applicants are ranked on the basis of their Leaving Certificate subjects.

All graduates who wish to become pharmacists are required to undergo twelve months pre-registration training after they have completed the four year pharmacy degree course. All practical training must be carried out under the supervision of a pharmacist who has undergone special training in order to act as a tutor. At least six months of the year must be spent in a hospital or community pharmacy while the other six months may be spent in a community, hospital or academic pharmacy, or the pharmaceutical industry.

The Pharmaceutical Society supervises the pre-registration year and requires each graduate to complete two multiple-choice assessments and a practice of pharmacy research project during the year. The two assessments and the project account for 10 per cent each of the Society's Licence Examination - the professional examination which each graduate must pass in order to register as a pharmacist. The Society also runs an optional course in Forensic Pharmacy for pre-registration graduates each year which covers topics such as medicine and pharmacy law, professional matters and negligence. The Pharmaceutical Society's final examination examines candidates' knowledge of medicines and pharmacy law, ethical and professional matters and is taken at the end of the pre-registration year. It accounts for 70 per cent of the Licence Examination. Having successfully completed all elements of the Licence Examination, the graduate may apply for registration as a pharmacist.

All graduates who wish to practise Pharmacy must be registered (as Licentiates) with the Pharmaceutical Society of Ireland. In addition, most pharmacists become members of the Society (MPSI).

It has been shown above that it is rather difficult to obtain a place for studying pharmacy in Ireland. An other option is to study abroad and then come back to Ireland to work at a pharmacy or even open one oneself. But both is bound to specific pre-conditions.

If a Student has been offered a place in one of the Universities abroad in order to practice pharmacy in the Republic of Ireland he generally must:

- successfully complete the degree course in that School of Pharmacy
- if applicable successfully complete the relevant pre-registration training year in that country (note: she/he cannot do the pre-registration training year in the Republic of Ireland)

- if applicable successfully complete the Registration Examination in the respective country
- apply for registration with the Pharmaceutical Society of Ireland under the EU/EEA route having successfully registered in the country he has been studying.

Under the terms of the EU free-movement directives one cannot take personal control of a pharmacy that is less than three years old. In practice, this means that:

- one cannot set up one's own pharmacy (unless it is set up as a limited company and another pharmacist gets employed to work there for the first three years of its existence. This pharmacist must be registered with the Pharmaceutical Society of Ireland and have registered through the Irish, Reciprocal or Adjudicating Committee routes.)
- one cannot work in a pharmacy that is less than three years old (unless the pharmacist that has been studying abroad is working at all times with or under the supervision of another pharmacist who is registered with the Pharmaceutical Society of Ireland and has registered through the Irish, Reciprocal or Adjudicating Committee routes.)

In order to take advantage of this route of registration the relevant person must be a national of an EU/EEA country. A person may not register in Ireland under this route if he or she is a non-national of the EU/EEA even though this person may have studied pharmacy and registered as a pharmacist in an EU/EEA country.

To open an own Pharmacy

Until 1996 any Pharmacist after fulfilling the requirements described above was allowed to open his own pharmacy. Then, from 1996 to February 2002, special regulations have been in force.

Regulations in force as from May 1996 limited the number of General Medical Scheme (GMS) dispensing pharmacies i.e. pharmacies which will be reimbursed by the GMS for dispensing prescriptions to medical cardholders and other qualifying individuals. The main provisions of the regulations under which contractor agreements have been granted from this time on have been as follows. The health board has to be satisfied of the following criteria:

- There is a definite public need for a community pharmacy in the catchment area to which an application relates i.e. serve a catchment area of not less than 4,000 in urban areas and large towns and in the case of other locations the population must be at least 2,500. In addition, pharmacies must be spaced at least 250 meters apart or 5 km in rural areas.
- The premises have free and direct access to the public road at all times.
- The proposed premises, equipment, staff and facilities etc must meet the requirements of the contractor agreement and standards set out by the pharmaceutical society.

- The proposed supervising pharmacist has at least three years recent post registration experience in the practice of community pharmacy.
- The proposed supervising pharmacist has a high degree of professional competence including the ability to manage the community pharmacy.
- The proposed pharmacy has a reasonable prospect of being viable and there is a long-term commitment to the catchment area the pharmacy is intended to serve.

The reasons put forward by the Department of Health for these restrictions according to OECD (2001: 301) were (1) to erect similar controls to those already in place in other EU-Member Countries, (2) to promote the development of quality driven service and (3) to prevent further clustering of pharmacies in areas already well-served while promoting the provision of rural areas.

These regulations lead to heavy criticism by the 2001 OECD-Report on “Regulatory Reform in Ireland”. In the words of OECD:

“The logic provided for restricting the location and number of pharmacies is flawed. Incumbents in other sectors in other economies make similar arguments, that if they are protected from competition then they will perform a variety of good works. In fact competition – keeping up with the competitors – is what induces quality-improving investments.(...) Where there is a genuine public service obligation, such as loss-making provision to rural areas, the solution is not creation of a protected monopoly to cross-subsidise the unprofitable activity. Rather, the solution is to split the task into two parts, of providing the service and paying for the part that must be subsidised. (...) Therefore, eliminate the location restrictions on pharmacies. Assess the exit and entry in the sector and provide transparent subsidies to pharmacies that are desirable on the basis of public policy objectives, but are not forthcoming under free entry” (OECD 2001: 302).

The Minister for Health and Children announced on 31st January 2002 his revocation of the above Regulations on the opening of new pharmacies, which has been in place since 1996. Since 1996, the Regulations have been subject to ongoing legal challenge, during the course of those challenges, the legal basis of the Regulations were raised. The Minister for Health and Children sought legal advice from the Office of the Attorney General. The advice received concluded that the Regulations were *ultra vires*.

The effect of the revocation, for the awarding of new Community Pharmacy contracts, is a return to the pre 1996 situation whereby the applicant applies to the health board for a Community Pharmacy Contract, which is granted if the educational preconditions mentioned above are met.

Conduct Regulation

Prices and Fees

Pharmacies sell both under the GMS and to private patients. Both types of transactions are heavily regulated, at least for medicines dispensed under prescription. In particular, for the sale of a prescription medicine under the GMS, the pharmacist cannot charge a mark-up: he is reimbursed for the cost of the medicine plus a flat dispensing fee. The flat fee can vary if a powder or ointment must be prepared or the medicine is dispensed at night. For the sale to a private patient, i.e. one not under the GMS, the pharmacist charges a 50% mark-up, under established custom and trade. The wholesale cost of prescription medicine is set by agreement between the Department of Health and the Irish Pharmaceutical Healthcare Organisation, representing the drug-making Industry.

Other products pharmacists sell, including as mentioned above, over the counter medicines (OTCs), as well as cosmetics, toiletry, camera film etc. For these products the prices and margins are not fixed.

Advertising

Advertising by pharmacies is constrained by the ethical rules of the profession. Listings in the telephone directory and notices in the newspaper cannot advertise more than its existence and hours or change of hours. Special events, such as patient testing, can be advertised only by a notice in the window of a pharmacy (c.f. OECD 2001: 01). According to OECD (2001: 302) the cumulative effect of these restrictions is that a pharmacy cannot increase its customer base by advertising.

Also these regulations appear to be rather rigid, one has to bear in mind, that they are issued by the Pharmaceutical Society of Ireland as a professional rule only. For this, the respective regulations are not legally binding.

Forms of Business, Inter-professional Co-operation, Location and Diversification

The owner of a pharmacy in Ireland may be one of the following:

- (a) a pharmacist;
- (b) a partnership of pharmacists;
- (c) a legal person (e.g. a company);
- (d) the legal personal representative of a pharmacist acting as such at the time of his death (this is limited to a period of five years from the date of death).

All in all the establishment of a business in the profession is not restricted to specific forms of business. This means that also non-pharmacists, i.e. as corporate bodies can own pharmacies. At the same time specific regulations on inter-professional co-operation do not exist, nor on location (again since 2002, see above) or on diversification: more than one pharmacy may be owned in Ireland and it is possible to run several branch-offices.

Continuing Education

There is no obligation for continuing education for pharmacists in Ireland.

Specialisation in the Profession

There are specific regulations on specialisation in the profession of pharmacists in Ireland

Compulsory Indemnity Insurance

There are no regulations on compulsory professional indemnity insurance in Ireland.

Economic Characteristics

Ireland – Structure and dynamics (NACE 5231)

*Enterprises, Turnover, Employment*¹: The nominal turnover share of pharmacies in Ireland reached a level of over 310 million Euro in 2000, equivalent to less than 0.35% of GDP, which represents a typical value, but a little more than the median of our survey of 14 member states. (c.f. corresponding Overview-table in Chapter 5). Output of the sector rose however at a very high yearly compound average of 16.2%, ahead of the booming Irish GDP (nominal 15% p.a.) during the second half of the 1990's. This represents a real growth in pharmacy services of 15.1% per annum, which outstrips employment, which increased at a rate of 5.9% p.a. over the period 1995-1999, so productivity has risen dramatically. In fact, the real turnover share per employed person was up by 39.6% over this period.

¹ EUROSTAT

Table 11-1 Key Statistics, Pharmacy Services, Ireland 5231

	Number of Firms	Total Turnover in Mio EUR	Turnover Share in Mio EUR	Employment	No. of Professionals
1995	970	519	171	5 672	
1996	1 022	607	200	6 409	
1997	1 053	708	234	6 602	
1998	1 152	933	308	8 096	
1999	1 173	946	312	7 136	
2001					2 966

Source: EUROSTAT, IHS

The number of firms has also increased, being over 970 in 1995 and over 1170 in 1999, an average compound rate of increase of just 4.9% p.a. (see Table). The lower rate of increase in enterprises relative to employment is indicative of a slight trend towards larger pharmacies i.e. indeed the average enterprise gave employment to 6.1 persons in 2000, compared to a 5.8 person average in 1995. However the total number of enterprises in this branch, at 314 per million of population, is the third highest in the survey, after Portugal and Italy.

The average turnover share per firm (in 1999) of about 270,000 euro is much lower, however, than the correspondingly value - for turnover – for technical services (520,000 euro), accounting services (490,000 euro) in Ireland, and especially the turnover of legal services' firms (1530,000 euro). This level of business is the fifth lowest among the member states in our survey².

The level of employment is, however, high for the branch, at over 1900 persons per million of the population in 1999, whereas the level of productivity, as measured by the turnover share per employed person is, at 44,000 euro in 1999 in absolute terms, below the median value of countries included in our survey. Even when adjusted for the price levels in Ireland, as well as for the output of the whole economy (in terms of GDP in PPS per capita), the relative volume (share) per employee of the pharmacy branch in Germany occupies roughly the same place among the member states surveyed.

² Note: Value Added is typically 70-75% of turnover for legal and accounting services, 50-55% of turnover for technical services.

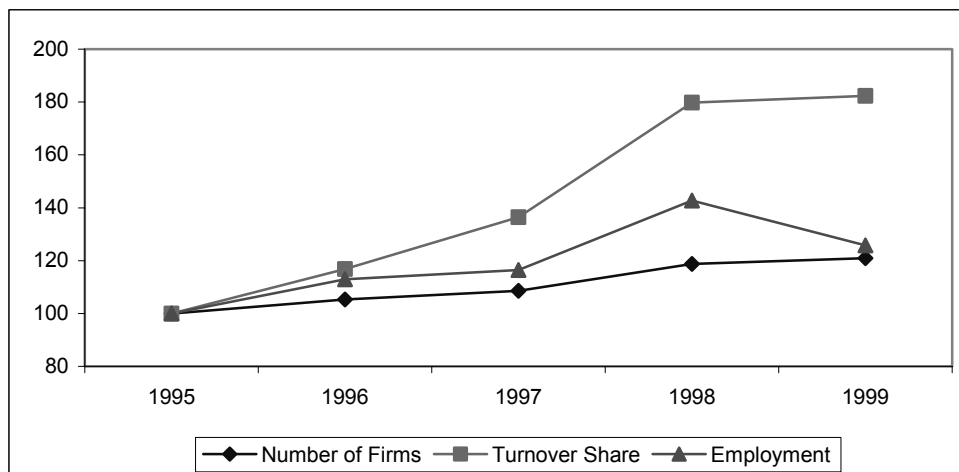
Table 11-2 Key Statistics, Pharmacy Services, Ireland 5231

	Turnover Share per Firm 1000 EURO	Employment per 1000 firms	Turnover Share per person employed 1000 EURO	Employment per Mio. of Pop	Firms per Mio. of Population
1995	177	5 847	30	1 577	270
1996	196	6 271	31	1 770	282
1997	222	6 270	35	1 808	288
1998	267	7 028	38	2 192	312
1999	266	6 084	44	1 911	314

Source: EUROSTAT, IHS

The differential rates of growth in enterprises, turnover, and employment are illustrated in the chart, with the 1995 values indexed at 100.

Chart 11-1 Relative Growth Rates, Ireland 5231



Source: EUROSTAT, IHS

The Pharmaceutical Society of Ireland: reports a professional membership of 2966 pharmaceutical chemists in 2000, up 24% from 1995 (IHS questionnaire). There are, in addition, 3 members classed as ‘registered druggists’ and one member classed as ‘dispensing chemist and druggist’ – both these categories have decreased from 6 in each in 1995. The number of professional trainees (in all stages of training), 350, has increased by 40%, from 250 in 1995. Around 50 trainees passing the final examination in each of 1995 and 2000, with an pass rate of 100% in the latter year, and 96% in the former. The number of newly admitted members in 2000 was 213. The number of firms reported for 2000, 1244, agrees approximately with the statistical data cited above. The Pharmaceutical Society estimates the number of firms with incorporated status as having risen from 60% in 1995 to 73% in 2000. Most firms (93%) have one office, 5% have 2-5 offices, 1.1% have 5-20 offices, and 0.4% have between 20 and 50 offices (as of 2000). As regards firms from other countries, the highest number originate from UK, followed by Germany.

Summary

The market entry and conduct indexes we calculated for Ireland are – at least from an international comparative point of view – very low (1.47 for entry and 1.2 for conduct). If this calculation would have been done for the time between 1996 and the beginning of 2002 the entry index would have been much higher, as the maximum number of pharmacies was fixed in this time by a kind of “economic needs test”. This regulation has been abolished by the beginning of 2002. However, maybe our entry index in fact underestimates the problems of market entry for young would-be pharmacists in Ireland. It does not reflect the fact that the number of places for university education in pharmaceutical sciences is very limited in Ireland. At the same time, if one has been studying abroad, even as an Irish citizen, it is only possible under relatively rigid preconditions to open one's own pharmacy in Ireland. On the other hand Ireland is one of the rare Member States of the European Union where no “needs test” for the opening of a new pharmacy applies and conduct regulation concerning pharmacies is not very rigid in Ireland. This is especially true with regard to advertising, form of business, branch offices and inter-professional co-operation.

The direct effects of the removal of the market-entry-barriers mentioned above in the beginning of 2002 is not clear at the moment. We suggest that there only can be an effective liberalisation of market entry , if at the same time changes in the number of places for pharmaceutical education in Ireland are imposed (which is planned and already implemented to some degree) or at least the restrictions concerning would-be pharmacists that have been studying abroad are lifted.

11.2 The Profession of Pharmacists in Portugal: an overview

The Portuguese pharmacists-system shows, as the health system in general, extensive regulation. In the Portuguese health system there are numerous and sometimes very restrictive controls over pharmaceutical goods, high-technology equipment and the education, training and registration of health personnel.

In respect to pharmacies there are regulation barriers regarding the entry to the profession and opening a community pharmacy. The number of pharmacies is restricted and there are rigorous rules on the ownership of pharmacies. Pharmacies are equipped with broad exclusive rights for the supply of medical goods. At the same time wide regulations on running a pharmacy exist. This is true in respect of price regulation, rules concerning marketing and advertising as well as forms of business etc.

All in all the pharmacists sector in Portugal shows strong signs of a state-imposed monopoly which in cases has led to sub-optimal market-outcomes. We will show that the density of pharmacies per population is very low in Portugal, even for South-European standards. At the same time there are growing problems of controlling the public costs of pharmaceuticals; according to WHO, the respective price formation and –control systems are sub-optimal.

For pharmacies in Portugal we calculated a market entry index of 4,19 and a conduct index of 3,8. Both are high from an international comparative point of view.

The representative body for the pharmaceutical profession is the Pharmaceutical Society (*Ordem dos Farmacêuticos*), for which membership is compulsory. It covers pharmacists and others licensed to work in industry, laboratories and enterprises and is the legal representative of people with a degree in pharmaceutical sciences. It has regulatory and disciplinary powers. In addition to the Pharmaceutical Society, which represents all pharmacists in general, Portuguese community pharmacists, in particular, are represented by the National Association of Pharmacies (*Associação Nacional das Farmácias*; ANF). Membership in ANF is not compulsory. The ANF has strongly been committed to the support of its members' interest, particularly with regard to professional, economic and legal aspects. As an associative structure, the ANF does economic and financial consultancy as well as information technology support and professional training. Almost 95% of pharmacists are members of the National Association of Pharmacists; however some choose to remain independent. The Association offers incentives in order to maintain membership rates such as computers, software, continuous education and other services which are of benefit to the pharmacist.

The National Association of Pharmacists also has, as the WHO terms it, a “powerful corporate role”. It operates as a fund which handles the majority of pharmaceutical payments between the National Health System and the pharmacists.

Market Entry

Tasks and exclusive tasks provided by Portuguese Pharmacists

In Portugal Pharmacists have the exclusive right of preparation, control, selection, purchase, storage and dispensation of human and veterinary medicines as well as medical devices. All drugs, including over-the-counter drugs (OTC) can only be sold in a pharmacy. It is not permitted for drugs of any sort to be sold through other outlets. This means that pharmaceutical products generally are solely distributed through pharmacies, and their subsidiaries. Hospitals as a basic principle have a pharmaceutical depot for internal use only. There is presently a limited service within hospitals for dispensing prescriptions to outpatients, but only those drugs which carry no co-payment are allowed to be dispensed. The idea of extending pharmacy services in hospitals to allow direct sales by the NHS is being debated within the Ministry of Health. Similarly, in health centres only those vaccinations which are provided free of co-payment are dispensed directly by the health centre. Otherwise patients have to take their prescriptions to a private pharmacist whether or not they receive the prescription from a NHS doctor in a health centre or from an outpatient department of a hospital.

This means that Doctors/Medical Practitioners in principle are not allowed to dispense medicines on their own. Only veterinary surgeons may dispense medicines when carrying out emergency operations.

Other exclusive tasks of Portuguese pharmacists are the quality control of medicines and medical devices in quality control laboratories. Apart from medicinal products and other products associated with health pharmacies in Portugal may also sell Cosmetics, skin-care, dietetic, orthopaedic, phytopharmaceutical, optometric and homeopathic products.

Education and Entrance to the Profession

To become a pharmacist in Portugal one has to graduate in Pharmaceutical Sciences at the University. The study-programme takes 5 years plus 6 months of pre-graduate training. There is, for people with Portuguese nationality, no other education qualification enabling application for entrance to the profession. At the same time no additional practise is needed to become a full member of the profession. A special professional exam has only recently been introduced. This professional examination was established by the Pharmacist's Society's new bylaws, approved on November 2001. The professional exam will only be implemented from 2003 onwards and candidates from accredited degrees in Pharmaceutical Sciences are excused from this examination. As already mentioned above for practising pharmacists a membership in the *Ordem dos Farmacêuticos* is compulsory. A membership in the ANF is not obligatory.

For a long time there were only three faculties of pharmacy in Portugal. This meant that a low number of pharmacists graduated each year and therefore the professional market was for a long time eager to receive them at various sites. Recently, in a period of only six years, four other faculties have started to offer students courses in pharmaceutical sciences.

The majority of young pharmacists in Portugal pursue careers in community pharmacy. This may be because legislation still restricts pharmacy ownership to pharmacists and also because pharmacies in Portugal are making an effort to have at least two pharmacists working in each pharmacy. However, regarding the areas of Community and Hospital Pharmacy, the job market is far from absorbing the annual number of graduates leaving the universities: pharmacy ownership is under very rigid control and, although it is a right exclusive to Pharmacists, the criteria for opening new pharmacies are so strict that they make it almost impossible for a young pharmacist to establish himself as a pharmacy owner in the first years after graduation (see below). In Hospital Pharmacy, the number of annual placements is extremely reduced as well. Regarding Industrial Pharmacy, the situation is not so good as well any more. The problem has two sides: on one hand, there isn't much pharmaceutical industry in Portugal; on the other hand, industry tends, more and more, to employ graduates other than pharmacists. However, still many find a job in the pharmaceutical industry, where they can choose between drug registration, marketing, quality assurance and production, although production in Portugal has been decreasing quite a lot over the last few years.

As mentioned above, the regulations to open an own pharmacy in Portugal are rather rigid, even by international standards. Pharmacies must be owned by a qualified pharmacist. In addition to this regulation which reduces competition, the location of pharmacies is highly regulated (*Portaria* 936-A/99 of 22nd October 1999). There is a maximum number of pharmacists permitted in each community, which is one pharmacy for every 4,000 inhabitants in towns with a population of 4,000 or more (until the end of the 1990s the respective number has been 6,000). The distance between pharmacies must be more than 500 metres (until the end of the 1990s 250 m). However, a pharmacy may be authorised, irrespective of the number of inhabitants, in an area which does not have one if the real needs of the local population require it:

- if there is a hospital or a medical centre and if the distance to the nearest pharmacy is more than 3 km;
- if this distance is more than 5 km;
- in areas which have a shopping centre provided for in town plans, providing certain conditions are met, etc.

For the pharmacies available open competitions are held nation-wide on the authority of the Ministry for Health - National Institute of Pharmacy and Medicines, at the request of the local health authorities.

Admission to the open competition is as follows:

- Priority is given to the owners of pharmacies in the same municipal area as the pharmacy for which the competition is organised, who wish to transfer their dispensary there. The next most successful candidate is given authorisation to open a dispensary in the locality from which the first pharmacy has been transferred;

The following are not admitted:

- pharmacists or companies set up by pharmacists who already own a dispensary at the time of the competition (in an other area), or those who have owned a dispensary during the previous ten years;
- companies with one or more members to whom the above conditions apply.

Candidates are listed according to the number of years of professional experience, their period of residence in the area, their age and, finally, the marks and grades obtained during university studies.

Conduct Regulation

Prices and Fees

The system for prices and fees for pharmacists in Portugal is rather fragmented and the information on this point is inconsistent. The Pharmaceutical Society in the questionnaire sent to us indicated that there are no special regulations on prices and fees of Portuguese Pharmacists. This information appears to be misleading according to other sources. According to Vasco/Da Silva³ wholesaler and pharmacies' prices for prescription-only pharmacies in Portugal tend to be fixed.

The pricing of pharmaceuticals is a two-step process. In the first instance, DGCC (Directorate-General for Trade and Competition, which is part of the Ministry of Finance) agrees to the maximum price for every new medicinal product (except hospital-only specialities). Subsequently, INFARMED (*Instituto Nacional da Farmacia e do Medicamento* - National Institute for Pharmacies and Medicines) processes reimbursement applications,

³ Country Profile Portugal, Pharmaceutical Pricing and Reimbursement; LSE study on healthcare in individual countries; Worldwide survey on pharmaceutical pricing and reimbursement structures; <http://pharmacos.eudra.org/F3/g10/docs/tse/Portugal.pdf>

where a product price can be lower in order to obtain reimbursement status. Prices are set by the Directorate-General for Trade and Competition (DGCC), according to the Regulation n° 29/90. The initial manufacturers'/importers' maximum selling prices (PVA) are based on the lowest ex-factory price of identical or similar pharmaceutical product containing the same active ingredient in three reference countries: Spain, France and Italy. Normally, all prices are reviewed annually and a rate of revision is fixed.

According to WHO these rules for price-fixing for prescription-only medicines are not always implemented in practise⁴:

“Since 1991 (Decree Law 72/91) the price of drugs has been established using an artificial price based on comparisons with other countries. An attempt was made in 1998 to introduce reference pricing. This system groups drugs according to their active ingredients and sets a reference price for the group (often the average or lower-priced drug in the group). In Portugal, if two drugs of similar properties were already on the market, any new drug entering the market had to be priced at least 10% cheaper than the existing products. But this policy has been shrouded in controversy. Some products were misclassified and it is still unclear whether this controversy will have tarnished the policy irredeemably or whether the government will persist with its implementation.” (p. 68).

According to Vasco/da Silva (p11) the gross wholesaler margin is 8% of the Pharmacy Selling Price excluding tax (PSP); the pharmacist margin is 20% of the PSP. Non-medicinal products (that are permitted to be sold in pharmacies) may have a higher marketing margin.

This regulations of maximum prices and margins do not apply to OTC products. Regulation 261/91 states that OTC products have free pricing and distribution margins. OTC products are not reimbursed and can be sold only through pharmacies, except in exceptional circumstances justifiable on grounds of public health reasons. As to WHO (1999: 77) over-the-counter drugs yield the greatest profit.

Pharmacists obtain their income from three main sources: direct payment from the patient for OTCs, the co-payment directly from the patient and the remainder from the NHS (via the Regional Health Administration: RHA) or the appropriate insurance fund. The payment system follows a provider pays model. This means that whoever prescribes pays. So in the case of public hospitals, the individual hospital must cover the cost of the drug. If the prescription is from a health centre the payments are centralised through the RHA. As mentioned above about 95% of pharmacists are members of the National Association of Pharmacists and only few choose to remain independent. Members of the Association invoice the Association who reimburses them immediately; it then bills the RHA in bulk on behalf of its members. The Association is powerful and has negotiated a minimum payment period of two months with the RHA and has the ability to levy interest from the RHA for late payment. For most of the other relevant professions the minimum payment period is 4 months.

⁴ WHO (1999): Health Care Systems in Transition, Portugal, European Observatory of health Care Systems.

According to WHO (1999: 77) it is “one of the perverse incentives of the payment system for pharmacists (...) that they benefit from dispensing more expensive drugs. As a result pharmacists do not stock the cheapest drugs.” The WHO sums up the problems of pharmacies pricing in Portugal as follows (1999: 95):

„As in many other European countries, Portugal faces the problem of controlling expenditure growth on drugs and pharmaceuticals. The industrial lobby and the professional lobby are both very strong. The drug market is characterised in Portugal by freedom of prescription for doctors (outside the hospital inpatient setting), lax price controls on the drug companies and a monopoly position for the pharmacist who sells the drugs. Despite attempts by the government to regulate the sector, it remains largely limited to the quality and safety of drugs. Government regulation of pharmacists actually protects their monopoly position and the method of payment creates perverse incentives for the dispensing of more expensive products.“

Advertising

According to the Law Decree 100/94, direct consumer advertising of prescription-only pharmaceuticals is prohibited in Portugal. The National Council for the Publicity of Medicinal Products is a consultative board created within INFARMED; its function is to analyse the advertisement of medicinal products for human use, to issue opinions on legislative proposals in this area and to present recommendations in order to improve the quality of the advertisements.

According to the questionnaire sent to us by the *Ordem dos Farmacêuticos* all advertising for pharmacists in Portugal is strictly prohibited. This information probably is misleading, as other sources state that only the advertising of medicines is prohibited (Law Decree 100/94 of 19 April modified by Law Decree 48/99 of 16 February). For the pharmacy itself, the advertising of products other than medicines that are sold by the pharmacy and other activities carried out in the pharmacy (e.g. pregnancy tests, blood pressure) is allowed, subject to compliance with the general rules relating to all advertising to the public and the profession's Code of Ethics. Overall this means that advertising by pharmacists is restricted, not generally forbidden.

Forms of Business, Inter-Professional Co-operation, Location and Diversification

Only pharmacists may establish and/or own a community pharmacy. Partnerships with other pharmacists are possible; partnerships with non-pharmacists are not permitted. Pharmacists may also establish limited companies, but ownership is reserved to the profession. Additionally a pharmacist may not own or co-own more than one dispensary. She/He must offer guarantees of professional and good character and his name must have been entered in the register of pharmacists.

Continuing Education

Continuing education traditionally was not obligatory for pharmacists in Portugal. This has changed recently. The Society's new bylaws, approved on November 2001, establish mandatory continuing education for all its members and links it with professional license revalidation within the Pharmaceutical Society. Every 5 years pharmacists must accomplish a minimum of credits granted by attending continuous education activities accredited by the Society. This will be implemented as from 2003.

In non-compulsory form ongoing training programmes for pharmacists have been in place for the past 15 years or so, held jointly with the Lisbon, Oporto and Coimbra Faculties of Pharmacy, with the Pharmaceutical Society and the ANF. Organised in different areas, the continuing education system has been undergoing a consolidation process in the last few years, with 57% of the Portuguese community pharmacies having already received training curricula.

Specialisation in the Profession

Specialisation in the profession is organised by the different specialist colleges (Hospital Pharmacy; Clinical Biology; Pharmaceutical Industry; Regulatory Affairs) of the *Ordem dos Farmacêuticos*. Specialisation is conferred after a minimum period of practise and examination. It leads to a title of specialist in the specific area of specialisation which may be advertised.

Compulsory Indemnity Insurance

For pharmacists in Portugal, as in most EU-Member-States, there does not exist a compulsory indemnity insurance.

Economic Characteristics

Portugal – Structure and dynamics (NACE 5231)

Enterprises, Turnover, Employment:⁵ The nominal turnover share of pharmacies in Portugal reached a level of nearly 462 million Euro in 2000, equivalent to exactly 0.4% of GDP, which represents the fourth highest of our survey of 14 member states, after that of France, Belgium, and Spain, in decreasing order (c.f. corresponding Overview-table in Chapter 5).

⁵ EUROSTAT

Output of the sector rose however at a yearly compound average of 6.1% during the second half of the 1990's. This represents a real growth in pharmacy services of just 3.6% per annum, compared to the stagnant growth of employment, which was 0.3% p.a. over the period 1996-2000, so productivity has been risen. In fact, the real turnover share per employed person increased by 13.6% over this period.

Table 11-3 Key Statistics, Pharmacy Services, Portugal 5231

	Number of Firms	Total Turnover in Mio EUR	Turnover Share in Mio EUR	Employment	No. of Professionals
1996	2 769	1 823	365	14 032	
1997	2 698	1 943	389	13 641	
1998	2 471	1 884	377	12 176	
1999	2 719	2 077	415	13 484	
2000	2 832	2 311	462	14 227	
2001					9 498

Source: EUROSTAT, IHS

The number of firms has also stayed more or less constant, being just under 2800 in 1997 and just over 2800 in 2000, an average compound rate of increase of just 0.6% p.a. (see Table). The slightly higher rate of increase in enterprises relative to employment is indicative of a minimal trend towards smaller pharmacies i.e. indeed the average firm gave employment to 5.0 persons in 2000, compared to a 5.1 person average in 1997. However the total number of enterprises in this branch, at 283 per million of population, makes Portugal one of the countries with the highest density of pharmacies, after Spain, Belgium, France, and Ireland, in decreasing order.

The average turnover share per firm (in 1999) of over 160,000 euro is, however, very low in international comparison – in absolute terms, the only country with a lower value being Spain. Adjusted for the lower prices and output level of the whole economy, however, this (volume per firm) takes on a position in the middle of our surveyed member states.

The level of employment of the branch is, at over 1400 persons per million of the population in 2000, also typical, whereas the level of productivity, as measured by the turnover share per employed person is, at 32,000 euro in 2000 in absolute terms, the lowest value of countries included in our survey. Seen in the light of the adjustment for prices as well as for the output of the whole economy in Portugal (in terms of GDP in PPS per capita), the relative volume (share) per employee of the pharmacy branch in Portugal is paradoxically the highest among the member states surveyed. We prefer this latter measure for international comparison, as it takes into account the lower GDP, and hence consumption level (nominally) of Portugal.

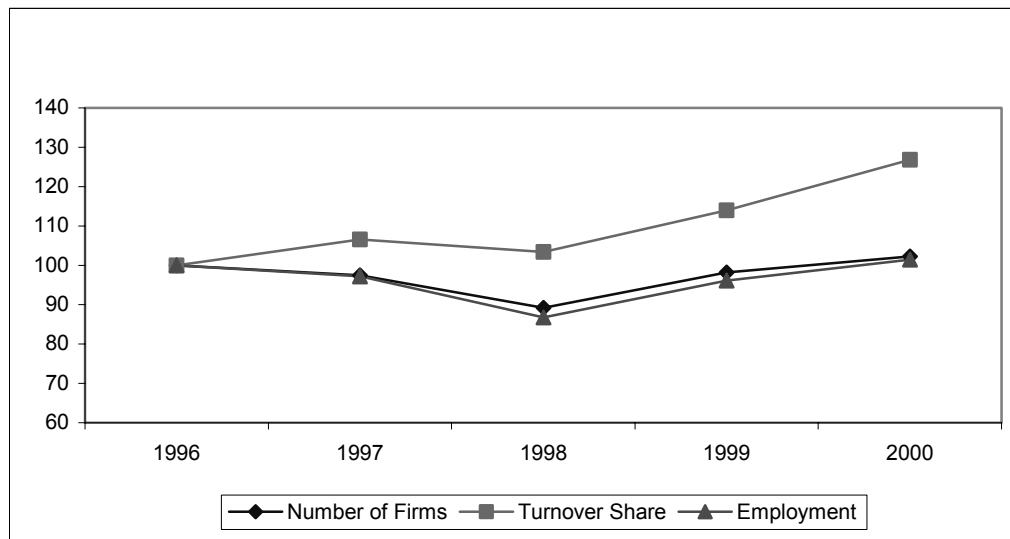
Table 11-4 Key Statistics, Pharmacy Services, Portugal 5231

	Turnover Share per Firm 1000 EURO	Employment per 1000 firms	Turnover Share per person employed 1000 EURO	Employment per Mio. of Pop	Firms per Mio. of Population
1996	132	5 068	26	1 414	279
1997	144	5 056	28	1 373	272
1998	152	4 928	31	1 223	248
1999	153	4 959	31	1 351	272
2000	163	5 024	32	1 423	283

Source: EUROSTAT, IHS

The differential rates of growth in enterprises, turnover, and employment are illustrated in the chart, with the 1996 values indexed at 100.

Chart 11-2 Relative Growth Rates, Portugal 5231



Source: EUROSTAT, IHS

Professionals: The *Ordem Dos Farmacêuticos* reported a total of 9,498 professional pharmacists in Portugal in 2001 (IHS questionnaire). This figure has increased by 67% since 1990, from 5,697. The number of new members in 2000 was particularly high, at 528, almost double the number in each of the years 1995 (273) and 1990 (285).

Summary

The sector of pharmacies in Portugal is highly regulated. This is true for market entry as well as for conduct. Although some regulatory changes have occurred in recent years, there are no signs of real liberalisation. It seems that the established pharmacists in Portugal have a strong lobby. At the same time it is not only our opinion, but also that of the WHO, that several regulations of the pharmacies sector in Portugal lead to sub-optimal market outcomes. This is true at least for the rigid entry regulations, the lack of educational facilities for those who want to study pharmaceutical sciences in Portugal as well as for the price-building system in order.

The number of graduated pharmacists in Portugal is low, the same is true in regards of pharmacies-density per population. At the same time growing problems of medicines-costs for the public health care system occur. The example of pharmacies in Portugal shows that high regulation does not *per se* lead to optimal outcomes. On the contrary, the opposite appears to be true.

11.3 The Profession of Pharmacists in Sweden: an overview

The Swedish pharmacies-system differs very much from all other national systems of this sector in the European Union. In Sweden, the community pharmacies are not organised as a kind of “liberal profession”, as it is the case in the other EU Member States. All pharmacies are part of one company, Apoteket AB, owned by the government.

Apoteket AB was founded in 1971 and is wholly owned by the Swedish state. Apoteket has an exclusive right to sell pharmaceuticals to the public and is obliged to satisfy the need for drugs nation-wide. It is required to maintain a countrywide distribution system and decides which sales outlets it wishes to have and where to be located in order to fulfil the requirement of availability. The price of drugs is the same, no matter in which part of the country they are purchased. Apoteket has a duty to supply all the drugs that have been approved for the Swedish market.

Apart from sales to the public, Apoteket is responsible vis-à-vis the health services for the purchasing and supply of drugs. The healthcare principals, mainly County Councils and municipalities, have the option of assuming responsibility for this under their own management. At present, however, all the healthcare principals have chosen Apoteket as their provider of these services. Apoteket AB recently had just over 11,500 employees (equivalent to an average of 10,308 full-time employees) and was operating approximately 900 pharmacies (800 community pharmacies plus 100 hospital pharmacies).

Market Entry

Tasks and exclusive tasks provided by Swedish Pharmacies

There is a monopoly on retail sales of pharmaceuticals in Sweden. Pharmaceuticals can only be sold from a pharmacy, and, as mentioned above, all pharmacies are part of one state owned company. Additionally, OTCs can be sold in pharmacies only and not in other outlets. Pharmacies in Sweden generally carry only medications and not products such as cosmetics.

Education and Entrance to the Profession

To become a pharmacist in Sweden one has to have studied for five years at University level after leaving school. This education ends with the so-called *Apotekarexamen*. There is no obligation for membership in or registration with a professional body etc. Another profession in the field is that of prescriptionists, who have had two or three years of higher education. Apart from pharmacists also persons with this education work in retail sale for Apoteket AB. Training as a pharmacy technician is now available in a number of locations, at both upper

secondary school level and beyond. Due to the state monopoly in the dispensation of drugs in Sweden one can only work in a community or hospital pharmacy as an employee of Apoteket AB. There are no self employed community pharmacists, who own their own pharmacy.

Conduct Regulation

Prices and Fees

In Sweden, the pricing of pharmaceuticals is free. However, if a product is to be covered by the Drug Benefit Scheme, the company marketing the product must apply to *Riksförsäkringsverket* (RFV; National Social Insurance Board) for establishing a reimbursement price. RFV is a central government agency responsible for the National social insurance, and accountable to the Ministry of Health and Social Affairs. The Division of Drug Affairs is the unit within RFV responsible for setting up the reimbursement prices of pharmaceutical products that are included in the Drug Benefit Scheme.

The pricing process is characterised as being quite consensual. The parties involved in the discussions usually reach mutual agreement on the price of the product. However, the price is formally set in a unilateral decision by the RFV. If the company regards this decision as unacceptable it can either put the product on the market as a non-reimbursable product or appeal against the RFV decision. Such outcomes of the pricing process are, however, rare.

Prices are set at the level of the pharmacy purchase price (AIP) but RFV also decides on the pharmacy-selling price (AUP). In 1999, the composition of the consumer price (AUP) was on average: Marketing company: 79.5%, Wholesaler: 3.2%, Pharmacy 17.3%.

Prices for non-reimbursable medicines and other products sold by pharmacies are not fixed.

Advertising

The Swedish Medical Products Agency is responsible for regulations on the promotion of pharmaceuticals. Prescription-drugs are not advertised at all (only in journals addressed to physicians, dentists and other health personnel), under a code of ethics which exists in Sweden on a voluntary basis. All other drugs can be advertised but it is not the pharmacies which promote marketing; it is the producer.

Forms of Business, Inter-professional Co-operation, Location and Diversification

Due to the state monopoly in drug dispensation in Sweden the question of “forms of business” does not arise in the same way as it does in other countries. There are no special

regulations on this point. The same is true for the subject of inter-professional co-operation, location and diversification. Apoteket AB is required to maintain a countrywide distribution system and decides which sales outlets it wishes to have and where to be located in order to fulfil the requirement of availability.

Continuing Education

For pharmacists in Sweden an obligation for continuing education does not exist.

Specialisation in the Profession

There are no special regulations in respect to professional specialisation.

Compulsory Indemnity Insurance

Special regulations concerning compulsory professional indemnity insurance do not exist. (There being no need, being wholly stated owned.)

Economic Characteristics

Sweden – Structure and dynamics (NACE 5231)

*Enterprises, Turnover, Employment*⁶: The nominal turnover share of pharmacies (outlets) in Sweden reached a level of nearly 650 million Euro in 2000, equivalent to less than 0.3% of GDP, which lies at the middle of our survey of 14 member states (c.f. corresponding Overview-table in Chapter 5). Output of the sector rose however at a yearly compound average of 9.9% during the 1990s and at the same rate in the period 1997 to 2000. This represents a real growth in pharmacy services of 6.4% per annum, more than employment, which actually increased just marginally, at a rate of 0.4% p.a. over the period 1993-2000, so productivity has been increased considerably. In fact, the real turnover share per employed person was up by only 13.7% over the years 1997 - 2000 (the longest period for which we have data).

⁶ EUROSTAT

Table 11-5 Key Statistics, Pharmacy Services; Sweden 5231

	Number of Firms	Total Turnover in Mio EUR	Turnover Share in Mio EUR	Employment	No. of Professionals
1993	3	1 859	372		
1996	1	2 752	550		
1997	1	2 486	497	11 021	
1998	2	2 627	525	10 952	
1999	1	2 967	593	11 039	
2000	2	3 300	660	11 150	
2001					5 000

Source: EUROSTAT, IHS

The number of enterprises has been either 1, 2 or 3 in the statistics, reflecting the state monopoly (see Table).

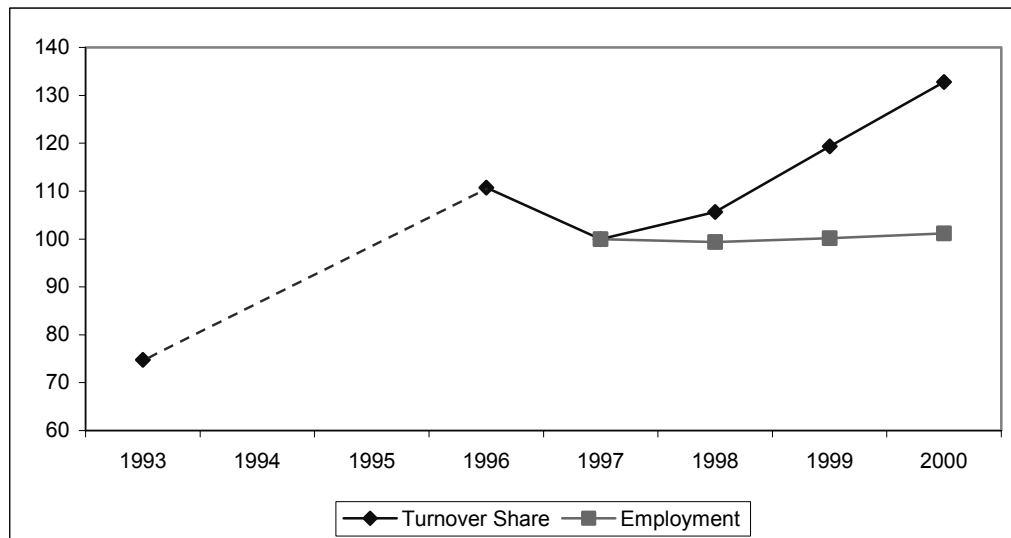
The level of employment is, however, typical for the branch, at around 1300 persons per million of the population in the year 2000, whereas the level of productivity, as measured by the turnover share per employed person is, at 59,000 euro in 2000 in absolute terms, just above the median value of countries included in our survey. Even when adjusted for the higher price levels in Sweden, as well as for the output of the whole economy (in terms of GDP in PPS per capita), the relative volume (share) per employee of the pharmacy branch in Sweden occupies the same middle place among the member states surveyed.

Table 11-6 Key Statistics, Pharmacy Services; Sweden 5231

	Turnover Share per Firm	Employment per 1000 firms	Turnover Share per person employed	Employment per Mio. of Pop	Firms per Mio. of Population
	1000 EURO		1000 EURO		
1993	123 905				0.3451
1996	550 480				0.1132
1997	497 220	11 021 000	45	1 246	0.1131
1998	262 680	5 476 000	48	1 238	0.2261
1999	593 360	11 039 000	54	1 247	0.1129
2000	330 030	5 575 000	59	1 258	0.2257

Source: EUROSTAT, IHS

The differential rates of growth in enterprises, turnover, and employment are illustrated in the chart, with the 1997 values indexed at 100.

Chart 11-3 Relative Growth Rates, Sweden 5231

Source: EUROSTAT, IHS

Sveriges Farmaceutförbund: The Swedish pharmaceutical association reported a membership of 7,200 in 2001⁷, all being, of course non self-employed. (IHS questionnaire). In 2001, 300 new members were admitted. It is not clear whether the 200 firms referred to in the questionnaire are regional groupings of outlets.

Summary

The regulation of pharmacies, as it exists in Sweden, is, from an international comparative point of view, a very special case. Pharmacies in Sweden are organised as a state-monopoly. For this market entry for single pharmacists is not possible as self employed. The Swedish state, as the owner of Apoteket, has recently made clear that it has no plans to change the regulatory system which controls drug retailing.

However, in respect of market dynamics, product innovation etc. it makes perhaps not that much difference if the pharmacy sector is run via a state monopoly or a very strongly regulated private sector. At least, in a system of state monopoly, the pharmacists may not operate as licensed private profit-oriented profession using their economic and political power for erecting market- barriers and thus to build up a monopoly in which private near-term market interests may dominate. On the other hand, it may well be the case that there are other potential economic welfare losses including X-inefficiency and less incentives to meet consumer preferences.

⁷ The number of practising professionals working in pharmacies, 5,000, used in Chapter 5, was obtained from telephone information from *Farmaceutförbund*.

11.4 The Profession of Pharmacists in Germany: an overview

The profession of pharmacists, originated in the middle-age, belongs traditionally to the liberal professions. Pharmacists understand their profession as a part of the health system on the level of other medical professions and feel like members of any liberal professions with a commercial component. Compared to other professions in this study, however, the pharmacist does not belong to the liberal professions under the tax laws. In the decision of The Federal Constitutional Court (*Bundesverfassungsgericht*) of 1956 pharmacists have been classified as tradesmen.

The pharmacist has the task of providing the population with medicine in accordance with the regulations. This covers the development, production, examination, storage, selling and registration of risks of medicine as well as the information from doctors and patients to medicine. Pharmacists work in Germany in so called community pharmacies, in hospitals, in the industry or, among other things, also in test institutions. The following explanations refer, however, to pharmacists, who work in a community pharmacy.

The Federal Organisation of German Pharmacist Association (*ABDA - Bundesvereinigung Deutscher Apothekerverbände*) is the leading organisation of the approx. 53,000 German pharmacists. The aim of this association is the fulfilment and improvement of the common interests of this profession. Member organisations of the *ABDA* are the 17 pharmacists chambers and 17 pharmacists associations. The Regional Pharmacist Chambers (*Landesapothekerkammern*) are united in the Federal Pharmacist Chamber (*Bundesapothekerkammer*) in Frankfurt/Germany, the pharmacist associations in the German Pharmacist Association (*Deutschen Apothekerverband*).

The *ABDA* arranges an intensive exchange of views, in order to promote the interests of its member organisations. It advises them about all the news in the health care system and the medicine sector.

In Germany pharmacists have to be members of one of the corresponding regional pharmacist chambers. The 17 pharmacist chambers are organised on a district level. The Federal Pharmacist Chamber (*Bundesapothekerkammer*) is a working group of the Regional Pharmacist Chamber (*Landesapothekerkammer*).

Besides the chambers, there exist 17 pharmacist associations, which are based on optional membership. Together with the regional pharmacist chambers these are also organised in the Federal Organisation of German Pharmacist Association (*Bundesvereinigung Deutscher Apothekerverbände*) in Frankfurt/Germany.

Market Entry

Tasks and exclusive tasks provided by German Pharmacists

The general tasks that are provided by German Pharmacists have already been mentioned above. The main exclusive contribution that German pharmacists provide is the distribution of so called “pharmacy-only medicines” and “medicinal products” (*apo-thesenpflichtige Arzneimittel; apothekenpflichtige Medizinprodukte*). Apart from this, they also sell over-the-counter (OTC) medicines (*freiverkäufliche Arzneimittel*) and OTC medicinal products, for which not only Pharmacists, but for example also chemist’s shops (*Drogerien*) have the right to sell them. Another kind of service is the distribution of goods customarily offered in pharmacies (*apothekenübliche Waren, § 25 Apothekenbetriebsordnung*). They may be sold by other retailers as well. In addition pharmacists also have the right to offer screening measures, e.g. blood test or taking blood pressure. This service is provided by doctors as well.

Education and Entrance to the Profession

The legal basis for the education to be a pharmacist is the licence to practice regulation (*Approbationsordnung*) for pharmacists dated July 19, 1989, which came into force in a changed version October 01, 2001.

The pharmaceutical study includes:

- a study of four years at an university;
- a clinical training (*Famulatur*) of eight weeks;
- a practical training of twelve months and
- the pharmaceutical exam with three examination sections.

Famulatur / Clinical elective

During the part of the study at university, a student has to make a *famulatur* / clinical elective, while not having any lectures. Four weeks of this *famulatur* have to be at a community pharmacy and during the rest of the time one can choose among other pharmaceutical jobs, e.g. hospital pharmacy or the pharmaceutical industry.

After finishing the second part of the study at university (the so called main study) follows a 12 months practical training (third part), where knowledge is supposed to be deepened, extended and applied practically. A minimum of 6 months have to be served at a community pharmacy; the rest of the time in a hospital or military pharmacy, the pharmaceutical industry, in a scientific institute, e.g. university, or a pharmaceutical investigation centre. The practical year is completed with a four to six week course, where the practically gained issues are taught. Also the third part ends, as does the second part, with a state examination.

After successfully passing the pharmaceutical examination, one can apply for a licence to practise as a pharmacist. This license authorises the individual to use the title of pharmacist and allows him the unlimited practice of this profession.

Conduct Regulation

Prices and Fees

For pharmacy-only medicines there is a law fixing the prices (*Arzneimittelpreisverordnung*; Drug Price Ordinance). On the basis of free manufacturers' prices this leads to uniform consumer prices for pharmacy-only medicines throughout Germany. Prices for OTC medicines and other goods offered by pharmacists are not fixed.

Advertising

For Pharmacists in Germany some, but not all, forms of advertising are forbidden. Advertising is forbidden in the following cases:

- prescription-only medicines,
- price advertising as far as pharmacy-only medicines are concerned.

Furthermore, advertising must conform with the European Law (Chapter VIII of Dir. 2001/83/EEC), the Law on Advertising in the Health System (*Heilmittelwerbegesetz*) the profession's law (*Berufsordnungen der Apothekerkammern*) and general regulations on advertising.

The Federal Constitutional Court (*Bundesverfassungsgericht*) has clarified in its decision of May 22, 1996 that the pharmacist chambers are not allowed to intervene with a publicity prohibition into the competitive process just to hinder competition.

It is also not possible in reference to the constitutional right of the freedom of the profession (*Berufsfreiheit*) according to article 12 paragraph 1 GG to exclude certain advertising media as improper, e.g. shirt advertisement or too big advertisements. Such prohibitions are

according to the point of view of The Federal Constitutional Court (*Bundesverfassungsgericht*) incompatible neither with the public good nor does it correspond to the principle of proportionality (*Verhältnismäßigkeit*).

Altogether, today pharmacists are able to use almost the full range of advertising instruments and marketing. But there are still some barriers. For example, advertisement, which is misleading or seems to exaggerate in reference to its content and frequency and favours an additional use or misuse (compare IFB 2001⁸) is not allowed..

Forms of Business and Inter-Professional Co-operation

Pharmacies very often are run in the form of a sole practitioner. Partnership is allowed as far as a private partnership (*Gesellschaft bürgerlichen Rechts*) or general partnership (*offene Handelsgesellschaft*) are concerned. In these cases each pharmacist needs permission to run the relevant pharmacy and each one is fully liable. This means that inter-professional co-operation is not possible in the form of running a business together. At the same time incorporation, e.g. in form of a Limited Liability Partnership or a Public Limited Company, are not allowed. In addition, it is forbidden for pharmacists and doctors to work too close together. The patients may not be assigned to specific pharmacists/doctors, but must have the free choice (§ 11 *Apothekengesetz ApoG*; Pharmacies Act).

Location and Diversification

Germany is one of the few member states of the European Union, where the number of Pharmacies is not restricted (e. g. by economic needs tests etc.). Any pharmacist may open and run a community pharmacy at the place of his own choice. But one pharmacist may open only one pharmacy and under normal conditions may not run a branch office. It is only in very specific cases, where this is permitted: there must be a “state of emergency in the supply with medicines” in a specific region (*Notstand in der Arzneimittelversorgung*; § 16 ApoG). In such a case one pharmacist may only run one additional branch office and it is a precondition that this additional branch office is directed by a pharmacist as well. Due to the also existing ban of mail-service (*Versandhandel*) of pharmacy-only medicines, a certain natural geographical restriction is imposed.

Continuing Education

The profession's law generally says that continuing education must take place and the profession's chambers (*Apothekerkammern*) organise frequent seminars on varying topics. Notwithstanding this, a general control of single pharmacists does not take place.

⁸ See <http://www.ifb-bayern.de/Werbung-Apotheker.PDF>.

Specialisation in the Profession

The profession's chambers offer seminars on specialisation. After certain time (e.g. 3 years) of seminars and practice, there are exams. The title that can be obtained is "*Fachapotheker*", with various specialisations. This may be advertised.

Compulsory Indemnity Insurance

For pharmacists in Germany there are no regulations on compulsory professional indemnity insurance.

Actual challenges and recent changes in regulations

In Germany, the current political discussion is focused – beyond the labour market topic – around a new health reform. It is to be expected – but still open – that the reform will also effect the German pharmacists.

Economic Characteristics**Germany – Structure and dynamics (NACE 5231)**

*Enterprises, Turnover, Employment*⁹: The nominal turnover share of pharmacies in Germany reached a level of nearly 7,200 million Euro in 2000, equivalent to less than 0.4% of GDP, which represents somewhat more than the median of our survey of 14 member states. (c.f. corresponding Overview-table in Chapter 5). Output of the sector rose however at a yearly compound average of 2.5% during the second half of the 1990's. This represents a real growth in pharmacy services of just 0.3% per annum, just slightly ahead of employment, which actually decreased at a rate of 0.3% p.a. over the period 1995-1999, so productivity has been virtually stagnant. In fact, the real turnover share per employed person was slightly down by only 2.5% over this period.

It is noted here that the turnover (net of VAT) recorded by the Eurostat statistics is consistently somewhat lower than the figures reported by ABDA, as described later in this section. Nevertheless the former is used as a comparable basis for all countries in Chapter 5.

⁹ EUROSTAT

Table 11-7 Key Statistics, Pharmacy Services, Germany 5231

	Number of Firms	Total Turnover in Mio EUR	Turnover Share in Mio EUR	Employment	No. of Professionals
1995	19 291	20 531	6 508	162 100	42 790
1996	19 399	21 037	6 669	167 100	
1997	19 377	20 662	6 550	164 900	
1998	19 311	21 174	6 712	166 552	
1999	19 491	22 638	7 176	160 081	
2000					46 078

Source: EUROSTAT, IHS

The number of firms has also stayed more or less constant, being just under 19,300 in 1995 and just under 19,500 in 1999, an average compound rate of increase of just 0.3% p.a. (see table). The slightly higher rate of increase in enterprises relative to employment is indicative of a slight trend towards smaller pharmacies; indeed the average firm gave employment to 8.2 persons in 2000, compared to a 8.4 person average in 1995. However the total number of enterprises in this branch, at 238 per million of population, makes Germany the last of the countries with a higher than median density of pharmacies, after Spain, Belgium, France, Ireland, Portugal and Italy, in decreasing order.

The average turnover share per firm (in 1999) of almost 370,000 EUR is lower than the correspondingly figure - for turnover – for technical services (470,000 EUR) and accounting services (490,000 EUR) in Germany – but on a par with turnover for legal services' firms (380,000 EUR). Again Germany occupies a position just above halfway among the member states in our survey¹⁰.

The level of employment is, however, high for the branch, at nearly 2,000 persons per million of the population in 1999, whereas the level of productivity, as measured by the turnover share per employed person is, at 45,000 EUR in 1999 in absolute terms, below the median value of countries included in our survey. Even when adjusted for the price levels in Germany, as well as for the output of the whole economy (in terms of GDP in PPS per capita), the relative volume (share) per employee of the pharmacy branch in Germany occupies the same place among the member states surveyed.

¹⁰ Note: value added is typically 70-75% of turnover for legal and accounting services, 50-55% of turnover for technical services.

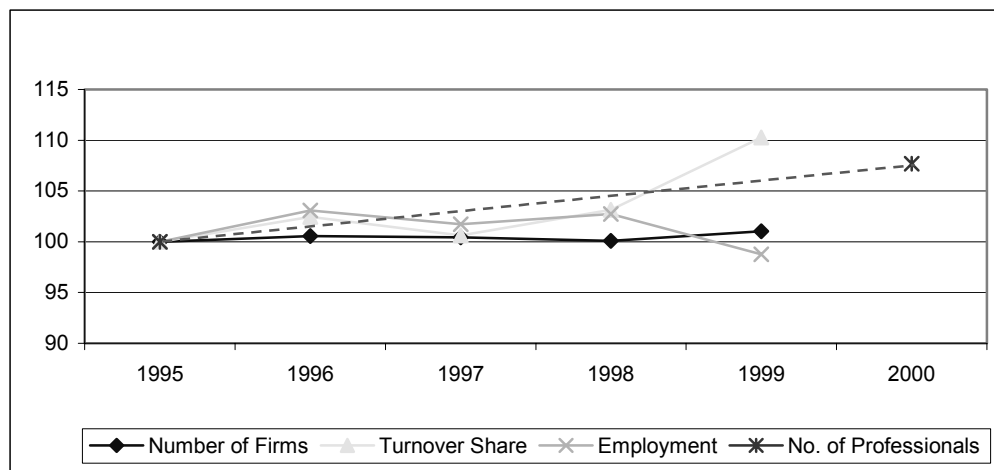
Table 11-8 Key Statistics, Pharmacy Services, Germany 5231

	Turnover Share per Firm 1000 EURO	Employment per 1000 firms	Turnover Share per person employed 1000 EURO	Employment per Mio. of Pop	Firms per Mio. of Population
1995	337	8 403	40	1 988	237
1996	344	8 614	40	2 042	237
1997	338	8 510	40	2 011	236
1998	348	8 625	40	2 030	235
1999	368	8 213	45	1 951	238

Source: EUROSTAT, IHS

The differential rates of growth in enterprises, turnover, and employment are illustrated in the chart, with the 1995 values indexed at 100.

Chart 11-4 Relative Growth Rates, Germany 5231



Source: EUROSTAT, IHS

Turnover, Margin and Profits: German pharmacies achieved a total turnover of 52,6 Bill. DM (without value added tax in 2000). This is an increase of 4.5% over the previous year.¹¹

Table 11-9 Total turnover of pharmacies* in Germany 1992 to 2000

Year	Total Turnover of Pharmacies				
	Germany	West Germany	East Germany	West – East Germany	West – East Germany
	in Bil. DM	in Bil. DM	in Bil. DM	in Bil. DM	1%
1992	40.99	35.31	5.68	29.63	72.3
1993	38.15	31.8	6.35	25.45	66.7
1994	40.58	33.45	7.13	26.32	64.9
1995	43.26	35.46	7.8	27.66	63.9
1996	45.4	37.2	8.2	29	63.9
1997	45.64	37.52	8.12	29.4	64.4
1998	48.4	39.95	8.45	31.5	65.1
1999	50.3	41.6	8.7	32.9	65.4
2000	52.6	43.5	9.1	34.4	65.4

* without value added tax

¹ in % of Germany

Source: ABDA Federal Chamber of Pharmacists (Bundesapothekerkammer),
www.abda.de, 3.1.2003, own calculations

Within the 1990s the turnover of pharmacies in Germany increased altogether from 40.99 Bill. DM in 1992 to 52.6 Bill. DM in 2000 by 28.3%. However, the development in West and East Germany was quite different: the West German turnover growth rate in this time period was 23.2%, in East Germany 42.6%. Evidently this is due to the start-up situation in the new *Bundesländer*.

Interestingly the gap in total turnover between West and East rose from 29.63 to 34.4 Bill. DM; however, the relative difference decreased from 72.3% to 65.4% in that period.

The turnover per pharmacy from 1980 to 2000 in Germany is shown in the table. In 2000 on the average each pharmacy had a turnover of about 2.37 Mio. DM.

From 1980 to 1990 the growth rate of turnover per pharmacy was 49.4%. Such an increase was not achieved in the 1990s: the growth rate from 1990 to 2000 was 43.2%. Within the 1990s almost no change was seen between the turnover situation in 1996 and 1997. The turnover in the last two years increased instead again around 4% per year.

¹¹ Note. There is a discrepancy between these figures and the data from Eurostat!

Table 11-10 Turnover per pharmacy* 1980 to 2000 in Germany

Year	Turnover per pharmacy	
	Turnover in 1 000 DM	Relative Change % ¹
1980	1 108	-
1990	1 655	49.4
1993	1 750	5.7
1994	1 840	5.1
1995	1 950	6
1996	2 040	4.6
1997	2 050	0.5
1998	2 180	6.3
1999	2 270	4.1
2000	2 370	4.4

* without value added tax

¹in % of Germany

Source: ABDA Federal Chamber of Pharmacists (Bundesapothekerkammer),
www.abda.de, 3.1.2003, own calculations

As the Federal Chamber of Pharmacists points out, and according also to the Institute for Trade Research (*Institut für Handelsforschung*, IfH), in 2001 there was a trade margin (*Handelsspanne*) of 26.7% of the gross turnover, 0.4 percentage points less than the year before (see table). From 1980 this margin continuously decreased from 32.7% to 26.7% in 2001. However, the decrease in the 1990s is not as strong as in the 1980s.

Table 11-11 Business economic results: trade margins, expenditure and turnover profits of pharmacies in Germany 1980 to 2001

Year	Trade Margin %	Expenditure Share %	Turnover Profits %
1980	32.7	29.8	2.9
1990	28.8	27.3	1.5
1995	28.1	27.4	0.7
1996	28.1	27.5	0.6
1997	27.9	27.8	0.1
1998	27.5	27.5	0.0
1999	27.3	26.5	0.8
2000	27.1	26.2	0.9
2001	26.7	25.3	1.4

Source: ABDA Federal Chamber of Pharmacists (Bundesapothekerkammer),
www.abda.de, 3.1.2003, Institute for Trade Research (IfH)

The expenditure burden (inclusive calculatory wage of the entrepreneur and own capital interest) in 2001 was 25.3% of the gross turnover (26.2% in the year before). As the table shows, the expenditure share decreased from 1980 to 2000 from 29.8% to 25.3%. The decrease again was higher in the 1980s than in the 1990s.

The development of the trade margins and the expenditure shares finally yield the turnover profits. Again according to IfH, in 2000 the relative expenditure burden of 25.3% was 1.4% lower than the trade margin, which yields a business economic result (turnover profit) of 1.4%. From 1998 onwards this measure of business success was continuously increasing from 0% to 1.4%.

The Federal Statistical Office in Germany provides some additional information about the expenditure (cost) structure. Based on a sample of 572 regarded pharmacies they count an average turnover of 2,105 Mio. DM without value added tax and about 2,412 Mio. DM with value added tax.

The turnover per employee (inclusive the self-employed pharmacist and helping family members) is 241,500 DM. The gross profit (*Rohertrag*) as turnover minus material expenditures per pharmacy is 643,400 DM and per employee is 73,800 DM.

Members of the profession: In Germany there are now 45,869 pharmacists working in 21,569 public pharmacies per 31.12.2001 (see table). From all of these, about 53,000 pharmacists the 45,869 pharmacists in public pharmacies are about 86.5%. About 1,829 (3.5%) pharmacists work in hospitals, and about 5,507 (10.4%) in industry, administration, organisations and sciences (end of year 2001). This structure did not change substantially compared to ten years ago: From all pharmacies at the end of year 1991 about 85% worked public, 3% in hospital and about 12% in industry, administration and science.

Table 11-12 Pharmacists, pharmacies and supply of pharmacies in Germany 1980 to 2001

Year*	Pharmacists	Pharmacies	Pharmacists/ Pharmacy	Inhabitants/ Pharmacy
1980	27 693	16 244	1.7	3 788
1990	35 118	18 029	1.9	3 500
1995	42 790	21 119	2.0	3 867
1996	43 629	21 290	2.0	3 847
1997	45 271	21 457	2.1	3 820
1998	45 465	21 556	2.1	3 800
1999	46 064	21 590	2.1	3 800
2000	46 078	21 592	2.1	3 800
2001	45 869	21 569	2.1	3 810

*Per December 31 of each year

Source: ABDA Federal Chamber of Pharmacists (Bundesapothekerkammer), www.abda.de, 3.1.2003

The mean pharmacist per pharmacy quota is about 2.1, which is almost constant since 1997. Within the 1990s the number of pharmacists raised from 35,118 in 1990 to 45,869 in 2001 by 30.6%. The number of public pharmacies, on the contrary, raised from 18,029 in 1990 to 21,569 in 2001 by 19.6% resulting in an increased pharmacists density per pharmacy.

The growth in the number of pharmacists in the 1990s by 30.6% was higher than in the 1980s with a growth rate of 26.8% from 27,693 pharmacists in 1980 to 31,118 in 1990. The pharmacy density, measured as all German inhabitants divided by the number of pharmacies, over the years remains constant since 1998 with 3,800 after an increase in the early 1990s from 3,500 to 3,847 inhabitants served by a pharmacy on average.

Trainees; ABDA reported that the number of pharmacy trainees in 2000 (in all stages of pre-qualification) was 13,108, an increase of 17% on the figure for 1990 of 11,195.¹² As the number of new trainees in 2000 is approximately the same as in 1995 (ca. 2,500), the period of time in training status is upwards of 5 years.

Women in the profession: Compared to many other liberal professions the female quota within pharmacists is relatively high. At the end of the year 2001 almost two out of three pharmacists were women (65.1%, see table).

Table 11-13 Female pharmacists in Germany 1980 to 2001

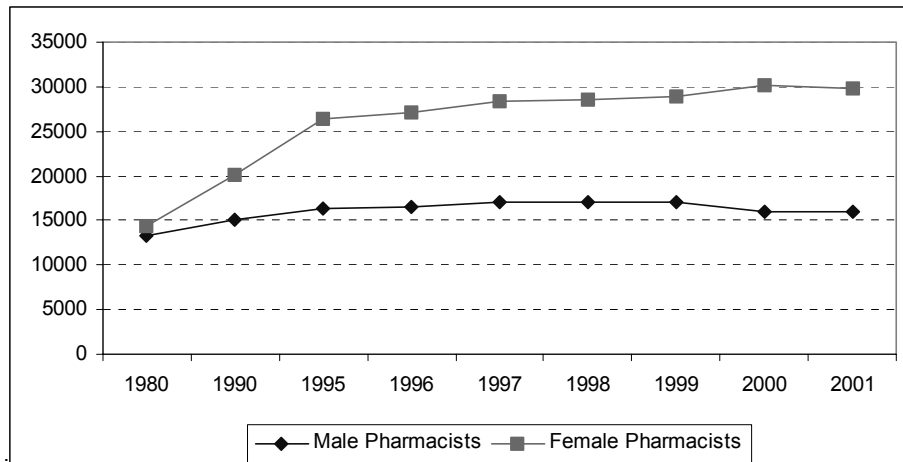
Year*	All Pharmacists	Male Pharmacists	Female Pharmacists	Female Pharmacists quota %
1980	27 693	13 348	14 345	51.8
1990	35 118	14 995	20 123	57.3
1995	42 790	16 389	26 401	61.7
1996	43 629	16 448	27 181	62.3
1997	45 271	16 977	28 294	62.5
1998	45 465	17 004	28 461	62.6
1999	46 064	17 136	28 928	62.8
2000	46 078	15 989	30 089	65.3
2001	45 869	16 008	29 861	65.1

*Per December 31 of each year

Source: ABDA Federal Chamber of Pharmacists (Bundesapothekerkammer), www.abda.de, 3.1.2003.

The female quota rose by 7.8 percentage points from 57.3% in 1990 to 65.1% in 2001,

¹² IHS questionnaire

Chart 11-5 Male and female pharmacists 1980 to 2001 (end of years) in Germany

Source: ABDA Federal Chamber of Pharmacists (Bundesapothekerkammer), www.abda.de, 3.1.2003, own calculations

As the chart shows, there is a remarkable growing gap between the number of male and female pharmacist apprentices: whereas in 1980 their number was almost the same, in 2001 the difference between male and female apprentices grew to 13,853, which is 30.2% of all pharmacy apprentices.

It is to be expected that the female quota will continue to increase because the actual licences (*Approbationen*) with 1,894 has an even higher female quota of 74%.

The pharmacists' female quota, however, shows a broader range within the different pharmacy types: whilst in the public pharmacies actually 65.1% are women, 52% of pharmacists in hospitals and 47% in industry, administration, organisations, science are women.

Age structure: There is no information from the Federal Chamber of Pharmacists about the age structure of pharmacists available.

Function as employers and instructors: The importance as employers and instructors is shown in two tables: the number of respective persons and the structure as percentage of all active persons in pharmacies (including all pharmacists).

Table 11-14 Employees in pharmacies in Germany 1980 to 2001

Year*	Pharmacy Practitioner	Pharmacist Assistant	Pharmaceutical Technical Assistant (PTA) ¹	Helpers/PKA	others	Total Employment
1980	1 113	4 542	11 920	35 733	27 693	81 001
1990	1 899	4 168	25 009	33 416	35 118	99 610
1995	1 669	11 501	32 102	38 483	42 781	126 536
1996	1 758	11 344	33 809	39 478	43 629	130 018
1997	1 859	11 313	35 150	38 814	45 271	132 407
1998	1 780	11 367	37 149	39 030	45 465	134 791
1999	1 750	11 141	37 821	38 116	46 064	134 892
2000	1 649	10 835	39 792	38 116	46 078	136 470
2001	1 748	10 294	40 805	38 614	45 839	137 300

* Per December 31 of each year

¹ incl. PTA practitioners

Source: ABDA Federal Chamber of Pharmacists (Bundesapothekerkammer), www.abda.de, 3.1.2003

The 21,569 public pharmacies provided more than 137,000 working places at the end of the year 2001. The dominant shares of employees in 2001 are pharmaceutical technical assistants (PTA) with 40,805 persons (29.7% of all active persons in pharmacies including pharmacists) and helpers 38,614 (28.1%). 10,294 persons are pharmacist assistants (7.5%) and 1,748 persons (1.3%) are pharmacy practitioners.

Table 11-15 Pharmaceutical personnel in pharmacies 1980 to 2001 (end of years) in Germany (Structure in percent of total employment of previous table)

Year*	Pharmacy Practitioner	Pharmacist Assistant	Pharmaceutical Technical Assistant (PTA) ¹	Helpers/PKA	All pharmaceutical personnel**
1980	1.4	5.6	14.7	44.1	65.8
1990	1.9	4.2	25.1	33.5	64.7
1995	1.3	9.1	25.4	30.4	66.2
1996	1.4	8.7	26	30.4	66.4
1997	1.4	8.5	26.5	29.3	65.8
1998	1.3	8.4	27.6	29	66.3
1999	1.3	8.3	28	28.3	65.9
2000	1.2	7.9	29.2	27.9	66.2
2001	1.3	7.5	29.7	28.1	66.6

* Per December 31 of each year

** excludes 'others' of previous table

¹ incl. PTA practitioners

Source: ABDA Federal Chamber of Pharmacists (Bundesapothekerkammer), www.abda.de, 3.1.2003

As in 200, of 38,116 helpers/PKA (pharmaceutical commercial assistants) 30,122 had finished their apprenticeship and 7,994 were apprentices as PKA. The percentage of apprentices as PKA at about 21% has been roughly constant over the last years.

In the 1990s the number of active persons increased from 99,610 in 1990 to 137,300 in 2001 by 37.8%, whereas in the 1980s this growth rate was lower at 23%.

Also the employee structure in the 1980s differs from the 1990s to the beginning of this century: whereas the gap between PTAs (14.7%) and helpers/PKA (44.1%) was almost 30 percentage points, this gap decreased to 8 percentage points (33.5% minus 25.1%) and further in 2001 to only -1,6 percentage points (28.1% minus 29.7%). Indeed, the number of PTAs 'finally' overtook the number of helpers/PKAs in 2000 and 2001. As the table also shows, the share of pharmacists remains constant at about one third over the past 22 years.

ABDA reports that about 95% of pharmacies have altogether between 3 and 10 employees, with the remaining 5% having more than 10 employees (IHS questionnaire).

Students: In Germany there were 13,108 pharmacy students as of 1999/2000 (see table).

As the table shows, there is a remarkable increase by 19.6% in the 1980s (1980/81 to 1990/91) and a similar increase till 1995/96 by 17.1%. From the mid 1990s there was almost no change, the reason being that recently there has been a '*numerus clausus*' introduced in Germany for the study of pharmacy. The central authority (*Zentralstelle für die Vergabe von Studienplätzen*) allows about 2,500 students each year to start with a pharmacy study.

Table 11-16 Pharmacy students 1980/81 to 2000/01 in Germany

Year	All Pharmacy Students	Relative Change %
1980/81	9 359	-
1990/91	11 195	19.6
1995/96	13 106	17.1
1996/97	13 085	-0.2
1997/98	13 275	1.5
1998/99	13 123	-1.1
1999/00	13 108	-0.1

Per December 31 of each year

Source: ABDA Federal Chamber of Pharmacists

(Bundesapothekerkammer), www.abda.de, 3.1.2003

Thus, there is no dramatic change in the future development to be expected within the next years.

Pharmacy 5231**Table 11-17 Turnover, output and gross return per pharmacy**

output classes	firms	total turnover		in % of turnover		total output ¹		gross return ²	
	in units	incl. VAT	excl. VAT	trade turnover		per firm	per person employed ³	per firm	per person employed
		in 1000 DM		retail	wholesale	in 1000 DM		in 1000 DM	
total	572	2 411.6	2 104.5	98.6	1.3	2 104.5	241.5	643.4	73.8
thereof									
100000 - 500000	6	(399)	(289.9)	(100)	(-)	(289.9)	(92.0)	(99.0)	(91.4)
500000 - 1000000	34	998.0	870.2	99.8	-	870.2	135.3	265.4	41.3
1000000 - 2000000	192	1 724.7	1 504.3	99.2	0.7	1 504.8	211.1	456.1	64.0
2000000 - 5000000	286	3 211.6	2 803.7	99	0.9	2 803.9	267.1	867.1	82.6
5000000 - 10000000	40	7 377.0	6 431.5	84.9	4.3	6 413.5	342.9	1 925.2	102.7
10000000 - 50000000	14	15 083.1	13.1	87.8	12.3	13 149.0	401.7	3 702.8	113.2

(Source: Statistisches Bundesamt)

¹ total output=turnover without VAT plus/minus changes in stock of semi-finished products² gross return=total output minus material expenditure³ including unpaid persons employed

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