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Executive Summary

1. Introduction

- 1 The European Commission has been working to promote reform and modernisation of restrictive regulation in the professional services area since 2002. In a first step research was carried out which included an independent study of professional regulation by the Institute for Advanced Studies in Vienna published in March 2003.¹ This underlines wide disparities in levels of regulation across the EU and reveals links between excessive regulation and economic inefficiency. Drawing on the IHS study and other fact-finding work, the Commission then published two policy reports,² which summarise the Commission's thinking on the scope to reform or modernise specific professional regulation and rules in the professions. Whilst the Commission is not opposed to all regulation of professional services as there are legitimate arguments in favour of certain regulations in this area e.g. to protect consumer interests or safeguard the independence and integrity of a profession, the Commission argues that restrictive regulation needs to meet a strict proportionality test. This means that it is only justified if it serves a clearly defined public interest goal, is objectively suitable to obtain that goal and is the means least restrictive of competition to achieve this goal. This is because such regulations eliminate or limit competition between service providers and thus reduce the incentives for professionals to work cost-efficiently, lower prices, increase quality or offer innovative services. However, a considerable part of current professional regulation does not meet this test.
- 2 In order to explore the economic impact of such restrictive professional regulation on specific markets, the Commission has now chosen to examine one key market in more detail – that of conveyancing services (i.e. services associated with buying and selling property) with a particular focus on legal related conveyancing services. This market is obviously of direct interest to consumers and of high overall economic significance. Indeed, it is estimated that property turnover in the EU27 for 2005 was almost 1,800

¹ The study is available at: http://ec.europa.eu/comm/competition/sectors/professional_services/studies/studies.html

² Report on Competition in Professional Services (COM(2004) 83) of 9 February 2004 and Commission Communication 'Professional Services - scope for more reform' (COM(2005) 405) of 5 September 2005 to be found at: http://ec.europa.eu/comm/competition/sectors/professional_services/reports/reports.html

billion Euro (around 16% of the EU27 GDP) with the corresponding turnover in property related legal services being around 16.7 billion Euro. Land and buildings also account for between half and three quarters of country wealth in most European economies. Given the substantial size of this market, it is obvious that any reduction in conveyancing related legal fees as a result of pro-competitive reforms will bring significant financial benefits to consumers all over Europe.

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

6 The study consists of a general legal part, an economic part and case studies on four countries (England and Wales, Germany, the Netherlands, and Sweden), representing different regulatory systems. The final conclusions summarise the key findings of the study and develop some recommendations on de-regulation and reform of conveyancing services regulation with a view to promoting greater choice and the delivery of more cost effective legal services in conveyancing. Published alongside this study are a set of "country fiches", which set out key legal and economic findings. These served as a source of information for the study, although other sources have also been drawn on.

2. Regulatory Models

7 In order to compare and evaluate the different regulatory systems under which legal conveyancing services are provided in the 21 EU countries examined, we categorised the systems into four distinct regulatory models for the purposes of this study:³

- The **traditional, highly regulated Latin notary system**, which reflects the public office characterisation of notarial activities. This model may be found in the vast majority of continental European countries including Spain, Portugal, France, Italy, Luxembourg, Belgium, Germany, Poland, Slovenia and Austria.⁴ In addition, Latin notaries exist also in Greece but this country has been classified as a hybrid system given that the additional presence of two lawyers is also required in an average transaction. The Latin notary model is characterised by mandatory involvement of notaries, even though the scope of involvement (contract and deed of conveyance, only deed or just the authentication of signatures) differs widely. Other important features include *numerus clausus* of professionals, fixed fees and strict regulation on market conduct.
- The **deregulated Dutch notary system**, which reflects a more modern vision of the notary as a private entrepreneur fulfilling public tasks. Under this model, no *numerus clausus* exists, fees are negotiable and market structure and conduct

³ The term "legal systems" is also used in this study as a way of referring to the four different "regulatory models/systems" identified.

⁴ Austria is supposed to be part of this group, although lawyers have a high presence on the market as well and certification of signatures could not only be done by a notary, but by a court as well. Yet, the consultation of a notary in many cases is "quasi-mandatory", as banking institutions in most cases of a mortgage stipulate the involvement of a notary.

regulation is generally less strict.

- The **lawyer system** existing in the UK and Ireland, the Czech Republic and Slovakia and – to a lesser extent – also in Austria (where both notaries and lawyers have a high presence on the market). A hybrid system may be found in Hungary⁵ where in average transactions lawyers take care of the conveyancing (mandatory intervention) whereas notaries are usually involved in setting up the mortgage. The lawyer system is characterised by quality control of professionals licensing and professional exams only, negotiable fees and lower levels of regulation on market structure and conduct.
- The **Scandinavian licensed real estate agent system** under which real estate agents provide legal services, too. This model is also characterised by quality control of professionals through professional exams and licensing only, negotiable fees and lower levels of regulation on market structure and conduct. This system can be found in Sweden, Finland and Denmark; however, each has its own characteristics.

3. Legal Part

- 8 **Analysis of existing regulation and its justifications:** The regulation of Latin notaries poses most problems in terms of the application of EC internal market law and to some extent EC competition law. Assuming that notarial services in conveyancing do not constitute the exercise of public authority exempted from the application of EC Treaty law, large parts of their regulation are shown to be unjustifiable under the proportionality principle.
- 9 First, **mandatory intervention** by legal professionals may only be proportional on consumer protection grounds and legal security grounds in transactions involving consumers and/or small enterprises in those countries (including Germany, Poland, Greece and Hungary) where it extends to the drafting of the contract. Yet, even there, if it were possible to render standard transactions less complicated as in Scandinavian countries, informed consumers should be able to handle them alone. Irrespective of this, mandatory intervention, for example, by notaries is not justifiable in larger

⁵ In this study Hungary has been treated as a hybrid system along with Greece, as both notaries and lawyers are involved in the average transaction.

commercial transactions in which all parties are usually represented by lawyers or in consumer transactions where it is usual for parties to employ a lawyer to represent their interests.

- 10 The professional title of notaries, which may point to high expertise and experience, should still be protected. Conversely, **exclusive rights** for notaries with regard to real estate transactions are not justifiable. Considering that real estate transactions are to a large extent standardised, lawyers possessing a general law degree and legal training as well as specialised professionals such as the English style licensed conveyancers or Scandinavian style licensed real estate agents, should also be admitted. However, on account of conflict of interest problems, each party should then be represented by his or her own lawyer or other professional as it usually happens e.g. in England and Wales.
- 11 ***Numerus clausus and fixed locations***, which widely entail the consequence that fewer professionals are appointed than the market would actually support are very difficult to justify. An adequate geographical coverage with conveyancing services could be achieved by admitting lawyers too as recommended here, or – if this were not desired – by State intervention such as income supplements to notary candidates willing to establish themselves in insufficiently covered areas.
- 12 Another core element of notarial regulation, **fixed fees** encounter similar objections. Cross-subsidisation does not provide a valid justification as it is impossible to operate it in a fair and targeted way. Indeed, “cross-subsidisable” transactions with high and low values, and in subsidised and lucrative legal fields, are not at all distributed in a roughly equal way among professionals. In order to ensure the provision of services at affordable cost to vulnerable groups of consumers, a State should therefore again resort to direct subsidies to that group or use targeted pricing regulation (e.g. maximum prices for family law matters for lower income groups as operated by the Netherlands).
- 13 Moreover, fixed fees may not be justified by quality concerns either as a reliable correlation between fixed fees and quality does not exist. Instead, there are other mechanisms with a greater bearing on a professional’s willingness to deliver adequate quality, which include subjective requirements of access to the profession, professional honour and deontology, reputation, peer pressure, disciplinary rules controlled by professional associations and effective complaint procedures for consumers, as well as the danger of incurring liability.

- 14 Fixed fees cannot be justified on the grounds of fee information or transparency as this can also be ensured by less restrictive means. These include the publication of historical and survey-based price information by independent parties (such as consumer organisations) or State authorities.
- 15 Regarding **other kinds of market conduct regulation of Latin notaries** (on business form, inter-professional cooperation and advertising) further instances of overregulation incompatible with proportionality rationales have been found.
- 16 All the other regulatory models (Dutch style deregulated notaries, lawyers and licensed real estate agents) pose less problems to EC internal market and EC competition law.

4. Economic Parts

4.1 Regulatory Indices

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

- 21** **MERI and MCRI are by far most restrictive in the group of Latin notary countries, whereas in regimes dominated by lawyers and licensed real estate agents much more liberal rules are in place.** The Netherlands is a paradigmatic example for a deregulated Latin-notary system. The differences between the notary systems and the other three groups become even more visible (in all three models of weighting), when the Mandatory Intervention Index (MII) is taken into account as well.
- 22** **Regarding the Consumer Protection Index (CPI) the Netherlands exhibits one of the highest levels and the average level for the groups of “lawyers” and “notaries” countries is close.** Average CPI in the Scandinavian countries is somewhat lower than in the other three groups, but this applies mainly due to the ratings for just one country, Finland.
- 23** The suitability of our indices has been tested against plausible alternative schemes, with the result that, overall, the two alternative models of weighting confirm to a high degree the original outcomes obtained from our regulation indices. In other words: sensitivity towards different forms of weighting is low in our regulation indices. **This supports the validity and robustness of the regulation indices calculated according to our model of weighting. There is no large distortion of results caused by particular “subjective weightings”.**

4.2 Market Outcomes: Transaction Costs

- 24** Transaction costs incurred by the buyer and/or seller of property or land comprise fees to professionals, such as real estate agents, for technical services (surveyor etc.) and for legal services (lawyers, notaries, licensed conveyancers), and, in addition, fees for land registration and taxes. In this study the focus is on fees for legal services. To arrive at the fees for legal services in each country and in order to make a cross country comparison, the average steps and costs associated with buying real estate and obtaining proper legal title in each country were assessed: Legal fees typically represent 15% – 25% of all professional fees, accounting for about 7% – 13% of transaction costs (without mortgage) or around 12% of transaction costs for an average house transaction with a 100% mortgage. Nevertheless, this represents a sizeable cost for consumers, and a notable feature is the variation in legal fees between different countries.

- 25 Comparison based on a benchmark transaction value of €250,000 demonstrates that legal fees in Scandinavian countries and the Dutch deregulated notary system are lowest, followed by the lawyer-based conveyancing countries.** Latin notary countries are generally the most expensive. Among these, the surveyed new Member States of Eastern and Central Europe have markedly lower fees in absolute terms than the Western European States. However, fees within the various systems vary widely, so that, for example, there are some Latin notary systems where fees are lower than in the lawyer-system countries of Ireland and Scotland.
- 26** Whereas in the notary countries, legal fees are incremental conditional on the value of the transaction, in Scandinavian countries as well as the UK and Ireland, and to a certain extent in the Netherlands, fee schedules are nearly flat.
- 27 When fees are adjusted by net earnings across countries, or, alternatively, when fees are measured relative to the average house price in each country a similar picture emerges: relative fees are generally lower in Scandinavian countries, followed by many lawyer-system countries and some Latin Notary countries (including the Netherlands).** The Latin notary countries of France, Belgium and Italy are found to have relatively high legal fees. In general, countries exhibiting higher fees tend also to be those countries with a high degree of regulation, as is shown in detailed tables and supported by simple plots of legal fees versus regulation index. Furthermore, an analysis on the basis of fees adjusted by net earnings also indicates that the cross-subsidisation between low and high value transactions in almost all cases does not hold i.e. fees adjusted by net earnings in Latin notary countries are consistently higher than those in the other systems where service providers manage to provide an economically viable service, including in the case of low value transactions.

4.3 Market Outcomes: Assessment of Service

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

- 29 Answers to survey questions addressing each of these aspects of service provided raw data for mathematical conversion into specific variables of service assessment, thereafter aggregated into choice, quality, certainty and speed assessments, each computed per response. For each country studied the average score of each of the four service assessment variables provides a country index. Giving equal importance to these four facets of service provision, an Overall Service Assessment Index (OSA) was calculated for each country.
- 30 **The OSA index is robust** (sample size as well as the distributional effects having been considered). The ranking of countries implied by overall service assessment shows that nearly all places in the ‘bottom half’ of the ranking are taken by Latin notary countries, with the notable exception of Germany. The difference in index values between mainly (non Latin notary) countries and most Latin notary countries is statistically significant. This result is in itself dramatic: **not only does the empirical assessment of service in EU countries, by professionals, associations and consumers not support claims of ‘better’ service in more regulated systems, it indicates that the opposite seems to be happening – namely, that better service in less regulated countries represents the norm.**

4.4 Econometric Analysis

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

argument that high prices are needed to assure high levels of service assessment (quality in a broad sense).

5. Case Studies

5.1 England and Wales: Lawyers and Licensed Conveyancers System

- 33** In England and Wales, legal conveyancing services are provided today by lawyers (solicitors) as well as a para-legal profession called licensed conveyancers. Until the mid-1980s in England and Wales there was no significant competition on the conveyancing market because of the regulatory framework: conveyancing for gain was restricted to the legal profession and advertising of legal services was prohibited by the Law Society, ensuring that there was no overt price competition between law firms. The major reform was the creation of licensed conveyancers thus allowing conveyancing to be done by non-solicitors - a reform driven by the Consumers' Association. Actual entry of these licensed conveyancers took place in 1987. Until then solicitors had a monopoly on conveyancing, or more strictly on conveyancing for gain that is for payment. At that time conveyancing fees were commonly perceived to be high.
- 34** **Research shows that fees fell immediately prior to the reform seeing the introduction of licensed conveyancers, that is in 1986, because of the potential for enhanced competition in conveyancing services.** Thereafter the price analysis is contradictory; it seems clear that licensed conveyancers were generally cheaper than solicitors but not invariably so and that the entry of licensed conveyancers into a local market often, but not invariably, reduced solicitors' prices. This seems to suggest that after a few years of cohabitation within the market a mutual adjustment occurred. Several factors have been offered to explain this: the fact that entry of licensed conveyancers was rather low and that licensed conveyancers have more limited opportunity for business development and risk spreading across different services, and also a slump in the housing market. The research also shows that price discrimination (i.e. fees based on the value of the transaction) had diminished in a contestable market and a flatter fee structure emerged, and that prices had fallen in real terms since the entry of licensed conveyancers. This has worked to the significant benefit of consumers over the past two decades as house prices have risen massively in England and Wales. The relaxation of advertising controls in 1984 was also found to have had a positive effect on price competition. The Government hopes that further competition will be

realised when other multi-service providers (e.g. banks, supermarkets) enter this market as a result of the recent reforms which have just completed their passage through the UK Parliament.

- 35 With regard to the qualitative changes of conveyancing services in the course of the reform process, the literature finds that average satisfaction ratings rose between 1983 and 1986 with respect to access to a solicitor, information provided from the solicitor and time the conveyancing took. Although this is a clear indication of quality improvements in later years, the absence of any significant interaction effects suggests that they are essentially independent of the fee levels paid by the clients. More recent research shows high levels of satisfaction with conveyancers and it is generally considered that standards are high. **The estimated welfare gain, i.e. a comparison with the fees which consumers in England and Wales would have paid under a traditional Latin notary system, using the French notary system as a comparator, amounts to at least 3,749 million Euro in 2006, and shows clearly the advantages of a deregulated competitive system.**

5.2 Germany: Latin Notary System

- 36 Using the data set that contains information on the 96 Bavarian districts, we analyse the entry effects on competitive conduct (mark-ups) in the notary profession in Bavaria, Germany. We focus on two issues in our German case study. First, we estimate the entry impact on the current competitiveness in the Bavarian notary profession. Using the Bresnahan-Reiss Ratio, which measures the rate at which mark-ups or variable profits fall with additional firm entry, we estimate the mark-up reduction of additional firm entry. Second, we analyse the effects of lowering the mark-up(s) on the number of existing notaries that are located across different districts in Bavaria. In order to analyse the effects of geographic entry restriction on the notary profession in Bavaria, we focus on the 96 districts in Bavaria. We chose Bavaria as our "representative" German case for two reasons. First, from the statistical aspect, Bavaria provides the largest data set for Germany. Second, Bavaria is known to have, along with other single profession notary regimes in German regions, the most restrictive entry requirements (both professionally and geographically) for the regional notary profession in Germany.
- 37 The main results can be summarized as follows. First, we find that entry does affect conduct in the notary market. **Empirical results indicate that the current Bavarian notary profession imposes net mark-up in the range of 53 to 116 percent over the**

competitive benchmark (i.e. this is the pricing level at which it is not economically viable for a new competitor to enter the market). Second, the geographic coverage would not decrease significantly if the net mark-ups were to be lowered: A large reduction in net mark-up is met with a slight decrease in the number of geographic districts that are covered (in the sense of number of markets with at least one notary office). For example, if the net mark-up(s) are reduced by 10, 20 and 30 percent then the number of geographic districts covered by at least one notary would decrease only by 1, 3 and 4 percents respectively. Consequently, our case study shows that the argument for a geographic entry restriction with high mark-ups to ensure a high geographic coverage cannot be robustly supported. Thus, from the policy point of view, to improve the welfare of consumers, it might be economically wise to deregulate the profession as the benefits clearly outweigh the costs.

5.3 Netherlands: Deregulated Notary System

38 In 1999, the Netherlands undertook partial deregulation of the Latin notarial profession to create a competitive market in notary services. The Dutch government’s objective has been to promote innovation, service and lower fees, and to provide greater choice for clients. The 1999 reforms have had numerous effects on the conveyancing service market in the Netherlands. First, the *numerus clausus* system was replaced by one that responds more directly to the market. Consequently, the requirements for appointment to the office of notary were modified (i.e. requirement to submit a business plan for approval was introduced and the mandatory work placement for junior notaries doubled from three to six years). The other important change was the abolition of the fixed fee system. In addition the possibility for notaries to perform official activities outside their place of practice was introduced; the Royal Netherlands Notarial Organization (KNB) went from being a professional association to being a public body, its powers and duties being modified accordingly; a statutory basis was provided for collaboration with two related professions in the Netherlands as well as in other countries, with strict rules for enforcing independence and impartiality; a “designated client account” was introduced, along with guarantees to safeguard clients’ monies; the possibility for a notary to be in the salaried employ of another notary (entrepreneur) was introduced.

- 39** **The reforms have improved customer service, innovation, the use of technology, efficiency and customer friendliness.** With regard to the pricing, fees are now calculated using cost-based pricing and consequently fees in the real-estate practice have generally fallen. Consumers can now shop around and thus they are able to reduce their costs substantially for conveyancing services compared with the period before deregulation. Internet sites providing pricing information have emerged to facilitate this. Furthermore, neither the continuity nor the accessibility of the notarial profession has been jeopardised by the deregulation of fees and there is no hard evidence to show that quality has suffered. There has also been a positive increase in the number of notaries (+12%) since 1999 and their employees (+22%) despite the economic downturn, which has seen the number of deeds fall. The welfare gains from the reform can be summarized as follows. **The amounts of 927.2 and 579.6 million Euro respectively, represent the amount of total fees that Dutch customers would have paid before and after the reform for a typical basket of notary services, including family law and property related services. In other words, due to the reform, the total amount of fees has dropped by 37.5%: an annual welfare gain to consumers of 347.64 million Euro.**

5.4 Sweden: Licensed Real Estate Agent System

- 40** **Conveyancing in Sweden has always been done in a fairly free contract form. The parties are free to create the contract and the deed and the use of experts is voluntary.** There is, however, also a long tradition for the majority of sellers to sell the property through a real estate agent who also takes care of the legal side of the sale. Conveyancing has also always been a matter where the professional service most of the time is handled by non-lawyers. A consequence – as well as a pre-requisite – of this is that Swedish law tends to simplify matters. This is done by using standardised contracts and by trying to avoid the creation of new contract types.
- 41** The commission (transaction fee) is almost always paid by the seller. A reason for this is that it is difficult to legally tie a buyer to an obligation to pay commission to the real estate agent. This probably benefits competition in the settling of commissions, since the seller clearly can see how big the agent's cut of the price will be. Moreover, there have never been any fixed commissions in law. In other words, the seller has great possibilities to negotiate with the agent in order to get a favourable commission rate. Estimating the proportion of the agent's commission which relates to the legal work is

not easy, but inquiries indicate this to be around €500. This figure is based on the charges that a lawyer would make for preparing a sales contract for the property transfer.

- 42 With regard to the quality of conveyancing services, in Sweden, the profession has gone from internal quality control (optional, since membership in an association has never been compulsory) to public control. The Real Estate Agents' Board supervises the agents in several ways. The Board handles the licensing of agents as well as the expulsion of unworthy professionals and it gives statements on what constitutes good professional conduct. It also deals with complaints and the Board's decisions on cases are published in a yearbook. They are often also mentioned in newspapers. Consequently, the system creates pressure on agents to behave ethically and also helps maintain the public's trust in agents. The biggest advantage of the Swedish system, particularly when compared with the Latin notary system, is that it involves less professional actors in the transfer of real estate. The agent handles the marketing as well as the legal searches and the drawing up of contracts ("one-stop-shop"). Fewer practitioners mean lower costs for consumers and business. The absence of price regulation might be another reason for low costs. For a thought experiment, the annual consumer welfare gains were estimated by working out how much more consumers would be paying in legal fees if Sweden had a Latin style notary system where prices are fixed and based on the value of the property. Using the French notary system as a comparator, it was calculated that Swedish consumers would be paying legal fees in the amount of 266 million Euro per year. **This amount is about 191 million Euro higher than the current annual level of Swedish conveyancing fees. In other words, the annual welfare gain for not having a typical Latin style notary system would be of the amount of 191 million Euro for Swedish consumers.**

Conclusions and Way Forward

Key Findings

- 43 The following provides an overview of the main conclusions of the study.
- The study provides convincing evidence that deregulated systems (or systems with lower levels of restrictive regulation) produce better outcomes for consumers overall in terms of price and choice. It also concludes that there is no evidence to support claims that higher levels of regulation and higher prices, lead to higher levels of service quality (measured in a broad sense).
 - Of the four types of regulatory systems examined (i.e. traditional, highly regulated Latin notary system, the deregulated Dutch notary system, the lawyer system and the Scandinavian licensed real estate agent system), the study finds that the traditional Latin notary system, which has the highest levels of restrictive regulation, including the use of fixed fees scales and *numerus clausus* performs the worst on all counts:
 - Latin notary countries are generally more expensive than the deregulated Dutch system, the lawyer system or the Scandinavian system especially for higher value transactions (i.e. those €250,000 and over) and have some of the highest absolute legal fees (e.g. France, Belgium and Italy). The fixed fees scales used are often very arbitrary in nature and hardly reflect the real costs of providing the services given they are usually calculated as a percentage of the transaction value. This also leads to vast distortions in notary incomes, which reflect the overall wealth of the area in which their office is situated. The cross-subsidisation argument (whereby high fees for high value transactions subsidise lower fees for lower value transactions) also does not hold in all cases surveyed with the possible exception of one country.
 - It is also very striking that in the service assessment nearly all the places in the "bottom half" of the ranking are taken by Latin notary countries. This is significant indicating that users of Latin notary systems are paying high prices without getting "better services". Indeed the results overall point to the conclusion that better service is provided in the less regulated countries where services are also generally less expensive. This explodes the theory that high

levels of regulation lead to better services and outcomes for consumers. It points to the conclusion that consumers who have no choice but to use the services of Latin notaries, are currently often not getting a good deal.

- The Netherlands case study provides a useful insight into what happens with some deregulation of notary services and provides empirical evidence of the positive effects deregulation can have on consumer welfare. The Dutch model is a modernised version of the Latin notary system where fixed pricing and *numerus clausus* (two of the most radical forms of regulation) have been abolished. On pricing this has resulted in price differentiation and the possibility for consumers to negotiate on fees. The case study shows that the average consumer buying a basket of notary services is considerably better off. There has also been a rise in the number of notaries and innovation is on the up with the emergence of new business structures and the greater use of IT. Importantly quality has not been compromised and in fact the evidence points to better customer service and satisfaction as the removal of fixed fees has made notaries compete on standard of service.
- The German case study shows that the current regulatory set-up for notaries in Bavaria with geographic entry restrictions and high mark-ups to ensure high geographic coverage, cannot be supported empirically and again proves the point that deregulation of prices and of restrictions on entry would enhance consumer welfare.
- The evidence is compelling that the regulation of the Latin notary system in many Member States is in need of an overhaul and that current regulation, especially the use of fixed fee scales and absolute restrictions on entry (e.g. *numerus clausus*), is having an overall negative rather than positive effect on consumer welfare and the standard of notary services (i.e. quality measured in the broad sense). The study finds that this regulation cannot be justified under the proportionality test (i.e. that it serves a clearly defined public interest goal, is objectively suitable to obtain that goal and is the means least restrictive of competition to achieve this goal) and is problematic from a competition and internal market perspective.
- The study raises broader questions too about whether conveyancing should continue to be an exclusive right for certain professions only. It does not seem proportionate or justifiable that lawyers are barred from performing conveyancing

services in Latin notary countries, as they are entitled to deal with substantially much more complex issues like mergers and acquisitions. That said, it is also highly arguable that conveyancing services should be not reserved only to notaries and lawyers. As the English and Swedish case studies show, other suitable qualified and licensed professionals (e.g. licensed conveyancers and licensed real estate agents) can also provide good quality services. This can promote competition to the benefit of consumers as shown in the English case study where the introduction of licensed conveyancers helped reduce price discrimination and a flat pricing structure emerged which has worked to the significant advantage of consumers. The UK Government is now going further with legislation to open the way for supermarkets and financial providers to provide one-stop shops for professional services, including home buying services thus opening the way for greater competition in the conveyancing services market.

- It seems especially hard to understand why the mandatory involvement of notaries in commercial transactions is necessary where often notaries simply take over contracts prepared by the parties' lawyers and their participation merely amounts to an additional layer of bureaucracy and cost. This also applies to consumer transactions in some Latin notary countries (e.g. Slovenia and Portugal) where consumers may employ a lawyer to represent them and take care of their interests, but who are still compelled to use the services of a notary for some elements of the transaction. The lawyer often prepares the contracts and undertakes the necessary checks and simply then passes these to the notary who may then transfer the information into a notary deed for signature by the parties.
- There is also the further question of whether mandatory intervention by professionals in conveyancing transactions is justified at all on grounds of consumer protection and of ensuring legal certainty. In countries such as Austria and Sweden it is possible for consumers to handle standard contracts and procedures themselves by using pre-formulated forms and by applying for registration personally. In Denmark work is underway to examine how to support private parties in handling real estate transactions themselves as part of the Government's efforts to lower the costs associated with buying real estate.

44 In conclusion, this study raises a host of issues about the current regulation of this market and especially the regulation of the Latin notary profession (e.g. fixed prices and *numerus clausus*), the mandatory involvement of certain professionals in conveyancing

and their exclusive rights in this field. It shows that consumer welfare is enhanced under deregulated systems and highly regulated Latin notary systems with fixed prices and *numerus clausus* can be singled out for special criticism as they result in significant consumer detriment in the form of higher prices, without any comparable quality gains.

Way forward

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

“... the deed that he signs is not only the most important financial investment of his life, not only the heaviest and longest debt to which he binds himself, but also an act through which he expects to live a tranquil family life. For this single reason, this act must be girded by the strongest guarantees and these come at a cost.”

46 This comprehensive analysis, both qualitatively and quantitatively, of the conveyancing services market in 21 EU countries clearly shows that the signing of a house deed is indeed “girded or safeguarded by the strongest guarantees” even when the market is deregulated. The question then is: *must this guarantee come at a disproportionately high cost and are there better ways of delivering this guarantee to consumers?*

47 From the evidence we have found, it is our opinion that Member States with the Latin notary system would do well to increase the choice of conveyancing related legal services and to promote the provision of more cost-effective services for consumers. To do this they should act to dismantle overly restrictive regulation such as fixed pricing and *numerus clausus* for Latin notaries. There is also the question of reserving this market to notaries in many Member States and whether this market should be opened up to lawyers and other suitably licensed professions (e.g. licensed conveyancers and real estate agents). We would urge Member States to consider opening up this market to these other professionals. The study has also raised broader questions about whether the mandatory use of professionals in conveyancing is really necessary at all or whether it places an unnecessary financial burden on consumers and business.

I. Introduction

1. Background

- 48 Liberal professions, including legal professions such as lawyers and notaries, are not only among the oldest but also among the most regulated professions in Europe. In a large number of Member States, regulations exist which cover pricing (e.g. fixed fee scales), advertising (e.g. restrictions or bans on comparative or price advertising), limit inter-professional co-operation and business structure. Liberal professions also enjoy a wide range of exclusive rights. Taken together, these add up to highly restrictive anti-competitive arrangements which would be considered unacceptable in most areas of economic activity.
- 49 Against this background, the European Commission has been working to promote reform and modernisation of restrictive regulation in the professional services area since 2002. In a first step, research was carried out which included an independent study of regulation in the professions by the Institute of Advanced Studies in Vienna and published in March 2003.⁶ This study underlined the wide disparities in levels of regulation across the EU, with countries such as Greece and Germany maintaining rather high levels of regulation, while Ireland, the UK, Denmark and the Netherlands have considerably more liberal regimes. It also reveals links between excessive regulation and economic inefficiency.
- 50 Drawing on the IHS study and other fact finding work, the Commission then published two reports⁷ which summarise the Commission's thinking on the scope to reform or modernise specific professional regulation and rules in the professions. Whilst the Commission is not opposed to all regulation of professional services as there are legitimate arguments in favour of certain regulation in this area e.g. to protect consumer interests or safeguard the independence and integrity of a profession, the Commission argues that restrictive regulation needs to meet a strict proportionality test. This means that it is only justified if it serves a clearly defined public interest goal, is objectively

⁶ The study is available at: http://europa.eu.int/comm/competition/liberalization/conference/libprofconference.html_study

⁷ Report on 'Competition in Professional Services' (COM (83)2004) of 9 February 2004 and Commission Communication 'Professional Services - scope for more reform' of 5 September

suitable to obtain that goal and the means least restrictive of competition to achieve this goal.⁸ This is because such regulations eliminate or limit competition between service providers and thus reduce the incentives for professionals to work cost-efficiently, lower prices, increase quality or offer innovative services.

51 In order to gain more precise and specific insights about the economic impact of restrictive professional regulation on specific markets, the Commission in 2006 chose to examine one key market in more detail – that of conveyancing services with a particular focus on legal conveyancing related services. This market is obviously of direct interest to consumers and of high overall economic significance. Indeed, it is estimated that property turnover in the EU27 for 2005 was almost 1,800 billion Euro (around 16% of the EU27 GDP) with the corresponding turnover in property related legal services being around 16.7 billion Euro. Land and buildings also account for between half and three quarters of country wealth in most European economies. Thus, the overall value of UK houses is estimated at more than £1 trillion (2006). And in Germany in 2005, the taxable turnover of real estate transactions handled by less than 9,000 notaries amounted to 136,885 million Euro, which corresponded to a tax revenue of nearly 4.8 billion Euro. Given the substantial size of this market, it is obvious that even a small decrease in transactions costs could realise a huge market potential, which would extend to the creation of new jobs. Efficient property transfer and registration which reduces transaction costs and guarantees property rights is therefore of utmost importance.

52 In many EU countries, the professional regulation and practice surrounding the conveyance of property has failed to keep pace with and address social and technological change (e.g. introduction of on-line land registries). In some EU countries, the system and its regulation has not changed significantly for centuries. The inefficiency of some EU countries' property transfer systems is illustrated in a World Bank Report 'Doing Business' in 2005.⁹ This shows wide disparities in costs and the time taken to register property transfers. Costs range from 13.7% of a property's value in Greece to as little as 0.6% in Denmark (figures include taxes).

2005 to be found at:

http://europa.eu.int/comm/competition/liberal_professions/sec200564_en.pdf

⁸ See e.g. ECJ joined cases C-94/04 and 202/04 Cipolla and Macrino, para 64.

⁹ This report can be found at:

<http://www.doingbusiness.org/documents/DoingBusiness2005.pdf>.

- 53** In other EU countries, though, regulatory reforms have been undertaken in a pro-competitive legal and political environment in recent times with a view to delivering better services to citizens, business and consumers. Thus, in England and Wales, the solicitors' monopoly for conveyancing services was abolished in 1985, and in 1998, the Netherlands deregulated their notarial law, abolishing fixed prices and *numerus clausus* of professionals. Similarly, Italy abolished in 2006 fixed minimum prices for notarial services (but retained the *numerus clausus* and maximum fees), and other States such as Poland and Portugal¹⁰ have implemented reforms or are likely to follow in the near future.
- 54** The economic assessment of deregulation in conveyancing services in theory and the assessment of the English and Dutch reforms in practice – the others being too recent to be evaluated meaningfully – is controversial. Whilst the majority of economists expect the realisation of the general advantages of competition in this field too,¹¹ there are some warning voices among scholars.¹² According to them, competition in markets for services offered by – Latin style continental – notaries might not work properly because of information asymmetries and the need to guarantee an optimal supply of public goods whose quality is difficult to assess for consumers. The English and the Dutch experience is interpreted as showing that deregulation does not deliver lower prices, but that, to the contrary, increased competition may decrease quality and endanger the integrity of the notary as the holder of a public office.¹³
- 55** Against the background just described, this study, commissioned by DG Competition in August 2006, is about analysing the pros and cons of deregulation of conveyancing services in depth, integrating a legal and an economic perspective. 21 EU countries¹⁴ are surveyed for this purpose. These are: Austria, Belgium, the Czech Republic, Denmark, England and Wales, Finland, France, Germany, Greece, Hungary, Ireland,

¹⁰ With respect to reforms in Portugal, see also section 5.1.1.2.

¹¹ See most explicitly B. Arrunada, *Managing Competition in Professional Services and the Burden of Inertia* in: Ehlermann and Atanasiu, *European Competition Law Annual 2004, 2006*, 51-71.

¹² See R. Van den Bergh/ Y. Montangie, *Competition in Professional Services Markets: Are Latin Notaries Different?*, *J. of Competition Law and Economics* 2 (2006), 189-214.

¹³ R. Van den Bergh/ Y. Montangie, *op. cit.* at 189, 198ff.

¹⁴ Please note that while Scotland is not a separate EU Member State it has its own legal system and is therefore analysed as a separate country for the purposes of this study.

Italy, Luxembourg, the Netherlands, Poland, Portugal, Scotland, Slovakia, Slovenia, Spain and Sweden.

2. Aims and Methodology

- 56** The following methodology was applied: The first step involved getting reliable and detailed information on the regulation currently existing in the 21 EU countries. This was achieved by means of a questionnaire covering legal and economic topics, which was sent to selected national reporters, in most cases leading professionals (mainly notaries), academics or both. A list of national reporters can be found with the set of country fiches published alongside this study. In its legal part, the questionnaire covered the basic framework for land transfer, in particular sales contracts and registration, the role of different professionals in the various steps of conveyancing and the regulation of professionals. In its economic part, the questionnaire investigated transaction costs for transfers and mortgages; data on the number, size, concentration, turnover and number of employees of service providers; data on the size of national markets including the number and value of property transactions and the level of professional fees earned from conveyancing per profession, even though data of the latter kind were hardly ever available.
- 57** The first questionnaire for the national reporters was complemented by a second questionnaire asking for the opinions of professionals and consumers on choice, professional quality, speed and costs of professional services as well as on problems such as legal disputes between the contracting parties and between parties and professionals. This questionnaire was made available online at ZERP's Website as of early September 2006 and was promulgated by emails and letters of invitation. In addition, a Belgian market research company was mandated to collect additional replies. All together, we received about 700 replies from 22 countries (this included one reply on the US system which is outside the scope of this study). Finally, interested parties and stakeholders were informed and consulted extensively. A discussion paper on preliminary findings was presented at a conference organised jointly by the Finnish National Competition Authority and DG Competition of the European Commission on the occasion of the Finnish Presidency in Brussels on 13 December 2006. Meetings with leading representatives of the CCBE (Council of Bars and Law Societies of Europe) and the CNUE (Conférence des Notariats de l'Union Européenne) were

convened in January 2007. CCBE, CNUE and BEUC (European Consumers' Organisation) as well as national competition authorities were also invited to comment in writing on the methodology, analysis and preliminary findings in December 2006 and, in January 2007 together with CEPI (Conseil Européen des Professions Immobilières) on the factual data contained in the country fiches, which are published alongside this study.¹⁵ All comments received have been considered carefully.

3. Approach and Structure

58 The legal and economic data collected will be analysed in the present final report as follows:

59 The legal analysis will in a first general part give an overview of the involvement, be it mandatory, usual or occasional, of the different kinds of professionals dealing with buying and selling real estate. This analysis then focuses down to consider in detail the professions involved in providing legal conveyancing services and the regulatory environment in which they operate. It analyses and compares the different regulatory systems across the 21 countries studied, including the rationales invoked by them to justify specific regulatory interventions. The following economic analysis will show empirically the relationship between regulation including its content and intensity and concrete market outcomes in all 21 countries surveyed. In a first step, we reconstruct existing regulations in a quasi-quantitative way by means of regulation indices that are divided into various sub-indices. We then analyse market outcomes: we compare regulation indices to transaction costs. To arrive at the transaction costs for each country, and in order to make a cross country comparison, the study evaluates from a consumer point of view the average steps and costs associated with buying and obtaining a proper title in real estate in each country studied as well as a mortgage covering 70% of the purchase price. Then follows an analysis of other market indicators such as quality, choice and speed of services. These data will also be reconstructed econometrically in a services index, which is again composed of various sub-indices, and through regression analyses and other advanced econometric modelling.

60 The final part of the study consists of four country case studies. In the case of England and Wales and the Netherlands, the outcome of the regulatory reforms carried out will

¹⁵ In those cases in which we received contradictory information, the information by our national

be assessed in depth by analysing the development of chief market indicators (e.g. price, quality, speed, jobs and growth) over time. In a further Swedish case study, the Scandinavian model which does not rely on Latin style notaries will be further analysed. Finally, in a German case study, the effects of (hypothetical) deregulation of notarial services in a single region, namely Bavaria, will be assessed by means of econometric modelling. Bavaria is chosen on account of the existence of a *numerus clausus* of “sole notaries”, i.e. notaries who are not allowed to practise any other profession simultaneously and whose number is fixed by the Ministry of Justice according to needs standards. The executive summary and conclusions summarise the key findings of the study and develop some recommendations on reform of conveyancing services regulation so as to open the market up to greater competition.

- 61** Published alongside this study are a set of "country fiches", which set out key legal and economic findings. These served as a source of information for the study, although other sources have also been drawn on.
- 62** As a final word of caution, it should be noted that this study is by no means premised on a wholesale rejection of all regulation of professional services. Indeed, there are legitimate arguments in favour of certain regulations in this area e.g. to protect consumer interests or safeguard the independence and integrity of a profession. However, we will critically assess possible justifications for regulation and their proportionality. Thus, this study ultimately aims at distinguishing regulation which clearly furthers the public interest from regulation which is unjustifiable or disproportionate and eliminates or limits competition between service providers and thus reduces the incentives for professionals to work cost-efficiently, lower prices, increase quality or offer innovative services.

reporters who acted as independent scientific experts was given priority.

II. Size of the legal conveyancing services market in the EU27

- 63** Data is unfortunately not readily available on the size of the legal services conveyancing market in the EU countries. It has however been possible to get data on the size of the real estate market for some EU countries both in terms of transaction numbers and the value of real estate traded. Using this data we estimate the property turnover of the EU27 and from this the size of the EU legal services conveyancing market.
- 64** For **Austria** and **Germany**, the respective Ministries of Finance provide data on the value of property transfer taxes.¹⁶ In 2005 the value of property transfer taxes was recorded as being 548 million Euro for Austria and 4,791 million Euro for Germany. As the tax rate in both countries is 3.5%,¹⁷ we can calculate the total volume of property transactions for 2005 as being 15,663 million Euro for Austria and 136,886 million Euro for Germany.
- 65** For **Belgium**, the Ministry of Economics indicates that in 2004 there were 201,225 transactions representing a value of 23,098 million Euro.¹⁸ Property transfer taxes in 2004 and 2005 were reported as being 2,033 and 2,412 million Euro.¹⁹ As property transfer tax is 10% in the Flemish Region and 12.5% in the Walloon and Brussels Regions, we use a population-weighted²⁰ property transfer tax rate of 11% and arrive at a property turnover subject to property transfer tax for 2004 of 21,927 million Euro, i.e. 80% of the reported total turnover. We therefore estimate the property turnover for 2005 as being $2,412 \text{ million} / 0.11 / 0.80 = 27,409 \text{ million Euro}$.

¹⁶ Bundesfinanzministerium (2007): Kassenmäßige Steuereinnahmen nach Steuerarten 1950 bis 2006, 25. April 2007, http://www.bundesfinanzministerium.de/cln_05/nn_4158/DE/Steuern/Steuerschaetzung__einnahmen/Steuereinnahmen/0601011a6002.html (17.07.2007)); Statistik Austria (2006), Gebahrungen und Sektor Staat, Teil I, Wien 2006 (http://www.statistik.at/web_de/Redirect/index.htm?dDocName=011846, 18.09.07).

¹⁷ In Austria, the transfer tax is 2% for transactions between family members. In Germany, transactions can be, among others, tax exempt between government entities and close relatives. We consider these types of transactions to be marginal and therefore, negligible.

¹⁸ Source: ecodata, http://ecodata.mineco.fgov.be/mdn/Onroerend_goed.jsp (29.07.2007)

¹⁹ Activiteitenverslag patrimoniumdocumentatie (2005 Statistieken, p.14, (<http://www.patrimoniumdiensten.be/interfakrednl/Publicaties/RAV05.htm> (17.07.2007)).

²⁰ Population, Flemish region: 6,078 600; Brussels region: 1,018,804; Walloon region: 3,413,978.

- 66** For **France**, *Friggit* (2007) calculates the value of property transactions (any taxable property) in 2005 as 223,768 million Euro.²¹ This does not take into account property which has been bought by the government. From the notaries' database *Friggit* calculated that approximately 4% of the total turnover consists of this type of transaction. Adding this in, the total turnover for France is therefore 232,718 million Euro.
- 67** All other EU countries were asked in writing to report the volume and value of real estate traded. Up to the cut off date of 1 October 2007 suitable information was received from Denmark, England and Wales, Estonia, Finland, Latvia, Lithuania, the Netherlands, Scotland and Slovenia.
- 68** For the **Netherlands** the turnover of the residential sector only was provided and for **Italy**, we only have estimations by a local consultancy firm of the residential turnover for 2006.²² We therefore assume that the residential turnover covers 80% of the respective national markets.
- 69** This means that in total we have reliable data for **14 EU countries** (see table II-1 below) representing about 64% of the population and 79% of the GDP of the EU27. If we examine the data for these countries, we see that property turnover is highly correlated with population (0.68) and GDP (0.73). If we exclude England and Wales whose property transfer volume is exceptionally high, we even obtain correlations of property turnover with population of 0.90 and with GDP of 0.91.
- 70** If we estimate the property turnover of the missing countries of the EU27 by extrapolation using GDP or population, we arrive at a figure of 339,568 and 690,434 million Euro, respectively.²³ For further calculations, we use the average (515,001 million Euro). The following table summarises the above information.

²¹ Frigitt, Jacques (2007): Long Term Data on Home Prices in France - French real estate price house prices in France And Other Aggregates, (<http://www.edef.org/statistiques/ltseries.zip> (18.09.07)).

²² See Lunghini, Paola G. (May 2007): Italy – Positive trend reversal, report by order of the Expo Real, (<http://www.exporeal.net/link/en/16808422> (17.07.2007)).

²³ By GDP: $1,251,255 \times 2,343,022 / 8,637,737 = 339,408$ and by population: $1,251,255 \times 174,850 / 317,025 = 690,108$.

Table II-1: Estimation of Property Turnover in 2005

	Population 2005 (in million)	% of EU 27	GDP 2005 (in million €)	% of EU 27	property turnover 2005 (in million €)
Austria	8,236	1.7%	245,330	2.2%	15,662
Belgium	10,479	2.1%	298,541	2.7%	27,409
Denmark	5,419	1.1%	208,267	1.9%	37,284
England and Wales*)	53,390	10.9%	1,624,127	14.8%	540,861
Estonia	1,346	0.3%	11,061	0.1%	3,034
Finland	5,246	1.1%	157,162	1.4%	7,300
France	62,702	12.7%	1,717,921	15.6%	232,719
Germany	82,469	16.8%	2,241,000	20.4%	136,886
Latvia	2,301	0.5%	13,012	0.1%	1,462
Lithuania	3,414	0.7%	20,621	0.2%	3,068
Netherlands	16,320	3.3%	505,646	4.6%	57,522
Italy**)	58,607	11.9%	1,423,048	13.0%	150,000
Scotland***)	5,095	1.0%	144,367	1.3%	36,775
Slovenia	2,000	0.4%	27,634	0.3%	1,880
Sum	317,025	64.5%	8,637,737	78.7%	1,251,860
other of EU 27	174,850	35.5%	2,343,022	21.3%	515,007
EU 27	491,875	100.0%	10,980,760	100.0%	1,766,867

Source for population and GDP: Eurostat; sources for property turnover; Austria: Statistik Austria; Belgium: Ministry of Economics; Denmark: Ministry of Taxation; England and Wales: HMPA Division, Department of Communities and Local Government; Estonia: Statistics Estonia; Finland: Finnish Competition Authority; France: Friggitt (2007); Germany: Federal Ministry of Finance; Latvia: Ministry of Justice; Lithuania: State Enterprise Centre of Registers; Netherlands: Ministry of Economic Affairs; Italy: Lunghini (2007); Scotland: Registers of Scotland; Slovenia: Ministry of Finance.

*) GDP of England and Wales is about 90% of total UK.

**) Property turnover is estimation for 2006.

***) GDP of Scotland is about 8% of total UK.

71 This table illustrates that the real estate market is a very substantial one with an estimated property turnover in 2005 of almost 1,800 billion Euro (which corresponds to around 16% of the EU27 GDP).

72 From various sources (see annex 1, Transaction Cost Tables) we have information on the average transaction value/price and the corresponding cost (or fee level) of legal conveyancing services for 18 EU countries (representing 89% of the EU27's

population). The average fee level for conveyancing services for the EU27 as a whole is then calculated, using the average fee level for each country weighted by population. This is summarised in table II-2 for the EU27. The individual countries are grouped according to the "different worlds" of regulation for legal conveyancing services:

1. The traditional system of Latin notaries.
2. The de-regulated Latin notary system of the Netherlands.
3. The lawyers systems of England/Wales, Ireland and Scotland (where solicitors provide most of the respective services) and in countries like the Czech Republic where clients can decide to consult a lawyer instead of a notary.
4. The north European/Scandinavian model, where most relevant services are provided by real estate agents.
5. Hybrid systems where typically both a notary and a lawyer are involved (Greece and Hungary)

Table II-2: Estimation of Average Transaction Price and Fees for Legal Services for the EU 27²⁴

	Population 2005 (in million)	average transaction price (in Euro)	fee for legal service*) (in Euro)
Latin notary countries			
Austria	8,236	150,000	1,566
Belgium	10,479	167,000	2,475
Germany	82,469	130,863	885
France	62,702	226,630	2,711
Italy	58,607	129,532	2,501
Poland	38,165	100,000	677
Slovenia	2,000	100,000	810
Spain	43,398	172,630	1,038
sum	306,058	(62.2% of EU 27)	
Netherlands – deregulated notary country			

²⁴ Countries are listed in this table under the five different regulatory models for conveyancing services in Europe identified in this study. A summary of these different models is provided in the legal part of this report.

	Population 2005 (in million)	average transaction price (in Euro)	fee for legal service*) (in Euro)
Netherlands	16,320	202,000	1,121
sum	16,320	(3.3% of EU 27)	
Lawyer countries			
England and Wales	53,39	297,750	1,412
Czech Republic	10,236	100,000	1,201
Ireland	4,159	303,310	2,662
Scotland	5,095	193,860	1,623
sum	72,880	(14.8% of EU 27)	
Scandinavian countries			
Denmark	5,419	221,743	2,026
Finland	5,246	123,756	577
Sweden	10 666	147,500	500
sum	21,331	(6.4% of EU 27)	
Hybrid countries			
Greece	11,104	130,000	3,850
Hungary	10,087	100,000	2,280
sum	21,191	(4.3% of EU 27)	
sum all 18 countries	437,780	(89% of EU 27)	
EU 27	491,875	172,302**)	1,625**)

Source for population: Eurostat.

*) Assuming an average transaction price

**) Average, weighted by population

73 If our estimations hold, we can calculate an estimate for the total annual amount of legal fees for conveyancing services for the EU27 using the average transaction price for the EU27, the average fee for the EU27 and the estimated property turnover for the EU27 as follows:

fee for legal service / average transaction price x property turnover

≈

annual amount of legal fees for conveyancing services

1,625 / 172,302 x 1,766,867 million Euro ≈ 16,663 million Euro

- 74** Due to limited data the above represents a very approximate estimation. Furthermore, these figures do not take into account legal costs associated with registering changes to mortgages (e.g. a remortgage or switching of lender) where it is necessary to use a notary or lawyer. The real turnover in property related legal services might therefore be significantly higher or lower than 16.7 billion Euro. But as our estimation is only intended to illustrate the importance of the market for legal conveyancing services in the EU27 we think our approach is appropriate.
- 75** **So in summary the real estate market is big with an estimated property turnover in 2005 of almost 1,800 billion Euro (around 16% of the EU27 GDP) and the corresponding turnover in property related legal services being around 16.7 billion Euro in 2005.** Given the substantial size of this market, it is obvious that any reduction in legal fees as a result of pro-competitive reforms will bring significant financial benefits to consumers all over Europe.

III. Legal Part

1. Definition: Conveyancing disaggregated

Table III-1: Steps in the Conveyancing Process

Steps in the Conveyancing Process
Agent Services: matching parties
Technical Services - evaluation of land and buildings - energy check, directive 2002/91/EC
Legal Services - preliminary contract - preliminary checks (land register, administrative permits, esp. building permit) - legal advice or counselling - drafting the sales and/or transfer contract (often taking the form of a deed, i.e. a formal, legally regulated and in some countries even sealed document, on which the signatures of the parties are certified to be authentic by the legal draftsman) - certification (= authentication) of signatures - contract execution (transfer of payment and registration) - taxation (transfer tax)

76 Before addressing the different types of professionals and their roles, a description of what we understand by the conveyancing process and its different steps is of order. With some variations, this usually involves the following steps in all countries surveyed: After **(1) buyer and seller have been found**, often with the help of real estate agents, **(2) an evaluation of the land and the building** by technical experts is made in a number of countries. Specifically, this may involve an energy check (rendered mandatory by the EU Directive on the energy performance of buildings, 2002/91/EC) and an overall evaluation on behalf of the buyer and/or the seller, which is in a number of countries required by lending banks. Thereafter, in many countries, **(3) a preliminary contract** is usually concluded, which may be done by the parties alone or with the help of a professional. As a next step, **(4) preliminary legal checks** are carried out, which include the control of the land register (including registered debts), a search for (other) debts for which the buyer may be liable and a scrutiny of the building permit for an existing structure. After this, **(5) the sales contract and/ or a transfer contract (effecting ipso iure, or being a legal condition for the transfer of property)** is drafted on the basis of legal advice given by the draftsman (or the parties are counselled by their legal representatives one of whom drafts the contract). Often, the

contract(s) need(s) to take the form of a **deed** ("acte authentique", "notarielle Urkunde"), i.e. a formal and in some countries witnessed and/or sealed document, on which the signatures of the parties are certified to be authentic by the legal draftsman in a special procedure. The ensuing **(6) contract execution** includes the application for and the control of administrative permits, the transfer and control of the payment (this may be done through a specific escrow account of the professional or the buyer's notice to the professional) and, finally, **(7) fulfilling taxation obligations** (encompassing notice of the contract to the tax authorities, calculation of the applicable tax, payment and its control or tax retention from the sales price).

77 As will be shown, the involvement of legal and other professionals in these steps differs widely among European countries.

2. Types of Professionals and Services Offered

Table III-2: Overview of Different Services in Conveyancing

<i>"Matching Services"</i>	<i>Technical Services</i>	<i>Legal Services</i>
real estate agents	architects	civil law notaries
	surveyors	lawyers (advocates and solicitors)
	engineers	scandinavian licensed real estate agents
		other professionals: licensed conveyancers (England, Wales and Scotland) gestor administrativo (Spain)

78 Professionals involved in the various steps of conveyancing in Europe include real estate agents, technical experts (mostly architects, surveyors, engineers) and legal professionals (e.g. notaries, lawyers) who constitute the focus of our study.

2.1 Real Estate Agents

79 All over Europe, real estate agents have the basic function of matching the parties for a transaction. Whereas real estate agents are in many cases prohibited from offering any legal services, this is allowed and usual in another group of countries including Austria, France, the Netherlands, Portugal, Slovakia, Slovenia and Spain. In Scandinavia, (licensed) real estate agents provide full legal services (see 2.3).

- 80 The involvement of a real estate agent seems to oscillate **around 70%** in most countries, more in the urban centres, less in the countryside, more in prosperous areas, less in poorer areas. Involvement of a real estate agent is **non-mandatory** in all countries. Involvement of a real estate agent is somewhat **higher** in countries, where the real estate agent also performs **legal services** (Scandinavian countries). Involvement seems to be lower in the newly acceded Central and **Eastern European** countries (e.g. Hungary, Slovenia). Finally, a unique feature may be found in France and Belgium: there notaries are also allowed to act as real estate agents – a cumulation of roles prohibited by statute or professional rules in all other States under exam.
- 81 Generally, real estate agent services tend to be little regulated in most European countries. They will be covered as well in the present study to the extent that they provide legal services as in Scandinavia. However, we will not deal with their function in matching parties.

2.2 Technical Services

- 82 Generally, technical services are sought only rarely by the buyer. Technical services are **not mandatory** in any of the countries analysed. In most countries, technical experts are involved in **less than 10%** of all property sales. Basically only in the **UK, Ireland, Denmark** and **France** is a technical expert usually involved. A paramount reason why many buyers think that they do not need a technical expert seems to be the statutory duty of the seller in the continental legal systems to disclose major hidden defects of the sold property. This duty to disclose hidden defects renders technical expertise less important. Nevertheless, when a bank loan is sought, the bank would in many countries send their expert to value the property.
- 83 The same reasons might explain why a survey is very common in the English, Irish and Scottish systems. In these systems, there is no requirement of disclosure, but the rule is “caveat emptor” (= the buyer has to check the goods sold, if he wants to make sure that they are in a proper condition). Usually, the rule of caveat emptor is however being mitigated by a practice of asking the seller for a whole list of conditions of the premises sold.
- 84 In England, Italy and France, the bank financing the buyer also requires a technical survey of the acquired property. However, it is hard to identify a precise reason why in

the continental systems it is only French and Italian banks who demand such an evaluation.

- 85** Moreover, technical services are now required by European law under the EU **Directive 2002/91/EC** on the energy performance of buildings, but which has not yet been implemented in most member states (except Denmark and France). After implementation, the seller will have to employ an energy expert, unless he already has a recent “energy certificate” (e.g. for a rental house). The involvement of technical experts will therefore likely increase in future.
- 86** Finally, it should be mentioned that England is currently phasing in the introduction of a “home information package”, that obliges the seller to provide structured information on the property. Whilst, at a previous stage in the English discussion, a “home condition report” about the technical state of the building was intended to become a mandatory requirement, now such a report is only optional. An energy performance certification is however a mandatory part of this. Beyond England, only in Denmark is a “property condition survey” containing similar technical data on the property usual.

2.3 Legal Services

Table III-3: Providers of Legal Conveyancing Services

	Real Estate Agents	Lawyers (advocates/solicitors)	Notaries	Other Legal Professionals
Austria	Rare (preliminary contract)	Usual (contract: advocate or notary)	Usual (contract and registration by notary or court mandatory)	–
Belgium	Barred	Rare	Mandatory (deed required for registration)	–
Czech Republic	Barred	Usual (contract and certification of signatures)	Sometimes (contract and certification of signatures)	–
Denmark	Usual (contract)	Usual for buyer (deed of conveyance and registration)	–	–
England and Wales	Barred	Usual (contract and registration)	–	Licensed conveyancers: rare (instead of solicitor)
Finland	Usual (contract)	Rare	Mandatory (certification of signatures)	–
France	Sometimes (preliminary contract)	Rare	Mandatory (deed required for registration)	–
Germany	Barred	Rare	Mandatory (contract and transfer of property)	–

	Real Estate Agents	Lawyers (advocates/solicitors)	Notaries	Other Legal Professionals
Greece	Barred	Mandatory in most cases (witness contract; registration)	Mandatory (contract and certification of signatures)	–
Hungary	Barred	Mandatory (contract and certification of signatures: advocate or notary)	Mandatory (contract and certification of signatures: advocate or notary)	–
Ireland	Barred	Usual (contract and registration)	–	–
Italy	Barred	Rare	Mandatory (deed required for registration)	–
Luxembourg	Barred	Rare	Mandatory (deed required for registration)	–
Netherlands	Rare	Rare	Mandatory (deed required for transfer of property and registration)	–
Poland	Sometimes	Rare	Mandatory (contract and certification of signatures)	–
Portugal	Sometimes (contract drafting)	Usual (assistance for buyer)	Mandatory (deed required for registration)	–
Scotland	Barred	Usual (contract and registration)	–	Licensed conveyancers: rare (instead of solicitor)
Slovakia	Sometimes (contract drafting)	Sometimes (contract)	Mandatory (certification of signatures by notary or municipal body)	–
Slovenia	Sometimes (contract drafting)	Sometimes (contract)	Mandatory (certification of signatures)	–
Spain	Sometimes (preliminary contract)	Rare	Mandatory (deed required for transfer of property and registration)	Gestor administrativo: usual in contract execution
Sweden	Usual (contract drafting and registration)	Rare	–	–

87 Representing different regulatory traditions and models, the following professionals offering legal services in conveyancing may be found in Europe today:

88 **Civil law notaries: the civil law notaries, which derive from the Latin tradition**, are the most important group Europe wide, which is dominant in all Western continental European states from Portugal to Germany and in most Eastern European countries including Poland, Slovakia, Slovenia and the Baltic countries (the latter not being represented in the present study). Latin notaries are normally single profession notaries

except in some regions of Germany where lawyers may be admitted as notaries after several years of practice. Finally, a different form of notaries not deriving from the Latin tradition exists also in Finland. However, the role of Finnish notaries is limited to the authentication of signatures. The UK has Notaries Public but they are not involved as a matter of routine in the conveyance of property located in the UK.

- 89** **Lawyers** (solicitors or advocates): They are dominant in the UK (England and Wales and Scotland) and Ireland as well as in the Czech Republic and Hungary, but also play an important role in Austria. A fundamental difference between the notary and the lawyer system is that in the latter case, in a majority of instances (always in the UK and Ireland, sometimes also in the Czech Republic and Hungary), each party is represented by their own lawyer. This may be safer but also renders the transaction more complicated.
- 90** In certain cases, **lawyers and notaries**, are simultaneously involved in providing legal services. This is typical for commercial estates all over Europe where companies in many cases have contracts drafted by lawyers, often even by their own in-house lawyers. In these cases, if a notary's intervention is mandatory (as it is in most continental countries), the notary typically uses the contracts prepared by the lawyers. However, in a minority of countries, the simultaneous involvement of lawyers and notaries is usual also in residential conveyancing. Thus, in Greece, on top of the notary, both parties are also represented by lawyers (this is mandatory for transactions over a certain value); in Hungary, lawyers usually do the transfer of property whereas notaries are used to draw up the loan and mortgage agreement (which is generally requested by the lending bank, as a notarial deed is considered to be directly enforceable); finally, in Portugal, on top of the notary, the buyer is normally represented by a lawyer throughout the whole conveyancing process (although there is no mandatory requirement).
- 91** **Real estate agents** may in a number of countries also fulfil legal tasks. Thus, in countries of the Romanic law family (France, Belgium, Spain and Italy), agents without mandatory legal education often draft the preliminary contract or even, as in Spain, the sales contract itself, the intervention of the notary being limited to drafting the deed of conveyance at a later stage. For consumers, this may have dangerous consequences in that they may already have committed themselves to detailed contracts before a legal professional has been consulted. In France and Belgium, there is the special situation that notaries (just as other lawyers) may also offer agent services to a limited extent which leads to a dubious tying of different markets.

92 In the Scandinavian countries, the whole conveyancing process is in most cases done by **licensed real estate agents**, who normally have a specialised university degree which includes a range of legal subjects. The Scandinavian agents combine traditional agent services, i.e. matching the parties, with full legal services similar to those of a continental Latin notary. However, the pure form of the Scandinavian model exists only in Sweden. In Denmark, whilst the seller is represented by an estate agent, the buyer is usually represented by a lawyer; and in Finland, as mentioned, there exists a specific form of notary, typically civil servants acting as “part-timers”, who have the sole task of authenticating the signatures of a sales contract and who do not give legal advice. Finally, in three countries, additional professionals are involved: In England and Wales as well as Scotland, **licensed conveyancers** (legal professionals exclusively competent in conveyancing) have been admitted since the 1980’s by the Thatcher government as competitors to solicitors albeit limited to conveyancing. However, they exist only in small numbers and handle less than 5% of all property sales in England and Wales, and only a minimal share in Scotland. In Spain, finally, the execution of notarial deeds (registration and taxation in particular) is usually done by *gestores administrativos* who are typically affiliated to mortgage banks who are said to insist (illegally) on the use of their own *gestores* in a considerable number of cases.

3. Mandatory or Voluntary Involvement and Scope of Services

Table III-4: Overview of the Mandatory or Voluntary (expressed in % terms) Involvement of the Most Common Professionals in Conveyancing Transactions

	<i>real estate agent</i>	<i>technical services</i>	<i>Legal services (lawyer or civil law notary)</i>	<i>licensed conveyancer</i>
Austria	50%	n.a.	In practice: 50% lawyer 40% notary and it is usual to use a notary for certification of signatures (95%)	n.a.
Belgium	50-75%	Usual, with regional differences	Notary mandatory	n.a.
Czech Republic	90%	90% (appraisers)	65% advocates, 35% notaries	n.a.
Denmark	90%, acting for the seller	90%	80% lawyer for buyer	n.a.
England and Wales	90-95%	Mostly surveyor	97% of the market (2 lawyers)	Rare (3% of the market)

	real estate agent	technical services	Legal services (lawyer or civil law notary)	licensed conveyancer
Finland	75-90%	Usual	Only certification of signature by notary mandatory	n.a.
France	25-50% 35%-40% among private persons	90%-100%	Notary mandatory	n.a.
Germany	50%	n.a.	Notary mandatory	n.a.
Greece	15%	n.a.	Notary mandatory and lawyer too for transactions over 29,347 €	n.a.
Hungary	15% for C2C 70% for B2C, B2B ²⁵	1%-2%	Mandatory (lawyer or notary) In practice: 99% lawyer 1% notary and it is usual to use a notary to draw up the loan and mortgage agreement	n.a.
Ireland	80%	Mostly surveyor	99% 2 lawyers	n.a.
Italy	75%	n.a.	Notary mandatory	n.a.
Luxembourg	90%	n.a.	Notary mandatory	n.a.
Netherlands	50%	Rare	Notary mandatory	n.a.
Poland	40% (25%-50%)	n.a.	Notary mandatory	n.a.
Portugal	80%	Energy certificate mandatory	Notary mandatory and it is usual for the buyer to use a lawyer to represent their interests throughout the buying process	n.a.
Scotland	80%	Mostly surveyor	99% 2 lawyers	rare
Slovakia	70%	n.a.	Only certification of signature by notary mandatory	n.a.
Slovenia	25-50% urban areas 5%-25% rural areas	n.a.	Only certification of signature by notary mandatory	n.a.
Spain	25-50%	n.a.	Notary mandatory contract execution often carried out by a <i>gestor administrativo</i>	n.a.
Sweden	85%	Physical survey common	Usually real estate agent	n.a.

²⁵ C2C = consumer to consumer; B2C = business to consumer; B2B = business to business

- 93 For assessing the efficiency of conveyancing services, the question whether the involvement of a certain professional is legally mandatory or not is of key importance. In most continental countries, intervention by a civil law notary is mandatory by statute for every property sale. In some countries (e.g. Hungary) the intervention of either a lawyer or a notary is mandatory. The intervention of a real estate agent is not mandatory in any country.
- 94 However, the scope of intervention of notaries is widely different. In Germany and Poland, **a detailed sales contract and a separate contract transferring the property** need to be drafted by a notary, though both are usually done in one document. If the notarial form is not observed, the transfer will not be legally valid and will be denied registration. In some other countries including the Netherlands and Spain, whilst the parties themselves or an estate agent drafts the detailed contract of sales, the subsequent **notarial contract transferring the property** will repeat so to speak the essential legal elements. In yet a third group of countries following the French model (including France, Belgium, Italy, Luxembourg and Portugal), a notarial instrument is required only for the **registration procedure**. This means that a simple written (or even oral) contract is perfectly valid under private law and may even entail the transfer of property, but that the application for registration must be accompanied by a notarial contract. As only the registration makes the title opposable to third parties, this renders a notarial contract factually mandatory. In these countries, the preliminary contract may be drafted by someone else – the parties themselves, an estate agent or a lawyer. In yet another group of countries, only a **certification of signature** for the registration in the land register is required. Whereas in Slovakia and Slovenia, there is no alternative to the notary, in Austria and the Czech Republic the certification can also be done by the district court, in the Czech Republic also by an advocate. In all these countries, the drafting of the contract is mostly done by lawyers (who enjoy the exclusive right to offer this service for money) or by the parties themselves – with the exception of Austria where notaries have retained a considerable market share.²⁶
- 95 An exceptional case is provided by Hungary. Here, the intervention of a legal professional is mandatory, but the parties may retain either a civil law notary or a lawyer (which happens in more than 99% of all cases). It should be noted though that in Hungary it is usual for the lending bank to require that a notary be used to draw up the

²⁶ This is also due to the fact that certification at court is more costly than notarial certification and that the office hours of courts are more limited.

loan and mortgage agreement, as a notarial deed is directly enforceable. Another hybrid system, characterised by the involvement of both notaries and lawyers in average transactions, is to be found in Greece. Here, it is mandatory to use a notary for the draft of the contract; the presence of a lawyer (at least one for each party) is also required when the value of the transaction exceeds €29,347.

- 96 In England and Wales, Scotland and Ireland, no professional involvement is mandatory, and the parties may draft the contract themselves or with the help of anyone, but solicitors or licensed conveyancers (who do not exist in Ireland) enjoy exclusive rights in offering conveyancing services for money. Finally, only in two countries, Denmark and Sweden, neither mandatory involvement nor exclusive rights exist, though in practice licensed real estate agents are involved in the vast majority of cases.²⁷
- 97 It is obvious that when comparing especially professional fees, the widely different scope of professional services should be borne in mind.

4. Professional Regulation

- 98 The three main types of professionals offering legal services - notaries, lawyers, and real estate agents in a number of countries – are regulated very differently as regards market entry and market conduct.

4.1 Real Estate Agents

Table III-5: Regulation of Real Estate Agents

<i>Restrictive regulation on:</i>	Numerus clausus	Subjective requirement	Market conduct regulation	Mandatory insurance	Conduct control	Fee regulation
<i>Austria</i>	No	Exam	Almost none	No	No	Maximum fee
<i>Belgium</i>	No	Exam	Almost none	Yes	Some	No
<i>Czech Republic</i>	No	Almost none (only trade certificate)	No	No	No	No
<i>Denmark</i>	No	University degree + license	Some	Yes	Yes	No
<i>England and Wales</i>	No	Almost none	Almost none	No	No	No

²⁷ In Finland, there is the obligation to use the Finnish style side-job notary for the certification of signatures; for all other services, neither mandatory intervention nor exclusive rights exist.

<i>Restrictive regulation on:</i>	Numerus clausus	Subjective requirement	Market conduct regulation	Mandatory insurance	Conduct control	Fee regulation
<i>Finland</i>	No	Exam	Yes	Yes	Some	Reasonable
<i>France</i>	No	No	Yes	No	No	No
<i>Germany</i>	No	Almost none	No	No	No	No
<i>Greece</i>	N.a.	N.a.	N.a.	N.a.	N.a.	N.a.
<i>Hungary</i>	No	6 months course + Exam	No	No	No	No
<i>Ireland</i>	No	License	No	No	No	No
<i>Italy</i>	No	Exam	No	Yes	No	No
<i>Luxembourg</i>	No	Exam	Some	Yes	Some	No
<i>Netherlands</i>	No	No	No	No	No	No
<i>Poland</i>	No	License	Some	Yes	No	No
<i>Portugal</i>	No	University Degree or Exam + License	Some	Yes	Some	No
<i>Scotland</i>	No	No	No	No	No	No
<i>Slovakia</i>	No	University degree or 5y. practice + License	No	No	some	No
<i>Slovenia</i>	No	Exam	Yes	Yes	Yes	Maximum fee
<i>Spain</i>	No	Exam	No	No	No	No
<i>Sweden</i>	No	University degree + license	Some	Yes	Some	No

- 99** In most countries, real estate agents are not at all (England, France, Germany) or very little regulated. **Numerus clausus** does not exist in any country. Most countries, however have some **subjective requirements**, such as an exam or a license. The standards differ; some countries such as Poland even require university studies. Other countries have only very basic requirements (e.g. excluding bankrupt persons) (e.g. England, Germany).
- 100** Conversely, market conduct regulation does not widely exist. **Mandatory insurance** exists in about half of the countries surveyed (Denmark, Finland, Italy, Poland, Slovenia), but not in most of the larger states (Austria, England, France, Germany). **Conduct control** exists only in Denmark, Slovenia and – to a lesser extent – in Finland. **Maximum fee** regulations exist only in Austria and Slovenia; in Finland the fees must not be unreasonable.
- 101** Looking at the states with more regulation, they fall into two groups: Scandinavian states (Denmark, Finland, Sweden), and some newly acceded Central and Eastern

European States (especially Poland, Slovakia, Slovenia). The higher regulatory standards in Eastern Europe are difficult to explain given the fact that Eastern European real estate agents perform the same function as their Western European colleagues. At any rate, the higher standards in Eastern Europe correlate with lower numbers of real estate agents in the relevant countries, if compared with Western Europe.

- 102** Considering that they perform also legal services, Scandinavian licensed real estate agents are regulated relatively little. Entry to the profession is conditional on registration with a Board of Agents (Sweden) or similar institution. Requirements for registration include passing an exam as well as proof of professional insurance. In Denmark, admission to the exam requires special education and two years practice; in Sweden, two years study, one year of which is devoted to law, and 10 weeks practice. Whilst Danish and Finnish agents are under no duty of neutrality (observing “good brokerage practice” being sufficient), such a duty was stipulated for Swedish agents in 1984, albeit it could be argued that this is flawed by the controversial exception to help the seller to get the best price. Fees are not regulated; in Denmark, former fee recommendations have been abolished on the request of the competition authority. In practice, fees exist as flat or percentage based commissions.

4.2 Latin Notaries

Table III-6: Regulation of Latin Notaries (this analysis therefore excludes Finland)

	<i>Numerus clausus</i>	<i>Subjective Requirements</i>	<i>Fixed fees (absolute if not otherwise indicated)</i>	<i>Fixed location</i>	<i>Interprofessional coop. restrictions</i>	<i>Other business structure restrictions</i>	<i>Advertising restrictions</i>	<i>Neutrality</i>
Austria	Yes	Univ. degree + prof. exam	Fixed maximum	Yes	Yes	Yes	Yes	Yes
Belgium	Yes	Univ. degree + prof. exam	Yes	Yes	Yes	Yes	Yes	Yes
Czech Republic	Yes	Univ. degree + prof. exam	Yes	Yes	Yes	Yes	Yes	Yes
France	Yes	Univ. degree + prof. exam	Yes	Yes	Yes	Yes	Yes	Yes
Germany	Yes	Univ. degree + general prof. exam	Yes	Yes	Yes	Yes	Yes	Yes
Greece	Yes	Univ. degree + prof. exam	Yes	Yes	Yes	Yes	Yes	Yes
Hungary	Yes	Univ. degree + prof. exam	Yes	Yes	Yes	Yes	Yes	Yes

	Numerus clausus	Subjective Requirements	Fixed fees (absolute if not otherwise indicated)	Fixed location	Interprofessional coop. restrictions	Business structure restrictions	Advertising restrictions	Neutrality
Italy	Yes	Univ. degree + prof. exam	Fixed minimum up to 2006/ now maximum limits, but practice is unclear	Yes	Yes	Yes	Yes	Yes
Luxembourg	Yes	Univ. degree + prof. exam	Yes	Yes	Yes	Yes	Yes	Yes
Netherlands	No	Univ. degree + prof. exam	No	No	Some	No	No special restrictions	Yes
Poland	Yes	Univ. degree + prof. exam	Fixed maximum	Yes	Yes	Yes	Yes	Yes
Portugal	Yes	Univ. degree + prof. exam	Yes	Yes	Yes	Yes	Yes	Yes
Slovakia	Yes	Univ. degree + prof. exam	Yes	Yes	Yes	Yes	Yes	Yes
Slovenia	Yes	Univ. degree + prof. exam	Yes	Yes	Yes	Yes	Yes	Yes
Spain	Yes	Univ. degree + prof. exam	Yes	Yes	Yes	Yes	Yes	Yes

103 In the view of the Member States concerned, Latin notaries are assigned a dual role as holders of a public office and liberal professionals (see also in this chapter section 5.1). Many of the regulatory restrictions applying to notarial services are based on their public office characterisation. Alongside subjective requirements (university degree and one or more professional exams), entry to the profession is restricted by **numerus clausus**, i.e. there is a limited number of professionals which is generally determined by the Ministry of Justice together with Notaries' Professional Associations according to objective needs criteria. The main exception lies with the **Netherlands**, where numerus clausus has been abolished in the 1998 reform; since then, market entry presupposes a detailed business plan. Another peculiar feature of Latin notaries is **fixed fees**. Whereas **statutorily fixed fees** were the universal rule in all notarial systems up until 1990, today, there is a trend towards deregulation. Thus, in **Austria** and in the **Netherlands** fixed fees have been abolished and **Italy** abolished fixed fees for all liberal professions in 2006 by a legislative decree (although it should be noted that fixed maximum fees still exist in Austria and Italy). However, regarding notaries in Italy, the legal situation is rendered opaque by a contradicting posterior provision in the notarial law which prohibits unfair price competition amongst notaries. Apparently, the exact meaning of this provision and its relationship with the liberalisation decree has not yet

been clarified. Other countries such as **Germany** have recently liberalised lawyer fees (for out of court services only), but kept statutorily fixed fees for notaries.

- 104** Similarly, in all states, except the Netherlands, the notary is appointed for a **specific location**. This means that he is restricted to providing services in a given area (which, working in his area, does not bar him from authenticating deeds for property situated outside that area). In addition, some states (e.g. Germany, Italy and Spain) require for registration in the land register that deeds be done by notaries who are established in this state.
- 105** Also, **limitations on inter-professional cooperation** and **business structure** are frequent in all states. Thus, notaries are generally prohibited from entering into formal cooperation, or from establishing common businesses, with tax specialists, lawyers and real estate agents. Beyond that, notaries are generally prohibited from exercising other professions at the same time. Generally, with the exceptions of France and Belgium, notaries must not act as real estate agents. With the exception of some German regions (Länder), notaries must not act as lawyers either.²⁸
- 106** Lastly, in all surveyed states, notarial **conduct** is regulated by statute. To start with, acting for both parties, notaries are subject to strict duties of **neutrality and impartiality**. Detailed conduct regulation is typically left to self regulation by professional associations. Specifically, these enact professional standards including deontological codes and are generally competent to supervise professional conduct of their members. Also there is regulation for the notarial procedure to be observed e.g. with the authentication or notarisation of documents. Finally, further regulations are common to restrict advertising which do not seem to be implemented strictly in some countries.

²⁸ This combination may elsewhere only be found in some Swiss cantons.

4.3 Lawyers

Table III-7: Regulation of Lawyers in Conveyancing²⁹

	Numerus clausus	Subjective requirements	Fixed fees	Acting for 2 parties allowed	Inter-professional cooperation Restrictions	Other business structure restrictions	Advertising restrictions
Austria	No	Univ. degree + prof. exams	(non-binding) fee table	Yes	Severe	Few	Some (price ad not allowed)
Czech Republic	No	Univ. degree + prof. exams	(non-binding) fee table	Yes	Few	Few	General rules apply
Denmark	No	Univ. degree + prof. exams	no "reasonable fee"	Yes	Few	Few	General rules apply
England & Wales	No	Univ. degree + prof. exams / alternative routes	No	Yes	Severe (but in the process of being reformed)	Almost none	General rules apply
Finland	No	None, but for admission to Bar univ. degree + prof. exams	No	Yes	No	No	General rules apply
Greece	No	Univ. degree + prof. exams	Fixed minimum fees	Yes	Severe	Severe	Severe
Hungary	No	Univ. degree + prof. exams	No	No	No	No	Forbidden
Ireland	No	Univ. degree + prof. exams	No	No	Severe	Few	Considerable
Portugal	No	Univ. degree + prof. exams	No	No	Few	Few	Some + general rules
Scotland	No	Univ. degree + prof. exams	No	No	Severe	Almost none	General rules apply
Slovakia	No	Univ. degree + prof. exams	No	No	None	Few	Some
Slovenia	No	Univ. degree + prof. exams	Yes	No	Severe	Severe	Forbidden
Sweden	No	Univ. degree + prof. exams	No	Yes	Few	Few	General rules apply

107 Generally, lawyers (solicitors in the UK and Ireland and advocates on the continent) active in conveyancing are less strictly regulated than notaries. This applies likewise to market conduct regulation. Market entry is in no country conditional on numerus clausus, but only on subjective requirements, the most important ones being university degree and bar exam. Fees are generally negotiable. In England a trend exists towards flattish fees based on a broad look at all individual circumstances. Fixed lawyer fees are excluded even in otherwise strictly regulated countries such as Hungary, where lawyers

²⁹ This table only lists those Member States where it is usual or routine to use a lawyer in the conveyance of property.

and civil law notaries compete in conveyancing services and notarial fees are fixed by statute. Similarly, regulation on interprofessional co-operation, business structure and advertising for lawyers has generally been liberalised to some extent in recent years.

- 108** In terms of qualifications, lawyers active in conveyancing must of course fulfil all general qualifications of the profession. Most countries have no additional requirements for lawyers to counsel in the area of conveyancing. However, in England, entry into the conveyancing market requires holding (personally or via a law firm) a practising certificate issued by the Law Society. This supposes an annual application which may be subject to disciplinary recommendations, the payment of a fee and the proof of insurance. In Denmark, whilst there are no additional requirements for lawyers active in conveyancing, lawyers need an additional license to act as real estate agents. Finally, in “notary countries”, lawyers are always prohibited from performing those conveyancing services exclusively assigned to notaries.
- 109** An important factor affecting competition between lawyers and notaries is the possibility for a lawyer to represent both parties (i.e. buyer and seller) in conveyancing. This is admitted in some countries including the Scandinavian countries, Hungary and the Czech Republic as an exception to the general prohibition on grounds of interest conflict. However, in all other lawyer countries, including England and Wales, acting for buyer and seller is considered dangerous for lawyers and therefore considered undesirable by deontological guidelines and/or forbidden by statute.
- 110** **English licensed conveyancers** are subject to a similar regulatory regime as solicitors, although they are not lawyers. Licenses are granted by the Council of Licensed Conveyancers (CLC). Requirements to obtain a full license, allowing offering services to the public, are the following: completion of CLC examinations; practical training, minimum age of 21 years; being a 'fit and proper person'; an annual license fee; a stipulated contribution to the CLC compensation fund; premium to the professional indemnity insurance; evidence of continuing education (minimum of 12 courses certified by CLC). Fees are not regulated but in practice roughly similar to solicitors' fees.

5. Justifications for Restrictive Professional Regulation

5.1 The Latin Notary System

111 As stated before, the Latin Notary System is the most regulated system characterised by heavy restrictions in market entry and market conduct regulation. Before analysing possible justifications for regulation, which may legally become relevant in the context of the freedom of establishment (Article 43 EC) and the freedom to provide services (Article 49 EC)³⁰ and under EC competition law, one needs to face the difficult *question préalable* whether notarial activities in conveyancing qualify as the exercise of **public authority**. Only if this is the case would they not be subject to the freedom of establishment and the freedom to provide services according to the exception contained in Art. 45, 55 EC. Similarly, EC competition law only applies to situations where undertakings (i.e. entities which exercise activity of economic nature as opposed to – inter alia – the exercise of public authority³¹) or associations of undertakings are involved. Therefore to the extent to which certain notarial activities were considered to constitute exercise of public authority, restrictive agreements between notaries, or

³⁰ It seems safe to say that all major State regulatory restrictions at issue here are covered by the scope of the freedom of establishment and/or the freedom to provide services as they restrict market access for foreign providers – the decisive criterion in ECJ case law (see Randelzhofer/Forsthoff, in Grabitz/Hilf, vor Art. 39-55 para. 109ff). For example, with regard to Article 49 EC (freedom to provide services) this has recently been decided explicitly by the ECJ in the Cipolla case (C-94/04 and C-202/04) for Italian minimum fees of lawyers. The decisive rationale was that, to establish themselves successfully on new markets, foreign providers depend on the possibility of undercutting prices and fees of local providers for specific services. This established practice is rendered impossible by fixed fees or fixed minimum fees. If the Keck formula (ECJ cases C-267 und C-268/91, Keck und Mithouard, Slg. I-1993, 6097) were applicable to the freedom to provide services and the freedom of establishment (which is frequently claimed but has not yet been confirmed by the ECJ), rules on advertising could be characterised as “certain selling arrangements” according to this formula and might therefore escape the scope of the basic freedoms. However, this is at any rate different in the case of an outright ban on important marketing instruments that effectively limits market access for foreign products and services (C-384/93, Alpine Investments, ECR 1995, I-1141; C-322/01 DocMorris, ECR 2003, I-14887; see also Leible, in Grabitz/Hilf, Art. 28 p. 38). Therefore, the ban on any kind of advertising to be found in traditional notary systems is also covered by the scope of Art. 49 EC. Objective limitations such as *numerus clausus* and exclusive rights go even further and limit market entry of foreign providers directly (C-3/95 Reisebüro Broede, ECR 1996, I-6511). The same is true for regulation limiting business structure to the extent that a foreign business form, e.g. a private limited company, must not be used in a Member State. Finally, regulation banning certain forms of interprofessional co-operation is also covered by the freedom of services when it limits the access of national providers to foreign markets in so far as “integrated services” usual in the destination country cannot be offered (AG Léger in C-309/99 Wouters, para. 242-248).

abusive behaviour by them, as well as restrictive decisions by notarial associations with regard to their members or restrictive acts of self-regulation, would be, as concerns these activities, outside the reach of Articles 81/82 EC.^{32 33}

112 Even if in national systems Latin notaries are classified as holders of a public office, to which they are usually appointed by the national Ministries of Justice, their activities do not necessarily qualify as the exercise of public authority under European law. This question is currently at stake in EC Treaty infringement procedures brought by the European Commission against nationality clauses to be found in several Latin notary countries, according to which only nationals of the respective country are eligible to become a notary. The Commission deems that notarial activity is essentially economic in nature and should not, therefore, be qualified as the exercise of public authority. This view is actually supported by good arguments.³⁴ To start with, the term “public power” needs to be construed in an autonomous and functional way in European law, so as to prevent Member States from excluding certain economic activities from the scope of the internal market freedoms and competition law by simply defining them as public. In line with this and in order to preserve the *effet utile* of the European economic constitution, all “public authority exceptions” from free markets and undistorted competition, in particular Arts. 45, 55, 39 para. 4 EC are construed restrictively by the ECJ, so as to include only a hard core of activities which have “a direct and specific connection with the exercise of official authority”³⁵ and whose national control is of vital interest for each

³¹ ECJ case C-364/92 SAT / Eurocontrol para. 30. See also ECJ C-309/99 Wouters, para. 57ff.

³² The so-called *effet utile* doctrine, establishing State liability under EC competition law, would not apply either, according to which the loyalty duty laid down in Art. 10 EC with 81/82 EC is infringed where a Member State requires or encourages the adoption of agreements, decisions or concerted practices contrary to Art. 81 EC or reinforces their effects, or where it divests its own rules of the character of legislation by delegating to private economic operators responsibility for taking decisions affecting the economic sphere or where a Member State requires or encourages abuses of a dominant position contrary to Article 82 EC or reinforces the effects of such abuses. Indeed, both alternatives of the *effet utile* doctrine – the encouragement of anti-competitive behaviour and the delegation of legislative competence – refer only to those operators who exercise activity of an economic nature.

³³ For this conclusion, see e.g. ECJ C-309/99 Wouters, para. 57ff.- For a general overview, see E. Bergamini, *La Concorrenza tra professionisti nel mercato interno dell'Unione Europea*, 2005.

³⁴ It is plausibly argued in the literature that Arts. 45, 55 EC which go back to the original Treaty of Rome have become outdated to a considerable extent nowadays (see Randelzhofer/Forsthoff, in Grabitz/Hilf, Art. 45 para. 2). Reserving all kinds of public services to nationals is no longer compatible with the current advanced state of integration, which is reflected in more recent Treaty reforms including the introduction of Union citizenship.

³⁵ See ECJ Case C-42/92 Thijssen, para. 22.

Member State. This has even been rejected for historical reasons for the core of notarial activities, the issuance of authenticated deeds and legal counselling.³⁶ At any rate, given the undisputed character of civil law notaries as liberal professionals (alongside holders of a public office) – and the fact that legal services in conveyancing are successfully performed in many European states by private practitioners such as solicitors and real estate agents who are not exercising any kind of public authority, at least notarial services in conveyancing would not seem to pertain to the hard core of activities which could be regarded as the exercise of public authority even under European law.³⁷

113 Whilst this question is still open pending the infringement procedures on nationality clauses, the following analysis of specific regulation and its justifications is premised on the view that notarial services in conveyancing do not constitute the exercise of public authority in the sense of the EC Treaty.

5.1.1 Mandatory Intervention of a Notary or a Lawyer

114 Mandatory intervention is mostly based on the following public policies:

- to ensure adequate legal information and advice, in particular for weaker parties such as in particular consumers, to prevent them from ill-considered contracting (consumer protection),
- to exercise a pre-control for the land register,
- to ensure the legality of real property transactions in the interest of the parties and the general public including the prevention of court actions,
- to collaborate in tax collection.

115 It could be argued that all these policy objectives qualify as legitimate public interests and could therefore justify the restriction of the freedom of establishment and/or the freedom to provide services to the extent they respect the proportionality principle.

³⁶ See Deregulierungskommission (ed.), *Marktöffnung und Wettbewerb*, 1991, 112.

³⁷ Incidentally, this conclusion has been reached by the ECJ in the *Wouters* case (C-309/99 *Wouters*, para. 58) for a national bar association acting as regulatory body of the profession: "When it adopts a regulation [on interprofessional co-operation], a professional body such as the Bar of the Netherlands is [not] (...) exercising powers which are typically those of a public authority. It acts as the regulatory body of a profession, the practice of which constitutes an economic activity."

5.1.1.1 Consumer protection

Scope of mandatory intervention

- 116** To start with a very important insight, consumer protection could arguably only be invoked as a justification in the small minority of Latin notary countries in which mandatory intervention extends to the draft of the full contract (Poland, Greece, Germany). If however the mandatory involvement of a professional is limited to drafting the deed of property transfer (Spain, Netherlands), to the registration process (the Romanic model to be found in France, Belgium, Italy and Luxembourg) or to the certification of signatures only (Slovenia, Slovakia), it is difficult to see how it could be argued that consumers' rights are adequately protected through this mandatory involvement in the first place. Indeed, if the contract is drafted by the parties themselves, or by a third party (e.g. estate agent) acting on behalf of the seller, considerable dangers, e.g. on the existence and reach of guarantees and burdens, may exist for the buyer. The possible posterior control, by a professional, of a contract which is already binding and may also have entailed the transfer of property applying for registration is at any rate not suitable to ensure consumer protection. To the contrary, the mandatory involvement of a professional e.g. in the registration procedure might even mislead a consumer who deems him- or herself protected believing that a trustworthy professional will thoroughly check and control all aspects of the transaction, whereas in reality posterior control can never be fully effective. So this serves to substantially undermine the consumer protection argument used by many Member States for mandatory intervention by Latin notaries and in turn the giving to notaries of extensive exclusive rights for conveyancing (see below under 5.1.2. for further discussion of exclusive rights in this context).
- 117** To some extent, this criticism also applies to countries such as Germany where a notary must draft the contract, but does not usually take care of all legally relevant parts of a transaction such as building permits and other zoning and construction law provisos (e.g. minimum distances to be respected from neighbouring buildings or the possibility of adding another floor to a house). The German notary may however still advise on these issues and will at least tell the consumers to whom they have to turn for further inquiries. Generally, the fact that in Germany, the notary is always involved at the drafting stage, pays heed to all circumstances and effectively controls the whole transaction to the benefit of the consumer may account for the good assessment of the

German system by other professionals and consumers when compared to other forms of the Latin notary system (see the economic parts of this report (see Chapters VI). It should also be noted in this context that the Hammerstein report on the evaluation of the Dutch reform commissioned by the Dutch Parliament recommends extending mandatory intervention to the preparation of the contract on consumer protection grounds (see Dutch case study in Chapter VIII.3.). The Dutch Government has however not chosen to implement this up until now.

The “party system”

- 118** More broadly, it also remains questionable whether **mandatory involvement of professionals is actually necessary in standardised consumer sales** on consumer protection grounds. As exemplified by countries such as Sweden or Austria, it is perfectly possible for informed consumers to handle standard contracts and procedures themselves by filling in pre-formulated forms (made available by housing associations or the Ministry of Justice) and by applying for registration personally. This is even more so as almost all purchase contracts need to be presented to banks and the land registry who check them carefully. Even in countries such as England and Wales where standard conveyancing procedures are probably more complex than on the continent (“chain operation and control”), there exists literature for consumers on how to handle procedures themselves even though few consumers actually do so. However, a caveat needs to be voiced here: if the Swedish, Austrian or English “party system” were to be adopted in other States, legislation would need to make sure that sales contracts may be done and requests for registration presented by private parties on manageable standard forms. At any rate, the “party system” would need to be limited to certain predefined types of standard transactions. If these conditions are fulfilled, empowering consumers to handle their own conveyancing procedure would be in line with the European model of an adequately informed consumer, which has succeeded the former paternalistic national models of weak consumers in need of constant protection.
- 119** Interestingly, there are countries which are currently running **projects in order to support private parties in handling real estate transactions themselves**. For example, as part of the Danish Government's efforts to create better and less expensive real estate transactions, a website, www.boligejer.dk, was established in March 2006 by the National Agency for Enterprise and Construction. On this website, consumers have access to all relevant data about real estate and to information and

documents necessary for real estate transactions, including rules to be observed in that connection. The purpose of the website is to make it easier for consumers either to perform parts of the transaction without professional help, or to assess the quality and extent of services and tasks performed by professionals (for instance when negotiating the fee). The website contains step-by-step guidance for buyers and for sellers as well as for builders.³⁸ If working well, the Danish experiment could have pioneering character for other European countries as well.

The special case of commercial transactions

- 120** Finally, even assuming that professional assistance were considered necessary, the mandatory involvement of a professional should then actually be limited to weaker parties, i.e. transactions involving consumers and perhaps also small enterprises (e.g. craftsmen). In other **commercial transactions**, the mandatory involvement of professionals is not necessary on protection grounds and often amounts to situations in which the notary simply takes over contracts prepared by the parties' lawyers. Clearly, in such situations, the notary's duty, for example, of reading the contract to the parties or their representatives is no longer useful and is in fact an additional layer of unnecessary bureaucracy and adds additional costs.

5.1.1.2 Pre-control for the land register

- 121** Moving to the rationale to **exercise a pre-control for the land register**, this does not seem to render necessary the intervention of a professional. Indeed, one can simply expect the land registry, which is staffed all over Europe with legally qualified officials (be it civil servants, legal professionals or judges) to effect this control itself. The dual control by notaries as well as qualified land registrars may even slow down the whole process, which has been reported from countries such as Spain. The possible gain in speed of the registration procedure which may be realised by professional assistance is not sufficient to justify mandatory intervention. Instead, it should be left to consumers whether they want to buy this service or not. Indeed in Portugal under the package of reforms known as the Simplex Reforms, the public official at the public register is now empowered to draft and record contracts (that replace notary deeds) related to the

³⁸ Information by Ms. Karen Berg from the Danish competition authority.

purchase of real estate, as well as register these contracts in the public registry.³⁹ This new procedure is currently being operated on a trial basis in a number of municipalities in Portugal.

5.1.1.3 Ensuring the legality of real property transactions

122 In respect of the rationale to **ensure the legality of real property transactions**, which could also be a legitimate ground for limiting the internal market freedoms and competition, one should distinguish between formal and substantive legality.

Formal legality

123 Regarding **formal legality**, which mainly means that the identity of the parties be checked and the registration procedure be done correctly, the answer is similar to the pre-control for the land register: the staff of the registration office can, and in basically all countries actually do, control the registration procedure itself. Whilst it is certainly likely that a certain number of applications filled in by consumers themselves, on standard forms, would be rejected due to gaps and errors, this seems to primarily affect the overall speed of the transaction (the parties would need to do it again or seek the assistance of a professional), rather than its legality. As to the control of the parties' identity, the authentication of signatures on the deed, and/or the request for registration, would act to control this. However, if one were to think that the Swedish system of using two witnesses is not sufficiently safe (for which no solid evidence exists), this task could also be assigned to a court (an option which is available e.g. in Austria), or to other public officials entrusted with this task as in the case of the Finnish "side job" notaries. Furthermore, new developments such as an electronic identity card could be an appropriate instrument to ensure the control of the parties' identity.

Substantive legality

124 Regarding **substantive legality**, meaning the final validity of a transaction (i.e. the absence of successful claims e.g. for restitution), the corresponding **interest of the general public** could be, and in most European States actually is, adequately protected through positive publicity of the register, i.e. the legal guarantee that one can rely on register entries and acquire real estate bona fides from a registered owner even

³⁹ Further information on this reform can be found at http://www.portugal.gov.pt/NR/rdonlyres/9C53098E-8336-4712-99D3-65064129F815/0/Apresentacao_Casa_Pronta.pdf

if s/he turns out not to be the true owner (as it is already the case under most European systems), and the availability of state liability in case of erroneous registrations. So, the only remaining legality problem may be defects affecting the substantive validity *inter partes*. Here the answer may be similar to the above considerations on consumer protection: the involvement of a professional only for the act of transfer or for the authentication of signatures, as in the majority of notary countries, is not suitable to guarantee the definitive substantive legality of the transaction under substantive law. There may still be defects arising from a contract concluded without the assistance of a professional, which lead to avoidance and restitution at a later stage. Only professional assistance at the stage of contract drafting could clearly ameliorate substantive legality. However, again, such assistance would not seem to be necessary in the case of standard transactions handled on standard forms, which are pre-formulated by competent institutions such as the Ministry of Justice and whose correct implementation is controlled by the land registry.

- 125** As a final word of caution, it should be noted that the important role assigned to the land registry here would require in some states its partial reorganisation, its supply with more lawyers and reforms of statutory law such as a comprehensive duty of registration for all transactions and positive publicity of register entries (currently non-existent in some countries such as Greece).

5.1.1.4 Preventing legal actions

- 126** The frequently voiced rationale of **preventing legal actions** (“preventive justice”, “vorbeugende Rechtspflege”) may be addressed in basically the same way. Disputes on formal matters might be largely prevented by controls carried out by the land registry. Disputes on matters of substantive law (i) should not often arise in a standardised system which is complemented by positive publicity and (ii) – in a non-standardised system – could only be effectively prevented if mandatory intervention extends to the drafting of the contract, as all “minor forms” of mandatory intervention are not suitable for preventing legal actions in the first place. This applies to many of the existing Latin notary systems where mandatory intervention of a notary is required only to certify signatures or for registration purposes.

5.1.1.5 Collaboration in tax collection

- 127** Finally, the **collaboration of the professional in tax collection**, which is an additional task of the notary in a minority of countries, does not presuppose his mandatory intervention in the core parts of the conveyancing process (drafting of the contract, administering the registration procedure and authentication of signatures) in the first place. As already happens in the majority of countries, transfer taxes can also be collected by the tax administration.

5.1.1.6 Conclusion

- 128** In sum, mandatory intervention of a notary or a lawyer may thus only be proportional in transactions involving consumers and/or small enterprises if it extends to the drafting of the contract as well. However, if the procedure for consumer transactions, including the registration, may be sufficiently standardised and summarised in understandable step-by-step instructions, as is presently already the case in Scandinavian countries, adequately informed consumers should be able to handle such transactions themselves. Under these premises, mandatory intervention would no longer be justified at all.

5.1.2 Exclusive Rights

Disproportionality of Exclusive Rights in Conveyancing

- 129** Unlike mandatory intervention, exclusive rights of notaries (which may also be found for lawyers except in Sweden and Finland, and in Scandinavia for licensed real estate agents) may in a first respect be plausibly justified on grounds of consumer protection (trust in the quality of legal advice) and, more generally, commutative justice, i.e. to receive adequate value for money. Anyone, consumer or business, who seeks the assistance of a professional, should be able to fully rely on the competences and skills of the professional and the quality of the service “bought”. Indeed, even an informed consumer or a business cannot be expected to control a professional. To the contrary, reliable quality standards decrease the transaction costs for consumers and other clients who do not have to spend time and money undertaking quality checks.
- 130** However, assuming that exclusive rights for jurists to ensure quality in conveyancing are legitimate, it is doubtful whether such rights should be reserved to notaries only

(which is the situation in all Latin notary systems except Austria⁴⁰ and those German regions which have the “lawyer-notary” system), with advocates and other legally trained professionals being excluded. As the German Monopolkommission put it in its recent study on liberal professions (Drucksache 16/2460, p. 373ff [381]):

“exclusive rights can only be justified in a competition policy perspective if the number of admitted persons and of admitted types of [university and/or professional, addition by author] degrees is sufficiently large and if persons with sufficient qualifications are not excluded.”(author’s translation).

- 131** To justify the grant of exclusive rights to notaries one might however point to the higher legal skills of notaries as well as to their higher specialisation and experience. Indeed, in all Latin notary countries, notaries are selected among the top 10% or even 5% of jurists, typically in difficult concours which require several years of preparation, and they have to undergo several, sometimes more than 10 years of professional training as notary candidates. Also, their expertise is limited to a couple of fields (alongside conveyancing above all family, succession and corporate law), in which they are far more specialised and experienced than average lawyers, who are normally allowed to counsel in any legal field.
- 132** Notwithstanding that, building an exclusive right on these grounds seems disproportionate. First, one should consider that the legal difficulty of average transactions is rather low; so low that in all examined countries legal professionals almost always work on the basis of standard/model contracts (or contracts which are put together using standard blocks of text),⁴¹ and that in Sweden standard form contracts and the registration procedure are even handled by consumers themselves without significant problems, and that, finally, in other countries with more complicated systems such as France, the Netherlands, Belgium or Italy contracts are again done often on the basis of standard forms by real estate agents without any legal education (with the notarial deed being issued later to enable registration). In that situation, as described above (see point 5.1.1.1), the mandatory intervention of a legal professional (but only the timely intervention at the contracting stage, i.e. before binding

⁴⁰ Please note that Hungary where notaries and advocates enjoy exclusive rights in conveyancing is characterised as a hybrid system here.

⁴¹ This has been shown *inter alia* in the Netherlands where massive fee cuts following the reform seem to be largely due to the “standardisability” of conveyancing transactions.

commitments are entered into) might still be defensible in consumer transactions on protection grounds at least in more complex legal transactions.

133 However, reserving this task to the top 10 or even 5% of jurists among whom notaries are usually recruited is too much of a good thing.⁴² This entails that, in a marginal cost analysis ("Grenzkostenrechnung"), the potential increase of quality provided by a top 5% jurist – which is anyway a somewhat idealistic assumption⁴³ – as compared to an average jurist is so small that the exclusive right of the former is not at all efficient. In case of fixed fees, this additional cost is not only to be borne by the consumer (assuming that market-based costs of legal professionals are generally lower as shown in the Netherlands after the reform), but in a macroeconomic perspective also by society as a whole. This is due to the fact that high income perspectives artificially increased by monopoly rents attract many top lawyers who would be needed more urgently inter alia in universities, higher courts and ministries.⁴⁴ The inadequacy of prohibiting lawyers from offering conveyancing services may also be shown by a comparison with medicine – where mistakes may obviously lead to even more serious results than in law. Applying the logic of exclusive rights, doctors who are "generalists" would need to be forbidden from carrying out examinations of say the lungs because "lung specialists" perform better. Just as in medicine, it should however be sufficient that generalists committing mistakes are liable (which may include not sending the parties to specialists in difficult non-standard situations) and that consumers should have a free choice of engaging a specialist or a generalist (who is perhaps somewhat cheaper) to deal with their conveyancing work.

134 Moreover, the exclusive rights for Latin notaries are often not granted in a consistent way. Thus, State legislation typically allows any lawyer, without specialisation, to deal with highly complex transactions such as mergers and acquisitions or provide complicated tax advice (which in most German regions is even allowed to lawyers who

⁴² Such phenomena are sometimes described as a problem of "over-optimal" quality. See e.g. Monopolkommission p. 382 para. 937ff.

⁴³ In the real world, according to our experience, even a top notary will in many cases provide only good average quality for opportunistic reasons (saving time etc), particularly when using standard forms or standard components which notaries (or in practice frequently notary clerks preparing the drafts), are often reported to be unwilling to change. Such behaviour is indeed very tempting as the difference between top and good average quality will not in most cases be discovered due to the information asymmetry between professionals and consumers and/or due to the fact that the feature to which the quality difference relates does not turn out to be important or controversial at the implementation stage.

have never passed any exam in tax law). According to standing ECJ jurisprudence, “regulatory consistency” is a precondition for proportionality.⁴⁵

135 As an overall result, lawyers should be admitted in conveyancing as well.

Conflict of interest issues involving notaries and lawyers

136 As a consequence of the admission of lawyers to conveyancing, Member States will however need to consider several conflict of interest issues.

137 The first issue is whether lawyers should be allowed to represent only one or both parties (i.e. buyer and seller). Allowing lawyers to represent both parties would actually do away with a core distinction between notaries and lawyers: the notaries’ duty is to act as an impartial neutral adviser and intermediary between the parties (without formally representing any party). This peculiar function of notaries is assured by statute (i.e. they may not adopt the competing role of a lawyer defending partial interests only) and they are committed to it by professional honor and peer pressure, all of which is supervised by specialised professional associations which care about upholding the public reputation of notaries. Therefore, Member States will want to consider carefully, when opening this market to lawyers, the issue of whether they should allow one lawyer to act for both parties, or limit them to representing only one party in conveyancing matters thereby avoiding any potential conflict of interest. For example, even though the representation of both parties by one lawyer in conveyancing is allowed and usual in some lawyer systems including the Czech Republic and Hungary, this solution is considered undesirable by professional guidelines and/or forbidden by statute in most lawyer systems. For example, in England and Wales a lawyer is not allowed to represent buyer and seller but may still represent the buyer and the lending bank, although where the two interests conflict practice rules require a lawyer to cease to act for both parties

138 A second issue follows directly from these considerations: If lawyers were admitted in conveyancing, and at any rate if they were given the right to represent both parties, Member States would, by regulatory logic imbued by equality considerations, also need to consider admitting notaries as advocates so as to enable them to act in ordinary

⁴⁴ Deregulierungskommission (op. cit.), 113 at 459.

⁴⁵ Consistency is generally regarded as a requirement for lawful limitations of the market freedoms by the ECJ (see e.g. German beer case 178/84, ECR 1987, 1227).

adversarial matters, too. This would transform any single profession notary into an advocate-notary in the Prussian style and in effect do away with the longstanding continental legal tradition of having single profession notaries who act as impartial legal advisers in everything they do. Still, under the Prussian model of advocate-notaries, when these professionals perform their notarial function, they do so as regular notaries (governed by the same regulation as single profession notaries), which means that they do not represent the interests of one or both parties, but act as a neutral intermediary between them. This distinctive function is protected by incompatibility rules ensuring that an advocate-notary who has acted in a certain matter as advocate or notary must not subsequently act in the same matter in the other function. Nevertheless, conflicts of interest may arise, e.g. when a seller of land takes a legally inexperienced buyer to the advocate-notary whom he usually consults as advocate in business or family matters. Though few such conflicts seem to reach the level of litigation, legal professionals and experienced business actors in Germany are sometimes reported to be uneasy about the potential conflict in the different roles of advocate-notaries.⁴⁶ Yet in our view, these are not decisive arguments against advocate-notaries as similar conflict of interest problems may arise with single profession notaries, too – e.g. when a building company always uses the same notary who has, consequently, an interest in acting in favour of the company to maintain the business relationship.

- 139** All these points will need to be considered by national legislators when re-regulating the conveyancing services market and in deciding whether to allow the representation of both parties by one advocate or to adopt the model of advocate-notaries.

Other professionals in conveyancing

- 140** Finally, it is also highly arguable that conveyancing services should not even be reserved solely to notaries and lawyers. As the English example of licensed conveyancers, and the Scandinavian example of licensed real estate agents with a university degree show, other licensed professionals can also provide good quality services in this area in competition with lawyers and notaries. What is more, the Scandinavian model under which professionals are trained in a wide range of disciplines relevant to conveyancing (including law, economics, engineering and computer-science) might even be better for consumers, as they can obtain all relevant

⁴⁶ The leading German commentaries on notarial law point to this potential conflict of roles, see e.g. H. Schippel/ U. Bracker (eds.), *Bundesnotarordnung, Kommentar*, 8th ed. 2006.

services from one professional (“one stop shop”). Generally, these professionals should be limited to representing the party by whom they are paid.

Conclusion

- 141** On all these grounds, the reservation of real property transactions to notaries does not seem proportionate or justifiable. Lawyers and other suitably qualified professionals should not be barred from performing such services in Latin notary countries. Instead, as the German Monopolkommission suggested (loc. cit., para. 931f), the protection of professional titles – including lawyer and notary – should generally be sufficient and enable consumers who may trust one group of professionals more than others to make an informed choice.

5.1.3 Numerus clausus and fixed locations

- 142** **Numerus clausus** which applies in all Latin notarial systems except in the Netherlands is based on the premise of the civil law notary being a **holder of a public office**. Numerus clausus creates strong distortions of competition and macroeconomic disadvantages. Obviously, it prevents the market from deciding over the adequate number of professionals, which may often entail the consequence that far less professionals are appointed than the market would actually support. This is illustrated vividly by the case study on Bavaria by Gabe Lee below⁴⁷ which shows that the economic conditions of this affluent region would support many more notarial offices, working at profitable conditions, than the status quo. This is also bad for jobs and growth in general, as notarial offices would have to hire more legal clerks and assistants, secretarial staff, cleaning services, craftsmen etc. This fact is shown plausibly in Dutch developments since the 1999 reform, after which employment in the sector rose far stronger than the increase in the number of notaries. In addition, as described by the German Deregulation Commission already in 1991, numerus clausus and fixed fees may have bad macroeconomic consequences as high income perspectives artificially increased by monopoly rents attract many top lawyers who would be needed more urgently in universities, higher courts and ministries.⁴⁸

⁴⁷ See the German case study in Chapter VIII.2.

⁴⁸ Deregulierungskommission (op. cit.), 113 at 459.

- 143** Given these weighty disadvantages, very good reasons are needed to justify *numerus clausus* and fixed locations. Specifically, the following justifications have been brought forward:
- 144** According to the first line of argument drawing on the **public office characterisation** of notarial activities, the national Ministry of Justice should decide about the number of notaries, just as it also decides about the number of judges, registrars or other civil servants. If, however, as defended here, notarial activities are viewed as predominantly of an economic nature (and with regard to conveyancing – entirely economic (see section 5.1 above), this rationale would no longer have decisive weight.
- 145** A further rationale in support of **numerus clausus** is to ensure that **all notaries appointed have sufficient business** to keep their practice going. Viewed in isolation, this rationale is simply in plain contradiction with an open market economy. According to its basic tenets, an artificial shortage of any good or service is not desirable, as market mechanisms are much more effective in deciding about the number of operators who are able to supply a service at profitable conditions.
- 146** In practice, the assessment of *numerus clausus* is however mostly linked with the principle of **fixed location**, which again may be found in all notary countries except the Netherlands. According to this principle, not only the overall number but also the location of individual notarial offices is fixed by the Ministry of Justice on the basis of objective needs criteria. This principle aims at ensuring an adequate supply of regular, uninterrupted and personal notarial services countrywide – also in remote and less affluent areas with a small population (“universal services”).⁴⁹ Fixed location is argued to presuppose *numerus clausus*: it is argued that if notaries are forced to establish themselves in places which are financially unattractive, they should be protected from competition by assigning them a sufficiently big area and hence keeping competitors at a “sufficient distance”. This, so the argument concludes, could only be achieved through *numerus clausus*.
- 147** However, whilst an **adequate geographical coverage** with conveyancing services is a legitimate and important concern, this may be reached by less anti-competitive

⁴⁹ In exceptional cases such as the German region of Bavaria, fixed location even goes hand in hand with a limited degree of cross-subsidisation, implemented by the notarial association, among profitable and non-profitable businesses. Thus, under current practice each notary whose income does not reach that of a judge, gets the difference refunded by the notarial association. In practice, such cases are however rare (less than 5 per year).

measures than fixed location and *numerus clausus*. First, it is by no means certain that leaving the market to operate would always, and in all countries, lead to an insufficient geographical coverage of the national territory with notaries. Instead, as shown by the already mentioned case study on Bavaria by Gabe Lee, the economic conditions of this region would support many more notarial offices, working at profitable conditions, than the status quo – a result which might also be true for many other European countries. Similarly, the experience with lawyers – where no *numerus clausus* exists in any European country and locations are not fixed – shows that an adequate geographical coverage is apparently ensured in all countries by the market itself. Therefore, it should also be noted that if our proposal of admitting lawyers (and other suitably qualified professionals) to perform conveyancing services were followed, problems of countrywide supply for services would be very unlikely to exist. Moreover, assuming that the monopoly of notaries is maintained and an adequate countrywide supply of services were not ensured, it would be the State's task to intervene directly - be it by paying income supplements to notary candidates willing to establish themselves in the areas concerned, or by exceptionally appointing civil servants as substitute notaries in these areas. As in other areas, such interventions would distort competition less and be more effective than *numerus clausus* and fixed location which apply to the whole country.

148 Finally, the argument that *numerus clausus* and fixed fees are essential for a **good quality** of notarial services will be treated in the following section.

5.1.4 Fixed fees

149 Together with its complements mandatory intervention and *numerus clausus*, the fixing of fees by statute is the most controversial regulatory feature of the Latin notary system. Again, fixed fees exist in all Latin notary systems except the Netherlands as of 1999. Whereas Austria, Poland and Italy (as of 2006 only) rely on limiting the maximum fee only, most states, however, set precise fees for all notarial activities.

150 Fixed fees operate to inhibit competition and create gross distortions of markets: Firstly and very obviously, fixed fees for conveyancing are, as the Dutch experience has confirmed also for notaries, typically higher than free fees. But this is not all: With fixed fees notaries have no incentive to differentiate their services and offer consumers a choice in the services they buy. In particular, notary services are often packaged together, and notary fee scales often package services together as an "all in fee". So

consumers have little choice other than to buy the full package of services regardless of whether they want them or not. One such example is the use of notary escrow accounts which are in many notary countries automatically included in a package regardless of whether they are really needed or wanted (e.g. in a transaction among relatives).

151 This situation is quite different in say the deregulated lawyer market where there is choice and significant price differences between lawyers. This is brought about by a range of factors including specialisation, office location, internal organisation and costs and opportunities for making savings (e.g. economies of scale). As the Dutch example shows, removing fixed fees has resulted in service differentiation and choice for consumers even in notarial services. Thus consumers can, for example, take a less personalised service, or use a service provider that is less conveniently situated, for a commensurate price reduction – for example by using a remote high volume provider.

152 Given these drastic disadvantages of fixed fees, very good reasons need to be given to justify them. Specifically, the following justifications have been brought forward in favour of fixed fees:

- to prevent oligopolistic behaviour which might arise from the *numerus clausus*;
- necessary precondition of the duty to provide services;
- to cross-subsidise low value-transactions with high value-transactions in conveyancing, and to cross-subsidise less standardised transactions in other legal areas such as marital contracts and wills with gains from conveyancing, so as to ensure the availability of services at an acceptable cost;
- most importantly, to ensure an adequate quality of notarial services.

5.1.4.1 Preventing an oligopoly

153 This rationale draws on a **link between *numerus clausus* and fixed fees**. Indeed, oligopolistic behaviour may emerge in markets where fees are free, but the number of professionals operating on that market is fixed. This may be happening in Austria where fixed fees have been removed, but notary fee levels in the conveyancing area remain relatively high. Yet, it is obvious that if *numerus clausus* were abolished, as advocated here, the danger of an oligopoly would disappear because the market would adjust, new notaries would enter (as in the case of the Netherlands) to compete with incumbents and/or also lawyers and other licensed professionals, if exclusive rights in

this area were extended to them too (as in the case of England and Wales and Scandinavia).

5.1.4.2 Necessary precondition of the duty to provide services

154 According to another line of argument, fixed fees are presented as a necessary precondition of the duty to provide services to all requesting parties, which is of course clearly in the public interest. If fees were negotiable, so the argument runs, an agreement between professional and client on the remuneration of services might not be found in a specific case (e.g. because of high fees being quoted), or the professional might completely exclude a less lucrative service from the range of services offered.⁵⁰

155 In the first place, it should be noted that under a system of free competition advocated here which ensures a sufficient number of service providers such consequences are very unlikely to happen. Yet, even if these dangers were taken seriously, in order to ensure a duty to provide services at acceptable prices, other devices aside from fixed pricing which are less restrictive of competition are available. For a start, if a profession is given reserved rights for conveyancing, which is highly questionable in the first place (see argumentation under section 5.1.2), then the counterpart to this is that there has to be a duty to provide the reserved services and this duty should be enforced. For example, it could be made a disciplinary offence to quote excessively high prices or to exclude a specific service. A complaint procedure could be put in place to handle such instances. Secondly, there is the example of the Dutch reforms where the Hammerstein Committee⁵¹ considered this point in detail and, rather than reintroduce pricing regulation of any sort, recommended that special referral arrangements be implemented whereby a notary who cannot service a client is obliged to refer the client on to other members of their firm or to notaries working in other offices. The referring notary must also guarantee that the other notary will provide the client with the requested service. Finally, the legislator should oblige notaries to communicate their standard prices, at which notaries would have a duty to provide the requested services but which would still be further negotiable, to a public or private body yet to be

⁵⁰ W. Reimann, Die deutsche Notariatsverfassung, available at: http://www.uni-regensburg.de/Fakultaeten/Jura/arnold/dsg/scripten/band_4_6, 12.

⁵¹ Official name: Notarial Profession Evaluation Act Committee, established by the Minister of Justice on 9 July 2004. The Committee presented its report 'The best of two worlds' on the evaluation of the Notaries Act 1999 in September 2005. This report is commonly referred to as the Hammerstein Committee Report 2005.

determined (see below 5.1.4.5.) so as to make these prices transparent to all potential clients. In the event that certain groups of customers could not afford these standard prices (which would need to be controlled by professional bodies so as to prevent excesses), there is also the option of the legislator intervening in the market in a limited way to assist those parties (see below 5.1.4.3.). This could take the form of special direct assistance (e.g. social assistance) or by fixing maximum prices for e.g. groups on low pay.

5.1.4.3 Cross-subsidisation and the provision of services at affordable cost

- 156** The issue of **cross-subsidisation** is more complex. As shown in the comparison of fees, “internal” cross-subsidisation between low and high real estate transaction values might actually take place in some countries such as Germany where notarial fees for transactions with lower values (up to €100,000 approximately) are lower than (normally flat or close to flat) market fees in deregulated countries such as England and Wales. As regards “external” cross-subsidisation (i.e. between different notarial services), the Dutch example shows that, before the reform, there may have been a certain degree of cross-subsidisation between notarial services in family as well as inheritance law and conveyancing. Indeed, the former became more expensive by 100% or more and the latter cheaper by 30% after deregulation, thus reflecting their true economic value.⁵² This could act to the disadvantage of poorer consumers who may not be able to afford to buy a house and thus benefit from reduced fees for conveyancing services, but who would be forced to pay more to have a signature authenticated or a will or marriage contract drawn up. For this group of consumers, it might be pointless if overall prices for an “average basket of notary services”, which is composed by 65% of conveyancing services, falls by 10% or more thanks to massive fee cuts in these services. On this basis, one might view the cross-subsidising effect of fixed prices as politically desirable to enable the provision of the full range of notarial services at affordable cost to poorer consumers.
- 157** However, irrespective of the actual operation of cross-subsidisation, which is difficult to measure, it is very doubtful whether this mechanism can justify the general fixing of fees. Indeed, to work in an effective and just way, cross-subsidisation presupposes that transactions with high and low values, and in subsidised and lucrative legal fields, are

⁵² For details, see the Dutch case study in Chapter VIII.3.

distributed in a roughly equal way among professionals. This is not at all the case. Basically all country reports mention big local market divergences. Thus, the value of land and buildings depends heavily on their location and the income level in the region. Also, the volume of transactions in conveyancing vs. family and inheritance law may depend on the economic situation of a country (more conveyancing in boom periods vs. more stable numbers, less dependent on the economic situation, in the latter fields). On this account, it is not possible to operate a system of countrywide cross-subsidisation in a just and acceptable way for professionals and citizens alike. It can never be excluded that a system of cross-subsidisation actually goes beyond what is intended and needed, and that high monopoly rents are created for professionals established in attractive places with high real estate prices.

- 158** In order to ensure the provision of services at affordable cost to vulnerable groups of consumers, a State would therefore be well advised to resort to alternative mechanisms, of a far less distortive nature. Social assistance could be provided to finance fees for persons in need (in order to ensure the persons who qualify for social assistance actually benefit from this measure, notaries could be required to verify eligibility). Alternatively, notaries could be required to provide their services for free or at reduced rates for certain specific groups. Fixed maximum prices for certain transactions and groups of users could also be introduced. This approach has been adopted by the Dutch, who have introduced maximum fees for family law services for lower income groups. They have however steered away from reintroducing price regulation across the board, preferring instead to take a more targeted and needs based approach.
- 159** As a result, given the overall benefits for society and the economy in opening up a market, maintaining an unfair and untransparent system of cross subsidisation cannot reasonably be justified on the grounds that removing it might, besides bringing great benefits to many, have limited negative consequences for some. Instead, a State should resort to compensatory mechanisms less distortive of competition.

5.1.4.4 Quality of services

- 160** Perhaps the most commonly advanced argument to justify the use of fixed fees and hence restrict competition and internal market freedoms, is that they are necessary to ensure the **adequate quality** of professional services and that, as a consequence, the deregulation of fees would lead to a harmful decrease in quality. Similarly, it is sometimes also submitted that with an exclusion of price competition, competition

would turn to competition over quality only, which would be a significant advantage for clients.

- 161** Certainly, the need to ensure the proper operation of the profession including the quality of notarial deeds and advice to clients would be a legitimate goal which could justify a restriction of competition and internal market rules provided that the proportionality principle is respected. However, the decisive question is whether there is actually a persuasive causal link between fixed prices and an adequate quality of services.

Burden of Prove

- 162** As the German Monopolkommission has plausibly argued, it is on account of the general commitment of the European and national economic constitution to competition and free markets that those who argue in favour of a necessary correlation between fixed fees and quality should bear the **burden of prove** for all steps of the proportionality analysis.⁵³ This is also in line with the fact that the argument of consumer protection and quality cannot refute the finding of a restriction but is to be made at the level of proposing justifications for that restriction. At that level, the usual rule applies according to which those who want to benefit from a justification have to invoke it and prove that its conditions are met. In the Cipolla case, AG Poiares Maduro has advocated the same solution even more strongly on discrimination grounds:

“In order for the justification put forward by the Italian Government to offset the restriction on the freedom to provide services which the legislation in question in the main proceedings entails, it is essential to establish a direct link between that legislation and the proper operation of the legal profession. The **discriminatory impact** of that legislation due to the fact that the minimum fees are calculated on the basis of the substantive conditions under which Italian lawyers operate and taking into account the fact that the CNF is to be involved in drafting that measure, creates a greater obligation to provide justification.”⁵⁴

⁵³ See the study by the German monopoly commission: Monopolkommission, 16. Hauptgutachten, 2004/2005, Bundestagsdrucksache 16/2460 of 25.8.2006 (henceforward quoted as Monopoly Commission), p. 379 at para. 914ff.

⁵⁴ See Opinion in ECJ C-/4/04 and C-202/04 Cipolla et al. of 5/12/2006, para. 87.

No reliable correlation between fixed fees and quality

- 163** A reliable correlation between fixed fees and quality has never been proven and is very unlikely to exist.
- 164** (1) As a preliminary observation, it should be borne in mind that due to asymmetry of information between the legal service providers and consumers, it is difficult for consumers, unlike businesses and other repeat players, to judge the quality of notarial services and in this case "the deed" in particular. Fixed fees do not change this in any way and neither, as we argue below, can they guarantee quality. What is more likely to happen is that with consumers "quality competition" will shift to secondary quality criteria such as the friendliness of the staff, the accessibility of services (e.g. waiting time) or the location and outfit of the office rooms. These elements irrelevant to the quality of the legal service itself, or deed, are of course not worthy of protection through fixed fees. Thus, the argument according to which competition over (primary) quality would be the consequence of the exclusion of price competition does not hold here.
- 165** (2) Yet a link between fixed fees and quality is not persuasive for other reasons, either. Specifically, there are other incentive and sanction mechanisms which have a greater bearing on a professional's willingness to deliver adequate quality than fees.⁵⁵ These include subjective requirements of access to the profession (in particular highly competitive exams and concours for notaries and lawyers in Europe), professional honour and deontology, reputation, peer pressure, disciplinary rules controlled by professional associations (and ultimately by the State) and complaint procedures for consumers, as well as the danger of incurring liability (or facing higher premiums for professional insurance).⁵⁶ The effectiveness of these mechanisms is shown e.g. in the case of German auditors who are equally entitled to issue deeds enjoying public faith, but who are not regulated through *numerus clausus* and fixed fees.⁵⁷ Over several decades, there have never been any serious problems of lack of quality, unreliability or even corruption. In this study, the analysis of the Dutch reform has shown that, despite numerous claims to the contrary, no decrease of quality is visible, but that service orientation and speed of notaries is even rated better after the reform of fixed fees and *numerus clausus*.

⁵⁵ See Monopolkommission p. 381f at para. 930ff.

⁵⁶ See ECJ C-4/04 and C-202/04 Cipolla et al. of 5/12/2006, para. 63

⁵⁷ See Deregulierungskommission (op. cit.), 112, at 458.

166 However, even if all these mechanisms were, wrongly in our view, deemed to be ineffective, quality would not be guaranteed under a system of fixed prices either. Indeed, given the above-mentioned information asymmetry in respect of the quality of legal services, there is nothing which could effectively deter a professional from maximising volume and hence profit at the expense of quality. As AG Léger has put it in the Arduino case, it fails to be seen “how a system of mandatory prices would prevent members of the profession from offering inadequate services if, in any event, they lacked qualifications, competence or moral conscience”.⁵⁸ Similarly, prices fixed at the current level may even not live up to the expectations of a professional about gains and income. Under this premise, one should therefore expect already now a minority of professionals unsatisfied with the current fee system to be providing bad quality.

167 Lastly, the conclusion that fixed fees have no clear bearing on quality is also confirmed by the fact that, under a system of deregulated fees, many reasons for price differentiation exist which are not at all related to the quality of legal services. Thus, as noted earlier in deregulated lawyer markets, we find huge price differences, which seem to depend mainly on a series of factors including specialisation, office location, internal organisation and costs and opportunities for making savings (e.g. economies of scale), and there may be a legitimate trade off to be made here on price. Someone may be prepared to accept a less personal service for a commensurate price reduction – for example by using a high volume conveyancer, if he or she still gets adequate levels of quality in terms of the deed that is drawn up. The decrease in such secondary quality elements would account for legitimate consumer choice but by no means prove a corresponding lack of primary quality elements. The missing link between fixed fees and quality has also been confirmed by AG General Poiares Maduro in the Cipolla case:

“Although the objective of ensuring proper operation of that profession is legitimate, the Italian Government has not demonstrated how the fixing of minimum fees is appropriate for achieving it. Although there is already a large difference between the lowest and highest fees, it does not provide any incentive to provide poor-quality legal services at low prices. The Italian Republic has not demonstrated that there is a

⁵⁸ Similarly AG Léger in the Arduino case ECJ C-35/99, para. 117: It is by no means clear how a system of fixed prices should prevent professionals from offering bad quality if they lack education, competence or devotion to the job.

correlation between the level of fees and the quality of the services provided, and in particular that services provided for a low fee are of an inferior quality.”⁵⁹

168 (3) Assuming thus that there is no regular correlation between fixed fees and quality, it has nevertheless been argued that a **harmful decrease of quality** might (exceptionally) be the result of **ruinous competition**. According to this argument, this form of competition occurs when the supply of services considerably outstrips demand with the result that professionals would feel forced to enter into a price war and to go for the highest possible volume at the cost of quality; in that situation, the above-mentioned guarantee mechanisms would cease to function. This argument was actually brought forward by the Italian government and commented on by the ECJ in the recent Cipolla case on fixed fees for lawyers in Italy. In its judgment, the Court ordered national courts to examine whether the danger of ruinous competition might actually materialise and result in a decrease of quality in the Italian market which is characterised by a high number of lawyers per inhabitant.⁶⁰

169 With due respect, this argumentation is not convincing in our view as the depicted scenario of ruinous competition is unlikely to materialise among legal professionals. First, it is not plausible that in the wake of fee deregulation a high number of consumers would turn away from their family notary or lawyer because there are somewhat cheaper providers of the same service. However, consumers who do not have a family notary or lawyer might actually go for the cheapest offer; just as new market entrants would need to engage in price competition to establish themselves on the market. Still, in these cases too, a series of incentive and sanction mechanisms already mentioned such as subjective requirements of access to the profession, professional honour and deontology, the ambition to build up reputation, peer pressure, disciplinary rules, including an effective complaints procedure, continued education and their control by professional associations (and ultimately by the State) and the danger of incurring liability are sufficient to prevent the supply of bad quality services even under conditions of strong competition. These mechanisms – most of which work despite asymmetric information on quality between professional and consumer – will operate to throw providers of bad quality out of the market within a relatively short period of time or to make them turn to other fields of activity. This conclusion is also supported by

⁵⁹ See Opinion in ECJ C-4/04 and C-202/04 Cipolla et al. of 5/12/2006, para. 87.

⁶⁰ See ECJ C-4/04 and C-202/04 Cipolla et al. of 5/12/2006, para. 61ff.

evidence: Whilst in Member States such as Germany a certain number of lawyers (advocates) do not have enough business and need to resort to social assistance or even abandon independent practice, there is no indication of them engaging in ruinous competition and decreasing the quality of their services in out of court business where fixed fees do not exist any longer.

170 To sum up, there is no persuasive link between fixed fees and (adequate) quality of notarial services.

5.1.4.5 Ensuring fee information and transparency

171 A final argument invoked in favour of fixed fees is that these ensure fee information and transparency. These features, too, constitute public goals worthy of protection. And indeed, the abolition of fixed prices and the emergence of a service market with huge price discrepancies might lead to insecurity among consumers about what constitutes an adequate price. Yet again, alternative mechanisms less distortive of competition are available so that fixed fees are not proportionate.

172 Some argue for the use of fee recommendations, elaborated jointly by all interested parties, i.e. at least notary and consumer associations and the Ministry of Justice. This solution has been discussed amongst others by the German Monopoly Commission.⁶¹ Recommended fees are ascribed several advantages: Firstly, in a situation characterised by asymmetric information, they would give consumers reliable guidelines on adequate fee levels. Secondly, the presence of recommended fees would serve as a default regime where the client and legal professional cannot agree on fees. The presence of such a regime would also save time as fees could be agreed upon more easily.⁶² Moreover, some consumers would welcome being freed from the necessity to “talk about money” with which they might not feel comfortable.

173 Yet, it cannot be ignored that recommended fees also operate to decrease price competition. The fixing of a price, even one which merely constitutes a target or recommendation, affects competition because it enables all participants to predict with

⁶¹ This point is emphasised by the Monopoly Commission p. 382 at para. 941.

⁶² This point is emphasised by the Monopoly Commission p. 382 at para. 941.

a reasonable degree of certainty what the pricing policy pursued by their competitors will be.⁶³

- 174** Against this background, attention should be paid to alternative methods of providing price information and transparency to consumers of legal services which distort competition to a lesser extent. For example, the publication of historical and survey-based price information by independent parties (such as consumer organisations) or State authorities might provide a more trustworthy price guide for consumers. To render this solution operational, notaries could be obliged by regulation to communicate their (maximum) prices for a set of frequent services to a specified private or public body (notarial associations could perform a relais function in this), but it is important that this body act independently from the profession itself and that the information is not presented in such a way that amounts to a price recommendation to members of the profession. This body could publish price surveys in the media and on the Web, so as to provide a maximum amount of neutral information to consumers without the negative effects of recommended prices.⁶⁴ There is also the option, practised under the new Italian legislation, of requiring lawyers/notaries to give a formal written quote setting out likely fees to clients so all is transparent and agreed at the outset. A fee dispute mechanism could be put in place for those who want to dispute the level of fees charged and, as a final fallback, the client could take the matter to court for the judge to decide on what constitutes an appropriate fee level based on historic data. The judge could be provided with a reference guide so as to arrive at an appropriate fee level in such cases. This reference guide should however be used solely by a court for this purpose and not by the professions to determine prices.
- 175** To sum up, when considering how to ensure fee information and transparency, the proportionality principle points to alternative methods that are less restrictive than fixed fees.

⁶³ See ECJ judgment C-8/72 *Vereniging van Cementhandelaren v. Commission* [1972] ECR 977, para 21. See also Commission, Decision of 24 June 2004 condemning recommended prices for Belgian Architects, OJ 2005 L 4/10, paras 64, 78).

⁶⁴ See Belgian Architects Decision of 24 June 2004, paras 99, 110.

5.1.5 Market Conduct

5.1.5.1 Business form

- 176** The **prohibition** of the provision of notarial services by **legal persons** (in particular in the form of a limited company) is mostly based on the professional duty to provide the services in person - so as to make the office holders approachable to consumers and to prevent them from hiding behind the “corporate veil”. Whilst these aims are of course legitimate, the wholesale prohibition of notarial services by legal persons is not proportionate. Instead, as in the case of lawyers, alternative business structures (including limited companies) could be permitted subject to specific regulation to protect independence and ensure professional accountability. These conditions could be fine-tuned to the specificities of different national legal systems. Generally, if these conditions are fulfilled, the position of clients would even be enhanced: more expertise might be available; more persons would be liable; and the liability insurance cover would be higher. As a result, the provision of notarial services via alternative business structures should be allowed in principle.

5.1.5.2 Larger partnerships in particular

- 177** The **prohibition on forming larger partnerships among the same professionals** (for example where more than two notaries work together) is usually meant to ensure sufficient choice by the customers of legal service providers by preventing local monopolies, in particular in small and medium sized towns, and to protect consumers against possible conflicts of interests. Based on this argument, a restriction on larger partnerships would actually seem to be defensible if a very low number of professionals exists in a particular city or district. However, as advocated here, if numerus clausus of notaries is abolished and advocates and other licensed professionals are also admitted to offer conveyancing services, local monopolies and any ensuing problems of conflicts of interests would be excluded in the first place.

5.1.5.3 Inter-professional co-operation

- 178** The prohibition or the **restrictions on inter-professional co-operation** are meant to ensure the neutrality of the Latin notary. As accepted by the ECJ in the *Wouters* case for lawyers and accountants in the Netherlands, such restrictions may actually be legitimate if there is a real possibility of conflict of interest due to the specific

organisation of the professions involved in the Member State concerned. But this will however depend on the specific national circumstances at issue and inter-professional co-operation should not be automatically ruled out on these grounds. Moreover, there is nothing to stop any Member State deciding to allow such co-operation and setting up suitable regulatory structures to protect against any such conflicts. For example, notaries in the Netherlands are allowed to co-operate with attorneys and tax consultants and a number of large offices have come into being in which notaries work together with attorneys and tax consultants. This is reported to have resulted in an increase in expertise to the benefit of the consumer.

5.1.6 Advertising

- 179** According to the classic model of Latin notaries, advertising is completely prohibited, mostly by self-regulation through notarial associations, although in many States recent reforms have added exceptions to this rule. Advertising restrictions, too, are mostly based on the public functions of the notary: "Commercial" advertising is considered incompatible with the public office held by notaries and its dignity. Notaries are therefore supposed to be bound not only to the general prohibition of unfair competition, but to a higher standard of transparency and loyalty towards their clients. Finally, advertising restrictions are also alleged to prevent undue influence in the choice of the notary and to restrict competitive downward pressures affecting the quality of notarial services.
- 180** However, almost all of these restrictions are not justified either. To start with, as with other restrictions, the public function and dignity of the office are no longer crucially relevant if the assumption of the predominantly economic (and in the case of conveyancing – entirely economic) character of notarial services is accepted. Moreover, the alleged need of going beyond general standards of unfair competition law is not plausible in the case of notaries. The fact that notarial services are an "experience good" which is difficult to assess does not justify withholding information from consumers. Instead, under the conditions of asymmetric information especially regarding the quality of professional services, it is even more important to supply consumers with information which may also come in the form of publicity as long as this is accurate and not misleading. In particular, making an effective choice of notary presupposes information on quality, specialisation and price. It is often said that in the case of legal professionals, publicity might be undignified and against public morals; the

theoretical but often repeated example being a lawyer advertising for divorce work, to which one might relate a notary advertising for marital contracts or wills (“do a marriage contract as you can never trust your partner”) is not plausible as such behaviour would be extremely unlikely and even counterproductive. This is even more so for aggressive marketing practices such as the American “ambulance chasing” – indeed, a notary walking around in hospitals or old age homes to “sell” wills would be unthinkable (and prohibited even under general unfair competition law or general European standards of private law.). To the contrary, respectability, discreteness and seriousness are essential for a notary’s reputation and success in business. Also, liability risks might prevent notaries from advertising using illusory promises or practising other doubtful marketing practices. Moreover, experience from the US shows that advertising by lawyers in general, though allowed, has remained rare.⁶⁵ On all these grounds, extending restrictions on advertising beyond the general standards of unfair competition is not necessary.

- 181** If allowed, advertising will certainly increase price competition. However, the argument of competitive downward pressures negatively affecting the quality of services is not accepted here (see above). Instead, lower prices may be expected to increase access of consumers to professional services which is viewed as desirable. Finally, one should endorse the German Monopoly Commission’s argument that publicity restrictions are no apt matter for professional self regulation and internal jurisdiction.⁶⁶ Indeed, publicity is not a purely internal matter of the profession as it is primarily about informing possible clients, and it is not confined to a neutral description of professional services either. If professional bodies had the authority to decide upon the rules on publicity/advertising then these rules are likely to be drafted so as to serve the interests of incumbent established professionals who are likely to hold a position of power in the professional body, but work to the disadvantage of new market entrants, also from other EU Member States, who are trying to establish themselves.

5.2 The Dutch deregulated notary system

- 182** As mentioned, the Dutch deregulated notary system has abolished the chief limitations of *numerus clausus*, fixed fees and fixed locations. *Numerus clausus* has been

⁶⁵ See Monopoly Commission p. 407 at para. 1103.

⁶⁶ See Monopoly Commission p. 408 at para. 1107.

replaced by the requirement to present a business plan for the first three years of practice in order to ensure a certain stability of the notarial office. Even though the business plan requirement is debated in the Netherlands and is argued to be excessive by some, setting such a requirement is largely within the margin of discretion of a national legislator as pursuing legitimate aims. The prohibition to open branch offices seems to be justifiable to the extent that the danger of market concentration exists. To the extent that other regulatory restrictions exist in the Dutch system (especially on mandatory intervention and exclusivity rights) the same reasoning as for the traditional Latin notary model applies.

5.3 The Lawyer System

- 183** The lawyer system may be found in several forms. Generally, it is characterised by exclusivity rights whereby only lawyers may offer conveyancing services for reward or money. The system generally has lower levels of restrictive regulation than the Latin notary system. Notably pricing regulation is rare and no country operates a system of *numerus clausus*. As argued earlier though, the exclusive rights of lawyers in this area can be open to criticism given that it is highly arguable that other suitable qualified and licensed professionals – such as the English style licensed conveyancers – could also provide good quality services in this area and so be allowed to operate in this market in competition with lawyers and notaries.

5.4 The Scandinavian Licensed Real Estate Agent System

- 184** The Scandinavian system has the least regulation of all those examined. There is no mandatory obligation on those selling or buying property to use a lawyer or licensed real estate agent to deal with the legal aspects of the transaction (the only exception to this is in Finland where a publicly employed notary has to be used to certify signatures on the contract of sale). The principal regulatory limitations concern substantial subjective requirements of lawyers and real estate agents in Sweden and Denmark (university degree) who also enjoy exclusive rights. As shown above, these limitations may be justified on the basis of ensuring the good functioning of the legal system and of ensuring an adequate quality of professional services offered for money to consumers.

6. Summary on Regulatory Models

185 Summarising all the above information, we may distinguish four regulatory models for conveyancing services in Europe:

- The **traditional, highly regulated Latin notary system**, which reflects the public office characterisation of notarial activities. This model may be found in the vast majority of continental European countries including Spain, Portugal, France, Italy, Luxembourg, Belgium, Germany, Poland and Slovenia. In addition, Latin notaries exist also in Greece but this country is classified as hybrid here as the additional presence of two lawyers is also required in an average transaction. The Latin notary model is characterised by mandatory involvement of notaries, even though the scope of involvement (contract and deed of conveyance, only deed or just the authentication of signatures) differs widely. Other important features include numerous *clausus* of professionals, fixed fees and strict regulation on market entry and conduct. As shown above, most of this regulation, particularly on numerous *clausus*, fixed fees and reserved rights is unacceptable when considered in the light of European competition and internal market law.
- The **deregulated Dutch notary system**, which reflects a more modern vision of the notary as a private entrepreneur fulfilling public tasks. Under this model, no numerous *clausus* exists, fees are negotiable and market entry and conduct regulation is generally less strict. Compatibility problems with European competition and internal market law still exist, but to a much more limited extent than in the traditional notary countries (e.g. reserved rights for notaries).
- The **lawyer system** existing in the UK and Ireland, Hungary,⁶⁷ the Czech Republic, Slovakia⁶⁸ and – to a lesser extent – also in Austria (where both notaries and lawyers have a high presence on the market). A hybrid system may be found in Hungary where in average transactions lawyers take care of the conveyancing (mandatory intervention) whereas notaries are usually involved in setting up the mortgage. The lawyer system is characterised by quality control of professionals

⁶⁷ In the following economic assessment, Hungary will be treated as a hybrid system, too, as notaries are usually involved in the draft of the mortgage loan contract whereas lawyers dominate the conveyancing process.

⁶⁸ In Slovakia, notaries exist as well, but they are normally only used for the authentication of signatures (as an alternative to a public body), whereas lawyers typically handle the conveyancing process.

through licensing and professional exams only, negotiable fees and lower levels of regulation on market entry and conduct. Compatibility problems with European competition and internal market law exist to a substantially lesser extent than in the traditional notary countries (e.g. reserved rights for lawyers).

- The **Scandinavian licensed agent system** under which real estate agents also provide legal services. This model is also characterised by quality control of professionals through professional exams and licensing only, negotiable fees and a lower levels of regulation on market entry and conduct. Compatibility problems with European competition and internal market law barely appear to exist.

IV. Regulatory Indices

1. Introduction and Methodology

- 186** For further econometric analysis, it is necessary to reinterpret qualitative information on regulation in form of **quasi-quantitative measures**. For this purpose, four **regulation indices** for **each country** and **each profession providing legal services in the conveyancing process** are calculated. Each index has a range of “0” (no regulation) to “6” (highest degree of regulation). The regulation indices picture the status quo of regulation at the time of writing (spring 2007). In other words: they provide a snapshot of current regulation, but do not include information on the *direction* of regulative changes in recent years.⁶⁹
- 187** First, we differentiate between **market entry regulations** (calculated as a “**Market Entry Regulation Index**”; **MERI**) and **market conduct regulations** (calculated as a “**Market Conduct Regulation Index**”, **MCRI**).
- 188** **Market entry regulations** (covered in **MERI**) are in the first instance quotas or economic needs tests, licensing rules (exclusive and shared exclusive tasks) and professional education requirements. In calculating the MERI “Quotas and economic needs tests” is given a weight of 50%, as such regulations have obviously the most direct impacts for market structure and market outcomes. Licensing rules and professional education requirements are given equal weights of 25% each. The details of coding and weighting are given in Table IV-1 below.

⁶⁹ The main source of information on regulation used for coding the regulation indices were the country reports published alongside this study. Further information including datasheets can be found in the separate excel annex 2: Regulatory Indices Database.

Table IV-1: Coding and Weighting of the “Market Entry Regulation Index” (MERI) for Professionals in Conveyancing

(Sub)Index	Themes/questions	Weights by theme (b _j)	Question weights (c _k)	Coding of data
ERLC	Licensing	0.25		
	How many services does the profession have an exclusive or shared exclusive right to provide?*		1	0 1 2 3 0 2 4 6
ERED	Education requirements (only applies if Licensing not 0):	0.25		
ERED1	What is the duration of special education/university/or other higher degree?		0.3	equals number of years of education (max of 6)
ERED2	What is the duration of compulsory practise necessary to become a full member of the profession?		0.4	equals number of years of compulsory practise (max of 6)
ERED3	Are there professional exams that must be passed to become a full member of the profession?		0.3	no yes 0 6
ERQT	Quotas and economic needs tests	0.5		
	Is the number professionals/firms permitted to practise restricted by quotas or economic needs tests?		1	no yes 0 6
MERI	Country scores (0-6)	$\sum_j b_j \sum_k c_k \text{ answer}_{jk}$		

* Exclusive and shared exclusive rights are: (1) contract drafting, (2) certification and/or authentication, (3) contract execution

- 189** Rules on fees/prices, restrictions on advertising, on location and diversification, on form of business and on inter-professional co-operation are **market conduct regulations (covered in MCRI)**. Regulations on prices and fees has been given the highest weighting (50%), as it is evident that the model of price setting has the most significant and direct effects on relevant market outcomes. “Minimum prices for all services” and “minimum prices for some services” are regarded to be the most restrictive forms of price regulation: Whereas maximum prices and even reference prices also have some impact on competition, the direct effects of minimum prices are the strongest.
- 190** Regulations on “location and diversification”, “form of business” and “inter-professional co-operation” all have to do with possibilities of implementing different business models, which is supposed to have significant impacts on market structures and outcomes. We give all of these three fields of regulation an equal weight of 11%, summing up to 33%. Regulations on advertising are taken into account with the remaining 17%. The details of coding and weighting are described in Table IV-2 below.

Table IV-2: Coding and Weighting of the “Market Conduct Regulation Index” (MCRI) for Professionals in Conveyancing

(Sub)Index	Themes/questions	Weights by theme (b _i)	Question weights (c _k)	Coding of data														
MCPR	Regulations on prices and fees	0.50																
	Are the fees or prices that a profession charges in conveyancing services regulated in any way (by government or self-regulated)?		1	<table border="1"> <tr> <td>no regulation</td> <td>non-binding recommended prices on some services</td> <td>non-binding recommended prices on all services</td> <td>maximum prices on some services</td> <td>maximum prices on all services</td> <td>minimum prices on some services</td> <td>minimum prices on all services</td> </tr> <tr> <td>0</td> <td>1</td> <td>2</td> <td>3</td> <td>4</td> <td>5</td> <td>6</td> </tr> </table>	no regulation	non-binding recommended prices on some services	non-binding recommended prices on all services	maximum prices on some services	maximum prices on all services	minimum prices on some services	minimum prices on all services	0	1	2	3	4	5	6
no regulation	non-binding recommended prices on some services	non-binding recommended prices on all services	maximum prices on some services	maximum prices on all services	minimum prices on some services	minimum prices on all services												
0	1	2	3	4	5	6												
MCAD	Regulations on advertising	0.17																
	Is advertising and marketing by the profession regulated in any way?		1	<table border="1"> <tr> <td>no specific regulations</td> <td>advertising is regulated</td> <td>advertising is prohibited</td> </tr> <tr> <td>0</td> <td>3</td> <td>6</td> </tr> </table>	no specific regulations	advertising is regulated	advertising is prohibited	0	3	6								
no specific regulations	advertising is regulated	advertising is prohibited																
0	3	6																
MCLOC	Regulations on location/diversification	0.11																
	Are there restrictions on the location and/or diversification of service providers?			<table border="1"> <tr> <td>location/diversification not restricted</td> <td>location/diversification restricted</td> </tr> <tr> <td>0</td> <td>6</td> </tr> </table>	location/diversification not restricted	location/diversification restricted	0	6										
location/diversification not restricted	location/diversification restricted																	
0	6																	
MCBU	Regulations on form of business	0.11																
	Is the legal form of business restricted to a particular type?		1	<table border="1"> <tr> <td>no restrictions</td> <td>partnership and/or some incorporation (regulation on ownership etc.) allowed</td> <td>sole practitioner only</td> </tr> <tr> <td>0</td> <td>3</td> <td>6</td> </tr> </table>	no restrictions	partnership and/or some incorporation (regulation on ownership etc.) allowed	sole practitioner only	0	3	6								
no restrictions	partnership and/or some incorporation (regulation on ownership etc.) allowed	sole practitioner only																
0	3	6																
MCIC	Regulations on inter-professional co-operation	0,11																
	Is co-operation between professionals restricted?		1	<table border="1"> <tr> <td>all forms allowed</td> <td>generally allowed (but with some restrictions on form of business etc.)</td> <td>only allowed with comparable professions</td> <td>generally forbidden</td> </tr> <tr> <td>0</td> <td>3</td> <td>4.5</td> <td>6</td> </tr> </table>	all forms allowed	generally allowed (but with some restrictions on form of business etc.)	only allowed with comparable professions	generally forbidden	0	3	4.5	6						
all forms allowed	generally allowed (but with some restrictions on form of business etc.)	only allowed with comparable professions	generally forbidden															
0	3	4.5	6															
MCRI	Country scores (0-6)	$\sum_i b_i \sum_k c_k \text{ answer}_{jk}$																

191 Furthermore, in the case of land/real estate transfer, it makes a difference which **services** by respective professionals are **mandatory** (or not) for individuals or legal persons. For that, we calculate a “**Mandatory Intervention Index**” (**MII**) regarding **legal services** in case of a **real estate sale** for each country. MII is “0”, if no mandatory intervention applies. If a mandatory intervention is necessary for a certification of signatures only, MII is “2”. If further tasks have to be handled by *one* professional in the conveyancing process on a mandatory basis (so that the land sale can be registered etc.) then MII equals “4”. If more than one professional have to be consulted, MII is given the maximum level (“6”). The details of coding and weighting are described in **Table IV-3** below.

Table IV-3: Coding and Weighting of the “Mandatory Intervention Index” (MII) in Conveyancing Services

(Sub)Index	Themes/questions	Weights by theme (b _i)	Question weights (c _k)	Coding of data															
MII	Mandatory intervention for validity of the sales contract	1																	
	Is the intervention of <i>any</i> professional required for the validity of the sales contract?		1	<table border="0"> <tr> <td></td> <td></td> <td>more than one professional involved on mandatory basis (apart from certification)</td> <td>6</td> </tr> <tr> <td></td> <td></td> <td>one professional involved on mandatory basis (apart from certification)</td> <td>4</td> </tr> <tr> <td></td> <td></td> <td>mandatory intervention for certification only</td> <td>2</td> </tr> <tr> <td></td> <td></td> <td>no mandatory intervention</td> <td>0</td> </tr> </table>			more than one professional involved on mandatory basis (apart from certification)	6			one professional involved on mandatory basis (apart from certification)	4			mandatory intervention for certification only	2			no mandatory intervention
		more than one professional involved on mandatory basis (apart from certification)	6																
		one professional involved on mandatory basis (apart from certification)	4																
		mandatory intervention for certification only	2																
		no mandatory intervention	0																
MII	Country scores (0-6)	$\sum b_i \sum c_k \text{ answer}_{jk}$																	

192 Some specific regulations (e.g. compulsory indemnity insurance, mandatory continuing education or the existence of specific instruments for quality control/conduct control) are often supposed to be more directly connected to problems of **consumer protection** than the ones of “traditional” market entry (especially quotas/economic needs tests and the provision of exclusive tasks) and market conduct regulation. Against this background, we calculate a so-called “**Consumer Protection Index**” (**CPI**) for **each relevant legal profession** in every country.

193 In calculating the CPI, we give “compulsory indemnity insurance” the highest weight (36%), as the direct advantages for the customer are by far most manifest in this field. Conduct/quality control and continuing education are both important fields of consumer protection and for that both given an equal middle-weight of 18%. The same weighting applies for “requirements in education for market entry”, which is coded in the same way as “ERED” in the Market Entry Regulation Index (see above). The obligation to provide services (which only applies for notaries and where direct effects on consumer

interests are less self-evident) is counted with a weight of 10%.⁷⁰ The details of coding and weighting are shown in **Table IV-4** below.

- 194** In some countries, compensation/guarantee funds exist on top of compulsory indemnity insurance. Such instruments are likely to contribute to consumer protection as well. We did not add this variable to the CPI because of a partial lack of adequate information on such instruments at the time of writing. At the same time, given the weighting that would have been given to the existence/non-existence of compensation/guarantee funds, changes in the calculation of the overall index would be small, so that they would influence the overall result to a minor degree only.

⁷⁰ See the annex at the end of this chapter for a version of the CPI without the variable “obligation to provide services (CPOS)”.

Table IV-4: Coding and Weighting of the “Consumer Protection Index” (CPI) in Conveyancing Services

(Sub)Index	Themes/questions	Weights by theme (b _j)	Question weights (c _k)	Coding of data						
CPIS	Compulsory indemnity insurance	0.36								
	Is there the obligation for professional indemnity insurance?		1	<table border="0"> <tr> <td>yes, but very low insurance sum (less than 150.000 EUR)</td> <td>no</td> <td>yes, insurance sum over 150.000 EUR</td> </tr> <tr> <td>2</td> <td>0</td> <td>6</td> </tr> </table>	yes, but very low insurance sum (less than 150.000 EUR)	no	yes, insurance sum over 150.000 EUR	2	0	6
yes, but very low insurance sum (less than 150.000 EUR)	no	yes, insurance sum over 150.000 EUR								
2	0	6								
CPC	Conduct control/quality control	0.18								
	Are there specific institutions/instruments aiming at conduct/quality control vis-à-vis the professionals?		1	<table border="0"> <tr> <td>no</td> <td>yes</td> </tr> <tr> <td>0</td> <td>6</td> </tr> </table>	no	yes	0	6		
no	yes									
0	6									
CPERED	Education requirements for market entry	0.18								
	See "ERED" of the Market Entry Regulation Index (MERI)		1	See "ERED" of the Market Entry Regulation Index (MERI) 0 to 6						
CPCONEDUC	Continuing education	0.18								
	Is there an obligation for continuing professional education?		1	<table border="0"> <tr> <td>no or recommendation only</td> <td>Yes, but less than 20 hours/year</td> <td>yes, more than 20 hours / year</td> </tr> <tr> <td>0</td> <td>3</td> <td>6</td> </tr> </table>	no or recommendation only	Yes, but less than 20 hours/year	yes, more than 20 hours / year	0	3	6
no or recommendation only	Yes, but less than 20 hours/year	yes, more than 20 hours / year								
0	3	6								
CPOS	Obligation to provide services	0.10								
	Is there an obligation for the professionals to provide services if contacted by a customer?		1	<table border="0"> <tr> <td>no</td> <td>yes</td> </tr> <tr> <td>0</td> <td>6</td> </tr> </table>	no	yes	0	6		
no	yes									
0	6									
CPI	Country scores (0-6)	$\sum_j b_j \sum_k c_k \text{ answer}_{jk}$								

195 To minimize problems stemming from “subjective” weighting in constructing these indices we perform sensitivity tests with other weighting methodologies. The results, given in section 3 below and the annex at the end of this chapter, show that our indices are sensitive only to a small degree to different forms of weighting and for that reason they exhibit a high level of validity.

2. Regulation Indices for EU Countries

2.1 Countries with “Latin notary” (LN-countries)

196 **Table IV-5** shows **MERI**, **MCRI** and **CPI** for notaries in countries with “**Latin notaries**”.

197 Overall **market entry regulation (MERI)** is rather **rigid** in all countries, with only the **exception** of the **Netherlands**.

198 **Market conduct regulation (MCRI)** shows a similar situation: A rather high level of regulation in most countries with the exception of the Netherlands and here also Austria, where deregulation in recent years has led to (by notaries’ standards) rather liberal regulation.

199 **CPI (consumer protection regulation)** is **rather high** for notaries in the countries covered. Exceptions are:

- Greece and Luxembourg: No obligation for professional indemnity insurance, continuing education is not mandatory.
- Poland and Portugal: Low insurance sum of mandatory professional indemnity insurance, continuing education is only recommended (no minimum hours/year).
- Slovakia: Low insurance sum of mandatory professional indemnity insurance.
- Czech Republic, Spain, Slovakia and Belgium: Continuing education is not mandatory.

Table IV-5: Notaries: MERI, MCRI and CPI⁷¹

	MERI Market Entry	MCRI Market Conduct	MERI + MCRI	CPI Consumer Protection
Luxembourg	5.4	n.a.	n.a.	2.3
Hungary	5.9	6.0	11.9	4.5
Czech Republic	5.6	5.7	11.3	4.7
Portugal	5.0	6.0	11.0	4.5
Greece	5.1	5.7	10.8	2.5
Belgium	5.7	5.0	10.7	4.7
Slovakia	5.3	5.2	10.5	3.4
Poland	5.6	4.7	10.3	3.2
France	5.1	5.2	10.3	5.2
Germany	5.7	4.5	10.2	5.3
Italy	5.4	4.7	10.1	5.6
Spain	4.8	5.2	10.0	4.4
Slovenia	4.9	5.0	9.9	5.0
Austria	5.9	3.2	9.0	5.9
Netherlands	1.9	1.2	3.1	5.6
<i>Average</i>	<i>5.2</i>	<i>4.8</i>	<i>9.9</i>	<i>4.4</i>
<i>Average without the Netherlands</i>	<i>5.4</i>	<i>5.1</i>	<i>10.4</i>	<i>4.4</i>

- 200** In several of these countries with “Latin” notaries **lawyers** also play an important role in legal services related to conveyancing. **Table IV-6** gives an overview of the **regulation indices** for **lawyers** in the respective **countries**.
- 201** **Regulation** on **market entry** in LN-countries is, generally speaking, **less rigid for lawyers** than for notaries. However, rather **restrictive conduct regulation** applies to lawyers in some countries like **Greece** and **Slovenia**.

⁷¹ MCRI for Luxembourg is missing due to insufficient information at the time of writing. For Italy, recent changes (i.e. the 2006 Bersani Decree) are, in principle, reflected in the assessment. Still, the regulation indices calculated for Italy have tentative character, as the exact outcomes of the liberalisations going ahead as a result of the 2006 Bersani Decree – in the sense of their implementation – at the time of writing were unclear to some degree (e.g. regarding regulation on prices/fees).

Table IV-6: Lawyers in LN-Countries: MERI, MCRI and CPI

	MERI Market Entry	MCRI Market Conduct	MERI + MCRI	CPI Consumer Protection	
Greece		2.4	5.0	7.4	2.3
Slovenia		2.2	3.7	5.9	4.7
Czech Republic		2.6	2.2	4.8	2.6
Austria		2.1	2.5	4.6	4.0
Slovakia		2.1	2.2	4.3	2.6
Spain		1.8	2.5	4.3	n.a.
Hungary		2.6	1.4	4.0	2.6
Portugal		2.0	1.5	3.5	2.5
<i>Average</i>		<i>2.2</i>	<i>2.6</i>	<i>4.8</i>	<i>3.0</i>

202 CPI is, overall, **lower** than for **notaries**. This, on the one hand, is caused by the fact that the “obligation to provide services” (which is reflected in the CPI with a weight of 10%) is specific to the notaries. On the other hand, regulation on educational requirements for market entry is, generally speaking, less rigid for lawyers than for notaries. Apart from that, an obligation for continuing education for lawyers only applies in Austria, Slovenia and Greece. Yet, at the same time, lawyers in Greece are not obliged to have professional indemnity insurance and in Hungary, Slovakia, the Czech Republic and Portugal the minimum insurance sum for mandatory professional indemnity insurance is very low.

203 On the basis of these indices for notaries and lawyers we calculate **overall indices** for **LN-countries** (see **Table IV-7**) according to following rules:

- For all countries with mandatory intervention of notaries⁷² and no mandatory intervention of lawyers we only take into account regulation for notaries. We do this, because averaging the regulation for notaries and lawyers would lead to results that underestimate the regulatory load in countries where lawyers play a major role as well (though on a non-mandatory basis). This mode of inter-professional weighting applies for all LN-countries except Hungary, the Czech Republic, Slovakia and

⁷² Austria is supposed to be part of this group, although certification of signatures could be done at a court as well. At the same time, the consultation of a notary in many cases is “quasi-mandatory”, as banking institutions in most cases of a mortgage stipulate the involvement of a notary. In Slovenia, in the conveyancing process civil law notaries are mandatory with respect to the certification of the parties' signatures under the intabulation clause. In Portugal, the mandatory involvement of the notary extends to the drafting of the contract and the authentication of the parties' signatures. In Spain notary intervention is compulsory but advocates are sometimes used in consumer sales and often used in commercial sales to draw up a preliminary contract. Furthermore, advocates may check debts and administrative permits

Greece (see below).

- In Hungary buyers/sellers have to consult a notary or a lawyer on a mandatory basis for the transfer of property, with the dominance of lawyers being overwhelming (99% and less than 1% notaries). However, notaries are usually, though not on a mandatory basis, used for setting up mortgages as banks tend to insist on their involvement to ensure the direct enforceability of the deed. Therefore, regulation for notaries was also considered but with a lower weight (20%) as compared with regulation for lawyers (80%).
- In the Czech Republic professional intervention is not mandatory. Notaries are involved in about 40% of real estate property transfer, lawyers in about 60%. To account for this, regulation for notaries is given a lower weight (40%) than regulation for lawyers (60%).
- In Slovakia professional intervention is not mandatory. Notaries are involved in about 25% of real estate property transfer, lawyers in about 75%. To account for this, regulation for notaries is given a lower weight (25%) than regulation for lawyers (75%).
- In Greece, the involvement of notaries in land/real estate sales is obligatory. Furthermore, if the contract value exceeds the amount of 29,347.03 EUR buyers/sellers as well have to engage (at least) one lawyer each. In this special case we sum up MERI and MCRI of both professions, to reflect the regulatory load of mandatory intervention of two professions. For this, MERI and MCRI both score the highest possible level (“6”). For CPI we take the average of lawyers and notaries.
- MII (mandatory intervention) is by definition an overall-index.

(which may overlap with the notary's professional duties), or they may be involved in the execution of the contract (payment etc.).

Table IV-7: Overall Regulation Indices for Legal Services in Conveyancing in LN-Countries

	MERI Market Entry	MCRI Market Conduct	MERI + MCRI	MII Mandatory Intervention	MERI +MCRI MII	CPI Consumer Protection	
Luxembourg		5.4	n.a.	n.a.	4.0	n.a.	2.3
Greece		6.0	6.0	12.0	6.0	18.0	2.4
Portugal		5.0	6.0	11.0	4.0	15.0	4.5
Belgium		5.7	5.0	10.7	4.0	14.7	4.7
Poland		5.6	4.7	10.3	4.0	14.3	3.2
France		5.1	5.2	10.3	4.0	14.3	5.2
Germany		5.7	4.5	10.2	4.0	14.2	5.3
Italy		5.4	4.7	10.1	4.0	14.1	5.6
Spain		4.8	5.2	10.0	4.0	14.0	4.4
Slovenia		4.9	5.0	9.9	2.0	11.9	5.0
Austria		5.9	3.2	9.0	2.0	11.0	5.9
Hungary		3.3	2.3	5.6	4.0	9.6	3.0
Czech Republic		3.8	3.6	7.4	2.0	9.4	3.4
Slovakia		2.9	2.9	5.8	0.0	5.8	2.8
Netherlands		1.9	1.2	3.1	4.0	7.1	5.6
<i>Average</i>		<i>4.8</i>	<i>4.2</i>	<i>8.9</i>	<i>3.5</i>	<i>12.4</i>	<i>4.2</i>
<i>Average without the Netherlands</i>		<i>5.0</i>	<i>4.5</i>	<i>9.4</i>	<i>3.4</i>	<i>12.8</i>	<i>4.1</i>

2.2 Countries without “Latin” notaries

204 In countries without “Latin” notaries legal services in conveyancing are provided by lawyers (solicitors) (England/Wales, Scotland, Denmark, Ireland), real estate agents (Denmark, Sweden, Finland) or so-called “licensed conveyancers” (England/Wales).

205 **Table IV-8** shows regulation indices (MERI; MCRI and CPI) for lawyers/solicitors in Denmark, Ireland, England/Wales and Scotland. **Table IV-9** shows the same regulation indices for real estate agents/licensed conveyancers in Denmark, Sweden, Finland and England/Wales.

Table IV-8: Lawyers in Non-LN-Countries: MERI, MCRI and CPI

	MERI Market Entry	MCRI Market Conduct	MERI + MCRI	CPI Consumer Protection	
Denmark		2.1	1.2	3.3	4.1
Ireland		2.0	1.3	3.3	4.5
Scotland		1.9	1.0	2.9	5.0
England/Wales		2.0	0.8	2.8	4.5
<i>Average</i>		<i>2.0</i>	<i>1.1</i>	<i>3.1</i>	<i>4.5</i>

206 Regulation on market entry and conduct for lawyers in Denmark, Scotland, Ireland and England/Wales is considerably more liberal than for notaries in most LN-countries listed in **Table IV-5** above. At the same time the CPI is quite high (especially in Scotland).

207 Contrary to most LN-countries, in Denmark and Sweden **real estate agents** (see **Table IV-9**) are authorised to provide legal services in conveyancing. The same holds for **licensed conveyancers** in **England and Wales**. Though members of these professions have to be “**licensed**” in the respective countries **to provide legal services, regulation** appears to be rather **liberal**. The latter especially is true for market conduct regulation. In **Finland**, any person may give legal advice (even on a commercial basis). Yet, only registered real estate agents are allowed to act as intermediaries for the sale of real estate. CPI is comparatively low in Finland. This applies because there is no obligation for continuing education and because the maximum insurance sum in indemnity insurance is rather low.

Table IV-9: Real Estate Agents and Licensed Conveyancers in Non-LN-Countries

	MERI Market Entry	MCRI Market Conduct	MERI + MCRI	CPI Consumer Protection	
England/Wales		1.7	0.7	2.3	4.2
Denmark		2.0	0.3	2.3	3.9
Sweden		1.2	0.0	1.2	4.4
Finland		0.5	0.0	0.5	2.1
<i>Average</i>		<i>1.3</i>	<i>0.2</i>	<i>1.6</i>	<i>3.7</i>

208 Here again, to get an overall picture of the regulation of legal services we combine regulation indices for lawyers/solicitors with the ones for licensed conveyancers/real estate agents (Table IV-10).

209 We do this as follows:

- In Sweden and Finland, the market is completely dominated by real estate agents. For this reason, we do not take into account regulation for lawyers.
- The market in Scotland and Ireland is dominated by solicitors, so we take into account the regulations for this profession only.
- In Denmark in many cases lawyers *and* real estate agents are involved in a land/real estate sale. For this, we give both professions equal weights.
- In England/Wales it is mostly a solicitor who is providing legal services in conveyancing. Licensed conveyancers have a market share of less than 5%. For this reason, we weight regulation on solicitors with 90%, regulation for licensed conveyancers with 10%.
- MII (mandatory intervention) is by definition an overall-index.

Table IV-10: Overall Regulation Indices for Legal Services in Conveyancing in Non-LN-Countries

	MERI Market Entry	MCRI Market Conduct	MERI + MCRI	MII Mandatory Intervention	MERI + MCRI +MII	CPI Consumer Protection
Ireland	2.0	1.3	3.3	0.0	3.3	4.5
Scotland	1.9	1.0	2.9	0.0	2.9	5.0
Denmark	2.0	0.8	2.8	0.0	2.8	4.0
England/Wales	2.0	0.8	2.8	0.0	2.8	4.5
Sweden	1.2	0.0	1.2	0.0	1.2	4.4
Finland	0.5	0.0	0.5	0.0	0.5	2.1
<i>Average</i>	<i>1.6</i>	<i>0.6</i>	<i>2.2</i>	<i>0.0</i>	<i>2.2</i>	<i>4.1</i>

2.3 Comparing “different worlds” of regulation of legal services in conveyancing

210 Table IV-11 below presents **the regulation indices** for **all the countries** covered. We grouped them according to four “different worlds” of regulation of legal services in conveyancing:

1. The traditional system of “Latin” notaries (N).
2. The de-regulated “Latin” notary system of the Netherlands (D).
3. The lawyers systems of England/Wales, Ireland and Scotland (where solicitors provide most of respective services). Slovakia and Czech Republic are as well part of this group, as clients can decide to consult a lawyer instead of a notary in these countries (L).
4. The north European/Scandinavian model, where most relevant services are provided by real estate agents (S).

211 Greece and Hungary are both supposed to be hybrid models, and for that not supposed to represent an own specific “world of regulation” (see section II.6. of this study).

Table IV-11: Overall Regulation Indices for Legal Services in Conveyancing: Four “Worlds of Regulation”

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

- 212** Overall, regulation in the sense of MERI, MCRI and MII is rather restrictive in traditional “Latin” notary systems. Austria is to some degree an exception (especially in respect of conduct regulation).
- 213** Examples for rather liberal regulatory systems are the northern European countries, where real estate agents play a major role, as well as the countries of the “L-group”, where lawyers are the most important service providers of legal services in conveyancing.
- 214** The Netherlands are *the* example for a de-regulated “Latin”-notary system.
- 215** Interestingly, consumer protection regulation (as measured in the CPI) is on average not considerably higher in the traditional “Latin” notary system than it is in the other three models.

3. Sensitivity tests with different models of weighting

- 216** The construction of regulation indices is always confronted with the problem of accurate weighting of different regulatory instruments. Over- or underestimating the relevance of specific instruments of regulation could lead to artificial outcomes in further analyses. For this reason, we carry out some sensitivity tests with other weights for the Market Entry Regulation Index (MERI) and the Market Conduct Regulation Index (MCRI), which are used in this study for further econometric analysis. In addition, two alternative forms of weighting are applied for the “Consumer Protection Index” (CPI).
- 217** We do not perform sensitivity tests for the “Mandatory Intervention Index” (MII), as MII per definition does not rely on any weighting.
- 218** We control our outcomes of MERI and MCRI against two other models of weighting. First, we give all forms of regulation equal weights (the Equal Weights Model; EWM). Second, we use the methodology of weighting used by the OECD for calculating their “indicators of regulatory conditions in professional services”.⁷³ We term this model of weighting “WBO”.
- 219** For CPI we again control our outcomes compared to an “Equal Weights Model” (EWM) and to a model of equal weights but without the variable “obligation to provide services” (CPOS), whereby the latter is specific to Latin notaries only (EWM2 model).
- 220** The details can be found in the annex at the end of this chapter.
- 221** The results of this exercise indicated that our indices show low sensitivity to different methodologies of weighting various instruments of regulation. Obviously – regarding MERI and MCRI - for “low regulation countries” rather liberal rules for all forms of market entry and market conduct regulation apply, whereas the regulatory regimes of “high regulation countries” appear to be rather restrictive in all forms of market entry and market conduct regulation. The same is also true to a high degree for consumer protection regulation (CPI). However, this index shows a somewhat larger sensitivity in re-weighting than MERI and MCRI (especially for the L- and the S-group).
- 222** Overall, two alternative models of weighting executed confirm our original outcomes. MERI and MCRI are by far most restrictive in the N-group, whereas in regimes

⁷³ See http://www.oecd.org/document/24/0,2340,en_2825_495698_35858776_1_1_1_1,00.html; this methodology heavily relies on IHS (2003).

dominated by lawyers and real estate agents much more liberal rules are in place. The Netherlands are *the* paradigmatic example for a liberalised Latin notaries system. The differences between the notaries system and the other three groups become even more visible (in all three models of weighting), when mandatory intervention is taken into account as well.

- 223** Regarding the Consumer Protection Index (CPI) the Netherlands shows one of the highest levels and the L-group is close to the level that on average applies to countries dominated by Latin notaries. Here, the EWM2 weighting model even results in the same on average CPI for the L-group and for the N-group. CPI in the Scandinavian countries is on average lower than in the other three groups (irrespective of weighting methodology applied). This is – in the first instance - caused by the case of Finland, whereas in Denmark and Sweden CPI reaches about the level of the L-group.
- 224** Overall, sensitivity towards different forms of weighting is low in our regulation indices. This tends to support the validity of the regulation indices calculated according to our original model of weighting. We do not find a large distortion of results caused by particular “subjective weightings”.

Annex to Chapter IV: Sensitivity tests for regulation indices with different models of weighting

- 225** The construction of regulation indices is always confronted with the problem of accurate weighting of different regulatory instruments. Over- or underestimating the relevance of specific instruments of regulation could lead to artificial outcomes in further analyses. For this reason, we carry out some sensitivity tests with other weights for the Market Entry Regulation Index (MERI) and the Market Conduct Regulation Index (MCRI), which are used in this study for further econometric analysis. In addition, two alternative forms of weighting are applied for the “Consumer Protection Index” (CPI).
- 226** We do not perform sensitivity tests for the “Mandatory Intervention Index” (MII), as MII per definition does not rely on any weighting.
- 227** We control our outcomes of MERI and MCRI against two other models of weighting. First, we give all forms of regulation equal weights (the Equal Weights Model; EWM). Second, we use the methodology of weighting used by the OECD for calculating their “indicators of regulatory conditions in professional services”.⁷⁴ We term this model of weighting “WBO”.
- 228** For CPI we again control our outcomes compared to an “Equal Weights Model” (EWM) and to a model of equal weights but without the variable “obligation to provide services” (CPOS), whereby the latter is a specific of Latin notaries only (EWM2-model).
- 229** **Table IV-12 and IV-13** give a comparison of our weighting methodology in the current study with the other two models.

⁷⁴ See http://www.oecd.org/document/24/0,2340,en_2825_495698_35858776_1_1_1_1,00.html; this methodology heavily relies on IHS (2003).

Table IV-12: Alternative Models of Weighting in the “Market Entry Regulation Index” (MERI)

(Sub)Index	Themes/questions	Weights in this Study (WIS)		Equal Weights Model (EWM)		Weights by OECD (WBO)	
		Weights by theme (b _j)	Question weights (c _k)	Weights by theme (b _j)	Question weights (c _k)	Weights by theme (b _j)	Question weights (c _k)
ERLC	Licensing	0.25	1	0,33	1	0.40	
ERED	Education requirements	0.25		0,33		0.40	
ERED1			0.3		0,33		0,33
ERED2			0.4		0,33		0,33
ERED3			0.3		0,33		0,33
ERQT	Quotas and economic needs	0.5	1	0,33	1	0.20	

MERI	Country scores (0-6)	$\sum_j b_j \sum_k c_k \text{ answer}_{jk}$
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Table IV-13: Alternative Models of Weighting in the “Market Conduct Regulation Index” (MCRI)

(Sub)Index	Themes/questions	Weights in this Study (WIS)		Equal Weights Model (EWM)		Weights by OECD (WBO)	
		Weights by theme (b _j)	Question weights (c _k)	Weights by theme (b _j)	Question weights (c _k)	Weights by theme (b _j)	Question weights (c _k)
MCPR	Regulations on prices and fees	0.50	1	0.20	1	0,38	1
MCAD	Regulations on advertising	0.17	1	0.20	1	0,23	1
MCLOC	Regulations on location/ diversification	0.11	1	0.20	1	0	
MCBU	Regulations on form of business	0.11	1	0.20	1	0,19	1
MCIC	Regulations on inter-professional co-operation	0,11	1	0.20	1	0,19	1

MCRI	Country scores (0-6)	$\sum_j b_j \sum_k c_k \text{ answer}_{jk}$
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230 For CPI we again control our outcomes compared to an “Equal Weights Model” (EWM) and to a model of equal weights but without the variable “obligation to provide services” (CPOS), whereby the latter is a specific of Latin notaries only. These two alternative models of weighting are summarised in **Table IV-14**.

Table IV-14: Alternative Models of Weighting in the “Consumer Protection Index” (CPI)

(Sub)Index	Themes/questions	Weights in this Study (WIS)		Equal Weights Model (EWM)		Equal Weights without CPOS (EWM2)	
		Weights by theme (b _j)	Question weights (c _k)	Weights by theme (b _j)	Question weights (c _k)	Weights by theme (b _j)	Question weights (c _k)
CPIS	Compulsory indemnity insurance	0.36	1	0,2	1	0,25	1
CPC	Conduct control/quality	0.18	1	0,2	1	0,25	1
CPERED	Education requirements for	0.18	1	0,2	1	0,25	1
CPCONEDUC	Continuing education	0.18	1	0,2	1	0,25	1
CPOS	Obligation to provide services	0.10	1	0,2	1	0	0

CPI	Country scores (0-6)	$\sum_j b_j \sum_k c_k \text{ answer}_{jk}$
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231 In a first step, we calculate MERI, MCRI and CPI according to the two alternative methods of weighting for every profession covered in the regulation indices above and compare them with our original outcomes. In a second step, via inter-professional weighting, we compute overall regulation indices (containing MERI and MCRI) for every country. In the end we control for possible changes in findings regarding the “four worlds of regulation” set out in section 2.3. of chapter IV.

1. MERI and MCRI for different professions: outcomes of alternative methodologies of weighting

232 **Table IV-15** and **Table IV-16** show the results of MERI and MCRI for notaries according to the three different methodologies of weighting.

233 EWM and WBO result in slightly lower figures for MERI, as “quotas and economic needs tests” is given a lower weight. However, the correlation of WIS with both EWM and WBO is extremely high.⁷⁵

⁷⁵ Pearson product-moment correlation coefficient is a measure of the correlation of two variables X and Y, that is, a measure of the tendency of the variables to increase or decrease together. It is defined as the sum of the products of the standard scores of the two measures divided by the degrees of freedom. Pearson's Correlation Coefficient can take on the values from -1.0 to 1.0. Where -1.0 is a perfect negative (inverse) correlation, 0.0 is no correlation, and 1.0 is a perfect positive correlation.

234 The last finding applies to MCRI as well. Again, the variations in outcomes are not large. This is especially true when our model of weighting in this study (WIS) is compared to the weights used by OECD (WBO).

Table IV-15: The “Market Entry Regulation Index” (MERI) for Notaries in Three Different Models of Weighting

	MERI Weights in this Study (WIS)	Equal Weights Model (EWM)	Weights by OECD (WBO)
Austria	5.9	5.8	5.7
Belgium	5.7	5.7	5.6
Czech Republic	5.6	5.6	5.5
France	5.1	4.9	4.7
Germany	5.7	5.6	5.5
Greece	5.1	4.8	4.6
Hungary	5.9	5.9	5.9
Italy	5.4	5.3	5.1
Luxembourg	5.4	5.3	5.2
Netherlands	1.9	2.4	2.9
Poland	5.6	5.6	5.5
Portugal	5.0	4.7	4.5
Slovakia	5.3	5.1	4.9
Slovenia	4.9	4.4	4.1
Spain	4.8	4.6	4.3
<i>Correlation with WIS*</i>		<i>0.98</i>	<i>0.98</i>

*Pearson's Correlation Coefficient

Table IV-16: The “Market Conduct Regulation Index” (MCRI) for Notaries in Three Different Models of Weighting

	MCRI Weights in this Study (WIS)	Equal Weights Model (EWM)	Weights by OECD (WBO)
Austria	3.2	4.0	3.2
Belgium	5.0	4.5	4.4
Czech Republic	5.7	5.4	5.4
France	5.2	5.2	5.0
Germany	4.5	4.3	4.0
Greece	5.7	5.4	5.4
Hungary	6.0	6.0	5.9
Italy	4.7	4.6	4.3
Netherlands	1.2	2.1	0.9
Poland	4.7	5.0	4.6
Portugal	6.0	6.0	5.9
Slovakia	5.2	4.8	4.7
Slovenia	5.0	4.8	4.6
Spain	5.2	5.2	5.0
<i>Correlation with WIS*</i>		<i>0.96</i>	<i>0.99</i>

*Pearson's Correlation Coefficient

235 For the “Consumer Protection Index” (CPI) sensitivity to different forms of weighting is again rather low. However, for notaries EWM2 in many cases leads to lower CPIs when compared to our original model. This is caused by the elimination of CPOS.

Table IV-17: The “Consumer Protection Index” (CPI) for Notaries in Three Different Models of Weighting

	CPI Weights in this Study (WIS)	Equal Weights Model (EWM)	Equal Weights without CPOS
Austria	5.9	5.9	5.9
Belgium	4.7	4.6	4.2
Czech Republic	4.7	4.5	4.1
France	5.2	5.1	4.9
Germany	5.3	5.2	5.0
Greece	2.5	3.3	2.6
Hungary	4.5	5.1	4.9
Italy	5.6	5.5	5.4
Luxembourg	2.3	3.1	2.4
Netherlands	5.6	5.5	5.4
Poland	3.2	3.7	3.1
Portugal	4.5	4.4	4.0
Slovakia	3.4	3.9	3.3
Slovenia	5.0	4.9	4.6
Spain	4.4	4.3	3.8
<i>Correlation with WIS*</i>		<i>0.97</i>	<i>0.97</i>

*Pearson's Correlation Coefficient

236 **Table IV-18** and **IV-19** show the respective outcomes for MERI and MCRI for lawyers in different countries. Again, correlation coefficients are extremely high for all cases. These results point in the direction that different models of weightings do not lead to different ranks when comparing the regulation of lawyers across countries. However, EWM and WBO generally result in slightly higher MERI for lawyers. This is caused by the fact that “licensing” and “education requirements” are given a higher weight in these models than in the methodology we use in this study.

237 Regarding MCRI, results provided by EWM and WBO are again a little bit higher than using WIS. This is, in first instance, caused by higher weights for regulations on “forms of business” and “inter-professional co-operation”:

Table IV-18: The “Market Entry Regulation Index” (MERI) for Lawyers in Three Different Models of Weighting

	MERI Weights in this Study (WIS)	Equal Weights Model (EWM)	Weights by OECD (WBO)
Austria	2.1	2.8	3.3
Czech Republic	2.6	3.6	4.3
Denmark	2.1	2.9	3.5
England/Wales	2.0	2.7	3.3
Greece	2.4	3.3	3.9
Hungary	2.6	3.6	4.3
Ireland	2.0	2.7	3.2
Portugal	2.0	2.7	3.3
Scotland	1.9	2.6	3.1
Slovakia	2.1	2.9	3.5
Slovenia	2.2	3.0	3.6
Spain	1.8	2.6	3.1
<i>Correlation with WIS*</i>		<i>0.998</i>	<i>0.998</i>

*Pearson's Correlation Coefficient

Table IV-19: The “Market Conduct Regulation Index” (MCRI) for Lawyers in Three Different Models of Weighting

	MCRI Weights in this Study (WIS)	Equal Weights Model (EWM)	Weights by OECD (WBO)
Austria	2.5	2.8	3.2
Czech Republic	2.2	2.2	2.6
Denmark	1.2	1.8	1.8
England/Wales	0.8	1.5	1.4
Greece	5.0	4.2	5.4
Hungary	1.4	1.8	2.0
Ireland	1.3	2.1	2.1
Portugal	1.5	2.4	2.4
Scotland	1.0	1.8	1.7
Slovakia	2.2	2.2	2.6
Slovenia	3.7	3.2	4.0
Spain	2.5	2.8	3.2
<i>Correlation with WIS*</i>		<i>0.97</i>	<i>0.99</i>

*Pearson's Correlation Coefficient

238 Regarding the Consumer Protection Index (CPI) for lawyers (**Table IV-20** below) correlation coefficients are again rather high. In other words: The ranking of countries only changes to a minor degree. However, EWM provides a slightly lower CPIs for

lawyers than our original model, whereas outcomes according to EWM2 point in the other direction to some extent.

Table IV-20: The “Consumer Protection Index” (CPI) for Lawyers in Three Different Models of Weighting

	CPI Weights in this Study (WIS)	Equal Weights Model (EWM)	Equal Weights without CPOS (EWM2)
Austria	4.0	3.2	4.1
Czech Republic	2.6	2.5	3.1
Denmark	4.1	3.3	4.1
England/Wales	4.5	3.8	4.7
Greece	2.3	2.5	3.2
Hungary	2.6	2.5	3.1
Ireland	4.5	3.8	4.7
Portugal	2.5	2.4	3.0
Scotland	5.0	4.3	5.4
Slovakia	2.6	2.5	3.1
Slovenia	4.7	4.0	5.0
Spain	n.a.	n.a.	n.a.
<i>Correlation with WIS*</i>		<i>0.98</i>	<i>0.98</i>

*Pearson's Correlation Coefficient

239 **Table IV-21 and IV-22** show MERI and MCRI for real estate agents (and/or licensed conveyancers) in countries where they perform legal services. Again, correlation coefficients are extremely high. As for lawyers, EWM and WBO lead to slightly higher MERI and MCRI when compared to our original model of weighting. Overall, the reasons are the same as the ones sketched out for lawyers above.

Table IV-21: The “Market Entry Regulation Index” (MERI) for Real Estate Agents/Licensed Conveyancers in Three Different Models of Weighting

	MERI Weights in this Study (WIS)	Equal Weights Model (EWM)	Weights by OECD (WBO)
Denmark	2.0	2.7	3.2
Finland	0.5	0.7	0.8
England/Wales	1.7	2.2	2.7
Sweden	1.2	1.6	1.9
<i>Correlation with WIS*</i>		<i>0.9995</i>	<i>0.9995</i>

*Pearson's Correlation Coefficient

Table IV-22: The “Market Conduct Regulation Index” (MCRI) for Real Estate Agents/Licensed Conveyancers in Three Different Models of Weighting

	MCRI Weights in this Study (WIS)	Equal Weights Model (EWM)	Weights by OECD (WBO)
Denmark	0.3	0.6	0.6
England/Wales	0.7	1.2	1.1
Finland	0.0	0.0	0.0
Sweden	0.0	0.0	0.0
<i>Correlation with WIS*</i>		1.0	1.0

240 For the Consumer Protection Index (CPI) for real estate agents/licensed conveyancers the outcomes of alternative models of weighting point in the same direction as for lawyers; with somewhat lower numbers with EWM and to some degree higher CPIs according to EWM2. Again, correlation indices are very high.

Table IV-23: The “Consumer Protection Index” (CPI) for Real Estate Agents/Licensed Conveyancers in Three Different Models of Weighting

	CPI Weights in this Study (WIS)	Equal Weights Model (EWM)	Equal Weights without CPOS
Denmark	3.9	3.2	4.0
England/Wales	4.2	3.5	4.4
Finland	2.1	2.0	2.5
Sweden	4.4	3.7	4.7
<i>Correlation with WIS*</i>		0.99	0.99

*Pearson's Correlation Coefficient

2. Overall regulation indices: outcomes of alternative methodologies of weighting

241 To calculate overall regulation indices we follow the methodology described in sections 2.1. and 2.2. of this chapter.

242 In short, this means that for all countries with Latin notaries we take into account regulations for notaries only - with four exceptions: For the Czech Republic regulation of notaries is given a weight of 40%, regulation of lawyers a weight of 60%; for Hungary regulation of notaries has a weight of 20%, regulation lawyers a weight of 80%; for

Slovakia regulation of notaries has a weight of 25%, regulation lawyers a weight of 75%, for Greece we sum up MERI and MCRI for notaries and lawyers (as it is mandatory to consult both professions in many cases) (see section 2.1. of chapter IV). CPI in Greece is the average of lawyers and notaries.

243 For countries *without* Latin notaries, inter-professional weighting is done as follows (see section 2.2. of chapter IV):

- Sweden and Finland: 100% real estate agents.
- Scotland and Ireland: 100% lawyers (solicitors).
- Denmark: 50% lawyers, 50% real estate agents.
- England/Wales: 90% solicitors, 10% licensed conveyancers.

244 **Table IV-24** shows the overall “Market Entry Regulation Index” (MERI) for all countries and professions covered (after inter-professional weighting). Correlations indices are very high and overall outcomes in ranking do not vary to a large degree. The same is true for the overall “Market Conduct Regulation Index” (MCRI) for all countries and professions covered (after inter-professional weighting) (see **Table IV-25**).

245 **Table IV-26** presents the sum of MERI and MCRI. The correlation coefficient is very high again. However, for countries where Latin notaries play a major role in legal services in conveyancing, our methodology of weighting (WIS) leads to slightly higher regulation indices than the alternatives EWM and WBO. At the same time, for the other countries, where respective tasks are provided by lawyers and/or real estate agents, regulation indices turn out to be slightly higher according to EWM and WBO.

Table IV-24: Overall “Market Entry Regulation Index” (MERI) in Three Different Models of Weighting

	MERI Weights in this Study (WIS)	Equal Weights Model (EWM)	Weights by OECD (WBO)	
Greece	6.0	6.0	6.0	6.0
Austria	5.9	5.8	5.8	5.7
Germany	5.7	5.6	5.6	5.5
Belgium	5.7	5.7	5.7	5.6
Poland	5.6	5.6	5.6	5.5
Luxembourg	5.4	5.3	5.3	5.2
Italy	5.4	5.3	5.3	5.1
France	5.1	4.9	4.9	4.7
Portugal	5.0	4.7	4.7	4.5
Slovenia	4.9	4.4	4.4	4.1
Spain	4.8	4.6	4.6	4.3
Czech Republic	3.8	4.4	4.4	4.7
Hungary	3.3	4.0	4.0	4.6
Slovakia	2.9	3.4	3.4	3.8
Denmark	2.0	2.8	2.8	3.3
England/Wales	2.0	2.7	2.7	3.2
Ireland	2.0	2.7	2.7	3.2
Scotland	1.9	2.6	2.6	3.1
Netherlands	1.9	2.4	2.4	2.9
Sweden	1.2	1.6	1.6	1.9
Finland	0.5	0.7	0.7	0.8
<i>Correlation with WIS*</i>			<i>0.986</i>	<i>0.94</i>

*Pearson's Correlation Coefficient

Table IV-25: Overall “Market Conduct Regulation Index” (MCRI) in Three Different Models of Weighting

	MCRI Weights in this Study (WIS)	Equal Weights Model (EWM)	Weights by OECD (WBO)	
Luxembourg	n.a.	n.a.	n.a.	
Greece	6.0	6.0	6.0	6.0
Portugal	6.0	6.0	6.0	5.9
France	5.2	5.2	5.2	5.0
Spain	5.2	5.2	5.2	5.0
Belgium	5.0	4.5	4.5	4.4
Slovenia	5.0	4.8	4.8	4.6
Poland	4.7	5.0	5.0	4.6
Italy	4.7	4.6	4.6	4.3
Germany	4.5	4.3	4.3	4.0
Czech Republic	3.6	3.5	3.5	3.7
Austria	3.2	4.0	4.0	3.2
Slovakia	2.9	2.8	2.8	3.1
Hungary	2.3	2.6	2.6	2.7
Ireland	1.3	2.1	2.1	2.1
Netherlands	1.2	2.1	2.1	0.9
Scotland	1.0	1.8	1.8	1.7
England/Wales	0.8	1.5	1.5	1.4
Denmark	0.8	1.2	1.2	1.2
Finland	0.0	0.0	0.0	0.0
Sweden	0.0	0.0	0.0	0.0
<i>Correlation with WIS*</i>			<i>0.98</i>	<i>0.99</i>

*Pearson's Correlation Coefficient

Table IV-26: Overall MERI plus MCRI in Three Different Models of Weighting

	MERI+MCRI Weights in this Study (WIS)	Equal Weights Model (EWM)	Weights by OECD (WBO)	
Luxembourg	n.a.	n.a.	n.a.	
Greece	12.0	12.0	12.0	12.0
Portugal	11.0	10.7	10.7	10.4
Belgium	10.7	10.2	10.2	10.0
Poland	10.3	10.6	10.6	10.1
France	10.3	10.1	10.1	9.7
Germany	10.2	9.9	9.9	9.5
Italy	10.1	9.9	9.9	9.4
Spain	10.0	9.8	9.8	9.3
Slovenia	9.9	9.2	9.2	8.7
Austria	9.0	9.8	9.8	8.9
Czech Republic	7.4	7.8	7.8	8.4
Slovakia	5.8	6.2	6.2	6.9
Hungary	5.6	6.7	6.7	7.3
Ireland	3.3	4.8	4.8	5.3
Netherlands	3.1	4.5	4.5	3.8
Scotland	2.9	4.4	4.4	4.8
Denmark	2.8	4.0	4.0	4.5
England/Wales	2.8	4.1	4.1	4.6
Sweden	1.2	1.6	1.6	1.9
Finland	0.5	0.7	0.7	0.8
<i>Correlation with WIS*</i>			<i>0.99</i>	<i>0.98</i>

*Pearson's Correlation Coefficient

246 **Table IV-27** presents the outcomes for the overall Consumer Protection Index (CPI) according to three different models of weighting. Here, sensitivity is higher than for MERI and MCRI. This is caused by the fact that EWM and EWM2 – when compared to WIS – imply different effects in countries; in those where legal services in conveyancing are dominated by notaries on the one hand, and countries where lawyers/real estate agents play a more important role on the other. However, correlation indices are still rather high and countries with comparatively high CPI according to one model are in no case labelled as “low performers” in one of the other models (or vice versa).

Table IV-27: Overall “Consumer Protection Index” (CPI) in Three Different Models of Weighting

	CPI Weights in this Study (WIS)	Equal Weights Model (EWM)	Equal Weights without CPOS
Austria	5.9	5.9	5.9
Belgium	4.7	4.6	4.2
Czech Republic	3.4	3.3	3.5
Denmark	4.0	3.2	4.0
England/Wales	4.5	3.8	4.7
Finland	2.1	2.0	2.5
France	5.2	5.1	4.9
Germany	5.3	5.2	5.0
Greece	2.4	2.9	2.9
Hungary	3.0	3.0	3.5
Ireland	4.5	3.8	4.7
Italy	5.6	5.5	5.4
Luxembourg	2.3	3.1	2.4
Netherlands	5.6	5.5	5.4
Poland	3.2	3.7	3.1
Portugal	4.5	4.4	4.0
Scotland	5.0	4.3	5.4
Slovakia	2.8	2.8	3.2
Slovenia	5.0	4.9	4.6
Spain	4.4	4.3	3.8
Sweden	4.4	3.7	4.7
<i>Correlation with WIS*</i>		0.93	0.96

*Pearson's Correlation Coefficient

3. Comparing “different worlds” of regulation of legal services in conveyancing with three alternative models of weighting

- 247** **Table IV-28** presents the results of three different models of weighting regulation indices for our “four worlds of regulation” outlined in section 2.3. of chapter IV).
- 248** Overall, our indices show low sensitivity to different methodologies of weighting various instruments of regulation. Obviously – regarding MERI and MCRI - for “low regulation countries” rather liberal rules for all forms of market entry and market conduct regulation apply, whereas the regulatory regimes of “high regulation countries” appear to be rather restrictive in all forms of market entry and market conduct regulation. The same is also true to a high degree for consumer protection regulation (CPI). However, this index shows a somewhat larger sensitivity in re-weighting than MERI and MCRI (especially for the L- and the S-group).
- 249** Overall, the two alternative models of weighting confirm our original outcomes. MERI and MCRI are by far most restrictive in the N-group, whereas in regimes dominated by

lawyers and real estate agents much more liberal rules are in place. The Netherlands are *the* paradigmatic example for a liberalised Latin notaries system. The differences between the notaries system and the other three groups become even more visible (in all three models of weighting), when mandatory intervention is taken into account as well.

250 Regarding the Consumer Protection Index (CPI) the Netherlands show one of the highest levels and the L-group is close to the level that in average applies to countries dominated by Latin notaries. Here, the EWM2 weighting model even results in the same on average CPI for the L-group and for the N-group. CPI in the Scandinavian countries on average is lower than in the other three groups (irrespective of weighting methodology applied). This is – in the first instance - caused by the case of Finland, whereas in Denmark and Sweden CPI reaches about the level of the L-group.

251 Overall, sensitivity towards different forms of weighting is low in our regulation indices. This tends to support the validity of the regulation indices calculated according to our original model of weighting. We do not find a large distortion of results caused by particular “subjective weightings”.

Table IV-28: Overall Regulation Indices for Legal Services in Conveyancing in Three Models of Weighting Regulation Indices: Four “Worlds of Regulation”

Group	Country	MERI+MCRI			MERI+MCRI+MII			CPI		
		Weights in this Study (WIS)	Equal Weights Model (EWM)	Weights by OECD (WBO)	Weights in this Study (WIS)	Equal Weights Model (EWM)	Weights by OECD (WBO)	Weights in this Study (WIS)	Equal Weights Model (EWM)	Equal Weights without CPOS (EWM2)
Hybrid	Greece	12.0	12.0	12.0	18.0	18.0	18.0	2.4	2.9	2.9
	Hungary	5.6	6.7	7.3	9.6	10.7	11.3	3.0	3.0	3.5
N	Luxembourg	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	2.3	3.1	2.4
	Portugal	11.0	10.7	10.4	15.0	14.7	14.4	4.5	4.4	4.0
	Belgium	10.7	10.2	10.0	14.7	14.2	14.0	4.7	4.6	4.2
	Poland	10.3	10.6	10.1	14.3	14.6	14.1	3.2	3.7	3.1
	France	10.3	10.1	9.7	14.3	14.1	13.7	5.2	5.1	4.9
	Germany	10.2	9.9	9.5	14.2	13.9	13.5	5.3	5.2	5.0
	Italy	10.1	9.9	9.4	14.1	13.9	13.4	5.6	5.5	5.4
	Spain	10.0	9.8	9.3	14.0	13.8	13.3	4.4	4.3	3.8
	Slovenia	9.9	9.2	8.7	11.9	11.2	10.7	5.0	4.9	4.6
	Austria	9.0	9.8	8.9	11.0	11.8	10.9	5.9	5.9	5.9
	<i>Average</i>	<i>10.2</i>	<i>10.0</i>	<i>9.6</i>	<i>13.7</i>	<i>13.6</i>	<i>13.1</i>	<i>4.6</i>	<i>4.7</i>	<i>4.3</i>
D	Netherlands	3.1	4.5	3.8	7.1	8.5	7.8	5.6	5.5	5.4
	<i>Average</i>	<i>3.1</i>	<i>4.5</i>	<i>3.8</i>	<i>7.1</i>	<i>8.5</i>	<i>7.8</i>	<i>5.6</i>	<i>5.5</i>	<i>5.4</i>
L	Czech Republic	7.4	7.8	8.4	9.4	9.8	10.4	3.4	3.3	3.5
	Slovakia	5.8	6.2	6.9	5.8	6.2	6.9	2.8	2.8	3.2
	Ireland	3.3	4.8	5.3	3.3	4.8	5.3	4.5	3.8	4.7
	Scotland	2.9	4.4	4.8	2.9	4.4	4.8	5.0	4.3	5.4
	England/Wales	2.8	4.1	4.6	2.8	4.1	4.6	4.5	3.8	4.7
	<i>Average</i>	<i>4.4</i>	<i>5.5</i>	<i>6.0</i>	<i>4.8</i>	<i>5.9</i>	<i>6.4</i>	<i>4.0</i>	<i>3.6</i>	<i>4.3</i>
S	Denmark	2.8	4.0	4.5	2.8	4.0	4.5	4.0	3.2	4.0
	Sweden	1.2	1.6	1.9	1.2	1.6	1.9	4.4	3.7	4.7
	Finland	0.5	0.7	0.8	0.5	0.7	0.8	2.1	2.0	2.5
	<i>Average</i>	<i>1.5</i>	<i>2.1</i>	<i>2.4</i>	<i>1.5</i>	<i>2.1</i>	<i>2.4</i>	<i>3.5</i>	<i>3.0</i>	<i>3.7</i>

V. Market Outcomes: Transaction Costs⁷⁶

1. Introduction

252 Costs incurred to the buyer/seller of property/land transactions in addition to the buying/selling price are transaction costs. These comprise fees to professionals, such as real estate agents, for technical services (surveyor etc.) and for legal services (lawyers, notaries, licensed conveyers), and, in addition, fees for land registration and taxes. Detailed tables of fees are presented in the separate excel annex 1: Transaction Costs Database.⁷⁷

253 In this linked annex, excel worksheets containing fee tables in absolute and relative terms are shown for transactions valued at 100,000 €, 250,000 €, and 500,000 € respectively for various EU countries, based on the cases of no mortgage, 100% mortgage and 70% mortgage.⁷⁸ Further tables show the estimates of professional fees and other transaction costs in absolute and relative terms for an average transaction value (house price) in each country.

A cautionary note about transaction costs: It is comparatively easy to obtain fees which are fixed by statute (such as taxes, register or notarial fees), but it is difficult to estimate other fees (such as the agents' or the lawyers' fees). The tables are based on our best estimates for the average fee, based primarily on our national reporters or publications, sometimes also on fee schedules published by firms on the internet.

254 In general, taxes account for upwards of 40 percent of all transaction costs. Although fees for professionals tend to vary mostly from 45 to 65 percent of transaction costs, these are in turn dominated by fees to real estate agents – accounting for at least 70 percent of professional fees on average. Thus legal fees – the focus of this study – typically represent 15 – 25 percent of all professional fees, accounting for about 7% – 13% of transaction costs (without mortgage) or around 11.5% of transaction costs for an average house transaction with a 100% mortgage.⁷⁹ Nevertheless, this represents a

⁷⁶ Luxembourg is not included in this chapter and so fees for 20 Member States are analysed.

⁷⁷ Separate Excel Annex 1: Transaction Costs Database.

⁷⁸ For expositional purposes, we present here mainly the case for the transaction value of €250,000 and 70% mortgage.

⁷⁹ Averages over countries in the Fee Tables are unweighted averages of country data, and thus differs from EU-wide consumer averages.

sizeable cost for consumers, and a notable feature is the variation in legal fees between different countries.

255 In this chapter we draw attention to, and illustrate, a) the differences that exist between countries in transaction costs and professional fees (section 2); b) the differences in effective “fee schedules” in both absolute and relative terms for different transaction values (section 3); c) the correlation between legal fees for different transaction values and the level of regulation (section 4). The overall results of this Chapter are presented in section 5.

256 It should be pointed out that section 2 gives an overview of all types of transaction costs. Section 3 onwards however only considers legal fees (fees charged by a notary, a lawyer or (in Scandinavian countries) by a real estate agent for their legal work in relation to a transfer of title and establishment of a mortgage.

2. Overall transaction costs and professional fees

257 **Figure V-1** shows the (non-adjusted) total transaction costs for the EU countries for the property value of 250,000 € and 70% mortgage.⁸⁰ The average EU transaction cost is around 8.8% of the property value. Costs in the range between 1% and 7% are associated with the Czech Republic, Denmark, England and Wales, Ireland, Portugal, Scotland, Slovenia and Sweden; for Finland, Germany, Italy and the Netherlands, the corresponding range is between 7% and 10%; costs between 10% and 15% have been reported for Austria, France, Hungary, Poland and Spain; costs of more than 15% are for Belgium and Greece. The total transaction costs are composed of taxes (about 40%), registration fees (about 4%) and professional fees (about 56%). Thus, both taxes and professional fees each amount to about 4.2% of the transaction value on average, whereas registration fees account for less than 0.4% of the average transaction value. There are considerable variations between countries around these average values.

258 **Figure V-2** shows the costs that are associated with the professional fees for transactions valued at 250,000 € with a 70% mortgage as benchmark. Professional fees in excess of 16,000 € (all professions) are registered for Austria, France, Greece, Italy and Spain. The middle-range for this transaction value lies between 8,000 € and 12,000 €, with those of England/Wales, Ireland, Netherlands, Poland, Scotland and

⁸⁰ For standard comparison purposes, we discuss here mainly transactions with 70% mortgage.

Slovakia being less than 6,000 €. Legal fees on their own are by far the highest for Greece, at nearly 6,500 € for transactions of 250,000 € with a 70% mortgage, while these are less than 1000 € in Czech Republic, Finland, Portugal, Slovakia and Sweden.

259 **Figure V-3** further illustrates the range of legal fees for different transaction values. For clear expositional purpose, **Figure V-4** excludes Greece. The average (un-adjusted) legal fees as a percentage of the transaction value for the EU Member States under review are 1.22%, 0.75%, 0.55%, and 0.97% for the property values of 100,000 €, 250,000 €, 500,000 €, and average house prices respectively (with a 70% mortgage). **Table V-1** summarizes Figures 1, 2 and 3.

260 It should be noted that for the Scandinavian countries⁸¹ of Finland and Sweden where real estate agents' also perform legal tasks, a single fee is usually charged covering both broker fees and legal tasks. For the purpose of this study, it has been necessary to determine the amount of this fee which relates to the legal part of their performance. A simple, but accurate way to do this, is to look at the fees a lawyer would charge for drafting the contract to transfer the property. This is also logical given that the parties have the option to consult a lawyer when for example the buyer and seller have met without the intervention of an agent, but nevertheless require legal help. Accordingly, a flat fee of 500 € is taken to represent the legal part of the real estate agent's performance and is based on the information provided by the national reporters. For Finland, 77 € and 353 € are added to this to take account of notary fees for the verification of signature and the bank fee for the mortgage respectively. For Denmark, where the seller is usually represented by a real estate agent and the buyer by a lawyer, it is assumed that the legal part of the real estate agent's services would correspond to a fee of 500 €. ⁸² As another peculiarity, the costs of the Spanish *gestor administrativo*, whose involvement in contract execution is usual, have been added to the lawyers' fees.

⁸¹ In relation to this study these are: Denmark, Finland and Sweden.

⁸² Note that, as a consequence, the legal fee of 500 € for Denmark, Finland and Sweden, is part of the real estate agents' costs (Figures 1 and 2) – and not *lawyers'* costs; however the legal fee of 500 € is included in *legal* fees (Figures 3 and 4) for these countries.

Figure V-1: Total Transaction Costs for Conveyancing

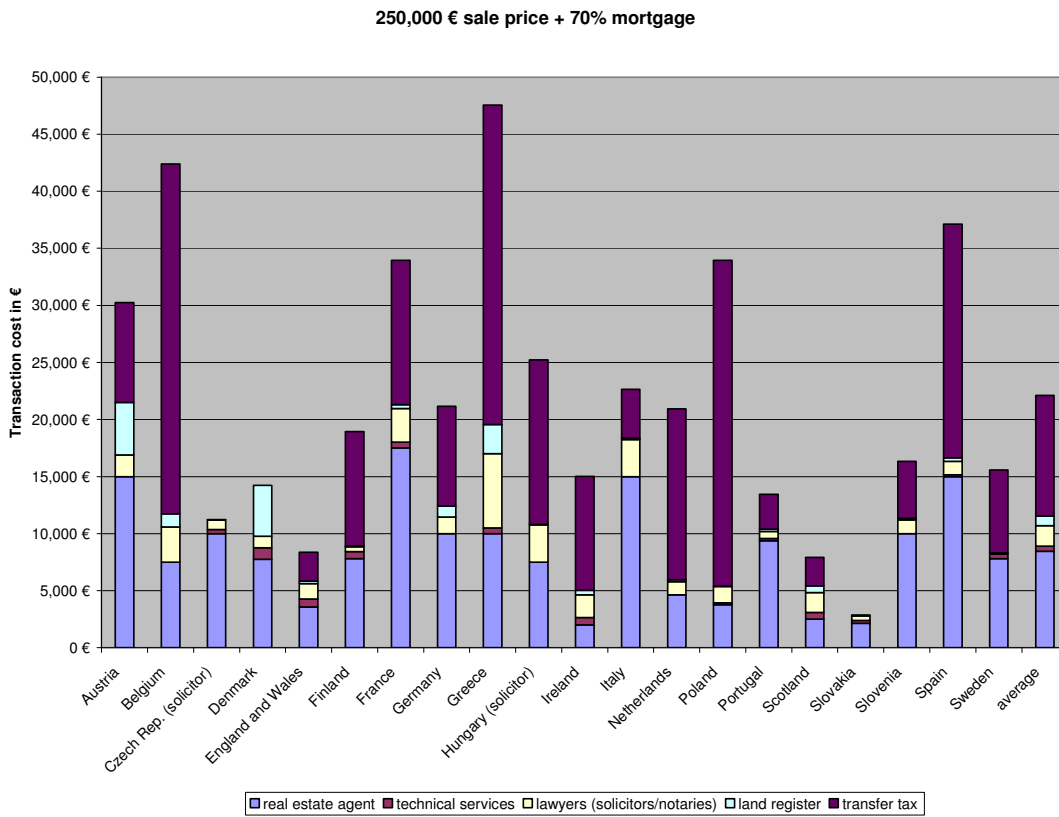


Figure V-2: Professional Fees for Transaction of 250,000 €

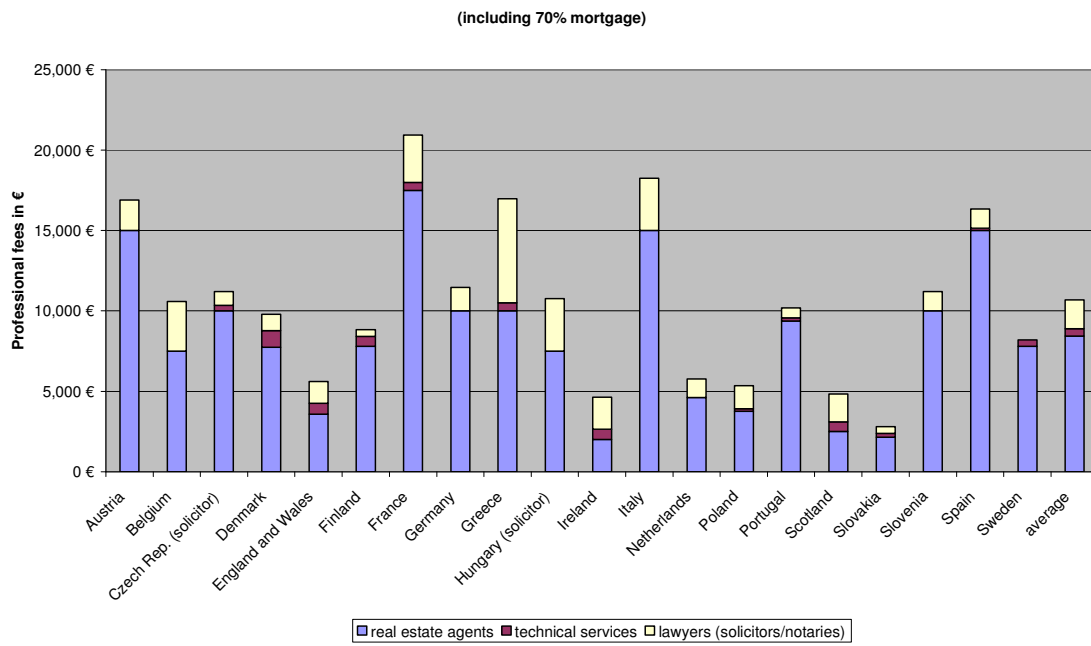
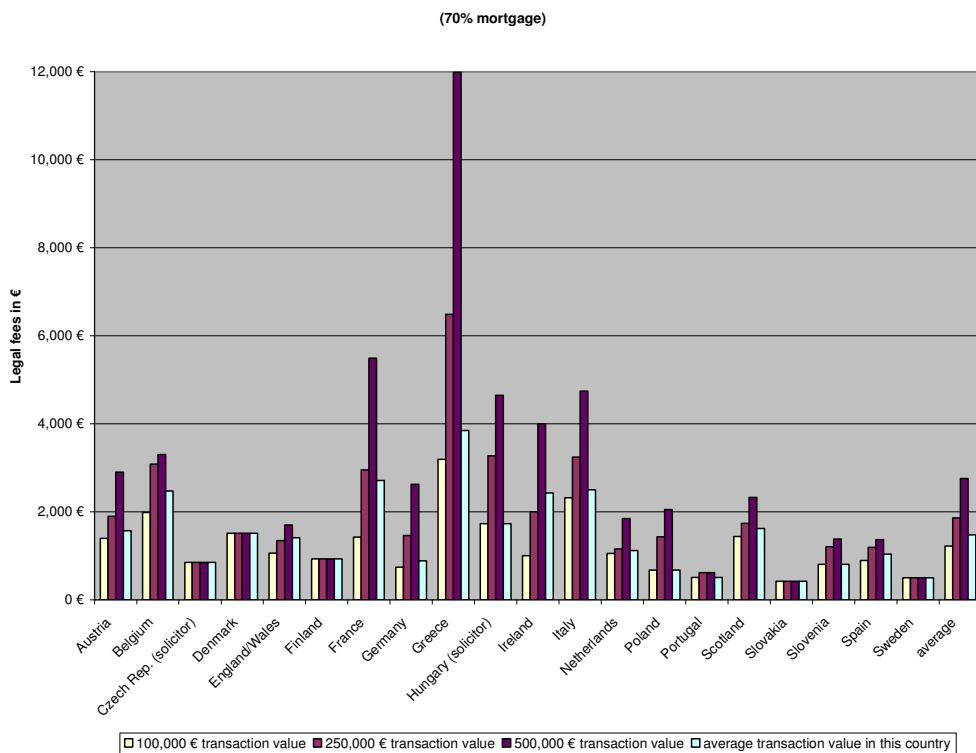


Figure V-3: Legal Fees for Conveyancing (1)



261 Given the information above, although the percentage of legal fees to the transaction value might seem relatively small, by no means are they insignificant. In particular, in some of the rural areas in the Member States, legal fees are the major burden upon buyers along with taxes as real estate agents do not play a role in the transaction. Moreover, the efficiency of legal fees in relation to effects on the real estate markets as well as on the whole economy needs to be considered. Consequently, we begin to address the aforementioned issues in the following section.

Figure V-4: Legal Fees for Conveyancing (2 - excluding Greece)

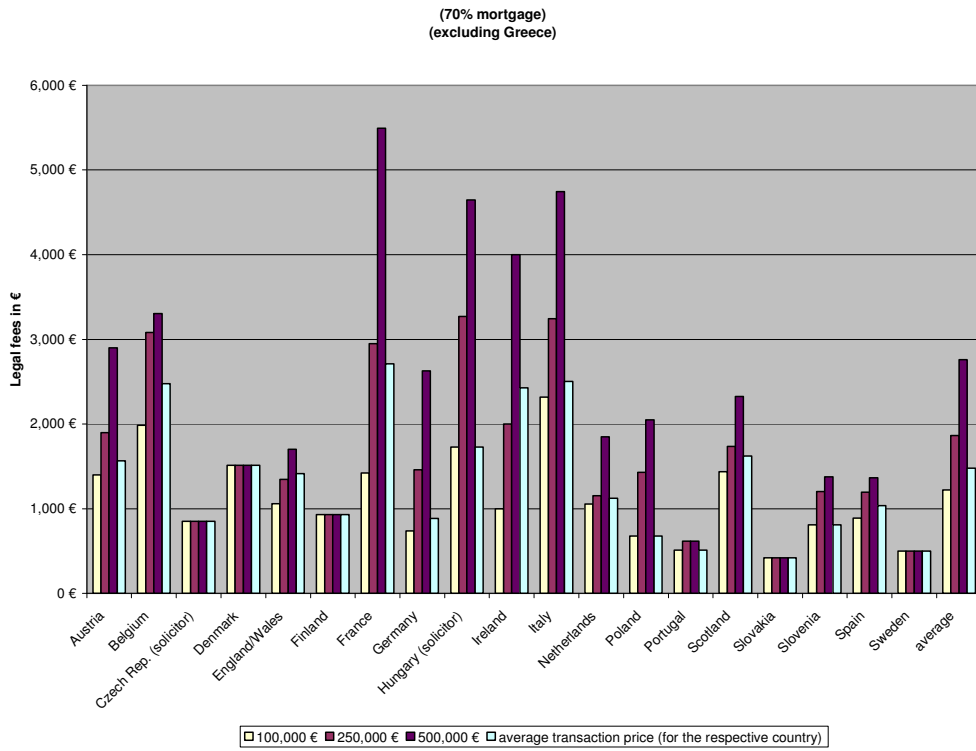


Table V-1: Transaction Costs to Property Value (250,000 Euros; 70% Mortgage) by Types⁸³

Cost/value relation (250K; 70% mortgage)					
Country	total cost	tax	registration	profess. fees	legal fee
Austria	12.10%	3.50%	1.84%	6.76%	0.76%
Belgium	16.96%	12.27%	0.46%	4.23%	1.23%
Czech Rep. (solicitor)	4.49%	0.00%	0.01%	4.48%	0.34%
Denmark	5.89%	0.00%	1.78%	4.11%	0.61%
England and Wales	3.34%	1.01%	0.09%	2.24%	0.54%
Finland	7.78%	4.00%	0.04%	3.74%	0.37%
France	13.57%	5.06%	0.14%	8.38%	1.18%
Germany	8.46%	3.50%	0.38%	4.58%	0.58%
Greece	19.02%	11.20%	1.03%	6.80%	2.60%
Hungary (solicitor)	10.10%	5.77%	0.02%	4.31%	1.31%
Ireland	6.01%	4.00%	0.15%	1.86%	0.80%
Italy	9.06%	1.71%	0.06%	7.30%	1.30%
Netherlands	8.38%	6.00%	0.07%	2.31%	0.46%
Poland	13.58%	11.42%	0.02%	2.14%	0.57%
Portugal	5.38%	1.22%	0.09%	4.07%	0.25%
Scotland	3.17%	1.00%	0.23%	1.93%	0.69%
Slovakia	1.14%	0.00%	0.02%	1.12%	0.17%
Slovenia	6.53%	2.00%	0.05%	4.48%	0.48%
Spain	14.84%	8.19%	0.12%	6.53%	0.48%
Sweden	6.43%	2.90%	0.05%	3.48%	0.20%
average	8.81%	4.24%	0.33%	4.24%	0.75%

Notes:

Total cost includes: real estate agent, technical, legal services, land register fees, transfer taxes.

Professional fees includes: real estate agent, notaries/lawyers, technical service fees.

Legal fees only covers notaries/lawyers' fees (and in the case of Spain the fees charged by gestor administrativo, whose involvement in contract execution is usual, have been added to the legal fees) and legal services by real estate agents (if relevant - mainly in Scandinavia)

⁸³ These transaction costs are in absolute terms: they are not adjusted for the net earnings factor.

3. Comparison of legal fees

262 In line with this study's focus, we now analyse legal fees only, i.e. without considering taxation, real estate agent fees or any other non legal fees.

3.1 Sample transaction of 250,000 € with 70% mortgage: Absolute Fees (i.e. unadjusted)

263 For a transaction value of 250,000 € with a mortgage for the same amount, the Swedish system is by far the cheapest– the percentage of legal costs of the value of the transfer thus being 0.2% only; similar values have been reported for Portugal and Slovakia; the Czech Republic and Finland follow with a little less than 0.4%. Values of 0.46%-0.6% are reported for England and Wales, Germany, the Netherlands, Poland, Slovenia and Spain. For the range of values between 0.6% and 0.8%, we find Denmark, Scotland, Austria and Ireland. However, the Isles countries⁸⁴ and Denmark might offer best quality of advice for money, as the reported fees cover the intervention of two professionals, i.e. one for each party, which seems to be safer than the involvement of one single professional. High legal costs of more than 1% of the transaction value are reported for Belgium and France (around 1.2%), Hungary (solicitor) and Italy – around 1.3%, and Greece (around 2.6%).⁸⁵

264 Extending the comparison to the different regulatory systems, the Scandinavian countries are least costly (with 0.39% of the transaction value⁸⁶) followed by the Dutch deregulated notary system with 0.46% and the lawyer system⁸⁷ (without Hungary, which is rated as a hybrid system) with 0.51%. Traditional notary systems⁸⁸ (rated without the hybrid system of Greece) are most expensive (0.76%). However, it should not be ignored that the fees within the various systems vary widely, so that there are

⁸⁴ In relation to this study these are: England and Wales, Ireland (Republic), and Scotland.

⁸⁵ It should be noted however that in these countries mortgages (here assumed for 70% percent of the price) are particularly expensive. Under the premise that mortgages are created for 100% of the house price, absolute figures for Italy, France, and Belgium would be about 10-15% higher.

⁸⁶ Unweighted averages used.

⁸⁷ In relation to this study these are: Czech Republic., England/Wales, Ireland, Scotland, and Slovakia. Hungary is a hybrid system.

⁸⁸ In relation to this study these are: Austria, Belgium, France, Germany, Italy, Poland, Portugal, Slovenia and Spain. Greece is a hybrid system.

some notarial systems which are cheaper than e.g. Ireland (the most expensive Isles country) and Scotland.

- 265** Viewing a different classification of countries, the five surveyed Eastern European⁸⁹ countries are markedly less expensive in absolute monetary values (0.57%) than the remaining fifteen countries (0.80%).

3.2 Scale Progression of fees (unadjusted): transactions of 100,000 €, 250,000 € and 500,000 €.

- 266** In a further step, absolute legal fees (unadjusted) are compared for different standard house values: 100,000 €, 250,000 € and 500,000 €. **Figures V-5, V-6 and V-7** show the progressional development of legal fees for selected countries,⁹⁰ different legal systems, and in terms of percentages respectively.
- 267** In nearly all notary countries legal fees are incremental conditional on the value of the transaction, other countries (with lawyers' system, or the Netherlands) have a far less "steep" fee progression, whereas the Scandinavian countries (as well as Portugal) more or less have flat fees (see Figures V-5 and V-6). Charging flat fees appears to be more just because transactions of real estate with different value will usually involve the same amount of work (and somewhat higher fees might only be explained by a higher share of the insurance premium due to the higher financial risk to the professional).
- 268** Incremental fees are often argued to entail cross-subsidisation between higher and lower value transactions. If fees are viewed in absolute values, this assessment seems to be only correct to a limited extent. Thus, the relative amount of the fees charged by country for a transaction above 250,000 € may change in comparison to the relative amount when a transfer value of 100,000 € is considered (c.f. Figure V-7). Thus, incremental (fixed) notarial fees for a 100,000 € transaction in Germany, Poland, Slovenia and Spain are somewhat less expensive than flat or nearly flat fees in Denmark, Finland and England (only Sweden being still cheaper than the aforementioned group of notary countries). This could point towards limited cross-subsidisation taking place. However, this does not hold if we consider adjusted fees – see below.

⁸⁹ In relation to this study these are: Czech Republic., Hungary, Poland, Slovakia and Slovenia.

⁹⁰ Greece, which reports by far the highest absolute legal fees, is excluded from the graph for clarity.

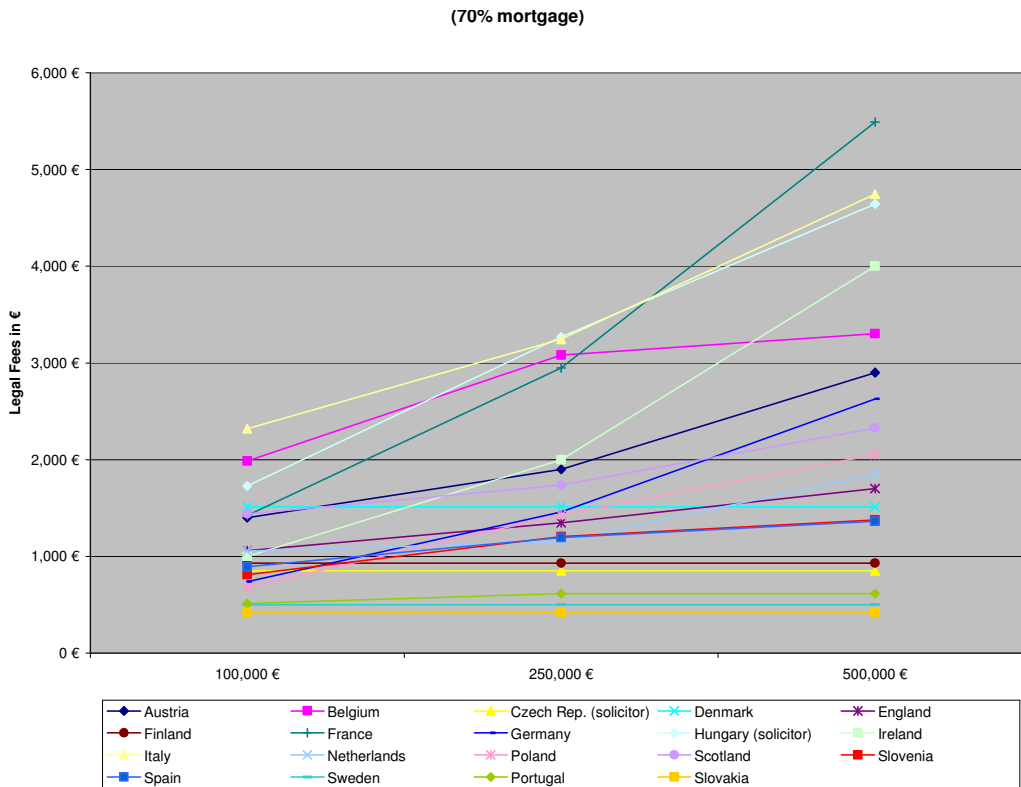
- 269** Furthermore, it should not be ignored that the maximum difference between the cheaper notarial fees and the flat fees is about 400 € for a transaction value of 100,000 €, whereas in the case of transactions with a value of 500,000 € notarial fees are up to several thousand Euros more expensive than flat fees. This large difference in fees could be interpreted as a monopoly rent conferred by the regulation of fixed fees (without considering at this stage possible further cross-subsidisation among different legal services).⁹¹ As a finding, it may thus be stated that whereas cross-subsidisation between higher and lower fees is limited (or non-existent when we look at adjusted fees, see below), monopoly rents in the case of high value transactions under fixed notarial fees are considerably large. As the bulk of transactions (especially in Central and Eastern Europe) concern lower values, however, we will in the next step consider fees in correlation with average house prices.⁹²
- 270** **Figure V-6** shows general trends:⁹³ on average fees charged in civil notary countries are consistently higher than all other systems' fees (for all transaction values under review). On the other hand, the Scandinavian system offers the lowest fees (apart from lawyers' fees for transactions under 120,000 € approx.) There is little difference in fees between both the Dutch deregulated notary model and the lawyers' system.

⁹¹ This will be examined in the Dutch case study.

⁹² Data taken from the national reports and from statistical sources available on the internet.

⁹³ For transactions involving a 70% mortgage.

Figure V-5: Legal Fees for Conveyancing (3)



271 Extending also this comparison to the different regulatory systems, we find the following figures:

Figure V-6: Legal Fees by Regulatory System

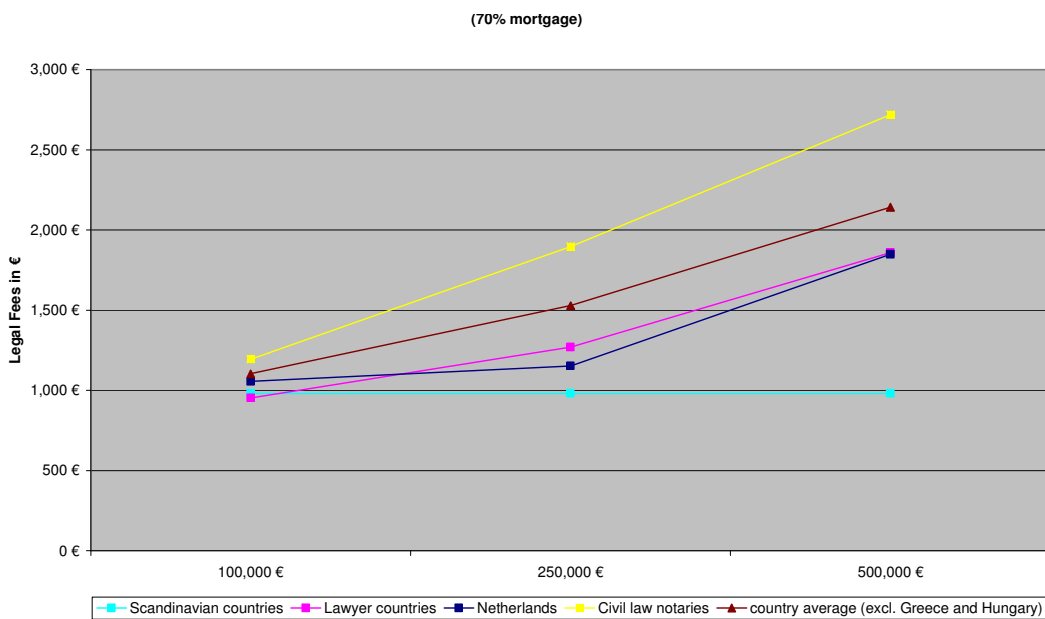
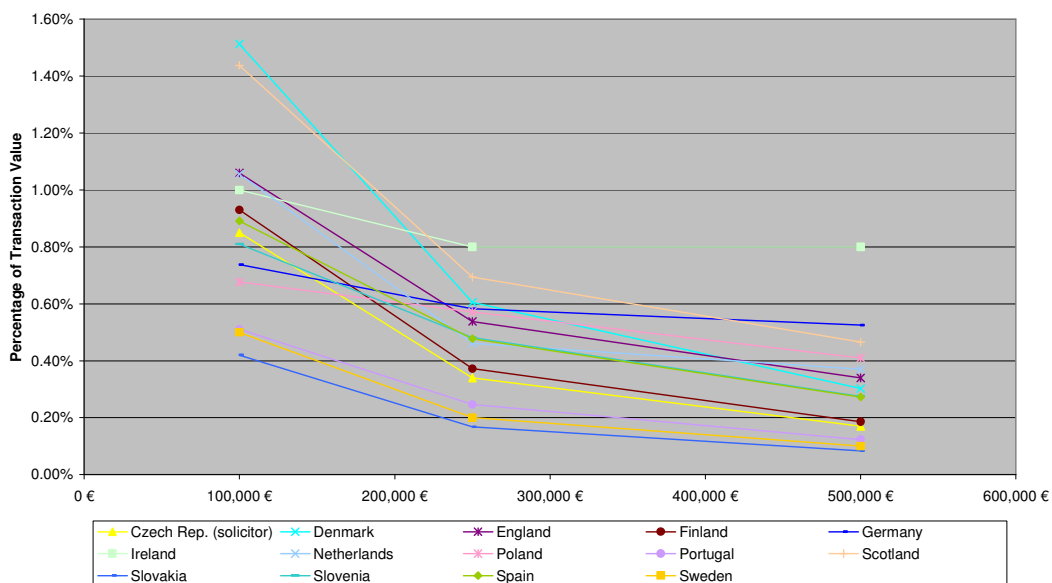


Figure V-7: Legal Fees as Percentage of Transaction Value (unadjusted)



3.3 Scale Progression of fees (Adjusted by net earnings factor): transactions 100,000 €, 250,000 € and 500,000 €.

272 Our use of benchmark transaction prices of 100,000 €, 250,000 € and 500,000 € throws much light on the relative costs of legal fees in different countries. However, housing markets differ substantially between (and often within) countries, so that typical “average” transactions are located at different points between the benchmarks. Another feature of the EU at present is the widely differing levels of economic performance indicators between countries; there is a large nominal and real difference between high and low income countries; in the latter category are to be found nearly all the new Member States of Central and Eastern Europe. We use data on average net earnings (and alternatively, price levels) to adjust fees in order to gain an indication of the real cost of legal fees in consumer property transactions.

273 The net earnings factor adjustment to the legal fees expressed as a percentage to the transaction value is equivalent to either adjusting the house value or the legal fees accordingly. One cannot *both* adjust house value and legal fees across countries as the net effect would be unchanged. As a thought experiment, let us assume the following: a typical consumer in a particular Western European country W earns, say, 4 times more than a typical person in a particular Eastern European country E (i.e. a person in W has

4 times more purchasing power than a person in E) but both pay 1000 € legal fees for a house purchase of 100,000 €. Consequently, a house that is worth 100,000 € in E would be equivalent to 25,000 € for a W consumer. Thus, the real percentage of legal fees to the house value for W person is 1% whereas for the E person, it is 4% (i.e. $(1000/25000)*100$). One may also adjust the absolute legal fees by the factor 4: a W person pays 1000 € whereas an E person pays 4,000 € in real terms. Thus, the real percentage is 1% and 4% for W and E persons respectively. The main message is that E consumer is 4 times poorer than the W consumer, and hence in reality pays 4 times more in real terms.

- 274** When absolute legal fees are adjusted by the net earnings index, somewhat different results from our analysis in 3.1 and 3.2 are obtained. To adjust the absolute legal fees in order to account for differences in net earnings across the countries, the following transformation was performed. We take the average net earnings for the EU in 2005 – 23,550 € – as a benchmark. The percentage of legal fees to total transaction cost is then multiplied by the ratio of net earnings for the respective country to the benchmark of 23,550 €. For example, the net earnings for Poland and England and Wales are 5,200 € and 33,668 € respectively. Moreover, the percentage legal fees for a 100,000 € property value (with 70% mortgage) for Poland and England/Wales are 0.68% and 1.06% respectively. Thus, the net earnings adjusted percentage of legal fees to 100,000 € house value for Poland is $(0.68*(23550/5200) = 3.08\%$, whereas for England it is $(1.06*(23550/33668) = 0.74\%$. Consequently, where England seemed considerably more expensive in absolute terms, it is in fact less expensive in real percentage terms than Poland.
- 275** **Figures V-8 and V-9** and **table V-2** show the legal fees that are adjusted by the net earnings factor. They show that much more is paid in real terms in Hungary, followed by Greece, then Poland and Italy, than in all other countries. Figure V-9 shows the clear message that when the legal fees in real terms are categorised by the regulatory systems, the notary system clearly charges much more than others for all transaction values, and that the Scandinavian countries, the Netherlands and most of the lawyer countries charge considerably less in the range of our benchmark transactions.
- 276** It should also be noted that, when using adjusted fees, there seems to be little indication of cross-subsidisation between notarial fees for low and high transaction values (with the possible exception of Germany). Indeed, it seems difficult to explain the high notarial fees for high transaction values as a compensation for the "low" notarial

fees charged for low transactions values as even for the low transaction values, notarial fees are generally higher than fees observed in the lawyer countries, the Scandinavian countries and the fees applied by the Dutch deregulated notaries.

Figure V-8: Legal Fees Adjusted by Net Earning Factor

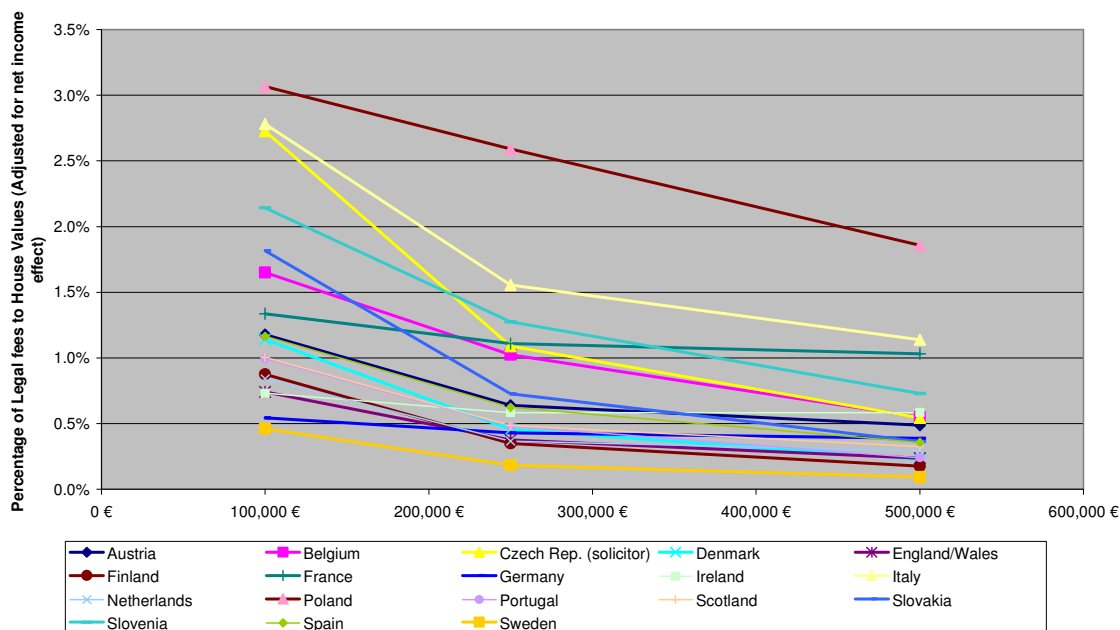
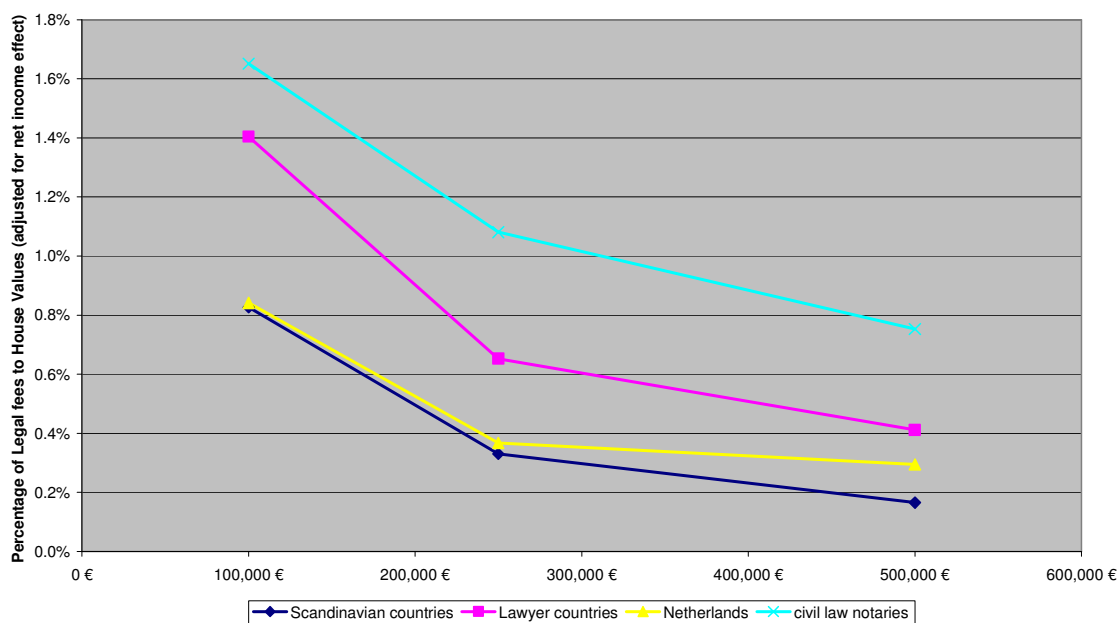


Table V-2: Legal Fees Adjusted by Net Earnings (Income) for Different Transaction Values

Country	Legal fee as a percentage of transaction value ADJUSTED BY NET INCOME		
	100,000 €	250,000 €	500,000 €
Sweden	0.46%	0.18%	0.09%
Germany	0.54%	0.43%	0.39%
Ireland	0.73%	0.58%	0.58%
England/Wales	0.74%	0.38%	0.24%
Netherlands	0.84%	0.37%	0.29%
Finland	0.88%	0.35%	0.18%
Portugal	0.99%	0.48%	0.24%
Scotland	1.01%	0.49%	0.33%
Denmark	1.14%	0.46%	0.23%
Spain	1.17%	0.62%	0.36%
Austria	1.18%	0.64%	0.49%
France	1.34%	1.11%	1.03%
Belgium	1.65%	1.02%	0.55%
Slovakia	1.82%	0.73%	0.36%
Slovenia	2.14%	1.27%	0.73%
Czech Rep.	2.73%	1.09%	0.55%
Italy	2.78%	1.56%	1.14%
Poland	3.07%	2.59%	1.86%
Greece	4.38%	3.57%	3.29%
Hungary	6.96%	5.27%	3.74%
average	1.83%	1.16%	0.83%

Figure V-9: Legal Fees Adjusted by Net Earning Factor by Regulatory System

3.4 Fees compared with average house prices

277 For average house prices, we have calculated by interpolation corresponding legal fees on the basis of the fees as presented in the Fee Tables for transactions of 100,000 €, 250,000 € and 500,000 €. In order to measure the effective value of these fees, they are indexed both with net earnings and also with country price levels as measured by Eurostat.⁹⁴

⁹⁴ Country price levels indices (PLIs), Net earnings based on one-earner married couple with average wage and two children; both obtained from EUROSTAT website: <http://epp.eurostat.ec.europa.eu> (March 2007).

Table V-3: Average House Prices, Estimated Legal Fees, Adjusted Prices

Country	Average price for residential house/apartment	Estimated fee for av. price	2005 deflators		Adjusted fee, by...	
			Price level	Net earnings	average price level	net earnings
Sweden	<i>147,500 €</i>	500 €	120.6%	25,479 €	415 €	462 €
Germany	130,863 €	886 €	104.1%	31,916 €	851 €	654 €
Finland	123,756 €	930 €	122.0%	25,006 €	762 €	876 €
Netherlands	<i>202,000 €</i>	1,122 €	105.2%	29,554 €	1,066 €	894 €
England/Wales	297,750 €	1,413 €	104.9%	33,688 €	1,347 €	988 €
Portugal	<i>100,000 €</i>	510 €	85.2%	12,086 €	599 €	995 €
Scotland	<i>193,860 €</i>	1,624 €	104.9%	33,688 €	1,548 €	1,135 €
Denmark	221,743 €	1,513 €	135.8%	31,202 €	1,114 €	1,142 €
Austria	150,000 €	1,567 €	102.9%	28,009 €	1,523 €	1,317 €
Spain	<i>172,630 €</i>	1,038 €	90.0%	18,004 €	1,153 €	1,358 €
Ireland	303,310 €	2,426 €	123.4%	32,233 €	1,966 €	1,773 €
Slovakia	100,000 €	420 €	57.6%	5,445 €	729 €	1,817 €
Belgium	167,000 €	2,475 €	104.3%	28,324 €	2,373 €	2,058 €
Slovenia	<i>100,000 €</i>	810 €	76.4%	8,901 €	1,060 €	2,143 €
France	<i>226,630 €</i>	2,711 €	108.5%	25,050 €	2,499 €	2,549 €
Czech Republic	100,000 €	850 €	57.8%	7,337 €	1,471 €	2,728 €
Italy	129,532 €	2,501 €	102.6%	19,636 €	2,438 €	3,000 €
Poland	100,000 €	677 €	59.6%	5,200 €	1,136 €	3,066 €
Greece	130,000 €	3,850 €	87.8%	17,140 €	4,385 €	5,290 €
Hungary (solicitor)	<i>100,000 €</i>	1,728 €	63.6%	5,848 €	2,717 €	6,959 €
average*	159,829 €	1,478 €	100%	23,550 €	1,558 €	2,060 €

Notes: * Unweighted country averages, except for 2005 deflators (=EU 25 average)
Estimates of average house price are shown in *italics*.

278 Countries in Table V-3 are listed in order of fee adjusted by net earnings (the last column). Overall, results for the two adjustment methods show broad correspondence, although there are variations for some countries. Sweden still ranks first when adjusted by price level (415 €), whilst the ranks following are taken by the Portugal, Slovakia, Finland, Germany, Slovenia and the Netherlands. In general the Scandinavian countries maintain high positions, and lawyer countries maintain a middle position (in England and Wales, Ireland and Scotland average house prices are much higher than elsewhere, with the price/fee ratio being favourable). However, some traditional notary countries like Portugal, Slovakia and Germany compare as well or better to the Dutch deregulated system when fees are adjusted by price level. When fees adjusted on the basis of net earnings are compared, this only holds for Germany. Once again, the more expensive notary countries such as France, Belgium and Italy are rated low on both

adjustments. It may be noted that for many new Member States adjusted fees using the price index and net earning factors are different: net earnings for these new Member States have not moved at a similar pace as their price indices. That is, inflation rates have increased at a much faster pace than net earnings for these new Member States.

279 The data is presented for the various regulatory systems in **Figures V-10a and V-10b** below.

Figure V-10a: Legal Fees for Average Priced House for Different Regulatory Systems – in Euro; and Indexed by Price Levels and Net Earnings

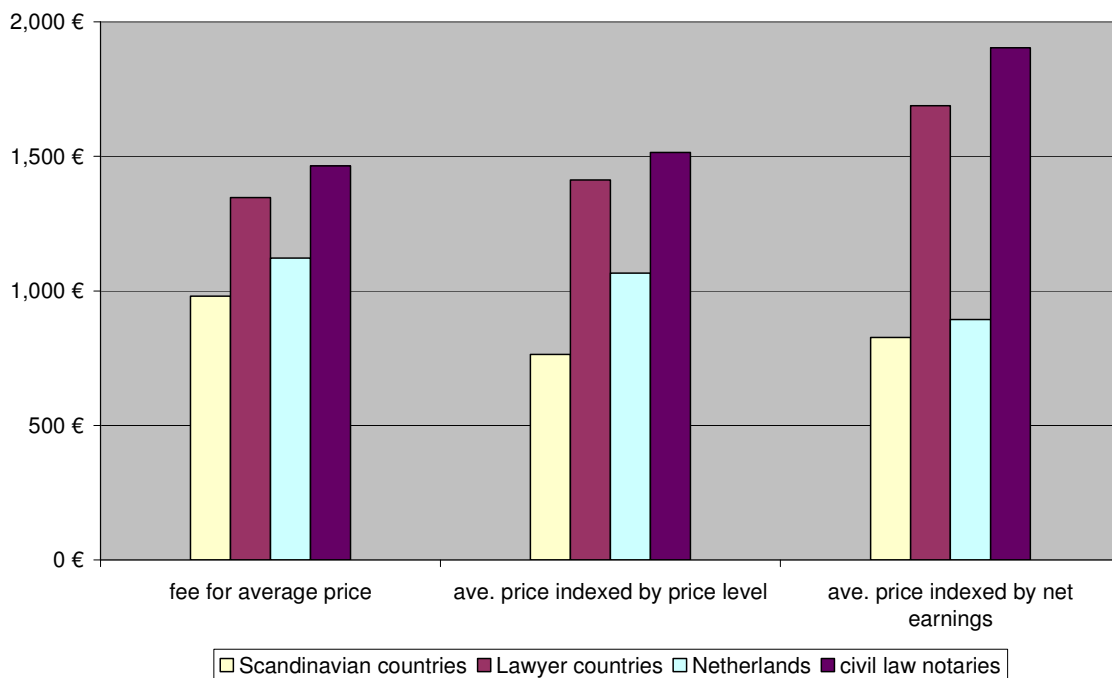
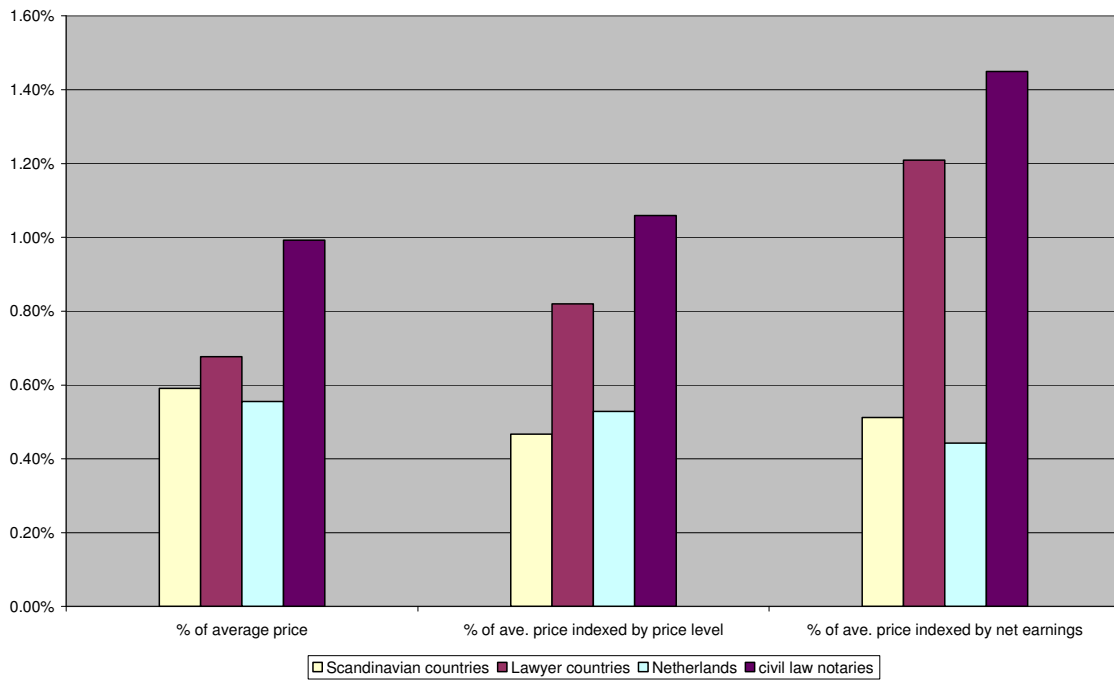


Figure V-10b: Legal Fees for Average Priced House for Different Regulatory Systems – as a Percentage of Average House Price; and Indexed by Price Levels and Net Earnings



280 These diagrams do not need much explanation: They show the clear lead of the Scandinavian and the Dutch deregulated notary systems when comparing both absolute fees (Fig. V-10a) due for the purchase of an average house and relative fees as a percentage of average house prices (Fig. V-10b). In both cases the notary system is the most expensive followed by the lawyer system. In addition, a similar picture emerges when absolute and relative fees are adjusted by price levels or net earnings. Once again, the result for the lawyer system needs to be viewed with some caution as house prices are much higher in the UK and Ireland than elsewhere. Furthermore, it should be remembered that for lawyer countries figures include the costs of two professionals/lawyers (one for each party), which as explained earlier might offer best value for consumers in terms of security given they are represented by their own professional.

4. Correlation between fees and regulatory index

281 In the following section an initial look at the relationship between legal fees and the level of regulation is taken. Hungary and Greece (which are hybrid systems) are

excluded from this analysis. Correlations between the regulation indices and the percentages of legal fees to the transaction value are shown graphically. A more detailed treatment of these relationships, also taking the aspect of “service quality” into account, follows in Chapter VI.

282 **Figures V-11, V-12 and V-13** show various PTV (percent of transaction value adjusted by the net earnings factor) against the combined regulation indices on market entry (MERI), market conduct (MCRI) and mandatory intervention (MII)⁹⁵ (see Chapter IV). Figures V-11 to V-13 clearly show the positive relationship between the percentage fees and regulation indices: the higher the regulation indices, the higher the percentage fees, in general. In Figure V-11, the correlation (R^2 = goodness of fit) between the two variables is 0.22. The straight-line goodness of fit increases to 0.31 for PTV250k (i.e. legal fee as percentage of 250,000 € house transaction), which is equivalent to a correlation coefficient R of 0.56.

283 The result of this analysis is straightforward: whilst there are some countries with high regulatory indices and rather low cost percentage values (ES, PT, DE), there are also other highly regulated countries with high or very high costs⁹⁶ (FR, IT, BE, PL) and, most importantly, no countries with low regulatory index values and high costs. In sum, Figures V-11 to V-13 all therefore show a clear positive correlation between the level of regulation and the percentage of the transaction value taken by legal fees (i.e. high levels of regulation go hand in hand with high fee levels whereas low levels of regulation are associated with low fee levels).

⁹⁵ The combined index is a sum of the three partial indices.

⁹⁶ It should be noted that Greece has been left out here as it represents a hybrid system: two lawyers acting on top of the involvement of a notary.

Figure V-11: PTV for a transaction value of 100,000 € vs. Regulation Indices

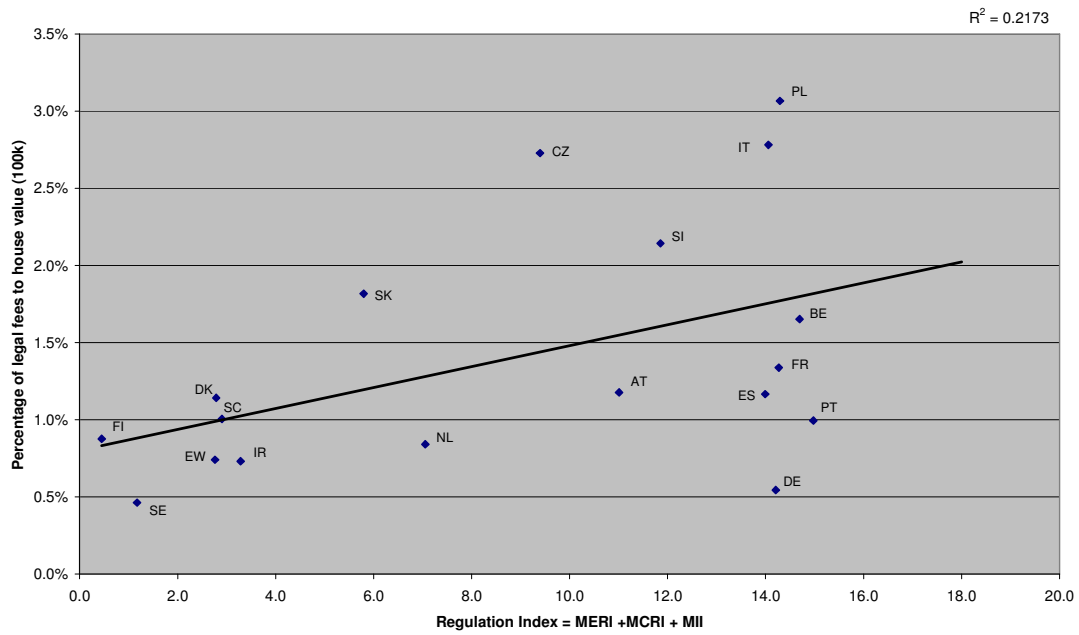


Figure V-12: PTV for a transaction value of 250,000 € vs. Regulation Indices

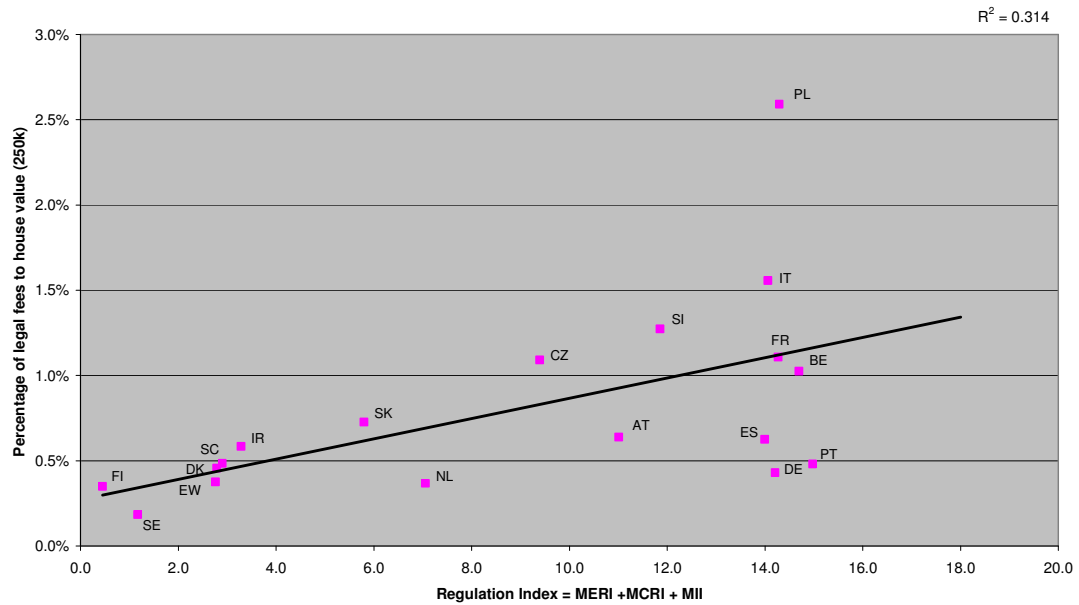
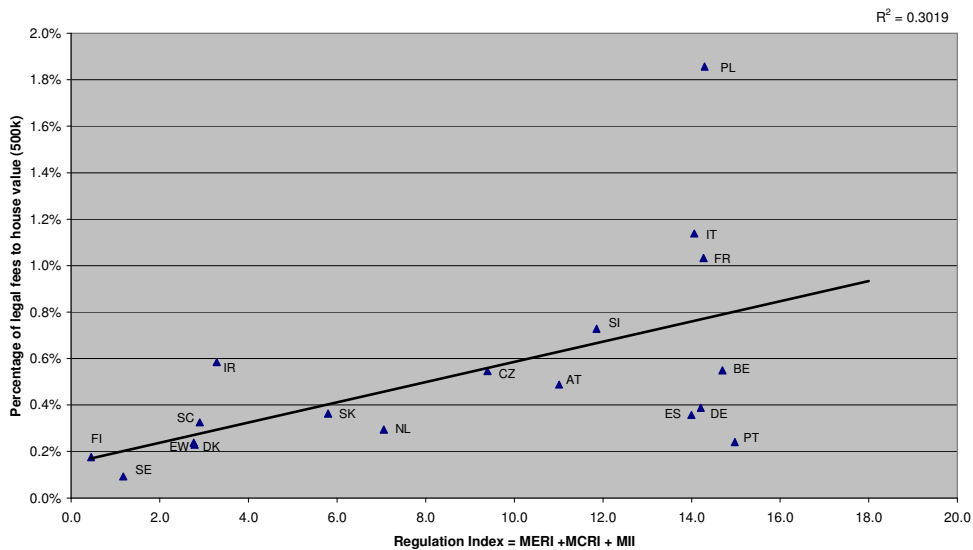
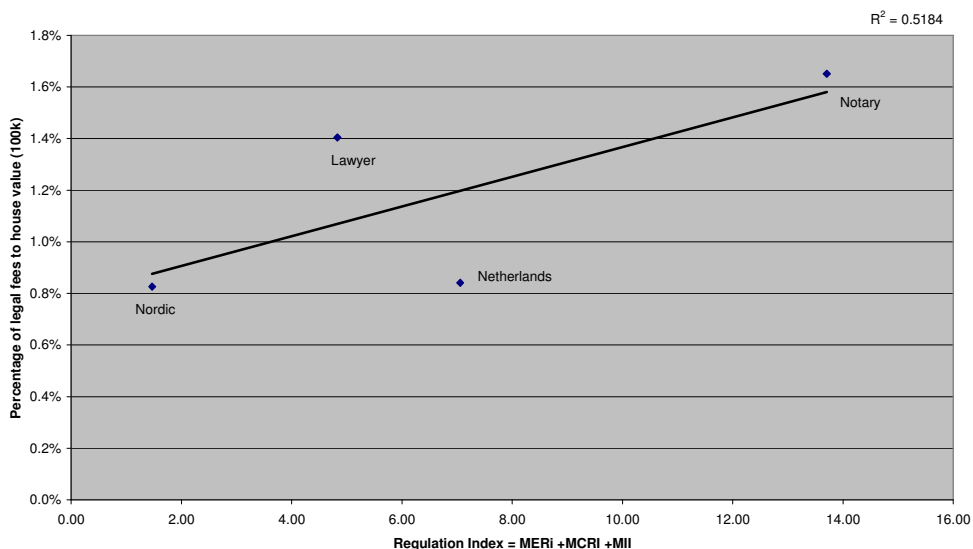


Figure V-13: PTV for a transaction value of 500,000 € vs. Regulation Indices



284 We also analyse the correlations between the regulation indices and regulatory systems. **Figures V-14 to V-16⁹⁷** show the relationship. The straight-line relationship between the two variables is even closer: the goodness of fit values are 0.52, 0.73 and 0.87 for the house values of 100,000 €, 250,000 € and 500,000 €.

Figure V-14: PTV for a transaction value of 100,000 € vs. Regulation Indices (4 different Regulatory Systems)



⁹⁷ In these figures, Nordic is used as an interchangeable term for Scandinavian countries.

Figure V-15: PTV for a transaction value of 250,000 € vs. Regulation Indices (4 different Regulatory Systems)

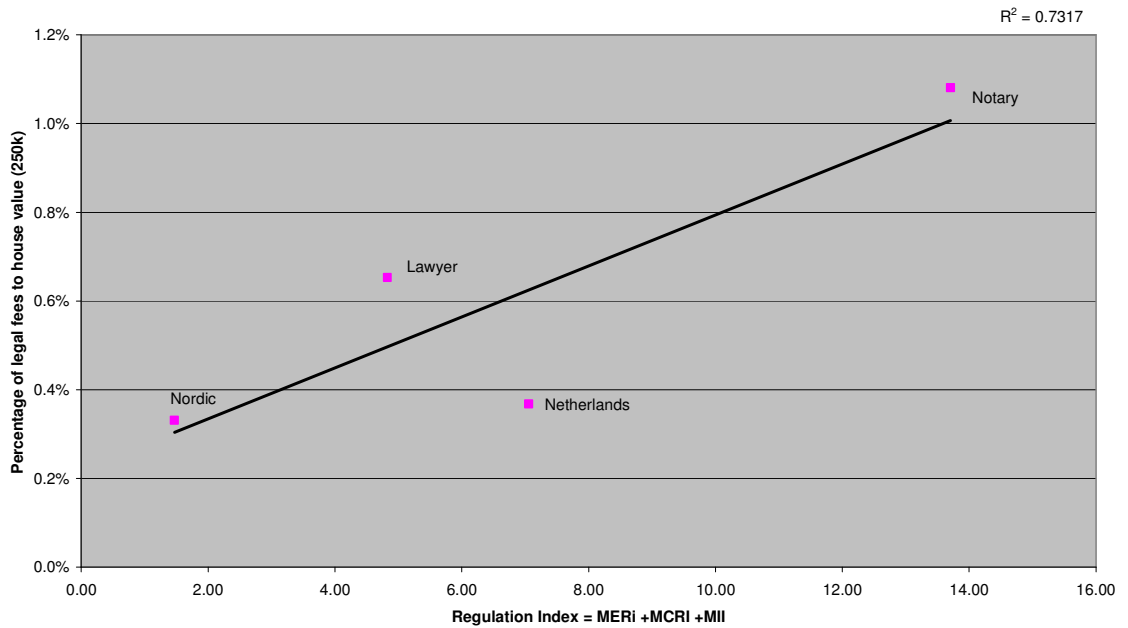
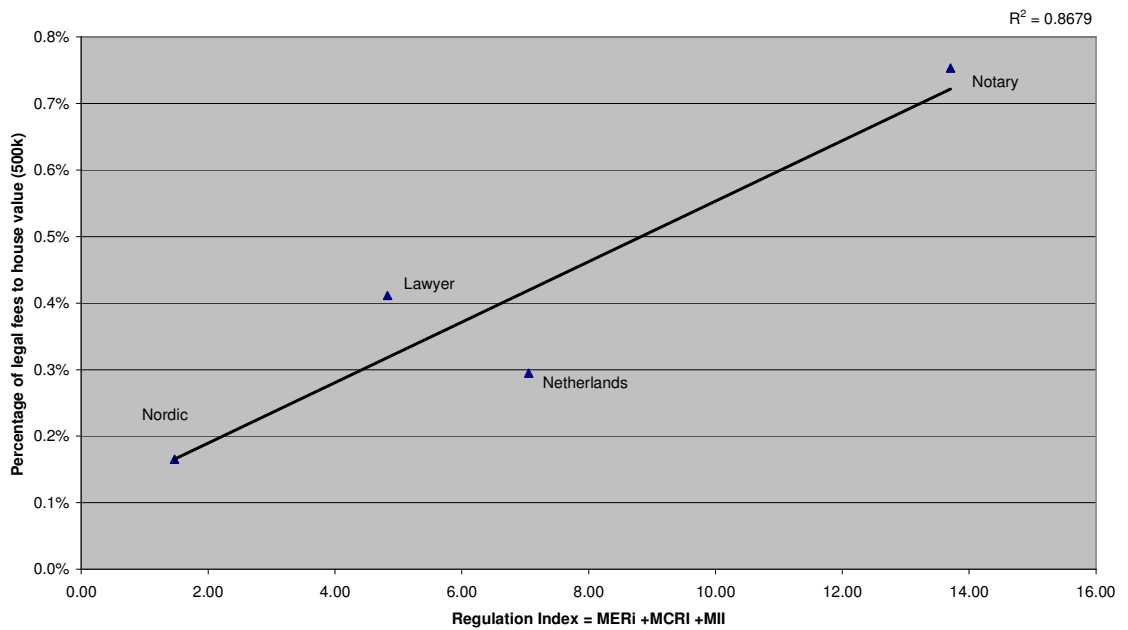


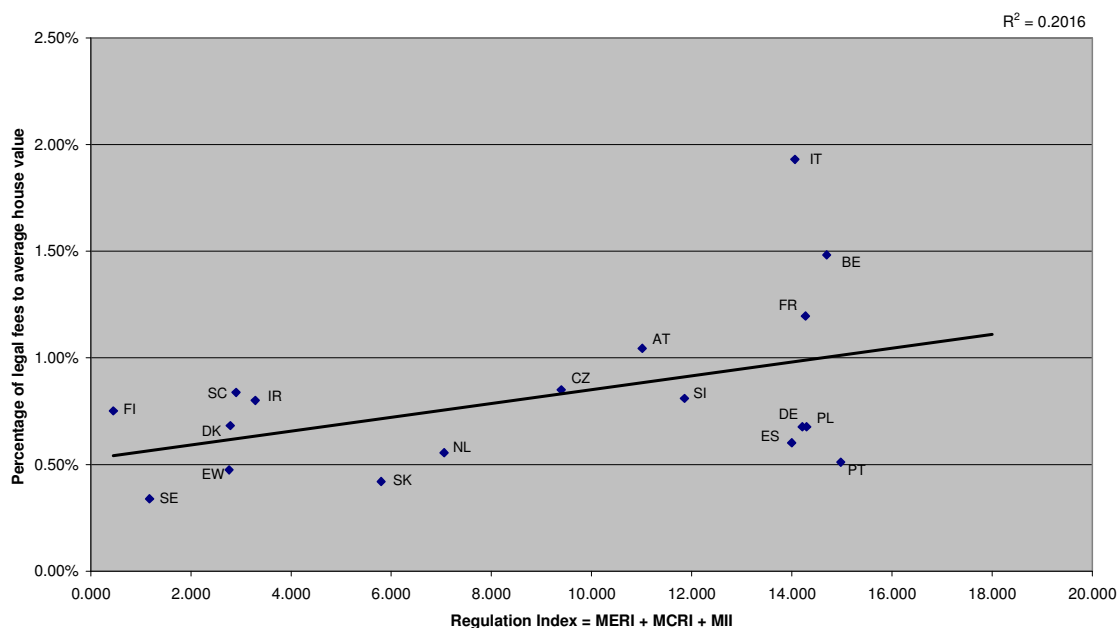
Figure V-16: PTV for a transaction value of 500,000 € vs. Regulation Indices (4 different Regulatory Systems)



285 The general picture shown in the above is confirmed in **Figure V-17** when we plot the legal fees as a percentage of average house price (PAHP) against the level of

regulation. The legal fee has been estimated for each country by interpolation based on the benchmarks for house prices of 100,000 €, 250,000 € and 500,000 €. In this case it is not necessary to adjust the legal fee for each country (for example by net earnings) in order to make relative comparisons. The relative positions of countries, and trend, is similar to those shown in Figures V-11-V-13.

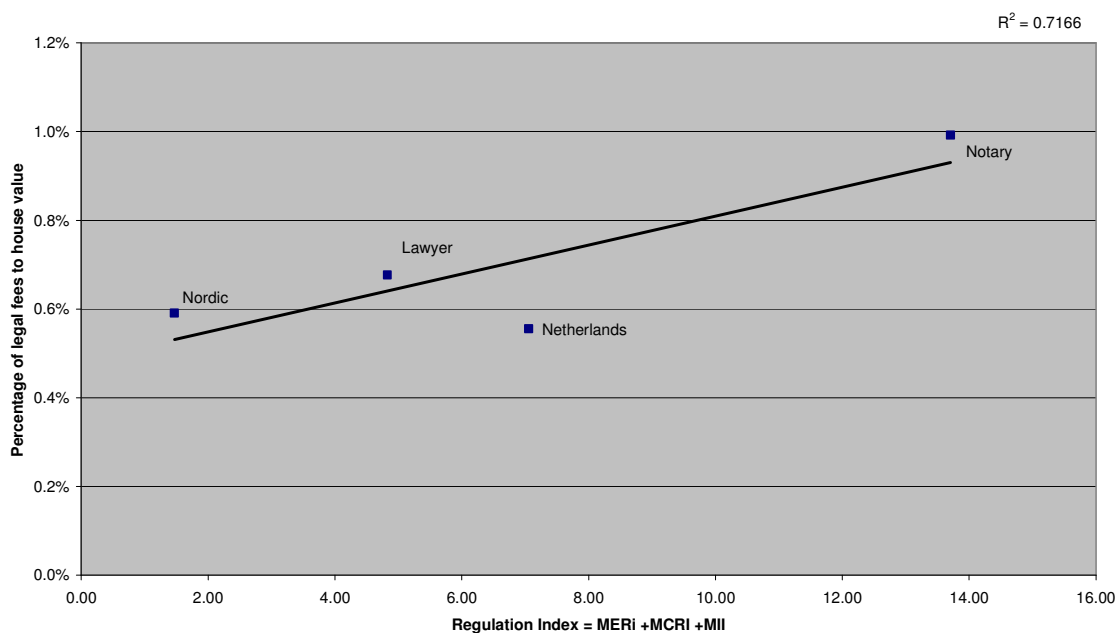
Figure V-17: PAHP vs. Regulation Indices



286 Likewise the relative positions of the country groups (Notary, Lawyer, Netherlands and Scandinavian) is unchanged in **Figure V-18** – based on PAHP – compared to Figures V-14-V-16^{98 99}. Once again, there is a clear positive correlation between the level of fees and the level of regulation.

⁹⁸ Greece and Hungary have been excluded from this analysis.

⁹⁹ In this figure, Nordic is used as an interchangeable term for Scandinavian countries.

Figure V-18: PAHP vs. Regulation Indices (4 Regulatory Systems)

5. Overall result

287 On average, the lowest legal fees are observed in the **Scandinavian system** (in particular Finland and Sweden). Comparing the UK and Ireland adversarial systems with flat or nearly flat fees and notarial systems¹⁰⁰ with value-dependant fees, the former are **cheaper for all transactions values examined including for a transaction value of 100,000 Euro**.¹⁰¹ Furthermore the higher the value becomes, the more expensive the notary systems (in particular the French, the Belgian and the Italian) become; this may indicate the existence of monopoly rents. The **deregulated Dutch system** – being a notarial system, but with less professional regulations, in particular without limits on the number of notaries and without statutorily fixed fees –, ranges close to the Scandinavian countries according to our figures. It therefore delivers impressive evidence that deregulated notary systems may work efficiently.¹⁰²

¹⁰⁰ Excluding the hybrid Greek and Hungarian systems and excluding the deregulated Dutch system.

¹⁰¹ Including a mortgage of the same amount.

¹⁰² See also the Dutch case study in Chapter VIII.3. for further info.

By and large, these tendencies are also confirmed by an additional comparison of the fees charged for average house prices in various countries.

- 288** Moreover, when we look at individual countries and we adjust fees by the net earnings factor there are very strong indications that **no cross-subsidisation** is taking place between notarial fees for low and high value transactions (with the possible exception of Germany) because notarial fees are generally higher even for 100,000 Euro value transactions than in cheapest country under review (Sweden).
- 289** Finally, the overall findings show a statistical **correlation between higher regulation and higher fees**. This means that high levels of regulation go hand in hand with high fee levels whereas low levels of regulation are associated with low fee levels.

VI. Market Outcomes: Assessment of Service

1. Introduction

- 290** In a perfectly competitive market, prices may be set exogenously, conveying information about relative scarcities. However, when the competitive markets that determine these prices experience the types of informational asymmetries between buyers and sellers that lead to adverse selection, prices take on an additional role, and may integrate information regarding the quality of goods or services provided.¹⁰³ We would thus be interested in whether the prices charged by professional services are related in some way to the quality of service provided. So higher prices for better quality services *might be* indicative of an efficient market. However, we should also be alert to latent inefficiencies: the possibility of disproportionately higher prices being charged for only somewhat better quality services (“moral hazard”) or even higher prices for standard quality services.
- 291** It follows from the above consideration that we can only examine efficiency of the markets for conveyancing services in the EU by relating prices to measures of service quality. Further, we link the national sub-markets by the degree of regulation, as a fundamental ‘control variable’ across countries and regulatory systems. Other chapters of this study deal with prices and regulation indices. The task here is to define a set of appropriate measures of service quality. Measurement is an empirical task, there are no reference datasets or ‘rules’ for these variables. For this reason a detailed questionnaire(s) was designed for this study, which was made accessible for an online survey. In addition a Belgian Market Research Company was mandated to collect replies.
- 292** Two versions of the questionnaire were provided 1) for individuals and 2) for professional associations. ‘Individuals’ encompasses both non-conveyancing related professionals, e.g. customers/consumers, as well as conveyancing professionals, whether legal, real-estate or technical. Each questionnaire had five sections dealing with related assessments of the service provided in each country – for each of the topics Choice, Quality, “Problems”, Speed and Price. In addition the Associations were

¹⁰³ Cf. Hughes (1998): “Measuring Efficiency When Market Prices Are Subject to Adverse Selection”, WP 98-3, Rutgers University.

asked to complete a sixth section on Market Structure. The feedback from questions on price is supplementary to our various investigations into price data, and this subject is dealt with in chapter V of this study.

293 Unique to the questionnaires are answers in the first four topics of service (quality). Because we used the term ‘Quality’ in this questionnaire in a stricter sense to deal with specific questions regarding quality of the professionals etc. we will rather use the term ‘service assessment’ in this report as an umbrella-term for the four service topics, namely ‘Choice’, ‘Quality’, ‘Certainty’, and ‘Speed’, instead of the broader term “service quality”, to avoid possible confusion. Service assessment draws attention to the empirical nature of the topics considered, with relevant information being drawn from the experience of people who completed the survey responses. Details of the questionnaire may be accessed at the ZERP website.¹⁰⁴

294 In order to test whether there are relationships between the service topics – and prices and regulatory system – it is necessary for us to have adequate quantitative data on these topics. Our methodology consists of constructing quasi-quantitative variables from all those questions that are both relevant and, crucially, lend themselves to such quantitative interpretation. These questions represent an important subset of all questions covered in the questionnaire, and are shown in detail in Table VI-10 in the annex at the end of this chapter.¹⁰⁵ Our aim is to construct variables for four service topics (‘Choice’, ‘Quality’, ‘Certainty’, and ‘Speed’). Each variable scale has a positive direction, i.e. *ceteris paribus* we will consider “more” of each variable as being more beneficial than “less”. The section of the questionnaire dealing with ‘Problems’ would otherwise imply a negative scale. Reversing this scale provides us with a topic ‘lack of legal problems’ that covers some (even if not all) aspects of the concept of “legal certainty”. Hence our diction for the proxy variable we use in the study – ‘Certainty’.

2. Overview of the Service Assessment Variables

295 Each of the service assessment topics Choice, Quality, Certainty and Speed are addressed by several relevant questions in the survey questionnaire. When a person fills out the questionnaire her/his response to *each* question (element) gives rise to a

¹⁰⁴ At <http://www.zerp.uni-bremen.de/>.

¹⁰⁵ Annex to Chapter VI: Definition, Coding and Weighting of Service Assessment Variables.

statistical variable. This variable (element) takes on a value depending on the answer – including ‘no answer’. For each topic, one (or more) particular questions can be converted into a new quantitative variable which is a function of the corresponding answer variables. We construct the quantitative variables on a scale of 0 to 6, where 0 represents least desirable outcomes, and 6 the most desirable outcomes. “Desirability” corresponds to the groups in the following sense:

<u>Variable Group</u>	<u>Low Desirability</u>	<u>High Desirability</u>
Choice	none	lots
Quality	dissatisfaction	satisfaction
Certainty	many problems	no problems
Speed	slow	fast

- 296** There are several quantitative variables for each topic – sub-variables – which are then multiplied by weights (that sum to 1) and aggregated to return the topic variables of Choice, Quality, Certainty and Speed, also on the scale of 0 (low) – 6 (high).
- 297** There are 4 groups of service assessment variables that are covered in the questionnaire – corresponding to the topics: choice (3 subvariables), quality (6 subvariables), certainty (3 subvariables) and speed (7 subvariables). Altogether these four groups comprise 19 subvariables.
- 298** Choice, Quality, Certainty and Speed are “variables” because they are produced for each questionnaire submitted. We may encounter difficulties, however, in the translation of answers-to-questions into sub-variables, and sub-variables into topic variables, if some required information is missing, i.e. not indicated by the respondent. This can be mitigated by an appropriate strategy for filling-in missing (sub-)variables but only to a certain extent. Inevitably, a variable value may remain unobtainable for some particular survey responses.
- 299** The questionnaire allows respondents to answer questions depending on whether they are inclined to assess particular professions – often one of the five professional groups: lawyer (attorney or advocate), civil law notary, licensed conveyancer, real estate agent, and architect/surveyor/engineer. Obviously the appropriateness of the answer depends on the professions involved in providing conveyancing services in each country. Hence we produce 17 topic variables (out of many more sub-variables) comprising Choice, Quality, Certainty for each of the five professions, plus Speed for each of residential and commercial transactions. By taking into account the actual involvement of

professionals in each country (in a similar manner regarding regulation indices – cf. chapter IV) we reduce, in a later step, to 4 topic variables for each response, conditional on the country of the response, i.e. for Choice, Quality, Certainty and also Speed (where we are interested primarily in residential transactions for comparative purposes).

2.1 Questions relevant to each Topic of Service

300 Choice of Professional

- Is the intervention of a professional mandatory for certain transactions? (Note: The answer to this question is known already, independently of response given)
- If not: Is it nevertheless usual to resort to the help of a professional? How frequently? (Note: The answer to this question has also been estimated already independently of response given)
- Are you satisfied with mandatory involvement (where this exists), or would choice of professional services be preferable? Which?
- Are there enough professional service providers?
- Is choice difficult because of difference in quality of professionals?

301 Quality¹⁰⁶

- Assessment of quality in total
- Personal qualification of the professional overall
 - in particular: integrity and trust
 - in particular: professional education
 - in particular: professional experience
- Quality of the conveyancing services overall
 - in particular: executing the contract
 - in particular: explanation to the parties

¹⁰⁶ Note: Professionals in a particular profession were asked in the questionnaire not to self-assess the quality of members of their own profession: this was generally adhered to in responses; actual violations to this request were, however, excluded from the results.

- in particular: drafting the contract
- Friendliness of the professional and of the staff
- Speed of the conveyancing services provided overall (Note: Qualitative answer sought here: the actual assessment of speed in weeks is asked under “Speed”)
 - in particular: time to get an appointment
 - in particular: time for executing the tasks
- Value for Money (general assessment of the price/quality ratio)

302 Certainty

- For the contracting parties: Breakdown in percentages of transactions without problems, disputes that do not go to court, disputes that do go to court, for each of
 - consumer to consumer transactions
 - builder/developer to consumer transactions
 - commercial acquisitions
- For the Client – Professional relationship: Breakdown in percentages of transactions without problems, disputes that do not go to court, disputes that do go to court, for each of
 - disputes involving land registration
 - disputes with the professional

303 Speed of Transaction

- Assessment of the time in weeks that it takes on average for drafting, executing and registering the contract once a buyer has been found, for each of
 - Legal services: preclosure
 - Legal services after concluding the contract
 - Real estate agent’s services
 - Technical services: preclosure
 - Paying transfer taxes
 - Registration in the land register fee

- Total time spent after finding a buyer (may well be shorter than sum of above times)

304 *Other Questions:* Questions in the survey questionnaire that are not referenced in the Definition of Service Assessment Variables in Table VI-10 (in the annex at the end of this chapter) do not have a direct influence on the outcome indices, but may be useful as checks and/or background analysis.

3. Definition, Coding and Weighting of Service Assessment Variables

305 The annex at the end of this chapter contains exact details of the definition, coding and weighting of all service assessment variables.

4. Summary of Responses to the Questionnaire

306 Having set the background for measuring Service Assessments in the previous sections (cf. the annex at the end of this chapter), we present and analyse the empirical results gained from the online survey in this and the remaining sections of this chapter.

307 Altogether, as of 1 February 2007,¹⁰⁷ there were 702 responses to the questionnaires, 652 (93%) of which were responses to the Questionnaire for Individuals, and exactly 50 (7%) were submitted from the Questionnaire for Associations.

308 Not every questionnaire returned can be used in the calculation of service assessment variables. For example, all parts of a topic, e.g. quality, may have been unanswered, so that every sub-variable – and hence the aggregated variable – is missing. Our main focus of attention is of course in differences/similarities between EU countries as regards service, so if no indication was given as to which country the questionnaire refers, the response is in fact unusable. 13 responses from individuals and 8 from associations were unidentifiable, so that altogether the maximum useful response set was 681. Due to gaps in the answers actually given to questions, and the network of questions needed to convert sub-variables into each service assessment variable, the total number of valid service assessments that are obtainable for each topic may be even less. These drawbacks were in part mitigated by adopting a suitable strategy to replace “missing values”: In order not to bias per-country results, country averages

¹⁰⁷ Cut-off date for this and all subsequent analyses.

were mostly used to fill in missing values; However, for small $N < 10$ the overall average was used.

- 309** The breakdown of responses to the questionnaires (both for individuals and for associations) is shown in **Table VI-1**. Looking at the last two rows we can observe that overall there is a good mix of backgrounds.¹⁰⁸ The survey may be regarded as an “expert survey” as three-quarters of all respondents have a professional affiliation. Given the range of experience of the conveyancing market that is investigated in the questionnaires, this is not surprising, rather welcomed. Nevertheless, at 25%, there is a sizeable input from customers of conveyancing services (ccs). Lawyers and Real Estate Agents (including licensed conveyors) are the largest single groups with 20% each of responses.
- 310** The breakdown per country is more heterogeneous; by the nature of the survey this make-up could not be controlled anyway. It should be noted here that the sample sizes for Austria (4), Denmark (5), Hungary (1), Luxembourg (2) and Scotland (6), are too small for much importance to be put on results from these countries.

¹⁰⁸ There were only a few cases of double affiliation claimed in the responses (with affiliation to a legal body as well as another – e.g. an engineering body; these were resolved by giving the legal affiliation precedence over the other professional affiliation, which in turn has precedence over being a consumer (ccs)).

Table VI-1: Sources of Responses to the Questionnaires¹⁰⁹

	Individuals' Questionnaire						Associa- tions	Country Totals =100%	
	Lawyer	Civil law notary	other Legal*	Real Estate/ Licensed Conveyor	Tech	ccs**			n.a.
n.a.		1 4.8%	1 4.8%			11 52.4%	8 38.1%	21 100%	
Austria	1 25.0%	1 25.0%			1 25.0%		1 25.0%	4 100%	
Belgium	12 20.3%			12 20.3%	13 22.0%	19 32.2%	1 1.7%	2 3.4%	59 100%
Czech R	4 36.4%			4 36.4%	2 18.2%	1 9.1%		11 100%	
Denmark			2 40.0%				3 60.0%	5 100%	
England	18 34.6%	2 3.8%	4 7.7%	14 26.9%	3 5.8%	11 21.2%		52 100%	
Finland	6 18.2%	5 15.2%	9 27.3%	5 15.2%		4 12.1%	4 12.1%	33 100%	
France	14 20.6%	4 5.9%		14 20.6%	12 17.6%	22 32.4%	2 2.9%	68 100%	
Germany	11 14.7%	15 20.0%	2 2.7%	9 12.0%	5 6.7%	24 32.0%	9 12.0%	75 100%	
Greece	6 50.0%	2 16.7%		1 8.3%			1 8.3%	2 16.7%	12 100%
Hungary	1 100.0%							1 100%	
Ireland	1 2.9%	1 2.9%	3 8.8%	10 29.4%	10 29.4%	8 23.5%	1 2.9%	34 100%	
Italy	2 7.1%	4 14.3%	2 7.1%	1 3.6%	5 17.9%	14 50.0%		28 100%	
Luxembourg						2 100.0%		2 100%	
Netherlands	14 23.7%	1 1.7%	3 5.1%	12 20.3%	12 20.3%	14 23.7%	1 1.7%	2 3.4%	59 100%
Poland	16 21.3%	1 1.3%	1 1.3%	15 20.0%	14 18.7%	18 24.0%	10 13.3%	75 100%	
Portugal	1 8.3%	1 8.3%	5 41.7%	2 16.7%		1 8.3%	1 8.3%	1 8.3%	12 100%
Scotland	1 16.7%					4 66.7%	1 16.7%	6 100%	
Slovakia	5 15.6%	4 12.5%	1 3.1%	8 25.0%	4 12.5%	8 25.0%	1 3.1%	1 3.1%	32 100%
Slovenia	8 34.8%	1 4.3%	4 17.4%	4 17.4%	3 13.0%	2 8.7%	1 4.3%	1 4.3%	23 100%
Spain	19 27.9%	2 2.9%	5 7.4%	14 20.6%	13 19.1%	13 19.1%	2 2.9%	2 2.9%	68 100%
Sweden			1 4.5%	15 68.2%		5 22.7%	1 4.5%		22 100%
All countries	140 20.6%	44 6.5%	42 6.2%	140 20.6%	97 14.2%	170 25.0%	6 0.9%	42 6.2%	681 100%

* other Legal: Judges and Law Professors; ** ccs - Customer of conveyancing services

5. Empirical Results of Service Assessment

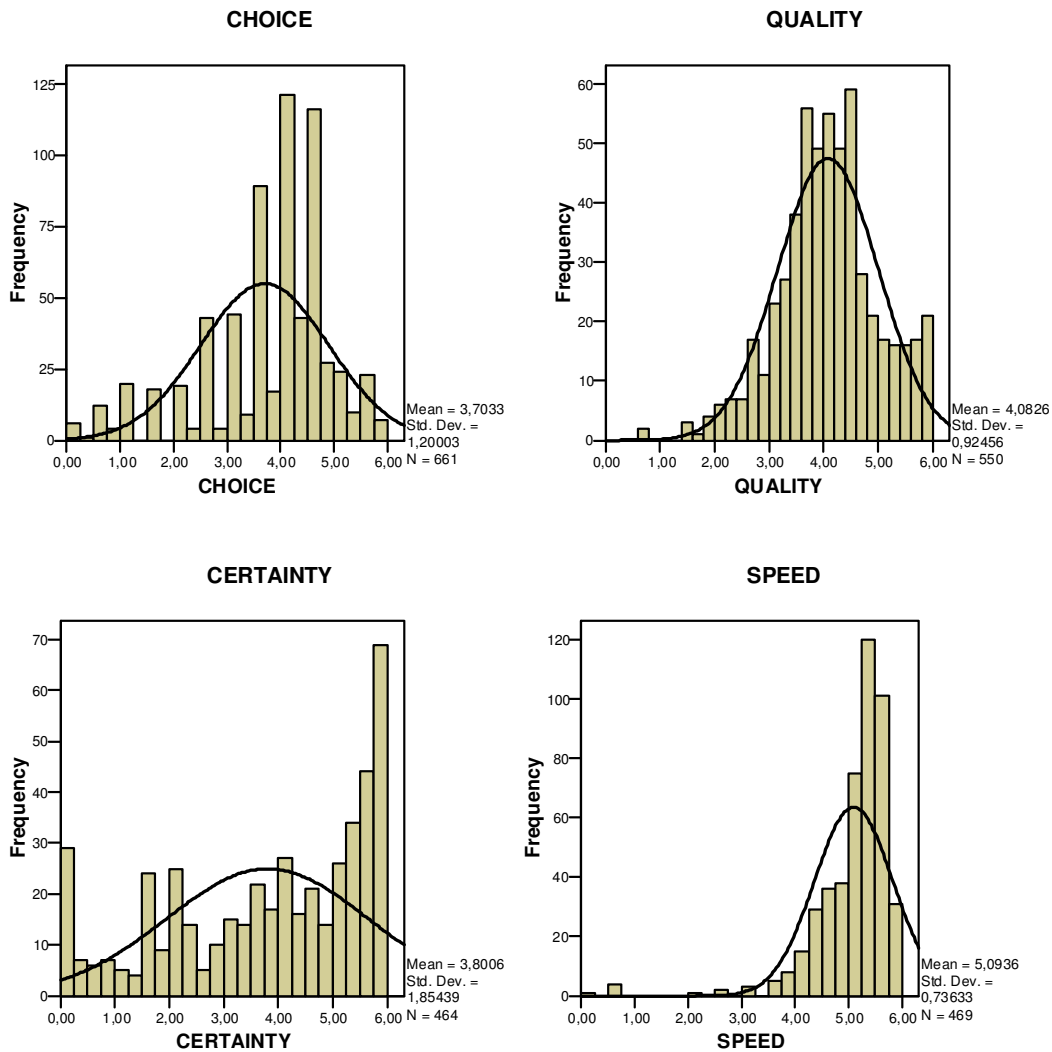
5.1 Distribution of Service Assessment Variables

311 The histograms in **Figure VI-1** show the distribution of the empirical values taken by the four service assessment variables, for the entire set of responses. There is a wide spread of values over the entire range 0-6 for Choice, Quality and Certainty. Speed,

¹⁰⁹ In this and following tables, Czech Republic is abbreviated to Czech R, England and Wales to England.

however, takes values "bunched" in the upper half of the range. This is due to the fact that most of the respondents report that time taken for various conveyancing tasks to be carried out is under 15 weeks, but there are a few tasks in some countries that are reported as taking longer. Since the Speed variable is a linear transformation of these time variables, it is reflected in its distribution.

Figure VI-1: Histograms of Service Assessment Variables



312 Choice and Quality are more centred (cf. Normal curves shown) than Certainty, which is fairly "uniform" apart from an increase of values towards 6 (indicative of there being no problems).

313 Further descriptive statistics of the Service Assessment variables are given in **Table VI-4**.

5.2 Service Assessment Indices

- 314** A main intention of examining the Service Assessments of Choice, Quality, Certainty and Speed is to provide suitable data for econometric analysis (cf. chapter VII). As comparative data on price and regulation is definable only on a per country basis, the results from the questionnaires need also to be aggregated in order to be compatible. Evidently, the mean of each service assessment variable provides the appropriate estimate. In accordance with the terminology for regulation indices, we will refer to the empirically obtained country averages as the **CHOICE** Index, **QUALITY** Index, **CERTAINTY** Index, and **SPEED** Index. These are shown in **Table VI-2** for each country in alphabetical order, along with summary statistics (minimum, maximum, mean and median) and the sample size (*N*) on which each index is based. *N* varies per index, as it is dependent on the actual questions the respondent has replied to.
- 315** Sample sizes vary considerably in the list of 21 countries from which responses were obtained. Since the respondents may be regarded to a high degree as being experts on conveyancing in their country,¹¹⁰ sample sizes of about 20 upwards are considered as being adequate for purpose. However the number of responses was very low (less than 6) in each of Austria, Denmark, Hungary, Luxembourg and Scotland, while various *N* for Czech Republic, Greece, Portugal, and Sweden are also less than 20.
- 316** Respondents were asked not to assess Quality-related questions if they are of the same profession (e.g. notaries assessing notaries; lawyers assessing lawyers). Mostly respondents complied with this request, but in those cases where this conflict of interest was not complied with, the answers were ignored in the calculations (i.e. treated as not having being answered).
- 317** The data on Service Assessment in Table VI-2 is complete for 20 out of 21 countries. For Luxembourg there is no estimate available of Speed Index.

¹¹⁰ Altogether three-quarters of respondents were professionals in the field (cf. Table V-1).

Table VI-2: Service Assessment Indices

	CHOICE		QUALITY		CERTAINTY		SPEED	
	Mean	N	Mean	N	Mean	N	Mean	N
Country								
Austria	4.3	4	4.21	3	4.72	3	5.36	3
Belgium	3.07	58	3.65	54	2.74	26	4.67	36
Czech R	4.56	9	4.78	5	3.68	11	5.4	10
Denmark	4.27	4	4.05	4	5.52	1	5.23	2
England	4.42	52	3.73	30	4.26	39	5.18	42
Finland	4.55	33	3.89	28	4.84	23	5.68	20
France	3.23	60	3.52	43	2.55	32	4.47	44
Germany	4.01	73	5.06	65	5.19	55	5.35	57
Greece	3.75	10	4.96	3	3.58	12	5.69	11
Hungary	3.43	1	1.45	1	4.61	1	3.82	1
Ireland	4.64	34	3.86	30	5.4	25	4.88	24
Italy	3.4	28	3.91	25	3.81	19	5.56	14
<i>Luxembourg</i>	2.92	2	2.46	2	5.69	1		0
Netherland	4.75	59	4.19	56	3.08	33	5.14	41
Poland	2.75	75	4	65	3.56	62	4.73	65
Portugal	3.16	12	4.04	8	4.43	7	5.52	7
Scotland	3.82	6	4.59	4	4.39	5	5.64	3
Slovakia	3.93	31	4.49	31	2.28	30	5.27	18
Slovenia	2.59	23	4.41	23	4.19	22	5.31	15
Spain	3.16	67	3.87	62	3.07	43	5.27	49
Sweden	4.33	20	4.22	8	4.18	14	5.69	7
Summary								
Min	2.59		1.45		2.28		3.82	
Max	4.75		5.06		5.69		5.69	
Mean	3.76		3.97		4.08		5.19	
Median	3.82		4.04		4.19		5.29	

5.3 Robustness Analyses of Overall Service Assessment

- 318** The service assessment indices of the previous section provide input into the regressions of chapter VII. In the remainder of this chapter we analyse the intrinsic information implied by the service assessments themselves.
- 319** In the **Table VI-3** below we first calculate an **AVERAGE Index** of Service Assessment, obtained as the mean of the four service assessment indices, Choice, Quality, Certainty and Speed, i.e. by implicitly giving equal weighting to each of these important aspects of service delivery, in the absence of specific reasons to do the contrary. The countries are also listed, top to bottom, in decreasing order of the Average Index.

Table VI-3: Country Service Assessment Indices Ranked According to

N	Country	CHOICE	QUALITY	CERTAINTY	SPEED	AVERAGE
		Index	Index	Index	Index	Index Mean
75	Germany	4.01	5.06	5.19	5.35	4.90
5	<i>Denmark</i>	4.27	4.05	5.52	5.23	4.77
33	Finland	4.55	3.89	4.84	5.68	4.74
34	Ireland	4.64	3.86	5.40	4.88	4.70
4	<i>Austria</i>	4.30	4.21	4.72	5.36	4.65
6	<i>Scotland</i>	3.82	4.59	4.39	5.64	4.61
11	Czech R	4.56	4.78	3.68	5.40	4.61
22	Sweden	4.33	4.22	4.18	5.69	4.61
12	Greece	3.75	4.96	3.58	5.69	4.50
52	England	4.42	3.73	4.26	5.18	4.40
59	Netherland	4.75	4.19	3.08	5.14	4.29
12	Portugal	3.16	4.04	4.43	5.52	4.29
28	Italy	3.40	3.91	3.81	5.56	4.17
23	Slovenia	2.59	4.41	4.19	5.31	4.13
32	Slovakia	3.93	4.49	2.28	5.27	3.99
68	Spain	3.16	3.87	3.07	5.27	3.84
75	Poland	2.75	4.00	3.56	4.73	3.76
2	<i>Luxembourg</i>	2.92	2.46	5.69		3.69
59	Belgium	3.07	3.65	2.74	4.67	3.53
68	France	3.23	3.52	2.55	4.47	3.44
1	<i>Hungary</i>	3.43	1.45	4.61	3.82	3.33
	Total	3.7	4.08	3.8	5.09	

Average Index

- 320** The first column (*N*) indicates the number of responses in each country. Countries with a very low number of responses appear italicised with a suitable *caveat* regarding the uncertainty of the results obtained. In the last row 'Total' is provided as a reference; it is the average of the respective service assessment variables over all responses and countries, where available. These values differ, not surprisingly, to some extent from the mean of the 21 (or 20) country indices.
- 321** Since these country results are of undoubted interest in themselves, we consider the robustness of the results in what follows, and enquire into their statistical significance in the next section, which is appropriate, especially given our caveat regarding the small sample size of certain countries.
- 322** There are indeed considerable differences in the sample size of these four service variables. To illustrate this, consider, for example, the Choice variable: the standard error (= standard deviation of the country sample mean) varies from as little as 0.06 for

Germany with N=73, to as high as 0.94 for Austria (N=4). In fact the standard error for Hungary, with just one (!) response, would be infinite. For this reason it is left out of further consideration here, as likewise, Luxembourg. The different magnitudes of standard error represent different sized confidence intervals for the means (under the normal assumption). For this reason it does not seem appropriate to “trust the reliability of”, say, the Austrian results to the same degree as the German ones.

Table VI-4: Descriptive Statistics of Service Assessment Variables

	N	Minimum	Maximum	Mean	Std. Error of mean	Std. Deviation	Skewness	Kurtosis
Choice	661	0	6	3.70	0.05	1.20	-0.99	0.78
Quality	550	0.73	6	4.08	0.04	0.92	-0.19	0.42
Certainty	464	0	6	3.80	0.09	1.85	-0.59	-0.84
Speed	469	0	5.9	5.09	0.03	0.74	-3.15	15.45

- 323** We introduce here, a method to compensate for these different-sized confidence intervals. If we take a ‘conservative’ or ‘cautious’ approach, we can say that we are approximately 84% confident that the true mean of the sample is *at least* equal to the mean as calculated minus one standard error.¹¹¹ By making this **sample adjustment**, we eliminate to some extent the effect of different sample sizes, by discounting the assessment by the size of its standard error.
- 324** **Table VI-5** shows the same indices after adjusting for sample size (SASAI). The countries are arranged in decreasing order of the Average Index. It is noticeable that, while there is broad correspondence in the order of countries, Denmark and Austria are both much lower in the ranking: this is a direct result of the “discounting” of these countries’ indices, being based as they are on at most 4 questionnaire responses (for Choice in both cases) and on even less *N* for Quality, Certainty and Speed. In fact there is only one valid response for Certainty from Denmark, so that (as in the case of Hungary) no estimate of SASAI can be obtained. Thus the index average for Denmark excludes Certainty. For this reason, Denmark, like Hungary and Luxembourg is shown in italics in the tables. The general correspondence however between the original average country index of Table VI-3 and the average country index after adjusting for sample size (SASAI) is high (correlation coefficient of 95%).
- 325** In a further step the possible effect of varying skewness and kurtosis in the distributions of the service assessment variables was considered (cf. Figures VI-1 and Table VI-4).

A *centralising transformation* around the median values for each of the four component service assessment variables was used to investigate such effects.¹¹² The results were once again highly correlated with the service assessment indices of Table VI-3. We conclude that there are no distorting distributional effects in the data.

326 These results indicate a robustness in the data. Sample size corrections mainly affect countries with very small samples. An additional correction for distributional effects is of little consequence, after making the adjustment for sample size (SASAI) shown in Table VI-5.

¹¹¹ From an approximately normally distributed population (which we assume for the means) about 68% of the values are within 1 standard deviation of the sample mean.

¹¹² For clarity of exposition we forgo showing results here. This centralising transformation has been applied in a recent IHS study (No. 833, March 2007) on rating the performance of insurance companies on the basis of financial ratios published by the FMA (Financial Market Authority) in Austria. We have shown, using principal component analysis to derive the first eigenvector, that this transformation eliminates most bias resulting, for example, from skewed distributions or the existence of outliers.

Table VI-5: Country Sample Adjusted Service Assessment Indices (SASAI) and Adjusted Average Index, after Correction of Country Means to Account for Sample Size

Sample Adjusted Service Assessment Indices (SASAI)	Adjusted CHOICE	Adjusted QUALITY	Adjusted CERTAINTY	Adjusted SPEED	Adjusted AVERAGE
	= Mean - s.e.	= Mean - s.e.	= Mean - s.e.	= Mean - s.e.	Mean of adj.
Germany	3.95	4.95	5.10	5.30	4.83
Finland	4.44	3.80	4.56	5.65	4.61
Ireland	4.54	3.77	5.16	4.81	4.57
Sweden	4.16	4.11	3.72	5.55	4.39
Czech R	4.37	4.49	3.31	5.36	4.38
Greece	3.64	4.67	3.21	5.68	4.30
England	4.34	3.64	4.00	5.13	4.28
<i>Denmark</i>	3.75	3.83		5.21	4.26
Scotland	3.58	4.17	3.78	5.47	4.25
Netherlands	4.65	4.10	2.81	5.06	4.16
Austria	3.36	3.46	4.09	5.25	4.04
Italy	3.26	3.74	3.46	5.49	3.99
Portugal	2.95	3.64	3.72	5.41	3.93
Slovenia	2.31	4.26	3.87	5.18	3.91
Slovakia	3.79	4.38	2.00	5.20	3.84
Spain	3.01	3.75	2.76	5.19	3.68
Poland	2.59	3.87	3.29	4.55	3.58
Belgium	2.89	3.53	2.40	4.59	3.35
France	3.08	3.40	2.22	4.40	3.28
<i>Hungary</i>					
<i>Luxembourg</i>					

327 With reference to Table VI-5 (with sample adjustment) a particular pattern emerges: It is generally observable that most of the *Latin notary* countries are to be found in the lower half of the table, with the notable (and robust in terms of the empirical data) exception of Germany.

328 In the wake of the above analysis, the next table in this section, Table VI-6, presents countries in a list – in decreasing order of index value – for each of the service assessment indices, Choice, Quality, Certainty and Speed, as well as for the Overall combined index, which are based on the adjustment for small N (small sample size) described above (SASAI). **Caveat:** This table is intended for quick comparisons based on Table VI-5. The exact position in the rankings should not be considered as ultimate, bearing in mind our cautions with respect to sample size, particularly for the countries with small N . Thus, despite the sample adjustment undertaken, less credence should be attached to the relative position of countries with smallest N (shown in italics in Table VI-6). Nevertheless, given the degree of robustness which has been

demonstrated in the foregoing discussion, the relative position of a country’s index as lying roughly, say, near the top, or near the bottom, or in the middle, may indeed be considered as being a maintainable characterisation of service *as assessed by surveyed respondents in each country.*

Table VI-6: Countries Listed in Order of Sample Adjusted Service Assessment Indices (SASAI) and Adjusted Average Index (country means corrected for sample size.)

By Sample Adjusted Service Assessment Indices (SASAI)	Adjusted CHOICE	Adjusted QUALITY	Adjusted CERTAINTY	Adjusted SPEED	Adjusted AVERAGE
	= Mean - s.e.	= Mean - s.e.	= Mean - s.e.	= Mean - s.e.	Mean of adj.
	Netherlands	Germany	Ireland	Greece	Germany
	Ireland	Greece	Germany	Finland	Finland
	Finland	Czech R	Finland	Sweden	Ireland
	Czech R	Slovakia	Austria	Italy	Sweden
	England	Slovenia	England	Scotland	Czech R
	Sweden	Scotland	Slovenia	Portugal	Greece
	Germany	Sweden	Scotland	Czech R	England
	Slovakia	Netherlands	Sweden	Germany	Denmark
	Denmark	Poland	Portugal	Austria	Scotland
	Greece	Denmark	Italy	Denmark	Netherlands
	Scotland	Finland	Czech R	Slovakia	Austria
	Austria	Ireland	Poland	Spain	Italy
	Italy	Spain	Greece	Slovenia	Portugal
	France	Italy	Netherlands	England	Slovenia
	Spain	England	Spain	Netherlands	Slovakia
	Portugal	Portugal	Belgium	Ireland	Spain
	Belgium	Belgium	France	Belgium	Poland
	Poland	Austria	Slovakia	Poland	Belgium
	Slovenia	France	**	France	France
Hungary*					
Luxembourg*					

* no values *Lowest N in italics* ** no value for Denmark

329 In the following section we test precisely which of the country results given in Table VI-3 are significantly different from those of other countries.

6. Statistical Significance Tests of Results

6.1 Comparison between Individual Countries

330 In Table VI-3 an index of overall service assessment is presented that is the average of the Choice, Quality, Certainty and Speed Indices for each country. Having considered the robustness of the results in the previous section we now look at the extent the differences found between countries are statistically significant. Both of these

procedures take account of sample size. Statistical significance is more difficult to detect when sample sizes are lower. When, however, the difference between the results for two countries are found to be statistically significant at the 5% level used, we can be 95% confident that the reported differences are not just due to random effects of sampling.

- 331** In order to test differences in the overall service assessment we need to know how it is distributed in each country. We construct an **Overall Service Assessment (OSA) variable** consistently as the mean of the Choice, Quality, Certainty and Speed variables (where necessary filling in values with country averages for those cases wherever there is a missing response¹¹³). The descriptive statistics of this variable, on a country OSA index basis, are summarised in the first seven columns of **Table VI-7**.
- 332** In this table Austria, Denmark, Luxembourg and Hungary are omitted as their sample sizes are too small for significance testing. When the index calculated as the mean OSA per country (third column of this table) is compared with the last column (which originates from Table VI-3), we see that the OSA index constructed from the OSA variable gives country results fairly close to the index average of country service assessment indices of Table VI-3.

¹¹³ In order to avoid introducing bias, missing values were only replaced by country averages for large samples; for small samples the overall average of the dataset was used.

Table VI-7: Descriptive Statistics for OSA Country Index vs. Average of Component Service Assessment Indices

Country Stats. for Overall Service Assessment Variable (OSA Index)							(cf. Table VI-3)	
	N	Mean	Std. Deviation	Std. Error	Minimum	Maximum	AVERAGE of the four component Service Assessment Indices	
Germany	75	4.91	0.35	0.04	4.01	5.52	Germany	4.90
Finland	33	4.74	0.29	0.05	4.05	5.31	Finland	4.74
Ireland	34	4.70	0.37	0.06	3.59	5.09	Ireland	4.70
Czech R	11	4.61	0.38	0.12	3.84	5.29	Czech R	4.61
Sweden	22	4.48	0.45	0.10	3.24	5.05	Sweden	4.61
Scotland	6	4.47	0.20	0.08	4.26	4.83	Scotland	4.61
England	52	4.40	0.45	0.06	3.20	5.28	England	4.40
Greece	12	4.33	0.40	0.11	3.61	5.07	Greece	4.50
Netherlands	59	4.29	0.51	0.07	2.38	5.48	Netherlands	4.29
Portugal	12	4.18	0.57	0.16	3.00	5.18	Portugal	4.29
Italy	28	4.16	0.39	0.07	3.38	4.87	Italy	4.17
Slovenia	23	4.13	0.57	0.12	2.43	4.99	Slovenia	4.13
Slovakia	31	3.99	0.45	0.08	3.27	5.04	Slovakia	3.99
Spain	68	3.84	0.68	0.08	2.10	5.10	Spain	3.84
Poland	75	3.76	0.76	0.09	1.90	5.33	Poland	3.76
Belgium	59	3.53	0.59	0.08	2.18	5.11	Belgium	3.53
France	68	3.44	0.55	0.07	2.02	4.77	France	3.44
Total	680	4.14	0.70	0.03	1.90	5.52		

333 When the OSA mean indices of two countries are compared then the likelihood of the difference between them being statistically significant increases with the size of this difference, and also with the size of the sample sizes (*N*) of each. How this interplay of *N* and values is resolved in our dataset is shown in **Table VI-8**. In this table statistically significant¹¹⁴ differences are shown in red; the significant difference (or non-significance) in OSA values refers to pairs consisting of the country at the head of each column and each of the countries listed below it in the same column.

334 Thus Germany, Finland and Ireland have in common that their OSA is significantly different from (greater than) that of each of the countries from the Netherlands down to France in the table (8 countries) – and that of Germany is also significantly different from that of England/Wales. Likewise differences between the OSA of each of

¹¹⁴ Statistical testing of differences in means was done with one-way analysis of variance (ANOVA); 5% level of significance using both Tamhane T2 and Dunnett T3 *post hoc* tests for unequal variances. Owing to the possibility of data being non-normal, these tests were repeated on ranked data, with unchanged results. The sample sizes (*N*) and standard deviations of the

Scotland, Sweden, Czech Republic and England/Wales with that of each of Spain, Poland, Belgium and France are statistically significant, and those of Czech Republic and England/Wales additionally with that of Slovakia.

335 Low sample sizes limit the possibilities for differences being statistically significant. Thus there are less significant differences with other countries for the Czech Republic compared to Ireland despite having a higher OSA, which is explained by the relatively small size of $N = 11$ for Czech Republic, compared to $N = 34$ for Ireland, with their standard deviation being of comparable size (Czech Republic 0.40, Ireland 0.37; cf. Table VI-7). The sample sizes for Austria, Denmark, Luxembourg and Hungary are too small to detect any significant differences with other countries, as is the case for Portugal, as evident from the last column of Table VI-8.

336 In summary, there tends to be statistically significant differences in Overall Service Assessment – between countries' OSA in the top half of Table VI-7 (or, equivalently, countries' Overall index of Table VI-3), and those in the bottom half. This implies that the overall service assessment – arising out of the empirical data – for many Latin notary countries located in the lower halves of these tables, lags behind those of the rest.

country groups are shown in the Country Statistics Table VI-7. The differences between country groups that are statistically significant at the 5% level are shown in Table VI-8.

Table VI-8: Statistical Significance of Difference in Overall Service Assessment (OSA)

Compares...	Rank Position in Table of Overall Service Assessment (Table VI-3):								
	1 Germany	3 Finland	4 Czech R	5 Ireland	7 Scotland	8 Sweden	9 Greece	10 England	11 Portugal
with . . . <i>(red colour indicates significant difference in mean overall assessment of service)</i>	03Finland	01Germany	01Germany	01Germany	01Germany	01Germany	01Germany	01Germany	01Germany
	04Czech R	04Czech R	03Finland	03Finland	03Finland	03Finland	03Finland	03Finland	03Finland
	05Ireland	05Ireland	05Ireland	04Czech R	04Czech R	04Czech R	04Czech R	04Czech R	04Czech R
	07Scotland	07Scotland	07Scotland	07Scotland	05Ireland	05Ireland	05Ireland	05Ireland	05Ireland
	08Sweden	08Sweden	08Sweden	08Sweden	08Sweden	07Scotland	07Scotland	07Scotland	07Scotland
	09Greece	09Greece	09Greece	09Greece	09Greece	09Greece	08Sweden	08Sweden	08Sweden
	10England	10England	10England	10England	10England	10England	10England	09Greece	09Greece
	11Portugal	11Portugal	11Portugal	11Portugal	11Portugal	11Portugal	11Portugal	11Portugal	10England
	12Netherlands	12Netherlands	12Netherlands	12Netherlands	12Netherlands	12Netherlands	12Netherlands	12Netherlands	11Portugal
	13Italy	13Italy	13Italy	13Italy	13Italy	13Italy	13Italy	13Italy	12Netherlands
	14Slovenia	14Slovenia	14Slovenia	14Slovenia	14Slovenia	14Slovenia	14Slovenia	14Slovenia	13Italy
	15Slovakia	15Slovakia	15Slovakia	15Slovakia	15Slovakia	15Slovakia	15Slovakia	15Slovakia	14Slovenia
	16Spain	16Spain	16Spain	16Spain	16Spain	16Spain	16Spain	16Spain	15Slovakia
	17Poland	17Poland	17Poland	17Poland	17Poland	17Poland	17Poland	17Poland	16Spain
	19Belgium	19Belgium	19Belgium	19Belgium	19Belgium	19Belgium	19Belgium	19Belgium	19Belgium
	20France	20France	20France	20France	20France	20France	20France	20France	20France

Note: Arrangement of Columns left-to right, and prefixes of country names refer to position in Table VI-3;

Alpha level of significance = 0.05, Tamhane and Dunnett T3 tests.

6.2 Comparison between the “Worlds of Regulation”

- 337** For this analysis the returns of the survey questionnaires on service were grouped by “worlds of regulation”, as described above in Chapter IV on regulatory indices. Data from all countries were used, and grouped by country as in Table IV-11. The same method of analysis was used as in the foregoing comparison between countries. Thus the overall service assessment (OSA) per assessor (= returned questionnaire) is the primary variable which is grouped according to whether the country concerned or the legal aspects of its conveyancing system is Latin notary, lawyer based, a hybrid of these two, Scandinavian, or the deregulated notary system of the Netherlands.
- 338** The summary statistical data is shown in Table VI-9.

Table VI-9: Overall Service Assessment by “World of Regulation”

	N	Mean	Std. Deviation	Std. Error	95% C.I. for Mean		Minimum	Maximum
					Lower Bnd.	Upper Bnd.		
Scandinavian	60	4.617	0.384	0.050	4.518	4.716	3.24	5.31
Lawyer based	134	4.401	0.485	0.042	4.318	4.484	3.20	5.29
NL Dereg Notary	59	4.291	0.511	0.067	4.158	4.424	2.38	5.48
Hybrid	13	4.253	0.470	0.130	3.969	4.537	3.33	5.07
LatinNotary	414	3.966	0.766	0.038	3.892	4.040	1.90	5.52
Total	680	4.143	0.704	0.027	4.089	4.196	1.90	5.52

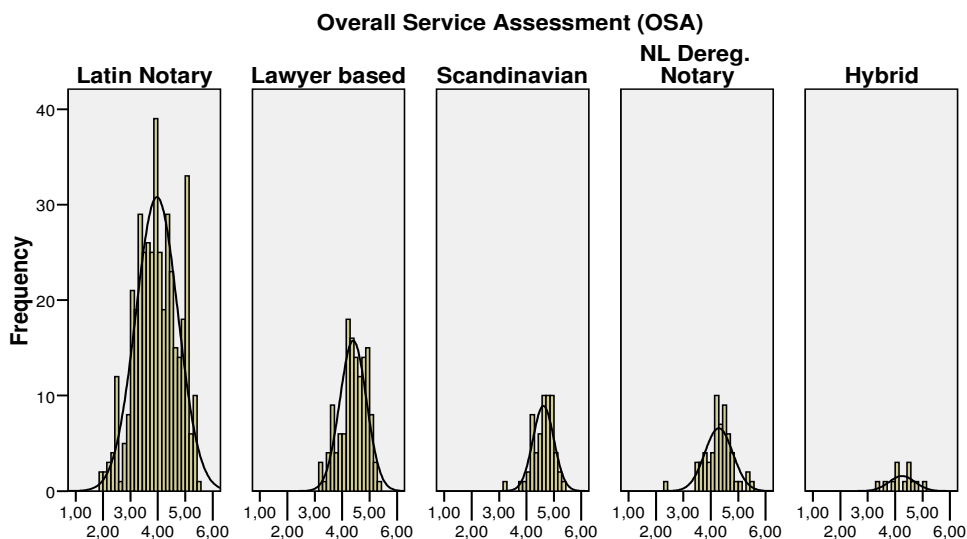
- 339** The rows of this table are arranged in order of decreasing mean of the overall service assessment. Sample sizes are adequately large (with the exception perhaps of the hybrid group comprising Greece and Hungary). The Scandinavian group has the highest assessment, and the Latin Notary group of countries the lowest, having a mean score of less than 4 that is less than the whole sample mean of 4.14.
- 340** As in the foregoing comparison between countries, first a normal distribution of the OSA variable per group was assumed. The validity of this assumption may be seen in Figure VI-2, where histograms of each group are overlaid by the corresponding normal curve. ANOVA test statistics that do not assume equal variances were used to find statistically significant differences between the groups. A second analysis using non-parametric testing of paired groups¹¹⁵ was carried out, without the need for assuming normal distributions. In both cases the results confirm what is apparent from inspection of Table VI-9. With the exception of the hybrid group (smaller N) the lower 95% confidence interval bound of the Scandinavian group (4.518) is larger than the upper

¹¹⁵ Kruskal-Wallis and Mann-Whitney tests.

95% confidence interval bound of the other groups. Likewise the upper CI bound for the Latin notary group (4.04) is less than the lower CI bounds of Scandinavian, Dutch and lawyer-based groups. So the service assessment performance of the Scandinavian group and the Latin notary group of countries do not even overlap with the other groups.

341 In other words, the overall service assessment of the Scandinavian group is statistically significantly higher than the rest, and the overall service assessment of the Latin notaries (which includes the relatively high assessments of Germany) is statistically significantly lower than the other “worlds of regulation”.

Figure VI-2: Distributions of OSA by “World of Regulation” Group



7. Overall result

342 Many detailed questions concerning key aspects of service, namely **choice** available to consumers, and **quality, certainty** and **speed** of delivery were posed and answered by respondents. These responses were combined into corresponding quantitative variables, each on a scale of 0-6. An index is created from these variables for each aspect of service separately, by appropriate weighting the contribution of each question. In addition, an **overall service assessment (OSA)** variable and index is computed. The average index value is reported per country for the four service components and overall.

- 343** Around three-quarters of respondents have a professional affiliation, although responses to one's own profession were disallowed. In addition to consumers (without professional affiliation), the professional background of respondents was spread between lawyers, notaries, licensed conveyors and technical professions (e.g. Surveyors), the mix depending on their relevance to conveyancing in individual countries.
- 344** In each aspect of service, and in the overall assessment, the indices obtained show (perhaps surprisingly) a high degree of differentiation between countries. There is also a broad correspondence between the performance of countries' overall index with each component aspect of service. The average index scores for individual countries are robust and sample sizes are sufficiently large to detect statistically significant differences between those countries with relatively high, and those with relatively low OSA.
- 345** In particular there is compelling statistical evidence to support a superior assessment of service by respondents in Scandinavian countries, and also that there is a lower assessment of service overall in (nearly all) Latin notary countries.
- 346** The service assessments of the other "worlds of regulation" are above average, with the deregulated notary system of Netherlands being followed by the groups of lawyer-based and hybrid countries (but the differences between them are not statistically significant).

Annex to Chapter VI: Definition, Coding and Weighting of Service Assessment Variables

**Table VI-10: Definition of Service Assessment Variables:
Source Information in Questionnaire**

Variable group	Symbol	Description of Variable	Corresponds to (elements of) Questions
Choice	C	For suffixes att, not, lic, rea, tec*:	
(3 subvariables)	C1a	“Choice availability and use”	1.1 + 1.2 + 1.3 (6x5 elements altogether)
	C2s	“Satisfaction with no. of choices”	1.5 (1x5 elements)
	C3q	“Quality of choices”	1.6 (4x5 elements)
Quality	Q	For suffixes att, not, lic, rea, tec*: “Assessment of ...	
(6 subvariables)	Q1t	... quality in total”	2.1 (1x5 elements)
	Q2c	... quality of conveyancing”	2.1 (4x5 elements)
	Q3s	... speed of services”	2.1 (3x5 elements)
	Q4v	... value for money”	2.1 (1x5 elements)
	Q5p	... personal qualification”	2.1 (4x5 elements)
	Q6f	... friendliness of personnel”	2.1 (1x5 elements)
Certainty	F	For suffixes att, not, lic, rea, tec*: “Frequency of disputes - ...	
(3 subvariables)	F1c	... among contracting parties”	3.1 (9 elements)
	F2l	... about land register”	3.2 (3 elements)
	F3p	... with professionals”	3.2 (3x5 elements)
Speed	S	For residential and commercial: “Total time for contract for . . .	
(7 subvariables)	S1-pre	... legal services: preclosure”	5.2 (1x2 elements)
	S2-pos	... legal services: postclosure”	5.2 (1x2 elements)
	S3-rea	... real estate services”	5.2 (1x2 elements)
	S4-tec	... technical services”	5.2 (1x2 elements)
	S5-tax	... paying transfer taxes”	5.2 (1x2 elements)
	S6-fee	... land registration fee”	5.2 (1x2 elements)
	S7-tot	... total time spent”	5.2 (1x2 elements)

* att=lawyer; not=notary; lic= licensed conveyor; rea= real estate agent; tec=technical.

Coding and Weighting of Service Variables

347 Precise details of coding and calculation of each outcome index are indicated in the following tables (Tables VI-11 on the following pages). Within each topic of service assessment, the choice of weightings used to aggregate the subvariables into the group variable is intuitively determined (these are shown in the third column of Tables VI-11). The initial and usual (default) position is that each subvariable is considered equally important – in that case equal weights are then used (for example Choice). Deviations from this default position require justification: as in the cases of – near equality weightings with exception of low-weighted “friendliness” (for Quality); Double weighting (relatively) for disputes involving a professional (for Certainty); double weightings (relatively) for legal services over other service aspects (for Speed).

348 The precise coding of each question is detailed in the last column of Tables VI-11. The following presents a short guide to the coding:

349 **C1a Choice: availability and use**

- Being mandatory (Question 1.1) means having no choice, so the value is set to 0.
- If, however, this state of affairs is satisfactory (Question 1.3), 1.5 points are awarded.
- When the consumer is free to choose legal counsel or not (Question 1.1) values are between 1.5 and 6.
- The more use is made of counsel (Question 1.2), the more points are awarded. So the most that a respondent could reasonably answer is that both seller and buyer choose counsel between 75% and 100% of the time (2 x 4 points), and either only the seller or the buyer uses counsel less than 25% of the time (1 point). So at most 9 points can be awarded. These are interpolated in the scale between 1.5 and 6.

350 This scale thus “rewards” having a choice, and moreover, using that choice.

351 **C2s Choice: Satisfaction with number of choices**

- Consumer is either satisfied (6 points), or dissatisfied (0 points)

352 C3q Choice: Quality of Choices

- Four aspects of quality, if fulfilled add up to 6 points (each positive aspect receives 1.5 points)

**353 Q1t, Q2c, Q3s, Q4v, Q5p, Q6f
Quality subvariables**

- For each question the ordinal assessments of “very good”, “good”, “average”, “bad”, and “very bad” are translated into scale values between 6 and 0. Where multiple questions are aggregated into a subvariable (Q2c, Q3s and Q5p) "overall" assessments are give double (relative) weight, in an otherwise pattern of equal weighting.

**354 F1c, F2l, F3patt etc.
Certainty subvariables**

- Litigation is “penalised” heavily (five times heavier than out-of-court disputes). All three types of transactions - consumer to consumer, builder/developer to consumer, and commercial acquisition (SME) are given equal importance. Since it is considered that it would be a very poor situation if as much as 20% of all cases would go to court, such a result (or worse) would receive 0 points.¹¹⁶ At best – no disputes whatsoever – 6 points are received. Other combinations are interpolated in the scale.

**355 S1rpre, S2rpos, S3rrea, S4rtec, S5rtax, S6rfee, S7rtot
Speed subvariables (residential)**

- The total time in weeks before and after concluding agreement is compared to the maximum in the data set ($W=31$ if time is greater than 30 weeks). Time required at the maximum (upper bound) receive 0 points and the shortest times receive up to a maximum of 6 points on the scale.

¹¹⁶ Technical Note: All responses to questionnaires were implemented on a SPSS statistical database, based on input from data scripts (provided by IT services of ZERP with due thanks to Marc Brückner, ISL), and which was continually being updated by responses to the online survey questionnaires as they arrived. Programs for the calculation of variables according to the definitions were partially implemented in SPSS software, as were the statistical analyses of section 4.5.

356 The exact formulas for coding are given in the following pages (**Tables VI-11**). The presentation proceeds in a 'top-down' manner, so that the aggregation of Choice, Quality, Certainty and Speed topic variables is on the first page, followed by the construction details of each topic variable from subvariables, and their exact definition, in the following tables and pages.

Tables VI-11: (this page and following five pages)

Coding and Weighting of the "Service Assessment Variables" (SAV) of consumers of conveyancing

(Sub)variable	Themes/questions	Weights by theme (b _j)	Question weights (c _k)	Coding of data
CI	Country scores (0-6)	0.25	$\Omega(\chi_{..})$	CHOICE variable
QI	Country scores (0-6)	0.25	$\Omega(\chi_{..})$	QUALITY variable
FI	Country scores (0-6)	0.25	$\Omega(\chi_{..})$	Legal CERTAINTY (or Functioning) variable
SI	Country scores (0-6)	0.25		SPEED variable
$\Omega(\chi_{..})$	row vector of Country Specific Weights for variables (lawyers, notaries, etc.) taken from table below			
MOI	Country scores (0-6)	$\sum_j b_j \sum_k c_k \text{ answer}_{jk}$		

COUNTRY SPECIFIC WEIGHTING OF LEGAL SERVICES : (indicative of interaction with consumer on provision of legal services)		$\Omega(X, \pi)$ For Residential Transactions and Professional Service				SUM LEGAL PROFS %
		LAWYERS %	NOTARIES %	LIC CONS %	REAs %	
Country	X					
Austria			100			100
Belgium			100			100
Czech R		60	40			100
Denmark		50			50	100
England		90		10		100
Finland					100	100
France			100			100
Germany			100			100
Greece		50	50			100
Hungary		80	20			100
Ireland		100				100
Italy			100			100
Luxembourg			100			100
Netherlands			100			100
Poland			100			100
Portugal			100			100
Scotland		100				100
Slovakia			100			100
Slovenia			100			100
Spain			100			100
Sweden					100	100

LIC CONS = Licensed Conveyors; REAs = Real Estate Agents

Coding and Weighting of the "Choice variable" (C) for consumers in conveyancing								
(Sub)variable	Themes/questions	Weights by theme (b _j)	Question weights (c _k) / Calculation	Coding of data				
C1a	Choice availability and use	0.33; (A+B)	ans = ans(1.1) + ans(1.2)* + ans(1.3)**					
NB: calculated based on correct facts	1.1 Professional counsel is mandatory by law?		x	no 0	yes 1			
			ans(1.1)	(1-x)*1.5				
*NB: not calculated if mandatory	1.2 If the involvement of a certain professional is not mandatory , please indicate how often parties choose such services in conveyancing on their own motion	A		Both parties chose to have professional counsel.				
			y1	never used 0	rarely used (< 25%), 1	sometimes used (25% to 50%) 2	mostly used (50% - 75%) 3	frequently used (75% to 100%) 4
			y2	never used 0	rarely used (< 25%), 1	sometimes used (25% to 50%) 2	mostly used (50% - 75%) 3	frequently used (75% to 100%) 4
			y3	never used 0	rarely used (< 25%), 1	sometimes used (25% to 50%) 2	mostly used (50% - 75%) 3	frequently used (75% to 100%) 4
			y4	never used 0	rarely used (< 25%), 1	sometimes used (25% to 50%) 2	mostly used (50% - 75%) 3	frequently used (75% to 100%) 4
			ans(1.2) = (min(9,2*y1+y2+y3))*0.5					
**NB: not calculated if non-mandatory	1.3. If the involvement of a certain professional is mandatory for legal services : are you satisfied with this situation or would you prefer to have a choice in the type of professional available (e.g. an attorney as an alternative to	B		no 0	yes 1			
			ans(1.3)	z*1.5				

C2s	Satisfaction with number of choices	0.33																												
	1.5. Do you personally think that in your country there are enough professional service providers of a certain kind (e.g. notaries) as to allow sufficient choice among them?		<table border="1"> <tr> <td>1</td> <td>no</td> <td>yes</td> </tr> <tr> <td></td> <td>0</td> <td>6</td> </tr> </table>	1	no	yes		0	6																					
1	no	yes																												
	0	6																												
C3q	Quality of Choices	0.33																												
	1.6. Is it difficult for the parties to find and choose a qualified professional because there are differences in quality among professionals offering legal services in conveyancing in your country?		<table border="1"> <tr> <td></td> <td colspan="2">Yes, choice is difficult because there are large differences in quality.</td> </tr> <tr> <td>q1</td> <td>I agree 0</td> <td>I don't agree 1.5</td> </tr> <tr> <td></td> <td colspan="2">Yes, choice is difficult because too little information is available about the quality of individual professionals.</td> </tr> <tr> <td>q2</td> <td>I agree 0</td> <td>I don't agree 1.5</td> </tr> <tr> <td></td> <td colspan="2">It is easy to find out who is qualified and who is not and so choice is not difficult.</td> </tr> <tr> <td>q3</td> <td>I agree 1.5</td> <td>I don't agree 0</td> </tr> <tr> <td></td> <td colspan="2">Choice is not difficult as professionals are all more or less equally qualified</td> </tr> <tr> <td>q4</td> <td>I agree 1.5</td> <td>I don't agree 0</td> </tr> <tr> <td colspan="3">ans(1.6) = q1 + q2 + q3 + q4</td> </tr> </table>		Yes, choice is difficult because there are large differences in quality .		q1	I agree 0	I don't agree 1.5		Yes, choice is difficult because too little information is available about the quality of individual professionals .		q2	I agree 0	I don't agree 1.5		It is easy to find out who is qualified and who is not and so choice is not difficult.		q3	I agree 1.5	I don't agree 0		Choice is not difficult as professionals are all more or less equally qualified		q4	I agree 1.5	I don't agree 0	ans(1.6) = q1 + q2 + q3 + q4		
	Yes, choice is difficult because there are large differences in quality .																													
q1	I agree 0	I don't agree 1.5																												
	Yes, choice is difficult because too little information is available about the quality of individual professionals .																													
q2	I agree 0	I don't agree 1.5																												
	It is easy to find out who is qualified and who is not and so choice is not difficult.																													
q3	I agree 1.5	I don't agree 0																												
	Choice is not difficult as professionals are all more or less equally qualified																													
q4	I agree 1.5	I don't agree 0																												
ans(1.6) = q1 + q2 + q3 + q4																														
C (lawyers)																														
= Catt	Country scores (0-6)		$\sum_j b_j \sum_k c_k \text{ answer}_{jk}$																											
Repeated : Separate variables for lawyers, notaries, licensed conveyors, real estate agents, and technical professions																														

Coding and Weighting of the "Quality variable" (Q) for consumers in conveyancing									
(Sub)variable	Themes/questions	Weights by theme (b _j)	Question weights (c _k) / Calculation	Coding of data					
Q1t	Assessment of quality in total	0.2		1	2	3	4	5	6
	2.1 Total grading			very good	good	average	sufficient	bad	very bad
			1	6	4.5	3.5	2,5	1	0
Q5p	2.1 Personal qualification	0.2		1	2	3	4	5	6
				very good	good	average	sufficient	bad	very bad
	overall	0.4	6	4.5	3.5	2,5	1	0	
	- in particular: integrity and trust	0.2	6	4.5	3.5	2,6	1	0	
	- in particular: professional education	0.2	6	4.5	3.5	2,7	1	0	
	- in particular: professional experience	0.2	6	4.5	3.5	2,8	1	0	
Q2c	2.1 Quality of the conveyancing services	0.2		1	2	3	4	5	6
				very good	good	average	sufficient	bad	very bad
	overall	0.4	6	4.5	3.5	2,5	1	0	
	- in particular: drafting the contract	0.2	6	4.5	3.5	2,6	1	0	
	- in particular: executing the contract	0.2	6	4.5	3.5	2,7	1	0	
	- in particular: explanation to the parties	0.2	6	4.5	3.5	2,8	1	0	
Q6f	2.1 Friendliness (of the profession)	0.05		1	2	3	4	5	6
				very good	good	average	sufficient	bad	very bad
			1	6	4.5	3.5	2,5	1	0
Q3s	2.1 Speed of the conveyancing services provided	0.2		1	2	3	4	5	6
				very good	good	average	sufficient	bad	very bad
	overall	0.5	6	4.5	3.5	2,5	1	0	
	- in particular: time to get an appointment	0.25	6	4.5	3.5	2,6	1	0	
	- in particular: time for executing the tasks	0.25	6	4.5	3.5	2,7	1	0	
Q4v	2.1 Value for Money (general assessment of the price/quality ratio)	0.15		1	2	3	4	5	6
				very good	good	average	sufficient	bad	very bad
			1	6	4.5	3.5	2,5	1	0
Q (lawyers)									
= Qatt	Country scores (0-6)	$\sum_j b_j \sum_k c_k \text{ answer}_{jk}$							

Repeated : Separate variables for lawyers, notaries, licensed conveyors, real estate agents, and technical professions

Coding and Weighting of the "Legal Certainty variable" (F) for consumers in conveyancing				
(Sub)variable	Themes/questions	Weights by theme (b _j)	Question weights (c _k) / Calculation	Coding of data
F1c	Frequency of disputes among contracting parties	0.25		
	3.1 Sales without problems			%-1 consumer to consumer %-2 builder/developer to consumer %-3 commercial acquisition (SME)
	3.1 Dispute between the parties which does not go to court		c2 = 1 c2 = 1 c2 = 1	%-4 consumer to consumer %-5 builder/developer to consumer %-6 commercial acquisition (SME)
	3.1 Court procedure between the parties		c3 = 5 c3 = 5 c3 = 5	%-7 consumer to consumer %-8 builder/developer to consumer %-9 commercial acquisition (SME)
				ans(3.1) = 3_AVG_for_(c2c, b2c, SME) of { 6 * (3*100 - Σ _k c _k answer %-k)/(3*100) }
F2l	3.2 Legal Disputes (land register)	0.25		
	3.2 Sales without problems			%-10
	3.2 Dispute between the parties which does not go to court		c2 = 1	%-11
	3.2 Court procedure between the parties		c3 = 5	%-12
				ans(3.2) = 6 * (100 - Σ _k c _k answer %-k)/(100)
F3patt	3.2 Legal Disputes (attorneys)	0.5		
	3.2 Sales without problems			%-10
	3.2 Dispute between the parties which does not go to court		c2 = 1	%-11
	3.2 Court procedure between the parties		c3 = 5	%-12
				ans(3.2) = 6 * (100 - Σ _k c _k answer %-k)/(100)
F3pnot	3.2 Legal Disputes (notaries)	likewise 0,5		
	3.2 Sales without problems			%-10
	3.2 Dispute between the parties which does not go to court		c2 = 1	%-11
	3.2 Court procedure between the parties		c3 = 5	%-12
				ans(3.2) = 6 * (100 - Σ _k c _k answer %-k)/(100)
F (lawyers)				
= Fatt	Country scores (0-6)		Σ _j b _j Σ _k c _k answer _{jk}	

Repeated : Separate variables for lawyers, notaries, licensed conveyors, real estate agents, and technical professions

Coding and Weighting of the "Speed variable" (S) for consumers in conveyancing				
(Sub)variable	Themes/questions	Weights by theme (b _j)	Question weights (c _k) / Calculation	Coding of data
	Time spend after finding a buyer			Number of weeks [na indicates missing value]
S1rpre	5.2 for Legal Services (residential property) : preclosure	0.25		Number of weeks = W ans(5.2) = $6^* (1 - \{ W \} / \{ \text{Reference [31 weeks]} \})$
S2rpos	5.2 for Legal Services (residential property) : after concluding contract	0.25		Number of weeks = W ans(5.2) = $6^* (1 - \{ W \} / \{ \text{Reference [31 weeks]} \})$
S3rrea	5.2 for Real estate agent's services	0.125		Number of weeks = W ans(5.2) = $6^* (1 - \{ W \} / \{ \text{Reference [31 weeks]} \})$
S4rtec	5.2 for Technical services:	0		Number of weeks = W ans(5.2) = $6^* (1 - \{ W \} / \{ \text{Reference [31 weeks]} \})$
S5rtax	5.2 for Paying transfer taxes	0.125		Number of weeks = W ans(5.2) = $6^* (1 - \{ W \} / \{ \text{Reference [31 weeks]} \})$
S6rfee	5.2 for Registration in the land register fee	0.125		Number of weeks = W ans(5.2) = $6^* (1 - \{ W \} / \{ \text{Reference [31 weeks]} \})$
S7rtot	5.2 for Total Time	0.125		Number of weeks = W ans(5.2) = $6^* (1 - \{ W \} / \{ \text{Reference [31 weeks]} \})$
S (residential)				
= Sres	Country scores (0-6)	$\sum_j b_j \sum_k c_k \text{ answer}_{jk}$		
Repeated : Separate variables for residential transactions and property transactions				

VII. Econometric Analysis¹¹⁷

1. Introduction

357 The prime objective of the econometric analysis is to examine the effect of regulation on price and market efficiency, here measured by the Service Assessment Indices. We first analyse the correlation between the Regulation Indices, the Service Assessment Indices and the fees for legal services. We further analyse the relationship between those variables by estimating a coherent set of regressions. The dataset contains 15 observations (countries).

358 Regulation is captured by three sub-indices: Market Entry Regulation Index (MERI), Market Conduct Regulation Index (MCRI) and Mandatory Intervention Index (MII) as well as an Overall Regulation Index (ORI = MERI + MCRI + MII) as described above in chapter IV.

Table VII-1: Regulation Indices

Country	MERI	MCRI	MII	ORI
1. Belgium	5.700	4.995	4.000	14.695
2. Czech Republic	3.825	3.570	2.000	9.395
3. England	1.954	0.809	0.000	2.762
4. Finland	0.450	0.000	0.000	0.450
5. France	5.100	5.170	4.000	14.270
6. Germany	5.713	4.495	4.000	14.208
7. Ireland	1.950	1.335	0.000	3.285
8. Italy	5.400	4.660	4.000	14.060
9. Netherlands	1.900	1.155	4.000	7.055
10. Poland	5.625	4.670	4.000	14.295
11. Portugal	4.975	6.000	4.000	14.975
12. Slovakia	2.925	2.873	0.000	5.798
13. Slovenia	4.875	4.980	2.000	11.855
14. Spain	4.825	5.170	4.000	13.995
15. Sweden	1.172	0.000	0.000	1.172

359 Service assessment is measured by four sub-indices CHOICE, QUALITY, CERTAINTY and SPEED as well as by an Overall Service Assessment Average Index (OSA), as described in Chapter VI.

¹¹⁷ Luxembourg is also excluded from this chapter due to non-availability of fee information.

Table VII-2: Service Assessment Indices

Country	CHOICE	QUALITY	CERTAINTY	SPEED	OSA
1. Belgium	3.070	3.650	2.740	4.670	3.533
2. Czech Republic	4.560	4.780	3.680	5.400	4.605
3. England	4.420	3.730	4.260	5.180	4.398
4. Finland	4.550	3.890	4.840	5.680	4.740
5. France	3.230	3.520	2.550	4.470	3.443
6. Germany	4.010	5.060	5.190	5.350	4.903
7. Ireland	4.640	3.860	5.400	4.880	4.695
8. Italy	3.400	3.910	3.810	5.560	4.170
9. Netherlands	4.750	4.190	3.080	5.140	4.290
10. Poland	2.750	4.000	3.560	4.730	3.760
11. Portugal	3.160	4.040	4.430	5.520	4.288
12. Slovakia	3.930	4.490	2.280	5.270	3.993
13. Slovenia	2.590	4.410	4.190	5.310	4.125
14. Spain	3.160	3.870	3.070	5.270	3.843
15. Sweden	4.330	4.220	4.180	5.690	4.605

360 We use the fees for legal conveyancing services for a transaction of 100, 250, 500 K EUR and the average house price (FEE100, FEE250, FEE500 and FEE_AV). Furthermore we use fees adjusted for price level and net earnings (FEE_PL and FEE_NE). All fees include a mortgage of 70% of the house price.

Table VII-3: Fees for Conveyancing Service

Country	fee100	fee250	fee500	fee_av	fee_pl	fee_ne
1. Belgium	1,986.728	3,080.828	3,304.040	2,475.426	2,373.371	1,995.006
2. Czech Republic	850.000	850.000	850.000	850.000	1,470.588	2,644.535
3. England	1,060.000	1,345.000	1,700.000	1,412.805	1,346.811	957.317
4. Finland	930.000	930.000	930.000	930.000	762.295	848.961
5. France	1,422.731	2,948.900	5,492.500	2,711.122	2,498.730	2,470.530
6. Germany	737.600	1,458.500	2,626.900	885.925	851.033	633.632
7. Ireland	1,000.000	2,000.000	4,000.000	2,426.480	1,966.353	1,718.402
8. Italy	2,319.000	3,245.000	4,745.000	2,501.311	2,437.925	2,907.793
9. Netherlands	1,055.800	1,152.900	1,849.100	1,121.828	1,066.376	866.481
10. Poland	677.000	1,430.000	2,050.000	677.000	1,135.906	2,971.900
11. Portugal	510.400	616.035	616.035	510.400	599.061	964.000
12. Slovakia	420.000	420.000	420.000	420.000	729.167	1,760.760
13. Slovenia	810.000	1,203.750	1,377.000	810.000	1,060.209	2,077.280
14. Spain	891.300	1,194.300	1,364.300	1,038.013	1,153.347	1,316.081
15. Sweden	500.000	500.000	500.000	500.000	414.594	447.957

2. Correlations analysis

361 We calculate the *Braivais-Pearson* correlation between regulation and fees as well as between regulation and service assessment.

Table VII-4: Pearson’s Correlation between Regulation and Fees Resp. between Regulation and Service Assessment (n=15)

	MERI	MCRI	MII	ORI
FEE100	0.319	0.222	0.379	0.320
FEE250	0.473	0.360	0.449	0.449
FEE500	0.384	0.282	0.387	0.368
FEE_AV	0.212	0.145	0.221	0.201
FEE_NE	0.543*	0.511	0.311	0.482
FEE_PL	0.383	0.313	0.323	0.358
CHOICE	-0.801**	-0.829**	-0.572*	-0.779**
QUALITY	0.072	0.028	-0.049	0.018
CERTAINTY	-0.268	-0.309	-0.319	-0.316
SPEED	-0.374	-0.314	-0.330	-0.358
OSA	-0.539*	-0.571*	-0.489	-0.564*

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

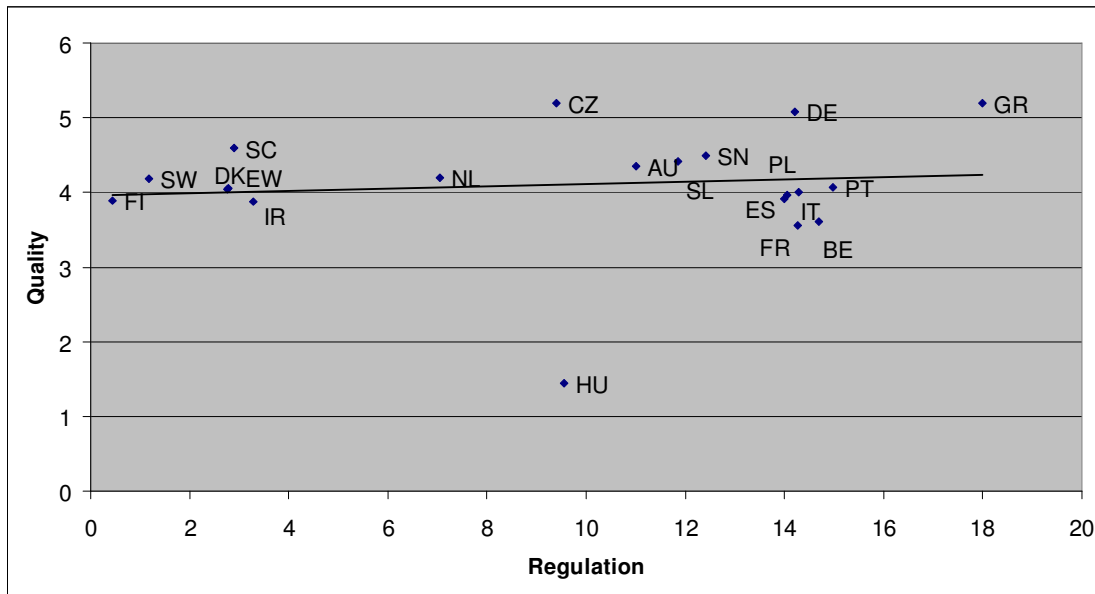
362 The linear correlation between the regulation indices (overall and sub indices) and *fees* are positive in all cases, confirming the economic hypotheses that regulation has a positive relationship with prices (i.e. the higher the level of regulation, the higher the prices).

363 For the service assessment indices (overall and sub indices), 17 out of 20 correlation coefficients are negative, indicating that high levels of regulation has a negative relationship with service assessment as measured by the indices (i.e. the higher the level of regulation, the lower the assessment of the service). The results especially show a clear picture for *choice* and the overall average service index (*OSA*) where 7 out of 8 estimations are significant at least on the 5%-level, indicating that higher levels of regulation lead to less choice and a lower overall service assessment. For *quality*, *certainty* and *speed* we observe estimations which are not significantly different from zero, indicating that the level of regulation has no real impact on the level of *quality*, *certainty* or *speed*.

364 Maintenance of quality is a core argument for regulation in the sector for legal services. Therefore we have a closer look at the relationship between regulation and quality. The following graph shows the relationship between regulation (measured by the Overall

Regulatory Index (*ORI*) and quality as described in chapter VI. Whilst regulation differs a lot across countries, there is no major variation in the level of quality across countries. Obviously there does not seem to be a correlation between regulation and quality; **so there is no empirical evidence to support the hypotheses that a high level of regulation is needed to assure quality.**

Figure VII-1: Correlations between Regulation and Quality



365 **Table VII-5** shows the correlation between fees and service assessment indices. It is interesting as well that there seems to be a negative correlation between fees and service assessment as all correlation coefficients are negative even if only some of these are significant. **The results do not show any proof that high prices have a positive correlation with high service assessment and thus again do not support the argument that high prices are needed to assure high service assessment. On the contrary, the results indicate that higher prices are associated with lower levels of choice, quality, certainty or speed.**

Table VII-5: Pearson’s Correlation between Fees and Service Assessment Indices

	CHOICE	QUALITY	CERT,	SPEED	OSA
FEE100	-0.180	-0.491	-0.216	-0.284	-0.366
FEE250	-0.320	-0.517*	-0.182	-0.560*	-0.470
FEE500	-0.190	-0.447	-0.072	-0.599*	-0.349
FEE_AV	-0.073	-0.605*	-0.113	-0.562*	-0.352
FEE_NE	-0.480	-0.161	-0.386	-0.459	-0.540*
FEE_PL	-0.201	-0.516*	-0.267	-0.613*	-0.476

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

3. Regression Models

366 In order to show the impact of regulation on price and service assessment in detail, we examine linear regression models with regulations as independent (explanatory) variables and fees respectively service assessment as the dependent variable. Obtaining significant results with a small dataset ($n = 15$) is difficult in a multifactor model framework, so we estimate simple linear regressions.¹¹⁸ By using simple regressions some relevant explanatory variables may be omitted and therefore, among other things, results may be insignificant and the model’s explanatory power, measured by R^2 may be low.

367 In principle, we could include all sub-indices for regulation in the regression. Accordingly, a regression to explain the fees for legal services could be modelled as follows:

$$fee = \alpha + \beta_1 \text{MERI} + \beta_2 \text{MCRI} + \beta_3 \text{MII} + \varepsilon \quad (1)$$

368 As the database contains only 15 countries, we have to implement some restrictions on the coefficients in order to estimate impacts with the usual levels of statistical significance. One possibility is to assume that $\beta_1 = \beta_2 = \beta_3$. As the correlations of MCRI, MERI and MII are rather high (see table below), this assumption seems to be justifiable: If a system is less/highly regulated, it tends to be less/highly regulated in all areas. We therefore use for the following examination an Overall Regulation Index $\text{ORI} = \text{MCRI} + \text{MERI} + \text{MII}$ as a proxy for the level of regulation in the respective countries.

¹¹⁸ As in simple linear regression the coefficient of the independent variable is a linear function of the (linear) correlation coefficient the regression results are by construction in line with the

Table VII-6: Correlations of Regulation Indices

	MERI	MCRI	MII	ORI
MERI	1	0.956**	0.802**	0.972**
MCRI	0.956**	1	0.770**	0.963**
MII	0.802**	0.770**	1	0.902**
ORI	0.972**	0.963**	0.902**	1

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

369 The regression models could be in consequence reduced to

$$fee = \alpha + \beta_1 ORI + \varepsilon, \quad (2)$$

370 We estimate that regression model for all types of fees as the dependant variable (FEE100, FEE250, FEE500, FEE_AV, FEE_PL, FEE_NE).

371 Furthermore, as we want to know the impact of regulation on the service assessment, we estimate the following regression for all types of Service Assessment Indices (CHOICE, QUALITY, CERTAINTY, SPEED, OSA) as the dependent variable,

$$Service\ Assessment\ Indices = \alpha + \beta_1 ORI + \varepsilon, \quad (3)$$

correlation analysis. In addition to correlations, the regression results allow us to estimate the magnitude of the impact of the independent variable.

4. Regression results

372 The following table displays the result for these regressions:

Table VII-7: Results for Service Assessment Indices

	Constant	ORI	R ²	adj, R ²
CHOICE	4.773 ***	-0.106 ***	0.607	0.576
QUALITY	4.095 ***	0.001	0.000	-0.077
CERTAINTY	4.333 ***	-0.054	0.100	0.031
SPEED	5.436 ***	-0.024	0.128	0.061
OSA	4.659 ***	-0.046 **	0.319	0.266

*/**/** indicate significance on the 10%/5%/1%-level, t-Values are corrected for heteroskedasticity using White Heteroskedasticity-Consistent Standard Errors and Covariance,

373 For the service assessment indices *choice* and *OSA* as dependent variables we obtain significant and negative coefficient estimations for *ORI*, indicating that a high level of regulation leads to less choice and a lower overall service assessment. With *quality*, *certainty* and *speed* as the dependent variable the coefficients of *ORI* are insignificant. As expected, R² and adjusted R² are low because further variables could have an impact on the dependant variable.

Table VII-8: Results for Fee Levels

	Constant	ORI	R ²	adj, R ²
FEE100	718 ***	31	0.103	0.034
FEE250	780 **	75 *	0.201	0.140
FEE500	1,112	106	0.135	0.069
FEE_AV	1,002 **	30	0.040	-0.033
FEE_NE	935 ***	74 **	0.232	0.173
FEE_PL	902 ***	45	0.128	0.061

*/**/** indicate significance on the 10%/5%/1%-level, t-Values are corrected for heteroskedasticity using White Heteroskedasticity-Consistent Standard Errors and Covariance,

374 Furthermore, with fees as the dependent variable, all parameters for *ORI* are positive, two of them are even significant. These results again support the hypotheses that high levels of regulation lead to high fees. Again, R² and adjusted R² are rather low.

5. Overall findings

- 375** We have analysed empirically the relationship between regulation and fees and between regulation and service perception, here measured by Regulation Indices, by different price categories and a set of Service Assessment Indices. We have calculated correlations between these three set of variables and estimated various regressions to assess the effect of regulation on fees and on service assessment. Despite a small dataset with only 15 observations, which limits considerably the complexity of any econometric analysis, we have been able to generate results which nevertheless point towards some enlightening conclusions.
- 376** First, we have found evidence that high levels of regulation leads to high prices and low levels of regulation lead to lower prices thus showing a potential financial benefit for consumers from deregulation.
- 377** Second, the results do not show any proof that high prices have a positive correlation with high service assessment. The results do therefore not support the argument that high prices are needed to assure high levels of service assessment. When looking at the different components of the overall service assessment, it becomes clear that there does not seem to be a correlation between the level of regulation and the level of quality. There is therefore no empirical evidence to support the hypotheses that high levels of regulation are needed to assure high quality.
- 378** So, the analysis indicates – within the limits of our approach – that **high levels of regulation lead to higher fees whilst not leading to a better outcome in terms of choice for consumers, quality, certainty or speed.**

VIII. Case Studies

A. England and Wales

*by Peter Sparkes and Steffen Sebastian*¹¹⁹

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1. Introduction

1.1 General structure

379 In England and Wales the markets for legal conveyancing services are restricted to solicitors and licensed conveyancers. Private conveyancing devoid of fees¹²⁰ is also possible but this is very unusual because the savings for consumers in property transactions are small. The conveyancing systems in England and Wales are adversarial i.e. each side is represented by its own lawyer.

¹¹⁹ Peter Sparkes, Professor of Property Law, University of Southampton (UK), parts 1.1 to 4.2; Steffen Sebastian, Professor of Real Estate Finance, University of Regensburg (Germany), parts 4.2 to 5. Each author is responsible for the parts which he has written. Professor Sparkes acknowledges the assistance of Richard Barnett, Chair of the Law Society's Conveyancing and Land Law Committee.

¹²⁰ So called "do-it-yourself conveyancing".

380 This case study reports on how the conveyancing system was opened to competition and the impact of this on price and quality. The first two sections describe the reforms to the conveyancing markets in England and Wales since the 1980s which saw the introduction of licensed conveyancers and the possibility of overt price competition between solicitors' firms. Empirical studies about the impact of these reforms on licensed conveyancers, pricing, consumer price discrimination, advertising and quality of conveyancing services are reported in the next section. This section also considers how these changes have impacted on consumers and compares the position of consumers in England with those in countries like France and Belgium which have a Latin notary system. The last section concludes.

1.2 Addendum on the Chain System

381 Land transactions in England and Wales normally form part of a chain of transactions, perhaps 6 to 8 in a chain, in which all sales and purchases are interlinked so that it is intended that exchange of contracts and completion should occur at the same time. This system is not adopted in Scotland nor most of continental Europe where transactions are standalone, and many continental lawyers often misunderstand the chain system.¹²¹

382 England and Wales has a severe shortage of residential property caused by the small size of the land, the attractiveness of the country caused by economic prosperity and tight planning controls. It is not easy to increase the supply of building land as could be done in most of continental Europe. This has caused progressive increases in prices. If the market always rose it would be easy; buy first and sell later, but in fact there are periods when the market is relatively static, periods of stagnation and sharp reverses when the market falls rapidly. Chains insulate existing homeowners from the risk of market fluctuations and the risk of being caught with an unsaleable property or without any purchasable property for long periods. A person sells one home and moves to another on the same day which eliminates the need for bridging finance or, conversely, the cost of rent. No comparison of conveyancing systems is really giving an accurate cost picture unless the cost of/saving of bridging finance/rent is factored in. Any market that rose rapidly and then suffered falls would be bound to develop the same system.

¹²¹ Eg Murray (2007) 'Real Estate Conveyancing in Five EU Member States'.

383 Most of the work of a conveyancer in England is not legal work; it is organisation, administration, the process of lining up documentation, searches, finance and other professionals to a set date when contracts are exchanged. This work eliminates bridging costs. Thus if we compare conveyancing costs under the English and Welsh system to the Latin model of notarial fees plus bridging/rent, the English system overall would be significantly cheaper.

384 Chains carry the innate risk of broken transactions. Some potential buyers are unable to raise mortgage finance, but most breaks arise from expensive defects revealed by surveys, so the agreed price is not an accurate statement of market value. Transactions on the continent would not break for this reason, given the rarity of surveys, so the risk falls on the buyer. The cost of these broken transactions is very hard on the parties (it may be improved by Home Information Packs¹²²) but it is better to discover a defect in advance and inevitable that a transaction will fail if the lender is not prepared to lend.

385 Chains have an impact on legal representation. In England each party has an experienced professional advising them and watching what the respective buyer and seller are doing, as compared to a single notary acting for both sides in a continental transaction. Thus:

Table A-1: Role of Lawyers in England Versus Notaries in Continental Europe

	Lawyer 1 (or notary in continental Europe)	Lawyer 2
Continental	Seller/Buyer/Lender	
English/Welsh	Seller	Buyer/Lender

386 This might at first glance be thought to increase the cost given there are two lawyers involved and that a notarial system with a single notary is cheaper. This completely misunderstands the English chain system.

¹²² See the following link for information on Home Information Packs
<http://www.homeinformationpacks.gov.uk/>

Table A-2: The English Chain System

	Lawyer 1	Lawyer 2	Lawyer 3	Lawyer 4	Lawyer 5	Lawyer 6
Property 1	A (seller)	B (buyer)				
Property 2		B (seller)	C (buyer)			
Property 3			C(seller)	D (buyer)		
Property 4				D (seller)	E (buyer)	
Property 5					E (seller)	F (buyer)
NB the average is about 8 links in a chain.						

387 Thus in a chain of transactions one lawyer acts for an individual who is both buying and selling. One would not want half a notary in the property being bought and a different half-notary for the property being sold.

388 It is also claimed that buyer and lender are usually in conflict; quite the reverse; the clout of lenders ensures that title is properly sorted out and removes the pressure that buyers would otherwise be under in a rising market to accept a weak title. Where the two interests conflict – a case which is rarely heard of in practice – practice rules require a conveyancer to cease to act for both parties.

2. General description of the reforms to the conveyancing market since the 1980s

389 Up to the mid-1980s there was no significant competition in the conveyancing markets in England and Wales because of the regulatory framework: conveyancing for gain was restricted to the legal profession and advertising of legal services was prohibited by the Law Society, ensuring that there was no overt price competition between law firms. Restrictions on conveyancing originated in 1804 to compensate solicitors for the burden of taxes. Later Law Society rules against advertising of solicitors' services and overt price advertisement were intended to foster professional behaviour between law firms.

390 In the 1970s and early 1980s consumer groups exerted pressure on the British Government because of dissatisfaction about the length of time taken to complete property transactions and fees also came under scrutiny. Simultaneously the

Monopolies Commission recommended abolition of the scale fees as a guideline for solicitors on the assessment of fees for conveyancing activities.

391 This led to the deregulation of the market which can be considered as taking place in **three main phases**.

392 First, **scale fees** for conveyancing were abolished: these ceased to be binding in 1973, but this had little effect in isolation because overt price competition between law firms was prohibited by the Law Society and solicitors continued to refer to the old scale fees even after their abolition and hence they continued effectively to determine fees up to 1984.¹²³ Decreasing fees for solicitors' conveyancing activities were reported early in 1984 after the British Government announced the intention to deregulate the conveyancing market even before the form of deregulation was known.

393 The second phase was the **removal of controls on advertising** by solicitors as analysed by *Stephen, Love & Paterson*.¹²⁴ Advertising was controlled until 1984, though a monopolies report had urged removal of the controls.¹²⁵ Restrictions on advertising were released by the Law Society in October 1984. The reason for this was that solicitors imposed pressure on the Law Society fearing non-solicitors competition in the conveyancing market. This resulted in an extension of price competition. The new rules were revised further in 1987.

394 The third and major reform was the **creation of the para-profession of licensed conveyancers** and allowing conveyancing to be done by non-solicitors - a reform enacted in 1985¹²⁶ by Mrs Thatcher's Conservative government as part of her vision of the free market economy. The campaign for this reform was driven by the Consumers' Association. Implementation occurred in 1987. Up to then solicitors had a monopoly on conveyancing, or more strictly on conveyancing for gain that is for payment. At that time conveyancing fees were commonly perceived to be high.

¹²³ Domberger and Sherr (1989): The Impact of Competition on Pricing and Quality of Legal Services, in: *International Review of Law and Economics* 1989, 9, 41-56; Domberger and Sherr (1993): Price Discrimination in Conveyancing: A Reply to Our Critics, in: *International Review of Law and Economics* 1993, 13, 103-107.

¹²⁴ Stephen, Love and Paterson (1994): Deregulation of Conveyancing Markets in England and Wales, in: *Fiscal Studies* 1994, Vol. 15 (4), 102-118.

¹²⁵ Monopolies and Mergers Commission (1976).

¹²⁶ Administration of Justice Act 1985, in force 1987.

- 395** Further reforms were proposed by the **Clementi Review** and a Bill to implement these changes has now completed its passage through the English Parliament. The reform proposed by the Clementi Review will have far more profound consequences than the previous reforms because of the so-called "Tesco law", the idea that supermarkets and financial providers may provide one stop professional services including e.g. a home buying service. This can undoubtedly cause conveyancing charges to fall, but the unanswered question is whether consumers will incur higher overall costs because of the bundling of financial products. Since the effects of this process are speculative they are not commented on further in this case study.
- 396** English law of property has also undergone significant modernisation through the advancement of technology as well. "The Land Registration Act 2002 (LRA 2002) for England and Wales introduced changes to the conveyancing system through the creation of a framework in which registered conveyancing would be facilitated by electronic conveyancing (e-conveyancing). A primary objective of this was to fulfil the underlying fundamental principles of the LRA 2002 whereby the register 'should be a complete and accurate reflection of the state of title of the land at any given time' in order to facilitate investigation of title online, with a minimum number of additional enquiries and inspections."¹²⁷

3. Introduction of Licensed Conveyancers

- 397** The third major reform, which saw the introduction of licensed conveyancers improved competition in the market and also the quality of conveyancing services, but only marginally. This can be explained by a number of factors.
- 398** First, under the old regime there were already large volume conveyancers. These employed legal executives or even unqualified staff to do most of the transaction – the file being handed to a solicitor for the stage of drafting the conveyance. Providers of this kind did not offer a personalised service but were significantly cheaper than your average solicitor. These firms, however, had a bad reputation with solicitors for the technical quality of their work and attracted only a relatively small market share. It is estimated today that licensed conveyancers have a similar market share, but that their

¹²⁷ Bogusz (2006): Modernizing English Property Law: The Influence of Internal Market Principles, in: European Business Law Review 2006, 17 (5), 1395-1419.

quality is far better than these large volume conveyancers. One or two licensed conveyancers also offer a high volume low cost conveyancing service in today's market.

399 Second, because licensed conveyancers attracted a limited market share – variously estimated in the 3-5% range¹²⁸ – measured in terms of numbers of completions, the effect of the 1985 reform was limited. The immediate impact of licensed conveyancers was studied by *Stephen, Love & Paterson (1994)*. Their conclusions were that the number of licensed conveyancers who had entered the market was small (in 1989 (1992) only 17 (29) firms of licensed conveyancers existed contrasted with 1619 (1666) solicitors' firms); that these were concentrated in London and other urban centres (as the table below shows); that nowhere did the percentage of firms exceed 5% of the total; and that the market share was much less because most licensed conveyancers were sole practitioners in contrast to the larger median size of solicitors' firms (the average number of solicitors in solicitors' firms was 4.6 in 1989 and 5.3 in 1992). They also found that in 1989 a few licensed conveyancers were employed by solicitors' firms, local authorities or other third parties, too.

Table A-3: Sample Markets Showing Licensed Conveyancer Entry

Metropolitan	Birmingham*, Liverpool*, Manchester*, Newcastle*, Sheffield*
Urban	Huddersfield ^o , Middlesbrough, Nottingham*, Slough*, Warrington*, Watford, Luton*
Intermediate non-rural	Leek, Norwich*, Oxford, Retford, Warminster
Intermediate rural	Canterbury, Clitheroe, Devizes, Harrogate, Matlock, Whitehaven
Extreme rural	Aberystwyth, Bridport, Lowestoft, Skegness, Welshpool

*Licensed Conveyancers present in 1989 and 1992.

^oLicensed Conveyancers present only in 1992.

400 Thirdly on price, if solicitors' conveyancing services had been massively overpriced before the reform one would have expected to have seen much greater inroads into the market by licensed conveyancers, but this did not happen. Some possible explanations may be proffered. A crucial reason was that solicitors themselves reacted to the

¹²⁸ The Courts and Legal Services Act 1992 allows banks to provide conveyancing services but this has never been implemented because of concerns about how to preserve the independence of home buyers from bundled financial products.

competition by reducing prices and a more competitive market was introduced by consumers shopping around. So competition between solicitors themselves increased. However, the most significant factor was the relatively low cost of conveyancing in England and Wales before the changes making available savings marginal; conveyancing costs are fixed per transaction rather than by house value as under Latin notary systems - although higher value transactions are slightly higher because of the greater risk and hence insurance loading, and reflecting ability to pay.

401 Another reason for the low entry of licensed conveyancers might have been the lack of experience or insight and the ability to predict how local law firms would react when confronted with entry into the conveyancing market by non-solicitors and the sort of behaviour they might adopt. In this respect solicitors had a significant advantage as they were engaged in other activities aside from conveyancing and this gave them the flexibility to take on and drive licensed conveyancers from the market.

402 The relaxation of advertising controls also had a positive effect on price competition. It is reported that advertising became “fairly common” within eight years of the removal of controls in 1984 and solicitors were on the whole quick to take advantage of the removal of the ban,¹²⁹ especially since licensed conveyancers had been free of the competitive controls that affected solicitors. This resulted in an extension of price competition.

¹²⁹ Stephen, Love & Paterson (1994), p. 115.

4. Economic Impact

4.1 Detailed look at the effect of deregulation on prices

403 In terms of fees, anecdotal evidence suggests that **fees fell in 1986 immediately before the reform** which saw the introduction of licensed conveyancers because of the potential for competition.¹³⁰ *Domberger & Sherr (1989)* empirically investigate the influence of several factors on solicitors' fees and price discrimination in this period (1983 till 1986). They find that fees for purchase transactions decreased slightly and fees for sale transactions increased slightly. For sale transactions they find a successive significant reduction of the impact of house prices on solicitors' fees for conveyancing services. So **price discrimination based on transaction values also diminished during the period of examination**. Their regression analysis also shows that solicitors reduced fees for conveyancing services in cases where the client was signalling that they were shopping around before deciding who to engage.

404 After the **introduction of licensed conveyancers the evidence is contradictory**. It seems clear that licensed conveyancers were generally cheaper than solicitors, but not invariably so and that the entry of licensed conveyancers into a local market often, but not invariably, reduced prices. It also seems that after a few years of cohabitation within a market, a mutual adjustment occurred. On the basis of these findings the main published survey concluded about the entry of licensed conveyancers that:

“Although initially entry appears to have reduced solicitors' fees, it has not had the desired effect in the long run. ... [T]here has been subsequently an accommodation to licensed conveyancers' entry by all parties. Licensed conveyancers by 1992 were pricing rather like solicitors.”¹³¹

405 *Stephen et al. (1994)* look at what happened to **conveyancing fees between 1989 and 1992** (see table A-4 below). They report mean fees for two specimen property transactions – values used are 50,000 GBP (this was the average value of a UK house in 1992) and 80,000 GBP subject to mortgages of 30,000 GBP and 60,000 GBP respectively. Additionally for 1992 they report mean fees for a property valued at 120,000 GBP subject to a mortgage of 80,000 GBP. They find that:

¹³⁰ Paterson, Farmer, Stephen & Love (1988).

¹³¹ Stephen, Love & Paterson (1994) at 116. Their methodology is explained at 106 ff.

“Allowing for the increase in the retail price index between November 1989 and November 1992 of almost 18 per cent,¹³² the real cost of obtaining conveyancing services from a solicitor for the 50,000 GBP and 80,000 GBP specimen transactions **has fallen on average.**”

406 They also note that this average figure masks a wide variation of changes in TTWAs [travel-to-work areas]. For example, the mean fee for the 50,000 GBP property had risen by 20 per cent (in current price terms) in Skegness while it had fallen by 18 per cent in Whitehaven. Similarly, the fee for the 80,000 GBP property had risen by 29 per cent in Skegness but fallen by 23 per cent in Huddersfield.

407 Regarding licensed conveyancers (non-solicitors) *Stephen et al. (1994)* find:

“The fees quoted by licensed conveyancers are, on average, below those quoted by solicitors in the markets where licensed conveyancers operate.” (see table A-5 below).

408 They also flag that “these averages hide variations: the mean charged fees of licensed conveyancers were above those of solicitors in Watford and Luton in 1989 and Slough in 1992.”

Table A-4: Means of Solicitors’ Conveyancing Fees

	1989	1992	Change
50,000 GBP property			
Mean fee	247.25 GBP	251.05 GBP	+1.5%
Coefficient of variation for mean fees	0.225	0.164	-27.1%
80,000 GBP property			
Mean fee	309.34 GBP	306.24 GBP	-1.0%
Coefficient of variation for mean fees	0.205	0.216	+5.4%
120,000 GBP property			
Mean fee	n.a.	385.21 GBP	n.a.
Coefficient of variation for mean fees	n.a.	0.249	n.a.

¹³² Note that the Nationwide Building Society’s index of house prices fell from 233.8 to 190.6 (see Stephen et al. 1994).

Table A-5: Conveyancing Fees in Markets where Licensed Conveyancers Operate

	1989	1992	Change
50,000 GBP property			
(a) Mean fee of licensed conveyancers	199.14 GBP	216.80 GBP	8.9%
(b) Mean fee of solicitors	240.04 GBP	251.01 GBP	4.6%
(a):(b)	82.96%	86.37%	
80,000 GBP property			
(a) Mean fee of licensed conveyancers	207.93 GBP	231.80 GBP	11.5%
(b) Mean fee of solicitors	301.92 GBP	306.78 GBP	1.6%
(a):(b)	68.87%	75.56%	

409 Regarding price discrimination, *Stephen et al. (1994)* confirm the findings of *Domberger & Sherr* that **price discrimination based on transaction values had diminished considerably in a more contestable market**. They reveal in a survey for 1989 that:

“21 per cent of solicitors who provided fee information charged the same fee for both the 50,000 GBP and the 80,000 GBP transaction. Licensed conveyancers (non-solicitors) in our sample markets showed a lower propensity to ‘price-discriminate’ for the two transactions: 71 per cent charged the same fee for both transactions.”

410 In a survey for 1992 they show that:

“26 per cent of solicitors providing data on fees for the 50,000 GBP and 80,000 GBP properties charged the same fee for both, whilst 16 per cent of those who provided data for all three transactions charged a single fee (inserted by author - i.e 50,000 GBP, 80,000 GBP and 120,000 GBP transactions). In 1992, 56 per cent of the licensed conveyancers charged the same fee for the 50,000 GBP and 80,000 GBP transactions, whilst 36 per cent charged the same fee for all three transactions.”

4.2 Impact of the deregulation on client orientation and quality of services

411 Despite deregulation the **vast majority of buyers continue to use a professional conveyancer**: the matter is complex for a first timer, fees are low for the service offered and it is awkward to handle technical details such as the transfer of cash without an office infrastructure.

- 412** There is also a **very wide choice** of practitioners to choose from in England and Wales: 11,000 solicitors' offices to which must be added licensed conveyancers. Coverage is also good as most firms offering residential conveyancing are small and local and so most small country towns will have more than one firm. **Accessibility** is high too on this account as a local service is always available, and local knowledge can be useful; for example searches often fail to reveal planning problems which an experienced local practitioner may spot.
- 413** In terms of **quality**, it is considered that the vast majority of solicitors provide a perfectly professional level of service in terms of drafting documentation, conducting searches, and assessing risk. There may be some concerns about the capacity of some high volume conveyancers to spot issues that are out of the run of the mill. Competence in the practical aspects of chain management is reported to have improved under competitive pressure. Reported cases on mortgage fraud suggest that some solicitors cut corners e.g. in reliance on undertakings and in releasing mortgage funds before having executed documents. Concern is also expressed by the land registry about some technical aspects, for example in ensuring that applications are made within the priority period of searches. However, in general, **standards are high**.
- 414** This is also the view of clients who expressed high levels of satisfaction with conveyancers to Key Researchers,¹³³ the main areas of concern being the speed of despatch of business and communication of progress. *Bogusz (2006)* notes that efficiency (speed) of property transactions has improved because the Government of England and Wales has embraced the use of technology in the Land Registration Act 2002.
- 415** *Domberger and Sherr (1989)* analysed qualitative changes in conveyancing services in the course of the reform process. For their exploration *Domberger and Sherr (1989)* collected clients' transaction data and conducted interviews to investigate qualitative aspects of transactions. They analysed the variance of satisfaction ratings associated with purchases and found that average satisfaction **ratings rose between 1983 and 1986** with respect to access to the solicitor, information provided from the solicitor and time the conveyancing took. *Domberger and Sherr (1989)* note:

¹³³ Key Research [8.25], Table [A 8.8] which can be found at:
<http://www.communities.gov.uk/publications/housing/keyresearch>

“Although this is a clear indication of quality improvements in later years, the absence of any significant interaction effects suggests that they are essentially independent of the fee levels paid by the clients.”

- 416** It might be expected that the system in England and Wales would generate more disputes than elsewhere simply because the conveyancing is adversarial, so the interests of each party are represented by an independent professional. In reality there are few disputes about pure property law, though there are priority disputes, and most disputes will be purely contractual in character e.g. delays, failure to vacate, removal of fittings, misdescription and misrepresentation. It is exceedingly rare for these to escalate to the point of litigation and in general the professionals representing each side resolve these minor disputes. This is perhaps a strength of the English and Welsh system given it is difficult to see how disputes could be dealt with adequately when a single notary is acting for both sides, and impossible to see how data could be collected on the prevalence of mistakes.

4.3 Welfare gains

- 417** In this sub-section we estimate how much worse off consumers in England and Wales would be under a typical Latin notary system. This difference can be referred to as a "welfare gain" for consumers in England and Wales. To do this we compare fees paid by consumers in England and Wales under the current deregulated system with fees they would have paid under the highly regulated French notary system. We take the year 2006 for this comparison.
- 418** From the Woolwich Survey we have detailed information about the fees for legal conveyancing services in 2006.¹³⁴ We calculate the fees which would have been paid

¹³⁴ In the opinion of experts we have consulted, it is considered that the Woolwich Study tends to overstate the level of fees for conveyancing services. However, the Woolwich study provides a more detailed breakdown for different price levels which makes it more suitable for our purposes. The real welfare gain might therefore be higher than our estimation.

under the French notary system, assuming a mortgage of 75%¹³⁵ of the purchase price.¹³⁶ All fees exclude VAT.

419 We easily observe that under the French notary system fees are much higher than under the deregulated English and Welsh system. This is even more striking when it is considered that in England and Wales each party (buyer and seller) is represented by their own lawyer. This effect is especially pronounced for higher value properties, where we observe that fees would have been up to 639% higher under the French system.

Table A-6: The Cost for Legal Conveyancing Services (selling and buying) in 2006 under the English and Welsh Versus the French Regulatory System

Property Price (in £)	Property Price (in €)	Fees under E&W system (with VAT in £)	Fees under E&W system (ex VAT in €)	Fees under French system (ex VAT in €)	% value of French/ E&W fees
60,000	87,000	943	1,164	1,336	119%
80,000	116,000	964	1,190	1,635	142%
100,000	145,000	990	1,222	1,934	164%
125,000	181,250	1,027	1,267	2,307	189%
150,000	217,500	1,049	1,295	2,681	215%
200,000	290,000	1,121	1,383	3,429	257%
300,000	435,000	1,267	1,564	4,925	326%
500,000	725,000	1,516	1,871	7,915	438%
750,000	1,087,500	1,839	2,269	11,654	532%
1,000,000	1,450,000	2,528	3,120	15,391	511%
1,500,000	2,175,000	3,305	4,079	22,869	581%
2,000,000	2,900,000	4,214	5,200	30,345	604%
2,500,000	3,625,000	4,967	6,129	37,821	639%
3,000,000	4,350,000	6,488	8,006	45,297	586%
3,500,000	5,075,000	7,342	9,060	52,775	603%
4,000,000	5,800,000	8,367	10,325	60,251	604%

Source: Woolwich Study; Chambre de Notaire de Paris; £1 is set equal to € 1.45.

420 As data about the annual value of fees earned from legal conveyancing services in England and Wales is not available directly, we have to project what this might be using

¹³⁵ It should be noted that this differs from the Chapter on Transaction Costs where as a comparator fees for a mortgage of 70% have been used rather than 75%. For the purpose of this exercise, it is assumed that the Woolwich figures include the cost of a mortgage.

¹³⁶ Source: http://www.paris.notaires.fr/frais_mut_ecran1.php (22.08.2007). The estimation of the notaries' fees is based on the reform applicable since May 19, 2006.

publicly available information about the property markets of England and Wales. HM Revenue and Customs (HMRC) provides detailed information on the value of property sold for different price ranges. The following table gives an analysis of this information for 2006.

Table A-7: Price Distribution of All Property Transactions in England and Wales in 2006

Range of prices in £ (lower limit)	Number (in thousands)		Value (in million £)	
0	152	8.5%	209	0.0%
10,000	31	1.8%	432	0.1%
20,000	26	1.5%	625	0.1%
30,000	26	1.5%	892	0.2%
40,000	29	1.6%	1,257	0.3%
50,000	33	1.9%	1,784	0.4%
60,000	208	11.7%	16,622	4.0%
100,000	385	21.7%	47,456	11.3%
150,000	546	30.7%	103,964	24.8%
250,000	262	14.7%	86,387	20.6%
500,000	54	3.0%	35,374	8.4%
1,000,000	24	1.3%	123,996	29.6%
Total	1,777	100.0%	418,997	100.0%

Source: HMRC (http://www.hmrc.gov.uk/stats/survey_of_prop/menu.htm, 23.08.07)

421 The Woolwich Survey gives the legal fees for property in 16 different price ranges. In order to match these prices to the price ranges of the HMRC data, we first have to estimate the fees for transactions with a value of less than £60,000. Regressing the property prices on the fees of the Woolwich study gives a coefficient of 0.187% with constant of £690.¹³⁷ We use this relationship to estimate the missing fees. Transaction values are assumed to be the average of the lower and upper limit. Furthermore, we assume that legal fees for properties within a range are the average of the available fees for prices within that range. We then use the above data to estimate the 2006 turnover for legal conveyancing services under the English and Welsh system and under the French notary system. The following table shows the relevant calculations.

¹³⁷ Both parameters are highly significant and adjusted R² is 99.5%.

Table A-8: Total Amount of Legal Fees for Conveyancing Service in England/Wales for 2006

House price (in £)	Fees under E&W system (ex VAT in €)	Fees under French system (ex VAT in €)	Price range (in £)	No. of transactions (in thousands)	Total legal fees under E&W system (in million Euro)	Total legal fees under French system (in million Euro)
5,000	863	345				
15,000	886	627				
25,000	909	810				
35,000	932	961	0 -			
45,000	955	1,111	59,999			
55,000	978	1,201				
average:	921	843		298	274	251
60,000	1,164	1,336				
80,000	1,190	1,635	60,000 -			
100,000	1,222	1,934	99,999			
average:	1,192	1,635		208	248	340
100,000	1,180	1,934				
125,000	1,267	2,307	100,000 -			
150,000	1,295	2,681	149,999			
average:	1,247	2,307		385	480	889
150,000	1,295	2,681				
200,000	1,383	3,429	150,000 -			
average:	1,339	3,055	249,999	546	731	1 668
300,000	1,564	4,925				
500,000	1,871	7,915	250,000 -			
average:	1,717	6,420	499,999	262	450	1,682
500 000	1,871	7,915				
750,000	2,269	11,654	500,000 -			
1,000,000	3,120	15,391	999,999			
average:	2,420	11,653		54	130	628
1,500,000	4,079	22,869				
2,000,000	5,200	30,345	1,000,000 -			
2,500,000	6,129	37,821	2,499,000			
average:	5,136	30,345		24	123	728
				1,777	2,437	6,186

£1 is set equal to € 1.45.

422 We observe the **welfare gain of the deregulated English and Welsh system in 2006 to be approx. 3,749 million Euro.**¹³⁸ If we add VAT, the annual welfare gain is even higher at 4,535 million Euro.¹³⁹ Nevertheless, estimations unavoidably lack absolute accurateness and the exact welfare loss might therefore be higher or lower. However, the order of magnitude of the welfare gain holds true and serves to illustrate the point.

5. Conclusions

423 In short we give an overview of what happened to prices, quality and choice when the market for conveyancing services in England was deregulated.

424 While only a small number of licensed conveyancers entered the market for property transactions, the **mere threat of entry succeeded in increasing competition.** 7.1 per cent of the respondents in the survey by *Stephen et al. (1994)* said the loss of the conveyancing monopoly had increased competition in their local conveyancing market. In one area this answer was given by 20 per cent of respondents. *Stephen et al. (1994)* note that **this can be interpreted in terms of the theory of contestable markets:**

"The passage of the Administration of Justice Act had made the market for conveyancing contestable; therefore fees fell to the competitive level to forestall entry."

425 **Price discrimination based on transaction values reduced considerably with the increase in competition, a flat pricing structure emerged and prices in real terms fell.** It should be noted that this system of flat or near flat pricing based on the underlying economic value of the work performed, has worked to the significant advantage of consumers in England and Wales over the past decade during which time house prices have risen dramatically. An estimation of the welfare gain, i.e. a comparison with the fees which consumers in England and Wales would have paid under the French notary system shows clearly the advantages of a deregulated

¹³⁸ Fees for transaction prices of less than £25,000 seem to be lower under the French system. But, in our calculation we have not taken into account that French notaries in contrast to the English and Welsh counterparts normally charge an additional lump sum which is according to the French notary chamber approximately €380.

¹³⁹ VAT is 19.6% in France and 17.5% in UK. If we apply a VAT of 17.5% in both countries the welfare loss would be 4,405 million Euro.

competitive system. This is calculated as being the region of 3,749 million Euro in 2006 (ex VAT).

426 The evidence also shows that the entry of licensed conveyancers caused quality improvements in the conveyancing market given that they replaced the minor market share of some solicitor firms who handled a high volume of conveyancing transactions but had bad quality standards. And consumer choice rose. Recent research shows high levels of consumer satisfaction with conveyancers.

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B. Germany: Entry and Competition for Bavaria, Germany Notary Profession

By Gabe S. Lee¹⁴⁰

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1. Introduction

427 The purpose of this case study is to analyze the entry effects on competitive conduct (mark-ups) in notary profession in Bavaria, Germany. I focus on two issues. First, I estimate the entry impact on the current competitiveness in the Bavarian notary profession. Using the Bresnahan-Reiss Ratio, which measures the rate at which mark-ups or variable profits fall with additional firm entry, I estimate the mark-up reduction of additional firm entry. Second, I analyze the effects of lowering the mark-ups on the number of existing geographical notaries. In order to analyze the effects of geographic entry restriction on the notary profession in Bavaria, I focus on the 96 districts in Bavaria.¹⁴¹ I chose Bavaria as our "representative" German case for two reasons. First, from the statistical aspect, Bavaria provides the largest data set. Second, Bavaria is

¹⁴⁰ Department of Real Estate, University of Regensburg, I thank Andreas Hagemann for his data assistance. The usual disclaimer applies here.

¹⁴¹ I consider both kinds of existing districts, "Landkreise" and "kreisfreie Städte": e.g. the city of Munich is classified as "kreisfreie Stadt" whereas the district of Munich is classified as "Landkreis".

known to have the most restrictive entry requirements (both professionally and geographically) for the regional notary profession in Germany.

428 The main results can be summarized as follows. First, I find that entry does affect conduct in the notary market. Empirical results indicate that the current Bavarian notary profession imposes net mark-up in the range of 53 to 116 percent over the competitive benchmark. Second, the geographic coverage would not decrease significantly if the net mark-ups were to be lowered: A large reduction in net mark-up is met with a slight decrease in the number of geographic districts that are covered (in the sense of number of markets with at least one notary office). For example, if the net mark-ups are reduced by 10, 20 and 30 percent then the number of geographic districts covered would decrease only by 1, 3 and 4 percents respectively. Consequently, the argument for a geographic entry restriction with high mark-ups to ensure a high geographic coverage cannot be robustly supported in this note. Thus, from the policy point of view, to improve the welfare of consumers, it might be economically wise to deregulate the profession as the benefits clearly outweigh the costs.

2. Notary Profession in Bavaria Germany and Data Description

2.1 Notary Market in Bavaria

429 I briefly describe the procedure for the entry into the notary profession in Bavaria as well as the geographic restriction that the profession faces. As in various justice ministries of German Bundesländer (a province or a state), the Bavarian ministry of justice also takes the number of notarial acts needed as the prime factor in creating a new notarial office. Minimum numbers for creating new notarial positions usually range between 250 and 400 acts per year for attorney/notaries and between 1500 and 1800 per year for single-profession notaries. Although the Bavarian ministry bases the number of notarial acts authenticated by the notaries in the respective district in creating a new office, there are other economic and demographic factors such the district population and the economic output which also contributes in deciding for new notarial offices. These other factors, however, do not weigh equal proportion. For example, economic centers such as Munich, where there is more demand for notarial services, have disproportionately more notaries as economic factors outweigh the population factor.

430 Once the need for a new notarial office has been confirmed, the province justice ministry appoints a Notarassessor from a list of applicants: the first appointment call goes to an applicant who obtained the highest state bar examination score. Thus, the entry into the notarial service profession can be described as not only extremely restrictive, but the practicing of the service is geographically restrictive as well: one of the notary law further stipulates (§ 10a par. 2 BNotO) that a notary shall not exercise his tasks outside of his district, unless it is required by the interests of the parties.

2.2 Data Description

431 The data set contains information on the 96 Bavarian districts. I have information on the number of active notaries, income per capita, total population (as well as the demographic breakdowns), unemployment rate and the percentage change of number of houses in each of the 96 districts. I use a sample dataset from December 2003 for the number of notaries and 2004 figures for other explanatory variables. **Table B-1** shows the number of notaries per district in Bavaria, Germany. Around 83 percent of the districts (81 out of 96) comprises of three or less notaries. That is, there are 12 districts with no notary office, 22 districts with one notary office, and so forth. There are, however, two "outliers" in our sample: city of Munich and city of Nuernberg have 42 and 10 notary offices respectively, and these two cities are grouped into 6+ districts. The effects of these two cities on the empirical results are discussed in the later section.

Table B-1: Number of Notaries per District in Bavaria, Germany

0	1	2	3	4	5	6+	Total
12	22	25	21	8	5	3	96

Source: <http://www.notare.bayern.de>

432 **Table B-2** describes the summary statistics of the variables that I use to analyse the entry effect on the conduct of the Bavarian notary profession.

Table B-2: Summary Statistics

Variable	Description	Mean	Std. Dev.	Min	Max
# Notaries	Number of notaries per district	2.60	4.36	0	42
ln(Population)	Logarithm of population	11.59	0.53	10.57	14.04
Income	GDP per capita (in 1.000€)	58.71	8.81	46.79	120.83
% Unemployed	Unemployment rate	8.56	3.01	4.30	17.10
% Pop. 25-40	Fraction of population between 25 and 40	19.90	1.46	17.17	26.16
% Δ House	Percentage change in the number of houses from 1995 to 2003	11.02	3.72	3.70	22.60

Source: <http://www.notare.bayern.de>, Statistisches Bundesamt

433 I use the same explanatory variables as Nahuis, et al (2005), who study the effects of entry on the Netherlands notary profession, and Schaumans and Verboven (2006), who study the effects of entry and regulation on the health care professions in Belgium: pharmacists and doctors. One additional explanatory variable that I introduce is the percentage changes in the number of houses: this variable is introduced to capture the effect of the existing notaries on the development of housing markets. The other modification that I made in the explanatory variables is to introduce the fraction of population in the age range from 25 to 40. This age range is known in the housing literature as the age group that transacts (first time home buyers) most often. And hence, the 25 - 40 age group variable should theoretically be related to the number of notaries.

2.3 Data Source

434 I obtained the data from the following source:

- number of notaries per district: The Bavarian Notary Association.
<http://www.notare.bayern.de/>
- population, unemployment rate, changes in the number of houses, and mean income: German Federal Statistics Department: in particular Volkswirtschaftliche Gesamtrechnungen der Länder -- VGR d L;
- http://www.vgrdl.de/Arbeitskreis_VGR/info.asp

2.4 Model

435 I use the entry model of Bresnahan and Reiss (1991) to address the entry effects on conduct of Bavarian notary profession. Since, for the most part, the model is identical to that in Bresnahan and Reiss, the exposition of the model will be brief.

436 Bresnahan and Reiss use the idea of entry threshold to measure the critical number of consumers required for an extra firm to be profitable. And the ratio of these entry - thresholds provide scale-free measures of entry's effect on market conduct. Essentially, the Bresnahan and Reiss (BR) entry ratio looks at how the entry of a new firm in a (geographically defined) market affects the profit margins of existing firms. Bresnahan and Reiss model is particularly suitable for the Bavarian notary case study as the model explicitly bases on the assumption that entrants may face entry barriers. Moreover, the ratio allows one to make inferences about the extent of competition by relating the number of entrants, N , to the size of the market, S .¹⁴² That is, the ratio relates unobserved payoff from the equilibrium relationship between the observed market structure and market size. For example, a fall in variable profits (or net mark-ups) due to an increase in competition implies that firms will require a larger market size, S , in order to remain profitable.

2.5 Entry Threshold Ratio

437 Below, I briefly describe the derivation of the equilibrium entry threshold ratio. The profit function, Π , for the n th entrant (firm) into the market can be defined as¹⁴³

$$\Pi_n = \left[P_n - AVC(q_n, \mathbf{W})d(\mathbf{Z}, P_n) \frac{S(\mathbf{Y})_n}{n} \right] - F_n \quad (1)$$

438 where $P_n - AVC(q_n, \mathbf{W})$ = average variable profitability, $d(\mathbf{Z}, P_n)$ = demand function for a consumer, $S(\mathbf{Y})$ = "market size", n = number of firm in the industry, F_n = fixed cost for a firm, the vectors \mathbf{Z} and \mathbf{Y} represent demographic variables affecting market demand, and \mathbf{W} denote the vector of cost shifting variables that affect AVC and the

¹⁴² To predict how N should vary with S , Bresnahan and Reiss assume that the product is homogenous and the entrants' characteristics are identical. For our purpose in analyzing notary profession in Bavaria, these two assumptions are quite reasonable.

firm's output q_n . Given the set up above, Π_1 , Π_2 , and Π_3 represent the profit functions for a firm in a monopoly, duopoly and tripoly markets respectively. From equation (1), one can see that the more firms in the market, the less the variable profit margin.

- 439** The breakeven condition, $\Pi(S_n) = 0$, defines the breakeven level of demand. That is, one can determine the market size per firm as a function of fixed costs and equilibrium variable profits per customer:

$$\begin{aligned} \Pi(S_n) &= 0 \\ \Rightarrow & \\ s_n &\equiv \frac{S(\mathbf{Y})_n}{n} = \frac{F_n}{[P_n - AVC(q_n, \mathbf{W})d(\mathbf{Z}, P_n)]} \end{aligned} \quad (2)$$

- 440** Thus, the per firm entry threshold, s_n , decreases with increases in variable profits and margins (mark-ups).

- 441** To obtain the entry threshold ratio, $ETR_{n,n+1} \equiv \frac{s_{n+1}}{s_n}$, that measures the rate at which mark-ups or variable profits fall with entry, one uses the fact that the Nash equilibrium occurs for entry/existing firms when $\Pi_{n,n+1} < 0$. Thus, the ratio

$$\begin{aligned} \frac{s_{n+1}}{s_n} &\equiv \frac{\frac{S(\mathbf{Y})_{n+1}}{n+1}}{\frac{S(\mathbf{Y})_n}{n}} \\ &= \left[\frac{F_{n+1}}{[P_{n+1} - AVC(q_{n+1}, \mathbf{W})d(\mathbf{Z}, P_{n+1})]} \right] / \left[\frac{F_n}{[P_n - AVC(q_n, \mathbf{W})d(\mathbf{Z}, P_n)]} \right]. \end{aligned}$$

- 442** Assuming that the fixed costs for all firms are equal, I could then define the successive entry threshold ratio ($ETR_{n,n+1}$) as

¹⁴³ For expositional purpose, I assume that later entrants' fixed and variable costs are not different than the earlier entrants'.

$$ETR_{n,n+1} \equiv \frac{\frac{S(\mathbf{Y})_{n+1}}{n+1}}{\frac{S(\mathbf{Y})_n}{n}} = \frac{V_n}{V_{n+1}} \quad (3)$$

where,

$$V_n = [P_n - AVC(q_n, \mathbf{W})d(\mathbf{Z}, P_n)]$$

$$V_{n+1} = [P_{n+1} - AVC(q_{n+1}, \mathbf{W})d(\mathbf{Z}, P_{n+1})]$$

443 The left-hand side of the ratio equation (3) ($\frac{S(\mathbf{Y})_{n+1}}{\frac{S(\mathbf{Y})_n}{n}}$) is observable and shows how competition affects variable profits. A ratio equal to one is an indication of perfect competition: variable profitability (mark-ups) does not change with entry of an additional firm. Consequently, the ratio that departs from one (i.e. greater than one) measures whether competitive conduct changes as the number of firms increases. One should, however, note that the entry threshold ratio does not measure the level of competition. Instead, it measures how the level changes with the number of firms.

2.6 Empirical Procedure for Entry Threshold Ratio

444 My empirical method follows that of Nahuis, et al (2005), who study the effects of entry on the Netherlands notary profession, and Schaumans and Verboven (2006), who study the effects of entry and regulation on the health care professions in Belgium: pharmacists and doctors.

445 In order to empirically address the aforementioned issues, I also use the ordered probit model, using maximum likelihood method, to estimate the entry threshold. The model treats firm's unobserved profitability as a latent variable, and uses information on the number of entrants as a proxy.¹⁴⁴ The probability of observing markets with no firms equals

$$\Pr(N = 0) = \Pr(\Pi_1 < 0)$$

446 where, Π_1 denotes the monopolist's profit. And the probability of observing n firms in equilibrium equals

$$\Pr(N = n) = \Pr(\Pi_n > 0) \text{ and } \Pr(\Pi_{n+1} < 0)$$

¹⁴⁴ One assumes free entry and that the new entrant breaks even at zero profit.

447 That is, there are only n firms in the market as there is no profit incentive for extra firm to enter into this market (i.e. if one extra firm enters the market then he could expect to obtain negative profits).

448 As Nahuis, et al (2005) and Schaumans and Verboven (2006), I also use a functional form of profits to estimate entry threshold:

$$\Pi_n = \lambda \ln(S) + X\beta - \alpha_n + \varepsilon_n \quad (4)$$

449 where, S is the market size and X are the other explanatory variables. The cut points, α_n , of the estimation capture the effect of the number of firms in the market which still have positive profits. Consequently, according to the free entry condition, there will be at least n firms in the market if

$$\begin{aligned} \Pr(N \geq n) &= \Pr(\Pi_n^* > \varepsilon_n) \\ &= \Phi(\alpha_n - \lambda \ln(S) - X\beta) \end{aligned}$$

450 where $\Phi(\alpha_n - \lambda_n \ln(S) - X\beta_n)$ is the normal cumulative function and α_n is the value of the n th cut point estimated from the ordered probit.

451 Once the parameters, $\{\alpha_n, \lambda_n, \beta_n\}$, have been estimated via ordered probit, we then can construct the entry threshold by setting the profit function in equation (4) equal to zero: we can recover the market size, S_n , that is necessary to support a specific number of firms. In other words, we can find the entry threshold per firm by computing

452 The entry threshold ratio, $ETR_{n,n+1}$, then is

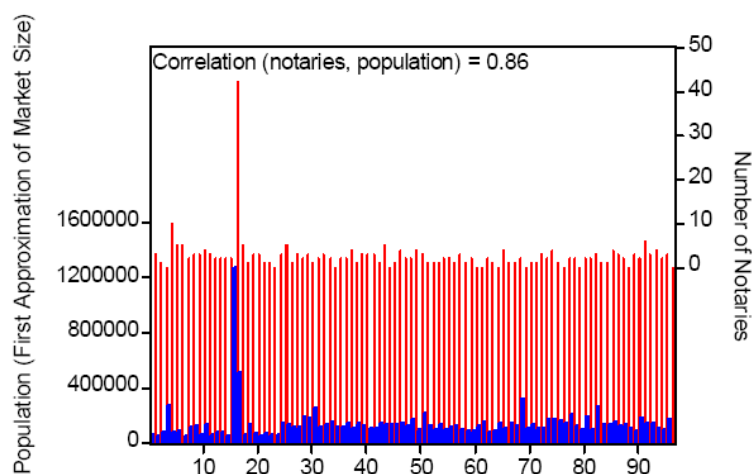
$$\begin{aligned} ETR_{n,n+1} &= \frac{\frac{S(\mathbf{Y})_{n+1}}{n+1}}{\frac{S(\mathbf{Y})_n}{n}} \\ &= \exp\left[\frac{\hat{\alpha}_{n+1} - \hat{\alpha}_n}{\hat{\lambda}}\right] \left(\frac{n}{n+1}\right) \end{aligned} \quad (5)$$

453 Thus, an entry threshold ratio that is greater than one implies that the per-firm entry threshold has to increase in order to support an additional firm. Or, one could also interpret the increase in the ratio as the reduction of mark-ups of existing firms when the entry of extra firm occurs.

3. Empirical Results

454 My sample contains 96 isolated Bavarian districts (local markets).¹⁴⁵ Each district is clearly separated by local jurisdiction and most of the local population resides within each district (i.e. no overlapping customers), as in previous empirical literature on entry model, I also use population as a first approximation to the market size, $S(Y)$. Figure 1 plots the distribution of our sample markets by ranges of the district's population.¹⁴⁶ The figures 1 and 2 show that our sample districts cover a wide range of market sizes, making it possible to estimate the population required to support one, two and more firms. Moreover, the high correlation between the number of notaries and population also provide further support for using population as a proxy for market size.

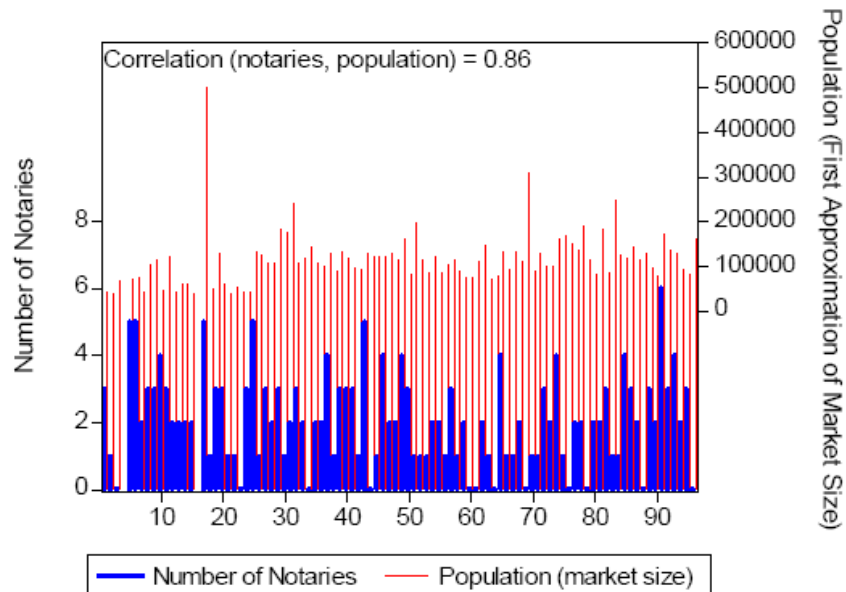
Figure B-1: Number of Districts by Population and Notaries



¹⁴⁵ All data and estimation procedures can be obtained from the author.

¹⁴⁶ Figure 2 is same as Figure 1 without Munich and Nuernberg.

Figure B-2: Number of Districts by Population and Notaries



455 **Table B- 3** provides our empirical model specification as well as the estimated parameters. Specification 1 and 2 can be considered as an "uncensored" ordered probit model (these models include Nuernberg and Munich with 10 and 42 notary offices respectively), whereas specification 3 and 4 are estimated without these two markets. Considering the Akaike criterion and the log likelihood values, specification 4 is considered to be the best fitted model. My final empirical observation is thus based on specification 4, although, the results from the rest of the specification are also reported. Judging from the estimation, all the explanatory variables are statistically significant, except for the percentage changes in the number of houses. As expected, the market size, measured by population, is the most significant market variable affecting the notaries' payoffs. The entry cut off values, $\{\alpha_i\}_{i=1}^6$ are all positive and increasing in value: this result is consistent with the theory of entry.

Table B-3: Empirical Results: Ordered Probit Estimation

	Specification 1	Specification 2	Specification 3	Specification 4
ln(Population)	0.9901 (0.2797)	0.9938 (0.2788)	0.7487 (0.3035)	0.7636 (0.3009)
GDP per capita	-0.0472 (0.0162)	-0.0472 (0.0162)	-0.0461 (0.0165)	-0.0461 (0.0165)
% Unemployed	0.1490 (0.0563)	0.1438 (0.0420)	0.1286 (0.0578)	0.1152 (0.0444)
% Pop. 25-40	0.2641 (0.0878)	0.2635 (0.0877)	0.2283 (0.0899)	0.2278 (0.0899)
% Δ House	0.0060 (0.0432)		0.0159 (0.0439)	
α_1	13.9622 (3.3486)	13.8815 (3.3024)	10.4854 (3.7414)	10.3579 (3.7272)
α_2	14.8220 (3.3528)	14.7412 (3.3066)	11.3412 (3.7455)	11.2136 (3.7313)
α_3	15.5851 (3.3667)	15.5025 (3.3185)	12.0966 (3.7591)	11.9650 (3.7437)
α_4	16.4042 (3.3908)	16.3207 (3.3418)	12.9074 (3.7816)	12.7735 (3.7657)
α_5	16.9977 (3.4233)	16.9154 (3.3761)	13.5035 (3.8104)	13.3727 (3.7956)
α_6	17.8036 (3.5097)	17.7249 (3.4687)	14.4352 (3.8789)	14.3146 (3.8687)
α_{10}	18.1445 (3.5625)	18.0669 (3.5234)		
α_{42}	18.9237 (3.7737)	18.8535 (3.7471)		
Observations	96	96	94	94
Akaike criterion	3.462376	3.441747	3.419303	3.39942
Log likelihood	-153.194	-153.204	-149.707	-149.773

Standard errors in parentheses

456 Armed with the parameter estimates, I can now construct the entry threshold ratio according to equation (5). The results are in **Table B- 4**. Looking at the last column in Table B- 4, the entry threshold ratio for an additional firm in a monopoly market, $ETR_{1,2}$, equals 1.53: the monopoly market's net mark-up is reduced by 53 percent if an extra firm enters in this market. Or, one could interpret this ratio of 1.53 as the following: the market size needs to be increased by 53 percent in order to support both existing monopoly as well as the new entrant. For the markets with three existing firms, the entry threshold ratio, $ETR_{3,4}$, shows that an addition of one extra firm would result in a lose of 116 percent net mark-up. The main message from Table B- 4 is that regardless of the current geographic market structure, the empirical results indicate high net mark-ups (in relation to the competitive benchmark of no mark-up) in the Bavarian notary profession.

Table B-4: Successive Entry Threshold Ratios

	Specification 1	Specification 2	Specification 3	Specification 4
$ETR_{1,2}$	1.1915	1.1877	1.5681	1.5334
$ETR_{2,3}$	1.4408	1.4343	1.8285	1.7834
$ETR_{3,4}$	1.7153	1.7085	2.2148	2.1624
$ETR_{4,5}$	1.4569	1.4553	1.7737	1.7534
$ETR_{5,6}$	1.8805	1.8818	2.8922	2.8613

457 In order to analyze whether the lowering the net mark-up will lead to a redistribution of geographic coverage, I follow the estimation strategy proposed in Schaumans and Verboven (2006).¹⁴⁷ For expositional purpose, I briefly state the estimation strategy. Let the variable profit to be defined as

$$V_n = \mu \cdot R_n \cdot S$$

458 where μ denotes the net mark-ups and R_n denotes the revenues per customer. The change in the net mark-up $\Delta\mu$, can be estimated by adjusting the estimated intercept from the order probit model: that is, $\hat{\beta}_0$ to $\hat{\beta}_0 + \hat{\lambda} \ln(\Delta\mu)$. Once the estimated intercept has been adjusted, one can then calculate the expected number of firms in each market using the marginal probabilities. **Table B- 5** summarizes the entry predictions under various mark-ups of notaries. One of the results in Table B- 5 shows that the total number of notaries in Bavaria decreases if the net mark-ups are reduced. This empirical observation is consistent with the theory of entry: the less the mark-ups, the fewer firms could be supported to be competitive. The geographic coverage, however, would not decrease significantly if the net mark-ups were to be lowered: A large reduction in net mark-up is met with a slight decrease in the number of geographic districts that are covered (in the sense of number of markets with at least one notary office). For example, if the net mark-ups are reduced by 10 ($\Delta = 0.9$), 20 ($\Delta = 0.8$) and 30 ($\Delta = 0.7$) percent then the number of geographic districts covered would

¹⁴⁷ Unlike Schaumans and Verboven (2006), I cannot adjust both the entry requirement **and** net mark-ups. In Schaumans and Verboven (2006), they study the Belgium pharmacy market that has explicit limit on the market saturation point, i.e. maximum number of pharmacies required for each local district. Consequently, Schaumans and Verboven (2006) can provide empirical experiment on the effect of entry liberalization and reduction in the regulated mark-ups on the expected number of pharmacies.

decrease by only 1, 3 and 4 percents respectively.¹⁴⁸ Consequently, a relatively large benefit of price reduction is met by a small amount of cost in coverage reduction. The usual argument from the notary profession for geographic entry restriction with high mark-ups is to ensure a sufficient coverage of notary service in the less attractive areas without triggering excessive entry elsewhere. The empirical results in Table B- 5, however, indicate that such argument for geographic entry restriction with high mark-ups does not seem to hold robustly as the notary profession (industry) becomes more competitive. Thus, from the policy point of view, to improve the welfare of consumers, it might be economically wise to deregulate the profession as the benefits clearly outweigh the costs.

Table B-5: Predicted Observations (Specification 4)

	Number of Notaries							Total Number of Notaries	Total Number of District Coverage (1+)
	0	1	2	3	4	5	6		
Actual	12	22	25	21	8	5	1	198	82
Predicted ($\Delta = 1.0$)	3	16	58	14	0	2	1	190	91
Predicted ($\Delta = 0.9$)	4	20	58	10	0	1	1	177	90
Predicted ($\Delta = 0.8$)	6	29	50	7	0	1	1	161	88
Predicted ($\Delta = 0.7$)	7	44	35	6	0	2	0	142	87

4. Some Remarks

459 Using the data set that contains information on the 96 Bavarian districts, I analyze the entry effects on competitive conduct (mark-ups) in notary profession in Bavaria, Germany. The main results can be summarized as follows. First, I find that entry does affect conduct in the notary market. Empirical results indicate that the current Bavarian notary profession imposes net mark-up in the range of 53 to 116 percent over the competitive benchmark. Second, a reduction in mark-ups would lead to an increase in geographic coverage. Consequently, the argument for a geographic entry restriction

¹⁴⁸ If I compare the number of actual districts with one or more notary offices to my estimated districts then we would have an increase in geographical coverage. For example, with a reduction in the net mark-ups of 10% ($\Delta = 10$), the predicted number of districts with one or more notary offices is 90. The actual number (from the data) is 82. Thus, the difference is eight more geographic coverage when there is ten percent reduction in the net mark-up.

with high mark-ups to ensure a high geographic coverage cannot be empirically supported in this note.

460 For further research, it would be useful to follow Schaumans and Verboven (2006) on their effort to analyze the simultaneous effect of entry requirement **and** net mark-ups on geographic coverage. As the Bavarian notary market does not have an explicit limit on the market saturation point, i.e. maximum number of notaries required for each local district, I can only adjust the mark-up dimension to see the effect on geographic coverage. My conjecture, however, is that if there was a way to add the extra dimension of entry restriction, I would obtain even stronger results against the current geographic entry restriction as well as high net mark-ups.

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C. Netherlands

By Mr A.D. (Dolf) Plaggemars¹⁴⁹

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¹⁴⁹ Former notary and former President of the Royal Netherlands Notarial Organisation (KNB).

1. Introduction

461 Everyone will be convinced of the need for legal certainty in conveyancing. But how can this legal certainty best be obtained? Possible ways are:

- Leave it to the market: in other words, the parties can undertake their own conveyancing possibly with the help of advisors if they so chose.
- Regulation by Government, under which civil servants provide conveyancing services.
- Regulation by means of a 'mixed form', in which Government grants the conveyancing power exclusively to (a) professional(s), whether in a regulated market or otherwise.

462 The "Latin notarial profession" is an example of a mixed form. Kok¹⁵⁰ states: "*the notary is invested with government authority*" and "*government authority may therefore be described as a key feature of the notarial profession*".

463 Likewise, the Hammerstein Committee in its report¹⁵¹ states: "*a notary is a civil servant invested with official authority*". It also went on to say that "*the notary is not only exclusively allowed and obliged to make authentic deeds in the cases in which the law orders it, but also when a client asks it from him. This makes the notary a public server. The notary is an important institute in avoiding legal proceedings in court. The notary is a professional in public services.*"

464 And the Dutch government:¹⁵² "*the notary's special position of trust as a public official in our legal system*".

465 It follows that there is evidently no doubt in the Netherlands about the question of whether the notary has a 'public office', but it is one that operates within a market context. The notary is, after all, paid by his clients.

¹⁵⁰ Kok, Het Nederlands notariaat (The Dutch Notarial Profession), dissertation, Leiden, 1971.

¹⁵¹ Official name: Notarial Profession Evaluation Act Committee, established by the Minister of Justice on 9 July 2004. The Committee presented its report on the evaluation of the Notaries Act 1999 in September 2005. The title of the report – 'The best of two worlds' – is a reference to the public office/market balance. This report is cited below as the Hammerstein Committee Report 2005.

¹⁵² Government position on the Hammerstein Committee Report 2005, of 7 February 2006, referred to below as Government position 2006.

466 This mixed form of public office/market has existed in the Netherlands for many years and was first recognised under the ‘Ventôse Law’ of 1803¹⁵³ and in the (old) Notaries Act.¹⁵⁴ It has shifted further from public office to market in the new Notaries Act.¹⁵⁵ It is also interesting to note that even before the new act was introduced the provisions on the *numerus clausus* (maximum number of notaries) were being applied more liberally¹⁵⁶ and fixed rates (i.e. fixed scale charges) for conveyancing were lowered four times in the 1990s. Both these moves were prompted by the same circumstances. As a result of the economic boom the number of transactions and property prices had risen and notarial incomes with them. The notaries were also brought under the operation of the Economic Competition Act as far back as 1987! A further significant change to the profession was brought about in the 1990s when the Dutch Government, influenced partly by consumer organisations, decided to deregulate the notarial profession to promote innovation, more service differentiation and greater choice, and lower fees for users.

2. The Dutch Notarial System after the 1999 reforms

467 Almost all attention before, during and after the introduction of the new Notaries Act has focused on the adoption of a competitive method of charging (abandonment of the system of fixed rates) even though the reforms touched on other areas too. It should however be noted that the Dutch system still forms part of the so-called Latin notary system and that a great deal of regulation has remained in place.

2.1 Removal of the numerus clausus

468 Notaries are appointed by royal decree,¹⁵⁷ as under the old act, and may apply for appointment to an existing post that has fallen vacant, which may be a single-practitioner post (notary’s office) or an office in association with others. Additionally

¹⁵³ *Loi Contenant Organisation du Notariat de 25 Ventôse* (windy month) *An XI*, of 16 March 1803.

¹⁵⁴ Act of 9 July 1842.

¹⁵⁵ Act of 3 April 1999, introduced on 1 October 1999.

¹⁵⁶ There were 1,142 notarial posts in 1994 and 1,332 in 1999. Figures supplied by the Royal Netherlands Notarial Organization.

under the new system, a notary can take the initiative to create a new office which has not existed before. To establish a new office, the reform introduced the requirement to submit a business plan,¹⁵⁸ which should contain:

- (a) a market survey;
- (b) a description of the office organisation;
- (c) a forecast of results; and
- (d) a financing plan.

469 The business plan should cover a minimum period of three years¹⁵⁹ and is assessed by a committee of experts consisting of three members. The chairman and one of the members should have experience of business economics, and the other member should be a notary.¹⁶⁰

2.2 Adjustment of the requirements for appointment as a notary

470 The requirements for appointment continue to be:

- (a) a university degree in notarial law;
- (b) a 3-year additional part-time professional training course and practical experience in the notarial profession.

471 The period of practical training was as a result of the reform increased from 3 to 6 years so as to enable notary candidates to gather more experience before opening their own office.

2.3 The abolition of fixed fees

472 Under the reform a scheme was adopted to reduce the fixed fee rates (scale charges) for conveyancing practice and family law practice in stages over a period of three years (from 1999 to 2003). The fees in company law practice were already free of restriction.

¹⁵⁷ Section 3 Notaries Act.

¹⁵⁸ Section 6 Notaries Act.

¹⁵⁹ Article 2 of the Notary's Business Plan Decree of 9 April 1999.

¹⁶⁰ Article 5 of the Decree referred to in note 10.

Maximum fees for people of limited financial means were introduced for family law practice.

- 473** The results of this fee deregulation were considered and described in the Final Report of the Notarial Profession Monitoring Committee.¹⁶¹ The findings of this study were so positive that the Government completely abandoned the system of fixed rates from 1 July 2003, while maintaining the maximum rates in family law practice for people of limited means.

2.4 Official activities outside the place of practice

- 474** The new act also allows notaries to perform official activities outside their place of practice provided that they are performed in the territory of the Netherlands. However, notaries are not permitted to have branch offices or hold clinics outside their place of practice.¹⁶² Clients therefore now have a wider choice of notaries and, for example, deeds for foreign clients can now be executed at Schiphol Airport by every Dutch notary.

2.5 Designated 'client account'

- 475** Under the old system, client money had to be kept in a special "Foundation Client Account" (Stichting Derdengelden), which worked without problems. However, the Government introduced a new system for safeguarding client money which it considered to fit better into the overall context of the reforms. Under the new system, the notary is obliged to keep one or more specially designated "client accounts" at a "recognised" bank. These are intended exclusively for the money of third parties, including any interest paid on the accounts. Only "third parties" (i.e. the clients) whose money has been paid into these accounts have a right of action against the account¹⁶³ and, in the unfortunate event of bankruptcy (a very exceptional occurrence), this client money can never form part of the assets of the notary. This ensures that the interests of clients are safeguarded.

¹⁶¹ Final report of the Notarial Profession Monitoring Committee, period 1999-2003, February 2003.

¹⁶² Section 13 Notaries Act.

¹⁶³ Section 25 Notaries Act.

2.6 The Royal Netherlands Notarial Organisation as a public body

- 476** Under the new system, the Royal Netherlands Notarial Organisation (KNB), of which all notaries and junior notaries are members by law, became a public body within the meaning of Article 134 of the Constitution. Before this the KNB only represented the interests of its members. This change of status was introduced because the Government wanted to transfer legislative power from the State to the KNB in order to promote self-regulation by professional bodies.
- 477** Today the role of the KNB is to promote good professional practice and for this purpose it has far-reaching regulatory powers. Its regulations require the prior approval of the Minister of Justice. In practice its regulations cover the following main areas: control of quality and integrity, professional and legal (scientific) support, permanent (post-academic) education and training, professional ethics, electronic (ICT) facilities and support, promotion of the profession and to ensure the transparency of fees.

2.7 Collaboration with other professions

- 478** Although collaboration with two other professions (attorneys-at-law and tax consultants) was permitted before the reforms (for which rules were laid down in guidelines drawn up by the KNB), a statutory basis for this is now provided by Section 16 of the Notaries Act. According to this provision, "*a notary may enter into a collaborative association with practitioners of another profession, provided that his independence and impartiality are not and cannot be influenced by this.*"
- 479** Under the Interdisciplinary Collaboration Regulation 2003,¹⁶⁴ the possibility of collaboration is however limited to:
- (a) attorneys-at-law (i.e. members of the Dutch Bar);
 - (b) tax consultants (i.e. members of the Order of Dutch Tax Consultants);
 - (c) practitioners of the professions referred to at (a) and (b) above who work abroad, provided that they are subject to disciplinary law in the same way as the persons referred to at (a) and (b) and have adequate professional liability insurance.

¹⁶⁴ Regulation of the KNB of 18 June 2003, approved by the Minister of Justice on 18 September 2003.

480 In addition, the regulation contains provisions designed to ensure the independence and impartiality of Dutch notaries in multidisciplinary practices of this kind.

2.8 Publicity

481 In its Professional Rules of Conduct Regulation¹⁶⁵ approved after the 1999 reform, the KNB has permitted practitioners to use publicity, provided that in doing so they observe a standard of care befitting the profession. Such publicity may not involve a comparison of the notary's services with those of one or more other notaries, unless representative and verifiable elements are compared and the publicity is not misleading. The Dutch Competition Authority believes the professional rules on publicity should still be further relaxed.

3. Impact Analysis

*3.1 Abolition of the *numerus clausus**

482 As the number of notaries is no longer subject to a ceiling (*numerus clausus*), the actual number of practising notaries has been left to market forces. This means that in the Netherlands it is market conditions that have a direct and dynamic effect on numbers. This is different to many other countries where the *numerus clausus* is adjusted from time to time on the basis of a number of factors, including market data. The introduction of the new requirement of a business plan has helped ensure that this is being done in a manner that is commercially responsible. If the economy deteriorates, the posts that fall free may possibly not be filled (this has happened repeatedly in the past, mostly those in associations) and there will be fewer applications for new notarial posts. In times of economic confidence there will be scope for expansion.

483 721 business plans for existing and new notarial posts were lodged in the period from the introduction of the new Notaries Act (1 October 1999) to 1 January 2006. Only 22 of the 721 plans were not approved. There has certainly been no policy of protecting established notaries, as some had feared.

¹⁶⁵ Regulation of the KNB of 21 June 2000, approved by the State Secretary for Justice on 15 September 2000.

- 484** In 1999, when the new Notaries Act and its deregulation provisions came into force, there were 1,332 notarial posts (see footnote¹⁵⁶). Notarial post number 1,500 was filled in January 2007. The abolition of the *numerus clausus* has fulfilled its objective, but has not resulted in an explosive growth in the number of notarial posts, partly owing to the effect of the economic downturn. Physical accessibility has been improved since the number of inhabitants per place of notarial practice has fallen by 8.7% from 12,365 (in 1998) to 11,284 (in 2003).¹⁶⁶
- 485** The Dutch Government informed Parliament in February 2006, that in addition to a business plan assessment, it wished to introduce an objective test to assess the suitability of persons applying to join the profession. This would resemble the selection committee process for members of the judiciary.

3.2 Adjustment of the appointment criteria

- 486** In the opinion of the legislator (1999), the increasing complexity of society as a whole, and legal relationships in particular, made it desirable to strengthen the appointment criteria in order to maintain the standard and quality of the notarial profession. To this end, the length of the practical training was extended in the 1999 reforms from 3 to 6 years as noted above.¹⁶⁷ This training requirement is not regarded as a problem by 77% of junior notaries.¹⁶⁸ However, the following further adjustments have now been recommended by the Hammerstein Committee to improve access to the profession:
- (a) abolition of the requirement of Dutch nationality;¹⁶⁹
 - (b) promotion of lateral entry to the profession by allowing job experience in other legal professions to count towards the period of practical training;¹⁷⁰
 - (c) relaxation of the practical training structure requirements for part-time junior notaries;¹⁷¹

¹⁶⁶ Hammerstein Committee Report 2005.

¹⁶⁷ Average period of practical training of junior notaries seeking appointment is 10 years (Hammerstein Committee Report 2005).

¹⁶⁸ Notarial Profession Trend Report, 2004.

¹⁶⁹ Recommendation from the Hammerstein Committee Report 2005 and confirmed in government position 2006.

¹⁷⁰ Recommendation from the Hammerstein Committee Report 2005 and confirmed in government position 2006.

(d) possibility of notaries being in salaried employment.¹⁷²

487 It will most likely become possible for a junior notary to work as a notary in the salaried employ of another notary (entrepreneur) rather than working as a notary in a self-employed capacity.¹⁷³ The object of the scheme is to give more junior notaries the possibility of becoming a notary without having to bear the responsibilities of running a business. This would also make it easier for them to work on a part-time basis. It seems very likely that this change will actually be introduced as 65% of junior notaries have indicated that they regard working as a salaried employee a reasonable alternative.¹⁷⁴

3.3 The abolition of fixed fees.

488 In relation to fee deregulation, the Dutch Government made the following assessment:

“There is fee rate differentiation and cost-price-related charging. The costs of conveyancing in particular have fallen, sometimes by over 30%. The continuity and accessibility of the notarial profession have not been jeopardised by abandoning the system of fixed fee rates for property transactions. Many politicians had expected that this would have had the effect of reducing fee rates right across the board. But this expectation has been borne out only partially. Notaries have begun working in a more cost-conscious way, but partly as a result, fee reductions have been evident only in conveyancing work (and then mainly for the benefit of commercial clients), while fees in family law practice have risen. The charge for a will has actually almost doubled. It seems as though private clients – as weak market participants – have benefited only slightly from the abolition of fixed rates. However, the position of people of limited means has been protected by the statutory maximum fees. The government agrees with the Hammerstein Committee that the present level of fee rates does not warrant a return to the system of fixed rates. The aim of the biennial Notarial Profession Trends Report is to identify any problems in good time. This form of monitoring is in keeping with the transitional stage in which the notarial profession still finds itself.”¹⁷⁵

¹⁷¹ Recommendation from the Hammerstein Committee Report 2005 and confirmed in government position 2006.

¹⁷² Recommendation from the Hammerstein Committee Report 2005 and confirmed in government position 2006.

¹⁷³ Notary in Salaried Employment Bill 2005.

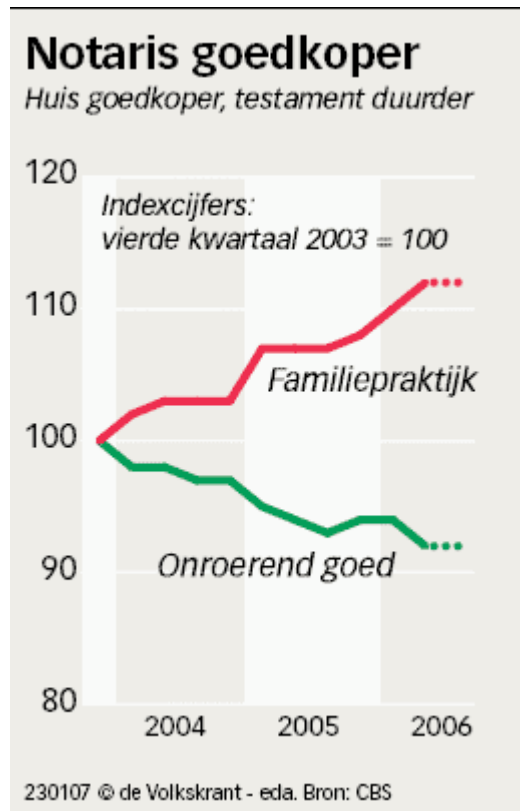
¹⁷⁴ Notarial Profession Trend Report, 2004.

¹⁷⁵ Almost literal quote from the 2006 Government position.

489 It was feared in the Lower House of Parliament that notaries would shed their loss-making family law practice work and concentrate on the profitable conveyancing work.¹⁷⁶ This fear has in fact proved to be unfounded and what the KNB predicted has happened.

490 Under the fixed fee system there was cross-subsidisation between notary services. Fixed rates for most conveyancing deeds were set too high and this work was in turn used to subsidise the almost always unduly low rates for family law work. After the fixed rate system was abandoned for conveyancing work, fee rates fell in cases where they were substantially in excess of the actual underlying economic value of the service and rose in cases where they were under the economic value. This is a logical effect of the operation of market forces.

491 The graph below illustrates the trend in prices during the period autumn 2003 to 2006 after the free rate system had been fully implemented on 1 July 2003 for both conveyancing practice and family law. The index for the fourth quarter of 2003 is 100. It shows clearly that in the family practice as a whole fees rose, while in the conveyancing practice as a whole fees fell.



¹⁷⁶ Hammerstein Committee Report 2005.

492 However, this does not tell us if the "average" consumer is better or worse off after deregulation, as consumers tend to use both more expensive family law services and cheaper conveyancing services. In order to assess the impact for consumers in a non-distorted way, two baskets of notarial services have been put together. These represent the services a typical consumer would use. Using this as a basis, the cost of the package of services prior to the reforms (1 October 1999) and post reforms (in early 2007)¹⁷⁷ can be compared.

493 Example 1: Basket of services comprising of a conveyance of a house with a purchase price of €100,000 and a mortgage of €100,000, by two cohabitants who want a cohabitation contract and two identical wills. Comparison of fees before and after deregulation.

Table C-1: First Basket of Services

Notary's fee (in euro)	In Sept. 1999 before deregulation	In Sept. 1999 before deregulation but prices adjusted for inflation*	In Jan. 2007 after deregulation
a. Cohabitation contract	238.00	276.94	363.00
b. Two identical wills	190.00	221.08	362.00
(sum of a and b)	428.00	498.02	725.00
c. Combined fee for cohabitation contracts and two identical wills	364.00	423.55	544.00
d. Deed of conveyance and mortgage deed together	1,491.00	1,734.93	896.00
e. Cancellation deed (cancellation of seller's old mortgage)	33.00	38.40	100.00
Total (c, d, e)	1,888.00	2,196.88	1,540.00

*) inflation adjusted, price level as of Jan. 2007

¹⁷⁷ All amounts stated are purely the notary's fee excl VAT. The 1999 rates were taken from the national book of rates as fixed at that time, while the 2007 rates have been generated by competition. The amounts given are averages taken from a number of offices in three regions (the east, the north and Amsterdam and surrounding area (rates of roughly 10 offices per region).

494 Example 2: Basket of services comprising of a conveyance of a house with a purchase price of €250,000 and a mortgage of €250,000, by two cohabitantes who want a cohabitation contract and two identical wills. Comparison of fees before and after deregulation.

Table C-2: Second Basket of Services

Notary's fee (in euro)	In Sept. 1999 before deregulation	In Sept. 1999 before deregulation but prices adjusted for inflation *	in Jan. 2007 after deregulation
a. Cohabitation contract	238.00	276.94	363.00
b. Two identical wills	190.00	221.08	362.00
(sum of a. and b.)	428.00	498.02	725.00
c. Combined fee for cohabitation contracts and two identical wills	364.00	423.55	544.00
d. Deed of conveyance and mortgage deed together	1,827.00	2,125.90	1,144.00
e. Cancellation deed (cancellation of seller's old mortgage)	33.00	38.40	100.00
Total (c, d, e)	2,224.00	2,587.85	1,788.00

*) inflation adjusted, price level as of Jan. 2007

495 These two examples show that, although fees for family law services increased, consumers are substantially better off after deregulation thanks to the more than proportional reduction in fees for conveyancing. Furthermore, it should be noted that under the old system of fixed rates applicable to the conveyancing practice, a fee rate was applied which, although digressive, increased together with the purchase price. This generated enormous differences in notarial incomes between cheap and expensive regions. As the rates have now tended to flatten out and become more related to the underlying economic value of the service provided, notarial incomes are today more in balance across the different regions.

496 However, the gradual transition to a system of free rates did not go entirely smoothly. In their efforts to maintain the volume of their work some notaries tended to panic and cut their rates excessively. It is therefore very important to note that **the transition to a**

system of free rates needs enough time both for notaries and consumers.

Furthermore, the cost structure of a notary's office is characterised by relatively high staffing costs, which are hard to adjust in the short term: 56-70% consists of staffing costs (excluding the income of the notary).¹⁷⁸

497 Another problem was that the economy went into a sharp decline almost at the same time as the system of fixed rates charges was phased out. For example, the number of mortgage deeds fell from 717,239 in 1999 to 587,518 in 2003 (a drop of 129,721). By contrast, the number of wills rose from 234,700 in 1999 to 325,500 in 2003 (up by 90,800). The conveyancing practice, however, generates by far the greatest turnover of most notary offices and so a fall in the number of deeds here can have a significant impact on a notary's business. For example, in 2001 the aggregate turnover of notary offices was 716 million euro, of which some 65% came from conveyancing business, 15% from family law business, 15% from corporate law business and 5% from miscellaneous sources.¹⁷⁹ The table below gives an overview of the total number of notarial deeds for the period 1998 to 2003

Table C-3: Total Number of Deeds, Divided into Conveyancing (hypotheken) and Wills (testamenten)

Tabel 3.4 Totaal aantal akten, onderverdeeld naar hypotheken en testamenten 1998- 2003

	1998	1999	2000	2001	2002	2003
Totaal aantal akten	1.674.000	1.822.000	1.654.000	1.585.000	1.629.000	1.642.000
Index totaal aantal akten	100	109	99	95	97	98
Waarvan:						
hypotheekakten	624.438	717.239	557.263	526.512	543.201	587.518
index hypotheekakten	100	115	89	84	87	94
geregistreerde testamenten*	nb	234.700	250.500	269.000	257.000	325.500
index testamenten	nb	100	107	115	110	138

* In deze aantallen zijn ook wijzigingen in geregistreerde testamenten opgenomen.

Bron: KNB, CBS, CTR

The above table shows the total number of deeds, subdivided into mortgages (*hypotheken*) and wills (*testamenten*) during the period 1998-2003. Explanation of the text in the left column downwards: Total number of deeds (*totaal aantal akten*) and index of total number of deeds, of which: mortgage deeds (*hypotheekakten*), index mortgage deeds, registered wills (*geregistreerde testamenten*), index wills. Explanation of the text marked with *: These numbers also include changes in registered wills. Source: KNB, CBS (Statistics Office) CTR (Central Register of Wills)

¹⁷⁸ Hammerstein Committee Report 2005.

¹⁷⁹ All figures taken from the Hammerstein Committee Report 2005.

498 In its 2004 Annual Report the Financial Supervision Office (BFT)¹⁸⁰ indicated that the profitability of the notarial profession had declined, albeit to a lesser extent than might have been expected on the basis of the fall in the number of conveyancing cases. The average income trend is downwards. The BFT had surveyed 21% of the total number of notary's offices and found that the solvency of 16 of the offices surveyed (8%) was 'unfavourable' and that the operating profit of 24 of the notary's offices in the survey had fallen by over 20%.¹⁸¹ These figures are averages. It is also known that those offices that have greatly stepped up their efficiency (mainly larger offices) have seen their operating profits rise considerably. Whatever the case market forces are having an effect.

3.4 Official activities outside the place of practice

499 The expansion of the notary's scope for executing deeds seems to be enhancing the service provided by notaries and increasing client choice.

3.5 Designated 'client account'

500 Like the Hammerstein Committee, the Government considers the good management of client money to be essential. It is not simply that clients should be able to rely on the fact that if the notary becomes bankrupt, or his assets are seized, their money will be kept separate from other office monies, but also that it is not used for any purpose other than that for which it was given to the notary for safekeeping.

501 Just one incident of this kind at a single notary's office could dent public confidence in the entire notarial profession. The Financial Supervision Office therefore needs to carry out stricter checks to ensure notaries are complying with their accounting obligations and so the relevant regulations will be tightened up further.

¹⁸⁰ Financial regulator for the notarial profession.

¹⁸¹ It should be noted that as some notaries work together within one office the number of offices is smaller than the number of notaries.

3.6 The Royal Netherlands Notarial Organisation as an administrative body

502 The KNB is clearly transforming itself from a body dedicated to representing the interests of its members (a kind of trade association) to an administrative body, which is increasingly playing a supervisory and corrective role in relation to its members. There are numerous fields where this has become evident - for example, quality control, continuing professional development and other means of promoting good practice.

3.7 Collaboration with other professions

503 As already mentioned, collaboration is allowed only with two professions: attorneys-at-law and tax consultants. A number of large offices have been created in which notaries work together with attorneys and, occasionally, tax consultants. This has resulted in an increase in expertise. The permitted collaboration with offices outside the Netherlands is in line with the European ideal.

504 Regarding collaboration with accountants, the legislator had already opened the way for collaboration with this profession. Indeed, Section 18 of the new Notaries Act had left open this possibility.¹⁸² However, the KNB considering that this risked the independence of notaries¹⁸³ adopted a prohibition barring this kind of collaboration. The Government approved this prohibition. It is interesting to note here that the Dutch Bar (NOVA) had previously prohibited collaboration of this kind between attorneys and accountants and that this decision was recognized by the European Court of Justice.¹⁸⁴

3.8 Publicity

505 The Hammerstein Committee saw clear advantages in the deregulation of advertising activities. It allows the notary to provide information (for example on their own website) about quality, special expertise and promotes fee transparency. Advertising through the medium of an estate agent is not permitted however, in order to avoid any appearance

¹⁸² Section 18 (1) of the Notaries Act provides, however, that the independence of the notary may not be adversely influenced by this.

¹⁸³ Annual speech of KNB Chairman Plaggemars in 2003.

¹⁸⁴ ECJ Case C-309/99 Wouters, of 19 February 2002.

of dependency. The advertising must also respect the dignity of the office and may not be unduly obtrusive.

3.9 Client-orientation of notary's offices, quality of the deed and speed of the transaction

506 EIM undertook a survey of business clients in 2005 to evaluate the effect of the reforms on the service provided by notaries. This included the client-orientation of notaries, quality of deeds produced and speed of service. Overall business clients believed that following deregulation quality had been maintained and the speed of service was at least the same whilst some 40 % of clients even thought it had been enhanced.

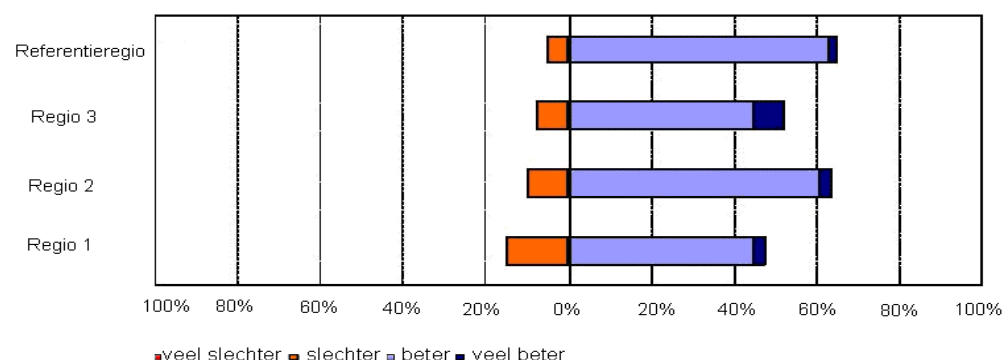
507 The following sets out some of the key findings. A series of charts are used to show the views of business users in three regions. A reference region (in which the reform was assessed in a very positive way) is also shown. If respondents indicate that the service is better or much better, the bar moves to the right. If they report that the service has worsened, the bar moves to the left. Respondents who see no change are not shown. However, their effect is apparent because the total bar does not add up to 100%.

Client-orientation

508 The chart below shows the development of client orientation in a reference region and three other regions. The majority of business users in all regions thought that client-orientation had improved.

Figure C-1: Development of Client Orientation

figuur13 Ontwikkeling klantgerichtheid



bron: EIM

509 Key

Veel Slechter – much worse

Slechter – worse

Beter – better

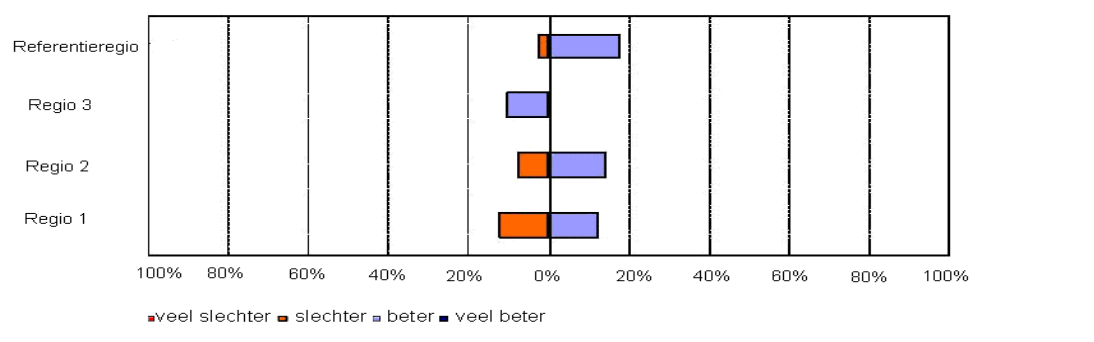
Veel beter - much better.

Quality of deeds

510 The chart below shows the development of quality of deeds. This shows that the quality of the deeds had been maintained. The great majority of the respondents who completed the questionnaires circulated in connection with the survey report saw no change. With the exception of region 3, more people saw an improvement than a deterioration. It seems therefore that even in regions where there was strong price competition no decline in the quality of the deeds was perceived by corporate clients, who are a group well qualified to judge this.

Figure C-2: Development of Quality of Deeds

figuur 14 Kwaliteit van de akten



Bron: EMF

511 Key

Veel Slechter - much worse

Slechter – worse

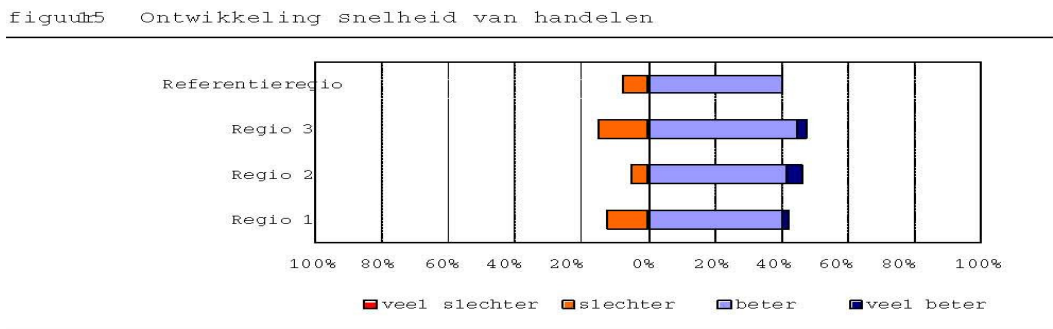
Beter – better

Veel beter - much better

Speed of action

512 The chart below shows the development of the speed of action. Speed of action certainly plays an important role in conveyancing practice. The majority saw no change in the service. However, a large group of some 40% saw an improvement in comparison with the position before deregulation in 1999.

Figure C-3: Development of Speed of Action



Bron: EIM

513 Key

Veel Slechter – much worse

Slechter – worse

Beter – better

Veel beter – much better

514 The general conclusion from the EIM sample was that market forces were having many positive effects and that negative effects were limited.

515 Almost 45% of the corporate clients mentioned the reduction in fee rates and 30% also reported that there was more openness, more approachability, better explanation of deeds, a less authoritative approach and better cooperation between estate agents and notaries. It would seem that the abolition of fixed fee rates had increased the necessity for notaries to focus more on the standard of service. Most respondents (56%) stated that they could not identify any negative developments. Less than 20% of the clients felt that notaries were unable to devote as much time to clients as before because of pressure of work and lower rates, with the consequence that the notary’s task of providing additional information was not being adequately fulfilled. Similarly, just 12% of

respondents argued that the fee rate structure had become less transparent. The EIM concludes on this basis that market forces have certainly helped to reduce the distance between the notarial profession and its clients and the profession is now responding better to their needs.

- 516** There were no indications to suggest that in regions where there was stiff price competition the services provided by ‘cheap’ notary offices were consistently poorer. Nor was there any indication that substantive quality was worse than before the deregulation. Indeed, the contrary appears to be true. It was also very likely on the basis of the interviews conducted that the offices with the most competitive prices were not working under cost price (which was sometimes supposed).

3.10 Impact on innovation

- 517** The notarial profession is a “flexible public office”¹⁸⁵ and is able to adapt to changing circumstances. It is clear that deregulation in the Netherlands and the impact of market forces and competition have already accelerated and intensified the innovation process in terms of how notaries organise themselves and deliver their services. The following sets out some recent examples:

- 518** 1. The emergence of new forms of collaborative associations. For example:
- The full merger of notary offices, with the aim of creating a stronger organisation and increasing expertise through specialisation.
 - The creation of new collaborative arrangements between notary offices, for example:
 - o *Netwerk-notarissen*, a network of 150 small offices
 - o *Formaat-notarissen*, a kind of franchise organisation of large and medium-sized firms with 46 affiliated offices whereby support facilities are shared e.g. publicity, education, ICT.
 - Collaboration in specialist practice associations e.g. on mediation, estate planning, agriculture law, which allows the sharing of expertise and hence results in greater subject-matter expertise.

¹⁸⁵ “The notarial profession is indeed a flexible public office”, Van Velten, 2000.

- Collaboration with attorneys, tax consultants and foreign notary's offices.

519 2. New innovative developments in relation to electronic platforms/ICT including the development of online databases, possibility of verifying digital signatures, secured exchange of electronic messages, websites comparing rates for the most usual notarial services for private individuals, and the electronic registration of notarial deeds with the land registry.

4. Growth in employment and overall welfare gain for consumers

520 Since deregulation there has, as explained above, been an increase in the total number of notaries and their employees. The following tables give an overview of the jobs created and the number of deeds dealt with.¹⁸⁶

Table C-4: Number of Notaries and Employees

	1999	2005	2006
Number of employees	6,991	8,967	9,027
Number of notaries	1,332	1,474	1,496
Number of junior notaries	2,052	2,067	2,126
Total	10,375	12,508	12,649

Table C-5: Number of Deeds produced

	1999	2005	2006
Total number of deeds	1,821,787	1,785,125	1,814,659
Number of deeds per Notary	1,368	1,211	1,215

521 The first table shows an important increase not only in the total number of notaries (+12%) but also in the total number of people employed (+22%).¹⁸⁷ This indicates that

¹⁸⁶ - 1999 saw the largest number of deeds ever.

- No data are available on the number of FTEs represented in the number of employed persons given. Part-time working increased in the period mentioned.

- The figures were derived from the (mandatory) pension funds and from the KNB.

¹⁸⁷ It should be noted that the numbers quoted for employees are in terms of actual people and not FTE. It is also important to note that in the years 1998 and 1999 there was an enormous

deregulation has not resulted in job losses, but rather to a relatively steep increase in highly skilled and well paid jobs.

5. Summary of reforms introduced

522 Before 1999 the market for notarial services was completely regulated, including through *numerus clausus* and fixed fees. With the new Notaries Act adopted in 1999, the balance that had existed since 1802 between the public office of a notary and the market shifted more towards the market:

- The *numerus clausus* system was abolished; the presentation and approval of a business plan is now the main objective regulatory restriction.
- The fixed fee system was abolished.
- The possibility for notaries to perform official activities outside their place of practice was introduced.
- The Royal Netherlands Notarial Organization (KNB) went from being a professional association to being a public body, its powers and duties being modified accordingly.
- A statutory basis was provided for collaboration with two related professions in the Netherlands as well as in other countries, with strict rules for enforcing independence and impartiality.
- A “designated client account” was introduced, with guarantees for the safety of clients’ money.
- The possibilities for notary offices to use publicity were expanded.
- The possibility for a notary to be in the salaried employ of another notary (entrepreneur) is likely to be introduced soon.
- The Dutch Government is also pro specialisation of notaries in some fields of the profession.

523 The notarial profession is a fragile balance between public office and market. The 1999 reform shifted it further to the market. In 2006 the Dutch Government not only persisted

growth in the number of deeds and many notaries were as a result understaffed to cope with this workload. Extra staff were therefore recruited, although the number of deeds fell in 2000.

on market orientation, but made also a statement supporting the public office function of notaries.

- 524** According to the Dutch Government, it is essentially possible to combine the role of public servant and entrepreneur provided that there are sufficient guarantees to ensure the proper discharge of a notary's duties. The Dutch Government also considered notaries to be an essential guarantee in important parts of legal relations, which should be maintained. Guarantee of public interest comes first. It thought that deregulation of the notarial profession was only possible in so far as the most important facets of the profession were insured including integrity, independence and impartiality. It reasoned that if the conduct of the notarial profession was adversely affected, its continuity could be put in danger and that market forces should not lead to discontinuance of the Latin notarial system. The difference between legal- and non-legal activities, official and non official activities were not relevant for the quality and integrity of the notary. The notary is an important institution in helping to avoid legal proceedings in court.
- 525** The Government also felt that the present level of notarial prices gave no reason to return to a system of fee regulation. Return to regulation was always possible, but there were no reasons to do so now. It also noted that, although there was hardly any difference in the number of complaints in terms of client satisfaction and appreciation by society of notarial services (which are perceived as continuing to be high), the notaries themselves considered that professional conduct was in slight erosion.
- 526** Furthermore it is important to note that the Dutch Government and Parliament reconfirmed the notarial monopolies for the benefit of legal certainty in society and that even limited new monopoly rights were granted (e.g. the formation of a public company with corporate capacity and the formation of a company with limited partnership with corporate capacity (both kinds of companies can be created from 2008)). The Government's opinion was in line with the position of the Hammerstein Committee who stressed the importance of the role of the notary as an independent and impartial confidential counselor and recommended mandatory notarial intervention even for the draft of the sales contract in conveyancing. It also noted that legal security in conveyancing is so well organised that disputes about proprietary rights rarely have to be presented in court.

6. Conclusions

6.1 What has been the impact of deregulation in the Netherlands?

- 527 The above analysis indicates that the experience is generally positive. A workable compromise has been found between the market and the public office.
- 528 The abolition of the **numerus clausus** has fulfilled its objective whereby the actual number of practicing notaries has been left to market forces. This led to an increase, but not to an explosion in the number of notaries.
- 529 **Price deregulation** has led to fee differentiation and cost-price-related charging. Costs for conveyancing have fallen whereas costs for family law increased. However, as clearly indicated by the simulations above using a typical basket of services, consumers are now better off than they were in 1999. Furthermore, before deregulation, fixed fees resulted in enormous differences in notarial incomes between cheap and expensive regions. With cost related fees, notarial income is now more balanced. The continuity and accessibility of the notarial profession have not been jeopardised by abandoning the system of fixed fees. Those offices that have greatly stepped up their efficiency have seen their operating profits rise while others have seen profits decrease. The Government currently has no intention of returning to a system of fee regulation.
- 530 The expansion of the notary's **territorial scope for executing deeds** enhances the service and results in more choice for clients.
- 531 **Collaboration with other professions** has not increased very much as regards single notaries, but large offices where notaries work together with attorneys (and occasionally tax consultants) are emerging.
- 532 Importantly, business clients who are well placed to judge the impact of the reform believe that **client orientation** has clearly improved, **quality** has been maintained and that **speed** has increased. Finally, the increased impact of market forces and competition has accelerated and intensified innovation.
- 533 Whilst these consequences of the reform are generally positive, there is also a certain risk that as a result of competition relationships between fellow practitioners and the typical notarial side of the work (“Belehrung und Beratung”) will come under pressure

and some Dutch notaries have concerns that this may affect professional conduct. However, there is certainly no hard evidence to substantiate this, no major problems have been reported to date and the integrity of the notarial profession has been maintained. At any rate, the developments in the transition phase, which is still under way, will continue to be monitored to ensure that any adverse effects are corrected.

6.2 What can be learned from deregulation in the Netherlands?

534 There are a number of lessons that can be drawn from the experience of the Netherlands in deregulating the notary profession:

1. In a process of deregulation a suitable period needs to be provided between enactment of the law and its implementation. This will give both the profession and society sufficient time to prepare themselves for the changes.
2. The system of checks and balances needs to be readjusted. Appropriate flanking measures need to be taken immediately on implementation. If competition is fierce, quality, financial and integrity checks need to be tightened to protect society.
3. New prices/fee rates should be fully transparent from the introduction of deregulation, e.g. through a HOT code (HOT being the Dutch acronym for 'offering clear rates'). Public websites provide a useful way to do this, preferably managed by the notaries' professional organization, together with consumer organizations if necessary. Offers must be concrete and verifiable, and must comply with competition law.
4. The general public must be better informed about the changes to be implemented, the expected effects of these changes and the significance and importance of the agency of a notary.
5. A personal test similar to the test employed for new members of the judiciary should be used to assess the suitability of a person for the office of notary.
6. Deregulation of the notarial profession is only possible under the condition that the most important qualities of the profession are safeguarded.
7. Dutch deregulation provisions may not be directly applicable to other countries and it will always be necessary to take account of the national situation.

7. Economic impact of the Dutch Reforms

By Steffen Sebastian¹⁸⁸

535 In this section we consider the broader economic impact of the Dutch reforms. To do this we use the basket of typical services as shown above. We see that even though fees for family law services went up, this increase was more than compensated for by the decrease in fees for legal services in conveyancing. All in all, consumers are on average about 30% better off thanks to the reforms.

Table C-6: Basket of Services

Notary's fee (in Euro)	In Sept. 1999	In Sept. 1999 *	In Jan. 2007
a. Cohabitation contract	238.00	276.94	363.00
b. Two identical wills	190.00	221.08	362.00
sum of a and b	428.00	498.02	725.00
c. Combined fee for cohabitation contracts and two identical wills	364.00	423.55	544.00
d. Deed of conveyance and mortgage deed **	1,491.00	1 734.93	896.00
e. Cancellation deed (cancellation of seller's old mortgage)	33.00	38.40	100.00
Total (c, d, e)	1,888.00	2,196,88	1,540,00

*) inflation adjusted, price level as of Jan. 2007

**) average of the fees for a purchase price of €100,000 and of €250,000; including a 100% mortgage

536 As the decision to buy a property, to renew a mortgage or register a will, does not normally depend on the level of legal fees, we base our estimations on the average annual number of deeds. We know that on average between 2000 and 2005, 620,300 mortgages and 427,817 property transfers were registered, i.e. 192,483 mortgages were renewed without a property transfer. Furthermore, on average during the period 1999 to 2003, 267,340 wills were drawn up per year (see annex). The figures also show that the number of deeds increased over time for mortgages, property transfers and wills.

¹⁸⁸ Professor of Real Estate Finance, University of Regensburg (Germany).

537 Using the average number of wills per year as being 267,340, we estimate¹⁸⁹ that 40% are individual wills ($40\% \times 267,340 = 106,896$); 50% are two identical wills¹⁹⁰ ($50\% \times 267,340 = 133,620 = 2 \times 66,810$); and the remaining 10% are a combination of a cohabitation contract and two identical wills ($10\% \times 267,340 = 26,734 = 2 \times 13,362$). We also estimate the number of co-habitation agreements in a year as being 20% of the total number of wills ($20\% \times 267,240 = 53,448$). As mentioned above, out of these 53,488, 13,367 are drawn up in combination with two identical wills, i.e. the remaining 40,086 are cohabitation contracts without a will.

538 We can then calculate the total value of annual fees for all family law services and conveyancing before and after deregulation as follows:

Table C-7: Estimated Annual Turnover for Legal Services

	Number	Notary's fee (in Euro)	Annual turnover (in million Euro)	Notary's fee (in Euro)	Annual turnover (in million Euro)
		Sept. 1999 *)	before reform	Jan. 2007	after reform
Cohabitation contracts (without will)	40,086	276.94	11.1	363.00	14.6
Combinations of cohabitation contract and two identical wills	13,362	423.55	5.7	544.00	7.3
Combinations of two identical wills	66,810	221.08	14.8	362.00	24.2
Wills (individual persons only)	106,896	131.49	14.1	285.00	30.5
Deed of conveyance and mortgage deed **	427,817	1, 734.93	742.2	896.00	383.3
Cancellation deed (cancellation of seller's old mortgage)	427,817	38.40	16.4	100.00	42.8
Mortgages without a property transfer (more than € 250 000)	192,483	638.82	123.0	400.00	77.0
Sum			927.2		579.6

All information about notary fees was provided by Mr A. D. Plaggemars.

*) inflation adjusted, price level as of Jan. 2007. €131.49 is the notary fees for 1999 adjusted for inflation ($113 \times 1.16360433 = 131.49$). €638.82 is the notary fee for 1999 adjusted for inflation ($549 \times 1.16360433 = 638.82$). All other original prices are given in table C-1.

***) average of the fees for a purchase price of €100 000 and of €250 000; including a 100% mortgage

¹⁸⁹ As we did not have access to a detailed breakdown of the services in family law, we have had to make some assumptions about the breakdown of wills/cohabitation agreements etc. The credibility of these assumptions was however not disputed by experts we consulted.

¹⁹⁰ For statistical purposes, two identical wills are counted as being two deeds. The notary fee shown in Table 1.2 is however an inclusive fee for both wills.

539 The amounts of 927.2 and 579.6 million Euro respectively, represent the amount of total fees that Dutch customers would have paid before and after the reform for legal services in family law, property transactions and mortgages. **We observe that due to the reform the total amount has dropped by 37.5% which can be regarded as an annual welfare gain to consumers of 347.64 million Euro.** As these calculations are based party on assumptions, the welfare gain can be significantly higher or lower. However, the order of magnitude of the welfare gain holds true.

Annex

	Transfer of real estate (number of notarial deeds)	Mortgages (number of notarial deeds)	Wills (number of notarial deeds, including changes of will)
1999			234,700
2000	422,000	563,000	250,500
2001	407,000	534,000	269,000
2002	411,000	553,000	257,000
2003	404,000	598,000	325,000
2004	444,700	702,900	
2005	478,200	770,900	
sum	2,566,900	3,721,800	1,336,200
average	427,817	620,300	267,240

Source: Jaarverslag Kadaster 2005

Source: KNB (Royal Netherlands Notarial Organisation), CBS (Statistics Office), CTR (Central Register of Wills)

D. Sweden

*By Ulf Jensen*¹⁹¹

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1. Introduction

540 Conveyancing in Sweden has always been done on a fairly free contract form. The parties are free to create the contract and the deed and the use of experts is purely voluntary. It is not usual to use a lawyer for the purchase or sale of a property in Sweden and there is no obligation to do so. That said, sales of bigger properties are normally handled by lawyers because of the complexities involved and because these sales rely on particular contract clauses rather than on the default rules contained in the Land Code (the Swedish statute of 1970 governing real property law). Such properties are also normally not marketed by real estate agents. Such transactions are however not covered in this paper as they are very few even if the purchase sums involved can be large.

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- 541 The paper rather focuses on the **role of the real estate agent** in the buying and selling process given there is a long tradition for the majority of sellers to sell their properties using real estate agents. Real estate agents are also very active in the sale certain types of commercial property, such as farms and shop/office tenancies.
- 542 This paper will explain how the voluntary use of experts works in the sale/transfer of real estate in Sweden and why most people find it to their advantage to use real estate agents, including for the legal side of the sale. It will then go on to analyse the pros and cons of the Swedish system.

1.1 The property market in Sweden

- 543 By way of background it is important to understand the make up of the property market in Sweden. The main residential property market is made up of freeholds (in which about 40 % of the population live) and co-operative flats (20 %). A freehold is a property where the title is registered in the Land Registry and they are free-standing houses or semi-detached houses. Co-operative (coops) flats (a share in a co-operative housing association that gives the member the right of access to a flat) are sold on the free market and may be extremely costly, since apartments in the big cities are very much sought after. Prices for coops in central Stockholm are about €4,000 per sq.m. and in the university city of Lund about €2,000. As in other countries, prices vary with the location and the range is great. The average price for houses in Stockholm is three times higher than in northern Sweden.¹⁹² The average coop is seven times more costly in Stockholm than in the province of Dalarna, 200 km away.
- 544 There are no long term leases of the English style in Sweden and no condominiums (freehold flats that are registered in the Land Registry).

1.2 The Swedish legal system for buying and selling of property

- 545 Being a sparsely populated country, Sweden has never been able to afford the luxury of professional legal assistance in everyday legal matters. Professional lawyers (advocates) were not finally regulated until 1948, even if the association was founded in 1887. There are not more than 4,400 advocates in the whole country, less than in many

¹⁹² *Mäklarstatistik* for November 2006-January 2007.

American cities and, after Japan, said to be the lowest number of advocates per capita in the industrialised World.

- 546** There are several legal tasks that are usually performed by non-legal professionals, such as the handling of the estates of the deceased, wills, mortgages and the founding of stock companies. Conveyancing has also always been a matter where the professional service most of the time is supplied by non-lawyers and in particular real estate agents.
- 547** A consequence – as well as a pre-requisite – of this is that the conveyancing process in Sweden has evolved in a simple way. Standardised contracts are used, the creation of new contract types is avoided and a sort of *numerus clausus* on the choice of contract exists. Contracts that are outside the standard range, for instance, if they contain a clause that is said to last more than two years, are void. Pre-emption clauses (i.e. a clause giving someone a prior-ranking purchase option) are only valid when the estate is given away.
- 548** A Swedish contract (and deed) has to be made in written form and mention the parties (with signatures), the sum of money involved and the piece of property, as well as a clearly expressed will from the vendor to sell it. Nothing more is needed and people who want to handle the transaction themselves can buy a standard contract form in any book-store for €2. Conditional clauses are possible, but they – with the exception of payment – cannot prevail for more than two years. Options to buy or sell real estate are not legally valid.
- 549** Standard contracts of this kind are not controlled or checked by any third party, as for example happens with tenancy agreements where standard contracts – even in the commercial area – are written jointly by organisations representing landlords and tenants.
- 550** An important feature is that registry information is available to everyone and there is no limitation on access e.g. professionals only. The application to register a property transfer is also fairly simple. The buyer who applies to have a title registered just leaves his address and social security number and the deed.

1.3 Use of witnesses in certifying signatures

- 551** A special simplification means that official authentication of the contract and the deed is not necessary. The signature of the seller is normally testified to by two witnesses; if not the title registration will be delayed for up to six months.¹⁹³ The use of official authentication has been thoroughly discussed by the government.¹⁹⁴ The minister's conclusion was official witnesses would cause the parties "not unsubstantial trouble and costs and ... in relation to the advantages and create a burden on the turnover [of estates]".¹⁹⁵
- 552** The simple procedure does however create risks. Anyone can write a document that looks like a deed and enter signatures. The Land Registry will only look for the statements mentioned above and for signatures, but the Registry does not have any means to investigate whether the seller's and the witnesses' signatures are valid or not. A title achieved by a false deed is of course not valid, but it may still cause the true owner trouble and anxiety.
- 553** The advantages were described by the minister cited above. The aim is to make the procedure as simple and cheap as possible. There are from time to time discussions that the former title holder should at least get a letter from the Land Registry when the title has been changed, but the former government considered this to be an unnecessary cost (estimated to be about €100,000 per year for the whole system).
- 554** A bank – as well as a buyer – often checks that the change in title has been properly registered, but it is also important to check the identity of the other party (seller or creditor). Mortgages or sales made by someone else than the real owner cannot, generally, be validated through good faith rules.

1.4 Responsibility for defects

- 555** The Land Code initially puts the responsibility for defects on the seller, although this can be changed by agreement between the parties. It is however usual for the seller to take responsibility. The normal contract regulates the way in which payment is made

¹⁹³ The Land Code ch. 20 sec. 8.

¹⁹⁴ Governmental Proposal of the 1970 Land Code (Prop.) 1970:20 B p. 128-141.

¹⁹⁵ Loc. cit., Prop. 1970:20 B p. 137.

and the time when the buyer takes possession. If certain warranties are made, which is unusual, they will be found in the contract. Often there is more in a contract, especially if the parties try to regulate responsibility for physical defects in a different way to that stipulated in the Land Code. The most common case of this is to stipulate that the buyer will arrange for a professional survey of the house and that he is entitled to withdraw if serious defects are discovered. Sometimes the seller disclaims responsibility for all or certain defects. Conversely, his responsibility may also be extended by clear express warranties to certain conditions (e.g. that the cellar of the house will not become humid in the wet season).

2. The role of real estate agents in the buying and selling process

556 As noted above, most sales are handled by real estate agents. One key reason for this is that they are better able to market the property and thus achieve better prices. Another is that people still feel insecure about legal matters and especially buyers who tend to feel more comfortable if an agent is involved. The simple rules surrounding the conveyance of property suit this arrangement and benefit the agents (in competition with lawyers) and there is no doubt that the easiness of the conveyancing procedure suits non-legal professionals. An interesting question is to what extent the agent deals with purely legal matters or, in other words, with tasks that are performed by solicitors in the British Isles and by notaries in continental Europe. The following sets out the key "legal tasks". It should be noted that this involves only a very small portion of an agents' time and the percentage of the commission fee associated with this is small. Estimating the proportion of the agent's commission which relates to the legal work is not easy, but inquiries indicate this to be around €500. This figure is based on the charges that a lawyer would make for preparing a sales contract for the property transfer.

557 Key legal tasks:

1. The agent is obliged to perform a **legal survey** as well as to interpret it and explain it buyers.¹⁹⁶ This survey is normally made by a direct land registry check on the computer. A legal survey must also be done when coops are sold. The information (ownership and encumbrances) are collected from the co-operative association.

¹⁹⁶ The Estate Agents' Act sec. 17 and Fastighetsmäklarlagen – en kommentar (2005) by Melin, p. 186-191.

The agent does not have to check city plans and building permits, unless he is aware of circumstances of interest to the buyer.¹⁹⁷ The results of the survey are given to the buyer in written form.

2. The agent shall – unless something else has been agreed upon – assist the parties in **drawing up the documents** necessary for the transfer.¹⁹⁸ This includes almost always writing the contract and the deed. An important part of this task is to explain the contract to the parties.
3. **Registration** of the deed is often handled by the agent, but it is also common for the buyer's bank to handle this, since the bank wants to be assured that registration of any new mortgage takes place.

2.1 Key steps in the sales process

558 The following lists the key steps in selling a property:

559 **Intake.** A potential seller will look around and discuss the conditions with a few agents. The agent will make a brief inspection of the property and then sign a commission contract with the seller. All this is done in less than a week.

560 **Preparations.** The agent will now make a formal property description (extremely important, since errors here are in violation of the Estate Agents Act) and prepare advertisements and other marketing texts. Home staging (the increasingly popular professional preparation of a house) and the taking of pictures will also take place in this phase. This phase usually takes about a week.

561 **House showing.** The advertisements will describe the house and give details of when buyers can inspect the property. Several "shows" are common. The bidding normally starts in this phase. For a property that is easy to sell, this phase lasts only for about a week, but sometimes it may take much more time.

562 **Bidding.** Houses and coops are usually sold to the highest bidder. The agent has telephone contact (sometimes Internet is used) with the interested buyers and the bids are submitted in auction style. The bidding normally takes less than a week, but when or where the markets are slow, this may be longer.

¹⁹⁷ Melin p. 178.

¹⁹⁸ The Estate Agents' Act sec. 19 and Melin p. 205-219.

- 563 Closing.** When the highest bidder has been accepted, the parties usually hurry to close the deal. The legally binding moment is when the contract has been signed by the parties; nothing can be promised before this. It is therefore in the interests of the parties to close the deal as quickly as possible.
- 564 Aftermath.** Conveyancing in Sweden normally takes place in two steps; the binding contract and the deed, which is released after full payment. In the period between contract and deed, the seller is still in possession of the property. This period is usually about three months long. Application for title and re-arrangement of mortgages are made when the deed has been signed. This is also the moment when the keys and possession of the property are transferred to the buyer.
- 565** This means that the average seller will have a contract within a month after meeting the agent for the first time. He will leave the house a few months later. It must be added that the chains that are common in England and Wales, where transactions cannot be completed until other sales are finished are not used – though not forbidden – in Sweden.

2.2 The regulation of real estate agents

- 566** Before 1984 there were no legal requirements for real estate agents. Professional quality was taken care of within the branch organisations and by registration (or authorisation).¹⁹⁹ The authorisation was given to agents with at least two years of professional experience, but it was just a sign of basic quality. Anyone could act as an intermediary in conveyancing and the title *fastighetsmäklare* (real estate agent) was not protected.
- 567** The organised agents demanded stronger quality control and from the 1940's the profession has gone through different changes. The present act, *Fastighetsmäklarlagen* (The Estate Agents' Act) dates from 1995. A translation of this is annexed.
- 568** The main sources of information in this field are – as usual in Sweden – committee reports²⁰⁰ and government proposals.²⁰¹ There is also some literature on the subject,

¹⁹⁹ *Kungl Maj:ts kungörelse om auktorisation av fastighetsmäklare (1947:336)*, The Ordinance on Authorisation of Real Estate Agents.

²⁰⁰ SOU 1981:102, SOU 1999:35 and SOU 1999:71. The most important is the report from 1981.

such as *Cervin, Fastighetsmäklaren* (1991) and *Zacharias, Fastighetsmäklarlagen i praktisk tillämpning* (2001), but the most important work is *Fastighetsmäklarlagen – en kommentar* (2005) by *Melin* and with a contribution from *Kilander*.²⁰² This is a commentary in the German style.

2.3 Quality control and the supervision of real estate agents

- 569** The profession has moved from having internal quality control (optional, since membership in an association has never been compulsory) to public control.
- 570** The Real Estate Agents' Board, which is a public body, supervises the agents in several ways. The Board handles registration of new agents, which is compulsory, as well as expulsion of unworthy professionals and it gives statements on what constitutes good professional conduct.
- 571** The Board's most important task is to handle complaints from agents' customers. If an error has been made by the agent (this is deemed to be the case in about 7 % of complaints) a warning will be given and in severe cases the agent will be expelled. The decisions from the Board can be appealed in the administrative court system.
- 572** A selection of the decisions is published by the Board in a yearbook. They are often also mentioned in newspapers. This system creates pressure on agents to behave well. It is also welcomed by the associations as being vital to maintaining the public's trust in real estate agents.
- 573** The most recent publication with statements from the Board is from the year 2005.²⁰³ It contains 76 cases where warnings or statements were given. It is interesting to analyse these to see where the grounds for criticism lay and, in particular, to identify those that relate to the legal element of an agent's work.
- 574** There are five categories that may qualify as legal tasks i.e. similar to what a solicitor or a notary would do in other countries. They are:
- 12 cases of errors in drawing up contracts

²⁰¹ Prop 1983/84:16 and 1994/95:14 are the proposals for the actual acts.

²⁰² Cited here as *Melin*.

²⁰³ *Årsbok 2005 Fastighetsmäklarnämndens tillsynsärenden*, to be found on http://www.fastighetsmaklarnamnden.se/pdf/fmn_arsbok_2005_prel.pdf. The yearbook shows that the Board considered 424 matters or complaints in 2005.

- 4 cases of misleading information from the legal survey
- 3 cases concerning building permits
- 1 case on other legal information
- 1 case about the handling of a deceased person's estate

575 This makes 21 cases, around 25 % of the total number of cases brought.²⁰⁴ Most of the other cases involved errors in the drawing up of the commission's contract, having relatives as sellers or buyers, mistakes in the physical description of the property and the involvement of unregistered persons in the sale as intermediaries.

576 Another change is that educational standards have been raised. Before 1984 there were no educational requirements at all, but between 1984 and 1995 a distance learning programme was introduced.²⁰⁵ With effect from 1995, two years of academic studies in Intermediation of Real Estate, Real Estate Law and Private Law, Taxation Law, Economics and Real Estate Valuation are necessary.²⁰⁶ Foreigners with satisfactory education and experience from other countries can be registered after application to the Real Estate Agents' Board.

577 Education is provided by seven Swedish universities or colleges. It is an advantage that this education is independent from the associations and the ambition is clearly to have a good academic standard.

2.4 Cost of real estate agent services

578 The commission paid to the real estate agent is almost always paid by the seller. A reason for this is that it is difficult for the agent to legally tie a buyer to an obligation to pay commission.²⁰⁷ This probably benefits competition in the setting of commission rates, since the seller can clearly see how big the agent's cut of the price will be.

²⁰⁴ It should also be noted that a certain number of mistakes concern registry applications and not the final registration made by the Land Registry. This is because banks and agents sometimes use the Land Registry as a proof reader, knowing that errors in an application will be pointed out by the registrar. Any applications with errors are immediately returned to the bank or agent and do not hold up the flow of normal work. It takes from a day to three weeks to get a correct application registered.

²⁰⁵ Melin p. 71.

²⁰⁶ *Fastighetsmäklarförordningen (1995:1028)*, the Estate Agents' Ordinance, sec. 9.

²⁰⁷ The Estate Agent's Act sec. 11 and 21—23.

- 579** There has never been any fixed commission rates in the law.²⁰⁸ There used to be pricing recommendations made by the agents' associations. In the *riksprovisionstaxan* (national table for commission) from AFR (the biggest association) dating from 1978, a 3 % commission was recommended for the sale of family houses and 5 % for coops. To this VAT was added. One of the bigger chains outside AFR (Spafab) recommended 3.5 % as commission for the sale of houses.²⁰⁹ The fee table was compulsory for the members of AFR until 1972, and after this changed to a recommendation.
- 580** It would appear that fees did rise during the first part of the 20th century. The percentage at the end of the 19th century has been estimated as being between 0.5 and 1 %, and 1 % between the wars.²¹⁰
- 581** Today, price recommendations are no longer present. For about ten years, the associations have endorsed free competition between agents on fees. It is therefore extremely difficult to estimate the levels of current commissions. In a dissertation from 1976 on transaction costs and procedures, comparisons between certain countries were made and the commission was the biggest part in all the countries.²¹¹ The author judged the Swedish commission to be between 2 and 4 % (inclusive of VAT), but without any references to underlying data.²¹² There is no statistical material on this available from the agents' organisations. It is however fair to guess that few sellers pay more than 3 % plus VAT in commission.²¹³
- 582** Another important matter is how agents use commission levels to market their services. Agents rarely advertise commission percentages. A few agents use low flat fees and charge about €3,000 for their work, regardless of the sales price. This strategy may not however appeal to all sellers who may prefer to give the agent an incentive to reach the highest possible price and an agent who works for a fixed fee may have a bigger interest in selling the property as soon as possible.

²⁰⁸ There were, however, general percentages for all sorts of agents in the Agents' Ordinance of 1720. They were very low, 0.5%.

²⁰⁹ SOU 1981:102, *Fastighetsförmedlingslag*, a governmental committee report on intermediation in conveyancing, p. 139.

²¹⁰ *Ibid.*

²¹¹ Sylwia Lindqvist, *Transaktionsprocess och transaktionskostnader för småhusfastigheter: En internationell jämförelse*, KTH, Stockholm 2006.

²¹² See Lindqvist pp. 61-62 and 119-120.

²¹³ When I sold my house in November 2006 for €500,000 the agent was paid less than €10,000 excl. VAT.

583 To conclude, the seller has great possibilities to negotiate with the agent in order to get a favourable commission rate. It is actually the same with banks when negotiating mortgage terms and many customers only get fixed rate mortgages after negotiations with the banks.

584 All this makes it impossible to produce fee tables between 1980 and today. But what is apparent is a trend towards lower commissions. Judging from the 1978 pricing recommendations, commissions in general seem to have gone down from 3% plus VAT to around 2%. The downward trend is even stronger for more expensive properties.

2.5 Assessment of agent services

585 As stated, agents take part in the majority of Swedish sales of real estate. The sellers use them in order to reach more buyers, which raises the chances of a good price. Buyers tend to be more interested in bidding on property sold by agents, because they feel more secure dealing with a professional who is responsible.

586 Still people seem to complain. A common picture of the agent is that they are dishonest and pushy, just like second-hand car dealers. As is shown below, their unprofessional behaviour is in fact rare.

587 One of the reasons for this is the speed that is necessary in property sales. No bids are legally valid and it is therefore extremely important to get the parties to sign the contract. If the highest bidder begins to hesitate, the seller and the agent must return very quickly to the other potential buyers and hope that they have not already found a new property.

588 The use of bidding as the method to achieve the best price also makes buyers insecure. It is easy to get carried away and offer a much higher price than the one advertised, which can easily lead to second thoughts. That notwithstanding, once the contract is signed, it would be costly for the buyer to withdraw. Fixed selling prices could cure this, but such a system might not achieve the best (or highest) selling price.

589 Despite this situation real conflict of interests problems are rather rare. As a matter of fact agents do not generally have an interest in selling at the highest possible price – but rather their goal is to achieve a sale and in a reasonable time frame. Therefore, they seem to act in most cases as true arbiters between the parties. They are also required by law to act in a neutral way between the parties. Legally, conflict of interest

problems are prevented by the routine use of standard contracts, derogations from which – be it to the advantage of the seller or the buyer – are void by law.

- 590** In 2005, agents were active in 84% of all house sales in Sweden. The figure has risen from 77% in 2001, the increase being largely due to the rise of internet marketing which is dominated by agents.²¹⁴ Whatever people may say about agents, it is clear that they are still used by the majority.
- 591** If the percentage of involvement of agents in Sweden is thus higher than in other countries, the most plausible explanation is that the provision of full legal and brokerage services by one professional (“one-stop-shop”) at a low cost makes it more attractive for consumers to turn to agents than elsewhere.²¹⁵

2.6 Jobs and growth in the sector

- 592** The market for Swedish real estate agents has recently been investigated in a report, where the focus lies on education, professional roles and the job market of the future.²¹⁶
- 593** The number of agents has probably grown since 1981, when the biggest organisation *Auktoriserade fastighetsmäklares riksförbund* (today *Mäklarsamfundet*) had 490 full

²¹⁴ The data comes from *Mäklarsamfundet*, <http://www.maklarsamfundet.se/maklartemplates/Page.aspx?id=1194>. The higher percentage of 95% indicated by P. Murray, *Real Estate Conveyancing in 5 European Union Member States*, Final Report, 2007, 59 (without giving a source) is apparently inaccurate.

²¹⁵ It is not, however, plausible to assume that the high rate of involvement of agents is due to the fact that even consumers who do not need brokering, but only legal services in conveyancing, would be obliged to turn to an agent (P. Murray, *Real Estate Conveyancing in 5 European Union Member States*, Final Report, 2007, 58f.). Instead in sales e.g. among relatives or friends, it is usual for the parties to fill in the standard forms themselves, which is pretty safe as legal mistakes will be pointed out by the registry office; in the case of special difficulties lawyers are also consulted about these. Finally, it is also possible, and it actually happens in a number of cases, that people will hire an agent for legal services only and at a cost much lower than the full inclusive commission rate. For these reasons, it is fanciful to assume that agents paid at the full commission rate of 3% (an estimation which is anyway at the top end of current commission rates) are often involved only to provide legal services in cases where no matching services are needed (Murray, loc. cit., 104ff) and that these circumstances would lead to a macroeconomically significant increase in legal transaction costs.

²¹⁶ Claudia Wörtmann, *Konkurrens, utveckling och förändring – Rapport om den svenska fastighetsmäklarmarknaden*, Mäklarsamfundet November 2006. The report is available in Swedish at <http://www.maklarsamfundet.se/upload/Start/Pdf/Fakta%20&%20Publikationer/branschen2006.pdf>.

members and 250 aspiring members.²¹⁷ The smaller national organisation *Sveriges Aktiva Fastighetsmäklares Riksförbund* (today *Fastighetsmäklarförbundet*) had 280 members. Outside these associations agents worked in national chains or were totally independent.

594 Since registration became compulsory it is easier to count the number of agents. In late 2006 there were 5,795 registered agents.²¹⁸ The number rose by about 800 between 2004 and 2006. 37% of the agents are women and they are in the majority in terms of agents who have registered since 2004.

595 It has to be noted that far from all registered agents are active. Older agents, who are allowed to stay in the business without having the required two years of education, have to maintain the registration, because they cannot re-enter without meeting the new requirements.

596 The real estate agent market is well illustrated in two tables by Wörtmann. The first gives information about the involvement of real estate agents in the market for family housing.²¹⁹ The table shows that on average agents sold 27 houses in the province of Blekinge and just 5 in metropolitan Stockholm. Wörtmann calls the table a competition index and the interpretation from that point of view is that competition among agents in, for example, Skåne – where the average agent sells 11 houses – is much fiercer than in neighbouring Blekinge.

Table D-1: Job Market of Real Estate Agents: Family Houses

Province	Number of agents	Family houses sold in 2005	Sales by real estate agents (in %)	Properties or objects per agent	Average price in Oct. 2006 (SW Kronor)
Blekinge	47	1,256	81	27	1,033,000
Dalarna	92	2,368	72	26	845,000
Gävleborg	98	2,045	74	21	883,000
Gotland	22	413	82	19	1,616,000
Halland	150	2,121	85	14	1,906,000
Jämtland	34	744	49	22	850,000

²¹⁷ SOU 1981:102 p. 66.

²¹⁸ All statistics here come from Wörtmann p. 11.

²¹⁹ Wörtmann p. 9.

Province	Number of agents	Family houses sold in 2005	Sales by real estate agents (in %)	Properties or objects per agent	Average price in Oct. 2006 (SW Kronor)
Jönköping	121	2,392	86	19	1,130,000
Kalmar	113	2,084	83	18	925,000
Kronoberg	69	1,374	81	20	965,000
Norrbottn	47	1,187	68	25	788,000
Örebro	98	2,091	82	21	1,115,000
Ostergötland	172	2,582	90	15	1,421,000
Skåne	791	9,102	88	11	1,850,000
Södermanland	112	1,927	88	17	1,480,000
Stockholms län	2,118	10,357	93	5	3,114,000
Upsala län	214	1,780	90	8	1,816,000
Värmland	98	2,277	85	23	930,000
Väster Norrland	73	1,833	69	25	802,000
Västerbotten	83	1,636	68	20	788,000
Västmanland	99	2,143	86	22	1,289,000
Västra Götaland	874	9,863	85	11	1,667,000

Source: Wörtmann

597 A similar table shows the conditions for the sales of coops.²²⁰

Table D-2: Job Market of Real Estate Agents: Coops

Province	Number of agents	Coops sold in 2005	Properties or object per agent	Average price in Oct. 2006 (SW Kronor)
Blekinge	47	767	16	519,000
Dalarna	92	2,251	24	347,000
Gävleborg	98	1,995	20	407,000
Gotland	22	301	13	833,000
Halland	150	972	6	825,000
Jämtland	34	1,042	31	807,000
Jönköping	121	1,728	14	476,000
Kalmar	113	1,391	12	334,000
Kronober	69	676	10	502,000

²²⁰ Wörtmann p. 10.

Province	Number of agents	Coops sold in 2005	Properties or object per agent	Average price in Oct. 2006 (SW Kronor)
Norrbottn	47	1,544	33	466,000
Orebro	98	1,888	18	488,000
Östergötland	172	3,126	18	450,000
Skåne	791	12,525	16	816,000
Södermanland	112	2,170	19	430,000
Stockholms län	2,118	29,851	14	1,663,000
Uppsala län	214	4,553	21	901,000
Värmland	98	1,902	19	346,000
Väster Norrland	73	2,615	36	324,000
Västerbotten	83	2,054	25	541,000
Västmanland	99	3,084	24	436,000
Västra Götaland	874	11,631	13	1,085,000

Source: Wörtmann

598 To really reflect the state of competition the tables should be amalgamated. When this is done it is still obvious that competition is high in Stockholm and Skåne (unless there is an unusually high number of registered, but inactive agents in these areas). The number of agents in Stockholm is clearly much higher than the area's proportion of the inhabitants of the country (1/6 of the Swedes live in Stockholm, but more than 1/3 of the agents).

599 The gross income of an agent can at least be appreciated from these figures. The average turnover of agents for coop sales in, for example, Uppsala län is $21 \times 901\,000 = 18\,921\,000$ Sw Kronor (€2,000,000) and for houses $8 \times 1\,816\,000 = 14\,528\,000$ Sw kronor (€1,600,000). The total turnover is 33 449 000 kronor (€3,700,000 approx). If the average commission is 2%, the average agent could have gross earnings of €74,000 per year. But after deductions for advertising, staff, cars and office costs only about 40 % of gross income (as a rule of thumb) actually reaches the agent as salary, which is significantly lower. These figures do however need to be adjusted for the fact that a third of registered agents are probably actually inactive.²²¹ If so, the average turnover would be about €100,000 and the net income about €40,000 for agents in Uppsala.

²²¹ Many registered agents are inactive. One reason is that older agents, who lack the two years of education that is necessary for new agents, cannot re-enter as registered agents without this education if they stop being registered for a while. The yearly fee for registration is less than

3. Economic impact: a comparison with a typical Latin notary country

600 In this section we estimate how much more consumers in Sweden would be paying in legal fees if Sweden had a Latin style notary system where prices are fixed and based on the value of the property. For comparison purposes we use France.

601 From tables D-1 and D-2 we can extract the total number of family houses (61,575) and coops (88,066) sold in 2005, together 149,641. If we estimate the part of the agents' fees charged for legal services in Sweden as being €500 (see chapter on Transaction Costs), the total amount of fees for legal services paid by Swedish consumers would be 74.8 million Euro.

602 Under the French notary system, notary fees are calculated on the basis of the sales price. **Table D-3** shows French notary fees for six different transaction values. These are then applied to different price ranges.

Table D-3: Legal Fees for Selected Transaction Prices (selling and buying) in France

Transaction price in €	40,000	50,000	100,000	150,000	200,000	330,000
Notary fees	851	954	1,470	1,985	2,501	3,841
Used for price range	34,412– 47,795	49,494 - 57,460	83,693 - 120,017	136,905 - 177,052	192,877 - 202,436	330,738

Source: http://www.paris.notaires.fr/frais_mut_ecran1.php (14.05.2007). Fees include a mortgage of 75% but not TVA nor additional charges. 1 SW Kronor is set equal to €0.10621. The estimation of the notary fees is based on the reform applicable since May 19, 2006.

603 Using this information **table D-4** gives an estimation of legal fees if Sweden had a similar pricing system to France. Hence, the estimated total amount of fees under a French style notary price regulation system would be 266.1 million Euro. This is about 191.3 million Euro higher and is the amount by which Swedish consumers would be worse off under a typical Latin style notary system.

€200 and some inactive agents pay this in order to be able to make a deal if the possibility should rise.

Table D-4: Estimation for Legal Fees in Sweden under a French Style Notary Price Regulation System

Province	Coop / FH	Properties/ objects sold in 2005	Average price in oct. 2006 in SW Kronor	Average price in oct. 2006 in €	“French” style notary fees per region in €
Väster Norrland	coop	2,615	324,000	34,412	2,225,365
Kalmar	coop	1,391	334,000	35,474	1,183,741
Värmland	coop	1,902	346,000	36,749	1,618,602
Dalarna	coop	2,251	347,000	36,855	1 915 601
Gävleborg	coop	1,995	407,000	43,227	1,697,745
Södermanl.	coop	2,170	430,000	45,670	1,846,670
Västmanland	coop	3,084	436,000	46,308	2,624,484
Östergötland	coop	3,126	450,000	47,795	2,660,226
Norrbottnen	coop	1,544	466,000	49,494	1,472,976
Jönköping	coop	1,728	476,000	50,556	1,648,512
Orebro	coop	1,888	488,000	51,830	1,801,152
Kronober	coop	676	502,000	53,317	644 904
Blekinge	coop	767	519,000	55,123	731,718
Västerbotten	coop	2,054	541,000	57,460	1,959,516
Norrbottnen	FH	1,187	788,000	83,693	1,744,890
Västerbotten	FH	1,636	788,000	83,693	2,404,920
Väster Norrland	FH	1,833	802,000	85,180	2,694,510
Jämtland	coop	1,042	807,000	85,711	1,531,740
Skåne	coop	12,525	816,000	86,667	18,411,750
Halland	coop	972	825,000	87,623	1,428,840
Gotland	coop	301	833,000	88,473	442,470
Dalarna	FH	2,368	845,000	89,747	3,480,960
Jämtland	FH	744	850,000	90,279	1,093,680
Gävleborg	FH	2,045	883,000	93,783	3,006,150
Upsala län	coop	4,553	901,000	95,695	6,692,910
Kalmar	FH	2,084	925,000	98,244	3,063,480
Värmland	FH	2,277	930,000	98,775	3,347,190
Kronoberg	FH	1,374	965,000	102,493	2,019,780
Blekinge	FH	1,256	1,033,000	109,715	1,846,320
Västra Götaland	coop	11,631	1,085,000	115,238	17,097,570
Örebro	FH	2,091	1,115,000	118,424	3,073,770
Jönköping	FH	2 392	1,130,000	120,017	3,516,240
Västmanland	FH	2,143	1,289,000	136,905	4,253,855
Ostergötland	FH	2,582	1,421,000	150,924	5,125,270
Södermanl.	FH	1,927	1,480,000	157,191	3,825,095
Gotland	FH	413	1,616,000	171,635	819,805
Stockholms län	coop	29,851	1,663,000	176,627	59,254,235

Province	coop / FH	Properties/ objects sold in 2005	Average price in oct. 2006 in SW Kronor	Average price in oct. 2006 in €	“French” style notary fees per region in €
Västra Götaland	FH	9,863	1,667,000	177,052	19,578,055
Upsala län	FH	1,780	1,816,000	192,877	4,451,780
Skåne	FH	9,102	1,850,000	196,489	22,764,102
Halland	FH	2,121	1,906,000	202,436	5,304,621
Stockholms län	FH	10,357	3,114,000	330,738	39,781,237
sum		149,641			266,086,437

4. Conclusions

- 604** The biggest advantage of the Swedish system, particularly when compared with the Latin notary system, is that it involves less professional actors in the transfer of real estate. The agent handles the marketing as well as the legal searches and the drawing up of contracts (“one-stop-shop”). Less practitioners mean lower costs for consumers and business. The absence of price regulation might be another reason for low costs.
- 605** The legal responsibilities of the agent create pressure to maintain high standards and it is clear that their associations are also working to achieve this. Errors and legal errors in particular, are relatively rare to which the solid university preparation of agents since 1995 certainly contributes. The witness system works cheaply and well; dangers of manipulation exist of course but have materialised very rarely. It is also clear that competition among agents is very strong and that this has led to lower commission rates than in most other European countries. This is remarkable, considering that the range of professional services delivered by Swedish agents is much larger than that of their European colleagues. Another advantage is that the total time of a typical sale procedure seems to be short in Sweden and one of the reasons for this is probably due to the fact that agents take care of almost everything to do with the sale.
- 606** However, the advantages of the Swedish system also depend on special institutional and cultural preconditions. First and foremost, the system is designed so as to be handled by non-lawyers, and the legislator has always succeeded in keeping it simple enough for that purpose. Contracting is facilitated by the existence of a limited range of standard contracts which can be filled in by anybody; of course this advantage comes

at the price of a certain inflexibility. Moreover, the land register system is staffed well, works effectively and uses modern information technology. The Swedish witness system not only presupposes a general culture of compliance but also the availability of effective criminal sanctions in cases of manipulation (which has induced Finland to provide for the mandatory intervention of a public official acting as a “side-job” notary for the authentication of the parties’ signatures).

607 Against this background, it would not be easy, though by no means impossible, to transpose the advantages of the Swedish system to other systems. Thus, the legal side of the sale of English real estate would probably be too complicated to be handled by Swedish style real estate agents, given the different legal forms property can take, the problem with unregistered land and the importance of chain operation and control. The German system would have less obstacles both in terms of substance and procedure; but the denial of public access to land registry information would be a problem. In yet other countries such as Greece, the sub-optimal functioning of the register and the limited legal effects of registration would constitute hurdles. That notwithstanding, the advantages of the Swedish system provide an important reference point for the future of conveyancing in Europe.

Annex to the Swedish Case Study

- 608 A translation of the Estate Agents' Act, taken from the website of *Mäklarsamfundet* (the Association of Real Estate Agents).²²²

ESTATE AGENTS' ACT (1995:400)

General provisions

1. By estate agent in this Act reference is made to physical persons, professionally acting as an intermediary for the sale of estates, parts of estates, buildings on other person's land, site-leasehold rights, tenant owner's flats, joint owner's rights with regard to flats, lease rights or tenancy rights.
2. What is stipulated in this Act with regard to estates is also applicable to the other intermediary sales objects referred to in 1 above. On intermediary sales of site-leasehold rights or tenancy rights Sections 18, 21 and 22 are not applicable. On such transfers of usufruct, what is stated with regard to seller shall pertain to the person who assigns or grants the use of the usufruct and what has been stated with regard to the buyer shall pertain to the opposite party.
3. The provisions of this Act are applicable irrespective of where the estate is situated, if an essential part of the estate agent's commission is carried out in Sweden. To the extent that the Act (1998:167) on Law Applicable to Agreement Obligations is applicable, the issue of choice of legal system is however determined pursuant to that Act. The Act 1998:168.
4. If not otherwise specified in the below, the provisions of this Act must not be deviated from to the disadvantage of a consumer purchasing an estate mainly for individual use or selling an estate mainly possessed for individual use.

Registration of estate agents

5. Each estate agent must be registered with the Board of Estate Agents. This does not apply, however, with regard to lawyers or estate agents only arranging transfers of tenant owner's flats.

More detailed provisions with regard to the Board of Estate Agents are issued by the Government.

6. In order for an estate agent to be registered, the requirement is that he
 1. is not below age, is not declared bankrupt or subject to ban on carrying on business, or has an administrator acting for him pursuant to Chapter 11, Section 7 of the Parenthood and Guardianship Act;
 2. has an insurance against indemnity liability falling on him if he neglects his obligations pursuant to Sections 11 – 19,
 3. has a satisfactory education,

²²² <http://www.maklarsamfundet.se/maklartemplates/WidePage.aspx?id=383>.

4. intends to be professionally active as an estate agent, and

5. is honest and otherwise suitable as an estate agent.

More detailed stipulations with regard to the conditions for registration and to the registration procedure is issued by the Government or by the authority appointed by the Government. Fee of registration in the form of an application fee and an annual fee is determined by the Government.

7. Supervision of the estate agents registered pursuant to Section 5 is carried out by the Board of Estate Agents. The Board is to see to it that the estate agents, in conducting their business, observe their obligations under this Act.

A registered estate agent is obliged to let the Board of Estate Agents scrutinise files, book-keeping and other documents associated with the operations as well as to provide the information requested for the supervision.

8. The Board of Estate Agents is to revoke the registration of such estate agent who

1. no longer meets the requirements under Section 6,
2. does not pay the stipulated registration fee, or
3. acts in contravention of his obligations under this Act.

A decision of revocation is immediately applicable.

If regarded as sufficient, the Board of Estate Agents may, instead of revoking the registration, issue a warning. If the fault is insignificant, sanctions may be omitted.

9. The Board of Estate Agents' decision under this Act may be appealed against before a Public Administrative Court.

Review permit is required when appealing to the Fiscal Court of Appeal.

10. Whoever intentionally, professionally arranges transfers of house properties in contravention of what is stipulated regarding registration in Section 5, is to be sentenced to fines or imprisonment for maximum six months.

The Estate Agent's commission

11. A commission agreement is to be drawn up in writing. The estate agent must not invoke contractual terms not entered in the commission agreement or in any other way agreed upon in writing. This does not apply, however, to agreements on changes in the price of the object offered by the estate agent and other conditions governing the transfer or the grant.

If the commission involves sole right, the period of the sole right must only be maximum three months at a time. An agreement on prolongation may be entered into not earlier than one month prior to the expiry of the commission agreement.

12. The estate agent shall carry out his commission carefully and in all observe generally accepted estate agency practice. In so doing, the estate agent shall watch and protect the interests of both the seller and the buyer.

Deposit received by the estate agent shall be handed over to the seller without delay, unless something else has been agreed on in special order.
Money and other assets taken charge of by the estate agent on behalf of some other party shall be kept apart from his own assets.

13. The estate agent must not purchase an estate, which he has been commissioned to transfer in his capacity of intermediary. Nor must the estate agent arrange the transfer of an estate to any such closely related person as is referred to in Chapter 4, Section 3 of the Bankruptcy Act (1987:672),
If the estate agent or any person close to him acquires an estate, which the estate agent previously has been commissioned to arrange the transfer of, the estate agent shall immediately report such acquisition to the Board of Estate Agents.
14. An estate agent must not pursue trade in house properties.

Nor must the estate agent pursue other activity of a kind to shake the confidence in him as an estate agent.
15. The estate agent must not represent a buyer or a seller in capacity of proxy. The estate agent may, however, take on limited measures to be taken, to the extent that this is accepted in accordance with generally accepted estate agency practice.
16. An estate agent shall, to the extent required by generally accepted estate agency practice, provide advice and information about the house property and other conditions with regard to the transfer needed by the buyer and the seller. The estate agent shall act thus that the seller, prior to the transfer, provides the information about the house property which may be regarded as of importance to the buyer, also thus that the buyer, prior to the acquisition, inspects the house property or has it inspected.
17. The estate agent is to make sure who has the right of disposal of the house property and with what mortgages, easements and other rights the house property is encumbered.
18. When the arranging of the transfer pertains to a house property being bought by a client mainly for private use, the estate agent shall provide the buyer with a written description of the house property. The description shall contain information in respects stated in Section 17 as well as information about the house property designation, rateable value and area. The description shall also contain information as to the age, size and construction method of the building.

In case of arranging of transfer as referred to in the first paragraph, the estate agent shall, prior to the transfer of the house property, provide the buyer with a written estimate of the housing costs.
19. The estate agent shall act thus that the buyer and the seller agree on issues, which need to be settled in connection with the transfer. Unless otherwise agreed upon, the estate agent shall assist the buyer and the seller in drawing up the documents necessary for the transfer.

20. If the estate agent intentionally or negligently disregards his obligations pursuant to Sections 11 – 19, he shall compensate resulting damages incurred by the buyer or the seller. If reasonable, the damages may be reduced or completely excluded.

If the estate agent has paid damages to the buyer due to damage incurred by the latter as a result of the house property deviating from what the buyer has had reasons to expect, the estate agent may claim the damages in return from the seller to the extent that also the seller is responsible for the damage and that it is not unreasonable that the seller finally assumes this responsibility alone.

Compensation for the estate agent's assignment

21. Unless otherwise agreed upon, the estate agent's compensation is to be calculated on a certain percentage of the purchase price (commission).

The estate agent is entitled to commission only if the transfer agreement has been concluded with the estate agent as intermediary between the employer and a person assigned by the estate agent.

If the estate agent has received the assignment with sole right and should, without his acting as intermediary, a transfer agreement be concluded within the applicable period of the sole right, the estate agent is entitled to commission as if the agreement had been achieved by him as an intermediary.

22. If the estate agent's assignment is to be paid for on a commission basis, the estate agent shall be entitled to cost compensation only if this has been separately agreed upon.
23. The estate agent's commission may be reduced, if the estate agent, on carrying out the assignment, has disregarded his obligations to the buyer or the seller. This does not however apply if the negligence is insignificant.

1. *This Act will gain legal force on 1 October 1995, when the Act (1984:81) on Estate Agents will cease to apply.*
2. *Earlier provisions apply to assignment agreements entered into prior to the new Act entering into force.*
3. *Earlier provisions apply to matters of supervision initiated prior to the entering into legal force.*
4. *The provisions in Section 13 of the new Act apply, even if the assignment agreement has been entered into prior to the entering into force.*
5. *Even if the assignment agreement has been entered into prior to the entering into force, the prohibition in Section 15 of the new Act applies, unless the estate agent has, prior to the entering into force, accepted to act in capacity of representative.*