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**COMMISSION STAFF WORKING DOCUMENT**  
*Accompanying the document*

**Communication from the Commission to the European Parliament, the Council, the  
European Economic and Social Committee and the Committee of the Regions**

**on taking stock of and updating the reform recommendations for regulation in  
professional services of 2017**

{COM(2021) 385 final}

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# **Detailed information** **on the assessment of regulation in professional services**

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## I. Introduction

Four years have passed since the Commission put forward its reform recommendations for regulation in professional services to help Member States identify opportunities for reforming unnecessary or disproportionate restrictions<sup>1</sup>. Now seems to be an appropriate time to, firstly, evaluate whether and how Member States have used this guidance, and, secondly, to provide updated recommendations based on this assessment.

The Commission already announced its intention to update the recommendations in its enforcement action plan of March 2020<sup>2</sup>. The COVID-19 pandemic has only increased the urgency of boosting the EU economy by, among other measures, ensuring that the regulatory framework in which this economy operates is not more restrictive than what is really necessary to ensure the protection of genuine public interests.

Professional services are typically among the most highly regulated sectors of our economy. Nonetheless, the type and level of regulation differs greatly between Member States. While regulatory diversity can be the result of tailor-made responses to local differences, it can also be a sign of solutions from the past that have never been thoroughly reassessed based on today's reality. To ensure that any future professional regulation does pass this quality test, the European legislator adopted the Proportionality Test Directive, which requires Member States to thoroughly assess the proportionality of new national professional regulation before its adoption<sup>3</sup>. For all existing regulation, the updated recommendations set out in the Communication aim to once again point Member States towards those areas where regulatory reform could be most beneficial.

This staff working document provides the necessary background information for the recommendations made in the Communication.

It first sets out the economic background by highlighting the economic importance of professional services, in particular, the ones chosen for the assessment, prevalence of professional regulation, and impacts of regulation on market performance (II).

The next section gives a detailed description of the regulatory situation for the selected professions in each Member State (III).

Part IV provides a detailed explanation of the methodology used for the restrictiveness indicator.

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<sup>1</sup> COM(2016) 820.

<sup>2</sup> Long term action plan for better implementation and enforcement of single market rules, COM(2020) 94 final.

<sup>3</sup> Directive 2018/958/EU.

## II. Economic background

### II.1. Economic importance of professional services and choice of professions for the assessment

The role of professional services in the EU economy cannot be underestimated. Services play a major part in the economy not only by directly contributing to value added and employment, but also through the value chain interactions. They play an increasing role in the production of goods in the context of what has been termed as ‘servicification’ of the economy (i.e. the rising indirect contribution of services into the production of goods, either as inputs and activities within firms, or as outputs bundled with goods). Dynamic, resilient and well-functioning services markets can therefore provide a strong basis for the performance of the rest of the economy.

Business services, many of which are regulated professional services, contribute around 13% to EU gross value added and almost 14% to EU employment. In addition to their direct contribution, they provide important inputs to the rest of the economy, including manufacturing, both domestic and cross-border. Being mostly defined as knowledge-intensive, these services contribute significantly to innovation and research activities.

As in the 2017 reform recommendations, the Communication and this staff working document focus on a number of economically important groups of professions, namely architects, civil engineers, accountants/tax advisers, lawyers, patent agents, real estate agents and tourist guides. These groups of professions were selected because of their economic importance, their role in the innovation activities and their vital contribution to economic ecosystems, as well as the potential gains from reforming the regulatory framework surrounding them. They belong to four key broader economic sectors: business services, construction, real estate and tourism.

For example, *architectural and engineering sectors* directly account for 1.4% of total employment and 1% of gross value added in the EU. Their indirect contribution in terms of the key inputs to other economic sectors is even greater (for instance, around 5% of all inputs in construction come from these two sectors; they are crucial for the construction processes). Over 50% of European companies in the architectural and engineering sector are considered ‘innovative enterprises’. *Legal and accounting sectors* together contribute 3% to EU employment and the same percentage to EU gross value added, and also provide vital services to other economic sectors.

As regards *tourist guides*, a profession still regulated in two thirds of Member States, tourism is one of the major economic activities in the EU with wide-ranging impacts on the rest of the economy, as well as on society and culture. *Patent agents* were chosen because of their vital role in innovation and development, for which intellectual property rights (IPRs) such as patents, trademarks and industrial designs are indispensable tools in many industries. *Real estate* activities form a major part of the economy as a whole and play an important role in most economic activities, with impacts on businesses and the broader public.

## II.2. Prevalence of professional services regulation

Based on an EU-wide survey, around 22 % of the European labour force, or over 47 million citizens, are directly affected by professional regulation<sup>4</sup>.

Indeed, many of the services professions are traditionally highly regulated. In market economies, regulation can be justified when it intends to correct market failures, caused, for instance, by the presence of significant ‘externalities’<sup>5</sup> or strong information asymmetries. Such corrections should ideally be achieved with the least restrictive means and at a minimum possible cost for market participants. At the same time, regulatory restrictiveness can often be pushed above the necessary minimum, for example by the vested interests of the relevant professional groups.

Analysis of regulatory restrictiveness for the economically important professions in focus shows significant remaining barriers to entering and practising these professions, as well as wide differences in regulatory approaches between Member States. Such restrictions span different aspects of access to and exercise of professional services, ranging from reserved activities and protection of professional title to legal form, shareholding or insurance requirements. While the impacts of some of the specific restriction may seem insignificant, the cumulative restrictive effects of such requirements on the professional services markets can be substantial. A recent report ‘Business Journey on the Single Market: Practical Obstacles and Barriers’ places access to and exercise of regulated professions among the strong and persisting obstacles for businesses in the single market<sup>6</sup>.

At present, according to the information provided by the Member States in the regulated professions database, there are almost 6 000 regulated professions across the EU<sup>7</sup>. As highlighted by Chart 1, around 40% of that total is accounted for by professionals in health and social services, followed by business services (around 14%), transport (10%), public services and education (9%) and construction (8%).

This total number corresponds to an average of around 200 regulated professions per Member State. However, there are large variations between countries, ranging from Lithuania with 80 professions to Hungary with 554<sup>8</sup>. While these numbers say little about the intensity or proportionality of the regulation, they serve as a useful starting point for this analysis, illustrating the degree of divergence in national regulation of professional services.

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<sup>4</sup> Koumenta M. and M. Pagliero, 2016: *Measuring Prevalence and Labour Market Impacts of Occupational Regulation in the EU*. See: <https://ec.europa.eu/docsroom/documents/20362>.

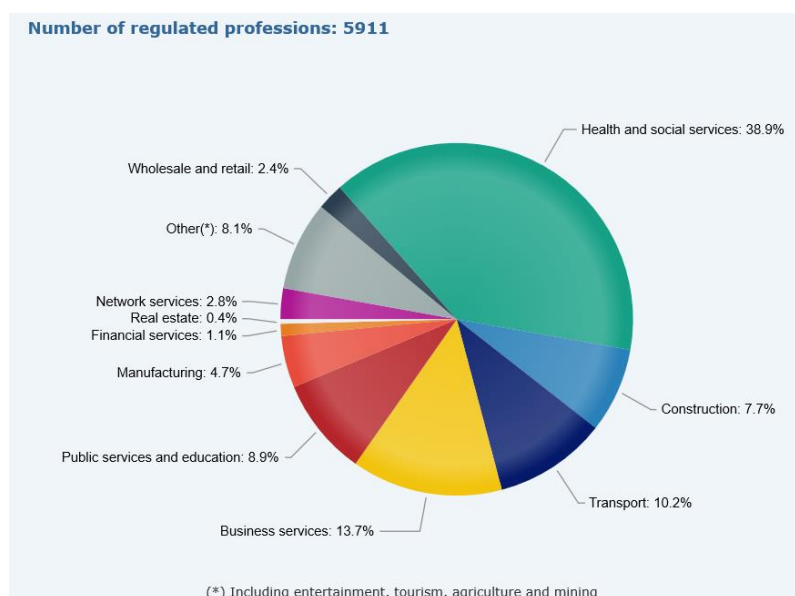
<sup>5</sup> A cost or benefit unintentionally imposed on a third party.

<sup>6</sup> SWD(2020) 54.

<sup>7</sup> See <https://ec.europa.eu/growth/tools-databases/regprof/>. The database includes information on the regulated professions covered by Directive 2005/36/EC and shows some 600 different ‘generic professions’ affected by regulation. Under each generic profession, there are usually many more specific professions, which brings the number of regulated professions in the EU to almost 6 000.

<sup>8</sup> EU regulated professions database, March 2021.

**Chart 1. Distribution of regulated professions by economic sector, EU, March 2021:**



Source: EU regulated professions database.

### **II.3. Selected services' market performance and the impacts of regulatory constraints**

An essential characteristic of well-functioning markets is the ease of market entry and exit, which can be estimated through the rates of company 'births' and 'deaths'<sup>9</sup>. This section takes a closer look at these indicators for four business services sectors (legal, accounting, architectural and engineering) in the EU<sup>10</sup>. For the four business services in focus, chart 2 demonstrates significant differences between the EU Member States<sup>11</sup>. While such variations can be explained by a multitude of factors, such as consumer demand or relative profitability of the respective markets, they can give a first indication of how dynamic the national markets are. For instance, in the case of architectural services, while the EU average birth rate of firms has remained around 7-8% over 2012-2018, Greece and Austria display birth rates of 2.6% and 3.9% respectively, suggesting that new architectural firms may have difficulties entering the market<sup>12</sup>.

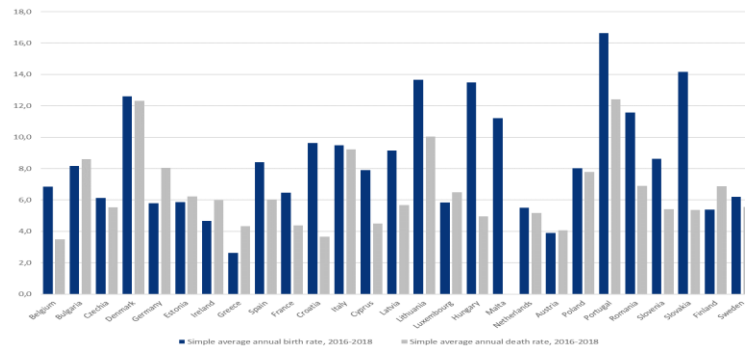
<sup>9</sup> Calculated according to the *Eurostat-OECD Manual on Business Demography Statistics, 2007*.

<sup>10</sup> The four economic sectors were chosen to provide information on four of the professions covered in the Communication. For the remaining three professions (patent agents, real estate agents and tourist guides), there is no one-to-one correspondence with an economic sector.

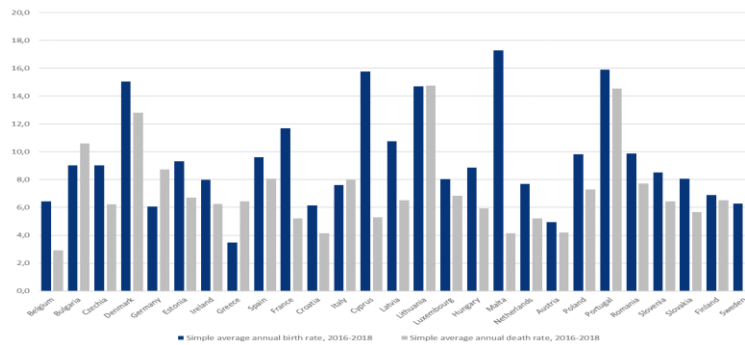
<sup>11</sup> Data was provided by the consortium led by LE Europe in the framework of an ongoing study for the European Commission on *Competition and its economic outcomes in selected business services professions in the EU: a refined methodology and a comprehensive empirical assessment*.

<sup>12</sup> Nevertheless, international comparisons have to be done with care. Austria, for example, displays a low birth rate in all professions selected in Chart 2. This hints at structural drivers that will be common to all sectors, meaning that the low birth rate in regulated sectors may be related to factors other than sector-specific regulations.

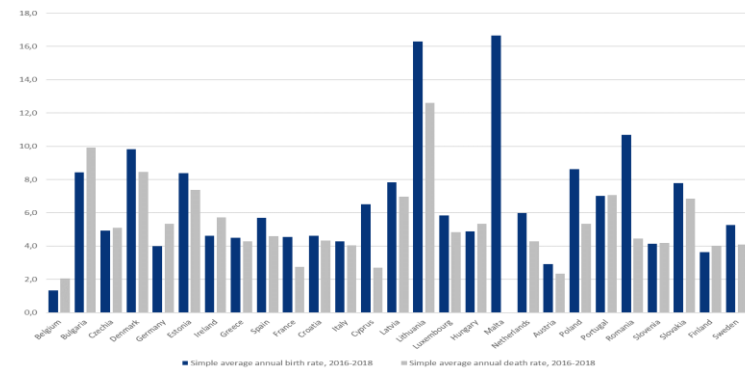
**Chart 2. Average birth and death rates of firms in the EU, 2016-2018:**



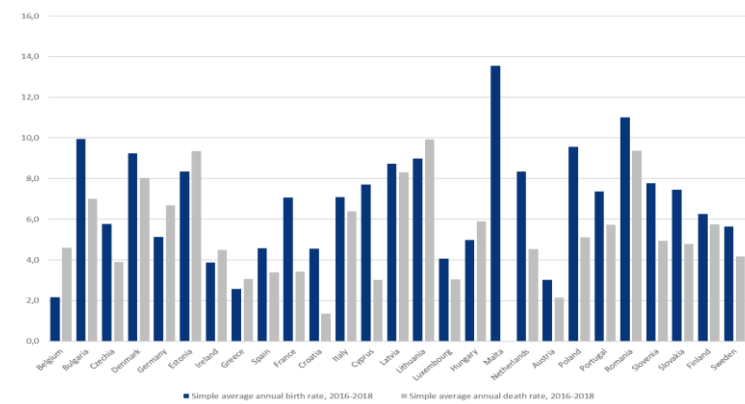
**Chart 2a: Architectural activities.**



**Chart 2b: Engineering activities and related technical consultancy.**



**Chart 2c: Accounting, bookkeeping and auditing activities; tax consultancy.**



**Chart 2d: Legal activities.**

**Source: Elaboration by LE Europe based on Eurostat data.**



**Chart 3. HHI across the EU Member States (upper and lower bound)<sup>13</sup>, 2018:**

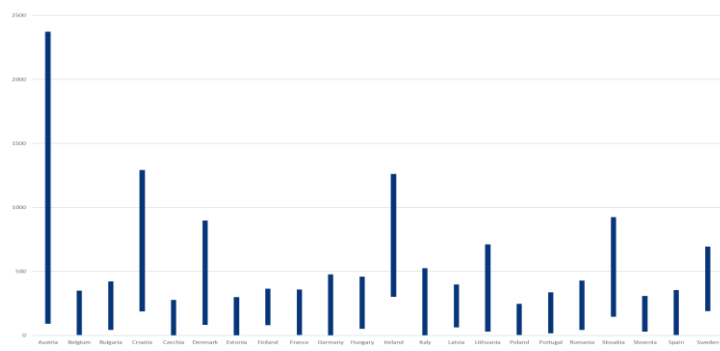


Chart 3a: Architectural activities.

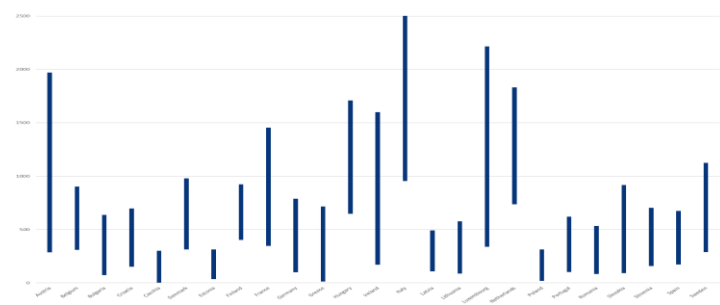


Chart 3b: Engineering activities and related technical consultancy.

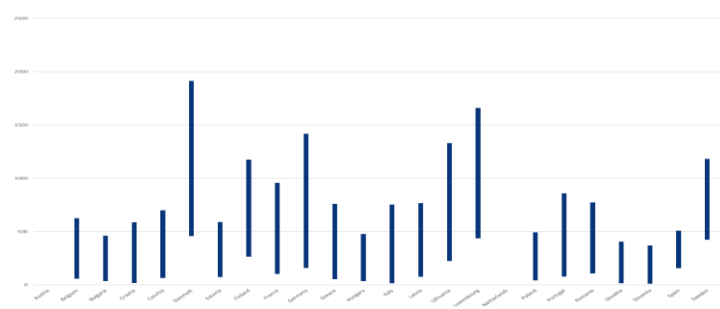


Chart 3c: Accounting, bookkeeping and auditing activities; tax consultancy.

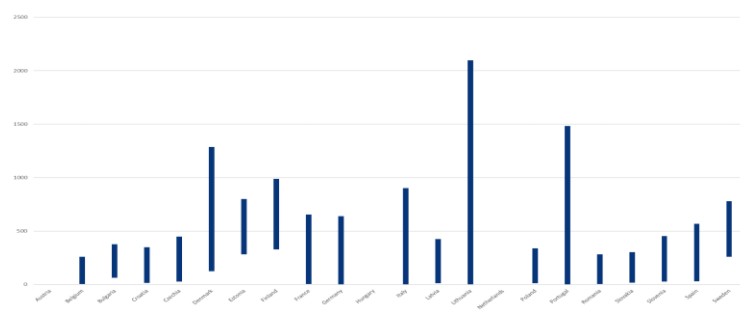


Chart 3d: Legal activities.

**Source: Elaboration by LE Europe based on Orbis data.**

Note: HHI is based on the top 50 firms. Some observations were excluded due to insufficient data coverage in the Orbis database.

<sup>13</sup> Upper bound on the HHI was calculated using the sum of turnovers of the 50 largest firms in a sector based on Orbis data as the denominator; lower bound was calculated using the total turnover of a sector based on Eurostat data as the denominator. This provides a reliable range for the likely HHI value.

The degree of competition in a market is often measured by looking at 'market concentration', which is a numerical measure representing the number of firms active in the market and their respective output shares. While several different measures can be used, one of the most commonly used ones is the Herfindahl–Hirschman Index (HHI), calculated as the sum of squared market shares of the firms active in a market. Higher HHI indicates a higher concentration of firms in a market, which corresponds to a lower degree of competition. Being a data-intensive indicator, HHI can suffer from data availability issues, and like the other measures of market performance, it can be influenced by many different factors. However, in conjunction with other relevant indicators, it can be useful for assessing competition in a given market.

Chart 3 presents this indicator for the four business services under investigation across the EU Member States. Again, a significant cross-country variation can be observed, which could be attributable, among other factors, to the strength of regulatory barriers to market entry and the exercise of a profession.

The above indicators and their significant cross-country variations suggest that for the four business services assessed, there remains a significant potential for improvement in terms of competition and market performance in a number of Member States. Regulatory barriers to market entry and the exercise of a profession may play a role in this process.

Abundant empirical evidence confirms that excessive market regulation can have significant negative impacts on the economic performance of the sectors concerned, while opening markets to competition can boost productivity, innovation and entrepreneurship, ultimately leading to better economic outcomes and consumer welfare. Multiple empirical studies in the field conclusively demonstrate positive impacts of removing unnecessarily restrictive regulation on market performance, professional mobility and broader economic outcomes<sup>14</sup>.

For instance, a recent study demonstrates a potential gain in GDP of over EUR 14 billion and an increase in employment of over 50 000 people in 12 EU Member States over 3 years, resulting from the implementation of the Commission's 2017 reform recommendations in only four business services sectors (legal, accounting, architectural and engineering), a significant gain given the almost negligible public cost of these reforms<sup>15</sup>.

An empirical study on the effects of regulation on service quality, analysing the impact of the regulatory environment on six professional services markets, concludes that in a number of cases less restrictive regulation resulted in improved market outcomes such as availability of services and prices. At the same time, no conclusive evidence was found that an increase in competition has negative effects on the quality of services provided or on consumer satisfaction and well-being<sup>16</sup>.

Similarly, evidence shows that while broader factors undoubtedly play a role, restrictions stemming from professional regulation are perceived by European businesses as potential obstacles to the adoption of digital automation solutions. A study for the European

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<sup>14</sup> For an overview see e.g. Canton E., D. Ciriaci and I. Solera, 2014: *The Economic Impact of Professional Services Liberalisation*. European Economy Economic Papers 533. Available at: [https://ec.europa.eu/economy\\_finance/publications/economic\\_paper/2014/pdf/ecp533\\_en.pdf](https://ec.europa.eu/economy_finance/publications/economic_paper/2014/pdf/ecp533_en.pdf)

<sup>15</sup> Consortium led by Prometeia SpA (2021): *The impact of regulatory environment on digital automation in professional services*. Study for the European Commission. See: <https://data.europa.eu/doi/10.2873/310173>

<sup>16</sup> Koumenta M. et al, 2019: *Effects of Regulation on Service Quality. Evidence from Six European Cases*. The study looked at lawyers, architects, engineers, pharmacists, tourist guides, driving instructors and ride hailing drivers in Poland, Germany, Italy, Greece, the UK and Ireland. See: <https://op.europa.eu/en/publication-detail/-/publication/bfd2b0e8-1943-11e9-8d04-01aa75ed71a1/language-en>.

Commission has looked at the state of play and trends of digital automation in the legal, accounting, architectural and engineering sectors in 12 EU Member States<sup>17</sup>. In particular, a survey of service providers across these EU countries demonstrated that while the existing digital technologies are associated with multiple benefits, their level of adoption still falls significantly below potential. Among the top barriers to the introduction of digital technologies, businesses mentioned their high costs and the shortage of relevant skills. Cumbersome administrative procedures and regulatory constraints were also listed as key obstacles. Regulation was shown to significantly affect digital innovation activities, both directly and indirectly, for several reasons including reduced competition, limitations to company size and obstacles to accessing finance. The study also confirmed negative effects of restrictive professional regulation on firm-level productivity and broader economic outcomes such as gross value added, income and employment.

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<sup>17</sup> Consortium led by Prometeia SpA (2021): *The impact of regulatory environment on digital automation in professional services*. The study covers architectural, engineering, legal and accounting services in 12 Member States (Germany, France, Italy, Spain, the Netherlands, Belgium, Ireland, Portugal, Sweden, Poland, Romania and Croatia). Survey respondents on average attributed a score of 2 to 3 (out of 5) to the perceived negative impact of regulatory restrictions on digital automation adoption. Further econometric analysis conclusively demonstrates a statistically significant impact of perceived regulatory restrictions on companies' engagement in digital automation.

### **III. Summary of professional regulation per Member State**

## I. Overview

By 1 February 2021, Austria had submitted information about 204 regulated professions. This is a slight decrease compared with previously submitted figures. While some new professions have been added, others have been deregulated (like employment placement agencies), and certain database entries have been corrected or consolidated. For instance, a number of professions related to general trade law (*Gewerbeordnung*) have been merged into one profession (e.g. shoemaker and orthopaedic shoemaker). Of the regulated professions, 10.3% concern business services, 9.8% the construction sector and 0.5% the real estate sector.

According to an EU-wide survey<sup>18</sup>, 22% of Austria's labour force can be considered to be working in regulated professions. This is slightly higher than the EU average (21%).

Austria regularly updates the **database on regulated professions**. This database provides citizens and administrative authorities from other Member States with valuable information about the regulation of professions in a given Member State. However, the information for Austria is currently incomplete for a number of professions, mainly because some newly adopted reforms have not yet been reported in the database.

In its **national action plan** from 2016, Austria announced changes for a limited number of professions. The reforms on patent agents and engineers were introduced in 2017 and in 2019 respectively (for more details, see the sections on the individual professions below).

Since 2016, annual **country-specific recommendations** have been addressed to Austria, that consistently underline the need to reduce regulatory and administrative barriers in the services sector, in particular in the area of professional services.

In 2016, the recommendation was to reduce administrative and regulatory barriers for investments, such as restrictive authorisation requirements, restrictions on legal form and shareholding, and impediments to setting up interdisciplinary companies, in particular in the area of services.

In 2017, the recommendation was to reduce administrative and regulatory barriers, to ease market entry and to facilitate company growth in order to encourage investment in the services sector.

In 2018 and 2019, it was recommended to support productivity growth by stimulating digitalisation of businesses and company growth and by reducing regulatory barriers in the service sector.

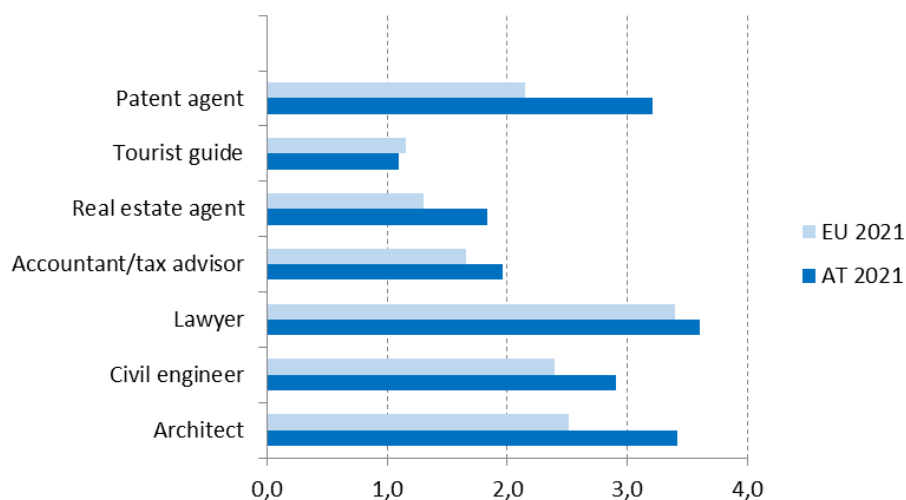
## II. Situation on the analysed professions

Regulatory restrictiveness in Austria is higher than the EU average for all the professions analysed, except for tourist guides, and is highest for lawyers.

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<sup>18</sup> Koumenta M. and M. Pagliero (2016), *Measuring Prevalence and Labour Market Impacts of Occupational Regulation in the EU*. See: <https://ec.europa.eu/docsroom/documents/20362>.

Chart 1: Regulatory restrictiveness, Austria, 2021.



Architects, engineers, lawyers and patent agents are considered as ‘liberal professions’ in Austria and subject to specific legislation. This specific legislation for liberal professions also applies to tax advisers, while other accounting professions fall under different legislation.

Tourist guides’ and real estate agents’ services are considered to be commercial activities, and are therefore covered by the general trade law (*‘Gewerbeordnung’*).

In 2017, based on the restrictiveness indicator and its detailed analysis of the legislation, the Commission made specific recommendations for each of the regulated professions analysed.

The following description of the situation for the different professions focuses on changes since the analysis published in 2017. However, to provide a complete and understandable picture, the description also restates part of the information described in 2017.

### Architects/engineers

In 2017, the Commission made the following recommendations for the professions of architects and engineers:

- reconsider the wide scope of reserved activities;
- consider the impact of shareholding and the company form restrictions in place in addition to other requirements;
- assess the proportionality of the restrictions on multidisciplinary activities.

A **reform** of the law covering both professions entered into force in July 2019.

In addition, on 29 July 2019, the European Court of Justice (ECJ) gave its ruling in case C-209/18 on requirements for engineers and architects, among other professions. The ECJ found that the (old) law on engineers/architects infringed European law: (a) by establishing a seat requirement; (b) by establishing restrictive conditions for shareholders<sup>19</sup>; and (c) by limiting multidisciplinary activities of engineers/architects. Despite the reform in 2019, key elements of the law remained unchanged, in particular on the scope of the reserved activities.

<sup>19</sup> According to the old law, only natural persons and companies of civil engineers may be members of a company of architects/engineers, and only natural persons who are members of such a company and hold the majority of its shares could be appointed as managers and representatives of such a company.

Both professions<sup>20</sup> benefit from reserved activities and a title protection. The reserved activities include ‘drawing up public documents’ which is the only activity exclusively reserved to architects and engineers in their respective field of activity.

All other reserved activities in the field of architecture and engineering are shared with various other professions, e.g. with a master builder or commercial engineer (*‘Baumeister / Ingenieurbüro’*) in line with the general trade law (*‘Gewerbeordnung’*).

However, the scope of activities and conditions for accessing the profession differ significantly between these two groups. To ensure the independence and objectivity of architects and engineers there is a strict separation between the planning and the execution of activities. Whereas architects/engineers are limited to planning, consulting, coordination and supervising activities, the master builder has no such limitation and can plan/supervise and build at the same time.

The required duration of study/professional training for architects and engineers remains 5 years of education plus 3 years of prior professional experience. Membership with the professional association is mandatory. It is also necessary to pass a specific state exam to get an authorisation to practise, which is valid throughout the country.

Professional indemnity insurance is not obligatory. The professional chamber organises collective insurance coverage on a voluntary basis.

On legal form and shareholding requirements, changes to the law entered into force on 1 July 2019.

Whereas previously only certain company forms were available to architectural/engineering firms, the new law allows any legal company form. The rule that more than 50% of the shares have to be held by one or more natural persons authorised to exercise the profession of civil engineer (*‘Ziviltechniker’*) has not been changed. The remaining shares may be owned either by other architectural or civil engineering (*‘Ziviltechniker’*) firms, by any other natural person, or, and this is new, by companies which are established in another Member State, an EEA country or Switzerland, and that actively and legally provide architectural/engineering services. However, companies established in other countries cannot provide these services. The strict rules on decision-making, imposing that decisions cannot be taken against the partners authorised to carry out the activity, have been maintained.

Concerning restrictions on multidisciplinary activities, the scope of architectural or civil engineering firms is limited to providing architectural/engineering (*‘Ziviltechniker’*) services. This therefore limits the possibility of joint exercise with other professions. In this respect, the ECJ found in its previously mentioned ruling that *‘Austria has not put forward any specific arguments to show that other less restrictive measures, such as the adoption of rules on the internal organisation of a multidisciplinary company suggested in argument by the Commission, would not be suitable for ensuring the impartiality, independence and integrity of [an architect/engineer] carrying on his activity within such a company. It cannot therefore be accepted that the prohibition of forming such companies (...) is ‘necessary’ to that end within the meaning of Article 25(1)(a) or (b) of Directive 2006/123.’*

According to the information available to the Commission, the law has not yet been modified to take account of the Court judgment. The new law is expected to be adopted in May 2021.

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<sup>20</sup> The law covers *‘Ziviltechniker’*, i.e. architects and engineers in a wide range of engineering fields.

Based on the information available, there are no additional certification or attestation schemes for architects and engineers to gain access to specific professional activities that would be subject to additional qualification requirements in Austria<sup>21</sup>.

### Accountants/tax advisers

In 2017, the Commission made the following recommendation on accountants/tax advisers to all Member States that regulate the profession:

- reconsider reserving simple tasks such as payroll activities or preparation of tax declarations to highly qualified professional.

The law on accountancy covers three professions: senior accountant (*'Bilanzbuchhalter'*), accountant (*'Buchhalter'*) and payroll accountant (*'Personalverrechner'*). Self-employed service providers in these professions have a number of reserved activities. To become self-employed an official appointment is necessary. Depending on the profession, this requires 1.5 or 3 years of professional experience. Membership with the professional chamber is mandatory, as is professional indemnity insurance. Continuous professional development is also required, of 15 or 30 units per year, depending on the profession. The competent authority can impose sanctions of up to EUR 5 000 if this obligation is repeatedly breached.

Reserved activities differ between the professions mentioned above. They include payroll services, representation and assistance before regional administrative authorities, bookkeeping, drawing up financial statements and tax advice on VAT returns. Most of these services are also shared with tax advisers, auditors and partly with lawyers.

Changes to the law on accountancy came into force in 2017, mainly because of the transposition of the anti-money laundering directive, but also to align with the new law on tax advisers and auditors.

The profession of tax adviser (*'Steuerberater'*), a liberal profession, is regulated by a reserve of activities and a title protection. The number of reserved activities is rather large, as it includes the services that can be provided by the other three accounting professions. Tax advisers have extensive powers to represent clients before authorities and administrative courts as well as to provide legal advice and perform functions equivalent to lawyers in these areas. However, none of the reserved activities are exclusive, but rather shared with accounting professionals or other liberal professions.

To qualify for a professional licence, candidates must complete a university degree (minimum 180 ECTS), undertake a three-year traineeship, and pass a professional exam. Note that admission to the professional exam is already possible after 1.5 years of practical experience as a trainee.

While there are no specific restrictions or rules on legal form and shareholding for accountants, only a limited number of legal forms are available for tax advisers. Shareholders must either be professionals or members of the family and must hold the majority of the shares. Professionals from other Member States cannot hold more than 25% of the shares or of the voting rights. The very precise rule on joint exercise only being possible with other liberal professions, accountants, management and technical consultants, was relaxed under

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<sup>21</sup> e.g., where to carry out specific/specialised activities additional education or experience or an exam would be required. This may concern activities such as construction supervision, energy certification, energy audits, expert opinions, activities related to special buildings (such as nuclear power plants or historical heritage sites).



the 2017 reform, and cooperation with other self-employed professionals for specific tasks and contracts is now permitted. Professional indemnity insurance is still mandatory.

The 2017 reform of the law governing tax advisers and auditors did not change the above mentioned rules substantially, except for one. It introduced a new obligation on continuous professional development (CPD), prescribing a minimum of 120 hours to be followed within 3 years, and at least 30 hours a year. Fulfilment of this obligation must be notified to the professional chamber. A regulation governing the professional body gives more detail on this obligation. The professional chamber has set up its own 'academy' which is responsible for the education and the CPD of the professionals. However there are no restrictions on the use of advanced training courses from other advanced training institutes, provided they are technically suitable.

There are no restrictions for tax advisers on advertising and marketing. On tariffs, exclusive success fees (*'Erfolgshonorar'*) are forbidden, as is the acceptance of a commission (*'Provision'*).

### Lawyers

In 2017, the Commission made the following recommendations for lawyers to all Member States that regulate the profession:

- Clarify the scope of the reserves so as to facilitate the provision of legal consultancy services by lawyers or other service providers, in particular for online services.
- Assess legal form and shareholding requirements, incompatibility rules and multidisciplinary restrictions, in particular taking into account the proportionality of these restrictions in relation to the core principles, such as the independence of the profession and to the corresponding supervisory arrangements. In addition, consideration should be provided to the cumulative effect of such requirements to the extent that their effects might be accentuated in case of extensive reserves of activities (e.g. where legal advice is also part of the reserved activities).

A reform in 2020 took account of one of these recommendations by opening up the legal forms a law company can take.

Like all the other liberal professions, lawyers benefit from reserved activities and a title protection. A lawyer's right of representation extends to all courts and authorities and confers on them the power to represent parties on a professional basis, both in and out of court, for all public and private matters. This power is reserved to lawyers.

Qualifying as a lawyer requires 4 years of legal studies in Austrian law, at least 3 years of experience as a trainee lawyer, and passing the bar exam. Membership with the bar is mandatory, as is continuous professional development (CPD). The latter consists of a general, activity- and risk-based CPD under the responsibility of the respective lawyer, rather than a purely point-based CPD based on specific hours.

On legal form and shareholding requirements, since the 2020 reform all legal forms are permitted (except for public limited liability company). Lawyers must hold at least 50% of the firm's shares. The other shares can be held by only a few categories of people specified under the law, such as close relatives. The qualified registered lawyers must hold the majority in the company capital, and they must have a decisive influence on the decision-making process, which means a simple or a contractually determined qualified majority (usually up to 75%) for shareholders' resolutions in favour of the professionals.

To preserve independence and professional secrecy and to avoid conflicts of interest, setting up multidisciplinary companies is not permitted. However, certain forms of cooperation between lawyers and other liberal professionals are possible if the profession's client-focused core values are safeguarded. There are also specific rules on incompatibilities with certain professions (e.g. notaries), as well as general rules on incompatibilities.

Professional liability insurance is mandatory. Rules on tariffs cover recommended fees, notably the reimbursement of legal fees by the unsuccessful party. Lawyers are allowed to advertise as long as the information provided is true and factual and in line with the basic values of the legal profession.

### Patent agents

In 2017, the Commission made the following recommendations for the profession of patent agents:

- reconsider the various layers of regulatory measures, for instance requiring multiple years of professional experience or professional training in addition to basic training requirements and try to offer alternative ways to obtain the qualification;
- assess the scope of reserves of activities for patent/trademark agents;
- assess the proportionality of prohibition of joint exercise of the profession of patent/trademark patent with other professions;
- assess the proportionality of the shareholding requirements.

A **reform** of the law on patent agents entered into force in May 2019, which partially addressed the recommendations.

On 29 July 2019, the ECJ gave its ruling in case C-209/18 on patent agents<sup>22</sup>. The Court found that a seat requirement, rules on shareholding and multidisciplinary rules violate Articles 14, 15 and 25 respectively of the Services Directive. According to the information available to the Commission, the necessary modifications were adopted in May 2021.

Patent agents benefit from reserved activities and a title protection. Reserved activities include counselling and representation before the Patent Office or other administrative authority, drawing up legal documents in intellectual property matters and representing clients before the courts in intellectual property matters (for patent attorneys only before the Higher Regional Court of Vienna). All these activities are shared with lawyers and notaries.

Since the 2019 reform, qualifying as a patent agent requires studies of at least 270 ECTS, of which at least 210 have to be in a technical subject or natural science, and 60 have to be on Austrian law. This corresponds to 4.5 years of study as compared to the 5 years required before the 2019 reform. Prior professional practice is still obligatory, but the length has been slightly shortened. The length still depends on the type of professional practice (e.g. 4 years (instead of 5) in the office of a patent attorney or 6.5 years (instead of 7.5) in the field of intellectual property rights). Membership with the professional association remains mandatory. A candidate must apply for entry on the list of patent attorneys, which can be refused. Candidates also have to swear an oath.

On legal form and shareholding requirements, as with other liberal professions, only certain company forms are allowed, such as private limited liability company (GmbH). The rules on shareholding were changed in 2019. While previously only patent attorneys and their close

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<sup>22</sup> Among other professions - see also the section on architects and engineers.

relatives (wife, children) or retired patent attorneys could be a shareholder, since the reform a company with limited liability can become a shareholder if the company is the sole partner with liability in a 'patent agent partnership (*Patentsanwalts-Partnerschaft*)' in the form of a limited partnership (*Kommanditgesellschaft*). In addition, rules on voting rights have been abolished.

The rule that a patent attorney may only be part of one company and therefore cannot practise together with other professionals has been relaxed. A patent attorney can now be a partner in more than one patent agent partnership, but partnerships with other professions are still not possible.

Professional liability insurance is obligatory. There is no restriction on tariffs, and advertising is permitted as long as it is factual and respects the ethics of the profession. Certain forms of advertising are explicitly prohibited, including self-promotion, aggressive advertising, comparative advertising and misleading advertising. A patent agent also has to ensure that third parties, in particular the media, do not generate advertising that can be considered incompatible with the ethics of the profession.

### Real estate agents

In 2017, the Commission made the following recommendations for the real estate agent profession:

- take into consideration the possibility of opening to other professionals the activities currently exclusively reserved to estate agents;
- evaluate to what extent the duration of mandatory qualification requirements is indispensable in view of the tasks pursued by estate agents and the objectives of regulation.

The Commission is unaware of any reform or other initiative that has taken account of or assessed its recommendations.

The real estate agent profession is one of three professions in the real estate sector and can be practised independently of the other two (real estate manager and real estate developer). It is regulated by way of reserved activities, which include: brokering sales and exchanges of plots of land, legal estates, apartments, business premises, prefabricated houses and firms; brokering lease contracts (and similar contracts) for real estate; selling real estate including hire purchase; brokering participation in property funds; and advice and support for all these transactions. Real estate agents can also represent clients before public authorities/courts (as long as it is not reserved for lawyers) and conduct public auctions of properties. Some reserved activities are shared, notably with lawyers and notaries.

In general, qualifying as a real estate agent requires between one and three years of training (depending on the pre-professional education). As for other regulated professions covered by the trade law, only the self-employed and managers require a qualification. There are four alternative pathways to qualifying as a real estate agent, namely: (i) specific university studies plus one 1 year of professional experience or (ii) '*Fachhochschule*' studies plus 1 year of professional experience, (iii) an apprenticeship or secondary school diploma plus 2 years of professional experience and passing an exam; or (iv) other academic studies plus 1 year of professional experience and passing an exam. Passing the specific exam for real estate agents requires general knowledge of regulations such as tax law and labour law, as well as specific subjects relevant to the profession.

Registration with the chamber of commerce (*Wirtschaftskammer*) is mandatory for real estate agents, as well as anyone wishing to set up a business. Professional insurance is required, as is proof that the person has no convictions for violations of tax law. The guidelines on conduct and professional practice includes a chapter on maximum prices for different services. There are also rules on advertising, including on unfair customer enticement (*unlautere Kundenabwerbung*).

Austria considers that it is also necessary to regulate this profession given that agents can act as trustees representing the interests of their clients, and thus prevent extensive and costly disputes in court.

### Tourist guides

In 2017, the Commission made the following recommendations for the tourist guide profession:

- consider the justification and proportionality of regulation of the profession;
- consider introducing a more precise definition of the reserved activities in view of the very wide or undefined scope of reserved activities.

Based on the information available to the Commission, Austria has not undertaken any reform or (proportionality) assessment on the above-mentioned recommendations.

Tourist guides benefit from reserved activities. In the absence of a reform, they are wide-ranging in scope, covering accompanying tourists/visitors and explaining: (i) Austria's historic treasures and artistic and cultural heritage ; (ii) the social and political situation in national and international contexts; and (iii) sporting and social events. However, some of these activities are shared with non-regulated professionals (*Reisebetreuer*), e.g. guides that provide commentary in tour buses and taxis.

Qualifying as a tourist guide requires the completion of at least 250 training units. Various institutes provide specific training courses, but other studies can also be recognised for the purposes of the professional exam. Registration with the chamber of commerce is mandatory for tourist guides, as well as anyone who wishes to set up a business.

## I. Overview

By 2 March 2021 Belgium had submitted information about 158 regulated professions. This is an increase compared with previously submitted figures. It seems that most of these new entries are the result of the ongoing Belgian effort to complete the information in the database, including for those professions that have been regulated based on EU law. Of those professions, 11.4% concern business services, 7% the construction sector and 0.6% the real estate sector.

According to an EU wide survey<sup>23</sup>, 17% of Belgium's labour force can be considered to be working in regulated professions. This is below the EU average (21%)

Belgium is now regularly updating the **database on regulated professions**. This database provides citizens and administrative authorities from other Member States with valuable information about the regulation of professions in a given Member State.

The information on regulated professions in Belgium is currently still incomplete for a number of professions, partly because of reforms that have not yet been reported in the database.

In its **national action plan** from 2016, Belgium announced changes for a limited number of professions, not including any of the seven professions covered in the present analysis.

Since 2016, annual **country-specific recommendations** on professional services have been addressed to Belgium, in particular: (i) to reduce the regulatory and administrative burden; and (ii) incentivise entrepreneurship and competition.

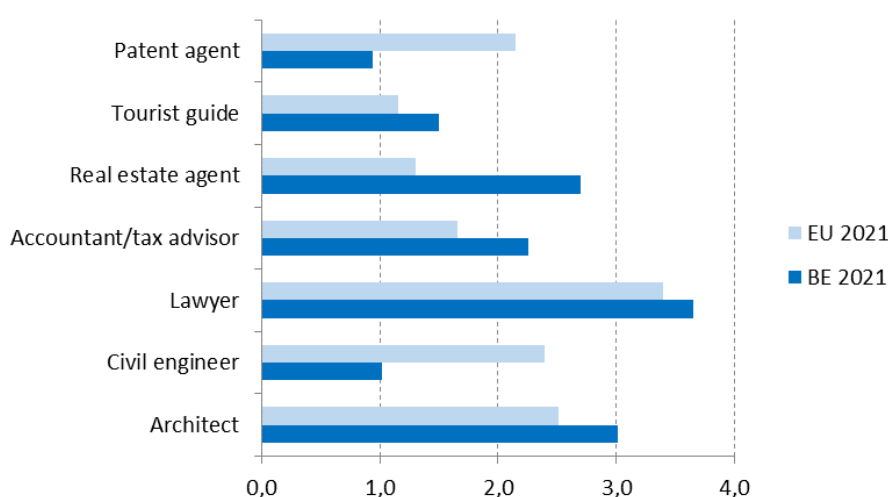
## II. Situation on the analysed professions

Regulatory restrictiveness in Belgium is higher than the EU average for most of the professions analysed, except for civil engineers and patent agents. Regulatory restrictiveness is the highest for lawyers.

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<sup>23</sup> Koumenta M. and M. Pagliero (2016), *Measuring Prevalence and Labour Market Impacts of Occupational Regulation in the EU*. See: <https://ec.europa.eu/docsroom/documents/20362>.

**Chart 1: Regulatory restrictiveness, Belgium, 2021.**



As a federal state, Belgium has allocated the power to regulate access to – and exercise of – professions to different policy levels. Following the sixth state reform in 2014, the power to regulate several professions, primarily the crafts professions, was transferred to the regional level. Regulation of most so-called intellectual professions has remained within the exclusive remit of the federal level (although the regions are responsible for certain aspects like the organisation of education). These intellectual professions include architects, accountants/tax advisors, lawyers, patent agents and real-estate agents. However, the regulation of tourist guides is a power held by each of the three regions.

Since 2017, the professions of accountant/tax advisor and patent agents have been subject to reforms that are described in detail in the respective chapters below. In addition, the Belgian government commissioned a study to analyse the rules applicable to the exercise of an intellectual profession within a company, and to evaluate whether these rules fulfill the criteria of necessity and proportionality. Among other issues, the study looked at the professions of architects, accountants and real-estate agents, and was finalised in 2018. It concluded that the requirement for a minimum level of share ownership by professionals should be limited to 50%+1, and the same percentage should also be applied to professionals represented in the decision-making bodies (i.e. board of directors), instead of the current percentages of 60% and 100% for certain professions like architects and real estate agents. The study also suggested changing the rules on corporate purpose and participation in other companies to make clear that the exercise of related activities is allowed. Finally, the study advised that the rules on incompatible activities should be made more precise.

Following this study, certain changes were made to the rules describing incompatible activities for accountants. After the study was released, additional reforms were also announced for architects, but no concrete amendments have yet been proposed. Belgium has recently commissioned another study to: (i) develop on the findings in the 2018 study; and (ii) analyse in more depth the economic situation in those professions.

The following description of the situation for the different professions focuses on changes since the analysis published in 2017. However, to provide a complete and understandable picture, the description also restates part of the information provided in 2017.

## Architects

In 2017, the Commission made the following recommendation for the architectural profession:

- consider the impact of the shareholding and company form restrictions in place in addition to the other requirements.

However, Belgium has not revised its shareholding and voting rights requirements. This is despite: (i) the Commission's recommendation; and (ii) an internal study that advised limiting the requirement for a minimum level of share ownership by professionals (and limiting the minimum percentage of professionals represented in decision-making bodies) to 50%+1. However, Belgium did abolish the obligation to obtain a visum from the professional body to submit building plans to local authorities for Flanders and the Brussels Capital Region.

The Law on the protection of the profession of architects dates from 1939. It regulates the profession through a protected title and a reserve of activities. This reserve of activities includes the drawing-up of plans and the monitoring of the execution of construction works that require a permit.

The education required to become an architect is composed of 5 years of study and 2 years of traineeship without the need to pass a state examination.

There is a mandatory obligation for architects to register with the professional Chamber. Currently, the Law does not impose any continuous professional development requirement.

The use of most corporate forms is allowed, with the exception of public limited liability companies whose shares can be traded on the stock market<sup>24</sup>. Nevertheless, a distinction should be made between professional and 'ordinary' architect-companies. In a professional company, the company itself can exercise the architectural profession and professionals can benefit from limited liability (these companies can take the form of a limited liability company, a public limited company, and a cooperative society). In 'ordinary' architecture companies, the professionals remain fully liable. In a professional company, 60% of the shares and voting rights need to be held by architects; the remaining shares need to be held by natural or legal persons that exercise a non-incompatible profession and that have been reported to the professional association. In an 'ordinary' architecture company, only the majority of the shares and voting rights need to be in the hands of professionals. In addition, in a professional company, all managers, directors and members of the board must be natural persons and architects (100%). Belgium justifies these restrictions by the need to protect consumers and the safety of third parties. The law specifically bans the possibility of jointly exercising the profession of architect and building contractor. In addition, the law provides that the activity and object of a professional company should be limited to services that are related to the profession of architect and that are not incompatible with this profession. However, it seems that the concept of 'services related to the profession of architect' have been interpreted quite broadly, and the law has not posed a significant barrier to the possibility of setting up multidisciplinary practices offering different professional services.

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<sup>24</sup> Belgian law considers that the requirement for shareholders to be known by name is necessary to ensure: (i) the prohibition of contractors and civil servants being shareholders; and (ii) the demand that 60% of the shares and voting rights are held by architects. Therefore every transfer of shares in architecture companies is subject to prior approval by the Chamber.

Architects are required to take out professional indemnity insurance and an equivalence assessment is required for insurance coverage taken out in other Member States. Advertising by architects is restricted in the sense that it needs to be conducted in a ‘discreet’ and ‘independent manner’, avoiding any ‘intrusive publicity’.

Based on the information available, there are no additional certification or attestation schemes for architects concerning access to specific professional activities that would be subject to additional qualification requirements in Belgium<sup>25</sup>.

### Engineers

In 2017, the Commission did not make any recommendations to Belgium on the profession of civil engineers. Since then, there has been no reform or other initiative the Commission is aware of concerning the regulation of this profession.

Civil engineers must follow the same procedures as architects if they work as/under the professional title of architect.

Construction engineers in Belgium are ‘burgerlijk ingenieur/ingénieur civil’ and ‘industriële ingenieur/ingénieur industriel’ and benefit from a protected title without specific reserves of activities.

The professional title is granted after having obtained a university degree, e.g. after 5 years (300 ECTS) of education for the ‘burgerlijk ingenieur/ingénieur civil’, 5 years for the ‘ingénieur industriel’ in the French-speaking community, and after 4 years (240 ECTS) of university education for the ‘industriële ingenieur’ in the Dutch-speaking community. No other requirements on access to or exercise of the profession have been identified.

Based on the information available, there are no additional certification or attestation schemes for engineers concerning access to specific professional activities that would be subject to additional qualification requirements in Belgium.

Belgium maintains its position that the protected titles are only “academic titles”. This means that professionals from other Member States seeking to use the protected titles will not be able to benefit from the rights and procedures for recognition of professional qualifications set out in Directive 2005/36/EC.

### Accountants/Tax advisors

In 2017, the Commission made the following recommendations for accountants/tax advisors:

- re-assess the incompatibility rules prohibiting the simultaneous exercise of any other economic activity for all types of accountancy professions, especially for professions where the conflict of interest could be prevented on a case-by-case basis (see infringement 2015/4216 concerning total bans on joint exercise);
- assess the proportionality of the shareholding requirements.

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<sup>25</sup> This refers, for example, to situations where in order to pursue specific/specialised activities additional education or experience or an exam would be required. This may concern activities such as: (i) construction supervision; (ii) energy certification; (iii) energy audits; (iv) expertise activities; and (v) activities related to special buildings (such as nuclear power plants, or historical heritage sites).



Belgium has fully addressed these recommendations by means of amendments to the code of ethics as well as a new law that fundamentally changes the organisation of the profession and removes legal-form and shareholding requirements. On 30 September 2020, a new law on accountants and tax advisors entered into force (hereafter “the new Accountant and Tax Advisor law”). This law replaces the four professions of ‘comptable agréé/erkend boekhouder’, ‘comptable-fiscaliste agréé/erkend boekhouder-fiscalist’, ‘conseil fiscal/belastingconsulent’ and ‘Expert-comptable/accountant’ by two new professions: ‘gecertificeerd accountant/expert-comptable certifié’ (certified accountant)<sup>26</sup> and ‘gecertificeerd belastingadviseur/conseiller fiscal certifié’ (certified tax advisor)<sup>27</sup>. The objective of the reform is to increase the quality of the services and the flexibility of the applicable regulation. It should be noted that the ‘old’ professions and titles of ‘comptable agréé/erkend boekhouder’ and ‘comptable-fiscaliste agréé/erkend boekhouder-fiscalist’ have been replaced by the transitional titles of ‘accountant/comptable’ and ‘comptable-fiscaliste/fiscaal accountant’ (tax-accountant) for those persons who held that title on 30 September 2020. It is however no longer possible to acquire these professional titles for new entrants to the profession.

The new profession of certified accountant is regulated by way of a protected title and a reserve of activities that includes bookkeeping/drawing up of financial statements, as well as some specific expert and attestation tasks. All of these activities are shared with auditors. Certified tax advisors, for their part, are only regulated by way of protected title.

As was the case under the old law, for both professions of certified accountant and certified tax advisor, the required education is: (i) 3 years of university or post-secondary study; (ii) a mandatory traineeship of 3 years; and (iii) two separate state exams (an entry exam at the start and a competency exam at the end of the traineeship). An exemption from the three-year traineeship requirement as well as the entry exam is possible for those who can prove 7 years of relevant professional experience. All professionals still need to register with the relevant professional body and follow continuous professional development activities as determined by this body.

On the specific rules on incompatible activities and joint exercise that were applicable to the former professions of ‘comptable agréé/erkend boekhouder’ and ‘Comptable-fiscaliste agréé/Erkend boekhouder-fiscalist’ (currently ‘accountant/comptable’ and ‘comptable-fiscaliste/fiscaal accountant’), the Court of Justice of the European Union (CJEU) held in its judgment in case C-384/18 of 27 February 2020 that by ‘prohibiting the exercise of accounting activities in conjunction with the activities of an insurance broker or agent, or of an estate agent, or with any banking or financial services activity, and by permitting [the Chambers] to prohibit the exercise of accounting activities in conjunction with any artisanal, commercial or agricultural activity, the Kingdom of Belgium has failed to fulfil its obligations under Article 25 of Directive 2006/123/EC [...] and Article 49 TFEU’. The CJEU considered that Belgium had failed to demonstrate by means of ‘precise evidence’ that an *ex ante* ban was ‘the only measure capable of attaining the desired objectives’ and that ‘none of the measures less restrictive of the freedom to provide services’ suggested by the Commission would be sufficiently effective to attain those objectives. More specifically, the CJEU said that Belgium had failed to show why an *ex post* review by the professional chambers would not be sufficient to reach the objective of guaranteeing the independence and

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<sup>26</sup> This replaces the former profession and title of ‘accountant/expert-comptable’.

<sup>27</sup> Replacing the former profession and title of ‘belastingconsulent/conseil fiscal’.

impartiality of accountants and of ensuring that they comply with their obligation to maintain strict professional secrecy.

Although Belgium already amended the codes of ethics for these professions during the infringement procedure, these amendments did not suffice<sup>28</sup>. Hence, the ‘accountant/comptable’ and ‘comptable-fiscaliste/fiscaal accountant’ (formerly ‘comptable agréé/erkend boekhouder’ and ‘comptable-fiscaliste agréé/erkend boekhouder-fiscalist’) are now allowed to exercise multidisciplinary activities in so far as these do not jeopardise their independence, impartiality and professional secrecy. There will only be an *a posteriori* check by the professional association.

On the professions of certified accountant and certified tax advisor, the new law only provides for a general conflict-of-interest rule. Although the law provides for the possibility of adopting more specific rules on incompatible activities, no new code of ethics governing these two professions has yet been adopted. However, it is unclear to what extent the previous code applicable to the former ‘accountants’, would also apply to the current profession of certified accountant<sup>29</sup>. In addition, for legal persons, Belgium requires the corporate goal and activity to be limited to the activities covered by the profession or to activities that are not incompatible with that profession. Legal persons are allowed to participate in other companies if these companies do not exercise activities that are considered incompatible with the legal person’s profession.

The new law on accountants and tax advisors removes any remaining requirements on legal form and shareholding for both professions. However, it upholds the requirement that the majority of the voting rights in a professional company of accountants/tax advisors must be held by the professionals working in that company.

There is still a mandatory obligation for accountants/tax advisors to hold indemnity insurance, and the insurance contract must be approved by the professional body. In addition, the professional must take an oath before he or she can be registered. Finally, the code of ethics applicable to the former ‘accountants’ will apply to the current certified accountant insofar as it is not contradictory to the the new Accountant and Tax Advisor law or other legislation. This code would seem to considerably restrict the type of advertising allowed by such ‘accountants’<sup>30</sup>.

## Lawyers

In 2017, the Commission made the following recommendations for the lawyers.

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<sup>28</sup> The amended code of ethics that entered into force in 2017 still completely banned certain activities (insurance broker and any banking- or financial-services activity for which registration with the financial supervisory authority is required) from being exercised either: (i) simultaneously with the profession of accountant; or (ii) as part of a multidisciplinary practice with other professionals. All other activities were made subject to prior approval by the professional association taking into account the risk to the independence and impartiality of the professional.

<sup>29</sup> 1 MAART 1998. - Koninklijk besluit tot vaststelling van het reglement van plichtenleer der accountants. Articles 20-21 of this Royal Decree seem to subject the possibility to set up a multidisciplinary practice to a prior approval by the professional association and seem to limit such joint exercise to other intellectual professions as well as to a mere cost-sharing association.

<sup>30</sup> Arts 30 & 31 of this act seem to: (i) limit advertising to ‘objective information’ about the office that does not jeopardise the integrity of the profession; and (ii) explicitly prohibit any comparative advertising on tariffs or quality. It is unclear to what extent these limitations are still imposed following the adoption of Directive 2006/123/EC as well as book XIV of the Belgian Code of Economic Law.

- The Commission said Belgium should introduce more transparency and review the proportionality-of-access rules for lawyers wishing to practise before the relevant supreme courts, and in particular clarify the rules applicable to European lawyers;
- The Commission said (this was also a recommendation to all MS) that Belgium should assess legal form and shareholding requirements, incompatibility rules and multidisciplinary restrictions, in particular taking into account the proportionality of these restrictions in relation to the core principles, such as the independence of the profession and to the corresponding supervisory arrangements. In addition, consideration should be provided to the cumulative effect of such requirements to the extent that their effects might be accentuated in case of extensive reserves of activities (e.g. where legal advice is also part of the reserved activities).

There has been no reform or other initiative the Commission is aware of which has taken into account or assessed the recommendations made by the Commission.

The legal profession in Belgium includes the professions of ‘avocat/advocaat/rechtsanwalt’ and ‘avocat devant la Cour de Cassation/advocaat bij het Hof van Cassatie’. The profession is regulated by way of a protected title and a reserve of activities for: (i) the representation of clients in court; (ii) insolvency practice as ‘curator’/‘curateur’; (iii) representation before the Patent Office (shared with patent agents); and (iv) since 2018, mediation in the form of ‘collaboratieve onderhandelingen’/‘droit collaboratif’ between the parties and their respective lawyers without the need to involve a neutral third party.

The general education requirement for lawyers is 5 years of study complemented by 3 years of training and passing the bar exam. An ‘avocat devant la Cour de Cassation’/‘Advocaat bij het Hof van Cassatie’ is required additionally to have a professional experience of 10 years as a registered lawyer, and must follow an additional training of 4 years, which is completed by passing an additional bar exam.

All lawyers are obliged to register with the bar.

The number of licences granted to ‘avocat devant la Cour de Cassation’/‘Advocaat bij het Hof van Cassatie’ appears to be restricted (currently there are 20). These lawyers are appointed by the King upon proposal by the Supreme Court.

Lawyers are required to follow continuous professional training by way of a credit-system determined on a yearly basis (an average of 20 hours a year).

The use of all company forms is allowed, on the condition that all shares are in the hands of qualified lawyer(s), and with the limitation that shares cannot be traded on the stock exchange. Irrespective of the legal form chosen, all shares and voting rights are reserved to lawyers.

Belgian law explicitly prohibits lawyers from combining the exercise of the profession of lawyer with certain specific professions such as judge, notary and bailiff, but also with all ‘trade or industry’ activities. All other professions or activities are allowed on condition that they do not endanger the independence of the lawyer or the dignity of the bar. However, it seems that at least the Flemish bar has been more flexible towards exercising trade activities in combination with the profession of lawyer. Nevertheless, in all language communities, lawyers are allowed to organise certain forms of cooperation with other professions, but are not allowed to do this in the form of a limited liability company.

Lawyers are required to take out professional indemnity insurance (a minimum coverage is subscribed to by the bar for all its affiliated members and included in the membership fees). Lawyers are free to determine their fees but are not allowed to work on the basis of contingency fees exclusively related to the outcome of the dispute. The client must be informed of the lawyer's tariffs beforehand. If the lawyer's fees exceed the limits of fair moderation, the bar association ('Conseil de l'Ordre') has the authority to reduce it. The lawyer's fees may also be challenged before the judge. Belgian lawyers are allowed to advertise, yet certain restrictions are imposed by the bars. For example, the Flemish bar has ruled that advertising on prices cannot solely refer to minimum and basic prices. According to the rules of the French-speaking bar and the German-speaking bar advertising: (i) can only be about 'objective elements that can be verified by the bar'; (ii) cannot refer to success rates/number of cases treated/turn-over; (iii) cannot advertise prices of such a low level that these would not suffice for a qualitative service, etc.

### Patent agents

In 2017, the Commission did not address any recommendations to Belgium for the profession of patent agents.

In the meantime, Belgium has adopted a new law on patent agents (Law of 8 July 2018) which will introduce additional requirements, such as title protection, mandatory insurance, and requirements for continuous professional development. Although parts of this new law entered into force on the 1 December 2020, this is not the case for the provisions covering the additional requirements described above.

Patent agents are regulated by way of a reserve of activity for counselling and representing clients before the patent authority. This activity is shared with lawyers.

The education required is 4 years of study, a mandatory traineeship of 3 years under the supervision of an accredited patent agent (or as an employee representing his or her employer in patent matters before the Belgian Office for Intellectual Property) and the successful completion of a state exam.

Patent agents must become a member of their professional association, pay membership fees, and comply with the rules of the code of ethics.

Once the relevant legal provisions of the Law of 8 July 2018 enter into force, patent agents will also be required to follow continuous professional development activities and to subscribe to mandatory professional indemnity insurance. The title of 'octrooigemachtigde'/'mandataire en brevets'/'Patentanwalt' will become protected.

### Real-estate agents

In 2017, the Commission made the following recommendations for real-estate agents:

- evaluate to what extent the duration of mandatory qualification requirements is indispensable in view of the tasks pursued by estate agents and the objectives of regulation;
- consider the possibility of alternative pathways to access the profession;

- evaluate the need for shareholding and voting rights restriction.

There has been no reform or other initiative the Commission is aware of which has taken into account or assessed the recommendations made by the Commission.

Real-estate agents are regulated by way of a protected title and reserve of activity. The intermediation in real-estate transactions is an activity shared with notaries, while ‘syndic’ management of properties can also be carried out by other professionals such as lawyers.

There seem to be two pathways to obtain the professional qualification: (i) a three-year general bachelor’s degree of any kind; or (ii) a three-year special ‘entrepreneurial training’, which can be followed by attending evening classes twice a week. Both degrees still need to be complemented with a mandatory traineeship lasting a minimum of 200 days and a mandatory exam organised by the professional association.

Real-estate agents are required to: (i) be registered with the professional body; (ii) follow continuous professional development (for a minimum of 10 hours per year and up to 20 hours if the real estate agent wants to combine the activities of ‘*bemiddelaar*’ (real-estate broker) with ‘*syndicus*’ (property manager)); and (iii) be covered by professional indemnity insurance.

There are no restrictions on the use of corporate forms. However, setting up of a ‘full’ limited liability company is only possible in the form of a so-called professional real-estate company, where the company itself is allowed to exercise the profession. In such professional companies, 60% of the shares and voting rights need to be held by qualified professionals; the remaining shares need to be held by natural or legal persons that exercise a non-incompatible profession and that have been reported to the professional association. In addition, all managers, directors, members of the management committee and, more generally, independent agents acting in the name and on behalf of the legal entity, must be natural persons authorised to exercise the profession of real-estate agent. In a professional real-estate company of this sort, the joint exercise of professional activities is restricted by the requirement that the ‘goal’ of the company needs to be limited to ‘those activities that are part of the real-estate profession and are not incompatible with it’. It seems that the professional association assesses the ‘goal’ of these companies without any precise criteria, and refuses the setting-up of certain companies if the additional activities are considered to be incompatible with the real-estate profession. No such limitations on shareholding or joint exercise are present if real-estate agents choose an ‘ordinary’ real-estate company form. However, in such ‘ordinary’ real-estate companies, professionals cannot limit their liability to the same extent. More generally, real-estate agents are also subject to a general obligation to avoid conflicts of interest.

### Tourist guides

Because tourist guides were not regulated in Belgium at the time, no recommendations were formulated in 2017.

At the end of 2016, the Walloon Region in Belgium amended its Code on Tourism and introduced title protection for different types of tourist guides. The regulation came into force in July 2017. These titles are the ‘guide conférencier’, ‘guide régional’, ‘guide accompagnateur en randonnée’, ‘guide grand tourisme’, ‘guide local ou thématique’, ‘guide

nature-aventure’, and ‘guide découverte de la nature’. There are no reserved activities associated with these protected titles.

Education requirements differ according to the specific title sought. For instance, to use the title of ‘guide conférencier’, a Master title is required<sup>31</sup>, whereas to become a ‘guide régional’ only a two-year education programme of ‘guide touristique – guide régional’ is required. In addition, there is a minimum requirement of 3 years of prior professional experience, with a minimum of 5 ‘performances’ per year in the category and the language(s) for which recognition is sought<sup>32</sup>.

The territorial validity of these titles is limited to the Walloon region. No specific mutual-recognition regime has been laid down for tourist guides from the other regions, given that these regions do not regulate the profession.

Tourist guides seeking title protection need to prove their knowledge of the language(s) in which they want to guide. In addition, when working, they need to visibly wear a specific badge. Finally, according to the code of ethics, tourist guides who have chosen to join a professional association are not allowed to make personal advertising beyond the advertising provided by the group to which he/she belongs.

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<sup>31</sup> As well as a one-year ‘higher education accreditation’ that can be followed in parallel to the final Master-year.

<sup>32</sup> Only three services per year and per language are required for the category ‘local/thematic guide’



**BULGARIA**



## I. Overview

By 1 February 2021, Bulgaria had submitted information about 109 regulated professions. Among those professions, 6.4% concern business services and 10.1% the construction sector.

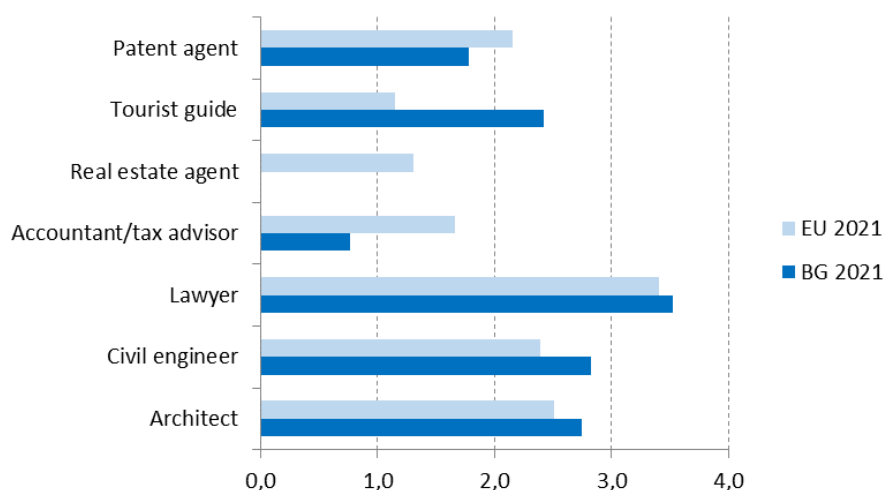
According to an EU-wide survey<sup>33</sup>, 21% of Bulgaria's labour force can be considered to be working in regulated professions. This corresponds exactly to the EU average (21%).

Bulgaria is regularly updating the **database of regulated professions**. As of 1 January 2021, 97% of the general information on regulated professions had been filled in. About 3% of the professions still need to be assessed as to the proportionality of their regulation.

## II. Situation on the analysed professions

Regulatory restrictiveness in Bulgaria is higher than the EU average for the professions of architect, civil engineer, lawyer and tourist guide. It is lower for the professions of accountant/tax adviser, patent agent and real estate agent (the latter not being regulated). Among the professions analysed, restrictiveness is the highest for lawyers.

**Chart 1: Regulatory restrictiveness, Bulgaria, 2021**



The following description of the situation for the different professions focuses on changes since the analysis published in 2017. However, to provide a complete and understandable picture, the description also restates part of the information described in 2017.

<sup>33</sup> Koumenta M. and Pagliero M., (2016), *Measuring Prevalence and Labour Market Impacts of Occupational Regulation in the EU*. See: <https://ec.europa.eu/docsroom/documents/20362>.

## Architects/engineers

In 2017, the Commission did not address any recommendations to Bulgaria for the professions of architect and engineer.

There have been no significant reforms regarding the regulation of either profession since 2017.

Both professions are covered by the same law and are regulated by way of reserve of activities and title protection.

For professional companies, only the use of the title 'design office' is protected. This title can be used subject to shareholding requirements (minimum 50% of the capital held by professionals), but professional activity is not reserved for companies holding such titles. Thus, the service can be provided by qualified professionals in a company without restriction as regards its legal form or shareholding requirements.

Under the Spatial Planning Act, the activities reserved for architects broadly fall into the following activity categories: (i) architectural design and planning, feasibility studies; (ii) examination of design and related documentation; (iii) preparation/submission/signing of technical control and compliance documentation; (iv) construction/cost/management, monitoring of construction/execution; (v) urban/territorial planning/design; and (vi) landscape architecture.

Architects share these activities with engineers and with other qualified persons with limited capacity (such as urban planners, landscape architects, etc.)

Under the Law on spatial planning, the activities reserved for engineers broadly fall into the following activity categories: (i) design and planning, feasibility studies; (ii) representation for obtaining permits (signature of designs); (iii) tender and contract administration; (iv) project management, including monitoring of execution and construction cost management; and (v) management of construction maintenance (including inspection).

Engineers share these activities with architects and with other qualified professionals with more limited capacity (such as urban planners, landscape architects, etc.).

The training requirements for full capacity to exercise either of the professions comprise 7 years in total and include a master's degree and a state exam, as well as 2 years of experience with a fully qualified professional. A second pathway requires a bachelor's degree and 4 years of relevant experience. There is a legal obligation for the professional chambers to provide continuous professional development courses to interested architects/engineers, but it is not compulsory for them to follow that training.

For both professions, membership in the relevant professional organisation is compulsory under the Law on the Chamber of Architects and Investment Design Engineers.

As regards incompatibility, there is a general conflict of interest rule for working on projects. Under the Law on the Chamber of Architects and Investment Design Engineers, the same person cannot participate in the construction process as both designer and constructor.

Professional liability insurance is mandatory under the Law on spatial planning.

Fees/tariffs that professionals and/or professional firms charge for their services are regulated by the profession itself, by way of binding minimum or fixed fees/tariffs for some activities.



Based on information available, there are no additional certification or attestation schemes for architects or engineers concerning access to specific professional activities that would be subject to additional qualification requirements in Bulgaria<sup>34</sup>.

#### Accountants/tax advisers

In 2017, the Commission did not address any recommendations to Bulgaria for the profession of accountant/tax adviser.

The profession is regulated in Bulgaria by way of reserved activities; the title ‘accountant’ as such does not exist.

Article 17 of the Law on accountancy reserves for professionals holding particular qualifications the activity of drawing up consolidated, annual and interim financial statements of enterprises (with the exception of consolidated statements of microenterprises). This activity is shared with auditors.

The Law on accountancy establishes 5 pathways to obtain the required qualification, with a total duration of 7 to 8 years depending on the pathway. The main pathway consists in a master’s degree in accounting and economics, and professional experience of 2 years in accounting, external or internal auditing and financial inspection or tax audits.

Additional authorisation requirements or restrictions to exercise the profession have not been identified.

#### Lawyers

In 2017, the Commission issued the following recommendations for the profession of lawyer in Bulgaria:

- re-assess the necessity of reserving to lawyers legal advice and representation of citizens before administrative authorities under the new draft law;
- (*recommendation to all Member States*) assess legal form and shareholding requirements, incompatibility rules and multidisciplinary restrictions, in particular taking into account the proportionality of these restrictions in relation to the core principles, such as the independence of the profession, and to the corresponding supervisory arrangements. In addition, consideration should be given to the cumulative effect of such requirements to the extent that their effects might be accentuated in the case of extensive reserves of activities (e.g. where legal advice is also part of the reserved activities).

There has been no reform or other initiative in Bulgaria the Commission is aware of that has taken into account or assessed its recommendations.

The legal profession in Bulgaria is regulated by way of reserves of activities and protected title.

The activities reserved for lawyers consist of representation of clients in court (shared with in house lawyers). In addition, lawyers may certify copies of documents or authenticate

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<sup>34</sup> e.g. where additional education or experience or an exam would be required to pursue specific/specialised activities. This may concern activities such as the performance of construction supervision, energy certification, energy audits, expertise activities, activities related to special buildings (such as nuclear power plants, historical heritage sites).

signatures (activity shared with notaries). Legal advice is not reserved for lawyers. A number of lawyers offer online consultations through their websites.

The scope of the activities reserved for lawyers concerning the registration of companies had been reduced prior to the 2017 reform recommendations. The activity is open to other professionals, such as accountants, but also to non-professionals. The registration of companies in the Commercial Register is supervised by the Registry Agency and is no longer done by the courts. As a consequence, the registration fees charged by other professionals such as accountants for the registration of companies have been significantly lowered.

There are ongoing discussions on a new draft law since 2015. The new law would introduce a wide range of activities exclusively reserved for lawyers. These would include giving oral and written consultations and statements on issues of law, preparation of complaints, and the drafting of notary acts and testaments. However, until now no decision has been taken by the legislator.

The level of qualification required is a master's degree in law, successful completion of a Bar exam and 2 years of relevant professional experience.

Candidates holding an educational and scientific degree of 'Doctor of laws', as well as individuals who have a legal service record of more than 5 years, may register with the Supreme Bar Council without passing an examination.

Professional liability insurance is mandatory. Only a limited number of legal forms are possible, whereas shareholding requirements provide for 100% capital ownership for lawyers.

Ordinance No 1 of 9 July 2004 of the Supreme Bar Council sets minimum binding fees for lawyers.

Lawyers are allowed to develop a website and have business cards for informative purposes but all forms of advertising are prohibited, as specified in the Code of Conduct for lawyers.

### Patent agents

In 2017, the Commission did not address any recommendations to Bulgaria for the profession of patent agent.

Several reforms have taken place since the beginning of 2017: an ordinance on patent agents entered into force on 9 September 2017 reforming the profession. The Law on patent and utility models was updated in 2019 and 2020, somewhat liberalising the exercise of the profession.

The profession of industrial property representative continues to be regulated in Bulgaria by way of reserved activities and protected title. However, since 2019/2020, the activity of filing patents is no longer exclusively reserved for industrial property representatives. Inventors can also file a patent before the Patent Office in person, unless they are not established in Bulgaria; in the latter case they need to act through a lawyer or an industrial property representative.

The total duration of the education required is 5 years (master's degree in law, technical disciplines or intellectual property). In addition, patent agents need to prove professional experience of 2 years and pass the specific state exam organised by the Patent Office.

Membership of a professional association is not required, but there is an obligation to enrol in the Register of Industrial Property Representatives. Incompatibility rules exclude

involvement in trade and in salaried activities, and make being a patent agent incompatible with the status of civil servant.

The profession can be exercised individually or in partnership with any other profession or trade and in any available company form.

#### Real estate agents

The profession is not regulated in Bulgaria.

#### Tourist guides

In 2017, the Commission made the following recommendations for the profession of tourist guide:

- (*recommendation to all regulating Member States*) consider the justification and proportionality of regulation of the profession.
- consider introducing a more precise definition of the reserved activities in view of the very wide or undefined scope of reserved activities

On 11 June 2019, the profession of tourist guide, which was regulated by way of title protection and reserves of activities, was reformed.

The scope of the reserved activities since the reform is only described negatively, i.e. by listing exclusions where the regulation does not apply. The new Ordinance states that it does not apply to persons carrying out tourist guide activities as employees of and in museums, art galleries, protected natural sites, archaeological sites and excavations. Nor does it apply to mountain guides and therefore to activities in caves, diving, hunting and fishing activities, bodies for water sports, mountain and river attractions, hunting and birdwatching. It is understood from this that outside these exceptions, the activities reserved for tourist guides are broad and cover any means of accompanying and guiding tourists and providing explanations. Service providers from other Member States are only allowed to provide services for trips starting and ending outside Bulgaria, as long as the activity is provided inside the vehicles they travel in.

Although there are several routes to obtain qualification as tourist guide, the educational requirement comprises in general 5 years (master's degree) and passing a specific state exam organised by the Ministry of Tourism. Since 2019, it is compulsory to take practical training of at least 4 weeks with a tourist guide registered in the Register for Licensed Tourist Guides or with a registered tour operator or with an organisation working in the field of tourism. There is still a general obligation to follow continuous professional development courses, but there are no specific requirements as regards the content, duration and penalties for non-compliance.

Registration in a state register remains compulsory, but membership in a professional association is still voluntary.



CROATIA



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## I. Overview

By 2 March 2021, Croatia had submitted information about 263 regulated professions. This is a very small increase compared with previously submitted figures. While a couple of professions have been deregulated (e.g. tourist guides) Croatia has also added new entries to the database on regulated professions, including professions that have been regulated as required by EU law. Of those professions, 11.4% concern business services, 7.6% the construction sector and 0.4% the real estate sector.

According to an EU-wide survey<sup>35</sup>, 31% of Croatia's labour force can be considered to be working in regulated professions. This is significantly higher than the EU average (21%).

Croatia is now regularly updating the **database on regulated professions**. This database provides citizens and administrative authorities from other Member States with valuable information about the regulation of professions in a given Member State.

The information on regulated professions in Croatia is currently still incomplete for a number of professions, partly because recent reforms have not yet been reported in the database.

In its **national action plan from 2016**, Croatia announced a series of measures to be carried out between 2016 and 2018. Though some of these seem to have been implemented, the regulation on tourist guides was not relaxed as had been planned.

Since 2016, annual **country-specific recommendations** on professional services have been addressed to Croatia, in particular to remove regulatory restrictions hampering access to and the practise of regulated professions, and increase competition in professional services.

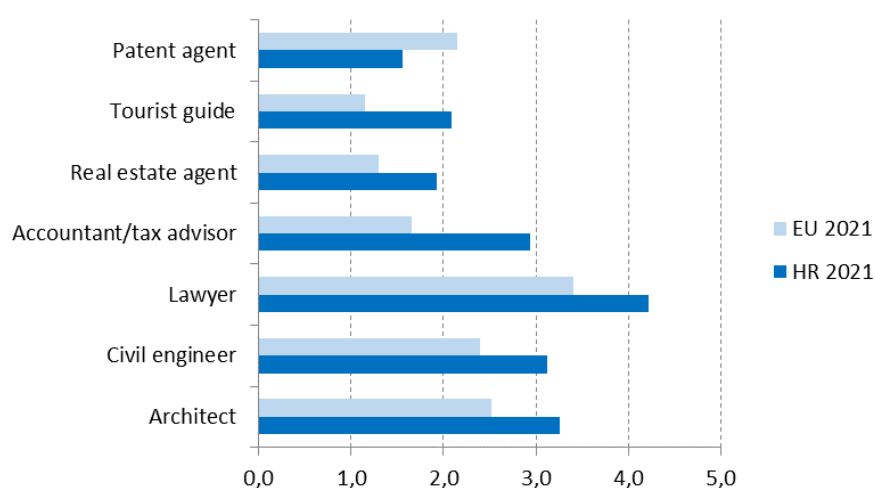
## II. Situation on the analysed professions

Regulatory restrictiveness in Croatia is higher than the EU average for all the professions analysed, except for patent agents, and is highest for lawyers.

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<sup>35</sup> Koumenta M. and M. Pagliero (2016), *Measuring Prevalence and Labour Market Impacts of Occupational Regulation in the EU*. See: <https://ec.europa.eu/docsroom/documents/20362>.

**Chart 1: Regulatory restrictiveness, Croatia, 2021.**



Starting from a comparatively very restrictive regulatory environment for professional services, Croatia has over the years embarked upon several reform efforts, with mixed success.

Most recently, Croatia requested the World Bank together with the European Commission to analyse the restrictions in place for regulated professions and to identify possibilities for reform, as part of the 2019-2024 World Bank Group (WBG) Country Partnership Framework (CPF) for the Republic of Croatia. After a stocktaking exercise, 24 high-impact professions were selected for in-depth analysis, including architects, civil engineers, tax advisers, lawyers, and tourist guides. The report identified 42 unnecessary restrictions that it considered most harmful to competition and suggested 45 reform measures to address them in the short to medium term. In the long term, the report strongly recommended a systematic review of regulations<sup>36</sup>.

Following this report, Croatia committed to adopting and implementing two action plans on services market liberalisation. The first action plan, adopted in late 2019, announces 20 reform measures for seven professions (lawyers, travel agency managers, tourist guides, architects, pharmacists, physical therapists and energy certifiers). The level of ambition of the proposed reforms is significantly below what was recommended in the World Bank report. While the measures were expected to be implemented by the end of 2020, several of them are still pending. The second action plan was adopted in late April 2021 and announces reforms for six professions (lawyers, notaries, tax advisors, auditors, surveyors and pilots).

As will be discussed under the headings on specific professions below, since 2017 Croatia has adopted some, mostly small, reforms for architects and civil engineers (removal of one exclusive right for architects, abolishment of mandatory Chamber membership for construction site managers and removal of a residency requirement for architects), tax advisers (residency requirement abolished, legal form opened up, no licensing of accountants), lawyers (amendment to advertising restrictions). For tourist guides, the amendments actually created more restrictions by extending the obligation to take county-specific exams to cross-border service providers.

<sup>36</sup> World Bank Group. 2020. *Licence to Compete: Reforming the Regulation of Professions in Croatia*. World Bank, Washington, DC. © World Bank. <https://openknowledge.worldbank.org/handle/10986/33963> Licence: CC BY 3.0 IGO.

Based on an in-depth analysis of the current situation, the level of restrictiveness in Croatia is found to be higher than the EU weighted average for all professions except patent agents. Of the professions analysed, the level of restrictiveness is still found to be highest for lawyers.

Based on the restrictiveness indicator, which was established in 2017, and on its detailed analysis of the legislation, the Commission made specific recommendations for six of the seven regulated professions analysed.

The following description of the situation for the different professions focuses on changes since the analysis published in 2017. However, to provide a complete and understandable picture, the description also restates part of the information described in 2017.

### Architects/Civil engineers

In 2017, the Commission made the following recommendation for the architectural profession:

- reconsider the wide scope of reserved activities.

The Commission also recommended that all Member States with a fragmented system for the architectural profession or multiple certification requirements should reflect on how their system affects the free movement of professionals and whether the potential obstacles are justified.

The Commission did not make any recommendation to Croatia on civil engineers.

Since 2017, Croatia has undertaken some reforms of the architecture and engineering professions, and has announced additional reforms as a follow-up to the World Bank review that was finalised in 2020. Concretely, the activity of interior design is no longer reserved for architects and obligatory chamber membership for site managers has been abolished. In addition, the total ban on advertising for civil engineers has been removed. Finally, the residency requirement for architects was removed.

The construction process in Croatia is characterised by the obligatory involvement of a wide range of professions, each with their own exclusive rights. These include the 'core' professions of certified architects and certified civil engineers, but also mechanical engineers, electrical engineers, geodetic engineers as well as certified architect-urban planners.

All these professions are regulated by way of reserved activities and title protection. This analysis focuses on certified architects and civil engineers but will refer to these parallel professions to the extent relevant for assessing regulatory restrictiveness.

### *Reserved activities and qualification requirements*

Both certified architects and certified civil engineers are covered by the same laws.

Both professions require a graduate degree in architecture or engineering of 5 years, a minimum of 2 years professional experience and passing a professional exam. This seems to be the only pathway available to enter those professions. Fully qualified architects from other Member States who benefit from automatic recognition in line with Directive 2005/36/EC can carry the protected titles, be entered into the relevant professional registers and exercise all reserved activities/roles (including those for which additional requirements are imposed) without the need to prove such professional experience and/or to pass the state exam. The legislation reserves a large number of activities for both professions in the areas of design,

checking of permit applications and construction supervision, most of which do not appear to be shared even between engineers and architects<sup>37</sup>. Indeed, although both architects and civil engineers have a role in, for example, design and planning, their responsibilities are limited to their respective domains, with only small overlaps.

Moreover, engineering activities in construction are further subdivided between civil, mechanical, and electrical engineers, each with exclusive rights in their area of responsibility (e.g. electrical installations for electrical engineers) with only limited overlaps (e.g. water and sewage installations for buildings can be designed by certified architects, certified civil engineers and certified mechanical engineers). Although for simple family houses, the involvement of an architect or civil engineer will suffice, most construction projects will require contributions from professionals from at least three of these fields<sup>38</sup>.

This division of tasks in the construction process is made even more complex by the presence of specific certification schemes for performing the role of design auditor, project manager, site manager or works manager.

**Design auditors** are authorised to check and certify the stability of a particular construction. Only civil engineers with 10 years of work experience in a relevant field can be entered into the registry for design auditors. For large public construction projects<sup>39</sup>, Croatian law requires that a **project manager** be appointed. This should be a professional with a graduate degree in architecture, urban planning, civil engineering, electrical engineering or mechanical engineering and with at least 8 years experience as well as an international project management certificate. **Site managers** can manage other, less complex construction projects. Depending on the level and substance of their degree (graduate/master's or bachelor's in fields of architecture or engineering), professionals will need 3-5 years of professional experience and to have passed a professional exam. **Works managers** are authorised to manage construction works in their area of specialisation (architecture, civil/electrical/mechanical engineering). Depending on whether they hold a master's degree in one of those fields or only a bachelor's degree in engineering, they are required to have either 2 or 3 years professional experience in those respective professions and to have passed the relevant professional exam.

Finally, certified architect-urban planners have the exclusive right to develop draft spatial plans, spatial status reports and engage in landscape architecture.

Based on the information available, other than those mentioned above, there are no additional certification or attestation schemes for architects and civil engineers to gain access to specific professional activities that would be subject to additional qualification requirements in Croatia.

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<sup>37</sup> The activities reserved for **architects** broadly fall into the following categories: architectural design and planning, feasibility studies; examination of design and related documentation; preparation/ submission/ signing of technical control and compliance; construction cost management, monitoring of construction /execution; energy certification and energy audit.

The activities reserved for **engineers** broadly fall into the following categories: design and planning, feasibility studies; representation for obtaining permits (signature of designs); project management including monitoring of execution and construction cost management; energy certification and energy audit.

<sup>38</sup> World Bank, Volume I, 54.

<sup>39</sup> Buildings worth more than HRK 50 million (around USD 8 million) and infrastructure worth more than HRK 10 million (around USD 1.5 million).

### *Mandatory registration and chamber membership*

Certified architects and civil engineers, need to register and become members of the professional chamber of architects or civil engineers. Mechanical engineers, electrical engineers and geodetic engineers have their own chambers. Certified architect-urban planners need to become members of the architects' chamber.

If professionals want to get the licence to perform the tasks of design auditors they must also apply to be entered into the relevant specialist registry in their respective chamber. For site managers and works managers mandatory membership was abolished at the end of 2019.

### *Other requirements*

Both certified architects and civil engineers are obliged to follow a minimum of 10 hours of continuous professional development per year.

There are no corporate form requirements and both professions can establish themselves as sole practitioners, in a joint practice office or as a legal person registered for this activity (including limited liability companies).

Regarding incompatibilities between certain activities and the joint exercise of professions, besides a general conflict of interest rule, the only specific limitation is that a company/individual professional who undertakes the 'project management' cannot be involved in the actual execution and supervision of that same project. In addition, indemnity insurance is compulsory for both professions, and a mutual recognition clause on insurances from other EEA countries is in place. For architects, the chamber has recently abolished a residency requirement.

Both for architects and civil engineers, the chambers provide non-binding recommended prices by offering guidance on the necessary man-hours and recommended hourly rates for specific tasks.

### Accountants/tax advisors

In 2017, the Commission made the following recommendations for accountants/tax advisors:

- re-assess the proportionality of the extended scope of the activities, reserved to tax advisors as part of the upcoming reform, in particular as regards the necessity to reserve activities, such as drawing up tax returns;
- consider the possibility to share the activity of tax counselling with other professionals in the sector, in line with Case C-451/03;
- remove the restrictions requiring residence on the national territory;
- take fully into consideration professional qualifications obtained abroad in line with the Professional Qualifications Directive.

Since then Croatia has amended its Act on tax advisory services by removing the residency requirement and abolishing the legal form restriction that prevented tax advisors from establishing a limited liability company. It also refrained from extending the scope of reserved activities as was initially planned under that reform.

While the law provided for the licensing of accountants by the beginning of 2019, Croatia abandoned this plan and chose to continue not to regulate accountants. It does however regulate tax advisors, by way of reserves of activities and a protected title. Activities reserved



for tax advisors include providing tax advice<sup>40</sup> (partially shared with auditors), representing clients before administrative bodies (shared with lawyers), acting as court-appointed experts and providing valuation services.

There are two pathways to obtaining the required qualifications. The first is a master's diploma in economy or law, minimum 5 years professional experience and passing a state exam. The second is a 4-5 year specialist university graduate degree related to taxes, minimum 7 years professional experience and passing a state exam. The exam is particularly expensive, at around EUR 950. Chamber membership is compulsory, and subject to an annual fee. Linked to this chamber membership is a continuous professional development obligation of minimum 120 hours/3 years. While there are no numerical or territorial restrictions for tax advisor licences, the stringent access requirements seem to act as a significant deterrent as there are currently only about 70 licensed tax advisers for the whole of Croatia. It seems that most providers of tax advice do so without applying for a licence<sup>41</sup>, which suggests either that the exclusive rights are interpreted quite leniently or that enforcement is very limited.

Following the reform of the Act on tax advisory services in early 2017, tax advisors are now also allowed to set up a limited liability company to provide their services. The majority of the shares and voting rights in such companies need to be held by licensed tax advisors, and the majority of the management board should be tax advisors. Since this reform, tax advisors can also work for a multidisciplinary company that also provides services other than tax advice, as long as the shareholding, voting rights and management board requirements are fulfilled. Furthermore, under the amended act tax advisors are no longer prohibited from engaging in other types of professional activity.

The indemnity insurance is compulsory for professionals, and any evidence of insurance from other EEA countries is accepted. Other authorisation requirements include a certain level of knowledge of the Croatian language and on tax laws.

## Lawyers

In 2017, the Commission made the following recommendations for lawyers:

- review the provision according to which a lawyer who is not practising for more than 6 months would be deprived of the right to exercise the profession
- clarify the scope of the reserves so as to facilitate the provision of legal consultancy services by lawyers or other service providers, in particular for online services.

The Commission also addressed the following recommendation to all Member States:

- assess legal form and shareholding requirements, incompatibility rules and multidisciplinary restrictions, in particular taking into account the proportionality of these restrictions in relation to the core principles, such as the independence of the profession and to the corresponding supervisory arrangements. In addition, consideration should be provided to the cumulative effect of such requirements to the extent that their effects might be accentuated in case of extensive reserves of activities (e.g. where legal advice is also part of the reserved activities).

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<sup>40</sup> Note that the verification of tax returns and continuous supervision of tax and accounting records is exclusively reserved for tax advisers.

<sup>41</sup> World Bank Recommendations Volume II, p. 56.

Since 2017, Croatia has made only minor changes to its legal provisions and ethical rules governing lawyers. There was an amendment to the Ordinance on commercial communications but it did not create a genuine possibility for lawyers to advertise their services. However, following an infringement proceeding, Croatia is in the process of adopting a reform on access to and the practise of the law profession and law firms.

Lawyers are regulated by way of reserved activities and title protection. The three main reserved activities are giving legal advice (shared with law professors and to a certain extent tax advisors and patent agents); representing clients in front of courts (exclusive); and drafting various legal documents or actions. Other shared reserved activities are representation before administrative bodies, insolvency practice and mediation.

The education requirement is a five-year master's degree in law, a three-year traineeship and passing a state examination. It is then compulsory to register with the Croatian Bar Association, which requires an enrolment fee and subsequent monthly membership fees. Lawyers need to follow the Code of Ethics, which includes an obligation on continuous professional development (to renew, expand and perfect their legal and general knowledge) but with no sanction or control mechanism. The Croatian law which states that if a lawyer does not practise law for more than 6 months without a good reason, they may lose their practising rights, is in the process of being repealed.

Lawyers can only set up individual practices, joint legal offices or law firms (these can be public societies without limited liability, or limited liability companies). They cannot operate as any other legal person. Shares have to be held by attorneys only. Lawyers that have an individual practices can only establish one office in the territory of Croatia. There is a complete ban on joint exercise with non-lawyers. Furthermore, a lawyer cannot perform any activity which is incompatible with maintaining their good reputation and/or independence, or enter into any employment other than in a law firm. However, there are restrictions on EU lawyers' abilities to set up law firms in Croatia. Possibilities for lawyers and law firms to set up offices in Croatia are part of the upcoming reform.

Lawyers must obtain professional indemnity insurance, and Croatian law also recognises insurances obtained in other Member States.

Other authorisation requirements include proof of medical fitness; a self-signed statement that the professional has the necessary equipment and office space; taking an oath, buying an 'office seal' (special stamp), active knowledge of the Croatian language, being 'worthy to practise law', etc.

Regarding remuneration, all lawyer's services are subject to binding minimum and maximum tariffs. Although the Ordinance on commercial communications was amended, the prohibition on any 'self-praising' advertising means that lawyers are in reality still completely prevented from advertising. However, with the ongoing reform, the possibility to derogate by written agreement from binding tariffs should be introduced, as well as amendments allowing communication of a commercial nature by lawyers.

### Patent agents

In 2017, the Commission gave Croatia the following recommendation on patent agents:

- re-assess the condition of prior professional experience as a requirement to access the profession of patent/trademark agent.

Apart from a reduction in the fee for the professional exam, no reforms of the patent agent profession have taken place since 2017.

The profession is still regulated by way of protected title and reserved activities (representation before the Patent Office or other administrative authorities), although this activity is shared with lawyers.

Patent agents need to have completed a master's degree in technical or natural sciences, and to have passed a state exam. There are two additional pathways to enter the profession: a master's degree in a field other than technical or natural sciences, at least 5 years of work experience in industrial property, and passing the state exam; or being a lawyer enrolled with the Bar and passing the patent state exam. Trademark representatives need to have completed a master's degree in technical or natural sciences, and to have passed a state exam, or be a lawyer enrolled with the Bar and having passed the patent state exam.

The agents need to be members of the Chamber, pay a small annual fee and comply with the Code of Ethics, which includes the rule that a representative may not accept jobs that are incompatible with their vocation and with maintaining their good reputation and independence. The Code also imposes certain requirements on the content of patent agents' advertisements.

### Real estate agents

In 2017, the Commission gave the following recommendation on real estate agents:

- consider the possibility of alternative pathways to access the profession.

Croatia has not introduced any reforms of the regulation governing real estate agents since 2017.

Real estate agents benefit from reserved activities. They have the exclusive right to establish/facilitate contacts and negotiations, obtain information on properties, show properties and arrange the signing of lease agreements and the transfer of rights.

The only qualification requirement for real estate agents, apart from a high school diploma, is to pass a professional exam. There is a state register of real estate agents who have passed this exam. Real estate agents are also obliged to take out professional liability insurance.

### Tourist guides

In 2017, the Commission gave Croatia the following recommendations on tourist guides:

- clarify the legal situation of tourist guides, which currently differs between regions, limiting access and exercise for established service providers as well as for temporary services provision;
- review the list of sites reserved to holders of specific qualifications and consider the proportionality of each reservation.

It also addressed the following recommendation to all Member States that regulate the tourist guide profession:

- consider the justification and proportionality of regulation of the profession.

Croatia adopted a new Act on tourism services in late 2017. On tourist guides, the amendments did not address any of the concerns raised in the Commission's recommendations, and seemed to have even worsened the situation. The new Act did however remove the requirement to prove 'business ability'. In the meantime, Croatia has announced further amendments to this act and related ordinances<sup>42</sup>, which should replace the 21 county-specific professional exams with one centralised exam, reform the prior training and reduce the number of sites that on the 'list of protected sites'.

Croatia still regulates the profession by means of title protection and reserved activities. It exclusively reserves some activities (accompanying and guiding tourists on cruises and sightseeing tours and interpreting the cultural and natural heritage of a specific area) to licensed tourist guides. The law also specifically provides that expert guide services at a museum, gallery, protected natural area, archaeological site etc. are not to be considered as tourist guide activities.

Candidates need to follow a vocational post-secondary training of 130 hours at a higher education institution before taking the mandatory state exam(s). The exam consists of a general part, that is the same for all the candidates and a special part on the protected tourist sites ('localities') in the specific region/county where the tourist guide wants to provide their services. This means that a tourist guide that wants to cover protected sites across the whole of Croatia would be obliged to pass up to 21 separate county-specific examinations, most of which require a fee. Given that the current list of protected sites still seems to cover most of Croatia's main tourist attractions, having to take a specific exam per county amounts to a serious territorial restriction.

Rather than abolishing these territorial restrictions, the 2017 Act on tourism services extended the county-specific exam requirement for protected sites to tourist guides from other Member States who seek to provide their services on a temporary or occasional basis.

As mentioned, Croatia has announced that it will streamline the 21 county-specific professional exams into one centralised exam which will also include the general part. The number of protected sites that require this specific part of the exam, will also be reduced by 70%.

To be allowed to work as a tourist guide, professionals will also need to have adequate knowledge of the Croatian language as well as any other languages in which they seek to provide their services.

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<sup>42</sup> These are part of the first action plan to liberalise the services market which followed on from the World Bank recommendations.

## I. Overview

By 1 March 2021, Cyprus had submitted information about 114 regulated professions. Among those professions, 15.8% concern business services, 4.4% the construction sector and 1.8% the real estate sector.

According to an EU-wide survey<sup>43</sup>, 19% of Cyprus' labour force can be considered to be working in regulated professions. This is lower than the EU average (21%).

Cyprus is not very actively updating the **database on regulated professions**. The database provides citizens and administrative authorities from other Member States with valuable information about the regulation of professions in a given Member State. To date, a considerable part of the general information about professions in Cyprus, as well as proportionality assessments, are still missing.

Cyprus was not active in the **mutual evaluation exercise**. On the other hand, Cyprus has been subjected to the economic adjustment programme in 2013, and a review and opening of their regulated professions has been on the agenda for a number of years, with varying success.

Cyprus has not submitted any **national action plan**.

The 2020 country report for Cyprus still indicated that for certain regulated professions, Cyprus has more restrictive regulation than the EU (OECD) average. This is the case for lawyers, architects, civil engineers and real estate agents, as demonstrated by the European Commission's restrictiveness indicator (European Commission, 2017) and as confirmed more recently by the OECD Product Market Regulation indicator (2018). Some of the existing licensing requirements, residency requirements and shareholding requirements may disproportionately restrict market competition and the mobility of professionals, distorting efficient resource allocation. No specific measures to address these issues have been adopted or proposed so far. Focused reviews and assessment of the proportionality of the identified restrictions on professional services would improve the growth opportunities and economic performance of these sectors<sup>44</sup>.

## II. Situation on the analysed professions

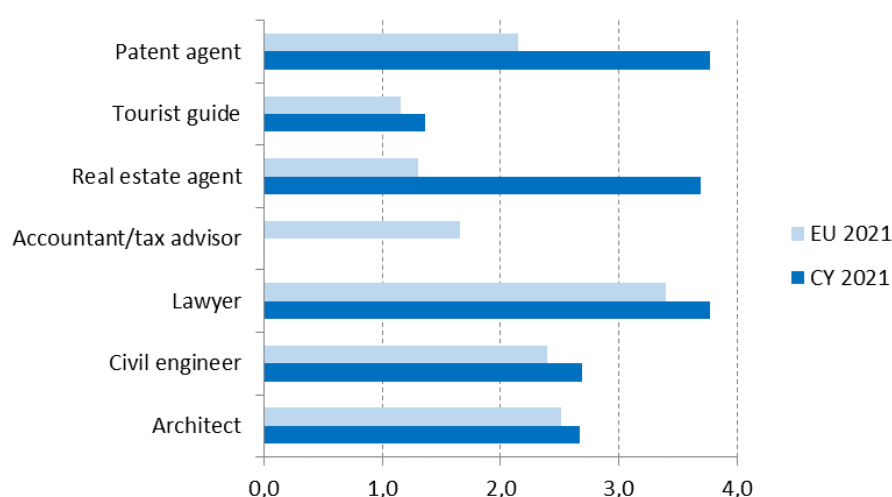
Restrictiveness in Cyprus is higher than the EU average for all of the professions under assessment, except accountant/tax adviser. Of the professions analysed, restrictiveness is the highest for lawyers.

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<sup>43</sup> Koumenta M. and Pagliero M., (2016), *Measuring Prevalence and Labour Market Impacts of Occupational Regulation in the EU*. See: <https://ec.europa.eu/docsroom/documents/20362>.

<sup>44</sup> Commission staff working document, Country Report Cyprus 2020, accompanying the document Communication – 2020 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011 {COM(2020) 150 final}, SWD(2020) 512 final, p. 57.

Chart 1: Regulatory restrictiveness, Cyprus, 2021



The following description of the situation for the different professions focuses on changes since the analysis published in 2017. However, to provide a complete and understandable picture, the description also restates part of the information described in 2017.

### Architects

In 2017, the Commission made the following recommendations for the profession of architect:

- review the requirement that 100% of the shares of a company need to be held by professionals<sup>45</sup>;
- consider the impact of the shareholding and company form restrictions in place in addition to other requirements.

Following an infringement procedure, Cyprus changed the shareholding requirements, thus addressing the first recommendation.

Cyprus regulates the profession of architect by way of reserved activities and protection of title. The reserve of activities for architects, and their nature as exclusive or shared activities, derive from a number of legal provisions which include those dealing with construction and similar requirements. A number of activities are shared with other engineers, while architects have an exclusive right to prepare, submit and sign technical control and compliance documentation.

Following a recent amendment to the Law on the Scientific and Technical Chamber of Cyprus, access to the profession of architect is open to people with a degree or diploma in architecture obtained following the training specified in the annexes to the Law or obtained after 5 years of studies at university (or equivalent) or 4 years of university (or equivalent) studies. In addition, a post-diploma professional traineeship in architecture of at least 1 year is required (2 years in the case of 4-year studies). Registration with the Scientific and Technical Chamber of Cyprus (ETEK, or ‘the Chamber’) is also mandatory; an annual licence is issued.

<sup>45</sup> This recommendation was made in follow-up to an infringement procedure opened by the Commission (for further information, see press releases IP-16-3646 and IP-17-4772).

Architects may form general and limited liability partnerships, and private limited liability companies, incorporated under Cypriot law. Public limited liability companies and other company forms are not allowed. While shareholdings in these companies and capital were previously reserved for ETEK members, an amendment introduced in 2017 following the infringement proceedings stipulates that at least 51% of the partners/shareholders be ETEK members, that at least 51% of the capital belongs to ETEK members and that the members hold an annual licence to practise the profession.

In the case of a partnership or company whose partners/shareholders are members of more than one category of engineering science (this includes architects), registration is accepted provided that the partners/shareholders hold a certain percentage per category of activities (e.g. in the case of registration in two categories, they hold at least 30% per category). In any case, at least 51% of all partners/shareholders must be ETEK members and at least 51 % of the capital belong to members of ETEK. In addition, they must hold an annual licence to exercise the profession. The Commission understands that the remaining shares can be held by any other natural or legal person, including financial investors.

The law allows for natural and legal persons already legally established in another Member State to become shareholders in Cypriot companies when they can prove that they are legally established in their Member State of origin, and without any need to register with ETEK. Legal persons already established in another Member State may also establish themselves in Cyprus by setting up a branch or an agency, with no shareholding requirements being imposed by Cypriot law.

Professional liability insurance is mandatory for companies.

For energy audits and the energy performance of buildings certification, there is an additional certification or attestation scheme. Architects should be registered with the ETEK and have a valid licence. Professional experience of at least 3 years in the field is required. In addition, architects should prove that they have followed a specific training programme and passed the examination.

According to the Law, the Chamber regulates remuneration for professional advice, services and work provided or performed by members of the Chamber. According to the Chamber's Code of Conduct, remuneration for the provision of services is mandatory (except in the case of specific authorisation by the Chamber) and minimum fees should be fixed by decision of the Chamber. However, to date, there has been no decision regulating fees.

In general, limited advertising is possible as long as it is respectful of the profession; however, the Code of Conduct of ETEK contains some restrictions; for example, it prohibits comparison with other architects.

### Civil engineers

In 2017, the Commission made the following recommendations for the profession of civil engineer:

- review the requirement that 100% of the shares of a company need to be held by professionals<sup>46</sup>;
- consider the impact of the shareholding and company form restrictions in place in addition to other requirements.

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<sup>46</sup> This recommendation was made in follow-up to an infringement procedure opened by the Commission (for further information, see press releases IP-16-3646 and IP-17-4772).

Following an infringement procedure, Cyprus changed the shareholding requirements and therefore addressed the first recommendation.

Cyprus regulates the profession of civil engineer by way of a reserve of activities and protection of title. The reserves of activities for civil engineers and their nature as exclusive or shared activities derive from a number of legal provisions which include those dealing with construction and similar requirements. A number of activities are shared with other types of engineer and with architects. Management of construction maintenance (including inspection) is the exclusive competence of a licensed civil engineer.

Access to the profession is open to persons holding (a) a university diploma (or equivalent) in the field of civil engineering, which should allow the holder to exercise the profession in the country delivering the diploma, and after (b) completion of a 1-year post-diploma practical training course. Registration with ETEK is also mandatory. Engineers may form general and limited liability partnerships, and private limited liability companies, incorporated under Cypriot law. Public limited liability companies and other company forms are not allowed. While shareholding of these companies and capital was previously reserved for members of ETEK, an amendment introduced in 2017 as a follow-up to the infringement proceedings stipulates that at least 51% of the partners/shareholders be ETEK members, that at least 51% of the capital belongs to ETEK members and that the members hold an annual licence to practise the profession. The Commission understands that the remaining shares can be held by any other natural or legal person, including financial investors.

In the case of a partnership or company whose shareholders and directors are members of more than one category of engineering science, registration is accepted provided that the shareholders and directors hold a certain percentage per category of activities (e.g. in the case of registration in two categories, they hold at least 30% per category). In any case, at least 51% of all shareholders should be members – holders of the annual licence to practise – and the shares they hold should represent at least 51% of the capital.

The law allows for natural and legal persons already legally established in another Member State to become shareholders in Cypriot companies when they can prove that they are legally established in their Member State of origin, and without any obligation to register with ETEK. Legal persons already established in another Member State may also establish themselves in Cyprus by setting up a branch or an agency, with no shareholding requirements imposed by Cypriot law.

Professional liability insurance is mandatory for companies.

For energy audits and the energy performance of buildings certification, there is an additional certification or attestation scheme. Engineers should be registered with ETEK and have a valid licence. Professional experience of at least 3 years in the field is required. In addition, engineers should prove that they have followed a specific training programme and passed the examination.

The Law states that the Chamber regulates remuneration for professional advice, services and work provided or performed by members of the Chamber. According to the Chamber's Code of Conduct, remuneration for the provision of services is mandatory (except in the case of specific authorisation by the Chamber) and minimum fees should be fixed by decision of the Chamber. However, to date, there has been no decision regulating fees in practice.

In general, limited advertising is possible as long as it is respectful of the profession; however, the Code of Conduct of ETEK contains some restrictions; for example, it prohibits comparative advertising.



### Accountants/tax advisers

In 2017, the Commission did not address any recommendations to Cyprus for the profession of accountant/tax adviser.

Cyprus regulates the profession of registered auditor. In contrast, the profession of accountant is not regulated.

Membership of Accountants with ICPAC (the Institute of Certified Public Accountants of Cyprus) is not obligatory to exercise the profession of accountant (as opposed to registered auditors). ICPAC's awarding of the title 'certified public accountant' to its members has no legal consequences.

### Lawyers

In 2017, the Commission made the following recommendations for the profession of lawyer:

- review the rule on residency requirements for lawyers to the extent applicable to EU nationals seeking access to the profession in Cyprus;
- clarify the scope of the reserves so as to facilitate the provision of legal consultancy services by lawyers or other service providers, in particular for online services.

In addition, the Commission addressed the following recommendation to all Member States:

- assess legal form and shareholding requirements, incompatibility rules and multidisciplinary restrictions, in particular taking into account the proportionality of these restrictions in relation to the core principles, such as the independence of the profession and to the corresponding supervisory arrangements. In addition, consideration should be given to the cumulative effect of such requirements to the extent that their effects might be accentuated in the case of extensive reserves of activities (e.g. where legal advice is also part of the reserved activities).

In 2017, Cyprus introduced an amendment to comply with the first recommendation. Despite amendments introduced by a law in 2020, which among other things changed the education requirements, the two other recommendations were not addressed.

The legal profession is regulated by way of protected title and a number of reserves of activities, which are exclusive. These are: (i) representing clients in court and before administrative authorities (including tax authorities); (ii) provision of legal advice; (iii) drawing up legal documents such as contracts, real estate transactions and wills; and (iv) preparing statements of legal opinions. A 3-year law diploma at university level is required, followed by a post-diploma professional traineeship of 12 months supervised by a lawyer having at least 5 years professional experience. A state exam needs to be passed before appointment.

Lawyers have to register with the Bar Association to obtain authorisation to practise, and they also have to take an oath.

There is also a 'habitual residence' requirement, established in law. According to an amendment to the Law in 2017, this condition does not apply to lawyers practising in another Member State under the Cypriot professional title. Similarly, the habitual residence requirement does not apply to EU lawyers practising in Cyprus under their home country title.

Continuous professional development is mandatory. Lawyers have to attend certified and non-certified seminars or programmes as a prerequisite for renewal of their licence. There is a specific committee which determines, among other things, the minimum requirement of points/hours per year. In 2021, lawyers will have to attend 12 seminars (4 certified and 8 non-certified), including the carry-over of the 2020 requirements due to COVID-19.

Lawyers can either work independently, as sole practitioners, in a partnership with other lawyers or in law firms. Law firms may choose between a number of legal forms, namely partnerships, limited partnerships and private limited companies. All partners or shareholders of law firms have to be lawyers and any transfer of shares in a limited company needs to be communicated and approved by the Bar. Partnerships and limited partnerships of lawyers may be shareholders in a law firm which has the form of a private limited company.

Cypriot law contains an obligation for lawyers to have professional liability insurance, the minimum level and conditions of which are set by decision of the Bar.

The Code of Conduct lays down some restrictions on advertising, mainly a prohibition on 'client hunting' and on the payment of commission to any person bringing in new clients.

There are non-binding recommended fees.

### Patent agents

In 2017, the Commission made the following recommendations for the activities linked to patent agents:

- assess the proportionality of measures reserving the activities related to industrial property solely to lawyers.

The profession of patent agent is not regulated in Cyprus. However, the Law on lawyers reserves the submission of patents and trademarks for lawyers, who also have the right to provide legal advice, including on issues relating to patents and trademark law. In that respect, the conditions for accessing and exercising activities corresponding to those of a patent agent are those that apply to lawyers. The assessment of the regulatory regime applicable to patent agents should therefore be the one applicable to lawyers.

### Real estate agents

In 2017, the Commission made the following recommendations for the profession of real estate agent:

- take into consideration the possibility of opening to other professionals the activities currently exclusively reserved for estate agents;
- evaluate to what extent the duration of mandatory qualification requirements is indispensable in view of the tasks pursued by estate agents and the objectives of regulation;
- consider the possibility of alternative pathways to access the profession.

Despite these recommendations, Cyprus has not initiated any reform. On the contrary, an administrative circular of March 2020 introduced new restrictions (see below).

The profession of real estate agent is a regulated profession. A licence is required and regulation takes the form of a protection of title and of reserved activities. The reserved

activities are: the provision of commission-based services for the sale/rent of immovable property, guided tours of properties, promotion or advertising under the title of real estate agent. The illicit exercise of a real estate agent's activities is an offence punishable by imprisonment or a fine. In essence, while the involvement of a real estate agent is not necessary for the conclusion of property transactions, if a professional is involved in a real estate transaction, that person has to be a licensed real estate agent. In addition, all contracts for the provision of real estate agency services entered into by non-licensed agents are void. These specific activities of real estate agents do not appear to be shared with other professions.

Obtaining a licence is dependent upon specific qualifications and training amounting to a minimum of 4 years. Training needs to be of post-secondary level and cover a period of at least 3 years at a university or equivalent level, and should be relevant to the profession; however, a master's degree of at least 1 year in such subjects would also suffice. In both cases, subsequent professional training of 12 months is also required and takes the form of work as an assistant real estate agent.

Legal persons can also offer real estate services, but they need to be licensed. The law provides that such legal persons may take the form of general partnerships, limited partnerships and limited liability companies. Public limited companies are not included in the list. A circular of March 2020 issued by the Council of Real Estate Agents and interpreting the law states that any natural person linked to a real estate agency must be a registered real estate agent. According to this circular, the objective of the legislature is to prevent real estate agents from exercising the profession unless they are duly qualified. The purpose is to protect both property buyers and sellers.

The Council of Real Estate Agents imposes maximum fees for the activities of real estate agents.

### Tourist guides

In 2017, the Commission made the following recommendations for the profession of tourist guide:

- consider the justification and proportionality of regulation of the profession.

However, Cyprus has not initiated any reform.

Tourist guides are regulated by a reserve of activities and title protection. The exercise of the profession without a licence is a criminal offence. The Cyprus Tourism Organisation (CTO), a state body, keeps a register of licensed tourist guides; tourist guides are obliged to wear the official distinctive badge provided by the Deputy Ministry of Tourism. The reserve of activities covers accompanying national or foreign tourists or visitors to provide specific information and explanations on matters relating to history, archaeology, monuments and works of art linked to Cypriot culture, natural monuments and contemporary issues relating to Cyprus. These activities are, however, shared with archaeologists and employees of the Deputy Ministry of Tourism, who provide such services without remuneration.

Tourist guides need to possess: (i) a diploma from a tourist guide school (or equivalent) issued in Cyprus after 3 semesters of study or to have exercised the profession in another Member State; (ii) knowledge of Cypriot history, art, archaeological and historic places, the natural environment and current affairs of Cyprus; (iii) a very good knowledge of Greek and

of at least one other foreign language. EU citizens who are licensed tourist guides in their own country and who wish to exercise the profession of tourist guide in Cyprus are obliged to prove area-specific knowledge.

There is no compulsory registration in a professional body, but the CTO keeps a register of licensed tourist guides.

Tourist guide licences are valid for 2 years or a part thereof; they expire on 31 December of the year immediately following the year of their issue. Licences may be renewed upon payment of the prescribed fee, if the CTO establishes that the conditions laid down in the Law on tourist guides continue to be fulfilled.

Qualified tourist guides in Cyprus maintain their qualification provided that they attend an annual conference organised by the Deputy Ministry of Tourism.

Tourist offices may not employ non-registered tourist guides for excursions, sightseeing tours or simple customer guiding. In addition, tourist offices are obliged to involve a licensed tourist guide in each sightseeing tour, although there are some exceptions (e.g. tours which do not cover archaeological sites, museums, etc., and walking, cycling, motorbike and riding tours).



CZECHIA



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## I. Overview

By 1 January 2021, Czechia had submitted information about 365 regulated professions. Of those professions, 18.1% concern business services, 5.2% the construction sector and 0.3% the real estate sector.

According to an EU-wide survey<sup>47</sup>, 25% of Czechia's labour force can be considered to be working in regulated professions. This is slightly higher than the EU average (21%).

Czechia regularly updates the **database on regulated professions**. This database provides citizens and administrative authorities from other Member States with valuable information about the regulation of professions in a given Member State. Czechia has also introduced proportionality assessments for all of its regulated professions.

In its **national action plan** of 2016, Czechia presented an overview of the regulatory framework of the regulated professions, but only announced changes for a few professions. In most cases, reforms were designed to reduce the general administrative burden.

Czechia also announced the forthcoming regulation of additional professions, such as tourist guides and real estate agents and, according to information available, both professions have been regulated.

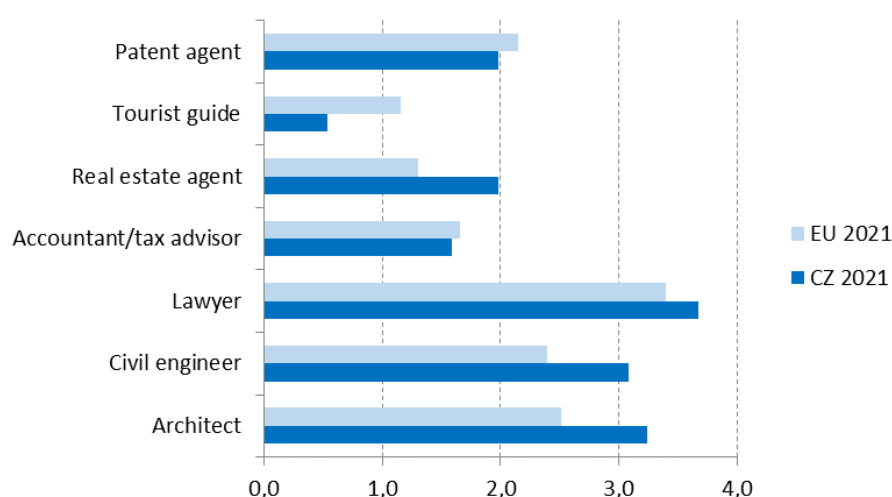
## II. Situation on the analysed professions

Regulatory restrictiveness in Czechia is higher than the EU average for the professions of architect, civil engineer, lawyer and real estate agent. It is lower than the EU average for the professions of accountant/tax adviser, patent agent and tourist guide. Of the professions analysed, the level of restrictiveness is highest for lawyers.

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<sup>47</sup> Koumenta M. and M. Pagliero (2016), *Measuring Prevalence and Labour Market Impacts of Occupational Regulation in the EU*. See: <https://ec.europa.eu/docsroom/documents/20362>.

Chart 1: Regulatory restrictiveness, Czechia, 2021



The following description of the situation for the different professions focuses on changes since the analysis published in 2017. However, to provide a complete and understandable picture, the description also restates part of the information described in 2017.

### Architects/Engineers

Both professions are regulated by reserved activities and a protected title.

In 2017, the Commission made the following recommendation for the architectural profession:

- consider the impact of the restrictions on shareholding and company form, in addition to the other requirements.

In 2017, the Commission made the following recommendation for the engineering profession:

- reconsider the wide scope of reserved activities.

The Commission is not aware of any reform or other initiative in Czechia that has taken into account or assessed its recommendation.

According to Act N° 360/1992 Coll. on authorised architects, chartered engineers and chartered technicians, the activities reserved for architects broadly fall under the following categories: architectural design and planning, feasibility studies (e.g. preparing land-use planning documents, land-use planning data documents, design documents for buildings, design documents for garden and landscape work including documents on land-use data and planning); examination of design and related documentation; preparation/submission/signing of technical control and compliance; construction/ cost management, monitoring of construction/execution (e.g. supervising building implementation, management and implementation of a simple building); urban/territorial planning/design; and landscape architecture, interior design/ preparation of documentation for interior design projects.

While architectural design and planning is shared with engineers only, the other activities are shared with both engineers and chartered technicians. The professions of landscape architect

and urban planner also exist, but have limited reserved activities which are shared with architects and engineers.

According to Act N° 360/1992 Coll. on authorised architects, chartered engineers and chartered technicians, the activities reserved for engineers broadly fall under the following categories: design and planning, feasibility studies (e.g. preparing documentation for construction projects, including on territorial planning, reviewing and processing documents necessary for a partial environmental impact assessment); representation for obtaining permits (signature of designs); tender and contract administration; project management and supervision, cost management; and management of construction maintenance (including inspection).

Qualifying as an architect requires 5 years of education (master's degree) and 3 years of mandatory practice (8 years in total). Czechia also recognises the professional qualifications of architects qualified in another European Economic Area country, in line with the Professional Qualifications Directive.

Qualifying as a chartered engineer requires either a four-year bachelor's degree followed by 5 years of mandatory practice, or a master's degree followed by 3 years of mandatory practice.

For both professions there is a general obligation to undertake continuous professional development. Based on the information available, engineers must participate in a lifelong learning programme that is organised in three-year cycles by the professional chamber, or on an individual basis. For each cycle, an engineer must collect a minimum of 12 credits, which are awarded (between 0.5 and 3 points each) for activities such as seminars, studying the relevant literature, academic activities or learning a language.

For both professions, membership in the two chambers monitoring professional practice, namely the Czech Chamber of Architects (CKA) and the Czech Chamber of Chartered Engineers and Technicians Active in Construction (CKAIT), is compulsory. On incompatibilities, there is a general obligation to avoid conflicts of interest.

It appears that for both professions there are certain restrictions on the corporate form/ type of organisation that can be used to carry out related activities, as well as shareholding requirements. According to the rules on legal form (Act. no. 360/1992 Coll.) authorised individuals (i.e. chartered architects, chartered engineers and chartered technicians) may carry out their activities in a limited liability company where authorised persons make up the majority of partners and executives. If the company has only one partner or executive, then that person must be an authorised person. From the information available it seems that in limited liability companies the remaining shares can be held by any other natural or legal person.

Professional indemnity insurance is mandatory for both architects and engineers.

According to the information available, there are no additional certification or attestation schemes in Czechia designed to enable architects or engineers to access specific professional activities that require additional qualifications<sup>48</sup>.

### Accountants/tax advisers

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<sup>48</sup> For example, where to be able to carry out specific/specialised activities, additional education or experience or an exam is required. This may concern activities such as supervising construction projects, energy certification, energy audits, expert opinions, or activities related to special buildings (such as nuclear power plants or historical heritage sites).

In 2017, the Commission gave the following recommendation to all Member States that regulate the accountant/tax adviser profession:

- reconsider reserving simple tasks such as payroll activities or preparation of tax declarations to highly qualified professionals.

The Commission is not aware of any reform or other initiative in Czechia that has taken into account or assessed its recommendation.

Two professions in the sector benefit from reserved activities: *daňový poradce* (tax adviser) and *Činnost účetních poradců, vedení účetnictví, vedení daňové evidence* (accountant).

Changes to the law on tax advice came into force in 2018, mainly setting out detailed rules on the role of tax advisers as liable persons under the Act on certain measures against money laundering and financing terrorism, and then later in 2020 when incorporating the anti-money laundering directive into national law.

The Commission has not identified any substantial changes in the regulation of accountants.

Reserved activities for tax advisers include providing legal assistance and economic advice in financial matters, taxes, levies, fees and other payments, as well as in matters directly related to taxes (especially the processing of tax returns and representation before tax authorities if necessary). Tax advisers may also represent clients in judicial proceedings in tax matters and prepare opinions.

While representation and assistance before tax authorities, and representation in court and tax advice are activities that are shared with lawyers, payroll activities, bookkeeping and drawing up annual financial statements and consolidated financial statements are shared with accountants.

Accountants provide advice on bookkeeping and tax records, and prepare financial statements and consolidated financial statements, annual reports and consolidated annual reports.

The activity is regulated for both companies and the self-employed. As legal entities, companies must appoint a person who meets the qualification requirement. However, for salaried employees qualification is not required.

For tax advisers the qualification requirement is 3 years of university education and passing a state exam. For accountants, there are three pathways: (i) completing general secondary education and passing a school-leaving exam followed by 5 years of professional experience, (ii) an accredited requalification course and 5 years of professional experience, or (iii) a university education and 3 years of professional experience.

For tax advisers, registration in a chamber is compulsory, as is professional liability insurance. However, these conditions do not apply to accountants.

## Lawyers

In 2017, the Commission gave the following recommendations to all Member States that regulate the law profession:

- Clarify the scope of the reserves so as to facilitate the provision of legal consultancy services by lawyers or other service providers, in particular for online services.
- Assess legal form and shareholding requirements, incompatibility rules and multidisciplinary restrictions, in particular taking into account the proportionality of these



restrictions in relation to the core principles, such as the independence of the profession and to the corresponding supervisory arrangements. In addition, consideration should be provided to the cumulative effect of such requirements to the extent that their effects might be accentuated in the case of extensive reserves of activities (e.g. where legal advice is also part of the reserved activities).

The Commission is not aware of any reform or other initiative in Czechia that has taken into account or assessed its recommendations.

Lawyers benefit from reserved activities and a protected title.

The core activities reserved for the legal profession are representing clients in court proceedings, especially in criminal cases, and in proceedings before the Constitutional Court, the Supreme Court and the Supreme Administrative Court. However, Czechia also reserves the following activities: drawing up legal documents (shared with patent attorneys, tax advisers and notaries within the scope of their competence); legal advice - including in tax matters (shared with patent attorneys, tax advisers and notaries within the scope of their competence) and representation before administrative authorities (shared with patent attorneys, notaries and tax advisers within the scope of their competence); and other forms of legal aid where these are provided on a permanent basis and for a fee (e.g. public procurement administration).

For lawyers, the qualification requirement is a university degree in law, followed by professional training for a minimum of 3 years and passing a Bar exam.

Lawyers must be registered with the Czech Bar Association. A lawyer may practise the legal profession as a sole practitioner or jointly with other lawyers as a member of a civil partnership, or a member of a company. Only lawyers may hold shares in law firms. Salaried practice is also allowed. The incompatibility rule appears to be wide-ranging. According to the law, a lawyer may not 'have another profession or conduct any other activity incompatible with the profession of a lawyer'. Multidisciplinary restrictions are also in place, preventing lawyers from teaming-up with other professions within the same company.

Professional liability insurance is compulsory.

There are recommended tariffs for all services, and advertising is restricted by the internal rules of the Czech Bar Association. A lawyer has the right to inform the public about the services they provide as long as this information is accurate, not misleading and respects the duty of confidentiality and other basic values of the legal profession.

### Patent agents

In 2017, the Commission did not address any recommendations to Czechia on patent agents. Since then there has been no reform or other initiative the Commission is aware of on the regulation of this profession.

Patent agents still benefit from reserved activities.

All activities reserved for patent agents, namely providing expert advice to natural persons and legal entities in industrial property matters, representing clients before public bodies and before courts, and other services related to the protection of industrial property, are shared with lawyers.

For patent agents, the qualification requirement is a bachelor's degree, followed by at least 3 years of professional experience in the field of intellectual property, and passing an exam at the Industrial Property Office. Patent agents must also register with the Chamber of Patent Attorneys. There are no shareholding restrictions, but at least one member, shareholder or employee must be a patent agent. For a public limited company, the share capital of the company must consist of registered shares and at least one member of the statutory and supervisory bodies must be a patent agent. If either body is composed of only one person, then that person must be a patent agent. If it is composed of two natural persons, one of them must be a patent agent.

Professional indemnity insurance is compulsory.

### Real estate agents

In 2017, the Commission made the following recommendation on the real estate agent profession:

- as a part of the forthcoming reform avoid multiple layers of regulation and assess in detail whether the objective of consumer protection could be ensured by less restrictive means, such as introducing a protected title.

Real estate activities are considered as trade. The profession was reformed in 2019 and real estate agents now benefit from the following reserved activities: facilitating contacts and negotiations, arranging sale, rental, etc., obtaining information on properties, etc., showing properties and explaining terms and conditions, estimating costs, and arranging the signing of lease agreements and the transfer of rights. A qualification is required to be able to practise as a real estate agent.

There are four pathways to becoming a real estate agent: (a) a master's degree in law, economics, finance or marketing and trade, or education in construction with a focus on civil engineering or preparation and construction of buildings, or a similar higher education degree obtained from a university, not included in the field of education; (b) a bachelor's degree and 1 year's experience and completion of an internationally recognised course according to Section 60a of Act 111/1998 Coll. focusing on real estate organised at a state-accredited institute; (c) university, higher professional or secondary education with a school-leaving examination and 3 years' professional experience; or (d) professional qualifications for the activity of a real estate broker in line with the Act on recognition of professional qualifications. Applicants are obliged to comply with the general rules set by the Act on trade licensing (legal capacity and integrity/good repute).

Real estate agents must be covered by mandatory liability insurance for the entire duration of their activities.

There are binding maximum prices for certain services. There seem to be no restrictions on advertising.

### Tourist guides

In 2017, the Commission did not address any recommendations to Czechia on the tourist guide profession, which was deregulated in 2008. However, according to the information available it seems that following a 2021 reform, tourist guides now have title protection.

Since the profession was deregulated in 2008, to obtain a trade licence to work as a tourist guide, an applicant only needs to meet the general conditions set under the Act on trade licensing (legal capacity and integrity/good repute).

However, it seems that the new legislation requires tourist guides to have a card placed visibly on their clothing in order to be able to practise. They can apply for one of two grades of card issued by the Ministry of Regional Development: 'I grade' cards (without professional qualifications) and 'II grade' cards, which require a professional qualification. Pathways to obtaining the II grade card are: (a) a university degree in history or tourism studies; (b) higher vocational studies in tourism; (c) secondary education with a school-leaving certificate in tourism studies; (d) secondary education with a school-leaving certificate and a retraining certificate or other evidence of professional qualification issued by an accredited institution for the relevant work activity; (e) a professional qualification for tourist guides; or (f) recognised professional qualifications in line with the Recognition of Professional Qualifications Directive.

The Ministry of Regional Development cooperates with the selected professional tourism associations, including the Czech Tourist Guide Association.

## I. Overview

By 1 February 2021, Denmark had submitted information about 178 regulated professions. Of those professions, 13.5% concern business services, 17.4% the construction sector and 0.6% the real estate sector. This is a slight increase compared with previously submitted figures, as some professions – notably in the construction sector - were notified late.

According to an EU-wide survey from 2016<sup>49</sup>, 14% of Denmark's labour force can be considered to be working in regulated professions. This is lower than the EU average (21%).

Denmark is now regularly updating the **database on regulated professions**. This database provides citizens and administrative authorities from other Member States with valuable information about the regulation of professions in a given Member State.

In its **national action plan** from 2016, Denmark announced changes affecting around 40 regulated professions. The changes, which varied in scope and likely impact, included abolishing the scheme, changing certain rules and requirements, reserved activities, and the administration, further digitalisation, simplified guidance, modernisation, merging schemes and further regulation. It is unclear if and to what extent any of these reviews or reforms have been introduced.

## II. Situation on the analysed professions

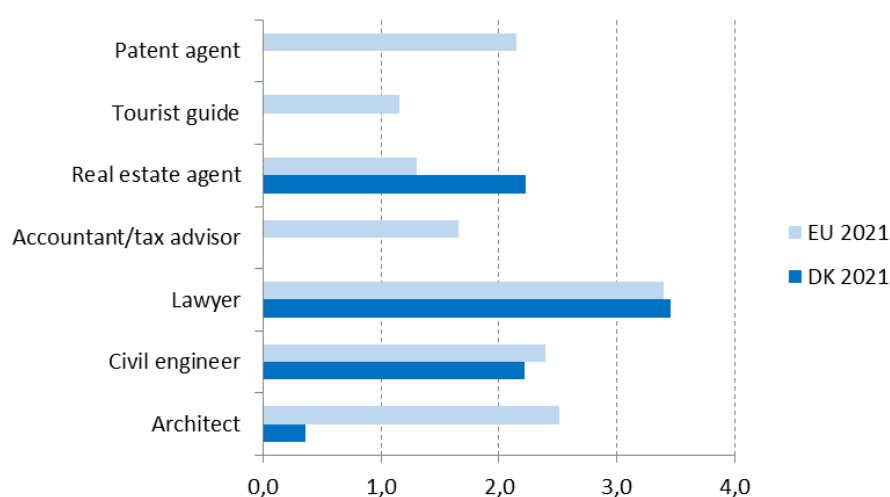
Regulatory restrictiveness in Denmark is lower than the EU average for all professions except for lawyers and real estate agents. Of the professions analysed, restrictiveness is highest for lawyers.

Unregulated professions include accountants/tax advisers, patent agents and tourist guides. Architects and civil engineers have regulated training, but are not regulated professions under terms of the Professional Qualifications Directive.

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<sup>49</sup> Koumenta M. and M. Pagliero (2016), *Measuring Prevalence and Labour Market Impacts of Occupational Regulation in the EU*. See: <https://ec.europa.eu/docsroom/documents/20362>.

Chart 1: Regulatory restrictiveness, Denmark, 2021



The following description of the situation for the different professions focuses on changes since the analysis published in 2017. However, to provide a complete and understandable picture, the description also restates part of the information described in 2017.

### Architects

The architect profession is not regulated in Denmark.

In 2017, the Commission made the following recommendation for architects:

- when making professional certification mandatory for non-regulated professions or relying on other checks and balances, especially on the provision of specific services, it should review the overall coherence and practical effects of this model to avoid it becoming a barrier for accessing the profession.

No change in legislation has resulted from the recommendation and no information is available on a possible review of this approach.

For architecture, Denmark has a five-year post-secondary education programme with no mandatory traineeship and a voluntary two-year post-graduate training programme. Professionals have to follow continuous professional development programmes. 10% of an architect's salary is set aside by their employer for this continuous training. Danish legislation on building requires that the professionals that build a new construction must be covered by professional indemnity insurance for 10 years.

The Danish Building Act regulates much of the construction process in terms of safety and standards, and the municipal authorities are responsible for oversight, largely through the building permit application process. On the basis of the Building Act, the Danish building regulation lays down the administrative rules for applying for a building permit as well as practical requirements for new buildings (e.g. design, fire safety, energy consumption).

In addition, architects may agree on a 'description of services' with clients, which they are then legally obliged to deliver. The wider community is actively involved in planning applications, but the ultimate responsibility rests on the building owner who needs to ensure

that their building complies with the building regulations. Owners may, as appropriate, seek civil redress from any construction project participants seen to be at fault.

Checking/ensuring health and safety on construction sites is the responsibility of 'health and safety coordinators'. Energy performance checks are conducted by verified practitioners. For a 'high consequence' building (school, shopping mall, etc.), a structural engineer (*anerkendt statiker*) needs to be hired to certify the quality of the construction when a building permit is submitted. Fully qualified architects, engineers and construction engineers are also typically employed as building inspectors in municipalities. Denmark is generally satisfied with its system and its safety record, pointing out that there is 'no penal history'.

### Civil engineer

In 2017, the Commission made the following recommendation for civil engineers:

- when making professional certification mandatory for non-regulated professions or relying on other checks and balances, especially on the provision of specific services, it should review the overall coherence and practical effects of this model to avoid it becoming a barrier for accessing the profession.

No change in legislation has resulted from the recommendation and no information is available on the intention to review this approach.

Civil engineers (*Anerkendt statiker*) benefit from rules on reserved activities and title protection.

More than 99% of all civil engineers perform their job without any certification. However, less than 100 civil engineers are certified as structural engineers. The Danish building regulation requires that a certified structural engineer be involved in the structural design or in the monitoring of the structural calculations of 'high consequence' (class CC3) buildings, according to Eurocode 0.

Preparing or assuring the quality of calculations for a construction of a certain size and complexity, where the consequences of collapse could be particularly large, is an activity reserved for civil engineers (*anerkendt statiker*). A five-year degree is required, such as a Master of Science in Engineering (M.Sc.Eng.), a Bachelor of Science in Engineering with honours (B.Sc.Eng. (Hons.)) or a Bachelor of Science in Engineering (BSc.Eng.). The certifying body must give applicants without any of the above qualifications the opportunity to take a test or exam to check that they have the requisite professional expertise. Besides the required degree, access to the profession is granted after the completion of a 3-year mandatory training period (i.e. having worked at least 3 years on static calculations). Professional liability insurance is also required.

### Accountants/tax advisers

The profession of accountant/tax adviser is not regulated in Denmark. Only the profession of statutory auditor (*Statsautoriseret revisor*) is regulated with reserved activities, as required by Article 6 of Directive 2006/43/EC<sup>50</sup>.

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<sup>50</sup> Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC, OJ L 157, 9.6.2006, p. 87.

## Lawyers

Denmark did not receive a specific recommendation in 2017 on the profession of lawyers.

Lawyers (*Advokat*) benefit from title protection and reserved activities.

Lawyers have an exclusive right to conduct legal proceedings for others. This includes representing clients before the courts, acting as administrator of a deceased person's estate and acting as administrator for the division of matrimonial property. The requirement is a 5-year university degree, 3 years of mandatory training as a solicitor's clerk, and passing a state exam. Registering with the Danish Bar association is mandatory for every lawyer in Denmark. Lawyers must pass special exams to be allowed to plead before higher instance courts. They are also required to take part in continuous professional development in the form of 54 sessions of 45 minutes of relevant training over 3 years.

Restrictions apply to the corporate forms lawyers companies may take, except for public limited companies (*A/S*) including European limited companies (*SE-selskab*), private limited companies (*ApS*) or limited partnership companies (*kommanditaktieselskab/partnerselskab*). These companies may only perform activities reserved for lawyers. Joint exercise with other professions is therefore impossible. Holding companies wholly owned by lawyers may own shares in other lawyer-A/S.

Non-lawyers may not possess more than 10% of the capital and the voting rights of a lawyer company. Lawyers may not be associated with non-lawyers, and all lawyers need to have professional indemnity insurance coverage.

Practising lawyers are not eligible for a position in public service or in the judiciary, unless explicit permission has been granted.

In 2008, the rules on the monopoly of lawyers to appear before a court were amended to allow individuals other than lawyers to be granted the right to appear before the court in cases concerning claims smaller than DKK 50.000, in cases concerning payment orders which meet certain requirements and in cases concerning the enforcement of orders in the bailiff's court.

However, no changes to the national regulations subject to this review were made known to the Commission.

There are no specific restrictions on tariffs, or on advertising as long as it respects consumer protection, transparency and other ethical principles (e.g. no direct solicitation of clients).

## Patent agents

The patent agent profession is still not regulated in Denmark, and no specific requirements exist. Activities related to legal representation in patent case are reserved for lawyers.

## Real estate agents

In 2017, the Commission recommended that Denmark evaluate to what extent the duration of mandatory qualification requirements is indispensable in view of the tasks pursued. However, no changes have been made to national rules in that respect.

Real estate agents (*Ejendomsrådgivere*) benefit from reserved activities and a protected title.

Acting as an intermediary in property sales is reserved for registered real estate agents. Their involvement is mandatory for every property sale, and they bear the responsibility for the transaction. Real estate agents are also responsible for arranging the valuation of properties. A lawyer can also be registered and appointed as a real estate intermediary, which implies that all reserved activities of a real estate agent are shared with lawyers.

There are several possibilities to qualify as a real estate agent in Denmark, but on average it requires 3 years of specialist training followed by 2 years of traineeship or work experience. There are also multiple ways to obtain a required qualification. Agents have to be registered in the public register of approved real estate agents managed by the Danish Business Authority. The Disciplinary Board handles complaints and imposes penalties against real estate agents and agencies.

Real estate agents who conduct their activities from a physical place may not be associated with other professionals except for lawyers. Real estate agents are not allowed to represent both parties in a transaction or be involved in the financing of the real estate purchased. Registered real estate agents have to be covered by professional liability insurance.

Besides the sector specific regulation, consumers are protected through several pieces of cross-cutting legislation such as the law on consumer protection in the acquisition of real estate, the contract law and the consumer law.

The regulation was revised and the new law, which entered into force in January 2015, has removed the activity of buyer-counselling from the list of activities reserved for real estate agents. In its national action plan from 2016, the Danish authorities explained that they hoped that this reform would lead to further development and growth in real estate market. They also mentioned an ongoing review of the requirements and scope of reserved activities. However, no changes to national regulations subject to this review were made known to the Commission.

### Tourist guides

The tourist guide profession remains not regulated in Denmark.

There are no legal requirements on access to this profession in terms of holding a particular qualification or having a particular educational or professional background. A tourist guide diploma programme is offered by a Danish university, which provides future tourist guides with the necessary knowledge and competencies to practice as a tourist guide.

Consumers are protected through the existence of the Danish Consumer Complaints Board (*DA-Forbrugerklagenævnet*) under the Danish Competition and Consumer Authority.



## I. Overview

By January 2021, Estonia had submitted information about 108 regulated professions. This is a slight increase compared with the situation reported in the 2017 Communication. The new entries added to the database concerned the professions which were regulated before 2016 by way of national regulation or due to specific EU legislation, and which had not been entered previously (e.g. professions in the transport sector, kindergarten teachers, property valuers). Estonia did not introduce regulation of new professions since the 2017 Communication.

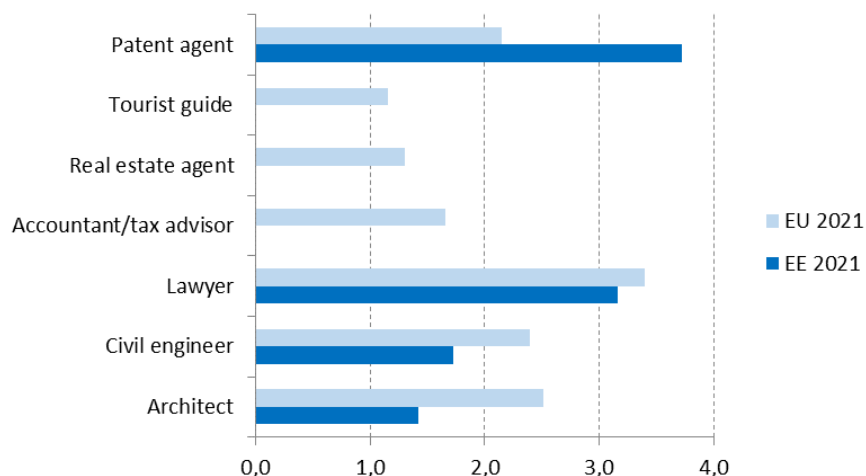
Of the 108 professions subject to regulation, 10.1% concern business services, 14.7% the construction sector and 1.8 % the real estate sector.

Estonia is now regularly updating the **database on regulated professions**. This database provides citizens and administrative authorities from other Member States with valuable information about the regulation of professions in a given Member State. The Estonian authorities' contribution to this database is above the EU average, in particular as regards screening of requirements and proportionality forms. However, for some professions, the information on regulatory requirements is occasionally incomplete<sup>51</sup>.

## II. Situation on the analysed professions

Regulatory restrictiveness in Estonia is lower than the EU average for all of the professions analysed, except for patent agents.

Chart 1: Regulatory restrictiveness, Estonia, 2021



<sup>51</sup> For instance, the 2019 amendments concerning alternative pathways to obtaining qualifications for patent agents were not reflected in the database.

Although the reported number of regulated professions in Estonia remains relatively low, there remains a tendency to regulate education and training or particular professional activities rather than the profession as such. The Estonian Qualifications Authority runs a voluntary certification scheme, and sets professional standards using EQF levels. These professional standards are used not only to develop curricula in formal education and training, but also serve as the basis for issuing professional certificates in various sectors, including construction. In general, professional certificates are not mandatory (i.e. not a pre-condition for working in the profession), but some legislation requires them. As reported in the 2017 Communication, there is growing concern that professional certificates might become increasingly used as mandatory qualification requirements in certain sectors (such as construction) thus potentially becoming a barrier to accessing the market.

The following description of the situation for the different professions focuses on changes since the analysis was published in 2017. However, to provide a complete and understandable picture, the description also restates part of the information described in 2017.

### Architects/Engineers

In 2017, the Commission did not make any specific recommendations for the architecture and engineering professions in Estonia. However, more generally, the Commission recommended that:

- Member States making professional certification mandatory for non-regulated professions or relying on other checks and balances, especially on the provision of specific services, should review the overall coherence and practical effects of this model to avoid it becoming a barrier for accessing the profession.
- Member States with a fragmented system of the profession, or with multiple requirements depending on the specific activities pursued, should reflect upon the effects of their system on the free movement of professionals and whether any potential obstacles created by their system can be justified.

Based on the available information, Estonian authorities revised the rules for certification requirements. However, the limited changes do not show that they had duly assessed or taken into account the above recommendations.

In particular, the Building Code regulation (No 108) in Estonia was replaced by a new simplified regulation (No 61) in 2017. The reform was carried out to simplify the rules, which were found to be too detailed and restrictive. Information provided by the Estonian authorities shows that, although the revised rules are better attuned to the actual situation in the construction industry, they did not bring substantive changes regarding access conditions for architects or engineers.

The architecture and civil engineering professions remain not regulated. However, for certain modes of pursuing professional activities, there is a requirement to have a professional certificate (i.e. a certificate at a certain level issued by the Qualifications Authority).

According to the Building Code, any company that wishes to undertake activities in the fields of construction, design, building surveys, energy audits, owner supervision, consultancy on building projects and buildings, and issuing energy certificates must register in the Register of Economic Activities and name a specialist in charge of that particular field – e.g. the field of ‘design’ for an architect. There are certain qualification requirements for such a specialist in charge (*‘pädev isik’*), while the company’s other employees do not need to comply with

this requirement. Registration as a '*pädev isik*' is also required for self-employed professionals. For Estonian qualifications, the authorities check the register to ensure that the nominated person has the appropriate level of professional qualifications. If the company's nominated specialist has had their EU qualification recognised by the competent authority, the company only needs to present a recognition certificate for the particular activity in question (e.g. auditing construction works).

The nominated specialists independently perform, scrutinise or manage work in an area of activity related to their area of competence and assume responsibility for such work. They submit technical opinions in their own name or, when acting on behalf of an undertaking, in the name of the undertaking. Where necessary, they arrange the allocation of resources and organise the work of others.

The new Building Regulation specifies the areas of construction in which the qualification of the nominated specialist must be proven, as well as the qualification requirements for such a specialist.

While some construction activities are shared with one or more related professions, for others the '*pädev isik*' must be qualified at a certain pre-defined level.

For instance, only architects can be nominated as the '*pädev isik*' for the following activities: (i) preparing building design documentation for construction works subject to building permit requirements, and (ii) performing expert assessments of building design documentation<sup>52</sup>. On the other hand, people with qualifications in either engineering or architecture are allowed to carry out owner supervision works. The following activities listed in the Building Code are reserved for engineers: (i) building in the context of construction works subject to building permit requirements, (ii) issuing energy performance certificates, (iii) performing energy audits, (iv) performing site investigations, and (v) auditing construction works<sup>53</sup>.

The qualification requirements are set by reference to professional certificates obtained based on various levels of the Estonian qualifications system.

For an architect performing the function of a '*pädev isik*' there is a requirement to have a qualification equal to the pre-EQF architect IV/V levels or the EQF 7 or 8 levels for authorised architects (i.e. at least a master's degree or doctorate, respectively). Several pathways to obtaining such qualifications are possible. For instance, it is possible to achieve a level 7 architect qualification in the following ways: (i) architectural training successfully completed at a university meeting professional standards, or a higher education degree in applied architecture or other architectural studies and completion of a master's degree in architecture, or (ii) attainment of a 4-year degree in architecture and subsequent completion of 3 years of work experience in planning and/or architectural design (in the last 6 years), or (iii) 3 years of architectural training followed by 5 years of experience in planning and/or architectural design (in the last 10 years).

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<sup>52</sup> The activities reserved for those nominated as '*pädev isik*' with architect qualifications broadly fall into the following categories: architectural design and planning, feasibility studies; examination of design and related documentation; preparation/submission/signing of technical control and compliance documents; construction cost management, monitoring of construction/execution.

<sup>53</sup> The activities reserved for those nominated as '*pädev isik*' with engineer qualifications broadly fall into the following categories: design and planning, feasibility studies; representation for obtaining permits (approval of designs); project management, including monitoring of execution and construction cost management; management of construction maintenance (including inspection).

For an engineer performing the function of '*pädev isik*', various combinations of qualifications are acceptable, ranging from EstQF level 5 (vocational) to EstQF level 8 (doctor), depending on the activities concerned. Designation as '*pädev isik*' requires a higher qualification level, generally Level 7. There are several pathways to obtaining this qualification level: i) contemporary formal education – for civil engineers this generally means a master's degree, or ii) other forms of education (not necessarily higher), combined with work experience and further training. The occupational standard for the engineering profession is competency-based so the requirements per professional vary. Professional experience is also one of the requirements for a '*pädev isik*' with higher qualification requirements.

In general, the professional qualifications of architects and civil engineers should be renewed every 5 years, but this can vary.

### Accountants/tax advisors

The profession of accountant/tax advisor is not regulated in Estonia. Only the profession of sworn/internal auditor is regulated in this sector.

### Lawyers

In 2017, the Commission made the following recommendation for lawyers in all Member States:

- assess legal form and shareholding requirements, incompatibility rules and multidisciplinary restrictions, in particular taking into account the proportionality of these restrictions in relation to core principles, such as the independence of the profession, and to the corresponding supervisory arrangements.

The Commission also recommended clarifying the scope of the reserved activities to facilitate the provision of legal consultancy services by lawyers or other service providers, in particular in online services. However, the provision of legal consultancy services in Estonia is not a reserved activity.

In Estonia, the key requirements governing access to and pursuit of the legal profession remained largely intact, in particular as regards the shareholding requirements, incompatibility rules and multidisciplinary restrictions mentioned in the 2017 recommendations.

Estonia regulates the activities of the '*advokaat*' (sworn advocate) by designating such activities as reserved and protecting the title. For most types of court proceedings, only sworn advocates are permitted to represent people in the Supreme Court<sup>54</sup>. Along with other professions, sworn advocates can also act as bankruptcy trustees, as long as they are members of the Chamber of Bailiffs and Trustees in Bankruptcy<sup>55</sup>. In the framework of providing legal services to a client, sworn advocates also verify transcripts and signatures of documents to be

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<sup>54</sup> In the courts of lower instances, the clerks of a sworn advocate ('half-qualified' lawyers who are also members of the Bar Association) and any others who have a master's degree in law can also represent people before the court.

<sup>55</sup> The activity of acting as a bankruptcy trustee is shared with: i) people who have passed a bankruptcy trustee exam and traineeship, ii) bailiffs who have a master's degree in law, and iii) sworn auditors.

submitted to the court and other state offices (an activity that is shared with e.g. notaries). Legal advice, drawing up legal documents and representation in administrative proceedings are activities that remain not reserved for sworn advocates. In 2018, one additional activity was added to the list of reserved activities, namely the possibility for advocates to provide the service of a 'contact person' under the Commercial Code, i.e. a person to whom the procedural documents of the undertaking and the declarations of intent addressed to the undertaking may be delivered (this activity is shared with notaries, law offices, sworn auditors, audit firms, tax representatives and providers of trust and company services).

The qualification requirements to become a sworn advocate still consist of a 5-year master's degree, 3 years of professional experience as the clerk of a sworn advocate (or 2 years of experience in a position requiring a master's degree in law combined with one year of experience as the clerk of a sworn advocate), followed by passing an exam organised by the Estonian Bar Association. However, there are also several other ways to obtain this qualification, especially based on certain professional experience. Notaries and assistant prosecutors with at least three years of experience are accepted. People with a doctorate degree are exempt from professional experience requirements. Sworn advocates excluded from the Bar, former judges, judges of the European Court of Justice, European Court of Human Rights or General Court of the European Union or those working as a Chancellor of Justice or prosecutor with at least three years of work experience are also accepted. In addition, individuals may work as sworn advocates if, for at least three years, they worked in an office or held a position where the complexity of their tasks and responsibilities was similar to that of work as a sworn advocate.

Membership in the Bar Association remains mandatory and subject to monthly fees (EUR 60). Every five years, each advocate must submit a report on continuous training undertaken (approximately 10 hours per year, on content determined by the Bar Association).

The allowed corporate forms remain: a general partnership, limited partnership, private limited company, public limited company, and sole proprietor. Only sworn advocates may be shareholders (thus also controlling all voting rights). A sworn advocate may be a shareholder of only one company of advocates.

Certain restrictions on the companies of advocates remain. Such companies may not engage in an area of activity other than the provision of legal services and may not work together with other company types (e.g. in the same space as a law office or generally together with a law office).

Restrictions on individual '*advokaats*' consist of a prohibition to work as a public official or as an employee in any position other than lawyer, except in a teaching or research capacity or as an employee of the Bar Association. Each '*advokaat*' must inform the Bar Association if they participate in the management of a company. Such participation must be compatible with their professional activities, must meet the requirements for professional ethics and cannot compromise the lawyer's independence.

Professional indemnity insurance remains mandatory. The insurer must be a company that is authorised to engage in insurance activities in Estonia. There is a mutual recognition clause for associated members of the Bar Association (i.e. lawyers qualified in other Member States who want to act as lawyers in Estonia without becoming full members of the Estonian Bar Association)<sup>56</sup>. Knowledge of the Estonian language and an oath are also required.

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<sup>56</sup> The following requirements apply to the insurance: (1) the insurer must be a company with permission to engage in insurance activities in Estonia; (2) the insured event involves direct patrimonial damage caused in

## Patent agents

In 2017, the Commission gave Estonia the following recommendations on patent agents:

- re-assess the condition of prior professional experience as a requirement to access the profession of patent/trademark agent;
- assess the scope of reserves of activities for patent/trademark agents.

The profession remains regulated in Estonia and benefits from reserved activities and a protected title (*'patendivolnik'*). The Patent Attorneys Act has been revised twice since the 2017 recommendations. The amendments introduced mandatory Chamber membership with continuous professional development obligations. The Act now clearly states that the title of *'patendivolnik'* is reserved for members of the Chamber.

The key areas of competence of patent attorneys have not changed since 2017. Reserved activities include: representing people in acts related to trademarks and patents at the Patent Office and at the Industrial Property Board of Appeal and including representation in design cases. Patent attorneys are also able to authenticate translations and copies of documents concerning industrial property, which are to be submitted to the authorities (this activity is shared with notaries and sworn translators). In the Supreme Court, patent attorneys can only represent people in patent- and trademark-related cases in co-operation with a sworn advocate. In lower instances, patent attorneys may also represent people in patent- and trademark-related cases, but this is not an exclusively reserved activity (it is open to all people with a master's degree in law).

Education requirements have been increased to include a requirement for a recognised master's degree (previously, a higher education degree of minimum 3 years was required). For 'inventions and layout designs of integrated circuits', the degree must be in science or engineering. Professional practice requirements have remained at 4 years of professional experience (within the last 10 years), followed by passing a mandatory exam. Up to two years of work experience at the Patent Office is still considered an alternative, subject to passing the examination. In the specialty of 'trade marks, industrial designs and geographical indications', sworn advocates who have worked in a specific area at a law office for at least four years are also admitted.

A requirement of registration at the state register of patent attorneys has been replaced by mandatory Chamber membership since 2018. The membership fees are set by the Chamber's management board and confirmed during a meeting of the whole chamber. The current fee is set at EUR 300 per year (this is to cover the costs of the Chamber's work). A patent attorney is now required to undergo periodic (verified every 5 years) professional in-service training in every area of their professional activities, in accordance with the conditions set by the Chamber (at no additional cost).

There remain certain restrictions on the corporate forms allowed for patent attorneys in Estonia. It is not possible to exercise the profession in a company form with limited liability. A patent attorney can operate as a sole proprietor, through a company of patent attorneys or on the basis of an employment contract entered into with another person. However, a

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connection with the provision of legal services by the management of a law office or an advocate, regardless of the place of provision of legal services; liability for intentional breach of official duties need not be insured; (3) the minimum amount of coverage is EUR 63 910; (4) if the insurance contract was concluded with a deductible, the insurer must compensate for the full amount of the damage and claim the deductible from the policyholder.

company of patent attorneys may merge only with another company of patent attorneys. There are no shareholding or voting rights restrictions for patent attorney companies.

A company of patent attorneys is not allowed to provide any services other than legal services. In addition, it may not hire an attorney at law (because of restrictions specified in attorney-at-law legislation). Professional indemnity insurance is required (without provisions on mutual recognition or equivalence of insurance obtained abroad). Finally, the following language requirements are mandatory: oral and written proficiency in Estonian and proficiency in two foreign languages to the extent necessary for the professional activities of a patent attorney (including at least one official language of the European Patent Office).

### Real estate agents

The profession remains not regulated in Estonia. Instead, there is a voluntary certification system run by the Estonian Qualifications Authority, which serves as a label of quality in the market.

The only profession regulated in the real estate sector is the profession of land appraiser.

### Tourist guides

The profession remains not regulated in Estonia. Tourist guides are subject to the Tourism Act, which sets specific requirements for providing tourism services, and to the consumer protection legislation, supervised by the Consumer Protection Authority. Estonia notes that the transparency of service quality provided by the internet and social media disciplines service providers in this sector.



FINLAND



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## I. Overview

By 1 February 2021, Finland submitted information about 191 regulated professions. This increase compared to 2016 is mostly due to the inclusion of professions that are covered by EU laws, such as professions from the transport sector. Among those 191 professions, 8.9% concern business services, 2.1% the construction sector and 0.5% the real estate sector.

According to an EU-wide survey from 2016<sup>57</sup>, 17% of the Finnish labour force can be considered to be working in regulated professions. This is lower than the EU average (21%).

Finland is regularly updating the **database on regulated professions** providing citizens and administrations from other Member States with valuable information about the regulation of professions in a given Member State.

In its **national action plan** from 2016, Finland announced very limited changes to the regulation in place. It indicated its ambition to review the regulation of professions in the public sector, by linking them to competences rather than qualification. It also referred to plans to introduce joint legislation for social and healthcare professionals. It is unclear whether, and to what extent, any of these reviews or reforms have taken place.

## II. Situation concerning the analysed professions

Among the professions analysed:

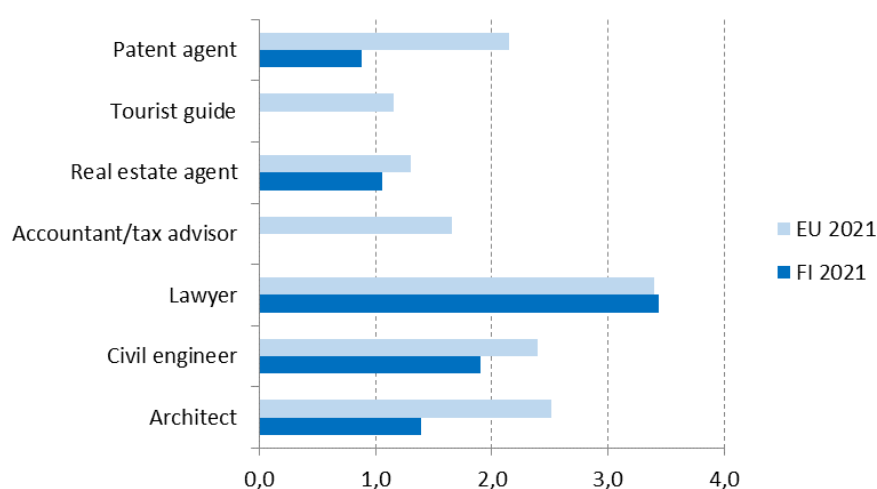
- restrictiveness in Finland is highest for lawyers (slightly above the EU average);
- the professions of tourist guide and accountant/tax advisor are not regulated;
- architects and civil engineers have regulated training, but are not regulated professions in terms of the Professional Qualifications Directive.

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<sup>57</sup> Koumenta M. and M. Pagliero (2016), "Measuring Prevalence and Labour Market Impacts of Occupational Regulation in the EU". See: <https://ec.europa.eu/docsroom/documents/20362>.



Chart 1: Regulatory restrictiveness, Finland, 2021



The following description of the situation for the different professions focuses on changes since the analysis published in 2017. However, a complete and understandable picture, the description also restates part of the information described in 2017.

### Architects

In 2017, the following recommendation was made for Finland, along with other Member States:

- when making professional certification mandatory for non-regulated professions or relying on other checks and balances, especially on the provision of specific services, it should review the overall coherence and practical effects of this model, to avoid it becoming a barrier for accessing the profession.

No legislation has been changed as a result of the recommendation and no information is available about a possible review of this approach.

The profession of architect is not regulated in Finland.

The party procuring a construction project (client) bears the responsibility that the building is planned in compliance with the regulations and the permit granted. He needs to ensure that the project meets all requirements and is responsible for hiring competent staff. The architect and other designers are in a private law relationship with their client. Constructions are governed by the Land Use and Building Act and by building regulations which set out requirements regarding safety and health.

Projects are led by lead designers (*Pääsuunnittelija*) who have specific responsibilities under the law and who must meet eligibility requirements that are assessed by local building authorities. These authorities decide on a project-by-project basis which qualifications are required of the lead designer, and whether to grant the construction permit. Health, safety and quality factors are also overseen by the local authority. The procedure may vary from municipality to municipality.

Qualification requirements for design tasks are regulated according to their level of difficulty. Access conditions for the lead designer, building designer and special designer are defined in the Land Use and Building Act.

## Civil engineers

In 2017, the following recommendation was made for Finland, along with other Member States, regarding civil engineers:

- when making professional certification mandatory for non-regulated professions or relying on other checks and balances, especially on the provision of specific services, it should review the overall coherence and practical effects of this model to avoid it becoming a barrier for accessing the profession.

No legislation was changed as a result of the recommendation and no information is available about a possible review of this approach.

The profession of civil engineer is not regulated in Finland.

Construction projects are regulated by the Land Use and Building Act which, since its adoption in 2000, defines the responsibilities of the client and of the building control authority. According to this Act, the compiler of the architectural and engineering drawings must have the education and experience required. These education and experience requirements will vary depending on the type of building project (its intended use, technology used, calculation methods or environmental requirements). Qualification requirements for lead designers (*Pääsuunnittelija*) and site managers are regulated in the Act.

The qualifications of a designer are assessed on a project-by-project basis. The local building control authority decides what qualifications are necessary, depending on the building project.

## Accountants/tax advisors

The profession of accountant is not regulated in Finland. Only the profession of statutory auditor is regulated, as required Europe-wide by Article 6 of Directive 2006/43/EC<sup>58</sup>.

For specialisations, dedicated exams are required, which are organised by the Finnish Patent and Registration Office (the HT, KHT and JHT exams).

## Lawyers

In 2016, the Commission addressed the following recommendation to all Member States reserving legal advice:

- clarify the scope of the reserves so as to facilitate the provision of legal consultancy services by lawyers or other service providers, in particular for online services.

In addition, the Commission addressed the following recommendation to all Member States:

- assess legal form and shareholding requirements, incompatibility rules and multidisciplinary restrictions, in particular taking into account the proportionality of these restrictions in relation to the core principles, such as the independence of the

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<sup>58</sup> Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC, OJ L 157, 9.6.2006, p. 87.

profession and to the corresponding supervisory arrangements. In addition, consideration should be provided to the cumulative effect of such requirements to the extent that their effects might be accentuated in case of extensive reserves of activities (e.g. where legal advice is also part of the reserved activities).

No legislation has been changed as a result of these recommendations and no information is available about a possible review of the regulatory approaches.

The profession of advocate/ attorney-at-law (*Asianajaja/advokat*) is regulated by reserves on activities and protected title.

Lawyers who advise on and assist in legal matters can be divided into two categories:

1. private lawyers who are either members of the Finnish Bar Association (advocates or attorneys-at-law) or licensed legal counsels
2. public legal aid attorneys (working at a state legal aid office).

Lawyers who represent clients in the Finnish courts must be advocates (members of the Bar), public legal aid attorneys or have a license issued by an independent Board of Licensed Legal Counsels.

Becoming an advocate requires a Master of Law degree (5 years), four years of work experience in the legal field, and passing a bar exam. Membership of the Finnish Bar Association is compulsory and requires payment of annual fees. As part of their obligations, advocates/ attorneys-at-law have to update their professional skills on an annual basis with 18 hours of relevant training; however, research, teaching or publication work also counts.

Advocates may not engage in other activities than those related to their profession and they cannot create a conflict of interest and endanger their independence, e.g. by engaging in work in the public or judicial sector. They also need to have professional liability insurance. There are no restrictions in place on tariffs and advertising.

Some restrictions exist as to the corporate form with limited liability; only the company form "*Osakeyhtiö*" is allowed. Shareholders of a lawyers' company can only be lawyers (de facto 100% shareholding), except in limited circumstances authorised by the Finnish Bar Association. Likewise, joint exercise with other professions is not permitted, except in limited circumstances authorised by the Finnish Bar Association.

### Patent agents

In 2017, the Commission did not address any recommendations to Finland for the profession of patent agents. Since then, there has been no reform or other initiative the Commission is aware of concerning the regulation of this profession.

The profession of authorised patent attorney remains regulated by protected title.

Attorneys and agents can operate – even professionally – without authorisation, but only authorised attorneys have the right to use the titles protected by law, such as patent attorney, trademark attorney, design attorney, and industrial property attorney. Although no specific training is foreseen apart from the possession of a suitable higher university degree, an exam has to be passed to carry the professional title. No further relevant regulatory requirements could be identified.

### Real estate agents

It was recommended in 2017 that Finland consider the possibility of alternative pathways to access the profession.

The profession of real estate agent is regulated solely by way of title protection. Only a person who has passed the qualifying examination for real estate agents (LKV qualification test) may use the title “real estate agent” (*kiinteistönvälittäjä*) or the acronym “LKV”.

In the same way, only a person who has passed the qualifying examination for real estate agents or the qualifying examination for letting agents (LVV qualification test) may use the title “letting agent” (*vuokrahuoneiston välittäjä*) or “housing agent” (*asunnonvälittäjä*) or the acronym “LVV”. No specific training or previous experience is required to sit the examination.

Most of the transactions involving a real estate agent concern the sale and purchase of shares in a house cooperative, which does not require separate endorsement by an official notary in Finland.

The qualification requirement applies only to the responsible manager and to at least 50% of the staff employed by a real estate agency. A compulsory registration is required to obtain a license. The Commission is not aware of any other relevant access requirements to this profession.

### Tourist guides

The profession of tourist guides remains unregulated in Finland.

Consumer interests are safeguarded by the Consumer Protection Act, which also applies to tourism services offered to consumers by traders or service providers.

Mediation is organised by the Consumer advisory services. If the dispute cannot be solved, the consumer can refer it to the Consumer Disputes Board.

The education to become a tourist guide is offered at upper secondary level. In higher education institutions there are programmes offering education in tourism research and hospitality management.

## I. Overview

By 1 February 2021, France had entered information about 265 regulated professions into the publicly available database for regulated professions. Of these professions, 11.3% concern business services, 6.4% the construction sector and 1.1% the real estate sector.

This is a slight increase compared with 2016 figures (258), resulting from the French authorities having introduced in the database professions regulated as required by EU law, notably in the field of air transport.

According to an EU-wide survey<sup>59</sup>, 17% of the French labour force can be considered to be working in regulated professions. This is lower than the EU average (21%).

France regularly updates the **database on regulated professions**. This database provides citizens and administrative authorities from other Member States with valuable information about the regulation of its professions in a given Member State.

The **national action plan** submitted by France in 2016 detailed the changes to regulated professions introduced by the Law on growth, activity and equal economic opportunities (the ‘*Loi Macron*’) and its implementing acts. Concerning in particular the seven professions analysed in this report, this law lifted several restrictions on legal forms for legal professions. It reduced the shareholding requirements for some legal professions and allowed the creation of multi-professional companies between a certain range of related professions. The action plan also presented the reforms France introduced for architects and real estate agents.

Since 2016, annual **country-specific recommendations** have been addressed to France in the area of professional services, in particular, to remove barriers to competition and growth in business services and regulated professions. The 2019 country-specific recommendation proposes to:

*Reduce regulatory restrictions, in particular in the services sector, and fully implement the measures to foster the growth of firms.*

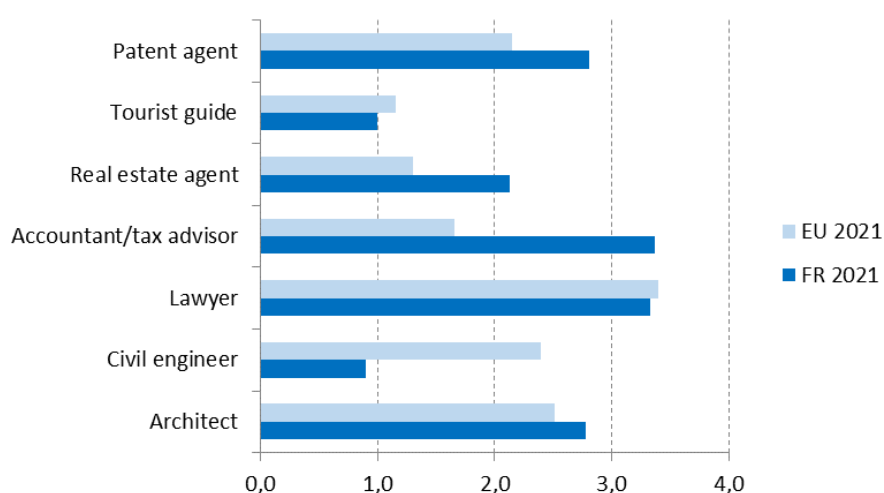
## II. Situation on the analysed professions

Regulatory restrictiveness in France is higher than the EU average for accountants/tax advisers, architects, real estate agents and patent agents. It is lower than the EU average for lawyers, tourist guides, and in particular civil engineers. Among the professions analysed, restrictiveness is the highest for accountants/tax advisers and lawyers.

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<sup>59</sup> Koumenta M. and M. Pagliero (2016), *Measuring Prevalence and Labour Market Impacts of Occupational Regulation in the EU*. See: <https://ec.europa.eu/docsroom/documents/20362>.

**Chart 1: Regulatory restrictiveness, France, 2021.**



The following description of the situation for the different professions focuses on changes since the analysis published in 2017. However, to provide a complete and understandable picture, the description also restates part of the information described in 2017.

### Architects

In 2017, the Commission made the following recommendation for architects:

- consider the impact of the shareholding and company form restrictions in place in addition to the other requirements.

No reforms on the above-mentioned issues seem to have been made since then.

Architects benefit from title protection and reserved activities.

According to Article 3 of the Law n°77-2 of 3 January 1977 on architecture, activities reserved for architects include architectural works/projects subject to a building permit application<sup>60</sup>.

The profession of architects requires 6 years of higher education, comprising 5 years of study and 1 year of theoretical and practical training. This is in line with the training standards under Directive 2005/36/EC for architects who benefit from automatic recognition. Following the 1 year of theoretical and practical training, the future architect will be authorised to practise project management (*habilitation à la maîtrise d'oeuvre (HMONP)*) which will enable them to sign construction projects. At the end of that year, the junior architect sits a State exam organised by the National High Schools of Architecture to enable them to sign architectural projects under their own name. There are no territorial restrictions or limitations of the number of registrations to the Order. There is an obligation to register with the professional body representing the architects in the area in which the professional wishes to practise (*tableau regional des architectes*) and to have professional indemnity

<sup>60</sup> According to French law, the activities reserved for architects broadly fall under the following categories: 1. Architectural Design and planning, feasibility studies; 3. Preparation/ submission/signing of technical control and compliance (i.e. + submission of building permit request) The other usual tasks undertaken by architects such as construction management, interior design and landscape architecture, technical control and compliance permit, urban design are not reserved activities.

insurance appropriate for each building site. Depending on the case, it may be an annual professional insurance for all projects, or an insurance adapted to each site.

Architects can form civil or commercial companies among themselves or with other natural or legal persons. They can also form a company with a single shareholder. Companies must respect certain rules and be registered in the roll of the Order of Architects in the region in which the company wishes to establish itself in order to be allowed to use the title of architectural company and be authorised to practise the profession of architect.

According to Article 13 of the Architectural Act 1977, in order to become an architectural company, several conditions must be met:

- the company's shares must be in registered form
- more than half of the share capital and voting rights must be held by one or more natural persons who are architects or by one or more natural persons established in another EU Member State or EEA country and legally practising the profession of architect, or by architectural companies or legal entities established in France or in another EU Member State or EEA country in which more than half of the share capital and voting rights are held by architects.

In addition, legal persons who are not architectural firms may not hold more than 25% of the share capital and voting rights of architectural firms.

The following must be architects or architectural practices established in an EU Member State or EEA country: the chairman of the board of directors, the chief executive officer if there is only one, at least half of the chief executives on the executive board and in management, and the majority of the members of the board of directors and the supervisory boards

The continuous professional development (CPD) obligation is satisfied when an architect has completed and declared a structured training action of at least 20 hours over a calendar year or at least 60 hours over three consecutive years. Publications or training offered by the architect can compensate for CPD under certain conditions, which is checked by the regional professional body.

Based on the available information, the Commission has not identified additional certification or attestation schemes specific to architects<sup>61</sup>.

The last remaining restrictions concerning tariffs were abolished with the Law of 7 July 2016 and there are no restrictions on advertising.

### Civil engineers

In 2017, the Commission did not address any recommendations to France on the civil engineering profession.

In France, civil engineers benefit from a protected title. Only holders of diplomas delivered by certain state-created/recognised institutions on the advice or decision of the *Commission des titres d'ingénieur* and accredited engineering higher education institutions are allowed to use the title of '*ingénieur diplômé*' ('graduated engineer'). The title guarantees a master's

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<sup>61</sup> e.g., where in order to pursue specific/specialised activities additional education or experience or an exam would be required. This may concern activities such as performance of construction supervision, energy certification, energy audits, expert opinions, activities related to special buildings (such as nuclear power plants, historical heritage sites).

level qualification including academic and practical training, which allows holders of such diplomas to work as engineers without any other requirements. The French law also sets out a number of construction and urban planning rules and standards, and general principles on developing a construction project. These are considered sufficient to ensure security.

However, based on the available information, engineers require additional qualifications to undertake specific professional activities, and certification to prove compliance with certain norms (for example on fire prevention, environment, etc.). This is the case for all technical inspectors in the field of construction whose legal status is laid down in Articles L.111-23 to L.111-26 of the Construction and Housing Code (CCH) and Articles R.111-29 to R.111-42 of the CCH. They are responsible for preventing all technical problems that may arise during the construction of a building, particularly regarding the integrity of the roadworks, foundations, framework, roof and ceiling and the equipment that is inseparably linked to these works, as well as the safety of people.

A technical controller intervenes at the request of the client. They are required to give a technical opinion which must not exceed the scope of the approval for which they have been authorised to perform their duties.

A technical inspector is required in particular for certain buildings which present particular risks because of their nature (e.g. public buildings), size (e.g. skyscrapers) or location or whose operation is essential for public safety or the defence of public order. These technical construction controllers can be either legal or natural persons. The Minister in charge of construction grants them an approval of up to 5 years, renewable after a reasoned opinion of the Commission for the Approval of Technical Inspectors. Technical inspectors must have an engineering qualification of at least 4 years and professional experience of at least 3 years to be able to perform these tasks.

They have to be fully independent from the designer and project manager, and demonstrate that they undertake continuous professional development and have the material and logistical means to pursue their tasks. If the technical construction controller is a legal person, they will need to provide the competent authority with information on the composition of the company's capital, the list of individuals detaining more than 5% of the capital and list of branches of the company and of the shares of the company in other companies, as well as the list of managing staff and external financing sources.

#### Accountants/tax advisers

In 2017, the Commission made the following recommendations for accountants/tax advisers:

- all Member States regulating professions in the sector should reconsider reserving simple tasks such as payroll activities or preparation of tax declarations to highly qualified professionals;
- introduce clarity on the scope of the activities, reserved to expert accountants, in particular as regards simple tasks, such as making accounting entries electronically, in line with the national case-law and Case C-79/01;
- assess the proportionality of the shareholding requirements.

Following those recommendations, the French authorities provided clarification on the scope of reserved activities for accountants, which do not include payroll activities or the preparation of tax returns. They also clarified that there is no shareholding requirement, but



that two thirds of voting rights have to be held by accountants in a ‘société d’exercice comptable’.

The profession benefits from reserved activities and a protected title.

Activities reserved for accountants include assessing companies’ and bodies’ bookkeeping, and drawing up annual financial statements and consolidated financial statements for companies (except for those where they are employed).

Under the reserved activities, accountants review and evaluate accountancy, attest to the truthfulness and conformity of the profit and loss accounts and also keep, centralise, open, close, monitor, recover and consolidate the accounts of companies and organisations to which they are not bound by an employment contract. Less complex tasks, such as making electronic accounting entries can be performed by people other than accountants (e.g. employees in the company), as long as their accuracy is confirmed by an accountant.

Regarding shared activities, accountants can as a side (and not main) activity, give legal advice in fiscal and social matters, carry out legal, fiscal or social studies and works to any authority or public or private body if they do bookkeeping for them and if those studies are directly linked to their bookkeeping work.

They can also carry out other non-reserved activities, like organise the accounts and use accounting techniques to analyse the economic, legal and financial functioning of companies, and provide assistance for the creation of a company. In May 2019, the Law on the growth and transformation of enterprises (the ‘Loi Pacte’)<sup>62</sup> somewhat broadened and simplified the role of accountants. They can now manage debt payment and debt collection on behalf of their client. The mandate for accountants to represent their clients before the tax authorities and social security bodies is now presumed.

Accountants require a minimum of 5 years of study followed by a three-year traineeship and passing a state exam. Membership with the professional body is compulsory, as is professional indemnity insurance. Ethical rules include a general obligation to undertake continuous professional development, and for this, the professional body recommends 120 hours every 3 years, with a minimum of 20 hours per year.

There are no restrictions on territorial validity and the number of licences.

Accountancy is incompatible with any occupation or act likely to compromise the professional’s independence. In particular:

- being an employee, except in companies having as their main purpose the accounting activity.

Since the Loi Pacte of 2019, the ban on commercial work for accountants who are also auditors has been removed. With the very imminent entry into force of a professional standard approved by Order, all accountants will be able to carry out commercial work. Accountants can work either as a sole practitioner, in partnership with other accountants, or as an employee of another professional or professional company – *société d’expertise comptable* (SEC) according to the French terminology, or as a corporate officer (*mandataire social*) of an SEC. In a SEC two thirds of voting rights have to be held by accountants. Since 2014, there are no more shareholding restrictions in the SEC. Accountants can choose from all legal forms governing French companies: civil or commercial corporate forms. The only restriction is the prohibition to create a company which, by its legal form, provides the status

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<sup>62</sup> Loi No 2019-486 of 22 May 2019.

of trader to their partners. This concerns three types of company: *société en nom collectif* (SNC), *société en commandite par actions* (SCA), *société en commandite simple* (SCS).

Regarding multi-professional companies (*sociétés pluri-professionnelle d'exercice* - SPE), an accountant can be member of an SPE, company created for the joint practice of two or more of the following nine professions: lawyer, lawyer before the supreme courts, bailiff auctioneer, court bailiffs, notary, insolvency practitioner, court-appointed receivers, patent agent and accountant. However, an accountant cannot carry out an auditor's activity in the SPE for ethical reasons. Partners in an SPE must include at least one member of each of the professions it exercises, and which constitutes its corporate purpose. All the capital and voting rights of an SPE must be held by natural persons exercising one of the professions exercised in common in the company or by companies whose capital and voting rights are wholly owned by these natural persons. At least one member of the profession practising within the company, as a partner or employee, must be a member of the managing or supervisory board.

## Lawyers

In 2017, the Commission made the following recommendation for lawyers:

- to introduce more transparency and review the proportionality of access rules for lawyers wishing to practise before the competent supreme courts, and in particular to clarify the rules applicable to European lawyers;
- (recommendation to all Member States reserving legal advice) clarify the scope of reservations in order to facilitate the provision of legal advice by lawyers or other service providers, in particular for online services;
- (recommendation to all Member States) assess legal form and ownership requirements, incompatibility rules and multidisciplinary restrictions, taking into account in particular the proportionality of these restrictions in relation to fundamental principles, such as the independence of the profession, and the corresponding control arrangements. In addition, the cumulative effect of these requirements should be considered, as their effects could be accentuated in the case of reservations of important activities (e.g. where legal advice is also part of the reserved activities).

Lawyers in France benefit from a protected title and a reserved activity to represent clients in court.

### *The field of activity*

A lawyer is the only person entitled to assist and represent clients, and apply to and plead before the courts or jurisdictional or disciplinary bodies. There are legal exceptions, in particular pleading before social courts or the commercial court.

A lawyer can assist their clients and plead without territorial limitation. However, 'avocats aux Conseils' (Supreme Court lawyers) have a monopoly on representing litigants before the French Supreme Courts ('Conseil d'Etat and the Cour de Cassation').

It is also only a lawyer that may assist a party in a participatory procedure provided for in the Civil Code.

Lawyers may assist and represent their clients before public authorities.

They may also carry out certain activities with other professions (shared activities).

A lawyer is entitled to provide legal advice (including tax, insolvency and business incorporation) and to draw up private deeds<sup>63</sup>. Certain other professions may also provide legal advice and draw up deeds under the conditions set out in national law<sup>64</sup>.

Lawyers may also represent clients when drawing up contracts for a paid sporting or training activity.

They may also provide fiduciary and mediation services.

Case-law has clarified activities that are and are not reserved for lawyers. For example, the online production of documents for judicial proceedings where a lawyer is not needed, is not an activity reserved for lawyers<sup>65</sup>. However, there is still some legal uncertainty on the exact scope of the activities falling under 'legal advice' which gives rise to abundant case-law.

### *Access to the profession*

Lawyers require a minimum university education of 4 years (master's level), passing a specific university exam, and 18 months of theoretical and practical training in a professional centre (*Centre régional de formation professionnelle d'avocats or CFRPA*). They then have to pass a final professional exam (*examen d'aptitude à la profession d'avocat or CAPA*) organised by the centre.

However, there are certain exceptions to these requirements for certain other legal professionals, members of the Conseil d'Etat, administrative courts and administrative courts of appeal, magistrates of the Court of Auditors, magistrates of the judiciary, university professors, lawyers at the Conseil d'Etat and the Cour de Cassation, etc. Depending on the case, the beneficiary of the 'passerelle' may be exempted from the university requirement and/or the CRFPA/CAPA training. Exemptions are also granted to doctors of law.

*Supreme Courts lawyers ('Avocats aux conseils')* require 3 years of theoretical and practical training at the Institut de formation et de recherche des avocats aux conseils (Ifrac), and passing an aptitude exam (CAPAC). Derogations can be granted for certain legal professions.

The number of authorisations (*offices ministériels*) granted to lawyers before the supreme courts is strictly restricted, but a law in 2015<sup>66</sup> introduces a gradual increase following the opinion of the French competition authority. Lawyers before the supreme courts are appointed by the Ministry of Justice.

Following the Commission's first recommendation, France adopted Decree No 2021-171 on 16 February 2021<sup>67</sup> setting out the conditions for access to and practise of the profession of lawyer at the Conseil d'Etat and Cour de Cassation applicable in France to European nationals. It therefore ensures the recognition of professional qualifications of EU nationals, and that qualified EU lawyers can access the French Supreme Courts under their original professional title on a temporary or occasional basis, or permanently.

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<sup>63</sup> For lawyers, the activities of legal advice (including tax matters), drawing up legal documents, representation before administrative authorities, fiduciary activities, mediation are shared with other legal professions.

<sup>64</sup> However other professions, such as accountants, can also deliver legal advice if it constitutes an ancillary activity.

<sup>65</sup> See Cour d'appel de Paris, Pôle 5 – Ch.12, decision of 21 March 2016

<sup>66</sup> Law 2015-990 of 6 August 2015.

<sup>67</sup> Decree No 2021-171 of 16 February 2021<sup>67</sup> organising representation before the Conseil d'Etat and Cour de cassation by professionals who are nationals of Member States of the European Union or parties to the Agreement on the European Economic Area other than France and amending Decree No 91-1125 of 28 October 1991 on the conditions for access to the profession of lawyer at the Conseil d'Etat and Cour de cassation.

### *Organisation of the profession*

To use the title of lawyer an individual must register with a bar in their professional jurisdiction. Registration is subject to conditions of good character (no convictions).

The lawyer takes an oath.

From the time of registration, lawyers are required to undergo 20 hours of further education in the course of a calendar year or 40 hours in the course of two consecutive years. This obligation can be fulfilled in several ways: by participating in legal or professional training courses provided by the CRFPA or universities, by participating in training courses provided by lawyers or other educational establishments, by attending legal symposia or conferences, by providing legal instruction or by publishing legal works.

### *Modes of practise*

Lawyers may practise as individuals, as partners under a practice structure (association, professional partnership, private practice company or joint venture), or as employees or private associates of a lawyer, an association, a law firm or a company whose purpose is to practise law. They may also be a member of an economic or a European economic interest group.

Lawyers may also use structures with a legal personality, except for legal forms that give their partners a 'trader' status. They can therefore use the form SARL, SAS, SA or European company. The share capital and voting rights of one of these companies may be held by any natural person practising a legal or judicial profession or by any person legally established in an EU Member State, subject to certain conditions.

Lawyers may also set up multi-professional companies for the joint practise of several regulated legal and judicial professions (lawyers, *avocats aux Conseils*, auctioneers, bailiffs, notaries, court-appointed administrators, judicial representatives) as well as industrial property consultants and chartered accountants. However, when lawyers are part of an SPE<sup>68</sup> it is sufficient for shares to belong to one of these professions with at least one shareholder being a lawyer.

### *Professional insurance, fees and advertising*

All lawyers must have insurance coverage for the financial consequences of their professional civil liability. Special insurance must be taken out for fiduciary services.

A lawyer's fees are freely agreed between them and their client<sup>69</sup>.

Personal advertising is permitted as long as the lawyer provides accurate information and respects essential ethical principles of the profession. Comparative advertising is prohibited.

A lawyer may offer services online (personalised solicitation), but canvassing either in person or over the phone is prohibited.

Since Decree n° 2019-257 of 29 March 2019, personalised solicitation is also permissible for the *avocat aux Conseils*.

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<sup>69</sup> Maximum and minimum fees are determined for specific judiciary property services.

## Patent agents

In 2017, the Commission did not address any recommendations to France for the profession of patent agents.

Patent agents still benefit from a protected title, but do not have exclusive reserved activities. They share the activity of representing clients before the National Patent Office (*Institut national de la propriété industrielle*) with lawyers and contractually-linked companies. Other activities are not reserved.

Becoming a patent agent (conseil en propriété intellectuelle ‘CPI’) is subject to the following conditions:

1. a national second cycle legal, scientific or technical diploma<sup>70</sup>;
2. a diploma issued by the Centre for International Industrial Property Studies (CEIPI) of the University of Strasbourg<sup>71</sup>;
3. at least 3 years' professional experience;
4. passing an exam<sup>72</sup>.

Individuals who fulfil these conditions are entered on a list of qualified people kept by the French Office. People on this list may, upon request, be entered in the list of CPIs, also kept by the French Office, provided that they produce a financial guarantee and civil liability insurance.

There are no territorial limitations. Registration with the professional body ‘*Compagnie nationale des conseils en propriété industrielle*’ is compulsory.

Patent agents can work independently, as a sole practitioner or in partnership with other patent agents, or as an employee in a professional company. However, they lose their title when working in companies with other corporate objectives. They can set up professional civil partnerships, SEL, SPE or any other partnership. In the latter case, however, chief executives and the majority of the board need to be patent agents. Since June 2019, more than half of the voting rights and shares in patent companies have to belong to professionals. The share capital of patent agents can be reduced to 25% in companies that gather professionals from the same sector (1. construction of prototypes; 2. approximation between bids and licence applications; 3. creation of trademarks; 4. financing innovation). When working within an SPE, all shares and voting rights need to be held by patent agents or by other professionals such as lawyers, accountants, notaries, etc. (see above information on accountants and lawyers).

Commercial activities are prohibited and there is a general rule to avoid conflicts of interest.

Continuous professional development is mandatory, with a required 20 hours per year of activities including teaching, attending courses, writing articles and acting as a mediator.

All patent agents must have professional indemnity insurance and a financial guarantee for funds and values received.

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<sup>70</sup> Issued by a public establishment of a scientific, cultural and professional nature within the meaning of Law No. 84-52 of 26 January 1984 authorised to issue it, or of a title recognised as equivalent under the conditions laid down by joint order of the Minister of Justice, the Minister responsible for industrial property and the Minister responsible for higher education.

<sup>71</sup> Or a title recognised as equivalent under the conditions laid down by joint order of the Minister of Justice, the Minister responsible for industrial property and the Minister responsible for higher education.

<sup>72</sup> The terms and conditions and programme of which must be laid down, for each specialisation, by joint order of the Minister of Justice, the Minister responsible for industrial property and the Minister responsible for higher education. The tests must be adapted for professional representatives before the European Patent Office.

Patent agents are authorised to make use of advertising, but while direct marketing via emails and phone calls is allowed, personal text messages are not allowed.

Fees are not regulated.

### Real estate agents

In 2017, the Commission made the following recommendation for real estate agents:

- evaluate to what extent the duration of mandatory qualification requirements is indispensable in view of the tasks pursued by estate agents and the objectives of regulation.

Real estate agents benefit from reserved activities and a protected title. The title protection was introduced through a Law on housing adopted in November 2018.

The activities of a real estate agent in France include transactions involving the property of others and relating to the purchase, sale, search, exchange, rental or subletting, whether seasonal or not, bare or furnished, of built or unfurnished buildings; the purchase, sale or management lease of businesses; the subscription, purchase or sale of shares or units in real estate companies or participatory housing companies giving entitlement to the allocation of premises in possession or ownership; and the purchase or sale of non-negotiable shares when the company's assets include a building or a business.

The activity also includes the management of real estate and co-ownership syndicates. Some of these activities are shared with other professions, namely architects, notaries, solicitors, lawyers, bailiffs, and insolvency administrators. Some are also shared with bodies in the remit of these bodies' activities linked to real estate.

To carry out these activities, independently, the agent needs to hold a professional card and, in order to obtain it, fulfil certain requirements, including qualification requirements. Employees, or commercial agents authorised (*habilités*) by a real estate agent, do not need to hold the professional card and hence are not subject to professional qualification requirements.

The following four main ways to qualify for the professional card are set out in the law: (i) a general higher education diploma of at least 3 years in relevant subjects (law, economy, etc.); (ii) a specialised diploma of two years post-secondary education; (iii) a school leaving certificate plus 3 years of professional experience; or (iv) 4 years of professional experience as an executive in the field or 10 years as a non-executive. There is no obligatory traineeship, or state exam, or any obligation of professional experience, except for the alternative educational pathways mentioned above. There is no territorial restriction or limitation to the number of licences.

Self-employed real estate agents must apply for a professional card with the Chamber of Commerce and Industry. Since October 2016, the card is valid for 3 years.

To renew the card, real estate agents have to fulfil continuous professional development requirements of 14 hours per year or 42 hours over the last three consecutive years of practise. This can take the form of professional training by accredited trainers or attending conferences and seminars on the subject. The training certificate must be attached to the card

renewal application and submitted to the Chamber of Commerce and Industry. Employees, and commercial agents must also comply with these continuous professional development requirements, although they are not required to have a professional card.

Holders of the professional card must have a professional indemnity insurance covering their civil liability, as well as a financial guarantee for the goods and values they receive. Employees who are commercial agents must also have professional liability insurance.

Real estate agents have to fulfil moral conditions, as required by law. Professional card holders have to fulfil additional conduct requirements ('character requirements') defined by decree and by the national council for property management and transactions. A commission for the control of estate agents' activities can investigate cases of abusive practices and submit a report to the administrative authority in charge of competition and tackling fraud.

Fees are fixed freely between real estate agent and client, except in the case of clients that rent (rather than own) their main residence.

### Tourist guides

In 2017, the Commission made the following recommendation for tourist guides:

- (*recommendation to all regulating MS*) consider the justification and proportionality of regulation of the profession.

France maintained its previous regulation on tourist guides, but introduced a third, rather open qualification pathway to facilitate access to the profession.

Tourist guides ('*guide conférencier*', i.e. lecturer guide according to French terminology) still benefit from reserved activities.

Reserved activities include the right to accompany and guide groups, to guide part of a journey organised by a tour operator, and to guide visitors around national museums (*musées de France*) and historical monuments. The list of national museums (1 223 in 2020) is established by the Ministry of Culture and is available on its online database 'Muséofile'. The list of monuments is established by *departement*. There are around 44 060 classified historical monuments in France, around 10% of which are open to the public.

Since the beginning of 2017, there are three training pathways to become a qualified tourist guide: (i) a three-year 'lecturer guide' degree (the most frequently chosen pathway); (ii) a five-year master's degree in a general subject with three specialist courses on lecturer guide services; and (iii) a master's degree in any subject, 1 year of professional experience as a guide (accumulated over the last 5 years) and knowledge of a foreign or regional language at C1 level of the common European framework of reference for languages (CEFRL) or sign language. A mandatory 12-week traineeship is also required for all pathways. Once these requirements are met, an individual can obtain the national professional lecturer guide card which enables them to carry out the reserved activity mentioned above.

Apart from lecturer guides, the tourist guide profession can be accessed freely and practised without a title or diploma.

The national action plan submitted in February 2016 mentioned a growing need for tourist guides, especially foreign language lecturer guides. This seems to be the main reason for opening the third qualification pathway, and explains the ongoing search for more diverse profiles that meet the demands of national and international clients.



GERMANY



## I. Overview

By 1 January 2021, Germany had submitted information about 160 regulated professions. This is a slight increase compared with 2016. Of those professions about 14% concern business services and 13.4% the construction sector.

The slight increase in regulated professions can be partly explained by the re-introduction of the ‘Meisterpflicht’ for 12 crafts professions in 2020. In 2004, Germany decided to abolish the ‘Meisterpflicht’ for 53 crafts professions, but has decided to partly reverse this reform by re-regulating a range of professions in the crafts sector.

According to an EU-wide survey<sup>73</sup>, 33% of Germany’s labour force can be considered to be working in regulated professions. This is above the EU average (21%) and is the highest among all Member States.

Germany regularly updates the **database on regulated professions**. This database provides citizens and administrative authorities from other Member States with valuable information about the regulation of professions in a given Member State. However, the information on regulated professions in Germany is currently incomplete, in particular for those professions regulated at länder level.

In its **national action plan** from 2016, Germany announced only a limited number of actions for certain professions, in particular for liberal professions and business services. Planned modifications of regulations concern for instance lawyers and patent agents (shareholding and voting rights as well as multidisciplinary restrictions), tax advisers (tariffs and consequences of the latest jurisprudence of the Court) and also, to a certain extent, architects (shareholding requirements). Apart from the implementation of the CJEU judgment in case C-342/14 on tax advisers and the amendment to tariffs for architects and engineers following the judgment in case C-377/17 (HOAI) the reforms planned for lawyers, patent agents and tax advisers have not yet taken place. A reform of legal services has been prepared by the German government, and parliamentary deliberations are ongoing.

In 2017, 2018 and 2019, the Council addressed **country specific recommendations** to Germany in the area of professional services:

*Stimulate/strengthen competition in business services and regulated professions.*

## II. Situation on the analysed professions

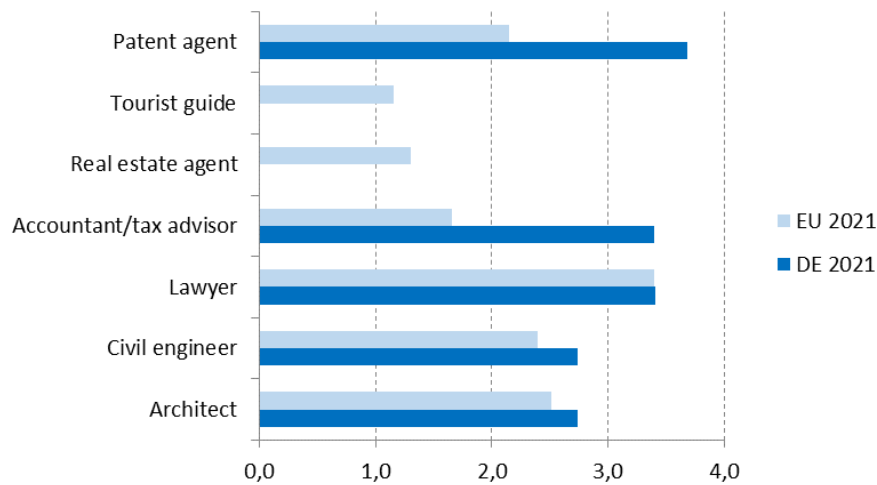
Regulatory restrictiveness in Germany is higher than the EU average for architects, civil engineers, patent agents and tax advisers.

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<sup>73</sup> Koumenta M. and M. Pagliero (2016), *Measuring Prevalence and Labour Market Impacts of Occupational Regulation in the EU*. See: <https://ec.europa.eu/docsroom/documents/20362>.



Chart 1: Regulatory restrictiveness, Germany, 2021.



In 2017, based on the restrictiveness indicator as well as on a detailed analysis of the legislation, the Commission made recommendations for these five regulated professions.

The following description of the situation for the different professions focuses on changes since the analysis published in 2017. However, to provide a complete and understandable picture, the description also restates part of the information described in 2017.

### Architects

In 2017, the Commission made the following recommendation for the architectural profession:

- consider the impact of the shareholding and company form restrictions in place in addition to other requirements.

In line with this recommendation, Germany announced in its 2016 national action plan that some Länder are considering a more uniform nationwide approach to shareholding and voting right rules. However, no progress seems to have been made to date.

The architectural profession is regulated at Länder level, meaning that there are 16 different laws and corresponding rules and regulations.

The authorisation to present building documents for most building permit applications (*‘Bauvorlageberechtigung’*) is reserved for architects, who share this reserved activity with other professions, including civil engineers.

There are no other reserved activities and the regulation therefore only applies to operators who want to use the title of architect. Title protection also exists for the related professions of interior architect, landscape architect and urban planner. To be permitted to hold the title in one of the fields one needs to be entered on a list maintained by the chamber.

To be eligible for registration, a professional needs to provide, among other things, evidence of having successfully completed a study programme of at least 4 years of regular study in one of the relevant areas at a German university and, after completion, having practised in the field full-time for 2 years or part-time for a comparable period. This is in line with the minimum study requirements for architects who benefit from automatic recognition under the Professional Qualifications Directive.

Partnerships or legal persons need to be entered into a separate register, but do not become members of the chamber. To obtain an authorisation to submit building permit documents, interior architects must register on another list.

Generally speaking, Länder-level legislation provides for three different pathways to obtain the title of architect: (i) studies and practical experience; (ii) teaching a relevant subject at university; or (iii) obtaining a qualification for high or higher civil engineering administrative service in building construction or urban development, or for higher service in landscape and nature conservation.

Authorisations are issued at regional level and, in line with the relevant regional law, are valid throughout the entire area under the responsibility of the regional chamber. In case of (a secondary) establishment, the recognition procedure for registration in other Länder is assured by the law at Länder level.

Chamber membership is also contingent on continuous professional development, in the form of at least eight ‘training points’ in a calendar year. One training point corresponds to a 45-minute lesson. During the mandatory 2 years of practical experience before registration, professionals also need to complete further training.

To qualify for a protected title, there are restrictions on the legal form a partnership or legal person can take. In addition to the registration requirement, professional members must hold at least half of the capital, voting rights and shares. The other shares can only be held by natural persons who exercise a liberal profession and who can contribute to the company's purpose due to their professional training. Furthermore, at least half of the people authorised to manage the company must be professionals.

Appropriate professional indemnity insurance is mandatory although there are no uniform rules as the requirement depends on applicable regional law.

To implement the CJEU judgment in case C- 377/17 Germany has amended its tariff restrictions for architects and engineers, which were based on the *Honorarordnung für Architekten und Ingenieure*. The new *Honorarordnung für Architekten und Ingenieure* entered into force on 1 January 2021. It contains a list of non-binding tariff ranges and clarifies that these can be used as basis for tariffs between contracting parties. Parties can deviate from these tariff ranges by means of a written tariff agreement in text form.

Restrictions on advertising and marketing vary in line with regional rules and a case-by-case assessment of chambers based on their professional rules. They generally consist of broad clauses stating that unprofessional actions for the purposes of competition, in particular promotional advertising, are prohibited.

Based on the information available, there are additional certification schemes for architects to access the title of certified or publicly appointed surveyor (*Sachverständiger*). In general, architects can work as surveyors without certification or public appointment. After several years of professional experience as a surveyor, it is, however, possible to apply for public appointment, which involves an assessment of personal and professional suitability.

## Engineers

In 2017, the Commission made the following recommendation for the engineering profession:

- assess the proportionality of the shareholding requirements.

To date, there seems to be no progress on this recommendation.

The engineering profession is regulated at Länder level, meaning that there are 16 different laws and corresponding rules and regulations.

Regulation takes the form of title protection, which exists in all Länder. Eligibility to hold the title is contingent on the completion of a study programme of at least 3 years in a technical or scientific field at a German higher education institute or an operator course at a German state-recognised mining school (*Betriebsführerlehrgang einer deutschen staatlich anerkannten Bergschule*). Title protection also exists for the title of ‘advisory engineer’, which requires 3 years of professional experience in a relevant field.

There is only one reserved activity, namely the submission of building permit applications for most types of building (*Bauvorlagenberechtigung*), which civil engineers share with a few other professions, notably with architects. To qualify for this, engineers need to demonstrate 2 years of professional experience in the field of building planning and register with the relevant chamber.

Authorisations are issued at regional level and, in line with the relevant regional law, are valid throughout the entire area under the responsibility of the regional chamber. The recognition procedure for registration in other Länder is assured by the law at Länder level. There is no such recognition procedure for the title of advisory engineer.

Chamber membership is only mandatory for advisory engineers, but it is necessary to register on a list managed by a chamber to obtain a professional title protection as an advisory engineer and to be allowed to submit building permit applications. The protection of the ‘engineer’ title is granted without any registration to holders of a German degree.

Chamber membership is also contingent on continuous professional development. On average, compulsory members (i.e. advisory engineers), must provide at least eight training points within a calendar year, and voluntary members at least four training points. Members with additional qualifications, such as publicly appointed experts, professions authorised to submit building permit applications or surveyors, must undergo further training according to their qualifications with at least four training points per qualification. One training point corresponds to a 45-minute lesson.

Engineers, including advisory engineers are allowed to carry out their activities in any legal form, to establish companies for this purpose or to participate in existing companies.

Shareholding requirements, restrictions on voting rights and joint practice, and incompatible activities apply, if the protected title is used as part of the company name. The title ‘advisory engineer’ may only be used by companies if their purpose is to provide this specific service, if advisory engineers hold at least half of the shares and voting rights, and if the other shares are held only by members of other liberal professions. The title ‘engineer’ may be used in a company name, as long as at least half of the board of directors, the managing directors or those holding at least 50% of the voting rights are authorised to use this professional title. The right to submit building permit applications is granted to natural persons but not to companies. Companies can only offer or advertise such services, if they have employees who are authorised to submit building permit applications.

Appropriate professional indemnity insurance is required, but there are no uniform rules as requirements vary according to the applicable regional law.

To implement the CJEU judgment in case C- 377/17 Germany has amended its tariff restrictions for architects and engineers, which were based on the *Honoararordnung für*

*Architekten und Ingenieure.* (HOAI) The new *HOAI* entered into force on 1 January 2021. It contains a list of non-binding tariff ranges and clarifies that these can be used as a basis for tariffs between contracting parties. Parties can deviate from these tariff ranges by means of a written tariff agreement in text form.

Restrictions on advertising and marketing vary in line with regional rules and a case-by case assessment of chambers based on their professional rules. They generally consist of broad clauses stating that unprofessional actions for the purposes of competition, in particular promotional advertising, are prohibited.

Based on the information available, there are additional certification and attestation schemes for engineers. After several years of professional experience and additional training, engineers can apply for certification or public appointment as a surveyor (*Sachverständiger*), which includes an assessment of personal and professional suitability.

#### Accountants/tax advisers

In 2017, the Commission made the following recommendations on tax advisers:

- ensure a proper follow-up of the CJEU judgment in case C-342/14, *X-Steuerberatungsgesellschaft*, in order to ensure transparency and legal certainty, in particular as regards provision of tax consultancy services by companies, established in other Member States;
- assess the proportionality of the shareholding requirements;
- reconsider reserving simple tasks such as payroll activities or preparation of tax declarations to highly qualified professionals.

Germany has amended its tax adviser legislation to implement the CJEU judgment in case C-342/14, but no progress seems to have been made on the remaining 2017 recommendations.

Two new legislative proposals are currently being prepared by the German government that may also have an impact on the regulation of the tax adviser profession. The planned reform is covered in more detail in the section on the law profession below.

The accountancy profession is not regulated in Germany. However, there is the possibility to obtain the recognised title of ‘qualified accountant’ (*‘geprüfter Bilanzbuchhalter’*) following a successful examination according to conditions laid down in a federal law.

Most tax advice services as well as representation before administrative authorities are reserved for tax advisers, in combination with a title protection. Parts of the reserved activities, namely. tax advice, are shared with lawyers and notaries, while bookkeeping and payroll activities are shared with professionals who have undertaken a commercial apprenticeship and have 3 years of professional experience in bookkeeping.

To qualify as a tax adviser, it is necessary to pass a state exam irrespective of which of the following three educational pathways was followed: (i) university studies in economics or law or another university degree with a specialisation in economics and a minimum of 3 years of professional experience, if the studies are less than 4 years, or 2 years, if the studies are more than 4 years; (ii) being a public official with at least 6 years of professional experience in a tax authority; or (iii) a minimum of 6 years of professional experience following professional education. After passing the state exam, a professional also needs to be formally appointed as a tax adviser before he or she can commence activities.

Chamber membership in one of the regional chambers is mandatory for tax advisers and depends on the place of establishment. There is a general non-specific continuous professional development obligation for tax advisers. Appropriate professional indemnity insurance is also required.

Tax advisory companies need to be recognised as such. Members of the board of directors or the managing directors must be tax advisers, lawyers, auditors, sworn auditors or tax agents. At least one tax adviser who is a member of the board of directors, managing director or personally liable partner must have their professional establishment at the company's headquarters or in its vicinity. 100% of the shares and 51% of voting rights must be held by tax advisers, lawyers, auditors, sworn accountants, tax agents, tax adviser companies or individuals eligible to act as board member or managing directors.

The law also lays down very strict rules on joint exercise, for example that tax advisers can only undertake joint professional activities with other legal or accounting professionals. Rules on incompatible activities are equally strict and encompass any commercial activity, employed status (with some exceptions), and in particular employment by the administration of finance.

The remuneration of tax advisers is based on the *Steuerberatervergütungsverordnung*, unless agreed otherwise in writing. Advertising and marketing is allowed as long as the information on services offered is factual. Promotional advertising is prohibited, however.

## Lawyers

In 2017, the Commission made the following recommendations for the profession of lawyer:

- review the need to maintain age restrictions for practising before the Federal Court of Justice (Bundesgerichtshof), in contrast to measures which appear to be more suitable to achieve the objectives pursued, such as professional experience;
- introduce more transparency and review the proportionality of access rules for lawyers wishing to practise before the relevant supreme courts, and in particular clarify the rules applicable to European lawyers;
- clarify the scope of the reserves so as to facilitate the provision of legal consultancy services by lawyers or other service providers, in particular for online services;

The Commission also addressed the following recommendation to all Member States:

- assess legal form and shareholding requirements, incompatibility rules and multidisciplinary restrictions, in particular taking into account the proportionality of these restrictions in relation to the core principles, such as the independence of the profession and to the corresponding supervisory arrangements. In addition, consideration should be provided to the cumulative effect of such requirements to the extent that their effects might be accentuated in case of extensive reserves of activities (e.g. where legal advice is also part of the reserved activities).

Some progress has been made since the 2017 recommendations. The German government has prepared two new legislative proposals on the professions of lawyer, tax adviser, patent agent and providers of out-of-court legal services, for which parliamentary deliberations are ongoing. The planned reforms notably concern judgments of the Federal Constitutional Court and improving the regulatory framework in light of recent developments, e.g. on legal tech. The main elements of the reform for lawyers include lifting the bans on success fees and

litigation financing, a possibility to cooperate with all liberal professions and the right for all liberal professions to hold shares in law firms and have free choice of any legal form.

The law profession is regulated at federal level by reserving the following activities: representation of clients before courts, legal advice (including in tax matters), drawing up legal documents, representation before administrative authorities (including tax authorities), and insolvency practice and mediation. All these activities are shared with other service providers or regulated professions, in particular with debt collection services, notaries, tax advisers, auditors and mediators. The title is protected and may only be used once a lawyer has been formally admitted to the legal profession by the competent regional bar association (chamber).

Lawyers require a minimum of 4 years of university, followed by the first state exam, an obligatory traineeship of 2 years and then a second mandatory state exam.

Chamber membership in one of the regional chambers is mandatory to access the lawyer profession and for law firms. There is a general, non-specific continuous professional development obligation for lawyers. Appropriate professional indemnity insurance is also required.

There are restrictions on the joint exercise of professions. For example, lawyers can only undertake joint professional activities with other lawyers, patent agents, tax advisers, tax agents, auditors and sworn accountants and attorney-notaries in their function as lawyer.

German lawyers and law firms established under German law as private or public limited companies must be members of the bar at the district court where they are established. Admission to the bar becomes effective with the certificate obtained after having taken the oath before the bar association. Whereas all company forms (except for a commercial partnership, i.e. the general partnership and the partly limited partnership regulated in the German Commercial Code (*Handelsgesetzbuch*)) are possible as long as they do not call into question the obligations of the professional, at least 51% of the shares and the voting rights of the company have to be held by lawyers. Furthermore a lawyer's firm (*Rechtsanwalts-gesellschaft*) may only include other lawyers, patent agents, tax advisers, tax agents, auditors and sworn accountants as shareholders.

In 2014, the Federal Constitutional Court held that the rule that the majority of shares and voting rights must belong to lawyers was unconstitutional. Germany announced in its national action plan that the respective provisions will be modified and the restrictions will be repealed. In a more recent decision of February 2016 the Federal Constitutional Court declared that the prohibition of a professional partnership of lawyers with physicians and pharmacists was unconstitutional.

Fees and expenses for lawyers' professional activities generally have to be in line with the *Gesetz über die Vergütung der Rechtsanwältinnen und Rechtsanwälte*, but there are no fixed fees and lawyers can agree fees with their clients subject to some limitations such as the prohibition to agree on success fees.

Lawyers may advertise their legal services as long as the information about the form and content of the professional activity is factual and the advertising is not aimed at a specific client and case.

Special rules exist for the representation before the Federal Court of Justice (*Bundesgerichtshof*): Representing parties in civil cases is an activity reserved to lawyers who are appointed to act before this court. A lawyer appointed to act before the Federal Court of

Justice may only appear before the Federal Court of Justice, the other federal supreme courts, the Joint Panel of the Supreme Courts and the Federal Constitutional Court.

Lawyers wishing to be appointed at the Federal Court of Justice must be at least 35 years-old and have 5 years' of experience as a lawyer. The Federal bar association and the bar association for the lawyers at the Federal Court of Justice establish a list of candidates which, after a pre-selection through a commission, is presented to the German Ministry of Justice and Consumer protection, which decides on the appointments. All lawyers at the Federal Court of Justice must become member of the bar at the Federal Court of Justice and previous bar memberships are being suspended. Concerning legal form and shareholding requirements, lawyers at the Federal Court of Justice can only exercise their profession jointly with other lawyers at the Federal Court of Justice and these partnerships can only be composed of two lawyers. The seat has to be at the seat of the Federal Court of Justice (i. e. the city of Karlsruhe).

### Patent agents

In 2017, the Commission made the following recommendations for patent agent profession:

- transpose as soon as possible Directive 2013/55/EU and ensure compliance with EU law;
- reconsider the various layers of regulatory measures, for instance requiring multiple years of professional experience or professional training in addition to basic training requirements and try to offer alternative ways to obtain the qualification;
- assess the proportionality of the shareholding requirements.

To date, the Directive 2013/55/EU has been transposed for the profession of patent agent and compliance with EU law has been ensured. Progress has also been made on the remaining 2017 recommendations. Two new legislative proposals have been prepared by the German government and are awaiting discussion and adoption by the German parliament, one of which may also have an impact on the regulation of the patent agent profession. Among other aims, the reform intends to liberalise shareholding requirements.

Federal law regulates the patent agent profession by way of title protection and the following reserved activities: counselling and representation before the Patent Office or other administrative authority, drawing up of legal documents in intellectual property matters and representation before the courts in intellectual property matters. These activities are generally shared with lawyers.

Qualifying as a patent agent usually requires 7 years of university or comparable studies, at least 1 year of practical (technical) training followed by training of at least 34 months, out of which 26 months must be with a patent agent, and passing a state exam.

Every patent agent is a compulsory member of the professional chamber and has to subscribe to professional indemnity insurance. Admission to the profession is upon request, which can only be refused for reasons explicitly stated in the law and becomes effective with a certificate obtained after having taken an oath before the professional association ('*Patentanwaltskammer*'). There is also a general non-specific continuous professional development obligation.

The law also lays down detailed rules on professional cooperation. For example, joint exercise of activities is only allowed with other patent agents, lawyers, tax advisers, tax agents, auditors and sworn accountants and attorney-notaries in their function as lawyer.

All company forms with limited liability are possible (as well as a partnership that requires the full personal liability of the shareholders), except for a commercial partnership, i.e. the general partnership and the partly limited partnership regulated in the German Commercial Code (*Handelsgesetzbuch*). However, only members of the patent agent chamber, lawyers, tax advisers, tax agents, auditors and sworn accountants and attorney-notaries in their function as lawyer may be shareholders. At least 51% of shares and of voting rights must be held by patent agents.

There are incompatibility rules, and non-compliance can lead to a ban on professional practice (*'Versagung der Berufstätigkeit'*).

Patent agents and clients are free to enter into an agreement on remuneration. They can also decide to apply the relevant provisions of the *Gesetz über die Vergütung der Rechtsanwältinnen und Rechtsanwälte*.

Patent agents can advertise, as long as the information is factual and without commercial interest.

### Real estate agents

The profession of real estate agents is not regulated in Germany.

To be able to act as a real estate and property agent a general commercial licence is required - as for any other commercial activity - in accordance with the German Trade Regulation. The prerequisite for a licence is a clean criminal record and no insolvency. The authority responsible for granting the licence carries out upstream checks. There is also a voluntary certification system in place for real estate agents.

Lobbying efforts to regulate this profession were unsuccessful and the profession remains unregulated to date.

### Tourist guides

The tourist guide profession is not regulated in Germany.

The voluntary training and the qualification programmes for tourist guides have been laid down in the European DIN standard 15565. Several institutions, e.g. the National Tourist Guide Association offer voluntary certifications for tourist guides according to this regulation in cooperation with regional and municipal training providers.



## I. Overview

By 1 March 2021, Greece had submitted information about 153 regulated professions. Of those professions, 22.2% concern business services and 7.2% the construction sector.

According to an EU wide survey<sup>74</sup>, 22% of Greece's labour force can be considered to be working in regulated professions. This is slightly higher than the EU average (21%). No data are available on business churn rates for the sectors analysed.

The **database on regulated professions** provides citizens and administrative authorities from other Member States with valuable information about the regulation of professions in a given Member State. However, Greece does not update the database regularly, which is part of the reason why the number of regulated professions reported in the database has not changed since 2016.

Greece has also not participated actively in the **mutual evaluation exercise**<sup>75</sup> and has not submitted any general information on its regulated professions or an assessment of their proportionality. However, Greece had been subjected to a Memorandum of Understanding by the troika, and a review and opening up of its regulated professions had been on the agenda for a number of years, with varying success.

Greece has not submitted a **national action plan**.

The 2020 country report for Greece highlights that since 2010, Greece has introduced an extensive legislative reform to streamline the legal framework for regulated professions. But it also indicates that Greece lags considerably behind its EU peers in 'ease of doing business'<sup>76</sup>. Restrictiveness remains relatively high in economically important professions and sectors. Despite extensive legislative and administrative reforms, certain economically important professional services have a higher than average level of regulation. This has already been highlighted by the European Commission in a similar assessment (2016) and confirmed by the OECD's 2018 product market regulation data.

The highest level of restrictiveness is observed for lawyers. Certain regulatory requirements, including shareholding requirements and restrictions on multidisciplinary activities for lawyers and law firms, limit innovation, competition and responsiveness to changing client requirements. There is also potential for helping new businesses to enter regulated sectors, such as tourist guides. Implementing further reforms to ease entry into certain regulated

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<sup>74</sup> Koumenta M. and M. Pagliero (2016), *Measuring Prevalence and Labour Market Impacts of Occupational Regulation in the EU*. See: <https://ec.europa.eu/docsroom/documents/20362>.

<sup>75</sup> The Communication of the Commission of 2 October 2013 set out a work plan to improve transparency on national professional regulations and to assess and discuss justification and proportionality of existing rules (mutual evaluation); COM(2013)676. Starting in 2014, this process required Member States firstly to introduce all the professions they regulated into the regulated professions database alongside all the regulatory measures they implemented for each profession notified, using this information they were then required to review the impact of such measures and to consider their value in protecting legitimate public interests.

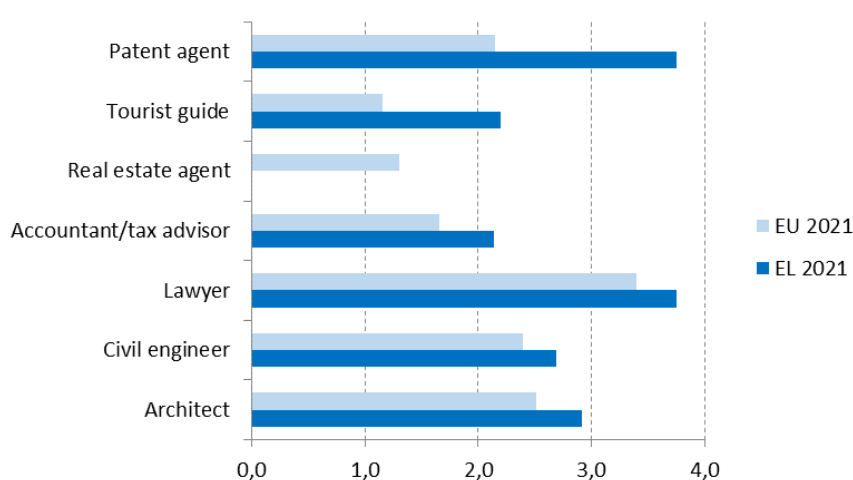
<sup>76</sup> Commission Staff Working Document, Country Report Greece 2020, accompanying the document Communication - 2020 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011 {COM(2020) 150 final} , SWD(2020) 507 final, p. 6.

professions and sectors on the basis of an assessment of the proportionality, appropriateness and necessity of intervention would help increase competition and enable a more efficient allocation of resources in such areas<sup>77</sup>.

## II. Situation on the analysed professions

Regulatory restrictiveness in Greece is higher than the EU average for all the professions analysed - except for the real estate agent profession, which is not regulated - and is highest for lawyers.

Chart 1: Regulatory restrictiveness, Greece, 2021



The following description of the situation for the different professions focuses on changes since the analysis published in 2017. However, to provide a complete and understandable picture, the description also restates part of the information described in 2017.

### Architects

In 2017, the Commission did not address any recommendations to Greece for the architectural profession.

However, in 2018, Greece adopted a Presidential Decree on the engineering profession in which it lays down the professional rights for each speciality (including architects). It lays down both the activities exclusive to architects<sup>78</sup> and a broad range of shared activities with engineers, civil engineers, surveyors, etc.

Architects benefit from title protection and reserved activities (both exclusive and shared), with some exceptions, for buildings of up to two floors.

<sup>77</sup> SWD(2020) 507 final, pp. 53-54.

<sup>78</sup> The activities reserved exclusively for architects fall under the following categories: urban /territorial planning and feasibility studies. However, more technical activities are also the exclusive competence of architects, such as energy audits and the preparation of studies for hydraulic installations in buildings.

Since graduates of architectural schools in Greece are architects/engineers, most of the services they provide are shared with engineers and, in most cases, with civil engineers.

According to the Presidential Decree, qualifying as an architect in Greece, requires a diploma in engineering, a specialisation in architecture or a diploma from a Polytechnic (or equivalent foreign studies), passing a post-graduate exam given by the Technical Chamber of Greece, and subsequent membership to the Chamber. No architect is allowed to provide services if not a member of the Chamber.

Greek law imposes post-licensing requirements, categorisation and additional authorisation on architects wishing to undertake public works and studies.

As a general rule, Greece does not impose restrictions on corporate forms, shareholdings/voting rights or on the joint exercise of architects with other professions. However, firms that want to be permitted to undertake public works (design and construction) must be entered in a specific register under the appropriate specific category. To be included in this register, a firm must fulfil specific requirements on legal form (for some companies), experience and availability of qualified personnel.

According to the information available, there are no other additional certification or attestation schemes for architects' access to specific professional activities that would be subject to additional qualification requirements in Greece<sup>79</sup>.

Professional liability insurance is mandatory.

Advertising is possible, except for comparative advertisement and direct solicitation of clients.

### Civil engineers

In 2017, the Commission did not address any recommendations to Greece on the profession of civil engineers.

However, as already mentioned under the previous heading, Greece adopted a Presidential Decree on the engineering profession in 2018 in which it lays down the professional rights for each speciality (including architects). This includes activities exclusive to civil engineers and a wide range of shared activities with other types of engineer, architects, surveyors, etc.<sup>80</sup>.

Civil engineers benefit from title protection and reserved activities (both exclusive and shared).

Qualifying as a civil engineer in Greece requires 5 years of university studies, passing a post-graduate exam organised by the Technical Chamber of Greece and becoming a member of the Chamber. No civil engineer is allowed to provide services if not a member of the Chamber.

Greek law imposes post-licensing requirements, categorisation and additional authorisation on civil engineers wishing to undertake public works and studies.

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<sup>79</sup> e.g., where in order to pursue specific/specialised activities additional education or experience or an exam would be required. This may concern activities such as construction supervision, energy certification, energy audits, expert opinions, activities related to special buildings (such as nuclear power plants and historical heritage sites).

<sup>80</sup> The activities exclusively reserved for engineers broadly fall under the following categories: design and planning, feasibility studies, project management including monitoring of execution and construction cost management.

As a general rule, Greece does not impose restrictions on corporate forms, shareholdings/voting rights or on the joint exercise of civil engineers with other professions. However, Greece has a specific register with categories of firms permitted to undertake public works (design and construction). To be included in this register and listed under specific categories, a firm must fulfil specific requirements on legal form (for some companies), experience and availability of qualified personnel.

According to the information available, there are no other additional certification and attestation schemes for engineers' access to specific professional activities that would be subject to additional qualification requirements in Greece.

Professional liability insurance is mandatory.

Advertising is possible, except for comparative advertisement and direct solicitation of clients.

### Accountants/tax advisers

In 2017, the Commission made the following recommendation to all Member States that regulate the accountancy profession:

- reconsider reserving simple tasks such as payroll activities or preparation of tax declarations to highly qualified professionals.

There has been no reform or other initiative that the Commission is aware of since the beginning of 2017.

Accountants benefit from a protected title and Greek law distinguishes between two categories of accountants. Access to the entry category of accountants ('category B' accountants) is available to (a) holders of a secondary school certificate with 7 years of professional experience as an assistant accountant, graduates from technical secondary schools (economy branch) with 6 years of work experience as an assistant accountant, and graduates of Accountancy Institutes (IEK) or of ELKEPA with 5 years of work experience as an assistant accountant; (b) university graduates (AEI and TEI) in economic subjects, and (c) individuals who have had their foreign qualifications recognised under Greek law (in line with the EU Professional Qualifications Directive).

The higher category of accountants ('category A'), is open to category B accountants in categories (b) and (c), with a post-licensing professional experience in accounting of 3 years (with some exceptions), and completion of specific courses on tax and accountancy topics leading to relevant attendance and evaluation certificates.

Since 1 January 2014 there is no compulsory membership of a Chamber.

According to the Code of Conduct for accountants, continuous professional development is mandatory.

Greek law lays down the activities that both category A and category B accountants can provide, but gives no clear indication as to whether some or all of them are reserved. However, when read in conjunction with fiscal and company law provisions, it appears that certain activities are reserved for licensed accountants. For example, category A and B accountants may sign 'single-entry books', category A accountants can also sign 'double-entry books' and co-sign financial statements of double-entry companies. Accountants may also

engage in non-reserved activities, such as providing advice, and preparing and submitting tax returns.

There are no restrictions on corporate forms, shareholdings/voting rights or on the joint exercise of the profession.

While advertising is possible, comparative advertisement and direct solicitation of clients is prohibited according to consumer protection law. In addition the Code of Conduct of accountants prohibits any unfair competition through advertisement as well as misleading advertisement.

## Lawyers

In 2017, the Commission made the following recommendations for the lawyer profession:

- ensure that training and experience obtained abroad are duly taken into account so that lawyer can access legal traineeship in line with Case C-313/01;
- clarify the scope of the reserves so as to facilitate the provision of legal consultancy services by lawyers or other service providers, in particular for online services.

The Commission also addressed the following recommendation to all Member States:

- assess legal form and shareholding requirements, incompatibility rules and multidisciplinary restrictions, in particular taking into account the proportionality of these restrictions in relation to the core principles, such as the independence of the profession and to the corresponding supervisory arrangements. In addition, consideration should be provided to the cumulative effect of such requirements to the extent that their effects might be accentuated in case of extensive reserves of activities (e.g. where legal advice is also part of the reserved activities).

A law adopted in October 2020 introduced a number of changes to the rules on the lawyer profession. They include changes in the conditions for accessing the profession, permitted activities and incompatibilities, professional training, representation in notarial acts, supervisory activities and updated fees.

The law also addressed the Commission's first 2017 recommendation in terms of improving the situation for lawyers that train and gain experience abroad.

Legal professionals benefit from a protected title and a number of reserved activities (both exclusive and shared). Representing clients in court and before administrative authorities and providing legal advice are activities exclusively reserved for lawyers. Previously exclusively reserved for lawyers, the intellectual property competence is shared with certified patent agents since 2018. Lawyers also share competence on notarial activities and mediation. The Lawyers' Code was recently amended to give lawyers an additional reserved competence on land property. According to a contract between the Hellenic Property Office and the relevant Bar Association, lawyers can check written acts and give legal support in transactions with permanent mortgage registries operating temporarily as land registry office.

The education requirement is 4 years of legal training, a supervised traineeship of 18 months and passing a state exam before appointment by the minister of Justice. However, ex-judges and prosecutors may be appointed lawyers under certain conditions, without having to follow a traineeship and complete the Bar exam.

Lawyers have to register with a local Bar Association in the district they intend to hold office. To get an authorisation to practise, lawyers must also take an oath. Additional professional qualifications are required to be able to practise before the highest courts.

To appear before the Court, lawyers must pay procedural costs in advance as well as various welfare levies. This could be an obstacle for lawyers established in another EU Member State and providing services in Greece.

Lawyers can either work independently, as sole practitioners or in a partnership with other lawyers in law firms. Liability and responsibility cannot be limited and equity in a law firm needs to be held by lawyers.

A number of incompatibilities can lead to a lawyer being disbarred or suspended. However, there is a list of activities that are explicitly allowed, such as being a Parlemantarian or engaging in press activities.

Lawyers are remunerated either according to the agreement with their client or on the basis of the Lawyers' Code and the relevant decisions of the Bar Associations. However, remuneration may not be below the thresholds laid down in the Lawyers' Code or in the decisions of the Bar Associations. A waiver or limitation below this threshold is automatically null and void. Payment of a success fee is possible, however, up to a maximum of 20% of the outcome of the proceeding or the work carried out.

Advertising is possible as long as it respects the prestige and dignity of the profession. However, certain forms of advertising are explicitly prohibited.

### Patent agents

In 2017, the Commission gave Greece the following recommendation on patent agents:

- assess the proportionality of measures reserving the activities related to industrial property solely to lawyers.

The profession of certified patent agent was introduced in Greece in 2018. Before that, Greek law expressly reserved the submission of patents and trademarks solely to lawyers who also had the exclusive right to provide legal advice, including on issues relating to patents and trade mark law. Since 2018, this competence is shared between lawyers and certified patent agents.

In 2019, the Hellenic Academy of Industrial Property was created to develop a national industrial property education, training and certification system leading to the qualification of a certified patent attorney, and to strengthen initiatives on cooperation between certified patent attorneys and intellectual and industrial property law lawyers. The Management Board was set up in May 2020, but the Academy is not yet fully operational.

The basic training programme will have a duration of 2 years.

National exams to certify as a patent attorney will be organised up to three times a year. To be admitted to this exam, candidates need to present a diploma of at least 4 years in law studies or from a Greek AIE/A.T.E.I. school (*i.e.* physical sciences), or a diploma from a recognised higher institution located in another country.

The profession also requires an excellent knowledge of English and a successful completion of the Academy's training programme or a proven apprenticeship experience with a certified Greek or European Patent Office patent attorney during at least 5 years.

Certified patent attorneys of the European Patent Office are not required to take the exam, except for the part on the Greek industrial property system.

### Real estate agents

The profession of real estate agent is still not regulated in Greece. With the adoption of Laws 4072/2012 and 4093/2012 the profession has been fully liberalised as provided for in Law 3919/2011.

Law 4072/2012 defines a real estate agent as a natural or legal person who provides real estate brokerage services. Brokerage services are the suggestion of opportunities or intermediation for the conclusion of contracts relating to immovable property, in particular contracts of sale, exchange, rental, leasing, creation of right of way or 'quid pro quo' construction.

Registry in the Chamber's register and in the General Commercial Register is mandatory. Some general conditions have to be fulfilled to be registered as real estate agent, such as a certificate of upper secondary school (or assimilated) and a clean criminal record.

At least one of the natural persons legally representing the legal person must fulfil the conditions for providing brokerage services. Moreover, if the legal person is also involved in activities other than real estate, the person responsible for the real estate activities should fulfil the conditions for providing brokerage services.

A real estate agent established in another Member State who would like to set up a branch or an office in Greece has to provide a certificate of registration with a competent authority or professional organisation, in accordance with the legislation of the Member State in which they are established. They will use the title assigned to them in the Member State in of their principal place of business.

Real estate agents established in another Member State that provide occasional services in Greece are not required to enter themselves in the General Commercial Register.

Their fees should be appropriate, in accordance with the principle set in the Civil Code. If the agreed remuneration is disproportionately high, it should be reduced by the court at the request of the debtor to the extent appropriate. The term 'disproportionately high' refers to excessive remuneration for the brokerage service and, in particular, when compared to the costs and the effort (albeit arduous).

While advertising is possible, comparative advertisement or direct solicitation of clients is prohibited under consumer protection law.

### Tourist guides

In 2017, the Commission gave the following recommendation on the tourist guide profession:

- consider the justification and proportionality of regulation of the profession

Two changes to the tourist guide profession were introduced by laws adopted in 2017 and 2018 (the latter was amended in 2020), respectively on tourist guide schools, and the competence of the Department of Educational Programmes and Communication within the Ministry of Education and Sport that is now responsible for granting tourist guide licences and for monitoring all matters related to this profession in Greece.

The tourist guide profession is still regulated in Greece. Tourist guides benefit from reserved activities such as accompanying tourists and travellers to and providing them with information on many sites including ancient and historical monuments of all periods, as well as providing information on the present and past of the country more generally.

Someone that is not a holder of a tourist guide licence may provide services in certain circumstances, with certain limitations and under strict conditions. Article 11 of the Law on tourist guides provides for a special permit for individuals who meet these conditions. Foreign tourist guides may also provide temporary services, in line with Presidential Decree 38/2010 (and its title II) transposing the Professional Qualifications Directive into national law.

The tourist guide schools of the Ministry of Tourism reopened in 2017, but enrolment is subject to conditions and restrictions. Therefore, in practice, access to the profession is currently only granted to holders of a 2-years diploma from the tourist guide schools and holders of a specific generic diplomas (normally university level), such as in archaeology, history, social anthropology, and ethnology. Individuals in the latter group have to attend a 2-month course. Greek and EU nationals who have acquired professional rights for tourist guides in another EU Member State and whose professional qualifications have been recognised can also access the profession.

While the Ministry of Tourism and the tourist guide schools organise specific trainings, there are no explicit requirements on continuous professional development.

Tourist guides can be self-employed or employees. They are paid per day or per hour. Their fees are in line with the professional collective agreements signed annually between tourist guides and travel agency associations, depending on the region, the site/excursion, number of sites and duration of the service.



## I. Overview

By 1 January 2021, Hungary had submitted information about 424 regulated professions. This is a decrease compared with 2016 figures. Of those professions, 13.6% concern business services, 11.2% the construction sector and 1% the real estate sector.

The decrease in regulated professions can be explained by a decision of the Hungarian government in 2019 to revise the system of regulated professions and reduce the number of regulated professions to boost the competitiveness of the economy. The decision supercedes the conclusions of the 2016 **national action plan**; work to implement it is still ongoing.

According to an EU-wide survey<sup>81</sup>, 26% of Hungary's labour force can be considered as working in regulated professions. This is higher than the EU average (21%).

Hungary regularly updates the **database on regulated professions**. This database provides citizens and administrative authorities from other Member States with valuable information about the regulation of professions in a given Member State. The information currently provided on regulated professions in Hungary remains incomplete, which is a result of the ongoing revision of the system of regulated professions.

In 2019, a **country-specific recommendation** on services was addressed to Hungary: *Improve competition and regulatory predictability in the services sector*. In 2017 and 2018, country-specific recommendations on services were also addressed to Hungary: *Strengthen regulatory predictability and stability, transparency and competition in the services sector, notably in retail*. A similar recommendation was issued in 2016.

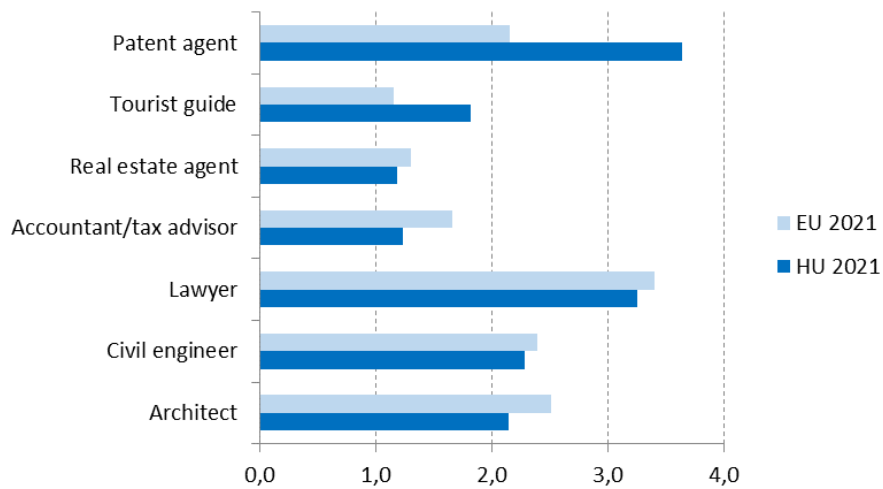
## II. Situation on the analysed professions

Regulatory restrictiveness in Hungary is higher than the EU average for the professions of patent agent and tourist guide, while for the remaining professions it is lower. Among the professions analysed, restrictiveness is the highest for patent agents.

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<sup>81</sup> Koumenta M. and M. Pagliero (2016), *Measuring Prevalence and Labour Market Impacts of Occupational Regulation in the EU*. See: <https://ec.europa.eu/docsroom/documents/20362>.

Chart 1: Regulatory restrictiveness, Hungary, 2021



The following description of the situation for the different professions focuses on changes since the analysis published in 2017. However, in order to provide a complete and understandable picture, the description also restates part of the information described in 2017.

### Architects/engineers

In 2017, the Commission made no recommendations to Hungary for the professions of architect or engineer. Architects and engineers may both carry out the reserved activities of architectural design and planning and feasibility studies. The following reserved activities may be carried out by both professions, but some specific activities require additional authorisation:

- Construction cost management and monitoring construction/execution including supervision of other related professionals are shared with the profession of construction-technical inspector;
- Examination of design and related documentation is shared with the profession of planning inspector;
- Interior design/preparation of documentation for interior decoration is shared with interior designer, and an architect is only entitled to carry out the full range of interior design activities in buildings they have designed;
- Preparation/submission/signing of technical control and compliance/permit-related documentation or project certification showing compliance with building legislation/standards of performance, quality, cost and safety is shared with the technical supervisor responsible;
- Urban/territorial planning/design is shared with the profession of spatial planner;
- Construction-technical expert consulting activity and activities of expert of energy performance certification of buildings is shared with these experts.

There are two pathways for the profession of architect. The first pathway requires 5 years of university training and a two-year traineeship. The second pathway requires 5.5 years of university training and a two-year traineeship.

For engineers, 5.5 years of university training are required followed by a traineeship of 3-7 years depending on the specialisation chosen.

Chamber membership is mandatory for both professions. The required state exam is organised by the Chamber. In addition, there is a continuous professional development obligation organised and administrated by the Chamber with a 5-year cycle.

Rules concerning continuous professional development are laid down in Chapter IX of Government decree No. 266/2013. (VII.11.) on Professional Activities related to Building and Construction Matters. Further training as part of continuous professional development must be completed in 5-year training cycles. During the first further training cycle, professionals must complete a compulsory further training course ending with a report. The fee for the exam and the report is HUF 34 000.

Appropriate professional indemnity insurance is required.

Based on the information available, there are no additional certification or attestation schemes for architects or engineers concerning access to specific professional activities that would be subject to additional qualification requirements in Hungary<sup>82</sup>.

#### Accountants/tax advisers

In 2017, the Commission made the following recommendations to all Member States regulating the profession of accountant/tax adviser:

- reconsider reserving simple tasks such as payroll activities or preparation of tax declarations to highly qualified professionals.

Hungary has not reserved payroll services and the preparation of tax declarations to a regulated profession.

Hungary regulates two professions under the generic name of accountant: chartered accountants and tax advisers, both by way of reserved activities. For chartered accountants, the following activities are reserved: bookkeeping/drawing up annual financial statements and consolidated financial statements for undertakings; and representation and assistance before administrative authorities. For tax advisers, the following activities are reserved: tax advice and representation and assistance before administrative authorities, which is shared with chartered accountants.

Entry for the specific training of chartered accountants is rather flexible (either a vocational financial qualification or an economist BsC/MA). The specific training is 320-480 hours, without any specific traineeship requirement. A qualification as chartered accountant is required to start training as a tax adviser. The specific training is 280-420 hours.

The national registration obliges chartered accountants to be registered with the authorities.

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<sup>82</sup> e.g. where additional education or experience or an exam would be required in order to pursue specific/specialised activities. This may concern activities such as construction supervision, energy certification, energy audits, expertise activities, and activities related to special buildings (such as nuclear power plants, historical heritage sites).

Both chartered accountants and tax advisers have to follow compulsory continuous professional development activities on an annual basis.

As regards shareholding requirements, voting rights, corporate forms or the joint exercise of the profession, Hungarian law only stipulates one requirement, namely to have at least one qualified employee or partner.

### Lawyers

In 2017, the Commission made the following recommendations for the profession of lawyer:

- clarify the scope of the reserves so as to facilitate the provision of legal consultancy services by lawyers or other service providers, in particular for online services;
- assess legal form and shareholding requirements, incompatibility rules and multidisciplinary restrictions, in particular taking into account the proportionality of these restrictions in relation to the core principles, such as the independence of the profession and to the corresponding supervisory arrangements. In addition, consideration should be provided to the cumulative effect of such requirements to the extent that their effects might be accentuated in case of extensive reserves of activities (e.g. where legal advice is also part of the reserved activities).

To date, there does not seem to be any progress following the 2017 recommendations.

Lawyers are regulated in Hungary by reserves of activities and title protection. The relevant Hungarian legislation differentiates between exclusive reserves and activities that are all shared with other professionals (e.g. notaries, tax advisers, real estate agents).

The education requirement is a minimum of 5 years' university study followed by a three-year traineeship and a series of state exams.

Professionals then have to register with the Bar and take an oath there. To get authorisation, lawyers also have to demonstrate a clear criminal record and need to prove that their premises are in conformity with the requirements. Once authorised, a lawyer can work anywhere in Hungary. There is a continuous professional development requirement for lawyers. The Bar regulations require at least a five-year training cycle, but do not require any final examination. Further details are regulated by the Bar Association enabled by the Act. The training courses are organised by the regional bar associations. At least 80 credit points must be obtained during the training period, of which at least 16 credit points must be obtained within 1 year by participating in a training event organised by an accredited training place. Lawyers who acquire a certain academic degree within a training period or teaching activity, or reach the age of 75, are exempt from this requirement.

If a law firm's registered capital is HUF 3 million or more, members of that law firm may not be required to take responsibility for the law firm's liabilities, with the exception of damages they cause within the scope of their legal practice. If the law firm's registered capital is less than HUF 3 million, members of the law firm have unlimited joint and several liability for the liabilities of the law firm that are not covered by its assets.

Only lawyers can be the members and shareholders of a law firm, and only lawyers can hold voting rights. Lawyers are permitted to be a member of only one law firm.

As regards incompatibilities of activities, the Hungarian legislation lists a number of conflict of interests (e.g. lawyers cannot be employed or be civil servants, and for 2 years they cannot represent clients in the same district where they were previously judges, attorneys or police detectives). It is not permitted to be an independent lawyer and a lawyer with a law firm at the same time. Specific requirements are set out in legislation for lawyers' premises.

Lawyers must obtain professional indemnity insurance.

### Patent agents

In 2017, the Commission made the following recommendations for the profession of patent agent:

- assess the scope of reserves of activities for patent/trademark agents,
- assess the proportionality of prohibition of joint exercise of the profession of patent/trademark patent with other professions;
- assess the proportionality of the shareholding requirements.

While the latter two recommendations have been taken as inspiration for reforms on national level, there have been no changes to the reserves of activities.

This means patent agents need to acquire a Master-level qualification in a field of natural sciences, and afterwards complete specific postgraduate training (advanced level industrial property qualification, provided by the Hungarian Intellectual Property Office), and have at least 3 years of professional experience as a trainee. Finally, the trainee agents also need to pass a specific exam organised by the Hungarian Intellectual Property Office.

The profession is regulated by title protection and by exclusive reserves of activities (counselling and representation before the Hungarian Intellectual Property Office or other administrative authorities, drawing up legal documents in intellectual property matters, representation before the courts in intellectual property matters, performing research in connection with industrial property rights and providing expert opinions, advice and information). A patent agent can be selected by the client or they can be attributed with the mandate by Courts.

Patent agents need to be members of the Chamber in order to be able to carry out their activities. Just as for lawyers, to obtain their authorisation patent agents must have a clean criminal record and meet the requirements on their premises. Any citizen of the European Economic Area can be a patent attorney in Hungary if they meet these requirements. There is no obligation to follow continuous professional development activities to keep their authorisation. Furthermore, anyone who is already a patent attorney in the European Economic Area and declares that they have professional indemnity insurance could also become a member of the Chamber.

Hungarian legislation is quite flexible on the forms a company may take: activities of patent agents might be carried out by sole professionals, by a patent firm (liable), as a company (potentially with limited liability) or by employed professionals (only in exceptional cases laid down by law).

Hungary has recently liberalised the rules for patent agents' offices and companies. In a patent agents' company, more than half of the company's share capital must be made up of

the contribution of the patent agent member or members; only natural persons may be members, of which one must be a patent agent; and natural persons must hold at least two-thirds of the votes. Following the liberalisation, their activities must be primarily those of patent agent, and the chief executive officer and at least three-quarters of the company's officers must be patent agent members.

A patent agents' office must now only pursue primarily – but not exclusively – patent agent activities, it needs to have natural persons as members, of which one must be a patent agent, it must be headed by a patent attorney, and patent agents must hold at least two-thirds of the voting rights.

Any activity which jeopardises the independence of the patent agent and the legitimate interests of the clients of the patent agent is incompatible with the activity of patent agent. Thus, any activity that does not jeopardise this independence could be freely pursued by the patent agents. The Patent Agent Act gives the examples of 16 specific activities that are not considered to jeopardise the independence of the practice (e.g. scientific, artistic and sporting activities, acting as an arbitrator or data protection officer, or election committee membership). Membership in a company with unlimited liability (other than a patent agents' or other entrepreneurial activity with unlimited liability) is incompatible with exercising the activity of patent agent.

Patent agents must obtain professional indemnity insurance.

### Real estate agents

In 2017, the Commission made no recommendations to Hungary for the profession of real estate agent.

In addition to the profession of real estate agent, Hungary regulates three real estate-related professions: real estate property value assessor and agent; condominium manager; and property manager. Reserved activities for the profession of real estate agents are facilitating contacts and assisting in negotiations, arranging sale and lease agreements, obtaining information about real properties, organising showings and explaining terms and conditions, as well as drafting lease and sale agreements, estimating real estate-related costs, arranging the signing of lease agreements and the transfer of deeds and conducting the real estate appraisal of a brokered real property. The real estate appraisal of a brokered real property can be done only by a real estate broker, while other sub-activities can also be carried out by a lawyer or a legal adviser to a chamber even without a professional real estate-related qualification.

Professionals need to follow 240-350 hours of training with a centralised exam at the end. Real estate agents – and lawyers or legal advisers who wish to conduct real estate brokerage – then have to submit a notification to be entered into the national register as a service provider in real estate brokerage.

As regards legal persons, the requirement is to employ at least one qualified and licensed professional, and that all employees engaged in real estate brokerage (or a related sub-activity) have to be qualified and licensed.

## Tourist guides

In 2017, the Commission made the following recommendations for the profession of tourist guide:

- consider the justification and proportionality of regulation of the profession.

To date, there does not seem to be any progress following the 2017 recommendations.

Hungary reserves the activities of tourist guides exclusively for qualified professionals. As a further condition, professionals can only provide these activities in languages in which they have passed a language exam or if they can otherwise prove that they master the language. Hungarian law requires professional tourist guides to be registered with the relevant authority. Once compliance with these requirements has been notified in the appropriate way, the tourist guides get specific cards issued by the authority and listing the languages that the professional can work in.

The profession of tourist guide requires either a two or five-year training course.

The competent authority can prohibit any professional providing tourist guide services without such notification from practising until they prove they are allowed to pursue the activities concerned. If a professional provides tourist guide services without verification of their language skills, the authority ban them from providing these services until they have proven the relevant language skills. Professionals who do not comply with the requirement to prove their language skills can be banned from providing tourist guide services for 3 years and removed from the authority's online register.



## I. Overview

By 1 January 2021, Ireland had submitted information concerning 220 regulated professions. This is a significant increase compared with previously submitted figures. Of those professions, 13.7% concern business services, 17% the construction sector, and 1.6% the real-estate sector.

According to an EU-wide survey<sup>83</sup>, 29% of Ireland’s labour force can be considered to be working in regulated professions. This is significantly higher than the EU average (21%).

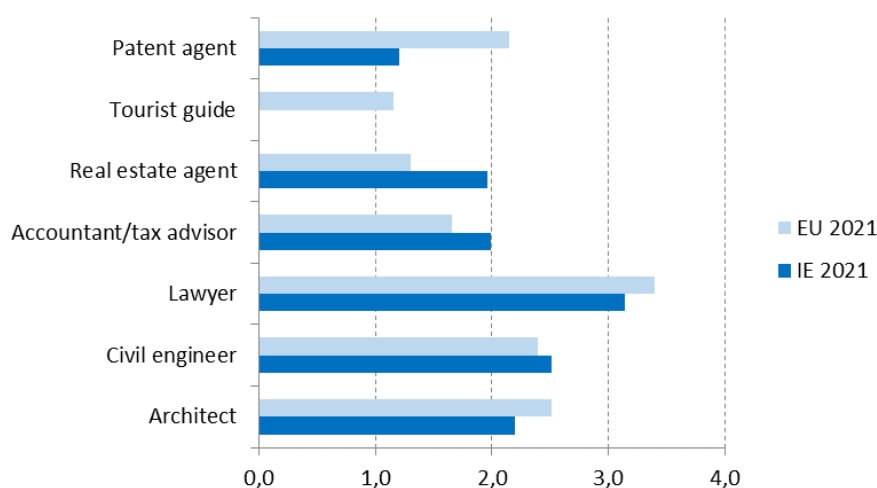
Ireland is regularly updating the **database on regulated professions**. This database provides citizens and administrative authorities from other Member States with valuable information about the regulation of professions in a given Member State.

No **national action plan** has yet been submitted, but one is scheduled to be submitted by summer 2021.

## II. Situation on the analysed professions

Regulatory restrictiveness in Ireland is higher than the EU average for the professions of real-estate agent, accountant/tax adviser and civil engineer. It is lower than the EU average for patent agents, architects and lawyers, and is highest for lawyers.

Chart 1: Regulatory restrictiveness, Ireland, 2021



The following description of the situation for the different professions focuses on changes since the analysis published in 2017. However, to provide a complete and understandable

<sup>83</sup>Koumenta M. and Pagliero M. (2016), *Measuring Prevalence and Labour Market Impacts of Occupational Regulation in the EU*. See: <https://ec.europa.eu/docsroom/documents/20362>.



picture, the description also restates part of the information described in 2017.

### Architects/Civil engineers

In 2017, the Commission made the following recommendations for the architectural profession:

- reconsider the wide scope of reserved activities, and in particular further consider the impact and necessity of recent changes.

There has been no reform or other initiative the Commission is aware of which has taken into account or assessed the recommendation made by the Commission.

These professions are regulated by both: (i) reserved activities; and (ii) a protected title.

In 2007, a register was introduced for architects and civil engineers, alongside title protection. In 2014, there were also regulatory changes to introduce reserved activities, all of which are shared by both professions. These reserved activities include: (i) building design; (ii) mandatory certification of compliance with building regulations at the design and completion stage; (iii) planning and feasibility studies; (iv) design certificates for building-control purposes, and the preparation, submission and signing of technical compliance documents; (v) construction-cost management; and (vi) the monitoring and supervision of projects including supervision of other related professionals and urban/landscape planning.

For architects, 5 years of education plus 2 years of postgraduate practical professional experience is required. For chartered engineers, 5 years of formal education and a minimum of 3 years of practice is required. Alternative pathways to obtain the professional qualification are available to applicants based on further learning and professional practice.

Based on the information available, there are no additional certification or attestation schemes for architects to access specific professional activities that would be subject to additional qualification requirements.

For architects, continuous professional development of 40 hours per year is mandatory, and this is monitored by the Royal Institute of Architects of Ireland (RIAI – the registration body). For civil engineers, an annual minimum of 35 hours of continuous professional development is required, and this is also monitored by the registration body.

Professional indemnity insurance is mandatory for both professions.

There are no restrictions on tariffs, advertising or marketing for architects. Engineers should act in accordance with their 2018 code of ethics. In particular, engineers must agree on fees that are appropriate to the extent of services and skills required. Engineers are authorised to advertise their activities provided this is done in an ethical way.

### Accountants/tax advisers

In 2017, the Commission made the following recommendations for the profession of accountant/tax adviser:

- assess the proportionality of the shareholding requirements.

The accountancy/tax-advice profession is regulated by reserved activities (that are shared

with statutory auditors, examiners and liquidators). The title of accountant or tax adviser is protected, but not on a statutory basis: this title is conferred by the accountancy bodies.

Ireland applies many cumulative measures, including: (i) exercise restrictions; (ii) high membership fees for registration; and (iii) particularly high continuous professional development requirements, which vary across the designated accountancy bodies (e.g. 120 hours required over 3 years, with a minimum requirement of 30 hours every year). Professional indemnity insurance is mandatory.

Shareholding requirements only exist for chartered accountants, and those requirements are laid down by the professional body as a condition for membership. The requirement is that at least 50% of the shares in a firm of chartered accountants must be held by professionals and only natural persons can be shareholders.

## Lawyers

In 2017, the Commission made the following recommendations for the profession of lawyer:

- clarify the scope of the reserves, so as to facilitate the provision of legal consultancy services by lawyers or other service providers, in particular for online services.

There has been no reform or other initiative the Commission is aware of which has taken into account or assessed the recommendation made by the Commission.

Ireland has a framework for regulating legal services which is based on the reservation of certain rights and activities to individuals holding one of the two specific professional titles, namely barrister or solicitor. The Irish legal system is divided between these professions, with the solicitor providing legal advice to the client and potentially representing the client in the lower courts. The barrister advises solicitors on complex cases and can argue cases in all Irish courts, including the superior courts. A member of the public cannot engage a barrister directly; this must be done through a solicitor.

For solicitors, these rights and activities are set out in legislation, notably the Solicitors Acts of 1954, 1960 and 1994, and the Courts Acts. Solicitors' exclusive rights include conveyancing and probate. However, solicitors are also permitted to argue in the lower courts, hold funds on behalf of clients, give binding undertakings, and practise on their own.

In contrast, the practice rights of barristers emanate from common law. Barristers have rights of audience in all courts of Ireland by virtue of the title of 'barrister'. This title is conferred by the Chief Justice of Ireland who calls candidates to the bar following graduation from the barrister-at-law course provided by the Honorable Society of King's Inns. Barristers also appear as advocates in arbitration and statutory tribunals and other forms of dispute resolution. From June 2018 onwards, the roll of practising barristers has been maintained by the Legal Services Regulatory Authority (the LSRA).

A recent publication by the LSRA recommended developing, implementing and maintaining a clear definition of the competences and standards required to practise as either a solicitor or barrister<sup>84</sup>.

To qualify as a barrister, one must hold an approved undergraduate law qualification of 3-4

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<sup>84</sup> Setting Standards, Legal Practitioner Education and Training, LSRA, September 2020, available at: <https://www.lsr.ie/wp-content/uploads/2020/11/Section-34-ET-Final-Report-to-Minister.pdf>.

years, followed by a one-year full-time (2 years part-time) professional course with the King's Inns, which holds a monopoly on the professional education of barristers in Ireland. Graduates who wish to practise the profession of barrister must then complete a one-year period of apprenticeship to an experienced barrister. Other pathways of entry (other than an undergraduate law qualification) to the professional course are also available. To qualify as a solicitor, one must: (i) pass the entrance examination in law in several legal subjects; (ii) obtain a trainee contract; (iii) carry out 2 years of training in a solicitor's office; (iv) follow vocational training courses; and (v) pass an examination, organised by the Law Society of Ireland.

Registration with the relevant professional body is compulsory. The relevant professional bodies are the Law Society (for solicitors) and the Bar Council (for barristers). On top of this, the Legal Services Bill 2011 introduced a Legal Services Regulatory Authority to oversee solicitors and barristers (LSRA). This legislation is being implemented on a phased basis. Since 7 October 2019, the LSRA has started to exercise many of its statutory functions including dealing with complaints and sanctioning legal practitioners. The LSRA complaint-handling system replaces the previous complaints-handling service provided by the Law Society and the Bar Council.

Ireland also requires continuous professional development in the legal profession. Barristers must undertake 12 hours of continuous professional development per year and solicitors are required to undertake 20 hours. In both cases, a specific number of hours must be devoted to regulatory or ethical training and development.

Regulations were introduced in October 2019 to allow partnerships of solicitors to apply to the LSRA for authorisation to operate as limited-liability partnerships. The Legal Services Regulation Act 2015 authorises – under certain conditions – multidisciplinary activities between legal practitioners (solicitors and barristers) and non-legal practitioners. However, an implementing act has not been adopted yet, which means that partnerships of solicitors and barristers are still not permitted in practice. Barristers are required to be sole practitioners.

Legal practitioners must have professional indemnity insurance. This requirement is monitored by the LSRA.

Finally, there are no tariff restrictions, but advertising and marketing are regulated for solicitors and prohibited for barristers.

### Patent agents

In 2017, the Commission did not make any specific recommendations for the profession of patent agents. Since then, there has been no reform or other initiative the Commission is aware of concerning the regulation of this profession.

Patent agents and trademark agents are regulated by a protected title.

For patent agents, Ireland requires a qualification period of 6 years, consisting of 3 years of education, and completion of a minimum three-year traineeship within an office of a patent agent. This is the only pathway into the profession of patent agent. The 3 years of education must be in a scientific discipline. For trademark agents, the requirement is to have followed 5 years in general secondary education followed by a written examination in the law and practice of trademarks. However, on rare occasions, a person may be able to provide satisfactory evidence that they have sufficient knowledge of the law and practice of trade marks, thus allowing them to be exempt from the exam.

Registration in a register of patent agents/trademark agents is mandatory to practise the profession of patent agent or trademark agent.

### Real-estate agents

In 2017, the Commission made the following recommendation for the profession of real-estate agent:

- take into consideration the possibility of opening to other professionals the activities currently exclusively reserved to estate agents.

There has been no reform or other initiative the Commission is aware of which has taken into account or assessed the recommendation made by the Commission.

This profession has been regulated since 2011 through a reserve of activities.

Ireland implements a high level of reserves (the possibility to provide ‘a property service’<sup>85</sup> is reserved only to licence holders). Real-estate agents have exclusive rights in relation to: (i) auctions of real estate other than land; (ii) selling a house, apartment, or land; (iii) letting; (iv) and providing property-management services to multi-unit developments. A separate licence is required for each property service. However, some legal activities carried out by real-estate agents are shared with barristers or solicitors, such as drawing up or preparing documents relating to real estate.

There are four routes to obtain a real-estate licence. All four routes require the prospective licence holder to study seven specific subjects (valuations; marketing/practice knowledge; economics; law; property management; building construction/technical; and business studies/professional development). These subjects may be studied in any of the four following ways:

- at level 6 to 8 of the National Framework of Qualifications with a specific minimum number of 120 ECTS;
- at level 9 and 10 of the National Framework of Qualifications with a specific minimum number of 90 ECTS;
- through 3 years’ experience of lawfully providing the property service in the 5 years preceding the making of a licence application;
- through a combination of education and experience.

The licence is delivered by the Property Services Regulatory Authority once all statutory requirements are met. Real-estate agents are then included in the Register of Property Services Providers, which is published on the regulatory authority’s website.

There are also requirements for continuous professional development.

There are no restrictions on the corporate form that real-estate agents must use, but the company must be licensed, as must each person who provides property services within the business. Real-estate agents are prohibited from giving financial advice unless a waiver is signed by buyer and vendor.

Discrimination in advertising is not permitted and all advertising must comply with all

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<sup>85</sup> ‘Property service’ means the provision, for consideration, in the State, in respect of property located within or outside the State, of any of the following: (a) the auction of property other than land; (b) the purchase or sale, by whatever means, of land; (c) the letting of land (including a letting in conacre or for the purposes of agistment); or (d) property-management services.

applicable laws on property listings and/or accommodation advertising (including, but not limited to, the requirement to include a rating of the building's energy efficiency in the property advertisement where applicable).

#### Tourist guides

The profession remains unregulated in Ireland.



## I. Overview

By 1 February 2021, Italy had submitted information about 183 regulated professions. This is a slight increase compared with 2016. Of those professions, 24.6% concern business services and 2.7% the construction sector.

According to a 2016 EU-wide survey<sup>86</sup>, 19% of Italy's labour force can be considered to be working in regulated professions. This is lower than the EU average (21%).

Italy regularly updates the **database on regulated professions**. This database provides citizens and administrative authorities from other Member States with valuable information about the regulation of professions in a given Member State.

In its 2016 **national action plan (NAP)** Italy identified three general areas of action: (i) updating training courses and adapting the State exams for certain technical professions (engineers, technical consultants) to clarify the scope of reserved activities and competencies; (ii) setting up a technical working group to identify minimum national standards for professions where training is devolved to the regions; and (iii) mapping the professions regulated at regional level to assess whether the regulation is justified and has added value.

In addition to these general measures, the NAP set out concrete measures for some professions, for instance in the tourism sector (although not always moving towards reducing barriers) and beauticians.

In addition to the NAP, on 15 September 2016, Italy submitted to the Commission its analysis of the national action plans and the proportionality assessments prepared and carried out by other Member States announcing that, similar to the NAP from France, Italy was about to review the crafts professions *'through the inventory of regional qualifications and creation of a national list to define characterising and specific reserved activities of a determined profession'*.

Since 2016, annual **country-specific recommendations** have been addressed to Italy for the services sector, in particular to address remaining restrictions to competition in the retail sector and in business services, including through a new annual competition law.

## II. Situation on the analysed professions

In Italy, certain professions come under the shared competence of the State, the regions and the autonomous provinces. Regions are responsible for defining the professional training required for some regulated professions and they share responsibility for the regulation of professions with the State.

Reforms were adopted for professions organised by orders or colleges (liberal professions like architects, engineers, accountants and lawyers). This included a reform for lawyers introduced by the 2017 Law on competition, updated training courses for certain technical

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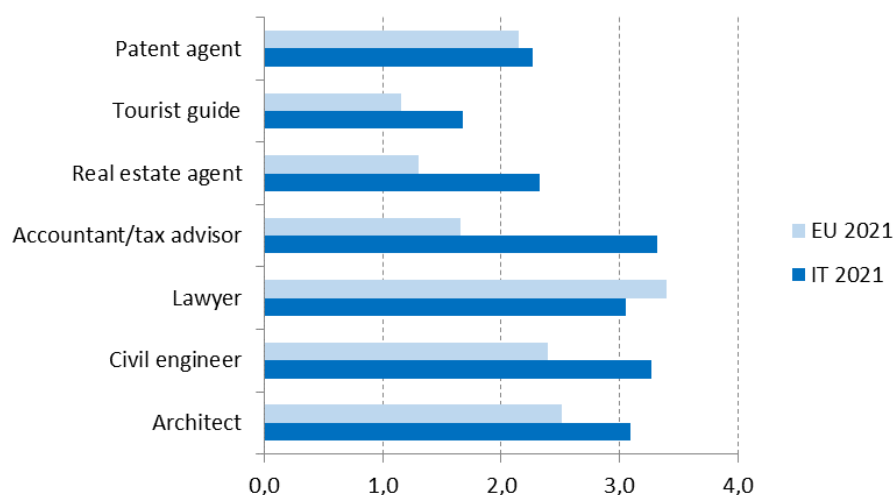
<sup>86</sup> Koumenta M. and M. Pagliero (2016), *Measuring Prevalence and Labour Market Impacts of Occupational Regulation in the EU*. See: <https://ec.europa.eu/docsroom/documents/20362>.

professions to clarify the scope of reserved activities and competencies which currently often overlap

Italy had already started to reform and open the regulated profession market through the 2012 Law on competition, which repealed all fixed tariffs for regulated professions.

Regulatory restrictiveness in Italy is higher than the EU average for all the professions analysed, except for lawyers, for which it is slightly lower. Of the professions analysed, restrictiveness is highest for accountants/tax advisers and civil engineers.

**Chart 1: Regulatory restrictiveness, Italy, 2021**



The following description of the situation for the different professions focuses on changes since the analysis published in 2017. However, to provide a complete and understandable picture, the description also restates part of the information described in 2017.

### Architects/engineers

In 2017, the Commission made the following recommendation for the architectural profession:

- reconsider the wide scope of reserved activities.

The Commission is not aware of any reform or other initiative that has taken account of or assessed part of its recommendation.

Architects and civil engineers (*architetto, ingegnere, geometra*) still benefit from reserved activities<sup>87</sup>. Given the broad range of reserved activities, no other provider can use the title.

<sup>87</sup> The activities reserved for architects broadly fall under the following categories: architectural design and planning; feasibility studies; examination of design and related documentation; preparation, signing of technical control and compliance; landscape architecture; urban design; construction cost management; monitoring of construction/execution; representation for obtaining permits (signature of designs); tender and contract administration; energy efficiency inspection/certification; resistance declarations; fire protection studies; restoration of historical/cultural buildings; valuation of land/buildings; industrial architecture; expert opinions (research, judicial, etc.).

Depending on the complexity and size of the project, the reserved activities, for instance, construction cost management or monitoring of construction /execution, are shared between five professions (*Architetto, Architetto iunior, Ingegnere Civile-ambientale, Ingegnere Civile-ambientale iunior, Perito industriale (Building) and Geometra*). For example, constructions with significant artistic character or the renovation and restoration of protected buildings covered by the Law on antiquity and fine arts are exclusively reserved for architects, although the technical part can also be carried out by engineers. ‘Junior professionals’, i.e. professionals who have only completed a three-year bachelor’s programme in the relevant fields (see below), play a supporting role in the whole building process, from the project development to the final testing, that remains reserved for architects and engineers.

In its 2016 NAP, Italy pointed out that it is often difficult to make a clear distinction between the competencies of each profession based on the existing rules. Although Italy has recognised the need to update the training courses for engineers, no revision has been adopted yet.

In line with the Bologna process, Italy introduced 3+2 year university programmes (bachelor’s and master’s) and the profession of junior architect and junior engineer for graduates of the three-year bachelor’s cycle.

Architects and engineers can enter into a joint practice with other professionals and non-professionals in the form of partnerships or joint-stock companies. However, the number of professional members and their participation in the share capital must constitute a two-thirds majority. Based on the information available, the Commission understands that the remaining shares can be held by any other legal or natural person. The Commission also understands that engineers have access to an additional specific form of company (*società di ingegneri*) which is required to have at least one technical director who is an engineer.

Continuous professional development is compulsory for architects and engineers, and should take the form of 60 credits over 3 years. Professional insurance is also mandatory for both professions.

There is an additional authorisation requirement for engineers who perform reinforced concrete static testing activities. Only those who have been registered for at least 10 years in the professional register can carry out this activity.

Based on the information available, there are no other additional certification or attestation schemes for architects and engineers to carry out specific professional activities that would be subject to additional qualification requirements in Italy<sup>88</sup>.

### Accountants/tax advisers

In 2017, the Commission made the following recommendation to all Member States that regulate the profession of accountant/tax adviser:

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The activities reserved for engineers broadly fall under the following categories: design and planning; feasibility studies; tender and contract administration; representation for obtaining permits; project management including monitoring of execution and construction cost management; management of constructions maintenance (including inspection).

<sup>88</sup> e.g. where in order to pursue specific/specialised activities additional education or experience or an exam would be required. This may concern activities such as construction supervision, energy certification, energy audits, expert opinions, activities related to special buildings (such as nuclear power plants and historical heritage sites).



- reconsider reserving simple tasks, such as payroll activities or preparation of tax declarations to highly qualified professionals

It also addressed the following recommendation to Italy specifically:

- assess the consistency of the reserved activities and the distribution between the multiple regulated professions in the sector. In particular, take full account of the case-law of the Court of Justice in Case C-79/01 when defining activities reserved to professionals, in particular payroll activities.

The Commission is not aware of any reform or other initiative that has taken account of or assessed part of its recommendations.

Two professions are considered to fall under this category: chartered accountant and accounting expert, both of which benefit from reserved activities and protected titles. Following the Bologna process, which introduced a university programme of 3+2 years, the profession of accounting expert was created for graduates of the three-year cycle.

Authorisation to practise the professions is granted after completion of an 18-month internship and passing a State exam.

It is mandatory to register with a regional order. There are two types of order: (i) for chartered accountants; and (ii) for accounting experts. The distinction between activities reserved for chartered accountants and those reserved for tax consultants is not very clear. For instance, only a chartered accountant can defend their client in front of the Tax Court and review financial statements, while accounting experts can supervise and review accounting records. Some activities are shared with other specific professions (e.g. appointment as curator of bankruptcy procedures is shared with lawyers, and appointment as referee for judicial sales is shared with lawyers and notaries). Assistance in matters of social security and social assistance of employees is reserved for labour law experts (*Consulenti del lavoro*) but also shared with accountants and lawyers.

Up until 2010, chartered accountants could enrol themselves in the ‘statutory auditors’ register. However, since then, they must have followed a specific three-year traineeship with a statutory auditor. Chartered accountants must also pass a State exam with extra exams on subjects relevant to the auditing profession.

There is no limitation on joint exercise with professionals in other areas. However, accountants must hold at least 66% of the shares and therefore have 66% of voting rights.

Continuous professional development is required, and takes the form of 90 credits every 3 years. It is supervised by the National Council. Professional insurance is also required to practise as an accountant.

The accountancy profession is incompatible with the professions of notary, journalist, entrepreneur, public service contractor and merchant banker.

### Lawyers

In 2017, the Commission made the following recommendation to all Member States that reserve legal advice for lawyers:

- clarify the scope of the reserved activities so as to facilitate the provision of legal consultancy services,

It also addressed the following recommendation on the lawyer profession to all Member States:

- assess legal form and shareholding requirements, incompatibility rules and multi-disciplinary restrictions, in particular taking into account the proportionality of the restrictions,

Finally, it addressed the following recommendation to Italy specifically:

- clarify the requirements restricting the pursuit of the profession, such as the wide scope of the incompatibility rule, especially for professions with similar professional conduct rules, such as patent agents. The justification for and proportionality of the recently introduced requirement of having at least five cases per year should be reassessed.

The Commission is not aware of any reform or other initiative that has taken account of or assessed the recommendation on the scope of the reserved activities.

As for the legal form, shareholding requirements and incompatibilities, Italy has adopted a reform that takes into account the relevant recommendations. It also plans to amend the five cases per year requirement, as set out in its action plan on enforcement.

Lawyers in Italy benefit from reserved activities covering the representation of clients before courts. The level of qualification required is a master's degree in law, an 18-month professional traineeship, successful completion of a State exam and enrolment with the Bar.

To be admitted to plead before the Supreme Court (*'Avvocato cassazionista'*), a lawyer must be enrolled in a special register, which is kept by the National Bar Council. This requires proof of having worked for at least 12 years as a lawyer before the Courts of Appeal and Tribunals.

Since 2017, it is necessary for these lawyers:

- to have passed an exam, after practising the profession for 5 years before the courts of first and second degree, and to have had a creditable and profitable practice for the same period with an *'Avvocato cassazionista'*; or
- to have passed a final verification at the end of the *'Scuola Superiore dell'Avvocatura'* (access to which is subject to at least 8 years of registration with a Bar) of both eligibility and the 'effective exercise' of the profession.

Continuous professional development is required for lawyers, including Supreme Court lawyers.

A 2013 Ministerial Decree allowed the formation of companies between different professionals with no restriction on their corporate form/type and no prohibition on joint practice. However, the National Bar considered that this did not apply to lawyers, as it did not respect the guiding principles of the 2012 lawyers' reform (Law 247/2012). Following a long legislative process that started in 2015, in 2017 Italy adopted a new Law on competition which allows lawyers to enter into multi-disciplinary partnerships with certain other professions (e.g. agronomists, social workers, architects, biologists, accountants, engineers, geologists, engineers, labour adviser and surgeons). It seems that this law also opens up shareholding in law firms to non-professionals. However, there are specific rules on voting rights and the proportion of shares that can be held by non-professionals, namely that 66% of the shares must be held by registered lawyers.

Following a 2016 Ministerial Decree, the District Bar Council checks that each lawyer registered exercises the profession continuously, regularly and in a prevailing manner. This requires proof of having handled at least five cases each year. However, following enforcement action, Italy is in the process of repealing this obligation.

The Commission has been receiving complaints on the conditions and criteria of the exam to access the lawyer profession in Italy.

Professional insurance is mandatory, and it is the Ministry of Justice that establishes the minimum coverage in line with the lawyer's revenues of the previous year.

Advertising is authorised provided that the information is factual.

### Patent agents

In 2017 the Commission did not make any recommendation to Italy on the patent agent profession, and it is not aware of any reform or other initiative on the regulation of this profession that has been introduced since then.

Patent agents benefit from reserved activities and a protected title.

They must be members of the '*Ordine dei Consulenti in Proprietà Industriale*'.

The reserved activities cover counselling and representation before the Italian Patent and Trademark Office and the Board of Appeal. This reserved activity is shared with lawyers.

Enrolment in the register of patent agents is obligatory.

The order classifies patent agents under one of two sections: (i) the patent section (qualified to advise on inventions, utility models, designs, new plant variety rights and semiconductor topographies - usually chemists or engineers); or (ii) the trademark section (qualified to advise on trademarks, distinctive signs, geographical indications and designs).

Continuous professional development is required and is organised and supervised by the Industrial Property Consultants Institute.

From the information provided, it seems that there are no restrictions on the legal form for practising the profession, on multi-disciplinary activities or on voting rights.

The patent agent profession is incompatible with the following regulated professions: notaries, journalists, mediators, exchange attorneys, tax collectors and lawyers.

Professional insurance is mandatory. Advertising is authorised, provided that the information is purely factual (e.g. on the title, academic qualifications, firm structure and fees).

### Real estate agents

In 2017, the Commission addressed the following recommendations to Italy on the real estate agent profession:

- consider the possibility of alternative pathways to access the profession
- evaluate the necessity and proportionality of prohibitions on incompatible activities

Real estate agents in Italy benefit from reserved activities and a protected title.

Although there is no legal definition of their activities, a real estate agent's role is to bring together two or more parties to conclude a property deal, without being tied to any of the parties through work relationships, employment or representation.

From the information provided, the Commission understands that all activities are shared with other professions.

Registering on a specific list hosted by the general Chamber of Commerce is compulsory. Anyone carrying out a brokering service without being registered to do so is subject to an administrative sanction.

The two pathways into the profession are:

- a secondary school diploma complemented by a training course of minimum 80 hours with the Chamber of Commerce or with training institutions accredited by the regions, and passing a professional exam; or
- a secondary school diploma, at least 12 consecutive months of practical experience and compulsory attendance of a specific training course (though this access route is not yet applied).

Reforms adopted in recent years have introduced the obligation to take out appropriate insurance to cover professional risks and rules on incompatible activities. These incompatibilities include: (i) any public or private employment, except in firms whose purpose is brokering; (ii) business and professional services; and (iii) legal representation of companies whose activity is incompatible with brokering real estate contracts.

From the information provided, it seems that there are no restrictions on the legal form for practising the profession, on voting rights or on multi-disciplinary activities.

### Tourist guides

In 2017, the Commission made the following recommendations for the tourist guide profession:

- consider the justification and proportionality of regulation of the profession
- clarify the legal situation of tourist guides in view of diverging regional regulations which seem to hinder access to the market affecting national service providers as well as those providing temporary services
- review list of sites reserved to holders of specific qualifications and consider proportionality of each reservation.

The Commission is not aware of any reform or other initiative that has taken account of or assessed part of its recommendations, except for changes to the list of tourist sites reserved for individuals with specific qualifications.

Tourist guides still benefit from reserved activities. Italy also regulates the tour manager (*accompagnatore turistico*) profession. A tour manager accompanies individuals or groups on journeys within the country or abroad and provides substantial information on tourist sites, which are not reserved to regular tourist guides.

To become a 'licensed' tourist guide in Italy, one has to pass a public exam. Some regions organise training courses to prepare for it. The exams usually take place only every 2 years in the respective province or municipality. Someone with a degree in arts (with a specialisation in archaeology, art history) or equivalent degree does not need to sit the public exam when requesting the licence.

A 2015 Decree drew up a list of sites of special historical, artistic or archaeological interest, reserved to tourist guides having acquired a specific authorisation for each site. However, following a decision of the 'Consiglio di Stato' in 2017, the Decree was repealed. Therefore, all tourist guides now have full and unrestricted access to all sites.

From the information provided, the Commission understands that continuous professional development is required in some regions but not yet at national level. Professional insurance is mandatory in all regions.

There are no restrictions on the legal form for practising the profession, on voting rights or on multi-disciplinary activities.

## I. Overview

By January 2021, Latvia had submitted information concerning 268 regulated professions. This is a minute increase compared with the situation reported in the 2017 Communication.

Among the 268 professions subject to regulation, 4.2% concern business services, 2.3% concern services in the construction sector and 0.4% concern services in the real estate sector. According to the database on regulated professions, since the 2017 Communication Latvia has introduced regulations for patent agents.

Latvia is sporadically updating the **database on regulated professions**. The database is an important source of information providing valuable data about the regulation of professions in a given Member State to administrative authorities and the broader public from other Member States. The activity of the Latvian authorities is generally comparable to the EU average, although the reporting on screening of regulatory requirements is well below the level in other Member States. While this can be explained by limited regulatory changes in Latvia, there were professions for which information on requirements was incomplete and requires updating.

There is significant number of specialities regulated in Latvia, especially in the health and transport areas.

Starting independent activities generally involves a requirement to obtain a certificate or undergo a certification process with the professional organisation in the sector concerned (or the state authority, as relevant). The use of titles of regulated professions is protected by Section 5 of the Law on regulated professions. Where validity of certificates is limited in time, the professionals are usually required to re-certify every 5 years.

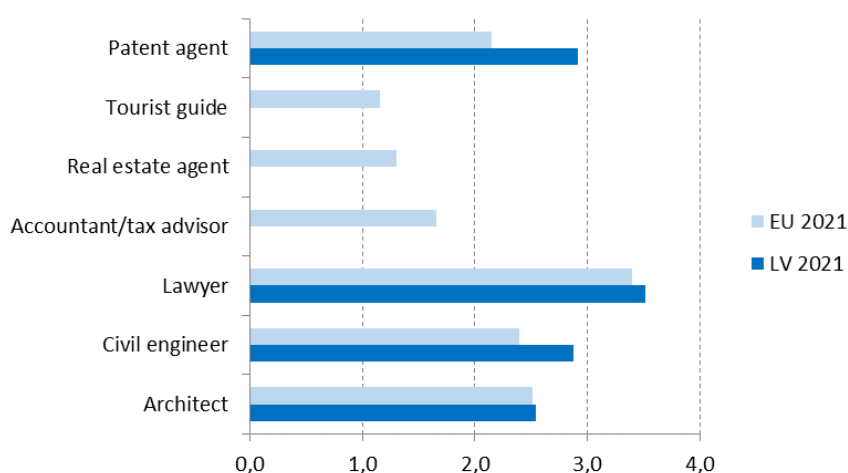
The list of regulated professions, their specialities and sub-specialities, as laid down in Ministerial regulations, has been amended several times since the 2017 Communication. The regulatory changes resulted in the deletion of 12 regulated professions (construction technician, hydrographer, lecturer in safety consultant training for the carriage of dangerous goods, electrical engineering technician, electrical assembler, dental nurse, riding therapist, riding therapist's assistant, metal materials welder, fault detector, building inspector). The regulatory changes also resulted in the addition of 11 new regulated professions (masseur, art therapist, detective, security guard, bomber, blast manager, pyrotechnician, site manager, psychologist, professional patent attorney, independent expert on the energy performance of buildings).

## II. Situation on the analysed professions

The list of professions regulated in Latvia includes the following professions covered in this document: architect, civil engineer, advocate and patent agent. Most of the regulated professions analysed have undergone regulatory changes to their requirements since 2017.

Regulatory restrictiveness in Latvia is higher than the EU average for architects, lawyers, civil engineers and patent agents. The professions of accountant/tax adviser, real estate agent and tourist guide are not regulated.

Chart 1: Regulatory restrictiveness, Latvia, 2021



The following description of the situation for the different professions focuses on changes since the analysis published in 2017. However, to provide a complete and understandable picture, the description also restates part of the information described in 2017.

### Architects/engineers

In construction, Latvia regulates the professions of architect, civil engineer and site manager.

In 2017, the Commission made one specific recommendation for the professions of architect and civil engineer in Latvia, as well as several general recommendations applicable to all Member States:

- Reflect upon the effects of fragmented system or multiple certification requirements on the free movement of professionals and whether potential obstacles can be justified;
- Member States making professional certification mandatory for non-regulated professions or relying on other checks and balances, especially on the provision of specific services, should review the overall coherence and practical effects of this model to avoid it becoming a barrier for accessing the profession;

The Latvian authorities reported a reduction in the number of specialities for the profession of civil engineer as laid down in Ministerial regulations. Specifically, amendments were made in 2017 to the list of specialities that fall under the profession of civil engineer. Several specialities (building civil engineer, transport construction civil engineer, heat and gas technology civil engineer, water technology civil engineer, hydrotechnical construction civil engineer) were removed from the list of specialities and categorised instead as the regulated professional activity reserved for the profession of civil engineer. At the same time, the regulatory requirements for construction technician, building surveyor and hydrographer were repealed.

Despite the reforms, multiple certification requirements on the free movement of professionals in this area remain in place in Latvia. To acquire an independent right of practice in the fields of architecture and construction, in addition to general education requirements, the person concerned is required to obtain a certificate for independent practice

(either a ‘certificate of architect’s practice’ or ‘certificate of construction practice’) in accordance with the Law on construction.

There have been only slight changes in the list of certifiable fields of activities since the 2017 Communication. In accordance with the Ministerial regulations in force, certification for construction specialists still covers a large number of the certifiable fields of activities (76) in the area of construction. The figure of 76 activities breaks down as: 16 activities in the area of design, 14 activities in construction work management, 17 activities in construction supervision, and 29 certifiable areas of activity within the speciality of construction expert examination. A person may obtain a right to professional practice in one or more of the certifiable areas. However, a professional can sit an examination to become a construction expert only in fields in which that person has already obtained a right of independent practice and additional relevant experience.

Evaluation of competencies and supervision of construction specialists is entrusted to accredited private legal entities (‘personnel certification bodies’). Information about certified construction specialists is entered in the register of the state construction information system.

The professional activities of construction specialists are grouped into the following main areas: architect practice and construction practice in the fields of engineering research, design, building, construction work management, construction supervision, and construction expert examination.

In the case of a new construction, architectural design is reserved for certified architects. Architects who have not been granted certification may be involved only under the supervision of a certified person, who is liable for the services provided. Only in a minor number of cases are these activities shared with other professions (e.g. certified engineers may also draw up designs for private houses). Structural design is reserved for certified engineers in a particular field (main construction, electricity, plumbing, water, etc.)

Only certified architects with the special additional certificates can provide an expert opinion on the architectural design for certain buildings (category 3). For other types of buildings, any certified architect can provide expert opinions. These activities are exclusive to certified architects. Only certified engineers with additional certification can assess compliance of construction works with the design documentation and regulatory provisions.

Activities concerning the technical control and compliance of existing buildings are shared with certified construction engineers (with certificates in respective fields).

Certified architects also perform author’s supervision during the construction process, verifying that architectural design plans are being followed. Only architects may perform author’s supervision for architectural design. Certified engineers perform owner’s supervision regarding structural design.

Certified architects (and engineers in the case of the reconstruction and renovation of existing structures) are also represent the owner in the construction process; this includes obtaining the construction permit and the acceptance of drawings.

Management of construction is reserved for certified construction managers in possession of a certificate in the corresponding sphere (e.g. construction works for road structures). Supervision of construction works is reserved for certified construction supervisors in the corresponding sphere.

Other reserved activities for certified engineers include cost estimation as part of the design process, and engineering research.



The training requirement for construction specialists within the profession of civil engineer remains generally 4 years of education. This means either level 1 (non-university education) or level 2 (university education) in a study programme in civil engineering. The professional experience requirements appear to have been reduced to at least 2 years of professional experience during the last 7 years (compared to the previous requirement of 3 years of experience). The aptitude exam requirement remain in place. Level-1 engineers can obtain certificates only in certain fields (construction work management and construction supervision). The certification procedure is carried out by professional organisations, based on delegation agreements between the Ministry of Economics and the respective professional organisation. As the sphere of professional services may differ, e.g. covering engineers in fields as disparate as electricity and hydro structures, delegation agreements have been concluded with seven professional organisations altogether. The training requirement for architects consists of architectural studies at university level (generally 5 years or the 4+2 model). For construction specialists in the field of architecture, there is an additional professional experience requirement, reduced to at least 2 years of professional experience during the last 7 years (previously the requirement was for 3 years of such experience) under the direct supervision of an architect. An aptitude test is also required. Certifications are organised by the Certification Board of the Latvian Association of Architects.

There are additional requirements for certified specialists, namely to increase their professional expertise each year in accordance with the list of topics and the scope of expertise-boosting events published on the website of the relevant expertise inspection body. This can be done by participating in continuous professional development (CPD) programmes, attending informational seminars and carrying out any other CPD activities in the specific area of certification. In the event of non-compliance with this requirement, the institution may initiate an evaluation of professional competence. Supervision is carried out on a regular basis (e.g. evaluation of complaints), while the monitoring of experience and professional development (vocational training, courses, etc.) is carried out every 5 years. There are no uniform requirements regarding the duration of CPD, so no cost estimation can be made. For example, the Ministry of Economics annually organises high-level seminars with international experts; such seminars are free of charge for architects and engineers. Participation in these annual seminars counts as continuous personal development. The topics are selected on the basis of identified issues of importance, e.g. digitalisation, energy efficiency, green construction, and climate change issues.

Professional indemnity insurance is required for certified specialists.

### Accountants/tax advisers

The profession of accountant/tax adviser remains not regulated in Latvia.

### Lawyers

In 2017, the Commission made the following recommendations for the profession of a sworn advocate:

- to clarify the scope of the reserved activities so as to facilitate the provision of legal consultancy services by sworn advocates or other service providers, in particular for online services;

- to assess legal form and shareholding requirements, incompatibility rules and multidisciplinary restrictions, in particular taking into account the proportionality of these restrictions in relation to core principles, such as the independence of the profession, and to the corresponding supervisory arrangements.

In Latvia, the key requirements governing access to, and pursuit of, the profession remained largely intact in all of the above-mentioned areas underlined in 2017 recommendations.

The activities of sworn advocates (as well as assistant sworn advocates) are regulated by the Law on advocates by way of reserves of activities and protected title.

An advocate is an independent and professional lawyer who: (i) provides legal assistance to defend and represent the lawful interests of persons in court proceedings and pre-trial investigations; (ii) provides legal consultation; (iii) prepares legal documents; and (iv) performs other legal activities. Advocates work within the court system. They can conduct cases in any court and in pre-trial investigation body of the Republic of Latvia upon being commissioned and chosen by the parties, the accused or other participants (clients) of the case. They also work in cases specified in the Law upon being commissioned by court judges, the chairs of pre-trial investigation bodies or the Latvian Council of Sworn Advocates. Advocates also provide other legal assistance in accordance with the procedures specified by law.

A number of activities are shared with other related professions; the drawing up of legal documents is shared with prosecutors, notaries, legal advisers and bailiffs<sup>89</sup>, while legal advice (including in tax matters) and representation before administrative authorities (including tax authorities) are shared with legal advisers.

Mandatory qualification requirements consist of state-recognised diplomas of second-level higher education in legal science. Applicants need to have obtained the professional qualifications of a lawyer and to have a certain level of professional experience depending on the field in question. The experience requirements break down as follows: 3 years as judge, 5 years as prosecutor, sworn bailiff, sworn notary, or an assistant to sworn advocate, or 7 years as academic personnel specialised in law at an institution of higher education or in any other position with juridical specialisation. Applicants must also pass an advocate examination.

Advocates are required to meet the following requirements:

- to be of faultless reputation;
- to be at least 25 years old;
- to be fluent in Latvian at the highest level;
- to have no trusteeship established over them;
- not to have been declared insolvent by a court;
- to have a clean criminal record (this includes not being a suspect or defendant in criminal proceedings relating to the committing of an intentional crime, etc.);
- not to have been the subject of disciplinary sanctions in the last 5 years;
- not to have been dismissed from the position of judge, sworn bailiff, assistant to a sworn bailiff, sworn notary or assistant to a sworn notary, etc.;
- not to hold any occupations incompatible with the position of sworn advocate (due to ethical reasons established by the Council of Sworn Advocates) or with employment

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<sup>89</sup> Each of these professions has its own competence in drafting the legal documents; each member of the profession acts within the scope of their competence.

in a state administrative institution, except for teaching staff and the duties of legal adviser.

Sworn advocates must practice individually or in collaboration exclusively with other sworn advocates. Sworn advocates may establish offices of sworn advocates. It is permitted to employ other non-legal staff (technical, administrative, financial) under employment contracts.

Under Latvian national action plans, in February 2015 a working group was set up to improve the quality of the advocacy organisation. The working group pointed to the need for amendments to the Law on advocates to address the following matters: (i) the legal status of advocates' offices; (ii) how to clarify/raise quality and education requirements (review of the examination for advocate); (iii) how to regulate liability for non-compliance with continuous professional development requirements; and (iv) the introduction of mandatory indemnity insurance.

Based on the available information, some reforms have taken place since the above mentioned initiative. . The Latvian authorities reported that amendments to the Law on advocates would come into force in 2021, stipulating that sworn advocates, including those who have been suspended or suspended, are obliged to improve their qualifications. Each sworn advocate will have to devote at least 16 academic hours to raising their qualifications within one calendar year, in accordance with procedures determined by the Latvian Council of Sworn Advocates. In addition, under the new law, insurance for advocates will become mandatory. The amendments also provide a clearer definition of the legal status of a sworn advocate law firm. Until now, the legal status of an advocate law firm was regulated in very general terms and there were differing interpretations of the law as regards equating advocate law firms with legal persons and recognising them as legal entities; a partnership or limited liability company by registering it in the Commercial Register. Consequently, not only will the amendments determine the legal status of advocate law firms, but they will also lay down a transparent tax regime and tax administration process.

### Patent agents

In Latvia, the regulation of patent attorneys was introduced in 2016. However, since the profession was reported in the database on regulated professions only in 2019, the assessment of this profession was not covered in the 2017 Communication. According to the Latvian authorities, the regulation aims to protect the rights and interests of owners of industrial property rights and recipients of services. It is aimed at reducing the risk of service provision by non-professional people that are not familiar with the legislation and regulations in force, and of reducing the risk of fraud or deceitful provision of services. The Latvian authorities point out that dealing with such cases requires a lot of time and financial resources, simultaneously damaging society's trust in public administration. To achieve those objectives, the regulation (the Law on industrial property institutions and procedures) aimed to ensure that patent attorneys have appropriate qualifications.

According to the regulation in place in Latvia, a patent attorney is a person included in the Patent Office's list of professional patent attorneys and who provides services in the field of industrial property protection. A professional patent attorney may specialise in one or more of the following areas: (i) patents; (ii) trademarks; (iii) industrial designs. Patent attorneys specialising in patents also deal with supplementary protection certificates for medicines and plant protection products and with semiconductor topographies. A professional patent

attorney specialising in trademarks also works with geographical indications. The powers of representation of patent attorneys before Patent Office are therefore limited to their relevant field of specialisation.

A professional patent attorney, as part of their professional competence, is entitled to:

- i. provide services in the field of industrial property in their specific area of specialisation, on the basis of which they were included on the list of professional patent attorneys;
- ii. represent persons and provide them with assistance about the protection of industrial property, if they have applied to the Patent Office the Board of Appeal, or to other state and local government institutions, courts, or to cooperate with other private persons;
- iii. collect evidence, including requesting the necessary documents from state and local government institutions and private persons;
- iv. become acquainted with the information necessary for the provision of assistance, including the rulings of state and local government institutions and courts, laws and regulations, administrative acts, as well as to receive true copies of these documents;
- v. settle, on behalf of the persons to be represented, payments at the Patent Office and the Board of Appeal, in court and in international organisations, related to the protection of industrial property provided for in the industrial property laws and regulations;
- vi. carry out the translation of documents related to the protection of industrial property and, in accordance with the procedures laid down in laws and regulations, certify such translations, true copies and extracts of documents that must be submitted to the Patent Office, the Board of Appeal, courts, international organisations, or other persons;
- vii. provide other services that fall within the scope of the attorney's professional qualification.

For example, professional patent attorneys specialising in the field of patents usually provide the following services:

- patent searches, including patentability, novelty, clearance searches and freedom to operate studies, patent validity searches;
- assessment of patentability;
- possible infringement assessments;
- IP strategy development and consultation on such strategies;
- drafting a patent application;
- protecting the rights and interests of applicants and owners against infringements of their rights;
- providing consultations on the commercialisation of inventions, including the drafting of licence agreements and transfer agreements.

Qualification requirements consist of:

- an academic or second-level higher professional education; at least 4 years of work experience in the field of industrial property protection;
- fluency in the official language and knowledge of at least two foreign languages;
- passing the qualification examination for professional patent attorneys.

A person applying to become a professional patent attorney specialising in patents must have been educated in the field of engineering or natural sciences. A person educated in other fields is also entitled to become a professional patent attorney in the field of patents. However, that person must acquire, in addition to their academic or second-level higher vocational education in another sector, a first-level higher vocational education in the field of engineering or natural sciences, or another comparable professional qualification.

In addition, a patent attorney is required to have knowledge of at least two foreign languages sufficient for professional cooperation with Latvian and foreign individuals and institutions. Patent attorneys must also conclude an insurance agreement on their civil liability.

Patent attorneys are required to continuously improve their professional knowledge and skills. Supervision is delegated to the Latvian Association of Patent Attorneys.

#### Real estate agents

The profession of real estate agent is still not regulated in Latvia.

#### Tourist guides

There continue to be no regulated professions in the tourism sector in Latvia.

## I. Overview

By January 2021, Lithuania had submitted information concerning 80 regulated professions. This is a very minor increase compared to the situation reported in the 2017 Communication.

Among the 80 professions subject to regulation, 9.1% concern business services, 1.3% concern services in the construction sector and 1.3% concern services in the real estate sector.

According to the information in the database on regulated professions, since the 2017 Communication, Lithuania has introduced regulation for two medical specialities and for private detectives and patent trustees (patent attorneys). No profession was deregulated during this period.

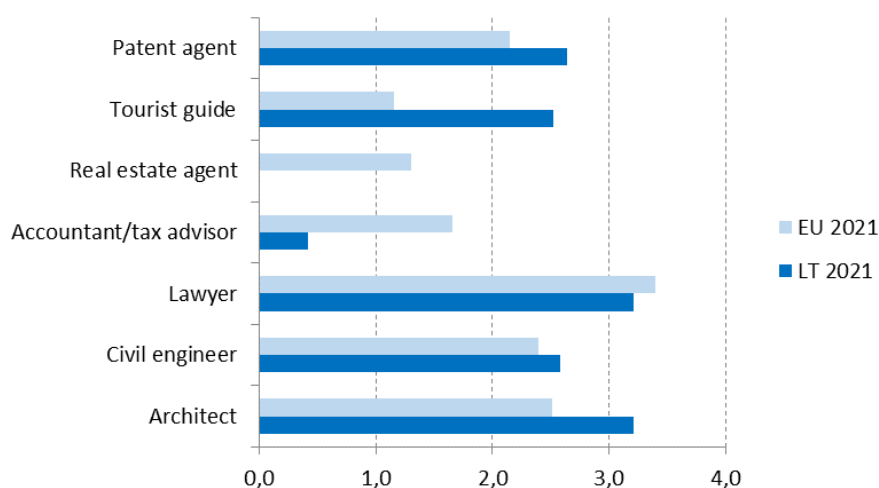
Lithuania is very sporadically updating the **database on regulated professions**. This database is an important source of information providing citizens and administrative authorities from other Member States with valuable data about the regulation of professions in a given Member State. The activity of the Lithuanian authorities in the database is well below the EU average, and this can only partially be explained by limited regulatory changes in the country. For some professions, information about requirements was incomplete and required updating.

## II. Situation concerning the analysed professions

The list of professions regulated in Lithuania is approved by order of the Minister for the Economy. It includes the following professions covered in this document: architect, civil engineer, advocate, patent attorney and tourist guide. All analysed regulated professions have undergone certain regulatory changes of their requirements since 2017.

Regulatory restrictiveness in Lithuania is higher than the EU average for architects, civil engineers, patent agents and tourist guides. Among the professions analysed, restrictiveness is the highest for lawyers (“advokatas”) and architects.

Chart 1: Regulatory restrictiveness, Lithuania, 2021



The following description of the situation for the different professions focuses on changes since the analysis published in 2017. However, to provide a complete and understandable picture, the description restates part of the information described in 2017.

### Architects/engineers

In 2017, the Commission did not make any specific recommendations for the professions of architect and civil engineer in Lithuania. However, more generally, the Commission recommended that:

- Member States making professional certification mandatory for non-regulated professions or relying on other checks and balances, especially on the provision of specific services, should review the overall coherence and practical effects of this model to avoid it becoming a barrier for accessing the profession.
- Member States with a fragmented system of the profession, or with multiple requirements depending on the specific activities pursued, should reflect upon the effects of their system on the free movement of professionals and whether any potential obstacles created by their system can be justified.

The Lithuanian authorities have not yet provided information demonstrating that they have duly assessed and taken into account the above-mentioned recommendations. This information is being updated.

Both architects and civil engineers remain covered by the same piece of legislation: the Law on construction. They can be grouped into two main categories: ‘unattested’ architects (or civil engineers) and ‘attested’ architects (or civil engineers). While unattested professionals need to comply with established qualification and professional experience requirements in order to pursue the activities reserved for them, attested architects and civil engineers have to undergo a mandatory certification procedure and obtain a qualification certificate.

Mandatory attestation for civil engineers is carried out by the Construction Production Certification Centre (SPSC), while the Chamber of Architects is in charge of the attestation of architects.

Both professions underwent reform as a result of amendments to the Law on construction in 2017. The regulatory requirements have increased for both professions, especially as regards the scope of reserved activities subject to additional qualification and attestation requirements. The profession of architect underwent further reform as a result of amendments to the Law on the Chamber of Architects and the adoption of the Law on architecture (June 2017).

#### *Activities reserved for architects and/or civil engineers*

The Law on construction defines the following key areas of technical construction activities: construction investigation, building design and building project supervision, expertise for construction projects and building expertise, construction works, and technical supervision of building construction.

The Law on construction that came into force on 1 January 2017 re-introduced mandatory attestation procedures for architects and civil engineers carrying out activities not only for sites of exceptional significance, but also for sites of non-exceptional significance. Similar procedures were established in 1996 in Lithuania, but were abolished in 2007. Since 2007

and until recently, both unattested and attested professionals could manage key areas of construction activities on sites of non-exceptional significance (except for ‘expertise’ activities). However, under the rules that came into force in 2017, the management of these key areas of construction became restricted to attested professionals, except for ‘non-complex buildings’ (i.e. simple building structures with a maximum height of 8.5 metres and not more than 80 square metres, with simple structure). According to the Lithuanian authorities, based on the assessment of past experience, reintroducing the attestation procedure for buildings of non-exceptional significance was necessary to ensure public safety, consumer protection, and the quality of design, implementation and construction of a building. Lithuanian authorities have not yet communicated further details about the specific reasons why they considered such requirements necessary and proportionate. According to the Lithuanian authorities, this information is being prepared and will be sent to the Commission in due course.

Based on the Law on construction, certain activities remain exclusively reserved for either architects or civil engineers. In particular, only architects are allowed to take charge of the architectural part of design documentation and its supervision, and only civil engineers are allowed act as the head of the construction works of buildings/engineering structures<sup>90</sup>.

In June 2017, the new Law on architecture came into effect, further clarifying the scope of activities of non-attested architects. These are as follows:

- drafting documents under the guidance of an attested architect (when such activities are reserved for attested architects);
- managing the key areas of construction activities with respect to non-complex buildings;
- designing public spaces, landscapes and urban structures;
- designing green spaces;
- designing interiors;
- developing the design of architectural elements and objects;
- carrying out scientific and/or pedagogical activities in the field of architecture;
- carrying out expert architectural assessment;
- other activities specified in the Law<sup>91</sup>.

In addition, the Law on architecture introduced title protection by defining ‘architect’ as a natural person who possesses education which satisfies the requirements laid down in the Law on architecture.

#### *Training requirements (unattested and attested professionals)*

The Law on architecture upgraded the training requirements for architects to 5 years of university-level studies with an examination in the light of requirements laid down in the revised Directive 2005/36/EC on the recognition of professional qualifications. These training requirements are similar to the previous requirements for a bachelor’s (4-year)

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<sup>90</sup> The activities reserved for engineers broadly fall into the following activity categories: design and planning, feasibility studies; representation for obtaining permits (signature of designs); project management, including monitoring of execution and construction cost management; management of construction maintenance (including inspection).

<sup>91</sup> The activities reserved for architects broadly fall into the following activity categories: architectural design and planning, feasibility studies; examination of design and related documentation; preparation/submission/signing of technical control and compliance documentation; construction cost management, monitoring of construction/execution; urban/territorial planning/design; landscape architecture; interior design/preparation of documentation for interior decoration; other activities.



degree and 3 years of experience, or a master's (4+2 years) degree and at least 1 year of professional experience. The main principle remains the same – a master's degree (5 years) with at least 2 years of professional experience.

Qualification requirements for civil engineers remain largely unchanged. According to the Law on construction, civil engineers should hold a qualification degree in civil engineering or construction technologies, or another compliant qualification degree or any other education. They should also have work experience as defined in the relevant legislation, corresponding to no less than Level VI of the Lithuanian qualifications framework, and allowing them to engage in activities comprising one, several or all the main areas of technical construction activities. In general, 3 years of training is required (higher education either at university or college level).

Qualification requirements for attested architects and attested civil engineers remain comparable to the situation reported in the 2017 recommendations. Attested professionals have to meet additional requirements of 2-5 years of professional experience depending on the functions to be performed.

There are over 10 types of function subject to attestation for civil engineers and architects, with distinct requirements depending on whether the building is of exceptional or non-exceptional significance. Specific requirements apply for specific buildings, such as those that belong to the country's cultural heritage or nuclear power sites.

In addition, for some activities there are mandatory tests to prove specific professional knowledge (an oral exam) and legal knowledge (a written test). Candidates are also required to provide information about at least two projects in the related fields. Holders of EU qualifications, although bound by mutual recognition rules, are also required to pass the legal knowledge test (they do not have to take the professional knowledge test).

#### *Other requirements*

The amendments to the Law on the Chamber of Architects have introduced a requirement for all attested architects to be members of the Chamber. Previously, membership was voluntary for attested professionals. According to the Lithuanian authorities, only 10% of attested architects were voluntary chamber members, which made the self-governance of architects inefficient. For example, it was not possible to ensure continuous professional development and compliance with the norms of professional ethics, and it was not possible to handle complaints, monitor activity, and otherwise 'safeguard the public interest in the area of architecture'. The Lithuanian authorities took the view that self-governance would be a more efficient, flexible and professional means of supervision. Furthermore, the proportionality of this measure would be ensured by allowing the members of the association to determine their membership conditions, such as membership fees, principles of professional activity, and appointment of governing bodies.

The Law on architecture has introduced a general continuous professional development (CPD) obligation for non-attested architects (previously only attested architects were subject to mandatory CPD rules). However, the Law does not set out any concrete requirements as to the number or frequency of CPD hours for non-attested architects.

Attested architects and civil engineers remain subject to mandatory CPD every 5 years and need to attend at least 20 hours of lectures, in accordance with training programmes approved by higher education institutions, associations, unions or educational establishments. The Law does not cover payment for CPD courses (institutions decide on this themselves).

Based on the Law on construction, civil liability insurance remains required only in a few instances specified in the Law, specifically for designers of construction works, technical supervisors of construction, contractors, or persons contracted to provide expert opinions on the design of construction works. Compliance with this insurance requirement is verified when construction permits are issued or upon completion of construction works, as relevant, depending on the activity concerned. The municipality in charge of issuing building permits typically checks compliance with this requirement for designing activities, while the Construction Completion Commission verifies if other participants in the construction process have the required insurance. Insurance is not mandatory for simple constructions and repairs, and in cases of 'self-dependent/own' constructions.

In addition, the decision of the Chamber of Architects provides for mandatory application of the European Code of Ethics for Providers of Architectural Services, which recommends mandatory civil liability insurance for architects and certain provisions on minimum prices. In the view of the Lithuanian authorities, the recommendations on insurance and prices remain not binding and may apply if they do not contradict the Law on architecture.

#### Accountants/tax advisers

The profession of accountant/tax adviser remains unregulated in Lithuania.

The current draft amending the Law on accounting envisages some future reforms, namely lifting a prohibition on company managers from serving at the same time as an accountant in the same company (as of 1 January 2022), and withdrawing the compulsory insurance requirement for an entity providing accounting services.

#### Lawyers

In 2017, the Commission made the following recommendations for the profession of lawyer:

- clarify the scope of the reserved activities so as to facilitate the provision of legal consultancy services by lawyers or other service providers, in particular for online services;
- assess legal form and shareholding requirements, incompatibility rules and multidisciplinary restrictions, in particular taking into account the proportionality of these restrictions in relation to core principles, such as the independence of the profession, and to the corresponding supervisory arrangements.

In Lithuania, the key requirements governing access to and pursuit of the profession of lawyer remained largely intact in all of the above-mentioned areas underlined in 2017 recommendations.

The exclusive reserved activities of *advokatas* remain the same. These are as follows:

- i. only an attorney (*advokatas*) or in certain cases an assistant attorney can act as a defence counsel in criminal courts (other participants may be represented by a person holding a law degree, subject to the permission of the judge);
- ii. generally *advokatas*/assistant attorneys act as legal representatives in civil cases (exceptions are made for certain instances where a person holding a law degree may represent close relatives, a spouse or employer);
- iii. appeals in cassation in civil matters have to be signed by an *advokatas*;

- iv. certain civil cases require the participation of an *advokatas* (i.e. cases concerning the investigation of activities of a legal person, cases concerning the forced sale of shares, and the compulsory hospitalisation of a person).

Other activities (such as providing legal advice, drafting of documents and representation on legal matters, except court representation) are not reserved.

In addition, an *advokatas* is allowed to provide some specific regulated activities (acting as bankruptcy administrator, restructuring administrator or patent agent) after having complied with the specific requirements set out in the relevant laws. This means that an *advokatas* does not have automatic access to these activities.

As previously, there are only three permitted legal forms for legal practice: (i) individual activity; (ii) partnership without establishing a legal entity; (iii) establishment of an attorney's partnership as a legal person. The partners in the latter form of enterprise enjoy unlimited liability only with respect to obligations not related to provision of the legal services of *advokatas*. Membership and voting rights in attorneys' partnerships remain exclusively reserved for *advokatas*. Joint practices of advocates and other professionals are still not allowed. Practising attorneys cannot participate in criminal intelligence/operational activities or be employed or hold any other paid position except: (i) activities allowed by the Law on the Bar (e.g. bankruptcy administrator, lobbyist, liquidator, curator, will executor, trustee, arbitrator, patent agent); (ii) research, teaching or creative activities; and (iii) work in the Lithuanian Bar Association.

Nevertheless, the profession of lawyer (*advokatas*) has undergone limited regulatory changes since the 2017 recommendations. Amendments to the Law on the Bar that entered into force on 1 January 2018 introduced more stringent requirements for conduct and professional ethics. For instance, the criteria of good repute was supplemented by a requirement to comply with the rules of conduct set out in the Lithuanian Attorney Code of Ethics. Similarly, access was prohibited for professionals convicted of an intentional crime but released from criminal liability within the last 2 years from the date a court judgment entered into force.

Most other requirements remain unchanged, with some reduction of requirements as regards the entry to the profession for judges, prosecutors, former attorneys and persons holding a PhD in law.

There remains a two-step procedure before an attorney can exercise a profession under the Lithuanian title of *advokatas*. First, candidates must be recognised as an *advokatas* and awarded this title. This step consists of a check of the candidate's qualifications, reputation, compliance with the language requirements, exam performance and health. Secondly, candidates must obtain a licence to practice as an *advokatas*. This step involves a check of the candidate's compliance with the legal form requirements, indemnity insurance, and the taking of a solemn declaration/oath.

Similarly, the education requirements remained unchanged. The required qualifications to become an *advokatas* are university-level education (bachelor and master's degree in law, or law degree of 5 years), followed by 5 years of professional experience in the field of law or 2 years as an assistant attorney. However, the access requirements for other legal professions were somewhat reduced: 5 years as a judge (instead of the previous 7-year requirement), 7 years as a public prosecutor (instead of the previous 10-year requirement) or a PhD in Law. Acceptance to the Bar is subject to passing the Bar entrance exam or the exam on the organisation of advocate activities (for alternative pathways only). The latter type of examination does not cover all legal fields, but rather covers subjects particular to activities of the practice of *advokatas*, such as professional ethics, work organisation, etc.

The profession of *advokatas* remains subject to mandatory continuous professional development requirements of 4 or 8 continuous professional development points per year, depending on the professional experience acquired. The points are attributed depending on the type of training undertaken, e.g. 2 points for training of more than 4 academic hours, 2 points for a presentation in a training session, etc. Costs are fixed only for training organised by the Bar Association (e.g. not less than EUR 20 for a training course of more than 6 academic hours).

An *advokatas* must be insured for damages to clients in excess of EUR 290. A mutual recognition clause to assess the equivalence of insurance from other Member States is in place. The sum of insurance and the insurance period are evaluated by the Lithuanian Bar Association. There is a mutual recognition clause for insurance obtained in other Member States by foreign lawyers (additional insurance can only be required if it is different in terms of conditions and cover).

Advertising of the activities of *advokatas* is permitted if such advertising complies with the principles of the activities of *advokatas*, as laid down in the rules set by the Lithuanian Bar Association in coordination with the Ministry of Justice. The rules on advertising are not limited to certain services, but rather set general conditions for the use/display of 'attorney's data'. This includes any written, oral, visual or other form of information about the attorney or the law firm, including (but not limited to) the attorney's name, firm name, logo, symbols and/or other information provided by the attorney or law firm.

The law does not set any tariff requirements, except recommendations concerning the maximum amount of fees to be awarded (from the losing party) in civil cases for the assistance provided by an attorney (or assistant attorney).

### Patent agents

In 2017, the Commission made the following recommendations for the profession of a patent agent:

- re-assess the condition of prior professional experience as a requirement to access the profession of patent/trademark agent.

Since the 2017 recommendations, Lithuania has revised the qualification requirements for patent trustees (patent attorneys) (*patentinis patiketinis*) and reduced a prior professional experience requirement.

The regulation of patent trustee (patent attorneys) was reformed in June 2017 by a new Law on patent attorneys. The new law brought in qualification requirements, which were lower than in the regulation previously in place. Acceptable university degrees were more broadly defined and now include any bachelor's or master's degree in natural sciences, biomedicine, technology or social sciences fields (the acceptable fields were previously technical, natural sciences, mathematics, computer science and law) and at least 2 years of professional experience in intellectual property protection (previously 5 years of experience was required).

A requirement to pass a qualification exam remains in place. The exam tests a person's knowledge of intellectual property, civil law and civil procedure law, as well as knowledge of professional ethics. The examination also tests the ability to apply the practical knowledge gained in the preparation of patents, trademarks, designs and other industrial property protection procedures.

After the exam, a patent trustee (patent attorney) undergoes an authorisation procedure to be entered into the Register of Patent Attorneys. At this stage, in addition to qualifications, the good repute of the patent trustee (patent attorney) is verified before entry into the Register.

However, the new law introduced a fully-fledged regulation of the profession of patent trustee (patent attorneys) in Lithuania. Before 2017 reform, the qualification requirements for patent trustees (patent attorneys) were regulated through a secondary legal act (Government Order No 362 of 1992), while the specific roles of patent trustees (patent attorneys) were set out in other relevant laws (the laws on patents, trademarks, design, etc.). The idea of introducing the Law on patent attorneys dates from before 2014<sup>92</sup> and appears to be driven by a need to more clearly define the scope of professional activities, ensure fair competition, a high quality of service, the development of the profession and a high level of intellectual property protection. Despite the declared public interest objectives, to date Lithuania did not provide to the Commission any proportionality assessment on introducing requirements for patent trustees (patent attorneys).

Based on new rules, access to professions is no longer limited to Lithuanian and EU/EEA citizens, but is also possible for third-country nationals. However, access for people who qualified as a patent attorney in another EU/EEA Member State have become less easy. Under the previous regulatory framework, patent agents (patent attorneys) qualified in other Member States were allowed to pursue their activities in Lithuania without any recognition procedures (subject to prior registration in the Register of Patent Attorneys). Under the new rules, such professionals have to undergo general mutual recognition procedures as laid down in the Directive on the recognition of regulated professions.

The profession remains regulated by way of a reserve of activities. The new law defines patent trustee (patent attorneys) as an ‘independent adviser and representative of the client in the field of industrial property protection’. Unless otherwise provided by law, patent trustees (patent attorneys) also have a right to provide services in other areas of intellectual property protection. The new law provides clarity about the exact scope of activities of patent trustees (patent attorneys). Their services consist of providing consultations and advice, preparing documents (documents for registration of patents, trademarks, designs and other objects of industrial property) and representing clients (natural or legal persons). In particular, patent trustees (patent attorneys) represent clients at the State Patent Bureau in order to obtain documents for the protection inventions, trademarks, designs and other industrial property objects. They also represent the interests of clients in the following matters:

- concluding and registering the licensing and transfer of rights to industrial property objects and other agreements;
- protection of industrial property when importing and exporting goods;
- in court (together with advocates, advocate assistants, and other experts as appropriate; patent agents cannot represent clients in courts alone); and
- in international industrial property protection institutions.

Furthermore, patent trustees (patent attorneys) can: (i) request the documents or copies thereof required for the provision of their services; (ii) collect and submit evidence; and (iii) approve copies of documents submitted to the State Patent Bureau, to a court or to other institutions or bodies.

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<sup>92</sup> The draft conception of the law on patent trustees of the Republic of Lithuania (2014).

According to the Law on the Bar and the Law on patent attorneys, advocates are also entitled to provide the services of patent agents (patent attorneys) if they fulfil the indicated requirements.

The new law created a professional chamber for patent trustees (the Institute of Patent Attorneys). Membership of the newly established chamber is mandatory and has the typical membership obligations, such as payment of membership fees, supervision by the Chamber, etc.). However, the membership conditions and fees are not significant (EUR 30 per year). According to the law, patent trustees are required to continuously improve their professional qualifications in accordance with the procedure established by the Chamber and to report every 5 years on how they have improved their professional qualifications. However, to date no such procedure has been established.

The new law has also introduced a requirement for mandatory professional civil liability for damage caused in excess of EUR 200. Where the patent attorney is acting under an employment contract, and his employer does not provide industrial property protection services to third parties, professional liability insurance is not mandatory for patent attorneys. The amount of professional indemnity insurance cover is a minimum of EUR 20 000 per insured event.

### Real estate agents

The profession of real estate agent remains unregulated in Lithuania.

There were no other (non-regulatory) barriers identified.

### Tourist guides

In 2017, the Commission made the following recommendations for the profession of tourist guide:

- consider the justification and proportionality of regulation of the profession.

The regulation of tourist guides was reformed in 2018 through amendments to the Law on tourism. Despite the recommendations, in Lithuania the requirements governing access to the profession of tourist guide became more stringent, in particular as regards the scope of reserved activities. At the same time, several requirements were reduced.

The profession of tourist guide remains regulated by way of reserved activities and title protection<sup>93</sup>. However, the scope of activities reserved for the profession has become broader. In November 2016, the reserved activities focused on listed tourist objectives, where only official travel guides were permitted to provide excursions (the list included various museums, national parks and historical towns)<sup>94</sup>. According to the Lithuanian authorities, the

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<sup>93</sup> Although there is no express penalty in the law for the use of the title 'guide', there is a general rule in the Administrative Code prohibiting unlicensed/illegal activities when a licence is required in order for a person to engage in a particular activity.

<sup>94</sup> Prior to 2018, in accordance with the law, the list of museums, sites and places of natural and cultural heritage (where excursions are only available with a certified guide) was approved by the State Tourism Department under the Ministry of the Economy.

requirement to list tourist objectives was impractical as it triggered discussions as to whether a specific objective would be of high importance and whether the information would be of sufficiently high quality to be provided by a certified guide and be included in the list. As it was assumed that nearly all information concerning potential tourist objectives (sights) would qualify to be included in that list, the latter was found to be unnecessary/superfluous. The list was therefore repealed in 2018.

Other types of excursion were not previously reserved to licensed tourist guides. Under the revised law, only people holding a tourist guide licence may provide guide services during an excursion (i.e. provide specific information on museums, art galleries, natural, cultural and scientific exhibitions or other objects or sites visited during excursions). Excursions are defined as visits to sites or places for less than a day and following a set route, with the participation of a guide. Tour leaders (unregulated in terms of the qualifications required) exercise a neighbouring activity and can accompany tourists during tours in Lithuania or abroad and give tourists information about a tour. Tour leaders cannot provide specific information on museums, art galleries, natural, cultural, scientific, exhibitions or other objectives or sites visited.

The qualification requirements have been slightly reformed and made less stringent.

Education requirements are comparable to the situation reported in 2017. They consist of completed tertiary education and a special training course for guides totalling no less than 250 academic hours. The course deals with how to prepare and lead excursions, guide commentaries, professional ethics, communication, psychology, Lithuanian culture, history and geography, and the legal rules governing the activities of tourist guides). Prospective tourist guides must also complete the guide training course and take a practical examination on how to lead excursions.

Another positive aspect of the reform is that there is no longer any mention of various tourist guide categories (second, first, or highest). These categories were previously based on professional experience, ability to work in different languages, and the number of tour routes.

## I. Overview

By 1 January 2021, Luxembourg had submitted information about 250 regulated professions. This is a sharp increase compared with previously submitted figures. Of those professions, 9.7% concern business services, 14.4% the construction sector and 1.3% the real estate sector.

According to an EU wide survey<sup>95</sup>, 21% of Luxembourg's labour force can be considered to be working in regulated professions. This is equal to the EU average (21%).

Luxembourg is regularly updating the **database on regulated professions**. This database provides citizens and administrative authorities from other Member States with valuable information about the regulation of professions in a given Member State.

In its **national action plan from 2016**, Luxembourg only referred to the 12 professions discussed during the mutual evaluation meetings for which there are no plans to adapt existing regulations. Furthermore, Luxembourg announced some measures to simplify the recognition of professional qualifications, in particular for access to the teaching profession. It also referred to the planned adoption of measures to ease administrative burden for small and medium-sized businesses and to the preparation of a programme to simplify and improve the regulation, although no specific deadlines have been given.

Although no progress has been made so far on the teachers' reform, work on administrative simplification has been ongoing since 2016. Adopted by the Government Council in March 2016, the *Einfach Lëtzebuerg* programme aims to: i) actively involve the public in the discussion process; ii) reduce administrative constraints; iii) remove unnecessary regulatory burden; and iv) simplify and improve the design and quality of legislation and processes. To achieve these objectives, the programme is structured around the following aspects: i) a selective and strategic review of existing legislation; ii) pragmatic and efficient quality control; iii) more transparency and consultation; and iv) strategic and intelligent digitisation of procedures.

Since 2016, the Commission has been addressing annual **country-specific recommendations** to Luxembourg in the framework of the European Semester in the area of professional services, in particular, on removing regulatory barriers to competition, investment and innovation in the business services sector.

## II. Situation on the analysed professions

The conditions of access to and exercise of regulated professions are set by the State. One particularity of the Luxembourg higher education system is that a number of professional training courses giving access to regulated professions are not available within the country itself (e.g. for architects).

Regulatory restrictiveness in Luxembourg is higher than the EU average for all of the professions analysed, except for patent agents, where the opposite is true, and tourist guides,

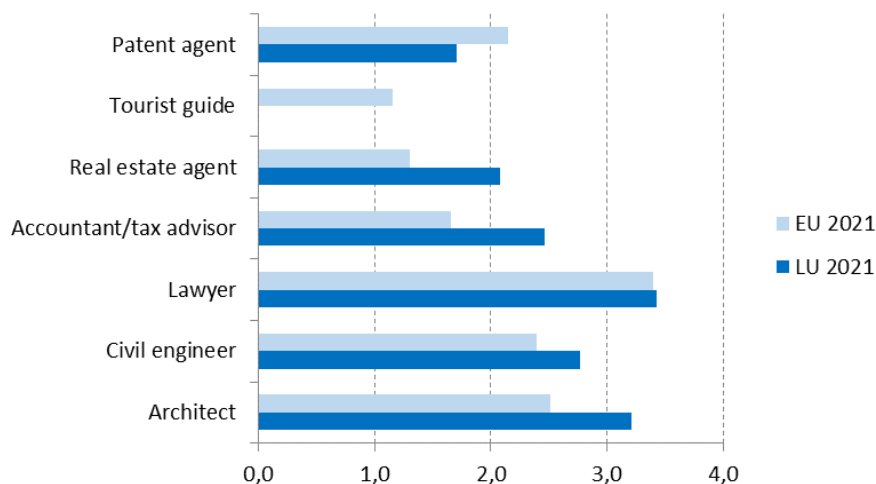
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<sup>95</sup> Koumenta M. and Pagliero M, (2016), *Measuring Prevalence and Labour Market Impacts of Occupational Regulation in the EU*. See: <https://ec.europa.eu/docsroom/documents/20362>.



who are not regulated. Among the professions analysed, restrictiveness is the highest for lawyers.

**Chart 1: Regulatory restrictiveness, Luxembourg, 2021**



The following description of the situation for the different professions focuses on changes since the analysis published in 2017. However, to provide a complete and understandable picture, the description also restates part of the information described in 2017.

### Architects/engineers

In 2017, the Commission made the following recommendation for the architectural profession:

- reconsider the wide scope of reserved activities.

The Commission is not aware of any reform or other initiative which has taken into account or assessed this recommendation.

Both professions benefit from reserved activities and title protection. The Luxembourg authorities justify the regulation, as the quality and safety of constructions need to be guaranteed.

Only architects may establish architectural projects. Anyone wishing to undertake work subject to building permits or plans, or work in urban design and planning must have an architect draw up an architectural project. This concerns namely residential, administrative, education, research and healthcare buildings and any other current construction that does not have any specific technical issues. The architect's scope of activity includes that of a landscape architect and an interior designer and is thus particularly wide.

Concerning civil engineers, anyone wishing to undertake work subject to a building permit or urban design or landscaping plans must have an engineer draw up a technical project. The law does not define 'civil engineering' as a profession, but it defines the work of a 'consulting engineer', within which it makes a distinction between 'construction consulting engineers' and 'other engineers'. The activities reserved for 'construction consulting engineers' consist of designing a technical, urban design or landscaping project, drawing up

the associated plans and coordinating the various activities needed to complete the project. This applies in particular to projects on ‘roads, railways, bridges, tunnels, barrages, dams, supporting structures, reservoirs, water supply, removal and treatment works, river management and energy and telecommunications projects’.

Architects and civil engineers (‘construction consulting engineer’) share some activities: i) architectural design and planning; ii) feasibility studies; iii) construction cost management; iv) monitoring of construction; v) project execution, including supervision of other related professionals/inspection of how the project is being executed; vi) examination of design and related documentation for work in industrial establishments such as factories, power stations, halls and agricultural buildings, as well as town and country planning work; and vii) delivery of energy performance certificates.

For both professions, a master’s degree of 5 years in the relevant discipline is required, followed by a professional traineeship of 2 years with respectively an architect or a civil engineer.

Based on the information available, there are no additional certification or attestation schemes for architects or engineers concerning access to specific professional activities that would be subject to additional qualification requirements<sup>96</sup>.

The Association of Architects and Consulting Engineers organises the professions. Membership in a professional body is mandatory for both professions, as is professional indemnity insurance.

In architectural and engineering companies, members of those professions need to hold the majority of the shares and voting rights. In addition, joint exercise can only occur between the different kinds of architects and engineers.

There is no restriction on tariffs, but architects and engineers must receive remuneration that is fair and matches the importance of the completed project and enables them to exercise their profession with dignity.

Architects and engineers can publicise their activities, but with restraint, refraining from any flashy publicity.

#### Accountants/tax advisers

In 2017, the Commission made the following recommendation for accountants/tax advisers:

- all Member States which regulate professions in this sector should consider reserving simple tasks such as payroll activities or preparation of tax declarations for highly qualified professionals.

The Commission is not aware of any reform or other initiative which has taken into account or assessed this recommendation.

Two professions are regulated in Luxembourg: chartered accountancy (*Expert comptable*) and accountancy (*comptable*). Companies with a balance sheet of over EUR 2.3 million or turnover of EUR 4.6 million or higher, can only hire chartered accountants to work on their

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<sup>96</sup> e.g., where in order to pursue specific/specialised activities, additional education or experience or an exam would be required. This may concern activities such as construction supervision, energy certification, energy audits, expertise activities, and activities related to special buildings (such as nuclear power plants and historical heritage sites).

accounts. Both professions benefit from reserved activities but only the title of chartered accountant is protected. The reserved activities of accountants are shared with chartered accountants. Payroll services, and representation and assistance before administrative authorities (tax authorities) are reserved exclusively for chartered accountants.

Chartered accountants organise, assess and adjust all kinds of accounts, establish balance sheets and analyse the position and operation of companies and organisations in their various economic and financial aspects.

Accountants provide, within the limits imposed by law on the public accounting profession, accounting and advisory services to third parties. They ensure the opening, keeping, centralising and closing of accounting records necessary for preparing accounts and determining company results, and they draft the financial statements in the form required by the relevant legal provisions.

To become accountant, a general or technical secondary education is required. A bachelor's degree in economics, financial studies, management, business law, or an equivalent field is required to qualify as a chartered accountant. The academic training must be completed by a professional traineeship of 3 years, with one of the years being supervised by an authorised chartered accountant. At the end of the traineeship, there is a final examination on certain parts of Luxembourg's legislation for accountants and chartered accountants.

Membership of a professional body is mandatory for chartered accountants.

Chartered accountants must hold the majority of shares and voting rights in a professional company. The majority of directors must be chartered accountants.

There are certain restrictions on joint exercises with other professions to avoid conflicts of interest. The chartered accountancy profession is incompatible with any activity that has an impact on professional independence.

No such restrictions have been identified for accountants.

Both professions have to adhere to certain ethics and standards.

## Lawyers

In 2017, the Commission made the following recommendations to all Member States that regulate lawyers:

- clarify the scope of reserved activities so as to facilitate the provision of legal consultancy services by lawyers or other service providers, in particular for online services.
- assess legal form and shareholding requirements, incompatibility rules and multidisciplinary restrictions, in particular taking into account the proportionality of these restrictions in relation to the core principles, such as the independence of the profession and to the corresponding supervisory arrangements. In addition, consideration should be provided to the cumulative effect of such requirements to the extent that their effects might be accentuated in case of extensive reserves of activities (e.g. where legal advice is also part of the reserved activities).

The Commission is not aware of any reform or other initiative which has taken into account or assessed these recommendations.

Lawyers benefit from reserved activities and a protected title. Only lawyers can i) assist or represent parties and plead before the courts of any kind; ii) receive documents and titles from parties in order to represent them before the judges, and iii) sign the acts necessary for the regularity of the process and prepare the case for judgment. An individual cannot directly or through an intermediary give, on a regular basis and against remuneration, legal advice or write private deeds on behalf of a third party, if they are not an authorised lawyer. Other activities such as incorporating companies or certifying documents can also be carried out by notaries.

To become a lawyer, an individual is required to hold a diploma confirming the completion of legal studies as well as 6 months of theoretical courses on Luxembourgish law. This academic training must then be supplemented by a two-year professional traineeship attested by an examination at the end.

Membership of the Bar is compulsory. The Bar also organises continuous professional development.

This profession can be exercised through any legal form, including a limited liability company. However, only lawyers can hold shares. The exercise of this profession is incompatible with salaried employment, notarial or bailiff functions, as well as with chartered accountancy and accountancy professions, trade or craft professions, or any activity that undermines the legal profession's independence.

Professional indemnity insurance is mandatory.

Lawyers are free to set their own fees as long as they are not excessive. In particular, in setting fees, lawyers should take into account the various aspects of the case, such as its importance, how difficult it is, the result obtained and the client's financial situation. In cases where these fees exceed reasonable standards, the Order Council reduces them. Personal advertising is authorised as long as it complies with the law, and all regulations and ethical rules that apply to the legal profession. Advertising must be limited to objective elements i.e. those that can be assessed and verified. Lawyers are prohibited from identifying clients and mentioning their prices in adverts.

### Patent agents

In 2017, the Commission did not make any specific recommendation to Luxembourg on patent agents. Since then, the Commission has not been aware of any reform or other initiative concerning the regulation of this profession.

Patent agents (*conseil en propriété industrielle*) benefit from reserved activities and a protected title.

They have reserved activities shared with lawyers for guiding, assisting and representing constituents in the field of industrial property, in particular in obtaining, maintaining, defending and contesting private rights consisting of patents, trademarks and designs. However, representation in court is reserved for lawyers.

A master's degree in legal, scientific or technical studies or an equivalent field is required to work in the profession. This academic training must be complemented by a professional traineeship of 3 years with a patent agent. Although the law requires traineeships to be followed by a national examination on Luxembourgish legislation relating to patents and the 2005 Benelux Convention on Intellectual Property (Trademarks and Designs), due to the lack

of implementing legislation, such an exam has neither been required in practice nor organised since 2011.

Joint exercise of activities does not appear to be prohibited.

There is an obligation to register with the Office of Intellectual Property.

### Real estate agents

In 2017, the Commission gave the following recommendation on real estate agents:

- consider the possibility of opening up the activities exclusively reserved for real estate agents to other professionals.

The Commission is not aware of any reform or other initiative which has taken into account or assessed this recommendation.

Real estate agents are regulated by way of reserved activities and title protection. All activities are shared with other professions: i) the activities shared with real estate developers – establishing contacts and facilitating negotiations with tenants and owners, arranging the sale, purchase, rental and lease of real property; ii) activities shared with property managers and notaries – arranging the signing of lease agreements and transfer of property rights, drawing up leasing and sale agreements and estimating costs; iii) activities shared with property managers – obtaining information about properties to be sold or leased, their owners' circumstances and the needs of prospective buyers or tenants; iv) activities shared with real estate developers and property managers – obtaining information about properties to be sold or leased, their owners' circumstances and the needs of prospective buyers or tenants.

To become a real estate agent, an individual is required to have either a qualification, consisting of 3 years of vocational secondary education including practical training of at least 12 weeks, or 3 years of professional experience. This initial training must include around 50 hours of studying Luxembourg's legislation concerning real estate, attested by an examination at the end.

In a similar way, Luxembourg regulates access to the activities of property managers and management of common properties.

Professional indemnity insurance is mandatory. There are also general conditions regarding ethics and standards.

### Tourist guides

This profession remains unregulated in Luxembourg.



## I. Overview

By 1 February 2021, Malta had submitted information about 132 regulated professions, a very slight reduction compared to 2016. Of those professions, 9.8% concern business services and 1.5% the construction sector.

According to an EU-wide survey<sup>97</sup>, 17% of Malta's labour force can be considered to be working in regulated professions. This is lower than the EU average (21%).

Malta is now regularly updating the **database on regulated professions**. This database provides citizens and administrative authorities from other Member States with valuable information about the regulation of professions in a given Member State. The information on regulated professions in the database has improved since 2016, but there is still a sizable amount of information to be added or corrected.

Malta has not yet submitted its **national action plan** on reform needs regarding its regulatory framework for regulated professions.

A more general assessment of Malta's legal framework has pointed out that it does not allow professionals to conduct their business in any other legal form than that of a civil partnership. This is the case for architects, tourist guides, lawyers and real estate agents. As a result, regulated professionals are prevented from forming companies that include non-professional shareholders.

Following a 2016 White Paper, in 2020 Malta adopted a new regulation setting a legal framework for the real estate agent profession. This new regulation imposes a licensing requirement for professionals seeking to provide real estate services, introduces training requirements and provides for a code of conduct to be adopted. This regulation also provides for a transition period, for real estates agents exercising the profession prior to the law being adopted, to request and get a licence by end of 2021.

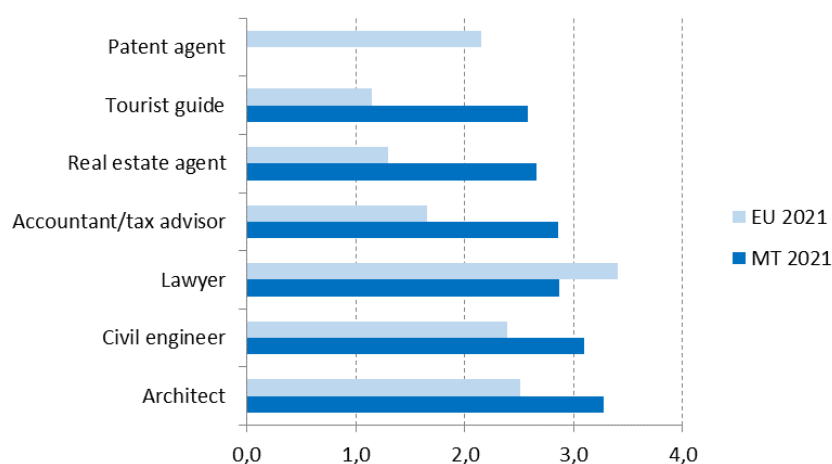
## II. Situation on the analysed professions

The level of restrictiveness in Malta is higher than the EU average for all the professions analysed, except for lawyers, for which it is lower, and patent agents, which is not regulated. Among the professions analysed, restrictiveness is the highest for architects and civil engineers.

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<sup>97</sup> Koumenta M. and Pagliero M, (2016), *Measuring Prevalence and Labour Market Impacts of Occupational Regulation in the EU*. See: <https://ec.europa.eu/docsroom/documents/20362>.

Chart 1: Regulatory restrictiveness, Malta, 2021



The following description of the situation for the different professions focuses on changes since the analysis published in 2017. However, to provide a complete and understandable picture, the description also restates part of the information described in 2017.

### Architects/civil engineers

In 2017, the Commission made the following recommendation for architecture and civil engineering professions:

- review the requirement that 100% of a company's shares need to be held by professionals.

The Commission made a further recommendation regarding civil engineers in Malta:

- the country should clarify which activities are reserved for 'Periti'.

The Commission is not aware of any reform or other initiative which has taken into account or assessed these recommendations.

Both professions are covered by the same law on 'Periti' and benefit from a protected title and reserved activities such as aspects of technical control and valuation of buildings and land. Based on the limited information on these professions in the database and considering that Malta has not supplied further information, the Commission understands that the activities reserved for architects are: i) preparation, submission, and the signing of technical control and compliance, permit-related documentation or certification of a project and ii) observing building legislation, standards of performance, quality, cost and safety. Moreover, without a clear distinction between the architecture and engineering professions, the Commission understands that both architects and engineers share and carry out the following activities: intervention on heritage buildings, valuation of immovable properties, fair rents and agricultural leases.

There is a six-year qualification requirement composed of 4 years of study and a two-year professional traineeship or a five-year study programme followed by a state examination.

There is no mandatory registration obligation with the professional body and the current Periti Act does not require continuous professional development although such an obligation is expected to be included in future amendments.

There are restrictions on the choice of legal form that architects and engineers can practise under. Both professions can only practise under the form of a civil partnership which entails unlimited liability for the professionals. As regards shareholding, voting rights and joint exercise of the profession, civil partnerships can only be formed by *Periti* professionals and the exclusive object of the partnership should be to practise the profession. No other shareholders are allowed.

The *Periti* is not required to take out professional indemnity insurance although envisaged amendments to the Periti Act are expected to include such an obligation. Architects and engineers are covered by the same legislation and can therefore practise the profession under a common civil partnership. However, the Maltese law does not provide either profession with the possibility to join a multidisciplinary structure with professionals of other areas, and prescribes that the civil partnership should be entirely owned by the Periti with a 100% shareholding requirement.

Based on the information available, there are no additional certification or attestation schemes for architects or engineers concerning access to specific professional activities that would be subject to additional qualification requirements in Malta<sup>98</sup>.

#### Accountants/tax advisers

In 2017, the Commission made the following recommendation for accountants:

- assess the proportionality of the shareholding requirements.

The Commission also addressed the following recommendation to all Member States regulating professions in the sector:

- consider reserving simple tasks such as payroll activities or preparation of tax declarations for highly qualified professionals

The Commission is not aware of any reform or other initiative which has taken into account or assessed these recommendations.

Accountants benefit from a protected title and reserved activities such as the drawing-up of financial statements and issuing of independent reports on share valuations or valuation of businesses.

The required education is 5 years of study and a mandatory traineeship of 3 years without the need to pass a state exam. Registration with the professional body is voluntary and no restrictions exist on the use of corporate forms.

Concerning shareholding and voting requirements, more than 50% of the shares of an accountancy firm need to be held by licensed accountants. There are no restrictions on joint exercise of professions or professional activities as long as the provisions on conflicts of interest found in the Code of Ethics are followed.

All holders of a licence to practise accountancy must spend at least 40 hours per calendar year on continuous professional development activities and the majority of the voting rights/shares in an accountancy firm need to be held by licensed accountants.

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<sup>98</sup> e.g., where in order to pursue specific/specialised activities, additional education or experience or an exam would be required. This may concern activities such as construction supervision, energy certification, energy audits, expertise activities, and activities related to special buildings (such as nuclear power plants, historical heritage sites).



There is a mandatory professional indemnity insurance that needs to be taken out according to national professional indemnity rules.

### Lawyers

In 2017, the Commission made the following recommendation to all Member States that reserve the activity of legal advice to lawyers:

- clarify the scope of the reserves so as to facilitate the provision of legal consultancy services by lawyers or other service providers, in particular for online services.

The Commission also made the following recommendation to all Member States:

- assess legal form and shareholding requirements, incompatibility rules and multidisciplinary restrictions.

The Commission is not aware of any reform or other initiative which has taken into account or assessed these recommendations.

In this chapter, two professions are considered: ‘Advocate’ and ‘Legal Procurator’, which have been notified by Malta as lawyers under the Lawyers’ Directives. Both professions have their titles protected and rely on reserved activities. Advocates and legal procurators share the activity of representing clients in lower courts, while legal procurators are excluded from representing clients before the Superior courts. In addition, advocates share the activity of representing clients before the tax courts with accountants.

The qualification requirements for advocates consist of 6 years of study and 1 year of training at the office of a practising advocate with the Bar of Malta and at the superior courts. Legal procurators need to follow 3 years of study and 1 year of training at the office of a practising advocate. If an individual wants to work in either profession, they would need to pass a state examination (‘warrant exam’), which seems to be imposed on anyone wishing to practise in Malta under the Maltese professional title of lawyer, including EU qualified lawyers.

Advocates can only engage in a professional partnership with other advocates and can only form civil partnerships. Accordingly, voting rights are limited to lawyers as well. The Commission understands that legal procurators are not allowed to create a company or partnership, or to practice as a self-employed. It seems they can only pursue their profession as an employee in the private and public sector.

There are restrictions on the joint exercise of the profession of lawyer. In addition, there are incompatibility rules prohibiting lawyers to exercise other professional activities that could give rise to conflict of interests.

There is no obligation for those in either profession to be registered with the professional body, to take out professional indemnity insurance or to follow continuous professional development activities. The Commission understands that there is no obligation for professional insurance.

Rules on advertising only apply to advocates, for which advertising is completely prohibited.

### Patent agents

Patent agents remain unregulated in Malta.

### Real estate agents

In 2020, Malta adopted a new law regulating, for the first time, access to the real estate agent profession. The law currently does not cover all the aspects of the profession and creates a transitional period running until the end of 2021 during which professionals should obtain their licence.

So far, the profession is only regulated through reserved activities. However, due to the broad range of exclusively reserved activities, it seems no one except real estate agents could use that title in practice.

In addition, the new regulation requires those seeking to become real estate agents obtain a minimum educational degree in areas related to real estate.

A licence can be obtained by registering with the professional Board. This licence is subject to renewal every 5 years.

Due to its recent adoption, the new framework for real estates agents appears incomplete. For instance, continuous professional development is said to be required for someone to get their licence renewed, but no details on the content of this professional development can be found.

The new regulation limits the legal form under which real estate agents can pursue their profession to that of a civil partnership. Therefore, real estate agents are prevented from setting up a company with non-professionals or any other professional that is not licensed as a real estate agent.

### Tourist guides

In 2017, the Commission made the following recommendation for tourist guides:

- consider introducing a more precise definition of the reserved activities in view of the very wide or undefined scope of reserved activities.

The Commission also addressed the following recommendation to all Member States that regulate tourist guides:

- consider the justification and proportionality of regulating the profession.

The Commission is not aware of any reform or other initiative which has taken into account or assessed these recommendations.

Tourist guides benefit from a protected title and reserves activities for '*guiding and interpreting the cultural and natural heritage of Malta*'.

The education is composed of a two-years course provided by the Institute of Tourism Studies. No mandatory traineeship, state examination or mandatory registration is required for tourist guides. However, continuous professional development is required, otherwise the licence can be suspended or revoked.

The general licence of tourist guide is applicable throughout the whole territory. However, a special schedule in the law set out that for a number of sites listed in the law, an additional specific licence is required. This list of sites covers all major tourist sites in Malta and therefore reserves any tourist guide activity on those sites to tourist guides with the additional qualifications and who hold the specific licence.

No restrictions exist on the use of corporate forms, holding of shares/voting rights, the joint exercise of professions/professional activities and there is no obligation to have professional indemnity insurance.



## I. Overview

By 2 March 2021, the Netherlands had submitted information about 185 regulated professions. This is an increase compared with previously submitted figures. It seems that the majority of these new entries are the result of the ongoing effort to complete the information in the database on regulated professions, including for those professions that have been regulated as required by EU law. Of those professions, 13.5% concern business services and 3.2% the construction sector.

According to an EU-wide survey<sup>99</sup>, 25% of the Dutch labour force can be considered to be working in regulated professions. This is higher than the EU average (21%).

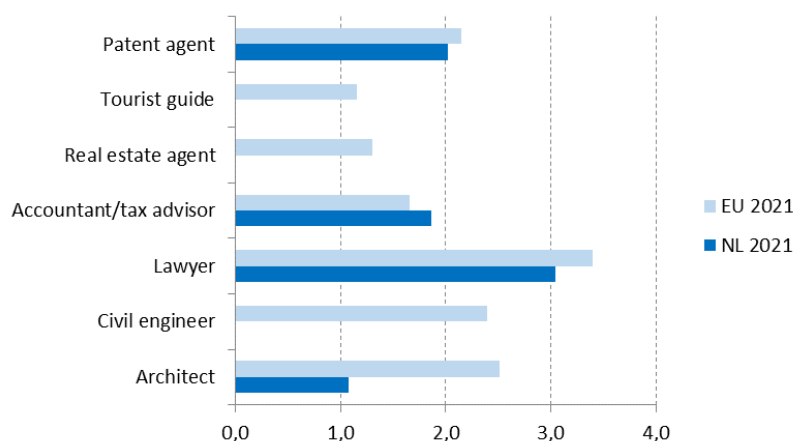
The Netherlands is now regularly updating the **database on regulated professions**. This database provides citizens and administrative authorities from other Member States with valuable information about the regulation of professions in a given Member State. The information on regulated professions in the Netherlands is currently still incomplete for a number of professions.

In its **national action plan from 2015**, the Netherlands announced possible changes for a limited number of professions, including accountants, lawyers and architects. However, no real reforms have taken place for these professions since 2016.

## II. Situation on the analysed professions

Regulatory restrictiveness in the Netherlands is lower than the EU average for all the professions analysed, except for accountants/tax advisers, and is highest for lawyers.

Chart 1: Regulatory restrictiveness, the Netherlands, 2021



<sup>99</sup> Koumenta M. and Pagliero M., (2016), *Measuring Prevalence and Labour Market Impacts of Occupational Regulation in the EU*. See: <https://ec.europa.eu/docsroom/documents/20362>.

The following description of the situation for the different professions focuses on changes since the analysis published in 2017. However, to provide a complete and understandable picture, the description also restates part of the information described in 2017.

### Architects

In 2017, the Commission did not make any reform recommendations to the Netherlands on architects. Since then, the Commission is unaware of any reforms or other initiative concerning the regulation of this profession.

Architects are regulated by means of title protection without reserving certain activities to the professional. In addition to the generic title of architect, the Netherlands also protects the titles of garden and landscape architect (*tuin- en landschapsarchitect*), town planner (*stedebouwkundige*) and interior design architect (*interieurarchitect*).

There are five alternative pathways to obtain these titles. The most common route is to obtain a five-year master's degree from one of two technical universities, plus 2 years of professional practical experience. Alternative routes are as follows: (i) obtaining a degree from one of the seven Academies of Architecture, where professional practical experience is integrated in the programme; (ii) succeeding in a special exam for the Architects Register, which is open to applicants with at least 7 years of proven relevant work experience in the architectural profession; (iii) receiving a special distinction certificate for exceptional performance, to be judged by an independent committee of professionals; (iv) a 'cross-over' procedure for registered interior architects, landscape architects or urban planners with at least 7 years of proven work experience in the field of architecture, to be judged by an independent committee of professionals<sup>100</sup>. There is also the obligation of 16 hours per year of continuous professional development.

A company can only use the title of 'architect' if at least 50% of the shares, 50% of the voting rights and at least 50% of the Board positions are held by registered architects carrying the title.

Based on the information available, there are no additional certification or attestation schemes for architects concerning access to specific professional activities that would be subject to additional qualification requirements in the Netherlands<sup>101</sup>.

### Civil engineers

The Netherlands does not regulate the profession of civil engineering, although safeguards are in place to protect the general interest objectives at stake through five-year training courses at master's level, a system of construction quality standards and a system of voluntary certification systems usually applicable to the engineering profession at large.

Based on the information available, there are no additional certification or attestation schemes for civil engineers concerning access to specific professional activities that would be subject to additional qualification requirements in the Netherlands.

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<sup>100</sup> Access to the profession is granted through automatic recognition in line with Directive 2005/36/EC for applicants with relevant EU qualifications.

<sup>101</sup> For example, where additional education or experience or an exam would be required to pursue specific/specialised activities. This may concern activities such as construction supervision, energy certification, energy audits, expertise activities, activities related to special buildings (such as nuclear power plants, heritage sites).

### Accountants/tax advisers

In 2017, the Commission made no recommendations for the accountant/tax advisor professions in the Netherlands. Since then, the Commission is unaware of any reforms or other initiative concerning the regulation of these professions.

The profession of accountant-administration consultant (*Accountant-Administratieconsulent*) is regulated in the Netherlands by way of a protected title. A total of 6 years of study (four-year HBO bachelor + two-year master's degree) is required, plus 3 years of practical training concluded by an exam. There is also compulsory membership of the professional body and a continuous professional development obligation of 40 hours per year. Finally, there is an obligation to take an oath.

### Lawyers

In 2017, the Commission made the following recommendation for lawyers:

- All Member States should assess legal form and shareholding requirements, incompatibility rules and multidisciplinary restrictions, in particular taking into account the proportionality of these restrictions in relation to the core principles, such as the independence of the profession and to the corresponding supervisory arrangements. In addition, consideration should be provided to the cumulative effect of such requirements to the extent that their effects might be accentuated in case of extensive reserves of activities (e.g. where legal advice is also part of the reserved activities).

The legal profession in the Netherlands is regulated by way of a protected title and an exclusive reserve of activity for representing clients in court and certain aspects of insolvency practice. In addition, the activity of representing clients before the patent office is shared with patent agents. Since 2012, only lawyers with specific knowledge and experience can represent clients before the Supreme Court of the Netherlands in civil matters.

To enter the profession, you need to follow 4 years of study (three-year bachelor's degree + one-year master's degree), complete a three-year traineeship (including theoretical professional training in parallel) and pass a mandatory bar exam. To become a supreme court lawyer (*Advocaat bij de Hoge Raad (in burgerlijke zaken)*), lawyers need to fulfil additional educational and professional experience requirements, including earning 10 training points a year in the area of "civiele cassatie" and passing two state exams (one before the 'conditional registration', and one before the 'unconditional registration').

Lawyers have to register with the Dutch Bar Association in the district they intend to hold office. To get an authorisation to practise, they also have to take an oath. They are obliged to collect 20 continuous professional development points per year, which can be earned by attending 20 hours of courses, teaching 10 hours, writing academic articles or performing other activities eligible for earning credits.

Lawyers can either work independently, as a sole practitioner or in the form of a practising legal entity (including limited liability companies) over which they exercise control in a group practice or as an employee (of specific employers). However, all voting rights and 90% of the shares of a legal practice need to be held by lawyers or practitioners of an

authorised profession<sup>102</sup>. There is a closed list of such authorised professions with whom lawyers may enter into a partnership: registered notaries, tax advisers (that are members of a professional association), patent attorneys and members of the tax registry. It seems there is no minimum percentage of shares/voting rights that need to be in the hands of lawyers alone. There is a general rule not to perform any activity that is incompatible with the core values of the legal profession or trust in the profession. In addition, lawyers can only jointly practise with a closed list of professions such as registered notaries, tax advisers (that are members of a professional association), patent attorneys and members of the tax registry. This cooperation can also take the form of a limited liability company. Lawyers are required to obtain professional indemnity insurance, which can be taken out in the Netherlands or in another Member State provided that it has the necessary minimum and territorial coverage.

### Patent agents

In 2017, the Commission made no recommendations to the Netherlands for the profession of patent agents. Since then, the Commission is unaware of any reforms or other initiative concerning the regulation of this profession.

Patent agents remain regulated by way of a protected title and reserved activities. Together with lawyers, they are the only ones that can represent clients before the Patent Office.

To enter the profession, patent agents need to obtain a five-years master's degree, complete and three-year traineeship and pass the state exam. They also need to register with the Dutch Bar Association of patent agents and take an oath.

Patent agents also have to complete a mandatory continuous professional development programme. They are expected to collect 16 points per year through several activities such as teaching, attending courses, writing articles, or acting as a mediator. A general restriction exists on the compatibility of activities for patent agents in the Netherlands in order to avoid conflicts of interest.

### Real estate agents

Since 2001, the profession of real estate agent is no longer a regulated profession in the Netherlands. Given the internet's increased role in providing buyers with instant information on home sales/purchases, the traditional role of a real estate agent who brings together supply and demand therefore no longer justified protecting this professional title. The market is in charge of developing certification schemes and applicable dispute resolution systems. There are three professional associations that offer private certification schemes, which include a quality check of professional qualifications.

### Tourist guides

In the Netherlands, tourist guides are still not regulated. Sufficient safeguards exist to protect consumers in the form of consumer protection law, contract law and the voluntary certification of tourist guides.

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<sup>102</sup> As a *lex specialis* (special law), usufruct in the form of registered depositary receipts and shares without voting rights can be granted to employees of a legal entity who are not lawyers or practitioners of an authorised liberal profession, but this must be limited to a total of 10% of the profit.

## I. Overview

By 26 February 2021, Poland had submitted information about 362 regulated professions. Of the professions subject to regulation, 24.9% concern transport services, 22.4% health and social services, 11% concern services in the construction sector, 8.4% business services and 8% network services.

Poland is regularly updating the **database on regulated professions**. This database is an important source of information providing people and administrative authorities from other Member States with valuable data about the regulation of professions in a given Member State.

In its **national action plan** of 2016, Poland described the wide-ranging reforms of professional regulation that it carried out as from the end of 2011. It had assessed 260 professions covering 1 million employees (6% of the workforce). The subsequent reforms covered 248 professions. For 70 professions, Poland completely abolished the barriers, and partially abolished the barriers for others (e.g. by lowering educational requirements or shortening the certified professional experience period or removing the professional entry examination). The Polish authorities estimated that full deregulation would affect professions and activities covering almost half a million professionals. The reforms were divided into three stages.

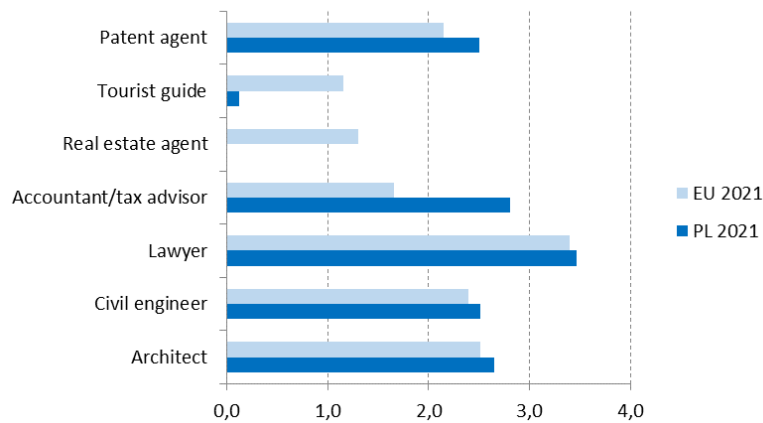
- The first stage was adopted in June 2013 and covered 51 professions, including lawyers, legal advisers, notaries, bailiffs, land surveyors, sport instructors and coaches, driving instructors, real estate professions (real estate agents, managers and valuation expert), taxi drivers, tourist guides, physical and technical protection workers.
- The second stage was adopted in May 2014 and covered 96 professions, including architects, urban planners, civil engineers, tax advisers, auditors.
- The third stage was adopted in August 2015 and covered 101 professions, including patent agents, geologists and stockbrokers. The national action plan submitted to the Commission in January 2016 did not indicate any major action going beyond the reforms of 2011-2015.

## II. Situation on the analysed professions

Regulatory restrictiveness in Poland is higher than the EU average for architects, civil engineers, lawyers, tax advisers and patent agents. Of the professions analysed, restrictiveness is the highest for lawyers.



Chart 1: Regulatory restrictiveness, Poland, 2021



The following description of the situation for the different professions focuses on changes since the analysis published in 2017. However, to provide a complete and understandable picture, the description also restates part of the information described in 2017.

### Architects/engineers

In 2017, the Commission made the following recommendations to Poland:

- reconsider the wide scope of reserved activities for architects and engineers;
- Member States with a fragmented system for the architect profession or multiple certification requirements, like (...) Poland, should reflect upon the effects of their system on the free movement of professionals and whether potential obstacles can be justified.

It would seem that Poland has not carried out any reforms since the recommendation was made on the above-mentioned issues.

The professions of architect and engineer remain regulated by way of reserved activities.

Registration with the professional chambers is required to access both categories of professions.

The professional chamber issues the *uprawnienia budowlane* (construction licence) following an examination. The scope of the licence depends on the level of qualifications and professional experience of the candidate. The licence can cover construction design and/or monitoring of construction/execution of works, and it can be either limited (to certain specialities or sub-specialities) or unlimited, as explained below.

There are four main specialities in which a construction licence can be granted:

- 1) architecture
- 2) structure and construction
- 3) engineering (covering a further six sub-specialities: a) bridges; b) roads; c) railway engineering with regard to railway construction work; d) railway engineering with regard to railway traffic control; e) hydrotechnical; f) demolition)

- 4) installations (covering a further three sub-specialities, not relevant for this study).

The four main specialities are subdivided into additional specialisations of a technical-construction nature. These require an additional five years of professional experience.

Poland notified to the Commission four regulated professions in the category of architect:

- 1) architect with a full licence (*magister inżynier architekt*)
- 2) architect with a building licence in the speciality of structure and construction
- 3) architect with a building licence in the speciality of architecture
- 4) technician architect (*technik architekt*) with a building licence in the speciality of architecture.

Poland notified to the Commission six regulated professions in the category of civil engineer:

- 1) civil engineer with a building licence in the speciality of architecture
- 2) civil engineer with a building licence in the speciality of structure and construction
- 3) civil engineer with a building licence in the speciality of railway engineering with regard to railway construction work
- 4) civil engineer with a building licence in the speciality of railway engineering with regard to railway traffic control
- 5) civil engineer with a building licence in the speciality of engineering of roads
- 6) civil engineer with a building licence in the speciality of engineering of bridges.

The activities reserved to architects with a full (unlimited) licence (*magister inżynier architekt*) broadly fall into the following categories. Access to these activities is shared with one or more professions in the field of architecture and/or civil engineering:

- architectural design and planning, feasibility studies
- examination of design and related documentation
- preparation/submission/signing of technical control and compliance
- construction cost management, monitoring of construction/execution of works
- urban/territorial planning/design
- landscape architecture (the activity is not reserved in Poland with one exception: green areas that are protected as historic monuments)
- other: management of the production of construction elements as well as surveillance and technical control of such production and investment surveillance
- technical control of the maintenance of existing constructions.

An unlimited building licence in the speciality of architecture entitles holders to design or manage construction works related to the architecture of building structures (*architektura obiektu*).

The activities reserved to architects who hold a building licence in the speciality of structure and construction broadly fall into the following activity categories. Access to these activities is shared with one or more professions in the field of architecture or civil engineering:

- examination of construction design and related documentation
- preparation/submission/signing of technical control and compliance
- construction cost management and monitoring the construction/execution of works
- others: management of the production of construction elements and surveillance and technical control of such production

- investment surveillance and technical control of the maintenance of existing constructions.

An unlimited building licence in the speciality of structure and construction entitles holders to design the construction of the building structure or manage construction works related to the construction and architecture of building structures. A limited building licence in the speciality of structure and construction entitles holders to design or manage construction works related to the construction of building structures up to 1000 m<sup>3</sup> and subject to further limitations.

The activities reserved to architects who hold a building licence in the speciality of architecture broadly fall into the following activity categories and are shared with one or more professions in the field of architecture or civil engineering:

- architectural design and planning, feasibility studies;
- examination of design and related documentation;
- preparation/submission/signing of technical control and compliance.

An unlimited building licence in the speciality of architecture entitles holders to design or manage construction works related to architecture of building structures (*architektura obiektu*). A limited building licence in the speciality of architecture entitles holders to design or manage construction works related to the architecture of building structures (*architektura obiektu*) up to 1000 m<sup>3</sup> located in farm areas (*w zabudowie zagrodowej lub na terenie zabudowy zagrodowej*).

The activities reserved to technician architects (*technik architekt*) who hold a building licence in the speciality of architecture broadly fall into the following category, with access to these activities shared with four other professions in the field of architecture or civil engineering: construction cost management and the monitoring of construction/execution of works.

The activities reserved to civil engineers who hold a building licence in railway engineering in the speciality area of railway construction work broadly fall into the following categories, with access to these activities shared with professions in the field of architecture and/or civil engineering:

- design and planning (within the scope of the speciality), feasibility studies
- representation for obtaining permits (signature of designs)
- tender and contract administration
- management of construction maintenance (including inspection).

An unlimited building licence in railway engineering speciality in the area of railway construction work covers building design and managing works on the following structures:

- railway lines, nodes and stations for construction works such as: railway stations, nodes and railway sidings and other related works covered by the regulations concerning the technical conditions to be met by railway structures and their location. This excludes railway structures referred to as road engineering structures, railway engineering structures and railway traffic control equipment.

A limited building licence in railway engineering in the speciality area of railway construction work covers building design and managing construction works such as: railway lines (excluding trunk lines) and railway sidings in the meaning of the regulations concerning technical conditions to be met by railway structures and their location. This licence does not cover work on railways adapted to trains running at a higher speed than 200 km/h.

The activities reserved to civil engineers holders of a building licence in engineering speciality of roads broadly fall into the following activity categories, with access to these activities shared with professions in the field of architecture and/or civil engineering:

- design and planning (within the scope of the speciality) and feasibility studies
- representation for obtaining permits (signature of designs)
- tender and contract administration
- management of construction maintenance (including inspection).

An unlimited building licence in engineering in the roads speciality covers building design and managing the construction works related to the building structure, such as:

- roads covered by the provisions on public roads, with the exception of road engineering structures besides culverts
- roads for aircraft traffic, parking and culverts.

A limited building licence in engineering in the roads speciality covers building design and managing the construction works related to the building structure, such as:

- local roads, access roads and internal roads, with the exception of road engineering structures besides culverts
- roads at an airport area that are not intended for aircraft traffic or parking.

The activities reserved to civil engineers who hold a building licence in railway engineering speciality in the area of railway traffic control broadly fall into the following categories, with access shared with one or more professions in the field of architecture and/or civil engineering:

- design and planning (within the scope of the speciality) and feasibility studies
- representation for obtaining permits (signature of designs)
- tender and contract administration
- project management, including monitoring the execution of works and construction cost management
- management of construction maintenance (including inspections)
- building licence that entitles holders to designing within the scope of their speciality and to prepare a draft land-use plan, within the scope of this speciality.

An unlimited building licence in the railway engineering speciality in the area of railway traffic control covers designing a building or managing of construction works related to the building structure in the range of the precaution equipment and railway traffic control, in the meaning of the regulations on technical conditions to be met by railway structures and their location. A limited building licence in the railway engineering speciality in the area of railway traffic control covers building design and managing construction works related to the

building structure in the range of the precaution equipment and railway traffic control, in the meaning of the regulations on technical conditions to be met by railway structures and their location. This licence does not include work on stations equipped with more than 50 switches and railway lines in the area of automatic locks.

The activities reserved civil engineers who hold a building licence in engineering speciality of bridges broadly fall into the following activity categories and are shared with one or more professions in the field of architecture and/or civil engineering:

- design and planning (within the scope of the speciality) and feasibility studies
- representation for obtaining permits (signature of designs)
- tender and contract administration
- project management including monitoring the execution of works and construction cost management
- management of construction maintenance (including inspection)
- building licence that entitles holders to design within the scope of their speciality and to prepare a draft land-use plan, within the scope of this speciality.

An unlimited building licence in the engineering speciality of bridges covers building structure design and management of the construction works related to a building structure, such as:

- 1) road engineering structure
- 2) railway engineering structure: bridges, viaducts, culverts, retaining structures and above-ground and underground pedestrian crossings.

An unlimited building licence in the engineering speciality of bridges entitles holders to calculate the spans required for bridges and culverts. A limited building licence in the engineering speciality of bridges covers building structure design and management of the construction works related to a building structure, such as: 1) single-span bridge structures, with a span made using precast and spans up to 21 m, built on stable ground, 2) culverts.

The activities reserved to civil engineers who hold a building licence in the speciality of structure and construction broadly fall into the following activity categories, with access shared with one or more professions in the field of architecture and/or civil engineering:

- design and planning (within the scope of the speciality) and feasibility studies
- representation for obtaining permits (signature of designs)
- tender and contract administration
- project management, including monitoring the execution of works and construction cost management
- management of construction maintenance (including inspection)
- building licence that entitles holders to designing within the scope of their speciality and to prepare a draft land-use plan, within the scope of this speciality.

An unlimited building licence in the speciality of structure and construction covers the design and management of construction works related to building structures in terms of: 1) preparing architectural and construction projects, and 2) managing construction works in relation to the building structure and architecture of the building.

A limited building licence in the speciality of structure and construction covers building design and management of construction works related to the building structure with a capacity of up to 1 000 m<sup>3</sup> and in line with the following parameters:

- 1) height of up to 12 m above ground level and 3 floors above ground and floor height of up to 4.8 m
- 2) depth of 3 m below ground level, directly on stable ground carrier
- 3) span of structural elements of up to 6 m and supports of up to 2 m
- 4) the building must not contain elements pre-stressed at the construction site
- 5) the building must not require an assessment of the impact of mining activity.

The activities reserved to civil engineers who hold a building licence in the speciality of architecture broadly fall into the following activity categories, with access shared with one or more professions in the field of architecture and/or civil engineering:

- design and planning (within the scope of the speciality) and feasibility studies
- representation for obtaining permits (signature of designs)
- tender and contract administration
- project management, including monitoring the execution of works and construction cost management;
- management of construction maintenance (including inspection)
- building licence that entitles holders to design within the scope of their speciality and to prepare a draft land-use plan, within the scope of this speciality.

An unlimited building licence in the speciality of architecture entitles holders to design and manage construction works related to the architecture of building structures (*architektura obiektu*). A limited building licence in the speciality of architecture entitles holders to design and manage construction works related to the architecture of building structures (*architektura obiektu*) up to 1000 m<sup>3</sup> located in farm areas (*w zabudowie zagrodowej lub na terenie zabudowy zagrodowej*).

The level of qualifications required to access the regulated professions in the category of architect ranges from 4 years of secondary education to 5 years of university education, while the length of mandatory training ranges from 1.5 year to 4 years, and must be followed by a state exam.

The level of qualifications required to access the regulated professions in the category of civil engineer is as follows: from 3.5 to 5 years of university education, and from 1.5 to 2.5 years of professional training, depending on the length of education, followed by a state exam.

The above-mentioned requirements concern qualifications that can be obtained in Poland. There are rules in place providing for the recognition of foreign qualifications.

Both architects and engineers are obliged to regularly update their professional competences (continuous professional development). Poland does not appear to set restrictions on company form, shareholding and voting rights.

There are non-binding, recommended tariffs applicable to some activities and no restrictions on the advertising of architectural and engineering services.

Based on the information available, Poland does not set additional certification or attestation schemes for architects and engineers to gain access to specific professional activities that would be subject to additional qualification requirements.<sup>103</sup>

### Accountants/Tax advisers

The profession of accountant was deregulated in 2015 and since then the following activities, previously reserved and shared between accountants, tax advisers and statutory auditors, are no longer reserved to a regulated profession in Poland: payroll services and bookkeeping, drawing up annual financial statements and consolidated financial statements for companies.

The profession of tax adviser (*doradca podatkowy*) remains regulated by way of reserved activities and title protection. There are also requirements governing education, training, company form, shareholding, etc., described in detail further below.

The profession of tax adviser was subject to reforms in 2015. The changes included deregulating activities that used to be reserved (as explained above), lightening the entry examination requirements, and shortening the obligatory professional practice from two years to six months.

In 2017, the Commission made the following recommendation to Poland for the profession of tax adviser:

- assess the proportionality of the shareholding requirements.

It would appear that Poland has not carried out any reforms regarding the above-mentioned issue.

The main change affecting the regulatory environment was to bring in an additional reserved activity in 2020, shared with statutory auditors, for the independent audit of the tax function.

As a result, the following three activities are currently reserved and shared:

- 1) providing advice, opinions and explanations to taxpayers, tax remitters and tax collectors, commissioned by them or for them, on their tax and customs obligations and in administrative execution matters relating to these obligations;
- 2) representing taxpayers, tax remitters and tax collectors in tax proceedings before public administrative bodies and regarding judicial control of decisions and other administrative acts in their tax and customs obligations and in administrative execution matters relating to these obligations;
- 3) independent audit of the tax function.

The first reserved activity is shared between tax advisers, attorneys-at-law (*radca prawny*), advocates (*adwokat*) and statutory auditors. The second is shared with tax advisers, attorneys-at-law and advocates. The third is shared with tax advisers and statutory auditors.

Poland provides the following pathways to access the profession of tax adviser:

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<sup>103</sup> For example, additional education, experience or an exam is required to practice specific/specialised activities. This may apply to activities such as construction supervision, energy certification, energy audits, expertise activities, activities related to special buildings (such as nuclear power plants, historical heritage sites).

- 1) three years of (any) completed university education, a state exam, six months of professional training and enrolment in the register of tax advisers within three years of passing the examination. To enrol, applicants must have full legal capacity, good repute and a clean criminal record;
- 2) members of the National Examination Committee on Tax Advisory (which include employees of the finance ministry with five years' experience in the profession, judges from the Supreme Administrative Court and district administrative courts, researchers from universities, etc.) can be exempt from the requirements of professional practice and the state exam;
- 3) holders of an academic title of *doktor habilitowany* in law or economy in the area of financial law or finance can be exempt from the requirements of professional practice and the state exam.

Registration in the professional chamber is mandatory. Professionals enrolled in the list of tax advisers become automatically members of the chamber.

Tax advisers are subject to continuous professional development requirements. According to the rules adopted by the chamber, tax advisers must obtain 32 points within two years, of which a minimum eight points must be obtained within the first year. One point is granted for each hour of training, three points for providing training, three points per page of published article, etc.

Tax advisers can practise as self-employed, in companies without legal personality or employed in tax advisory companies (a limited liability company (*sp. z o.o.*) or in joint-stock company (*SA*). Tax advisers can also be employed in any other types of companies, but then can provide services only to these companies. Tax advisers can practice in unregistered companies, provided that the general partners in a limited partnership and a limited joint-stock partnership and partners in other companies are either tax advisers, advocates, attorneys-at-law, auditors, patent agents or foreign lawyers.

In tax advisory companies (limited liability company or in joint-stock company), the majority of the board members must be tax advisers, and if the management board consists of no more than two persons, one must be a tax adviser. The majority of votes in the shareholders' meeting and supervisory bodies of a limited liability company or in a joint-stock company must be held by tax advisers.

## Lawyers

In 2017, the Commission made the following recommendations to all Member States for the profession of lawyer:

- All Member States reserving legal advice should clarify the scope of the reserves so as to facilitate the provision of legal consultancy services by lawyers or other service providers, in particular for online services.
- All Member States should assess legal form and shareholding requirements, incompatibility rules and multidisciplinary restrictions, in particular taking into account the proportionality of these restrictions in relation to core principles, such as the independence of the profession, and to the corresponding supervisory



arrangements. In addition, consideration should be given to the cumulative effect of such requirements in cases where their effects might be accentuated in the case of extensive reserves of activities (e.g. where legal advice is also part of the reserved activities).

There have been no major reforms since the reform recommendations were published in 2017 that would affect significantly the regulatory environment governing these two professions.

The professions of legal adviser (now called attorneys-at-law) and advocate were subject to substantial reforms in 2013. The changes in regulating these professions included extending the number of professions in association or partnership with whom advocates and attorneys-at-law can practice their profession, and opening up the possibility to practice as an advocate and attorney-at-law to other professionals (such as judges, public prosecutors) and to holders of academic degrees of professor and *doktor habilitowany* in the field of law. It also included opening up the possibility for attorneys-at-law to represent clients in criminal trials (provided that they are not employed).

Following the reforms of the professions in the past years, there are no longer any major differences in the laws regulating the two professions, except that only attorneys-at-law can work in an employment relationship; advocates cannot. The chambers created a few additional differences on continuous professional development and advertising, as described below.

Access to legal professions of advocate (*adwokat*) and attorney-at-law (*radca prawny*) is regulated by means of reserved activities and title protection.

The following reserved activities are shared by both professions:

- 1) representation before the courts (in Poland this is only obligatory for certain courts)
- 2) legal advice in tax matters
- 3) drawing up legal documents (such as contracts, real estate transactions and preparing statements of legal opinions)
- 4) representation before administrative authorities (including tax authorities)
- 5) other services, such as e.g. certification of documents.

With regard to industrial property matters, the following activities are shared with patent agents:

- drawing up legal documents
- representation before administrative authorities and courts (except for criminal procedures)
- representation before the Patent Office (for trademarks only).

Legal advice in general (except in tax matters) is not reserved to any profession. The provision of legal opinions and assistance in tax matters as well as representation in tax matters is shared with the profession of tax adviser. Under Article 3(1) of the Law of 5th of July 1996 on Tax Advice (Journal of Laws of 2020, item 130), the professional provision of legal advice in tax matters is reserved to four professions: tax advisers, advocates, attorneys-at-law and auditors.

Access to the professions of advocate and attorney-at-law is in principle subject to the following conditions: five years of university education in law and three years of training under supervision, followed by a state exam.

The requirement of three years' supervised training and the state exam is waived for example for:

- professors and holders of a *doktor habilitowany nauk prawnych* degree
- persons with three years of experience as bailiff or (senior) lawyer at the State Treasury Solicitors' Office (STSO)
- persons that have worked as a judge, prosecutor, advocate or attorney-at-law or as a notary
- persons that have at least two years of work experience as assessor in court (*asesor sądowy*)
- persons that have passed the examination to become judge, prosecutor or notary, under certain conditions, and have three out of five years of professional experience in law as further specified, or hold a *doktor nauk prawnych* degree and have three out of five years of professional experience in law, as specified in Polish legislation.

Mandatory registration in the professional chamber requires applicants to have legal capacity, a clean criminal record and to take an oath.

Advocates and attorneys-at-law are obliged to follow continuous professional development training organised by the respective chambers and financed by annual membership fees. The obligation is much more substantial for attorneys-at-law (40 credit points to obtain annually) than for advocates (12 credit points).

Advocates and attorneys-at-law can practice the profession as sole practitioners or in different company forms including a civil partnership, registered partnership, professional partnership, limited partnership and limited joint-stock partnership but not in a limited liability company and joint-stock company. Only attorneys-at-law can work in an employment relationship. Advocates and attorneys-at-law can create multidisciplinary companies only with patent agents, tax advisers and foreign lawyers.

Poland sets only minimum tariffs for the listed activities carried out by advocates and attorneys-at-law. For representation before the courts, Poland sets both minimum and maximum tariffs.

Advocates are explicitly forbidden from advertising their services. For attorneys-at-law, there is no ban on advertising but there are only certain general rules to follow.

#### Patent agents

In 2017, the Commission made the following reform recommendations to Poland for the profession of patent agent:

- assess the scope of reserves of activities
- assess the proportionality of the shareholding requirements.

The 2015 reform already covered the profession of patent agent. The changes included reducing the fees for the state exam and obligatory training and broadening the conditions for dispensation from the three years of training and abolishing the oral exam. The reform also brought in changes with regard to representation before the Patent Office, allowing advocates and attorneys-at-law to carry out this activity along with patent agents for cases concerning trademarks.

In 2017, Poland amended the Law on Patent Agents with regard to tariffs, in response to infringement proceedings launched by the Commission<sup>104</sup>. The change consisted of abolishing the minimal tariffs applied in contractual relations with clients, leaving only maximum tariffs to be applied if the court decides on the cost of representation.

There have been no changes with regard to reserved activities and shareholding requirements since the Commission's recommendations in 2017.

The profession of patent agent remains regulated by means of reserved activities and title protection.

The work of a patent agent consists of providing assistance on any matters related to intellectual property. In Poland, parties are not obliged to be represented by a patent agent before the Patent Office, but may choose to be so. For trademarks, industrial designs and geographical indications, the party can choose to be represented by a cross-border service provider, patent agent, attorney-at-law, advocate, a person jointly entitled to the party's rights, parents, spouse, siblings, descendants or adopted children. For inventions, supplementary protection certificates for pharmaceutical, and plant protection products, utility models and topography of semi-conductors, the party can choose to be represented before the Patent Office by a cross-border service provider, patent agent, a person jointly entitled to the party's rights, parents, spouse, siblings, descendants or adopted children.

Regarding representation before the courts, in principle it is not obligatory in Poland to be represented by a professional in the lower courts. However, representation is obligatory in cases concerning intellectual property on matters above the value of PLN 20 000 (EUR 5 000). The court may exempt the party from this obligation if the complexity of the case or other circumstances do not justify it. Parties may be represented in cases concerning intellectual property also by a patent agent, by a spouse, siblings, descendants, ascendants, adoptive children, etc. Patent agents are authorised to represent clients in courts in all matters related to industrial property (except for criminal procedures).

Access to the profession of patent agent is subject to the following conditions: university diploma in an area relevant to the profession, in particular law or engineering (five years), plus three years of training, followed by a state exam.

Mandatory registration in the chamber is conditional upon the applicant having legal capacity, a clean criminal record and taking an oath.

Patent agents can practice the profession under an employment contract, as sole practitioners or in different company forms:

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<sup>104</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_16\\_323](https://ec.europa.eu/commission/presscorner/detail/en/IP_16_323)

- 1) in a civil partnership, a registered partnership, a professional partnership, a limited partnership and a limited joint-stock partnership, in multidisciplinary teams with advocates, legal advisers, foreign lawyers and tax advisers, provided that at least half of partners are patent agents;
- 2) in a limited liability company and a joint-stock company provided that, among other conditions, the majority of shares and voting rights are held by patent agents.

Regarding tariffs, in principle, prices are agreed with the client in the contract, except for representation before courts and certain activities before the Patent Office, with maximum tariffs for these services stipulated by the Minister of Justice.

Patent agents may advertise their services, subject to some very general rules.

### Real estate agents

The profession of real estate agent remains unregulated.

The 2013 reforms covered this profession, which abolished the qualification requirements for access to the profession.

Notaries oversee the security of real estate transactions. Under Polish law, the transfer of real estate property must be carried out in the form of a notarial act (with few exceptions). Real estate agents must be entrepreneurs within the meaning of Polish law and must be covered by professional indemnity insurance (also for damage caused by persons acting under their supervision). Lastly, the deregulation of the profession prompted some umbrella organisations to bring in voluntary certification schemes.

### Tourist guides

In 2017, the Commission did not address any recommendations to Poland for the profession of tourist guides. Since then, Poland has not carried out any reforms or other initiative the Commission is aware of concerning the regulation of this profession.

The profession of tourist guide remains unregulated. Tourist guide services are provided by city and country guides as well as by mountain guides. Only the mountain guide profession is regulated in Poland, where access to this profession is subject to the possession of specific professional qualifications.

Provision of tourist guide services may be limited in museums (and areas belonging to museums such as excavation areas) and similar facilities where typically museum employees guide tourists.

The 2013 reforms covered the professions of tourist guide and guided tour operator, and they abolished the specific qualification requirements for access to these professions. The requirements for access to these professions are any secondary level education and a clean criminal record. These requirements are not verified by any public administration bodies but only by the employer/person ordering the service.

## I. Overview

By 1 January 2021, Portugal had submitted information concerning 245 regulated professions. Among these professions, 35.1% concern health and social services, 22% business services, 8.2% construction services and 0.4% the real estate sector. The number of regulated professions has slightly increased since 2012, when there were only 239 regulated professions.

According to an EU-wide survey<sup>105</sup>, 17% of Portugal's labour force can be considered to be working in regulated professions. This is slightly lower than the EU average (21%).

Portugal is sporadically updating the **database on regulated professions**. The database provides citizens and administrative authorities from other Member States with valuable information about the regulation of professions in a given Member State.

Through Decree-law no 37/2015, which transposed the amended Directive 2005/36/EC, Portugal ensured the recognition of professional qualifications in the case of temporary provision of services and establishment.

In general, the Portuguese system of regulation of professions is based on a prescriptive regulatory approach. Such an approach may lead to cumbersome procedures for the exercise of a regulated profession.

A 2018 OECD study on highly regulated professions, carried out in association with the Portuguese competition authority, made some recommendations to Portugal on professional services<sup>106</sup>. These were as follows:

- Separate regulatory function from representative function for self-regulated professional associations;
- Mitigate current regulatory restrictions on the reserved activities that may lead to the exclusion of alternative online services;
- Open certain professions to individuals with an educational background other than a university degree in their profession, thus allowing more individuals with different backgrounds to access the regulated professions and obtaining more diversity in the profession and in the offered services;
- The partnership, ownership and management of professional firms should be open to individuals outside the profession and multidisciplinary firms should be allowed, enabling alternative business structures and catering for different types of market players.

The 2019-2023 Portuguese government programme states that these recommendations will be followed. The aim is to promote faster entry into the labour market for graduates by reducing the regulatory and administrative burden on professionals and businesses. A draft law should be presented before Parliament by the end of 2021 for adoption in 2022. However, the exact

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<sup>105</sup> Koumenta M. and Pagliero M., (2016), *Measuring Prevalence and Labour Market Impacts of Occupational Regulation in the EU*. See: <https://ec.europa.eu/docsroom/documents/20362>.

<sup>106</sup> *OECD Competition Assessment Reviews: Portugal*, Volume II, Preliminary Version, OECD 2018, p. 20-21.

scope of the actions to be taken and the timeframe for their implementation are not yet determined.

Nevertheless, the Portuguese Government has recently adopted changes to bolster programmes reducing administrative burden and improving the quality of regulation (e.g. *Simplex+*<sup>107</sup>, *Unilex*<sup>108</sup>, *quanto custa*).

Since 2016, as part of the European Semester process, country-specific recommendations have been made to Portugal in the area of professional services:

2016: Improve and accelerate administrative and licensing procedures, accelerate tax litigations and reduce regulatory barriers, especially in business services;

2017: Implement a roadmap to further reduce the administrative burden and tackle regulatory barriers in construction and business services by the end of 2017;

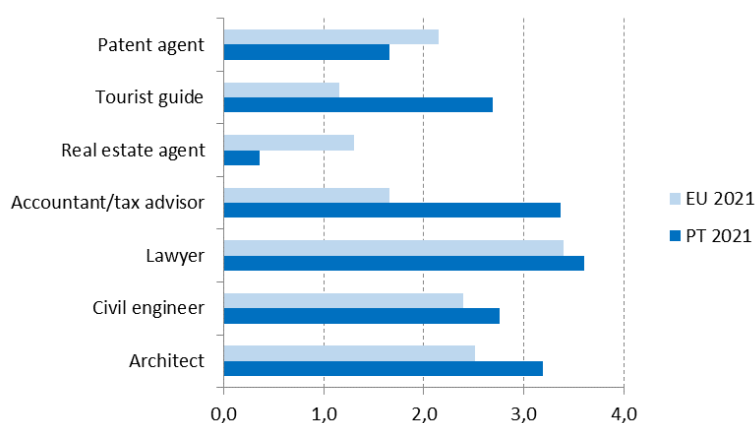
2018: Remove persistent regulatory restrictions by ensuring a proper implementation of the framework law for highly regulated professions;

2019: Reduce the administrative and regulatory burden on businesses, mainly by reducing sector-specific barriers to licensing. Develop a roadmap to reduce restrictions in highly regulated professions.

## II. Situation on the analysed professions

Regulatory restrictiveness in Portugal is higher than the EU average for all of the professions analysed, except for patent agents and real estate agents. Of the professions analysed, restrictiveness is the highest for lawyers.

Chart 1: Regulatory restrictiveness, Portugal, 2021



Regarding the professions of architect, engineer, lawyer and certified accountant, a legal framework was adopted in 2013 for the creation, organisation and functioning of public professional organisations and access and exercise to the professions in question. Further to the law's adoption, by-laws of professional organisations were supposed to be adopted to

<sup>107</sup> The Simplex+ programme already entered into force on 15 July. For further details, see [www.portugal2020.pt](http://www.portugal2020.pt).

<sup>108</sup> Approved by Decree-Law no. 152-D/2017 of 11 December.

ensure compliance with this legislative framework. Professional associations therefore play a crucial role in regulation of the access to, and exercise of, professions with compulsory registration in the relevant professional chamber.

Some professions (known as ‘not highly regulated professions’) are regulated by law without the involvement of professional associations. These include the professions of patent agent, real estate agent and tourist guide. The development of these professional services may be hampered by regulation which may not be necessary and proportionate<sup>109</sup>.

The following description of the situation concerning the different professions focuses on changes since the analysis published in 2017. However, to provide a complete and understandable picture, the description also restates part of the information described in 2017.

### Architects

In its recommendations, the Commission invited Portugal to:

- reconsider the wide scope of reserved activities for architects.

The profession of architect is regulated by way of reserves of activities and protected title (*arquitecto*).

The reserve of activities for architects includes, in their respective field of activity:

- architectural design and planning;
- feasibility studies;
- examination of design and related documentation;
- preparation of technical control and compliance (including, drawing up of public documents);
- monitoring the cost of construction and execution;
- urban and territorial planning.

The activities of construction control surveyors, project/work director, project author and project coordinator are shared with other professionals (engineers).

Architects must have a university degree in architecture and practical knowledge about the planning, design and overseeing of the construction of buildings and their surrounding space. Training takes 5 years plus a professional traineeship of 12 months.

Membership of the Professional Association of Architects (*Ordem dos Arquitectos*) is mandatory. The association regulates the exercise of the profession of architect and represents professionals’ interests.

There are no specific restrictions concerning the legal form in which architects can organise themselves, but qualified architects or engineers must hold more than 50% of the shares and corresponding voting rights in the company. The remainder of the shares can be held by non-professionals.

Architects are not affected by tariff regulations, but advertising is limited to objective information. The use of false or misleading information is expressly forbidden, as is comparison with other professionals.

Based on the information available, there are additional certification or attestation schemes for architects and engineers. These concern access to specific professional activities (such as

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<sup>109</sup> OECD Competition Assessment Reviews: Portugal, Volume II, OECD 2018.

architectural heritage) that would be subject to additional qualification requirements in Portugal<sup>110</sup>.

## Engineers

In its recommendations, the Commission invited Portugal to:

- reconsider the wide scope of reserved activities for engineers.

The profession of engineer is regulated by way of reserves of activities and protected title (*engenheiro*).

Engineers deal with the application of science and technology under the different engineering specialities in the activities of design planning, feasibility studies, representation to obtain permits, tender and contract administration, project management and management of constructions, and the monitoring of the execution of contracts. The reserved activities of engineers are listed in Law No 31/2009 and in other laws that specifically define them as activities reserved for those engaged in engineering<sup>111</sup>.

However, some reserved activities are shared with other regulated engineering professions. These are: construction control surveyor (*director de fiscalização de obra*), project supervisor (*director de obra*), project author (*autor de projecto*), project coordinator (*coordenador de projecto*). These titles are also protected by law and include mandatory membership of the competent professional association for technical engineers (*Ordem dos Engenheiros Técnicos*).

Recently, Law no. 25/2018 amended Article 25 of Law no. 31/2009 (as regards the diploma that regulates the professional qualification required for project approval). In this new law, the acquired rights conferred in Annex VI to Directive 2005/36/EC allowing engineers to perform architectural projects are considerably reduced, if not suppressed altogether. This has triggered issues of compliance with the Directive.

Engineers must have a university background of at least 3 years in engineering studies<sup>112</sup>. Engineers must be registered with the Professional Association of Engineers (*Ordem dos Engenheiros*). The association regulates the profession and provides representation for engineers within the national territory of Portugal.

In professional companies providing civil engineering, at least 51% of the shares needs to be held by professionals and the manager needs to be established in Portugal.

Engineers are not affected by tariff regulations, and advertising is limited to objective information. The use of false or misleading information is expressly forbidden, as is comparison with other professionals.

Based on the information available, there are additional certification or attestation schemes for architects and engineers. These concern access to specific professional activities (such as

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<sup>110</sup> e.g. where additional education or experience or an exam would be required in order to pursue specific/specialised activities.

<sup>111</sup> This is stated in Article 7 of the Statute of the *Ordem dos Engenheiros*, Law No. 123/2015.

<sup>112</sup> 5 years + 6-12-month traineeship (also 3 years + 18-24-month traineeship).



architectural heritage) that would be subject to additional qualification requirements in Portugal<sup>113</sup>.

### Accountants/tax advisers

In its recommendations adopted in 2017, the Commission invited Portugal:

- to reconsider reserving simple tasks such as payroll activities or preparation of tax declarations to highly qualified professionals for accountants/tax advisers;
- to assess the proportionality of the shareholding requirements for accountants/tax advisers.

Certified accountants are governed by the by-laws of the Professional Association of Certified Accountants (*Ordem dos Contabilistas Certificados – OCC*), the body responsible for the exercise of the profession.

The profession of accountant is regulated by way of reserves of activities and protected title.

In Portugal, certified accountants must register with the Professional Association of Certified Accountants (OCC) in order to practise their profession. In accordance with its by-laws, the OCC: (i) grants the professional title of certified accountant; (ii) regulates access to, and exercise of the profession of certified accountant in Portugal; (iii) establishes technical rules and regulations of professional activity; (iv) exercises disciplinary authority over its members; and (v) protects its members' interests and rights related to the exercise of their profession.

Certain activities are reserved only for accountants. These include the signing of financial statements and representation before tax authorities for certain specific issues. Other activities are shared with other professionals (tax advice is shared with lawyers and auditors). Accountants certify that the accounts they prepare comply with the applicable legal rules and accounting principles in force, and with guidelines of bodies responsible for accounting standardisation.

The qualification requires a 3-year secondary education and a professional internship of 800 hours (approximately 5 months) with an exam at the end. No alternative pathways to obtain this qualification are available. As regulated, professional internship can be substituted by minimum 3 years of relevant professional experience or by specific higher education course units, accepted under agreement between a professional organisation and the school/university.

The law also lays down continuous professional development requirements.

While there are no specific restrictions or rules concerning the legal form for accountants, they must hold the majority of the shares and the voting rights in the company. Joint exercise with other professions is possible if there are no conflicts of interest. However, joint exercise with lawyers is prohibited. Professional indemnity insurance is still mandatory.

There is no regulation of tariffs, and advertising and marketing is restricted by general ethical principles of truthful, non-persuasive and objective information.

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<sup>113</sup> e.g. where additional education or experience or an exam would be required in order to pursue specific/specialised activities.

## Lawyers

In 2017, the Commission made the following recommendations for the profession of lawyer:

- clarify the scope of the reserves so as to facilitate the provision of legal consultancy services by lawyers or other service providers, in particular for online services;
- assess legal form and shareholding requirements, incompatibility rules and multidisciplinary restrictions, in particular taking into account the proportionality of these restrictions in relation to the core principles, such as the independence of the profession and to the corresponding supervisory arrangements. In addition, consideration should be given to the cumulative effect of such requirements to the extent that their effects might be accentuated in the case of extensive reserves of activities (e.g. where legal advice is also part of the reserved activities).

There has been no reform or other initiative in Portugal the Commission is aware of which has taken into account or assessed its recommendations.

In Portugal, two legal professions share the activities of legal advice and representation before the Courts and administrative authorities: lawyer and *solicitador*. Both professions are regulated by way of reserves of activities and protected title. A lawyer's right of representation, extending to all courts and authorities, confers the power to represent parties on a professional basis, both in and out of the court, for all public and private matters. These powers are reserved for lawyers. Only *solicitadores* can exercise judicial office under procedural Law.

After 4 years of legal studies in Portuguese law, a candidate has to complete a traineeship of 18 months, supervised by a trained lawyer with more than 5 years of professional experience. The applicant undergoes practical training as a trainee lawyer and is then evaluated via a state bar exam before being admitted to the bar association (*Ordem dos Advogados*), membership of which is mandatory. There is also a general obligation to engage in continuous professional development.

To access the profession of *solicitador*, a candidate can alternatively hold a law degree or an officially recognised degree in legal agent studies, complete a traineeship and pass a State exam.

As far as legal form and shareholding requirements are concerned, as with other liberal professions, only lawyers may hold shares in a law firm. In this way, the totality of the company's equity is held by qualified registered lawyers.

To preserve independence and professional secrecy and to avoid conflicts of interest, the setting up of multidisciplinary companies is forbidden. In addition, there are specific rules dealing with incompatibility between certain professions (like that of notary), as well as general rules on incompatibilities and a general rule on conflicts of interest.

Professional liability insurance is mandatory. There are no tariff restrictions, and lawyers can advertise as long as the advertising provides true and factual information about their professional activity and is in line with lawyers' professional obligations.

## Patent agents

In 2017, the Commission did not make any recommendations to Portugal for the profession of patent agent. Since then, there has been no reform or other initiative the Commission is aware of concerning the regulation of this profession in Portugal.

The profession remains regulated by a reserve of activities and title protection (*agente oficial de propriedade intelectual*). The reserve of activities covers counselling and representation before the Patent Office or other administrative authorities, drawing up legal documents in intellectual property matters, and representing clients before the courts in intellectual property matters. All these activities are shared with lawyers.

There has been no reform of the current legal framework since November 2010, when the Portuguese Law on patent agents entered into force.

Beyond general or vocational post/secondary education, it is possible to qualify for this profession via an academic degree in a wide range of courses. In any case, the exercise of the profession is subject to a prior exam with the competent authority (the Instituto Nacional de Propriedade Intelectual – INPI).

Although prospective patent agents have to obtain prior authorisation from INPI before they can exercise the profession, INPI cannot be considered as a professional association, unlike similar bodies for other qualified professions (e.g. lawyers, notaries, engineers). This is because INPI's role does not include representing the interests of patent agents, and nor does it have disciplinary powers. Membership of INPI is not mandatory.

There are no restrictions on legal form and shareholding requirements. This means that the reserved activity has to be performed by a qualified patent agent, but patent agents may organise themselves as sole practitioners or through a limited or unlimited company. A patent attorney may be part of the company or not.

Joint exercise with other professions is also allowed, but there is a general rule on conflicts of interest that can limit the activity of patent agents in some particular cases.

### Real estate agents

The profession of real estate agent is not regulated in Portugal. There is no legal initiative or envisaged reform that would regulate the activity of real estate agents (showing properties, facilitating contacts and negotiations, arranging sale and housing rental).

Despite this, real estate companies (*mediadoras imobiliárias*) are bound by certain requirements, such as:

- prior registration with the responsible organisation;
- prior assessment of company's aptitude/good reputation;
- mandatory insurance.

The professionals who work for such companies do not have to obtain registration and are not bound by any special requirements. There is no mandatory training or education, prior professional experience or traineeship.

### Tourist guides

In 2017, the Commission made the following recommendation for the profession of tourist guide:

- consider the justification and proportionality of regulation of the profession.

There has been no reform or other initiative in Portugal the Commission is aware of which has taken into account or assessed its recommendation.

This profession remains regulated only in the autonomous regions of Madeira and the Azores. The profession is regulated by a reserve of activities covering the guiding of people to present and explain the regions' artistic and cultural heritage. This includes the organisation and guiding of tours (by bus or taxis), and providing information to tourists.

The exercise of this profession in Madeira and the Azores is subject to a prior certificated training programme and possession of a professional card. Various institutes offer such training courses and there are different means to have other studies recognised for the exercise of the activity.

Tourist guides from another Member State providing services on a guided tour are allowed to do so as long as they have the proper qualification required by the home Member State for the exercise of the profession.

Lastly, there are no restrictions concerning tariffs. Advertising is allowed, but it is subject to specific regulations.

## I. Overview

By 1 January 2021, Romania had submitted information about 208 regulated professions. This is a slight increase compared with the 2016 figures. Of those professions, 18.8% concern business services, 5.8% the construction sector and 0.5% the real estate sector.

According to an EU-wide survey<sup>114</sup>, 22% of Romania's labour force can be considered to be working in regulated professions. This is slightly higher than the EU average (21%).

Romania is regularly updating the **database on regulated professions**. This database provides citizens and administrative authorities from other Member States with valuable information about the regulation of professions in a given Member State.

In its **national action plan** for 2016, Romania gave a clear overview of the legislative framework of the regulated professions, but only announced limited changes for certain of them. On the basis of the information available, no reform seems to have been adopted.

Romania's list of regulated professions and competent authorities was drawn up prior to EU accession, and was annexed to Law No 200/2004 on the recognition of diplomas and professional qualifications for regulated professions in Romania. This act also includes the list of professions regulated in Romania and the competent authorities. When the Law was adopted in 2004, there were 45 regulated professions. This number has increased over the years, passing from 156 in 2015 to 189 in 2016 and 208 in 2021<sup>115</sup>.

Romania implemented the Professional Qualifications Directive (Directive 2005/36), as amended, by means of Law 200/2004. The latter also constitutes the main pillar of regulation for regulated professions in Romania.

As part of the 2020 European Semester economic coordination process, a recital<sup>116</sup> concerning the situation of professional services was also adopted:

*Cumbersome administrative procedures for setting up businesses as well as regulatory requirements imposed on services providers, including regulated professions, further impede market development.*

In its 2020 European Semester country report on Romania, the Commission considered that:

*Removing barriers for service providers could stimulate investment. Cumbersome administrative procedures for setting up businesses as well as regulatory requirements imposed on service providers, including regulated professions, limit market development. The level of restrictiveness in Romania is higher compared to the single market average for civil engineers, architects, accountants, and tourist guides. Removing these barriers could stimulate competition and investment, including in innovation, within the services sector.*

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<sup>114</sup> Koumenta M. and Pagliero M., (2016), *Measuring Prevalence and Labour Market Impacts of Occupational Regulation in the EU*. See: <https://ec.europa.eu/docsroom/documents/20362>.

<sup>115</sup> Numbers of regulated professions notified by Romania in the database of regulated professions.

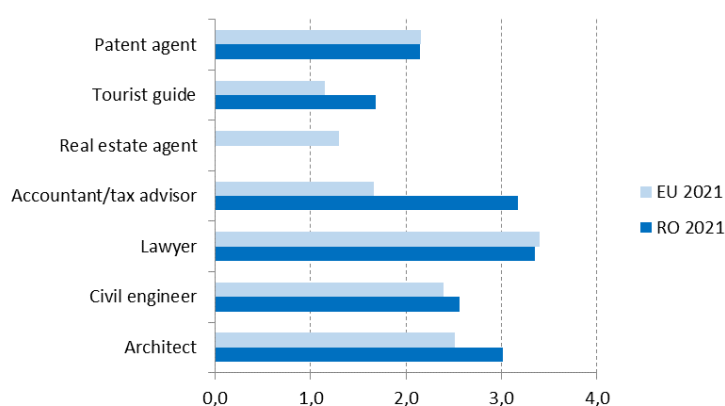
<sup>116</sup> Recital 24.

## II. Situation on the analysed professions

The list of regulated professions and corresponding competent authorities is annexed to Law 200/2004 on the recognition of diplomas and professional qualifications for regulated professions in Romania. The Law was amended notably in 2015 to incorporate the transposition of Directive 2013/55/EU.

Regulatory restrictiveness is higher in Romania than the EU average for all of the professions under review, except for the professions of lawyer, for which it is slightly lower, and for patent agent, for which it is similar to the EU average. Real estate agents are not regulated in Romania. Among the professions analysed, the highest restrictiveness level is observed for lawyers.

Chart 1: Regulatory restrictiveness, Romania, 2021



Between 2016 and 2021, no major reform concerning professional services was adopted by Romania.

The following description of the situation for the different professions focuses on changes since the analysis published in 2017. However, to provide a complete and understandable picture, the description also restates part of the information described in 2017.

### Architects

In 2017, the Commission made the following recommendations for architects:

- reconsider the wide scope of reserved activities for architects;
- consider the impact of the shareholding and company form restrictions in place in addition to the other requirements for architects.

Despite these recommendations, there has been no reform or other initiative in Romania the Commission is aware of concerning the regulation of this profession.

The education requirement remains 6 years of academic studies plus 2 years of mandatory traineeship to obtain the right of signature, which is issued by the professional chamber once an architect has passed an evaluation.

Registration with a professional body is mandatory for architects with the right of signature. Registration is also open to architects without the right of signature. The profession of architect is regulated through protection of title and reserves of activities.

Architects can provide a wide range of reserved activities, although in general these are shared with other professionals. However, for certain activities architects maintain exclusivity. For instance, architectural design and planning, and provision of feasibility studies are exclusively reserved for architects, while structural design is reserved for civil engineers and installation design for mechanical and electrical engineers; buildings of 'lower importance' can also be designed by architectural technologists. In contrast, for the feasibility studies of historical monuments/protected areas, the architectural component can be done only by architects who also hold a certificate in this respect, issued by the Romanian Ministry of Culture. While the submission of documents is not a reserved activity, the architectural design included in the technical documentation for a building permit can only be drawn up, signed and sealed by architects.

The continuous personal development is mandatory and drawn up by the professional organisation, based on Article 22 of the Professional Qualifications Directive. It includes the following important requirements: 96 hours/year, 5-year cycles, six cycles during the career. Renewal of right of signature is dependent on compliance with these requirements. Architects can work under the legal forms of individual office, associate office, commercial company or professional civil company. The civil company can be established only by architects with right of signature. For commercial companies, there are no shareholding requirements.

Professional indemnity insurance is compulsory. Architects are not bound by fixed or minimum fees and can advertise their activities in compliance with their professional ethics requirements.

Based on the information available, there are additional certification or attestation schemes for architects concerning access to specific professional activities that would be subject to additional qualification requirements in Romania<sup>117</sup>. These are: leading/managing the architectural design part of a construction project, expertise activities, activities on buildings of special significance or of cultural heritage, and special planning activities.

### Civil engineers

In its 2017 recommendations, the Commission invited Romania to:

- review the wide scope of reserves of activities for engineers, taking into account the fragmentation of activities within this sector and professions.

However, Romania has not engaged in any review.

In its national action plan, Romania justified the need to regulate the profession in this sector by the high environmental risks in the country (one of highest seismic risks in Europe).

In Romania, there are four regulated professions covered by the generic profession of civil engineer: (i) construction site coordinator; (ii) technical execution responsible; (iii) quality verifier for construction projects; (iv) certified technical expert.

For all four professions, the legal framework establishes reserves of activities and protected title. The mentioned professionals can intervene in relation to the same construction: for instance, the activity of project management, construction cost management, monitoring of construction/ execution of the project has to be done by a construction site coordinator

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<sup>117</sup> For example, architects wishing to work on projects in the field of cultural heritage need to pass a certification exam.

(representing the beneficiary of the construction) and by a technical execution responsible (representing the constructor), according to specific tasks stipulated in the procedures and legislation.

The qualification requirements for construction site coordinators and technical execution responsible vary depending on the domain(s) and subdomain(s) of authorisation. For instance, professional experience between 3 and 10 years is also required depending on the classification of a construction according to its importance. The certification for construction site coordinators and the technical execution responsible is done by the State Inspectorate for Construction. The other two professions require an engineer or architect diploma plus professional experience.

Access to all professions is dependent on candidates passing a certification exam.

There are no restrictions on the legal form and shareholding of companies. Apart from the requirement to have a clean criminal record, no additional authorisation requirements have been identified except for electrical installations, combustible natural gas installations, electrical networks and combustible natural gas networks.

#### Accountants/tax advisers

In its recommendations, the Commission invited Romania to:

- reconsider reserving simple tasks such as payroll activities or preparation of tax declarations to highly qualified professionals for accountants/tax advisers;
- assess the consistency of the reserved activities and the distribution between the multiple regulated professions in the sector of accountancy and tax advice;
- assess the proportionality of the shareholding requirements for accountants/tax advisers.

However, Romania has not reviewed the requirements and activities reserved for those professionals.

Accounting and tax advice activities are performed by the professions of expert (chartered) accountant, licensed accountant and tax consultant. The professions of expert and licensed accountant are regulated and managed by CECCAR, the Body of Expert and Licensed Accountants of Romania, while the tax consultant profession is regulated and managed by the Chamber of Tax Advisers. All three professions are regulated through protection of title and reserves of activities.

The reserved activities for **expert (chartered) accountants** cover:

- bookkeeping/drawing up annual financial statements and consolidated financial statements for undertakings;
- accounting expert appraisals required by judicial authorities;
- payroll activities, accounting management and bookkeeping;
- economic and financial analyses and asset appraisals;
- accounting examinations;
- representation and assistance before administrative authorities;
- technical expertise for the creation and restructuring of commercial companies;
- tax advice.

For **licensed accounts**, the reserved activities cover:

- financial and management accounting;
- payroll activities;



- bookkeeping of economic and financial operations.

For **tax advisers**, the reserved activities cover:

- representation and assistance before administrative authorities;
- accounting expert appraisals required by judicial authorities;
- tax consultancy with bookkeeping;
- tax advice.

Many of these reserved activities are shared between the professions. For example, licensed accountants share all their activities (bookkeeping and preparing the documents for financial statements) with chartered accountants. The activity of tax advice is reserved for tax consultants, whereas expert (chartered) accountants can supervise and perform accounting and financial record keeping activities, perform economic and financial analyses and asset appraisals, and provide technical expertise for the creation and restructuring of companies.

The level of qualification differs for expert (chartered) accountants and licensed accountants. The certification of expert (chartered) accountants requires a bachelor's degree in economics and 3 years of theoretical and practical training completed under CECCAR. For licensed accountants, certification requires a high school graduation diploma and 3 years of theoretical and practical training completed under CECCAR. For tax consultants, the education requirement is a 3-year bachelor's degree in economics, while 5 years of prior professional experience in the field is also required. Accountants are required to complete continuous professional development every year in order to be granted the right to exercise the profession.

Membership of a professional association is compulsory.

Joint exercise with other professions is allowed.

There are no restrictions regarding the legal form, but the company's main activity should be accounting or tax advice and at least 51% of the shareholders need to be chartered accountants/licensed accountants. However, only one shareholder in a company providing tax advice should be a tax consultant.

Professional liability insurance is compulsory.

### Lawyers

In its recommendations, the Commission invited Romania to:

- clarify the scope of the reserves so as to facilitate the provision of legal consultancy services by lawyers or other service providers, in particular for online services;
- assess legal form and shareholding requirements, incompatibility rules and multidisciplinary restrictions, in particular taking into account the proportionality of these restrictions in relation to core principles, such as the independence of the profession, and to the corresponding supervisory arrangements. In addition, consideration should be given to the cumulative effect of such requirements in cases where their effects might be accentuated in the case of extensive reserves of activities (e.g. where legal advice is also part of the reserved activities) for lawyers.

However, Romania has not reviewed the requirements and activities reserved for lawyers.

Law No 51/1995 on the organisation and practice of the profession of lawyer in Romania constitutes the legal framework governing the organisation and practice of the profession of

lawyer in Romania. The profession of lawyer is regulated through protection of title and reserves of activities.

The reserved activities cover representation in court, legal advice, filing legal requests, drafting legal acts, mediation, fiduciary activities etc. However, none of these activities are exclusively reserved for lawyers. For instance, notaries can also draft legal acts or provide legal advice. Despite the existence of several functioning online platforms, the legal framework for the provision of legal online services and operation of online platforms remains unclear.

The level of qualifications required is: a law degree, passing the entrance exam for the profession, 2 years of professional traineeship and a final exam. Several alternative ways to become a lawyer also exist. For instance, based on professional experience (e.g. 5 years experience as a judge), a lawyer who has passed the entrance exam for the profession may be exempted from the obligation to pass the final exam. The exams are organised by the competent authority, the National Union of Romanian Bar Associations (UNBR).

Registration with a bar association is mandatory. Unclear legislation adopted post-1989 has led to the creation of parallel bar associations, both in Bucharest and at regional level. While the bars were not considered as official by the government, they were tolerated. However, after Romania's accession to the EU in 2007, recognition of the professional qualifications of lawyers registered with the parallel and unofficial bars has become an issue. As a result, a substantial number of complaints has been received by the Commission. The Commission continues to receive complaints on this issue, particularly from EU lawyers registered with the UNBR-Bota, which is no longer considered as the competent regulatory authority for lawyers. However, based on the judgment of 21 September 2015 of the Romanian Court of Cassation, lawyers registered with the UNBR-Bota organisation cannot be regarded as legally practising as a lawyer within the meaning of Article 348 of the Criminal Code<sup>118</sup>. In accordance with Article 1(2) and (3) of Law No 51/1995, the profession of lawyer may be exercised only by lawyers registered with the bar association to which they belong. No bar association may be established and operated outside the National Union of Romanian Bar Associations.

The rules on legal form and shareholding requirements applicable to lawyers are very restrictive. While lawyers can also provide services in professional companies with limited liability, the choice of legal form is limited. In addition, shareholding by professionals other than lawyers is not possible and joint exercise of professions is prohibited.

Professional liability insurance is compulsory.

Lawyers are not bound by fixed or minimum fees and can advertise their activities in compliance with their professional ethics requirements.

### Patent/trademark agents

In 2017, the Commission did not make any recommendations to Romania for the profession of patent agent. Since then there has been no reform or other initiative the Commission is aware of concerning the regulation of this profession.

The profession remains regulated through protection of the title and reserves of activities. The reserves of activities are shared with other related professionals (lawyers and legal advisers).

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<sup>118</sup> [http://www.scj.ro/1093/Detalii-jurisprudenta?customQuery\[0\].Key=id&customQuery\[0\].Value=123204](http://www.scj.ro/1093/Detalii-jurisprudenta?customQuery[0].Key=id&customQuery[0].Value=123204)

The qualification can be acquired by obtaining a bachelor's degree in technical, scientific or legal studies and by passing an exam organised by the State Office for Patents and Trademarks. Prior experience of at least 3 years in the field of the diploma (technical, legal, scientific) and 3 years in the field of patent regulation/industrial property is required, but the two periods can coincide. Incompatibility rules are also in place: in order to avoid conflicts of interest, some activities cannot be performed (for instance, representing clients with opposing interests, trade, or carrying out activities that could lead to unfair competition). Only four legal forms of practice are allowed: *cabinet individual*; *cabinet asociat*; *societate civila profesionala*; *societate comerciala* with sole activity of intellectual property. These can be established only by patent agents.

Patent agents are not bound by fixed or minimum fees and can advertise their activities in compliance with their professional ethics requirements.

### Real estate agents

The profession is indicated as not regulated in Romania but training for the profession is regulated.

Consumer interests are considered to be guaranteed through consumer protection and criminal law.

### Tourist guides

In 2017, the Commission made the following recommendation for the profession of tourist guide:

- consider the justification and proportionality of regulation of the profession.

There has been no reform or other initiative the Commission is aware of which has taken into account or assessed the Commission's recommendation. However, Romania indicated that a reform is pending.

There remain three categories of tourist guide: local guide, national guide and specialised guide (e.g. mountain guide).

The profession is regulated through reserves of activities, which are exclusive, i.e. not shared with any other profession. The reserves of activities have a broad definition:

*A tourist guide is a person who leads and advises a group of tourists or visitors, offering the necessary explanations about the places visited, and who ensures that the contracted tourist programme is run under the best possible conditions.*

While there are no territorial restrictions for practising the profession of tourist guide in Romania, only national tourist guides can accompany groups of Romanian tourists outside Romania.

Becoming a local tourist guide requires completion of at least 1 080 hours of training; becoming a national tourist guide requires additional training of 180 hours. The legal framework establishes an age limit of 62 years for specialised guides and 65 years for national guides. Beyond these ages it is no longer possible to register for the qualification/training needed to obtain a tourist guide certificate, but tourist guides are still allowed to exercise the profession past those ages. Additional requirements include knowledge of a foreign language and a medical certificate.



SLOVAKIA



## I. Overview

By 5 January 2021, Slovakia had submitted information about 209 regulated professions. Among those professions, 11.4 % concern business services, 6.4% the construction sector and 0.3% the real estate sector. This is a decrease compared with previous figures, in particular since 2016. It seems that only a few professions have been deregulated and most changes are due to corrections to the entries in the database.

According to an EU-wide survey<sup>119</sup>, 27% of Slovakia's labour force can be considered to be working in regulated professions. This is higher than the EU average (21%).

Slovakia is regularly updating the database on regulated professions. The database provides citizens and administrative authorities from other Member States with valuable information about the regulation of professions in a given Member State.

In its **national action plan** from 2016, Slovakia informed the Commission that all relevant Slovak competent authorities had reviewed the Slovak regulation of professions in light of the definition of regulated profession and concluded that many professions notified to the Commission in the past did not fall under the amended Directive 2005/36/EC. Furthermore, Slovakia identified some duplication in the professions previously notified to the Commission. Following this review, Slovakia had identified 242 professions that in its view are regulated in the country.

Furthermore, in its national action plan Slovakia presented an overview of the regulatory framework of the regulated professions and announced changes in regulation, mainly linked to transposition of EU legislation. It also gave notice of: (i) an amendment to the Law on trade removing certain requirements for access to trading professions; and (ii) amendments to the Law on sport that resulted among other things in the merger of 20 regulated professions in the field of sport into two new professional categories. Finally, Slovakia announced plans to introduce regulation for the profession of estate agent. While changes were made in the database of regulated professions, reducing significantly the number of regulated professions, the announced structural reform of the profession of real estate agent has not been adopted.

The 2020 European Semester country report for Slovakia, drawn up in the light of the country-specific recommendations issued to Slovakia as part of the European Semester economic coordination, indicates that professional services continue to be heavily regulated, hampering competition<sup>120</sup>.

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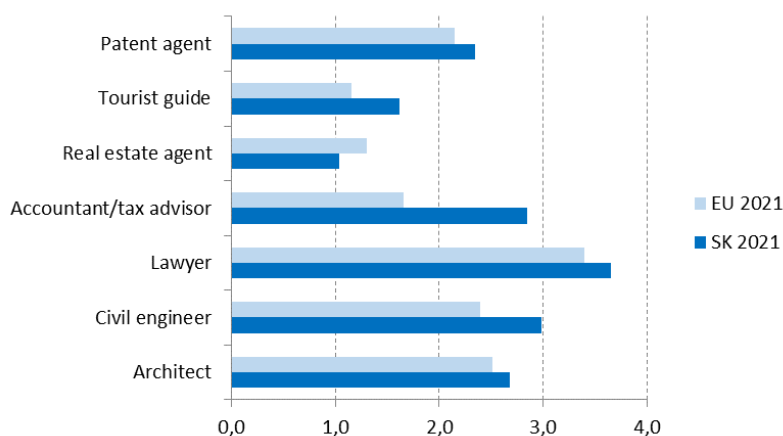
<sup>119</sup> Koumenta M. and Pagliero M., (2016), *Measuring Prevalence and Labour Market Impacts of Occupational Regulation in the EU*. See: <https://ec.europa.eu/docsroom/documents/20362>.

<sup>120</sup> Commission staff working document, Country Report Slovakia 2020, accompanying the document Communication – 2020 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011 {COM(2020) 150 final}, SWD(2020) 524 final, p. 48.

## II. Situation on the analysed professions

Restrictiveness in Slovakia is higher than the EU average for all the professions under review, with the exception of real estate agent. Among the professions analysed, restrictiveness is the highest for lawyers.

Chart 1: Regulatory restrictiveness, Slovakia, 2021



The following description of the situation for the different professions focuses on changes since the analysis published in 2017. However, to provide a complete and understandable picture, the description also restates part of the information described in 2017.

### Architects/engineers

In 2017, the Commission made the following recommendations for the profession of **architect**:

- reconsider the wide scope of reserved activities;
- consider the impact of the shareholding and company form restrictions in place in addition to other requirements.

In addition, the Commission made the following recommendation for the profession of **engineer**:

- assess the proportionality of shareholding requirements.

Despite these recommendations, Slovakia has not initiated any reform for these two professions.

Slovak legislation regulates separately the professions of chartered civil engineer, construction manager, construction supervisor and the profession of energy certification expert.

Around half of reserved activities of architects and engineers are shared with another profession.

For architects, access to the profession is subject to the following conditions: 5 years of university education in architecture or 4 years of university education in architecture and 2 years of mandatory traineeship (the traineeship can start at the earliest after the completion of

the third year of studies), followed by 3 years professional experience and an exam. The Commission understands that architects holding qualifications set out in Annex V to the Professional Qualification Directive are equally subject to these additional experience requirements if they wish to practise in Slovakia.

For chartered civil engineers, qualification consists in 5 years of university education, 3 years of mandatory traineeship and passing an exam.

Construction managers and construction supervisors are considered to be fully qualified after obtaining:

- (a) university education of 3 years in electro-technics or engineering and 3 years of professional experience in construction design; or
- (b) university technical education of 3 years and 5 years of professional experience; or
- (c) technical high school education and 5 years of professional experience as construction supervisor or construction manager.

For the energy certification of buildings, a professional is considered fully qualified after obtaining:

- (i) a second-level university degree in either:
  - (a) construction or architecture for thermal protection activities;
  - (b) construction, energy or engineering for the activities of heating and hot water preparation or for ventilation and air conditioning; or
  - (c) electrical engineering for activities with electrical wiring systems and built-in lighting; and
- (ii) professional relevant experience of at least 3 years (e.g. design of civil structures, energy equipment of buildings, evaluation concerning thermal-insulation properties).

In addition, an exam must be passed and a trade licence obtained for each of these activities.

Registration with the relevant professional chamber is compulsory for all the above-mentioned professions.

Architects and engineers are obliged to pass the state exam again if they have committed serious misconduct in the exercise of the profession, if they have not exercised the profession for 5 years or if the law has significantly changed.

Only architects are obliged to follow mandatory training organised by the Chamber and reach 20 credit points within 5 years.

Architects and engineers can exercise their profession as sole practitioners or via other legal forms (commercial company established under Slovak law or association agreement concluded between two or more sole practitioners). Joint exercise of profession is limited to architects and engineers. Furthermore, there are shareholding and voting restrictions in Slovakia (at least 51% of shares/votes must belong to architects or engineers) in any legal form. The Commission understands that there are no restriction on the types of minority shareholders.

No limitations of the licences granted or territorial restrictions have been identified. Professional liability insurance is compulsory for architects and chartered civil engineers. Other authorisation requirements include legal capacity, a clean criminal record and taking an oath.

Architects and engineers are required to provide information to their clients on the method they use to calculate their remuneration. There are no restriction concerning fees. However, architects and engineers may provide services free of charge only with the consent of the Chamber or, in the case of small-scale work, for health and social care institutions or charities.

In addition, under the Law on trade, there are nine different regulated trade activities in the area of engineering/construction business. These include energy auditor, preparation of documentation and designs for simple constructions, small constructions and changes of these constructions, realisation of landscape-architectural horticultural works. These require fulfilment of education and/or age and/or professional qualification criteria (including additional certification on top of professional experience in some cases) depending on the activity concerned and obtaining. A trade licence must also be obtained. Some of these activities include additional requirements for professionals with qualifications in architecture.

Based on the information available, there are no further certification or attestation schemes for architects or engineers concerning access to specific professional activities reserved for architects or engineers that would be subject to additional qualification requirements in Slovakia<sup>121</sup>.

#### Accountants/tax advisers

In 2017, the Commission made the following recommendations for the professions of accountant/tax adviser:

- reconsider reserving simple tasks such as payroll activities or preparation of tax declarations for highly qualified professionals;
- assess the proportionality of the shareholding requirements.

Despite these recommendations, Slovakia has not initiated any structural reform. However, it did change the education requirement in 2020 by removing the reference to the type of university studies necessary to access the profession.

While accountant is not a regulated profession, the profession of tax adviser is regulated by way of reserves of activities and protection of title.

The activities of tax adviser consist of: (i) providing advice in determining the tax base and taxes, and in tax planning; (this is not shared with any other profession); and (ii) giving opinions and explanations to clients on the application of legislation in the field of taxation (shared with lawyer).

The access to the profession of tax adviser is subject to the following conditions: 5 years of university education, 5 years of practice in economics or law or, alternatively, 3 years of practice as an assistant tax adviser, and the passing of a state exam. Registration with the Slovak Chamber of Tax Advisers is compulsory.

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<sup>121</sup> e.g. where additional education or experience or an exam would be required in order to pursue specific/specialised activities.

Tax advisers have to attend mandatory yearly training; according to the Chamber's by-laws, different options are offered to the tax advisers, including studying for an LL.M or PhD. Failure to fulfil this obligation may result in suspension from practice.

Following an investigation by the European Commission opened in 2012, Slovakia revised the Law on tax advisers and allowed tax advice services to be provided in any corporate form. The minimum obligatory shareholding and voting rights in tax advice companies were reduced from 75% to 50%. Shareholders have to be natural persons. Other authorisation requirements include legal capacity and taking an oath before the President of the Slovak Chamber of Tax Advisers.

The fees are not regulated. However, the remuneration should reflect the level of accountability, complexity and scope of issues to be addressed and time needed for tax consulting.

Advertising is permitted as long as it provides true and factual information, in line with the ethics standards in place. Discrediting other tax advisers or third parties is explicitly prohibited.

### Lawyers

In 2017, the Commission made the following recommendations for the profession of lawyer:

- clarify the scope of the reserves so as to facilitate the provision of legal consultancy services by lawyers or other service providers, in particular for online services;
- assess legal form and shareholding requirements, incompatibility rules and multidisciplinary restrictions, in particular taking into account the proportionality of these restrictions in relation to the core principles, such as the independence of the profession, and to the corresponding supervisory arrangements. In addition, consideration should be given to the cumulative effect of such requirements to the extent that their effects might be accentuated in the case of extensive reserves of activities (e.g. where legal advice is also part of the reserved activities).

Slovakia has not initiated any reforms in these fields. However, between 2019 and 2021, Slovakia did modify some of the requirements linked to traineeships, in particular reducing their duration.

The profession of lawyer (advocate) is regulated by way of reserves of activities and title protection. The activities of lawyer consist of: (i) drawing up legal documents such as contracts, real estate transactions and wills and preparing statements of legal opinions; (ii) legal advice (including in tax matters); (iii) representation before administrative authorities (including tax authorities); and (iv) representation of clients before courts (although representation by a lawyer is not always mandatory). Some of these activities are shared with other profession(s) such as notaries or tax advisers.

Access to the profession of lawyer is subject to the following conditions: a university degree in law (5 years or second-level university studies or equivalent), 3 years of legal practice as a trainee lawyer and completion of special training set by the Chamber, to be followed during these 3 years, and the passing of a state exam. A judicial, notarial or prosecutor's examination passed in Slovakia is considered equivalent to the Bar examination. Registration with the Bar is mandatory.



Lawyers may practice as: (i) sole practitioners; (ii) in association with other lawyers (advocates); (iii) in a partnership (public limited company) as a partner; (iv) in an unlimited partnership (commandite company) as an unlimited partner; or (v) in a limited liability company as an administrator. Shareholders/partners in all legal forms must be lawyers and thus natural persons.

With regard to the joint exercise of professions, a lawyer may practise either independently or in association with other lawyers. No other joint exercise is permitted. However, according to the Lawyers' Code of Conduct, lawyers may associate for a purpose other than the joint practice of law, for example to deal with various matters of common interest, joint training, consultation on certain legal matters, etc., provided that this is not contrary to the law on the legal profession and other legislation.

Lawyers must not be employed elsewhere and are not permitted to carry out similar activities, except for pedagogical, literary, scientific, artistic or sporting activities, or as members of a government advisory body or other activity not incompatible with legal practice, to be decided by the Chamber.

Continuous professional development is not mandatory, but is encouraged by the Chamber. Professional liability insurance is compulsory. Additional requirements include legal capacity and taking an oath before the President of the Slovak Chamber of Advocates.

There is no restriction on fees. Lawyer's fees are determined by agreement between lawyer and client ('the contractual fee'). However, in the absence of agreement, the fees will be determined according to the legal provisions, which establish a list of tariffs. Referring a client cannot give any right to compensation.

A lawyer is permitted to engage in advertising as long as the advertising provides true and factual information, respecting the dignity of the profession. Certain forms of advertising, such as comparative advertisement, are explicitly prohibited.

### Patent agents

In 2017, the Commission made the following recommendations for the profession of patent agent:

- ensure that the recognition procedure applying to foreign diploma holders seeking access to the profession of an assistant patent agent complies with the TFEU provisions on free movement of workers and non-discrimination and with the relevant case-law;
- reassess the condition of prior professional experience as a requirement to access the profession of patent/trademark agent.

There are two professions governed by the same legal act: patent agent and assistant patent agent. The first is regulated by means of reserves of activities, the latter Slovakia considers as non-regulated under Directive 2005/36/EC.

The activities of patent agent consist of: (i) counselling and representation before the Patent Office or other administrative authorities; and (ii) drawing up legal documents on intellectual property. These activities are reserved and shared with the profession of lawyer.

Access to the profession of patent agent is subject to the following conditions: university diploma (3 years), 3 years specialised practice as an assistant patent agent or 4 years of specialised practice in the area of intellectual property rights, followed by a state exam.

Registration with the Chamber for Patent Agents is compulsory.

A patent agent can practice as a sole practitioner, in association with other patent agents, or in a patent agents' business company. A patent agents' business company is a company where the patent agent is a partner, shareholder or employee. Incompatibility rules require that there be no conflicts of interest.

Other authorisation requirements for patent agents include legal capacity, a clean criminal record, the absence of disciplinary proceedings, a clean bankruptcy record (5 years) and the taking of an oath.

The role of an assistant patent agent is to be involved in the work of patent attorney; such work should help assistant patent attorneys prepare for the state exam to become a fully qualified patent attorney. There are certain access requirements for the profession of assistant patent agent: a university diploma (3 years), legal capacity, a clean criminal record, an employment contract with a patent attorney, and registration on the list of assistant patent agents at the Chamber for Patent Agents. Holders of diplomas from other Member States have to undergo an academic recognition procedure instead of recognition for professional purposes before being able to exercise this profession in Slovakia. Slovak legislation provides for the application of an academic recognition procedure in the case of access to non-regulated professions by foreign diploma holders.

There are no restrictions on fees and advertising. However, Regulation No 611/2004 of the Industrial Property Office regulates the methods for determining the remuneration to be agreed between the client and the patent agent, the conditions for determining the reimbursement of cash expenses and compensation for loss of time.

### Real estate agents

In 2017, the Commission made the following recommendations for the profession of real estate agent:

- evaluate to what extent the duration of mandatory qualification requirements is indispensable in view of the tasks pursued by estate agents and the objectives of regulation;
- remove the requirement for the holders of qualifications from other EU Member States to undergo a procedure for academic recognition of their diplomas.

Slovakia considers that the profession of real estate agent is not regulated; however, it defines the activities of 'brokering of the sale, lease and purchase of property' (real estate activities) as regulated trade. In its 2016 national action plan, Slovakia announced an assessment of the possibilities for regulating the profession of real estate agent. Voluntary certification was also under consideration.

Slovakia has not yet adopted a structural reform, but in 2020 it changed the requirements for accessing the profession for persons with secondary education (holding a school-leaving examination).

Slovakia's Law on trade lays down a number of requirements on access to/exercise of the activities of 'brokering of sale, lease and purchase of property (real estate activities)'. These are: (i) legal capacity; (ii) acquiring a trading licence, which results in automatic registration in the Trade Register; (iii) a university degree in economics, law, engineering or architecture or a complete secondary education with school-leaving examination; (iv) 2 years' experience in the field; and (v) a certificate of completion of an accredited educational programme issued

by an educational institution accredited by the Slovak Ministry of Education, Science, Research and Sports. Holders of diplomas from other EU Member States have to undergo an academic recognition procedure before being able to exercise these activities in Slovakia.

### Tourist guides

In 2017, the Commission made the following recommendation for the profession of tourist guide:

- consider the justification and proportionality of the regulation of the profession.

The profession of tourist guide remains regulated by way of reserves of activity.

The activities of tourist guide consist of accompanying and guiding tourists on cruises and sightseeing tours and presenting the cultural and natural heritage of a specific area. Both activities are reserved and are not shared with any another profession.

Access to the profession of tourist guide is subject to the following conditions: general or vocational secondary education, training of minimum 300 hours and an attestation of the competence obtained, after passing an exam, at the end of the training.

A tourist guide can exercise their activities as sole trader (natural person), or as an employee in any form of company under Slovak law. The Commission understands that there is no restriction in relation to the legal form.

No additional requirements have been reported, except the need for a trade licence.

There is an official price list for tourist guide services. A price reduction can only be granted in extraordinary and justified cases.

## I. Overview

By 26 February 2021, Slovenia had submitted information concerning 282 regulated professions in the Regulated Professions Database, a slight increase compared with the number reported in November 2016 (264 regulated professions). This is mainly because Slovenia has recently updated the missing information and outstanding notifications in the database. Of the professions subject to regulation, 32% concern health and social services, 12% public services and education, a further 12% transport and 11% business services.

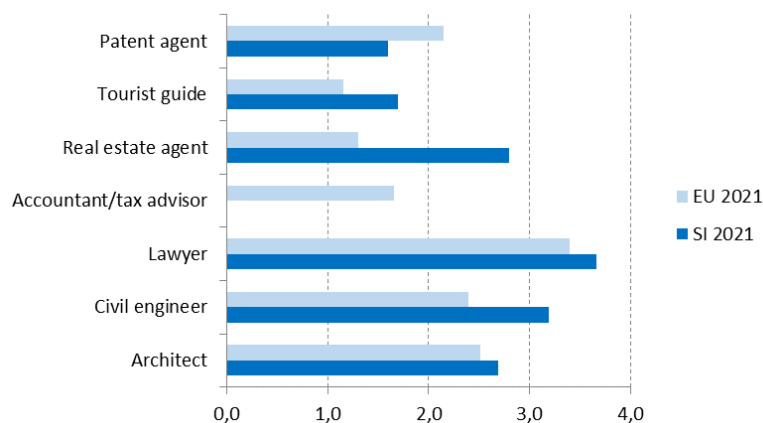
Slovenia is regularly updating the **database on regulated professions**. This database is an important source of information providing citizens and administrative authorities from other Member States with valuable data about the regulation of professions in a given Member State. Many notifications since 2017 concerned the previously missing proportionality assessments, prior checks for service provision and completion of other missing information. There were also numerous notifications due to changes in the legislation such as: (i) the introduction of obligatory continuous professional development (CPD); (ii) a re-licensing system for health-sector professions; and (iii) shortening of the mandatory training for several professions in this sector.

Many regulated professions analysed here have undergone regulatory changes in Slovenia since 2017, some in response to the Commission recommendations addressed to Slovenia in 2017. Regulatory rules governing the professions of engineer and architect changed in 2017, while those on tourist guides changed in 2018; the rules on the professions of lawyer and real estate agent changed in 2019 (for more details see the profession-specific sections below).

## II. Situation on the analysed professions

Regulatory restrictiveness in Slovenia is higher than the EU average for all of the professions analysed, except for patent agents and the non-regulated profession of accountant/tax adviser.

**Chart 1: Regulatory restrictiveness, Slovenia, 2021**



The following description of the situation for the different professions focuses on changes since the analysis published in 2017. However, to provide a complete and understandable picture, the description also restates part of the information described in 2017.

### Architects/engineers

In 2017, the Commission did not make any specific recommendations for the professions of architect and civil engineer in Slovenia.

Slovenia introduced regulatory changes to provisions governing the professions of engineer and architect in 2017.

Just as in 2016, Slovenia continues to regulate three professions in the category of architect: architect, landscape architect and spatial planner (*arhitekt, krajinski arhitekt, prostorski načrtovalec*). These three professions remain regulated by way of reserves of activities and title protection.

Regarding professions in the field of civil engineering, Slovenia used to regulate five professions: responsible project designer (*Odgovorni projektant*), responsible supervisor (*Odgovorni nadzornik*), responsible reviser of design documentation (*Odgovorni revident*), responsible building contractor (*Odgovorni vodja del*) and building site coordinator (*vodja del*). These were regulated by way of reserves of activities. Following the reform of 2017, Slovenia informed the Commission that it currently regulates the following professions in the category of civil engineer: chartered engineer (*Pooblaščeni inženir*) and building site coordinator/site engineer (*Vodja del*), with possibility for both professions to specialise in different fields. According to information from Slovenia, the current system relies on self-certification. Slovenia has also introduced title protection for both professions, in addition to reserves of activities.

The activities reserved for chartered architects broadly fall into the following activity categories:

- architectural design and planning, feasibility studies for buildings (exclusively reserved for chartered architects);
- examination of design and related documentation (partly shared with chartered engineers: architects examine the design and related documentation of buildings, while engineers examine the design and documentation for other structures);
- preparation/ submission/signing of technical control and compliance documentation (partly shared with chartered engineer: architects prepare/submit/sign technical control and compliance documents with regard to buildings, while civil engineers do the same for other civil engineering structures);
- construction cost management, monitoring of construction/execution (partly shared with chartered engineer – in their respective fields of specialisation);
- urban/territorial planning/design (mainly reserved for chartered spatial planners and only partly shared with chartered architects – chartered architects can only provide detailed spatial plans for municipalities/local authors);
- other: tender and contract administration (exclusively reserved for chartered architects).

The activities reserved for chartered landscape architects broadly fall into the following activity categories:

- preparation/submission/signing of technical control and compliance documentation, but only for plans in the field of landscape architecture (exclusively reserved for chartered landscape architects);
- landscape architecture (exclusively reserved for chartered landscape architects);
- examination of design and related documentation for landscape plans (shared with chartered architects);
- construction cost management, monitoring of construction/execution (shared with chartered architects and chartered engineers).

The activities reserved for chartered spatial planners broadly fall into the following activity categories:

- examination of design and related documentation (shared with chartered architects only in cases of detailed spatial plans for municipalities);
- correction/submission/signing of technical control and compliance documentation (shared with chartered architects);
- construction cost management, monitoring of construction/execution (shared with chartered architects);
- urban/ territorial planning/ design (shared with chartered architect).

The activities reserved for chartered engineers broadly fall into the following activity categories:

- design and planning, feasibility studies for civil engineering structure (exclusively reserved for chartered engineers);
- representation for obtaining permits for civil engineering structure (shared with chartered architects);
- project management, including monitoring of execution and construction cost management (shared with site engineers);
- management of constructions maintenance, including inspection (shared with chartered architects);
- managing work on the construction site (shared with site engineers).

The activities reserved for site engineers broadly fall into the following activity categories:

- project management, including monitoring of execution and construction cost management (shared with chartered engineers);
- management of constructions maintenance, including inspection (shared with chartered engineers);
- managing work on the construction site (shared with chartered engineers).

Access to the professions in the fields of architecture and engineering is subject to the following conditions: 5 years of university education (except for site engineers, for which 3 years of university training is required), 2 years of mandatory traineeship, and a state exam. The mandatory traineeship was shortened from 3 years to 2 years following the reform in 2017.

Registration with the relevant professional body remains compulsory for both architects and engineers.

In 2017, Slovenia introduced continuous professional training requirements for all the professions falling under the categories of architect/civil engineer, with the exception of site engineer. Training is validated with credit points; each year, both architects and engineers must collect at least 6 points. However, the rules on how these points are counted differ

between the two professional categories. For civil engineers, passive participation in training counts for maximum 5 points, while active participation (e.g. as a speaker) counts for twice as many points, but up to a maximum of 5; publication in a professional journal counts for 5 points. For architects, passive participation in training accounts for maximum 5 points while active participation (e.g. as a speaker) accounts for 1 point more than similar passive training; publication in a professional journal counts for 2 points.

Fees for continuous professional development are not specified. The training can be provided free of charge or for a fee; the fee can change depending on the training provider.

#### Accountants/tax advisers

The professions of accountant and tax adviser remain unregulated in Slovenia. There is an Accounting Service Chamber (ZRS), part of the Chamber of Commerce and Industry in Slovenia (GZS); membership of that body is voluntary. The chamber offers training courses at different professional associations in Slovenia.

Some associations of tax advisers exist in Slovenia solely on a voluntary basis; there is no obligatory membership or compulsory fees.

According to the information provided by the Slovenian authorities, there is no intention at present to regulate these professions.

#### Lawyers

In 2017, the Commission made the following recommendations for the professional category of lawyer:

to all Member States:

- clarify the scope of the reserved activities so as to facilitate the provision of legal consultancy services by lawyers or other service providers, in particular for online services;
- assess legal form and shareholding requirements, incompatibility rules and multidisciplinary restrictions, in particular taking into account the proportionality of these restrictions in relation to core principles, such as the independence of the profession, and to the corresponding supervisory arrangements.

specifically to Slovenia:

- remove the nationality requirement for EU nationals qualified in Slovenia.

Slovenia amended the Law on attorneys in 2019, ensuring compliance with EU law by removing the nationality requirement to access the profession. The removed requirement concerned holders of Slovenian qualifications, and did not affect EU nationals trained in other EU countries. No other regulatory changes of relevance for this report were made to the Law on attorneys on this occasion.

Access to the profession of attorney (*Odvetnik*) in Slovenia remains regulated by means of reserves of activities and title protection.

The reserved activities are the following: representation before courts, legal advice, drawing up legal documents and representation before administrative authorities. The first and last activities are partially shared with patent agents and with design and trademark agents; the second is shared with law graduates, while the third is partially shared with notaries and law graduates.

Access to the profession of attorney is subject to the following conditions: 5 years of university education in law in Slovenia or foreign qualifications recognised as equivalent, a state exam, plus 4 years of relevant work experience (of which at least 1 year after passing the state exam). If non-mandatory 2-year training is followed, it is equivalent to 2 years of professional experience.

Registration in the professional chamber is compulsory.

There is a general obligation of continuous professional development under the Code of Conduct of the Slovenian Bar.

Attorneys can exercise their profession as sole practitioners or in certain corporate forms including limited liability companies.

Only attorneys may be shareholders or owners of an attorneys' office established in Slovenia.

Several activities are incompatible with the profession of attorney. These include:

- employment in the civil service or as an employee (except for scientific, educational, artistic and publishing activities);
- notarial activities;
- performing managerial functions in a company with a corporate form not authorised for attorneys;
- performing other tasks which damage the reputation and independence of the legal profession.

In addition, the legislation requires an active command of the Slovenian language and having the necessary equipment and premises to practise.

While the Law on attorneys introduces only certain restrictions on advertising, there is an outright advertising ban under the Code of Conduct of the Slovenian Bar.

### Patent agents

In 2017, the Commission did not make any recommendations to Slovenia for the profession of patent agent. There have been no regulatory changes of relevance for this report since 2017.

Slovenia regulates two professions under the category of patent/trademark agent: industrial design and trademark agent and patent agent. They are both regulated by means of reserves of activity and title protection.

It seems that the only reserved activity is representation before the Slovenian Intellectual Property Office.



Industrial design and trademark agents represent parties in proceedings relating to the acquisition and maintenance of industrial designs, trademarks and geographical indications, and for other requests concerning those rights. This reserved activity is shared with patent agents and lawyers. Patent agents represent parties in proceedings relating to the acquisition and maintenance of any right under the Law on industrial property and for other requests concerning such rights. This reserved activity is only partially shared with industrial design and trademark agents.

Design and trademark representatives can be: (a) persons with a university degree who have passed the examination for design and trademark agent organised by the Slovenian Intellectual Property Office; (b) lawyers or law firms; (c) legal persons employing at least one person who fulfils the conditions under point (a).

Patent agents can be: (a) persons who have completed university studies in technology or science and have passed the qualifying examination for a patent agent organised by the Slovenian Intellectual Property Office; (b) lawyers or law firms employing on a regular or contractual basis a person who fulfils the conditions under point (a); (c) legal persons employing at least one person who fulfils the conditions under point (a).

Only those registered in the corresponding Register of Representatives maintained by the Slovenian Intellectual Property Office are authorised to act before the Slovenian Intellectual Property Office.

#### Real estate agents

In 2017, the Commission made the following recommendations for this profession to Slovenia:

- take into consideration the possibility of opening to other professionals the activities currently exclusively reserved to estate agents;
- reconsider its citizenship requirement for real estate agents.

Slovenia amended the Law on real estate agencies in 2019 and removed the Slovenian citizenship requirement for accessing the profession. There have been no further regulatory changes of relevance for this report since 2017.

The profession of real estate agent remains regulated by means of title protection and reserves of activities.

Real estate activities, known as ‘business brokerage’, are reserved for real estate companies and cover:

- establishing and facilitating contacts and negotiations with tenants and owners, and arranging the sale, purchase, rental and lease of real property;
- obtaining information about properties to be sold or leased, the circumstances of their owner and the needs of prospective buyers or tenants;
- showing properties to be sold or leased to prospective buyers or tenants and explaining terms of sale or conditions of rent or lease;
- arranging the signing of lease agreements and transfer of property rights.

These four activities are not shared with any other profession.

The activity of drawing up leasing and sale agreements is reserved for lawyers.

Each real estate company must have a contract (of employment or other) with at least one fully qualified estate agent and the principal business of the company must be carried out by these qualified professionals.

Access to the profession is possible either:

- i. upon acquiring a vocational qualification through either secondary vocational training (4 years), 3 years of professional experience, official endorsement by the responsible ministry, the passing of the state exam or validation of experience/skills; or
- ii. post-secondary vocational study of 2 years and the passing of the state exam or validation of experience/skills.

Registration in the Register of Estate Agents held by the competent ministry, for a fee, is mandatory.

Real estate agents are obliged to follow continuous professional training every 5 years or when legislation in the real estate field is amended (knowledge of the legislation is required under the state examination for real estate agents).

### Tourist guides

In 2017, the Commission made the following recommendations for the profession of tourist guide:

- consider the justification and proportionality of regulation of the profession;
- consider introducing a more precise definition of the reserved activities in view of the very wide or undefined scope of reserved activities.

Slovenia's regulatory provisions concerning tourist guides were amended in 2018.

Under the new provisions, the profession of tourist guide remains regulated but the access requirements have been eased.

The profession of tourist guide (*Turistični vodnik/vodič*) remains regulated by way of reserves of activities and title protection.

Previously, 4 years of vocational secondary-level education and knowledge of a foreign language were a precondition to take the state examination to become a tourist guide. These two preconditions were abolished in 2018; the requirement to take the state examination has been maintained.

The scope of activities reserved for tourist guides remains broad, consisting of guiding visitors on the basis of a predetermined programme.

The new provisions still: (i) give municipalities the possibility to lay down conditions for access to the profession of tourist guide for a given tourist area (*Turistični vodnik turističnega območja*); and (ii) ensure protection of the title 'tourist guide of the tourist area (area name)' for those who meet such conditions. At the same time, the law requires that any such conditions cannot be linked to the permanent residence of the tourist guide in the given area, and that municipal regulations must not restrict or exclude tourist management organised by

tourist guides qualified in Slovenia or foreign tourist guides established in other Member States who occasionally provide services in Slovenia. The activities reserved for the tourist guides of a tourist area are determined by municipalities, as was also the case before the reform.

The conditions for access to the profession of tourist guide for a particular tourist area are laid down by municipalities and can therefore differ from place to place.

Before the reform, municipalities usually required secondary-level education, knowledge of a foreign language and knowledge of the tourist area.

There is no obligation to have prior professional experience in order to practise the profession of tourist guide.

Finally, while there is still a requirement to obtain a licence in order to organise and sell tourist packages (i.e. bundled travel services), the qualification requirements (higher education and 3 years of professional experience) to obtain the licence were abolished in 2018.



## I. Overview

By 1 January 2021, Spain had submitted information about 186 regulated professions. Of those professions, 40.9% concern health and social services, 19.9% business services and 5.9% the construction sector. This is a slight increase compared with previously submitted figures.

According to a recent EU-wide survey<sup>122</sup>, 17% of Spain's labour force can be considered to be working in regulated professions. This is lower than the EU average (21%).

Spain is regularly updating the **database on regulated professions**. This database provides citizens and administrative authorities from other Member States with valuable information about the regulation of professions in a given Member State.

The Spanish **national action plan** adopted in 2016 covered only a limited number of professions: civil engineers (*ingenieros de caminos, canales y puertos*), architects, high voltage and low voltage installers/electricians, driving instructors, hairdressers, psychologists, physiotherapists, sport coaches, tourist guides and advanced experts in dental hygiene. On civil engineers and architects, Spain announced that it would 'narrow the scope of mandatory membership in the professional association (the adoption of the law covering this aspect has been on hold since 2013); simplify and rationalise the scope of reserved activities of more than 20 specialities of engineers; and introduce measures on insurance, continuous personal development and ethics'. On tourist guides, Spain intended to undertake a process of reflection (on a collaborative basis) about the proportionality of the measures/requirements imposed by the regions to access the activity of guide. However, it has failed to carry out any reforms in the meantime on these aspects.

In the European Semester, Spain has regularly received **country-specific recommendations** to improve coordination between different levels of governments and authorities as well as the need to ensure a thorough implementation of the law on market unity. The recommendations explain that the restrictiveness and fragmentation of regulation within Spain prevents firms from benefiting from economies of scale and holds back productivity. The law on market unity remains an important tool to address these issues.

Since 2016, Spain has received annual country-specific recommendations, in particular:

- in 2016, to accelerate the implementation of the law on market unity at regional level and adopt the planned reform on professional services and associations;
- in 2017, to ensure a thorough and timely implementation of the law on market unity for existing and forthcoming legislation;
- in 2018 and 2019, to further the implementation of the law on market unity by ensuring that, at all levels of government, rules governing access to and exercise of economic activities, notably for services, are in line with the principles of that law and by improving cooperation between administrative authorities;
- in 2020, the country-specific recommendation adopted aims amongst others to improve coordination between different levels of government.

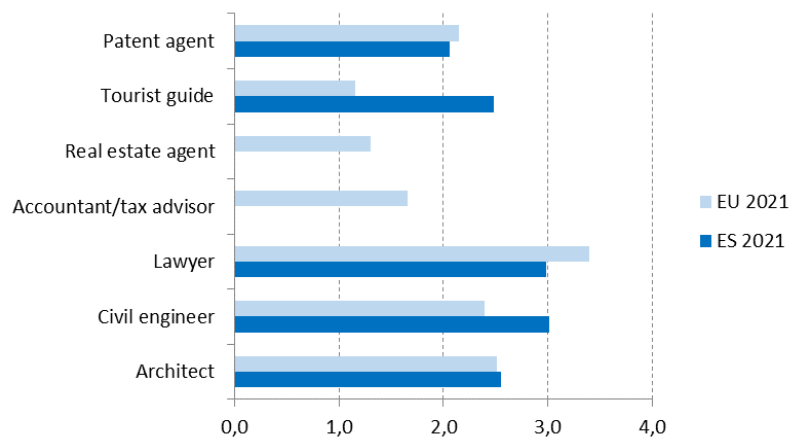
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<sup>122</sup> Koumenta M. and Pagliero M., (2016), *Measuring Prevalence and Labour Market Impacts of Occupational Regulation in the EU*. See: <https://ec.europa.eu/docsroom/documents/20362>.

## II. Situation on the analysed professions

Regulatory restrictiveness in Spain is higher than the EU average for the professions of civil engineer, architect and tourist guide. For lawyers and patent agents it is lower, while the professions of accountant/tax adviser and real estate agent are not regulated. Amongst the professions analysed, restrictiveness is highest for civil engineers and lawyers.

Chart 1: Regulatory restrictiveness, Spain, 2021



In Spain both the federal government and the 17 autonomous communities are entitled to regulate professional activities as Article 149(3) of the Spanish Constitution does not reserve this right exclusively to the federal government. As a result, certain professions are only regulated in some autonomous communities. In other autonomous communities the same activities might be carried out by anyone, or even if the activities are reserved the professionals concerned are not obliged to be members of a professional body.

In a large number of professions there is an obligation to be a member of the relevant professional body. Professional bodies play a key role in the regulation of these professions: they are public bodies to which the State delegates the power to control and self-regulate the professional activities (supervision of the professional register, disciplinary role, etc.). At the same time, they represent the interests of the professionals concerned.

The creation of a professional body must be established by a national or regional law and its scope of action is limited to a given geographical demarcation. With respect to professional bodies, the Omnibus Law that implements the Services Directive left the reform of reserves of activity and of mandatory membership requirements pending. However, this reform has never been adopted.

The following description of the situation for the different professions focuses on changes since the analysis published in 2017. However, to provide a complete and understandable picture, the description also restates part of the information described in 2017.

### Architects/engineers

In its recommendations, the Commission invited Spain to:

- reconsider the broad scope of reserved activities for architects and engineers;
- consider the impact of the shareholding and company form restrictions in place in addition to the other requirements for architects; and

- reassess the requirement to obtain an authorisation from the professional body for certain projects/works for engineers.

However, the country has failed to adopt reforms or carry out a review.

The professions of architect, technical architect, civil engineer and technical engineer in public works are regulated by way of reserves of activities and protected title based on the same law (at national level).

The activities reserved for architects broadly fall into the following activity categories: architectural design and planning, feasibility studies, construction cost management, monitoring of construction/execution, and preparation/submission/signing of technical control and compliance. The design and planning of specific-use buildings is reserved for architects. Technical architects are responsible for the qualitative and quantitative control of building construction as project execution supervisors, among other tasks. The activities reserved for engineers broadly fall into the following activity categories: design and planning, feasibility studies, representation for obtaining permits (signing designs), project management including monitoring of execution and construction cost management, and management of construction maintenance (including inspection). The reserves of activities are distributed depending on the type of construction and the role of the professional, according to their respective field of competence.

The length of training is 6 years for architects and engineers, and 4 years for technical engineers in public works and technical architects. The length of training for architects goes beyond the minimum standards of training for architects under the Professional Qualifications Directive, but Spain appears to correctly ensure recognition of architect qualifications from other Member States provided that they comply with the minimum standards of training under the Directive. It is mandatory to be a member of the professional body ('the Chamber') in order to access the profession. Authorisation ('*visado*') from the Chamber is necessary for all building works (e.g. building implementation projects, demolition of buildings, use of mining resources), including for temporary EU service providers.

There are no restrictions on the legal form of companies. They can be established provided that at least 50% of the shares are owned by qualified architects or engineers. The remaining shares can be held by other professionals or non-professionals.

Based on the information available, there are no additional certification schemes for architects/engineers concerning access to specific professional activities that would be subject to additional qualification requirements in Spain<sup>123</sup>.

#### Accountants/tax advisers

The profession is not regulated in Spain.

#### Lawyers

In Spain, two legal professions share the activities of legal advice and representation before the courts and administrative authorities: *abogado* (lawyer) and *procurador* (legal

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<sup>123</sup>For example, where additional education or experience or an exam would be required to pursue specific/specialised activities. This may concern activities such as construction supervision, energy certification, energy audits, expertise activities, activities related to special buildings (such as nuclear power plants, heritage sites).

representative). Both professions are regulated by way of reserves of activities and protected title.

In its recommendations, the Commission invited Spain to:

- issue clear guidelines and instructions on the registration of lawyers after the new qualification system entered into force;
- clarify the scope of the reserves so that lawyers or other service providers can provide legal consultancy services, in particular for online services;
- review the scope of the activities reserved for legal representatives, in particular whether certain activities can be shared with lawyers, such as technical representation or communication of documents to the courts;

Apart from a reform to be adopted on the exercise of the profession of *procurador*, the Commission is unaware of any specific follow-up to the recommendations made.

To practice, both *procuradores* and *abogados* require a bachelor's degree in law (4 years), plus an 18-month master's degree (theoretical and practical), followed by the successful completion of a state exam. The Spanish system was changed in 2006 and has been in force since 2011 (for *procuradores* since 2014).

A pending reform, prompted by Commission enforcement action to be adopted by Spain in 2021, will implement a single training pathway to access the profession of legal representative or lawyer. At the end of the training, applicants will have to choose between registering and practising as a lawyer or as a legal representative, and a lawyer cannot be a legal representative at the same time.

The activities reserved for lawyers cover the following: (i) drawing up legal documents (shared with notaries and patent agents); (ii) legal advice, including on tax matters (shared with different professionals such as labour law experts or economists); (iii) representing clients before courts, limited to the defence of clients in court (exclusive activity).

The activities reserved for legal representatives<sup>124</sup> constitute exclusive reserves of activities and can only be performed by them. They cover:

- a) 'technical' representation of a party before most courts in most procedures;
- b) communication of court acts to the party they represent and to the other parties, and of the parties to the court, both on paper and electronically;
- c) auxiliary enforcement acts of court orders and rulings in relation to seized assets.

As far as technical representation is concerned, this activity is shared with other professionals in some areas, such as *graduados sociales* (employment consultants) in labour matters. Lawyers have no access to these activities in civil and criminal procedures. In Spain, lawyers are members of a local bar association. There are a total of 83 bar associations and 70 legal representative associations in Spain. There is no quantitative restriction on the number of the lawyers in the country.

There are no restrictions on the legal form of companies. They can be established provided that at least 50% of the shares are owned by professionals. Lawyers can practise in professional companies with other liberal professions deemed compatible. The law currently prohibits lawyers from practising as and with legal representatives, employment consultants,

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<sup>124</sup> Articles 543(1) and (2) of the Judiciary Act state: '1. The parties in proceedings of any kind may be represented exclusively by *procuradores*, unless the law provides otherwise. 2. They may carry out communication acts to the parties of proceedings that the law allows.'

business agents, administrative managers, auditors, and notaries. With the pending reform to be adopted in 2021, Spain should open up the possibility for lawyers and legal representatives to practise within the same legal entity/professional company.

While lawyers are not subject to fixed, minimum or maximum fees, legal representative must respect minimum and maximum fees. With the reform to be adopted in 2021, Spain will abolish minimum fees for legal representatives and establish a system of remuneration ceilings, with a maximum overall amount of EUR 75 000 for the same legal case/proceeding (covering all instances).

### Patent agents

In 2017, the Commission did not issue any recommendations to Spain for the profession of patent agents.

In Spain, patent agents are not part of any list of mandatory professional associations, and there is no national law that regulates this profession in terms of mandatory professional association membership. Despite the removal of this requirement, passing various exams and tests and applying for registration in the Special Register of Patent Agents remains a compulsory requirement in order to access the regulated profession of patent agent.

The profession of patent agent remains regulated by way of reserved activities and protected title. The activity of counselling and representation before the Patent Office or other administrative authorities remains reserved for patent agents but is shared with lawyers.

Under Royal Decree 136/2021, it is not necessary to be part of the professional body in order to act as a patent agent as there is no national law with such a requirement.

### Real estate agents

In 2017, the Commission made the following recommendations for real estate agents:

- review existing regional regulations as they could lead to confusion on access to and exercise of this profession and could create obstacles to mobility.

The profession is considered not regulated by the Spanish authorities.

However, the profession is regulated in certain Spanish regions, for instance Catalonia, by way of reserves of activities and protected title. Regulations adopted in this region impose qualification requirements as well as an obligation for all real estate agents operating in the region to register.

### Tourist guides

In 2017, the Commission made the following recommendations for the profession of tourist guide:

- review access to the activity of tourist guides that currently differs between autonomous regions, limiting access to and exercise of the profession for established service providers as well as for those providing temporary services;
- ensure nationwide validity of authorisations.

The Commission is unaware of any reforms or other initiative that has taken into account or assessed its recommendations.

The profession remains regulated at regional level in most of the autonomous regions.



The length of training varies between a minimum of 690 hours (in Aragon) and a maximum of 2 000 hours (in most regions). No mandatory traineeship is required, but one needs to pass an exam at regional level. Certain regions require language skills (Spanish plus two other foreign languages are required for instance in Andalusia).

Two activities are considered to be reserved for tourist guides: accompanying and guiding visitors through specific places of interest such as museums, exhibitions, theme parks, factories and other industrial establishments, and interpreting the cultural and natural heritage of a specific area.

Territorial restrictions are in place for certain regions. This means that qualifications obtained in another region need to be recognised before the profession can be exercised. In all affected regions, professionals need to register with the regional authority.

## I. Overview

By 1 January 2021, Sweden had submitted information about 125 regulated professions. This increase of 37 professions is mostly the result of the mutual evaluation. Five professions were newly regulated. Two of them (*Djurvårdare nivå 2* and *Djurvårade nivå 3*) are regulated temporarily until 2023. Of the 125 regulated professions, 15.2% concern business services, 5.6% the construction sector and 0.8% the real estate sector.

According to an EU-wide survey from 2016<sup>125</sup>, 15% of Sweden's labour force can be considered to be working in regulated professions. This is lower than the EU average (21%).

Sweden regularly updates the **database on regulated professions**. This database provides the public and administrative authorities from other Member States with valuable information about the regulation of professions in a given Member State.

In its **national action plan** from 2016, Sweden announced very limited changes to the situation governing the professions of authorised/approved auditor (in compliance with EU audit package), driving instructor and electrical contractor. Overall, Sweden saw little need to adapt the current regulatory framework of the professions analysed here and has not made such changes since then.

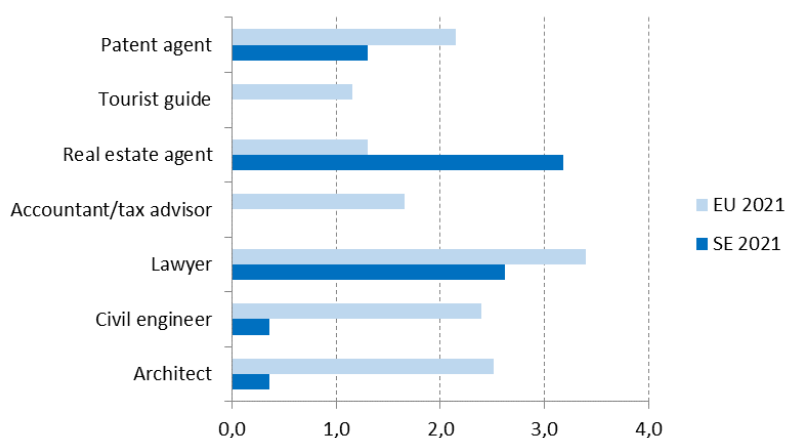
## II. Situation on the analysed professions

The level of regulatory restrictiveness in Sweden is higher than the EU average for the profession of real estate agent. Accountants/tax advisers and tourist guides are not regulated professions in Sweden. Architects and civil engineers have regulated training, but are not regulated professions in terms of the Professional Qualifications Directive.

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<sup>118</sup> Koumenta M. and M. Pagliero (2016), *Measuring Prevalence and Labour Market Impacts of Occupational Regulation in the EU*. See: <https://ec.europa.eu/docsroom/documents/20362>.

Chart 1: Regulatory restrictiveness, Sweden, 2021



The following description of the situation for the different professions focuses on changes since the analysis published in 2017. However, to provide a complete and understandable picture, the description also restates part of the information described in 2017.

### Architects

In 2017, the Commission made the following recommendation for architects:

- when making professional certification mandatory for non-regulated professions or relying on other checks and balances, especially on the provision of specific services, it should review the overall coherence and practical effects of this model to avoid it becoming a barrier for accessing the profession.

This recommendation has not resulted in any changes to the legislation and no information has been obtained that would indicate Sweden's intention to reconsider this regulatory approach.

The profession of architect is not regulated as such in Sweden. However, there are mandatory certification requirements for certain specialists and closely related activities are regulated.

Sweden sets no formal requirements for setting up practice as an architect. The architect education is a regulated education (a five-year, 300 ECTS, one-tier master's education programme). Four types of architects are defined according to the Swedish Association of Architects: 'traditional' architect (construction and renovation), physical planning, interior design and landscape design. There are also voluntary titles for these different types of architects granted and administered by the Swedish Association of Architects. In Sweden, the responsibility for location and design issues rests with municipalities, who have an obligation to hold qualified expertise in-house, and technical requirements are supervised via an independent system. The responsibility rests with the project client, who may be granted a building permit without involving an architect. When required, the client is responsible for appointing a certified quality control manager (*certifierad kontrollansvarig*) to ensure project compliance with the plans agreed with the municipality and with the applicable laws and regulations. The municipality can also require that different certified specialists (*certifierade sakkunniga*) are involved in the project, in addition to the quality control manager. The profession includes the following categories of certified specialists: fire protection,

ventilation, access for persons with disabilities/lifts and culture preservation. They constitute separate regulated professions.<sup>126</sup>

Consumer legislation protects consumers in the event of faulty or late service provision, including the services provided by an architect. The Consumer Services Act (*konsumenttjänstlagen*) contains consumer protection rules on contractual relationships applicable to the construction of housing. The Act on Contractual Terms in consumer relationships (*lagen om avtalsvillkor i konsumentförhållanden*) also protects the consumer if the contractual terms are ambiguous.

Based on the information available, there are no additional certification or attestation schemes for architects concerning access to specific professional activities that would be subject to additional qualification requirements in Sweden.

### Civil engineers

In 2017, the Commission made the following recommendation for the profession of civil engineer:

- when making professional certification mandatory for non-regulated professions or relying on other checks and balances, especially on the provision of specific services, it should review the overall coherence and practical effects of this model to avoid it becoming a barrier for accessing the profession.

This recommendation has not resulted in any changes to the legislation and no information has been obtained that would indicate Sweden's intention to reconsider this regulatory approach.

The profession of civil engineer is not regulated in Sweden. The civil engineering education is regulated and consists of a three-year (180 ECTS) bachelor's programme or/and a five-year, (300 ECTS) one-tier master's programme.

As for the architect profession, the client has the responsibility for ensuring that new constructions meet the applicable legal requirements. In addition to the building permit, most construction projects require an inspection plan, which must be approved by the municipality. In most cases, it is mandatory to involve other certified specialists, e.g. an independent certified 'quality control manager', or this can be required by the municipality. If an undertaking employing a civil engineer provides building services to a client, the client is protected by the Consumer Services Act. Sweden considers that this system, which involves the municipalities, a certified quality control manager and the consumer protection legislation, is sufficient to safeguard the public interest.

The legal requirements governing public constructions such as roads and bridges are somewhat different. In general, there are few requirements on professionals participating in the construction of a road or a bridge. However, where the state or the municipalities procure construction services for public construction projects, they generally require that the professionals participating in the project have certain competences. These competences are subdivided into different categories, depending on the complexity of the project.

There is no requirement for a building permit before commencing construction of a road or bridge etc. The project client has extensive responsibility for the construction and must carry

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<sup>126</sup> These specialists are separate regulated professions with different training backgrounds, requiring higher education of 3-5 years, mostly in engineering, in combination with related work experience.

out inspections on a regular basis to secure compliance with the legislation. The client is also obliged to follow an inspection plan issued by an independent quality control manager. In some areas, for example for the construction of road tunnels, the project must involve an accredited supervisory body. This requirement has been brought in to comply with EU legislation.

Consumer protection is ensured under the Consumer Services Act (*konsumenttjänstlagen*), which contains rules on contractual relationships applicable to the construction of housing. The Act on Contractual Terms in consumer relationships (*lagen om avtalsvillkor i konsumentförhållanden*) also protects the consumer if the contractual terms are ambiguous.

As briefly mentioned above, there are some regulated professions in the construction sector in Sweden that are complementary to the civil engineer and often come under the civil engineering profession in other Member States. For example, Sweden has the role of certified quality control manager (*certifierad kontrollansvarig*) who assists the developer in drafting an inspection plan, ensures that the inspection plan is followed and drafts a report to the developer and the building council. It also has the role of technical expert for the quality of construction projects (*Sakkunniga rörande kulturvärden*) who is in charge of ensuring compliance and preserving cultural values.

Based on the information available, Sweden does not impose additional certification or attestation schemes for civil engineers to gain access to specific professional activities or make them subject to additional qualification requirements.

#### Accountants/tax advisers

Sweden does not regulate the profession of accountant. Only the profession of statutory auditor is regulated, as required EU-wide by Article 6 of Directive 2006/43/EC<sup>127</sup>.

Members of the associations FAR (*Föreningen auktoriserade revisorer*) and Swedish Accounting and Payroll consultants (*Srf konsulterna*) may use the title of 'authorised accountant' issued by the association. It is voluntary and does not prevent anyone from accessing the profession. Use of the title requires holders to follow Sweden's accountancy standards (*Reko*), comply with the rules on ethics and go through regular quality checks organised by the association.

#### Lawyers

In 2016, the Commission made the following recommendation to all Member States reserving legal advice:

- clarify the scope of the reserves so as to facilitate the provision of legal consultancy services by lawyers or other service providers, in particular for online services.

The Commission also made the following recommendation to all Member States:

- assess legal form and shareholding requirements, incompatibility rules and multidisciplinary restrictions, in particular taking into account the proportionality of these restrictions in relation to the core principles, such as the independence of the

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<sup>127</sup> Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC, OJ L 157, 9.6.2006, p. 87.

profession and to the corresponding supervisory arrangements. In addition, consideration should be provided to the cumulative effect of such requirements to the extent that their effects might be accentuated in case of extensive reserves of activities (e.g. where legal advice is also part of the reserved activities).

These recommendations have not resulted in any changes to the legislation and no information has been obtained that would indicate Sweden's intention to reconsider the regulatory approach. The profession of advocate (*advokat*) is regulated by title protection and reserved activities. There is a reserved activity for public defence counsels, who in principle must be advocates and members of the Swedish Bar Association.

The education and training course to qualify as an advocate lasts 7.5 years. To qualify, lawyers must demonstrate three years of professional experience after having obtained a 4.5 year (270 ECTS) law degree and must become a member of the Swedish Bar Association. Members must pay an annual fee and maintain and develop their professional skills for at least 18 hours per year. Only advocates may become shareholder/member of the board/or partner of a Swedish firm of advocates. The Board of the Swedish Bar Association may grant exceptions, but the shareholding and voting rights are still limited to 10%. Advocates may only be employed by other advocates and they may not provide any other service that would prejudice their independence or be incompatible with their status, such as civil servant. Professional liability insurance is compulsory and is contracted by the Bar Association on behalf of its members.

Sweden does not set restrictions on tariffs and advertising is possible, provided that it is factual and complies with professional ethics.

### Patent agents

In Sweden, the profession of patent agent (*patentombud*) is currently regulated under the form of protected title without reserved activities. Access to the authorised patent agent is conditional upon completion of a specialised three-year post-secondary education programme after having completed a degree in the field of technology/science or law and having passed a written test. Prior professional experience of at least four years as assistant in patent law matters is necessary to access the protected title of authorised patent agent. Once authorised, patent agents have the duty to maintain and develop their professional skills in patent law. Sweden does not set specific restrictions on company forms, professional indemnity insurance, advertisements or fees.

In 2017, the Commission recommended that Sweden evaluate to what extent the duration of mandatory qualification requirements is indispensable, given the tasks carried out by patent agents and the objectives of the regulation. During a bilateral meeting in 2018, the Swedish authorities and the patent agent association explained the reasons for setting certain requirements, in particular the four years of practical experience. Most patent agents first sit the exam for patent agent at the European Patent Office (EPO), which requires three years of professional experience. Passing this test takes about a year. Once they pass this exam, patent agents sit an additional exam. Parts of the test for the EPO are recognised for Sweden's exam. Sweden typically organises the exam once a year, depending on the number of candidates. Organising this test is rather costly, about EUR 12 000, which is partly why it is not organised more often.

## Real estate agents

In 2017, the Commission gave Sweden the following recommendations:

- take into consideration the possibility of opening to other professionals the activities currently exclusively reserved to estate agents;
- evaluate to what extent the duration of mandatory qualification requirements is indispensable in view of the tasks pursued;
- consider the possibility of alternative pathways to access the profession.

These recommendations have not resulted in any changes to the legislation and no information has been obtained that would indicate Sweden's intention to review its regulatory approach. The profession of real estate agent remains regulated by reserved activities. There is no title protection. Some activities in this profession are shared with lawyers.

The Swedish authorities consider that real estate agents play a key role in real estate transactions in the absence of notaries or independent evaluators during this phase. Prior to 1984, there was a voluntary authorisation scheme for real estate agents. However, this proved insufficient to meet the objective of consumer protection, as only 30% of real estate agents chose to follow the voluntary authorisation scheme.

Qualified real estate agents make contact between the parties, show properties, facilitate the negotiations, draw up and arrange the signing of lease agreements and the transfer of property rights. To qualify as real estate agents, candidates must complete studies of 120 ECTS credits, including specific subjects, and must gain professional experience in the form of a 10-week traineeship. There are no other pathways to obtain the qualifications. Registration with the competent authority (Swedish Estate Agents Inspectorate) is mandatory, except for members of the Swedish Bar Association and for real estate agents that engage solely in certain transactions, such as municipal procurement of rental tenancies and the procurement of certain rental offices.

Sweden sets some restrictions for the joint exercise of the profession. The same company may not provide both property development and brokerage services and banking and insurance services must be clearly separated from those of real estate brokerage when they are provided by the same business group. Qualified real estate agents are obliged to hold professional indemnity insurance.

## Tourist guides

The profession of tourist guides remains unregulated in Sweden.

Legislation to protect consumers mainly cover risks related to the travel agency business; it is not directly aimed at protecting against damage that could be caused by tourist guides. Sweden's largest organisation of tourist guides "Sveguide" provides a framework for training for guides and a national certification for tourist guides.

#### **IV. Methodology of the restrictiveness indicator**



## IV.1. Overview

The restrictiveness indicator described below was developed by various European Commission services for the purposes of the Communication on reform recommendations for regulation in professional services adopted in 2017<sup>128</sup>.

The indicator measures the overall intensity of national regulation of access to and exercise of regulated professions, by combining information on different regulatory requirements into one figure per Member State and profession. It is therefore a composite indicator that takes into account many types of restrictions, from regulatory approach and qualification requirements to exercise restrictions such as limitations on multidisciplinary activities and corporate structures. The level of restrictiveness of every measure is first assessed and quantified separately and then combined into a weighted average, which allows a numerical representation of the cumulative regulatory burden of all these requirements taken together. As well as enabling cross-country comparisons, this also makes it easier to assess progress with national regulatory reforms over time.

The indicator is not the only attempt to quantify the level of regulation imposed on professional services. Since 1988, the OECD has been running the Product Market Regulation indicators (PMR) project, which analyses the regulatory situation in a wide range of economic sectors for its members. Although much larger in scope, it contains a sub-indicator which looks into the regulation of professional services, currently focusing on six professions: architects, civil engineers, lawyers, notaries, accountants and real estate agents. Detailed explanations on the methodological differences between the two indicators are provided below.

In 2017, the methodology for the restrictiveness indicator underwent a statistical audit by the European Commission's Joint Research Centre who concluded that the indicator was statistically coherent and robust, and provided a useful and efficient tool for condensing different aspects of national regulations<sup>129</sup>. The indicator was also assessed in a study for the European Parliament, which concluded that it 'can help to show that restrictiveness of professional services regulation tends to reduce the good functioning of markets and hence to reduce growth in the EU' and 'be a help in substantiating the debates and providing some uncomfortable truths'<sup>130</sup>. The study also points out that, while building on the OECD Product Market Regulation, the indicator presents the overall levels of restrictiveness in EU Member States in even greater detail, by including some additional aspects in the analysis.

Naturally, quantitative indicators should not be looked at or used in isolation. This information has to be read together with the qualitative assessment of the regulatory context for every profession in every Member State. Although the indicator takes into account the majority of restrictions affecting the professions analysed, it is not feasible to quantify non-regulatory barriers in this framework. The overall legal environment specific to each Member State may help to better understand significant differences in regulation for certain

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<sup>128</sup> COM(2016) 820 and SWD(2016) 436.

<sup>129</sup> JRC (2018): *Statistical Audit of the Restrictiveness Index for Seven Regulated Professions*. See: <https://ec.europa.eu/jrc/en/publication/jrc-statistical-audit-restrictiveness-index-seven-regulated-professions>

<sup>130</sup> Pelkmans J. (2017): *The New Restrictiveness Indicator for Professional Services: an Assessment. Study for the IMCO committee of the European Parliament*. See: [https://www.europarl.europa.eu/RegData/etudes/STUD/2017/607349/IPOL\\_STU\(2017\)607349\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/607349/IPOL_STU(2017)607349_EN.pdf)

professions between Member States. Last but not least, regulatory restrictiveness measures do not provide information on the necessity or proportionality of the requirements. As argued above, some regulation may be justified by legitimate reasons. However, an optimal level of regulation needs to be found, where regulation, while addressing market failures it intends to tackle, does not hamper the functioning of the respective markets.

## **IV.2. Data sources – Thorough review of national legislation validated by national authorities**

To update its analysis of the regulatory situation in every Member State for each of the seven professions under review, the Commission has relied on several sources.

Under Article 59 of the modernised Professional Qualifications Directive, Member States are required to provide up-to-date information about the professions they regulate, including information about the requirements restricting access to, or the pursuit of, such professional activities<sup>131</sup>. In addition, Member States need to communicate the reasons why they think these requirements are non-discriminatory, justified and proportionate<sup>132</sup>. All this information is made publicly available via the database of regulated professions<sup>133</sup>. The information is provided directly by national authorities - in most cases by the competent authorities for the respective professions - and validated by the national coordinator for the Professional Qualifications Directive. They are responsible for ensuring this information is kept up-to-date.

Furthermore, under Article 59(5) of the Professional Qualifications Directive, Member States are obliged to communicate any new or amended requirements no later than 6 months after their adoption. In addition, in line with Article 59(6) of the same directive, Member States are required to submit a report every 2 years explaining those requirements that have been removed or made less stringent.

The information submitted by Member States to the database of regulated professions and the biennial reports are the primary source of information for this analysis.

The Commission has verified the information submitted by Member States with the national legislation and has completed its own analysis when no or incomplete information had been given. Other sources, such as the database for the OECD Product Market Regulation (PMR) indicators 2018, have also been used to cross-check the data<sup>134</sup>.

The data collected through the database and the other sources were distributed to national authorities to check their accuracy for the first time in January 2021. A second validation process with Member States was conducted when the draft country analysis was sent to them for review in March 2021. Most Member States either confirmed the findings or completed and corrected any missing or incorrect information.

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<sup>131</sup> Directive 2005/36/EC as amended by Directive 2013/55/EU.

<sup>132</sup> A clear framework for this proportionality analysis is set out in the Proportionality Test Directive (2018/958/EU).

<sup>133</sup> See: <http://ec.europa.eu/growth/tools-databases/regprof/>

<sup>134</sup> See: <https://www.oecd.org/economy/reform/indicators-of-product-market-regulation/>

### IV.3. Professional activities under review

The following seven groups of professional services have been assessed in this exercise:

- Accountancy (including tax advisers but excluding the profession of statutory auditor);
- Architecture;
- Civil engineering;
- Legal services (Lawyer/Barrister/Solicitor);
- Patent agent / Trademark agent;
- Real estate agent /Real estate agency manager;
- Tourist guide (to be distinguished from travel agents or tour operators).

Each group, depending on the respective regulatory frameworks of the Member States, may include several professions. In order to cover these different realities, the analysis was undertaken on the basis of 'generic professions'<sup>135</sup>, which group specific regulated professions exercising all or some of the respective activities (listed below) in a given Member State. For example, activities defined under the generic profession of accountant are performed by four professions in Austria: *Personalbuchhalter* (payroll accountant), *Bilanzbuchhalter* (senior accountant), *Buchhalter* (certified accountant), *Steuerberater* (tax adviser). For each of the seven professional groups, the restrictiveness indicator considered all specific professions regulated at national level, which carry out one or more of the activities listed below.

The seven professional services under assessment cover the following activities:

<b>Accountancy</b>
Bookkeeping /Drawing up annual financial statements and consolidated financial statements for undertakings
Tax advice
Representation and assistance before administrative authorities (Tax authorities)
Payroll services
Others

<b>Architecture</b>
Architectural design and planning, feasibility studies
Examination of design and related documentation
Preparation/ submission/ signing of technical control and compliance /permit related documentation or certification of project and compliance with building legislation /

<sup>135</sup> A generic profession groups together all those professions regulated at national level with similar characteristics and activities exercised. In the database of regulated professions there are about 600 generic professions which group almost 6 000 professions regulated at national level.

standards of performance, quality, cost and safety
Construction cost management, monitoring of construction /execution including supervision of other related professionals/ inspection of execution
Urban/ territorial planning/ design
Landscape architecture
Interior design / preparation of documentation for interior decoration
Others

<b>Civil engineering</b>
Design and planning, feasibility studies
Representation for obtaining permits (signature of designs)
Tender and contract administration
Project management including monitoring of execution and construction cost management
Management of constructions maintenance (including inspection)
Others

<b>Legal services</b>
Representation of clients before courts ( <i>this covers cases where representation of clients before courts is reserved in general or only before some specific courts</i> )
Legal advice (including in tax matters)
Drawing up legal documents (such as contracts, real estate transactions and wills and preparing legal opinions)
Representation before administrative authorities (including tax authorities)
Fiduciary activities (e.g. acting on behalf of another person/persons to manage assets)
Notarial activities (e.g. administering oaths and certifying/authenticating legal documents, conveyancing, land registration, business incorporation)
Mediation
Insolvency practice
Others

<b>Patent agents</b>
Counselling and representation before the Patent Office or other administrative authorities
Drawing up legal documents in intellectual property matters
Representation before the courts in intellectual property matters
Others

<b>Real estate agents</b>
Establishing and facilitating contacts and negotiations with tenants and owners, arranging the sale, purchase, rental and lease of real property
Obtaining information about properties to be sold or leased, the circumstances of their owner and the needs of prospective buyers or tenants
Showing properties to be sold or leased to prospective buyers or tenants and explaining terms of sale or conditions of rent or lease
Drawing up leasing and sale agreements and estimating costs
Arranging signing of lease agreements and transfer of property rights
Others

<b>Tourist guides</b>
Accompanying and guiding tourists on cruises and sightseeing tours
Accompanying and guiding visitors through specific places of interest such as museums, exhibitions, theme parks, factories and other industrial establishments
Interpreting the cultural and natural heritage of a specific area
Others

For each of the seven professions, the list includes the field 'others' to allow other activities not included in the standard list - which nonetheless are reserved activities in the national legislation - to be taken into account. In this update, the lists for some of the professions (lawyers, patent agents and tourist guides) have been amended since 2017, based on information collected and Member States' feedback.

#### **IV.4. Regulatory requirements analysed**

The list of restrictions on the access to and exercise of regulated professions, identified by the Commission in 2017, remains pertinent and was therefore retained for this update. Namely, the following requirements, grouped into four categories based on their nature, were considered:

1. Regulatory approach
  - 1.1. Exclusive or shared reserved activities
  - 1.2. Protection of title
2. Qualification requirements
  - 2.1. Years of education and training
  - 2.2. Number of pathways to obtain qualifications
  - 2.3. Existence of mandatory professional traineeship
  - 2.4. Obligation to have professional experience to get full capacity

- 2.5. Existence of mandatory state/professional exam
- 2.6. Continuous professional development obligations
- 3. Other entry restrictions
  - 3.1. Compulsory membership or registration in professional body
  - 3.2. Limitation on the number of licences granted
  - 3.3. Restrictions on territorial validity of the professional qualification
  - 3.4. Age restriction
  - 3.5. Other authorisation requirements
- 4. Exercise requirements
  - 4.1. Restriction on corporate form/ type of entity
  - 4.2. Shareholding requirements
  - 4.3. Voting rights control
  - 4.4. Prohibitions on joint exercise of professions
  - 4.5. Incompatibilities of activities for a professional
  - 4.6. Professional indemnity insurance
  - 4.7. Tariff restrictions
  - 4.8. Restrictions on advertising

Each of the restrictions is explained in more detail below.

## **1. Regulatory approach**

### **1.1 Exclusive or shared reserved activities**

'Reserved activities' are activities that only holders of a specific professional qualification can exercise. In other words, these are activities for which these professionals enjoy a sectoral monopoly. In some cases these activities can also be performed by other regulated professions, in which case they are classified as 'shared' as opposed to 'exclusive' reserved activities.

For each of the analysed professions, (cf. Section 3 for the lists of activities) Member States indicated which of the activities from a pre-defined list they reserve to that profession, and whether or not they are shared with other professions. If necessary, Member States could also introduce additional reserved activities not included in the list.

The score is based on the number of reserved activities compared to the total number of activities predefined for each generic profession. The higher the number, the more restrictive the regulation is considered to be. A reduction is applied for each activity that is shared with one or several other professions that are not part of that generic profession. Where the reserves only apply to a specific mode of pursuit, i.e. only to managers or self-employed, the score is also reduced.

## 1.2 Protection of title

Title protection refers to the situation where a professional can only use a particular title if they have obtained a specific professional qualification. A name can become a professional title only if public authorities define the conditions for conferring it, either directly, or by giving a particular body (in particular a professional organisation) the power to do so, and if they protect that name by imposing sanctions or other measures when it is used improperly. The involvement of the State in the determination of the way in which the title is conferred is decisive.

A professional title may or may not be combined with reserved activities. In the latter case, anyone can access and exercise the activity concerned but cannot use the protected title unless the conditions for using it are met. Regulating a profession by way of protecting the title alone is considered less restrictive compared to regulating by means of reserves of activities. In situations where reserved activities are in place, introducing a rule to restrict the use of the title adds to the overall intensity of regulation.

## **2. Qualification requirements**

### 2.1 Years of education and training

In this category, the number of years necessary to obtain the academic qualification is measured. This includes any period of mandatory training included in the curriculum to obtain the qualification. The higher the number of years necessary to obtain the qualification, the more restrictive the regulation is considered to be.

### 2.2 Number of pathways to obtain qualifications

This variable measures how flexible the system is to obtain the required qualifications. The more possibilities (pathways) there are, the less restrictive the system is considered. For example, if for a given profession it is possible to obtain the qualification by going through a vocational post-secondary programme, which has to be supplemented either by professional experience and periods of training, or by the passing of a test, this will be considered as less restrictive compared to a situation where the vocational post-secondary programme is the only route to obtaining the qualification.

### 2.3 Existence of mandatory professional traineeship

This variable captures whether or not there is an obligation for future professionals to complete a supervised traineeship after graduation before being granted access to the profession.

### 2.4 Obligation to have prior professional experience to get full capacity

For certain professions in certain Member States, there is an obligation to possess professional experience of a minimum duration in order to be authorised to access a profession and exercise the related activities. Often the distinction between a mandatory traineeship and prior professional experience is unclear but the requirement is only counted once in the indicator, either as a mandatory traineeship or as prior professional experience.

### 2.5 Existence of mandatory state or professional exam to access the profession

This captures the obligation to pass an additional state/professional exam to access a profession. It concerns those exams that are not part of the 'academic' mandatory education programme and that take place only after graduation.

## 2.6 Continuous professional development

Often professionals are required to follow a specific number of hours of training over a given period. The intensity of the restriction is linked to the length of the training, the period over which it has to be completed and the cost for professionals.

## **3. Other entry requirements**

### 3.1 Compulsory membership/registration in professional bodies

Professional Chambers and Professional Orders are a common model of professional organisation and supervision. Specific powers may be entrusted to them by the State.

Member States may require professionals to be certified by and registered with specific professional organisations (e.g. Bar Associations, Chambers of Architects, Chambers of Engineers, Medical Associations, etc.) prior to being allowed to work in the profession. Continuous membership may also be a condition for exercising the profession, which can be expressed through an annual renewal of the relevant professional licence to exercise.

Chambers may have the power to supervise compliance with professional conduct rules and to impose disciplinary sanctions for infringements. They can impose continuous learning obligations on their members and provide specific services to them (e.g. arrange group professional liability insurance cover and develop and offer access to professional databases). Membership may also be dependent upon the payment of fees, the amount of which may vary substantially.

In cases where the registration with a professional body or state registry is only a formality and is not associated with specific obligations and significant fees, a limited score is attributed. Situations where membership of the professional body is associated with substantial entry and/or annual fees, and specific conduct rules or other types of obligations are imposed on the professionals, are considered more restrictive.

### 3.2 Limitation on the number of licences granted

Regulation which limits the number of professionals that can enter and/or exercise a profession is considered restrictive.

### 3.3 Restrictions on territorial validity

This concerns situations where the law limits the authorisation to practise to a given geographical territory within the same country (e.g. in one region but not in others). The impact in terms of restrictiveness can however be reduced by the presence of equivalence or mutual recognition clauses in the national law.

### 3.4 Age restriction

This category covers those rules that require a professional to be older (or younger) than a certain age in order to access and exercise the profession. General statutory pension age rules are not considered in this context.

### 3.5 Other authorisation requirements

There may be additional authorisation requirements, either at the level of access, i.e. before you can practise or use the title as an individual professional, or at the level of exercise, i.e. when, for specific activities within the profession you might need to get an authorisation (for example you can practise as an engineer but to be able to work on certain types of electrical infrastructures that make up part of the national grid you need a specific authorisation).



Authorisations may be contingent on fulfilling a number of conditions, above and beyond the required 'basic' professional qualifications. Examples include financial standing, language knowledge, oath, compliance with business premises requirements, additional attestation or certification schemes to perform specific activities.

In this assessment, the Commission looked more closely at certification or attestation schemes that impose additional requirements (including supplementary professional experience requirements) before a professional is allowed to perform certain specific activities. While opening up certain professional activities to one or more regulated professions with less stringent requirements might also have positive effects, unjustified fragmentation of access to professional activities may cause unnecessary confusion and create disproportionate costs linked to the need to obtain multiple authorisations.

This variable was scored on the basis of the number of additional authorisation requirements present as well as the perceived heaviness of these additional procedures/requirements.

#### **4. Exercise requirements**

##### 4.1 Restriction on corporate form/type of entity

This variable captures the presence of any restrictions on the legal form a company may take. A distinction is made between the following cases: there is no restriction on the company form; it is possible to exercise the profession in a corporate structure with limited liability; it is not possible to exercise the profession in a corporate structure with limited liability; and finally, the profession can only be exercised as a sole practitioner.

##### 4.2 Shareholding requirements

Shareholding restrictions are present when the law imposes a minimum percentage of the shares to be held by professionals with the required qualifications. The higher the percentage that is required, the more restrictive the situation.

##### 4.3 Voting rights / management control

This variable looks at whether the law imposes that a minimum percentage of voters be qualified professionals. The higher the percentage required, the more restrictive.

##### 4.4 Joint exercise of professions

National laws may prohibit the joint exercise of different professional activities to avoid conflicts of interest. This may include an explicit ban on the joint exercise with all or certain other activities or professions, or a more general provision excluding joint exercise where this would create problems for the independence or impartiality of the professionals. Scores differ depending on whether the restriction takes the form of a general conflict of interest clause, the prohibition of some specific activities or a total ban of any other activities.

##### 4.5 Incompatibilities of activities for a professional

This concerns rules that forbid a professional from exercising certain activities alongside their professional duties. Again, scores differ depending on whether the restriction takes the form of a total ban on exercising additional activities, a ban on some types of activities or a general conflict of interest rule.

##### 4.6 Professional indemnity insurance

This point covers the requirement for a professional to take out professional indemnity insurance and includes response options yes/no.

#### 4.7 Tariff restrictions

For some professions, state regulation or self-regulation by the profession (e.g. via a code of conduct) sets out rules on the level of the fees or prices that a professional may charge to the services recipient. A distinction is made between the following situations: no regulation, non-binding recommended prices for some services, non-binding recommended prices for all services, binding maximum prices for some services, binding minimum prices or fixed prices for some services, binding maximum prices for all services, and binding minimum prices or fixed prices for all services.

#### 4.8 Restrictions on advertising

This variable looks at whether there are any restrictions on advertising, either in terms of the specific media used or the allowed content of commercial communication. Scores differ depending on whether advertising is restricted to some extent (but going beyond a mere prohibition on false or misleading advertising) or completely forbidden.

### **IV.5. Quantification of regulation – Scoring system**

To arrive at a composite quantitative assessment per profession and Member State, numerical values ('scores') on a scale from zero to six were attributed to every regulatory requirement analysed. These values represent the level of restrictiveness and hence the barrier to the profession – the higher the score, the more restrictive the regulation is considered to be. For each restriction, the possible results can be either binary (yes/no) - which results in a score of six or zero respectively, or include intermediate values (for example, zero, two, four or six, e.g. for the restrictions on corporate forms). All professions in all countries were scored using the same methodology.

These individual scores were then combined into a weighted average to arrive to a composite score per profession and Member State. The weights used for the calculation of the total scores were set to reflect the relative importance of each of the restrictions for the overall conditions of access to and exercise of a regulated profession. This assessment of the relative importance of requirements was based on the Commission's experience attained through analysing legislation and case law, and discussions with Member States and representatives of the professions. Specific weights were assigned to each regulatory requirements as presented in Table 1.

**Table 1. Weights assigned to regulatory requirements in the restrictiveness indicator.**

<b>REGULATORY APPROACH</b>	
Exclusive or shared reserved activities	22%
Protection of title	8%
<i>Total for category</i>	30%
<b>QUALIFICATION REQUIREMENTS</b>	
Years of education and training	6%
Number of pathways to obtain qualifications	4%
Existence of mandatory professional traineeship	2%
Obligation to have professional experience to get full capacity	2%
Existence of mandatory state/professional exam	2%
Continuous professional development obligations	2%
<i>Total for category</i>	18%
<b>OTHER ENTRY RESTRICTIONS</b>	
Compulsory membership or registration in professional body	5%
Limitation on the number of licences granted	4%
Restrictions on territorial validity of the professional qualification	3%
Age restriction	2%
Other authorisation requirements	6%
<i>Total for category</i>	20%
<b>EXERCISE REQUIREMENTS</b>	
Restriction on corporate form/ type of entity	4%
Shareholding requirements	4%
Voting rights control	2%
Prohibitions on joint exercise of professions	3%
Incompatibilities of activities for a professional	3%
Professional indemnity insurance	6%
Tariff restrictions	7%
Restrictions on advertising	3%
<i>Total for category</i>	32%
<b>TOTAL</b>	<b>100%</b>

## IV.6. Comparability with the OECD PMR indicators for professional services

The OECD Product Market Regulation (PMR) and the European Commission's restrictiveness indicator for professional services (EC indicator) are built on the same principles. Both indicators measure the overall restrictiveness of regulation for entry and exercise of certain professions on a scale from zero to six. Both are 'de jure' indicators as they measure regulatory restrictiveness according to the requirements as provided for in national legislation. They take into account similar sets of regulatory restrictions. Historically, while the EC indicator largely builds on the methodology developed for the OECD PMR, the PMR has in turn been recently adapted and brought closer to the EC indicator by including additional professions and regulatory restrictions in the analysis.

The main remaining differences between the two indicators are:

1. *Choice of professions.* The OECD PMR analyses six professions (lawyer, accountant, architect, civil engineer, notary and estate agent). The EC indicator covers seven professions (lawyer, accountant, architect/tax adviser, civil engineer, patent agent, real estate agent and tourist guide). In case of multiple specific professions in each professional group (e.g. different types of accountants), the PMR looks at only one profession chosen on the basis of consultations with Member States. The EC indicator takes a broader view and considers the average restrictiveness of several regulated professions exercising the same set of activities.
2. *Regulation at regional level.* For federal countries, where matters are regulated at the state or regional level, the PMR takes into account the situation in one region selected as being 'representative' in consultation with Member States. The EC indicator either chooses the most restrictively regulated region or, where appropriate and feasible, evaluates the overall level of restrictiveness e.g. by taking an average.
3. *Specific restrictions analysed.* The sets of restrictions analysed by the two indicators are similar but not identical (as presented in Table 2). For instance, the EC indicator is more detailed as regards the restrictions related to qualification requirements. On the other hand, specific types of requirements such as restrictions on foreign entry are taken into account by the PMR but not in the EC indicator, which is explained by the relative importance of such restrictions for the non-EU OECD members.
4. *Weighting of restrictions.* While both indicators are composite, meaning that the scores on various restrictions are combined into a weighted average to obtain an overall score from zero to six per profession and country, an important difference between the two lies in the weights assigned to individual restrictions. While in the OECD PMR indicator all restrictions within the same category (entry or conduct) are given the same weight, the EC indicator applies a system of weights aiming to reflect the relative importance of specific requirements.
5. *Underlying data.* The OECD PMR indicator builds on the data provided by the competent national authorities via questionnaires. The EC indicator extensively uses the information from the EU database of regulated professions, where the data are provided by Member States. This information is cross-checked and amended by the Commission's internal experts based on the direct analysis of national legislation. The collected information is then submitted for verification and validation by the national competent authorities.

6. *Reference time point.* The OECD PMR indicator exists since 1988 and is updated every 5 years. The latest PMR results refer to the regulatory situation in 2018. The EC indicator was first produced in 2016 and updated in 2021.

The different reference time points, combined with certain methodological differences, as outlined above, may lead in some cases to noticeable divergences between the results of the two indicators.

**Table 2. Restrictions taken into account by the EC and the OECD indicators.**

<b>EC restrictiveness indicator</b>	<b>OECD PMR questionnaire</b>
Exclusive or shared reserved activities	Do professionals have exclusive or shared exclusive rights to provide certain activities?
Protection of the title	Is the professional title protected by the law?
Years of education and training	Total number of years of undergraduate and additional education and of compulsory practice
Number of pathways to obtain qualifications	How many pathways are there to obtain the qualifications to legally practise the profession?
Existence of mandatory traineeship	
Obligation to have professional experience to get full capacity	
Existence of mandatory state exam	Is there a requirement to pass one or more professional examination in order to legally practise the profession or to obtain the professional title when this is protected by the law?
Continuous professional development obligations	
Compulsory membership or registration in professional body	Is it compulsory to be a member of a professional organisation for an individual in order to legally practise the profession or to obtain the professional title when this is protected by the law?
Limitation to the number of licences granted	Is the number of professionals allowed to practise in your country limited by law or self-regulation by professional bodies (or a combination of the two)?
Restrictions on territorial validity of the professional qualification	Are there territorial restrictions to the ability of professionals to practise within your jurisdiction, imposed by law or self-regulation by professional bodies (or a combination of the two)?
Age restriction	
Restriction on corporate forms	Are there restrictions on the legal form of business that a professional firm can take?
Shareholding requirements	Can non-professionals have ownership-type interest in a firm?
Voting rights control	Can non-professionals have voting rights in a firm?
Prohibitions on joint exercise of professions	Is there regulation on inter-professional cooperation?
Incompatibilities of activities for a professional	
Professional indemnity insurance	
Other authorisation requirements	
Tariff restrictions	Are the fees or prices that a profession charges regulated by the government or self-regulated?
Restrictions on advertising and marketing	Is there regulation on advertising and marketing by the profession?