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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

{SWD(2021) 185 final}

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I. Regulation of professional services: the broader context

In January 2017, the Commission issued recommendations to the Member States on national reforms for regulation in professional services.[1] The aim of the recommendations was to encourage and assist Member States in creating a regulatory environment conducive to growth, innovation and job creation. However, progress on reforms of professional regulation in the EU has been rather disappointing in recent years. Despite the potential positive economic impacts that the reforms could generate, only a handful of Member States took action to remove disproportionate regulation. Even then, the reforms were often only prompted by infringement procedures. Some Member States even tightened the regulatory environment for certain professions. This corresponds with the analysis made in the Annual Single Market Report 2021 of a single market for services that continues to be held back by unjustified and unnecessary barriers.[2] Hence, four years after the recommendations were adopted, and against the backdrop of an EU economy severely shaken by the COVID-19 pandemic, now is the right time to take stock of action on regulation in professional services. This is fully in line with the recently adopted Communication on "Updating the 2020 New Industrial Strategy",[3] which stresses the urgency of improving the single market for services as an important lever for competitiveness and resilience of the EU economy. It therefore complements the actions envisaged in the mentioned Communication for a better functioning single market in the area of services. As announced in the enforcement action plan of March 2020, the current Communication provides an update to the 2017 recommendations for regulation in professional services.[4]

Economic context

The unprecedented shock to the EU economy caused by the COVID-19 pandemic requires a response on all fronts to achieve a successful economic rebound. Along with other measures, effective and impactful structural reforms in the services sector could give a boost to the economic recovery and help make it sustainable. Services play a major part in the EU economy, not only in terms of their direct contribution to value added and employment, but also via links throughout the value chains and their vital role in industrial ecosystems. Regulated professional services are omnipresent in the economy and are part of many sectors such as construction, mobility, health, tourism, public services and education.[5] They

[1] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on reform recommendations for regulation in professional services, COM(2016) 820, accompanied by SWD(2016) 436.

[2] SWD(2021) 351, Annual Single Market Report 2021, accompanying COM(2021)350, "Updating the 2020 New Industrial Strategy: Building a stronger Single Market for Europe's recovery".

[3] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Updating the 2020 New Industrial Strategy: Building a Stronger Single Market for Europe's Recovery, COM(2021) 350.

[4] Long-term action plan for better implementation and enforcement of single market rules, COM(2020) 94 final.

[5] See: https://ec.europa.eu/growth/tools-databases/regprof/.

increasingly participate in the production of goods in the context of what has been termed the 'servicification' of the economy.[6] Thus, dynamic, resilient and well-functioning service markets can provide a strong basis for the performance of the rest of the economy.

In particular, business services,[7] many of which are regulated professional services, contribute around 13% to EU gross value added and almost 14% to EU employment.[8] In addition to this direct contribution, they provide important input to the rest of the economy, both domestically and cross-border.[9] Being mostly defined as knowledge-intensive, these services make a significant contribution to innovation and research.

As clearly demonstrated during the pandemic, digital innovation plays an essential and increasing role in service provision and thus deserves a special focus in work on regulatory fitness. Evidence shows that, although digital automation in the business services sector has the potential to transform the whole business model, from access to markets to the automation of repetitive tasks, this is not yet the reality for most service providers in the EU.[10] The emergence of new digital services thus requires rethinking the current regulatory frameworks with a view to making them more conducive to the innovative services needed.

Empirical evidence confirms that excessive market regulation can significantly undermine economic performance. By contrast, opening markets to competition can boost productivity, innovation and entrepreneurship, ultimately leading to better economic outcomes. For instance, a recent study demonstrates that implementing the Commission's 2017 reform recommendations in only four business services sectors (legal, accounting, architectural and engineering) could generate a gain in GDP of over EUR 14 billion and could create over 50 000 more jobs in 12 EU Member States over three years; a significant gain given the almost negligible public cost of these reforms.[11] The positive impacts of reforms would emerge through improving productivity, lowering price levels and increasing final consumption.

Regulatory context

The regulation of professional services is a shared competence between the Member States and the EU, and therefore joint action is required to make regulation fit for purpose. 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, with the numbers varying greatly by country.[12] Based on an EU-wide survey, around 22% of the

[6] 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. For instance, Copenhagen Economics estimates that between 25% and 60% of employment in manufacturing firms relates to service functions and around 14 million service jobs are embedded in EU goods exports (Copenhagen Economics, 2018: Making EU trade in services work for all). See: https://www.copenhageneconomics.com/publications/publication/making-eu-trade-in-services-work-for-all.

[7] 'Business services' are sectors that support companies with a range of activities such as legal, accounting or engineering services. While regulated professional services are present in many other parts of the economy, most of the professions covered in this communication belong to the business services sector.

[8] Eurostat, 2017.

[9] For illustration, around 5% of total input in construction in the EU is provided by architectural and engineering services (Eurostat, 2019).

[10] Consortium led by Prometeia SpA (2021): *The impact of regulatory environment on digital automation in professional services*. Study for the European Commission. The study covers architectural, engineering, legal and accounting services in 12 Member States (BE, HR, FR, DE, IE, IT, NL, PL, PT, RO, ES, SE). See: https://data.europa.eu/doi/10.2873/310173.

[11] Idem.

[12] 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' subject to regulation. Each generic profession typically encompasses many more specific professions, which brings the number of regulated professions in the EU to almost 6 000.

European labour force, or over 47 million citizens, is directly affected by professional regulation.[13]

Indeed, many of the service professions are traditionally highly regulated. In market economies, regulation is justified when the aim is to correct market failures caused, for instance, by significant externalities or major information asymmetries. Ideally, these market corrections should be achieved in the least restrictive manner and at a minimum possible cost to market participants. However, regulatory restrictions can often be set above the necessary minimum, for example if influenced by the vested interests of the professional groups.

An analysis of regulatory restrictions for the economically important professions that are the focus of this communication shows significant barriers to market entry and exercise of these professions, and a wide range of regulatory approaches taken across Member States. These restrictions span different aspects of access to and exercise of professional services, ranging from reserved activities and protected professional titles to requirements on legal forms, shareholding or insurance. The cumulative effects of the requirements in restricting the markets for professional services can be significant. A recent report 'Business Journey on the Single Market: Practical Obstacles and Barriers' cites access to and exercise of regulated professions as some of the strong and persisting obstacles for businesses in the single market.[14]

Professions in focus

As in the 2017 reform recommendations, this communication focuses on several economically important groups of professions: architects, civil engineers, accountants, lawyers, patent agents, real estate agents and tourist guides. The focus is on these groups of professions due to their economic importance, their role in innovation and their contribution to vital economic ecosystems, as well as due to the potential gains from reforming regulations in these sectors. They belong to four key broader industries: 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. They make an even greater indirect contribution in terms of the key inputs to other economic sectors, such as construction. Over 50% of European companies in the architectural and engineering sector are considered 'innovative enterprises'. *Legal and accounting sectors* together contribute 3% to overall employment in the EU and the same percentage to overall EU gross value added, and likewise provide vital services to other economic sectors.

As for *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 and on social and cultural aspects. *Patent agents* were chosen due to their vital role in innovation and development, as intellectual property rights such as patents, trademarks and industrial designs are indispensable in many industries. *Real estate* activities form a major part of the economy as a whole and play an important role in most sectors, with impacts on individual businesses and citizens as well.

[13] Koumenta M. and M. Pagliero, 2016: Measuring Prevalence and Labour Market Impacts of Occupational Regulation in the EU. See: https://ec.europa.eu/growth/content/measuring-prevalence-and-labour-market-impacts-occupational-regulation-eu_en.
[14] SWD(2020) 54.

Progress on regulatory reforms

In its 2017 reform recommendations, the Commission proposed specific areas of regulation in selected professional services that would benefit from regulatory improvements.[15] The aim was to assist Member States in better targeting their regulatory reforms and achieving the highest economic payoffs from the reforms, and to provide additional political support needed to implement the reforms. Reforms in professional services have also repeatedly been included in the European Semester country-specific recommendations issued to a number of Member States.

Despite the clear economic benefits associated with easing the regulatory restrictions on the market for services, in general, progress across a broad range of service sectors has been almost non-existent over the last years (Chart 1).

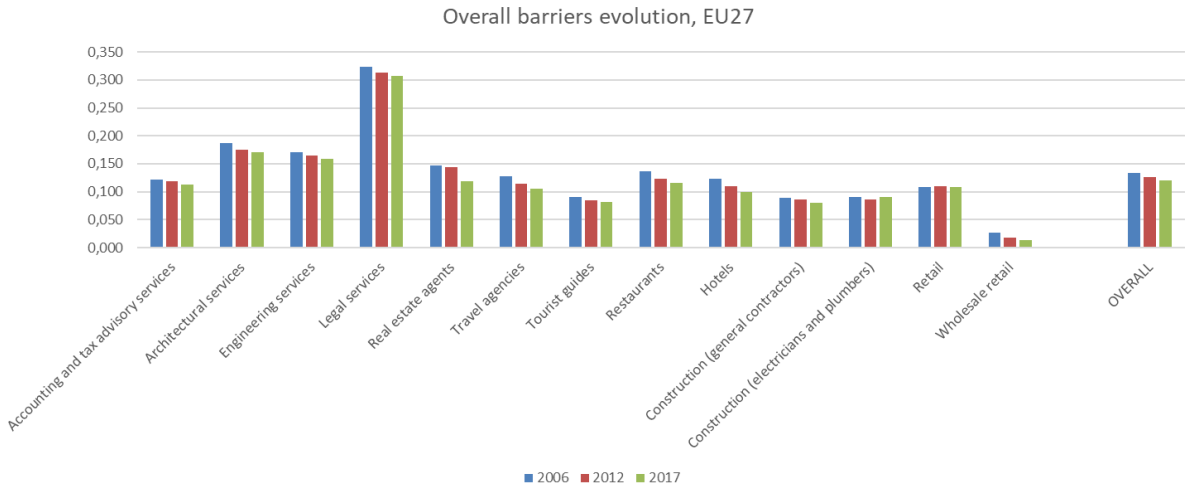


Chart 1. Market barriers in the EU-27, 2006-2017. Regulatory restrictiveness is measured on a scale from 0 to 1. Source: *Mapping and Assessment of Legal and Administrative Barriers in the Services Sector*, a study for the European Commission See: https://data.europa.eu/doi/10.2873/690757.

This situation applies also to the professional services' sectors analysed. Since 2017, only a handful of EU countries adopted reforms to liberalise professional services (in many cases as a result of infringement proceedings). Overall, the reforms only partially addressed the Commission's recommendations, with the result that there remains significant room for further regulatory improvements in most Member States.

By contrast, a number of Member States have recently tightened their regulations of certain professions. For instance, two Member States have started regulating the profession of real estate agent (with a regulatory initiative pending in one more country), which was previously unregulated in these countries. A number of Member States have brought in restrictions on certain aspects of entry and exercise of legal, architectural and engineering services (details below).

[15] COM/2016/820.

Restrictiveness indicator for regulation in professional services

As in 2017, this update of the reform recommendations is based on a thorough assessment of the national regulatory frameworks applicable to the seven professions in focus. In addition to a detailed qualitative analysis, the overall restrictiveness of national regulation is estimated using a composite indicator, developed in 2017 to assess the cumulative burden of multiple regulatory requirements.[16]

The indicator provides a quantitative basis for benchmarking the Member States' regulatory frameworks for the seven professions by measuring their restrictiveness on a scale from zero (least restrictive) to six (most restrictive). It follows a broadly similar methodology as the 2018 edition of the OECD Product Market Regulation (PMR) indicators. The types of regulatory requirements covered by the indicator remained unchanged since 2017, including:

(1) regulatory approach: activities reserved to holders of specific qualifications, protection of title;

(2) qualification requirements: years of education and training, mandatory state exam, continuous professional development obligations, etc.;

(3) other entry requirements: compulsory membership or registration in professional body, limit to the number of licences granted, other authorisation requirements, etc.;

(4) exercise requirements: restrictions on forms of company, shareholding and voting requirements, restrictions on joint exercise of professions, incompatible activities, etc.

In 2017, the methodology used to generate the restrictiveness indicator underwent a statistical audit by the European Commission's Joint Research Centre, which concluded that the indicator was statistically coherent and robust, and provided a useful and efficient tool for condensing different aspects of national regulations.[17] 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".[18] The study also points out that, though it builds on the OECD PMR methodology, the indicator presents the overall levels of restrictiveness in the EU Member States in even greater detail, by including some additional aspects in the analysis.

The Member State-specific results on regulatory restrictiveness for each of the seven professions are presented below. While these results provide a useful indication of the overall regulatory restrictiveness and of the potential for regulatory improvements, they should not be used in isolation from the qualitative assessment of national regulatory contexts. Neither should they be interpreted as a judgement on the proportionality or appropriateness of regulation. Rather, this should be a starting point for the further comprehensive analysis, where qualitative and quantitative approaches complement each other.

II. Analysis by profession

The following sections describe the regulations of the different professional services analysed. The concepts and (national) terminology as well as the organisation and scope of activities in

[16] For methodological details, see the related staff working document.
[17] 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
[18] 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.

the professions often differ between Member States. The analysis takes account of these differences and looks at the services covered in a given sector rather than national definitions of each profession.

The following assessment is mainly based on:

- information provided by the Member States in the regulated professions database;
- additional research by the Commission into national legislation.

The analysis also takes into account complaints or other feedback from stakeholders on the restrictions they face. This information has been checked and discussed with Member States on several occasions.

Each analysis contains a graph illustrating the restrictiveness indicator. This should be read in conjunction with the descriptive analysis provided for each profession. The aim of the indicator is to capture the relative intensity of the regulations governing each of the professions in every Member State. Non-regulatory barriers are not included in the indicator but they are mentioned in the qualitative description, where possible and where information is available to the Commission. The recommendations are based mostly on the broader qualitative analysis and therefore the scores provided by the indicator may not correlate exactly with the reform recommendations.

Based on these recommendations, Member States should reassess and reconsider the restrictions imposed on service providers and the regulations governing the selected professional sectors. In particular, they should consider the cumulative effect of having multiple layers of regulatory measures.

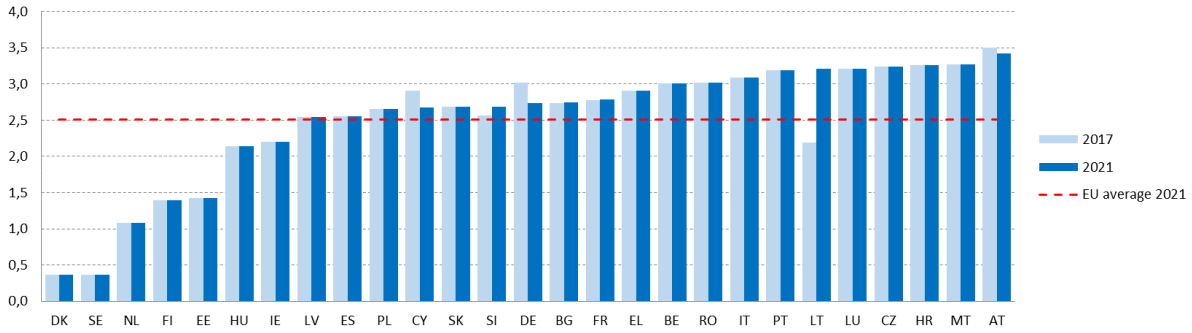
II.1. Architects

Although most EU Member States regulate the profession of architect in such a way that it qualifies for automatic recognition under the Professional Qualifications Directive, there remain significant differences in the approach taken. Several countries assign the architecture activities to one regulated profession (e.g. **Austria**, **Belgium**, **Bulgaria**, **Greece**, **France**, **Hungary**, **Ireland**, **Luxembourg**, **Malta**), while others take a more fragmented approach to regulation (e.g. **Poland**, **Lithuania**, **Latvia**) with different activities reserved to closely related professions (e.g. architectural technologists, landscape architects, urban planners, interior architects) or carried out by more specialised/certified specialists (e.g.. architects with additional attestations for specific fields of construction). **Denmark**, **Estonia**, **Finland** and **Sweden** do not regulate the profession *stricto sensu* but regulate specific modes of pursuit or use other forms of checks of competence specific to the construction sector.

In 2017, the Commission made a number of recommendations for the profession of architects, in particular regarding the wide scope of reserved activities, the impact of shareholding, company form and multidisciplinary activity restrictions, and the effects of fragmented regulatory systems / multiple certification requirements.

Based on the information available, the Member States have carried out several reforms since 2017, but with rather limited levels of ambition. In a few instances, the reforms resulted in tighter regulatory requirements.

Chart 2. Restrictiveness indicator: Architects[19]



Source: European Commission, 2021.

Chart 2 shows the relative position of Member States in terms of restrictiveness in the access to and exercise of the profession of architect, according to the updated restrictiveness indicator developed by the Commission. Compared to 2017, the indicator was slightly revised to better capture the scope of activities reserved to architects and the existence of additional certification/attestation schemes, which make access to specific activities subject to additional authorisation requirements.

The qualification requirements for architects were recently amended in a few Member States to reflect the minimum training requirements upgraded by Directive 2013/55/EU, for example in **Cyprus**, **Lithuania** and **Slovenia**. **Lithuania** also brought in title protection, continuous professional development obligations and mandatory membership with a professional body for attested architects.[20] **Slovenia** slightly reduced the training requirements, but brought in mandatory professional development obligations. **Latvia** reduced the professional experience requirements for architects that are subject to additional certification procedures.

The situation in countries that do not regulate the profession *stricto sensu* but rather regulate specific modes of pursuit or use other checks of competence specific to the construction environment (**Denmark**, **Estonia**, **Finland** and **Sweden)** did not change much. The Commission has not noted any meaningful change in the legislation since it issued the 2017 recommendation to 'non-regulating' Member States to review this model to avoid it becoming a barrier and is not aware of any reflection carried out on the issue. The information available to the Commission confirms the initial findings that the differences between the two models may be less significant than they might appear where 'non-regulating' countries use certification of competences of architects, ad hoc or case-by-case evaluation of competences in order to provide specific services (e.g. submit plans or building permits). For instance, in **Finland,** the authorities decide on the qualifications of lead, building and special designers on a case-by-case basis in the process of granting construction permits. In addition to checks for building permits, **Sweden** regulates the activities of certain certified specialists (for fire safety, ventilation, access for people with disabilities, culture preservation), building site coordinators and technical experts. **Estonia** initiated a reform to simplify the detailed certification rules for 'lead specialists'[21], but the reforms did not bring substantive changes to the access conditions.

The greatest differences between Member States can be seen in the reserved activities. Architectural design and planning activities, preparation, submission and signing of technical

[19] The indicator shows the overall degree of regulatory restrictiveness on a scale from 0 (least restrictive) to 6 (most restrictive). The 2017 scores were recalculated to take into account methodological adjustments and new information received from Member States.

[20] I.e. architects subject to additional attestation procedures in order to carry out specific activities.

[21] In Estonia, any company that wishes to provide services in the sectors 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 'lead specialist' for that particular field.

control and compliance documentation, typically are reserved to qualified architects in all countries that regulate the profession. Many countries also reserve to architects activities in the construction sector on cost management and construction monitoring. Other services, such as landscape architecture, urban, territorial planning and interior design are reserved to architects to varying degrees across EU Member States. A few countries reserve only specific services, e.g. **Germany** reserves only the service of submitting documents for building permit applications, and **Austria** exclusively reserves the service to draw up public documents. When countries reserve certain professional activities like this, they tend to be shared with related professions, particularly civil engineers or neighbouring professions, such as landscape architects, urban planners, spatial planners and interior designers.

The Commission notes that very few changes appear to have been made in response to the 2017 recommendations regarding the wide scope of activities reserved to architects. For instance, **Portugal** opened up the reserved service to apply for building project approval, which is now open to engineers, and it announced further reforms. Similarly, **Croatia** deregulated the activity of interior design and made it open to all.[22]

Another major difference between Member States identified in 2017 was the existence of 'unitary' versus 'fragmented' systems. Member States with a unitary system allow architects to provide a broad range of services, while in other Member States, competences and/or responsibilities are spread over different categories of professionals. In this communication, the Commission looked more closely at whether the profession is fragmented by assessing any requirements for additional certification or attestation schemes for architects in order to provide specific professional services (including additional professional experience requirements).

Based on the available information, the analysis found a fragmentation of the architect profession to varying degrees in several countries (e.g. **Latvia**, **Lithuania**, **Poland**). In **Latvia,** to acquire an independent right to exercise the profession, the applicant is required to obtain a certificate for independent practice in addition to the general mandatory education requirements. Although **Latvia** slightly reduced the number of specialties for construction specialists in response to the 2017 recommendations, it still has a high number of certification requirements[23]. The Commission found that, as of 2017, **Lithuania** increased the level of fragmentation by increasing the number of activities subject to additional attestations for architects for 'structures of non-exceptional significance'. **Poland** reports four types of architects[24] and allows further specialisations of a technical-construction nature. Based on the available information, there is also fragmentation, though to a lesser degree, in **Slovakia**, **Romania**, **Croatia**, **Slovenia**, **Cyprus**, **Netherlands**, and **Portugal**.

Although opening up certain professional activities to one or more regulated professions with less stringent regulatory requirements may also have positive effects, as reported in 2017, fragmentation in the conditions set to access different activities remains an important factor to consider in regulating the profession, as it may cause unnecessary confusion and the need to seek multiple levels of authorisation. In particular, the Commission regrets the limited action taken by Member States to reduce fragmentation in the range of activities that are subject to additional requirements. The Commission also calls upon those Member States to reconsider

[22] Croatia has also abolished the chamber membership requirement for site managers. According to the Croatian authorities, the residency requirement has also been removed.
[23] 76 certifiable fields of activities in the construction sector, of which 16 activities are in the area of design.
[24] Architects with full license; architects with a building license in the speciality of structure and construction, architects with a building license in the speciality of architecture; technical architects with a building license in the speciality of architecture.

the proportionality of regulation in fragmented systems. In particular, they should assess the efficiency of systems in spreading responsibility over different categories of professionals in the same area of activity, and the burden created by the need to obtain multiple certifications for activities that are closely related.

The Commission found that more progress has been made with regard to reforms on shareholding requirements. At least two countries, **Austria** and **Cyprus,** reduced their shareholding and company form restrictions following judgments by the Court of Justice.

On 29 July 2019, the European Court of Justice (ECJ) issued a ruling in case *C-209/18 Commission v. Austria* concerning, among other points, the requirements for engineers/architects specialised as civil engineers. The ECJ found that the (former) law on engineers/architects infringed European law, including by setting restrictive conditions for shareholders[25] and by limiting multidisciplinary activities of engineers/architects civil engineers. In June 2019, a new law entered into force in **Austria** amending the rules on legal form and shareholding requirements. While previously only certain forms of company were authorised to set up professional legal entities, the new law authorises all legal forms of company. It also opened up the rules on share ownership, which can be held not only by architectural/civil engineering firms or natural persons, but also by architecture/engineering companies established in another EU/EEA Member State or in Switzerland.

In addition, the 2017 recommendations invited **Austria** to revise the exclusive scope of the activity of architectural firms (the provision of architecture services) which significantly limits the scope to exercise this profession along with other professions. Although the 2019 reforms did not take up this recommendation, the new law is expected to be adopted in the first half of 2021 to take account of the judgment of the Court on this matter.[26]

The Commission also notes the progress made by **Cyprus** in reducing the shareholding requirements. Although previously shareholding in architectural companies was fully reserved to members of the Cyprus Scientific and Technical Chamber (ETEK), the amendments adopted in 2017 in response to the infringement proceedings reduced the requirements to at least 51%. By contrast, the Commission regrets that **Malta** still has the 100% shareholding requirement, despite the 2017 recommendations to reduce this requirement.

Despite announcements in its 2016 national action plan, **Germany** has not made progress in harmonising its shareholding/voting requirements nationwide.

The situation regarding mandatory professional insurance requirements remains unchanged since 2017.

There are rules on tariffs in seven countries, mostly in the form of recommended prices for all or some services (**Croatia, Germany**, **Italy**, **Luxembourg, Malta, Poland** and **Slovenia**).

On this point, the Commission notes the progress made by Germany to implement the ECJ judgment in case C-377/17 *Commission v. Germany*, as Germany has amended its tariff restrictions applicable to architects and engineers. The new rules that entered into force on 1 January 2021 maintained a list of tariff ranges, but clarified that these could be used as basis

[25] Under the former law, only natural persons and civil engineering companies could 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 managers and representatives of the company.

[26] The ECJ ruled 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*".

for prices agreed between contracting parties and parties could choose not to follow the list, by written agreement. **Bulgaria** prohibits prices for providing design services at below cost.

Nine countries maintain light advertising restrictions that are limited to a ban on advertising that is comparative in nature or not in line with professional ethics.

Recommendations

Member States with a wide scope of reserved activities should reassess the impact of these restrictions.

Austria, Belgium, Czechia, France, Germany, Italy, Romania, Slovakia, Spain and **Portugal** should consider the impact of the shareholding and/or company form restrictions they have, in addition to other requirements.

Austria should assess the proportionality of the restrictions it sets on multidisciplinary activities (pending adoption of the new law in response to the ECJ judgment).

Malta needs to review the requirement that 100% of the shares of a company must be held by professionals.

Member States with a fragmented system governing the profession or multiple certification requirements, like **Latvia, Lithuania** or **Poland**, should reassess the impact of this system on the free movement of professionals and whether potential obstacles can be justified.

Member States that make professional certification mandatory for non-regulated professions or that use other forms of checks and balances, especially for the provision of specific services, should review the overall coherence and practical effects of this requirement to avoid it becoming a barrier to access to the profession.

Lithuania is invited to review and communicate the specific reasons for considering that attestations for 'structures of non-exceptional significance' are necessary and proportionate.

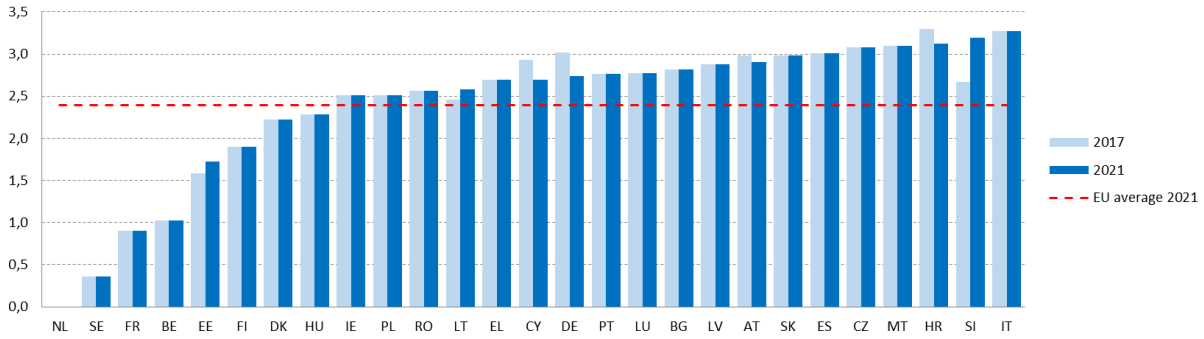
II.2. Civil engineers

The overall situation in the regulation of the profession of civil engineer is broadly the same in 2021 as it was in 2017. As reported in 2017, there are many similarities across Member States, in particular in the way they pursue the same general interests when regulating the profession. However, the regulatory approach still varies from one Member State to another.

Although most Member States consider regulating the profession to be necessary to ensure the quality and safety of civil engineering services, Member States such as the **Netherlands** or **Sweden** have found other ways than regulating the profession *stricto sensu* to ensure quality or meet the objectives to safeguard the general interest.

However, differences between the two approaches may be less significant than might appear where countries that do not regulate the profession in the usual sense, for instance **Finland** and **Sweden**, use certification of competences of civil engineers or an ad hoc evaluation of competences or experience on a case-by-case basis as a condition for engineers to provide specific services (e.g. submission of building plans or applications for permits). This is why in 2017, the Commission recommended to 'non-regulating' Member States to review this model to avoid it becoming a barrier for exercising these activities. The Commission has not noted any change in the legislation of 'non-regulating' countries in response to this recommendation and is not aware of any consultations carried out on the matter.

Chart 3. Restrictiveness indicator: civil engineers[27]



Source: European Commission, 2021.

Chart 3 shows the relative position of Member States in terms of the level of restrictiveness to access and exercise the profession of civil engineer, according to the new restrictiveness indicator. Since 2017, the indicator was slightly revised to better capture additional certification/attestation schemes, which make access to specific activities subject to additional authorisation requirements.

Another major difference between Member States identified in 2017 was the existence of 'unitary' versus 'fragmented' systems. Member States with a unitary system allow civil engineers to carry out a broad range of services, while in other Member States, competences and/or responsibilities are spread over different categories of engineers.

This latter 'fragmented' approach is taken, to varying degrees, in **Croatia**, **Czechia**, **Greece**, **Hungary**, **Ireland**, **Italy**, **Latvia**, **Lithuania**, **Luxembourg**, **Poland**, **Portugal**, **Romania**, **Slovenia**, **Slovakia**, and **Spain**. For instance, in **Romania** there are four regulated professions in the category civil engineer and there are six in **Poland**.

In 2017, the Commission recommended to Member States with fragmented systems governing the profession or with multiple layers of requirements depending on the specific activity, like **Latvia**, to assess the impacts of their systems on the free movement of professionals and whether potential obstacles could be justified.

Latvia had a particularly fragmented system, with many different specialties and about 80 types of certifications required for civil engineers in a range of services. In 2017, **Latvia** carried out a reform, which resulted in removing a number of specialties of civil engineer (building civil engineer, transport construction civil engineer, heat and gas technology civil engineer, water technology civil engineer, hydrotechnic construction civil engineer); these activities now come under the list of services reserved to civil engineers. At the same time, Latvia repealed the regulatory requirements for construction technician, building surveyor, and hydrographer. However, despite these reforms, multiple certification requirements in this sector remain in **Latvia** (76 counted).

Following a reform in 2017, **Slovenia** reduced the number of specialties in the field of civil engineering from five to two (chartered engineer and building site coordinator) but brought in other requirements (such as title protection for both professions and mandatory continued professional development for chartered engineers).

Lithuania made the legislation more stringent by requiring a specific attestation for 'structures of non-exceptional significance'. **Lithuania** claims that, based on past experience, this is necessary to protect public interest objectives. **Lithuania** has committed to

[27] The indicator shows the overall degree of regulatory restrictiveness on a scale from 0 (least restrictive) to 6 (most restrictive). The 2017 scores were recalculated to take into account methodological adjustments and new information received from Member States.

communicate further details on the specific reasons for considering why such requirements are necessary and proportionate.

In view of the above, the Commission regrets the limited action taken on this front. While opening up certain professional activities to one or more regulated professions with less stringent regulatory requirements may also have positive effects, as reported in 2017, the combination of unitary and fragmented systems can make access to these activities difficult and complex and can create barriers to the free movement of civil engineers. Questions arise also with regard to the proportionality of regulation in fragmented systems, notably where a range of activities is subject to additional requirements. In particular, Member States should assess the efficiency of systems that spread responsibility over different categories of professionals in the same area of activity (e.g. those who are responsible for design, others who are responsible for construction, and others still responsible for supervision or for small structures versus significant structures), and the burden created by the need to obtain multiple certifications for services that are closely related.

Differences in the organisation of the profession are also reflected in the reserved activities, which vary by country. In general, Member States mainly reserve design and construction services. In 2017, the Commission recommended to Member States that have a particularly wide scope of reserved activities such as **Austria**, **Czechia**, **Italy**, **Malta**, **Poland**, **Portugal**, **Romania** and **Spain** to reconsider their scope. **Malta** was invited to clarify which activities are reserved to the '*Periti*'. **Spain** was also invited to reassess the requirement to obtain authorisation from the professional organisation for certain projects/engineering works.

However, none of these Member States have revised their regulations. **Portugal** restricted even more access to reserved activities, although the Portuguese Competition Authority had proposed reducing the range of reserved activities while maintaining the quality and the safety standards. **Portugal** almost completely removed the acquired rights of engineers whose diplomas are listed in Annex VI to Directive 2005/36/EC to carry out architectural projects. This restriction triggered enforcement action by the Commission and remains unresolved.

More progress was made on shareholding requirements in the engineering profession. In 2017, the Commission recommended to **Cyprus** and **Malta** to review the requirement that 100% of the shares of a company must be held by professionals. The Commission also invited **Austria**, **Germany** and **Slovakia** to assess the proportionality of their shareholding requirements and, for **Austria**, the restrictions on multidisciplinary activities.

Shareholding limitations that go beyond requiring a simple majority of shares in a company to be held by members of the profession, were found by the European Court of Justice to breach EU law in case C-209/18 concerning, among others, shareholding and limitations of multidisciplinary activities for civil engineers in **Austria**. Further to this Court judgment, **Austria** amended its legislation to allow the use of any legal form of company. The percentage of shares that must be held by professionals is limited to a simple majority, while the remaining shares may now be owned by any other natural person or by civil engineering companies established either in **Austria** or in another Member State. A further opening of these rules as well as the removal of restrictions on multidisciplinary activities is expected under a new law due to be adopted in the first half of 2021.

Although the judgment was addressed to **Austria**, the Court of Justice laid down general principles that also apply to other Member States. Therefore, all Member States should examine their legislation in the light of this case.

Cyprus also made progress in reducing the percentage of shares that must be held by professionals who are members of the Cypriot chamber of engineers from 100% to 51%.

However, in **Malta** the situation remains unchanged. 100% of a company's shares must still be held by professionals. In **Italy** too, the number of professional members and their participation in the share capital must constitute a two-thirds majority for decisions by the shareholders (66.66%).

In 2017, some 14 Member States required membership with a professional organisation and 16 Member States made it mandatory to hold professional indemnity insurance; this remains the same in 2021.

Since the reforms in **Germany** regarding fixed fees for architects and engineers (the 'HOAI') following enforcement action and an ECJ judgment, there are no longer mandatory tariffs. **Bulgaria** prohibits prices for design services at below cost. Comparative advertising is banned in **Cyprus**, **Greece**, **Italy** and **Portugal**. In 2021, **Croatia** removed the total ban on advertising for engineers.

Recommendations

Member States with a wide scope of reserved activities should reconsider the impact of these restrictions.

Malta should clarify which activities are reserved to the '*Periti*'.

Spain should reassess the requirement to obtain authorisation from the professional organisation for certain projects/works.

Malta needs to review the requirement that 100% of a company's shares must be held by professionals. **Italy** needs to review the requirement that the number of professional members and their participation in the share capital must constitute a two-thirds majority.

Member States that make professional certification mandatory for non-regulated professions or that use other checks, especially for the provision of specific engineering services, should review the overall coherence and practical effects of these requirements to avoid it becoming a barrier for access to the profession.

Member States with a fragmented system of the profession or that set multiple requirements depending on the specific activities, such as **Latvia**, should assess the impact of this system on the free movement of professionals and whether potential obstacles can be justified. They should also assess the efficiency and proportionality of rules spreading responsibility over different categories of professionals in the same area of activity. **Lithuania** is invited to review and communicate the specific reasons for considering that attestations for 'structures of non-exceptional significance' are necessary and proportionate.

II.3. Accountants and tax advisers

Accounting/tax advice is performed by a particularly diverse group of professions, including accountants, certified accountants and tax advisers, with stark differences between Member States in terms of how these professions are organised and regulated. One or more professions in this sector are regulated in 19 Member States, either:

- by way of reserved activities and protected titles (**Austria, Belgium, Croatia France, Germany, Greece, Italy, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia**);
- by reserved activities (**Bulgaria**, **Czechia**, **Hungary**, **Ireland**); or

- by protecting the professional title only (the **Netherlands**).

In nine Member States (**Cyprus**, **Denmark**, **Estonia**, **Finland**, **Lithuania**, **Latvia**, **Slovenia, Spain** and **Sweden)**, none of the professions in the field are directly regulated. Other Member States generally justify regulating the sector by the role tax advisers/accountants play in all tax systems in assisting consumers, companies and taxpayers in meeting their tax obligations.

In 2017, the Commission made a number of recommendations applicable to the professions of accountants and tax advisers. They focused on the approach of reserving less complex or routine tasks solely to highly qualified professionals, e.g. payroll activities or the preparation of standard tax declarations, as well as on a broad range of reserved activities. The Commission also urged individual Member States to remove residency requirements and to reassess the proportionality of setting shareholding requirements and incompatibility rules.

Based on the information available, only a few reforms have been adopted since 2017. The Commission regrets the limited uptake of the recommendations for the professions of accountants and tax advisers, despite the potential for the reforms to have a positive impact on competitiveness and on openness to innovation.

Digitalisation in the services sector has created opportunities for new innovative business models. Accounting and tax advice services have a significant potential to capitalise on this development. IT tools and algorithms to support professional activities not only reduce costs but also reduce the complexity of a range of tasks. Reserving such tasks, and generally less complex or mechanical tasks, only to highly qualified professionals would therefore merit reassessment. The regulatory landscape across the EU should be adapted to allow for easy uptake, the development of digital solutions and the creation of innovative and user-centric business models to allow consumers and businesses to benefit from current and future developments.

Broadly speaking, the reforms that took place since 2017 were limited in their level of ambition and partly triggered by the obligation to implement judgments issued by the CJEU.

Germany amended its rules for tax advisers to implement the judgment in case C-342/14, but did not follow up on recommendations on reserved activities and shareholding restrictions.

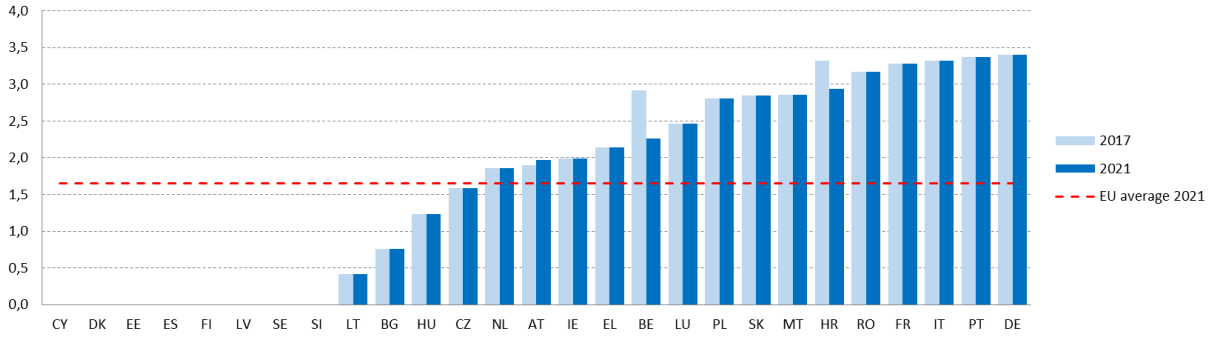
As another positive development, **Belgium** replaced the previous four accounting professions with two new professions. It markedly reduced the level of restrictiveness by removing any remaining requirements on legal form and shareholding for both professions. **Belgium** also amended its rules on incompatible activities and on the joint exercise of the accounting profession to implement the judgment in case C-384/18. The new professions may now provide multidisciplinary services in so far as they do not jeopardise independence, impartiality and professional secrecy.

A reform in 2017 in **Austria** provided for increased scope for professionals to cooperate with other self-employed professionals on specific tasks and contracts, but it also brought in a new obligation on continuous professional development.

A more wide-reaching reform was adopted in **Croatia,** abolishing the residency requirement and restrictions to the legal form, which had prevented tax advisers from setting up a limited liability company. **Croatia** decided not to extend the scope of reserved activities as initially planned and to continue not regulating the accounting profession. Tax advisers can now also take part in a multidiscplinary company that also provides other services than tax advice, provided that the shareholding, voting rights and management board requirements are met. Lastly, Croatia no longer prohibits tax advisers from carrying out other types of professional activities.

In 2019, **France** extended and clarified the activities that can be performed by accountants. Professionals can now manage debt payment and debt collection on behalf of their client, and may now represent their clients before tax authorities and social security bodies. Less complex tasks, such as making accounting entries electronically, can be carried out by other persons than accountants (e.g. employees in a company), as long as they are validated by an accountant "in fine". France also removed the ban on carrying out commercial acts for accountants who are also auditors.

Chart 4. Restrictiveness indicator: Accountants / tax advisers[28]



Source: European Commission, 2021.

Chart 4 shows the relative position of Member States in terms of restrictiveness as to the access to and exercise of the profession of accountant/tax adviser, according to the updated restrictiveness indicator. The indicator does not take into account the regulation of the profession of auditor, which is regulated in all Member States based on Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts. Compared to 2017, the indicator was slightly revised to better capture the scope of activities reserved to accountants/tax advisers and the restrictiveness of other types of requirements.

Some Member States reserve both tax advice and accounting activities (often shared with other professionals, for instance in **Austria**, **Czechia**, **France**[29], **Hungary**, **Romania**). **Belgium**, **Bulgaria**, **Italy**, **Ireland**, **Greece, Luxembourg**, **Malta** and **Portugal** reserve only accounting activities, i.e. bookkeeping/drafting consolidated financial statements, to an accounting profession. **Croatia**, **Germany, Poland** and **Slovakia** reserve only tax advisory services to a regulated profession.

Belgium has one and **Romania** has two accounting professions, in addition to the profession of tax consultant. **Italy, Greece** and **Luxembourg** have two accounting professions and **Austria** has three different accounting professions in addition to the profession of tax adviser. For some of these Member States, the distinction between the reserved activities of the individual professions and their overall scope is not very clear or coherent.

Some Member States, for instance **Austria**, **France, Germany, Italy** and **Portugal,** have bans on the joint exercise of activities and only allow cooperation with a limited number of professions, for instance in the legal or accounting sectors.

In **Austria,** only a limited number of legal forms is available for tax advisers. In **Germany**, tax advisers can choose to set up under any legal form, but members of the board of directors

[28] The indicator shows the overall degree of regulatory restrictiveness on a scale from 0 (least restrictive) to 6 (most restrictive). The 2017 scores were recalculated to take into account methodological adjustments and new information received from Member States.

[29] In France, tax advice is reserved for lawyers, but expert accountants may provide tax advice to their clients if it is an ancillary activity linked to their main accountancy activity. Auditors and notaries may also provide tax advice if it is related to their activities.

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 a personally liable partner must have their professional establishment at the company's headquarters or in its vicinity. In **Croatia** and **Luxembourg,** the majority of directors or the management board must be professionals. In **France**, at least one member of the profession practising within a multi-professional company, as a partner or employee, must be member of the managing or supervisory board. In **Poland**, the majority of the board members must be tax advisers, and if the management board consists of no more than two people, one of them must be a tax adviser.

Austria, **Belgium**, **Croatia**, **France, Germany**, **Italy**, **Luxembourg**, **Malta**, **Poland**, **Portugal**, **Romania** and **Slovakia** require at least 50% of the shares and/or voting rights to be held by professionals. In **Austria**, for the profession of tax adviser, professionals from other Member States are not permitted to hold more than 25% of the shares and of the voting rights.

Recommendations

All Member States regulating professions in the sector should reconsider reserving less complex tasks such as payroll activities or preparation of standard tax declarations to highly qualified professionals, in particular in light of developments in digitalisation in the sector.

Greece, Italy and **Romania** should clarify the scope of the reserved activities and assess the consistency of the reserved activities and the distribution between the multiple regulated professions in the sector.

Croatia, **Germany**, **France**, **Luxembourg** and **Poland** should review their restrictions for the composition of management boards and/or of managing directors.

Austria, Belgium, **Croatia, France**, **Germany**, **Italy**, **Luxembourg**, **Malta**, **Poland**, **Portugal**, **Romania** and **Slovakia** should assess the proportionality of the shareholding and/or voting rights requirements.

Austria should review the shareholding and voting right restrictions for professionals from other Member States.

Austria should review its restrictions to the legal forms available for tax advisers.

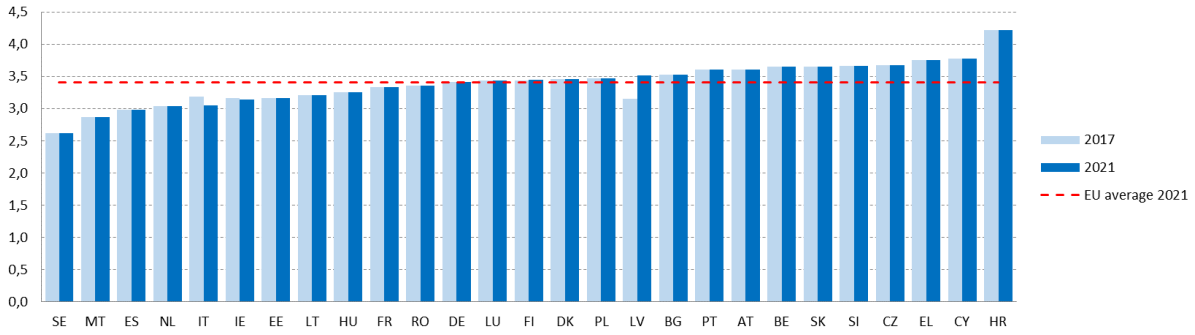
Austria, **Germany, Italy, Portugal** and **France** should assess the propoportionality of their restrictions on the joint exercise of activities.

II.4. Lawyers

The national approaches to regulating the profession of lawyer are rather uniform across Member States in the sense that all Member States regulate the profession by having reserved activities and protected titles.[30] At EU level, Directive 98/5/EC and Directive 77/249/EEC facilitate the mobility of lawyers across the EU.

[30] Based on the similarities in regulating the profession, notably by protecting the professional title, lawyers benefit from two specific directives, one giving the possibility to provide services on a temporary or occasional basis under the home country professional title (Directive 77/249/EEC), and the other giving the possibility to establish on a permanent basis in another Member State under the home country professional title (Directive 98/5/EC). Although these two directives do not specify the activities, reserved to the profession in general, they refer to 'activities of lawyers', such as activities relating to the representation of a client in legal proceedings or before public authorities, as well as legal advice.

Chart 5. Restrictiveness indicator: Lawyers[31]



Source: European Commission, 2021.

Chart 5 shows the relative position of Member States in terms of restrictiveness as to the access to and exercise of the profession of lawyer, according to the updated restrictiveness indicator. Compared to 2017, the indicator was slightly revised to better capture the scope of activities reserved to lawyers as well as the restrictiveness of other types of requirements.

In 2017, the Commission made a number of recommendations for the profession of lawyer. They invited Member States to review the scope of activities reserved to lawyers and to assess the cumulative effects of requirements regarding legal form, shareholding and partnerships for lawyers. In addition, the Commission urged Member States to remove the remaining nationality or residency requirements.

Based on the information available, only a few reforms have been adopted since the 2017 reform recommendations. No reform has been adopted so far concerning the scope of activities reserved to lawyers in relation to the development of the digital economy and the emergence of new providers with the rise of legal tech. However, concerning legal forms available to lawyers and law firms, some Member States broadened the scope of existing possibilities. **Austria** adopted a reform in 2020 to authorise all legal forms of exercise for lawyers and law firms except for public limited liability companies. Since 2017, **Italy** authorises lawyers to form multi-professional partnerships and allows non-lawyer shareholding in law firms, provided that 66% of the shares are held by lawyers. **Ireland** has separated the legal regulator of lawyers from the representative body and allowed partnerships of solicitors to operate as limited liability partnerships.

Other Member States have adopted or are in the process of adopting reforms following enforcement action:

- **Slovenia** repealed its nationality requirement for EU lawyers qualified in Slovenia;
- **Cyprus** repealed its residency requirement for EU lawyers;
- **Italy** is in the process of abolishing the obligation for lawyers to take on at least five cases per year;
- **Greece** amended its legislation to recognise training and experience obtained in another Member State to access legal traineeships;
- **France** adopted in 2021 a decree allowing Supreme Court lawyers from other Member States practising under their home country title to access these activities in France;
- **Croatia** is in the process of adopting a reform concerning the conditions applicable to foreign lawyers and law firms;
- **Spain** is in the process of adopting a reform concerning *procuradores* which would repeal fixed tariffs, allow multidisciplinary partnerships between lawyers and *procuradores* and create a single education pathway for lawyers and *procuradores*.

[31] The indicator shows the overall degree of regulatory restrictiveness on a scale from 0 (least restrictive) to 6 (most restrictive). The 2017 scores were recalculated to take into account methodological adjustments and new information received from Member States.

The rules on access to and the pursuit of the legal profession are among the most stringent in the business services sector. In terms of qualification, a higher education with a law degree is required in all Member States, followed by a mandatory traineeship or additional professional qualifications and a bar examination. The minimum total duration of education and training to access the profession varies between 5.5 years (e.g **France**, **Greece**, **Portugal**, **Spain**) and 9 years (e.g **Finland**, **Slovenia**). Continuous professional development is mandatory in most Member States, except for **Czechia**, **Greece**, **Malta**, **Slovakia** and **Spain** where it is voluntary.

All Member States reserve to lawyers activities related to the representation of clients before judicial authorities, although some allow the activity to be shared with other legal professions. In **Malta** "Advocates" and "Legal procurators" are both able to represent clients before lower courts. **Spain** shares the representation before the Court between *abogados* (defence of client) and *procuradores* (technical representation and notification of documents to the courts). In **Poland**, both attorneys at law (legal advisers) and advocates can represent clients before the courts[32]. In **Ireland**, solicitors represent the client in the lower courts while barristers advise solicitors and can argue cases in all courts[33].

Certain Member States impose additional professional qualification requirements in order to practise in the highest courts (**Belgium, Bulgaria**, **France, Germany, Greece, Italy** and the **Netherlands**). In addition, some of these countries (e.g. **Belgium, France** and **Germany)** put quantitative restrictions on the number of offices available to practise in the supreme courts. Since 2017, **France** has increased gradually the number of offices available and adopted in 2021 a decree allowing access to these activities under certain conditions for lawyers from other Member States practising under their home country title.

In many Member States, new providers have established themselves and provide legal services using algorithms and machine learning solutions. These developments are the subject of intense debates and have given rise to court proceedings regarding the difficulty to determine what constitutes legal advice in areas such as the provision of online legal consultations, debt collection and automated drafting of legal documents. At the same time these developments have sparked demand by the legal profession to adapt the regulatory framework to facilitate the adoption of such legal tech solutions. In **Germany**, government bills aim to promote consumer-friendly legal services on the market by opening certain legal services to legal tech operators while ensuring a level playing field between lawyers and debt collection service providers.

Most Member States impose strict incompatibility rules and multidisciplinary restrictions[34]. All Member States have either a general rule to avoid conflicts of interest or detailed incompatibility rules that prohibit the exercise of certain activities such as trade or salaried employment, except for those explicitly allowed (e.g. teaching or research). Multidisciplinary restrictions range from a total ban (e.g in **Czechia, Latvia, Lithuania**) to allowing certain multidisciplinary activities with a limited number of professions (**France**, **Germany,** the **Netherlands**). In **Estonia**, lawyers may participate in the management of a company where such participation is compatible with the professional activities of an '*advokaat*' and does not compromise the lawyer's independence. In **France**, professionals can set up a "*société pluriprofessionnelle d'exercice*" grouping different legal and accounting professions. In

[32] Only attorneys-at-law can work in an employment relationship; advocates cannot.
[33] A client cannot engage a barrister directly; this must be done through a solicitor.
[34] See Case C-309/99 *Wouters.*

Belgium, lawyers are allowed to organise certain forms of cooperation with a limited range of other professions but are not allowed to do so in the form of a limited liability company.

Concerning authorised legal forms of exercise for lawyers, many Member States allow a wide range of legal forms but exclude certain forms (such as public limited liability company in **Austria,** commercial forms in **France** or with the limitation that shares cannot be traded on the stock exchange in **Belgium**). Ordinary partnerships are generally allowed and in many Member States professional services can also be provided under the form of a professional company. A number of countries allow lawyers to set up as a limited liability company, for instance **Austria**, **Belgium**, **Cyprus, Finland**, **France** and **Germany**. **Ireland** brought in regulations in November 2019 to allow partnerships of solicitors to set up as limited liability partnerships. Following a reform in 2020, **Austria** broadened the range of legal forms available for law firms with the exception of public limited liability companies. However, in a majority of Member States, it is not possible to set up limited liability companies for lawyers.

The possibility to set up a law firm under a specific legal form is strongly linked to shareholding and voting rights requirements. A vast majority of Member States require all the shares to be held by lawyers. In some Member States, there are also limitations as to the number of law firms in which a lawyer can be shareholder, i.e. in **Estonia** or **Hungary**, a lawyer may be a shareholder of only one company of advocates. A limited number of Member States allow non-lawyers to participate in law firms. In **Spain,** non-lawyer ownership of companies (up to 49 %[35]) is possible, as it is in **France** but only for legal and accounting professions, in **Italy** (up to 34%), in **Poland** (but only for legal professions) and in the **Netherlands** (but only for notaries/patent agents and tax advisers). In **Germany**, over 50 % of the shares of a company must be held by lawyers and only other legal or accounting professionals may be shareholders. In **Denmark** and **Sweden**, at most 10% of the shares can be held by non-lawyers. No Member States allow purely financial participation. In **Germany**, a reform proposal from January 2021 proposes to waive the majority requirements for the board of legal companies[36], to allow the one-person limited company and to allow all liberal professions to set up a company together with lawyers and to be shareholders.

In the vast majority of the Member States, lawyers can advertise their services, provided that the communications comply with professional ethics. However, in **Bulgaria, Croatia, Malta, Poland** and **Slovenia**, lawyers are still subject to a total ban, in breach of Article 24 of Directive 2006/123/EC.

Free agreement on the amount of fees between the lawyer and the client appear to be the norm in the vast majority of the Member States. However, in **Bulgaria, Croatia, Cyprus, Greece** and **Poland,** lawyers must follow fixed or minimum tariffs. **Croatia** is in the process of bringing in the possibility to derogate from those fixed minimum fees by written agreement between the client and the lawyer. A pending legislative change in **Spain** will remove minimum tariffs for *procuradores*.

Recommendations

All Member States that reserve the provision of legal advice exclusively to lawyers should ensure that legal services can develop and innovate with the development of digital solutions without being hampered by an excessively broad scope of reserved activities. **Bulgaria** should maintain an open regime for legal services.

[35] When the profession is not considered as incompatible with the profession of lawyer.
[36] With the exception of companies that want to hold the title of "Rechtsanwaltsgesellschaft".

All Member States should assess legal form and shareholding requirements, incompatibility rules and multidisciplinary restrictions, taking into account in particular the need for innovation and to roll out digital solutions and emerging business models. **Ireland** should adopt all the implementing measures under the 2015 Legal Services Regulation Act to enable lawyers to provide multidisciplinary services.

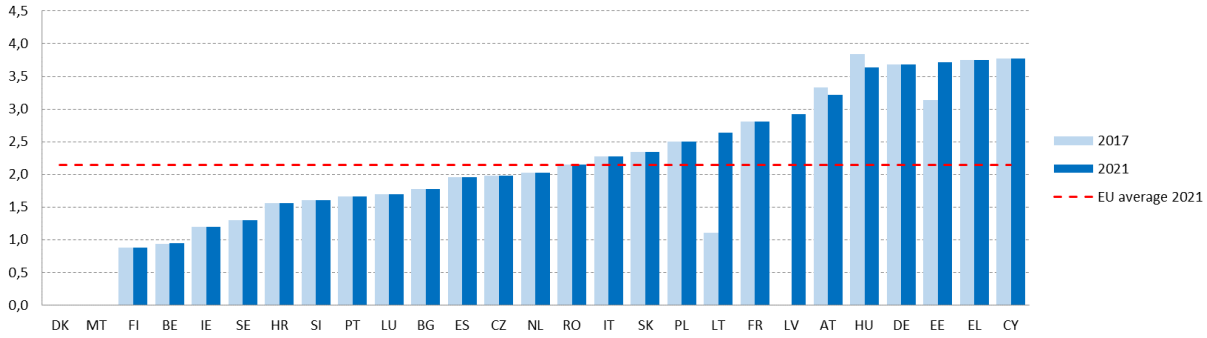
Belgium and **Germany** should bring in more transparency and review the proportionality of access rules for lawyers wishing to practise before their respective supreme courts, and in particular clarify the rules applicable to EU lawyers. **Germany** should review the need to maintain minimum age restrictions for practising before the Federal Court of Justice (*Bundesgerichtshof)*, in exchange for measures that appear to be better suited to achieving the set objectives, such as professional experience.

Bulgaria, Croatia, Malta, Poland, Slovenia need to remove all total bans on commercial communications for lawyers.

II.5. Patent/trademark agents

The profession of patent/trademark agent[37] is regulated in all but two Member States, i.e. only **Denmark** and **Malta** do not regulate this business service.[38]

Chart 6. Restrictiveness indicator: Patent / trademark agents[39]



Source: European Commission, 2021.

Chart 6 shows the relative position of Member States in terms of restrictiveness as to the access to and exercise of the profession of patent/trademark agent, according to the updated restrictiveness indicator. Compared to 2017, the indicator was slightly revised with a view to better capturing the scope of activities being reserved to patent agents as well as the restrictiveness of other types of requirements.

While the need of the necessary expertise for often highly complex intellectual property laws and technical aspects of innovations as well as the wish to protect clients (e.g. right holders) from improper handling of procedures might be valid reasons for regulating the profession, rules on access to and exercise of the profession must be proportionate. Therefore, in 2017, the Commission made a number of recommendations for the profession of patent/trademark agents, which focused on the scope of the reserved activities; multiple layers of regulatory measures, such as requiring multiple years of professional experience or professional training

[37] In a number of Member States, patent agents are called patent attorneys (for instance in AT and DE '*Patentanwälte*').
[38] The existence of the qualification of European Patent Agent based on the European Patent Convention signed by all EU Member States should also be mentioned. This qualification allows the professional to use the mentioned title when representing before the European Patent Office. However, this qualification does not allow the exercise of the profession of patent agent in the signatory countries that regulate the profession.
[39] The indicator shows the overall degree of regulatory restrictiveness on a scale from 0 (least restrictive) to 6 (most restrictive). The 2017 scores were recalculated to take into account methodological adjustments and new information received from Member States.

in addition to basic training requirements; shareholding requirements and restrictions on joint exercise; as well restrictions applying to cross-border situations.

In addition, the European Court of Justice (ECJ) found in a case concerning patent agents rules in **Austria** that a seat requirement as well as rules on shareholding and multidisciplinary rules breached Articles 14, 15 and 25 of the Services Directive.[40]

Based on the information available, since the 2017 recommendations, reforms were enacted to various degrees in **Austria**, **Belgium**, **Estonia**, **Germany**, **Greece**, **Hungary**, **Lithuania**, **Latvia** and **Poland**.

Among the positive developments, **Austria** carried out a reform in 2019, taking into account some of the recommendations such as opening up education requirements and slightly shortening the length of the required prior professional experience. It also relaxed the rules on shareholding, abolished the rules on voting rights and lifted certain restrictions on joint exercise. In May 2021, Austria adopted further changes to comply with the above-mentioned Court judgment.

Hungary also recently liberalised the rules concerning the restrictions for which the Commission had recommended making a proportionality assessment. Although in professional companies, 75% of the shares had to be held by patent agents, Hungary reduced this requirement to holding 'more than 50%'. For patent agent offices, it reduced the 100% shareholding requirement to the requirement for only one of the natural persons who can be members to be a patent agent and head the office. In both cases, two thirds of the votes must still be held by patent agents. Hungary amended the rules governing the ability to provide multidisciplinary services by softening the ban on providing other services.

Poland amended the rules on tariffs following infringement proceedings launched by the Commission and abolished minimum tariffs.

Lastly, following Commission enforcement action, **Germany** transposed Directive 2013/55/EU for the profession of patent agent to be compliant with EU law.

A number of countries decided to bring in new rules, including **Latvia** and **Greece,** which brought in the profession of patent agent. Although the profession was previously unregulated in **Latvia**, the submission of patents and trademarks in **Greece** before the reform was reserved to lawyers who also had the exclusive right to provide legal advice, including on issues relating to patents and trademark law. The reserved activities are therefore now shared between lawyers and the newly created profession of patent agents.

A new law in **Belgium** brought in additional requirements, such as title protection, obligatory membership linked to membership fees, mandatory insurance and to continuous professional development obligations. Although parts of this new law entered into force on 2 December 2020, the provisions governing the additional requirements are not yet in force as they require the adoption of a royal decree.

Estonia also added new requirements, with increased education requirements, a new mandatory chamber membership with continuous professional development obligations and title protection for members of the chamber. The requirements to have a rather long four-year professional experience remained unchanged.

Although **Lithuania** revised its qualification requirements for patent trustees ("*patentinis patiketinis*") and reduced the requirement of prior professional experience, it simultaneously

[40] ECJ judgment of 29 July 2019, case C-209/18, Commission v Austria.

brought in title protection, compulsory membership of a professional body, an obligation for continuous professional development and mandatory professional indemnity insurance.

The scope of reserved activities differs between the Member States with some Member States maintaining a rather wide scope. This is notably the case for **Austria**, **Estonia**, and **Hungary**. Reservations cover 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 (even if these services can be provided both by lawyers and notaries in **Austria**). In **Estonia**, patent agents are also competent to authenticate translations and copies of documents concerning industrial property which are to be submitted to the authorities (shared with notaries and sworn translators).

In **Cyprus**, which does not does not have a self-standing profession of patent agent, these services are exclusively reserved to lawyers.

Prior professional experience is required in many Member States but the duration varies from 2 years (**Bulgaria**) to 6.5 years (**Austria**). Traineeship under the supervision of a patent agent is required in certain Member States (**Belgium, Germany, Hungary, Ireland, Italy, Luxembourg,** the **Netherlands** and **Poland**). The total length of the required education varies between 3 years in **Portugal** (where there is also no traineeship or prior experience required) and 7 years in **Germany** (where in addition a 3 year-traineeship is required). Multiple years of professional experience and training need to be evaluated in the light of the fact that the services can be provided, for instance, also by lawyers without the need to specialise in intellectual property law.

Several Member States set shareholding requirements. **Cyprus** requires 100% of the partners in a law firm to be lawyers and hence this also affects patent agent services. **Germany** and **Poland** require at least 50% of the shares to be held by professionals.

Hungary maintains (though it slightly reviewed) the ban on exercising the profession of patent agent with other professions, while **Estonia** and **Germany** restrict the joint exercise to only legal or accounting professions.

Slovakia still requires holders of diplomas from other Member States to undergo an academic recognition procedure instead of recognition of their professional qualifications before being able to exercise this profession in Slovakia. Slovak legislation provides for the academic recognition procedure for access to non-regulated professions by foreign diploma holders.

Recommendations

Slovakia should ensure that the recognition procedure it applies to foreign diploma holders seeking access to the profession of assistant patent attorney complies with the TFEU provisions on free movement of workers and non-discrimination and with the applicable case law.

Germany should reconsider the need to have multiple layers of qualification requirements, for instance requiring multiple years of professional experience or professional training in addition to basic training and should seek to offer alternative ways to obtain the qualification.

Austria, Estonia and **Latvia** should reassess the condition of prior professional experience as a requirement to access the profession of patent/trademark agent.

Austria, **Estonia**, and **Hungary** should assess the scope of reserved activities for patent/trademark agents.

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

Estonia, **Germany** and **Hungary** should assess the proportionality of restrictions on the joint exercise of the profession of patent/trademark agent with other professions.

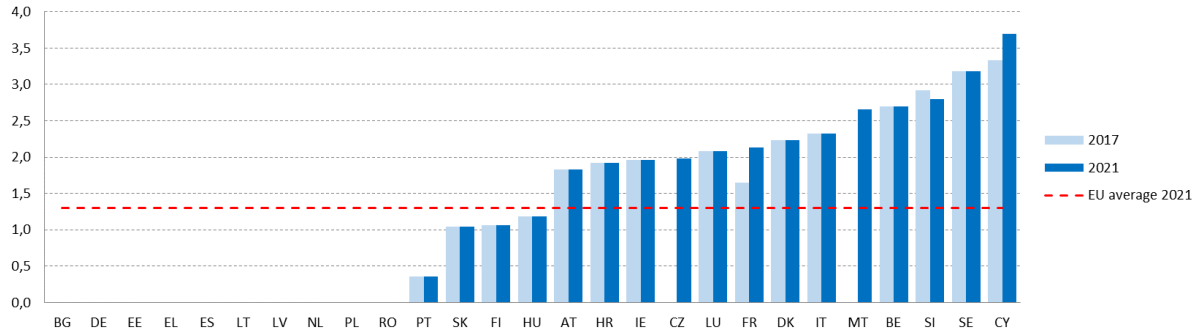
Germany and **Poland** should assess the proportionality of the shareholding requirements.

II.6. Real estate agents

With the possible exception of the Nordic countries,[41] the nature and complexity of the tasks typically performed by real estate agents in EU countries are very similar. They centre on intermediation between buyers and sellers of real property, including providing (legal) advice on certain aspects of the transaction. Despite these similarities, EU countries have taken very different approaches as to whether and how to regulate the profession of real estate agents.

In 2017, only 14 Member States considered it necessary to regulate access to the profession.[42] Non-regulating countries use other means to protect consumer interests, such as general legislation on consumer protection, civil and criminal law. In addition, self-regulation and voluntary certification systems serve as an alternative to regulation in some countries (**Germany**, **Estonia**, **Lithuania**, the **Netherlands** and **Poland**).

Chart 7. Restrictiveness indicator: Real estate agents[43]



Source: European Commission, 2021.

Chart 7 shows the relative position of Member States in terms of restrictiveness as to the access to and exercise of the profession of real estate agent, according to the updated restrictiveness indicator. Compared to 2017, the indicator was slightly revised with a view to better capturing the scope of activities being reserved to real estate agents as well as the restrictiveness of other types of requirements.

The wide variation in the level of restrictiveness across Member States led the European Commission to question the justifiability and proportionality of some of the most restrictive approaches. In 2017, the Commission made a number of recommendations for the profession of real estate agents, focusing in particular on exclusively reserved activities, the length of mandatory qualification requirements, the lack of alternative pathways to access the profession, shareholding and voting rights restrictions, incompatibility rules, regional regulation and the need for academic recognition of diplomas.

[41] In these countries, there typically is no mandatory intervention by a notary or lawyer in the conveyancing process, and real estate agents can work throughout the whole conveyancing process, including at the stage of the transfer of the deed and payment.

[42] In Spain, there is some regional regulation of real estate agent services.

[43] The indicator shows the overall degree of regulatory restrictiveness on a scale from 0 (least restrictive) to 6 (most restrictive). The 2017 scores were recalculated to take into account methodological adjustments and new information received from Member States.

Unfortunately, the follow-up to these recommendations has been very limited and most Member States have not made any real effort to re-evaluate the proportionality of the requirements. On the contrary, certain Member States have chosen to tighten regulation.

Two Member States, **Malta** and **Czechia**, recently started to regulate access to the profession. So far these newly regulated professions have not been notified in the database of regulated professions, and the Member States concerned have not communicated the results of any prior proportionality assessment based on the framework set out in the Proportionality Test Directive. The decision to bring in new regulation would seem all the more surprising in **Malta**, which, according to the 2016 Consumer Market Scoreboard, was found to have the best performing real estate market in the whole of the EU.[44]

In 2018, **France** brought in legislation to protect the title of real estate agent.

Although **Germany** dropped its plans to bring in regulation for real estate agents, **Romania** seems to have the intention to regulate access to the profession.

As regards education, most countries still require an education of around 2-3 years, which may need to be supplemented by a traineeship and/or work experience and/or an exam. This is in contrast to countries such as **Croatia**, **Finland, Hungary, Italy**, and **Malta**, which have relatively low qualification requirements. Except for **Croatia, Finland**, **Hungary**, **Italy** and **Sweden**, most countries have alternative pathways to obtain the required qualifications.

In March 2020, **Cyprus** adopted a circular interpreting the national law as requiring any natural person linked to a real estate agency to be a registered real estate agent, which seems to add a 100% shareholding requirement. In **Malta**, the new regulation limits the legal form under which real estate agents can exercise their profession, to that of a civil partnership. This means that real estate agents may not set up a company with non-professionals or any other professional who is not licenced as a real estate agent. **Belgium** still requires 60% of the shares and voting rights in professional real estate companies to be held by qualified professionals.

In **Spain**, certain regions such as Catalonia continue to regulate the profession by way of reserving activities and protecting the title.

Since **Slovakia** maintains that the profession of real estate agents is not regulated, professionals from other EU Member States seeking to work as real estate agents, continue to face the need to follow a procedure of academic recognition of their diplomas.

In the meantime, **Slovenia** removed its citizenship requirement.

Recommendations

Cyprus, Croatia, Czechia, Ireland, Slovakia, Slovenia and **Sweden** should consider the possibility of opening access to the activities currently exclusively reserved to real estate agents to other professionals.

Austria, **Belgium**, **Cyprus**, **Czechia, Denmark**, **France**, **Ireland, Slovenia**, **Slovakia** and **Sweden** should evaluate to what extent the duration of mandatory qualification requirements is indispensable in view of the services provided by estate agents and the objectives of regulation.

[44] Consumer Market Scoreboard 2016, available at: https://ec.europa.eu/info/sites/info/files/consumer_markets_scoreboard_2016_en.pdf.

Croatia, Finland, **Hungary**, **Italy** and **Sweden** should consider creating alternative pathways to access the profession.

Belgium should evaluate the need for shareholding and voting rights restrictions.

Cyprus and **Malta** should reassess the justification for and proportionality of requiring 100% of shares to be held by real estate agents.

Italy should evaluate the need for and proportionality of the ban on incompatible activities.

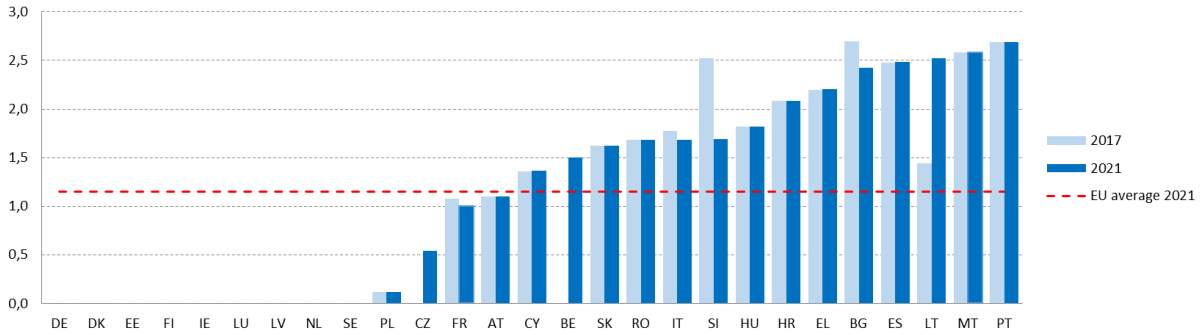
Spain should review existing regional regulations, as they could lead to confusion regarding access to and exercise of this profession and could create obstacles to mobility.

Slovakia should remove the requirement for holders of qualifications from other EU Member States to go through a procedure to have their academic diplomas recognised.

II.7. Tourist guides

The profession of tourist guide is still regulated in two thirds of the Member States, with a clear geographical focus on the south and the east of Europe.

Chart 8. Restrictiveness indicator: Tourist guides[45]



Source: European Commission, 2021.

Chart 8 shows the relative position of Member States in terms of restrictiveness as to the access to and exercise of the profession of tourist guide, according to the updated restrictiveness indicator. Compared to 2017, the indicator was slightly revised to better capture the scope of activities reserved to tourist guides and the restrictiveness of other types of requirements.

Neither **Belgium** nor **Bulgaria** have indicated this profession among the regulated professions in the database of regulated professions, but it is clear that both Member States have regulated the profession since at least 2016.

The recommendations from 2017 focused on the justification and proportionality of regulating the profession, and on the review and assessment of the scope of reserved activities. Member States with different regional regulations were asked to have a close look at the fragmentation of the rules and the geographical scope of authorisations for tourist guides. Lastly, the Commission invited Member States to review the lists reserving the right to work in a significant number of tourist sights to holders of specific licences.

[45] The indicator shows the overall degree of regulatory restrictiveness on a scale from 0 (least restrictive) to 6 (most restrictive). The 2017 scores were recalculated to take into account methodological adjustments and new information received from Member States.

The Commission recommended to all Member States regulating the profession to assess whether such regulation was necessary at all or whether less restrictive rules could achieve the aim of protecting the cultural, historical, archaeological and artistic heritage and its proper appreciation. These considerations, brought forward by the Member States to justify regulation, were recognised by the European Court of Justice as overriding reasons of the public interest which can justify a restriction. However, the proportionality of such rules should be thoroughly assessed. Member States should therefore only impose rules and obligations on access to and the exercise of the profession of tourist guides if this is clearly necessary to prevent damage to the cultural richness of a Member State.

None of the Member States regulating the profession informed the Commission about a review and the Commission takes note that only very limited reforms were adopted.

In **Slovenia**, although the profession remains regulated with a wide scope of reserved activities, access requirements were eased by abolishing pre-conditions to take the state exam.

Lithuania changed the regulation of tourist guides in 2018, but despite the recommendations, the requirements governing access to the profession became more stringent, in particular as regards the scope of reserved activities. Nonetheless, Lithuania did relax several requirements, for instance by abolishing the theoretical part of the state exam.

Croatia adopted a new Act on Tourism services in late 2017. However, the amendments did not address any of the concerns raised by the Commission on tourist guides and even seem to have worsened the situation. The new act did, however, remove the requirement to prove 'business ability'.

Greece has not carried out a reform, but since 2017, the Tourist Guides Schools of the Ministry of Tourism are operating again providing a two-year programme to obtain a diploma. Enrolment in these schools is subject to conditions and restrictions. **France** also brought in a rather slight opening of restrictions and additional access to the profession by adding a third pathway for obtaining the requisite professional qualifications.

Lastly, the Commission understands that in 2021, **Czechia** adopted a reform of the profession of tourist guide, resulting in regulation of the profession by protecting the title. The profession of tourist guide can be exercised only with a visibly placed card (I grade or II grade) issued by the Ministry of Regional Development upon application. To obtain a II grade card, a professional qualification is required.

Austria, **Bulgaria**, **Malta** and **Slovenia** reserve a very wide range of activities to holders of specific professional qualifications. This covers working as a guide to show and explain a country's social and political situation in national and international contexts, or sometimes even as a guide at sporting and social events and escorting tourists from the airport to their hotel. Such restrictions severely restrict access to these activities and must be limited to what is strictly necessary to protect the general public interest.

Bulgaria reviewed the regulation for the profession in 2019, but the scope of reserved activities remained unchanged. Changes in the law in **Slovenia** did not affect the rules on the scope of restrictions. No changes were adopted in **Austria** and **Malta**.

In **Croatia**, **Italy** and **Spain** the profession is regulated at regional level with the consequence that professionals may have to obtain different qualifications and authorisations within a single Member State if they want to provide services in more than one region. Such

differences render access to and the exercise of the profession more complicated[46] and might raise issues of compatibility with EU law, in particular with Article 10(4) of the Services Directive (Directive 2006/123/EC) and Article 7(2a) of the Professional Qualifications Directive (2005/36/EC).

Following an infringement procedure launched by the Commission, **Croatia** announced that it would replace the 21 county-specific professional exams by one centralised exam. **Spain** and **Italy** have not informed the Commission of any reforms or clarifications about the current system on the several different existing regulations.

In 2016, **Belgium** brought in title protection for different types of tourist guides in the Walloon region. Although the validity of these titles is limited to this region, no specific mutual recognition regime is planned for tourist guides from the two other regions, given that the Brussels and the Flemish region do not consider it necessary to regulate the profession.

In **Slovenia**, municipalities may still lay down conditions for access to the profession in a given tourist area and provide for title protection for those who meet such conditions. As the activities reserved to tourist guides are set at municipality level, these reserves could be very different throughout the country.

Croatia and **France** maintain lists of sites where working as a guide is reserved to holders of specific qualifications. This might lead to a fragmentation of the market and put a significant burden on service providers from other Member States who accompany tourists through different parts of a country and do not limit their provision of services to a particular site. Such lists, in particular if they cover a significant number of sights, create unjustified restrictions if the reasons for including a particular site have not been properly assessed.

While **France** only allows qualified tourist guides to work at a certain number of historic monuments, the law in **Croatia** contains a long list of protected localities and sites (which include most of the Croatian tourist highlights) for which tourist guides are required to pass one or more separate exams. This means that a tourist guide who wants to work at protected sites across the whole of Croatia would need to pass up to 21 separate county-specific examinations, mostly organised separately per county and requiring the candidate to pay a fee per exam. **Malta** uses a similar list of protected sites.

Following infringement proceedings launched by the Commission, **Croatia** announced that it would significantly reduce the number of sites that are part of the list of protected sites, which currently cover most of the main tourist highlights.

In 2017, **Italy** abolished its 2015 list reserving a significant number of sights to holders of specific licences, by a decision issued by an administrative court.

Recommendations

All Member States that regulate this profession should consider the justification and proportionality of regulating the profession.

Austria, **Bulgaria**, **Malta** and **Slovenia** should consider bringing in a more precise definition of the reserved activities in view of the very wide or undefined scope of reserved activities.

Croatia, **Italy** and **Slovenia** should clarify the regulatory framework governing tourist guides given the diverging regional regulations, which seem to hinder access to the market and which

[46] See also the Commission staff working document on the result of the performance checks of the internal market for services SWD(2012)147 accompanying the Communication from the Commission on the implementation of the Services Directive COM(2012)261.

affect national service providers as well as, in some cases, those providing temporary services.

Croatia and **Malta** should review the list of sites reserved to holders of specific qualifications and consider the proportionality of each restriction.

Spain should: (i) review access to the activity of tourist guides, which currently differs between autonomous regions, limiting access to and exercise of the profession for established service providers and for temporary service providers; (ii) ensure nationwide validity of authorisations.

III. Follow-up actions

The above overview shows that despite the specific guidance provided by the Commission in the 2017 reform recommendations, Member States have not made much progress in re-evaluating and removing unjustified or disproportionate professional regulation. This Communication aims to support and reinforce national regulatory fitness efforts, and complements other EU initiatives, such as the updated 2020 New Industrial Strategy, by identifying specific areas of comparatively high levels of regulation and by pointing towards concrete possibilities for increasing the competitiveness of the single market for services.

The Commission plans to follow up to these recommendations by closely monitoring Member States' actions in this area and continuing a permanent dialogue with stakeholders, in particular via its expert groups. Progress on reforms or lack thereof will also be a recurring focus of the dialogue with Member States in the framework of the European Semester and Recovery and Resilience Facility. Where national rules are in clear breach of EU law, the Commission will engage with the Member States concerned and, if necessary, initiate enforcement action. The Commission intends to continue updating the reform recommendations when needed and appropriate. The possibility of developing additional indicators and extending the scope to other economically important professions will also be explored.

The recommendations and their follow-up are complementary to the actions announced in the updated 2020 New Industrial Strategy.[47] These actions might address similar economic areas and will facilitate the permeability of the single market, including by exploring novel approaches, to be developed in a dialogue with Member States and stakeholders, in particular an assessment of the merits of harmonised standards in services where these could add value.[48]

[47] COM(2021) 350.

[48] Such initiatives could concern other services sectors than the ones covered in this Communication, depending on the results of the exploratory assessment to be carried out.