

Chapter 6. Financial and economic professions

This chapter covers the regulation of auditors, certified accountants, customs brokers and economists. In 2015, accounting, auditing and consulting services provided to Portuguese firms and households represented EUR 2 044 million which corresponds to 15.5% of all services provided to firms. Several barriers to competition were identified in the legislation applicable to access to, and the exercise of, the four professions in question, including: reserving certain activities for specific professions; requirements for minimum academic qualifications; requirements concerning partnerships, shareholding, management and multidisciplinary activities within professional firms; the minimum civil liability insurance coverage necessary for practising certain professions; and compulsory disclosure of operational information. Those barriers inflate costs and increase legal and regulatory uncertainty for potential and existing auditors, certified accountants, customs brokers and economists, while placing some members of these professions at a competitive disadvantage.

6.1. Introduction

The professional activities of auditors, certified accountants, customs brokers and economists, relate to the economic and financial decisions of firms, and were analysed as part of the Project "OECD Competition Assessment Review: Portugal" (the Project).

Some of their activities are similar. For example, similar activities are carried out by: (i) auditors and certified accountants; (ii) customs brokers and other customs representatives, such as freight forwarders; and (iii) economists and other professionals who apply economics in the performance of tasks.

These four regulated professions have a significant impact on the operations of businesses and, consequently, on the Portuguese economy. This is why overly restrictive regulations of these professions may have broader implications for the wider economy that go beyond the impact on the professionals themselves.

6.1.1. The professions

Auditors

Auditors have theoretical knowledge of and practical experience in auditing techniques. They review companies' or other entities' financial accounts and develop audit reports that are compliant with recognised standards.

In Portugal, auditors can only practise their profession if they are registered with the Professional Association of Auditors (*Ordem dos Revisores Oficiais de Contas - OROC*). In accordance with its bylaws,¹ the OROC represents its members before other entities, and is responsible for regulating the auditing profession, including regulating access to, and the exercise of, the profession of auditor in Portugal and controlling the quality of auditors and auditing services.

The bylaws of the OROC indicate that members of this profession conduct audits of firms' accounts in the public interest, provide advisory services in matters related to their professional training and qualification² and act as insolvency administrators and liquidators.³

Certified accountants

Certified accountants have, at minimum, a university degree in accounting, business management, economics, business sciences or taxation, as well as practical skills in planning, organising and co-ordinating the financial accounts of businesses. Members of this profession certify that the accounts they prepare comply with the applicable legal rules and accounting principles in force, and with the guidelines of entities responsible for accounting standardisation.

In Portugal, certified accountants must register with the Professional Association of Certified Accountants (*Ordem dos Contabilistas Certificados - OCC*) in order to practise their profession. In accordance with its bylaws,⁴ the OCC grants the professional title of certified accountant, regulates access to, and the exercise of, the profession of certified accountant in Portugal, establishes technical rules and regulations of professional activity, exercises disciplinary authority over its members and protects its members' interests and rights related to the exercise of their profession.

The bylaws of the OCC specify that certified accountants, in addition to planning, organising and co-ordinating companies' or other entities' accounts, may:⁵ (i) provide advice in matters related to accounting and taxation; and (ii) represent entities for which the accountant has prepared accounts in tax matters related to the accountant's specific competences.

Customs brokers

Customs brokers have, at minimum, a university degree in economics, business management or administration, law, international relations, international trade, logistics or customs management, as well as practical skills in representing economic agents before the Tax and Customs Authority (*Autoridade Tributária e Aduaneira* – AT) and other official bodies with a role in customs procedures. The exercise of such profession involves a wide range of activities in the framework of customs regulations.⁶

In Portugal, customs brokers must register with the Professional Association of Customs Brokers (*Ordem dos Despachantes Oficiais* – ODO) in order to practise the profession. In accordance with its bylaws,⁷ the ODO grants the professional title of customs broker, regulates access to, and the exercise of, the profession of customs broker in Portugal, exercises disciplinary authority on its members, protects the interests of the entities which use the services provided by customs brokers and protects its members' interests and rights related to the exercise of their profession.

The bylaws of the ODO indicate that customs brokers are required to guarantee any customs or other financial obligations stemming from the declarations submitted by the broker to the AT.⁸

Economists

Economists are individuals who have, at minimum, a university degree in any of the economic sciences⁹ and who also have practical skills specifically aimed at conducting economic analysis of the distribution of resources and the behaviour of economic actors. The exercise of this profession involves a wide range of activities, including analysing quantitative economic information and conceiving, developing and implementing scientific models in order to test theories and concepts, prepare forecasts and evaluate decisions.

In Portugal, economists can register with the Professional Association of Economists (*Ordem dos Economistas* – ODE) in order to practise their profession. In accordance with its bylaws,¹⁰ the ODE grants the professional title of economist, regulates access to, and the exercise of, the profession of economist in Portugal, represents and protects that profession's interests and its members' rights and interests related to the exercise of their profession and exercises disciplinary authority on its members.

The regulations applicable to the profession of economist do not foresee any exclusive activity reserved for individuals registered in the ODE. The professional title of economist merely prevents individuals who are not registered with that professional association from referring to themselves professionally as economists, and does not prevent them from performing any specific task.

Box 6.1. The protected professional title of “economist”

The bylaws of the Professional Association of Economists (ODE) (Art. 4) establish that only professionals registered in the ODE may use the professional title of “economist”, and only firms registered in the professional association can use the designation of an economists’ firm.

This provision introduces a protection of title. To use this title, individuals must register as full member in the ODE. They need to have a university degree in economics, or a foreign academic degree in the same field and have completed an internship (of 12 months for candidates with at least the master’s degree and 18 months for others).

In Portugal, the title of economist is not associated with reserved activities, which means that any professional can perform the activities of an economist. As such, the protection of the title of “economist” does not exclude other professionals from the performance of any specific economist activity.

Individuals with an academic degree in economics not registered in the Ordem may use any other title they please such as “graduate in economics”. When consulted, the stakeholders stated that the use of the title “economist” or “graduate in economics” had no influence in the market and on their image in the eyes of consumers. However, this does not mean that for certain purposes, such as to access specific positions or careers, the professional title of economist – and as such registry in the professional association – cannot be required.

Note that the profession of economist is only regulated in Portugal, Spain and Greece among the 28 EU Member States. European Commission website on regulated professions database: <http://ec.europa.eu/growth/tools-databases/regprof/index.cfm?action=homepage>.

6.1.2. The relevant institutional bodies

The activities performed by the financial and economic professionals described above fall within the scope of the professional associations described in Section 6.1.1 above, and of the following official authorities:

- the Ministry of Finances (*Ministério das Finanças*), which develops, co-ordinates, implements and assesses the financial policy of the state; and promotes the effective, efficient and equitable management of public resources;
- the Ministry of Economy (*Ministério da Economia*), which formulates, co-ordinates, executes and evaluates policies aimed at promoting economic growth, competitiveness, innovation, the internationalisation of enterprises, trade, industry and investment, as well as policies related to consumer protection, tourism, energy and geology;
- the Tax and Customs Authority (AT), the Portuguese body entrusted with administering taxes, including customs duties, and controlling the external border of the European Union as well as that of the national customs territory. The AT is subject to the oversight of the Ministry of Finances;

- the Securities Market Commission (*Comissão do Mercado de Valores Mobiliários* – CMVM), the Portuguese regulatory body for the profession of auditor, which is also tasked with regulating and monitoring securities markets, as well as the economic agents that operate in them. The CMVM has administrative, financial and managerial independence to conduct its work.

6.1.3. Main applicable legal framework

Auditors

Auditors are governed primarily by the bylaws of the OROC, which establish the legal regime for the organisation and its operation as well as for access to, and the exercise of, the profession of auditor.

Additionally, the code of ethics applicable to auditors¹¹ establishes the rules, conditions, principles and procedures with which those professionals must comply.

The other main Portuguese regulations relevant to the exercise of the profession of auditor are the following:

- Law 148/2015, which: approves the legal framework concerning audit reviews; and tasks the CMVM with monitoring auditors and auditing firms from countries other than Portugal registered in Portugal;
- Regulation 12/2017, which regulates the registration of individuals in the OROC and, the examinations concerning professional knowledge necessary for admittance into the association;
- Regulation 19/2017, which regulates the professional internship necessary for obtaining the professional title of auditor.

At the EU level, Regulation (EU) 537/2014, on specific requirements regarding statutory audits of public-interest entities, is also relevant. It establishes: (i) requirements for carrying out of statutory audits of annual and consolidated financial statements of public-interest entities; (ii) rules on the organisation and selection of auditors and firms of auditors by public-interest entities; and (iii) rules concerning the monitoring of compliance by auditors and firms of auditors with the applicable requirements.

Certified accountants

Certified accountants are mainly governed by the bylaws of the OCC, which establish the legal regime for the organisation and operation of that professional association and for access to, and the exercise of, the profession of certified accountant.

Furthermore, the code of ethics applicable to certified accountants¹² establishes the rules, conditions, principles and procedures with which those professionals must comply.

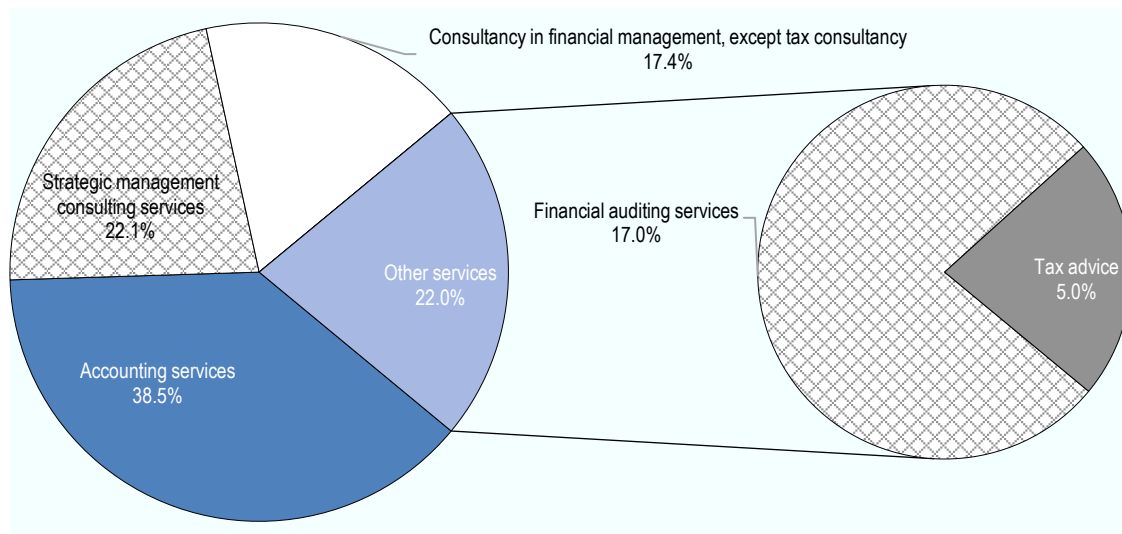
Customs brokers

Customs brokers are governed mainly by the bylaws of the ODO, which establish: the legal regime for the organisation and operation of that professional association; conditions for access to, and exercise of, the profession of customs broker; and the rules, conditions, principles and procedures concerning professional ethics for customs brokers.

Further Portuguese regulations relevant to the exercise of the profession of customs broker are the following:

- Regulation 666/2016, which regulates the professional internship necessary for obtaining the professional title of customs broker;
- Regulation 667/2016, which regulates the registration of individuals in the ODO; and
- Regulation 668/2016, which regulates the disciplinary procedure applicable to customs brokers.

Figure 6.1. Distribution of the accounting, auditing and consulting services provided to firms in Portugal, 2015



Note: The class “Services provided to firms” includes services provided to households, despite its name. Taking into account the description of the services rendered that are provided by the financial/economic professions, available at INE (see link above), several type of services were excluded from this quantification as they seem to be provided mostly by professionals other than the financial professionals under analysis (auditors, certified accountants, custom brokers, and economists). Hence, only the following services were considered: (i) financial auditing services; (ii) accounting services; (iii) tax advice; (iv) strategic management consulting; and (v) consultancy in financial management, except tax consultancy.

Source: INE (2017), “Principais indicadores económicos, segundo a atividade principal da empresa”, https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaquas&DESTAQUESdest_boui=281447433&DESTAQUESmodo=2 (accessed on 23 March 2018).

Economists

Economists are governed mainly by the bylaws of the ODE, which establish the legal regime for the organisation and operation of that professional association, and for access to, as well as the exercise of, the profession of economist.

Further Portuguese regulations relevant to the exercise of the profession of economist are the following:

- the code of ethics applicable to economists,¹³ which establishes the rules, conditions, principles and procedures with which those professionals must to comply;
- Regulation 311/2016, which regulates the registration of individuals in the ODE;
- Regulation 554/2016, which regulates the professional internship necessary for obtaining the professional title of economist;
- Regulation 301/2016, which regulates the disciplinary procedure applicable to economists.

6.1.4. Economic overview

In 2015, the total value of accounting, auditing and consulting services provided to firms in Portugal was EUR 2 044 million,¹⁴ a 15.6% increase relative to 2008. This value corresponds to 15.47% of all services provided to firms in Portugal.

The majority (38.5%) of the value of accounting, auditing and consulting services provided to firms in Portugal in 2015 related accounting services, while 22.1% of the value corresponded to strategic management consulting services (see Figure 6.1).

In 2016, there were 1 400 members of the OROC,¹⁵ of which 935 were active members. In the same year, the OCC had 70 975 members.¹⁶ In September 2017, the ODO had 501 members,¹⁷ of which 267 actively practise the profession in Portugal.

In 2016, there were 177 firms of auditors registered in the OROC.¹⁸

6.1.5. Methodology for competition assessment

The Project analysed 152 Portuguese laws and regulations¹⁹ applicable to the financial and economic professions. Among these, the Project identified 49 provisions as potentially harmful to competition and 37 recommendations were made.

Table 6.1. Summary of analysed provisions applicable to the financial and economic professions

	Total	Auditors	Certified accountants	Customs brokers	Economists
Pieces of legislation analysed	152	54	74	14	10
Provisions identified as potentially harmful to competition	56	24	12	13	7
Recommendations formulated	53	24	12	13	4

In some cases, the regulatory barriers to competition across different professions, including the financial professions, are similar in scope. Therefore, those regulations were jointly analysed by the Project team. The bulk of this analysis is presented in Chapter 3.

The following sections analyse the restrictions found in the regulations for the various financial professions that were specific only to these professions.

6.2. Compulsory disclosure of information by auditors to the professional association

6.2.1. Description of the relevant provision

Auditors are required to inform the Professional Association of Auditors of: (i) the beginning and the end of all the contracts formalised, within 30 days of the event; and (ii) their professional activities carried out annually, including the identities of their clients, type of activities of the clients, the certifications of accounts issued and the fees charged as well as the period of time which they concern.²⁰

6.2.2. Harm to competition

The policy objective underlying this provision is to ensure that the Professional Association of Auditors can access information that is relevant for the monitoring of the legal obligations of auditors. According to stakeholders, in the first case this information is made public by the professional association. This might be intended to prevent auditors who are not members of the internal bodies of the association (which receive this information) from being at a competitive disadvantage. However, such information is by nature sensitive given that it contains business secrets. Specifically, the provision allows some auditors to have access to sensitive information about their competitors, creating significant incentives to use that information improperly in their own business decisions.

On the annual report of auditors' activities, including fees charged, it was reported by stakeholders that in recent years the executive board of the professional association only requested auditors to communicate their total fees for the year relating to public interest functions, without discrimination by client. This practice does not prevent such negative consequences from taking place.

From a competition point of view it seems clear that the provision could also enable collusion among auditors, given that it creates a mechanism for exchange of operational information. In either case, the provision potentially distorts competition, resulting in higher auditing fees or other adverse outcomes for clients.

Nevertheless, the need for an entity to verify the auditors' compliance with their legal obligations is considered to be reasonable, and in such cases sensitive information may be required and requested, for the exercise of those specific activities of oversight.

6.2.3. Recommendation and benefits of implementation

The requirement for auditors to send regularly operational and confidential information to the OROC should be abolished.

Moreover, the bylaws of the OROC should be amended to include a provision requiring:

- that monitoring of the auditors' compliance with their legal obligations should be carried out by an independent, competent and impartial body not composed of auditors;
- auditors shall provide to the independent body only that information which is strictly necessary for the purposes of monitoring compliance with the Act.

The implementation of these recommendations will remove the current risk of collusion among auditors, and protect confidential information that does not lead to unfair business advantages, while guaranteeing that auditors comply with their legal obligations.

6.3. Publication of an annual transparency report by auditors and firms of auditors

6.3.1. Description of the relevant provision

The names of the auditors (the persons) and auditing firms that carry out audits of public-interest entities are required to be published on their website in an annual transparency report within three months of the end of each financial year.²¹

6.3.2. Harm to competition

The maximum period of time for auditors and firms of auditors to publish an annual transparency report defined in the Portuguese provision is shorter than the period in Regulation (EU) 537/2014²² and in the legal framework concerning audit monitoring,²³ for which the period is four months.

The shortened period for the publication of an annual transparency report imposes costs on auditors and the auditing firm, and may lead to uncertainty about the accuracy of these reports. It also leads to some uncertainty for firms operating across national borders which must comply with varying requirements, also imposing additional costs. Because of the difference in requirements it may be considered discriminatory. At the very least it increases the human and financial resources necessary for individuals and businesses to comply with regulation in Portugal as they have to act (one month) faster in order to guarantee that they comply with all the applicable regulation; and this may be a disincentive for potential competitors to enter the market.

6.3.3. Recommendation and benefits of implementation

The provision should be aligned with Regulation (EU) 537/2014 and with the legal framework concerning audit monitoring, by increasing the maximum period of time after the end of each financial year for auditors and firms of auditors to publish an annual transparency report.

The implementation of this recommendation will improve legal and regulatory certainty and lead to compliance cost savings for auditors and audit firms.

6.4. Minimum financial requirements for customs brokers

6.4.1. Description of the relevant provisions

Customs brokers, in order to practise the profession, shall fulfil the following minimum financial requirements:

- provide a security to cover any outstanding obligations incurred in their brokerage activities, in the form of either a bank deposit, a bank guarantee or insurance of, at least, EUR 49 879.79;²⁴
- possess insurance against professional civil liability, in order to cover the risks arising from their brokerage activities, and insured capital of at least EUR 50 000.²⁵

6.4.2. Harm to competition

The provisions impose two separate types of financial requirements on brokers (to be held simultaneously): (i) a security aimed at covering liabilities incurred; and (ii) an insurance against civil liability. However, those requirements could be duplicative, as they seem to address similar risks.

Additionally, the minimum values applied to each requirement may not be appropriate to the levels of risks incurred by each customs broker.

As a result, the provisions may cause customs brokers to incur unnecessary costs. In fact, the provisions prevent customs brokers from matching their level of civil liability to the

scale and risks of their activities, and the provisions require brokers to possess two forms of potentially overlapping financial assurance.

6.4.3. Recommendation and benefits of implementation

The provisions in their current form should be abolished.

The bylaws of the ODO should be amended to combine the financial security and civil liability requirement into a single financial requirement. This would allow brokers to cover their risks with a single financial instrument, such as insurance.

Furthermore, the minimum values for the financial requirements should be analysed to determine whether they are higher than necessary, given the level of risk incurred by customs brokers. If so, the required amount should be lowered from the seemingly arbitrary amount of EUR 49 879.79 at present, to a more suitable value.

The implementation of these recommendations will eliminate the imposition of duplicative requirements and therefore excess costs on customs brokers. In the event that the minimum values are found to be excessively high for some brokers, changes to these values would eliminate a substantial barrier to entry and the restriction on the ability of small brokers to compete.

Notes

¹ Approved by Law 140/2015.

² Such as evaluations, reports, arbitrations, studies on the reorganisation and restructuring of entities, financial analysis, economic and financial feasibility studies, studies and opinions on accounting matters, review of tax returns, studies and advice on tax and parafiscal matters and review of environmental and sustainability reports.

³ In accordance with Art. 41 (1) (a), Art. 48 (c) and Art. 48 (d) of the bylaws of the Professional Association of Auditors.

⁴ Approved by Decree-Law 452/99.

⁵ In accordance with Art. 10 (2) (a) and Art. 10 (2) (b) of the bylaws of the Professional Association of Certified Accountants.

⁶ Such as the submission of declarations to confer on goods a customs-approved treatment or use, of declarations with customs implications for goods and their means of transport and of declarations concerning goods subject to excise duties.

⁷ Approved by Decree-Law 173/98.

⁸ In accordance with Art. 66 (2) (b) of the bylaws of the Professional Association of Customs Brokers.

⁹ Which corresponds to a university degree whose main field is economics, business sciences or business management and administration and, if applicable, whose secondary fields are finances, banking and insurance, accounting and taxation, marketing and advertising or mathematics and statistics.

¹⁰ Published by Decree-Law 174/98.

¹¹ Approved by the General Meeting of the Professional Association of Auditors held on 29 September 2011.

¹² Approved by Decree-Law 310/2009.

¹³ Approved by the General Council of the Professional Association of Economists in its meeting held on 21 December 2012.

¹⁴ *Source*: INE (2017), “Principais indicadores económicos, segundo a atividade principal da empresa”, https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaques&DESTAQUESdest_boui=281447433&DESTAQUESmodo=2 (accessed on 23 March 2018). Taking into account the description of the services rendered and provided by the financial/economic professions, available at INE (see link above), several type of services were excluded from this quantification as they seem to be provided mostly by professionals other than the financial professionals under analysis (auditors, certified accountants, custom brokers, and economists). Hence, only the following services were: (i) financial auditing services; (ii) accounting services; (iii) tax advice; (iv) strategic management consulting; and (v) consultancy in financial management, except tax consultancy.

¹⁵ *Source*: Professional Association of Auditors (2017).

¹⁶ *Source*: Professional Association of Certified Accountants (2017).

¹⁷ *Source*: Professional Association of Customs Brokers (2017).

¹⁸ *Source*: Professional Association of Auditors (2017).

¹⁹ Henceforth called “Pieces of Portuguese legislation”.

²⁰ In accordance with Art. 57 of the bylaws of the Professional Association of Auditors.

²¹ In accordance with Art. 62 (1) of the bylaws of the Professional Association of Auditors.

²² Specifically, in Art. 13 (1) (first paragraph) (first sentence) of Regulation (EU) 537/2014.

²³ Specifically, in Art. 23 of the legal framework concerning audit monitoring.

²⁴ In accordance with Art. 67 (1) of the bylaws of the Professional Association of Customs Brokers.

²⁵ In accordance with Art. 67 (5) of the bylaws of the Professional Association of Customs Brokers.

References

Professional Association of Auditors (2017), “Relatório e Contas – Período de 2016”, <http://www.oroc.pt/fotos/editor2/Bastonario/2017/RelC2016.pdf>.

Professional Association of Certified Accountants (2017), Relatório e Contas – 2016, https://www.occ.pt/fotos/editor2/rc2016_b.pdf.

Professional Association of Customs Brokers (2017), e-mail of 14 September 2017.

Databases

INE (2017), “Principais indicadores económicos, segundo a atividade principal da empresa”, https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaques&DESTAQUESdest_boui=281447433&DESTAQUESmodo=2 (accessed on 23 March 2018).

Annex 6.A. Benefits to consumers

Consumer welfare can increase to as much as EUR 52.34 million with the lifting of restrictions arising from regulations applicable to the financial and economic professions, making them more competitive with regard to entry and exercise requirements, allowing for more competition between professionals.

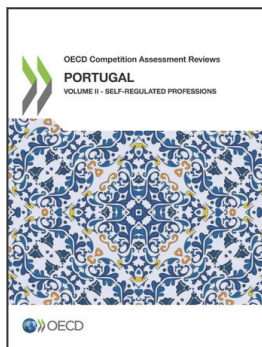
Table 6A.1. Impacts of financial and economic services on all firms in Portugal, 2015

Price changes	Increase in consumers welfare (<i>W</i>) in EUR when <i>ePD=2</i>
$\frac{\Delta P}{P} = 0.20\%$	4 096 248
$\frac{\Delta P}{P} = 0.40\%$	8 208 849
$\frac{\Delta P}{P} = 0.50\%$	10 271 281
$\frac{\Delta P}{P} = 0.75\%$	15 455 247
$\frac{\Delta P}{P} = 1.00\%$	20 644 764
$\frac{\Delta P}{P} = 1.50\%$	31 120 448
$\frac{\Delta P}{P} = 2.00\%$	41 698 334
$\frac{\Delta P}{P} = 2.50\%$	52 378 423

Note: Taking into account the description of the services rendered and provided by the financial/economic professions, available at INE (see link above), several type of services were excluded from this quantification as they seem to be provided mostly by professionals other than the financial professionals under analysis (auditors, certified accountants, custom brokers, and economists). Hence, only the following services were considered: (i) financial auditing services; (ii) accounting services; (iii) tax advice; (iv) strategic management consulting; and (v) consultancy in financial management, except tax consultancy.

Source: Data from INE (2017), “principais indicadores económicos, segundo a atividade principal da empresa”,

https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaques&DESTAQUESdest_boui=281447433&DESTAQUESmodo=2 (accessed on 23 March 2018) and methodology presented in Annex A.2.



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