# Chapter 2. Overview of the regulated professions

*The existence of a well-functioning professional services market ultimately affects most economic activities and is fundamental to enable productivity growth and welfare. Regulated professions play an important role in the Portuguese economy. The three professional sectors "legal", "technical/scientific" and "financial/economic", represent 2.3% of the gross domestic product (GDP) and employ around 144 000 people, with services that touch nearly every sector of economic activity. This section provides a brief overview of the rationale for regulating liberal professions and identifies the common market problems associated with them. It includes a description of the main regulatory frameworks and an economic overview of the regulated professions in Portugal. In sum, the current approach to the regulation of several professions is a prescriptive one, which leads to regulations that create several barriers to competition not justified by public interest concerns.*

Liberal professions are professions that require particular training and skills. The European Commission Directive on the recognition of professional qualifications 2005/36/EC (revised 20 November 2013), defines "Liberal Professions" as activities "practiced on the basis of relevant professional qualifications in a personal, responsible and professionally independent capacity by those providing intellectual and conceptual services in the interest of the client and the public."

Because of the nature of certain professional services, such as market failures stemming from limitations to consumer information, liberal professions tend to be highly regulated by national governments, supported by professional bodies. Examples of these regulated professions include lawyers, notaries, auditors and engineers. Liberal professions are often characterised by strict entry criteria and rules governing professional conduct, the rates or fees that can be charged, and the legal forms of professional businesses (Canton et al., 2014). In exchange, professionals are granted various exclusive rights. The precise range of restrictions and privileges enjoyed by professionals varies among jurisdictions.

Professional services contribute significantly to the development of any economy. Apart from their contribution to the GDP and employment of OECD countries, the existence of a well-functioning professional services market ultimately affects most economic activities and is fundamental to enable productivity growth. Thus, it is crucial to ensure that the regulatory framework for professional services encourages pro-competitive outcomes for consumers. In particular, well-designed regulations can improve market outcomes by addressing inherent market failures. However, regulation can also unnecessarily limit competition, both within professions and between professionals and other service providers, by going beyond what is necessary to address market failures. This generates consumer harm in the form of higher prices, stifled innovation or lower quality, among other effects.

The report identifies and evaluates the regulatory barriers to competition in 13 liberal professions in Portugal and makes recommendations for legislative reform. These recommendations aim to either mitigate or eliminate those barriers while preserving the objectives pursued by the legal provisions. The 13 professions included in this study are all self-regulated with their own professional associations ("orders"). They are:

- **Legal professions**: lawyers (*advogados*), notaries (*notários*), solicitors (*solicitadores*) and enforcement agents (*agentes de execução*);
- **Technical/scientific professions** : architects (*arquitectos*), engineers (*engenheiros*) and technical engineers (*engenheiros técnicos*);
- **Financial-economic professions**: auditors (*revisores oficiais de contas*), certified accountants (*contabilistas certificados*), economists (*economistas*) and customs brokers (*despachantes oficiais*);
- **Health professions**: nutritionists (*nutricionistas*) and pharmacists (*farmacêuticos*).

This chapter provides a short overview of the regulated professions, focusing specifically on the framework in Portugal. Section 2.1 includes an economic overview of the regulated professions in Portugal supported by statistical data. Section 2.2 explains the rationale for regulating liberal professions, while Section 2.3 sets out the competition implications of those regulations. Section 2.4 sets out the various models for regulating liberal professions. Section 2.5 describes the current regulatory environment in Portugal. Finally, Section 2.6 provides general observations on the impact on competition of the

current regulatory approach to professional services in Portugal, which will be dealt with in detail in the following chapters, and existing opportunities for regulatory reform.

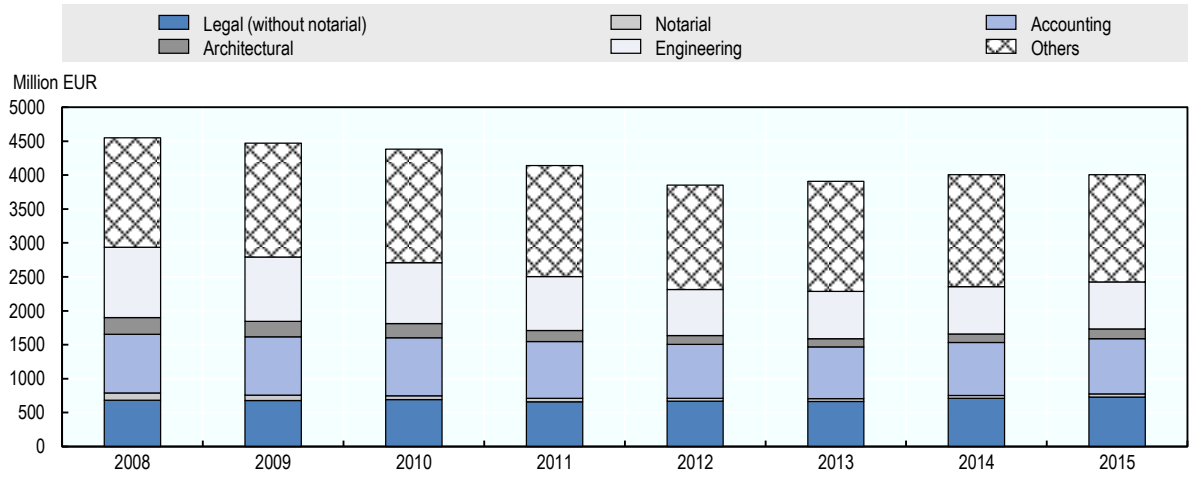
The overarching conclusion of this analysis is that there are several features of the current regulatory framework that are more restrictive than necessary, and which are not justified by the market failures that typically motivate regulations in professional services. In particular, they focus on specific behaviours at the expense of outcomes, and at times do not function in the interests of the consumers of professional services, nor the public interest more broadly.

## 2.1. Economic overview of the regulated professions in Portugal

The regulated professions are a crucial sector for the development of any economy. Apart from their contribution to the GDP and employment of OECD countries, the existence of a well-functioning professional services market ultimately affects most economic activities and is fundamental to enable productivity growth.

The regulated professions under analysis comprise four main areas: legal (lawyers, notaries, solicitors, and enforcement agents), financial and economic (auditors, certified accountants, customs brokers, and economists), technical (architects, engineers and technical engineers), and health (nutritionists and pharmacists). Due to lack of data, this economic overview does not include health professions.

**Figure 2.1. Gross value added of the regulated professions in Portugal (current prices)**




*Note*: "others" include activities related to management and consultancy, which might be developed by economists and accountants, and testing and technical analysis, which might be developed by engineers.
*Sources*: OECD (2017), "Value Added and its Components by Activity, ISIC rev4", National Accounts of OECD Countries, Vol. 2017, Issue 2: Detailed Tables; INE database, available at https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_indicadores&indOcorrCod=0008484&contexto=bd&selTab=tab2.

In 2015, the regulated professions generated a gross value-added (GVA) of almost EUR 4.1 billion for the Portuguese economy, corresponding to 2.3% of GDP. The three professional groups under analysis generated a GVA of almost EUR 2.54 billion,

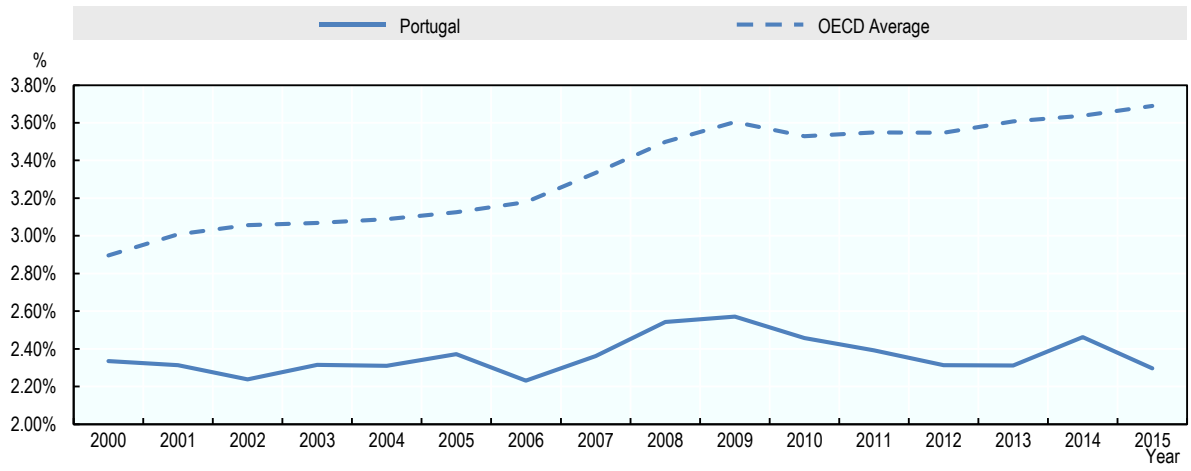
representing 1.35% of GDP. It employed more than 144 000 persons representing around 3% of the entire employed population. In the same year there were around 76 000 professional firms, one-third of which provided legal services.

In absolute terms, the value-added of these regulated professions in Portugal has been growing over the past 15 years, increasing from around EUR 3 billion in 2000 to EUR 4.1 billion 2015. This corresponds to an average annual growth rate of around 2%, below the average growth rate of the national GDP of 2.3% over the same time period.

Overall, the GVA of all professions with the exception of legal services decreased from 2008-12, reflecting difficult economic conditions in Portugal (Fig. 2.1). The engineering services were particularly hard hit, most likely owing to a concomitant dip in construction activity during that period. On the other hand, legal activities have been slowly increasing over time, only surpassed in 2015 by accounting activities, which represent almost 20% of the sector's value added.

The contribution of the liberal professions analysed here to the Portuguese GDP is below the OECD average. Between 2000 and 2015, regulated professions in Portugal accounted on average for less than 2.5% of the GDP, while the share for OECD countries exceeded 3% for the same time period.

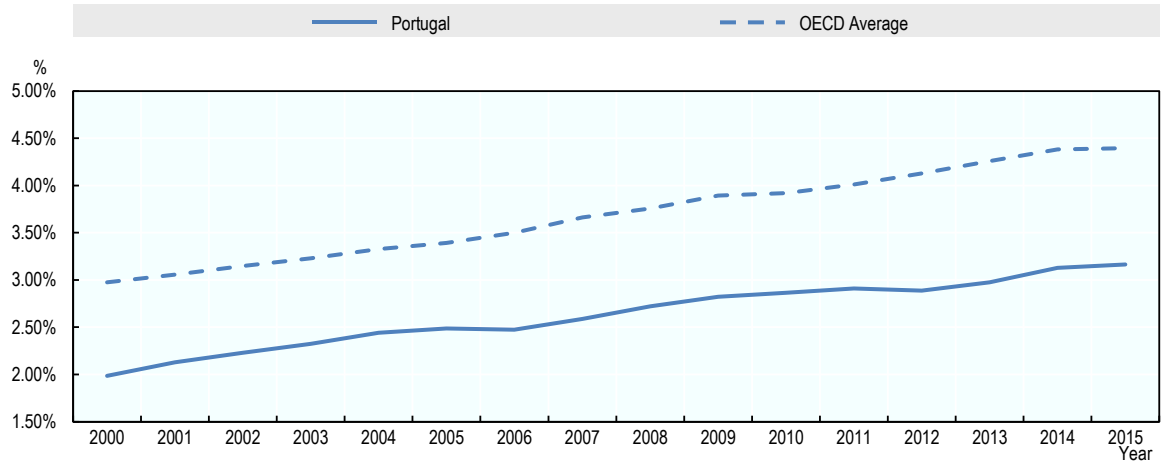
**Figure 2.2. GVA of the regulated professions as a share of GDP**




*Source*: OECD (2017), "Value Added and its Components by Activity, ISIC rev4", National Accounts of OECD Countries, Vol. 2017, Issue 2: Detailed Tables, OECD Publishing, Paris. http://dx.doi.org/10.1787/na_ma_dt-v2017-2-en.

The contribution of these professions to employment is also below the OECD average, but has been increasing over time. Between 2000 and 2015, they accounted on average for around 2.6% of total employment, while the share for OECD countries is 3.7% for the same time period.[1]

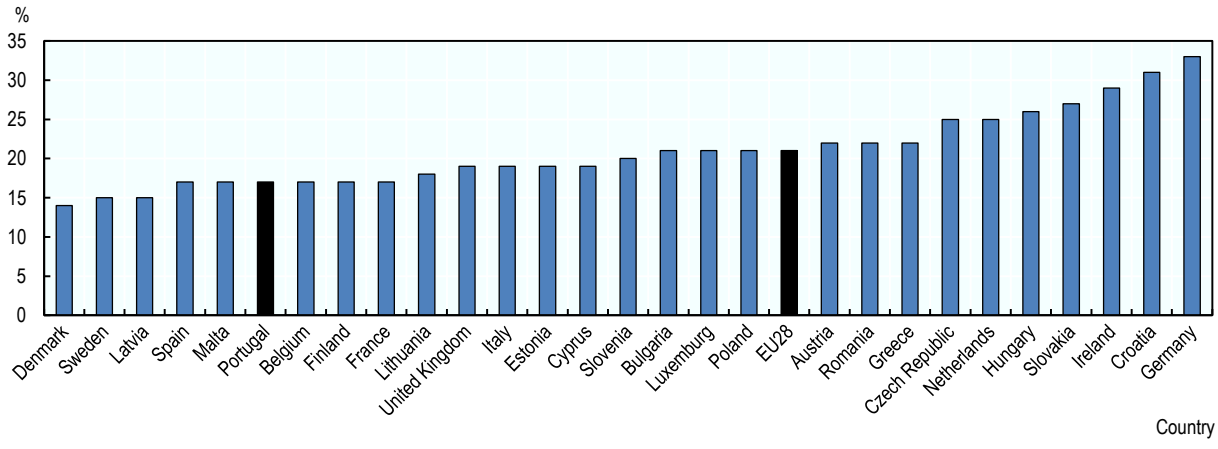
**Figure 2.3. Regulated professions as % of total employment in Portugal**




*Source*: OECD (2017), "Labour input by activity, ISIC rev4", National Accounts of OECD Countries, available at https://stats.oecd.org/Index.aspx?DataSetCode=SNA_TABLE6A.

Data from 2015 from the European Commission (2017) indicate that all regulated professions, i.e. also including health and other regulated profession not covered in this report, accounted for around 17% of the total labour force in Portugal, below the EU28 average of 21%.

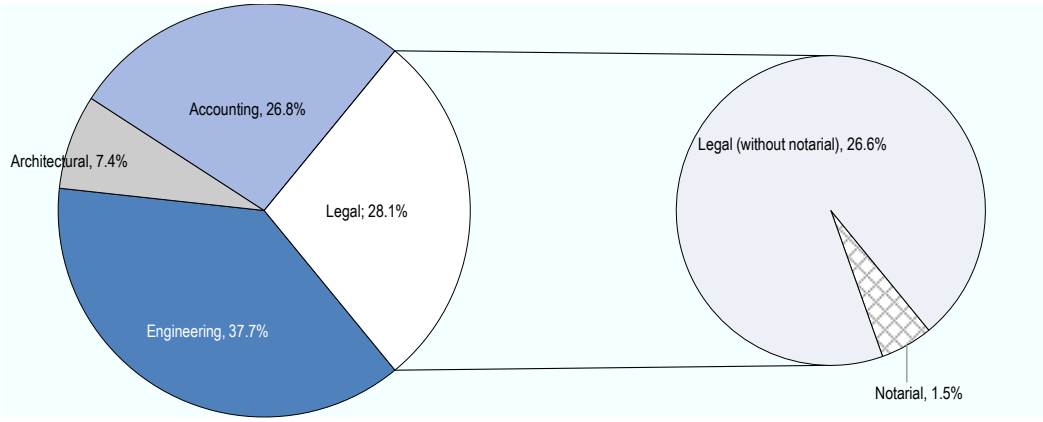
**Figure 2.4. Share of regulated professions in total labour force in 2015**




*Source*: European Commission (2016), "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 the regulation in professional services", SWD (2016), 436 final.

In 2016 the regulated professions in Portugal generated almost EUR 5 billion in turnover, 38% of which from engineers).

**Figure 2.5. Distribution of turnover by regulated professions in Portugal, 2016**




*Source*: Data extracted from INE website, database "Turnover (€) of enterprises by Geographic localization (NUTS - 2013) and Economic activity (Subclass - CAE Rev. 3); Annual", https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_indicadores&indOcorrCod=0008484&contexto=bd&selTab=tab2&xlang=en.

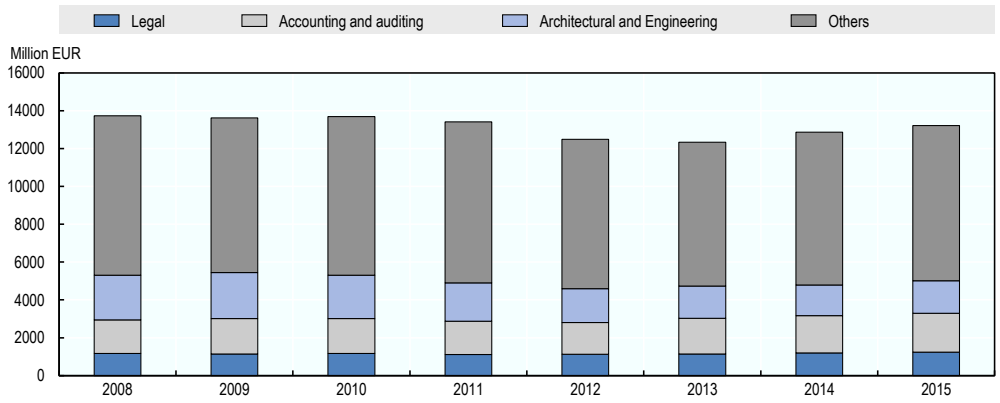
In terms of the value of the services rendered to firms, the regulated professions under analysis accounted for 38% of all services. In particular, the accounting and auditing services alone accounted for around 15.5% in 2015 (see Figure 2.6).

## 2.2. Linkages between professional services and the rest of the economy

There is an extensive theoretical and empirical literature on so-called knowledge intensive business services which include services such as legal, accounting, architectural, and engineering services in addition to various management consulting services, advertising and so on. These services are vital to the development and functioning of modern economies as inputs into innovation and technology (see Miles 2005 among others). They rely on professional knowledge, but they are also in themselves sources of knowledge and contribute to the competitiveness of their clients. They perform "services encompassing a high intellectual value-added" (Muller and Zenker, 2001). These services belong to the category of "knowledge-intensive business services"(KIBS) and have a strong impact on the general competiveness of the economy, and direct relevance for consumers, whether firms or households (Boeheim, 2004).

Canton et al. (2014) quote a wide literature that demonstrates the significance of knowledge-intensive business services (legal, accounting, management consulting) in linkages with the rest of the economy as knowledge inputs in the production process in other sectors, but also as users of knowledge inputs (the “backwards” link). In other words, the legal profession along with other services to businesses has an important multiplier effect in the economy as an intermediate input. This economic effect consists of an output multiplier effect and is defined as the ratio of the change in total output induced by an increase in demand for a professional service. Canton et al. analyse the output multipliers of four professions (including the legal, accounting, architecture and engineering profession), and they find that in the European Union (EU27), 1.00 Euro of final demand for legal and accounting activities in the economy generate 1.8 Euros of gross production in downstream businesses, including manufacturing.

**Figure 2.6. Distribution of the services rendered by regulated professions in Portugal, 2008-2015**




*Note*: The class "Services rendered to firms" includes services rendered to households, despite its name. The item "Legal" includes all the activities related to clients' legal rights and obligations and which aim at their legal advice, i.e., it includes all juridical and notarial services, plus other services. 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*: 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**.

Paterson et al. (2007) carried out a comparative study on the regulation of four categories of professional services across the European Union (legal, accounting, technical, and pharmacists) based on two indicators: entry and conduct regulation. This study demonstrates a negative correlation between the degree of regulation and productivity in legal, accounting and technical services (engineering and architects).[2] Also, Monteagudo et al. (2012) carried out an empirical analysis of services regulation, measuring the results of the regulatory changes on the barriers before and after the implementation of the Services Directive,[3] and concluded that the implementation of the directive has generated an extra 0.8% of EU GDP, ranging from 0.3% to 1.5%, depending on the Member State.[4]

Extensive OECD research, such as Arnold et al. (2008 and 2011), has demonstrated that restrictive product market regulations lead to an inefficient allocation of productive resources. Canton et al. (2014) find that in general for Europe, there appears to be an inefficient resource allocation in the regulated professions, which may be due to reduced competition connected with product market regulations. Other studies, such as Égert and Wanner (2016) demonstrate several positive impacts of regulatory reforms on labour productivity and economics in general.

## 2.3. The rationale for regulating liberal professions

One of the fundamental reasons for regulating the liberal professions is the potential emergence of market failures in their provision. These market failures consist of information asymmetries and externalities which, when left unaddressed, might lead to inefficient market outcomes. Liberal profession regulatory frameworks may also pursue additional policy goals. Each of these rationales will be described below.

### *2.3.1. Information asymmetries and moral hazard*

The normal argument in favour of regulation of the liberal professions is the existence of asymmetric information between the professional and the client because the client cannot assess the quality of the services in advance of procuring them. Many services provided by legal or other liberal professionals can be thought of as *experience goods*, as the quality of the service is not known by a consumer beforehand. For instance, a client seeking litigation services from a lawyer is generally not able to fully assess the skills of the litigator prior to observing their appearances in court. Other professional services are more appropriately classified as *credence goods* – goods for which the quality may never be observed but where the consumer needs to trust the professional to provide a good service. Even after buying a service the client may not be able to fully judge the quality, for instance in the drawing up of a will or a contract, hence they make their decisions based on trust, reputation and some expectations of the average quality they are likely to receive (OECD, 2016). This could create incentives for professional services providers to provide low quality services to consumers.

Because consumers are unable to assess beforehand the quality of professional services they are procuring, they may attempt to identify alternative indicators of quality. This can lead to *adverse selection*, where professionals are chosen by consumers for reasons unrelated, or in fact negatively associated with, quality. For example, consumers may perceive that a professional whose services are more expensive may offer higher quality than their less expensive peers, even if this is not true (OECD, 2016). As a result, consumers may pay too much for services that could be procured at a similar or better level of quality for a lower price, leading to an inefficient market outcome.

Another problem that can arise out of information asymmetries in professional services markets is *moral hazard*. Consumers rely on professionals to assess the exact nature and extent of services required for their particular situation. This relationship increases the potential for the professional (lawyer, architect etc.) to act against their clients' interest when there is a divergence between the professionals and clients' interests (OECD, 2016). For instance, in legal markets the professional might propose to their clients some additional services that they do not require; or an architect might suggest building features which are not strictly required. Clients without technical knowledge would not be well-placed to identify such behaviour. It should be noted that the likelihood of this varies significantly according to the client and service being procured. A large corporate client that employs legal advisors would be less likely to incur unnecessary costs than a small business owner with no legal training. Highly standardised notarial services would be less susceptible to such problems than technical, contentious areas of specialised law.

### *2.3.2. Externalities*

The existence of externalities associated with professional services can also lead to inefficient market outcomes. Negative externalities for society arise when professional services are of sub-optimal quality leading to costs for parties outside the professional-client relationship. For instance, a lawyer without an understanding of court procedures could lead to time wasting, imposing costs on the judge, courtroom staff and other parties (OECD, 2016). Furthermore, low-quality services in a court may result in decisions that do not reflect the underlying reality of a case ultimately leading to denial of justice to citizens. Similarly, an unskilled engineer might cause a building to be structurally unsound. Conversely, correctly applied legal services can generate positive externalities, including a reduction in the burden on judges in court proceedings and greater legal

certainty for parties to a transaction, just as good engineers should complete building works faster and on budget.

### *2.3.3. Other policy objectives*

There are several other policy objectives that have led to regulation of professions and their services which are not specifically related to market failure. Some regulations are aimed at addressing certain fundamental legal principles such as universal health care, including ensuring that low-income consumers can access health; or legal aid in the case of low-income groups. These different professional services are regarded as "merit goods", as they must be available to any individual regardless of his ability and willingness to pay, on the basis of a concept of "need" which society regards as meriting satisfaction due to a moral imperative.

Other objectives aim to uphold specific public interest objectives such as attorney-client confidentiality, or the integrity of auditing services (OECD, 2016).

## 2.4. The competition implications of liberal profession regulations

While well-designed regulations can help to address market failures and promote pro-competitive outcomes, disproportionate or unnecessary regulations for consumer protection or public interest objectives may harm competition between suppliers, and particularly between newcomers and established providers, which will have a negative impact on consumer welfare.

That is the case, for instance, when regulation upon professionals imposes the *protection of title and reserved activity*. There are many professions and activities that are self-regulated through the creation of a professional association. Some professional associations have the exclusive power to grant a title and along with it, define the activities that are exclusive to those professionals. These associations may restrict access to certain activities to those professionals registered with that professional association creating anticompetitive effects.

Another example of measures that may have counterproductive effects is the use of *regulated prices*, which may be intended to uphold high quality standards in professional services, or, in some cases, to guarantee universal access. However, no causal link has been established between a fixed price regime and higher quality of services (OECD 2009). *Fee regulation is harmful to competition* as it does not allow suppliers to compete freely on price in non-monopolistic markets, where such concern is mitigated and can be overcome with more transparency on the methods of calculating fees, for example. Moreover, the impossibility of providers to compete on prices means that clients are unable to seek out a professional with a lower fee, thereby effectively pricing a portion of consumers out of the market. This is particularly a problem with access to justice. Hadfield and Rhode (2016) cite a recent study from New York where up to 95% of litigants appear in court without legal representation.

In general, the aim of competition assessment analysis is to identify such unnecessary or excessive regulations and to propose a well-developed regulatory framework to support innovation, cost-reduction and more efficient practices for the professions, while supporting better access to professional services for both firms and consumers.

## 2.5. Models of regulation for professional services

In order to achieve a policy goal, a regulatory framework requires an institutional structure (according to May, 2007) with explicitly allocated responsibilities. May defines an "institutional structure" as a set of rules that prescribe: (i) expected behaviours or outcomes, (ii) standards that are benchmarks against which compliance can be measured, (iii) a mechanism for determining the degree of regulatory compliance, and (iv) sanctions for failure to comply with the rules.

The various approaches to the regulation of services, including professional services, can be grouped into four categories (based on Hadfield and Rhode, 2016, and May, 2007): (i) prescriptive or command-and-control regulation; (ii) performance- or outcomes-based regulation; (iii) systems −or management-based regulation; and (iv) meta-regulation or competitive regulation. All four regulatory approaches aim to mitigate or solve market failures due to information asymmetries and externalities, in order to achieve economic efficiency while achieving certain public objectives, such as universal access to justice. The different types of regulation we observe across different countries and economic sectors may combine elements from these four approaches.

**The "prescriptive regulation" approach** sets specific and detailed rules about training and qualifications that providers must possess. It is also known as "command and control" regulation. It often establishes behavioural rules to be complied by professionals. The main advantages of the prescriptive model are that it may deliver better regulatory outcomes when there appears to be a strong relationship between training, practices and the conduct and skills of the professional. In this situation, regulators might be better than practitioners at determining what practices reduce bad outcomes. However, prescriptive regulations could be ineffective, excessive and might favour private or corporate interests over the public interest – particularly in the case of industry self-regulation. The risk of self-regulation leading to anticompetitive outcomes (by supressing competition from non-members) was recognised in 2015 by the United States Supreme Court. [5]The liberal professions in Portugal are very strictly regulated and mostly follow the prescriptive approach.

**The "performance-based regulation" approach** sets the results that a provider has to achieve, but does not specify how the provider has to achieve them. This approach can deliver better outcomes when there are multiple ways of reducing undesirable results or there is substantial uncertainty about the relationship between training, practices and outcomes. In contrast to a "prescriptive regulation" approach, which assumes that adherence to prescribed rules and guarantees that the desired goals are achieved, a "performance-based regulation" approach grants a higher degree of autonomy to the regulated entities (in our case, the professionals themselves) to determine how best to achieved the desired results. Within this model, practitioners are in a better position to innovate than state regulators. However, it might be difficult to set measurable goals and standards; and to assess or predict performance. Additionally, regulated entities may not fully adhere to performance standards. Certain types of regulation covering the energy, telecoms, and transport sectors, as well as air and water quality, building and fire safety, and energy efficiency, usually follow this approach.

**The "systems-based regulation" approach** requires providers to set goals and engage in a process of reviewing practices and outcomes to develop internal procedures for achieving them. Both goals and procedures are then approved and monitored by the regulator. This approach provides a good answer to situations when the existing

uncertainty extends to the determination of what constitutes appropriate performance standards. Nonetheless, this approach limits the regulatory actions when system defects are found. Certain types of regulation over food, health, safety and environment follow this approach.

**Finally, the "meta-regulation" approach** imposes rules and processes on providers that are developed by either public or private, individual or multiple, third-party regulators. These regulators are subject to oversight by the state. The government requires providers to specify a regulator from among a set of approved regulators. This approach has the advantage of promoting innovation and investment in better regulatory design, and of addressing any conflicts of interest that may be inherent in self-regulation. One shortfall is to ensure that the entity to which the state has effectively delegated regulatory oversight authority achieves results consistent with the state's regulatory goals and is not captured by the entities within its mandate.

## 2.6. The current regulatory framework in Portugal and opportunities for reform

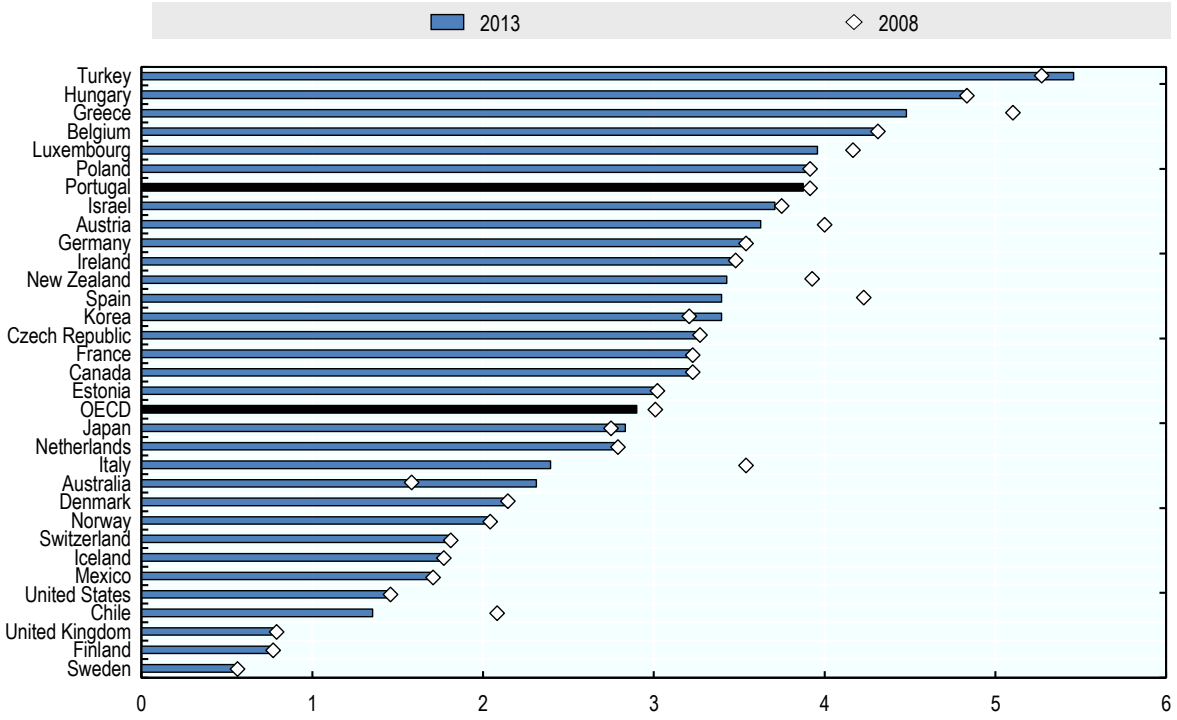
There are approximately 240 different regulated professions in Portugal, according to information submitted to the European Commission in November, 2016. This is above the EU-28 average of 198. Among those professions, 139 are regulated only by law, and 100 professions are also regulated by professional organisations. The latter professions are considered highly-regulated.

In Portugal, the broad regulatory framework for the professions is comprised of: Framework Law 2/2013, which establishes the legal regime for the creation, functioning and organisation of professional associations; Law 53/2015 on the constitution and functioning of societies of professionals who are subject to professional public associations; and the bylaws for each professional association (12 of which are addressed in this report). This framework is primarily rooted in a "prescriptive regulation" approach.

The overall degree of regulatory restrictiveness in Portuguese professional services markets can be measured by the OECD's Product Market Regulation (PMR) indicators.[6] Portuguese regulations in the legal, accounting, engineering and architect professions are more restrictive than the regulatory framework of most other OECD countries, as shown in Figure 2.7 to Figure 2.10. Moreover, the PMR indicators in Portugal for legal, accounting and architect professions have not changed substantially between 2008 and 2013 (the last time this was measured), though there was a positive evolution of the PMR of the engineer profession, meaning that the legal framework is slightly less restrictive than in 2008.

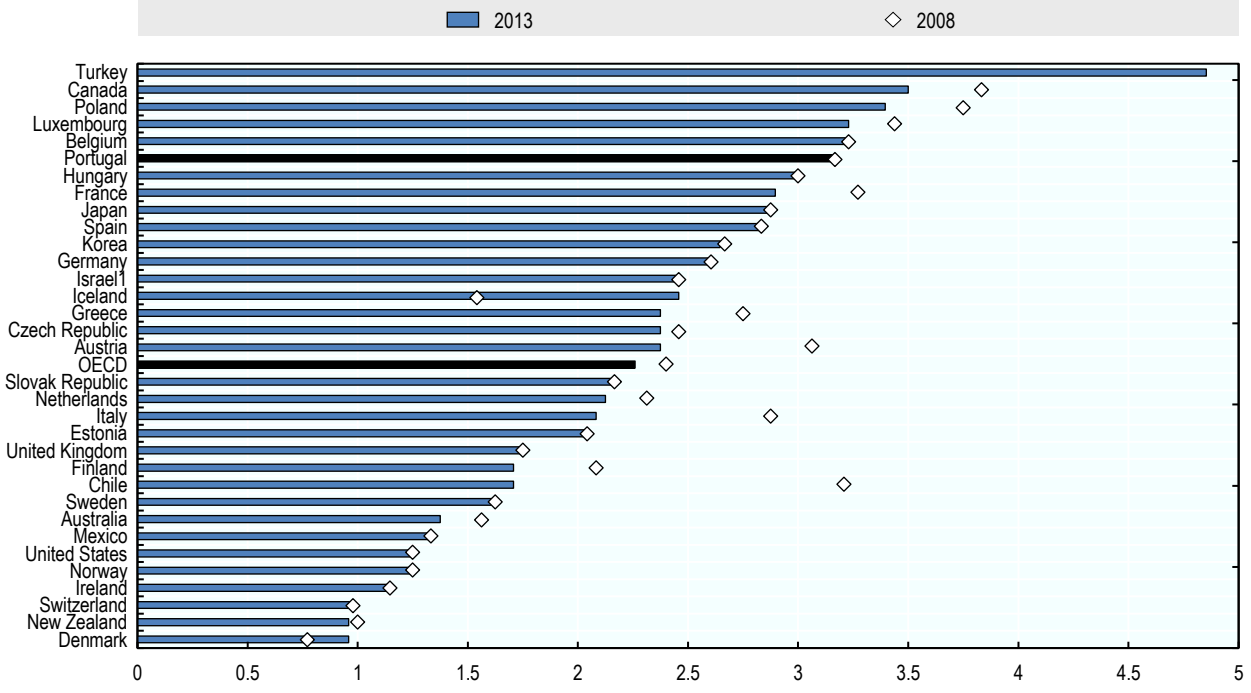
Looking inside the different components of the PMR, it is possible to identify the areas where regulatory reform would be more effective in promoting market entry and competition. In the accounting, engineer and architect professions, the high value of the PMR results from excessive barriers to entry, which could likely be reduced through pro-competitive reforms. In the legal professions, the high PMR indicator results from several barriers to entry and highly restrictive conduct regulations.

**Figure 2.7. Product Market Regulation indicator for the legal professions**



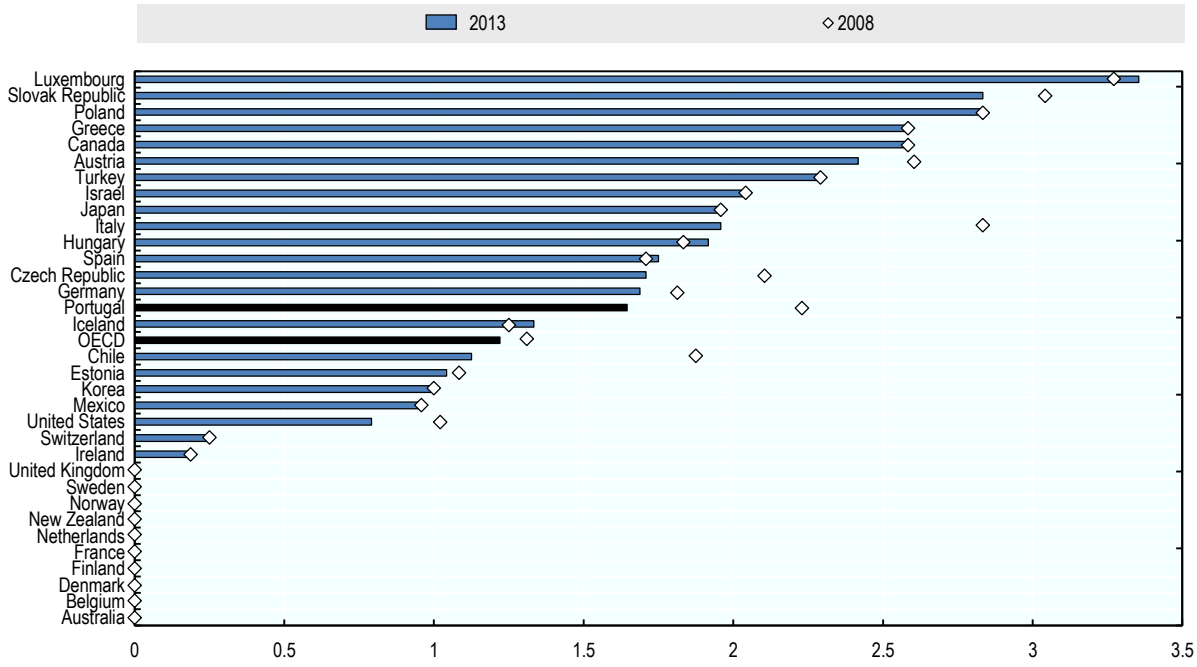

*Source*: OECD (2013), Product Market Regulation Database, www.oecd.org/economy/pmr.

**Figure 2.8. Product Market Regulation indicator for accounting-related professions**



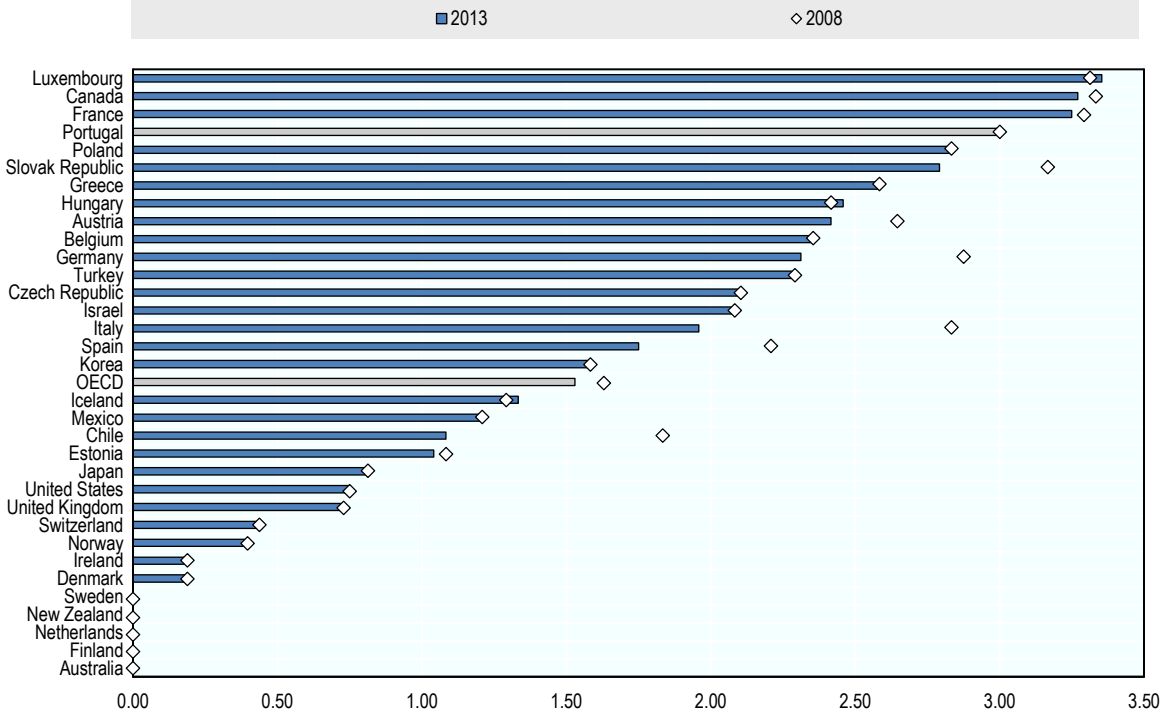

*Source*: OECD (2013), Product Market Regulation Database, www.oecd.org/economy/pmr.

**Figure 2.9. Product Market Regulation indicator for engineering professions**




*Source*: OECD (2013), Product Market Regulation Database, www.oecd.org/economy/pmr.

**Figure 2.10. Product Market indicator for the architecture profession**




*Source*: OECD (2013), Product Market Regulation Database, www.oecd.org/economy/pmr.

The European Commission's restrictiveness indicator for the liberal professions does not measure exactly the same aspects as the OECD PMR, but the outcomes are highly similar. In 2016 the EC restrictiveness indicator shows a higher value for Portugal than the EU average for engineers, architects and accountants, indicating that the regulatory framework for these professions is more limiting than the EU average. In Portugal the regulation for lawyers is particularly restrictive compared with the other professions. However, on an EU average, the Portuguese value for lawyers is slightly lower (European Commission, 2017).

According to the European Commission (2017a, p.9) "lower levels of regulatory restrictions coincide with better economic outcomes, specifically lower incumbents' rents and higher growth of the number of enterprises".

The breadth of the restrictions to competition in the regulated professions in Portugal, as well as the prescriptive approach that dominates, create a range of barriers to competition. In several cases, these barriers cannot be justified by the public interest arguments that tend to motivate professional services regulations; namely market failures or other broad policy goals.

We recommend that professional self-regulation in Portugal move away from a "prescriptive regulation" towards a "performance-based regulation" approach, possibly coupled with some features from a "systems-based regulation" approach. Both households and firms will be better off as a result of this evolution.

In addition to the regulatory approach, this report contains numerous specific recommendations for regulatory reform. The overarching rationale for these changes is that, while a certain level of regulation is justified for consumer protection reasons, it should not exceed the necessary and adequate level to ensure that protection. In general, the aim of this report's analysis was to identify such unnecessary or excessive regulations and to propose a well-developed regulatory framework to support innovation, cost-reduction and more efficient practices for the professions, while supporting better access to professional services for both firms and consumers. These changes take inspiration from recent reforms in the European Union, and economic studies demonstrating the broad economic benefits of regulatory reform in the liberal professions, described in Box 2.1.

Additional benefits from a different regulatory structure would include the fact that taking innovative steps will be easier. Innovation in professional services is also required to encourage the use of online and internet services and to prepare the professions for the future use of modern information technology, such artificial intelligence and blockchain, in service provision. The current regulatory system is ill-equipped to deal with radical or innovative technologies in the professions.

The next chapter analyses the regulation of professions in Portugal in general, with a particular focus on the regulatory barriers to competition that are common to several professions. Subsequent chapters then discuss barriers that are relevant only for one or a few professions, grouped by trade (legal, scientific and technical, financial and health).

**Box 2.1. Recent reforms in the field of regulated professions in other EU Member States**

Several regulatory reforms have been undertaken by EU countries in the field of the regulated professions over the past decade.

**Greece** had one of the highest levels of regulatory barriers among OECD countries, some of those in conflict with the spirit of the Services Directive. In 2011, the country undertook a major reform on a large number of regulated professions (such as lawyers, notaries, accountants, and auditors) and created a new framework regime. Some changes included the abolishment of fixed prices and compulsory minimum fees. The licensing requirement to practise a profession was replaced with a simpler scheme of notification. Athanassiou et al (2015) demonstrate positive outcomes in the case of Greece on employment levels, reduction of costs to consumers and more entrants into the market from the liberalisation of access and conduct. In the case of notaries, there was an increase on the number of start-ups from 80 during the period 2007 to 2013 to 193 in 2014.

**Spain** established a new regulatory framework for the regulated professions after the transposition of the Services Directive in 2009. Professional associations are not entitled to fix tariff rates, restrictions on advertising were relaxed and for some professions it became easier to exercise different professions at the same time.

**In Italy,** several changes such as the abolishment of mandatory minimum tariffs and the adoption of less restrictive rules on compulsory traineeships were adopted in 2012. Additionally, the freedom of establishment of new firms and the rules on advertising were relaxed. In the case of lawyers, fixed tariffs were abolished and free advertising was adopted, which contributed to lower average fees.

In some cases, such as Greece, Spain and Italy, those reforms were intended to conform the legislation of the Member States to the agreements established with the "troika". Other countries, such as Poland, Germany, Austria and the United Kingdom also undertook recent reforms on the liberalisation of professional requirements, with positive outcomes in employment rates and in the prices to consumers.

*Sources*: Athanassiou et al (2015), Canton et al (2014), Rojek et al (2016), Chini et al (2016), Davud Rostam-Afschar (2015), Koumenta et al (2015), and Pagliero (2015).

## Notes

[1] Note that these professional sectors may include employees and staff who are not themselves members of the professions. For instance, law firms employ secretarial staff, clerks and IT experts who are not lawyers themselves.

[2] In Canton et al. (2014).

[3] https://ec.europa.eu/growth/single-market/services/services-directive_pt.

[4] In Canton et al. (2014), op. cit.

[5] North Carolina Board of Dental Examiners vs The Federal Trade Commission. See www.ftc.gov/news-events/press-releases/2015/02/statement-ftc-chairwoman-edith-ramirez-us-supreme-court-ruling; and www.americanbar.org/groups/professional_responsibility/resources/client_protection/north-carolina-board-of-dental-examiners-decision-resources.html

[6] See http://www.oecd.org/eco/growth/indicatorsofproductmarketregulationhomepage.htm.

## References

Arnold, J. M., et al. (2008), Regulation, Allocative Efficiency and Productivity in OECD Countries: Industry and Firm-Level Evidence, OECD Economics Department Working Papers, No. 616, OECD Publishing, Paris, http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=eco/wkp(2008)24.

Arnold, J. M., et al. (2011), "Regulation, Resource Reallocation and Productivity Growth", European Investment Bank Papers, Vol. 16(1), 90-115.

Athanassiou et al. (2015), "The Effects of Liberalization of Professional Requirements in Greece", Centre of Planning and Economic Research (KEPE), Athens, http://www.eib.org/attachments/efs/eibpapers/eibpapers_2011_v16_n01_en.pdf#page=92

Boeheim, M. (2004), "Competition, Competition Policy and Economic Growth", Austrian Economic Quarterly, 4/2014, Austrian Institute of Economic Research (WIFO).

Canton, E., et al (2014), "The Economic Impact of Professional Services Liberalization", European Commission, DGEcoFin, European Economy Series, Economic Papers No. 533, September.

Chini et al. (2016), Effects of Liberalisation in Austria using the Example of Liberal Professions, Wirtschafts Universität Wien and Forschungsinstitut fur freie Berufe.

Comisión Nacional de la Competencia (CNC) (2008), Report on the professional services sector and professional associations,CNC, Barcelona.

Copenhagen Economics (2013), "Barriers to productivity growth in business services", background report prepared for Danish Productivity Commission 8 May 2013.

Corugedo, Emilio F. and Esther P. Ruiz (2014), "The EU Services Directive: Gains from Further Liberalization", IMF Working Paper WP/14/113, European Department, July.

Davud Rostam-Afschar (2015), "Regulatory Effects of the Amendment to the HwO in 2004 in German Craftsmanship", Free University Berlin and German Institute for Economic Research (DIW Berlin).

Égert, B. and I. Wanner (2016), "Regulations in services sectors and their impact on downstream industries: The OECD 2013 REGIMPACT Indicator", OECD Economics Department Working Papers, No. 1303, OECD Publishing, Paris. http://dx.doi.org/10.1787/5jlwz7kz39q8-en.

European Commission (2017), "Commission staff working document accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on reform recommendations for regulation in professional services {Com (2016) 820 final}", SWD (2016) 436 final.

European Commission (2014), Lawyers training systems in the EU, April.

European Economic and Social Committee (2014), "The State of Liberal Professions Concerning their Functions and Relevance to European Civil Society".

Hadfield, Gillian K. and Deborah Rhode (2016), "How to Regulate Legal Services to Promote Access, Innovation, and the Quality of Lawyering", Hastings Law Journal, Vol. 67, June.

Koumenta, Maria and Amy Humphris (2015), The Effects of Occupational Licensing on Employment, Skills and Quality: A Case Study of Two Occupations in the UK, Queen Mary University of London.

May, Peter J. (2007), "Regulatory regimes and accountability", Regulation & Governance, Vol. 1, pp. 8-26.

Miles, I. (2005), "Innovation in Services". In: Fagerberg, J, Mowery, D. C., Nelson, R. R. (Eds.), The Oxford Handbook of Innovation, Oxford University Press, Oxford.

Monteagudo, J., A. Rutkowski and D. Lorenzani (2012), "The Economic Impact of the Services Directive: A first assessment following implementation", European Economy Series, Economic Papers No. 456, European Commission, DGEcoFin, June.

Muller, E. and A. Zenker (2001), "Business Services and Actors of Knowledge Transformation: the role of KIBS in Regional and National Innovation Systems", Research Policy, 30: pp. 1501-1516.

OECD (2017a), "Value Added and its Components by Activity, ISIC rev4", National Accounts of OECD Countries, Vol. 2017, Issue 2: Detailed Tables, OECD Publishing, Paris, http://dx.doi.org/10.1787/na_ma_dt-v2017-2-en.

OECD (2017b), "Labour input by activity, ISIC rev4", National Accounts of OECD Countries, available at https://stats.oecd.org/Index.aspx?DataSetCode=SNA_TABLE6A.

OECD (2016), "Disruptive Innovations in Legal Services – United States", Working Party No. 2 on Competition and Regulation, DAF/COMP/WP2/WD(2016)4, 13 June.

OECD (2014), "Reducing regulatory barriers to competition: Progress since 2008 and scope for further reform", in *Economic Policy Reforms 2014: Going for Growth Interim Report*, OECD Publishing, Paris, https://doi.org/10.1787/growth-2014-4-en.

OECD (2009), "Competition and Regulatory Reforms in Professional Services", in OECD Reviews of Regulatory Reform: Italy 2009: Better Regulation to Strengthen Market Dynamics, OECD Publishing.

Pagliero, M. (2015), The effects of recent reforms liberalising regulated professions in Italy, University of Turin & Carlo Alberto College.

Paterson, I., M. Fink and A. Ogus (2007), "Economic Impact of Regulation in the Field of Liberal Professions in Different Member States", Parts I & II, WP Institute for Advanced Studies, Vienna, and European Network of Economic Policy Research Institutes (ENEPRI) WP No. 52/February.

Portuguese Bureau of Statistics (INE), INE database, available at https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_indicadores&indOcorrCod=0008484&contexto=bd&selTab=tab2.

Rojek et al. (2016), "The Effects of Reforms Liberalising Professional Requirements in Poland", Report funded by the EC/DG Internal Market, Industry, Entrepreneurship and SMEs, Warsaw School of Economics.

Semple, Noel et al. (2013), "A Taxonomy of Lawyer Regulation: How Contrasting Theories of Regulation Explain the Divergent Regulatory Regimes in Australia, England and Wales, and North America", Legal Ethics, Vol. 16(2), pp. 258-283.

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