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**Preliminary Findings from the ongoing Study on  
“Conveyancing Services Regulation in Europe”**

By

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## Summary

The purpose of our study is to analyse the effects of professional services regulation on the functioning and efficiency of the conveyancing market and the links between the two. We first construct various regulation indices (based on existing regulation) for EU Member States. We then assess the effect of regulation indices on key market indicators - such as price, choice, quality and speed of professional services as well as jobs and growth. The countries surveyed include Austria, Belgium, the Czech Republic, Denmark, England and Wales, Finland, France, Germany, Greece, Hungary, Ireland, Italy, the Netherlands, Poland, Portugal, Scotland, Slovakia, Slovenia, Spain and Sweden. Our current report focuses on the effect of regulation indices on price. The effect of regulation indices on other market indicators such as quality, speed and choice have not yet been sufficiently analysed to present them here but will be fully covered in the final report.

I. In a first step, we analyse the existing regulation on mandatory involvement (i.e. whether the involvement of certain professionals is prescribed by law) and professional regulation. In this context, we analyse regulation on market entry, market structure, and market conduct.

As a synthesis, we suggest dividing the countries covered into four different regulatory systems:

- 1) The **traditional, highly regulated Latin notary system**, in which the **notary** as a neutral intermediate drafts and executes the contract. This system is dominant in most European countries and reflects the public office characterisation of notarial activities. This model is characterised by mandatory involvement of notaries, numerus clausus of professionals, fixed fees and strict regulation on market structure and conduct.

- 2) The **deregulated Dutch notary system**, which reflects a more modern vision of the notary as a private entrepreneur fulfilling public tasks. Under this model, no numerus clausus exist, fees are negotiable and market structure and conduct regulation is generally less strict.
- 3) The **lawyer system** existing on the British Isles, in Hungary, in the Czech Republic, in Denmark. Whereas on the British isles both the seller and the buyer are represented by a solicitor (adversarial system), on the continent one lawyer usually acts for both parties. In general, the lawyer system is characterised by quality control of professionals through licensing and professional exams only, negotiable fees and a low level of regulation on market structure and conduct.
- 4) The **Nordic licensed agent system** under which estate agents provide legal services, too. This model is also characterised by quality control of professionals through professional exams and licensing only, negotiable fees and a low level of regulation on market structure and conduct.

II. In a further step, this information is reconstructed quasi-quantitatively through various regulation indices and sub-indices on market entry, market conduct, mandatory intervention of a professional and consumer protection. On the whole, this analysis confirms and refines the conclusions on the four regulatory models just outlined.

III. Regarding market efficiency, we are still examining key market indicators including price, quality, speed, jobs and growth as well as the impact of different regulations on them. Whilst market efficiency indices, constituting the output correlate of regulation indices, will only be calculated on the basis of an electronic questionnaire which is still being circulated, some preliminary findings on transaction costs are already available.

Transaction costs are essentially composed of transfer taxes, registration fees, agent's fees and legal services fees. **Transfer taxes** take the largest share of the transfer costs in most countries (about 30-50%). **Registration fees** account on average for 5% of all fees. **Real estate agents** fees, which arise in about 50% of all transactions, usually account for about 75-80%, legal fees for about 15-20% of the professional fees. **Technical services** are usual only in some states, particularly on the British Isles (surveyors), in Denmark and France (energy check). In this paper, we concentrate on legal services, because these are much more regulated than other services.

**Legal fees** vary greatly between countries, even within similar legal systems. For a transaction of 250.000.- Euro, including a mortgage for the same amount, we found the following average costs in absolute terms:

- lower than 1.000.- Euro: Finland, Sweden, Czech Republic
- 1.000 up to 1.500 Euro: Spain, Slovenia, Netherlands, England, Poland,
- 1.500 up to 2.000 Euro: Germany, Scotland, Austria,
- 2.000 up to 3.000 Euro: Ireland, Denmark, Hungary,
- 3.000 up to 4.000 Euro: France, Belgium, Italy
- more than 6.000 Euro: Greece (here both a notary and two lawyers are mandatory)

We then compare (absolute and adjusted) average fees for the different regulatory systems:

Generally, legal fees in unregulated markets tend to be more flat (whether for solicitors fees or in the Dutch example for the deregulated notarial fees), whereas statutes regulating fees usually set the fee level in accordance to the transaction value, starting with lower fees and going up with the transaction value (although underproportionally).

On average, the **Nordic systems** seem to be the **cheapest** (in particular Finland and Sweden, where regularly no legal professional is involved apart from the Finish notary whose services are limited to the authentication of signatures and therefore cheap). However, it is difficult to get exact figures here, because legal service is part of the overall fee of the Nordic real estate agents.

Comparing the British isles adversarial systems with flat or nearly flat fees and notarial systems with value-dependant fees, the former are **cheaper for transactions values of 250.000.- and 500.000.- Euro**; the higher the value becomes, the more notary systems (in particular the French, the Belgian and the Italian), become more expensive; this may show the existence of monopoly rents. However, notarial systems (excluding the hybrid Greek system and excluding the deregulated Dutch system) are on average **slightly cheaper for a transaction value of 100.000.- Euro** (all including a mortgage on the same amount). This might show a small degree of cross-subsidisation between high and low value conveyancing - an issue which still requires further research.

The **deregulated Dutch system** – being a notarial system, but with less professional regulations, in particular without limits on the number of notaries and without statutorily fixed fees -, ranges close to the Nordic countries according to our preliminary figures. It is worth noting that this system performs significantly better than the traditional notary system, even for low value transactions.

These tendencies are also confirmed by an additional comparison of the fees charged for average house prices in various countries. However, traditional notary countries such as Spain, Poland and Germany rank equal or nearly equal to the Netherlands in absolute terms as average house prices are comparatively low in these.

If we look at the development of fee levels adjusted by net earning factors an interesting picture emerges: the Nordic and Dutch deregulated model perform very well across the board, followed by the lawyers system. The traditional notary system is the worst performer with substantially higher fees for all types of transactions examined.

Furthermore, when comparing the level of regulation with fee levels, preliminary findings show a statistical **correlation between higher regulation and higher prices**. However, in the number of cases, equally regulated countries also have different fee levels.

IV. Alongside further research on these issues, several case studies are currently elaborated. These focus on countries which allow a comparison of the performance of different regulatory models: the Netherlands and the UK which have carried out major deregulatory reforms in recent years; Sweden which represents the low-cost pragmatic Scandinavian system; and Germany as a traditional notary country with high standards of regulation.

The final report of this study is due in early 2007 and will be made available online by the European Commission.

## I. Introduction

### **Aims of the Study**

The present study on conveyancing services regulations is to be situated within the European Commission's work to promote reform and modernisation of restrictive regulation in the professional services area. After major research including a first study by the Institute for Advanced Studies in Vienna (IHS) covering six liberal professions<sup>1</sup> and several reports by the Commission<sup>2</sup>, one key market, that of conveyancing services, has been chosen as the object of a further in-depth study. Following a public tender, the Centre for European Law and Policy (ZERP) at Bremen University, supported by economists from University of Regensburg and the IHS, was commissioned to undertake the study.

We analyse the effects of professional services regulation on the functioning and efficiency of the conveyancing market and the links between the two. We first construct various regulation indices (based on existing regulation) for EU Member States. We then assess the effect of regulation indices on key market indicators - such as price, choice, quality and speed of professional services as well as jobs and growth. The countries surveyed include Austria, Belgium, the Czech Republic, Denmark, England and Wales, Finland, France, Germany, Greece, Hungary, Ireland, Italy, the Netherlands, Poland, Portugal, Scotland, Slovakia, Slovenia, Spain and Sweden.

It should be noted that this study is by no means premised on a wholesale rejection of all regulation of professional services. Indeed, there are legitimate arguments in favour of certain regulations in this area e.g. to protect consumer interests or safeguard the independence and integrity of a profession. However, we will critically assess possible justifications for regulation and their proportionality. Thus, it ultimately aims at distinguishing regulation which clearly furthers the public interest from regulation which is unjustifiable or disproportionate and eliminates or limits competition between service providers and thus reduces the incentives for professionals to work cost-efficiently, lower prices, increase quality or offer innovative services.

### **Methodology**

A first step involved getting reliable and detailed information on the regulation currently obtaining in the Member States. This was achieved by means of a questionnaire covering legal and economic topics, which was sent to selected national reporters, in most cases leading professionals or academics or both.

In its legal part, the questionnaire covered the basic framework for land transfer, in particular sales contracts and registration, the role of different professionals in the various steps of conveyancing and the regulation of professionals. In its economic part, the questionnaire investigated transaction costs for transfers and mortgages; data on the number, size, concentration, turnover and number of employees of service providers; data on the size of national markets including the number and value of property transactions and the level of

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<sup>1</sup> The study is available at:

<http://europa.eu.int/comm/competition/liberalization/conference/libprofconference.html#study>

<sup>2</sup> Report on Competition in Professional Services (COM (83)2004) of 9 February 2004 and Commission Communication 'Professional Services - scope for more reform' of 5 September 2005 to be found at:

[http://ec.europa.eu/comm/competition/sectors/professional\\_services/reports/reports.html](http://ec.europa.eu/comm/competition/sectors/professional_services/reports/reports.html)

professional fees earned from conveyancing per profession, even though data of the latter kind were hardly ever available.

The first questionnaire for the national reporters was complemented by a second questionnaire asking for the opinions of professionals and consumers on choice, quality, speed and costs of professional services as well as on problems such as legal disputes between the contracting parties and between parties and professionals. This questionnaire has been made available online at ZERP's Website as of early September and has been promulgated by hundreds of emails and letters of invitation. To date, we have received about 300 replies. All these data have been, and are being, analysed, summarised and processed in various ways.

On the basis of the legal and economic findings, case studies on four key countries are compiled: the Netherlands and England and Wales who have carried out major deregulatory reforms in recent years, whose effects may serve as guidance for the whole of Europe; Sweden which represents the low-cost pragmatic Scandinavian system and Germany as a traditional notary country with high standards of regulation. The latter case study will be used to assess the effects of (hypothetical) liberalisation of notarial law in a highly regulated environment, namely the German region Bavaria. Specifically, by means of econometric modelling, we will try to assess the entry effects on competitive conduct (markups).

The present paper presents some provisional key findings already available. We first present an overview of different models on professionals and professional regulation (II). We then use these existing regulations to reconstruct in a quasi-quantitative way by means of indices on regulation that are divided into various sub-indices (III). We then analyse market outcomes: we compare regulation indices to transaction costs (IV). The analysis on other market indicators such as quality and speed of services is yet to be presented. These data will also be reconstructed econometrically in a market outcome index, which is again composed of various sub-indices (V). The four cases studies then follow (VI). We will conclude by presenting the remaining steps and a timetable for completion of the study (VII).

## II. Regulatory Models

### 1. Conveyancing disaggregated

Before addressing different regulatory models, a description of the conveyancing process is of order. With minor variations, this usually involves the following steps in all countries surveyed: After **(1) buyer and seller have been found**, often with the help of estate agents, **(2) an evaluation of the land and the building** by technical experts takes place in many countries. Specifically, this may involve an energy check (rendered mandatory by the EU Directive on the energy performance of buildings, 2002/91/EC) and an evaluation on behalf of the buyer and/or the seller, which is frequently required by lending banks. Then, **(3) preliminary legal checks** are carried out which include the control of the land register (including registered debts), of other debts for which the buyer may be liable and of the building permit for an existing structure. After this, **(4) the sales contract** is drafted on the basis of legal advice given by the draftsman (or the parties are counselled by their legal representatives); the draft having become final, it is signed by both parties, with signatures being certified in a special procedure (which may also happen as part of a notarial instrument). The ensuing **(5) contract execution** includes the application for and the control of administrative permits, carrying out the payment (alternatively through an escrow account or notice and following control of payment), and fulfilling taxation obligations (encompassing notice of the contract to the tax authorities, calculation of the applicable tax, payment and its control or tax retention from the sales price).

## 2. Types of Professionals

Professionals involved in the various steps of conveyancing in Europe include estate agents,<sup>3</sup> technical experts (mostly architects, surveyors, engineers) and legal professionals, who constitute the focus of our study.

### a) Real Estate Agents

Real estate agent services tend to be little regulated in most European countries. They will be covered as well in the study; however, this presentation focuses on legal services.

### b) Technical Services

Technical services are common in conveyancing only in some states. So they will be covered in the study only for these states. Also, concerning conveyancing services, there is little professional regulation.

### c) Legal Services

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

- **Civil law notaries:** going back to Latin tradition, they are the most important group Europe-wide, which is dominant in all Western continental European states from Portugal to Germany and in most Eastern European countries including Poland, Slovakia, Slovenia and the Baltic countries (which are not represented in the present study); however, also in Finland, a different form of notaries exists, who are however limited to the authentication of signatures.<sup>4</sup>
- **Lawyers (solicitors):** They are dominant on the British Isles (England and Wales, Scotland and Ireland) as well as in the Czech Republic and Hungary, but may also be found in Austria. In England and Wales, **licensed conveyancers** (legal professionals exclusively competent in conveyancing) have been admitted since the 1980's as competitors to solicitors; however, they exist only in small number. (They handle less than 5% of all land sales in England). A fundamental difference between the notary and the lawyer system is that in the latter in a majority of cases (always on the British Isles, sometimes also in the Czech Republic and Hungary) each party is represented by its own lawyer which might be safer.
- In the Nordic countries, conveyancing is mostly done by (licensed) **estate agents**, who normally have a university degree. They combine agent services (i.e. bringing together buyer and seller) with legal services. However, they are not lawyers. A similar combination may only be found in France, where notaries (just as other lawyers) may also act as estate agents.

In some countries, additional professionals are involved in providing legal services for conveyancing: thus, in Greece, on top of the notary, both parties are also represented by lawyers; in Portugal, on top of the notary, the buyer is typically represented by a lawyer; in Denmark, where the seller is represented by an estate agent, the buyer is usually represented by a lawyer; in Finland, where estate agents are also dominant, (the specific Finnish form of) notaries have to authenticate the signatures; in Spain, finally, the execution of notarial deeds

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<sup>3</sup> Everywhere, estate agents bring buyers and sellers together, but in large group of countries including Austria, France, the Netherlands, Portugal, Slovakia, Slovenia and Spain, they also draft preliminary contracts. In Scandinavia, (licensed) estate agents provide full legal services.

<sup>4</sup> Notaries are normally single profession notaries except in some regions of Germany where lawyers may be admitted as notaries after several years of practice.

(registration and taxation in particular) is usually done by *gestores administrativos* who are typically affiliated to the lending bank.

### 3. Mandatory of Voluntary Involvement and Scope of Services

For assessing the efficiency of conveyancing services, the question whether the involvement of a certain professional is legally mandatory or not is of key importance. In most continental countries, intervention of a civil law notary is mandatory by statute for every land sale. However, notaries' intervention is widely different *ratione materiae*. Some countries require notarial intervention for the **validity** of the sales contract (e.g. Germany, Poland) or for the transfer of property (e.g. the Netherlands or Spain). In other countries, notarial intervention is required only for the **registration** in the land register which makes the title opposable to third parties (e.g. Belgium, France, Italy, Luxembourg, and Portugal). In these countries, the preliminary contract may be drafted by someone else - the parties themselves, an estate agent or a lawyer. Other countries require only a **certification of signature** for the registration in the land register (Slovakia, Slovenia; similar also in Austria and the Czech Republic where the certification can also be made by the court, in the Czech Republic also by an advocate). Here the drafting of the contract is mostly done by lawyers. Hungary constitutes an exceptional case. Here, the intervention of a legal professional is mandatory, but the parties may retain either a civil law notary or a lawyer (which happens in more than 95% of all cases). When comparing especially notarial fees, the different scope of services should be borne in mind.

In a smaller group of countries composed of Austria and England, the involvement of a professional is not mandatory, and the parties may draft the contract themselves or with the help of anyone. However, certain professionals enjoy exclusive rights, i.e. only they may offer conveyancing services professionally (that is for money). This is true for notaries or lawyers in Austria, and solicitors or licensed conveyancers in England. Finally, only in two countries, Denmark and Sweden, neither mandatory involvement nor exclusive rights exist, though in practise estate agents are involved in the vast majority of cases even there.

Types of professionals and mandatory or voluntary involvement are summarised in the following table.

	<b>real estate agent</b>	<b>technical services</b>	<b>legal services (lawyer or civil law notary)</b>	<b>licensed conveyancer</b>
<b>Austria</b>		n.a.	90% (lawyer or notary)	n.a.
<b>Belgium</b>	50-75%		notary mandatory	n.a.
<b>Czech Republic</b>	90%	90% (appraisers)	70% advocates, 30% notaries	n.a.
<b>Denmark</b>	90%, acting for the seller	90%	80% lawyer for buyer	
<b>England</b>	70%	mostly surveyor	90% 2 lawyers	rare (3% of the market)
<b>Finland</b>	75-90%	usual	only certification of	n.a.

			signature mandatory	
<b>France</b>	25-50% 35%-40% among private persons	90%-100%	notary mandatory	n.a.
<b>Germany</b>	50%	n.a.	notary mandatory	n.a.
<b>Greece</b>		n.a.	notare mandatory	n.a.
<b>Hungary</b>	15% for C2C 70% for B2C, B2B	1%-2%	mandatory (lawyer or notary)	n.a.
<b>Ireland</b>		mostly surveyor	99% 2 lawyers	
<b>Italy</b>	75%	n.a.	notary mandatory	n.a.
<b>Netherlands</b>			notary mandatory	n.a.
<b>Poland</b>	40% (25%-50%)	n.a.	notary mandatory	n.a.
<b>Portugal</b>			notary mandatory	n.a.
<b>Scotland</b>		mostly surveyor	99% 2 lawyers	
<b>Slovakia</b>		n.a.	only certification of signature mandatory	n.a.
<b>Slovenia</b>	25-50% urban areas 5%-25% rural areas	n.a.	only certification of signature mandatory	n.a.
<b>Spain</b>	25-50%	n.a.	notary mandatory contract execution often carried out by a <i>gestor administrativo</i>	n.a.
<b>Sweden</b>	85%	physical survey common	usually real estate agent	n.a.

#### 4. Professional Regulation

The three main types of legal professionals - notaries, lawyers, and licensed agents – are regulated very differently as regards market entry, market structure and market conduct.

## Civil Law Notaries

Continental (Latin) notaries are assigned a dual role as holders of a public office and liberal professionals. All regulatory restrictions applying to notarial services are based on their public office characterisation. To start with, acting for both parties, notaries are subject to strict duties of **neutrality and impartiality**. Moreover, **numerus clausus** applies, i.e. there is a limited number of professionals which is generally determined by the Ministry of Justice together with Notaries Professional Associations according to objective needs criteria. The main exception lies with the **Netherlands**, where numerus clausus has been abolished in the 1998 reform; since then, market entry presupposes a detailed business plan. Another peculiar feature of Latin notaries is **fixed fees**. Whereas **statutorily fixed fees** were the universal rule in all civil law notarial systems up until 1990, today, there is a trend versus deregulation. Thus, in **Austria** and in **Netherlands** fixed fees have been abolished. **Italy** abolished fixed fees for all liberal professions in 2006 by a legislative decree, which has yet to be confirmed by a parliamentary statute in order to become permanent. In addition, the legal situation is rendered opaque by a contradicting posterior decree which prohibits unfair price competition amongst notaries. Other countries such as **Germany** have recently liberalised attorney fees (for out of court services only), but kept statutorily fixed fees for notaries.

Similarly, market structure is regulated for all civil law notaries. In all states, except the Netherlands, the notary is appointed for a **specific location**. This means that he is restricted to providing services in a given area (which, working in his area, does not bar him from authenticating deeds for land situated outside that area). In addition, deeds done by **national notaries** are required in some states for registration in the land register (e.g. Germany, Italy, and Spain). Also, **limitations on interprofessional cooperation and business structure** are frequent in all states. Thus, notaries are generally prohibited from entering into formal cooperation, or from establishing common businesses, with tax specialists, lawyers and estate agents. Beyond that, notaries are generally prohibited from exercising other professions at the same time. Generally, with the exceptions of France and Belgium, notaries must not act as agents. With the exception of some German regions (Länder), notaries must not act as lawyers either.<sup>5</sup>

Lastly, in all surveyed states, notarial **conduct** is regulated by statute. This extends to a regulation of the profession and professional associations. The latter are often delegated certain self-regulatory powers are often delegated, enact professional standards including deontological codes and are generally competent to supervise professional conduct of their members. Also there is regulation for the notarial procedure to be observed e.g. with the authentication or notarisation of documents. Finally, further regulations are common to restrict advertising which do not seem to be implemented strictly in some countries.

## Lawyers

Generally, lawyers active in conveyancing are less strictly regulated than notaries. This applies likewise to market structure and conduct regulation. Market entry is in no country conditional on numerus clausus, but only on subjective requirements, the most important ones being university degree and bar exam. Fees are generally negotiable. In England a trend exists towards flattish fees based on a broad look at all individual circumstances. Fixed lawyer fees are even excluded in countries such as Hungary, where lawyers and civil law notaries compete in conveyancing services and notarial fees are fixed by statute. Similarly, regulation on interprofessional co-operation, business structure and advertising for lawyers has generally been liberalised in recent years.

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<sup>5</sup> This combination may elsewhere only be found in some Swiss cantons.

In terms of qualifications, lawyers active in conveyancing must of course fulfil all general qualifications of the profession. Most countries have no additional requirements for lawyers to counsel in the area of conveyancing. However, in England, entry into the conveyancing market requires holding (personally or via a law firm) a practising certificate issued by the Law Society. This supposes an annual application which may be subject to disciplinary recommendations, the payment of a fee and the proof of insurance. In Denmark, whilst there are no additional requirements for lawyers active in conveyancing, lawyers need an additionally license to act as estate agents. Finally, in “notary countries”, lawyers are always prohibited from performing those conveyancing services exclusively assigned to notaries.

### **English Licensed Conveyancers**

English licensed conveyancers are subject to a similar regulatory regime as solicitors, although they are not lawyers. Licenses are granted by the Council of Licensed Conveyancers (CLC). Requirements to obtain a full licence, allowing offering services to the public, are the following: completion of CLC examinations; practical training, minimum age of 21 years; being a 'fit and proper person'; an annual licence fee; a stipulated contribution to the CLC compensation fund; premium to the professional indemnity insurance premium; evidence of continuing education (minimum 12 of courses certified by CLC). Fees are not regulated but in practise roughly similar to solicitors' fees.

### **Nordic (licensed) Real Estate Agents**

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

## **5. Summary on Regulatory Models**

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

- 5) The **traditional, highly regulated Latin notary system**, which reflects the public office characterisation of notarial activities. This model is characterised by mandatory involvement of notaries, numerus clausus of professionals, fixed fees and strict regulation on market structure and conduct.
- 6) The **deregulated Dutch notary system**, which reflects a more modern vision of the notary as a private entrepreneur fulfilling public tasks. Under this model, no numerus clausus exists, fees are negotiable and market structure and conduct regulation is generally less strict.
- 7) The **lawyer system** existing on the British Isles, in Hungary and – to a lesser extent – also in Austria. This system is characterised by quality control of professionals through licensing and professional exams only, negotiable fees and a low level of regulation on market structure and conduct.
- 8) The **Scandinavian licensed agent system** under which estate agents provide legal services, too. This model is also characterised by quality control of professionals

through professional exams and licensing only, negotiable fees and a low level of regulation on market structure and conduct.

### III. Regulatory Indices

#### 1. Methodology

For further econometric analysis it is necessary to reinterpret qualitative information on regulation in form of **quasi-quantitative measures**. For this purpose, four **regulation indices** for each state and **each profession providing legal services in the conveyancing process** are calculated. Each index has a range of “0” (no regulation) to “6” (highest grade of regulation).

First, we differentiate between **market entry regulations** (calculated as a “**Market Entry Regulation Index**”; **MERI**) and **market conduct regulations** (calculated as a “**Market Conduct Regulation Index**”, **MCRI**).

**Market entry regulations** (covered in **MERI**) are in the first instance quotas or economic needs tests, licensing rules (exclusive and shared exclusive tasks) and professional education requirements. In calculating the **MERI** “Quotas and economic needs tests” is give a weight of 50%, as such regulations have obviously the most direct impacts for market structure and market outcomes. Licensing rules and professional education requirements are given equal weights of 25% each.

Rules on fees/prices, restrictions on advertising, on location and diversification, on form of business and on inter-professional co-operation are **market conduct regulations (covered in MCRI)**. Regulations on prices and fees has been given the highest weighting (50%), as it is evident that the model of price setting has the most significant and direct effects on relevant market outcomes. “Minimum prices for all services” and “minimum prices for some services” are regarded to be the most restrictive forms of price regulation: Whereas maximum prices and even reference prices also have some impact on competition, the direct effects of minimum prices are the strongest.

Regulations on “location and diversification”, “form of business” and “inter-professional co-operation” all have to do with possibilities to implement different business models, which is supposed to have significant impacts on market structures and outcomes. We give all of these three fields of regulation an equal weight of 11%, summing up to 33%. Regulations on advertising are taken into account with the remaining 17%.

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

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

In calculating the CPI, we give “compulsory indemnity insurance” the highest weight (38%), as the direct advantages for the customer are by far most manifest in this field. Conduct/quality control and continuing education are both important fields of consumer protection and for that both given an equal middle-weight of 25%. The obligation to provide services (which only applies for notaries and where direct effects for consumer interests are less self-evident) is counted with a weight of 12%.

The **coding** of all four indices is shown in the annex.

## 2. Summary of first results

### 2.1. Countries with “latin notary” (LN-countries)

**Table 1** shows **MERI**, **MCRI** and **CPI** for notaries in countries with “**latin notaries**”.

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

**Market conduct regulation (MCRI)** shows a similar situation: A rather high grade of regulation in most countries with the exception of the Netherlands and here as well Austria, where liberalisations during recent years led to (for standards of notaries) rather liberal regulation.

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

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

**Table 1: Notaries: MERI, MCRI and CPI.**

	MERI Market Entry	MCRI Market Conduct	MERI + MCRI	CPI Consumer Protection	
Hungary		5,9	6,0	11,9	4,5
Czech Republic		5,6	5,7	11,3	4,5
Portugal		5,0	6,0	11,0	3,0
Greece		5,1	5,7	10,8	2,2
Belgium		5,7	5,0	10,7	4,5
Poland		5,6	4,7	10,3	3,0
France		5,1	5,2	10,3	5,3
Germany		5,7	4,5	10,2	5,3
Italy		5,4	4,7	10,1	6,0
Spain		4,8	5,2	10,0	4,5
Slovenia		4,9	5,0	9,9	5,3
Austria		5,9	3,2	9,0	6,0
Netherlands		1,9	1,2	3,1	6,0
<i>Average</i>		<i>5,1</i>	<i>4,8</i>	<i>9,9</i>	<i>4,6</i>
<i>Average without the Netherlands</i>		<i>5,4</i>	<i>5,1</i>	<i>10,4</i>	<i>4,5</i>

In several of these countries with “latin” notaries **lawyers** play as well an important role in legal services related to conveyancing. **Table 2** gives an overview on **regulation indices** for **lawyers** in the respective **countries**.

**Regulation on market entry** in LN-countries is, generally speaking, **less rigid for lawyers** than for notaries. However, especially in **Greece** and **Slovenia** rather **restrictive conduct regulations** apply.

**Table 2: Lawyers in LN-countries: MERI, MCRI and CPI.**

	MERI Market Entry	MCRI Market Conduct	MERI + MCRI	CPI Consumer Protection
Greece	2,4	5,0	7,4	3,0
Slovenia	2,2	3,7	5,9	4,5
Austria	2,1	2,5	4,6	3,8
Spain	1,8	2,5	4,3	n.a.
Czech Republic	2,6	2,2	4,8	2,6
Portugal	2,0	1,5	3,5	3,8
Hungary	2,6	1,4	4,0	2,3
<b>Average</b>	<b>2,2</b>	<b>2,7</b>	<b>4,9</b>	<b>3,3</b>

**CPI** is, overall, **lower** than for **notaries**. This, on the one hand, is caused by the fact that the “obligation to provide services” (which is reflected in the CPI with a weight of 12%) is a specific of the notaries. Apart of that, an obligation for continuing education for lawyers only applies in Austria, Slovenia and Greece. Yet, at the same time, lawyers in Greece are not obliged to have professional indemnity insurance and in Hungary, the Czech Republic and Portugal the minimum insurance sum for mandatory professional indemnity insurance is very low.

On the basis of these indices for notaries and lawyers we calculate **overall indices** for **LN-countries** (see **Table 3**) according to following rules:

- For all countries with mandatory intervention of notaries<sup>6</sup> and no mandatory intervention of lawyers we only take into account regulation for notaries. We do this, because averaging the regulation for notaries and lawyers would lead to results that underestimate the regulatory load in countries where lawyers play a major role as well (though on a non-mandatory basis).
- In Hungary buyers/sellers have to consult a notary or a lawyer on mandatory basis. Most choose a lawyer, so regulation for lawyers is given a higher weight (80%) than regulation for notaries (20%).
- In the Czech Republic professional intervention is not mandatory. Notaries are involved in about 40% of real estate property transfer, lawyers in about 70%. For this, regulation for notaries is given a lower weight (40%) than regulation for lawyers (60%).
- In Greece, the involvement of notaries in land/real estate sales is obligatory. Furthermore, if the contract value exceeds the amount of 29.347,03 EUR buyers/sellers as well have to engage (at least) one lawyer each. In this special case

<sup>6</sup> Austria is supposed to be part of this group, although certification of signatures could be done at a court as well.

we sum up MERI and MCRI of both professions, to reflect the regulatory load of mandatory intervention of two professions. For this, MERI and MCRI both score the highest possible level (“6”). For CPI we take the average of lawyers and notaries.

- MII (mandatory intervention) is per definition an overall-index.

**Table 3: Overall regulation indices for legal services in conveyancing in LN-countries**

	MERI Market Entry	MCRI Market Conduct	MERI +MCRI	MI Mandatory Intervention	MERI +MCRI +MI	CPI Consumer Protection
Greece	6,0	6,0	12,0	6,0	18,0	2,6
Portugal	5,0	6,0	11,0	4,0	15,0	3,0
Belgium	5,7	5,0	10,7	4,0	14,7	4,5
Poland	5,6	4,7	10,3	4,0	14,3	3,0
France	5,1	5,2	10,3	4,0	14,3	5,3
Germany	5,7	4,5	10,2	4,0	14,2	5,3
Italy	5,4	4,7	10,1	4,0	14,1	6,0
Spain	4,8	5,2	10,0	4,0	14,0	4,5
Slovenia	4,9	5,0	9,9	2,0	11,9	5,3
Austria	5,9	3,2	9,0	2,0	11,0	6,0
Hungary	3,3	2,3	5,6	4,0	9,6	3,5
Czech Republic	3,8	3,6	7,4	0,0	7,4	4,1
Netherlands	1,9	1,2	3,1	4,0	7,1	6,0
<i>Average</i>	4,9	4,3	9,2	3,5	12,7	4,5
<i>Average without the Netherlands</i>	5,1	4,6	9,7	3,5	13,2	4,4

## 2.2. Countries without “latin” notaries

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

**Table 4** shows regulation indices (MERI; MCRI and CPI) for lawyers/solicitors in Denmark, England/Wales and Scotland., **Table 5** for real estate agents/licensed conveyancers in Denmark, Sweden, Finland and England/Wales.

**Table 4: Lawyers in non-LN-countries: MERI, MCRI and CPI**

	MERI Market Entry	MCRI Market Conduct	MERI + MCRI	CPI Consumer Protection
Denmark	2,1	1,2	3,3	3,8
Scotland	1,9	1,0	2,9	5,3
England/Wales	2,0	0,8	2,8	4,5
<i>Average</i>	2,0	1,0	3,0	4,5

Regulation on market entry and conduct for lawyers in Denmark, Scotland and England/Wales is considerably more liberal than in most LN-countries listed in **Table 3** above. At the same time the CPI is quite high (especially in Scotland).

Contrary to most LN-countries in Denmark and Sweden **real estate agents** (see **Table 5**) are authorized to provide legal services in conveyancing. The same holds for **licensed conveyancers** in **England and Wales**. Though members of these professions have to be “**licensed**” in the respective countries **to provide legal services, regulation** appears to be rather **liberal**. The latter especially is true for market conduct regulation. In **Finland**, any person may give legal advice (even on a commercial basis). Yet, only registered real estate agents are allowed to act as intermediaries for the sale of real estate.

**Table 5: Real estate agents and licensed conveyancers in non-LN-countries**

	MERI Market Entry	MCRI Market Conduct	MERI + MCRI	CPI Consumer Protection
Denmark	2,0	0,3	2,3	3,8
England/Wales	1,7	0,0	1,7	2,6
Sweden	1,2	0,0	1,2	4,5
Finland	0,5	0,7	1,1	5,3
<i>Average</i>	<i>1,3</i>	<i>0,2</i>	<i>1,6</i>	<i>4,1</i>

Here again, to get an **overall picture** of the regulation of legal services we **combine regulation indices** for **lawyers/solicitors** with the ones for **licensed conveyancers/real estate agents** (**Table 6**).

We do this as follows:

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

**Table 6: Overall regulation indices for legal services in conveyancing in Non-LN-countries**

	MERI Market Entry	MCRI Market Conduct	MERI + MCRI	MII Mandatory Intervention	MERI +MCRI +MII	CPI Consumer Protection
Scotland	1,9	1,0	2,9	0,0	2,9	5,3
Denmark	2,0	0,8	2,8	0,0	2,8	3,8
England/Wales	2,0	0,7	2,7	0,0	2,7	4,3
Sweden	1,2	0,0	1,2	0,0	1,2	4,5
Finland	0,5	0,7	1,1	0,0	1,1	5,3
<i>Average</i>	<i>1,5</i>	<i>0,6</i>	<i>2,1</i>	<i>0,0</i>	<i>2,1</i>	<i>5,8</i>

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

Table 7 below presents the regulation indices for all the countries covered so far. We grouped them according to four “different worlds” of regulation of legal services in conveyancing:

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

**Table 7: Overall regulation indices for legal services in conveyancing: four “worlds of regulation”**

Group		MERI Market Entry	MCRI Market Conduct	MERI +MCRI	MII Mandatory Intervention	MERI +MCRI MII	CPI Consumer Protection
N	Greece	6,0	6,0	12,0	6,0	18,0	2,6
	Portugal	5,0	6,0	11,0	4,0	15,0	3,0
	Belgium	5,7	5,0	10,7	4,0	14,7	4,5
	Poland	5,6	4,7	10,3	4,0	14,3	3,0
	France	5,1	5,2	10,3	4,0	14,3	5,3
	Germany	5,7	4,5	10,2	4,0	14,2	5,3
	Italy	5,4	4,7	10,1	4,0	14,1	6,0
	Spain	4,8	5,2	10,0	4,0	14,0	4,5
	Slovenia	4,9	5,0	9,9	2,0	11,9	5,3
	Austria	5,9	3,2	9,0	2,0	11,0	6,0
	<i>Average</i>		5,4	4,9	10,3	3,8	14,1
D	Netherlands	1,9	1,2	3,1	4,0	7,1	6,0
	<i>Average</i>	1,9	1,2	3,1	4,0	7,1	6,0
L	Hungary	3,3	2,3	5,6	4,0	9,6	3,5
	Czech Republic	3,8	3,6	7,4	0,0	7,4	4,1
	Scotland	1,9	1,0	2,9	0,0	2,9	5,3
	England/Wales	2,0	0,7	2,7	0,0	2,7	4,3
	<i>Average</i>	2,7	1,9	4,6	1,0	5,6	4,3
S	Denmark	2,0	0,8	2,8	0,0	2,8	3,8
	Sweden	1,2	0,0	1,2	0,0	1,2	4,5
	Finland	0,5	0,7	1,1	0,0	1,1	5,3
	<i>Average</i>	1,2	0,5	1,7	0,0	1,7	4,5

**Overall, regulation in the sense of MERI, MCRI and MII is rather restrictive in traditional “latin”-notary-systems.** Austria is to some degree an exception (especially in respect of conduct regulation).

Examples for **rather liberal regulatory systems** are the **northern European countries**, where real estate agents play a major role, as well as the **countries** of the “L-group”, where lawyers are the most important service providers of legal services in conveyancing.

The **Netherlands** are *the* example for a de-regulated “latin”-notary system.

Interestingly, **consumer protection regulation** (as measured in the CPI) on average is not higher in the traditional “latin”-notary-system than it is in the other three models.

## IV. Market Outcomes: Transaction Costs

Regarding market outcomes, we first examine key market indicator price (other market indicators such as quality, speed as well as jobs and growth will be provided for the final version). We then analyse the statistical relationship between regulation indices and transaction costs (i.e. legal fees). Note that whilst market efficiency indices, constituting the “output correlate” of regulation index (input) will only be calculated on the basis of an electronic questionnaire which is still being circulated (1), some preliminary findings on transaction costs are already available (2).

### 1. Preliminary Findings on Transaction Costs

*Costs are summarised in the excel-table attached for transaction values, both with and without mortgage, of 100.000.-, 250.000.-, 500.000.- Euros and average national house price.<sup>7</sup> The total as well as the legal fees depends on the transaction values.*

*One cautionary word about the costs: It is comparatively easy to get the fees which are fixed by statute (such as taxes, register or notarial fees), but it is very difficult to estimate other fees (such as the agents' or the attorney fees). Here we had to do with a best estimate for the average fee, based primarily on our national reporters or publications, sometimes also on fee schedules published by firms in the internet.*

#### a) Overall transaction costs and professional fees

Figure 1 shows the (non-adjusted) total transaction costs for the EU member states for the property value of 250.000€. The average EU transaction cost is around 9,8% of the property value. Costs in the range between 3% and 7% are associated with the Czech Republic, Denmark, England, Ireland, Scotland, Slovenia and Sweden; for Finland, Germany, Italy and the Netherlands, the corresponding range is between 7% and 10%; costs between 10% and 15% have been reported for Austria, France, Hungary and Poland; costs of more than 15% are for Belgium, Greece and Spain. The total transaction costs are composed of taxes (about 43%), registration fees (about 5%) and professional fees (about 52%). Thus, taxes amount to 4.8%, registration fees to 0,4% and professional fees to about 4,6% of the transaction value.

Figure 2 shows the costs that are associated with the professional fees. Figure 3 further breaks down the composition of the professional fees into legal fees by transaction values. For clear expositional purpose, figure 4 excludes Greece. The average (un-adjusted) legal fees as a % of the transaction value for the EU member states under review are 1.4%, 0.62%, 0.79%, and 1.12% for the property values of 100k, 250k, 500k, and average house prices respectively. Table 8 summarizes Figures 1, 2 and 3.

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

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<sup>7</sup> For expositional purpose, we only present the case for transaction values both 100% mortgage, of 100.000.-, 250.000.-, 500.000.- Euros and average national house prices. We also analyse the cases for fully paid (i.e. no mortgage) and 70% mortgage scenarios: these results will be included for the final version.

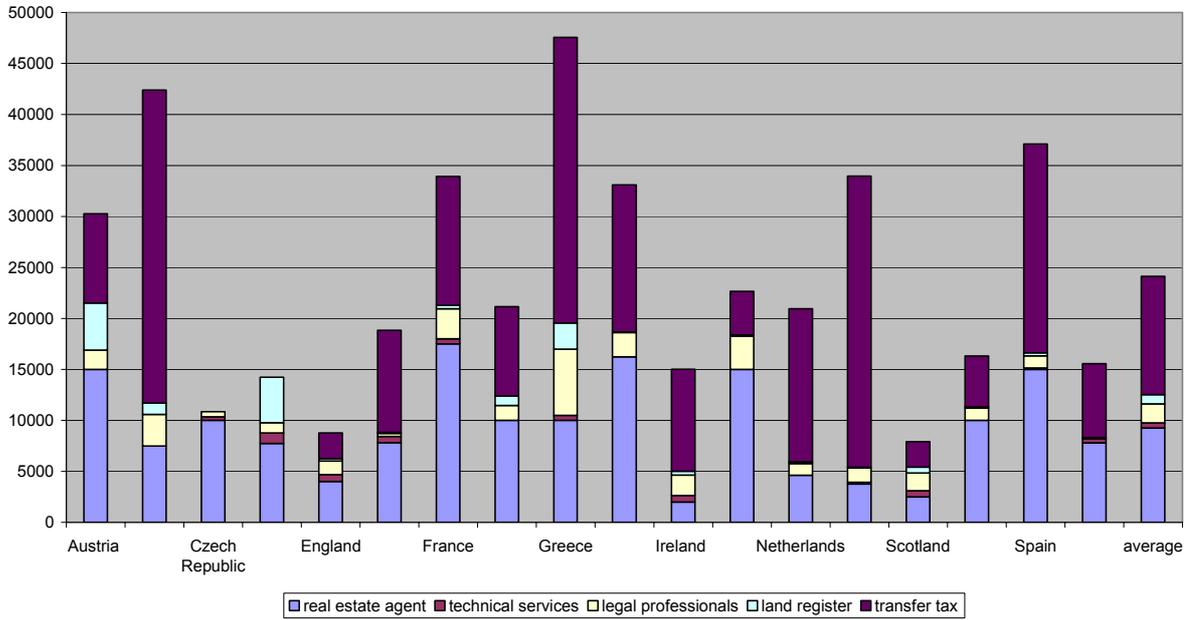
Table 8: Transaction costs to Property Value (250K) by types<sup>8</sup>

Countries	cost/value relation		
	250.000.- €		
	total cost	prof. fee	legal fee
Austria	12.46%	6.76%	0.76%
Belgium	17.45%	4.34%	1.34%
Czech Republic	4.35%	4.34%	0.20%
Denmark	6.16%	3.91%	0.41%
England	3.57%	2.47%	0.57%
Finland	7.58%	3.54%	0.17%
France	13.69%	8.48%	1.28%
Germany	8.57%	4.64%	0.64%
Greece	19.32%	6.86%	2.66%
Hungary(solicitor)	13.29%	7.50%	1.00%
Ireland	6.03%	1.88%	0.80%
Italy	9.31%	7.52%	1.52%
Netherlands	8.46%	2.39%	0.54%
Poland	14.22%	2.17%	0.57%
Scotland	3.19%	1.95%	0.71%
Slovenia	6.58%	4.52%	0.52%
Spain	15.49%	6.65%	0.57%
Sweden	6.83%	3.28%	0.00%
<b>average</b>	<b>9.81%</b>	<b>4.62%</b>	<b>0.79%</b>

<sup>8</sup> These transaction costs are in absolute terms: they are not adjusted for the net income factor.

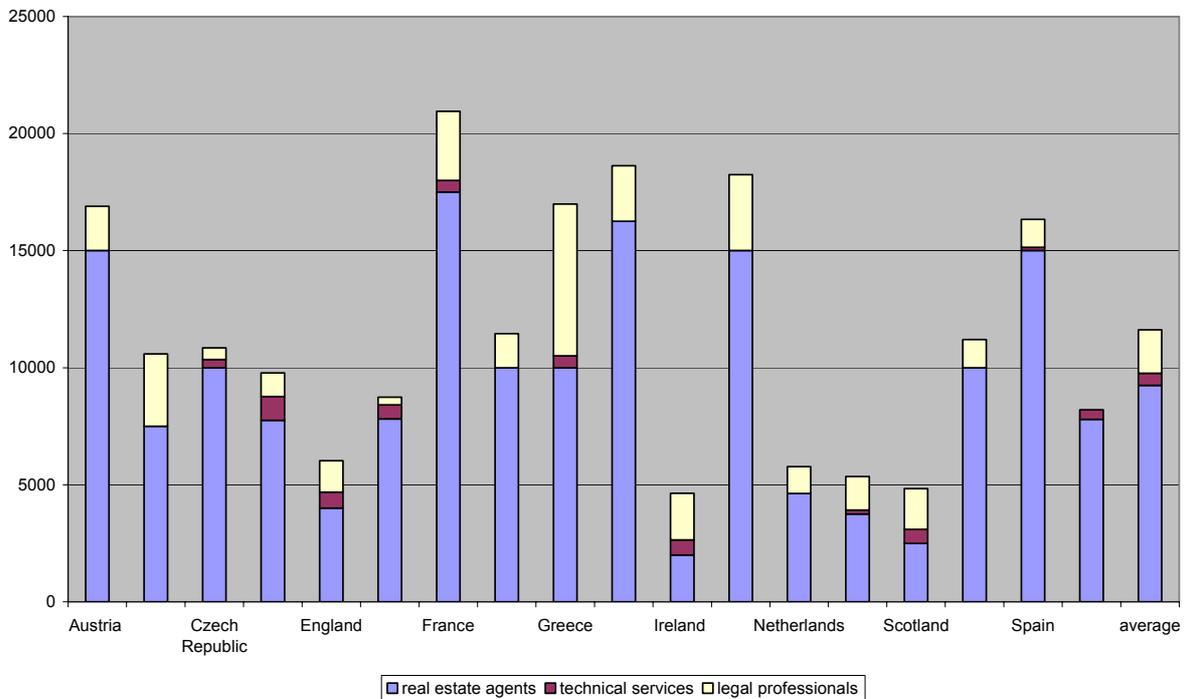
**Figure 1**

**Total Transaction Costs for Conveyancing  
250,000 € sale price**



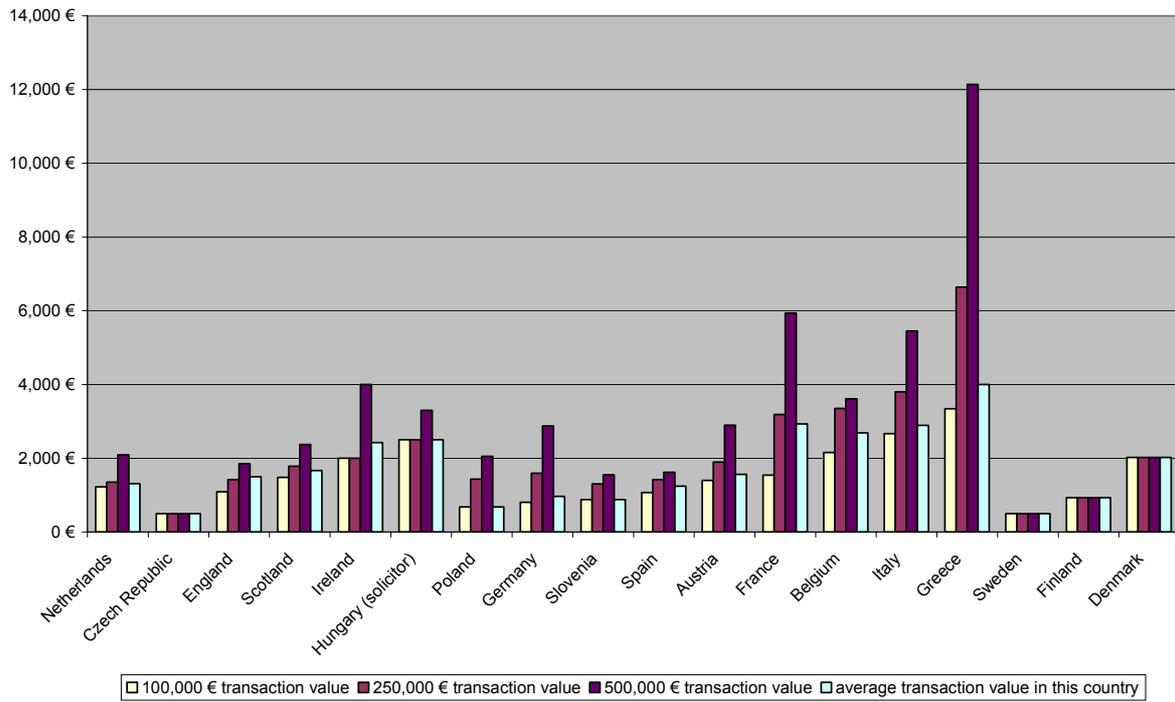
**Figure 2**

**Professional fees for transaction of 250,000 €**



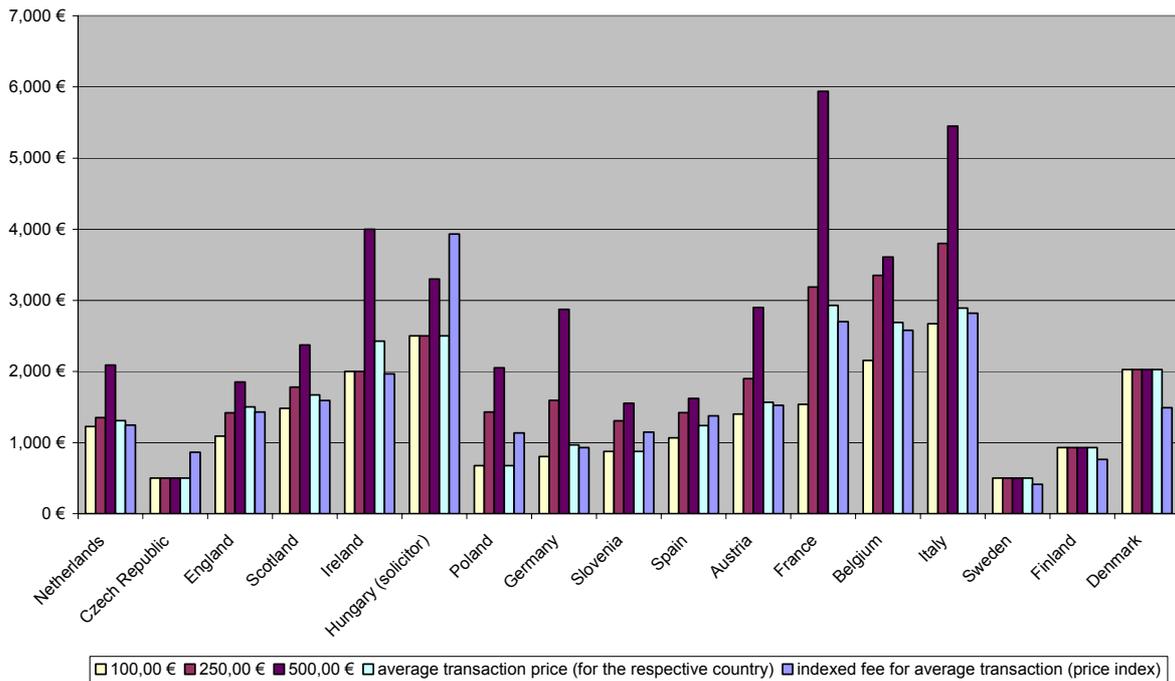
**Figure 3**

**Legal Fees for Conveyancing  
(including 100% Mortgage)**



**Figure 4**

**Legal Fees for Conveyancing  
(including 100% mortgage)  
(excluding Greece)**



## **b) Comparison of legal fees**

In line with this study's focus, we now only analyse legal fees, i.e. without considering agent fees. This approach needs to be adapted, however, for the Nordic countries where the agents also perform legal tasks. For Finland and Sweden, we have decided, after intense discussion with our reporters, to reckon with a flat fee of 500€ representing the legal part of the agent's performance. This sum is based on the approximate medium fee of a lawyer carrying out the contract drafting in conveyancing (which usually just consists of inserting the numbers into a standard contract and does not include any particular legal advice which is not considered necessary). A lawyer may actually get involved in these countries when buyer and seller have met without the intervention of an agent, but nevertheless require legal help. For Denmark, where the seller is usually represented by an agent and the buyer by a lawyer, we assumed that the legal part of the agent's services would correspond to a fee of 1030 €. As another peculiarity, the costs of the Spanish *gestor administrativo* whose involvement in contract execution is usual have been added to the legal fees.

### **(1) Sample transaction of 250.000€ with mortgage: Absolute Fees (i.e. un-adjusted)**

For a transaction value of 250.000€ with a mortgage for the same amount, the Swedish system is by far the cheapest as there is no legal professional involved - the percentage of legal costs of the value of the transfer thus being 0,2 only; similar values have been reported for the Czech Republic; Finland follows with a little less than 0,4% (because here the cost of the certification of signature by the "authenticating notary" needs to be added to the legal part of the agent's cost). Values of 0,5% - 0,6% are reported by England, the Netherlands, Poland, Slovenia and Spain. However, the British Isles and Denmark might offer best quality of advice for money, as the reported fees cover the intervention of two professionals, i.e. one for each party, which seems to be safer than the involvement of one single professional. For the range of values between 0,6% and 0,8%, we find Germany, Scotland, Austria and Ireland.. High legal costs of more than 1% of the transaction value are reported by Denmark (1,1% - involvement of an estate agent of the seller and a lawyer for the buyer), Belgium (around 1,3%), Hungary (solicitor – also around 1,3%), Italy (around 1,5%) and Greece (around 2,7%).<sup>9</sup>

Extending the comparison to the different regulatory systems, the Nordic countries and the Dutch deregulated notary system end up first (with 0,56% or 0,54% of the transaction value), followed by the lawyer system with 0,77% (or 0,69% for the British Isles only, i.e. without Hungary). Traditional notary systems (without the hybrid system of Greece) are most expensive (0,89%). Among them, the surveyed Eastern European states are markedly less expensive in absolute numbers (0,55%) than Western European States (1,01%). However, it should not be ignored that the fees within the various systems vary widely, so that there are some notarial systems which are cheaper than e.g. Ireland (the most expensive country on the British Isles) and Scotland.

### **(2a) Development of fees (unadjusted): transactions 100000.-, 250000.- and 500000.-€**

In a further step, legal fees (unadjusted) are compared for different standard house values: 100.000, 250.000€ and 500.000€. Figures 5, 6 and 7 show the legal fees development for selected countries, different legal systems, and in terms of percentage respectively. Whereas

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<sup>9</sup> It should be noted however that in these countries mortgages (here assumed for 100% percent of the price) are particularly expensive. Under the premise that mortgages are created for only 70% of the house price, absolute figures for Italy, France, and Belgium would be about 10-15% lower.

in the notary countries including the Netherlands, legal fees are incremental conditional on the value of the transaction, the Scandinavian countries as well as England have flat respectively nearly flat fees. The latter solution which is market-driven sounds more just because transactions of real estate with different value will usually involve the same amount of work (and somewhat higher fees might only be explained by a higher share of the insurance premium due to the higher financial risk of the professional).

Incremental fees are often argued to entail cross-subsidisation between higher and lower fees. If fees are viewed in absolute numbers, this assessment seems to be correct to a limited extent. Thus, the picture of the fees for the 250.000€ transaction just referred changes when a transfer value of 100.000€ is analysed. Then, incremental (fixed) notarial fees in Germany, Poland, Slovenia and Spain are somewhat less expensive than flat or nearly flat fees in Denmark, Finland and England (only Sweden being still cheaper than the mentioned group of notary countries). To this extent, cross-subsidisation might take place.

This notwithstanding, it should not be ignored that the maximum difference between the cheaper notarial fees and the flat fees is about 400€ (for a transaction value of 100.000€ - we have not yet looked at lower transaction values where the difference might be larger), whereas the difference between notarial fees and flat fees in the case of transactions with a value of 500.000€ goes up to several thousands of Euros. This difference could be interpreted as a monopoly rent conferred by the regulation of fixed fees (without considering at this stage possible further cross-subsidisation among different legal services)<sup>10</sup>. As a preliminary finding, it may thus be stated that whereas cross-subsidisation between higher and lower fees is limited, monopoly rents in the case of high value transactions under fixed notarial fees are high. As especially in Central and Eastern European transactions, the bulk of transaction however concern lower values, we will in the next step analyse fees in correlation with average house prices.<sup>11</sup>

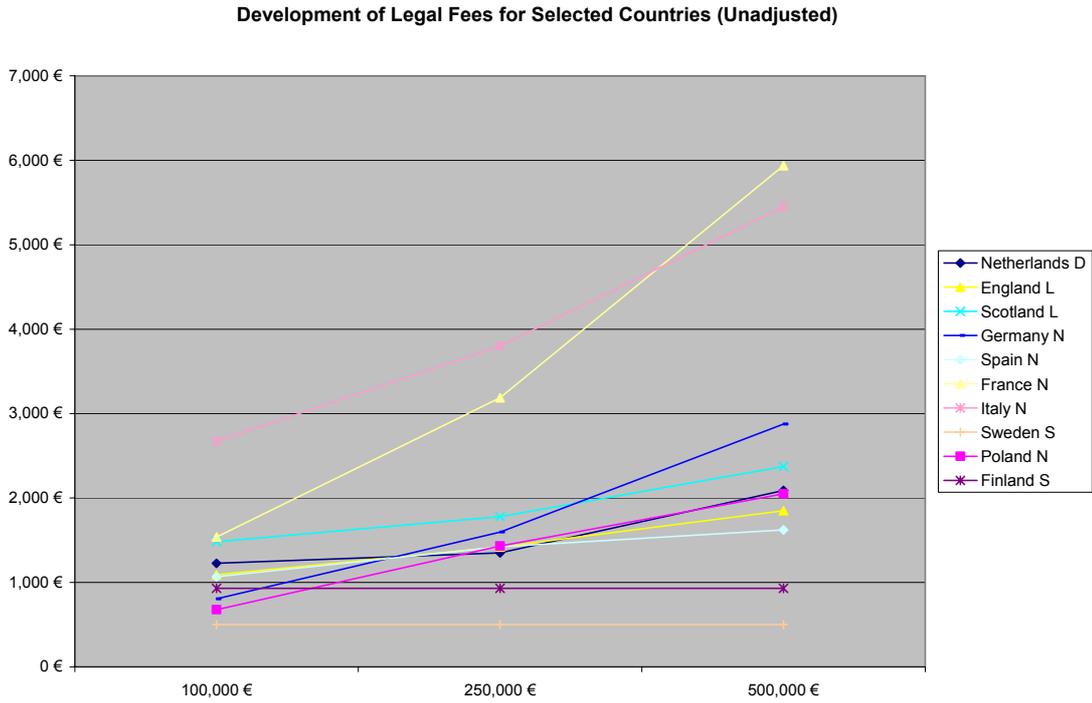
Figure 6 confirms the above trend: The average of notary countries has slightly cheaper fees for 100.000€ transactions than lawyer countries. However, already at a value of about 120.000.€ notary countries fees overtake all other systems' fees. Significantly, both the Dutch deregulated notary model and the Scandinavian system score better than the notary countries for all transaction values under review, even for the low value transaction.

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<sup>10</sup> This will be done in the Dutch case study.

<sup>11</sup> Data taken from the national reports and from statistical sources available on the internet. In sum cases, data still had to be estimated at the present stage (e.g. PL= 100.000€).

Figure 5



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

Figure 6

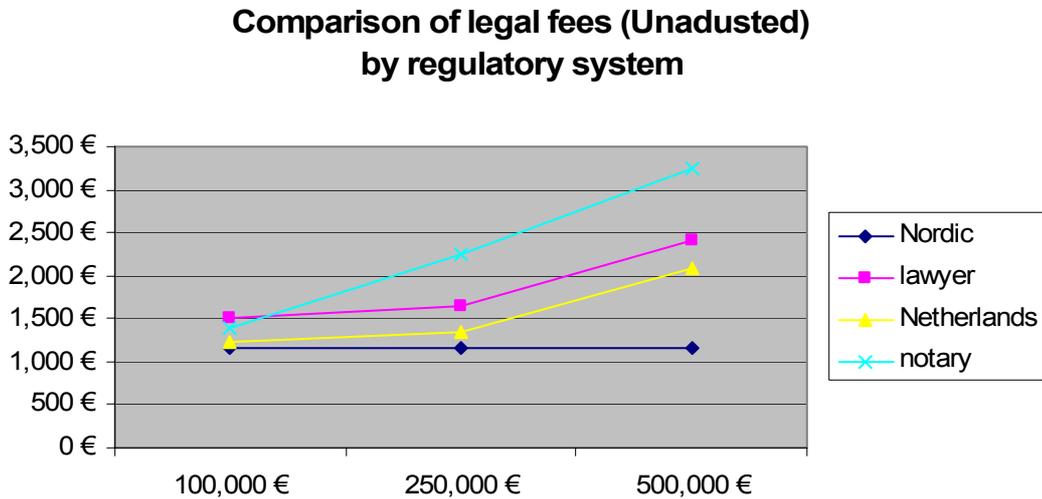
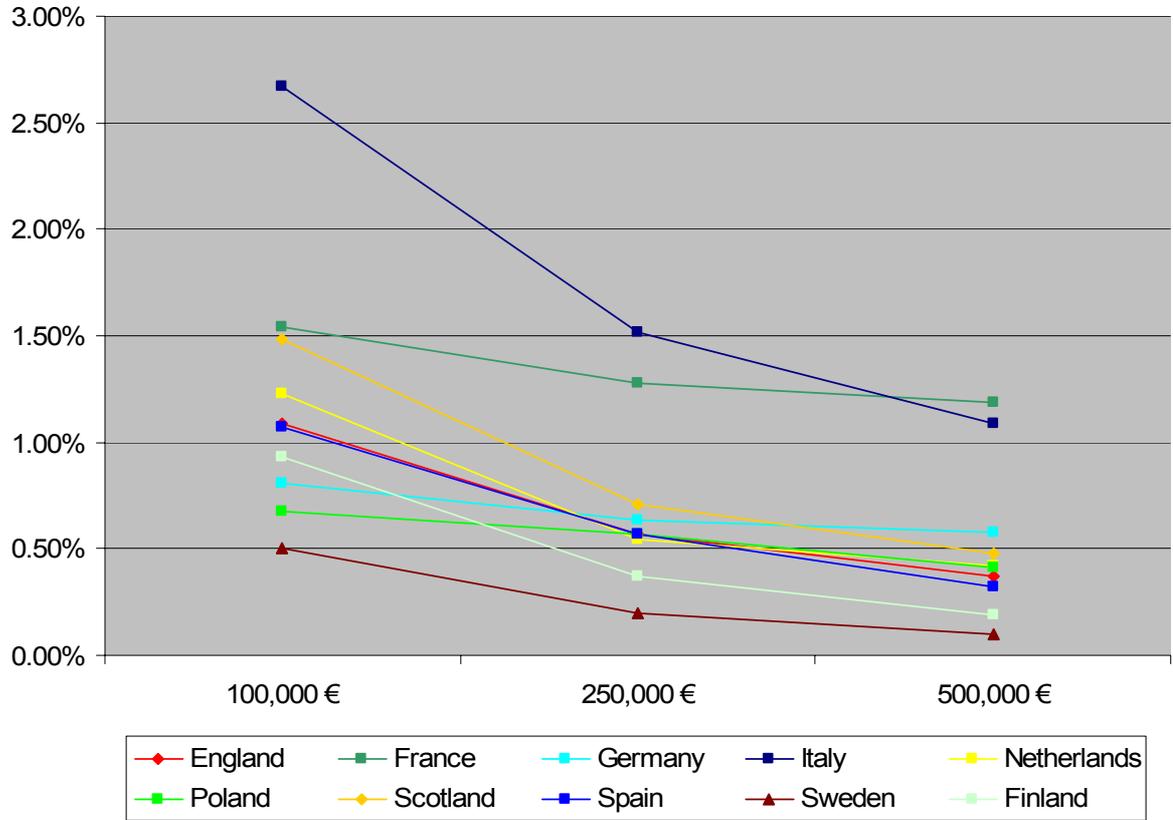


Figure 7

Legal fees as percentage of transaction value (unadjusted)



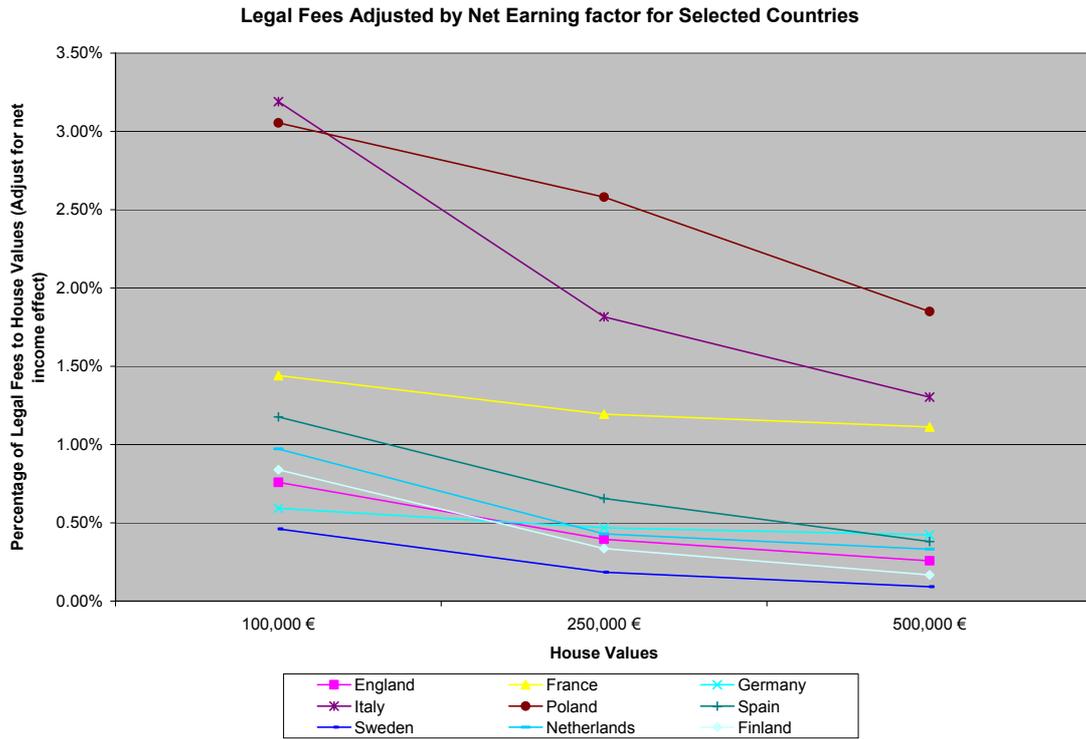
**(2b) Development of fees (Adjusted by net earning factor): transactions 100000.-, 250000.- and 500000.-€**

When absolute legal fees are adjusted by the net income index, we obtain somewhat different results from our analysis in (2a). To adjust the absolute legal fees in order to account for differences in income factor across the countries, we have performed the following transformation. We take the average net income for the EU (23 550 €) as a benchmark. We then multiply the percentage of legal fees to total transaction cost by the ratio of net earnings for respective country to the benchmark of 23 550. For example, the net incomes for Poland and England are 5200€ and 33 668€ respectively. Moreover, the percentage legal fees for 100k property value for Poland and England are 0.94% and 2.94% respectively. Thus, the net income adjusted percentage of legal fees to 100k house value for Poland is  $(0.94 * (23550/5200)) = 4.25\%$ , whereas for England it is  $(2.94 * (23550/33668)) = 2.06\%$ . Consequently, England is paying less in real percentage terms than Poland.

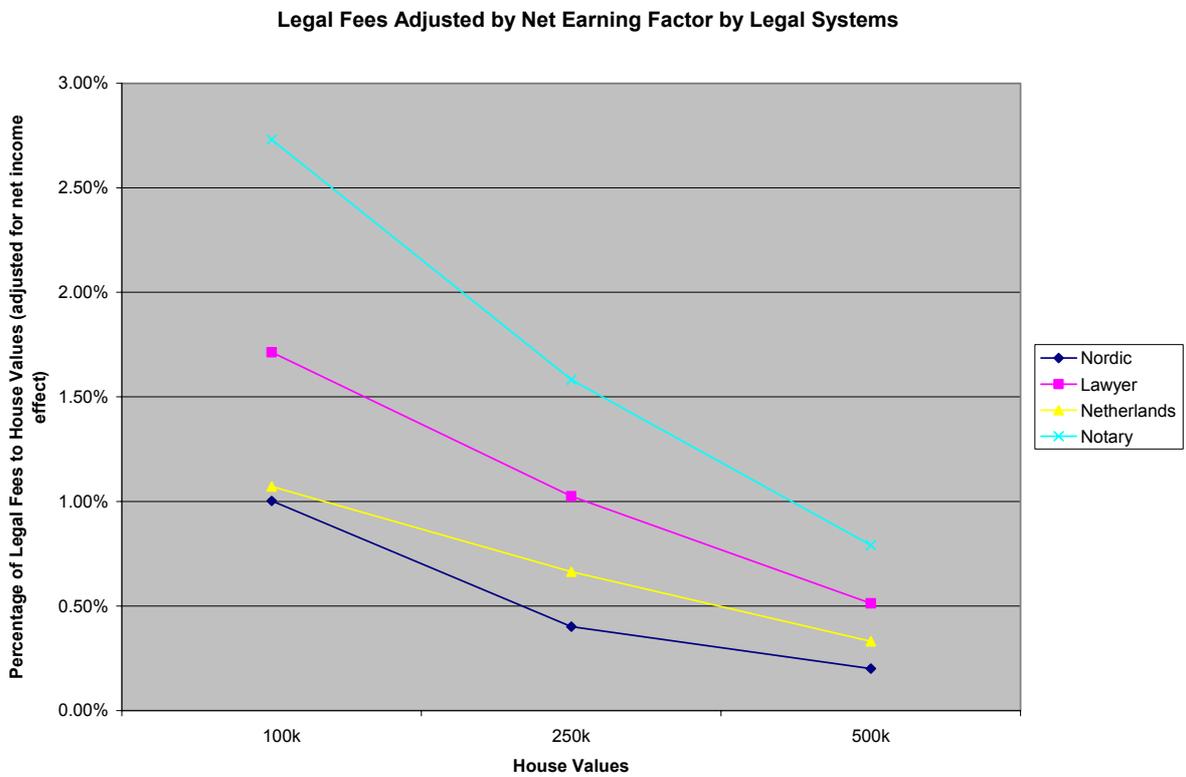
The net income factor adjustment to the percentage of legal fees to house value is equivalent to either adjusting the house value or the legal fees accordingly. One cannot both adjust house value and legal fees across countries as the net effect would be unchanged. For a thought experiment, let's assume the following: a typical English person earns 4 times more than a typical Polish person (i.e. an English person has 4 times more purchasing power than a Polish worker) but both pay 1000 € legal fees for 100K€ house. Consequently, a house that is worth 100k in Poland would be equivalent to 25k for an English person. Thus, the real percentage legal fees to the house value for English person is 1% whereas for Polish person, it is 4% (i.e.  $(1000/25000) * 100$ ). One could also adjust the absolute legal fees by the factor 4: English pays 1000€ whereas Polish pays 4000€ in real terms. Thus, the real percentage is 1% and 4% for English and Polish respectively. The main message is that Polish person is 4 times poorer than English, and hence pays 4 times more in real terms than English.

Figures 8 and 9 show the legal fees that are adjusted by the net income factor. Figure 8 shows that Poland in real term pays much more than all other countries for different house values (one exception is that Italy pays slightly little more at 100k house value). Figure 9 shows the clear message that when the legal fees in real terms are categorized by the legal systems, the notary system clearly charges much more than others.

**Figure 8**



**Figure 9**



## bb) Fees compared with average house prices

For average house prices, we have calculated corresponding fees on the basis of the fees indicated by national reporters for transactions of 100.000€ and 250.000€. In order to measure the effective value of these fees, we have also indexed them with the compared price levels and net earnings as calculated by Eurostat.<sup>12</sup>

Table 9: Average house prices, Estimated Legal Fees, Adjusted prices

Country	average price residential house/ apartment	estimated fee	price level 2005	net earnings	adjusted price level	fee by net earnings
Netherlands	202.000 €	1.310 €	105,2%	29.554 €	1.245 €	1.012 €
Czech Republic	<i>100.000 €</i>	500 €	57,8%	<i>12.000 €</i>	865 €	951 €
England	297.750 €	1.502 €	104,9%	33.688 €	1.432 €	1.018 €
Scotland	193.860 €	1.668 €	104,9%	33.688 €	1.591 €	1.131 €
Ireland	303.310 €	2.426 €	123,4%	32.233 €	1.966 €	1.718 €
Hungary (solicitor)	<i>100.000 €</i>	2.500 €	63,6%	5.848 €	3.931 €	9.758 €
Poland	<i>100.000 €</i>	677 €	59,6%	5.200 €	1.136 €	2.972 €
Germany	130.863 €	968 €	104,1%	31.916 €	930 €	693 €
Slovenia	<i>100.000 €</i>	878 €	76,4%	8.901 €	1.149 €	2.250 €
Spain	172.630 €	1.239 €	90,0%	18.004 €	1.377 €	1.571 €
Austria	<i>150.000 €</i>	1.567 €	102,9%	28.009 €	1.523 €	1.277 €
France	226.630 €	2.931 €	108,5%	25.050 €	2.701 €	2.671 €
Belgium	167.000 €	2.690 €	104,3%	28.324 €	2.579 €	2.168 €
Italy	129.532 €	2.892 €	102,6%	19.636 €	2.819 €	3.363 €
Greece	<i>130.000 €</i>	4.000 €	87,8%	17.140 €	4.556 €	5.327 €
Sweden	147.500 €	500 €	120,6%	25.479 €	415 €	448 €
Finland	123.756 €	930 €	122,0%	25.006 €	762 €	849 €
Denmark	221.743 €	2.026 €	135,8%	31.202 €	1.492 €	1.482 €
<b>average</b>	<b>166.476 €</b>	<b>1.734 €</b>		<b>22.827 €</b>	<b>1.804 €</b>	<b>2.259 €</b>

*Estimated numbers are in italics*

In an overall perspective, these figures show similar results, even though there are variations for some countries. Sweden and Finland rank still first (415€ and 762€), whilst the following ranks are taken by the Czech Republic, Germany, Spain and the Netherlands. Thus, the Scandinavian countries maintain their pole position; lawyer countries like the British Isles

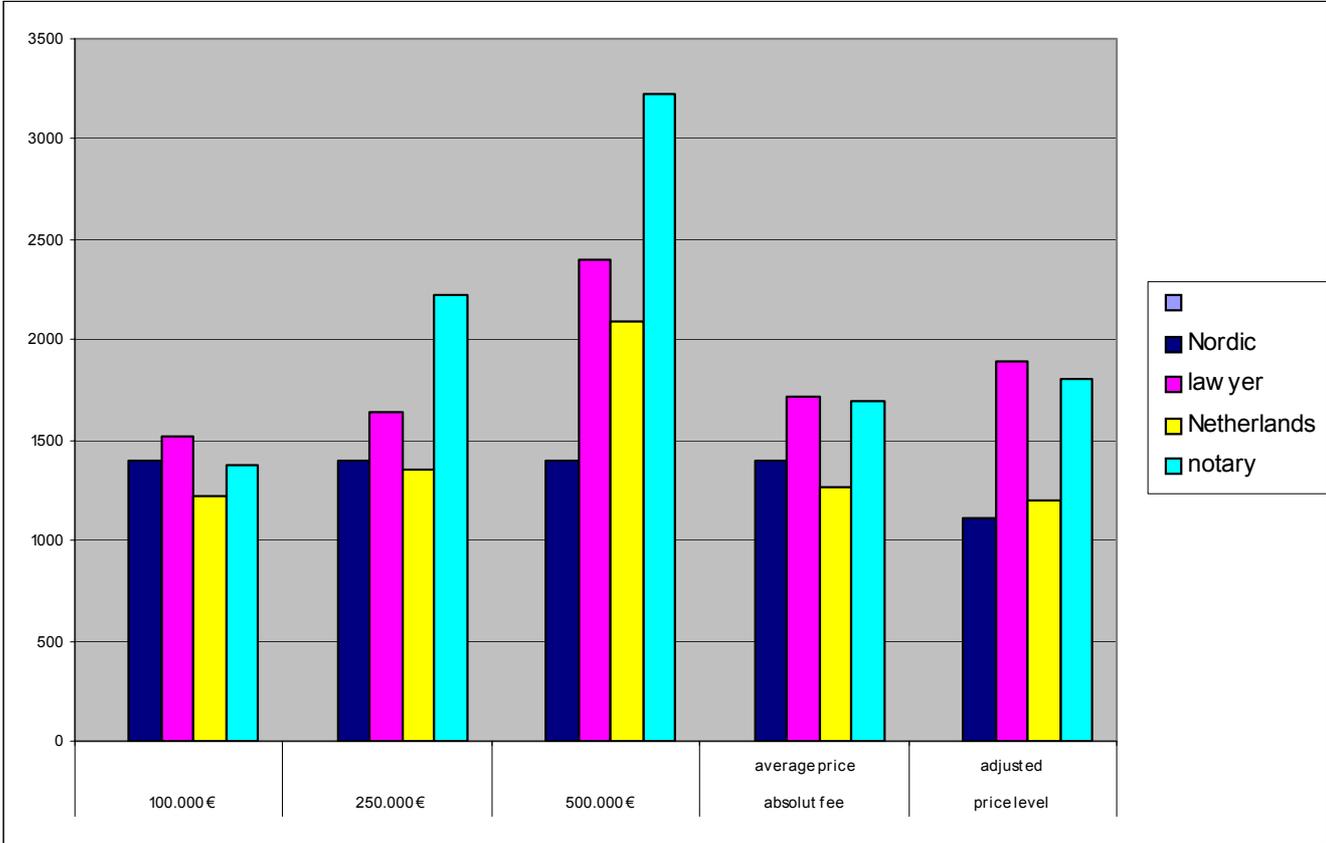
<sup>12</sup>

[http://epp.eurostat.ec.europa.eu/portal/page?\\_pageid=1996,39140985&\\_dad=portal&\\_schema=P-ORTAL&screen=detailref&language=de&product=Yearlies\\_new\\_economy&root=Yearlies\\_new\\_economy/B/B2/B21/er011](http://epp.eurostat.ec.europa.eu/portal/page?_pageid=1996,39140985&_dad=portal&_schema=P-ORTAL&screen=detailref&language=de&product=Yearlies_new_economy&root=Yearlies_new_economy/B/B2/B21/er011)

and the Czech republic do relatively well (this is also true for England, Scotland and Ireland as the average house price there is much higher than elsewhere, with the price/fee ratio being good). However, some traditional notary countries like Spain, Poland and Germany do as well as the Dutch deregulated system when adjusted fees by price level. When we compare fees adjusted on the basis of net earnings, this only holds for Germany. As expected, the more expensive notary countries such as France, Belgium and Italy rank worse. One should note that the new member states' adjusted fees by the price index and net earning factors are quite different: the net earning incomes for the new member states have not moved at a similar pace as the price indices for these states. That is, the inflation rates have increased at a much faster pace than the net income earnings for these new member states.

We extrapolate these figures to the various regulatory systems in Figure 10 below.

Figure 10  
 Legal Fees for Different Legal Systems



This diagram does not need much explanation: It shows the clear superiority of the Nordic system and the Dutch deregulated notary system when comparing both absolute fees due for the purchase of an average house and fees adjusted to price levels. Again, the result for the lawyer system needs to be viewed with caution as house prices are much higher on the British isles than elsewhere.

### **c) Fees percentage correlated with the regulatory index**

In the following section, we present correlations between the regulation indices and the real percentages of legal fees to the transaction value. Figures 11, 12 and 13 show various PTV (percent of transaction value adjusted by the net income factor) against the regulation indices (on market entry (MERI), market conduct (MCRI) and mandatory intervention (MII)). Figures 11 to 13 clearly show the positive relationship between the percentage fees and regulation indices: the higher the regulation indices, the higher the percentage fees. In Figure 11, the correlation ( $R^2$  = goodness of fit) between the two variables is 0.10. When Hungary is excluded, the goodness of fit improves to 38% from 10%. Figure 13 confirms that the correlation between the real legal fees and regulation indices increase as the house value increase: for house value of 500k, the correlation between the two variables is 0.34 (0.42 without Hungary).

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

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<sup>13</sup> It should be noted that Greece has been left out here as it represents a hybrid system: two lawyers acting on top of the notary.

Figure 11

PTV100k Vs Regulation Index

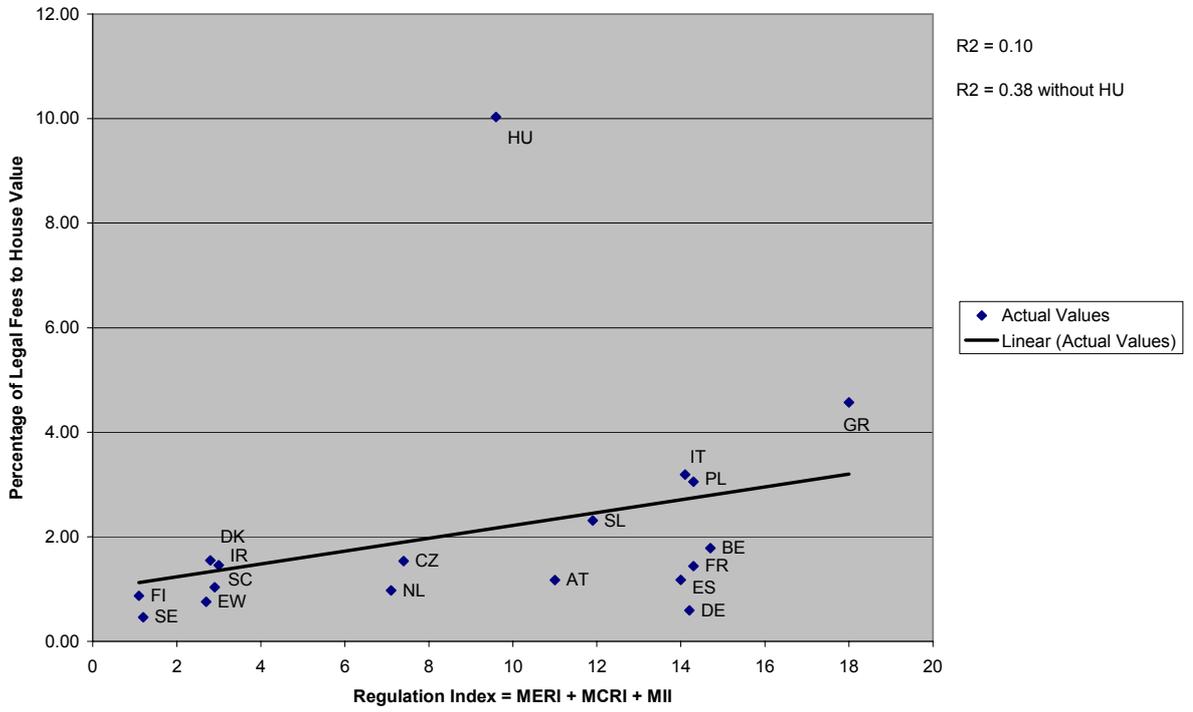
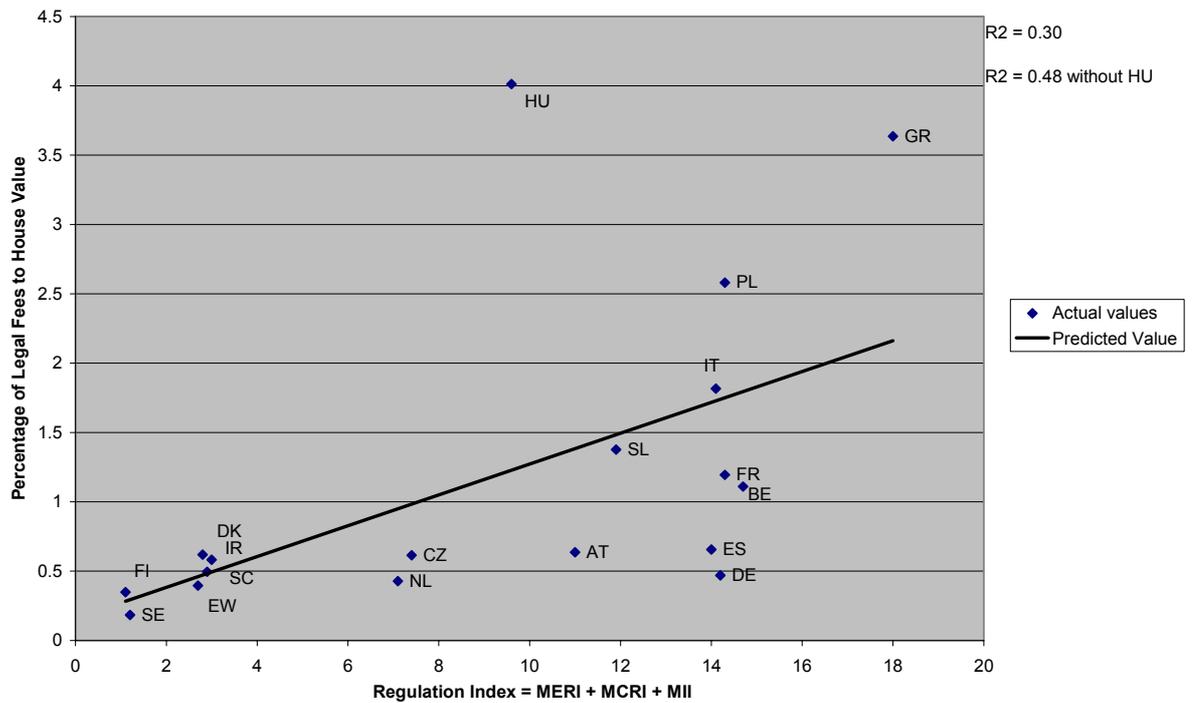


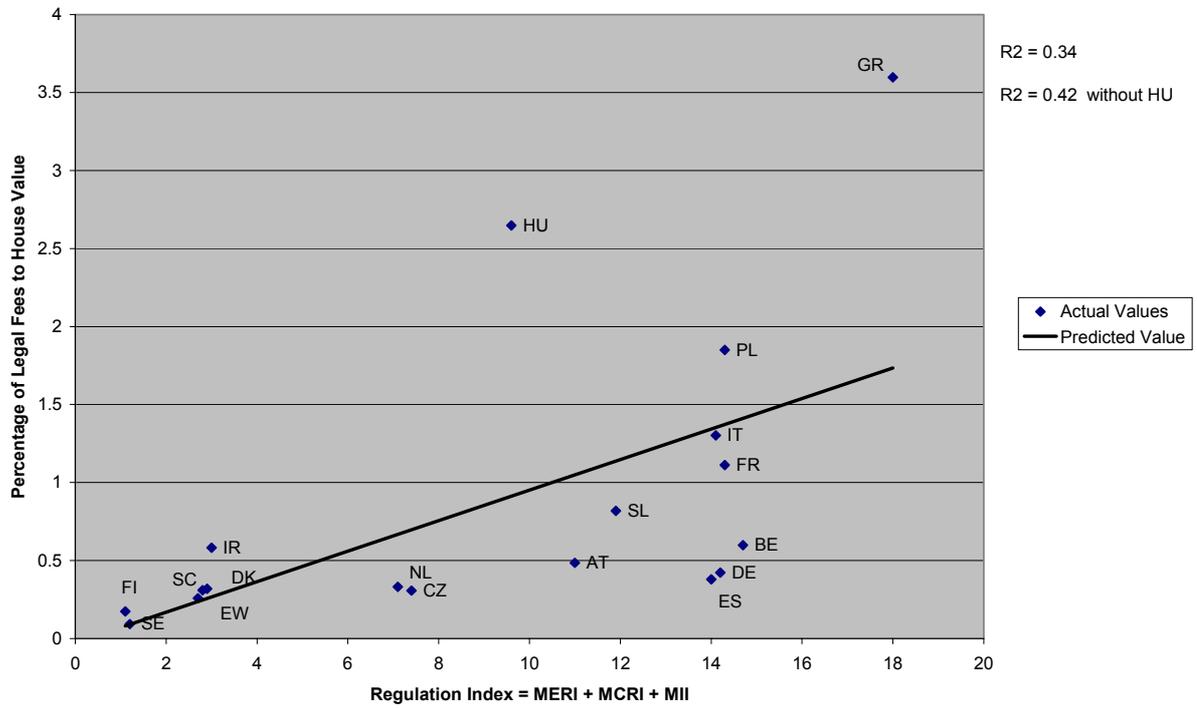
Figure 12

PTV 250K Vs Regulation Indices



**Figure 13**

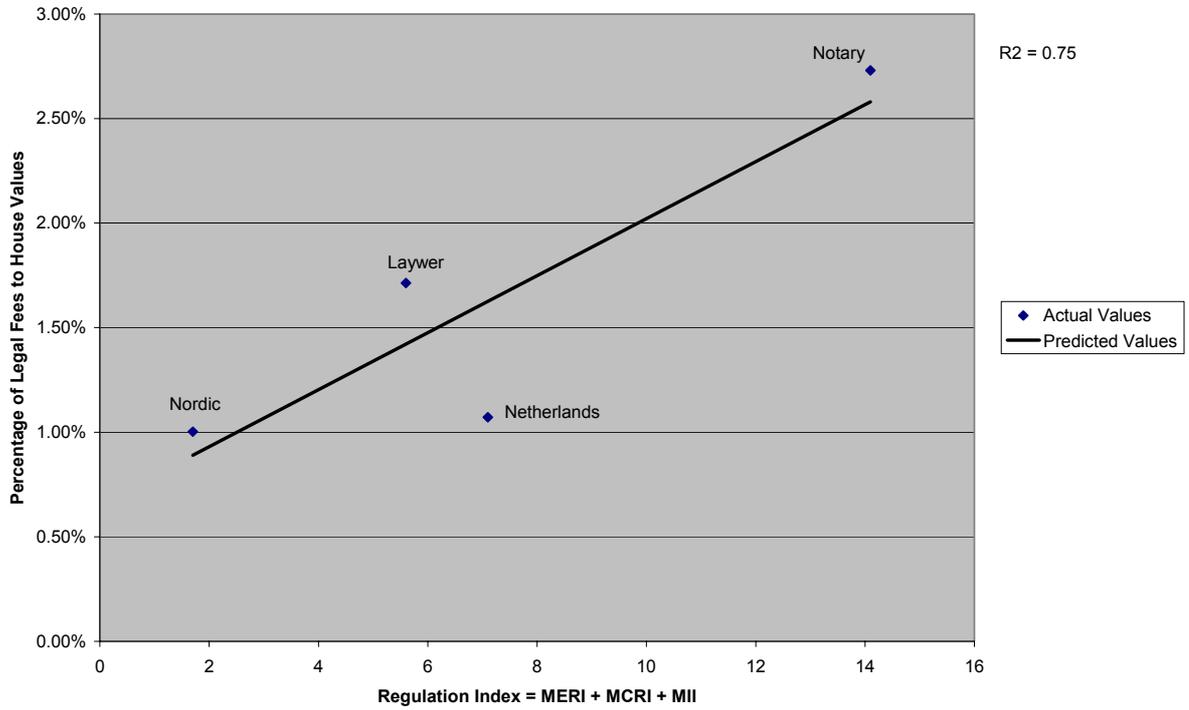
**PTV 500k Vs Regulation Indices**



We also analyse the correlations between the regulation indices and legal systems. Figures 14 to 16 show the correlations. The relationship between the two variables is even closer: the correlation values are 0.75, 0.84 and 0.91 for the house values of 100k, 250k and 500k.

**Figure 14**

**PTV 100k Regulation Indices for Legal Systems**



**Figure 15**

**PTV 250k Vs Regulation Indices by Legal Systems**

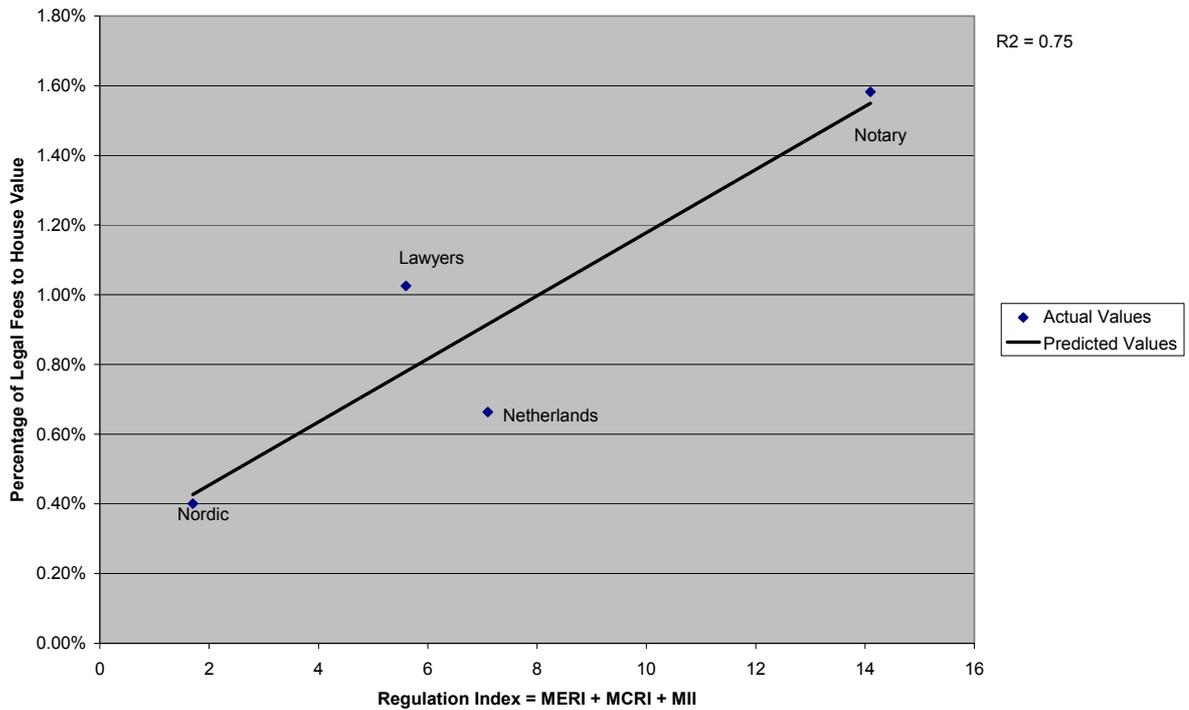
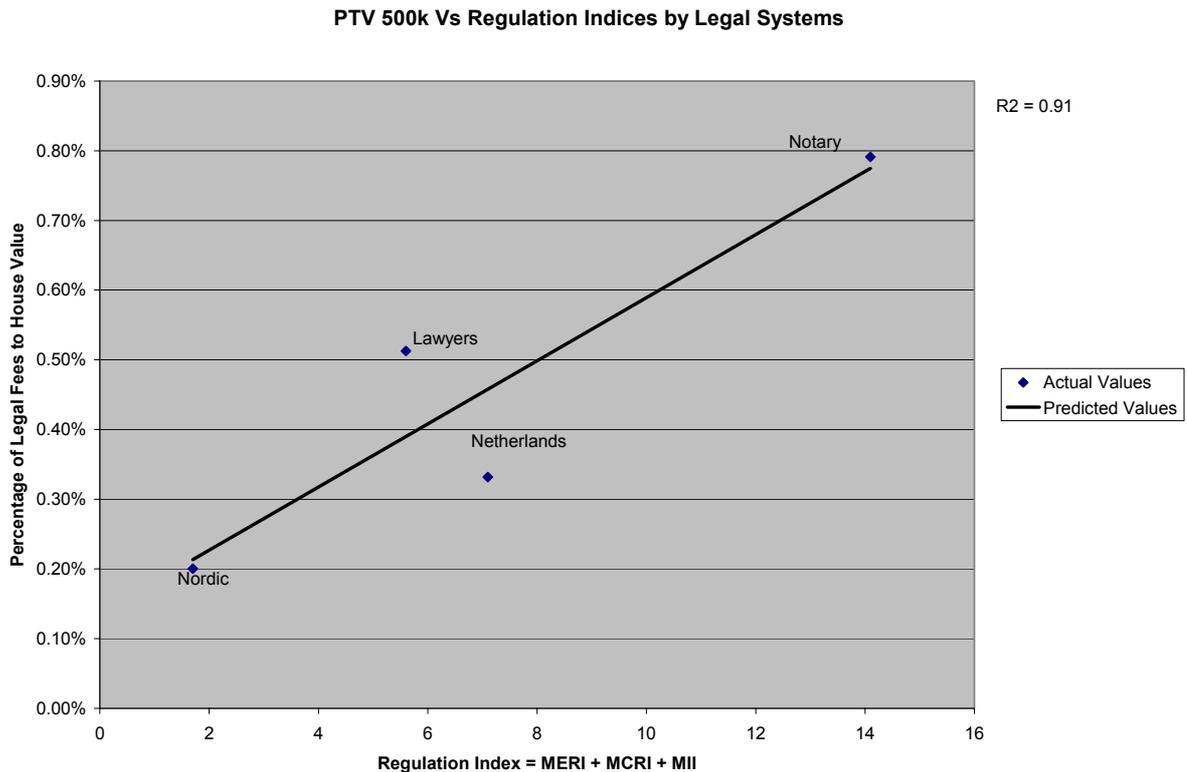


Figure 16



### ee) Overall result

On average, the **Nordic systems** are the most efficient (in particular Finland and Sweden). However, it is difficult to get exact figures here, because legal service is part of the overall fee of the Nordic real estate agents.

Comparing the British isles adversarial systems with flat or nearly flat fees and notarial systems with value-dependant fees, the former are **cheaper for transactions values of 250.000.- and 500.000.- Euro**; the higher the value becomes, the more notary systems (in particular the French, the Belgian and the Italian), become more expensive; this may show the existence of monopoly rents. However, notarial systems (excluding the hybrid Greek system and excluding the deregulated Dutch system) are on average **slightly cheaper for a transaction value of 100.000.- Euro** (all including a mortgage on the same amount). This might show a small degree of cross-subsidisation between high and low value conveyancing.

The **deregulated Dutch system** – being a notarial system, but with less professional regulations, in particular without limits on the number of notaries and without statutorily fixed fees -, ranges close to the Nordic countries according to our preliminary figures. It therefore delivers an impressive proof that deregulated notary systems may work very efficiently.

By and large, these tendencies are also confirmed by an additional comparison of the fees charged for average house prices in various countries. However, traditional notary countries such as Spain, Poland and Germany rank equal or nearly equal in absolute terms to the Netherlands but not in real terms. Finally, overall findings show a statistical **correlation between higher regulation and higher fees**.

## B. Market Outcome Indices

Whereas regulation indices may be regarded as inputs when studying the efficiency of different conveyancing regimes, outputs are necessary as counterparts for further econometric analysis – these are the **market outcome indices**. The study will examine whether the degree of regulation is associated with **specific outcomes of the conveyancing process in different countries**.

The relevant market outcomes are those chiefly perceived by **consumers/companies (buyers and sellers of property and land)**. All the outcome indices refer exclusively to survey questions concerning the **legal profession involved in conveyancing** (e.g. attorneys and notaries).

There are 5 groups of outcomes that are covered in the corresponding questionnaire – **Price Index** (1 index); **Choice Index** (3 subindices); **Quality Index** (4); (ease of) **Functioning Index** (3); and **Speed Index** (2). Altogether these five groups comprise 13 (sub-)indices, which in turn will be weighted to derive the overall **Market Outcome Index (MOI)** for the professions: lawyers, notaries, and/or licensed conveyors, as applicable to each country.

Each index is calibrated on a scale of 0 to 6, where 0 represents least desirable outcomes, and 6 the most desirable outcomes. “Desirability” corresponds to the various index groups in the following sense:

<b>Index Group</b>	<b>Low Desirability</b>	<b>High Desirability</b>
Price	high	low
Choice	none	lots
Quality	dissatisfaction	satisfaction
Functioning	no problems	many problems
Speed	slow	fast

Whereas the regulatory indices (cf. III above) are based on laws and regulations, which have been compiled for the purpose of the study by competent persons, the market outcome indices can only be **assessed empirically**, from the **returns of individuals** to the corresponding questionnaire in each country. Each respondent gives her/his answers to the questionnaire according to **personal experience** of the conveyancing system in their country. For this reason, it is required to gather **many independent responses from each country**; each individual response is subsumed into the calculation of each outcome index or subindex.

As stated, these data are currently being gathered by means of an electronic questionnaire which is open until 20/12/06.<sup>14</sup>

## **V. Short Outlook on Case Studies**

Several case studies are currently elaborated which look onto countries whose experience is of key importance for the whole of Europe: the Netherlands and the UK who have carried out major deregulatory reforms in recent years, whose effects may serve as guidance for the whole of Europe; Sweden which represents the low-cost pragmatic Scandinavian system and Germany as a traditional notary country with high standards of regulation.

### **1. England and Wales/ Netherlands**

For assessing reforms in England and the Netherlands, a similar methodology will be followed.

In a first step, the regulatory reforms will be described in detail. This presentation includes a description of the motivation for the reform, the including political driving forces, the chronology of its implementation and its main content. After that, we will assess the impact of the reform. This includes an overview of the empirical evidence on the impact of the reforms using the existing literature/various studies. We will distinguish opinions on the reform by the profession itself, by other lawyers, by government officials and by consumer associations. Regarding substance, we will focus on price changes over time - comparing cost evolution in England/Wales and the Netherlands with cost evolution in a typical Latin notary system. In this context, it seems reasonable to assume that, given the steep increase in real estate prices, the fees calculated on a % basis would have increased more sharply than the flat fee system used in Anglo-Saxon countries. In the Dutch case, the price development of conveyancing services will be compared to that of other notarial services (authentication of signatures, marriage contract and will). In this way, we will examine whether cross subsidisation between notarial services has been affected through the reform. In a further step, we will also critically assess the impact of reforms on the other variables of the market efficiency index (choice, quality and speed). The final section will look, to the extent that this is possible, at the broader impact of the reforms on the economy in terms of growth and jobs – thus assessing the contribution reforms make to the Lisbon agenda).

### **2. Sweden**

The Swedish case study will present the cheapest and apparently efficient model of conveyancing to be found all over Europe. Methodologically, we will undertake a critical evaluation of the Swedish model and contrast it with all the other regulatory models. In detail, the case study will focus on the role of agents, standard contracts, banks and the parties themselves. On this basis, the functioning of the system will be critically assessed. In particular, we will address the following questions: how the Swedish system compare to the Latin notary system: what does it offer that the Latin notary system does not offer and vice versa. Finally, we will analyse whether the Swedish model might be transferable to other countries. The focus of this analysis will lie on its institutional preconditions.

### **3. Germany**

A draft of the German case study has already been elaborated (see the paper by Gabe Lee annexed).

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<sup>14</sup> See [http://www.zerp.uni-bremen.de/english/aktuelles/intro\\_quest.html](http://www.zerp.uni-bremen.de/english/aktuelles/intro_quest.html). Readers are encouraged to reply to this questionnaire before 20/12/06.

## **VI. What next?**

A final report will be delivered on 31/1/06. This will in particular evaluate the results of the ongoing electronic survey on key market indicators. On this basis, conclusions on the effects of professional services regulation on the functioning and efficiency of the conveyancing market and the links between the two will be formulated.

## Annex

### Coding of regulation indices

Coding and Weighting of the "Market Entry Regulation Index" (MERI) for professionals in conveyancing

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

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

Coding and Weighting of the "Market Conduct Regulation Index" (MCRI) for professionals in conveyancing

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

Coding and weighting of the "Mandatory Intervention Index" (MII) in conveyancing services

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

Coding and weighting of the "Consumer Protection Index" (CPI) in conveyancing services

(Sub)Index	Themes/questions	Weights by theme (b <sub>j</sub> )	Question weights (c <sub>k</sub> )	Coding of data						
CPIS	<b>Compulsory indemnity insurance</b> Is there the obligation for professional indemnity insurance?	0.38	1	<table border="0"> <tr> <td>no</td> <td>yes, but very low insurance sum (less than 150.000 EUR)</td> <td>yes, insurance sum over 150.000 EUR</td> </tr> <tr> <td>0</td> <td>2</td> <td>6</td> </tr> </table>	no	yes, but very low insurance sum (less than 150.000 EUR)	yes, insurance sum over 150.000 EUR	0	2	6
no	yes, but very low insurance sum (less than 150.000 EUR)	yes, insurance sum over 150.000 EUR								
0	2	6								
CPC	<b>Conduct control/quality control</b> Are there specific institutions/instruments aiming at conduct/quality control vis a vis the professionals?	0.25	1	<table border="0"> <tr> <td>no</td> <td>yes</td> </tr> <tr> <td>0</td> <td>6</td> </tr> </table>	no	yes	0	6		
no	yes									
0	6									
CPCEDUC	<b>Continuing education</b> Is there an obligation for continuing professional education?	0.25	1	<table border="0"> <tr> <td>no or recommendation only</td> <td>Yes, but less than 20 hours/year</td> <td>yes, more than 20 hours / year</td> </tr> <tr> <td>0</td> <td>3</td> <td>6</td> </tr> </table>	no or recommendation only	Yes, but less than 20 hours/year	yes, more than 20 hours / year	0	3	6
no or recommendation only	Yes, but less than 20 hours/year	yes, more than 20 hours / year								
0	3	6								
CPOS	<b>Obligation to provide services</b> Is there an obligation for the professionals to provide services if contacted by a customer?	0.12	1	<table border="0"> <tr> <td>no</td> <td>yes</td> </tr> <tr> <td>0</td> <td>6</td> </tr> </table>	no	yes	0	6		
no	yes									
0	6									
<b>CPI</b>	<b>Country scores (0-6)</b>	$\sum_j b_j \sum_k c_k \text{ answer}_{jk}$								