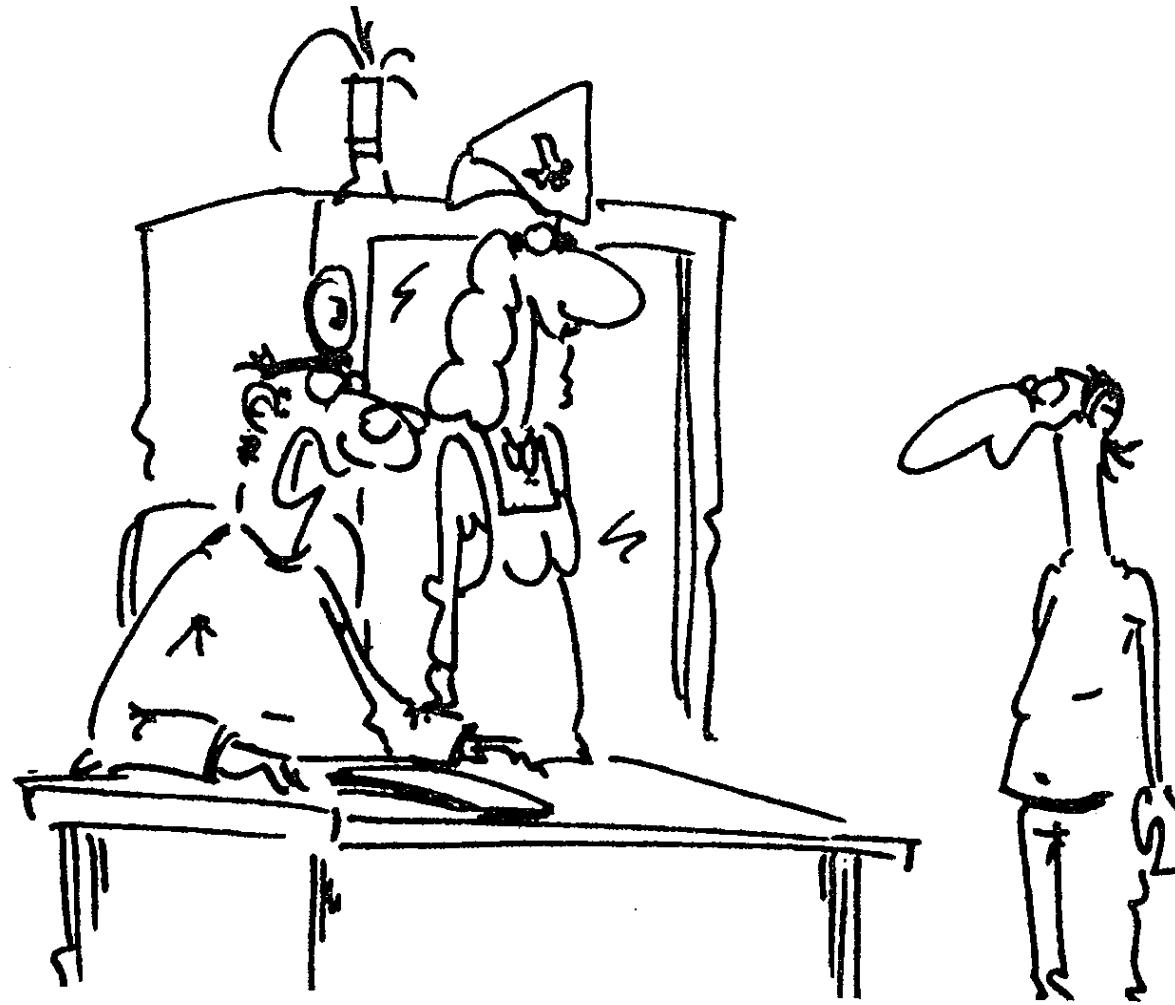


# Liberal Professions: Notaries in EU – a framework for reforms

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*Before I examine you, tell me, are you for or against liberalisation of professional services?*

# Notaries: Framework for Market Reform

- Summary
  - Notaries in the EU
  - The Latin-German framework: market fundamentals
  - A fully regulated system
    - How the system operates
    - Problems and measures to improve the system
  - A market-based system: why it would be more efficient
  - Transitional issues

# Aim of the study

- Study the market of liberal profession of notaries of the Latin-German Type.
- These notaries are part of the Conference of European Union Notaries (an association of Belgian law, Law n° 2, May of 2002 and a law of June 27, 1921), under the objectives of the International Union of Latin Notaries.
- Members include notaries from Germany, Austria, Belgium, Spain, France, Greece, Italy, Luxembourg, Netherlands, Portugal, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Czech Republic, Slovakia and Slovenia.
- We will take an economic viewpoint, and give the fundamentals of the market.
- We will propose a framework for market reform: two polar systems: fully regulated and market-based system. Majority of systems are fully regulated, although some measures can improve its operation.
- We will argue that a market-based system is more efficient, although transitional issues are important.

# Notaries in the EU: some data and characteristics

- Legal training required
- One of the highest regulated markets in liberal professions
- Data shows (i) high barriers to entry, (ii) conduct with substantial regulations, (iii) density of professionals differs substantially among countries
- Major recent changes: (i) Netherlands liberalized the market, (Austria?) (ii) Portugal privatized the professionals, (iii) Eastern European countries have also “privatized” the market

# A highly regulated market

Table 3-12 Notary Services: Conduct

Country	Profession	Regulation of prices			Advertising forbidden?			Reg. on location	Reg. on diversification	Incorp. for bidden?	Interprof. co-operation forbidden?				Comp. indemn. insurance?	Comp. cont. education?
		Min. price	max. price	refer-ence price	All	most	Some				any	incorp. gen.	with non lib. prof.	Incorp. w. non lib. prof		
Austria	Notar (Notary)	N	Y	Y	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y
Belgium	Notaire (Notary)	Y	Y	Y	N	Y?	Y	Y	Y	Y?	Y	Y	Y	Y	Y	N
Denmark	no Notaries in form of liberal profession															
Finland	no Notaries in form of liberal profession															
France	Notaire (Notary)	(Y)	(Y)	N	Y	Y	Y	N	Y	Y?	Y	Y	Y	Y	Y	Y
Germany	Notar (Notary)	Y	Y	N	N	Y	Y	Y	Y	Y	(Y)	(Y)	Y	Y	Y	Y
Italy	Notario	N	Y	N	Y	Y	Y	Y	Y	Y?	Y	Y	Y	Y	N	N
Netherlands	Notary	N	(Y)	N	N	N	Y	N	Y	N	N	Y	Y	Y	Y	Y
Portugal	Notario (Notary Public)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Spain	Notario (Notary Public)	Y	Y	N	Y	Y	Y	Y	N?	Y	Y	Y	Y	Y	Y	N
Sweden	no Notaries in form of liberal profession															
England/wales	no Notaries in form of liberal profession															
Greece	Notary	Y	Y	N	Y?	Y?	Y?	N?	Y?	N?	Y?	Y?	Y?	Y?	n.a.	N?
Luxemburg	Notaire	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Ireland	no Notaries in form of liberal profession															

Souce: Wien Report for the Commission

Note: For Portugal the system is similar to France and Luxemburg to Belgium

## COSTS OF DOING BUSINESS: Registering Property

Country	Number of procedures	Time (days)	Cost (% of property value)
Australia	5	7	4.5
Austria	3	32	4.5
Belgium	2	132	12.8
Canada	6	20	2.0
Czech Republic	4	122	3.0
Denmark	6	42	0.6
Finland	3	14	4.0
France	10	193	5.8
Germany	4	41	4.2
Greece	12	23	13.7
Hungary	4	79	6.8
Ireland	5	38	10.3
Italy	8	27	1.3
Latvia	10	62	2.1
Lithuania	3	3	0.3
Mexico	5	74	5.3
Netherlands	4	5	6.4
New Zealand	2	2	0.2
Norway	1	1	2.5
Poland	7	204	1.6
Portugal	5	83	7.3
Slovak Republic	5	22	3.1
Slovenia	6	391	2.0
Spain	4	20	7.1
Sweden	1	2	3.0
Switzerland	4	16	1.4
United Kingdom	2	21	4.1
United States	4	12	0.5

# Density of notaries in the EU

Country	Number of notaries	Population per notary
Portugal	543	19,481
Luxemburg	36	12,750
Germany	9,867	8,381
Spain	2,950	13,991
France	8,122	7,614
Belgium	1,226	8,493

The highest barriers to entry are in Portugal, Spain and Luxemburg. In 1990 there were in Portugal only 360 notaries.

# The Latin-German framework: market fundamentals

- A Latin notary is a law professional with the public role of receiving, interpreting and give legal form to the will of the parts, writing the documents required for that purpose and guarantying the authenticity of those documents and keeping originals and issuing copies of those originals (I Congress of Latin Notaries, Buenos Aires, 1948)
- The notary is (i) a law professional that writes documents with guarantee of authenticity for all legal purposes, (ii) at the same time a liberal professional and a public officer. The public and private nature of the notary cannot be dissociated. (art. 1, Statute of Notaries, D-L. 26/2004 of Portugal)

# The Latin-German framework: market fundamentals – why notaries have to be regulated?

- **Asymmetric information:** liberal professionals have a specific knowledge and highly qualified training, that general consumers do not have. Thus when they sell their services it is difficult for the consumer to evaluate its quality (Akerlof argument). For most clients and consumers, professional services are credence goods (Darby and Karni, 1973). Regulation could be the most adequate substitute for insurance, to compensate risk (Zerbe and Urban, 1988)
- **Bounded rationality or rational ignorance:** consumers use simplified rules to process information rather than complex rational analysis. Regulation is justified if the regulatory body has more information and expertise at its disposal than average consumers (Maks and Philipsen, 2002).
- **Externalities:** acts of notaries have implications on third parties (contracts or deeds written)
- **Production of public goods:** giving authenticity to written documents and giving legal form to contracts and deeds is a public good. Information concerning the quality of professional services satisfies the conditions of non-rivalry and non-exclusivity in consumption.

# How to solve these problems?

- Ex-ante quality control and certification are the first line of defence
- Regulating academic and professional experience for access to profession
- Licensing and certification are second stage controls: Certification by Notaries Association
- Code of Conduct
- Life-time continuous training
- Regulation of contracts
- Regulation of registrars and depository systems

# A fully regulated system

- Liberal profession cum public official
  - Unique status of legal professional, regulated by special norms (E.g. statutes of notaries)
- Numerus clausus
  - Entry regulated by Ministry of Justice. Law may specify also the map of office locations.
- Price regulation
  - Regulation specify all prices of notary services, acts and instruments
- Responsibility rules
- Reserved acts
- Ban on associations of notaries or with other professions. a/
  - a/ banning other organizational forms, specialization of professionals beyond particular aspects of their service (thus lowering the cost of providing services) and economies of scope (by providing a ``one stop shopping'' including lawyers, accountants, surveyors or medical doctors, dentists, and beauty consultants) are lost.

# Problems of present system

- Inefficient regional planning and lack of updating (sometimes urban areas explode and the numbers of notaries allowed are not adequate)
- Furthermore, in some countries there is regional exclusivity (only the notary where the main party resides can write the contract): inefficient market segmentation
- Rationing by queues: barriers to entry may create huge delays (E.g. In Portugal may take more than 4-6 months to have access to a notary. It has been considered a major problem for economic growth). In other cases it may lead to rent seeking.
- Prices regulated only with a basis on the value of the transaction (e.g., percentage of the value of the real estate sold) are not efficient. Combined with barriers to entry they have enriched the few professionals with monopoly rents

# Proposed measures

- Increase numerus clausus in countries with excess demand (e.g. Portugal (duplicate), Spain (+60%) and Luxemburg (+30%) number)
- Create a Permanent Commission that follow the market and change the map of notaries every 2-3 years, using market surveys and regional planning instruments
- Eliminate regional exclusivity. How to solve problem of poor regions? Allow notaries to perform consulting and advisory functions (in courts, tax and corporate laws)
- Reduce number of reserved acts a/ (e.g. Italy should shift registration of second hand cars to a Department of Vehicle Registration)
- Although value of transaction reveals “willingness to pay” prices should be regulated also with a basis on the costs of services provided (cost orientation)

a/ Portugal dropped from this list deeds for renting real estate for commercial uses, and entering a liberal profession.

# A market-based system

- However, some problems persist: how to calculate prices? How to determine an efficient regional distribution?
- Solution: move to a market-based system, allowing
  - Free entry a/
  - Advertising allowed
  - Competitive prices

a/ The problem of less developed areas can be solved by allowing notaries in those areas some complementary functions and allowing notaries to associate among themselves

# Transitional issues

- There may be transitional issues
- If barriers to entry persist, a private monopoly would lead to monopoly rents
- These barriers can be the result of very restrictive access to the profession, or temporary scarcity of professionals
- We need to be sure that these conditions are fulfilled and liberalize gradually