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*Reform of Spain's professional services market:  
Implementation of the EU Services Directive*

# Reform of Spain's professional services market: Implementation of the EU Services Directive

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Recent reforms prompted by the transposition of the EU Services Directive to Spanish law have improved how professional services operate in Spain. However, further action is needed to remove existing guidelines, as well as improve the functioning of professional associations themselves, in order to increase the efficacy of the reform.

*The implementation of the European Commission Services Directive initiated the modernization process of services markets within the European Union. The objective was to guarantee the creation of a single market by ensuring the freedom of establishment and circulation. The transposition of the Directive in Spain triggered an initial wave of reforms in the Spanish legal system. A second package of reforms is currently underway, following recommendations by the EC, IMF and OECD, which highlight the relative lack of competition in Spain's services as one of the major imbalances in its economy, alongside the public deficit and unemployment. Both the implemented and planned reforms represent a major step forward. Nevertheless, the government has recently announced modifications to the draft bill of the Professional Services and Associations Law, which is expected to soon be submitted for parliamentary debate and approval. Taking into consideration modifications already introduced, together with anticipated further changes, it will be important to maintain the main points of the draft bill and to introduce a deeper review of the legal framework for professional services, of the professional associations themselves, and for the activities that are subject to compulsory membership within a professional association. Spain's territorial map of professional associations must too be redrawn.*

## Introduction

A study of professional services in the EU found Spain to be one of the Member States in which professions are subject to most control and regulation.<sup>2</sup> This excess of regulation is nothing new. There is a long tradition of over-regulation in Spain, manifesting itself in unnecessary barriers and red tape, making it harder to set

up businesses and slowing job creation. The situation is compounded by the wide disparity in regulations across the autonomous regions, as well as a series of restrictions specific to certain professions.

The progressive deregulation of professional services in Spain has been part of the liberalisation process initiated at the European level against the

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<sup>2</sup> See Paterson, Fink and Ogus (2003) – data cited in executive summary.

backdrop of increased international competition. However, the peculiarities of the structure of Europe's market for professional services have led to considerable pressure to raise the level of regulation in order to protect professionals from increased competition (Garoupa, 2014). This resistance has considerably slowed progress and hampered the necessary reforms.

There is, however, ample evidence of the negative impact of excess regulation on the functioning of the economy, sector employment, productivity, and profit margins (Conway and Nicoletti, 2006; Paterson, Fink and Ogus, 2003; and Lusynian and Muir, 2013). The transposition of the EU Services Directive to national law aims to lighten the regulatory burden in certain service sector activities, with the objective of stimulating investment, creating skilled jobs, and accelerating economic growth. It is worth noting that the service sector (including financial services and trade) accounts for 73.5% of EU-27 GDP according to 2010 data (Eurostat, 2010) and in Spain's case, it accounts for 68.37% of GDP (INE, 2013).

## The professional services sector in Spain

Spain's professional services market is very fragmented, with a high concentration of micro-enterprises (see Table 1). This structure suggests that potential competition issues in the sector do not arise from the supply-side. However, this extremely small business size (an average of 2.7 employees per firm in Spain and 3 per firm in the EU-27, according to 2010 Eurostat data), prevents possible economies of scale and cost reductions. This is due to the fact that although micro-enterprises as a whole (companies with fewer than 10 employees) generate a large share of the sector's value added (more than 50%), their labour productivity is lower (50,700 euros, as against 65,500 euros for large companies, Eurostat, 2010).

Restrictions on the form of company organisation have contributed to the Spanish professional

services market's idiosyncratic structure. In this respect, the amendments to the Law on Professional Associations and the Law on Professional Societies through the Omnibus Law represent a relative step forward. These changes established the principle of freedom of company organisation, making it harder to constrain opportunities for collaboration or impose restrictions on the way in which businesses are organised, unless constraints are imposed by legislation justified by the need to protect users. Nevertheless, further progress needs to be made towards ensuring the reforms are implemented effectively, given that the rules governing professional associations have generally not been adapted to the new legislation. Larger business size would allow for productivity gains and more job creation in the sector. For this reason, mergers and inter- and intra-professional cooperation should be fostered in order to exploit economies of scale.

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As well as affecting costs in the sector itself, the reach and intensity of regulation in the professional services sector impacts costs in other sectors using these professional services as a factor of production. This interrelation means that inefficiencies in this sector raise the prices of other goods and services. Additionally, regulations restricting entry to professional services reduce the level of competition and affect the cost of entry for new firms in other sectors that depend on these services as inputs, and hence productivity and the allocation of resources to businesses. The impact analysis accompanying the draft bill of the Law on Professional Services and Associations estimated a long-term effect on GDP of +0.7%, with an

Table 1

**Contribution of the professional services sector to employment by company size and country, 2010**

Country	All companies	Micro-enterprises (<10)	Small enterprises (10 to 49)	Medium-sized enterprises (50 to 249)	Large enterprises (>250)
EU-27	11,062.9	49.1	19.8	13.1	18.0
Belgium	226.4	61.5	14.8	11.9	11.8
Bulgaria	90.0	66.0	21.7	9.2	3.2
Czech Republic	238.3	61.1	19.2	13.5	6.2
Denmark	134.2	29.6	22.3	19.6	28.5
Germany	2,005.8	36.9	27.5	13.1	22.5
Estonia	22.6	62.8	25.5	11.6	0.0
Ireland	102.7	47.9	22.9	12.1	17.1
<b>Spain</b>	<b>979.3</b>	<b>58.1</b>	<b>17.5</b>	<b>11.0</b>	<b>13.4</b>
France	1,292.8	41.7	21.9	15.3	21.1
Italy	1,233.8	78.6	9.8	5.6	5.9
Cyprus	20.4	51.2	24.2	15.5	9.2
Latvia	31.8	64.1	22.3	11.4	2.2
Lithuania	44.5	53.8	27.7	12.5	6.0
Luxembourg	26.0	35.1	23.2	17.4	24.3
Hungary	205.8	72.3	14.4	8.5	4.8
Netherlands	603.1	48.7	18.8	14.0	18.5
Austria	209.5	52.9	26.8	13.4	6.9
Poland	480.7	66.8	11.1	10.6	11.4
Portugal	225.9	70.7	14.7	8.7	6.0
Romania	189.8	50.7	19.5	17.1	12.7
Slovenia	48.7	67.6	--	10.8	--
Slovakia	104.0	65.6	17.0	8.4	9.0
Finland	105.2	44.9	24.6	16.1	14.5
Sweden	269.6	42.6	22.2	16.2	19.0
United Kingdom	1,938.3	28.0	22.6	18.2	31.3
Norway	117.6	40.2	23.3	16.0	20.5
Switzerland	237.5	31.5	35.2	16.2	17.0

Note: Malta and Greece not included due to lack of 2010 data. Norway and Switzerland are included as EFTA members.

Source: Eurostat, 2010.

overall reduction in prices (between -0.14% and -0.23%) and productivity gains (1%).

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### Are professional services in Spain over-regulated?

The OECD has developed a series of indicators measuring the impact of regulations on the sector's

development (see Conway and Nicoletti, 2006). These regulatory impact indicators facilitate a quantitative analysis of how regulation is evolving, and enable comparisons to be made between countries with similar regulatory frameworks. This allows us to analyse the extent to which regulatory changes have been introduced following the EU Services Directive and its transposition to Member States' national law, and whether the liberalisation recommended by the IMF and OECD is on track.

Table 2 summarises progress of the professional service indicators and the aggregate index of energy, transport, and communication regulation (ETCR) between 1998 and 2013, as calculated by the OECD for a representative group of countries. The regulatory indices in these latter sectors take into account the regulation on entry, degree of

Table 2

#### Aggregate of professional services and energy, transport, and communications regulation indicators. 1998, 2003, 2008 and 2013

Indices and Regulation		Professional services			Energy, Transport Communications
		Entry	Year	Total	
Austria	1998	4.20	3.28	3.74	3.88
	2003	4.21	1.78	2.99	2.64
	2008	4.19	3.28	2.86	3.07
	2013	1.78	0.88	2.49	1.65
Belgium	1998	1.53	3.74	2.33	3.76
	2003	2.99	1.88	2.33	3.13
	2008	2.86	3.88	2.35	2.38
	2013	2.64	2.00	2.35	2.11
Canada	1998	3.07	2.69	3.30	2.12
	2003	3.89	2.56	3.22	1.77
	2008	4.11	2.38	3.24	1.87
	2013	4.10	2.19	3.15	1.82
Denmark	1998	1.33	1.00	1.17	3.25
	2003	1.24	0.50	0.87	2.19
	2008	1.24	0.31	0.78	1.77
	2013	1.33	0.31	0.82	1.63
Finland	1998	0.52	0.47	0.49	3.19
	2003	0.67	0.56	0.61	2.67
	2008	0.86	0.56	0.71	2.58
	2013	0.86	0.38	0.62	2.46
France	1998	2.63	1.75	2.19	4.38
	2003	2.90	1.50	2.20	3.32
	2008	3.11	1.78	2.45	2.78
	2013	3.09	1.59	2.34	2.39

Table 2 (continued)

**Aggregate of professional services and energy, transport, and communications regulation indicators. 1998, 2003, 2008 and 2013**

Indices and Regulation		Professional services			Energy. Transport Communications
		Entry	Year	Total	
Germany	1998	4.43	4.13	4.28	2.71
	2003	3.12	2.94	3.03	2.06
	2008	3.23	2.41	2.82	1.52
	2013	3.18	2.06	2.62	1.45
Greece	1998	3.96	3.63	3.78	5.07
	2003	3.91	1.81	2.86	4.26
	2008	3.82	1.81	2.82	3.38
	2013	3.82	0.88	2.35	2.55
Romania	1998	1.99	1.25	1.62	2.94
	2003	2.01	1.13	1.57	2.05
	2008	1.99	0.56	1.28	1.62
	2013	1.90	0.56	1.23	1.49
Norway	1998	1.63	1.03	1.33	3.18
	2003	1.29	0.38	0.83	2.46
	2008	1.47	0.38	0.92	2.17
	2013	1.47	0.38	0.92	2.20
Portugal	1998	3.39	2.81	3.10	4.60
	2003	3.55	1.63	2.59	3.04
	2008	3.81	1.59	2.70	2.55
	2013	3.63	1.47	2.55	2.13
Spain	1998	3.24	3.72	3.48	3.80
	2003	3.03	2.06	2.55	2.17
	2008	3.33	1.41	2.37	1.85
	2013	3.43	0.69	2.06	1.75
Sweden	1998	0.59	1.38	0.98	2.66
	2003	0.53	1.00	0.77	2.30
	2008	0.53	0.56	0.55	2.00
	2013	0.53	0.56	0.55	1.71
United Kingdom	1998	2.02	0.63	1.32	1.80
	2003	1.54	0.19	0.86	1.30
	2008	1.26	0.50	0.88	1.13
	2013	1.26	0.50	0.88	0.91
USA	1998	3.51	0.17	1.84	2.05
	2003	1.96	0.75	1.35	1.95
	2008	1.77	0.94	1.35	1.69
	2013	--	--	--	--
UE-12+Norway	1998	2.48	2.10	2.29	3.48
	2003	2.37	1.34	1.85	2.58
	2008	2.43	1.18	1.81	2.22
	2013	2.41	0.94	1.67	1.88

Note: No data available for the United States in 2013.

Source: OECD, Indicators of regulation in professional services, and Aggregate Index of Energy, Transport, and Communications Regulation in 1998, 2003, 2008 and 2013.

vertical integration, concentration, price control, and extent of public ownership.

A trend towards deregulation can be observed between 1998 and 2013, along the lines pursued by the EU Services Directive. European countries started out from levels of regulation that were high in comparison with the United States, and in most countries, the index levels dropped. However, the rate of progress varied across countries and sectors. For example, in Spain, as in some other countries, such as France and Portugal, the barriers to entry index rose between 1998 and 2013, while there has tended to be more of a drop in barriers to pursuing a profession. Comparing these indicators with the aggregate energy, transport, and communications regulation indicator shows Spain had high levels of regulation in comparison with other European countries, but liberalisation in these sectors has lowered its regulatory indices to below the average, despite their higher starting point.

Notwithstanding these reforms, and the elimination of legal restrictions, it is readily apparent that existing guidelines infringe on the new legislation on rules governing professional associations and their codes of conduct. Although these guidelines are in theory no longer applicable, the fact that they remain in the regulatory texts, and that associations exercise a high degree of control, means that service providers generally abide by them. To avoid this, it would be advisable to adopt vigorous measures to force professional bodies to adapt their regulations to the new situation within a specified time frame, with subsequent checks by the administration and the relevant competition authority. If the deadline is not met, there should be consequences. For example, there should be compulsory removal of the entire content of their regulations or professional codes of conduct, or face penalties. Subsequently, these should be replaced by a generic standard alternative drawn up by the government for professional bodies whose membership is compulsory to carry out professional activities. Bodies whose membership is not compulsory would be required to become

straightforward professional associations, without regulatory powers.

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There are also cases where regional legislation does not comply with mandatory basic state legislation. Although rules that are incompatible with state legislation are inapplicable, they can lead to confusion among the parties concerned. To dispel any doubts, it would be appropriate to give the autonomous regions a deadline to adapt their regulations, with the Council for Market Unity –recently created under the Law to Guarantee Market Unity– driving the process.

### **The start of the liberalisation process: Implementing the EU Services Directive in Spain**

Directive 2006/123/EC, or the EU Services Directive, was largely implemented in Spanish legislation through Law 17/2009 on Free Access to Service Activities and their Exercise (Umbrella Law) and Law 25/2009 amending various laws to adapt them to the latter (Omnibus Law). The main objective was to **eliminate unnecessary and disproportionate barriers to entry** that partitioned markets and prevented them extending across national boundaries. Implementing the Directive in Spain has led to reforms to a whole range of restrictions on professional services activities. For example, the practice whereby professional associations recommended prices has been eliminated, as has the practice of endorsement being conditional upon submission of the price and other contractual conditions

(see Ciarreta *et al.*, 2010 and 2014). Eliminating these requirements represented substantial progress in terms of reducing the restrictions on professional services activities. The obligation to inform users of the price of services and give them an estimate if requested is particularly significant. Nevertheless, there are areas which still need to be addressed, such as eliminating Article 5.p of the Law on Professional Associations, regarding the association's role in managing collections of its members' fees. Blanket bans on advertising have also now been ruled out and the restrictions established in associations' rules cannot go beyond those laid down in the law, in particular in the General Law on Advertising, Law on Unfair Competition, Law Protecting Personal Data, and the General Law Defending Consumers' and Users' Rights. Nevertheless, more needs to be done to ensure effective compliance with these measures, as association rules that classify certain advertising content as unfair or illicit still apply to advertising that is legal under the above laws. Indeed, advertising professional services remains uncommon.

The Directive pays particular attention to **restrictions on entry to professions**, requiring Member States to review these restrictions in their entirety so as to retain only those strictly necessary to protect the public interest, and ensure that they are proportionate and non-discriminatory. Moreover the Umbrella Law requires that this be implemented through a legal instrument with the status of a law. If restrictions are maintained, the new rules make it obligatory that there be clear procedures in place, which must be accessible online through a 'point of single contact', and that obstacles are not imposed to deter free movement and the freedom of establishment. Particularly good news is the ongoing review of national barriers to entry established in the Directive, in a process that involves both the European Commission and the Member States.

In line with the principles laid down in the Directive, the fourth transitional provision of the Omnibus Law urges the government to submit a bill

establishing a single **list of professions subject to compulsory registration**, reserving this power to a law passed by the Spanish parliament. Fulfilment of this provision will, in principle, lead to a rationalisation of Spain's patchwork of professional bodies (some 1860 bodies, with membership being compulsory in some professions and not others, and worse still, compulsory in some regions and not others, within the same profession). Nevertheless, although more than four years have passed, this mandate has not been fulfilled. Likewise, given that high registration fees may be a deterrent to new entrants, and that the real costs are minimal, the Omnibus Law has limited these fees to the costs actually incurred in registering a member, and made it compulsory that it be possible to register online. For its part, the Umbrella Law has eliminated the requirement to notify or register with the association in the destination area prior to activity in a region other than that in which the professional person concerned was originally registered. Nevertheless, the rules of many associations continue to include this requirement, so it should be eliminated.

**Professional reserved activities** constitute the weakest point of the regulatory reform. Restrictions of this kind have increased in recent years, putting Spain near the top of the rankings on the OECD's regulatory indicators. Although the Services Directive does not cover free circulation, referring to Directive 2005/36 on this point, which is also applicable to the recognition of professional qualifications, it does oblige Member States to review the professions for which a specific qualification is required from the viewpoint of freedom of establishment. Nevertheless, as Spain has implemented other aspects of the Directive in a more than satisfactory way, in relation to professions for which specific qualifications are required, the Omnibus Law has barely removed any of the existing obstacles and a review of them is still pending. This review is urgently required given the complexity of the system of qualifications in force, in which over-qualification is the norm

and markets and activities are divided between different professions. This confusing picture is further complicated by professional associations' rules requiring specific qualifications for certain activities even though these requirements are not supported by law. The system of qualifications needs to be adapted to the reform of the university system within the European Higher Education Area in which the emphasis is placed on the skills acquired during a course of study rather than the name of the qualification.

## The second wave of reforms: The Law Guaranteeing Market Unity and the draft bill for a Professional Services and Associations Law

Successive reports by the European Commission, IMF and OECD have reiterated the need to reform professional services markets in Spain to open them up to competition, in view of the low

Spain's domestic market has left it fragmented and hinders mobility. To overcome this drawback, this law has established the **principle of nationwide effectiveness**, whereby, starting from the recognition of political independence, security is given to all national players regardless of where they are established, granting nationwide validity to authorisations or communications by one local or regional authority, except in exceptional circumstances circumscribed to a specific installation or establishment.

Moreover, a possible reform to professional services is currently being discussed that would have a bigger impact on **removing disproportionate barriers to entry** and so open up markets to freer competition. The draft bill on the Professional Services and Associations Law (APLSCP in its Spanish initials), prohibits professional bodies from offering collection management or other specifically commercial services. It also seems that the Omnibus Law's mandate will finally be completed by establishing a closed list of professions subject to **compulsory registration** with the relevant professional body in its first additional provision. The proposed list should be welcomed not only because it represents a big step forward from the current situation, but also because it associates professional registration with specific functions and not with professions as such. However, it seems that professionals classified as civil servants should be excluded from compulsory registration, as in this case the administration directly supervises their activity, making it unnecessary for this control function to be delegated to a professional association. As regards fees, as well as eliminating the registration fee, the APLSCP requires regular subscription fees not to exceed the amount necessary to cover the cost of essential services, i.e. those services the association is required to provide by law. All other services are to be voluntary for members and must be paid for separately from the subscription. As a whole, these changes will have a positive impact in terms of reducing barriers to entry. However, it does not seem advisable to set a ceiling of 240 euros a year, as the APLSCP does, as this figure

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productivity and competitiveness arising from the numerous barriers to entry, which, moreover, vary from one part of Spain to another (across autonomous regions and municipalities). In order to address this situation, Spain is embarking on a fresh series of legislative reforms. The first took place with the recent passing of the Law to Guarantee the Unity of the Market. Thus, the diversity of regulations and lack of coordination between different subnational governments in

may simply become a reference for associations to latch on to. An annual review of subscriptions by the authorities might be more effective.

Particularly good news is the fact that the APLSCP aims to make further headway in relation to **professional reserved activities** (i.e. those requiring specific qualifications for their activities) by bringing the requirements closer to those in other European countries. To this end, a Professional Reform Committee will be set up, which will review and assess the existing requirements and submit a report to the government for them to be updated. This review is somewhat urgent as until it takes place, the APLSCP's Single Repealing Provision repeals all the regulated professions that are not included on its lists. The existence of restrictions limiting certain professions to specific market segments has a similar effect to compulsory registration. For example, article 5.h of the current Professional Associations Law gives associations the task of drawing up lists from which experts may be appointed, and who are given priority by articles 340 and 341 of the Code of Civil Procedure. Given that as well as registration, associations demand additional requirements be met in order to be included on the list, although there is no legal basis for this, the outcome is that even in professions for which association membership is voluntary, service providers have to join if they wish to avoid being excluded from this market. The passing of APLSCP would overcome this inefficient situation by creating a register of experts drawn up by the ministry on which any suitably qualified professional could be included if they wish.

### Reforms to the legal status of the compulsory professional associations

The fact that there are significantly more restrictions to taking up and pursuing a profession in Spain than in neighbouring countries is largely the result of the lobbying power of the professional associations. This arose with the growth of

these associations at a time before the existence of the right of association, and made it possible to create trade unions - the only way of achieving a degree of independence outside of government structures. The traditional social prestige of the professional associations, and the lack of a culture of competition in Spain, have delayed until only recently the necessary adaptation of their role to a social democratic state characterised by the rule of law and a free market economy. The two packages of reforms have also made –or attempted to make– certain changes in this direction, although the pressure from the associations has delayed or halted some of the necessary changes.

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The role of the professional associations is to defend **social rights and the public interest** by delegation from government. It is therefore logical that limits and mechanisms controlling this delegation be established, all the more so given that public and private interests converge on them. However, under the current system the only control measure is the approval by regulation of the associations' statutes, and this is not always the case, which is clearly inadequate. To start with, it is essential that all associations' statutes and the codes of conduct be approved by the competent authorities following an obligatory and binding opinion by the relevant competition authorities. These checks are currently hampered by the proliferation of associations covering a province or smaller area, making it desirable to **encourage mergers** and prevent associations from splitting. However, neither the Professional Associations Law nor the APLSCP solve this

problem satisfactorily. What is more, the APLSCP allows approval of associations' statutes by administrative silence if consent is not given within six months of their submission, which seems questionable.

As regards *ex post checks*, it is advisable that the administration reserve the option of appointing a member of the association's governing body in advisory capacity, as happens in some other European countries. However, this is not envisaged in either the Law on Professional Associations or the APLSCP. By contrast, Article 37 of the APLSCP, which gives the authorities the power to take control of associations that are inactive or operating poorly should be welcomed. The bill also proposes a series of obligatory disclosure and management transparency measures.

It is also essential that all the **constitutional guarantees** regarding **associations' disciplinary powers** be extended. However, the majority of the infringements set out in associations' statutes and codes of conduct still lack any legal basis. The APLSCP does, however, establish a basic framework for infringements, but refers to the statutes of each association for the definition of their factual basis and consequences. It also refers to the disciplinary proceedings under Law 30/1992 or applicable regional law. Nevertheless, in contrast to the situation in other countries, there is no requirement for persons outside the association to sit on its disciplinary body. In view of the significance of these disciplinary powers and association members' convergence of public and private interests, it would seem advisable for there to be a majority presence of non-members on these bodies to ensure their impartiality, as happens in other European countries.

Finally, the essence of the compulsory professional associations is their contribution to a significant social right or public interest, for which registration with a professional association is essential. Voluntary membership is therefore of itself evidence that this need to control professional activity for the public good does not exist, and therefore there is no need to grant the association

public powers, such as disciplinary powers. In short, regulation by professional bodies of which membership is voluntary is meaningless, so the APLSCP would have done better to downgrade their status. Failure to do so leads to discrimination between professionals depending on whether they belong to one type of body or another. What is more, some associations make membership a prerequisite for using the name of the profession. This discriminatory measure, which is of doubtful legality, also creates a perverse incentive to register with the association even though it is not compulsory. The APLSCP is right to prohibit this practice among associations in which membership is voluntary.

## Concluding remarks

Together, the legislation passed to implement the EU Directive and that currently being debated represent significant progress towards improving how the professional services sector operates in Spain. However, their promulgation has in some cases not had immediate practical effects due to the numerous existing guidelines in the statutes and codes of conduct of the professional associations that maintain unjustified restrictions on taking up and pursuing a profession. These unjustified restrictions are also enshrined in certain regional laws.

Moreover, despite the major steps taken, the legislation passed and in the pipeline has only scratched the surface in terms of revising the legal status of the compulsory professional associations, allowing registration to remain voluntary, rather than making them ordinary professional associations, and failing to establishing effective control over associations' statutes by the competition authorities or any *ex post checks* in the event of any inappropriate exercise of functions that the administration delegates to them.

Spain's patchwork of professional bodies needs to be rationalised by adapting their territorial scope and clarifying the activities that should be

subject to compulsory registration. A similar problem arises in the case of professional reserved activities, which need to be reviewed and tested for necessity and proportionality. As regards restrictions on the pursuit of a profession, any indirect measures facilitating price control and limitations on the use of advertising should be eliminated. It would also be desirable to encourage mergers, given the excessively fragmented structure of the professional services market, and inter- and intra-professional collaboration, and to this end the restrictions on business organisation and structure impeding them should be eliminated.

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