

**REPORT ON THE PROFESSIONAL SERVICES SECTOR AND  
PROFESSIONAL ASSOCIATIONS**

**September 2008**



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*The professional services sector carries significant weight in the economy in its role as supplier both of end products and of inputs for other goods and services. This makes the sector's proper functioning and, specifically, its adequate regulation in terms of entry into and exercise of these professions of vital importance to achieve their full growth and employment potential.*

*Sixteen years ago, the Tribunal for Defense of Competition published a report with several proposals for reform of the professions self-regulated by professional associations. Those proposals were partly implemented in the subsequent regulatory reforms. The Spanish government recently announced a new regulatory framework for professional services, through a new law regulating this sector, and a modernisation of professional bodies.*

*For this reason, the CNC Council determined there was a need to issue this report, setting out the competition-related problems that have been detected in this professional services field. The report describes developments in the economy and society that affect this sector, in particular, the approval of the Services Directive and changes in university degrees. The document includes recommendations on the basic principles and guidelines that should be followed, from the standpoint of competition, in designing the new regulatory framework for professional services.*

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## REPORT ON THE PROFESSIONAL SERVICES SECTOR AND PROFESSIONAL ASSOCIATIONS

### I. INTRODUCTION

1. The Spanish government recently announced a reform of the regulatory framework for professional services and modernisation of professional associations with the aim, *inter alia*, of doing away with restrictions on competition that do not serve the general public interest.<sup>1</sup>
2. The professional services sector has long been the focus of attention from antitrust authorities, both in the form of competition advocacy through the study of the sector's problems and proposals for actions aimed at injecting competition there, and as the object of investigations and formal proceedings against anti-competitive conducts.
3. Thus, in relation to advocacy, the former Tribunal for Defense of Competition (Tribunal de Defensa de la Competencia — hereinafter, the Competition Court or TDC) published its 1992 *Report on the free practice of professions. Proposal to adapt the provisions on self-regulated professions to the rules of free competition prevailing in Spain* and, later on, in 1995, a new report titled *Competition in Spain: Current state and new proposals*, containing a new analysis of this sector.
4. In relation to disciplinary proceedings, from 1992 until the last Resolution published, the investigations involving professional services and, in particular, official professional associations (Colegios Profesionales), have represented nearly 10% of the total.

Resolutions 2008	1992/June	Total Resolutions	Professional Associations	Resolutions Associations/Total
Prohibited practices		474	63	13.3%
Appeals against Competition measures	against Service	712	52	7.3 %
Total Resolutions <sup>2</sup>		1,186	115	9.7 %

<sup>1</sup> Resolution of the Spanish Council of Ministers of 14 August 2008 on measures for structural reform and support of financing for small and medium enterprises. Twenty-one: "The Ministry of Economy and Finance will submit to the Government Executive Committee for Economic Affairs, no later than 31 December 2008, a draft bill for a Professional Services Act, to be subsequently addressed in the Council of Ministers. The draft bill must strengthen the principle of free entrance in professions, promote their overall practice, eliminate unjustified restrictions on competition and reinforce protection of consumers and users, fostering the modernisation of the official professional associations" (BOE of 15 August 2008).

<sup>2</sup> It should be kept in mind that a case may generate more than one Resolution.

5. The number of cases underscores the importance of the sector from a competition standpoint, and indicates that the reforms undertaken of the legislation governing professional associations since 1996, aimed at establishing free competition in the practice of self-regulated professions, have not solved some of the problems of the sector, which continues to be marked by situations contrary to free competition between professionals.
6. The main constraints on competition addressed in those investigations were those that established barriers to entry in the professional association regulating practice of the profession, mainly in the form of requirements hindering exercise of the profession in the jurisdiction of other associations; those which seek to defend reservations of activity not supported by law on the basis of arguments against encroachment by other professions; pricing restrictions, both in the form of fee fixing and, indirectly, through the system of certifications of project approval known as "*visados*" issued by professional bodies; and restrictions on advertising.
7. Over the course of this report the CNC seeks to point out the problems detected in the professional services sector in terms of provisions that protect anti-competitive conducts and examine their origin, so as to be useful when the announced new regulation of professional services is undertaken. The report also aims to underscore new developments in the economy and society that should be borne in mind when preparing the new regulatory framework, in particular, the impetus given by the European Commission to the introduction of competition in professional services, through the Services Directive and reform of university degrees.
8. This report has been approved by the Council of the National Competition Commission (Comisión Nacional de la Competencia — CNC) pursuant to the consultative powers attributed to it under article 26.1 of the Spanish Competition Act 15/2007 of 3 July 2007 (Ley de Defensa de la Competencia — LDC). That precept lays down the duty of the CNC to promote the existence of effective competition in markets through advocacy actions and by conducting studies and research on competition matters, making proposals for liberalisation, deregulation or regulatory amendment, and issuing reports on situations that hinder the maintenance of effective competition in markets as a result of the application of legal provisions.



## II. BACKGROUND. THE TDC REPORT OF 1992

9. In 1992 the TDC published its *Report on the free practice of professions. Proposal to adapt the provisions on self-regulated professions to the rules of free competition prevailing in Spain*, as it had been instructed to do so by the national government of Spain at that time.
10. As the TDC indicated, the legislation on professional associations prevailing at that time, which had made sense when approved in 1974,<sup>3</sup> nearly 20 years later was no longer in step with the new, open and free economic system. This inadequacy was especially notable after the approval of the Competition Act (1989) and the Unfair Competition Act (1991).
11. Toward that end, the TDC identified and evaluated the main restrictions affecting competition in this sector, and concluded by presenting proposals for reform primarily focused on what were the key issues at that time: ensuring freedom of pricing for the professions self-regulated by official associations generally referred to as professional colleges in Spain.
12. Indeed, as indicated in the Report's introduction itself, this was “a moderate proposal that did not seek to eliminate all restrictions enjoyed by these professions (such as, for example, compulsory membership in the association), but only to do away with what was most harmful to the national economy: the rules that restricted the freedom of professionals to set their prices. The reform also proposes elimination of the restrictions on competition (advertising, business structure, etc) which, though seemingly less consequential, are likewise harmful and have no justification”.
13. With that aim, the TDC suggested in its report that the Law on Professional Colleges of 1974 be revised (Ley de Colegios Profesionales — LCP), basically in relation to the areas summarised in the following chart.

### **Chart. Proposals for revision of the LCP contained in the TDC Report of 1992**

**Legislation on competition.** Clearly establish that the activity of professionals governed by professional associations is subject to antitrust law.

**Pricing.** Establish the right of these professionals to freely set their prices. If it is decided to maintain some type of tariff for a given time period, it is recommended that the tariffs be considered maximums.

<sup>3</sup> With a partial reform by Act 74/1978 of 26 December 1978 on provisions regulating professional associations, to adapt that legislation to the new constitutional framework.

**Advertising.** Put an end to all restrictions on advertising other than those laid down in the General Advertising Act and the Unfair Competition Act.

**Single association membership.** Eliminate restrictions on the geographical scope of the activity and allow professionals to freely exercise their profession throughout the national territory, regardless of which association they are registered in.

**Business structure.** End the restrictions imposed on the free configuration of the business structure.

**Certification of project.** No longer submit to the association's project certification procedure the fees and other contract terms and conditions that are to be determined by the free accord of the parties.

14. This proposal, which was reiterated in the TDC Report of 1995, *Competition in Spain: Current state and new proposals*, gave rise to a fruitful debate on liberalising the self-regulated professions, and was partly incorporated into Act 7/1997 of 14 April 1997 on liberalising measures for land and professional associations (via Royal Decree Law 5/1996 of 7 June 1996).<sup>4</sup>
15. In summary, the analysis and proposals made by the TDC in 1992 gave the necessary impetus for adopting a number of regulatory reforms that marked a “first step” toward introducing competition in the self-regulated professions.

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<sup>4</sup> There have been other later reforms of Act 2/1974: Royal Decree Law 6/1999 of 16 April 1999 on Urgent Measures for Liberalisation and Enhancement of Competition, and Royal Decree Law 6/2000 of 23 June 2000 on Urgent Measures for Intensification of Competition in Markets for Goods and Services. Nevertheless, the modifications contained in those instruments were partial and focused on specific groups such as notaries and registrars.

### III. SCOPE OF THE STUDY

#### III.1 Qualified professions and professions self-regulated by professional associations

16. As mentioned in the preceding section, the TDC report of 1992 was focused on "*profesiones colegiadas*", that is, on professions self-regulated by officially recognised professional associations (hereinafter, self-regulated professions). These are professions that can only be practiced by professionals who belong to the relevant professional association ("*colegio profesional*" or "professional college").
17. The scope of this report is broader, however, as it is not limited to *self-regulated professions*, but seeks to also analyse other professional services which, though not necessarily governed by an official "college", are affected by barriers to entry to and pursuit of the profession unrelated to those derived from the mandatory association requirement.
18. Thus, the scope of this study covers professional services that are affected by two types of regulations that restrict unfettered professional practice:
- Regulations establishing barriers to **entry or access** in the profession, which can be of two kinds:
    - degree requirement, and/or
    - mandatory membership in association
  - Regulations that establish limits on free **practice** of the profession.
19. For the purposes of this report, **barriers to entry or access** are restrictions that limit free entry into a profession, by requiring fulfilment of certain conditions to be able to pursue the profession. Two types of requirements are analysed here: degree requirements and/or mandatory association membership.
20. The main competition effect of entry barriers is to create *reservations of activity*, that is, professional activities or markets that are reserved for the professionals who meet the entry requirements, and completely closed off to all others, who will not be able to compete in that market. Thus, they affect what we may term inter-professional competition.

21. Furthermore, these barriers affect the Spanish constitutional right of free choice of profession,<sup>5</sup> a matter that should be taken into account when considering the requirements that must necessarily be met by any provision that seeks to introduce barriers of this kind.
22. In relation to **restrictions on practice** or, more properly said, regulations that affect pursuit of the professions, for the purposes of this report, they are understood to be those that regulate specific conducts carried on in the pursuit of a professional activity or of a profession.<sup>6</sup> These are regulations on prices, advertising, legal form, conflicts of interest, guarantees, etc.
23. Given that these are the two types of restrictions or “barriers” to be analysed in this report, then the scope of study will be defined by what we call *qualified professions* and *self-regulated professions*.
24. Before proceeding with the definition of the two, qualified professions and self-regulated professions, it should be made clear that these are concepts that may be open to a certain amount of confusion, as there is no one clear definition and they span very large number of situations.
25. It is therefore important to establish that this report will proceed on the basis of a general definition of the two types of professions, and that the possible exceptions to that general definition should not lead us to lose sight of the overall situation.
26. In the same sense, it should also be clarified that this report attempts to avoid, inasmuch as possible, using the term *regulated profession*, in the belief that it is too general and could therefore lead to confusion. Indeed, the term regulated profession could be considered to apply to one that is affected by any type of regulation (which may include the requirement of registration, submission of information, etc.), whereas this report, in delimiting the scope of its focus, will concentrate on certain specific regulations, namely the ones governing entry and practice mentioned above.

### **a) Qualified professions**

27. Determining the number of qualified professions is no simple matter.

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<sup>5</sup> Article 35.1 Spanish Constitution (SC). *All Spaniards have the duty to work and the right to employment, to the free election of profession or trade, to advancement through work, and to a sufficient remuneration to satisfy their needs and those of their family. On no account may they be discriminated against by reason of their gender.*

<sup>6</sup> It should be noted on this point that the differentiation between *professional activity* and *profession* is not clear; this report will generally speak of *profession* when its name matches that of a degree qualification (for example, architect) and of *professional activity* when there is no such correspondence, so that the activity may be carried on by holders of different degrees (for example, auditor).

28. For the purposes of this report, *qualified professions* means those that require some type of degree in order to exercise the profession. In turn, to delimit the concept of degree, we will use the definition employed in the Directives on recognition of professional qualifications.
29. The first of these Directives has been transposed into Spanish law by means of *Royal Decree 1665/1991 of 25 October 1991, which regulates the general system for recognition of higher education degrees of European Union Member States and other States party to the Agreement on the European Economic Area, signed on 2 May 1992, and ratified by Spain on 26 November 1993, which require education and training of at least three years*. In this case, qualification is defined as “any degree, certificate or other diploma or group thereof, issued by a competent authority in a Member State certifying that the holder has successfully completed a course or courses of post-secondary studies of at least three years, in a university, in an institute of higher education or in another centre of an equivalent educational level and, if applicable, that the holder has successfully completed the required professional education, in addition to the post-secondary course or courses, and possesses the professional qualifications required to enter a regulated profession in that Member State, provided the training has been obtained mainly in the Community or that the holder has professional experience of three years accredited by the Member State that has recognised the degree. The documents issued by a competent authority of the said State, recognised as of an equivalent level in that State, will be treated as degrees if they certify training acquired in the Community”.
30. Annex I to that Royal Decree includes a list of qualified professions for the purposes of the definition given to qualification, with a total of 57 qualified professions.<sup>7</sup>
31. The second Directive of reference is the one that has been transposed by means of *Royal Decree 1396/1995 of 4 August 1995, which regulates a second general system of recognition of professional training of European Union Member States and of other signatory States to the Agreement on the European Economic Area, and supplements the provisions of Royal Decree 1665/1991 of 25 October 1991*. In this case, qualification is defined as “any evidence of education and training or any set of such evidence other than that referred to in article 1.a) of Royal Decree 1665/1991, awarded by a competent authority in a Member State or associate of the European Economic that Area that certifies the holder has successfully completed a post-secondary course of at least one year's duration or of equivalent

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<sup>7</sup> The truth is that both in this instrument and in the one discussed next, the term actually used is that of *regulated professions*, but, as already indicated, this report ties to avoid employing that term for the sake of averting confusion. In fact, these laws define *regulated profession* as a professional activity or group of professional activities, access to which, the pursuit of which, or one of the modes of pursuit of which is subject, directly or indirectly, to the possession of a title (or qualification) and which constitute a profession in a Member State, which is what we are identifying here as a *qualified profession*.

duration on a part-time basis, one of the conditions of entry of which is the successful completion of the secondary courses required to obtain entry to university or higher education, as well as the professional training which may be required in addition to that post-secondary course, and possesses the professional qualifications required to take up the practice of a regulated profession in that State”.

32. Annex IV of the Royal Decree includes a list of qualified professions for the purposes of the definition given to qualification, with a total of 73.
33. It should be noted that this includes, in this last list in particular, both what the case-law<sup>8</sup> has called *official academic titles* (those whose attainment requires specific higher studies and which are awarded by the academic authority) and *other official titles* (based on attainment of an administrative authorisation or licence or on passing certain aptitude tests).
34. Lastly, to the two preceding Directives there have to be added what are known as “sectoral directives” referring to the medical professions and to architecture and which refer to a total of seven qualified professions.
35. In summary, and without any pretence of setting out a complete list here, we could be talking about close to 140 *qualified professions* in Spain, that is, professions whose pursuit is reserved for persons holding a specific title of qualification. The list of these qualified professions is set out in Annex I to this report.

## **b) Self-regulated professions**

36. In relation to self-regulated professions, for the purposes of this report these are considered to be those whose practice requires membership in the relevant association.
37. For professional associations, the mandatory membership requirement is the key defining element for purposes of assessing the possible effects on competition of the actions of these associations. In fact, without prejudice to going into greater detail elsewhere, the obligatory nature is precisely what distinguishes a professional association (college) from a (voluntary) society of professionals.
38. Spanish Act 2/1974 on Professional Colleges (Ley de Colegios Profesionales —LCP) is the law that stipulates, in article 3.2, that “membership in the relevant College is an indispensable requirement for practice of the self-regulated professions”.

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<sup>8</sup> Judgment 111/1993 of the Spanish Constitutional Court of 25.03.1993.

39. Note, however, that self-regulated professions have been defined as those in which membership in the association is obligatory and not those for which there exists a Professional College, which, in theory, should be the same thing. This is because there are cases, few and of no great significance, in which there is a College, but membership is voluntary (geologists, insurances brokers, etc.). These are exceptions which should not lead us to lose sight of the general issue in analysing professional associations. This nuance will therefore be ignored here, and these professions will also be considered self-regulated professions, such that the number of self-regulated professions is equal to the number of professions with Professional Colleges.<sup>9</sup>
40. According to the foregoing, Annex 2 sets out a list drawn up for this report on the self-regulated professions in Spain. Without prejudice to the possibility of an error in compiling the list, given the difficulty of gathering all of this information, a total of 87 *Professional Colleges* have been identified in Spain, some 25 of which have been created under the regional laws of Spain's Autonomous Communities and do not exist at the national level.<sup>10</sup>
41. As can be seen the number of self-regulated professions or of Professional Colleges, is less than the number of *qualified professions*. This is for two basic reasons.
42. First, because of the premise that every self-regulated profession must first be a qualified profession. This follows from the LCP, where it stipulates in article 3: “the person who holds the required qualification and fulfils the conditions laid down in the bylaws will have the right to be admitted to the relevant professional college”. Therefore, every college-regulated profession must first be a qualified profession, although there are some exceptions.
43. Second, because, although there are divergent interpretations on this point, the qualifications that give rise to Professional Colleges have, traditionally, been university degrees. For this reason, in the table of Professional Colleges we find practically all of the professions of the Royal Decree 1665/1991 annex<sup>11</sup> (those with a minimum qualification of three years) and of the sectoral directives (medical and architecture), but few of the Royal Decree 1396/1995 annex professions (with training of less duration and another type of non-academic qualification).
44. In short, the above facts reveal the large number of qualified professions and/or self-regulated professions existing in Spain.

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<sup>9</sup> Bear in mind that even though it may not make sense to analyse them from an antitrust standpoint because membership is not obligatory, their analysis will be maintained since they are qualified professions in any event.

<sup>10</sup> At the national level, there may be General Councils, which the Law on Professional Colleges requires be set up if there are various Colleges for the same profession with less than national scope.

<sup>11</sup> Except for Sworn Interpreters and Teachers and Professors, who do not have a Professional College.

### III.2 Weight of professional services in the economy

45. Professional services are a very significant sector of the economy, not just as suppliers of end products but also as supplier of inputs for other businesses.
46. Measuring their importance and contribution to GDP is not a simple matter, however, given the difficulties in statistically delimiting a sector that consists, as discussed above, of self-regulated professions and qualified professions.
47. The available data do not allow us to adequately estimate the Gross Value Added (GVA) generated by qualified professions. But a reasonably precise estimate can be obtained of the GVA generated by the self-regulated professions. Taking into account the broad overlaps between the two, the GVA generated by self-regulated professions can serve as a reasonable approximation to the GVA generated by the professions covered by our study.
48. To estimate GVA generated by self-regulated professions we must establish a correspondence between occupations that require association membership and the economic activities generated by those occupations. The Unión Profesional report (2006), *Impact in the Spanish economy of self-regulated professions: a study of output and employment*, establishes that correspondence and provides the headings of the Spanish classification of economic activities (CNAE) in which professionals in the self-regulated professions pursue their activity.
49. Using this approach, it can be stated that the Gross Value Added at market prices (GVA mp) generated by self-regulated professions amounts to 87,748.2 million euros, approximately, or 8.95% of GDP, according to 2006 data.
50. In the following table we can see the breakdown into the CNAE-93 headings for the principal activities carried on by the self-regulated professions, with the GVA mp generated by each and the percentage the latter represents with respect to total GDP. These data give us an idea of the sector's economic importance.

GVA self-regulated professions		
CNAE-93 heading	GVA mp (€ 000s)	% of GDP
Retailing of pharmaceutical products, medical, healthy and beauty articles (CNAE 523)	4,242,769	0.43%



Consulting in IT equipment and programmes (CNAE 721, 722)	7,941,182	0.81%
Legal, accounting, bookkeeping, tax advising, market research and public opinion survey activities; consulting and advice on business management and administration, corporate management (CNAE 741)	16,522,672	1.68%
Architecture, engineering and other technical services (CNAE 742)	10,312,564	1.05%
Healthcare, veterinary and social service activities (CNAE 85) (*)	48,729,000	4.97%
Total professions	87,748,187	8.95%
GDP at market prices (current 2005 prices)	980,954,000	100.00%

Source: CNC in-house based on data from INE, National Accounting Spain 2006 (advance estimate), 2006 Annual Survey of Commerce 2006 and 2006 Annual Survey of Services.

(\*) The available figure for this heading is at base prices, instead of market prices. This means the value is slightly less than if priced at market, but does not invalidate the estimate.

51. Using another approach, if we examine the indicator of direct employment in the self-regulated professions, the aforementioned Unión Profesional report (2006) shows that, according to the Population and Housing Census, more than one million persons are employed in those professions, or more than 6% of total employment, with more than 30% of total job holders with university credentials and more than 40% of doctorate-holding job holders.

52. According to that same Unión Profesional study, the number of persons holding a salaried job related to a self-regulating profession is 430,000. Thus, the volume of total employment, direct and indirect, generated by the self-regulated professions is more than 1.4 million persons, that is, some 8.8% of total employment (according to the Population and Housing Census for 2001).

## IV. REGULATION OF PROFESSIONS: ENTRY AND PRACTICE

### IV.1 Need for regulation

53. The European Commission, in its 2005 Communication *Follow-up to the Report on Competition in Professional Services*, summarised the reasons that make specific regulation of professional services necessary:

- First, because there is an *asymmetry of information* between consumers and professional service providers, inasmuch as professionals are required to possess a high level of technical knowledge. Consumers may not have this knowledge and therefore find it difficult to judge the quality of the services they purchase.
- Second, due to the existence of *externalities*, because the provision of a service may have an impact on third parties as well as on the service purchaser. A good example is an inaccurate audit that can mislead lenders and investors.
- Third, certain professional services are deemed to be in the *public good* since they are of value for society in general, for example, the correct administration of justice. If no regulation existed, the provision of these services might be insufficient or inadequate.

54. Therefore, accepting the existence of reasons which, in certain cases, may justify the existence of a regulatory framework, the objective advanced by the European Commission in its Communication, and the one that is pursued in this report, is to attain better regulation.

### IV.2 Principles of good regulation

55. The study and analysis of good regulation in general and of good regulation applied to the professional services sector have long been the focus of attention from leading international institutions.

56. In this regard, we may highlight the work carried out by the OECD, which in its 2000 report on *Competition in Professional Services* laid down a series of principles that should make up a high-quality regulatory framework for professional services. They basically consisted of the following:

- Exclusive rights should not be granted to professionals where other mechanisms exist which can solve the market failure with less restriction on competition (for example, collection and publication of information on

the quality of professionals, quality-rating agencies or the strengthening of civil liability rules).

- Where there is no alternative to granting exclusive rights, the entrance requirements should not be disproportionate to what is required to perform the service in question.
- Regulation should primarily focus on protecting small consumers. Commercial purchasers of professional services (including large corporations and large hospitals, for example) can assess their own needs and the quality of the services they use.
- Restrictions on competition between members of a profession should be eliminated (for example, agreements to restrict prices, to divide markets, to raise entrance requirements or to limit truthful advertising).
- Professional associations should not be granted exclusive jurisdiction to make decisions about entrance requirements, mutual recognition, or the boundaries of their exclusive rights.
- Competition between professional associations should be encouraged, provided mechanisms are in place to ensure the entrance requirements for entry into the profession do not drop below the standard of competency required to perform the exclusive service.

57. For its part, the European Commission has also conducted important analyses of the regulation of professional services and concluded that this regulation must be submitted to a *proportionality test* to assess to what extent an anti-competitive professional regulation truly serves the public interest and can be objectively justified.<sup>12</sup> The Commission has likewise suggested to the Member States that each rule should have an explicitly stated objective and an explanation how the chosen regulatory measure is the least restrictive mechanism to effectively attain the stated objective.

58. This view has been ratified by Community case-law. Thus, for example, in its well known *Cipolla* judgment,<sup>13</sup> in relation to professional services provided by lawyers, the European Court of Justice pointed out that “the protection of consumers, in particular recipients of the legal services provided by persons concerned in the administration of justice and, secondly, the safeguarding of the proper administration of justice, are objectives to be included among those which may be regarded as overriding requirements relating to the public interest capable of justifying a restriction on freedom to provide services, on condition, first, that the national measure at issue in the main proceedings is suitable for securing the attainment of the objective pursued and, secondly, it does not go beyond what is necessary in order to attain that objective”.

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<sup>12</sup> COM (2004) 83 final. *Report on competition in professional services.*

<sup>13</sup> Joined cases C-94/04 and C-202/04.

59. Lastly, we cannot fail to mention that the CNC also published a report recently, entitled *Recommendations to public authorities for more efficient and pro-competitive market regulation*, setting out the principles of efficient pro-competitive regulations:

- Necessity and proportionality (justification of the restriction)
- Least distortion (justification of the instruments used)
- Effectiveness
- Transparency
- Predictability

60. These principles are fully applicable to regulation, of any kind, of professional services.

### IV.3 High level of regulation

61. Despite the measures adopted after the 1992 TDC report was published (analysed in detail in section IV.5), the truth is that Spain continues to have a high level of regulation in the professional services sector.

62. The study done by the Institute for Advanced Studies (IHS), *Economic impact of regulation in the field of liberal professions in different EU Member States*, done in 2003 by order of the European Commission and subsequently updated in 2005, with the aim of drawing up a set of indicators of the level of regulation in EU countries, placed Spain amongst the most regulated countries, in the eighth position.<sup>14</sup>

63. Certainly this is a report that may have been rendered obsolete on some matters, but we know of no other report as complete and with such recent data, so it can at least be taken as an indicator of Spain's relative position with respect to the countries in our environment.

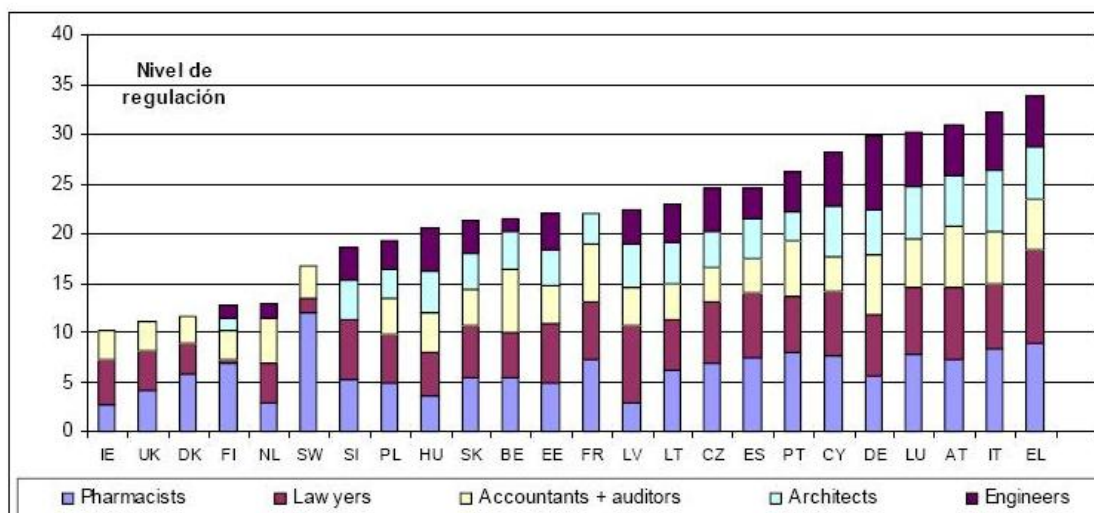
64. The IHS index of regulation analyses the following professions: legal services (lawyers and notaries), accountancy (accountants, auditors and tax advisors), technical services (architects and engineers) and pharmacy services.

65. The analysis is focused on two types of regulation: access or entrance to the market (qualification or accreditation; registration or membership in a register or professional organisation; reservations of activity) and of conduct

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<sup>14</sup> This information, as well as the graphic figure shown further below, is contained in the Communication (2005) 405 final *Follow-up to the Report on Competition in Professional Services*, in which the data from the 2003 IHS Report were taken and updated to reflect the reforms carried out since its publication.

of the profession (prices, advertising, location, legal form, inter-professional cooperation).



Source: COM (2005) 405 final

66. A second objective of the IHS study consisted of an attempt to identify the economic effects that the different degrees of regulation of professional services produced in Member States. To do so the IHS used data on employment and turnover and, though recognising that reaching more precise conclusions would require attaining more economic data that were not available, such as prices, costs and profits in those markets, the analysis did reveal a number of trends. Basically, the study arrived at the conclusion that there was nothing to indicate that the markets in the less regulated countries functioned incorrectly. On the contrary, the study concluded by supporting the thesis that lower regulation was not an impediment, but a stimulus, to the creation of wealth.

#### IV.4 Regulation of entry and regulation of practice

67. Having set out the reasons that may justify regulation and shown that there is a high degree of such regulation in Spain, we should now take a more detailed look at the regulation we are referring to here.

68. It is important to insist on the different types of regulation examined in this report, because neither their objectives nor their effects on competition are the same.

69. First, the regulation of **entry** or **access** to the profession, that is, rules that restrict the freedom to take up a profession by laying down certain

requirements. This entry or access regulation may consist in the mandatory condition of holding a specified degree and/or association membership.

70. Such entry rules have a clear effect on competition, by limiting the professionals who can compete in a given professional activity or, what amounts to the same thing, by creating **reservations of activity**.
71. Although the effect on competition is the same, it should nonetheless be kept in mind that the objective pursued by each type of regulation differs.
72. Thus, in the case of the requirement for a degree or title of qualification in certain trades or professions, the objective pursued is that of safeguarding the public interest by imposing as an indispensable condition that the prospective practitioners have demonstrated the necessary knowledge to perform the profession. Reprising what was already pointed out by the TDC in its 1992 Report, this restriction is justified to the extent that the protection of users of professional services warrants a prohibition on those services being provided by persons who do not have the pertinent specialised knowledge; this justification is weakened if what is required is not indispensable specialist expertise or is not directly related to the activity to be pursued.
73. As for the requirement of membership in an association, normally called professional colleges in Spain, and once again reiterating the view stated by the TDC, the purpose can be none other than to improve the quality of the services provided by the professionals and to help maintain certain pro-client conducts by those professionals. This and no other is the only purpose that can justify the delegation of authority made by the State to such associations.
74. Second, regulation of professional **practice** or conduct, that is, rules that establish limits on the pursuit of the profession, for example, conducts relating to prices, advertising, conflicts of interest with other professionals, legal form, etc.
75. Once again, the regulation of professional conduct affects free competition in professional practice, by imposing limitations on the scope and performance of the services pursuant to other public interest goals and, in particular, the defence of consumers, with special emphasis on small consumers.
76. This differentiation is important when analysing the necessity and proportionality of each of the different forms of regulation.

#### **a) Regulation of entry or access**

77. In relation to regulation of **entry or access**, the truth is that in practice, in most cases, we find regulation that combines the two barriers to entry or access mentioned above: qualification requirements and/or mandatory membership in a professional body.
78. That is to say, it is typical for the same regulation to require formal qualifications and membership in a professional association as condition for pursuing a profession, or more specifically, regulations that require such membership imply the degree requirement.
79. So the situation most commonly found in Spain is the existence of a law creating an association termed a Professional College (Colegio Profesional) which, at the same time as it establishes the College, lays down the obligation (association entry regulation) to be member of that association in order to practice a *profession* while, in turn, requiring certain formal qualifications to join the College (qualification entry regulation).
80. It is important to note, moreover, that in many cases no definition is given of the *profession* that is being regulated, but only that its name is the same as the required degree. This leads to a lack of clarity as to what functions or activities are being reserved for that profession, thereby generating legal disputes between professionals and uncertainty for their clients.
81. So the normal approach is to tie together, even under the same name, the concepts of qualification, qualified profession, obligatory professional association and self-regulated profession. Annex 3 gives an example of this type of regulation.
82. While this is the most common case, there are certainly other instances in which this combination does not arise and the **entry** regulation, in particular, the degree requirement, adopts other forms. This is the case of sectoral or individual regulations that make pursuit of a profession or of a specific professional activity conditional on holding a given degree or other type of education, training or qualification.
83. This is the case of statutes such as the Law on Entry to the professions of Lawyer and Procurator (procurador); the Building Regulatory Act, which requires certain engineering or architecture degrees, depending on the function to be performed; The 1946 Decree regulating the functions exclusively reserved for Aeronautical Technical Engineers; or the Law on Auditing of Accounts, which regulates the requirements for pursuing said professional activity.
84. Annex 4 contains some examples of laws and regulations of this kind, some of them dating back to the 1930s or 1940s.

85. So there are large number of regulations, of a very diverse nature, that introduce restrictions on eligibility for entering a profession, thus giving rise to many *reservations of activity* or, put differently, markets that are staked out and thus closed off to competition from other professionals.
86. Such reservations of activity are a clear exception to the aforementioned freedom of choice of profession proclaimed in the Spanish Constitution (SC). For this reason, as an exception, it has to be justified on the basis of a clear reason of general public interest. As the Spanish Constitutional Court found, amongst others in its judgment 194/1998,<sup>15</sup> “lawmakers, when using the authority conferred upon them by article 36 SC must do so in such way as to restrict as little as possible and in a justified manner both the right of association (article 22) and the free choice of profession and trade (article 35), and when deciding, in each concrete case, to create a Professional College, must take into account that, since the existence of those fundamental rights is affected, it will only be constitutionally permissible if justified by the need to serve a public interest”.
87. Now then, on this point we should stress that the reasons of **public interest** that could justify the reservations of activity are not normally included in the regulations in question, nor play an essential role in their drafting or approval. In other words, the introduction of barriers to competition is on many occasions lacking in any clear justification based on reasons of public interest.
88. Annex 5 sets out some examples of this lack of rigour in demonstrating the public interest served by establishing reservations of activity by requiring formal qualifications and/or membership in the professional body.

## **b) Regulation of practice**

89. As for regulation of the **practice** of the professional activity, that is, the regulation that establishes the limits on the professional conduct as regards pricing, advertising, legal form, etc., the most usual approach is co-regulation or self-regulation by the professional associations.
90. Indeed, the Law on Professional Colleges (LCP) attributes to these associations, *inter alia*, the aim of “overseeing the conduct of the professions”. This aim basically translates into the following functions, set out in article 5 of the LCP:
- i) oversee, within the scope of its competence, the professional activity of the members, ensuring professional ethics and dignity and due respect

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<sup>15</sup> This was a ruling on a case of obligatory membership in an association, but is cited here in relation to the reservation of activity in general.



for the rights of individuals, and exercise disciplinary powers in cases relating to the profession and college;

- k) procure harmony and collaboration amongst members, preventing unfair competition between them;
- l) adopt measures aimed at avoiding encroachment by unqualified practitioners;
- ñ) establish fee scales, merely for illustrative purposes;
- q) certify approval of the professional work of college members, where so expressly stipulated in the general Bylaws. The certification of project approval (*visado*) will not include the fees or other contract terms and conditions which will be freely agreed by the parties;
- t) comply and enforce compliance by members with the general and special laws and the professional Bylaws and Internal Rules and Regulations, as well as with the rules and decisions adopted by the college bodies within the scope of their powers.

91. This “oversight” task is performed by the Professional Colleges, basically, through the approval of their General Bylaws, the Bylaws of each College, and of their internal rules, in particular, the Deontological Code or other type of codes such as the one on advertising. It is also done through the disciplinary activity of the association.

92. Annex 6 includes some examples of General Bylaws and deontological rules of associations in which we can observe the introduction of limitations on the free pursuit of the profession that are likely to affect competition. The most significant ones are those which can generally be grouped under the College's interpretation of “unfair competition”, whereby the College establishes restrictions or prohibitions to avoid conducts that it considers, going beyond what is envisaged in the laws and regulations on unfair competition, to constitute such competition. These regulations basically affect advertising in general and advertising of prices in particular, relations with other professionals, pricing, ...

93. Nevertheless, although the usual situation is co-regulation or self-regulation of Professional Colleges, there are also sectoral or general regulations that govern the professional practice in general, or a specific type of profession or professional activity in particular, and which are capable of affecting competition. Obviously, these are the only regulations applicable in those cases where there is no Professional College.

94. Annex 7 contains examples, such as the Law on Professional Societies, which regulates this type of association for professional practice in general, the Notary Regulations, the Law on regulation of healthcare professions, the Audit Act, the Building Regulatory Act, etc.

95. By way of conclusion, we may observe that there is a heterogeneous regulatory framework for professional services that is capable of causing antitrust problems. In this regard, it is not to be overlooked that all rules which mandate or induce anti-competitive conducts and which are not based on statutory law can be prosecuted under the Spanish Competition Act.

#### **IV.5 The regulation of professional associations**

96. As seen in the preceding section, making membership in the association a mandatory condition for pursuing a given profession introduces restrictions on free competition from the standpoint both of entry (reservation of activity also tied to formal qualification) and of practice (regulatory oversight of the profession via self-regulation or co-regulation by Professional Colleges).

97. That is why it is important, before proceeding any further, to stop here and analyse in greater detail the regulations governing Professional Colleges in Spain, in order to call attention to the main antitrust problems they pose.

98. The national law regulating these professional associations is Act 2/1974 of 13 February 1974 on Professional Colleges (Ley sobre Colegios Profesionales — LCP).

99. It is a short law (containing nine articles only) basically intended to establish the general principles of Professional Colleges as corporations under public law, with their own legal personality and full capacity for pursuit of their purposes; to regulate their objectives and functions; to require a provision with statutory ranking for the creation of Professional Colleges; and to determine the content of their General Bylaws, as well as some of the basic rules governing how they function.

100. The LCP provides that an indispensable condition for practicing the self-regulated professions is to be a member of the College for the profession in question, and adds that all persons who hold the required qualifications and meet the conditions laid down in the bylaws will be entitled to be admitted as members of the relevant Professional College.

101. Thus, the law regulating these professional associations stipulates, first, that membership is compulsory, and, second, that they are tied to a formal qualification.

102. Now, this is the situation of most Professional Colleges and, in particular, of the most traditional ones such as physicians, engineers, architects, lawyers, ...

103. But we must not fail to mention that, although it is the exception and has a small weight in the overall total, these general characteristics of the associations have in some cases been weakened.
104. So we find, on the one hand, associations where membership is clearly not mandatory, that is, where there is a College but being a registered member is not a condition for being able to practice the profession (geologists, licensed insurance brokers, degree-holder in environmental sciences in Valencia, ...), or where the requirement is not applied in practice (economists), or where the obligatory nature is not clear (geographers, journalists in Galicia, teachers in the Balearic Isles, ...).
105. Also, in relation to the formal qualifications, there are Colleges that are not clearly tied to one or several specific or clearly justified higher degrees, in which, as the TDC points out, there is no direct connection between the qualification and the professional activity monopolised by the associations. This could be the case of the associations of Industrial Property Rights Agents, Real Estate Agents, Property Administrators, ...
106. The main reform of the LCP was introduced by Act 7/1997 of 14 April 1997 on liberalising measures for land and professional associations (via Royal Decree Law 5/1996 of 7 June 1996), which implemented some of the principal proposals included in the TDC report of 1992. The fundamental aim of the reform was to eliminate those provisions which most clearly hindered the introduction of competition in the professions regulated by professional colleges.
107. The 1997 reform introduced, amongst others, the following novelties:
- **Submission to competition rules.** The Act clearly establishes that pursuit of the self-regulated professions is to be done on a free-competition basis and will be subject, as regards the offering of services and setting of their prices, to the Competition Act and the Unfair Competition Act. The rest of the aspects of professional practice, however, continue to be governed by the general and specific legislation on the substantive regulation of each profession.

Also, the resolutions, decisions and recommendations of Professional Colleges that have economic implications must comply with the limits of article 1 of the Competition Act.

- **Professional fees.** The possibility of the professional bodies setting mandatory minimum fees is eliminated. Nevertheless, the associations are allowed to establish recommended fee scales and guidelines.

- **Single association membership.** In contrast to the “multiple affiliation” that existed until that time, it was provided that membership in a single College will be sufficient to practice the profession throughout the entire country. An exception was made for certain professions that require residence in the place where the services are provided. This reform was subsequently reinforced by Royal Decree Law 6/2000 to prohibit the Colleges from demanding excessive qualifications or economic payments of professionals who wanted to practice in their “territory” but were registered in another College.
  - **Fee collection.** The obligation to collect fees through the College was eliminated, although it is maintained as an optional service available to members. In the TDC report of 1992 mandatory collection of professional fees through the Colleges was considered a typical cartel practice that sought to exert tight control of members and unique in the world.
  - **Certification of projects.** The Colleges retained their powers to give the stamps of approval known as “visados” to the plans drawn up by the professionals, but it was stipulated that the formality would not cover fees or other contract terms and conditions that are left to the free accord of the parties.
108. In summary, the reform approved in 1997 of the Law on Professional Colleges entailed unquestionable advances in improving their regulation and introducing competition in the sector.
109. Nevertheless, it maintained certain historical holdovers present in Spanish law since Act 2/1974 and which have been the cause of some of the antitrust problems in the professional services sector that have been detected over time. Amongst these, we may call attention to the following:
- a) Articulation of the regulation around the concept of “profession”. The reservation of activity**
110. As already indicated, the regulation of Professional Colleges has led to a situation in which, generally speaking, the concepts of *professional college*, *profession* and *degree* are inextricably tied together in such way as to establish *reservations of activity* or exclusions from the performance of certain tasks by professionals not holding a specific formal qualification.
111. Put differently, the customary practice has led to the creation of professions on the basis of a specific academic degree and to the reservation of activity for holders of those degrees, so as to prevent competition by holders of other degrees.

112. Hence the creation of reservations of activity with negative effects on competition, as they prevent professionals holding other degrees for practicing a given profession. That is why it is important that we be able to judge whether these restrictions are clearly justified in the general public interest and necessary and proportionate for their objective. In this regard, it must be borne in mind that in many cases individuals holding qualifications with similar content may be in a position to perform the same activity, depriving that segmentation of the market of its rationale.
113. And what is more, those negative effects on competition can heighten over time, for, though 40 years ago there may have been some justification for limiting access to a profession to holders of a specific degree, it is no less true that the advances seen in all fields in these last 40 years have spawned new degrees, specialties and use of alternative technologies that should allow the holders of those new degrees to take up that same activity, instead of creating new and ever narrower reservations of activity for them with an increasing compartmentalisation of the market.
114. Although there may be cases of professions that should actually be reserved for holders of a specific degree, the fact is that it would be less detrimental to competition if, as a general rule, our approach to regulation were based on the concept of *professional activity* instead of on *profession*.
115. As pointed out earlier, in this report we say that a *professional activity* may be performed by holders of different degrees, whereas a profession is normally practiced by holders of the one and only one degree whose name is exactly the same as that of the profession.
116. One very apropos example of regulation of a *professional activity* is that of accounting auditors. Indeed, this is not a case of a profession being regulated on the basis of the existence of an academic degree, but the regulation of a professional activity that complies with all the requirements of public interest to be regulated,<sup>16</sup> and that, amongst other things, establishes all the degrees considered appropriate for pursuing that activity.
117. This is the type of regulation that should be sought in general, although, as already stated, there will continue to be justification for having certain professional activities (or professions) practised by the holders of a specific formal qualification.

**b) Automatic presumption of the public benefit or general public interest of a Professional College**

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<sup>16</sup> This is a clear example of the existence of external economies.

118. The LCP does not establish any requirement whatsoever to create Professional Colleges, except the need for regulation to have statutory ranking and effect (because it implies an alteration of the freedom of choice laid down in article 35 of the Spanish Constitution).
119. Therefore, it neither establishes nor explicitly requires some type of filter that would determine and demonstrate the existence of a public interest or benefit that justifies the creation of a professional association and the reservation of activity that such association entails in practice.
120. In the preceding section we saw some examples of how the general public interest that justifies the regulation is at times addressed only indirectly in the preambles to laws, and, in all events, it is difficult to find examples in which a rigorous analysis of the existence of that public interest is made, or that the proposed measure, namely the creation of a Professional College, is necessary and proportionate.
121. It is very important to reiterate here, moreover, that the laws creating Colleges normally tie together the obligation of membership in the association and the degree requirement. So the two things should be analysed separately. First, we must examine whether requiring a specific degree to pursue a profession is a proportionate measure and there is no better alternative for achieving the desired objective; second, whether mandatory membership in the association is also necessary and proportionate for attaining the objective pursued, which does not have to be the same.
122. This need to not automatically assume there is a general public interest in the regulation of Professional Colleges has also been stated in the case-law. The Spanish Constitutional Court, in judgment 194/1998 already cited earlier, states that “In all events, declaring a profession as regulated by a professional association, with the consequent mandatory membership, requires from the constitutional standpoint the existence of public interests that can be affected or, put differently, the necessary attainment of constitutionally relevant public purposes. The legitimacy of this decision will depend on whether the Professional College effectively performs functions that safeguard the interest of the recipients of the services provided by its member professionals, as well as on the relation that exists between the concrete activity and certain constitutionally guaranteed rights, values and interests”.
123. Along these same lines, in its ruling 132/1989 the Constitutional Court held that “exceptions to the general principle of freedom of association have to be justified, when the individual is obliged to join association, by the significance of the public interest pursued, and by the difficulty of achieving

that objective without recourse to establishing mandatory membership in that organisation”.

### **c) Maintenance of the three aims of Professional Colleges**

124. Continuing with the above-cited judgment 194/1998, the Constitutional Court adds: “As we have repeatedly stated, the obligation to join a College as condition for pursuing the profession cannot be justified having regard to the interests of the professionals, but as a safeguard for the interests of the recipients of the services they provide”.

125. The successive reforms of the LCP, however, have not altered the three aims attributed to Professional Associations, which do not match up with the foregoing affirmation. Those objectives are:

- oversight of the pursuit of the profession;
- exclusive representation of the profession;
- advocacy for the professional interests of the members.

126. To analyse those aims we must identify the ultimate purpose of Professional Associations, that is, the objective pursued in creating them. In other words, what is the objective that justifies (i) restricting the freedom to provide services by establishing the obligation to belong to a professional association and, most importantly from the antitrust standpoint, (ii) creating reservations of activity (in the linkage between Colleges and degrees) and (iii) granting capacity of self-regulation and disciplinary control to the Colleges.

127. The Law on Professional Colleges does not set out the objective of Professional Colleges. It only indicates in its statement of purpose that these associations are the “organic channel by which Spaniards participate in the public functions of a representative nature and other tasks of a general public interest”.

128. But the TDC already stated, in its 1992 report, that the possible public purpose of Professional Colleges can be “none other than to improve the quality of the services provided by the professionals and to help maintain certain pro-client conducts by those professionals”. And added that “making membership mandatory is an immense power that the State grants to a group of citizens and does not grant to any other group and, therefore, the use that is made of that power must be examined with the utmost care” (...) “what is worrisome is that the mandatory membership requirement be used in the interest of the members, instead of for the purpose that justifies the delegation of that power to them by society, through the State”.

129. Taking this premise as starting point, we can now analyse the three objectives the LCP lays down for these professional bodies.

130. If we begin by analysing the last of those objectives, *advocacy for the professional interests of the members*, it seems obvious that the aim here is not to improve the quality of the services provided or maintain pro-customer conducts. Instead, the objective pursued is one in which the public interest involved is hardly demonstrable. Indeed, no public interest can be perceived in requiring a professional to join an association to defend his or her professional interests; on the contrary, it would make more sense in the public interest to allow the professional free choice of what association to join or not.

131. This analysis would basically affect the following functions in the exclusive domain of the Professional Colleges envisaged in the LCP (article 5):

- j) organise activities and common services of interest for members, of a professional, training, cultural, assistance and welfare nature, and other similar ones, providing for economic sustenance with the necessary resources;
- p) organise collection of payments, compensation or professional fees when freely and expressly requested by the member, in those cases where the College has set up adequate services on the terms determined by the Bylaws of each College;
- r) organise, if applicable, courses for post-graduate professional instruction;
- s) facilitate the solution of housing problems of the members, for which purpose they will participate in the official Boards of Trustees created for each profession by the Ministry of Housing;
- u) all other functions that benefit the professional interests of the members.

132. Nor in relation to the second objective, *exclusive representation of the professions*, do we see reasons that fully justify such exclusivity. That is to say, we do not see the necessity of the membership obligation and of the Colleges being given a monopoly on representing the professionals. On the contrary, in most cases that work can be shared with other associations of a voluntary nature.

133. There is already an example on this question, namely in Catalonia Law 7/2006 of 31 May 2006 on the pursuit of qualified professions and on professional colleges. Without taking up an evaluation of that law, it is only mentioned in this report in order to give an example where voluntary



associations and mandatory colleges share some of the functions of representing the profession.

134. Thus, for example, the Law provides that associations may perform functions such as the following:

- Represent association members and pursue actions in defence of the rights and interests of those members, of the association and the general interests relating to pursuit of the profession.
- Participate in the consultative bodies of the government administration, appear in administrative proceedings in accordance with the law and, in particular, be heard in the drafting of general provisions that directly affect pursuit of the profession.
- Issue reports and opinions on matters of significance for the profession, at the request of the administration or of the courts.
- By delegation from the administration of the Catalanian government, they may perform functions and activities that do not involve exercise of authority. For purposes of such delegation, there should be taken into account how firmly established and representative the existing associations in the profession in question are, and, if applicable, it should be done through a competitive procedure if there are several associations with the same or similar characteristics, or under an agreement with all of them.

135. A clear parallel can be found between these functions and those which the LCP currently attributes on an exclusive basis to Professional Colleges (article 5):

- b) perform all functions entrusted thereto by the administration and collaborate with the latter by conducting studies, issuing reports, preparing statistics and other activities related to their objectives that may be requested of them or which they may pursue at their own initiative;
- c) act in the representative capacity established by law for the achievement of their purposes;
- d) participate in the consultative committees and bodies of the administration on matters within the area of competence of each of the professions;
- m) take part, in conciliation or arbitration proceedings, in the issues that arise for professional reasons between the members.

136. Lastly, we have the first of the objectives, the *oversight of the pursuit of the profession*. In this case it may make sense to maintain the mandatory membership requirement and the exclusivity with which this function is delegated to Professional Colleges, provided, of course, that there is fulfilment of the conditions cited above requiring that his obligation is clearly justified in the public interest and that its necessity and proportionality is assessed.

137. The most important functions contained in the LCP in relation to this objective are, as already cited above, the following:

- i) oversee, within the scope of its competence, the professional activity of the members, ensuring professional ethics and dignity and due respect for the rights of individuals, and exercise disciplinary powers in cases relating to the profession and college;
- k) procure harmony and collaboration amongst members, preventing unfair competition between them;
- l) adopt measures aimed at avoiding encroachment by unqualified practitioners;
- ñ) establish fee scales, merely for illustrative purposes;
- q) certify approval of the professional work of college members, where so expressly stipulated in the general Bylaws. The certification of project approval (*visado*) will not include the fees or other contract terms and conditions which will be freely agreed by the parties;
- t) comply and enforce compliance by members with the general and special laws and the professional Bylaws and Internal Rules and Regulations, as well as with the rules and decisions adopted by the college bodies within the scope of their powers.

138. However, even though this purpose of a professional college may make sense in defence of the public interest, it is in how this function is performed that there have been seen the biggest antitrust problems in the actions of these colleges, which on occasion have been subject to sanction by the TDC/Council of the CNC. The main problems seen in this area are analysed in the sections that follow.

#### **d) The dominance of self-regulation over co-regulation**

139. The LCP does not given the Administration much discretion in relation to the activity of Colleges in *regulating the pursuit of the profession*. Conversely, the Colleges have much power of self-regulation.

140. Thus, on the one hand, the room for administrative action or initiative in relation to the General Bylaws is, in practice, very limited, both as regards their approval and their modification.

141. Actually, the General Bylaws must be approved in the form of a Royal Decree and might therefore be understood as a type of co-regulation. But there is case-law that holds the Administration must confine itself to reviewing the legality of the proposed Bylaws, without engaging in any other type of evaluation. Also, the Administration does not, in principle, have authority to initiate an amendment of the Bylaws, as this initiative is reserved for the Colleges.<sup>17</sup> For this reason, the Administration's co-regulation capacity may be considered rather limited, and we should speak more of self-regulation.
142. Also, that discretion is null in relation to internal rules of the colleges that are of great significance for the professional activity, given that they are approved in a completely autonomous manner by the Professional Colleges.
143. Especially noteworthy amongst those internal rules are Deontological Codes, as they usually contain norms which, for the sake of ensuring proper and ethical practice of the profession, and of avoiding “unfair competition”, may include inefficiencies or restrictions of competition that cannot be controlled by the Administration a priori, because they fall within the arena of the association's self-regulation, and thus subject to the interpretation of the Professional Colleges.
144. The problem with the scarce room for action granted to the Administration by the LCP is compounded by the fact that the LCP has allowed the sphere of powers of the Colleges to include functions whose content is ambiguous enough to allow them, in practice, to provoke restrictions of competition. This ambiguity is more significant in relation to, for example, the colleges' efforts to eliminate unfair competition between their members, impose disciplinary penalties, implement measures, avoid professional encroachment, participate in establishing the conditions for attaining status as college member, etc.
145. In these cases the principal ambiguity arises from the distinction made by article 2.1 of the LCP with respect to activities subject to competition rules, because, after asserting that the pursuit of the self-regulated professions will be subject, in the offering of services and setting prices, to the Competition Act and the Unfair Competition Act, it adds that the “rest of the aspects of professional practice, however, continue to be governed by the general and specific legislation on the substantive regulation of each profession”.

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<sup>17</sup> Article 6 of the LCP: “2. The General Councils will draw up, for all Colleges in the same profession, and having heard those Colleges, General Bylaws, which will be submitted to the Government for approval, through the competent Ministry. (...) 5. Amendment of the General Bylaws (...) will be subject to the same requirements as their approval”.

146. The following sections address concrete examples of regulations or actions of Professional Colleges that can affect competition in matters of fees, advertising, certification of projects and college dues.

#### **e) Recommended fees**

147. The LCP allows the possibility of Professional Colleges establishing fee scales of a merely illustrative nature (subparagraph ñ) of article 5 of the LCP).

148. That possibility was introduced in the reform of 1997, as “consideration”, at least temporary, for elimination of the right of the colleges to establish mandatory minimum fees.

149. The CNC recently recommended that this possibility be eliminated,<sup>18</sup> reiterating that, as already indicated by the TDC in its 1992 report, setting illustrative or recommended fees is a practice that in competition law is called “conscious parallelism”, with ultimate effect similar to price fixing. The practice does not go so far as to establish a cartel, but all of the participants act in the same manner, because they can reasonably anticipate how their competitors will conduct themselves.

150. Indeed, not only are the advantages of price recommendations extremely dubious, such recommendations can strengthen the possibility of coordinated pricing by competitors in the market.

151. The European Commission has echoed this approach on several occasions. Thus, the European Commission, in its Decision 2005/8 against the Belgian Architects Association for including recommended fee scales in its deontological rules, stated that:

*“(78) As a preliminary, it is settled case law that the fixing of a price, even one which merely constitutes a target or recommendation, affects competition because it enables all participants to predict with a reasonable degree of certainty what the pricing policy pursued by their competitors will be, especially if the provisions on target prices are backed up by the possibility of inspections and penalties.*

*...(99) In any event, the Commission takes the view that the establishment of a (recommended) minimum fee scale cannot be considered as necessary in order to ensure the proper practice of the architect's profession. The Association asserts that the scale may be useful in that it can act as a guideline for replies to questions from parties to the contract or from a court of law. The Commission considers that information on prices can be*

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<sup>18</sup> Recommendations to public authorities for more efficient and pro-competitive market regulation. June 2008.

*provided in other ways. For example, the publication of information collected by independent parties (such as consumer organisations) concerning prices generally applied, or information based on a survey, can constitute a more reliable yardstick for consumers and lead to fewer distortions of competition”.*

#### **f) Advertising**

152. Advertising is a fundamental competitive tool for incumbent market players and for new entrants.

153. In some cases, as already mentioned in the preceding section, the Bylaws and deontological rules of the associations have included limitations on service advertising that are more restrictive than those contained in the General Advertising Act 34/1988. In those cases, no solid underlying reason is seen for the subsistence of these provisions, all the more when the General Advertising Act itself perfectly defines the type of unfair competition that can constitute the main justification for such prohibitions.

154. As in the previous case, the CNC Council has already recommended removing association restraints on free advertising and that advertising activity be explicitly submitted to the general limits established in the General Advertising Act.<sup>19</sup>

#### **g) Certification of projects**

155. The 1997 reform eliminated the possibility of certifications including fees in order to avoid possible use by associations of this information to affect the right of their members to establish prices freely.

156. But other means of influencing fees through the project certification procedure have been seen, giving rise to decisions of the TDC/CNC; the last being in case 629/07, on the College of Architects of Huelva (pending court review).

157. The case analysed in that proceeding consisted in the College's preparation of a “Method for simplified calculation of budget estimates for material execution of different types of works” whose non-application somewhat hindered attainment of certification.

158. The existence of cases such as the preceding one require renewed attention to the “benefits” of the certifications for consumers versus the “costs” they represent because of the possibility that their ultimate effect is to

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<sup>19</sup> Recommendations to public authorities for more efficient and pro-competitive market regulation. June 2008.

unify pricing practices of professionals or “hinder” free competition amongst them.

159. The truth is that the only thing the LCP establishes is the possibility of the association certifying the work of the professionals, by, to be sure, giving it a monopoly for such procedure. But there are other rules and decisions, not just the one relating to the Professional Colleges, that go on to require the existence of such certification. For example, when a government administration wants to conduct a competitive tender and requires that the project plans to be submitted be certified by the College.

160. So to know the “benefits” of certifications, the key thing is to determine the purpose they pursue and analyse their content and effectiveness. The LCP makes no pronouncement on these questions, instead delegating them to the rules of the professional associations (self-regulation). In other words, the LCP says nothing on the purpose or objective of these certifications.

161. To take an example, which in this case is quite significant, the General Bylaws of Architects establishes in article 31.2 that the purpose of certification (*visado*) is to: a) evidence the identity of the responsible architect or architects and their current qualification for the work in question; b) verify the formal integrity of the documentation in which the work must be set out according to the mandatory rules that apply in each case; and c) perform the rest of the checks stipulated by statutes and general legal provisions.

162. This, then, is what certification offers, but there are two remaining questions: the association's responsibility and the price of the certification. On the first, the association assumes no responsibility in relation to the certification, that is, it bears no legal liability for any subsequent failures in the certified project. As for the price of the certification, it is established by the Colleges and it is not easy for the consumer, who will eventually bear the price, to know it and, much less, to have any influence on the amount.

163. From the standpoint of the consumer (and government administrations are also consumers), knowing exactly what benefits and assurances are offered by the certification and what the price is should place them in a better position to decide if they want the project to be presented with or without the certification.

164. For all of these reasons, we believe the concept of certification by Professional Colleges must be submitted to an in-depth review: its purpose, content, obligatory nature, association responsibility and price.

#### **h) College dues**

165. The annual dues and initial charges are approved by each College without any intervention by the Administration and, normally, without much transparency, not only for the professional, but for the client (who, eventually, will bear the cost of the association dues).
166. This, first of all, leaves much room for arbitrariness by the Colleges. The differences in initial membership contribution can go as high as €6,000 for procurators in Madrid to €0 for industrial engineers in the Canary Islands.
167. Second, from the standpoint of competition, that margin for arbitrariness can have potential effects on competition, above all in relation to new entrants, as excessive initial contributions can discourage or delay entry by new competitors.
168. The TDC has referred to this issue, for example, in its resolution of 14 December 2000 in case 481/99, on Property Administrators of Sevilla and Huelva, when the Court held that “initial membership charges cannot be established to prevent entry by new college members or by competitors that belong to colleges in other geographic areas. For this reason, decisions by Colleges regarding the level of initiation fees must always be founded on objective considerations of the real cost, for, otherwise, the charge would be a barrier to entry by new competitors and violate the LDC”.
169. Third and last, as already seen, the Colleges currently have three very different objectives. If, as already discussed, the binding nature of membership must be restricted to one of those objectives, giving the professional freedom to seek attainment of the other objectives in voluntary associations, then this makes the demand that dues be based on objective considerations of real cost and no other factor even more important.<sup>20</sup>

#### **i) Mandatory membership**

170. Lastly, the requirement of membership in the association, together with the latter's exclusive right to represent the professionals, has the potential to maximise the anti-competitive impact of certain conducts or strategies of Professional Colleges.

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<sup>20</sup> To give an example, the website of the College of Odontologists and Stomatologists of Las Palmas indicates that the association dues fund the following: Defence and promotion of the oral and dental health of the population; advocacy for our interests vis-à-vis the Administration; fight against encroachment; continuing training; relations with other institutions and public and private sector organisations; deontological committee; administrative formalities (certifications, membership procedures, ...); job placement for members and auxiliary medical personnel; layer and administrative staff at the association headquarters; employment and tax law advisor for association issues of general interest; website; company that does the College's accounting; College headquarters with: conference hall, clinical room with dental equipment, library with video collection and ADSL Internet connection, administrative offices, meeting room etc.; national representation through the National Council of Colleges of Odontologists and Stomatologists (nearly 30% of dues are allocated to this item).

171. The problem of mandatory membership can arouse a debate with constitutional implications. To a large extent, Professional Colleges are professional societies set up pursuant to the right of association, but when considered as such cannot impose a binding membership requirement, because the right of association must be understood not just in the affirmative sense (the right to associate), but also in the negative (the right not to associate). The Constitutional Court has certainly accepted the obligatory nature of membership in other bodies set up under public law, but has done so on the basis that they discharge public functions, and this should be applied to Professional Colleges as well, but the situation entails a dual paradox. First, in the case of Professional Colleges the public functions that can be attributed to them constitute a minor part (only the defence of consumers) of their functions and activity, but that small part alone allows them to extend the affiliation obligation when they are in fact performing functions of a professional society. But the great paradox lies in the fact that the only public function attributable to the Colleges, the protection of the users of the professional services, is granted to the representatives of the professionals, that is, to a body that represents one of the parties to the conflict, not to an independent entity of a public nature. And, moreover, with powers of self-regulation.

172. In summary, by way of conclusion to the analysis given in this section, we may say that Professional Colleges are one more way (amongst others) of regulating the professional services market. The Administration's delegation of certain powers to these Colleges is justified by the better information they can attain on the market and their greater flexibility in applying and modifying that regulation. But there are also risks that come from their condition as advocates for objectives different from those of the Public Administration (the authority that delegates those powers to the Colleges) and their potential for acting as forums for coordinating supply-side conducts. Those risks are further heightened when College membership is made a requirement for pursuing a profession.

## **IV.6 Regional regulation**

173. In the last five years (2004 - 2008) 41 Laws have been approved creating Professional Associations. None of these laws was national, that is, no new national College has been created. The 41 laws were regional statutes of the Autonomous Communities, and 37 of them created Colleges that do not exist at the national level.<sup>21</sup>

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<sup>21</sup>They are the following Colleges, which are the same in some Autonomous Communities: Degree holders in environmental sciences; senior healthcare technicians; physical therapists; private detectives; orthopedists; dieticians-nutritionists; chemical engineers; pedagogues and psycho-pedagogues; computer engineers; jewellers, goldsmiths, silversmiths, watchmakers and gemmologists; junior computer technicians; dental hygienists; public relations and advertising advisers; speech therapists; librarians and documentalists; occupational therapists; social educators; tourist guides.



174. In addition, some of these Colleges originated in previous professional societies, without justifying the need to convert from professional societies to colleges of binding membership and with more powers to oversee the activity of the profession.
175. Furthermore, some of the Professional Colleges most recently created in an Autonomous Community display characteristics unlike those of the typical Professional College in relation to the tie-in between degree and membership and reservation of activity. This basically stems from Constitutional Court case-law which has established that “the national lawmakers will have the power to, having regard to the demands of public interest and the data produced by societal life, determine when a profession is to be considered a qualified profession”.<sup>22</sup>
176. For example, Galician law 2/1999 of 24 February 1999 creates the Professional College of Journalists of Galicia, which may be joined by holders of degrees in journalism, degrees in image and audiovisual communication who show they do news works, and other professionals that demonstrate that journalism is their main activity, as well as those registered in the Official Register of Journalists of the Federation of Press Associations of Spain. But no article in the law expressly requires membership in the College as a condition for working as a journalist in Galicia.
177. The above example is not meant as a critical evaluation of not making membership mandatory. It is cited to give an example of the casuistic approach introduced by regional regulations of this area.
178. Taken with the above, the creation of professional colleges by regional regulations, when there is no national law creating one, give rise to *rapture of a single market*, in that pursuit of a given profession may be unregulated in one region and regulated (with mandatory membership) in another.
179. This also marks a departure from the concept of single association membership established in the Law on Professional Colleges. The reform of

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<sup>22</sup> Constitutional Court judgment 154/2005 of 9 June 2005: “It is clear, therefore, that the power of the central State organs to regulate the conditions for attaining, issuing and certifying professional titles is tied directly to the existence of the so-called qualified professions, a concept used by the Constitution itself in article 36, and which implicitly admits, as seems obvious, that not all labour, trade or professional activities in the broad sense are or constitute qualified professions. As this Court has declared in judgment 83/1984, qualified professions exist when certain activities are made conditional «on possession of specific academic titles», and in an even more precise sense, Constitutional Court judgment 42/1986 defines qualified professions as those «whose pursuit requires a title, understood to mean possession of higher studies and attestation of such studies by means of the attainment of the appropriate certificate or degree». As we pointed out in this last judgment, it falls to the lawmaker, having regard to the demands of public interest and the data produced by societal life, to determine when a profession is to be considered a qualified profession, and there can be no doubt that, according to the terms of article 149.1.30 of the Constitution, that this power rests exclusively with the national lawmakers” (Constitutional Court judgment 122/1989, of 6 July 1989, Legal Foundation 3)”.

that law carried out in 1997 actually established single association membership with the aim of eliminating barriers to free movement and to the freedom to provide services by professional independently of the territory in which they were affiliated to a College. Indeed, that reform was strengthened later on in 2000 (Royal Decree Law 6/2000) to prohibit Professional Colleges from requiring some enabling title or extra payments from professionals belonging to a College in another geographic area.

180. There have been cases of regional Professional Colleges that have required some type of membership of professionals from another “territory”, and such requirement has met with the opposition of the TDC. For example, resolution 512/02 on the Professional College of private detectives in Catalonia, referred precisely to that association's requirement of an enabling title to practice that profession in said region. In this regard, the TDC stated that “the creation of a Professional College in an Autonomous Community for a profession not governed by a college in the rest of the nation cannot grant the professionals in that region the capacity to establish artificial entry barriers (payments for enabling title and certification of documents) for competitors from other zones who, on having passed the required aptitude tests, hold the enabling title granted by the Ministry of the Interior under article 10 of the Private Security Act 23/92. Mere membership cannot give the professionals from Catalonia any additional qualification to that held by those that reside in other regions that do not see a need for the profession of private detectives to be considered a qualified profession. Taken to the limit, if the Catalonia association were able to require and charge for enabling titles for the rest of the private detectives of Spain because they do not belong to another College anywhere else, it could create the undesirable need to create Colleges in all of Spain for the sole purpose of establishing reciprocity”.

181. In summary, there is a need for greater coordination in the regulation of Professional Colleges if we are to avoid harm to free competition between all professionals, independently of where they normally pursue their profession, and to the single market.

## V. OTHER FACTORS THAT MAKE REVISION OF THE MODEL NECESSARY

182. The preceding section discussed the persistence of certain rules and conducts in the professional services area that can affect competition in the sector and which should therefore be taken into account when undertaking a review of the sector's regulatory framework.

183. But there must also be taken into account other recent developments that affect the professional services sector in one way or another and likewise point to the way forward in carrying through a reform of that regulatory framework.

### V.1 The new impetus from the European Union: the Communications of 2004 and 2005 ...

184. The European Commission has given determined support to reforms in the professional services sector. Its clear objective has been to propel an examination of the regulation of professional services<sup>23</sup> (or liberal professions) to assess whether that regulation is the most efficient and the least restrictive of competition or, on the contrary, if there are alternative regulations more attuned to the economy that can help encourage growth and provide better service to consumers, in line with the Lisbon Strategy.

185. The most salient reports and documents are, on the one hand, the report done by the Institute for Advanced Studies of Vienna (IHS) on its study of the sector, already mentioned in an earlier section. Second, the Commission's approval of two Communications: *Report on competition in professional services*, in 2004,<sup>24</sup> and *Follow-up to the Report on Competition in Professional Services*, in 2005.<sup>25</sup>

186. All of them underscore the importance of professional services in improving the European economy's productivity and the negative effects that excessive or outmoded anti-competitive regulations can have for consumers, lessening the incentives for professionals to work efficiently, lower prices, enhance quality and offer innovative services. Similarly, having better and more varied professional services available could also increase demand, which would in turn have a positive impact on job creation.

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<sup>23</sup> The Commission has focused its analysis on six professions: lawyers, notaries, auditors / accountants, architects, engineers and pharmacists.

<sup>24</sup> COM (2004) 83 final.

<sup>25</sup> COM (2005) 405 final.

187. The Commission also indicates it does not oppose all types of regulation, as it recognises that there are arguments to justify some regulation in the sector. But it believes restrictive regulation can only exist when it entails effective and proportionate protection for consumers. The Commission thus encourages a joint effort to review the existing regulation and eliminate provisions that are not justified for reasons of public interest or because they are not proportionate and necessary for proper pursuit of the profession.
188. The Commission thus concludes that “more urgency by the majority of Member States to bring about systematic pro-competitive reform in this sector would bring about significant economic and consumer benefits”. And adds that “Experience shows that such a process will not start without strong political backing”.
189. To the contributions and impetus from the European Commission we should add the European Parliament's Resolution of October 2006,<sup>26</sup> in which it shows its support for the Commission's efforts to liberate the sector from overly restrictive regulation that harms competition and thus benefit the EU economy and its consumers.
190. In summary, there is a clear drive by European institutions for Member States to undertake a review of the regulation of professional services and carry out such reforms as prove necessary given the negative effects of that regulation on competition and efficiency in the sector.

## V.2 ... and the Services Directive

191. On 12 December 2006 the *Directive 2006/123/EC of the European Parliament and of the Council, on services in the internal market* was approved, more commonly referred to as the *Services Directive*.
192. Although the Member States have three years within which to transpose the Directive, it came into effect on 28 December 2006. This means that as from that time Member States must refrain from adopting any regulations contrary to the provisions of the Directive.
193. The purpose of the Directive is to achieve a genuine single market in services in the European Union through the elimination of the legal and administrative barriers that currently limit the development of service activities between Member States. Its objective also includes expanding choice for service recipients and improving the quality of services both for the end consumers and business users of those services.

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<sup>26</sup> European Parliament Resolution on follow-up to the report on Competition in Professional Services (2006/2137 (INI)).

194. Without entering here into a detailed discussion of the content of the Directive, what is notable for the purposes of this report is its underlying spirit (and “letter”), which we may succinctly summarise as follows: restrictions on access to or pursuit of the freedom to provide services can only be accepted when three conditions are met:

- **Non-discrimination:** the regulation cannot directly or indirectly discriminate on grounds of nationality or of the Member State in which the service providers are established.
- **Necessity:** the regulation must be justified by an overriding reason relating to the public interest.<sup>27</sup>
- **Proportionality:** the regulation must be suitable for securing the attainment of the objective it pursues and not go beyond what is necessary to attain that objective; and it must not be possible to replace those requirements with other, less restrictive measures which attain the same result.<sup>28</sup>

195. Thus, as the Directive states, the rules on authorisation (or access) must be based on objective criteria so that the authorities cannot act in an arbitrary fashion; and those criteria must be:

- non-discriminatory
- justified by an overriding reason relating to the public interest
- clear and unambiguous
- objective
- made public in advance
- transparent and accessible.

196. The same conditions apply to the case of requirements for practice of the profession.

197. And it is also important to emphasise another important aspect of the Services Directive: it addresses future but also past regulations as well. That is to say, the criteria it lays down for regulating services must be applied, on the one hand, to new regulations approved as from its effective date (which, we recall, was 28 December 2006), but also to existing regulations.

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<sup>27</sup> The Directive defines “overriding reason relating to the public interest” as reasons recognised as such in the case law of the Court of Justice, including the following: public policy; public security; public safety; public health; preserving the financial equilibrium of the social security system; the protection of consumers, recipients of services and workers; fairness of trade transactions; combating fraud; the protection of the environment and the urban environment; the health of animals; intellectual property; the conservation of the national historic and artistic heritage; social policy objectives and cultural policy objectives.

<sup>28</sup> It may also be interpreted as the sum of the principles of “proportionality” and of “least distortion”, according to the terminology employed in the CNC report *Recommendations to public authorities for more efficient and pro-competitive market regulation*, June 2008.

Consequently, the Directive obliges Member States to conduct a review, pursuant to the criteria described above, of the existing regulations governing professional services.

198. The Services Directive takes in all of the professions covered by this report, both in regard to entrance restrictions and to conduct restrictions.<sup>29</sup> Therefore, there is an obligation to apply the principles established in the Directive in the regulations that are approved, and to review, with the same criteria, the existing regulations, be they national or regional.

199. For this reason, the CNC Council believes the Services Directive provides the ideal framework for undertaking an ambitious review and improvement of the regulations governing the qualified professions and self-regulated professions.

200. A clarification is in order on this point. In interpreting the Services Directive some doubt could perhaps arise as to whether it obliges Member States to review the existing degree requirements.<sup>30</sup> In the opinion of the CNC Council, such doubts must be dispelled by taking up an ambitious transposition of the Directive and capturing all of its potential, but what is not admissible in any instance is for such doubts, should they exist, to paralyse an initiative to review and reform the conditions for access to and pursuit of the professions, including qualification requirements, for such initiative has its own import and is justified per se.

### **V.3 The new Directive on recognition of qualifications**

201. There is another Directive pending transposition, in this case related to the recognition of qualifications.

202. It is Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications. This Directive replaces the previous ones on the matter, in particular, the one that referred to degrees of three years or more (Directive 89/48/EC); the one on qualifications for a shorter period of education and training (Directive 92/51/EC); and the sectoral Directives on architects and health professionals. They are the ones that have been analysed in section III.1

<sup>29</sup> The Directive also regulates concrete questions such as advertising, binding tariffs, multidisciplinary activities, consumer information, etc.

<sup>30</sup> Article 15, Requirements to be evaluated, may lead to certain confusion due to the terminology used, as it provides that there should be examined the "requirements, other than those concerning matters covered by Directive 2005/36/EC or provided for in other Community instruments, which reserve access to the service activity in question to particular providers by virtue of the specific nature of the activity". Recall here that Directive 2005/36 is the one that refers to "professional qualifications", understood as those attested by evidence of formal qualification, an attestation of competence or of professional life.

and gave rise to the Royal Decrees that contain the lists of regulated or qualified professions in Spain.

203. Therefore, once again, the transposition of this new Directive must include the list of *regulated professions* (in the terminology of this report, *qualified professions*).

204. In the opinion of the CNC Council, though the Directive's transposition does not directly entail reform of existing regulations, but rather their “compilation”, the truth is that it is an opportunity for conducting a rigorous review of the legal provisions regulating access to certain professions in Spain. In short, it is one more element to be taken into account when taking up review of the regulation of professional services.

#### **V.4 The reform of university degrees**

205. Spain's participation in the construction of the European Higher Education Area, with a time horizon of 2010, has given rise to significant regulatory changes in university degrees, initiated with the amendment of the Organic Act on Universities, through Organic Act 4/2007 of 12 April 2007, and, later on, through its implementation via Royal Decree 1393/2007 of 29 October 2007 establishing the official university education plans.

206. Without going into a detailed analysis of what is involved by the so-called Bologna Process, the most important thing to highlight for the purposes of this report is that the reforms approved have resulted in disappearance of the “catalogue of degrees”, which has been replaced by greater autonomy for universities in creating and elaborating university degree programmes, subject to a system of administrative supervision/authorisation. The purpose of this reform, as set forth in the Statement of Purpose of Organic Act 4/2007, is the desire to strengthen the autonomy of universities to respond flexibly and swiftly to changing needs.

207. The disappearance of the “catalogue of degrees”, and the doors this opens for innovation in creating new university degrees, has immediate effects on the approach normally followed to regulating professions and, in particular, in the creation of Professional Colleges and establishment of reservations of activity.

208. Thus, as indicated earlier, the process normally followed is to create a *qualified profession* and a *profession self-regulated by a college* on the basis of a specific *university degree*. Therefore, only holders of that degree can practice the *profession* in question (the profession whose name is normally the same as that of the university degree).

209. Consequently, the new qualifications and degrees created, stimulated by the Bologna Process, will encounter markets that have already been carved up and reservations of activity for other degrees, which can basically have two effects. The first will be hesitation by universities when it comes to proposing new degrees, in the belief that the new qualifications may confront greater problems in the job market. The second effect, and more important from the competition standpoint, would be for holders of the new degrees to seek out their own reservation of activity, thereby constituting multiple and ever more narrowly delimited markets, which would affect competition in professional services negatively.
210. In short, the greater freedom that has been provided in relation to university degrees as a result of the Bologna Process leads to a rethink of the process of regulating *qualified professions* and *self-regulated professions*, and that review cannot and should not be performed, at least not on their own, by the Professional Colleges themselves.
211. But, moreover, another important point must be added. Royal Decree 1393/2007 of 29 October 2007, establishing the official university education plans, introduces an exception or nuance to the greater autonomy of universities in elaborating university degrees.
212. Article 12.9 provides that “In the case of degrees that enable the holder to pursue professional activities that are regulated in Spain, the Government shall establish the conditions to which the related plans of study must conform, which must also abide, where applicable, by the relevant European regulations. Those plans of study must, in all events, be designed to allow attainment of the competence needed to practice the profession. For these purposes the university must demonstrate that the plan of studies complies with those conditions”.
213. This opens the door to the Government determining the cases in which we have *degrees that enable the holder to pursue professional activities that are regulated in Spain*. Or, seen from another angle, the door is opened for the Government to review the regulation of professional activities and their linkage to certain university degrees.
214. To date the Council of Ministers has approved seven Resolutions establishing the conditions<sup>31</sup> that must be complied with by the plans of study aimed at attaining degrees that enable the holder to practice the following regulated professions: toddler education teacher; primary education teacher; professor of compulsory secondary education and baccalaureate, occupational training and language instruction; architect;

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<sup>31</sup> Those conditions are not actually established in the Resolution of the Council of Ministers, which defers to those established by the Spanish Ministry of Education and Science through a Ministerial Order.



technical architect (quantity surveyor); physician; veterinarian. In other words, until now such decisions have been made basically with respect to professional regulated by sectoral directives (healthcare and architecture) and those regulated by the Organic Act on Education of 2006.

215. But pressure is being exerted by other professionals, especially engineers, on the Government to adopt a similar decision, presumably with the purpose of having their profession “ratified” as a *regulated profession*. And this is even though the Council of Ministers Resolutions approved expressly state that “this Resolution does not constitute a regulation of professional practice or establish any reservation of activity for holders of the degrees that meet the conditions laid down herein”.

216. In summary, at a time when we are seeing a modification of the framework for university degrees—a traditional pillar in the definition of the *qualified professions* and of the *self-regulated professions*— it is necessary to monitor this process closely and make sure that neither pressures from diverse sectors, nor inertia nor any other factor prevent us from taking advantage of this opportunity to carry through the needed review of *reservations of activity* in professional services.

217. Put differently, we must not allow the emergence of new qualifications and degrees as a result of the reforms spawned by the Bologna Process to lead to the proliferation of new *qualified professions* and *self-regulated professions*, each with its own *reservation of activity*, as a reaction to the impossibility of relying on the new degrees to take up the activities reserved for more traditional qualifications.

## VI. RECAP

218. The TDC report of 1992 on the self-regulated professions played a key role in the regulatory reforms subsequently undertaken in relation to Professional Colleges and which marked a first step toward introducing competition in the services provided by professionals working in the professions regulated by such colleges.

219. But the TDC report concluded with the following assertion: “In future reforms, the Government should review the *reservation of activity* granted to some of the self-regulated professions. Does it make sense, for example, that the neighbours who live in a building cannot engage as administrator a person whom they regard as competent but who does not belong to the College of Property Administrators?”

220. Leaving aside the specific example the TDC had posed in its 1992 report (which has already been subject to regulatory reform as indicated),<sup>32</sup> the important thing is that the Competition Court was already pointing to the need to review, not just specific points, but the regulatory framework of professions and, in particular, its effects in the creation of reservations of activity.

221. This report is part of that effort, as it seeks to guide regulators on the issues that must be taken into account when undertaking the reform of the professional services sectors, a process not just confined to the regulation of Professional Colleges, but which affects other restrictions on access to and pursuit of professions.

222. The CNC is thus seeking to take its competition advocacy work to this sector, as stipulated in article 26 of the LDC. But that advocacy will also continue in the form of monitoring and reporting on the regulatory proposals brought forth in relation to the questions addressed in this report, in particular the regulation of the new legal framework governing professional services, thereby complying with the functions attributed to the CNC by article 25 of the LDC.

223. It should be added, furthermore, that the CNC, since the new LDC (article 12.3), has authority to challenge acts and general provisions of a

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<sup>32</sup> Since the approval of Act 8/1999 of 6 April 1999 on Reform of Act 49/1960 of 21 July 1960 on Horizontal Property, “the office of administrator and, if applicable, of secretary and administrator may be exercised by any owner, as well as by any individual with sufficient and legally recognised professional qualification to perform those functions. It may also fall to corporations and other legal persons on the terms established in the legal system”. Nevertheless, we must not fail to note that enforcing this new regulation in the specific case of property administrators has raised major competition problems in relation to the non-existence of exclusivity in this activity, which has led the TDC to issue several decisions along these lines.

lower non-statutory ranking that generate obstacles to the maintenance of effective competition in the markets.

224. Meanwhile, the CNC will in any even continue performing its function of investigating and prosecuting prohibited conducts. As has already been seen, the Resolutions of the TDC/CNC Council in relation to professional services and, in particular, to Professional Colleges, represent a large percentage of the total, which bears out that there remains much antitrust work to be in the area of professional services, not just on the regulatory front, but also to reduce the anti-competitive conducts punishable through enforcement of the Competition Act.

## VII. CONCLUSIONS

- ONE** The professional services sector carries significant weight in the economy in its role as supplier both of end products and of inputs for other goods and services. This makes the sector's proper functioning and, specifically, its adequate regulation a matter of vital importance. In particular, the diverse rules regulating entry to professions and their pursuit must avoid the introduction of reservations of activity and restrictions of competition that are unnecessary or disproportionate and impede full realisation of the sector's growth and employment potential.
- TWO** The Spanish government recently announced a reform of the regulatory framework for professional services. For this reason, the CNC Council believes it is the appropriate time to issue this report, setting out, first, the competition-related problems that have been detected in this sector so that the new regulation does not give rise to a repetition of those same problems; and second, identifying the main regulatory novelties affecting professional services that have been seen in our peer countries and, in particular, the implications of the upcoming transposition of the new Services Directive.
- THREE** The problems detected involve both the regulation of entry into the profession and the regulation of the pursuit of the profession.
- FOUR** In relation to regulation of entry in the profession, the principal restrictions involve the requirement for a given formal qualification or degree and/or mandatory membership in a professional association. The main effect of this from the standpoint of competition is to generate reservations of activity in which competition is limited to those professionals who fulfil the entrance conditions. Those requirements can only be justified by clear reasons of public interest that must be explicitly stated, so that the necessity and proportionality of the regulation is justified.
- FIVE** The problems derived from the existence of reservations of activity will be aggravated in the near-term future by the reforms spawned by the Bologna Process in the area of university degrees. Indeed, those reforms seek to give rise to a more flexible environment in which the new degrees can respond nimbly to new demands of society. But if the holders

of the new degrees find themselves forced to compete with certain areas of activity reserved and closed off to them, the changes may be fostering a “race” to create new reservations of activity in ever narrower markets.

## **SIX**

With respect to the regulation of conducts in the pursuit of the profession, the main problem arises from the power of self-regulation that current law gives to the professional associations called Professional Colleges in Spain, giving rise to the existence of internal rules and practices by the colleges that have harmed competition between the member professionals of each college. The problem partly stems from the definition of the objectives of these Professional Colleges, which combine merely corporatist interests in defence of the members, with other purposes aimed at protecting consumers, the real reason why the government delegates public powers to the colleges.

## **SEVEN**

Taking into account all of the above, the CNC Council believes the starting point for the regulatory reform must be the principle that professional practice be based on free competition and that regulation (whether general or co-regulation) should not restrict competition unless necessary for overriding reasons of public interest.

In short, reform of the regulatory framework for professional services must follow the Community case law and submit the measures aimed at safeguarding the public interest to the dual test that they are adequate for achieving the proposed objectives and do not go beyond what is strictly necessary to attain that objective.

And these principles must be applied both in new regulation and, where applicable, in an exhaustive review of the existing regulations, in an ambitious attempt to capitalise on the impetus provided by the Services Directive.

## **EIGHT**

In any event, as it has been doing until now, the CNC will continue monitoring anticompetitive practices and conducts in the professional services field that do not have a lawful base, by opening formal proceedings or by applying the new instrument conferred upon it by article 12.3 of Act 15/2007, that is, standing to challenge acts and general provisions of lower non-statutory ranking that generate obstacles to the maintenance of effective competition.



## VIII. RECOMMENDATIONS

**ONE.** The reform of the regulatory framework for professional services must not be limited to a review of the Law on Professional Colleges, as has been the case on previous occasions, but must have a broader scope and also address other regulations capable of restricting competition besides the ones arising from such colleges.

In particular, the reform must also take in the regulations of all kinds that create unjustified reservations of activity by requiring a specific formal qualification for pursuing a profession, as well as those that regulate professional conduct.

**TWO.** This reform of the regulatory framework for professional services and modernisation of Professional Colleges should be undertaken as part of an ambitious construction of the Services Directive, in which the Directive's principles are followed not just in designing the new regulatory framework of professional services but also in a review of all rules currently governing that area.

And it bears recalling here that the Services Directive affects regulation at the national, regional and local levels, so we should use the occasion to apply the Directive's regulatory principles on a coordinated basis at all those levels.

**THREE.** In establishing the principles that are to guide the regulation of professional services, once the general principle of freedom to provide services has been ratified, a top priority must be the requirement that each and every regulation demonstrates its necessity and proportionality, and that it is the alternative which generates the least distortion in terms of the effect on competition.

A clear definition of the public interest the regulation seeks to serve is the necessary starting point for assessing its justification.

This principle and the ones expounded below must be taken into account both in drafting new regulations for professional services and in rethinking and modifying the existing ones, specifically those that govern the mandatory degree and/or association membership requirement for taking up a professional activity and those that regulate the practice of the profession.

**FOUR.** In addition, there are two more general principles that have to be borne in mind in the reform of the regulatory framework for professional services.

First, the need to break the automatic linkage between a profession and a degree. Although there are some cases where the public interest may justify that a given profession only be practiced by people who hold a specific formal qualification, this should be the exception and not the general rule, so that professionals with diverse degrees can compete in the same market. Toward this end it will be useful to speak of regulation of *professional activities* and not of *professions*.

Second, the need to break with the automatic association between qualified profession and professional association. The reasons that justify the requirement for formal qualifications must not be automatically extended to the requirement for mandatory membership. It is one thing to restrict entry in the market (and thus limit competition) for public interest reasons that require the professional to have certain expertise, and quite another to require the professional, in addition to holding the requisite qualifications, to be registered in a Professional College.

**FIVE**. The objectives and functions of Professional Colleges must be redefined and delimited.

In the first place, mandatory membership must be confined to pursuing the objective of ensuring the quality of the services provided by professionals and helping to maintain pro-customer conducts by professionals, that is, the regulation must be consumer-oriented and not focused on serving the professionals. Consequently, the objectives of professional bodies must be limited to overseeing the profession with this approach, and membership must not be mandatory for other objectives relating to advocacy work for the professionals, which can be better pursued by joining voluntary associations.

Second, in that oversight of the profession the Administration must play a greater role, in particular, through use of the authority to initiate ex officio reviews of the general bylaws of professional bodies and through prior clearance of their internal codes.

Third, the current regulations have many rules that do not appear to be justified on public interest or consumer protection grounds, amongst them, the possibility of Professional Colleges issuing recommended fee scales or placing restrictions on advertising beyond those envisaged in the General Advertising Act, which the CNC Council has recently recommended be eliminated. There are other questions that also need to be reviewed, such as, for example, the purpose, content, mandatory nature, college liability and price of the project certifications issued by Professional Colleges.



## **ANNEX 1. LIST OF QUALIFIED PROFESSIONS IN SPAIN**

### **Professions of the Sectoral Directives**

Physician
Nurse responsible for general care
Odontologist
Midwife
Veterinarian
Pharmacist
Architect

**Professions of Annex I of Royal Decree 1665/1991 of 25 October 1991, which regulates the general system for recognition of higher education degrees of European Union Member States and other State(s) party to the Agreement on the European Economic Area, signed on 2 May 1992, and ratified by Spain on 26 November 1993, which require education and training of at least three years.**

<i>Legal, account and economic sector</i>
Lawyer
Insurance actuary
Industrial property rights agent
Accountant/Auditor
Junior tax adviser/accountant
Economist
Administrative manager
Employment relations specialist (graduado social)
Public pension officer
Sworn interpreter
Procurator
Tourist industry assistant
<i>Healthcare sector</i>
Speech and language therapist
Optician (dispensing optician)
Chiropodist (podiatrist)
Psychologist
Occupational therapist
<i>Technical and experimental sciences sector</i>
Junior architect
Biologist
Oenologist
Physicist
Geologist
Aeronautical engineer

Agronomist / agricultural engineer Weapons engineer Naval weapons engineer Civil engineer Electromechanical engineer Industrial engineer Mining engineer Forest engineer Marine engineer Telecommunications engineer Junior aeronautical engineer Junior agricultural engineer Forester Junior industrial engineer Mining engineering technician Marine engineering technician Junior civil engineer Electronic telecommunications engineer Land surveyor Chief engineer class I fishing vessel Marine engineering officer class I Marine engineering officer class II Ship's first radio officer, merchant marine Ship's second radio officer, merchant marine Harbour pilot Chemist
<i>Cultural sector</i>
Primary school teacher Secondary school teacher Specialised teacher of dramatic arts Art teacher Dance teacher Music teacher University lecturer
<i>Miscellaneous</i>
Social worker

**Professions of Annex IV of Royal Decree 1396/1995 of 4 August 1995, which regulates a second general system of recognition of professional training of European Union Member States and of other signatory States to the Agreement on the European Economic Area, and supplements the provisions of Royal Decree 1665/1991 of 25 October 1991**

<i>Underwater activities sector</i>
Diving instructor

Diver, 1st class Diver, 2nd class Diver, 2nd class restricted Diving instruction monitor
<i>Civil aviation sector</i>
Aircraft maintenance engineer Cabin crew
<i>Construction sector</i>
Interior designer-architect Technical designer
<i>Economic-administrative sector</i>
Customs officer/agent Marketing consultant
<i>Education sector</i>
Kindergarten/Nursery school/Preparatory school teacher
<i>Industrial sector</i>
Shotfirer Pressure vessel engineer Air conditioning, heating and ventilation technician Lift maintenance engineer /Lift contractor/Lift electrician Plumber Cooling systems technician Gas installer/repairer Nuclear technician Installer of low-voltage photovoltaic systems
<i>Merchant marine sector</i>
Ship's electrician foreman Chief ship electrician Ship electrician, 1st class Ship electrician, 2nd class Navigational watch Sailor chef Sailor electrician Sailor mechanical engineer Chief mechanic, merchant marine Mechanic, merchant marine Chief mechanic, merchant marine Engineer, 1st class, merchant marine Marine engineering officer class II Naval engine room officer Stevedore for dangerous goods Captain, merchant marine (ocean shipping) Ship's Deck officer class II / 1st mate Ship's Deck officer class 1 merchant marine Captain / Skipper (coastal shipping)

Ship's Deck officer class III / 2nd mate Ship's Radio operator, class II Ship's Radio operator, class II restricted
<i>Fishing vessels sector</i>
Fisherman sailor Coastal ship mechanics Chief mechanic, fishing vessel Engineer fishing fleet Chief engineer class I fishing vessel Engineer, 1st class, fishing fleet Second engineer class II, fishing vessel Coastal fishing vessel skipper Inshore fishing vessel skipper Local fishing vessel skipper Local fishing skipper Inshore fishing vessel second officer
<i>Healthcare sector</i>
Second-level nurse Dental hygienist Dental technician Anatomicopathological and cytological technician Dietician Medical/Biomedical laboratory technician Nuclear medicine technician Radiographer Radiotherapist Environmental health officer Prosthetist and orthotist / Orthopaedic technician /Surgical truss-maker Hearing aid dispenser / audiometric technician
<i>Road safety sector</i>
Driving school manager Driving instructor
<i>Tourism sector</i>
Tourist guide
<i>General activities sector</i>
Occupational health and safety officer
<i>Agrofood sector</i>
Vine growing specialist Wine processing technician

## ANNEX 2. PROFESSIONAL COLLEGES

		LAW / REGULATION CREATING COLLEGE	
PROFESSIONAL COLLEGE	FORMAL QUALIFICATION	SPAIN	REGION
Lawyers	University degree	Dates back to 1596. General Statute of the Law Profession was approved by Decree on 28 June 1946 and the General Bylaws of the Colleges of Lawyers of Spain was approved by the Order of 3 February 1947	
Actuaries (Institute)	University degree	Decree of 15 December 1942	
Property administrators	University degree or Degree from the Official College of Property Administrators, authorised by the Ministry of Public Works	Decree 693/1968 of 1 April 1968	
Commercial agents	School graduate	Decree 8 January 1926	
Industrial property rights agents	University degree + Exam	Royal Order Min Labour, Trade and Industry of 27 February 1927	
Real estate agents	University degree or API diploma issued by Ministry Public Works	Decree 3248/1969	
Customs officers/agents	University junior degree + Tax agency aptitude test	Royal Decree of 14 November 1922	

		LAW / REGULATION CREATING COLLEGE	
PROFESSIONAL COLLEGE	FORMAL QUALIFICATION	SPAIN	REGION
Environmentalists (degree holders in environmental sciences)	University degree		Catalonia (Law 12/2003), Valencia (Law 5/2008), Balearic Isles (Law 1/2008)
Architects	University degree	Royal Decree 27 December 1929	
Junior architects (Master builders)	University junior degree	Decree of Attributions of 16 July 1935	
Audiovisual	University degree or high school diploma		Catalonia (Law 24/2003)
Librarians-Documentalists	University junior or senior degree		Catalonia (Law 10/1985), Valencian Comm. (Law 6/2006)
Biologists	University degree	Law 75/1980	
Interior designers-architects	Higher vocational training	Decree 893/1972	
Technical designers	Higher vocational training	Decree 219/1973	
Private detectives	Qualifying licence from Ministry of the Interior		Catalonia (Law 2/1999), Valencian Comm. (Law 6/2001), Murcia (Law 4/2002); Galicia (Law 1/2008)
Dieticians-Nutritionists	University junior degree		Navarre (Law 6/2004), Aragón (Law 5/2007), Balearic Isles (Law 4/2007), Basque Country (Law 4/2008)

		LAW / REGULATION CREATING COLLEGE	
PROFESSIONAL COLLEGE	FORMAL QUALIFICATION	SPAIN	REGION
Nursing junior degree holders	University junior degree	Royal Order 28/12/1929 and Royal Order 07/05/1930	
Social workers and social assistants	University junior degree	Law 10/1982	
Graphic designers	University junior degree		Catalonia (Law 11/2003)
Doctors and Bachelors of Fine Arts (Formerly Professors of Drawing)	University degree	Decree 9 December 1955	
Doctors and Bachelors of Political Science and Sociology (Formerly D & B Political, Economic and Commercial Sciences – Politics Section)	University degree	Decree of 11 August 1953	
Doctors and Bachelors of Philosophy and Humanities and of Sciences	University degrees	The General Council was created in 1945, although there were Colleges already in existence before then	
Economists	University degree	Decree of 11 August 1953	
Social educators	University junior degree		Catalonia (Law 15/1996), Galicia (Law 1/2001), Balearic Isles (Law 8/2002), Murcia (Law 1/2003), Basque Country (Law 7/2003), Valencian Comm.

		LAW / REGULATION CREATING COLLEGE	
PROFESSIONAL COLLEGE	FORMAL QUALIFICATION	SPAIN	REGION
			(Law 15/2003), Castilla-La Mancha (Law 2/2004), Castilla y León (2/2005), Andalusia (Law 9/2005), Aragón (Law 9/2005)
Pharmacists	University degree	Order of January 1938 created General Council, but the Colleges have earlier origin	
Physicists (Doctors and Bachelors of Physics)	University degree	Law 34/1976	
Physical therapists	University junior degree		Catalonia (Law 7/1990), Canary Islands (Law 1/1996), Asturias (Law 6/1996), Murcia (Law 9/1996), Aragón (Law 5/1997), Madrid (Law 10/1997), Galicia (Law 3/1998), Andalusia (Law 8/1998), Cantabria (Law 9/1998), Valencian Comm. (Law 1/2000), Castilla y León (Law 6/2000), Balearic Isles (Law 12/2000), Basque Country (Law 1/2001), Castilla-La Mancha (Law 3/2001),



		LAW / REGULATION CREATING COLLEGE	
PROFESSIONAL COLLEGE	FORMAL QUALIFICATION	SPAIN	REGION
			Extremadura (Law 9/2001), Navarre (Law 14/2002), La Rioja (Law 2/2004)
Geographers	University degree	Law 16/1999	
Geologists	University degree	Law 73/1978	
Administrative managers	University degree + test	Decree 28 November 1933	
Tourist guides	Official enabling title		Balearic Isles (Law 5/2004)
Employment relations specialists	University degree and junior diplomas	Decree 22 December 1950	
Public pension officers	Title issued by Ministry of Finance	Decree 7 November 1944	
Dental hygienists	Higher vocational training		Madrid (Law 9/2002), Valencian Comm. (Law 8/2005), Castilla-La Mancha (Law 9/2005), Galicia (Law 11/2006)
Aeronautical engineers	Engineering	Decree 8 April 1965	
Weapons engineers	Engineering	Decree 92/1961 of 26 January 1961	
Naval weapons engineer	Engineering	Royal Decree 713/1964 of 12 March 1991	
Agronomists / agricultural engineers	Engineering	Decree 31 March 1950	
Civil engineers	Engineering	Decree 26 June 1953	

		LAW / REGULATION CREATING COLLEGE	
PROFESSIONAL COLLEGE	FORMAL QUALIFICATION	SPAIN	REGION
Electromechanical engineers	Engineering	Decree 1018/1963 of 20 April 1968	
Engineers of the Catholic Institute of Arts and Industries (ICAI)	Engineering	Decree 679/1963	
Industrial engineers	Engineering	Decree 9 April 1949	
Computer engineers	Engineering		Murcia (Law 1/1998), Basque Country (Law 3/2000), Valencian Comm. (Law 6/2000), Catalonia (Law 3/2001), Asturias (Law 5/2001), Castilla-La Mancha (Law 6/2002), Castilla y León (Law 4/2003), Balearic Isles (Law 2/2004), Andalusia (Law 11/2005), Galicia (Law 10/2006)
Mining engineers	Engineering	Decree 9 December 1955	
Forest engineers	Engineering	Decree 5 May 1954	
Marine engineers	Engineering	Decree 713/ 1967	
Chemical engineers	Engineering		Valencian Comm. (Law 9/2005), Galicia (Law 15/2007)
Telecommunications engineers	Engineering	Decree 2358/1967	

		LAW / REGULATION CREATING COLLEGE	
PROFESSIONAL COLLEGE	FORMAL QUALIFICATION	SPAIN	REGION
Junior aeronautical engineers	Technical engineering	Decree 990/1969	
Junior agriculture engineers (Formerly agricultural technicians)	Technical engineering	Order Min. Agriculture 27 November 1947	
Foresters (formerly forest specialists)	Technical engineering	Decree 927/1965	
Industrial junior engineers (formerly specialists)	Technical engineering	Decree 22 June 1956	
Computer junior engineers	Technical engineering		Murcia (Law 2/1998), Catalonia (Law 2/2001), Asturias (Law 4/2001), Castilla-La Mancha (Law 5/2002), Balearic Isles (Law 3/2004), Andalusia (Law 12/2005), Valencian Comm. (Law 7/2005), Galicia (Law 8/2006), Canary Islands (Law 7/2006)
Mining junior engineers (formerly mining and mineralogy and metallurgy factories - mining specialists)	Technical engineering	Decree 27 January 1956	
Marine engineering technicians	Technical engineering	Law 20/1977	

		LAW / REGULATION CREATING COLLEGE	
PROFESSIONAL COLLEGE	FORMAL QUALIFICATION	SPAIN	REGION
(formerly agricultural technicians)			
Junior civil engineers (formerly assistants and specialists)	Technical engineering	Decree 7 March 1958	
Telecommunications junior engineers (specialists)	Technical engineering	Decree 332/1974	
Junior surveyors	Technical engineering	Decree 290/1965	
Jewellers, goldsmiths and silversmiths, watchmakers and gemmologists;	Voc Ed or university degree or work experience		Catalonia (Law 12/2001), Cantabria (Law 2/2005), Galicia (Law 9/2006)
Degree holders in physical education and in sciences of physical activity and sports	University degree	Royal Decree 2957/1978 of 3 November 1978(Bylaws)	
Speech therapists	University junior degree		Catalonia (Law 2/1998), Valencian Comm. (Law 8/2000), Murcia (Law 6/2001), Castilla-La Mancha (Law 9/2001), Balearic Isles (Law 13/2001), Aragón (Law 2/2002), Andalusia (Law 9/2003), Cantabria (Law 3/2004), Castilla y León (Law 1/2005),

		LAW / REGULATION CREATING COLLEGE	
PROFESSIONAL COLLEGE	FORMAL QUALIFICATION	SPAIN	REGION
			Galicia (Law 3/2006), Basque Country (Law 4/2006)
Licensed insurance brokers	Title or diploma issued by Ministry of Economy and Finance	Law 29 December 1934 (formerly College of Insurance Free Agents)	
Physicians	University degree	First Bylaws 12 April 1898	
Notaries	Degree + Competitive examination	Law of Notaries of 1892, although predated by Colleges	
Odontologists and Stomatologists	University degree	Royal Order 27 May 1930	
Merchant marine officers	University graduates	Law 42/1977	
Opticians (dispensing opticians) - Optometrists (formerly opticians)	University junior degree	Decree 356/1964	
Orthopaedists	Higher vocational training		Aragón (Law 6/2007)
Pedagogues	University degree		Catalonia (Law 14/2001), Balearic Isles (Law 15/2001), Valencia (Law 3/2007)
Journalists	University degree		Catalonia (Law 22/1985 and Law 1/1988), Galicia (Law 2/1999), Murcia (Law

		LAW / REGULATION CREATING COLLEGE	
PROFESSIONAL COLLEGE	FORMAL QUALIFICATION	SPAIN	REGION
			5/2007)
Commercial aviation pilots	Title equivalent to university junior degree	Law 35/1998	
Chiropodists	University junior degree		Catalonia (Law 3/1989), Canary Islands (Law 9/1992), Asturias (Law 7/1996), Murcia (Law 10/1996), Galicia (Law 12/1996), La Rioja (Law 2/1997), Aragón (Law 6/1997), Madrid (Law 9/1997), Basque Country (Law 19/1997), Extremadura (Law 5/1998), Cantabria (Law 8/1998), Andalusia (Law 9/1998), Valencian Comm. (Law 2/1999), Castilla y León (Law 2/2000), Castilla-La Mancha (Law 6/2000), Balearic Isles (Law 3/2001), Navarre (Law 13/2002)
Harbour pilots	Title of harbour pilot issued by competent authority	Law 42/2002	
Court procurators (procuradores)	University degree	As from Organic Act on the Judiciary of 1870	

		LAW / REGULATION CREATING COLLEGE	
PROFESSIONAL COLLEGE	FORMAL QUALIFICATION	SPAIN	REGION
Dental technicians	Higher vocational training		Catalonia (Law 4/1989), Asturias (Law 5/1996), Cantabria (Law 2/1998), Galicia (Law 4/1998), Andalusia (Law 7/1998), La Rioja (Law 2/1999), Balearic Isles (Law 3/1999), Madrid (Law 14/1999), Extremadura (Law 1/2000), Valencian Comm. (Law 2/2000), Castilla y León (Law 5/2000), Castilla-La Mancha (Law 5/2000), Aragón (Law 6/2000), Murcia (Law 2/2001), Canary Islands (Law 3/2002 and Law 4/2002), Navarre (Law 5/2003)
Psychologists	University degree	Law 43/1979	
Advertising and public relations specialists	University degree		Catalonia (Law 12/1998), Valencian Comm. (Law 5/2001), Balearic Isles (Law 13/2006)
Chemists (former Doctors and Bachelors of Chemical Sciences and Physics-	University degree	Decree of 9 March 1951	

		LAW / REGULATION CREATING COLLEGE	
PROFESSIONAL COLLEGE	FORMAL QUALIFICATION	SPAIN	REGION
Chemistry)			
Land registrars	University degree + Competitive examination	Decree 14 February 1947	
Clerks, inspectors and treasurers of local administration	Civil servants in local administration with qualification	Royal Decree of 8 September 1925	
Tourist industry assistant	University junior degree and other titles		Catalonia (Law 6/1991), Canary Islands (Law 2/1996)
Senior healthcare technicians	Higher vocational training		Valencia (Law 4/2008)
Senior specialist in diagnostic imaging	Higher vocational training		Extremadura (Law 4/2007)
Occupational therapists	University junior degree		Aragón (Law 11/2001), Navarre (Law 1/2005), Balearic Isles (Law 5/2006), Extremadura (4/2006)
Tax and business advisers	University degree	Decree of 15 December 1942 (creation of the Council)	
Veterinarians	University degree	General Instruction of Public Health of 1904	



**ANNEX 3. REGULATION OF ENTRY INTO THE PROFESSION. Example of a law creating a professional association**

**Act 75/1980 of 26 December 1980 creating the Official College of Biologists**

Article One

The Official College of Biologists is hereby created, as a corporation under public law, with its own legal personality and full capacity to pursue its purposes subject to the law.

Article Two

In the event there exist several colleges of biologists, a general council of such associations must be established.

Article Three.

The Official College of Biologists will group together holders of doctorates and university degrees in the biological sciences. Membership will be a mandatory condition to pursue the profession of biologist.

Article Four

The Official College of Biologists may also be joined by holders of degrees and doctorates in the natural sciences who belong to the associations of bachelors of biology, or who belong to the professional biologist sections of the Official Colleges of Doctors and Bachelors of Philosophy and Humanities and of Sciences, and those who, though not members of those entities, comply with the requirements established by regulation and display ongoing engagement in biology.

Article Five

The College will deal with the State Administration through the Ministry of Universities and Research or the ministry determined by the Government by regulation.

The territorial colleges, where such exist, shall deal directly with the Administration of their Autonomous Communities, without prejudice to their participation in the General Council.

**TRANSITIONAL PROVISION ONE**

The Ministry of Universities and Research, after hearing the associations of bachelors of biological sciences, and of the professional sections of biologists of the Official Colleges of Doctors and Bachelors of Philosophy and Humanities and of Sciences, shall approve the provisional bylaws of the College, which will regulate, in accordance with the law, the requirements for acquiring membership status and attendant right to participate in electing the governing bodies, the procedure and time frame for calling those elections, as well as the constitution of the elected governing bodies.

#### TRANSITIONAL PROVISION TWO

After the college's governing bodies have been constituted, in accordance with the preceding provision, they will submit to the Ministry of Universities and Research, within six months, the bylaws referred to by the legislation on professional colleges.

#### FINAL PROVISION ONE

The Ministry of Universities and Research is authorised to issue the provisions needed to implement this Act.

#### FINAL PROVISION TWO

The provisions of this Act are without prejudice to the provisions of the Statutes of Devolution (Estatutos de Autonomía) of the Autonomous Communities.

**ANNEX 4. REGULATION OF ENTRY INTO THE PROFESSION. Some examples of sectoral or specific regulations**

**Act 34/2006 of 30 October 2006 on entry into the professions of Lawyer and Court Procurator**

*The right to obtain the professional title of lawyer or professional title of court procurator (procurador) will be held by persons who hold the university degree of bachelor of law, or the degree of the level that replaces it according to the provisions of article 88 of Organic Act 6/2001 of 21 December 2001 on Universities and its implementing regulations, and who evidence their professional qualification by completing the relevant specialised education and training and evaluation regulated by this Act.*

**Building Regulatory Act 38/1999 of 5 November 1999**

*Article 12. Works manager.*

*1. The works manager is the agent who, as part of the executive works management, directs the pursuit of the work in the technical, aesthetic, urban planning and environmental aspects, in accordance with the relevant project plans, the building licences and other prescribed authorisations and contract terms, with the aim of ensuring it complies with the proposed object.*

*2. Partial project works may be directed by other technical specialists, under the coordination of the works manager.*

*3. The works manager has the following obligations:*

*Hold the academic and professional title that qualifies him as architect, junior architect, engineer or junior engineers, as relevant, and fulfil the requisite conditions for pursuing the profession. In the case of legal persons, appoint a works technical manager with qualifying professional title.*

*In the case of construction of buildings for the uses indicated in group a) of section 1 of article 2, the qualifying academic and professional title will be that of architect.*

*When the work to be done involves construction of the buildings indicated in group b) of section 1 of article 2, the enabling title, as a general rule, will be that of engineer, junior engineer or architect and will be determined by the legal provisions regulating each provision, in accordance with their specialties and specific competences.*

*When the work to be done involves construction of the buildings indicated in group c) of section 1 of article 2, the enabling title, as a general rule, will be that of architect, junior architect, engineer or junior engineer and will be determined by the legal provisions regulating each provision, in accordance with their specialties and specific competences.*

*The same criteria shall be followed with respect to the works referred to by sections 2.b) and 2.c) of article 2 of this Act.*

### **Decree of 18 September 1935. Industrial engineers**

#### *Article 1*

*The degree of Industrial Engineer of the State Civil Schools confers upon its holder full capacity to design, execute and direct all types of installations and operating projects that all within the technical chemical, mechanical and electrical industry area of the industrial economy (including the following):*

#### **a) STEEL, IRON AND METALLURGY INDUSTRY IN GENERAL**

*Inorganic-chemical and organic-chemical processing.*

*Food and clothing industries.*

*Dyeing, tanning and ceramic arts.*

*Fibre industries.*

*Manufacture or processing of natural, animal and vegetable products*

*Silicon industries.*

*Graphic arts.*

*Carbon hydrogenation.*

#### **b) METAL, MECHANICAL AND ELECTRICAL CONSTRUCTION INDUSTRIES; INCLUDING PRECISION INDUSTRIES**

*Hydraulic and civil works.*

*Stream and maritime flood control.*

*Railroads, tramways, air transport and ancillary works.*

*Automobile and aerotechnical industries.*

*Shipyards and workshops.*

*Dry docks and dikes.*

*Cinematic industries.*

*Heating, cooling, ventilation, lighting and sanitation.*

*Public water development and use for supplies, irrigation and industry.*

*Industries relating to civil defence.*

**c) GENERATION, TRANSFORMATION AND USE OF ELECTRICAL ENERGY IN ALL ITS FORMS**

*Remote communications and, in general, everything covered by telecommunications, including acoustic, optic and radioelectric industries and applications.*

**Decree of 1 February 1946, regulating functions inherent in the Title of Aeronautical Engineer**

*The Royal Decree of 21 September 1928 created the Higher School of Aerotechnique, with authority to award the degree title of Aeronautical Engineer to individuals who successfully completed its study programmes.*

*Some of the provisions currently in force have been defining the functions inherent in this title, whose specialisation is clear and evident given that it is pursued in a medium, namely the air, that is strongly differentiated from others.*

*Now, the ever closer interconnection between the diverse activities involved as a result of the development of aeronautics technique, which has generated completely new industries, and the well-known importance and responsibility of its mission, counsels that the competence and authority carried by the title of Aeronautical Engineer be determined and specified.*

*Article two. As genuine functions of aeronautic technique, the title of Aeronautical Engineer is the only one that authorises its holder to carry on the following missions:*

*a) Design, examination, technical-experimental testing on land, at sea and in the air of models and prototypes of aerial material destined for the State or public services, such material including aircrafts, engines and any means of propulsion and air transport.*

*b) Management, organisation and execution of official experimental facilities for investigating the said aerial material, as well as information and standardisation relating thereof, all in collaboration with the parties deemed appropriate.*

*c) Technical advising and reporting on aerial material to authorities and official and private entities that so request.*

*d) The issuance of certificates of airworthiness, inspection and periodic or extraordinary reviews of specifically aeronautical material, as well as all types of expert assessments conducted thereon and regardless of the reason for their execution.*

e) *The inspection of manufacturing facilities in industries whose fundamental activities are dedicated to construction and repair of aerial material or manufacture of their components on an official basis.*

f) *The technical management and performance of functions and jobs of a genuinely aeronautical technical nature in official or subsidised industrial facilities, fundamentally dedicated to the construction, maintenance or repair of aerial material of all classes.*

g) *Overall technical design and of the special facilities considered essential, as well as the related inspection, all in relation to material for airlines, airports and aerodromes of all categories, including runways and departure and arrival devices, infrastructure works, signalling facilities, lighting, communications and other ancillary services for the foregoing.*

h) *Overall technical design in relation to installations of networks, components and services for flight protection, as well as the related inspection.*

i) *Management of technical instruction relating to the materials within the competence of the aeronautical engineer and training and instruction of auxiliary technical staff.*

*Holders of the title of Aeronautical Engineer are recognised to have legal capacity, on the terms enjoyed by other engineering specialities, to execute project plans of all types, reports, assessments, work, etc., that are not attributed exclusively to other engineering branches.*

### **Act on Auditing of Accounts 19/1988 of 12 July 1988**

#### *Article 6*

*1. The activity of auditing accounts may be carried on by the natural or legal persons who, having met the requirements referred to in the following articles, are on record as registered in the Official Register of Auditors of Accounts (Registro Oficial de Auditores de Cuentas) of the Institute of Accounting and Accounts Auditing (Instituto de Contabilidad y Auditoría de Cuentas — ICAC).*

#### *Article 7*

*1. To be registered in the Official Register of Auditors of Accounts the persons concerned must:*

*Be of legal age.*

*Be a national of Spain or of a Member State of the European Community, without prejudice to what is provided by the regulations on the freedom of establishment.*

*Not have a record of criminal offences.*

*Have obtained the relevant authorisation from the ICAC.*

*2. The authorisation referred to by the preceding paragraph shall be granted to the persons who have:*

*Earned a university degree.*

*Followed a programme of technical instruction and acquired practical training.*

*Passed a professional aptitude test organised and recognised by the State.*

*3. The practical training must last at least three years of work in the finance and accounting area, and will specifically involve annual accounts, consolidated accounts or similar financial statements.*

*4. The professional aptitude test for rigorous verification of the candidate's competence to audit accounts must comply with the conditions and cover the matters referred to by articles 5 and 6 of the Eighth European Communities Council Directive of 10 April 1984 based on Article 54 (3) (g) of the EEC Treaty on the approval of persons responsible for carrying out the statutory audits of accounting documents (84/253/EEC).*

*Persons holding full university, engineering, business profession, architect or junior university degrees will be exempted in the professional aptitude test from those subjects they have successfully completed in the requisite programme of studies for attaining the said titles.*

*5. The aptitude tests will be done using the single-call system, at the joint proposal of the associations representing accounting auditors referred to by article 5 of this Act, and subsidiarily by the ICAC, upon prior approval by the latter of the respective call, which will be published in the form of an Order of the Ministry of Economy. Successful completion of the tests will allow the person to join the associations representing accounting auditors, in relation to performance of the audit function, without prejudice to the specific requirements which may be stipulated in the bylaws of each association.*

*Regulations will be issued establishing the rules for approving the content of the programmes, frequency, composition of the tribunal, which must include at least one member of the associations representing accounting auditors, and the practical training period.*

6. Registration in the Official Register of Auditors of Accounts may be obtained by those who, fulfilling the requirements laid down in this article, except for what is provided in 2(a), have completed the studies or earned the degrees that enable them to enter the university and acquired the practical training indicated in section 3 above, with a minimum period of eight years in work conducted in the finance and accounting fields, specifically involving audits of annual accounts, consolidated accounts and similar financial statements, at least five years of which have been done with a person authorised to audit accounts in the pursuit of that activity.

7. To compute the period of practical training acquired prior to the entry into force of this Act, the following will be considered authorised persons for the purposes of what is provided in paragraph 6 above: practicing members of the Instituto de Censores Jurados de Cuentas (Institute of Chartered Examiners of Accounts), of the Register of Economist Auditors belonging to the General Council of Colleges of Economists of Spain, and of the General Register of Auditors belonging to the Higher Council of Official Colleges of Tax Advisers/Accountant of Spain (Consejo Superior de Colegios Oficiales de Titulares Mercantiles de España).

8. There may be registered in the Official Register of Auditors of Accounts (Registro Oficial de Auditores de Cuentas) civil servants who belong to the corps whose training and functions involve auditing public sector accounts, or who examine or evaluate the financial position and net assets and the actions of financial institutions or of insurance companies, where they meet the requirements for registration in the Official Register of Auditors of Accounts laid down in article 7 of this Act.

The requirement regarding pursuit of theoretical instruction programmes and the one on passing the professional aptitude test, established in paragraphs b and c of article 7.2 of this Act, will be deemed to have been fulfilled by successful completion of the competitive examination or the tests established for becoming a member in the relevant corps.

The practical training requirement established in paragraph b of article 7.2 of this Act will likewise be considered fulfilled through the effective performance of audit work on annual accounts, consolidated accounts or similar financial statements in the public sector, of financial institutions or of insurance companies for a minimum period of three years, certified by an auditor registered in the Official Register of Auditors of Accounts.

**Act 10/2005 of 14 June 2005 on Urgent Measures to Promote Digital Terrestrial Television, to Deregulate Cable Television and Foment More Choice**



*Article five.*

*As from ....., no authorisation for construction or complete refurbishment will be granted for any building of those referred to by article 2, unless the related architectural designs are accompanied by the a plan for installation of own collective infrastructure, which must be signed by a telecommunications engineer or telecommunications technical specialist. The said professionals will likewise be the ones who certify the works. The infrastructure must comply with the appropriate technical conditions to perform at least the functions indicated in article 1.2 of this Royal Decree Law, without prejudice to those that may be determined by the regulations issued from time to time to implement it.*

**Royal Decree 944/2005 of 29 July 2005 approving the National Technical Plan for Digital Terrestrial Television**

*ADDITIONAL PROVISION TWELVE. Local initiative in extending coverage.*

*The competent bodies of local corporations, in collaboration, where applicable, with the Autonomous Communities, may decide to install in areas of their townships with low population density single-frequency network stations for purposes of broadcast to their citizens of the digital terrestrial television service, provided the following conditions are met:*

- f) Submit at the competent Provincial Head Office for Telecommunications Inspection, through the relevant autonomous community, the technical project design for the facilities and, subsequently, a certificate attesting that the installation has been performed according to the technical design, both signed by an telecommunications<sup>33</sup> engineer or junior engineer and certified by the relevant official college. Also, there must be presented the certificate of installation signed by the telecommunications installer company that performed the installation.*

**Organic Act 2/2006 of 3 May 2006 on Education**

*Article 94*

<sup>33</sup> Deleted pursuant to the 19 October 2007 judgment of the Third Chamber of the Spanish Supreme Court (published in BOE of 21 January 2008).

*In order to teach classes of compulsory secondary education and baccalaureate it will be required to hold a university, engineer or architecture degree, or the equivalent degree title, in addition to pedagogical and didactic training at the postgraduate level, according to the provisions of article 100 of this Act, without prejudice to qualification by other degrees and titles which the Government may establish for certain areas for teaching purposes, upon prior consultation with the Autonomous Communities.*

**Spanish Act 50/1998 of 30 December 1998 on Fiscal, Administrative and Social Policy Measures.**

*Article 102. Regulation of the professions of Oenologist, Vine Growing Specialist and Wine Processing Technician.*

*One. This Act regulates the profession of Oenologist, which will require the university degree of Oenology established by Royal Decree 1845/1996 of 26 July 1996.*

*Oenologist have professional capacity to carry on the group of activities relating to the methods and techniques for growing vines and making wine, grape juice and other grape derivative products, analysis of the products made and their storage, handling and conservation. They are also recognised to have capacity to pursue activities relating to the technical health conditions of the wine making process and to the laws governing the sector and activities involving research and innovation in the vine growing, wine making and oenology fields.*

**Act 12/1986 of 1 April 1986 on the regulation of the professional attributions of junior engineers and architects**

*Article 1*

*1. Junior engineers and architects, after complying with the requirements laid down by law, will have full capacity and powers for pursuit of their profession within their respective field of technical specialisation.*

*2. For the purposes provided for in this Act, a speciality is considered to be each of the ones listed in Decree 148/1969 of 13 February 1969, which regulates the names of graduates from Technical Schools and the specialities to be studied in the School of Architects and Technical Engineering.*

*Article 2*

*1. Junior (technical) engineers, within their respective speciality, have the following professional attributions:*

*Drafting and signing project plans for construction, reform, repair, conservation, demolition, manufacture, installation, assembly or operation of movable or immovable property, in their respective cases, both on a principal or accessory basis, provided they are by their nature and characteristics included within the technical area proper to each degree.*

*The management of the activities entailed by the projects referred to by the preceding paragraph, including where the project plans have been done by a third party.*

*Performance of measurements, calculations, assessments, appraisals, expert evaluations, studies, reports, work plans and other similar tasks.*

*Teaching at different levels in the cases and terms provided in the relevant regulations and, in particular, in accordance with Organic Act 11/1983 of 25 August 1983 on University Reform.*

*Management of all types of industries and operations and pursuit, in general in relation to them, the activities referred to in the preceding paragraphs.*

*2. Junior architects have all of the professional attributions described in section 1 of this article in relation to their speciality in the execution of works, subject to the provisions of the laws governing the building sector.*

*The authority to design projects described in paragraph a) refers to all types of works and construction which, in accordance with the aforesaid legislation, do not require an architectural design, to the partial interventions in existing buildings that do not alter their architectural configuration, to demolition work and to the organisation, security, control and economy of building works of any nature.*

*4. In addition to what is provided in the first three sections of this article, junior architects and engineers will also have those other rights and professional attributions that are recognised in the prevailing legal provisions, as well as the ones recognised in the related regulatory provisions for the former categories of specialists, master builders, technical supervisors and engineer assistants.*

*The professional attributions recognised in this Act for junior architects and engineers will also rest with the categories of specialists, master builders, technical supervisors and engineer assistants, provided they have entered or enter the relevant technical speciality of architecture or engineering in accordance with the regulations governing the use of the new titles.*

*Article 3*

*Exercise of the attributions referred to by this Act will in all events comply with the requirements arising from the applicable European Community Directives.*

*Article 4*

*When the professional activities included in the above articles refer to matters relating to more than one technical architecture or engineering speciality, intervention will be required by the holder of the title in the speciality which, by the nature of the question, have prevalence over the others. If none of the activities involved has prevalence over the rest, intervention will be required by as many qualified specialists as there are specialities, with the liability thus resting with all of them.*

**Civil Procedure Act 1/2000 of 7 January 2000**

*Article 23. Intervention of court procurator*

*1. The appearance in trial will be done in the person of the procurator (procurador) who must hold a degree in law and be legally qualified to act before the court hearing the case.*

**ANNEX 5. REGULATION OF ENTRY INTO THE PROFESSION. Some examples of the public interest justification**

**Regulation of the profession of Interior Designer. Decree 902/1977**

*Decree eight hundred ninety-three thousand nine hundred seventy-two, of the twenty-fourth of March, created the National Syndicated College of Interior Designers for the purpose of channelling this professional activity organically, laying down as requirement for its legal pursuit, that the individual hold the appropriate qualification and necessarily join the college, at the same time giving the profession a corporate body to officially represent it, safeguarding and advocating its interests. The said Decree, which in article five develops the general powers that rest with the College, did not establish, however, a concrete delimitation of the attributions of interior design professionals. That regulatory gap must therefore be filled in, taking into account both the very nature of the profession and the level of knowledge officially required for the related degree. This Royal Decree serves that end and seeks to culminate the process of institutionalising the profession of interior designer.*

**Law 5/2008 of 15 May 2008 of the Government of the Valencian Community, creating the Professional College of Environmentalists of the Valencian Community**

*Statement of purpose*

*Article 45 of the Spanish Constitution provides that all persons have the right to enjoy an environment suitable for personal development, and the duty to conserve it; and the social interest in conserving the environment has steadily increased since the promulgation of the Magna Carta.*

*This legal and social context underscores the advisability of creating the Professional College of Degree Holders in Environmental Sciences of the Valencian Community. The territorial scope of the College will be the Valencian Community. (...)*

*The lack of regulation regarding environmental sciences likewise underscores the advisability that the oversight of the profession's pursuit be planned and regulated, establishing an entity that represents the profession vis-à-vis public authorities, with capacity to advocate and defend its interests, and that it be the professionals themselves who take responsibility for defining the rules to be observed in pursuit of this activity. The above is without prejudice to the recent case-law trend contrary to the establishment of professional monopolies, recognising the existence of competition between diverse professions.*

*The creation of the Professional College of Degree Holders in Environmental Sciences of the Valencian Community, from the public interest standpoint, responds to the need to regulate the tasks to be performed by the interested professionals, in relation to the areas of environmental management, land use planning, and environmental sciences or techniques of social and public interest impact because they involve constitutional values such as the right to enjoy an environment suitable for personal development and the duty to conserve it, laid down in article 45 of the Spanish Constitution; as well as the oversight and planning of professional practice through the establishment of deontological standards.*

**Regulation of the professions of Oenologist, Vine Growing Specialist and Wine Processing Technician: Spanish Act 50/1998 of 30 December 2003 on Fiscal, Administrative and Social Policy Measures.**

There is no mention in the Statement of Purpose.

**Law 6/2007 of 17 December 2007 creating the Professional College of Orthopaedists of Aragón**

*Statement of Purpose*

*The Association of Orthopaedists of Aragón has requested the creation of the Professional College of Orthopaedists of Aragón, with the support of the accredited majority of the interested professionals and finding that creation of that college is in the public interest, because the autonomous community must ensure, to the extent of its authority, pursuit of the professions and professional activities governed by professional colleges in the territory of Aragón in accordance with the applicable legal provisions.*

**Act 42/2002 of 14 November 2002 on the creation of the College of Harbour Pilots**

*Statement of Purpose*

*The promulgation of Act 27/1992 of 24 November 1992 on Ports of the State and of the Merchant Marine has marked a radical change in relation to the structure of harbour pilotage, defining it as a port service owned by the port authorities, while depositing in the maritime administration the powers for its regulation for reasons of maritime security.*

*Harbour pilots are currently a group of professional with sufficient identifying traits and common interests and whose legitimate aspirations to have their own association deserve to be heeded through the appropriate legal channel. In this regard, the Federation of Harbour Pilots of Spain has requested the creation of a National Official College of Harbour Pilots attached to the Ministry of Public Works.*

*Furthermore, there is no lack of public interest reasons to justify creation of the Official College of Harbour Pilots, as it can very effectively contribute to improving the provision of the harbour pilotage service and serve as a qualified body to participate in the procedures for drafting the rules that can generally affect that service.*

*Consequently, it appears appropriate to create an Official College of national scope which, without prejudice to the powers in this area that constitutionally rest with the Autonomous Communities, seeks to serve the aforesaid ends and fills in this long-felt gap in the profession's practice.*

#### **Decree of 18 September 1935. Industrial engineers**

*The industrial engineer degree programme undoubtedly constitutes one of the official education branches that has fully responded to the aim with which it was conceived; The unique characteristics of our country's industrial problem demanded that engineers be trained with a broad scientific base that while permitting specialisation in each of the diverse modes of major industry, would also provide our medium-size industry with managers knowledgeable in chemical, mechanical and electrical questions. The progress of Spanish industry and its nearly complete redemption from foreign technical direction are the best demonstration of the excellent work carried out by industrial engineers.*

*But it must be acknowledged that if the State zealously safeguarded the greater prestige and efficiency of this area of education, it overlooked regulating the free practice of the profession and giving a precise definition of the powers inherent in the degree-title of industrial engineer. Since its creation in 1850, it may be said that the officially recognised attributions conferred upon industrial engineers appear to be disseminated in a large number of regulations, isolated and without the requisite coordination, which, combined with the growing complexity of administrative organisation and increasing state intervention, has led to faulty interpretations and even the denial of some of those attributions, provoking conflicts that on one occasion had to be decided in its favour by the nation's highest courts.*

*This Decree aims to fill that void, in the good understanding that specifying the*

*professional attributions of industrial engineers involves nothing but coordinating and summarising the ones already recognised as a result of the study programmes and of the special mission entrusted to them.*



**ANNEX 6. REGULATION OF PRACTICE OF THE PROFESSION. Some example of rules of professional associations: By-laws and Deontological Codes**

**Psychologists. Deontological Code**

*Article 55*

*The psychologist will abstain from accepting terms of economic compensation that imply devaluing the profession or unfair competition.*

*Article 58*

*The Official College of Psychologists may prepare guidelines on minimum fees for professional services according to their nature, duration and other characteristics of each service in the practice of psychology.*

*Article 59*

*Receipt of the compensation and fees is not conditional on success of the treatment or on achievement of a specific result of the psychologist's actions.*

**Psychologists. Deontological Code**

*Article 50*

*Advertising of the services offered by the psychologist shall be done concisely, specifying the title that qualifies the psychologist to practice the profession and his or her college membership status, and, if applicable, the areas of work or techniques used. In no event will the advertising indicate the fees or any type of guarantees or statements regarding his or her professional merit, competence or success. All advertising must include a proper professional identification of the advertiser.*

**Lawyers. Deontological Code**

*1. The lawyer must not engage in unfair recruitment of clients.*

*2. Acts of unfair competition are all those acts that contravene national and regional legal provisions protecting fair competition, especially the following:*

*a) Use of direct and indirect advertising procedures contrary to the provisions of the General Advertising Act, and the specific norms on*

*advertising contained in this Deontological Code and other complementary provisions.*

*b) All practices aimed at direct or indirect development of clients that are contrary to the dignity of persons or to the social function of the law profession.*

*c) Use of third parties as means for eluding the deontological obligations. The party considered responsible will be the lawyer or lawyers favoured by such advertising in the event of violation of article 28.3 of the General Bylaws of the Spanish Law Profession unless they demonstrate their complete lack of involvement and immediate cancellation of the professional assignment on learning thereof.*

*d) Receipt or payment of consideration in violation of the legal rules on competition and the provisions of this Deontological Code.*

*e) Breach of articles 15 and 16 of this Code and/or provision of free services that imply selling at a loss on the terms established in article 17 of the Unfair Competition Act.*

### **Private detectives, Valencian Community. Internal Regulations**

#### *Article 27*

*The reports of private detectives who practice the profession in the Valencian Community must be certified (visado). All reports destined to be submitted in a judicial proceeding within the territory of the Valencian Community must be presented with the appropriate college certification (visado) in order to be valid as documentary evidence.*

### **Industrial engineers. Deontological Code**

*They shall not make value judgments or comparisons that harm the reputation of their competitors, except in cases demanded by conscience and with the appropriate discretion.*

### **Physical therapists. Deontological Code**

*Article 29.- The College disapproves the creation of professional groups in which one of its members could be exploited by other members.*

### **Physical therapists. Deontological Code**

*Article 59.- Advertising (...) In no event will the advertising indicate the fees or any type of guarantees or statements regarding professional merit, competence or success.*

### **Physical therapists. Deontological Code**

*Article 63.- The physical therapists must abstain from accepting terms of economic compensation that imply devaluing the profession or unfair competition.*

### **Economists. Deontological Code**

#### **7. ON FEES**

##### *7.1. Right to receive fees*

*Economists are entitled to economic compensation or fees for their professional services and to be reimbursed for the expenses they incur.*

##### *7.2. Amount of the fees*

*Economists may adjust the amount of their fees on the basis of the fee scale guidance established by their College.*

##### *7.3. Criteria for setting fees*

*Fees may be established on the overall basis of:*

- a) Time dedicated.*
- b) Economic interest of the matter.*
- c) The non-economic significance of the matter for the client and its social implications.*
- d) The time limits imposed on the assignment received.*
- e) The difficulty of the work, taking into account the facts, persons, documentation and complexity.*
- f) The need for and distance involved in travel away from their offices.*

##### *7.4. Compensation through prices/time unit*

*Economists may also set their fees based on time employed, composition and qualifications of the professionals engaged, according to the scales recommended by the Colleges for their prices per unit time.*

##### *7.5. Compensation through periodic fixed sums*

*The compensation for professional services may consist of a periodic fixed sum; provide the amount thereof is adequate compensation for the services and in line with the college rules.*

## **Commercial agents. Deontological Code**

### *Title IV: Relations with the competition*

*Article 25. Cause no deliberate harm to the reputation, good name and image of their competitors, whether other agents or professional peers.*

*Article 26. The formation of the clientele must be based on professional capabilities, good repute, and qualities of the product or service.*

*Article 35. Commercial agents shall not make any arrangements to displace a colleague or remove him or her from any professional engagement, although they conserve the right to present proposals in the College, in the manner established by regulation, that could lead to such outcome.*

*Article 37. Abstain from interfering in the relations between any of their colleagues and their principals, and most especially if that interference involves winning away the agency, and make sure before requesting or accepting any agency that the previous relations with other colleagues were resolved satisfactorily and in full compliance with the pending obligations.*

## **Court procurators. General Bylaws**

### *On guarantees*

#### *Article 47. Amount*

*1. Procurators, before beginning to discharge their functions, will make a security deposit at the disposal of the relevant judicial authority as guarantee of their professional actions. The deposit will be made according to the following scale:*

- a) To act in Madrid and Barcelona, 450 euros.*
- b) To act in other towns where there are High Courts of Justice, 240 euros.*
- c) To act in other towns where there are Sections of the Provincial Appellate Court (Audiencia Provincial), 150 euros.*
- d) To act in other towns where there are Courts of First Instance, 120 euros.*

*2. The Plenum of the General Council of Court Procurators, after hearing the Councils of the Colleges of the Autonomous Communities and the Colleges of Procurators, may increase the amounts of the guarantees, where so authorised by the Ministry of Justice.*

### **Court procurators. Regulation of advertising**

*Article 5.*

*Advertising must not be:*

- a) Illicit, unfair, subliminal, erroneous or misleading.*
- b) Expressive of persuasive content of an ideological nature, of self-praise or comparison, nor make reference to the price or cost of the professional services, nor promise results or induce the public to believe those results will be achieved or that, if they are not, the stipulated fees will not be charged.*

### **Court procurators. General Bylaws**

*Article 13. Practice in a defined territory*

*1. Practice of the procurator profession is territorial. Procurators may only be authorised to practice their profession in the territory covered by their Professional College. Territorial demarcations will be determined by the judicial district territorial criteria. A territory may include one or several judicial districts, even though the corresponding College covers several of them.*

*2. Qualification in the territory where the procurator will practice the profession authorises the procurator to appear before all judicial bodies based there.*

*3. When a regulation creates or modifies the geographic scope of one or more judicial districts or territorial demarcation, it will be the responsibility of the General Assembly of the affected College or Colleges, at the proposal of the respective Board of Governors, to decide the boundaries and characteristics of the new demarcation. Such decision shall be submitted to the Council of Colleges of the Autonomous Community and, by the latter, to the General Council or, otherwise, directly to the latter, so that one or the other can assess the appropriateness of the decision in light of the applicable laws.*

*The General Council will report all of the above to the competent authorities.*

**ANNEX 7. REGULATION OF PRACTICE OF THE PROFESSION. Some examples of sectoral or general regulations**

**Law 7/2006 of 31 May 2006 of Catalonia on the practice of qualified professions and on professional colleges**

*Article 9. Insurance.*

- 1. Qualified professionals have the obligation to contract insurance to cover the liability to which they may be exposed due to pursuit of their profession.*
- 2. In the case of self-regulated professions, the relevant professional colleges must adopt the necessary measures to promote and facilitate sufficient fulfilment of the insurance duty by their members.*
- 3. Professionals who act solely in the service of a public administration need not comply with the liability insurance requirement. Nor shall such insurance be mandatory if the professional activity is carried on exclusively for the account of another person who already has insurance coverage for the risks of the activity entailed by the pursuit of the profession.*
- 4. The provisions of this article shall be implemented by regulation according to the specific characteristics of each qualified profession and their professional association or college, with the participation, where applicable, of those professional colleges and associations.*

**Act 2/2007 of 15 March 2007 on professional companies**

*Article 3. Multidisciplinary companies.*

*Professional companies may pursue various professional activities provided their practice thereof is not considered incompatible by a rule of statutory or regulatory ranking.*

*Article 4. Composition.*

- 1. Professional partners in such companies are:*

*The natural persons who meet the requirements to carry on the professional activity that constitutes the company's registered corporate object and who practice that profession in the company.*

*The professional companies duly registered in the respective professional colleges which are duly formed according to the terms of this Act and hold an ownership interest in another professional company.*

- 2. Three fourths of the capital and of the voting rights, or three fourths of the*

*net assets and of the number of members of the non-capitalist companies must belong to professional partners.*

*3. Three fourths of the members of the governing bodies, where such exist, of professional companies must likewise be professional partners. If the governing body consists of a single person, or if there are managing directors, those functions must necessarily be performed by a professional partner.*

*4. Persons disqualified from practicing the profession or professions that constitute the registered corporate objects cannot be professional partners; nor can those barred from such practice by a court order or decision of a competent organisation.*

*5. These requirements must be complied with throughout the entire life of the professional company, and supervening breach thereof will be grounds for mandatory dissolution, unless the situation is normalised within a maximum of three months after the time the breach occurred.*

*6. Professional partners may only appoint other professional partners to act as their representative in the company bodies.*

### **Notary Regulations, approved by the Decree of 2 June 1944**

#### *Article 71*

*As a consequence of the notary's status as public functionary and of the nature of the notarial public function, advertising of the notary office and of its proprietor must preferably be done through the websites of the Notary Colleges and of the General Council of Notaries Public.*

*Toward that end, the Notary Colleges will maintain an up-to-date list of the notaries in the geographic area covered by the College available on their website. For the purposes of identifying the notary and the location of his or her notary office, those websites will contain the full name of the notary, his or photograph if the notary so requests, and the address, electronic mail and telephone and fax numbers of the notary office.*

*In no instance may notaries advertise directly or indirectly as successors of the owner of the same notary office.*

*Also, the premises where the notary office is located may be advertised by a plaque, the shape and dimensions of which may be regulated by the Executive Boards.*

**Notary Regulations, approved by the Decree of 2 June 1944**

**CHAPTER III. ON INCOMPATIBILITIES.**

*Article 138.*

*In no one town may there be two notaries united in marriage or in a similar relationship or related within the fourth civil degree of consanguinity or second degree of affinity, unless the same location is also served by at least one notary office of notaries unrelated to the former.*

*Nor will be the office of notary be compatible in the same notarial district with that of judge of first instance or Land Registrar in the same notarial district, if they are held by relatives of the former within the second degree of consanguinity or affinity, unless there occurs the exception mentioned in the preceding paragraph.*

*When the incompatibility due to family relation arises as a result of a new demarcation, the provisions of the preceding paragraphs shall not apply. If such incompatibility arises for any other reason, the Executive Board, upon holding an enquiry in which the affected notaries and the rest of the notaries in the location will be heard, will make a decision on the basis of the circumstances of the case.*

**Royal Decree 1373/2003 of 7 November 2003, approving the schedule of fees of Court Procurators**

*Article 1. Approval of the schedule*

*The schedule of fees of court procurators inserted below is hereby approved.*

*Article 2. Increase and decrease of the fees*

*The schedule fees may be increased or decreased by up to 12 percentage points if so expressly agreed by the procurator and his or her client when determining the fees for the procurator's professional service.*

**Act 44/2003 of 21 November 2003 on the regulation of healthcare professions**

*Article 1. Purpose and scope of application*

*This Act regulates the basic aspects of the qualified healthcare professions in relation to their practice on a self-employed basis or in the employment of others, to the general structure of the education and training of the professionals, to their professional development and to their participation in*



*planning and overseeing healthcare professions. It also establishes the registers of professionals that allow the citizens to avail themselves of their rights with respect to healthcare benefits and proper planning of human resources in the medical system.*

*The provisions of this Act apply both if the profession is pursued in the public healthcare sector or in the private health sector.*

### **Act on Auditing of Accounts 19/1988 of 12 July 1988**

#### *Article 10*

*1. Audit companies may be formed provided they comply with the following requirements:*

*That the partners are natural persons.*

*That, at least, the majority of the partners are accounts auditors, and, in turn, they hold the majority of the capital stock and voting rights.*

*That the majority of the directors and executives of the company are partner accounts auditors, and that, in the case of companies with a sole director, that such sole director be an accounts auditor.*

*That they be registered in the Official Register of Auditors of Accounts (Registro Oficial de Auditores de Cuentas).*

*2. The provisions of article 8 of this Act will apply to audit firms, even where some of their partners are affected by incompatibilities, including the persons, undertakings or entities related to them directly or indirectly.*

*3. The management and signature of audit work will rest in all events with one or more accounts auditor partners of the audit firm.*

*4. The Official Register of Auditors of Accounts will publish the list of companies registered there, in which there will necessarily be indicated:*

*Registered address.*

*Full name of each partner, specifying those who perform administrative or management functions.*

*Full name of the accounts auditors in the firm's service.*

*5. In addition to the events referred to by article 9 of this Act, audit firms and*

*their auditor partners who are in breach of any of the requirements established in section 1 of this article will have their registration struck temporarily or definitively from the Official Register of Auditors of Accounts.*