

Mutual evaluation of regulated professions

Overview of the regulatory framework in the real estate sector

*Report based on information transmitted by Member States
and on the meeting of 6 June 2014*

Directive 2005/36/EC on the recognition of professional qualifications¹, as amended by Directive 2013/55/EU sets out a transparency exercise and a mutual evaluation of all regulated professions. Article 59 of the revised Directive 2005/36/EC introduces an obligation for the Member States to notify the professions they regulate (including the activities reserved to qualified professionals) and to assess the justification and the proportionality of existing entry restrictions. In addition, the Communication on evaluating national regulations on access to professions² lays down a methodology and work plan for carrying out this process. The mutual evaluation exercise requires each country to review national requirements on access to professions and to share its findings with the others.

The profession of real estate agent was selected by a majority of Member States for in-depth discussion among the first cluster of professions (including Business services, Construction, Manufacturing, Real estate, Transport, Wholesale & retail) considered to have the greatest potential in terms of level of employment and degree of mobility. For the purposes of the mutual evaluation exercise, under the generic name of the profession “*Real Estate agent/Real estate agency manager/Administrator/Director*” are grouped activities related to the provision of intermediary services in respect of real estate transactions and real property assets. Many countries have reported more than one profession regulated in the real estate sector.

This paper summarises information submitted into the database for regulated professions by EU Member States, the countries party to the EEA Agreement and Switzerland, as well as on information contained in the sector reports and reflects the results of discussions in the first mutual evaluation meeting, which took place on 6 June 2014. It should not be considered as a comprehensive and detailed report on the existing regulations.

The first meeting on the mutual evaluation of regulated professions brought together national coordinators, government officials and experts in the real estate profession, allowing for open and informed discussions. The objective of the meeting was to examine how different policy responses have contributed to the regulatory environment better policy-making in the real estate sector and in particular to interrogate the balance between efficient regulatory, protection of general interest objectives and better overall policy-making. The meeting was also an opportunity for the countries to assess, together with the Commission, the impact of all types of barriers restricting access to regulated professions, to identify best practices and to ultimately improve the existing regulatory framework.

¹ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, OJ L 255, 30.9.2005.

² Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on Evaluating national regulations on access to professions - COM(2013) 676 final, 2.10.2013.

1. GENERAL OVERVIEW

According to the International Standard Classification of Occupation (ISCO)³, real estate agents and property managers arrange the sale, purchase, rental and lease of real property, usually on behalf of clients and on a commission basis. Tasks performed by real estate professionals usually include obtaining information about properties to be sold or leased, the circumstances of their owner and the needs of prospective buyers or tenants; showing properties to be sold or leased to prospective buyers or tenants and explaining terms of sale or conditions of rent or lease; facilitating negotiations with tenants and owners on rents and fees; drawing up leasing and sale agreements and estimating costs; arranging signing of lease agreements and transfer of property rights; collecting rent and bond monies on behalf of owner and inspecting properties before, during and after tenancies; ensuring the availability of workers to perform maintenance of the properties.

Regulatory approaches in the real estate sector vary significantly from one country to another. Since most countries have identified similar risks, it is necessary to examine the reasoning behind such substantial differences in regulation. A number of countries put forward historical traditions, differences in civil law and differences in the organisation of the profession, as well as recent trends in property markets as well as an economic context in order to explain the individual shape of each regulatory regime.

1.1. Economic and statistical information about the real estate sector

The relative importance of the real estate activities varies considerably. The contribution of the real estate sector to national economies' production ranged in 2012 from 5,7% of total value added produced in **Lithuania** to 15,8% in **Greece**. As regards employment, in 2012 the sector represented only 0,3% of total employment in **Malta** and **Liechtenstein**. In **Latvia**, real estate activities accounted for 2,3% of those employed, the highest share observed in the EEA. The dynamics of the sector in the last ten years is also quite different from country to country but for the EU as a whole the real estate sector grew on average more than the whole economy both in terms of value added and employment.

<i>Real estate activities</i>	<i>Value added</i>		<i>Total employment</i>	
	Share (%) 2012	Average annual real growth (%) 2002-2012	Share (%) 2012	Average annual growth (%) 2002-2012
EU-28 (1)	11,1	1,5	1,0	1,4
Belgium	9,0	0,8	0,5	1,9
Bulgaria	9,2	-0,8	0,8	7,0
Czech Republic	7,1	4,6	2,0	2,0
Denmark	10,7	0,4	1,6	2,3
Germany	12,1	1,7	1,1	0,6
Estonia	11,9	2,9	1,8	-2,4
Ireland	6,7	:	0,6	3,2
Greece	15,8	2,3	0,1	0,0
Spain	8,2	1,8	1,2	5,5
France	13,2	1,3	1,0	0,4
Croatia	:	:	:	:
Italy	14,0	0,1	0,5	1,0

³ See ISCO-08, endorsed by the Governing Body of the International Labor Organisation in March 2008, <http://www.ilo.org/public/english/bureau/stat/isco/isco08/index.htm>

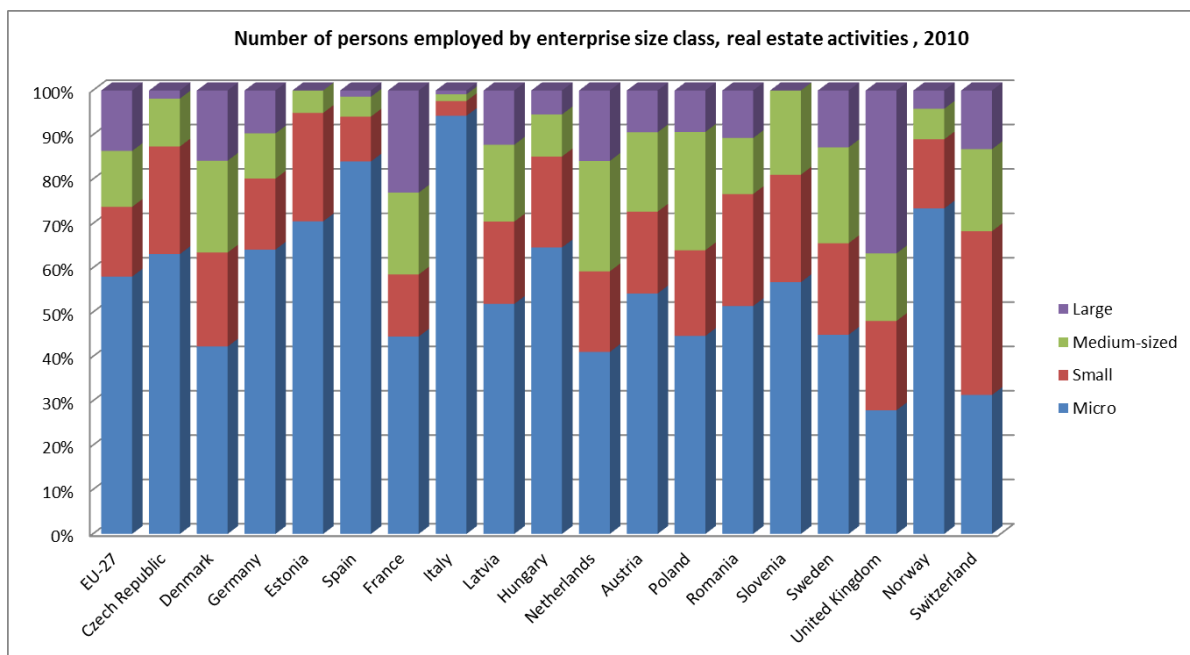
Cyprus	11,5	4,0	0,4	2,3
Latvia	9,0	6,5	2,3	0,0
Lithuania	5,7	2,9	1,0	2,0
Luxembourg	9,5	2,9	1,0	7,5
Hungary	8,9	2,2	1,5	-0,6
Malta	5,9	:	0,3	2,3
Netherlands	5,9	0,6	0,8	0,0
Austria	9,8	2,0	1,3	1,2
Poland	5,8	1,4	0,9	0,0
Portugal	8,8	-0,2	0,7	-0,4
Romania	9,4	2,6	0,4	-2,0
Slovenia	7,5	2,0	0,6	4,7
Slovakia	6,7	1,0	1,1	3,7
Finland	12,4	1,7	0,9	1,4
Sweden	9,2	1,0	:	:
United Kingdom	10,6	2,7	1,4	3,9
Iceland	9,8	:	:	:
Liechtenstein	:	:	0,3	:
Norway	6,9	2,4	0,9	3,5
Switzerland	:	:	1,0	5,6
Total economy EU-28		1,2		0,4

(1) Employment figure for EU corresponds to EU27

(2) value-added figures for EL, UK: 2011; Employment figures for ES, RO: 2011

Source: Eurostat National Account Statistics for gross value added and total employment (based on persons).
Real estate activities are defined according to Nace rev2 L category

The real estate sector is dominated by micro companies (employing less than 10 persons) across Member States, representing as much as 94% of the total in **Italy**. In the **UK** (37%) and **France** (23%) large companies (over 250 employees) are more represented than in the rest of the Union and EEA.



Real estate activities cover NACE section L

BE, BG, IE, EL, CY, LT, LU, MT, PT, SK, FI, HR: data not available or incomplete

Source: Eurostat (online data code: sbs_sc_1b_se_r2)

Only a limited number of countries have provided economic data on the real estate sector.

For example, **France** reported that whilst the real estate sector was dynamic until 2012, with ever growing sales, it has been impacted seriously by the economic crisis, with a decline in the growth of property sales. The number of people working in the real estate sector stagnated at 55.800 between 2009 and 2011, with a drop to 53.865 in 2010. There was an annual 10% fall in the total number of agencies, which is accentuated by the fact that most firms in the sector are small-sized businesses (fewer than 1,5 employees). In **Denmark**, there are 3.136 registered real estate agents, 3.893 deposited real estate agents and 410 lawyers that exercise profession as real estate agent.

Belgium notes that even though access to the profession is regulated, conditions to enter the profession are not very restrictive. Belgium argues that they have over 9.000 real estate agents and that their number grows each year, while in **the Netherlands** where access to the profession is not regulated; there are only 5.000 real estate agents. **Belgium** considers that conditions relating to the access of the profession do not in any way jeopardize mobility. These figures have been contested by **the Netherlands**, where the economic impact of deregulating the profession has been assessed. **The Netherlands** stressed that after deregulating the profession, market entry of new agents became easier. In 2010, the amount of real estate agencies in **the Netherlands** was 12.339, compared to 7.931 in 2000. Also, after 2005, commission rates went down, which could be as a result of increasing competition.

In the **UK**, there is a statutory review of the legislation every 5 years. In addition, research into the Home Buying and Selling market, carried out on behalf of the Office of Fair Trading, indicates that the recent economic downturn has seen a sharp decline in the number of residential property transactions. The research aimed to examine consumers' experience of service provision for buying and selling properties across the **UK**⁴.

Bearing in mind that it is not compulsory to use a real estate agent for buying or selling properties, it would be interesting to examine the distribution of real estate transactions between those which involved a real estate agent and those which were negotiated directly between individuals.

1.2. National regulatory models

The regulatory models most commonly used are the following:

- "*Reserves of activities*": a type of regulation where activities are reserved to the holders of a specific professional qualification, including where there are shared reserved activities with other regulated professions. Member States themselves define a set of professional activities for which they consider that a specific qualification is required;
- "*Protected title*": in this case, a specific qualification is required to use a professional title, but the activity associated with the profession is not reserved to the holders of this title: anybody can exercise the activities, as long as they do not use the title;

⁴ Office of Fair Trading, '*Home buying and selling – A market study*', OFT 1186, February 2010. The study addresses interesting issues, such as satisfaction with professionals, awareness of protection frameworks and complaint mechanisms, presence of conflicts of interest etc.

- "*Reserves of activities and protected title*" is the most stringent type of regulation where there are both reserved activities and protected title.

There is a wide range of such models used in the real estate sector, the profession is considered to be regulated within the meaning of Article 3(1)(a) of Directive 2005/36/EC in 18 countries: **Belgium, Denmark, Ireland, Spain, France, Croatia, Italy, Cyprus, Luxembourg, Hungary, Austria, Slovenia, Slovakia, Finland, Sweden, Iceland, Norway, Switzerland.**

In contrast, 14 countries do not regulate the profession (**Bulgaria, Czech Republic, Germany, Estonia, Greece, Latvia, Lithuania, Malta, the Netherlands, Poland, Portugal, Romania, UK and Liechtenstein**), but often use self-regulation regimes or voluntary certification systems.

1.2.1. Reserves of activities

In many countries, there are reserves of activities, meaning that only qualified professionals can legally exercise certain professional activities. In this respect it should be noted that the concept of reserved activities does not always refer to activities regulated by law. A "*reserve of activities*" could be implied by any requirement reserving the exercise of a service activity to the holders of a specific professional qualification.

Many countries report that the "*reserved activities*" are the same as the "*activities covered*", i.e. the activities generally performed by real estate professionals, but in reality, the scope of the latter would seem much wider. Quite often real estate agents offer a wide range of services, such as for example home inspections⁵, listing services or even moving services, which cannot be regarded as activities, reserved to real estate professionals.

From the information submitted is not always clear as to whether the profession of real estate agent is subject to an exclusive reserve of activities or a shared reserve with other professions. However, the Commission would ask countries to be mindful that national legislation requiring real estate agents to carry out that business exclusively, with the exception of other activities, such as management of property, is considered not to be in compliance with Articles 49 TFEU and 56 TFEU by the European Court of Justice⁶.

In those countries where access to the profession is highly regulated, the reserves of activities often exist alongside the use of a protected title. This is the case for instance in **Belgium, Denmark, Ireland, France, Finland** and in **Norway**. Some countries note that differences in the level of regulation can be explained by differences in the scope of reserved professional activities and the complexity of the tasks. For instance, **Belgium** argues that alongside advertising and arranging visits, real estate agents exercise much broader and complex activities such as preparing the sales file (collecting mandatory information, e.g. the soil certificate, the energy performance certificate, planning information, etc.) and the lease or purchase agreement.

⁵ To be noted that home inspections, involving an examination of a real estate property's condition, are not considered as a reserved activity in countries, where reserves of activities cover only intermediary services in negotiations between buyers and sellers, with the exception of valuation of property.

⁶ Case C-518/09 *Commission v Portugal*: By requiring real property brokerages to carry out exclusively the business of real property brokerage, with the exception of the management of real property on behalf of third parties, the Portuguese Republic has failed to fulfil its obligations under Articles 49 TFEU and 56 TFEU.

However, during discussions it was instructive to observe that with a few exceptions, there were no substantial differences as regards to the tasks which are performed by the professionals and the role of estate agents between countries which regulate the profession and those which do not.

Most of the countries that regulate the profession seem to have similar reserved activities for real estate agents consisting essentially in acting as an intermediary between buyer and seller of real property including giving advice (**Belgium, Ireland, Croatia, Cyprus, Hungary, Slovenia, Slovakia, Sweden**⁷ and **Iceland**). Some countries reported property evaluation (**Denmark, Italy and Hungary**) or even representation in front of public authorities/court as far as this is not reserved to lawyers, as well as carrying out public auctions of properties (**Austria**⁸). A special case is **Norway**: Norwegian estate agencies can to a large extent be compared with European notaries. It is also necessary to point out that the Norwegian real estate agent is an intermediary with the responsibility to carry out assignments in the interests of both parties. Apart from ensuring the negotiation between buyer and seller, the duties of real estate professionals include, among others, the completion of the financial settlement, as well as receiving the full purchase price⁹.

In **Denmark**, there is a continuing review of reserved activities and over recent years their scope has been reduced. Activities which once were reserved to real estate professionals are now shared with lawyers¹⁰. A recent legislative act suggests that it should no longer be a reserved activity to assist buyers of real estate.

It appears however that most countries do not perform periodic reviews of the scope of the activities reserved to real estate professionals.

Another key issue that arose from discussions is that in some cases reserved activities are not specifically determined in national law. This could create legal uncertainty as to whether some activities, which are close to those reserved to real estate professionals, could be performed by other professionals.

1.2.2. Protected title

Spain has partially deregulated the real estate profession. Currently, at national level only the title is protected, but there are no longer reserved activities linked to the possession of particular professional qualifications.

This partial deregulation is viewed by the Spanish authorities as having contributed to risky speculation in the property market. They reported that during the period of negotiation (the pre-contractual phase), the citizen is not sufficiently protected, advised and informed.

⁷ However, there is no obligation to be registered as an estate agent for members of the **Swedish** Bar Association, nor for estate agents engaging solely in certain activities.

⁸ In **Austria**, the profession of real estate trustees encompasses real estate agents, real estate management and real estate developer, each having different reserved activities (real estate management: management of built-up and unbuilt plots of land; real estate developer: organisational and commercial handling of building projects). It should be specified that qualification is required by law only for the pursuit of these activities as a self-employed person or as manager.

⁹ In 2013 **Norwegian** real estate agencies received € 50 billion in client assets.

¹⁰ To be noted that reserves of activities for real estate professionals are shared with lawyers or solicitors in **Austria, Ireland, Sweden and Norway**. In **France**, lawyers, notaries, bailiffs and land surveyors may perform these activities. In Switzerland reserved activities of real estate agents are shared with lawyers and other professions, such as architects, tax advisors etc.

However, different ministries are still divided as to the reintroduction of reserves of activities at a federal level, the ministry of economy being against it.

It appeared from discussions that in **Spain** the profession is regulated at regional level. For example, new regulations have been introduced in Catalonia imposing qualification requirements, as well as an obligation for all real estate agents operating in the region to register. To be noted that an impact assessment of the different regimes, in order to analyse whether the regulation or the deregulation in the different regions has played its role, has not been carried out nor has a similar enquiry into the regulation of estate agents as a causal factor in Spanish property speculation.

1.2.3. Self-regulation and voluntary certification systems

Many countries have chosen self-regulation and voluntary certification systems, in accordance with existing ISO or CEN standard¹¹ as an alternative to the regulation of the profession¹².

In the **Czech Republic** real estate activities are considered as trading and applicants are only obliged to comply with the general rules set by the Trade Licensing Act (minimal age of 18, the legal capacity and integrity). Mandatory certification is not legally required. However, the Association of Real Estate Offices has a system of self-regulation and in order to be a member one must obtain a certificate according to ISO and CEN standard. In **Lithuania**, the activities of real estate agents are subject to rules and principles of a general nature, such as the Civil code and Consumer Protection Law. Membership in the Lithuanian Association of Real Estate Agencies is not required, but it presumes that these professionals have to comply with the standards of good professional practice set out in the Association's Code of Ethics. **Lithuania** considers that the CEN standard, which defines general principles and qualification requirements, although being a document of voluntary application, is sufficient to achieving general interest objectives. In **Malta** there are no voluntary certification systems, whereas in **Poland**, following the deregulation of the profession, some professional associations introduced internal certification schemes.

In **Estonia** the profession is not regulated, but there is a system of voluntary certification, as a label of quality. Although the profession is not regulated, **Estonia** did not present any concerns around fraud or trust within the real estate sector. In **Greece** the profession is not regulated either and anyone who has secondary education can become a real estate agent, the only obligation being registration. In **Bulgaria** and **Romania** there is no obligation for registration and consumers' interests are guaranteed through consumer protection and criminal law. In **Latvia**, the profession is not regulated, the proposal for introducing regulation was rejected because it was widely criticised by the professional organisations.

In **Liechtenstein**, due to the size of the country the real estate market is small and considered more easily transparent and therefore the profession is not regulated. There are around 20 – 25 real estate agents operating on the market and their reputation is well known.

In **Germany** a licence is required to act as a real estate and property agent in accordance with the German Trade Regulation. The prerequisite for a licence is a clean criminal record and no

¹¹ European Standard EN 15733:2009

¹² To be noted that according to regulators, such as **Austria**, such a system may in practice entail access restrictions or considerable entry barriers to the profession by promoting the development of professional associations which dominate the market.

insolvency. Ex-post checks are carried out by the authority responsible for granting the licence. There is also a voluntary certification system in place¹³.

Although the profession is not regulated in the **UK**, there is a specific legal framework¹⁴ for the conduct of estate agents involved in buying and selling of property, placing many obligations upon estate agents by way of consumer protection. Estate agents must belong to an independent approved ombudsman redress scheme, dealing with complaints regarding the buying and selling of residential property¹⁵. In **the Netherlands**, certification schemes and dispute resolution processes are being arranged by the market. The real estate market is characterised by the presence of three professional associations¹⁶ who have set certification schemes after the liberalisation of the profession. Private certification schemes include certain quality checks with regard to the professional qualifications.

1.3. Professional qualification requirements

With regard to qualification requirements, it is instructive to observe the many reported varied methods to obtain qualifications¹⁷.

Three groups of countries can be identified with regard to the level of regulation, taking into account the duration and the content of the training, as set out under the national regulatory frameworks.

The first group of countries having rather stringent regulation in terms of length and content of training, includes **Austria** where there are four alternative paths to obtain qualifications¹⁸, three of them requiring successful completion of a specific qualifying examination. The examination covers general knowledge of legal regulations such as Tax law, Labour law and many others, as well as specific subjects relevant for the profession. The total duration of the training is five years. The professional qualification of real estate agent is only required for self-employed agents and for the managers of real estate agencies. For employees there is no specific qualification required. In **Luxembourg**, a secondary education diploma is required and additional training on legislation in the real estate sector is obligatory (duration of 50 hours). However, there are several alternative routes also leading to accessing the profession

¹³ Membership of the Professional Association for Property Service Providers is a mark of approval which real estate and property agents can use to distinguish themselves in a positive manner to consumers.

¹⁴ Estate Agents Act 1979 and associated legislation, Consumers, Estate Agents and Redress Act 2007, etc.

¹⁵ It should be noted that the Enterprise and Regulatory Reform Act 2013 provides the Secretary of State with the power to make it a requirement that all letting and property management agents in England are members of a redress scheme approved or administered by the Secretary of State.

¹⁶ NVM, VBO and VastgoedPro NL

¹⁷ In cases where there are too many alternative methods to obtain qualifications, it is important to establish a clear link between the practice of a regulated profession and the content of the training. In this respect, a profession which is open to persons who have not received significant education and training in law, such as engineers for example, cannot be considered to be one whose practice requires precise knowledge of national law (see Case C-197/06 *Van Leuken*).

¹⁸ A certificate of proficiency is awarded upon presentation of one of the following: Certificate on successful completion of a real-estate related study program at a university or university of applied sciences, plus at least one year of respective business practice; Certificate on successful completion of a commercial or legal university study program, plus at least one year of respective business practice and the successful completion of the qualifying examination; Certificate on successful completion of a trade-related high-school plus at least 1½ years of respective business practice, or completion of a general high-school plus at least two years of respective business practice, in addition to the successful completion of the qualifying examination; Certificate on successful completion of a 3-year trade school with a focus on the real estate trade, or the successful completion of an apprenticeship (including the final exams) in the field of real estate or office administration, plus at least 2 years of respective business practice, in addition to the successful completion of the qualifying examination.

(e.g. three years professional experience in leading position in a real estate company). **Cyprus** requires 3-year post-secondary education in valuation or real estate management, one year working experience with a qualified real estate agent, as well as the successful completion of an examination. In **Belgium**, since 2014 the list of diplomas granting access to the profession was extended and currently all master and bachelor diploma's (level 6 – EQF) are eligible. The candidates have to take a competence test, aimed at measuring their skills, in addition to a 1-year training period. Qualification can be obtained in **Slovakia** either through general or vocational secondary education and years of mandatory practice or through vocational post-secondary education (total duration of 3 years). **Slovenia** also indicates 3 years duration of education and provides for completion of continuing training every 5 years. In **France** there are several ways to access the profession, for example possession of a diploma in law, economics or trade, relevant professional experience or a combination of both. The total duration of the training varies significantly in respect of the different qualification routes. In **Denmark**, 3 years part time education (60 ECTS), a qualifying examination and 2 years full time employment is required.

The second group is composed by **Sweden**, where the two-year education required covers knowledge concerning the procurement of real estate, relevant law, economics, building techniques and valuation. The education should be complemented with professional experience in the form of a 10 week traineeship. In **Ireland**, applicants must hold a qualification comprising at least 120 ECTS credits, or equivalent, covering subjects such as law, marketing, valuation etc. In **Italy**, subject to completion of secondary education, the qualification is obtained after having attended a specific course of training (minimum 80 hours) and having passed an examination designed to assess the aptitude and ability of the candidate. A second path consists in having graduated from a secondary school and having completed a period of at least twelve consecutive months of practice with the obligation to attend a specific training course. In **Iceland** a training course is required, followed by a competence test. The duration of the training is 18 months (part time) following a 1-year practical work experience with a company in this field.

The third group of countries with comparatively low entry barriers includes **Hungary**, where the duration of the education programme is six months. In **Finland**, there is an obligatory examination for real estate agents (LKV) or letting agents (LVV), but no specific training or previous experience of the industry is required to sit the examination. In **Croatia**, there is no compulsory training program; the licensing examination consists of a written and oral part. Candidates must be familiar with the laws and other statutes associated with the examination material as well as what good agency practice entails.

1.4. Additional requirements

In addition to the qualification requirements, it is important to examine the cumulative effect of other requirements, such as the obligation to have professional liability insurance, a licence to exercise the activities, or compulsory registration in professional bodies, which supervise the activities of the professionals in order to examine whether those additional requirements ensure the protection of general interest objectives.

Restrictions related to *shareholding* or *voting rights* have been reported in the database only by **Iceland**. **Belgium** indicates however that whereas companies have no obligation to register, if they do wish to do so, they must satisfy a certain number of criteria relating to shareholding and voting rights. **Cyprus** reported the existence of *prohibitions on joint practices*.

None of the countries have reported any *territorial restrictions or limitations to the number of licenses granted*.

In general, very few countries have reported mandatory *continuing professional development* requirements. In this regard, **Norway** emphasises that mandatory follow-up studies are necessary due to the unique nature of the regulation of real estate agents in that country. Legislation in **Belgium** and in **Slovenia** also provides for an obligation to follow continuing training.

The majority of the countries have reported the existence of mandatory professional liability insurance as well as compulsory registration in professional bodies.

1.4.1. Professional liability insurance and financial guarantees

In **Austria**, real estate trustees when registering with the competent authorities must submit evidence of professional third-party liability insurance. The insurance company must report to the competent authority any circumstances resulting in the termination, non-existence or insufficient coverage of liability insurance. In **Belgium, France**¹⁹ and in **Norway**, real estate professionals must have professional liability insurance, including a security deposit. Professional liability insurance is required also in **Ireland, Croatia, Italy, Poland** and **Sweden**. **Hungary** is the only country having explicitly indicated the absence of mandatory professional liability insurance in the database.

1.4.2. Mandatory registration

The majority of countries regulating the profession have reported mandatory registration with professional bodies or other competent authorities. This obligation is considered as facilitating effective and active supervision.

For instance, in **Sweden**, real estate agents must be registered with the competent authority (the Swedish Estate Agents Inspectorate)²⁰. In order to work as an estate agent in **Ireland**, one must be registered in the relevant register maintained by the Property Services Regulatory Authority. The regulatory control mechanism in **Denmark** is nationally centralised, managed by the Danish Business Authority and the Disciplinary Board for real estate agents. The Business Authority keeps a public register, as to who may use the protected title, while the Disciplinary Board handles complaints and imposes penalties against real estate agents and agencies. Mandatory registration with competent authorities has also been reported by **Austria**. In **Belgium**, mandatory registration with the competent authority is also required. Real estate agents who do not meet their obligations can be disciplinarily sanctioned by the BIV²¹ (caution, reprimand, temporary suspension or definitive deregistration). In **Croatia**, administrative supervision is performed by the Ministry of the Economy, inter alia, through the process of registration in the relevant register. In **Italy**, real estate agents must be registered to practise the profession. The Chamber of Commerce handles complaints and can impose sanctions.

¹⁹ The financial guarantee is required for the real estate professionals that receive funds other than those corresponding to the remuneration.

²⁰ The supervision of the Inspectorate includes handling of complaints, as well as withdrawing agents from the register if they do not comply with the obligations imposed by law. Any person who intentionally engages in the procurement of real estate without being registered may be fined or sentenced to a term of imprisonment of not more than six months.

²¹ Beroepsinstituut van Vastgoedmakelaars (Professional institute for real estate agents).

2. RESULTS OF TRANSPARENCY / SCREENING EXERCISE

In line with the Communication of 2 October 2013 and according to Article 59(3) of Directive 2005/36/EC, Member States must examine whether regulatory requirements are compatible with the principles of non-discrimination, necessity and proportionality.

In that respect, it should be noted that *nationality and residence requirements* have not been reported in the database for regulated professions.

2.1. Reasons for regulating/deregulating the real estate profession

With regard to the variety of regulatory requirements, it should also be noted that different reasons led to the regulation or the deregulation of the profession and it is difficult to identify a general trend. It appears that consumer protection aspects have resulted in both the regulation and conversely the deregulation of the profession in several countries.

On the one hand there are a number of countries where the profession had been regulated for a long time. In many of these instances it appears that the regulatory framework has been gradually updated without carrying out any initial assessment into the effects under consideration. In **Austria**, the brokerage of real estate and the management of buildings came under a licensing requirement as of 1 September 1925. Under the Austrian Trade Act 1973, the trade authority checked the professional qualification of the real estate agents. Estate agency activity in **Norway** has been under strict public regulation since 1931, the purpose of this regulation being to secure transactions and that the parties receive impartial services. In **Denmark**, real estate agents have been specifically regulated since 1966 with a view to protecting consumers. The legal framework is currently in the process of reform, with the purpose to improve the protection of consumers, increase competition, reduce administrative burdens for businesses and secure a more efficient market. However, deregulation is not foreseen and no information has been shared as to the failings which precipitated this initiative to reform, what options are being considered nor how potential contradictions in these objectives will be managed. In **Finland**, reflecting the view that regulation had become necessary as people with inadequate qualifications had begun to provide estate agency services, the first decree on the estate agency business was issued in 1945. In **Sweden**, consumer protection aspects led to the regulation of the profession by the 1984 Act on real estate agents. In the absence of federal legislation, the legislative authority in the canton of Ticino (**Switzerland**) adopted legal standards which entered into force on 1 January 1985, with the intention of protecting the public interest, as well as the reputation of the profession. This approach is not shared across other cantons.

For some other countries regulation was introduced more recently. For instance, in **Belgium** the regulatory framework for real estate professionals was created in 1993 at the request of interested parties in the real estate sector in order to further professionalise the sector as well as enhancing consumer protection. In **Slovenia**, the profession has been regulated since 2003 with the aim of raising the level of quality of services and banning the activity of those entities who do not meet the legal requirements. In **Croatia**, the basic Real Estate Brokerage Act was adopted in 2007 with the aim to prevent certain financial offences by requiring an authorisation to exercise the profession. Estate agents in **Ireland** have only been regulated since 2011. The **Czech Government** intends to reform the real estate sector by regulating the access to the profession, the current legislation in the area being perceived as insufficient to protect the general interest. **Germany** also indicated during the discussions that there is an

ongoing debate with regard to the introduction of qualification requirements and mandatory professional liability insurance.

On the other hand, there are a number of Member States which decided to deregulate the profession. In the **Netherlands**, the first forms of regulation in the sector emerged in the fourteenth century with the obligation for real estate agents to take an oath which was meant to guarantee the protection of consumers. Since 2001, real estate agent in the Netherlands is no longer a regulated profession. With the rise of the internet the role of the real estate agents changed drastically, as consumers have become better informed, being able to easily search and compare offers. The protected title and mandatory oath were considered obsolete and as such abolished.

In 2011 **Portugal** undertook a reform on regulated professions that led to the revocation of 174 regulated professions, most of them created during the old-regime, prior to the Portuguese Constitution of 1976. The conclusion of their analysis into the sector was that although the regulation of this activity was based on consumer protection there was no constitutional basis to restrict the freedom of choosing a profession and therefore it should be deregulated.

The profession was regulated in **Poland** from 1998 to 2013 in order to prevent irregularities in the real estate market at the beginning of the transformation period. However, regulating the profession was accompanied by the use of some anti-competitive practices, identified by the competent authorities, limiting competition on the national market of professional internships. Moreover, the Court of Competition and Consumer Protection identified about 100 abusive clauses included in agency contracts used by real estate agents in the years 2004-2013. This led to the conclusion that the profession should be fully deregulated.

2.2. Justification and proportionality of the measures

To meet the requirement of proportionality, measures restricting the access to a profession should be justified by general interest objective and should be appropriate and necessary for achieving the objective pursued.

2.2.1. Identification of overriding reasons relating to the public interest

While all countries regulating the access to the profession of real estate agent consider that regulation is justified by reasons relating to the protection of consumers and recipients of services, some of them mention also the prevention of fraud (**Belgium, Denmark, Spain, France, Luxembourg, Hungary, Austria, Slovakia and Sweden**) and the protection of creditors (**Spain, France, Luxembourg, Austria and Sweden**). A limited number of countries indicate fair trade (**France, Luxembourg**), public policy (**Belgium, Cyprus, Hungary**), safeguarding the sound administration of justice (**Denmark**) and public security (**Slovenia**²²), without providing more details on what the actual precise risks are nor on how the mechanisms operate to protect from those same risks.

However this analysis is the fundamental element in informing other Member States through the mutual evaluation exercise and in securing the best outcomes for professionals and citizens.

²²**Slovenia** indicated to be ready to revisit the appropriateness of the justification.

Protection of consumers and recipients of services

To the extent that the objective pursued is the protection of consumers, the appropriateness and proportionality of the restriction must be assessed in relation to that objective.

Sweden considers that the transfer of real estate requires specific legal, financial and technical knowledge. For example, in some cases there are formal requirements that have to be met for an agreement to be legally valid. To be able to properly advise prospective buyers and sellers, the real estate agent must have a basic knowledge in technical risk factors associated with different construction techniques. Sweden indicates that the general interest of consumer protection legislation has been secured primarily by means of effective supervision. According to **France**, real estate professionals must advise and inform consumers, as well as ensure compliance with legal formalism. **Iceland** notes that the qualification is required with regard to the degree of complexity of valuation of real estate, giving advice, drawing up offers, contracts, deeds and other documents indicating technical and general description of the real estate. **Finland** invokes similar arguments and insists that most of the buying and selling of property using the services of a property agent has to do with the purchase or sale of shares in a housing cooperative, regarding which Finland does not require the sale or purchase to be endorsed by an official notary. **Denmark** also submits that the requirements which ensure that real estate agents have the proper training and education are intended to protect the consumers, but asserts that mandatory registration is also important, to support consumer certainty and therefore be less likely to fall victim of fraud. **Austria** notes that the pursuit of the profession of real estate agent requires compliance with a multitude of federal and state regulations, which in turn requires profound and up-to-date knowledge of the related Austrian legislation. Due to the fact that the agents are also trustees who represent the interests of their clients, the regulatory mechanisms in their profession are a basis for the creation of confidence and also prevent extensive and costly disputes at court.

In contrast however, countries which do not regulate the profession, such as **Germany, Lithuania, Malta, Poland** and the **UK** consider that the interests of consumers are already protected by general consumer protection legislation, civil law provisions and jurisprudence.

In particular, **Poland** indicates that it is the notary who is obliged to properly secure the rights and interests of the parties and give them necessary explanations on what concerns the notarial action. **Lithuania** points out that a real estate agent is only a mediator between the buyer and the seller, i.e. a person engaged in the search for real estate purchasers or real estate items for sale. Transactions are approved by a public notary, who ensures that sale agreements comply with legislation and are recorded in the Real Estate Register. Regulation of the profession, in the view of Lithuania, would not comply with the principle of proportionality, because it is not suitable for mitigating the risks, which could be solved by applying less restrictive measures to the activities in order to promote self-regulation and educating consumers on existing instruments. **Germany** considers that the general interest objective is guaranteed by the German Trade regulation, which sets up a general system for the supervision of commercial activities, as well as the German Agent and Building Contractor Regulation, which provides for a series of duties of conduct that serve, in particular, consumer protection²³. According to the **Netherlands**, internet and property websites have made the offer of homes for sale more transparent. Consumers are now better informed than before the rise of the internet and are no longer dependent upon advice from real estate agents about

²³ Those provisions include rules of conduct, information duty, use of assets belonging to the customer, accounting duty etc.

house offers. The traditional role of real estate agents, to bring supply and demand together, is increasingly shifting towards property websites and the matchmaking role of real estate agents is being superseded by the internet. Thus the market is becoming increasingly transparent with all information available for free. As a consequence, protecting the real estate agent title is no longer of public interest. A protected title has little to say about actual quality as, for example the check which measured the quality of the agent was only done once, when the agent applied for the title. Certification, by the market, on the other hand, contains a periodic check whereby continued quality can be guaranteed. Because of the increasing competitiveness and a more transparent online environment, real estate agents have lowered commission rates, which is of benefit to consumers. In 2012 in the **UK**, an amendment came into force to exclude from the scope of the Estate Agents Act 1979, intermediaries who do not get involved in the sales process but merely provided a private sales portal for sellers and buyers to advertise their properties and get in touch with each other. The intention of this amendment is to help support businesses to establish and grow as viable alternatives to estate agents, whilst stimulating competition and innovation leading to more consumer choice and better standards of service.

A specific aspect related to consumer protection was raised with regard to the situation in some countries where real estate agents represent only one of the parties to the transaction, while in other countries, such as **Ireland, Austria, Slovenia** and **Norway** they are regarded as trustees of both parties.

The discussions also addressed the question how the general interest objective is ensured in those countries where the profession is not regulated. In most cases this general interest objective is protected through horizontal legislation on consumer protection, civil and criminal law, as well as deontological rules. An interesting point was raised by the **UK**, where there is a specific concept, called "negative licensing". Everyone could act as an estate agent without having the obligation to have a licence for that, but if one breaches the legislation, he may be banned.

Similar mechanisms exist in many other countries, where in order to practice there is a requirement for good repute and the absence of insolvency or bankruptcy proceedings against the agent.

The need to provide high quality service to consumers was also subject to debate. In this respect, **the Netherlands** mentioned an investigation conducted by the Competition Authority based on information, provided by qualified real estate agents against agents who were not members of professional associations. However, no evidence of lower quality of the services provided by the latter was found.

Preliminary remarks

One preliminary conclusion to be drawn from the discussions is that identification of overriding reasons relating to the public interest requires more careful analysis. The effects of the qualification requirements need further assessment as to the achievement of the objective pursued.

It is important therefore to identify clearly the risks, as well as to establish the existence of a direct causal relationship between specific qualification requirements and the general objective in the public interest which is cited by way of justification.

In many countries the protection of consumers is ensured by notaries or lawyers who have a legal obligation to deal with legal formalities required for finalisation of a real estate transaction. Very few Member States have such obligations for real estate agents or other duties, involving for example investigations into the title, charges and finances related to the property.

Where restrictions are justified by overriding reasons in the general interest, it should be examined whether that interest is not already safeguarded by the rules to which the professional is subject. Bearing all this in mind, it is essential to assess the *cumulative effect* of all existing requirements, imposed on real estate professionals in addition to the qualification requirement, which might effectively ensure the protection of general interest objectives.

The fact that much information about the value of real estate and other aspects which are relevant for transactions is now available on the internet and consumers are able to make better informed decisions could shed new light on the proportionality of qualification requirements for real estate agents on consumer protection grounds. Consumers can now gather information online about sales trends, mortgage rates etc.

Prevention of fraud

Many countries insist on the fact that the responsibilities of real estate agents have been extended to the obligation of preventing money laundering and financing of terrorist activities.

Sweden observes that the annual turnover in the real estate business is significant and offers opportunities for money laundering. Real estate agents are covered by the Money Laundering Directive²⁴ and part of the training concerns knowledge of the rules on money laundering. **Austria** considers that low market entry criteria would lead to the appearance of unqualified speculators acting dubiously and often with fraudulent intent, who would frequently disappear immediately after cashing unjustified profits. **Belgium** also indicates that the regulation of the profession a good instrument for implementing the anti-fraud legislation.

The exact obligations of the real estate professionals under the anti-money laundering rules, as well as the content of the training with regard to the objective pursued, would merit further examination.

It would be interesting to consider the necessity and the appropriateness of the restriction as a means of avoiding or limiting the risks of money laundering involving real estate agents. It appeared from the discussions that a risk-based assessment would likely find little relationship between qualification requirement and prevention of fraud.

Protection of creditors

Some countries invoke the protection of creditors in order to justify the restriction, but recognise that the public interest objective is attained by other existing rules. **Austria** considers that the qualification certificates required for real estate agents fulfil an important and indispensable function by protecting creditors, investors, partners and clients. These

²⁴ Directive 2005/60/EC of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, OJ L 309, 25.11.2005.

measures are also an essential and effective tool to prevent insolvencies. Regulations for the profession of real estate agents based on the relevant qualifications are intended to protect qualified entrepreneurs against untrained or poorly trained competitors who undercut prices. **France** observes that regulation of the profession is proportionate with regard to the objective in question, but refers to the compulsory civil liability insurance and mandatory financial guarantee in case of handling funds, which ensures the protection of creditors of a real estate professional who has committed errors or omissions arising within the scope of real estate services.

Public policy

Hungary considers that the public policy objective should be ensured by regulating the required education and experience of the real estate agents on market-based evaluation and pricing of property. The report indicates that real estate transactions may modify the tax base and consequently the state's income from taxation, even though the measures are not of tax policy nature and primarily serve consumer protection, as well as prevention of fraud. Furthermore, **Hungary** points out that the public register on real estate agents is also intended to reduce the risks of fraud and is suitable to achieve that objective. **Hungary** considers that the existing framework is appropriate and does not intend to reconsider the rationale of the regulation. At the same time, it should be noted that tax authorities are responsible for the protection of this particular general interest objective. In addition, tax advisors have a similar role and it is not compulsory to use the services of real estate agents for purchase/rental transactions.

Belgium points out that regulation of the profession facilitates the implementation of the policy in different domains, such as energy efficiency certification, European professional card, rental legislation, anti-discrimination policy, anti-money laundering policy, etc.

Cyprus indicates that it is important to keep the regulatory measures in place due to the sensitivity of the profession in **Cyprus** and especially due to the situation of North Cyprus²⁵.

The recourse to the concept of public policy implies the existence, in addition to the perturbation of the social order which any infringement of the law involves, of a genuine and sufficiently serious threat affecting one of the fundamental interests of society²⁶. In any event, this concept as an exception to a fundamental freedom must be interpreted strictly.

2.2.2. Suitability of the measures

The regulation measures should be suitable and appropriate for the purpose of achieving the objective pursued.

As argued above, since most countries have indicated various general interest objectives, such as consumer protection, prevention of fraud, public policy etc., the justification for a restriction requires the existence of a strong, appropriate link between the aims pursued by the national measures and the overriding reason relating to the public interest at issue.

With regard to the suitability of the measures, restricting the access to the profession, it should be noted that the content of the education and training could be seen as a criterion which is

²⁵ According to **Cyprus**, real estate agents have a specific role, related to the buying or selling of property in some areas which may belong to persons displaced from their own land.

²⁶ See for example Case 30/77 *R v Bouchereau* and Case C-518/09 *Commission v Portugal*.

especially relevant in order to establish the requirements connected to the practice thereof²⁷. Where a requirement for specific qualifications is imposed as a means to ensure general interest objectives are met, the professional qualifications and the content of the training should be specifically related to the general interests to protect.

The suitability test involves the assessment of two other aspects, namely the consistency of the measures, restricting the access to the profession.

Consistency of the measures

Many countries have indicated that the objective has been pursued in a consistent and systematic manner, as comparable requirements have been imposed to similar professions (for instance **Austria, Sweden and Iceland**), without giving additional clarifications.

However, it should be noted that the way in which national measures pursue general interest objectives should be coherent. For instance in countries, such as **Spain** or **Switzerland**, reserves of activities are foreseen only in certain regions or cantons, which could be seen as an obstacle for the mobility of professionals within the same country.

Interestingly, in **Austria** the qualification is required by law only for the pursuit of these activities as a self-employed person or as manager, while in **Finland** the qualification requirement applies only to the responsible manager and to at least 50% of the staff employed by an estate agency.

Preliminary observations

Even though the information submitted into the database concerning the consistency of the measures is incomplete, it appeared from the discussions that measures having addressed similar risks in a different way within the same profession or sector, may prove appropriate only if based on objective criteria.

In other words, in order for a restriction to be justified, it must be based on objective, non-discriminatory criteria which are known in advance, in such a way as to circumscribe the exercise of the national authorities' discretion, so that it is not used arbitrarily²⁸.

2.2.3. Conclusions of the internal screening and of proportionality assessment

To answer the question whether the national requirements go beyond what is necessary to achieve the objective pursued, it is important to examine whether there are other less restrictive means capable to achieve the same result.

Following the internal screening conducted by the participating countries, including for some the consideration of less restrictive alternatives, a number of countries regulating the profession concluded that they would maintain the current system (**Austria, Belgium, Hungary, Slovenia, Sweden, Iceland and Norway**).

In particular, a voluntary authorisation scheme for real estate agents was in place prior to 1984 in **Sweden**. However, this proved insufficient in order to meet the objective of consumer protection, as only 30 percent of the real estate agents subjected themselves to the voluntary

²⁷ Case C-149/05 *Price*

²⁸ See by analogy, Case C-539/11 *Ottica New Line di Accardi Vincenzo v Comune di Campobello di Mazara*.

authorisation. In **Belgium**, 20 years after the entry into force of the regulation, in 2013 the relevant rules and the access conditions were reviewed. **Austria** indicated that there is a periodic review of the need for regulation of the profession and of the training requirements. This review is carried out by the professional organisations. To date, introduction of alternative modes of regulation is not foreseen.

Following an internal examination, **Finland** decided to improve the current system by adopting a legislative reform in 2013, which will enter into force in 2016. During the internal screening in 2012, two alternatives were considered: either all those employed in estate agency should be required to undergo examination within a transitional period determined by law, or this requirement should apply to at least half of the staff of an estate agency. It was considered that applying the requirement to all employees would restrict the freedom to practise a profession. Accordingly, the Bill proposed that at least half of the staff engaged in estate agency work in a property company and each of its branches should have the professional qualification based on compulsory examination. **Denmark** also considered the use of alternative mechanisms. The level of qualification requirements was lowered in 2006. In the report made by the Danish Business Authority in 2013 the protection of the title of real estate agent was discussed. The scope of reserved activities is under ongoing review.

The internal screening in **Slovenia**, based on the reports by the Market Inspectorate (MIRS), led to the conclusion that whilst Slovenian authorities cannot determine whether the regulation of the profession affects the quality of service, they assume that imposed regulation does have a positive effect since serious irregularities have not been detected.

Following the analysis of the current situation in the **Czech Republic** and the proposal of alternative solutions it was concluded that the current legislation related to the matter was insufficient as exercising real estate activities without proper education, skills, insurance, etc. could constitute a threat to the general interest (consumer protection).

Slovak authorities report considering the improvement of the current system by unifying the qualification requirements (for example by requiring only a university degree in economics, construction, architecture or law), because the current requirement for a secondary education level diploma and 5 years professional experience is not easy to be verified in practice.

Points for further consideration

The discussions highlighted that several countries have experience in performing *continuing review of the regulatory framework* of the real estate profession and have considered attentively alternative ways of regulation, such as use of voluntary certification schemes or protection of the title (without reserves of activities). There are already positive examples in a few countries where the scope of the reserved activities, as well as the duration and the content of the training are subject to periodic assessment.

The discussions also addressed the issue of the *complexity of tasks* performed by real estate professionals. In principle, the degree of complexity or the nature of the activities which are reserved could justify that these activities are exclusively performed by professionals possessing a specific professional qualification²⁹. At the same time, it should be ensured that

²⁹ This is not the case for those tasks, which are essentially of a straightforward nature and do not call for specific professional aptitudes, see in particular Case C-76/90 *Manfred Säger v Denmeyer & Co. Ltd.*, and Case C-79/01 *Payroll Data Services*.

the requirement to possess a professional qualification does not go beyond what is necessary to achieve the objective pursued.

For example, **Luxembourg** considers that due to their characteristics, the activities of the real estate professionals should not fall under common trade law, since the presence of complex operations, as well as the substantial amounts of the transactions, justify the additional qualification requirements. According to the **UK** however, the main tasks of estate professionals are to advertise³⁰, market and arrange visits. Their professional skill is marketing. It should be noted that in general, the contracts in the UK are drafted by solicitors.

The discussions showed that in practice, depending on the duties actually performed in some countries, many real estate agents use standard forms for contracts, available on the internet and often have only a subsidiary role in finalising a transaction.

In case there are many paths to access the profession of real estate agent, it is important to reconsider whether possession of the professional qualification in question is indispensable to perform the activities, reserved to real estate professionals.

With regard to the risk mitigation and the enforcement of the regulatory measures, the large majority of the countries has not submitted information on the existence of specific penalties and criminal sanctions under national law in case of illegal exercise of the real estate profession due to the lack of specific qualification³¹. However, it would be interesting to examine whether these measures do not go beyond what is necessary for attaining the objective pursued, in compliance with the principle of proportionality. In this regard, **Spain** indicated that according to the judgement of the Spanish Constitutional Court 111/93, the title of real estate agent cannot be protected by the Penal Code and that the offense of unlawful practice of a profession, punishable with imprisonment, could only concern the professions whose activities are related to particularly important legal concepts, such as freedom, security and physical integrity.

³⁰ An interesting case in **France** with regard to the complexity of the tasks shows that an activity, which merely consists in publishing ads on a website for a fee, is not considered to be part of the activities, reserved to real estate professionals, CA Dijon, 19.02. 2009: JurisData n° 2009-374844.

³¹ On that note, **Norway** reported that a person, acting as a real estate agent without a proper licence may be sentenced to six years in prison. The system however seems to work properly and there has been no convictions.