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CARIM INDIA – DEVELOPING A KNOWLEDGE BASE FOR POLICYMAKING ON INDIA-EU MIGRATION

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Regulatory Framework for Legal Services Sector in Selected EU Member States: Implications for Indian Legal Professionals

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CARIM-India Research Report 2013/31



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CARIM-India
Developing a knowledge base for policymaking on India-EU migration

Research Report
Thematic Report
CARIM-India RR2013/31

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in Selected EU Member States:
Implications for Indian Legal Professionals**

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CARIM-India – Developing a knowledge base for policymaking on India-EU migration

This project is co-financed by the European Union and carried out by the EUI in partnership with the Indian Council of Overseas Employment, (ICOE), the Indian Institute of Management Bangalore Association, (IIMB), and Maastricht University (Faculty of Law).

The proposed action is aimed at consolidating a constructive dialogue between the EU and India on migration covering all migration-related aspects. The objectives of the proposed action are aimed at:

- Assembling high-level Indian-EU expertise in major disciplines that deal with migration (demography, economics, law, sociology and politics) with a view to building up migration studies in India. This is an inherently international exercise in which experts will use standardised concepts and instruments that allow for aggregation and comparison. These experts will belong to all major disciplines that deal with migration, ranging from demography to law and from economics to sociology and political science.
- Providing the Government of India as well as the European Union, its Member States, the academia and civil society, with:
 1. Reliable, updated and comparative information on migration
 2. In-depth analyses on India-EU highly-skilled and circular migration, but also on low-skilled and irregular migration.
- Making research serve action by connecting experts with both policy-makers and the wider public through respectively policy-oriented research, training courses, and outreach programmes.

These three objectives will be pursued with a view to developing a knowledge base addressed to policy-makers and migration stakeholders in both the EU and India.

Results of the above activities are made available for public consultation through the website of the project: <http://www.india-eu-migration.eu/>

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Abstract

Legal services are amongst the most protected services across the globe. The protection comes mainly from regulatory barriers related to qualification recognition, residency conditions, area of practice etc. The European Union (EU) also has various regulations affecting the supply and availability of legal services in its Member States. Some of these regulations are common across the Member States whereas some are unique to particular Member States. An examination of the regulatory framework for legal services in the selected EU Member countries, namely, Germany, Ireland, Netherlands, Sweden and the UK, reveals that these countries have varying degrees of restrictiveness for foreign legal professionals. These countries in general have liberal regulatory regimes for persons belonging to the EU area but not for non-EU nationals including India. Hence, the legal services market in these countries is not very open for Indian legal professionals and the movement of Indian legal professionals to these EU Member States is restricted.

The type of law that can be practiced as well the capacity in which a foreign legal professional can work in the selected EU Member State is also subject to restrictions except for the UK and Sweden which have liberal regulatory regimes. However, the latter is once again more applicable to the nationals of the other EU Member States than to non EU nationals. Moreover, the liberal environment in these countries is nullified by restrictive work visa conditions and other related requirements that are applied to non EU nationals. These restrictions are likely to affect Indian legal professionals more than any other country given the large number of legal professionals in India, the desire of foreign law firms to hire Indian legal professionals and cultural, linguistic and other similarities between India and the UK, which is the most important legal services market in the EU. As India is becoming a knowledge hub in all spheres, and Indian legal professionals are aspiring to work overseas, India and the EU need to devise a strategy so that the legal qualifications obtained in India are well recognized in the EU member States and Indian legal professionals can contribute to the latter's economies.

1. Introduction

Legal services are growing very rapidly worldwide. Though, globalization and universal international standards are making these services globally comparable, the regulatory frameworks affecting these services are not the same across the globe. Also, these services are amongst the most protected services in most countries. The protection comes mainly from regulatory barriers related to qualification recognition, residency conditions, area of practice, etc.

The European Union (EU) also has various regulations affecting the supply and availability of legal services in its Member States. Some of these regulations are common across the Member States whereas some are unique to a particular Member State. It is also important to note that while many of these regulations are aimed at consumer safety and meeting public policy objectives, they are often very protectionist and hence affect the practitioners and suppliers of these services from other countries including India.

This paper compares the regulatory frameworks affecting legal services in selected Member States of the EU, namely the United Kingdom (UK), Ireland, Germany, Netherlands and Sweden. The UK is the largest legal services market in the EU; hence its inclusion in the selected countries is obvious. The other countries are selected to give a representation of the entire EU, including of the Scandinavian region. This paper takes into account the regulations for legal services that affect the nationals of the Member States as well as the citizens of non-EU countries. Though, these regulations are not India specific, they have the potential to affect the movement of Indian legal professionals to the EU Member States to provide their services. This paper also discusses the EU commitments in legal services under the General Agreement on Trade in Services (GATS) of the World Trade Organization (WTO). It also brings forward the Organization for Economic Cooperation (OECD) and the World Bank work on regulatory restrictiveness indices for legal services for the selected EU countries. It analyzes these regulations for their potential effects on the movement of Indian legal professionals to the EU and their ability to practice in EU countries. It concludes with some policy suggestions for facilitating such mobility.

2. Regulations affecting Legal Services in the EU

The EU is an important supplier of legal services globally. According to a WTO (2010) report, Europe accounted for more than 36% of the legal services market worldwide and stood second only after the Americas. Within Europe, the UK is a dominant legal services market with around US\$ 5,500 million in exports and US\$ 1,000 million in imports of legal services.

As far as the regulations affecting legal services in the EU are concerned, the EU has come up with an Establishment Directive (98/5/EC) that came into force in 1998. It facilitates the practice of the profession of lawyer on a permanent basis in a Member State other than that in which the professional qualification was obtained. The directive applies to lawyers in private or salaried practice in the home or a host Member State. According to this Directive, lawyers may pursue their profession on a permanent basis in another Member State under the professional title acquired in the home Member State but they are required to register with the competent authorities of the host Member State. Barring a few specified exceptions, a lawyer practicing under his/her home-country professional title must carry on the same professional activities as the host-country lawyers. S/he may give advice on the law of his home and host Member State, as well as on Community and international law. Lawyers practicing under their home-country professional title are subject to the rules of professional conduct and the disciplinary procedures of the host Member State.¹

¹http://europa.eu/legislation_summaries/internal_market/living_and_working_in_the_internal_market/123023_en.htm

The following paragraphs provide the regulatory frameworks affecting legal services in selected EU Member States, namely, the UK, Ireland, Germany, Netherlands and Sweden. These countries have been selected keeping in view their significance within the EU legal services market and their significance as markets of interest for Indian legal professionals.

2.1 United Kingdom

The UK is a dominant player for legal services in the EU. The legal services market in the UK consists of a range of services, including private practice, public sector and in-house industry and commerce lawyers for clients seeking legal assistance. There are more than 200,000 people employed in the legal services industry in the UK, of which around 150,000 are solicitors with practicing certificates and 12,700 are practicing barristers.² The UK provides several options of working for legal professionals. The latter can work as solicitors, barristers, Government Legal Service (GLS) lawyers etc.

2.1.1 Solicitors³

In England & Wales, solicitors are regulated by the Solicitors Regulation Authority (SRA), an independent regulatory arm of the Law Society of England & Wales. The SRA sets the regulations and standards for the solicitors' profession including entry and training requirements. According to the rules of the SRA, in order to practice as 'solicitor' in England and Wales, an individual must be admitted to the roll, and therefore be in possession of a practice certificate. Admission to the roll entitles the individual to practice reserved areas of law, which includes the following areas: the exercise of a right of audience; litigation; conveyancing; probate activities; notarial activities; the administration of oaths; offering financial advice or providing assistance on immigration or asylum affairs.⁴ It is to be noted that some of these reserved areas are open to other UK legal professionals, including notaries and licensed conveyancers, who are not regulated by the SRA.

A number of routes are available to becoming a solicitor in England and Wales. One such route is to complete a qualifying law degree. If the qualifying degree is not in law, there are two routes – First: To join the Chartered Institute of Legal Executives and Second: To take the Common Professional Examination (CPE)/Graduate Diploma in Law (GDL). Before becoming a solicitor, an applicant is also required to complete the Legal Practice Course (LPC) that helps to develop the skills needed to work in a firm of solicitors. The LPC must be completed by everyone who intends to qualify as a solicitor in England and Wales.

An applicant is also required to work as a trainee solicitor in a firm of solicitors or other organization authorized to take trainees. This is also called 'training contract'. The training contract period is for two years but it can be reduced by up to six months for persons having suitable and relevant previous legal experience. After the training contract, the applicant is required to pass the Professional Skills Course (PSC), which is the final stage of becoming a solicitor. It is worth mentioning that Law graduates, and non-law graduates who have completed the Common Professional Examination or a Graduate Diploma in Law, attend the PSC during the course of the training contract.

Qualified lawyers from an overseas jurisdiction including India may be eligible to transfer to the roll of solicitors of England and Wales under the Qualified Lawyers Transfer Scheme Regulations

² See, http://www.prospects.ac.uk/industries_law_overview.htm

³ The discussion in this section is based on the information available at the Law Society of England and Wales website (<http://www.lawsociety.org.uk/careers/becoming-a-solicitor/routes-to-qualifying/>)

⁴ 'Right of Audience' refers to a right of a lawyer to appear and conduct proceedings in court on behalf of their client. Conveyancing means the transfer of legal title of property from one person to another. Probate is the legal process of proving and registering in the court the last Will of a deceased person. Notarial activities include witnessing signatures on documents.

2010. However, they may need to undertake the Qualified Lawyers Transfer Scheme exam. Qualified lawyers from outside the EU are in addition required to show that they have gained two years of experience working in legal practice in a common law jurisdiction of which at least one year must have been gained by practising the law of England and Wales. Such experience must include three areas of common law and must have covered contentious and non-contentious areas of practice.

2.1.2. Barristers⁵

There are three stages of training that need to be completed in order to become a barrister in the UK. These three stages are:

- Academic Stage: It includes an undergraduate degree in law (LLB), or an undergraduate degree in any other subject followed by the conversion course
- Vocational Stage: It consists of the Bar Professional Training Course (BPTC), which entails one year of full time study or two years' part time study
- Pupillage: This includes one year spent as a pupil in barristers' chambers or in another organisation approved by the Bar Standards Board as a Pupillage Training Organisation (PTO)

A qualified foreign lawyer, being a member of a legal profession regulated in a jurisdiction outside England and Wales and entitled to practice as such, may apply to transfer to the Bar. However, he will need to provide:

- Evidence of good character and repute, such as a Certificate of the Senior Judge, Attorney General or Senior Law Officer of the Superior Court in which he has practiced showing that: for a period of not less than 3 years he has regularly exercised rights of audience in that court and he is a fit and proper person to be Called to the Bar
- A certificate to show that the person has not been prohibited from practicing in the jurisdiction in which he is qualified on the ground of commission of a criminal offence or professional misconduct and is not currently suspended from practicing on such grounds
- Evidence of all academic and professional qualifications
- Application fee of £440

2.1.3. GLS Lawyers⁶

Both solicitors and barristers can apply for becoming qualified GLS lawyers, subject to meeting the eligibility criteria which are listed below for various parameters:

- Academic: An applicant must have a minimum of a 2:1 degree in any subject. However, if the applicant can demonstrate equivalent high level academic and/or professional achievement, he may be considered even with a lower degree classification or a recognized professional qualification.
- Professional Qualifications: An applicant must be qualified to practice as a solicitor or barrister in England and Wales. He must also either have completed a training contract/pupillage, or have been exempted from this by the Law Society or the Bar Council.

⁵ The discussion in this section is based on the information available at the Bar Council website (<http://www.barcouncil.org.uk/becoming-a-barrister/how-to-become-a-barrister/overseas-transfers-to-the-bar-of-england-and-wales/>) and the Bar Standards Board website (<https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/transferring-lawyers/qualified-foreign-lawyers/>)

⁶ The discussion in this section is based on the information available at the Government Legal Service website (<http://www.gls.gov.uk/qualified-ops.html>)

It is to be noted that some vacancies may accept applications from applicants qualified outside of England and Wales. In such cases, such applicants, qualified in other jurisdictions, will be required to complete the Qualified Lawyers Transfer Test (QLTT) within a given period of appointment.

- **Nationality:** The GLS comes under the Civil Service and hence the Civil Service nationality rules are applicable for the GLS lawyers. If a post carries a 'reserved' tag, then only UK nationals are eligible to apply. In other cases, the applications can be accepted from UK nationals, European Economic Area (EEA) nationals, Swiss nationals and, in some circumstances, Turkish nationals and Commonwealth citizens
- **Immigration Status:** Apart from the Civil Service nationality requirements, the applicant is also required to obtain legal entitlement to work in the UK. The UK Border Agency operates a points-based immigration policy which applies to migrants from outside the European Economic Area, Switzerland and Turkey.

2.2 Ireland

2.2.1 Solicitors⁷

The Law Society of Ireland is the regulatory body with disciplinary powers over qualified solicitors. In order to become a solicitor, an applicant has to undergo a three years apprenticeship and is also required to complete courses of study organized by the Law Society of Ireland. To be admitted to the courses of study, the applicant must have a university degree or its equivalent or be a barrister or equivalent. On meeting these requirements, the applicant is required to pass the Society's Final Examination, divided into three sections known as the FE-1, FE-2 and FE-3. Once these sections are completed and the applicant demonstrates competency in the Irish language, he is entitled to be admitted to the roll of solicitors.

Every qualified solicitor is subject to the disciplinary powers of the Law Society. The Disciplinary Tribunal of the Law Society is empowered to investigate allegations of misconduct such as the misappropriation of monies. The Disciplinary Tribunal also has the power to require repayments of funds to clients if they find a solicitor has overcharged.

A national of a Member State of the EU who is qualified to practice as a lawyer in his home Member State can register himself in Ireland as a foreign qualified solicitor under the Establishment Directive (98/5/EC). All other lawyers, i.e., who are neither qualified in the EU nor subject to a reciprocal agreement, are required to undergo the entire training process, as mentioned previously.

2.2.2. Barristers⁸

As in the case of the UK, in Ireland too, there are three stages to become a barrister, namely, the academic, vocational and pupillage stages.

- **Academic:** In this stage, an applicant must obtain a Law Degree from a university or other approved third level institution. For non-law degree holders, a person can study for a two year Diploma in Legal Studies at King's Inns instead of a third level law degree.
- **Vocational:** After having the law degree or diploma, the applicant must pass an entrance examination into the King's Inns. After passing it, one may enroll in a one year full time

⁷ The discussion in this section is based on the information available at the Law Society of Ireland website (<http://www.lawsociety.ie/Pages/Public-Becoming-a-Solicitor-CMS/>)

⁸ Based on the information available at the Bar Council of Ireland website (<http://www.lawlibrary.ie/viewdoc.asp?fn=/documents/aboutus/generalinfo.htm&m=3>)

course or a two year part time course in the King's Inns leading to the degree of Barrister-at-Law. The emphasis in these courses is on advocacy, procedure and practical matters.

- Pupilage: Having passed the Barristers-at-Law degree from the King's Inns, students are called to the Bar of Ireland by the Chief Justice of Ireland. Before being allowed to practice on their own, barristers are required to do pupilage (commonly called "devilling") with a suitably qualified barrister in an established practice for a period of 12 months.

2.3 Germany⁹

The German legal system does not have any distinction between a barrister, who is allowed to appear in court, and solicitor, who prepares the statements and advises the client. In Germany, there is only the "Rechtsanwalt", who acts as both lawyer and solicitor. A Rechtsanwalt is entitled to do all type of legal works, such as, giving legal advice, admitting to legal representation, assisting clients in bringing cases before a court, and representing clients in court. In other words, there is no distinction between different legal services provided by a lawyer (Rechtsanwalt) in the German legal system and every legal professional, who is a part of the chamber of lawyers, can practice all kind of legal services for his/her clients.

The BRAK (Bundesrechtsanwaltskammer) is the federal regulatory organisation for the profession of Rechtsanwalt. In addition to the regulatory bodies, the DAV (Deutscher Anwaltverein) is the voluntary representative body for German Rechtsanwälte members.

Germany has implemented the Establishment Directive 98/5/EC, through German Law, thereby implementing the Directives of the European Community pertaining to professional law regulating the legal profession. According to this, the establishment is permitted for EU, EEA and Swiss nationals who are qualified in these countries. They are allowed to give advice in international law, the law of their home country as well as German law. Non-EU/EEA/Swiss nationals, who are however qualified in the EU/EEA or Switzerland, can establish in Germany but are restricted to giving advice only in international law and the law of their home country. Thus, they cannot give advice on German law.

Legal services by EU, EEA and Swiss qualified lawyers can also be provided cross-border on a temporary basis under the provisions of the Lawyers Services Directive 77/249/EEC. Contrary to the Establishment Directive, there are no conditions of nationality under the Lawyers Services Directive.

Under Section 206 of the Legal Profession Act (Bundesrechtsanwaltsordnung – BRAO), the Federal Ministry of Justice has approved many foreign professions as being equivalent to Germany's legal profession and therefore entitled them to the right of establishment in Germany to give advice in international law and the law of their home country. It includes India's advocate profession.

However, this facility is available to nationals from other states on condition that the right to offer legal services is limited to the law of this person's country of origin, if reciprocity with the country of origin is guaranteed. Apart from this, there are certain bureaucratic procedures that such nationals have to follow in order to be recognized in Germany for practicing legal profession. These are discussed as below-

- The Regional Judicial Administration, the decision making authority on an application for admission to the Bar, requires the person to submit a certificate from the responsible authority in the country of his/her origin stating that the person in question is a member of the profession. Not only this, it also requires that this certificate must be resubmitted to its office every year, failing which admission to the Bar will be revoked.

⁹ Based on the information available at <http://international.lawsociety.org.uk/ip/europe/574/practise> and <http://www.osce.org/odihr/36304>

- The Rechtsanwalt is required to establish a law practice in the district of the Bar where the Rechtsanwalt has been admitted within three months after being admitted to the Bar, failing which or if the Rechtsanwalt abandons the law practice, admission to the Bar will be revoked.
- The Rechtsanwalt is also required to indicate his/her country of origin in his/her professional title.

2.4 Netherlands¹⁰

The legal profession in Netherlands is self-regulated. Lawyers (advocaten) must be admitted to the Netherlands Bar Association (Nederlandse Orde van Advocaten) in order to practice. An advocate is also required to be registered with one of the local bars in one of the nineteen districts.

According to the Advocates Act, an applicant must complete a three year law degree that includes theoretical and practical training. After the graduation, the applicant is admitted to the Netherlands Bar Association and their local bar association as an advocate. However, he is required to complete three years of supervision by an experienced advocate in a law firm before being considered fully qualified. Apart from this, each year a lawyer must continue his/her professional development and undergo 20hours of CPD. A lawyer in Holland can work independently or choose to be part of a law firm. He can also be an employee in a company or municipal authority.

Lawyers belonging to an EU Member State or Switzerland can register as attorneys in Netherlands under the Professional Qualifications Directive subject to the condition of passing an examination of professional competence and meeting the requirements of the General Act on the Recognition of EC Professional Qualifications. Attorneys may also register as Dutch lawyers under the Lawyers' Establishment Directive subject to certain conditions. The EU Lawyers practicing under their home-country professional qualification may pursue the same activities as lawyers practicing under the relevant qualification used in the Netherlands. They are allowed to give advice on the law of their home Member State, on Community law, on international law and on Dutch law.

If an applicant has completed a law degree in a non-EU Member State, then the bachelor's and master's degree must also be earned at a Dutch university as the Dutch regulations stipulate that a person can be a lawyer if the area of the law has been achieved as a Bachelor's and Master's degree from a Dutch university. However, the applicant may apply for an exemption for certain subjects.

2.5 Sweden¹¹

All lawyers (*advokater*) in Sweden are in private practice as the public law offices (*allmänna advokatbyråer*) have been abolished. Sweden permits individuals to plead their own cases in court. Thus, a person is under no obligation to be represented or to engage a lawyer. Even a person representing or advising another person to legal proceedings does not have to be a lawyer. However, a person representing another in court is subject to certain requirements, like, residence, language proficiency and suitability but does not require having the professional title of lawyer.

A person wishing to become a lawyer or member of the Bar Association in Sweden must be resident in Sweden, the EU, the EEA or Switzerland. S/He must hold a Bachelor of Law or Master of Law degree and must have completed five years of legal work since taking his/her law degree, of which at least three years must have been spent either as an assistant lawyer in a law firm or in running the prospective member's own legal practice. The person must have passed a lawyer's

¹⁰ Based on the information available at <http://www.bridgewest.eu/article/lawyer-in-netherlands> and <http://international.lawsociety.org.uk/ip/europe/1372>

¹¹ Based on the information available at http://ec.europa.eu/civiljustice/legal_prof/legal_prof_swe_en.htm

examination and must be of good character and suitable in all respects for the profession of a lawyer and must be financially sound.

A person who has completed the training required to become a lawyer in a state within the EU or EEA or in Switzerland, and who passes an examination in Sweden to demonstrate that s/he has sufficient knowledge of the Swedish legal system, will be deemed to meet the requirements of Swedish training and the Swedish lawyer's examination, and can be admitted as a member of the Bar Association and can practice under the Swedish title of *advokat*.

Sweden allows anyone to set up a law firm and no specific training or experience is required in order to call oneself legal adviser (*jurist*) and to offer legal advice on a professional basis. However, the Swedish laws prescribe a ban of up to 10 years that may be imposed on persons who have committed a criminal offence, other than a minor one, in the course of providing legal assistance. A person who provides legal assistance and encourages the commission of a criminal act can be sentenced to a fine or imprisonment of a maximum of two years.

In general, foreign lawyers are allowed to pursue their activities without setting up an establishment in Sweden with the exception of representing a party in a Swedish court. However, lawyers who want to establish themselves in Sweden are required to register themselves with the Bar Association. Lawyers authorized in another Member state within the EU or the EEA or in Switzerland are generally subject to the same rules that apply to Swedish lawyers while pursuing activities in Sweden.

It is important to note that Swedish citizenship is not required in order to practice in Sweden. A foreign lawyer may work in Sweden under the professional title of his or her home country, but to practice the profession on a permanent basis s/he must register. Since July 1, 2002, admission to the Swedish Bar Association does not require citizenship. It means that that after three years of effective and regular activity involving Swedish law, a foreign lawyer will be deemed to be considered to meet the training and practical experience requirements for membership of the Swedish Bar Association, and hence can be admitted to the Association and practice under the Swedish title of *advokat*.

3. EU GATS Commitments in Legal Services

As mentioned previously, legal services generally comes under the most restricted services across the world. In accordance with this trend, the EU Member States have made only limited commitments in legal services under the GATS. The EU Member States selected for this study have generally not made any commitments except for the UK, which has made only partial commitments under mode 4. Table 1 presents the GATS commitments of the EU for legal services.

The limited commitment by the Member States selected for this paper and by the EU in general; as presented in Table 1, shows that that these Member States want to have a regulatory framework for legal services which is not binding on them. Hence, the Member States can liberalize this sector at their discretion to suit their particular characteristics and can also introduce measures that restrict non-EU nationals.

Table 1. GATS Commitments of the EU for Legal Services

Sector or Sub-sector		Limitations on Market Access		Limitations on National Treatment	Additional Commitments	Notes
a) Legal advice on home country law and public international law	1	F, P: Unbound for drafting of legal documents.	1	F, P: Unbound for drafting of legal documents. DK: Marketing of legal advice activities is restricted to lawyers with a Danish licence to practise and law firms registered in Denmark.	F: Host country law and international law (including EC law) are opened to the Members of the regulated legal and judicial profession. *10 L: Host country law and international law (including EC law) subject to registration as "avocat" at the Luxembourg Bar.	*10) Access to these professions is governed by the French law No. 90-1259 of 31 December 1990 which opens the entire range of legal and judicial activities.
	2	None	2	None		
	3	D: Access subject to acceptance into a Bar Association according to the "Federal Lawyers Act" which requires establishment which is restricted to sole proprietorship or partnership only. F: Provision through SEL (anonyme, à responsabilité limitée ou en commandite par actions) or SCP only.	3	DK: Marketing of legal advice activities is restricted to law firms registered in Denmark. Only lawyers with a Danish licence to practise and law firms registered in Denmark may own shares in a Danish law firm. Only lawyers with a Danish licence to practise may sit on the board or be part of the management of a Danish law firm.		
	4	Unbound except for D and UK where: as indicated in the horizontal section under (iii) and subject to the following specific limitations: D and UK: University degree and professional qualifications and three years' professional experience in the sector. D: Unbound for activities reserved to Rechtsanwalt".	4	Unbound except as indicated in the horizontal section.		

Source: WTO website

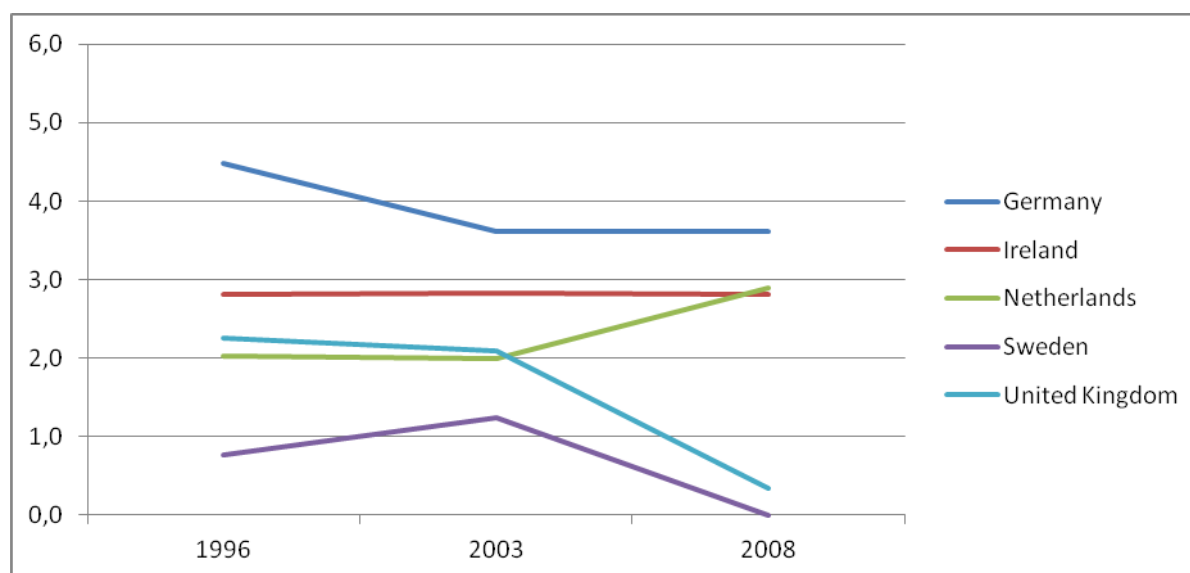
4. Legal Services Restrictiveness Indices for the Selected EU Member States

4.1 OECD Restrictiveness Indices

The OECD has prepared restrictiveness indices for legal services across countries, including the EU Member States, for the years 1996, 2003 and 2008. These indices capture the domestic regulatory restrictiveness for a number of parameters. The indicator captures the incidence of regulatory requirements and restrictions faced by foreign qualified legal professionals for practicing the profession in each of these countries, once they have entered the market. An index value of 0 represents “least restrictive” and an index value of 6 stands for “most restrictive”.

The OECD regulatory restrictiveness indices for legal services for the selected EU Member States, namely, the UK, Ireland, Germany, Netherlands and Sweden, are graphically represented Figure 1 and are given in Appendix -1 Table a.

Figure 1. Trends in OECD Regulatory Restrictiveness Indices for Legal Services for Selected EU Countries



Source: Author's construction based on the OECD Database

The regulatory indices show that Germany is the most restrictive among these five EU Member States in 2008 followed by Netherlands, Ireland, UK and Sweden. Another interesting observation is that whereas Germany, UK and Sweden have shown declining indices (reflecting a more liberal regulatory environment over time), the Netherlands has shown an increase in the restrictiveness indices from 2003 to 2008. Ireland remained the same from 1996 to 2008. For Germany, entry regulations in the form of licensing, education requirements and conduct regulations in the form of regulations on prices and fee are very important. Germany's index shows a declining trend because of the removal of quotas and economic needs tests and the relaxing of regulations on the form of business and inter professional co-operation in 2003. In Ireland, the main regulations include licensing, education requirements, regulations on the form of business and inter professional co-operation and on advertising. The Netherlands shows an increase in these same regulations over time. The only exception to this is the regulation on the form of business and inter professional co-operation that has come down over time and was no longer that important for the Netherlands in 2008 as compared to that for Ireland. For Sweden, the index value increased from 1996 to 2003 due to the introduction of licensing and education requirements. However, in 2008, all these regulations were lifted and hence the index shows a

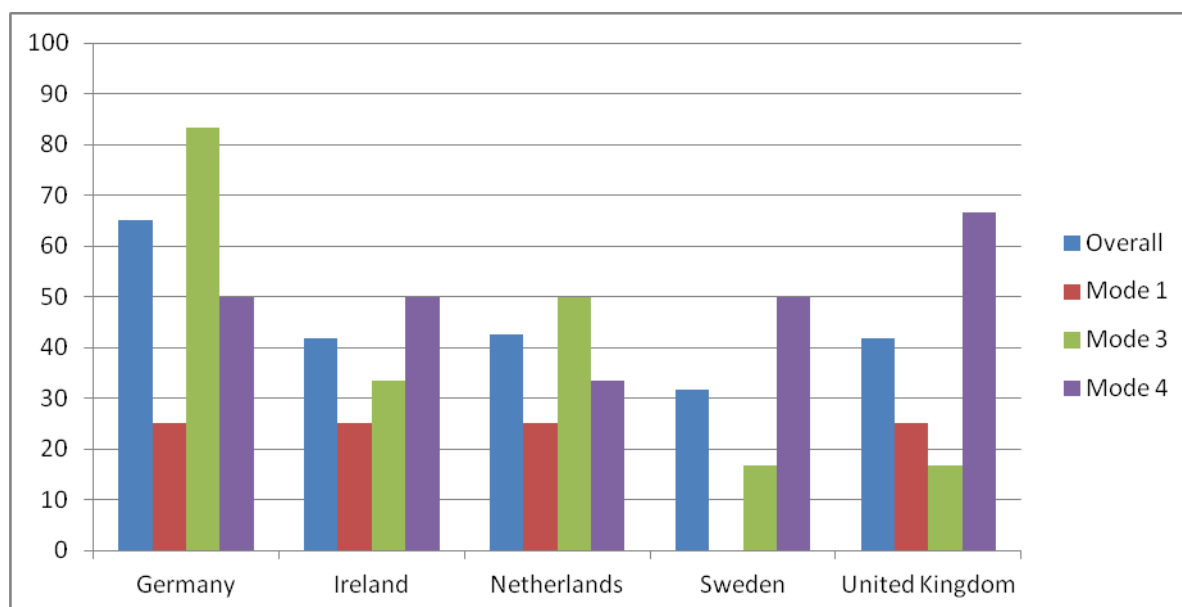
value of zero. In the UK, the only barriers applicable in 2008 are regulations on advertising wherever in 1996 and 2003, the UK applied other barriers also such as licensing and education requirements.

It is evident from the above discussion that countries have both entry and conduct barriers affecting legal services. When it comes to removing these barriers, countries tend to first lift the entry barriers and then the conduct barriers.

4.2 World Bank Restrictiveness Indices

The World Bank has also compiled a Services Trade Restrictions Database that provides comparable information on services trade policy measures (including for key modes of delivery) in various countries for many services, including legal services. Figure 2 present the Overall and Modal Services Trade Restrictiveness Index (STRI) for legal services for the selected EU Member States for the year 2010. The values of these indices are given in Appendix – 1 Table b.

Figure 2. World Bank Modal Regulatory Restrictiveness Indices for Legal Services for Selected EU Countries, 2010



Source: Author’s construction based on the World Bank Database

Figure 2 again confirms that Germany is the most restricted Member State among the selected EU countries and that the UK and Sweden are the least restricted. The index for mode 3 is very high in the case of Germany, implying that establishing commercial presence in Germany for foreign legal professionals is difficult. For legal advice on foreign law, ownership or control by non-locally-licensed professionals is not permitted in Germany as membership in the local bar is required for investment/ownership. However, a reciprocity condition applies. Only the foreign lawyers who are admitted to practice in Germany under a restricted license may associate with or employ locally-licensed lawyers. For legal advice on domestic law and representation in courts, foreign commercial presence is not allowed.

On the other hand, for the UK, the mode 3 index is very low indicating that it is easy to establish commercial presence in legal services in the UK. However, the mode 4 index is very high implying that the movement of non-UK legal professionals to the UK is subject to many restrictions. For legal advice on foreign law, there is an automatic recognition of foreign licenses and foreign lawyers are permitted to practice as a foreign legal consultant under their home title. However, there is a point-based visa

program in which points are awarded for education, prior earnings, age, UK experience, and English language proficiency. Foreign-licensed professionals are also subject to Labour Market Tests (LMT). All these conditions make it difficult to get work visa for foreign legal professionals even to advice on foreign law. For legal advice on domestic law and representation in courts, foreign-licensed professionals must meet certain conditions including (a) Residency in the UK due to the local training requirement; (b) an education requirement; foreign education is not recognized; (c) Two years of training in the UK; and (d) Passing a local examination (the QLTT aptitude test). The point-based visa program and LMT are also applicable for this class of legal services.

5. Implications for India

The regulatory framework for legal services in the selected EU Member States reveals that these countries have varying degrees of restrictiveness for foreign legal professionals. As discussed earlier, the legal services market in these countries is not very open for non EU nationals. Therefore, the movement of Indian legal professionals to these EU Member States is restricted. These barriers assume special significance for Indian legal professionals, despite not being India specific, because of a number of factors. These are discussed as below.

First, India is second only to the US in terms of its stock of lawyers. Each year around sixty to seventy thousands lawyers graduate in India. Many of these lawyers aspire to work overseas. Moreover, over the years, legal professionals in India have developed expertise in new and emerging areas of practice, such as merger and acquisition, infrastructure financing, public private partnership, etc. Many of the qualified Indian lawyers from esteemed law schools in India are in great demand in other countries, such as the UK. Regulatory barriers in other countries, including the EU countries will surely affect their chances of moving abroad for providing their services.

Second, as indicated earlier, the UK is the main legal services market in the EU and the second most important after the US, globally. Most of the top rated law firms have their offices in the UK. Many of the law firms having commercial presence in the UK regularly hire Indian law graduates through campus selection. Therefore, a significant number of Indian legal professionals tend to go to the UK for advising on various legal issues but the restrictive entry and conduct regulations do affect their mobility.

Third, given the common law system and compatibility with the UK for linguistic and cultural reasons, the UK is the natural choice for Indian legal professionals aspiring to work overseas. These law graduates tend to work there for some years, gain knowledge and experience on various legal issues and then come back to India to render their services.

Fourth, the restrictive regulatory regime also puts extra financial burden on the prospective Indian legal professionals who wish to move to these countries to practice law. For instance, in the UK, in addition to the QLTT, qualified lawyers from outside the EU are, , required to show that they have gained two years' experience of working in legal practice in a common law jurisdiction of which at least one year must have been gained by practising the law of England and Wales. Similarly, In Ireland, to be a solicitor, foreign lawyers, other than those qualified in the EU or from countries having a reciprocal agreement, is required to undergo the entire training process. This virtually makes the solicitor profession in Ireland out of reach for Indian legal professionals.

Fifth, as India is not having mutual recognition agreements for legal qualifications with most of the EU Member States, Indian legal professionals are required to do extra courses or pass additional exams before they are allowed to practice law in these countries. This once again puts extra financial burden on Indian legal professionals wishing to move to the EU.

Indian legal professionals are also apprehensive about practicing in the UK though the UK allows foreign commercial presence. According to them, Indian legal professionals face numerous behind the border restrictions in the UK, in the form of discretionary application of visa regulations (i.e., slow

issuance of work visas, denial of visas even after getting sponsorship from a firm), nationality and residency conditions etc. Further, the scope of practice is limited for Indian lawyers. Hence, even if the EU countries allow the commercial presence and eliminate/reduce entry barriers, there is skepticism about how effective such relaxation would be in reality given the host of other conditions which limit legal practice in these markets.

The issue of regulatory restrictiveness and lack of effective reciprocity have also been raised in India-EU bilateral discussions, particularly in India-UK meetings. The UK and India have set up a Joint Economic and Trade Committee (JETCO) in 2004 to look into various issues related with facilitating legal services trade between India and the UK. It was pointed out during the JETCO meetings that behind the border regulations in the form of visa restrictions and other associated conditions are actual barriers affecting mobility of Indian legal professionals to the UK. Thus, such barriers will continue to affect Indian legal professionals even if there will be any reciprocity arrangement between the two countries.

Thus, given all these factors, the EU's restrictions in this sector are likely to affect India much more, though these restrictions are origin neutral. The regulatory restrictions have the potential to affect Indian legal professionals more severely given the fact that not many qualified law students in India are in a position to bear the extra burden created by such restrictive regulatory regimes.

6. Conclusion and Policy Suggestions

The regulatory environment in the selected EU member States reflects the market realities of the legal services profession. The type of law that can be practiced as well the capacity in which a foreign legal professional can work in the selected EU Member State is generally restrictive except for the UK and Sweden. However, even in these two countries, India may not be in a position to take advantage of the liberal regulatory conditions given the fact that (a) the liberal environment is more applicable to the EU nationals only and (b) these countries apply many behind the border restrictions, such as restrictive work visa conditions and other related requirements on non EU nationals. As India is becoming a knowledge hub in all spheres, and Indian legal professionals are aspiring to gain international experience by moving overseas for work, India and the EU need to devise a strategy so that such movement can be facilitated and be mutually beneficial. The first step could be to recognize legal qualifications obtained in India by the EU member States. Such arrangements will not only reduce transaction costs in such mobility but also allow Indian legal professionals to contribute to these Member States' economies in a better way. The agreement could be done within the ongoing EU-India Bilateral Trade and Investment Agreement (BTIA) framework and also by having discussions with the individual EU Member States depending upon the demand and supply of legal professionals in the respective States and depending on trends in the movement of Indian legal professionals to such Member States.

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Appendix 1

Table a. OECD Regulatory Restrictiveness Indices for Legal Services for Selected EU Countries

Country/ Year	1996	2003	2008
Germany	4.5	3.6	3.6
Ireland	2.8	2.8	2.8
Netherlands	2.0	2.0	2.9
Sweden	0.8	1.2	0.0
United Kingdom	2.3	2.1	0.3

Source: OECD Database on Professional Services Restrictiveness, available at

<http://www.oecd.org/eco/regulatoryreformandcompetitionpolicy/indicatorsofregulatoryconditionsintheprofessionalservices.htm>

Table b. World Bank Modal Regulatory Restrictiveness Indices for Legal Services for Selected EU Countries, 2010

Country	Overall	Mode 1	Mode 3	Mode 4
Germany	65	25	83.33	50
Ireland	41.7	25	33.33	50
Netherlands	42.5	25	50	33.33
Sweden	31.7	0	16.67	50
United Kingdom	41.7	25	16.67	66.67

Source: World Bank Services Trade Restriction Database, available at <http://iresearch.worldbank.org/service/trade/>