

OECD PMR INDICATORS FOR PROFESSIONAL SERVICES. CIVIL LAW NOTARIES AS “PUBLIC GOOD”: EFFICIENCY AND LEGAL PROTECTION NEED HIGER REGULATION

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1. Introduction

The OECD regularly measures, through the Product Market Regulation (PMR) indicators, barriers to competition related to the national regulations of OECD and some other non-OECD countries. Since 1998, OECD also measures the regulation level of some professional services (lawyers, accountants, civil engineers, architects) that are deemed to play a key role (as intermediate input) in the productivity and the growth of a country. The intent of evaluating the regulation of the professional services is to find the right balance between effective beneficial competition and the correction of the possible market failure connected to the provision of these services. OECD would like to assess how well the markets for professional services are working and how the PMR variables are linked to specific regulatory features of these markets.

2. PMR Methodology, market failure and public goods

The aim of PMR is to ensure the smooth functioning of the market through the competition mechanism. The main idea is to avoid barriers to entry in the market and to ensure fair competition. Then higher scores are assigned to professional services with a higher level of regulations that are deemed to be connected with lower quality services and higher costs. The PMR score ranges from 0 (lowest level of regulation) to 6 (highest level of regulation). However, in the case of the public goods, competition does not always ensure that markets work well (e.g., market failure), and that the health and safety of consumers are protected¹. The provision of a service that is part of the administration of justice (public good) may therefore need screening criteria that are different from the ones used for measuring retail or other kinds of professional services. In the case of an institutional service of justice, output per capita, investment and employment may not be strictly connected to pure

¹ The PMR for professional services takes into consideration criteria connected to the entry barriers and conduct regulation (among others: exclusive rights, years of education, compulsory training and examinations, deontological rules, advertising and fixed fees)

competition mechanisms and deserve attentive regulation in order to meet the social demand and avoid discrimination.

3. Is deregulation in notarial services correlated with lower costs and better performances?

If we compare the level of the notarial regulation (as expressed by the PMR) with the Registering Property indicators of World Bank, we can observe an interesting aspect: “low level of regulation” does not seem to be more correlated with better quality and lower costs, while a “higher level of regulation” is more often associated with better performances in terms of quality, costs, and speediness of the procedures.

First of all, to correctly assess the impact of the PMR on measuring the level of regulation in the countries adopting notaries, we should consider that the civil law notary system may be very different from the system adopted in some countries analysed by the PMR, such as USA, Sweden, Korea and Israel. In fact, in some of these countries, notaries do not necessarily need a university education in law, and they are not mandatory required in the real estate (RE) transfers and other important legal transactions; moreover, they are not compulsory required to check the legal content of the document. The following table (Table 1) shows countries adopting civil law notaries (members of the International Union of Notaries) who are involved in real estate transactions according the analysis of the Doing Business report of the World Bank².

Table 1 – *Countries (analysed by PMR) adopting civil law notaries (UINL members) who are involved in the real estate transactions.*

Argentina	Chile	Croatia	Greece	Italy	Luxembourg	Poland	Slovak Rep.
Austria	Bulgaria	Czech Rep.	France	Japan	Mexico	Portugal	Slovenia
Belgium	Colombia	Estonia	Hungary	Latvia	Netherlands	Romania	Turkey
Brazil	Costa Rica	Germany	Indonesia	Lithuania	Spain	Russia*	

* Following the political events of February 2022, Russia was suspended by UINL (however this does not affect the analysis aiming at assessing the characteristics of the legal systems and the notaries' functions)

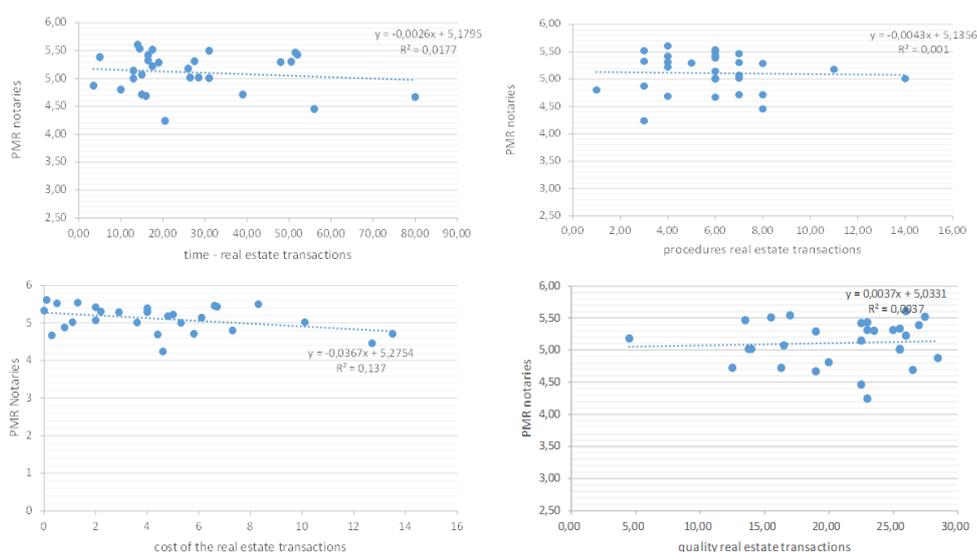
Source: World Bank DB report 2018 (countries in bold are non-OECD countries)

Therefore, taking into consideration the more homogeneous cluster indicated in Table1, we verify if a lower score of PMR corresponds to lower costs and higher performances as it concerns quality, lower number of procedures and faster processing. As indicators of performance of the notarial services, we could use the World Bank DB report indicator (*Registering Property RP*³) for the real estate transactions (core sector of the notarial activities).

² The table only indicates the sub-group of civil law notary countries that were analysed by the PMR indicator.

³ RP indicators on costs, procedures, time and quality.

Figure 1 – Comparison of notaries' PMR score and RP indicators in countries adopting notaries in the RE transfers.

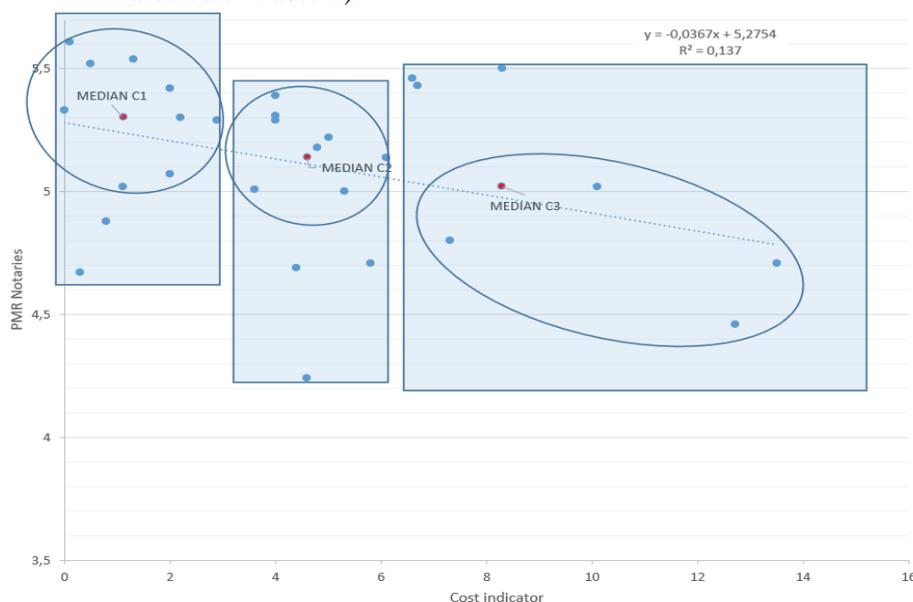


Source: elaboration of the author on World Bank and OECD PMR data (2018).

The third frame of Figure 1 (enlarged and divided in clusters in Figure 2) shows a tendency underlying an inverse correlation between the level of regulations (PMR) and cost supported by the consumer for the real estate transfer. In other words, highly regulated notarial systems produce a lower final cost for the consumers. Moreover, in Figure 1 we can also observe⁴ a general tendency of (slight) inverse correlation between “PMR score and procedures” and “PMR score and time” (this means that “countries with notaries” adopting less procedures and completing them in less time have some kind of tendency to adopt a more regulated notarial system), and some sort of tendency to a positive correlation between “PMR score and quality”. The inverse correlation (analysed in more detail below in Figure 2) between the regulation of notarial services and cost of the real estate transactions, it seems to be slightly higher.

⁴ Figure 1, 2 and 4 show slight relations that are anyway important indication of the tendency expressed by the data.

Figure 2 – Countries adopting civil law notaries in the RE transfers. Comparison of PMR score and RP Cost score (the frames represent the clusters indicated in Table 2).



Source: elaboration of the author on World Bank and OECD PMR data (2018).

Table 2 – Countries (analysed by PMR and adopting notaries in RE transactions) divided into clusters according to the RP Cost indicator of the DB report.

		CO Cost RP	PMR notaries (level of regulation)
Cluster 1	MEDIAN C1	1,10	5,30
C1	AVERAGE C1	1,20	5,24
	ST.D C1	0,96	0,30
Cluster 2	MEDIAN C2	4,60	5,14
C2	AVERAGE C2	4,69	5,02
	SD C2	0,75	0,36
Cluster 3	MEDIAN C3	8,30	5,02
C3	AVERAGE C3	9,31	5,05
	ST.D C3	2,85	0,42

Source: World Bank and PMR indicator 2018 (2 outliers are not considered in this table).

The above clusters show a tendency underling an inverse correlation between level of regulations (PMR) and cost supported by the consumer for the real estate transfer (highly regulated notarial systems produce a lower final cost for the consumers).

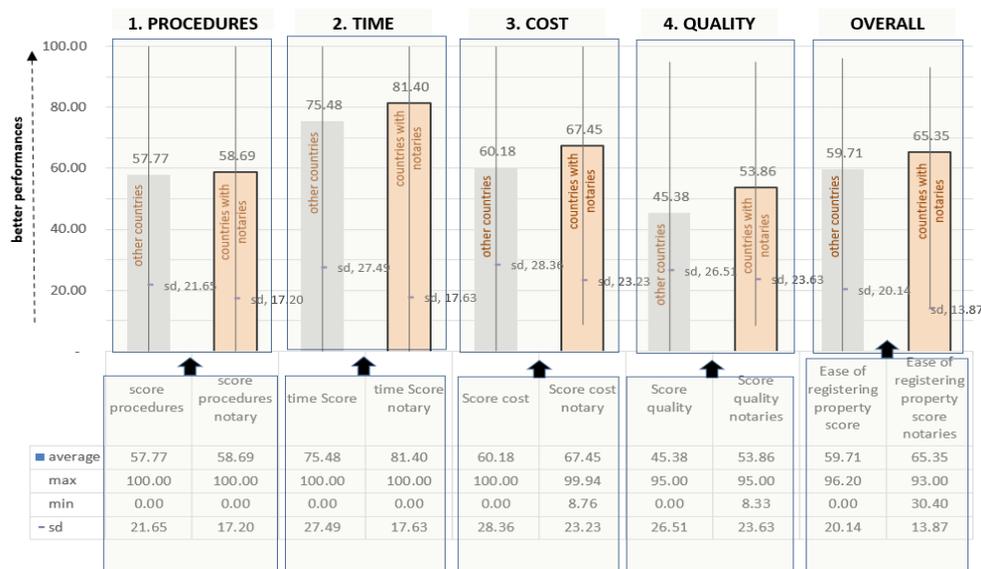
4. What about countries that do not use the notary system in real estate transactions?

A comprehensive study (Doing Business Report and Real Estate Transfers: Far Better with Legal Controls and Notarial Guarantee. Working Papers 20/079, EXCAS) focused the analysis on the main sub-indicators of the Registering property (namely, number of procedures, time, cost and quality the real estate registration infrastructure) in order to assess the average impact of civil law notaries. The aggregate assessment on the 190⁵ countries analysed by the DB shows better average results by countries adopting civil law notaries in real estate transfers. In Figure 3, representing the average performance on the Registering Property indicator, we can notice the better performances of the UINL countries adopting notaries in all sub-indicators. Moreover, the standard deviation has significant lower value in the UINL clusters. This means that inside the group of countries adopting notaries, the distribution of the scores is more uniform. The lower gap between maximum and minimum value (overall indicator as well as cost and quality sub-indicators) for the UINL cluster is a further confirmation of the greater uniformity of performances inside this group. Considering the analysis of the previous paragraphs on the level of PMR and the notarial performances, Figure 3 can provide an indication on the impact of regulation on professionals involved in the real estate transactions in systems that do not adopt notaries (scores are standardized on a scale from 1 to 100, where 100 = best performance).

The data (see Figure 3) also shows the greatest gap between the 2 analysed clusters (countries using notaries vs. other countries) in the quality indicator (8.47) and, surprisingly against all stereotypes, also in the cost indicator (7.26). This means that the quality of the transfer is much higher and less expensive if on civil law notary control. Another consideration can be made on the gap between the procedures and time indicators, with the most evident gap being on time. This surely means that the transfer is faster in the civil law notary countries' cluster. If we consider that the indicator on the procedures presents a less evident gap, this means that, on average, each procedure is completed quickly. Moreover, considering the possible distortion coming from the implication of the methodology on the calculation of time and procedures (see Cappiello 2014), a more faithful representation of the reality by these indicators would probably enhance further, the important legal control made by highly qualified legal experts (notaries) completing many checks (procedures) faster than systems that do not adopt civil law notaries.

⁵ The irregularities detected by the World Bank audit, concerns mainly China (other minor errors were detected in the data of Azerbaijan, Saudi Arabia and United Arab Emirates). These countries do not adopt civil law notaries for real estate transfers, so the aggregate results of the analysis on 190 countries are therefore not affected.

Figure 3 – Performances of UINL countries requiring notaries in property transfers (comparison with countries that do not use the notary system).



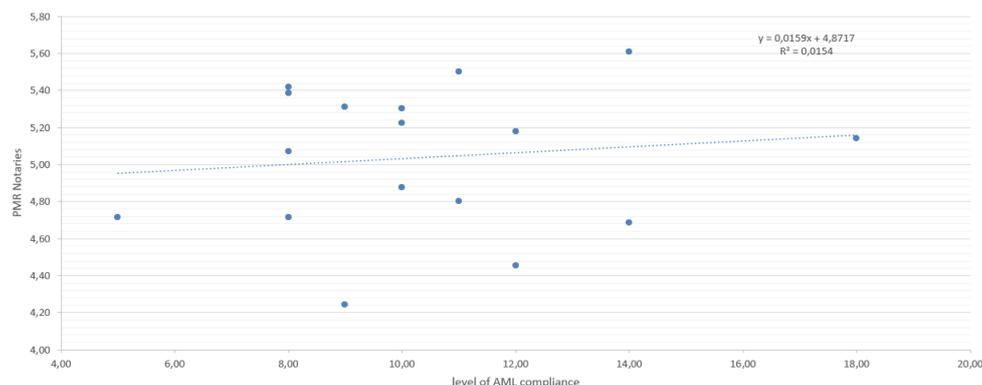
Note: The line inside each histogram shows the minimum and maximum value of each considered distribution, as well as the standard deviation indicated by a spot with the acronym sd.

Source: World Bank Doing Business Report 2020, Registering property indicator 2020

5. Compliance with the FATF (IO and R) and notarial services

Another important aspect of professional services is the compliance with the FATF anti-money laundering (AML) recommendations, especially as concerns the DNFBS criteria (features adopted also as guidelines for the EU legislation and OECD policies on AML). In Figure 4, note a positive trend as it concerns the correlation between the PMR score for the notarial professions and FATF compliance as it concerns AML (as a proxy we considered IO3-7, R10-11 and R22 of the FATF standards, which are more correlated with the nature of the service provided by notaries). Therefore, more regulated notarial systems tend to have a higher level of compliance with FATF standards. Figure 4 concerns the available FATF data on UINL countries (analysed by the PMR) adopting notaries for the RE transfers.

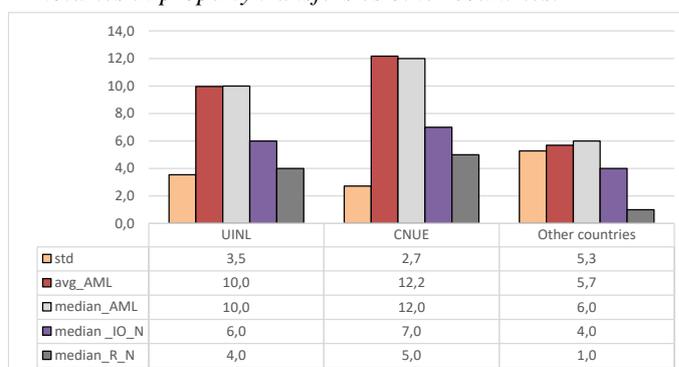
Figure 4 – UINL countries requiring notaries in property transfers. Compliance with AML standards and PMR scores as they concern the notarial profession



Source: elaboration on MER-FUR data FATF 2018-2019.

In Figure 5, note better compliance by CNUE (European countries adopting notaries) and UINL (world countries adopting notaries) compared to countries adopting a different system for Real Estate Transfers (the aggregated results are based on the before mentioned FATF criteria).

Figure 5 – Compliance with AML standards: UINL and CNUE countries requiring notaries in property transfers vs other countries.



Source: elaboration on MER-FUR data FATF 2018-2019.

6. Final considerations and future perspectives

If we accept the paternalistic choice of the legislator to protect the consumer (through the *ex-ante* notarial control) and we agree on the high standards with respect to education and selection of the public officers guaranteeing the credibility of the

entire property transfer process, we should reconsider the PMR scheme. If we think that professional standards are needed and are proportional to the objective, the open issue is the quantification of a fair compensation of the services provided by the notaries and which criteria have to be used. In other words, if we agree on setting high standards and these are deemed proportional to our objective, the criteria of selection and conduct (high education, continuous education, selection through a competitive examination, avoiding misleading advertising, etc.) have to be considered as “a protection for the consumer” instead of an “entry barrier” or a “conduct regulation” limiting free competition. Moreover, the fact that the overall PMR indicator is highly aggregated, as it incorporates in a single figure over 1000 data points, could be an obstacle rather than an advantage for the policymakers. This aggregation could hide the subsector score and therefore, the policymakers - missing the detail of each particular aggregated feature - may fail to individuate the right aspect where to intervene. Protection of the consumer is often based on competition, nevertheless the analysis of the consumer biases (for example switching costs or misrepresentation of the offer) and of the nature of supply market should guide the assessment of possible distortions and defend the consumer, ensuring transparency and clarity on costs, services and products (taking into account the final burden for the consumer and the simplification and clearness of the supplied services and products). The simplification and supervision of some relevant financing, intermediation and collateral services (offered to the companies and the individuals) may boost the productivity of all sectors connected to them. These intermediate inputs may have a greater impact on the cost, quality and productivity of all their connected trades and services. The analysis in paragraphs 3 and 4 show that the final effect of the regulation in many cases produces lower costs and better quality of the notarial services (better results than other system). Likewise, the assessment on the FATF requirement for AML (see par. 5) shows that a more regulated system of professionals guarantees better compliance with the anti-money laundering policies, and therefore, useful externalities for the consumer and the whole country system. As long as costs are fair, and services are guaranteed with high quality standards, we may need to reconsider the assessment scheme of the PMR⁶. The PMR scheme applied to the notarial category may risk to distort the evaluation made by the institutional users of these data (e.g. EU Commission and National Governments) and could produce deregulations risking to complicate the proper improvement of the supplied service. Since, as stated in the OECD brochure “the World Bank considers the PMR indicators a very useful diagnostic tool which complements their own *Ease of Doing Business indicator*”, attention should also be paid to assess the

⁶ Notaries, as underlined by the EU legislation (see introductory paragraphs), can be seen as ex-ante judges as concerns the nature of their services that must necessarily be highly regulated in order to ensure the correct administration of the Justice. Therefore, the PMR assessment scheme may have less adaptability to professions who are part of the administration of the justice.

consistency of PMR and the World Bank data with the final policy aims. The State involvement may not always induce distortion, and each market should be evaluated separately with detailed assessments of all their features. Few months ago, the World Bank has just decided to discontinue the Doing Business (DB) report⁷ that supported deregulations without proper assessment of features connected to the security of the business environment (a new World Bank methodology, called BEE⁸, will be adopted also considering more qualitative aspects). Therefore this methodology change (BEE) it is a sign that the same World Bank experts recognised that the DB criteria often pushed country governments to compete for improvement in the DB rankings without always obtaining a real enhancement of their socio-economic environment. Nevertheless, the BEE already announced that, besides integrating some of the PMR criteria, it will also assess “*whether the involvement of third-party professionals is optional (e.g., lawyers, accountants, notaries) for business registration*”. It seems instead reasonable that the impact of a third-party professional should only be evaluated in terms of the general efficiency for the whole process. Also the methodology for calculating time and procedures should take into account the “actual time” and the advantages for the consumer without penalising a one-stop-shop that, within the same range of time and with higher guarantee, provides its output with more simultaneous controls (procedures)⁹.

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⁷ World Bank press communication (Washington, September 16, 2021)

⁸ Business Enabling Environment (World Bank, *Business Enabling Environment (BEE)*, Pre-Concept Note, Washington, February 4, 2022).

⁹ Cappiello A. 2014, *World Bank Doing Business Project and the Statistical Methods based on Ranks: the Paradox of the Time Indicator*, Rivista Italiana di Economia, Demografia e Statistica, Volume LXVIII n. 1.

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SUMMARY

This article analyses the application of the OECD PMR criteria to the civil law notaries. Since the notarial service is offering a “public good” (administration of the justice), many criteria defined by the PMR indicator are, in this case, to be considered as a protection of the consumer rather than an obstacle to the proper functioning of the market. The level of regulation - because of the nature of the notarial public function - should forcibly be higher than the other PMR analysed professions. Therefore, if we apply the PMR to the notarial profession, we highly risk depriving the community and citizens of the *ex ante* legal security (removing the protection especially to the vulnerable parties). These reflections are supported by the empirical analysis on the correlation level of the notarial regulation (as expressed by the PMR) with some World Bank indicators. We can observe that “lower levels of regulation” do not seem to be more correlated with better quality and lower costs, while a “higher levels of regulation” are more often associated with better performances in terms of quality, costs, and speediness of the procedures. Moreover, also the anti-money laundering compliance with FATF standards (an important requirement for legal professionals) shows a positive trend of correlation with higher level of notarial regulation.

