REGULATION OF ATTORNEYS IN BELGIUM

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§ 1. Introduction

This paper will be an overview of the regulation of and by attorneys in Belgium. First a legal analysis will be given with a general summary of the types of regulation (§ 2); next will be examined whether the public interest argument which is often advanced to explain the contents of the current regulation can provide an adequate explanation (§ 3); then the present regulation of attorneys in Belgium will be examined from the point of view of rent-seeking by attorneys as an interest group (§ 4). Finally, a few concluding remarks will be formulated (§ 5).

This paper is mainly based on previous research conducted by Roger Van den Bergh and 1, 2. This paper differs from the previous research in that it focuses only on the situation of attorneys, provides more detailed information with respect to the legal regulation of and by attorneys and incorporates changes in the regulation of attorneys that have occurred more recently.

§ 2. Legal Analysis

In this part of the paper attention will be given to the contents of the existing self-regulation of attorneys. The focus will be especially on restrictions on competition which result from existing government regulation and professional ethics, both with respect to the regulation of entry into the profession and to the regulation of professional conduct.

Attorneys seek to control their market by limiting the entry into the profession and by eliminating competition. Following the terminology used by Abel in his comparative work on the legal profession 3 this first objective can be called "controlling the production of producers" whereas the second objective can be denoted as "controlling the production by producers". The former control deals

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1. I thank Kees Hollingman, Hans Oudijk, Nikolaas Roos, Jacques Siegers and Roger Van den Bergh for helpful comments on a previous draft of this paper.
3. See Abel, 1988, p. 80-137.
with external (or interprofessional) competition. This involves both limitations on entry and restrictions on competition from other occupations. A profession could limit entry either through fixing a numeros clausus or indirectly through compulsory apprenticeships. External competition can be limited by a large definition of the professional monopoly.

A. Regulation of Entry

1. Admission to the Bar

The profession of "attorney" is protected by the Belgian Code of Civil Procedure. Article 428 provides that no one can bear the title of attorney or exercise the profession of attorney if he is not a Belgian citizen or a citizen of a European Community Member State and holding the degree of "doctor in law". In addition, he has to be registered at the bar ("Ordres des Avocats")1. The "Ordres des Avocats", that exist at every district court in Belgium, decide upon the admission of an attorney to the bar. This is an important power, since without being a member of a bar nobody is allowed to perform services as an attorney. Authors claim that the bar has a discretionary power to decide whether it accepts a person as member or not. Against a decision not to be admitted to the bar, no appeal is possible 1.

2. Nationality Requirement

It is also interesting to describe the evolution concerning the nationality requirement. One has to make a distinction between the one hand the question whether foreign nationals can exercise the profession of attorney in Belgium if they have studied law in Belgium and on the other hand the question whether foreign attorneys who practise abroad can practice in Belgium, use their title of attorney and plead before the Belgian courts. As far as the first requirement is concerned, art. 428 of the Code of Civil Procedure now requires that one is either Belgian or national of another EC member state. The latter has been added by the statute of July, 2, 1975 to adapt Belgian law to EC requirements. The nationality requirement for attorneys had been held to violate European law, both by the highest Belgian administrative court ("Conseil d'Etat") and by the European Court of Justice 2. Foreigners who are not nationals of an EC member state can only be allowed to do the bar if certain restrictive conditions, which are laid down in a Royal Decree of August, 24, 1970, are met. The non-EC national must have had his residence in Belgium for at least six years and may not have a residence abroad. He may also not be a member of a foreign bar and must pledge himself not to become a member of a foreign bar 3. These provisions make clear that for foreign nationals (non-EC members) it is made very difficult to become a member of the bar.

The question then arises whether the foreign national would be allowed to perform his practice as attorney in Belgium, if he is already an attorney in his home-country, even without being admitted to a Belgian bar. For non-EC attorneys the rule is still that they cannot enjoy the benefits which Belgian law grants to attorneys. As a result of the free movement of services this is no longer true for EC attorneys. By the Act of December, 2, 1982 4, the articles 477bis-477sexies have been added to the chapter of the Code of Civil Procedure regulating the admission to the bar. According to these articles an EC attorney is allowed to use his title of attorney also in Belgium. In principle they can practise their profession in the same way as a Belgian attorney. However, according to a Royal Decree of March, 14, 1983 the foreign attorney has to cooperate with a local Belgian attorney 5. It should be noted, however, that this rule is probably violating European law since the German Federal Republic had a similar provision in § 4 of the German Act of August, 16, 1980. This paragraph also provided that the foreign attorney should co-operate with a local German attorney. The European Court of Justice held in a decision of February, 25, 1988 that this duty violates directive 77/249 of March, 22, 1977 with respect to the free movement of services of attorneys 6.

Hence, the possibility for EC attorneys to plead in Belgium still is a subject of discussion. Some bars have adopted original solutions to this problem. For

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instance, in Brussels foreign attorneys received the possibility to register on a so-called "B-list" which gave them some rights to practise law in Belgium under very restrictive conditions. They had to constrain themselves e.g. not to engage in Belgian law, although they were subject to the Belgian rules of professional ethics. This B-list system therefore is not very attractive and although in Brussels it already exists since 1984 it has attracted only few foreign law-firms.

These rules show that although there exists no formal quantity control (numerus clausus) the Ordre des Avocats can limit entry since they control the admission to the bar. However, as a consequence of the increasing influence of European law the bar is losing some of its powers since EC attorneys can also exercise their profession in Belgium.

3. Training Period

A serious limitation with respect to the entry into the profession is that younger attorneys have to perform an articling period of three years before they can be admitted to the bar. This duty is laid down in the Code of Civil Procedure, which also provides that the duties to be performed during this articling period will be fixed by the Bar-Council. The past few years one can note that the duties for attorneys in their articling period become increasingly heavier. The National Bar Council of Belgium has issued rules on May 25, 1989, concerning a professional training for attorneys during their articling period. In this ruling it is said that every bar should organise a series of courses in professional training, e.g. in labour law, criminal law, civil law. The young attorneys in their training period are forced to follow these courses and they have to pass an examination. Succeeding in this examination is a precondition for being admitted to the bar. According to this ruling of the National Bar Council the professional training has to consist of a minimum of sixty hours of classes. If one does not succeed in the exam, one not only needs to take the exam again, but also the minimum of sixty hours compulsory classes have to be followed once more. These duties during the training period form a serious barrier to entry. For instance, at the Antwerp Bar the young attorney must follow compulsory classes during the whole month of November every working day afternoon. It is clear that e.g. a university professor would consider to become a member of the bar these compulsory classes would probably change his intentions.

In addition to these formal duties which are required by the ethical rules of the bar, there is another feature which makes the training period (which is a prerequisite to enter the bar) particularly unattractive. During this training period the younger attorney has to plead many pro bono-cases. The young attorney receives many cases which he has to plead and for which he only receives a very modest fee which is paid by the state. In addition to these pro bono-cases the attorney in his training period can in principle plead his own cases. However, he is not allowed to have his own firm or to be an independent attorney at an office alone. He must set up office with a "patron" who is an older attorney by whom the younger attorney is paid. A consequence of the fact that the younger attorney looses a lot of time with pro bono-cases and mandatory classes and that the first three years are formally a training-period is that he often has no possibility to plead enough cases for his own account and also is often paid only a small amount for the work he does for his "patron". In a recent survey two sociologists showed that the attorneys in their training period at the Antwerp Bar earn an average monthly income of 5000 Belgian francs (± US$ 160). To improve the situation the Antwerp Bar has decided that the younger attorney should receive a minimum monthly income of 15,000 Belgian francs in his first year, 20,000 in the second and 25,000 Belgian francs in the third year of his training period.

In sum, one can note that the professional body of attorneys in Belgium itself controls the entry into the profession since admittance to a bar (which is non-revewable by a court) is a precondition for the exercise of the profession of attorney. In addition the entry into the profession is made unattractive by heavy duties during a three years training period in which only a low income is earned.

B. Definition of the Professional Monopoly

We have first described what the conditions are to become an attorney in Belgium and how the entry into the profession (and hence competition) is restricted by regulation. The next question of course is what the monopoly

13. According to Stevens this is somewhat contradictory, Stevens, 1990, p. 147.
MICHAEL G. FAURE

rights of the attorneys are. It is clear that the success of a profession is not only dependent upon its success in limiting market entry, but also upon the monopoly rights it can acquire for its members.

The best known and classic monopoly right of the attorney is to represent clients and defend their interests in a court of law. This monopoly right of attorneys is thus relatively limited: it applies only as far as pleading cases before a court is concerned. As will be mentioned below, for the other services provided by an attorney, which in modern legal practice become increasingly important (e.g. legal consultancy) there is no monopoly right. In addition, the monopoly of the attorneys to plead cases nowadays is more limited than it was before the reform of the Code of Civil Procedure in 1970. Let us just point out a few important exceptions to this monopoly right to plead: first, in most courts (with a few exceptions) the client is allowed to defend his own case. Second, before the justices of the peace, the commerce courts and the labour courts the clients can also be represented by their husband/wife or by a relative. Finally, the attorneys have also lost their pleading monopoly before the labour courts, since lawyers of the trade unions may also defend their members in court.

As was mentioned above, not only is the monopoly to plead in court limited, it also focusses only on a very limited part of the practical working load of an attorney. In a modern law firm most of the work consists of consultancy on legal matters, on which there is substantial competition from all kinds of professional legal advisors who are not attorneys. Attorneys have therefore been lobbying for a monopoly on legal consulting as well. A proposal to this effect has been introduced in Parliament but it has never been discussed. In view of the increasing import of foreign lawyers who do not formally belong to the Belgian Bar, renewed demands for a monopoly on consultation have been made by the bar.

C. Regulation of Conduct

Until now we could note that although the attorneys seem rather successful in limiting the entry into the profession, the monopoly rights the attorneys enjoy are not that impressive. They are basically limited to pleading cases before a court and even this monopoly right is not absolute. In addition to these limitations on competition, the attorneys also seek to restrict the inter-professional competition. These limitations can be divided into three categories: restrictions on advertising, cooperation and partnerships and restrictions of price-competition. For Belgian attorneys most of this regulation can be found in ethical rules which are set by the individual bars or by the National Bar Council. The bars in Belgium are, contrary to the situation in e.g. the Netherlands, very decentralized: to a large extent the bar in every district can set its own ethical rules. However, the National Bar Council supervises the regional bars.

1. Advertising

Traditionally the bar has been very much opposed to competition between attorneys. The general rule is that an attorney may not go after clients. It is therefore absolutely prohibited to advertise e.g. through sending brochures in which an attorney would announce the services which his firm could offer to potential clients. Any kind of propaganda or advertising in which means are used which aim at getting clients, is prohibited.

Advertisements either for the individual attorney or for the law-firm where he works are forbidden. The presidents of the Bar Councils have often enforced this rule against attorneys who tend to advertise in an indirect way: e.g. too large a doorplate, a reception offered to a large public when a law firm opens, or sending christmas or new years letters to the public at large. In the same line it has always been prohibited for attorneys to mention specific

18. Article 440 of the Belgian Code of Civil Procedure provides that before all courts only attorneys have the right to plead, unless the statute provides for an exception.
19. For all the exceptions on the right to plead see Stevens, 1990, p. 297-326.
20. This is explicitly provided for in articles 728 and 758 of the Code of Civil Procedure.
22. Parliamentary proceedings, Senate, 1974-75, nr. 674.

He adds to this letter: These are only a few examples. Every form of personal advertising or promotion, however small it may be, however ingenious, however naïve or however insufficient it may be, is totally prohibited, since competition between attorneys should be avoided. I am sometimes asked where to draw the line between admissible and inadmissible advertising. This question is unnecessary: no system of advertising at all is admitted.
qualifications. Art. 428 of the Belgian Code of Civil Procedure expressly states that no other title can be added to the title of attorney. In recent years one can, however, notice a tendency to relax the rules concerning advertising. One tendency is that the bars, under influence of the National Bar Council, increasingly tend to advertise for attorneys as a group. There have been some advertisements like: "Do you want some good advice? Go to an attorney!". The attorneys increasingly noticed that they were losing the battle against legal consulting firms and against foreign attorneys. The Belgian Bars realize that it is difficult to survive with an absolute prohibition of advertising in a European market where e.g. British and Dutch attorneys are allowed to advertise.

Therefore, in addition to this collective advertising for the profession as a whole, the bar is slowly moving more in the direction of allowing advertisements by attorneys. A step in this direction is that the bars have organised a system of information concerning the preferences of individual attorneys. The individual attorney is allowed to state the subject matters in which he is specialised to his local bar, which makes a list of attorneys with their preferences. The attorney himself is not allowed to advertise with these subject matters, but the public can consult the list at the "Ordres des Avocats". The bar expressly states that the mentioning of this preference does not mean that an attorney is specialised in this subject matter since an attorney should in principle be able to handle all cases. These preferences are, of course, a totally ineffective way to inform the public, since almost no client knows that he could go to the "Ordres des Avocats" to learn which attorney prefers what kind of subject matter.

The Brussels Bar has gone one step further and since June, 12, 1989 it is allowed to print a brochure with information on the law firm. This brochure, however, may only be handed over when a client asks for it. According to this new rule in Brussels also, a logo may be put on a letterhead and academic qualifications can be put on a business card. Once more the Brussels Bar made clear that they were forced to take this step because of the competitive pressures from Dutch and British attorneys who are allowed to advertise.

2. Partnerships

The Belgian Code of Civil Procedure also restricted the possibility of combining work as an attorney with a commercial job by introducing several incompatibilities. Art. 437 of the Belgian Code of Civil Procedure expressly mentions that the profession of attorney is incompatible with trade professions and with employed work (to guarantee the independence of the profession of attorney).

Also the form of business organization of attorneys is regulated. For a long time attorneys in Belgium were not allowed to form corporations. An association of independent attorneys was possible, as long as they would not take the form of a business corporation. The latter was considered contrary to the dignity of attorneys, who should practicise as "responsible" individuals and not as "commercial" corporations. Recently, these rules have been changed in many bars. In Antwerp this has been regulated in a ruling of January, 30, 1989. Now, associations of attorneys may incorporate and take the form of a commercial corporation with limited liability and legal personality. However, a lot of restrictive rules still apply. For instance, a firm can only have one location within Antwerp.

3. Fees

Of course a restriction of competition with respect to fees can also be found in the Belgian Code of Civil Procedure and in the ethical rules of the various bars. Art. 459 of the Code of Civil Procedure provides that the attorney is entitled to a fee "in accordance with the modesty of his profession". The same art. 459, al. 1 prohibits any ex ante agreement on the fee which is dependent on the result of the case. This so-called "pacta de quota litis" is hence pro-

29. For further details see Stevens, 1990, p. 352-367.
hibited in Belgium. Contingency fees or "no cure, no pay" provisions are therefore prohibited as well. 34.

The various bars in Belgium have fixed guidelines for the estimation of fees. Usually these regulations set minimum amounts. In most of these guidelines it is stated that the attorney is not allowed to systematically charge "too small" a fee, since this would be contrary to the dignity of the profession. In most cases the guidelines make clear that the amount of the fee is related to the type of case handled and the court before which the case must be pleaded.

These guidelines are said to provide information to the public at large and therefore more certainty. 35. However, most of the bar's guidelines are confidential and therefore not available to the potential clients.

The Bar Council and its president play an important role in supervising the fee in case of a dispute with a client. If a client feels that the amount of the fee is too high he can complain to the Bar Council, which could eventually decrease the amount of the fee. 36. Also if the attorney himself received no payment and wants to file a law suit against his client, he can only do so if he was granted permission by the president of the Bar Council. In these cases it is clear that the Bar Council supervises the fees.

It should also be noted that special rules apply when an attorney takes over a case from a colleague. According to a decision of the Bar Council an attorney is not allowed to approach a potential client to convince the latter to change attorney. He can only take the case if the existing client himself wishes to change. Moreover, the new attorney is not allowed to perform his services for the client if the first attorneys fees have not been paid. 37.

34. The president of the bar council, F. Lambrecht, warned against an advertisement in the Rechtszundig Weekblad of June, 20, 1987 of "international law office" in Amsterdam. This office announced to work under a system where the client only pays in case of a positive result and that it was looking for cooperation with Belgian attorneys. The president reminded that the pacta de quo lieit is prohibited and that any cooperation with international law office on a no cure no pay basis is therefore prohibited for Belgian attorneys.

36. This is explicitly provided for in art. 459, al. 2 of the Belgian code of civil procedure.

REGULATION OF ATTORNEYS IN BELGIUM

It is probably needless to mention that of course any kind of advertisement with respect to fees is absolutely prohibited. Therefore, since attorneys may not pass on information on prices to clients, price competition is most limited.

4. Dignity

In addition to the rules concerning advertising, partnerships and fees, several other ethical rules regulate the conduct of the attorneys and mostly limit competition in some way or other. Some of these have to do with the duty of dignity. According to art. 456 of the Code of Civil Procedure the Bar Council has to enforce the principles of dignity upon the attorneys who are members of that bar. These principles of dignity seem to be interpreted quite broadly. In the following cases the attorney violated the principles of dignity: the attorney who loses a client in prison with whom he was romantically involved (sentence of December, 3, 1979, Antwerp), the attorney who receives the rent for a brothel for his client (sentence of November, 14, 1980, Antwerp); the attorney who goes to the shop of his client twice to claim his fees (sentence of June, 23, 1980, Antwerp); the attorney who charges too small a fee (sentence of March, 3, 1958, Antwerp). Also facts which are only related to private life can violate the dignity of the attorneys. As such are considered the fact of being drunk in public and not paying one's debts. 38.

5. Enforcement

Finally it should not be forgotten that all the duties which have been formulated here with respect to advertising, partnerships, fees and dignity are enforced by the bar councils. In case of violation of these rules disciplinary sanctions apply. Art. 460, al. 1 of the Code of Civil Procedure provides that the Bar Council can warn, censor, reprimand or suspend an attorney for a period of one year or remove him from the bar. 39. It is therefore clear that the Bar Council can effectively enforce all its ethical rules. The bottom line is that the disobedient attorney can be removed from the bar forever and in consequence loose all the mentioned prerogatives of being an attorney.

38. More examples can be found by Stevens, 1990, p. 465.
40. For details see Stevens, 1990, p. 647 and following.
§ 3. The Public Interest Argument

After having described the contents and degree of regulation of and by attorneys in Belgium, we will now summarize the arguments which have been advanced from a public interest perspective to defend these regulations. Arguments in favour of regulation of the profession can be found in some of the economic literature. This will be summarized briefly, since this has already been published elsewhere. In addition we will give an overview of the arguments the attorneys themselves advance in favour of the regulation. Finally, the question will have to be addressed whether the existing self-regulation by the Belgian attorneys can be considered as an appropriate response to market failures, especially to the asymmetric information problem. If there is an argument for occupational regulation at all, it should also be examined whether there is a case for self-regulation by the profession of attorneys.

A. Informational Asymmetry as a Basis for Regulation

1. The adverse selection problem

The economic argument which could be advanced to defend regulation of professional services on public interest grounds could be found in the lack of information available for consumers about the quality of the services delivered by the professional. The services which are offered by attorneys are "experience goods." Characteristic for experience goods is that the uncertainty about the quality can only be reduced by consumption. Only then the properties of the experience good will become known. Hence, the consumer has no information ex ante on the quality of the service delivered. This information problem is supposed to be especially serious if the experience good is not regularly purchased and if the characteristics can only be assessed with the help of highly technical standards. One could argue that this is the case for the services offered by attorneys.

If indeed the quality of the services of the professional cannot be assessed by the consumer, the famous adverse selection problem would arise, since this would especially attract professionals who offer a low quality. Since the consumers can not distinguish quality levels, the professional has no incentive to provide good quality services, because the uninformed consumer cannot reward him for high quality services by paying a higher price. Thus adverse selection will arise and as a result of information deficiencies the market will only attract low quality providers of services. The reason is that low quality performers are not punished by the market, because consumers cannot recognize quality.

Thus regulation of professional services could be defended on "public interest" grounds as a mechanism to increase the quality of the services provided by professionals. The argument would be that if consumers cannot control quality, quality should be directly regulated. However, as such this is not an argument for self-regulation by the profession.

2. Reasons the attorneys advance for regulation

It is remarkable that if one looks at the regulation of and by attorneys in Belgium, no clear attempt is made by attorneys to justify the regulation of entry or the regulation of conduct as a means to protect the uninformed consumer. In most of the cases the Belgian attorneys bluntly state that the regulation aims at excluding or reducing competition between attorneys. Only in a second stage it is sometimes argued that "excessive" competition should be avoided, since this would reduce the quality offered by the attorneys.

Let us briefly address some of the reasons advanced by Belgian attorneys in favour of the regulations. The regulation of entry and the control of the "Ordre des Avocats" over the membership of the bar is said to represent the independence of the attorneys towards the executive and judicial powers.

It is also said that the regulation furthers a good administration of the law. Here the asymmetric information argument implicitly comes into the picture. It is held that for instance the monopoly to plead is certainly not to be seen as

43. Cave, 1985, p. 335-351.
MICHAEL G. FAURE

"a privilege of a corporate body" but justified because of the guarantees of competence and discipline which the attorneys offer:

"Le monopole est institué en vue de la bonne administration de la justice, de manière à écarter de la barre ceux qui n’offriraient pas les mêmes garanties que les avocats" 46.

Here one can implicitly recognize the argument that only attorneys should perform a certain service (pleading before a court of law) since only they could guarantee a good administration of the law. In this light one can also understand the tendency to increase the barriers to market entry which have recently occurred by imposing serious duties on the younger attorneys who have to perform a three year training period. These duties are said to increase the quality of the attorney since e.g. the compulsory courses should provide him with a lot of practical information on the various fields of law.

The rules regulating the conduct of attorneys specifically aim at a reduction of competition. This is clearly the case for the prohibition of advertising. Attorneys always stress that they are not a commercial trade of business. Stevens states:

"In commercial cases the clientèle is considered to be 'free game', but the attorney is not a hunter" 47.

Competition between attorneys would be contrary to the "dignity" of the profession. As was mentioned above, however, Belgian attorneys became increasingly aware that this "dignity" had its price. Belgian attorneys seemed to lose the battle against Dutch and British law firms who were allowed to advertise according to their national ethical rules and who are allowed to practise in Belgium as a consequence of European law. This lead the national "Ordre des Avocats" to the decision that advertising for the profession of attorney as a whole should be made. Moreover, some bars, as e.g. Brussels, even decided to allow modest individual advertising 48.

Also with respect to the regulation of fees the ethical rules clearly aim at an exclusion of competition. The Bar Council supervises fees and could impose disciplinary sanctions when an attorney would systematically charge too small a fee, through which he could try to bind a certain clientèle to his firm 49. Contingency fee arrangements are prohibited because they would impair the independence and dignity of the attorney if he himself would have a personal interest in the outcome of the case 50. One could argue that this regulation of fees could also be defended on public interest grounds. If fees would systematically be too small, attorneys would be forced to offer low quality services. It should be noted, however, that this informational asymmetry argument is only very indirectly referred to by the Belgian attorneys to defend the regulation of fees. The most important reason always is that competition between attorneys and the charging of too small a fee would be contrary to the dignity of the profession. No explicit reference is made to the interests of the clients in that respect.

B. A Critique of the Public Interest Argument

In the case of Belgian attorneys it is not that difficult to argue that the public interest arguments in favour of the regulation are weak. I also indicated that the attorneys themselves hardly try to defend the regulation on public interest grounds. The regulation of entry is still modestly defended as a means to exclude bad practitioners, but the regulation of conduct (both with respect to advertising and with respect to fees) is almost exclusively defended as a way of excluding competition between attorneys.

Indeed: if one regards the public interest arguments advanced in the literature in favour of regulation of professional services, it is clear that these do not make a strong case for regulation of the services provided by attorneys. The basic problem is that the argument for a regulatory intervention is asymmetric information. But it is highly doubtful whether in the case of attorneys there is an information problem and if so, whether the current Belgian regulation aims at solving this information problem. Firstly, it should be mentioned that in the case of the professional services offered by attorneys, clients are often very well able to assess the quality of the services offered. Surveys have shown that a vast majority of respondents are able to express their opinion concerning the services offered by a professional 51. Secondly, a distinction should certainly be made between various client groups. An average consumer who selects an

47. Stevens, 1990, p. 528.
attorney for e.g. a traffic accident may lack ex anse the information about the quality of the services offered by the chosen attorney. Corporate clients, however, seem to have relatively little information problems in selecting an attorney.52 If a large corporation wishes to find an attorney to defend the corporation against a claim in environmental damages it is relatively easy for them to find an attorney who is specialised in environmental law e.g. by information provided by legal advisors from other corporations with "environmental problems". Another way would be to examine the law reviews which deal with environmental law in which many attorneys who are specialised in this field publish articles.53 The example also makes clear that it is often costly to acquire information. The information on the quality of an attorney with respect to environmental law is not unavailable, but might be costly to obtain. If a large corporation has a legal officer who can afford to spend time in selecting an attorney who is specialised in environmental law the information is certainly available. But for a small firm that needs quick information it might be harder to obtain this. It is also clear that the prohibition of advertising increases the information costs for the client. Thirdly, the recent evolution in Belgium shows that attorneys themselves are fully aware of the fact that customers can assess the quality of services. Indeed, recent advertisements for attorneys as a group have been made by the bars. This supposes that consumers can compare the professional services of an attorney with the services provided by a substitute on the market, e.g. an accountant with respect to corporate matters. Hence, these advertisements for the profession as a whole falsify the classic arguments that clients would be unable to assess the quality of the services.

C. Alternative Legal Mechanisms

It has been shown that it is not that clear that in the case of attorneys a serious problem of asymmetric information exists. However, in some cases, e.g. with non-business clients who only need an attorney once in a life-time, there might still remain an information problem. The question, however, arises whether this justifies the serious limitations with respect to entry, advertising and fees that we can find in Belgium. Indeed, if an information deficiency leads to a market failure, many other legal mechanisms which don't have the negative effects of self-regulation could be used to remedy this problem.

53. This is, by the way, a nice way for attorneys to pass on information on their skills to the potential clients and thus to circumvent the prohibition of advertising imposed by the ethical rules.

REGULATION OF ATTORNEYS IN BELGIUM

If there are information deficiencies with respect to the quality of services of an attorney the first step that the regulator could consider is to provide information on the quality of the services performed. Many consumer protection acts in Belgium provide for a mandatory disclosure of information. At the moment an obligation to inform the consumer about the price of the services already exists for Belgian traders.54 Such a mandatory duty to disclose information could cure a lot of the information deficiencies. For instance, with respect to the attorneys, a duty to inform potential clients of a specialization of the attorney, could already be most helpful. In many cases this information remedy will help the consumer to recognize the quality standard. In such a case one would only need regulation to guarantee that the information provided by the attorney on his specialization is correct. In that respect a prohibition of misleading advertising could of course help.

If curing the informational asymmetry through regulation of the information is not possible, the next step would be the regulation of the quality of the services itself. In law and economics literature a lot of attention has been paid to liability and government regulation as alternative systems of quality guarantees through legal instruments.55 If one fears that the inability of the consumer to assess the quality provided by the attorney would lead to an inferior quality of these services, liability rules could of course induce the attorney to be careful. The ex anse knowledge of the attorney that he will be held liable ex post if through his negligence damage occurs should give him an incentive to be careful. Attorneys in Belgium are exposed both to contractual and to extra- contractual liability. Liability is often invoked when a duty to inform has been violated by the attorney. This duty to inform applies both when the attorney is consulting a client or when a case is tried before the court. The attorney will e.g. be held liable if he omits to advise his client to appeal to a higher court if this can be in his interest.56 In liability cases judges also examine whether the attorney has exercised the necessary care and diligence in preparing a case. The attorney should for instance make the necessary researches into the case involved and make a proper balance of the odds that his client will win the case.57 Most bars in Belgium have mandatory compulsory insurance schemes for their attorneys. On competitive insurance markets, the insurer

57. For details on professional liability of attorneys see De Puydt, 1983.
could stimulate the quality of the services performed through a monitoring system and an ex post adaptation of premiums 58.

In Belgium the regulation of and by attorneys goes much further. There is in fact no direct quality regulation of the services provided by attorneys. But in the case of attorneys in Belgium both the entry into the market and the conduct of the professionals are controlled by the attorneys themselves: these are the features of self-regulation 59.

D. Self-regulation as the Ultimate Solution?

The services provided by attorneys in Belgium are subjected to self-regulation although it is not at all clear that this far reaching regulatory mechanism was necessary. If a regulatory intervention is necessary to regulate the quality of the services provided by the attorneys, the question should be asked whether this ought to be done by self-regulation of the profession or by direct government regulation. An argument in favour of self-regulation would be that the attorneys have better knowledge of the quality of the services they provide than a regulatory authority. The argument would be that the profession itself has the best capacity to control the service quality and to recognize low standards 60.

Against these advantages one can point at the fact that the attorneys may lack appropriate incentives to control and enforce high quality. From the arguments advanced by the attorneys in favour of the ethical rules it is clear that all of these aim at the exclusion of competition. This exclusion of competition should uphold the consumers impression that all attorneys are equally good and all offer a high quality. It is, however, clear that quality differences between attorneys exist. The current ethical rules inhibit the passing on of this information on quality differences to the consumers. Hence, the self-regulation increases the information costs of the consumers instead of reducing them.

This is especially the case for the prohibition of advertising. One would expect that if there is too little information for consumers on the quality of the services offered, the first way to reduce the information costs is to allow the

professionals to give potential clients information on the quality of the services they offer and the prices charged. Currently, potential clients of attorneys have no ex ante information on the fee that the attorney will charge. Of course a client can ask an attorney how much he will charge to handle a case, but information on what the usual fee for a certain type of case is not public knowledge, so that the consumer is unable to make a comparison. Some argue that advertising by professionals will not provide the adequate result since consumers are totally unable to judge the quality of the services 61. But as we have shown above, this argument is certainly false for the case of attorneys. There is no reason why a consumer should not be informed on the subject matters in which a certain attorney is specialized and what fee he charges per hour or for handling a certain type of case. Moreover, the argument that consumers would be unable to assess the quality of services is not an argument in favour of a total prohibition of advertising, as currently exists for attorneys in Belgium. It is only an argument for a certain regulation of advertising, e.g. through a prohibition of misleading advertising. Of course, it is not argued here, that advertising is a perfect means of passing on information to the consumer. However, the appropriate solution is not a total prohibition of advertising.

The results are clear: the informational deficiency is only advanced as an excuse to restrict competition between attorneys. With free advertising competitive pressures could lower the search costs for consumers. But where there was not a real problem of asymmetric information initially, the ethical rules (especially the prohibition of advertising) in fact create an information deficiency. Therefore we can conclude that the regulation of conduct by the attorneys in Belgium, especially the regulation of advertising and fees, is clearly not in the public interest.

This argument can be endorsed by the fact that empirical research seems to indicate that the professional body of attorneys in Belgium does not substantially control the quality of services offered. One could indeed defend self-regulation (instead of government regulation of safety or occupational licensing) if one could argue that attorneys would be more able to control the quality of the services provided than a regulatory agency. However, the current practice of the professional body of attorneys demonstrates that the ethical rules are

58. In Belgium, however, the control of the moral hazard by the attorneys is far from being perfect. See Faure and Van den Bergh, 1989, p. 306-310.
60. See Dingwall and Fenn, 1987, p. 55 and 59.
61. See e.g. Geens, 1986; Otten, 1987, p. 184.
to a large extent not used to assure a minimum quality through sanctions for
malpractice, but are mostly concerned with restricting competitive behaviour.

In a previous paper Roger Van den Bergh and I gave an overview of the discip-
линary cases handled by the "Ordre des Avocats" in Antwerp between 1984
and 1986 62. That research showed that the sanctions were mostly imposed
for a lack of dignity in the private life or for improper behaviour towards other
attorneys or towards the professional association, but very rarely for pro-
fessional malpractice. I now also possess data for two other bars, which point
in the same direction:

Table 1: Disciplinary cases handled by the Dutch speaking "Ordre des Avocats" in Brussels between 1985 and 1989

<table>
<thead>
<tr>
<th>Type of case</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duties of the attorney</td>
<td></td>
</tr>
<tr>
<td>dignity in professional life</td>
<td>2</td>
</tr>
<tr>
<td>dignity in private life (e.g. non-payments of debts)</td>
<td>2</td>
</tr>
<tr>
<td>failures in the accounting</td>
<td>1</td>
</tr>
<tr>
<td>Relation towards clients</td>
<td></td>
</tr>
<tr>
<td>withholding money of clients</td>
<td>3</td>
</tr>
<tr>
<td>professional malpractice</td>
<td>1</td>
</tr>
<tr>
<td>Relation toward other attorneys</td>
<td></td>
</tr>
<tr>
<td>solidarity among attorneys</td>
<td>1</td>
</tr>
<tr>
<td>respect for other attorneys</td>
<td>1</td>
</tr>
<tr>
<td>withholding files</td>
<td>5</td>
</tr>
<tr>
<td>responding to a case</td>
<td>1</td>
</tr>
<tr>
<td>late payment of an associate</td>
<td>2</td>
</tr>
<tr>
<td>Relation towards the public body</td>
<td></td>
</tr>
<tr>
<td>duty to answer the president of the bar council immediately</td>
<td>10</td>
</tr>
<tr>
<td>non-payment of the membership-fee to the bar</td>
<td>5</td>
</tr>
<tr>
<td>not fulfilling the duties during the training period</td>
<td>2</td>
</tr>
<tr>
<td>looking for clients</td>
<td>2</td>
</tr>
</tbody>
</table>


REGULATION OF ATTORNEYS IN BELGIUM

In this period a couple of more important cases were handled by the Brussels
Bar Council as well. In those cases the guilty attorney had mostly violated all
kinds of ethical rules. However, in most of these cases a criminal and civil
prosecution against the attorney also took place e.g. because he had invested
his clients money and lost it . . .

Table 2: Disciplinary cases handled by the "Ordre des Avocats" of Turnhout
between 1980 and 1985

<table>
<thead>
<tr>
<th>Type of case</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duties of the attorney</td>
<td></td>
</tr>
<tr>
<td>dignity in professional life</td>
<td>7</td>
</tr>
<tr>
<td>Relation towards clients</td>
<td></td>
</tr>
<tr>
<td>fees</td>
<td>2</td>
</tr>
<tr>
<td>honesty and carefulness</td>
<td>6</td>
</tr>
<tr>
<td>Relation toward other attorneys</td>
<td></td>
</tr>
<tr>
<td>correspondence</td>
<td>3</td>
</tr>
<tr>
<td>honesty</td>
<td>1</td>
</tr>
<tr>
<td>Relation towards the public body</td>
<td></td>
</tr>
<tr>
<td>duty to answer the president of the bar council immediately</td>
<td>9</td>
</tr>
<tr>
<td>non-payment of the membership-fee to the bar</td>
<td>1</td>
</tr>
</tbody>
</table>

Again both tables show that sanctions are very rarely imposed for professional
malpractice. The public body seems to be more concerned with the public
image of the attorneys and their own interests than with the supervision of the
quality of the services performed. Also complaint procedures of disappointed
clients do not function as a means to improve the quality of the services per-
formed by attorneys. Clients often do not know that these procedures exist,
and, as the table indicates, sanctions are rarely imposed for professional mal-
practice.

This short overview of the disciplinary practice in several Belgian bars seems
to indicate that it can certainly not be argued that the bars use their powers to
improve the quality of the services provided by attorneys 63.

63. Of course, the low number of malpractice cases does not in itself prove that ethical rules
have no deterrent effect. However, the cases do point at the fact that these bars are more
concerned with the settlement of disputes between attorneys than with the enforcement
of quality standards upon individual attorneys.
MICHAEL G. PAURÉ

§ 4. Professional Regulation as a Way of Rent-seeking

A. Introduction

In the previous paragraph we have shown that the existing self-regulation by attorneys in Belgium cannot be considered an appropriate response to market failures. There is hardly a case for occupational regulation for attorneys, as informational asymmetries are probably not as strong in the case of attorneys as e.g. in that of physicians. Moreover, we found that the existing mechanisms of self-regulation by the Belgian attorneys are certainly not an effective response to a possible information deficiency since these regulations seem to increase the information costs instead of decreasing them.

The control of the bar itself on the admission to the profession and the increasing duties during the training period seem to aimed at a reduction of competitors on the market. If there is a serious fear for social losses due to malpractice by unable practitioners, there might be an argument to say that certain services, e.g. pleading a criminal case, can only be performed by persons with a certain qualification, e.g. a law degree. There is, however, no reason to limit these services to members of a certain professional organization: the bar. Also the three year training period with all the unpleasant duties and limitations is said to increase the quality of the services, but seems to aim at a limitation of the number of practitioners. In this respect it should also be noted that the calls from attorneys for more serious limitations on entry through an increasingly difficult training period were not the result of a decrease in the quality of the services offered, but resulted from an increasing number of attorneys in the 1980's. The attorneys themselves realise that the training period functions as a *numerus clausus*. 64

Also the argument used to defend the monopoly to plead, being that attorneys are necessary for a good administration of the law can be challenged. It is doubtful indeed, to say the least, that an attorney would do better in defending a case than a specialised consultant in e.g. tax matters. One should not forget that under the current ethical rules attorneys are not allowed to advertise their specialism. Therefore the risk is serious that a client with a complicated tax

problem might consult a general practitioner who has never dealt with a tax case before. The client in such a case is far better able to assess the quality of the tax consultant *ex anae*, since they are allowed to advertise. Research by Keijers and Peeters has also shown that in labour cases where the representatives of trade unions are allowed to plead, they are relatively more successful than the average attorney .... 65

Again, it should be stated that even if one accepts the public interest argument used by the attorneys that they are useful for the administration of the law, this is as such not an argument to defend the monopoly to plead. If attorneys would indeed, in a world where they could advertise the quality of their services, prove to plead better than other professionals, the client would still be free to take the case to an attorney. Moreover, the proper administration of justice is guaranteed in practice by a Code of Civil Procedure and by a Code of Criminal Procedure.

It needs no further discussion that the rules concerning the prohibition of advertising on the quality of services and the fees also can in no way be explained as being in the public interest. The Belgian attorneys, by the way, make no attempt to defend the prohibition of advertising on that ground. They clearly state that it is to avoid competition between attorneys. This is considered to be against the dignity of the profession.

Having stated now in many ways that the current regulation by and of attorneys in Belgium does not serve the public interest, the easy conclusion would be that the regulation must be the result of lobbying by the attorneys, since it only seems to protect their interests. Thus the regulation could be explained as a way of rent-seeking by attorneys. This, however, does not answer the question whether attorneys are also successful rent-seekers.

B. Attorneys as Rent-seekers

In the literature on rent-seeking several criteria are advanced, which indicate when an interest group is likely to be successful in obtaining wealth transfers. It is generally stated that the interest group should be small, single issue oriented, well-organised and thus have low transaction costs. On the other hand the information costs for the public at large should be high. Under these condi-

64. See the speech by the president of the Anwerp Bar Council of May, 23, 1989, quoted by Stevens, 1990, p. 204: "One can only be recognized as an attorney after a training period and if one succeeded in the examination. You can call this a *numerus clausus* or call it as you like ... ."

65. See Keijers and Peeters, 1984, p. 177-200.
tions a wealth transfer from the public at large to the interest group is likely to take place. The interest group with low transaction costs is likely to be successful in lobbying, especially if the transfer is somewhat disguised with a public interest argument which cannot be easily uncovered by the public at large 66.

It is remarkable that attorneys in Belgium are as such not so well-organised. The individual bars of every district, however, are well organised. They can of course exclude free riders through the compulsory membership of the bar. However, the bar is not the interest group that lobbies with the government. There are 26 bars, and their representatives together form the National Bar Council. Although they are a public body, they also defend the attorneys interest in some way. In addition there is a national association of attorneys, but this is not politically influential.

If one looks at the number of attorneys who are members of parliament, one should expect them to have a considerable influence on the legislative process. Indeed, of a total number of 212 members in the Chamber of Representatives the distribution of professionals is:

<table>
<thead>
<tr>
<th>Period</th>
<th>Attorneys</th>
<th>Architects</th>
<th>Physicians</th>
<th>Notaries</th>
<th>Pharmacists</th>
</tr>
</thead>
<tbody>
<tr>
<td>1961-1965</td>
<td>45</td>
<td>-</td>
<td>1</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>1965-1968</td>
<td>32</td>
<td>-</td>
<td>6</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>1968-1971</td>
<td>47</td>
<td>-</td>
<td>10</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>1971-1974</td>
<td>44</td>
<td>1</td>
<td>7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1974-1977</td>
<td>37</td>
<td>1</td>
<td>8</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>1977-1979</td>
<td>35</td>
<td>1</td>
<td>4</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1979-1981</td>
<td>32</td>
<td>-</td>
<td>4</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1981-1985</td>
<td>35</td>
<td>-</td>
<td>5</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>1985-1988</td>
<td>34</td>
<td>-</td>
<td>4</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>1988-1991</td>
<td>37</td>
<td>1</td>
<td>3</td>
<td>2</td>
<td>-</td>
</tr>
</tbody>
</table>

This table shows that the numerical presence of attorneys in the Belgian Parliament is impressive. However, this is in itself not an indication that the members of parliament who are at the same time attorneys will also function as representatives of the interest group of attorneys.

The problem the attorneys face is that they have no clear definition of the issues to fight for. In addition, there has been an evolution in the market for legal services which has caused many differences amongst attorneys. In the 1960's, when the current Code of Civil Procedure was drafted, in which the most important monopoly right of attorneys was laid down (monopoly to plead), pleading was probably still their most important activity. Internationalisation was not that important yet and most of the attorneys at that time were sole practitioners. Moreover, the monopoly to plead dated back to the Ancien Régime and many attorneys were still members of parliament (45-52). Therefore it was not that difficult for them to defend a monopoly to plead.

It can also be understood why the monopoly rights could easily be granted and were not as such recognized as a wealth transfer to the detriment of the public at large. Potential clients face high transaction costs to get organised. In the sixties there was no serious consumer movement or client organization that could challenge the monopoly to plead by attorneys.

In the 1970's and 1980's serious changes occurred in the market for legal services all over Europe and also in Belgium. The practice of the attorney has become increasingly international, facing more competition from foreign (American) law firms. In addition an important shift occurred in the practice as well. In many bars in the larger cities, such as Antwerp and Brussels, an increasing number of attorneys got organised in partnerships and larger law firms. These law firms employ many attorneys, who specialised in a certain field. In addition, a lot of these larger law firms spend a great deal of their time in consulting. Pleading has become only a less important part of the work.

The effect is that the diversity that already existed between the attorneys in Belgium seems to become even larger. Some attorneys still are sole practitioners, practicing in all fields of the law, working at smaller bars, having mainly personal clients and for whom pleading a case still is the most important work. But, as we just described, the opposite is true for larger law firms e.g. in Brussels who depend largely on corporate clients. This different structure of the law firms also has its influence on the demand for regulation. Given the increasing importance of consulting and the competitive pressures that exist in that field from other professional consulting firms, one can very well under-

66. See McCormick and Tollison, 1981.
stand the wish of attorneys to obtain a monopoly for legal consulting as well. It is, however, very doubtful that they will be successful in this attempt. The diversity between attorneys is too large for them to lobby as a well-organised interest group. In addition there will also be an important countervailing power from the professional consultants, who will of course heavily oppose a monopoly for legal consulting of attorneys.

One can therefore also understand why the ethical rules concerning advertising have recently been relaxed. Competition from other legal consulting firms made the bar aware that they should at least advertise for the attorneys as a group. But, the influence of Europe also causes Belgian law firms to loose their clients to British, Dutch and German law firms, who are allowed to advertise. As a consequence of these developments especially the larger law firms realised that it is impossible to develop a modern commercial law practice within the framework of the traditional ethical rules. In addition, many attorneys saw the advantage of having the possibility of informing the public about a specialism. Through these pressures the ethical rules concerning advertising seem to change, but on the other hand through the increasing duties in the training period the entry into the profession seems only to get more complicated.

C. Are Attorneys Effective Lobbyers?

If one looks at the contents of the Code of Civil Procedure, one should conclude that there is qualitative evidence that attorneys have been quite successful in acquiring a substantial influence in the law making process. They succeeded in getting control over the admission to the profession, a monopoly to plead and the permission to regulate the conduct of the professionals. In the previous paragraphs we have given some reasons that might explain why the attorneys were successful in the sixties and might nowadays not be as successful anymore. The question also arises whether the success of the rent-seeking can be examined by making an estimate of the rents. One way of getting some impression of this success is by examining recent figures on income-data. These are available from the National Institute of Statistics. The average income of a profession might give an indication of its success in obtaining rents. One should, however, be careful with these figures since earning high incomes does of course not necessarily mean that a group get high rents as a result of lobbying. The numbers are still interesting in comparison with the situation of other professions.

67. The reader will notice that the figures I give on the income of physicians are different from the numbers given in the paper by Henri Swennen on the regulation of the medical profession in Belgium. The reason is that I rely on income data given by the National Institute for Statistics, which provides the income figures as reported to the Social Security Services by the professional (after deduction of costs, but before taxation; see tables 6 and 7), whereas Swennen use figures given by the physicians in interviews with the professional organisation. For my purposes the accuracy is not that important, but the comparability with the other professions is. This is guaranteed since all data came from the same source.
This graph shows that the income of all professions exceeds the income of the self-employed workers. Hence, the average professional has a higher income than the average self-employed worker. However, note that the average income situation of attorneys is not that much higher than the average income of self-employed workers.

These figures show that the success of attorneys as far as the amounts of the rents are concerned, is rather disappointing. The explanation might be that although the attorneys were successful in limiting market entry and regulating conduct, this does not benefit them that much since they only enjoy a monopoly right concerning the pleading of cases before a court of law. Hence, the extent of the monopoly with respect to the performance of certain services is rather limited. The attorneys do indeed have to face competition in the area of legal consultancy. Now that pleading is becoming less important and consulting more important, there is reason to believe that attorneys will not benefit that much from wealth transfers any longer.

D. Distributional Aspects

It seems that the financial situation of attorneys is not as good as one would expect. They seem to have lobbied during the sixties to get a monopoly right on pleading and were successful, but as far as the amounts of the rents are concerned, this success seems to be limited, because of the competition the attorneys face from other professions with respect to consultancy. But, even if attorneys on the whole are not successful rent-seekers, specific sub-groups may enjoy significant benefits through so-called intraprofession transfers. These distributional effects clearly play a role in the case of attorneys. The ethical rules seem to benefit the older members of the bar. Certain duties, e.g. to perform the training period with the pro bono-cases clearly also benefit older attorneys. They have the advantage that a young attorney will work for them during a couple of years at a very low salary. The prohibition of advertising seems to further benefit older attorneys. Especially younger attorneys, as newcomers on a market will have a need to inform the public about the services they offer. This in particular is what older attorneys don’t want and don’t need, since they already have a large clientele which they have built up during several years. They can certainly do without the competition from a young trainee.


REGULATION OF ATTORNEYS IN BELGIUM

One can also note that the average income of older attorneys is certainly higher (a yearly income for all attorneys of approximately 700,000 BEF) than the average income of a young attorney in his training period. Therefore, the ethical rules might be ineffective as far as the protection of the whole group of attorneys is concerned, but they might be effective in transferring wealth to a limited group of attorneys.

§ 5. Conclusions

The starting point was to examine whether the ethical rules enacted by the professional body of attorneys and, in general, the regulation of attorneys was compatible with EC law. To answer this question we had to examine whether these rules served a goal of public interest.

Most of the regulations described in this paper should be opposed under EC law, since they do not serve the public interest. The basic problem is that regulation of the services provided by attorneys presumes that the consumer cannot assess the quality of the services provided by the professional. This is a weak starting point for regulation as far as attorneys are concerned, since in many cases consumers do have information on the quality of the services or can acquire it at relatively low costs. If one therefore rejects the adverse selection argument, there is no public interest argument for regulation, neither for regulation of entry, nor for regulation of conduct by the professionals. Even if one accepts that there might be information deficiencies with respect to the services offered by attorneys in some cases, most of the current Belgian regulations should also be opposed under EC law. If in some cases a form of regulation can be defended as being in the public interest, the informational asymmetry can certainly be cured at lower costs than under self-regulation. In this respect one can think of occupational regulation, liability rules and mandatory disclosure of information, combined with a prohibition of misleading advertising.

It is cynical to note that the current ethical rules do exactly the opposite: they prohibit the passing on of information on the quality of services and on prices to the potential customers. If the question is asked how in this case an abuse of self-regulation can effectively be prevented, the answer is that as far as regulation of conduct is concerned the current prohibition of advertising on

69. According to Langewerf and Van Loon this was an average monthly income of 5,000 BEF in 1984. These amounts have recently been increased.
services and fees should be abolished and replaced by a mandatory disclosure of information. This should be combined with legal rules prohibiting misleading advertising as is the case in fair trade practices legislation. These rules concerning misleading advertising should certainly not be enforced by a professional body, but by independent courts.

From this point of view there might yet be some place for a professional body to regulate conduct, provided that its rules do not inhibit competition. They could regulate e.g. the duty of politeness towards the president of the Bar Council, the fact that an attorney is obliged to answer letters he received from a colleague, etc. These ethical rules which do not limit competition might lead to quality improvement if one believes that the professionals will have an incentive to give high quality performance through the simple fact of belonging to a "dignified" profession. This idea of a "group-spirit" which improves quality might perhaps have worked in small groups, but this is certainly not the case in bars of 1000 attorneys who provide legal services as commercial businessmen. Of course not all the ethical rules restrict competition and some rules e.g. prohibition to withhold files from clients, clearly promote the interest of the client. Hence, one should distinguish between rules which clearly only restrict competition (e.g. a prohibition of advertising) and genuine "ethical" rules which aim at quality improvement.

Rules which limit market entry should be prohibited. The most effective way to do so would probably be the abolition of any monopoly right related to the profession. The monopoly to plead could be abolished and attorneys should in that respect compete with other professionals. No public interest argument can be found for attorneys to be the only ones able to represent a client in a court of law. Of course, a good administration of justice requires that certain procedural and other rules are respected e.g. with respect to a fair and dignified trial. But these can be regulated in a Code of Civil Procedure or in Royal Decrees prescribing the conduct before the court. In addition, there is as such no guarantee that an attorney would be more able to follow these rules than someone else. One could limit the right to defend clients to persons with a certain qualification, for instance a law degree. But if that requirement is met, there seems to be no reason for additional requirements for being allowed to plead a case.

The other question is whether in such a system the existence of the profession of attorney still makes any sense at all. The attorney still might have specific characteristics and properties which are attractive to clients. Also for historical reasons it seems likely that the profession of attorney will continue even if its monopoly rights are abolished. If the profession remains in existence, the barriers to entry should also be eliminated. Thus every person with a law degree should be able to hold the title of attorney, although this would have no more than a symbolic value.

The evolution of legal practice in Belgium has shown that it is greatly changing in this direction: attorneys have lost some of their monopoly rights with respect to pleading and the ethical rules concerning advertising are being changed now as well. This is highly interesting since attorneys themselves have noted that these rules also had adverse effects as far as their profession is concerned. The prohibition of advertising does limit the intraprofessional competition, but it could not exclude the competition from foreign law firms who are not subject to the Belgian ethical rules and from legal consulting firms. If foreign law firms could freely advertise in a European market and legal consulting firms can freely advertise to all corporate customers that they provide highly specialised legal advice, a prohibition of advertising for attorneys would be counterproductive as far as the interests of attorneys are concerned. Only after the bars in most Western-European countries had noted this, now also Belgian bars have slowly started to recognize that attorneys can only survive in modern commercial law practice if they can fully inform the consumers about the quality of the services they offer.
### APPENDIX

#### Table 4

<table>
<thead>
<tr>
<th>Attorneys</th>
<th>Number of practicing attorneys</th>
<th>Annual income per capita (in BEF)</th>
<th>Total income of the group (in BEF)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1982</td>
<td>5,589</td>
<td>625,400</td>
<td>3,512,128.373</td>
</tr>
<tr>
<td>1983</td>
<td>5,540</td>
<td>648,530</td>
<td>3,591,750.611</td>
</tr>
<tr>
<td>1984</td>
<td>5,708</td>
<td>680,549</td>
<td>3,884,575.776</td>
</tr>
<tr>
<td>1985</td>
<td>5,744</td>
<td>725,586</td>
<td>4,167,771.056</td>
</tr>
<tr>
<td>1986</td>
<td>6,357</td>
<td>723,902</td>
<td>4,601,850.520</td>
</tr>
<tr>
<td>1987</td>
<td>6,617</td>
<td>734,431</td>
<td>4,859,734.988</td>
</tr>
<tr>
<td>1988</td>
<td>6,904</td>
<td>787,049</td>
<td>5,433,788.906</td>
</tr>
<tr>
<td>1989</td>
<td>6,804</td>
<td>807,932</td>
<td>5,497,173.454</td>
</tr>
<tr>
<td>1990</td>
<td>8,060</td>
<td>911,506</td>
<td>7,346,745.533</td>
</tr>
</tbody>
</table>

#### Table 5

<table>
<thead>
<tr>
<th>Physicians / General practitioners</th>
<th>Number</th>
<th>Annual income per capita (in BEF)</th>
<th>Total income of the group (in BEF)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1982</td>
<td>12,636</td>
<td>1,249,720</td>
<td>15,791,467.585</td>
</tr>
<tr>
<td>1983</td>
<td>12,632</td>
<td>1,277,033</td>
<td>16,131,488.629</td>
</tr>
<tr>
<td>1984</td>
<td>13,107</td>
<td>1,323,083</td>
<td>17,341,651.730</td>
</tr>
<tr>
<td>1985</td>
<td>13,123</td>
<td>1,328,162</td>
<td>17,429,475.205</td>
</tr>
<tr>
<td>1986</td>
<td>14,278</td>
<td>1,261,641</td>
<td>18,013,712.038</td>
</tr>
<tr>
<td>1987</td>
<td>14,688</td>
<td>1,300,586</td>
<td>19,103,011.212</td>
</tr>
<tr>
<td>1988</td>
<td>15,268</td>
<td>1,270,328</td>
<td>19,395,368.605</td>
</tr>
<tr>
<td>1989</td>
<td>14,899</td>
<td>1,305,584</td>
<td>19,451,898.089</td>
</tr>
<tr>
<td>1990</td>
<td>16,562</td>
<td>1,396,562</td>
<td>23,129,864.549</td>
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</tbody>
</table>
### Table 6

<table>
<thead>
<tr>
<th>Physicians / Specialist</th>
<th>Number</th>
<th>Annual income per capita (in BEF)</th>
<th>Total income of the group (in BEF)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1982</td>
<td>5.109</td>
<td>1,945.930</td>
<td>9,941,760.902</td>
</tr>
<tr>
<td>1983</td>
<td>4.939</td>
<td>2,054.385</td>
<td>10,146,611.554</td>
</tr>
<tr>
<td>1984</td>
<td>5.023</td>
<td>2,083.065</td>
<td>10,463,235.521</td>
</tr>
<tr>
<td>1985</td>
<td>4.950</td>
<td>2,075.991</td>
<td>10,276,158.129</td>
</tr>
<tr>
<td>1986</td>
<td>5.473</td>
<td>1,978.222</td>
<td>10,826,814.151</td>
</tr>
<tr>
<td>1987</td>
<td>5.772</td>
<td>2,039.675</td>
<td>11,773,009.187</td>
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<tr>
<td>1988</td>
<td>3.940</td>
<td>1,999.727</td>
<td>11,878,379.399</td>
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<tr>
<td>1989</td>
<td>5.681</td>
<td>2,084.292</td>
<td>11,840,863.443</td>
</tr>
<tr>
<td>1990</td>
<td>6.246</td>
<td>2,227.931</td>
<td>13,915,662.712</td>
</tr>
</tbody>
</table>

### Table 7

<table>
<thead>
<tr>
<th>Pharmacists</th>
<th>Total number of practitioners in Belgium</th>
<th>Annual income per capita (in BEF)</th>
<th>Total income of the group (in BEF)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1982</td>
<td>4.310</td>
<td>1,110.822</td>
<td>4,787,644.260</td>
</tr>
<tr>
<td>1983</td>
<td>3.995</td>
<td>1,133.542</td>
<td>4,528,501.112</td>
</tr>
<tr>
<td>1984</td>
<td>3.860</td>
<td>1,285.455</td>
<td>4,961,857.742</td>
</tr>
<tr>
<td>1985</td>
<td>3.732</td>
<td>1,300.181</td>
<td>4,852,275.840</td>
</tr>
<tr>
<td>1986</td>
<td>3.902</td>
<td>1,266.163</td>
<td>4,941,834.325</td>
</tr>
<tr>
<td>1987</td>
<td>3.849</td>
<td>1,430.305</td>
<td>5,505,245.635</td>
</tr>
<tr>
<td>1988</td>
<td>3.803</td>
<td>1,530.015</td>
<td>5,818,648.631</td>
</tr>
<tr>
<td>1989</td>
<td>3.441</td>
<td>1,683.256</td>
<td>5,792,087.115</td>
</tr>
<tr>
<td>1990</td>
<td>3.915</td>
<td>1,712.081</td>
<td>6,702,797.507</td>
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</tbody>
</table>