

Liberating the Power of Services – Right of Establishment

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The Internal Market for Services

Services should be able to move across national borders as easily as within a single national market:

- Freedom of establishment of nationals/companies of a Member State in the territory of another Member State (Art. 49 TFEU)
- Freedom to provide services within the EU across borders without the need for an establishment in the Member State where the service is provided (Art. 56 TFEU)

Objectives of the Services Directive (Directive 2006/123/EC)

- Unprecedented legal obligation to carry out systematic structural reforms in services
- Improve the functioning of the Internal Market for services
 - by removing barriers to trade in services (establishment of service providers and cross border provision of services) and
 - by modernising the way in which public administrations work
- ...and as a result, help releasing the untapped potential of services in terms of growth and job creation

Nature of the Services Directive

- A horizontal framework directive:
 - covers all service activities unless they are explicitly excluded
 - complements (without replacing) the existing EU “acquis”
- Large variety of services covered such as wholesale and retail, construction and crafts, business-related services, most regulated professions, tourism, private education, etc
- In total, over 40 % EU GDP and employment
- A tool to be used beyond implementation

Freedom of establishment and the effects of the Services Directive

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Administrative simplification

- General obligation to simplify procedures (Art. 5)
 - The Points of single contact (PSC) (Art. 6-8): possibility for service providers to obtain all relevant information and to complete all relevant procedures
 - through one single place, without having to contact a whole series of authorities
 - electronically, including across borders
- E-government portals to be set up in all Member States

Freedom of establishment for providers (I)

Authorisation schemes

- Can only be maintained if non-discriminatory, justified by an overriding reason of general interest and proportionate (Art. 9)
- Transparency of conditions and procedures (Art. 10-13)
 - validity for the entire territory
 - “tacit” authorisation, etc.

Freedom of establishment for providers (II)

- Requirements to be eliminated (black list - Art.14):
 - Discriminatory requirements
 - Economic needs tests
 - Involvement of competitors in the granting of authorisations
 - etc.

Freedom of establishment for providers (III)

- Requirements to be evaluated (grey list - Art.15):
 - Quantitative and territorial restrictions
 - Fixed tariffs
 - Legal form requirements
 - Shareholding requirements
 - Minimum number of employees
 - etc.
- Requirements have to be evaluated against necessity and proportionality

Freedom of establishment for providers (IV)

- Commercial communications by the regulated professions (Art. 24)
 - Removal of total prohibitions
 - Need to ensure compliance with deontological rules
- Multidisciplinary activities (Art. 25)
 - Removal of restrictions to multidisciplinary activities
 - Specific rules for the regulated professions and for providers certification and similar services

What has been achieved so far? The adoption of “horizontal legislation”

- 23 Member States have adopted their horizontal laws implementing the general principles of the Directive
- In the 2 MS (DE, FR) which decided to incorporate the general principles of the Directive in several legislative acts work has been finalised
- Only in 2 MS the adoption of horizontal laws pending (AT, LU)

What has been achieved so far? Changes to “sector specific legislation”

- 20 MS have by now indicated that they have completed the required changes in sector specific legislation – the Commission is assessing this
- In 3 MS (BE, DE, FR) work is almost finalised
- In 4 MS (AT, GR, LU, SI) serious delays
- Over 1000 implementing acts have been communicated to the Commission so far, many of those are “omnibus laws”
- A number of reforms still underway

What does all this mean in practice for the establishment of service providers? (I)

- Abolition of a good number of cross cutting authorisation schemes
- Modification of many specific authorisations in sectors such as retail, construction, tourism or business services (a trend to replace authorisations by simple declarations)
- Incorporation in national legal systems of the principles of tacit agreement, unlimited duration and national validity of authorisations

What does all this mean in practice for the establishment of service providers? (II)

- Most economic needs tests abolished
- A good number of legal form requirements abolished or made less stringent
- Important (cross cutting) capital ownership requirements made less stringent
- Many compulsory tariffs (notably minimum and fixed tariffs) abolished
- Other important changes relate to minimum capital requirements, territorial/quantitative restrictions, bans on having more than one establishment, etc.

What does all this mean in practice for the establishment of service providers? (III)

Service providers are also “service recipients” (75% of services trade is B2B) so they also benefit from:

- Inclusion of “free movement clauses” in legislation
- Remaining establishment requirements abolished
- Many prior authorisations removed - A good number of notification requirements removed too
- Other type of requirements abolished include: limitation of marketing methods, financial guarantees, tariffs, obligations to have an address, etc.

The setting up of the Points of Single Contact

- E-government portals to be set up in each Member State
- A "first generation" of PSCs websites is available now in 23 MS
- In 17 of those 22 MS, the PSCs allow, to different degrees, the online completion of procedures
- Important delays in four Member States (IT, RO, SK, SI)

Freedom of establishment – going forward

***The Commission Communication
“Towards a better functioning Single
Market for Services – building on the
results of the mutual evaluation process
of the Services Directive”***

COM (2011)20 - 27 January 2011

The Communication adopted by the Commission last 27th January (I)

- “A lot has been achieved, a lot remains to be done”
- Ensure full implementation in all Member States (plus economic assessment of implementation)
- Actions for further deepening the Single Market for services

The Communication adopted by the Commission last 27th January (II)

- A Single Market “performance check” for services
 - identify remaining problems
 - by checking the consistency/coherence of EU legislation
 - on the basis of concrete case studies
 - going beyond the Services Directive

The Communication adopted by the Commission last 27th January (III)

- Tackle remaining regulatory barriers (reserve of activity, capital ownership and legal form, insurance requirements)
- Make the Single Market for services reality on the ground (monitoring of the freedom to provide services clause, notification of new legislation, assessment of means of redress available at national level)

For further information

- http://ec.europa.eu/internal_market/services/services-dir/index_fr.htm