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Detailed information on the implementation of Directive 2006/123/EC on  
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Accompanying the document  
Communication from the Commission to the European Parliament, the  
Council, the European Economic and Social Committee and the Committee of  
the Regions on the implementation of the Services Directive.  
A partnership for new growth in services 2012-2015

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**A partnership for new growth in services 2012-2015**

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# CONTENTS

## Introduction

### **Chapter I — Economic impact**

<b>1. RESULTS OF THE ECONOMIC ANALYSIS</b> .....	<b>8</b>
<b>2. SELECTION OF THE MOST RELEVANT SECTORS AND REQUIREMENTS</b> .....	<b>10</b>
<b>3. METHODOLOGY</b> .....	<b>10</b>
3.1. DATA GATHERING .....	10
3.2. CALCULATION OF THE ECONOMIC IMPACT .....	12
<b>4. ASSESSMENT OF THE ECONOMIC IMPACT OF SETTING UP THE POINTS OF SINGLE CONTACT</b> 10	

### **Chapter II – Points of Single Contact**

<b>1. INTRODUCTION</b> .....	<b>14</b>
1.1. LEGAL FRAMEWORK .....	14
1.2. BUSINESSES' EXPECTATIONS .....	15
<b>2. ASSESSMENT OF THE STATE OF PLAY</b> .....	<b>15</b>
2.1. INFORMATION PROVIDED BY PSCs .....	17
2.2. ELECTRONIC PROCEDURES .....	18
2.3. USABILITY OF PORTALS .....	21
<b>3. AWARENESS AND USAGE OF PSCs</b> .....	<b>21</b>
<b>4. CONCLUSIONS ON THE STATE OF PLAY OF PSCs</b> .....	<b>20</b>

### **Chapter III – Implementation and compliance with key provisions**

<b>1. INTRODUCTION</b> .....	<b>24</b>
<b>2. STREAMLINING THE REGULATORY ENVIRONMENT FOR SERVICES</b> .....	<b>25</b>
2.1. PROHIBITED ESTABLISHMENT REQUIREMENTS — ARTICLE 14 OF THE DIRECTIVE .....	26
2.2. REQUIREMENTS SUBJECT TO EVALUATION — ARTICLE 15 OF THE DIRECTIVE .....	31
2.3. TACIT APPROVAL OF APPLICATIONS FOR AUTHORISATION — ARTICLE 13(4) OF THE DIRECTIVE .....	35
2.4. NATIONWIDE VALIDITY OF AUTHORISATIONS — ARTICLE 10(4) OF THE DIRECTIVE .....	36
2.5. TOTAL PROHIBITION OF COMMERCIAL COMMUNICATIONS — ARTICLE 24 OF THE DIRECTIVE .....	37
<b>3. BOOSTING CROSS-BORDER TRADE — FREEDOM TO PROVIDE SERVICES CLAUSE</b> .....	<b>38</b>
3.1. INTRODUCTION .....	38
3.2. IMPLEMENTATION OF THE FREEDOM TO PROVIDE SERVICES CLAUSE BY MEMBER STATES .....	39
3.3. ISSUES ARISING FROM THE IMPLEMENTATION OF ARTICLE 16 OF THE DIRECTIVE .....	39
3.4. RULES ON FUTURE LEGISLATION — ARTICLE 39(5) OF THE DIRECTIVE .....	41
3.5. USE OF DEROGATIONS PROVIDED FOR IN ARTICLE 17 OF THE DIRECTIVE .....	41
3.6. IMPOSING SPECIFIC REQUIREMENTS LISTED IN ARTICLE 16(2) ON CROSS-BORDER SERVICE PROVIDERS .....	42

### **Chapter IV — Summary of the analysis of the implementation per Member State**

Annex I: Technical annex

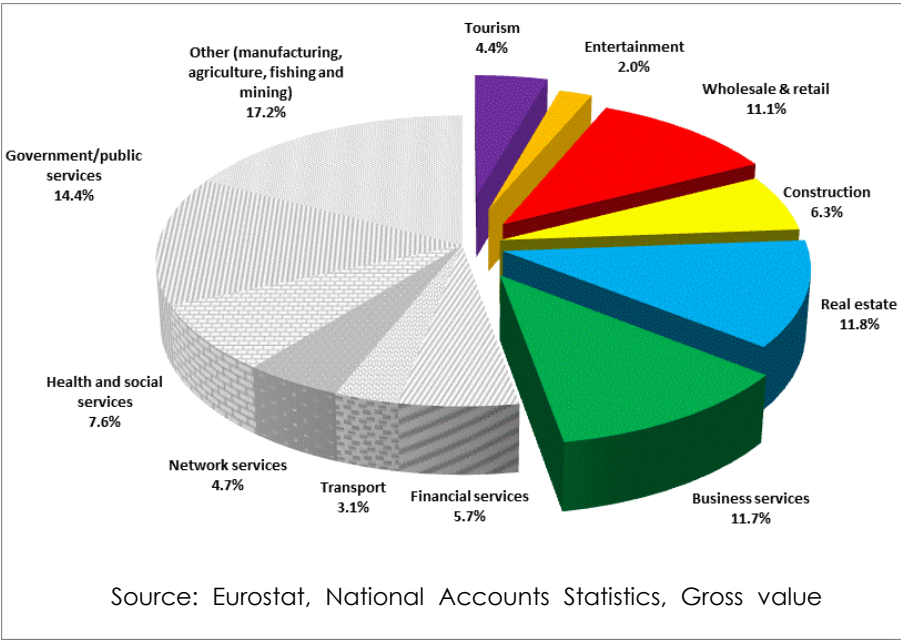
Annex II: Detailed country-specific information

**Introduction**

The Services Directive is a major step forward in making the single market for services a reality. It not only aims to facilitate operators' freedom to provide services across national borders, but also to ensure that the recipients of these services can easily enjoy the opportunities brought about by the single market. The implementation of the Services Directive set in motion huge efforts in the Member States to modernise their administrations and the legal framework for the provision of services and to facilitate establishment and exercise of service activities across borders.

Implementation of the Directive has been challenging particularly because of its broad scope. It covers around 65% of service activities within the services sector. The activities covered represent around 45% of total EU GDP and employment. They include business services (11.7% of value added), real estate (11.8%), retail and wholesale distribution (11.1%), construction (6.43%) and tourism (4.4%). Among the service sectors not covered by the Services Directive (or covered only marginally, such as energy and postal services), most benefit from specific and comprehensive regulatory frameworks at EU level. This is the case for financial and insurance services (5.7% of value added), network services (4.7%, including telecommunications, postal services and energy) and transport (3.1%). The remaining service sectors are government services (14.4% of value added, such as defence and public education) — which in general do not fall within the scope of application of EU law (as ‘non-economic’ services) — and health services (around 7.6%), to which, even in the absence of a comprehensive EU framework, a number of EU rules already apply, ranging from the recognition of professional qualifications to patients’ rights.

Figure 1: Services covered by the Services Directive (darker part on the right) and other sectors of the EU economy in terms of value added by sectors, 2009<sup>1</sup>



<sup>1</sup> Due to data limitations, most of the data cannot be disaggregated by sectors, so that sectors within the scope of the Services Directive include also specific activities that are excluded from the scope of the Directive, and vice versa.

Furthermore, the Services Directive required Member States not only to assess and where necessary adjust their laws in many areas but also to take very concrete and practical steps such as setting up Points of Single Contact and making administrative procedures available in electronic form.

This report describes the significant progress achieved but also what remains to be done. At this stage and given that only two years have elapsed (the implementation deadline was 28.12.2009), it is not feasible to report on all the details of the Services Directive. The report therefore concentrates on those issues and sectors which have the most significant impact or potential in economic terms: business services, construction, real estate, retail and tourism. The implementation of the Services Directive is an ongoing dynamic process.

This report builds upon the Handbook for the implementation of the Services Directive<sup>2</sup> which aimed to give Member States technical assistance by describing appropriate approaches to implementation and on the Commission Staff Working Paper setting out the results of the mutual evaluation process.<sup>3</sup> In addition, the assessment of the implementation in each Member State is based on the information notified to the Commission according to article 39 of the Directive, the results of the mutual evaluation process and the studies<sup>4</sup> that were carried out for the Commission. The economic analysis is based on an economic study carried out by Commission services.<sup>5</sup>

**Chapter I** assesses the Directive's economic impact.

**Chapter II** describes the state of play in the development of the Points of Single Contact.

**Chapter III** gives an overview of the implementation of some of the most relevant parts of the Directive, namely the provisions on administrative simplification (nationwide validity of authorisations, tacit approval), facilitating establishment (prohibited requirements, such as discriminations and economic needs tests, and requirements to be evaluated as to their proportionality, e.g. on legal form and shareholding, tariffs) and commercial communications.

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<sup>2</sup> [http://ec.europa.eu/internal\\_market/services/services-dir/handbook\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/handbook_en.htm)

<sup>3</sup> SEC(2011) 102 accompanying the Communication from the Commission '*Towards a better functioning Single Market for Services – building on the results of the mutual evaluation process of the Services Directive*', COM(2011)20

<sup>4</sup> [http://ec.europa.eu/internal\\_market/services/services-dir/study\\_on\\_points\\_of\\_single\\_contact\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/study_on_points_of_single_contact_en.htm) and Study "Assessment of implementation Measures in Member States" published on [http://ec.europa.eu/internal\\_market/services/services-dir/implementation\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/implementation_en.htm)

<sup>5</sup> Commission Study '*The Economic Impact of the Services Directive: a first assessment following implementation*', published on [http://ec.europa.eu/economy\\_finance/publications/economic\\_paper/2012/index\\_en.htm](http://ec.europa.eu/economy_finance/publications/economic_paper/2012/index_en.htm).

Particular attention is devoted to the implementation of the freedom to provide services clause and the situation with regard to cross-border trade.

**Chapter IV** summarises the state of implementation of the Directive per Member State. A more detailed analysis per Member State is provided in **Annex II**.

**Annex I** contains information about the sectors covered by the Services Directive as well as technical information and data concerning the economic study.

## Chapter I — Economic impact

The broad scope of the Services Directive, in terms of both service activities and legal/administrative requirements, means that its economic impact is of particular significance.<sup>6</sup> The economic assessment carried out by the Commission is the first analysis based on information on actual implementation of the Services Directive by Member States and the first study to deal not only with its effects on trade and foreign direct investment (i.e. foreign establishment), but also with its domestic effects via the increase in productivity of domestic firms. The assessment is still a forecast since the actual impact of the changes introduced will produce economic effects only over time. Effects of a more ambitious implementation have also been estimated showing the significant additional gains to be reaped. It is important to note that, although the results presented below cover the main restrictions under the Services Directive, data limitations mean that they provide only an estimate of the economic impact of another important provision under the Directive, namely the setting up of the Points of Single Contact<sup>7</sup>. This is mentioned in part 4 of this Chapter.

### 1. RESULTS OF THE ECONOMIC ANALYSIS

Based on **the implementation measures adopted so far by Member States, the Services Directive is generating an additional 0.81%** of EU GDP, with the majority of effects materializing during the 5-10 years following implementation (base-line scenario). The impact at EU level within the sectors covered by the analysis is estimated at more than 7% for trade, close to 4% for foreign direct investment (FDI) and above 4.5% for productivity. The domestic impact of barrier reductions turns out to be greater than the international impact, at least in the short run as the analysis does not take into account, due to data limitations, the long-term effect that increased flows of trade and foreign direct investment could have on GDP through productivity improvements.

In addition to the assesment based on real implementation to date, a second scenario **of a more ambitious implementation** of the Services Directive has been analysed. Under this scenario, each sector in every country moves to an 'ideal' barrier profile where barriers are equal to the EU average in that sector, or lower (if already achieved). In the case of such ideal but still conservative implementation the cumulative **long-term impact on overall GDP reaches 1.23%**. The impacts on FDI, trade and productivity would be about one and a half times larger than in the base-line scenario.

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<sup>6</sup> A number of previous economic studies have assessed the potential impact from a theoretical standpoint. See in particular Copenhagen Economics, 2005, Economic assessment of the barriers to the internal market for services and Bas Straathof, Gert-Jan Linders, Arjan Lejour, Jan Möhlmann, 2008, The internal market and the Dutch economy — Implications for trade and economic growth, CPB Document 168. These documents and further studies are available at [http://ec.europa.eu/internal\\_market/services/services-dir/studies\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/studies_en.htm).

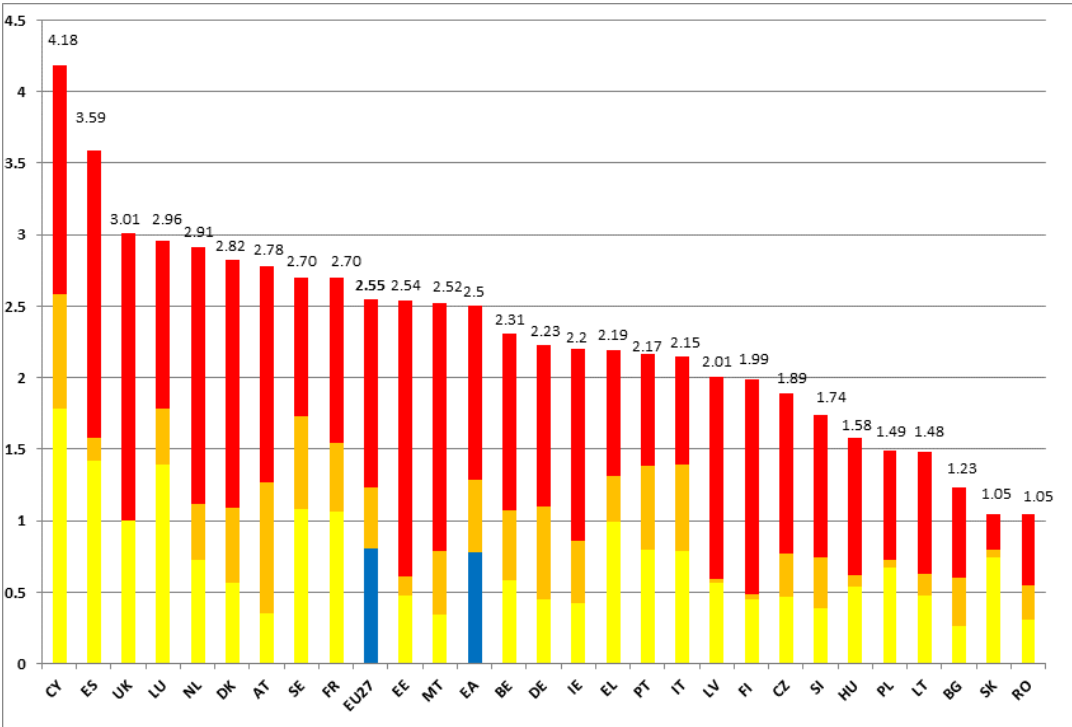
<sup>7</sup> In particular, this approximation to the economic effect of setting up national Points of Single Contacts is based upon the Member States' procedural streamlining efforts as far as setting up a service provider activity is concerned, while the dimension of cross-border provision is not covered.

The differences in impacts across countries mainly reflect the extent to which barriers have been reduced: countries with larger barrier reductions import more, attract more inward FDI, and have a larger boost in productivity. Moreover, the results are influenced by the geographic composition of the destination of exports and outward FDI, and the barrier reductions in those destinations: more exports to or investment in those countries which had larger barrier reductions increase the effects. Finally, with regard to the overall impact on GDP, the sectoral composition of the national economy explains some of the differences observed across Member States: a greater share of services in the economy means that the removal of barriers has a greater impact.

Finally, in a third scenario the ‘ideal’ barrier profile is even lower than in the second scenario: barriers are reduced in each sector to the average level of barriers in the the five countries with the lowest levels in that sector, or lower (if already achieved). Under **this third scenario close to the abolishment of almost all restrictions** within the scope of the Services Directive, **the additional gain could reach 1.8% of GDP compared to the base-line scenario, representing total economic gains of 2.6% of GDP.**

The following figure shows per Member State the effects on GDP of the actual implementation (base-line scenario), the additional impact of the second scenario (assuming a more ambitious but still quite modest implementation of the Services Directive) and the further effects of the third scenario (close to full elimination).

**Figure 2.** The GDP impacts of the Services Directive under the base-line scenario and the additional effects of the second and third scenarios (in %)



Source: Commission services

Note: Yellow and blue (aggregates for Euro Area and EU27) bars = effects of actual implementation (base-line scenario); orange bars = additional impacts in the second scenario (assuming a more ambitious implementation); red bars = additional impacts in the third scenario (close to full elimination).

## **2. SELECTION OF THE MOST RELEVANT SECTORS AND REQUIREMENTS**

For practical reasons and feasibility, it was decided to focus the assessment on the following key sectors that are most relevant in economic terms (GDP share, employment, growth) and in terms of the impact of the Services Directive:

- professional and business services (legal services, tax advisers, accountants, engineers and architects);
- construction and crafts;
- real estate;
- retail;
- tourism.

Thus a number of sectors covered by the Services Directive, representing approximately 20% of EU GDP, were left out of the economic assessment. The GDP impacts presented above have been obtained under the assumption of no barrier changes in those sectors.

A certain level of aggregation and simplification, often requiring value judgments, was necessary in the data collection within these ‘priority’ sectors. Thus, if a requirement existed in a significant part of the activities comprised in the sector (for example an authorisation requirement for large-scale retail outlets in the ‘retail’ category), it was considered applicable to the whole sector.

As regards the barriers to the internal market in services, the Services Directive addresses a wide range of aspects. The economic assessment focused on those that have a direct impact on reducing the administrative burden and on streamlining the regulatory environment for services since these are likely to have the most significant economic impact. These are requirements dealing directly with access to or the exercise of service activities: authorisation regimes, prohibited requirements on establishment and requirements to be evaluated and simplified, and the legal framework for cross-border service provision (see the list of assessed requirements in Annex I b)). The effects of simplifying administrative procedures (recognition of foreign documents, tacit approval, etc.) have also been taken into account.

## **3. METHODOLOGY**

### **3.1. Data gathering**

#### *3.1.1. Data sources*

The implementation of key provisions of the Services Directive was assessed throughout 2010 during the process of ‘mutual evaluation’ provided for by the Directive. Most data on barriers are based on the results of the mutual evaluation. The information gathered in this exercise was supplemented or corrected with data from external studies<sup>8</sup> and from other sources (performance checks, complaints and infringement procedures, etc.).

The economic assessment also used sectoral data from different sources, including Eurostat, for the other variables in the analysis (e.g. trade flows, FDI, productivity).

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<sup>8</sup> See [http://ec.europa.eu/internal\\_market/services/services-dir/updates\\_and\\_reports\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/updates_and_reports_en.htm).

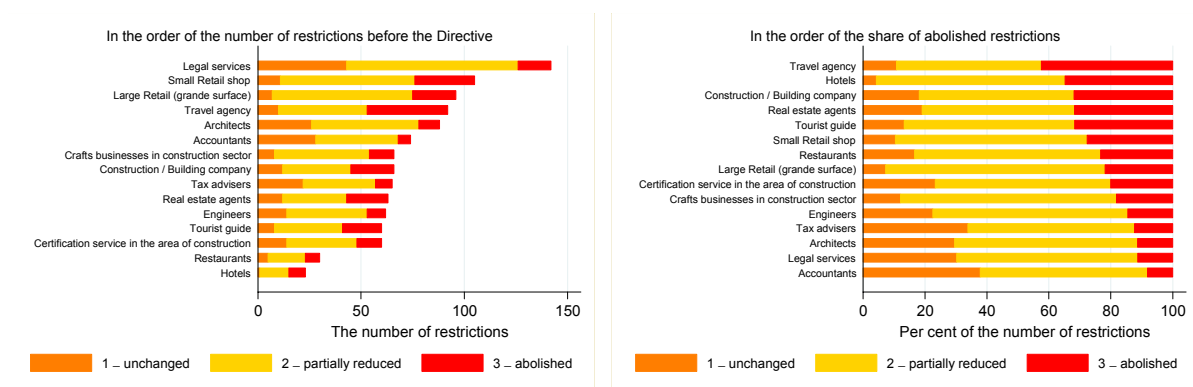
### 3.1.2. Transformation of qualitative information into quantitative indicators

Qualitative information on barriers had to be transformed into quantitative information for the assessment. The rule followed was to assign 1 to requirements that existed before the implementation of the Directive and 0 for those that did not. Three different values were used to describe what happened to each individual requirement as a result of implementation: 1 if the requirement was kept; 0.8 if the requirement was made less stringent (signifying a 20% barrier reduction); and 0 if the requirement was abolished. For Member States with decentralised administrations, regional differences in implementation could not be dealt with separately. This required some value judgments as to which requirements at regional level should be considered as being sufficiently relevant to be taken into account.

### 3.1.3. Description of aggregated data on barriers

Using the collected dataset, the figures below show the total absolute number of barriers maintained, reduced and eliminated as a result of the Services Directive across sectors in the EU. The highest number of restrictions before the Directive existed in the area of legal services. The highest number of restrictions were abolished in the area of travels agencies and hotels, with the lowest in legal services and accounting.

Figure 3. Barriers across sectors in the EU



Source: Commission services

However, for the interpretation of the data on barriers, it is important to stress that, as explained in Chapter III, the Services Directive does not require Member States to abolish all requirements. In many instances requirements can be maintained if they are necessary to protect a public interest objective and are proportionate. If that is the case keeping requirements or simplifying them (which would be marked above as 'partially reduced') instead of full abolishment does not violate the Services Directive. A requirement could be considered less stringent as a result of administrative simplification (recognition of foreign documents, tacit approval, Points of Single Contact etc.). In other cases, legal form and shareholding requirements were made less stringent in some Member States by broadening the scope of available company structures for certain professional service providers, without abolishing the requirement by giving full freedom.

Looking at the results of barrier reduction per Member State, there is a group of countries (Bulgaria, Cyprus, France, Germany, Greece, Italy, Luxemburg, Portugal, Romania, Spain, Sweden) where a particularly high number of restrictions were fully abolished or partially

changed. At the other end, Member States like Austria, Denmark, Ireland, Malta or the United Kingdom had a very low number of restrictions fully abolished or partially reduced. There are various reasons for this. For example a high number of restrictions abolished might mean that there was a high number of barriers to start with (e.g. Greece) or that newly introduced horizontal legislation affected many sectors (e.g. Sweden). On the other hand, a low number of changed restrictions might mean that a low number of restrictions already existed before the Services Directive (e.g. United Kingdom). For a detailed picture on the restrictions per Member State, see Chapter IV of this document.

### **3.2. Calculation of the economic impact**

Once data on barriers before and after the Directive had been collected, the impacts on foreign direct investment, trade and productivity were estimated with regression analysis.

Barrier reduction is expected to influence productivity both directly (via its impact on domestic firms' productivity) and indirectly, via its impact on foreign direct investment and trade (see the conceptual framework of the economic assessment in Annex I c)). Gravity models were used to estimate the effect of cross-border barriers on trade and of barriers to foreign establishment on capital flows. Dynamic panel data models were subsequently used to estimate the productivity effects of barriers to domestic establishment, of trade and of capital flows.

The impact of barrier changes on productivity, trade and FDI was calculated by multiplying the observed change in barriers (which was sector and country-specific information) times the estimated elasticities (estimated for the EU average) of each dependent variable (trade, capital flows and productivity) to barriers. Finally, the impacts on GDP were estimated using DG ECFIN's computable general equilibrium model QUEST III using as 'shocks' the productivity changes resulting from barrier changes.

## **4. ASSESSMENT OF THE ECONOMIC IMPACT OF SETTING UP THE POINTS OF SINGLE CONTACT**

The aim of this part of the economic assessment was to quantify the economic impact of the Points of Single Contact (PSCs) in every Member State. It was carried out for two scenarios: the actually achieved procedural streamlining effect linked to the PSCs and a future "what-if" situation in which Member States make additional efforts to reach an ideal best performer in the EU27 in terms of procedural burdens related to setting-up service activities.

The methodology provides only a conservative estimate of the actual economic impact of the PSCs due to the fact that it covers neither the aspects of cross-border provision of services nor some features of the PSCs which are difficult to quantify (e.g. technical accessibility, multilingual platform, user-friendliness, etc.). In fact, the main data used comes from the World Bank Doing Business 2012 database<sup>9</sup> for each EU27 Member State on administrative burden related to starting a business (i.e. the number of procedures to start up and operate a firm, the average time to deal with each procedure in days, and the related external costs). The procedural streamlining indicated for each Member State by the change in these data between the time periods corresponding to before the Services Directive (2003 and 2004 data) and after (2011) is assumed to be a result of setting up the PSCs. The economic impact of this

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<sup>9</sup> Refer to [www.doingbusiness.org/data/exploretopics/~/\\_media/FDKM/Doing%20Business/Documents/Annual-Reports/English/DB12-Chapters/starting-a-business.pdf](http://www.doingbusiness.org/data/exploretopics/~/_media/FDKM/Doing%20Business/Documents/Annual-Reports/English/DB12-Chapters/starting-a-business.pdf).

procedural streamlining effort is subsequently adjusted to take into account a set of completion scores provided by the Commission Services, computed on the basis of the findings of the Deloitte study<sup>10</sup> and own assessment.

Bearing in mind these limitations, the economy-wide impact of the PSCs is estimated to be around 0.13% of GDP, while an additional impact of further procedural streamlining in Member States could reach up to 0.15% of GDP in the medium run (5-year horizon) and up to 0.21% of GDP in the long run, taking into account that PSCs would have a positive effect on the creation of new service businesses.

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<sup>10</sup> "The functioning and usability of the Points of Single Contacts under the Services Directive – State of Play and Way Forward" (Deloitte, 2012), commissioned by DG MARKT.

## Chapter II — Points of Single Contact

### 1. INTRODUCTION

The Points of Single Contact (PSCs) are a very visible and concrete innovation of the Services Directive for businesses. PSCs aim to give them access to clear, up-to-date information, together with an easy means of completing administrative formalities both at home and abroad.

The creation of PSCs has proven to be a highly ambitious project, both in terms of the innovation required to bring paper-based systems online and in terms of the complexity and number of authorities and procedures to be brought under PSCs.

#### 1.1. Legal framework

Article 6 of the Services Directive requires Member States to establish PSCs through which service providers can complete all procedures and formalities needed to access and exercise service activities — such as declarations, notifications or applications necessary for authorisation by a competent authority.

Article 7 sets out the information that should be available to both service providers and recipients through the PSCs. These include information on the requirements applicable to providers, the contact details of competent authorities, the means of accessing public registers and databases of service providers, the means of redress available and the contact details of associations or organisations from which either providers or recipients may obtain practical assistance.

Article 8 of the Services Directive requires that businesses be allowed to complete all the procedures and formalities related to the access to and exercise of a service activity at a distance and by electronic means, be it nationally or in another Member State.

The cross-border completion of e-procedures poses a significant challenge, due in part to the lack of interoperability and differences in approach to online public services in Member States. In order to facilitate cross-border access to e-procedures, the Commission has adopted legal measures<sup>11</sup> to improve the cross-border use of e-signatures by requiring Member States to accept as a minimum certain e-signatures,<sup>12</sup> and to put in place the necessary technical means to be able to validate these, also on a cross-border basis.

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<sup>11</sup> Commission Decision 2009/767/EC of 16 October 2009 setting out measures facilitating the use of procedures by electronic means through the ‘points of single contact’ under Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market as amended by Commission Decision 2010/425/EU of 28 July 2010 amending Decision 2009/767/EC as regards the establishment, maintenance and publication of trusted lists of certification service providers supervised/accredited by Member States and by Commission Decision 2011/130/EU of 25 February 2011 establishing minimum requirements for the cross-border processing of documents signed electronically by competent authorities under Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market.

<sup>12</sup> Advanced e-signatures supported by a qualified certificate, or advanced e-signatures supported by a qualified certificate and created by a secure signature creation device, if justified..

## 1.2. Businesses' expectations

Business organisations have carried out their own reviews of the functioning of PSCs<sup>13</sup>. These reviews insist on the importance of PSCs and call for Member States to enhance PSCs by going beyond what is currently required by the Services Directive. In particular, they expect PSCs to take a more business-friendly approach by covering the whole business life cycle and by providing information and possibilities for completion of administrative procedures also in other key areas (such as VAT rules, labour law, social security) that are not covered by the Services Directive.

Also, businesses would expect PSCs to provide access to such information in foreign language(s).

In analysing the effectiveness of PSCs, it is therefore important to look beyond the question of compliance with the obligations under the Services Directive and take into account the perspective of business users and their actual needs.

## 2. ASSESSMENT OF THE STATE OF PLAY

The deadline for putting the PSCs in place was end 2009. This means that businesses should, as of that time, be able to get all the necessary information to start or carry out their activities and to complete the relevant formalities online (including to identify themselves, sign their applications, submit required documentation and receive official documents by electronic means), both within their own and in other Member States. The PSCs should in particular make life easier for SMEs who can choose to go through the procedures online saving some time and money.

The responsibility for the development of PSCs lies with the Member State authorities, but the Commission has adopted measures to facilitate the cross-border aspects of e-procedures where the major challenges lie due to technological divergences. In addition to the relevant legal measures that aim at enhancing the cross-border accessibility of e-procedures via setting clear obligations on the acceptance of e-signatures, making available information needed for cross-border validation of e-signatures and obliging Member States to put in place technical solutions for common formats of e-signatures, the Commission has been assisting Member States with practical tools in the form of open source software for e-signatures, and facilitating exchanges of best practices.

Against this background of expected delivery of PSCs, an extensive benchmarking survey was carried out by Deloitte Consulting<sup>14</sup> in 2011 and Member States participated in a mutual test of each other's PSCs, organised by the Commission. The analysis set out in this report is largely based on this fieldwork carried out in 2011, complemented by results from other relevant studies<sup>15</sup> and additional input from Member States. It cannot, in all cases, reflect all

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<sup>13</sup> Business Europe, Services Directive Implementation Report, November 2011, available at [www.buinessurope.eu](http://www.buinessurope.eu), Eurochambres: Services Directive: Points of Single Contact not fully functioning across the EU, January 2011, available at [www.eurochambres.eu](http://www.eurochambres.eu).

<sup>14</sup> [http://ec.europa.eu/internal\\_market/services/services-dir/study\\_on\\_points\\_of\\_single\\_contact\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/study_on_points_of_single_contact_en.htm)

<sup>15</sup> The Large Scale Pilot SPOCS (*Simple Procedures Online for Cross-border Services*) Points of Single Contact Research Study, April 2011, available at [www.eu-spocs.eu](http://www.eu-spocs.eu); the 9th eGovernment Measurement Benchmark: Digitising Public Services in Europe: Putting ambition into action, December 2010, available at [http://ec.europa.eu/information\\_society/newsroom/cf/item-detail-dae.cfm?item\\_id=6537](http://ec.europa.eu/information_society/newsroom/cf/item-detail-dae.cfm?item_id=6537).

ongoing improvements and developments<sup>16</sup> as PSCs are a constant ‘work in progress. The primary focus of the survey, studies and mutual testing was the key functions of the PSCs in terms of how they are used by businesses. Although some of the information that is required under Article 7 to be provided to service recipients through the PSCs was indirectly covered by the analysis, it was not examined in depth. A more focused analysis of the implementation of Article 7 will be undertaken in the framework of future activities concerning the PSCs.

Taking into account the main aspects of PSCs,<sup>17</sup> namely the availability of information, availability of e-procedures and ease of cross-border completion of e-procedures, and user-friendliness, the Commission has established three broad categories of PSCs that reflect an overall assessment of the state of play of PSCs in the Member States. The green colour in the figure below indicates Member States with the most advanced PSCs compared to others and the red colour indicates the most problematic ones, where the development is substantially lagging behind the average. The biggest number of Member States falls into the yellow category, which represents the middle ground. Being the biggest group, it is rather heterogeneous and encompasses both PSCs which are relatively advanced and score relatively well for many of the main features and PSCs that underperform in certain categories but do better in other areas, e.g. information availability can be very good but the completion of the procedures is poor. It should be noted that the green colour does not mean that these PSCs are fully compliant with the Services Directive in absolute terms: for all PSCs further improvements are needed, but these may be more or less considerable and may also vary as regards the areas where currently the deficiencies exist.

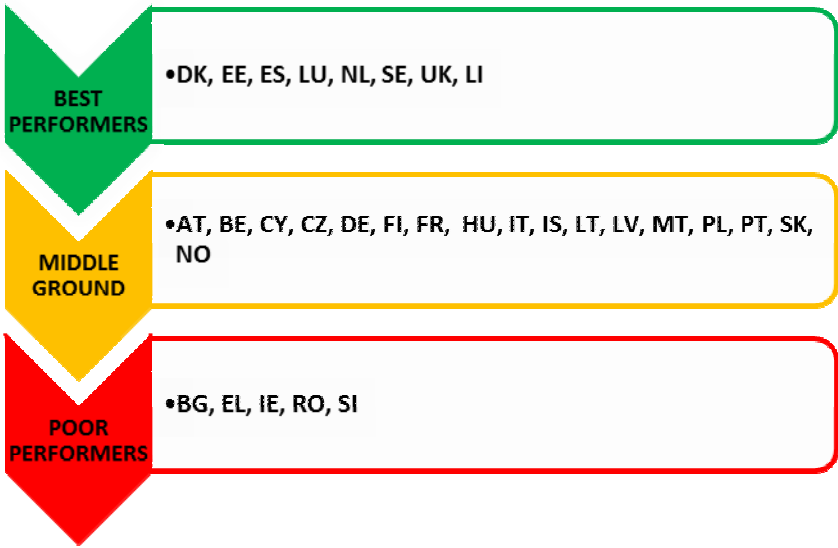


Figure 1: Categories of PSCs overall (including the availability of information, e-procedures, ease of cross-border completion of e-procedures and user-friendliness). For Germany it should be noted that PSCs are set up and managed by each Land with considerable differences between them as regards organisational structure. There is a central portal directing businesses to the relevant PSC.

<sup>16</sup> Romania launched its electronic PSC in late 2011; in January 2012, Slovakia launched its electronic PSC, which had only been available in pilot form at the time of the assessment, and Malta launched a substantially revamped PSC. Some other Member States, including Estonia, Finland, Luxembourg and Portugal, have recently made significant improvements to their PSCs.

<sup>17</sup> Availability of information, availability of e-procedures and ease of cross-border completion of e-procedures, user-friendliness.

Looking at the PSCs from the businesses' perspective the situation in the bigger Member States could be of particular interest in terms of business opportunities. In this regard it should be noted that in Spain and the United Kingdom the PSCs are well functioning and user-friendly even if cross-border completion of procedures needs to be enhanced in Spain. In Germany the situation is very divergent between the Länder but on average relatively good. In France the PSC is well established but not all mandatory information is available nor are all procedures covered yet. A major disincentive for cross-border use is the lack of other languages as the portal is in French only. Italy was late in setting up the PSCs but is improving rapidly. In Poland the situation is relatively good above all for national use, further improvements mostly regarding technical accessibility are needed for cross-border access.

Sections 2.1 to 2.3 below give a more detailed assessment of the degree of sophistication of the PSCs.

**2.1. Information provided by PSCs**

The following figure gives the categorisation of PSCs for the aspect "availability and quality of information":

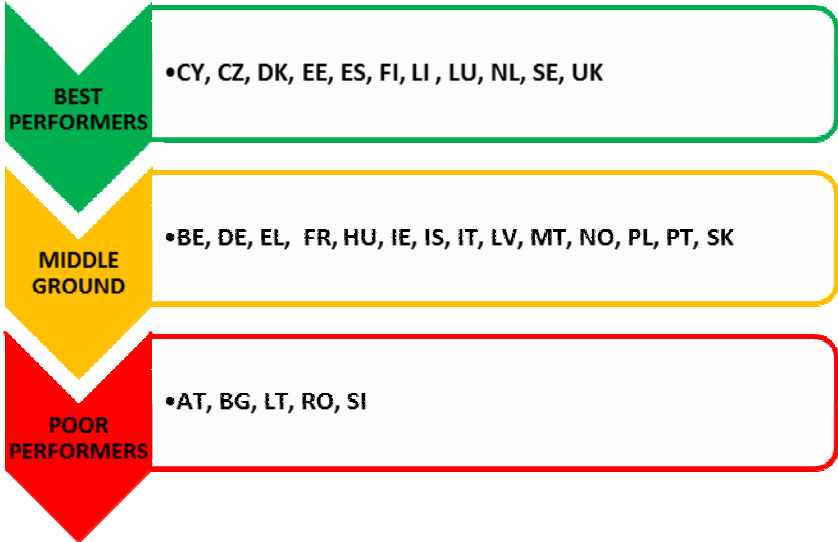


Figure 2: The categorisation of the PSCs for the aspect "quality and availability of information".

*2.1.1. Scope and availability of information*

As to the overall availability of information, procedures falling under the Services Directive are well covered (81% of the procedures analysed, covering 6 business scenarios for 3 sectors). The best performing Member States according to the Deloitte study are **Estonia, Ireland, Finland, Latvia, Norway, Portugal, Spain, the Netherlands and the United Kingdom**. The least information is available through the PSCs of **Bulgaria, Romania, Slovenia and Lithuania**.

Most information is given on company registrations, permits and insurance issues (94% coverage overall). The recognition of professional qualifications is also relatively well covered (more than 60%). Requirements related to the location or the premises of the provider are less well covered. These issues are often under the responsibility of local authorities (around 55%).

Even though it is not within the scope of the Services Directive, information on taxes is very well developed (covered by 76% of PSCs), as is information on employment (76%) and social security-related issues (64%). Many PSCs also provide advice on funding and intellectual property rights issues (67% coverage). The three most complete PSCs, when viewed from this wider perspective, are those located in **Estonia, Luxembourg** and the **United Kingdom**.

### *2.1.2. Structure of information*

The most common way of presenting the information is either by a thematic index of procedures or service sectors. Portals that offer the best search possibilities are those of **Cyprus, Hungary, Luxembourg, Norway** and **Sweden**. Information is less easy to find on the PSCs of **Austria, France**, some **German Länder** (such as **Brandenburg** and **Hessen**), **Greece, Ireland** and **Italy**.

Only 40% of end-users found that the PSCs clearly explained the requirements they had to fulfil. Less than half of PSCs make a clear distinction between requirements that apply to establishment and those applicable to cross-border service provision.

### *2.1.3. Language support*

Providing information in languages other than the language of the Member State of the PSC is not a legal obligation under the Services Directive. It is, however, highly useful for end-users. The PSCs of 20 Member States provide some information in other languages. Of these, 15 give information on requirements in other languages and 8 allow application forms to be completed in other languages. The **Czech Republic, Poland** and **Portugal** offer a tool for the online translation of their web pages.

## **2.2. Electronic procedures**

There are vast differences between Member States in terms of coverage of procedures. The positive finding is that more than one third of all PSCs provide a critical mass (more than 50%) of e-procedures.

Taking into account the number of procedures available in Member States and the possibility for cross-border users to complete the procedures (both for cases where no technical barriers exist and for those where some support is provided also for cross-border e-signatures and e-identification), Member States can be divided into the following three groups:

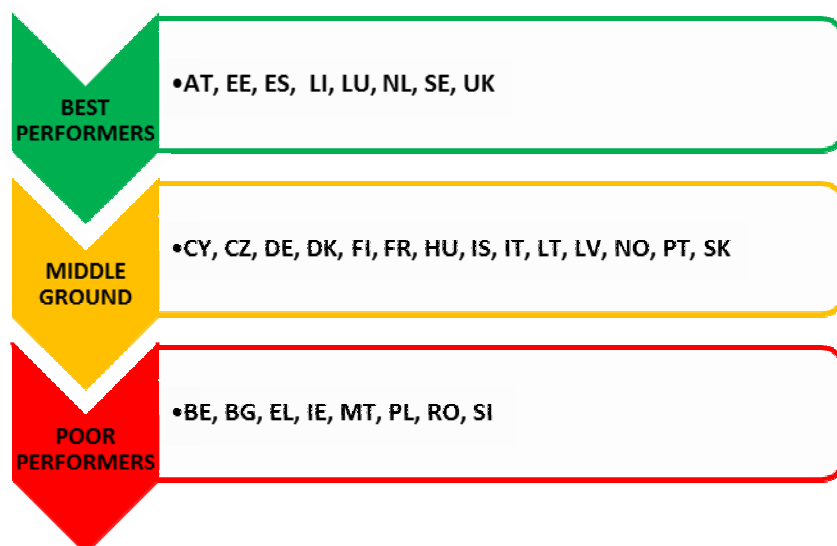


Figure 3: The categorisation of the PSCs for the completion of e-procedures.

### 2.2.1. Availability of e-procedures

Overall, out of the 81% of procedures on which information is available, at least some interaction is possible for 55% of them<sup>18</sup> (as a minimum, downloading forms and submitting by email). For another 26% of procedures only a very low level of information is provided.

Out of the 55% of transactional procedures, 22% are one-way interaction (meaning that forms can be downloaded), 9% are two-way interaction (forms can also be uploaded), and 24% are full case-handling (the procedure can be completed entirely online).

The four websites with the highest level of transactional procedures are in **Estonia, Italy, Liechtenstein** and **Sweden**. As regards the types of procedures, it appears from the Deloitte study that company registration is well covered. Less well covered are procedures relating to the premises of the provider and to the place where the service is carried out. This seems to be due, in many cases, to the fact these types of procedures fall under the responsibility of local authorities, which in many Member States have a varying, and often lower, level of e-government maturity. The degree of availability of procedures relating to the recognition of professional qualifications differs significantly between Member States. In some cases, the portals offer comprehensive information, including the possibility to complete such procedures online (e.g. in **Cyprus, Luxembourg** and **Sweden**). In other cases, the information available is still patchy and it is not yet possible to complete procedures electronically.

Tax and financial formalities and social security formalities, which are not strictly required under the scope of the Services Directive, are relatively well covered.

<sup>18</sup> For the procedures assessed in the Deloitte study, namely those required to offer services as an architect, travel agent and tour guide or restaurant/catering provider are considered. The administrative procedures analysed were company registration; obtaining a general business licence; procedures relating specifically to the service provider, including recognition of professional qualifications, specific licences to act as a travel agent or architect, or to sell alcohol; tax and financial formalities; social security formalities; regulations relating to the premises of the provider; procedures relating to the operation and location of the service provision, such as licences for a restaurant terrace; and procedures applying only or specifically to cross-border providers.

### 2.2.2. Completion of e-procedures

Even where e-procedures are available, the ease of their completion differs depending on the approach chosen in Member States. In Member States<sup>19</sup> where scanned copies of required documents are accepted and simple means are used if identification is required (such as a simple username and password), no technical barriers exist and the completion of procedures is facilitated for businesses. This does not mean, however, that all procedures are necessarily available. In a number of Member States scanned copies are not accepted and more secure means are required to allow access to personal data or to ensure data authenticity. In such cases official e-IDs (national government-issued or -guaranteed) and e-signatures are required. The usability of e-procedures, above all across borders, depends greatly on the capacity of the PSCs to deal with e-signatures and e-identification from other Member States. According to the Deloitte study and information provided by Member States, at least 14 Member States<sup>20</sup> require the use of official e-IDs for online procedures, and 18<sup>21</sup> require (qualified) e-signatures. However, only around half of these have solutions currently in place that allow their cross-border use, at least from some other Member States,<sup>22</sup> but never from all other Member States. In other words, none of these PSCs allows the completion of procedures from all other Member States but at best from a limited number of Member States. This means that in many cases businesses are unable to use PSCs in other Member States.

In summary, 20 Member States make the online completion of procedures available to foreign users to some extent, either by relying on simple solutions that create no obstacles to cross-border use or by relying on more complex solutions where no e-identification or simple identification (login/password) is used and no e-signatures are required or by using more complex solutions but having put in place at least some technical support to allow also for limited cross-border use.

#### Possibility of completing procedures electronically across borders (i.e. by users from abroad), based on Deloitte study and input from Member States

	Number of PSCs	Percentage of PSCs	List of PSCs
<b>Online completion of procedures is possible for foreign users</b>	20	58%	AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, IE, IS, LI, LT, LV, NL, PL, PT, UK
<b>By what means is online completion of procedures possible?</b>	<b>Number of PSCs</b>	<b>Percentage of PSCs (% of all)</b>	<b>List of PSCs</b>
- No technical barriers (no e-ID or e-signature is required)	9	47% (27%)	AT, BE, DE (for e-identification and depends on a Land) DK, FI, FR, IE, IS, NL, UK
- Official e-IDs issued in other Member States are	7	37% (21%)	CY, EE, ES, EL, LI, LT, PT

<sup>19</sup> AT, BE, DK, FI, FR, IE, IS, UK.

<sup>20</sup> BG, EE, ES, HU, IT, LT, LU, LV, MT, NL(depends on authorities), NO, PT, SE, SI.

<sup>21</sup> BG, CY, DE, EE, ES, HU, IT, LV, LT, LU, MT, NL (depends on authorities), NO, PL, PT, SE, SI, SK.

<sup>22</sup> CY, EE, ES, GR, LI, LT, PT for e-ID and CY, CZ, EE, ES, GR, LI, LT, LV, PT, SK for e-signatures.

supported (at least in part)			
- Qualified e-signatures issued in other Member States are supported (at least in part)	10	50% (30%)	CY, CZ, EE, ES, EL, LI, LT, LV, PL PT

### 2.3. Usability of portals

The usability of portals was assessed by Deloitte, who gathered users' feedback via end-user testing conducted in summer 2011. Their analysis reveals that, overall, 40% of businesses found it very difficult to complete procedures online. Specifically, in 8 Member States, at least 50% of users found the PSC easy/very easy to use (only one quarter of PSCs were found to be predominantly easy to use); in 10 Member States, at least 50% of users found the PSC satisfactory to use (one third of PSCs, was found to be mostly satisfactory). In 12 Member States, at least 50% of users found the PSC difficult/very difficult to use (40% of PSCs were found to be difficult to use).

A composite usability index was used by Deloitte to measure the user's experience of the PSCs. The index was composed of four measures: effectiveness and efficiency (whether the users can successfully achieve their objectives and, efficiency how much efforts and resource is expended in achieving those objectives), satisfaction (whether the experience was satisfactory), propensity for portal re-use and e-accessibility. The composite index for usability was generated by combining the rankings for each of the Member States studied against the four measures. The index ranks **Ireland, Slovakia, Czech Republic, Estonia** and one **German Land (Hessen)** most highly for this criterion. **Portugal, Austria, Greece, Slovenia** and **Lithuania** have been placed at the bottom of the ranking of usability<sup>23</sup>.

### 3. AWARENESS AND USAGE OF PSCS

The actual usage of PSCs depends greatly on the awareness of their existence and the services they offer to businesses. Overall, the level of awareness among businesses appears to be rather low. As an indicator, only 30% of Deloitte focus group participants were aware of the existence of the PSC in their country. Major efforts need to be made to raise the awareness of PSCs among businesses at both national and EU level. The activities already undertaken include promotional campaigns in Member States and by the Commission, for example via leaflets or articles, which have often been limited partly due to availability of resources. A common brand (EUGO) has been created to give PSCs a coherent common identity, and activities are ongoing to make it easier to find PSCs online. A more active role played by business organisations in the promotion of PSCs among their members would enhance the level of awareness.

The actual usage of PSCs is not easy to measure due to differences between the methodologies used in Member States, but the data gathered from Member States show that it is steadily increasing. The figures vary between Member States (where statistics are collected) but for example between 2010 and 2011 a very steep increase was noted in the **Czech**

<sup>23</sup> Detailed analysis of other features of the composite usability index can be found in the Deloitte study.

**Republic** (more than 100%) and **Belgium** (around 80%), with significant increases found in **Italy**, **Latvia** and the **Netherlands**. Currently the rise is most manifest for domestic use except for cases where domestic demand has reached a high level (e.g. in the **Netherlands**), further increases are expected from cross-border use.

#### 4. CONCLUSIONS ON THE STATE OF PLAY OF PSCS

The establishment of PSCs has posed a huge challenge to Member States. It has involved significant changes in administrative procedures, in internal cooperation methods and in technical developments.

The majority of the PSCs have been built on existing e-Government business websites which provide services going beyond the Services Directive and take a more holistic approach to business needs. In seven Member States<sup>24</sup> entirely new websites were created. Most of the PSCs serve primarily as gateways to relevant competent authorities' websites. The level of standardisation and integration of competent authorities varies between Member States. PSCs are found to be easier to navigate and use in those Member States where a consistent or more standardised approach exists between competent authorities with regard to the provision of information and the completion of procedures.

With regard to information provision, the overall picture of PSCs is relatively positive. A large proportion of information is provided by the majority of PSCs at least for the most important service sectors, and it often goes beyond the requirements of the Services Directive. The level of detail and structure of the information however varies and further efforts are needed to increase the user friendliness of the information, including via a clearer structure, more search functions and more language support. Work in this regard continues at national level and also via the EUGO Network.

When it comes to online completion of procedures, the current picture is less positive. Many administrative procedures which are relevant are not yet online and possibilities for cross-border completion of procedures are very limited. The cross-border completion is mainly possible in Member States who do not require advanced e-identification or electronic signatures. Main problems with online completion exist in Member States who require electronic identification and electronic signatures but do not technically support these from other Member States, and this number remains relatively high with one third or even more. At the same time there are signs of progress in a number of Member States and clear plans in others to have the necessary technical solutions in place in 2012 or over the coming two years. The solutions mentioned rely in several cases on the results of projects financed by the CIP<sup>25</sup> Large Scale Pilots, above all for e-identification<sup>26</sup>, and the tools provided by the Commission for e-signatures<sup>27</sup> in support of Commission Decision 2011/130/EU adopted under the Services Directive. The Commission will continue to assist Member States with the technical aspects of PSCs to increase their cross-border access, in particular via open source software and best practice sharing in the EUGO network.

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<sup>24</sup> Cyprus, the Czech Republic, Ireland, Lithuania, Portugal, Slovenia and Spain

<sup>25</sup> Competitiveness and Innovation Programme

<sup>26</sup> Large Scale Pilot STORK (*Secure Identity Across Borders Linked*)

<sup>27</sup> Open source software for e-signature creation and validation

Finally, more impetus should be given to the cross-border use of e-identification and e-signatures in a wider context with the Commission proposal for a Regulation on electronic identification and trust service for electronic transactions in the internal market.

## Chapter III — Implementation and compliance with key provisions

### 1. INTRODUCTION

The Services Directive entails an ambitious programme of administrative and regulatory simplification to remove unjustified obstacles to cross-border service activities. The aim of this simplification is to facilitate market access for businesses, in particular SMEs, across the EU, and to offer consumers a broader choice.

The Services Directive should be seen as opening up possibilities for service providers to develop their activities in a more effectively functioning single market. Cross-border service activities remain limited. The ambition of the Services Directive is to boost cross-border trade and offer new opportunities to service providers.

Streamlining the regulatory environment for service providers is beneficial for service providers intending to establish themselves in a Member State by creating a new business or by opening, for example, a subsidiary or a branch. These benefits accrue equally to service providers seeking to become established in another Member State and to those setting up business in their own country.

Service providers established in one Member State, and providing services in another, benefit from the ‘freedom to provide services’ clause (Article 16 of the Services Directive). This clause requires Member States to refrain from imposing their own requirements on cross-border service providers except where their application is necessary for reasons of public policy, public security, public health or the protection of the environment.

The Services Directive facilitates the exercise of economic activity by EU companies operating in the services sector, in particular for SMEs. Indeed, the provisions on administrative simplification and those facilitating access to foreign markets have a significant positive impact on SMEs which have limited resources and technical capacity to comply with the administrative costs and various barriers to establishment and cross-border provision of services. This is of particular importance given that out of 21 million of companies in the EU, over 99% are SMEs. Looking at the number of the companies in the particular economic sectors, over 75 % of them operate in the sectors covered by the Services Directive, again over 99% of these (over 16 million) are SMEs.

With a view to enhancing the rights of recipients and strengthening their confidence in the internal market, the Services Directive obliges Member States to remove obstacles for service recipients wanting to buy services supplied by providers established in other Member States, such as obligations to obtain a specific authorisation to receive such services. It also obliges Member States to make general information available to service recipients, including through the Points of Single Contact, and to provide assistance on the legal requirements and redress procedures applicable in other Member States. Finally, it lays down an obligation on Member States to ensure that discriminatory requirements based on service recipients' nationality or place of residence were put to an end. The latter provision is subject to in-depth analysis in a separate document<sup>28</sup> (hereafter referred to as the Staff Working Paper on Article 20(2)). Many

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<sup>28</sup> Commission Staff Working Paper with a view to establishing guidance on the application of Article 20, paragraph 2 of Directive 2006/123/EC on services in the internal market ("the Services Directive").

Member States have introduced in the horizontal laws transposing the Services Directive provisions reproducing in full or in part the Services Directive's provision on non-discrimination. Others relied on pre-existing legislation that achieves the same end (see Annex I to the Staff Working Paper on Article 20(2)). The national provisions implementing Article 20(2) of the Services Directive make the prohibition of discrimination on grounds of nationality or residence binding on service providers. It is then for relevant national competent authorities to ensure compliance with this obligation. In order to perform this assessment, a case-by-case analysis is required in all instances.

This Chapter does not examine systematically the implementation of all the provisions of the Services Directive. Member States have dedicated significant resources and efforts to implementing the Services Directive in all its aspects. The Commission services are monitoring the implementation process of the whole Directive. However on this occasion, focus has been placed on certain provisions which are key to improving the situation for establishment and cross-border service provision with particular regard to important economic sectors with growth potential (professional services, construction, crafts and certification services, real estate, retail and tourism).

Chapter III provides an overview of the implementation of these provisions in these sectors. Member States are quoted and examples provided. Chapter IV provides a summary of the analysis of the implementation of the Services Directive per Member State. Issues where action is needed are identified for each of them. More detailed information on individual Member States is given in annex II.

## **2. STREAMLINING THE REGULATORY ENVIRONMENT FOR SERVICES: FREEDOM OF ESTABLISHMENT FOR SERVICE PROVIDERS**

Prior to the implementation of the Services Directive, service providers frequently had to be authorised or had to comply with administrative formalities to exercise activities. The Services Directive required Member States to eliminate authorisation schemes and other burdensome requirements when they were not justified or to replace them with less restrictive measures, for instance, notifications or declarations.

As a consequence of this requirement, Member States have removed a significant number of authorisations schemes. **Italy** has established a general principle that all economic activities that previously required an authorisation can be started upon filing a simple declaration with the competent authorities. In **Hungary** more than 50 authorisation schemes have been replaced by declarations, for various activities ranging from tourist guides, through private recruitment agencies to property management. In **Spain**, more than 30 authorisation schemes at national level, in the area of industrial services, have been replaced by declarations, e.g. as regards installing high-voltage lines, high-pressure equipment or lifting equipment. In **Greece, Malta and Slovakia** a wide range of authorisations have been replaced by declarations.

Furthermore, Member States had to facilitate and streamline procedures in particular so that, (1) where no response to a request for authorisation is provided within the deadline set in the national legislation, authorisation is deemed to be granted (Article 13(4), tacit approval of authorisation) and (2) authorisations should allow providers to exercise their activities throughout the national territory (Article 10(4), nationwide validity of authorisations).

## 2.1. Prohibited establishment requirements — Article 14 of the Directive

Requirements listed in Article 14 of the Directive are discriminatory or particularly restrictive and thus have to be removed.

Before the implementation of the Services Directive, the Court of Justice had already found these requirements to be incompatible with Article 49 TFEU. As a consequence, Member States had already removed them to a large extent from their legislation.

Where such requirements still existed, Member States have in general repealed them. However, residence requirements, economic needs tests and the involvement of competitors in individual decisions still apply in some Member States.

The obligation imposed on Member States to remove these requirements is precise, clear and unequivocal.

Where Article 14 violations are identified, they must be corrected as a matter of priority.

### 2.1.1. *Prohibition of discriminatory requirements based on nationality or residence (Article 14(1))*

Member States have been active in removing requirements based on nationality or residence which are clear violations of EU law.

For instance, **Spain** has removed nationality and residence requirements for casual trading and the **Netherlands** for doorstep selling as well as for the inspection of certain heating installations. **Austria** has removed a nationality requirement for chimney sweeps. In **Bulgaria**, nationality requirements for cartographers and land registry service providers and for industrial property agents are in the process of being removed. **Poland** has removed a residence requirement for service providers conducting training for drivers transporting hazardous goods. **Romania** has removed a nationality requirement for tourist guides.

However, requirements based on nationality or residence are still applied. This means that a service provider has to be a national of the country of service provision or be resident in the country to start a business or, in the case of a company that its registered office has to be located in the Member State. This also concerns cases where the legislation requires the service provider, its staff, persons holding the share capital or members of the provider's management or supervisory bodies to be nationals or to reside in the Member State.

In the professional services sector, in **Malta** and **Sweden** patent agents must be residents in the respective Member State.

In the crafts, construction and certification sector, if a nationality requirement has been removed for chimney sweeps in **Austria**, a residence requirement still applies.

In the real estate sector, both natural and legal persons must have a registered office or place of business in **Cyprus**.

In the tourism sector, residence requirements have been identified in **Italy** for ski instructors and in **Cyprus** and **Sweden** for car rental services. In particular, **Cyprus** has introduced this requirement with a new legislation adopted at the end of April 2012.

In the education sector, discriminatory requirements have also been identified as regards driving schools in **Cyprus** and **Poland**. A residence requirement was identified in **Lithuania** for a natural person wishing to provide formal vocational training.

#### 2.1.2. *Prohibition of requirements limiting the choice of the service provider between principal and secondary establishment — Article 14(3)*

Requirements limiting the choice of the service provider have been repealed in certain regions of **Austria** and of **Italy** for ski instructors and in **France** for veterinarians.

However, service providers still face restrictions as to the type of establishment they want to have in another Member State. This is the case in certain regions of **Spain** for travel agencies.

*In **Hungary**, the activity of issuing hot meal and holiday vouchers (SZÉP Card) cannot be pursued by a branch office of a foreign company.*

*In **Romania**, in the sector of education, a provider already established in another Member State can only choose to set up a branch but is not able to set up another form of establishment.*

#### 2.1.3. *Prohibition of economic needs tests — Article 14(5)*

Access to an activity cannot be subject to ‘economic needs tests’. Purely economic needs tests, i.e. tests that make the granting of an authorisation subject to proof of the existence of an economic need or market demand, an assessment of the potential or current economic effects of the activity or an assessment of the appropriateness of the activity in relation to the economic planning objectives set by the competent authority, are banned.

The obligation for service providers to prove the existence of an economic need or market demand, or to assess the potential or current economic effect of their activity for instance on competitors, or to assess the appropriateness of the activity in relation to economic planning objectives, hinders or severely delays the establishment of newcomers. The economic studies that service providers often have to have carried out are costly and time-consuming.

These requirements were in force in national legislation relating to the retail sector.

They have been removed in **Belgium**, **France**, **Luxembourg**, **Italy**, the **Netherlands** and most regions of **Spain**.

*The **Netherlands** have explicitly introduced in their zoning legislation a ban on the application of economic needs tests.*

*In **France**, economic needs tests previously imposed on retail operators in order to be authorised to open new shops or extend existing ones have been abolished.*

However, economic needs tests are still applied in **Romania, Austria, Greece and the Netherlands**.

*In **Romania** an economic needs test and the involvement of competitors in the authorisation procedure are still applied for the opening of large retail stores (exceeding 1 000 m<sup>2</sup>). Any applications for setting up large retail sale structures must be accompanied by a market impact survey.*

*In **Austria**, an economic needs test has to be carried out before the relocation of a tobacco shop can be authorised.*

*In **Greece**, the delivery of authorisations for open air casual trading is linked to an economic test connected with the opinion of a committee involving potential competitors.*

*In **the Netherlands**, economic criteria are applied for the establishment of certain retail outlets at local level despite a clear prohibition in the zoning legislation.*

The absolute prohibition contained in Article 14(5) of the Services Directive does not concern planning requirements that serve overriding reasons relating to the public interest. Sometimes these planning requirements take into account economic data such as demand and supply figures. The use of economic data and criteria as a means to attain other objectives, such as the protection of the environment or town and country planning (e.g. safeguarding of the vitality of city centres) does not constitute an economic needs test within the meaning of Article 14(5) of the Services Directive. In those cases, the use of economic data and criteria for the purpose of serving other reasons in the general interest, such as safeguarding the vitality of city centres or protecting the environment, can be justified if the restrictions are necessary and proportionate and the overriding public interests to be served are not purely economic (that is, they do not protect existing competitors). Such requirements may have to be examined according to other relevant provisions of the Services Directive and the Treaty.

#### *2.1.4. Ban of involvement of competing operators in the decisions of competent authorities — Article 14(6)*

The direct or indirect involvement of competing operators, including within consultative bodies, in the granting of individual authorisations or in the adoption of other decisions of the competent authority is forbidden by Article 14(6) of the Services Directive. This prohibition does not concern the consultation of organisations, such as chambers of commerce or social partners, on matters other than individual applications for authorisations, or the consultation of the public at large. The involvement of competing operators in an individual decision, for instance an authorisation, goes against the basic goal of favouring the market entry of newcomers.

In the retail sector, legislation governing the setting up of large-scale retail establishments in certain regions of **Spain** and in **France** have been amended to remove the involvement of competitors in decisions concerning individual operators.

*In **France**, competing operators were previously part of local committees granting authorisations for the opening of retail shops. They have been replaced in such committees by independent experts.*

However this requirement has been maintained in this sector in **Austria, Romania** and in **Greece**.

*In Greece the opinion of a committee is required for outdoor casual trading. The requirement for participation of the Trade association in the authorisation procedure was abolished, nevertheless other potential competitors, such as the Federation of professionals and craftsmen of the Prefecture still have to be involved.*

*In Romania a 'socio-economic commission' has to be involved in the examination and approval of applications to set up large retail outlets. This commission includes a representative of the economic operators in the closest neighbourhood of the large retail outlet to be established.*

*In Austria, the regional commission of tobacconists, which consists also of competitors of a service provider, has to be consulted.*

In the professional services sector, competitors are involved in individual decisions in **Sweden** and in **France**.

*In Sweden, lawyers already established in Sweden have to confirm the good reputation of candidate lawyers wanting to establish themselves in Sweden.*

*In France, committees granting authorisation to those organising and managing events include competitors.*

In the crafts, construction and certification sector, in **Germany** boards consisting partly of competing operators still have to confirm to the competent authority that an applicant structural inspection engineers fulfils all the necessary application requirements for being authorised.

#### *2.1.5. Ban of the obligation to obtain a financial guarantee or insurance from an operator established in the same Member State — Article 14(7)*

This obligation requires service providers established in one Member State to obtain a financial guarantee or insurance in the Member State where they want to set up a secondary establishment. This may force them to duplicate financial guarantees or insurance and could be very costly.

The obligation to obtain financial guarantees in the Member State of establishment has been removed in **Greece** for the tourism sector and in numerous sectors in **Portugal**, such as professional services, construction, real estate and tourism.

*In Greece, in the tourism sector, the obligation to obtain an execution bond from the Public Deposit and Loans fund or a bank established in Greece has been changed and bonds issues by banks established in other Member States are equally accepted.*

*In Portugal, amendments to sector-specific legislation for construction, real estate and tourism for example, systematically include clauses specifying that the required insurance for established service providers can also be hired from any insurance*

*provider in the EEA. The implementation of Article 14(7) of the Services Directive has also been ensured through the horizontal law.*

In the professional services sector an obligation for accountants, tax advisers and patent attorneys to obtain insurance from an operator who is authorised to exercise in **Austria** has been identified.

In the tourism sector, in **Cyprus** the law provides that for the grant of a licence to establish and operate a travel agency, a deposit of guarantee by the service provider is required.

2.1.6. *Ban of the obligation to have been previously registered or to have previously exercised the activity for a given period in the same Member State — Article 14(8)*

By nature, requiring previous experience has the effect of hindering newcomers from entering the market.

This requirement has been identified in **Greece** in the professional services sector and in **Hungary** in the retail sector.

*In **Greece**, accountants and architects/engineers are required to have experience in Greece in order to be promoted from one category giving access to a level of activities to another category giving access to more activities.*

*In **Hungary**, one of the conditions regarding the issuance of hot meal and holiday vouchers (SZÉP Card) consists in the entity having exercised an activity falling under the same category in the Hungarian Income Tax Law for at least two years.*

## 2.2. Requirements subject to evaluation — Article 15 of the Directive

Member States had to assess a number of requirements that are frequently present in national regulations applicable to services. These requirements have been dealt with by the Court of Justice on numerous occasions. Some were found to be compatible with the fundamental freedoms, depending on circumstances and sectors, in so far as they were suitable to pursue valid public interest objectives and proportionate.

Member States were required to assess those requirements. They could only maintain them if they concluded that, in spite of their restrictive effects, the requirements were justified and proportionate. Member States had to report to the Commission and the other Member States on the results of their assessment.

Very often, Member States chose to preserve the status quo and did not go for a more ambitious implementation of the Directive which would have produced greater economic impact.

The most common requirements maintained by Member States are the obligation to take a specific legal form, often coupled with limitations on shareholding, i.e. ownership of shares in companies is restricted in varying degrees to members of the profession. This concerns in particular the professional services sector. Quantitative and territorial restrictions, mainly for retail are also frequent but they generally concern the sale of very specific products (tobacco, alcohol) or certain types of selling (casual trading, market stalls, doorstep selling).

### 2.2.1. Quantitative and territorial restrictions — Article 15(2)(a)

Quantitative and territorial restrictions have been removed or replaced with less restrictive measures in the professional services sector in **France**, in the retail sector in **Greece** and in the tourism sector in certain regions in **Italy** (ski schools) and **Austria** (ski schools). Restrictions have also been lifted in **Spain** (petrol stations).

*In France, the profession of ‘avoué’ (specialised attorneys who were the only ones authorised to submit writs to the appeals courts), for which quantitative restrictions were imposed, has been merged with that of lawyer, where no such restrictions exist.*

In the retail sector, however with special reference to the sale of particular goods (mostly alcohol and tobacco) or to certain types of selling, quantitative or territorial restrictions have been maintained in **Belgium, France, Greece, Hungary, Italy, Luxembourg, the Netherlands** and **Spain**.

In the tourism sector, requirements of this kind have been identified in certain regions in **Austria** (ski guides), in **Cyprus** (catering) and in certain regions of **Italy** (ski schools).

### 2.2.2. Obligation for the service provider to take a specific legal form — Article 15(2)(b)

Requirements that service providers take a specific legal form are serious obstacles to the establishment of service providers from other Member States. They might be forced to change their legal form or structure and adapt their business models. There is a wide diversity of legal

form requirements ranging from the obligation to exercise the activity as a natural person to limitations regarding the legal form available for a legal person. For example, in certain Member States, lawyers can only exercise as natural person, in others they can also exercise under professional partnership while in other Member States the setting up of law firms is possible. In Member States where law firms are authorised, only certain legal forms may be available.

Restrictions on legal forms are closely related to shareholding requirements. For instance, when there is a requirement that the activity can only be exercised as a natural person or in a partnership between professionals, this amounts to requiring that 100% of the capital is owned by the professionals thus excluding non-professional third parties.

Legal form requirements are often but not exclusively found in the professional services sector where the implementation of the Directive lead to the removal of legal form requirements, such as the obligations imposed on providers of certain services to operate as natural persons or under specific legal forms.

This is the case in **Belgium** for debt recovery activities, in **Denmark** for real estate agents and accountants and in **Portugal** for real estate agents.

In other Member States, legal form requirements have been made less stringent.

This is the case in **Poland** where lawyers and tax advisers may now exercise their activities as a joint-stock limited partnership while previously they could only exercise them as natural persons or partnerships. In **Germany**, architects and engineers have now a free choice of corporate structure. In **France**, accountants can now provide their services under any legal form except as commercial companies. Changes are pending in **Cyprus** for architects and engineers who can only exercise their activities as natural persons. The draft legislation proposes that these activities can also be exercised as a company limited by shares. **Italy** has made requirements less stringent for all regulated professions: recent reforms make several legal forms available, among which limited liability companies.

Requirements limiting company structures are still in place in many Member States for professional services: **Austria** (engineers, accountants, patent agents, tax advisers), **Belgium** (lawyers, architects, accountants, tax advisers and driving schools), **Bulgaria** (lawyers, architects, engineers holding specific company titles), the **Czech Republic** (lawyers), **Denmark** (land surveyors, lawyers), **France** (lawyers, veterinarians), **Germany** (patent agents), **Italy** (all regulated professions even though requirements were made less stringent), **Malta** (architects, engineers), **Poland** (lawyers), **Portugal** (lawyers), **Romania** (lawyers, patent agents, mediators, insolvency practitioners, veterinarians), **Slovakia** (lawyers, tax advisers, mediators), **Slovenia** (lawyers and collecting societies) and the **United Kingdom** (lawyers).

*For example, in the **United Kingdom**, advocates in Scotland and barristers in Northern Ireland can only operate as sole practitioners, ruling out the possibility to exercise this activity through partnerships or company practices.*

*In **Bulgaria**, lawyers can only exercise their activity as sole practitioners, in a partnership or through a law firm composed of lawyers.*

*In Slovenia, collecting societies must be non-profit organisation.*

In the retail sector **Italy** (itinerant sales) and in the tourism sector **Spain** and **Portugal** (travel agents) have abolished such requirements.

In the crafts, construction and certification sector, an obligation to take a specific legal form has been maintained in **Austria** (chimney sweeps), **Bulgaria** (maintenance, repair and modification of high-risk equipment) and **Italy** (crafts).

In the real estate sector, this requirement applies for land surveyors in **Belgium**, **Denmark**, **France** and **Slovakia**.

### 2.2.3. *Requirements relating to the shareholding of companies — Article 15(2)(c)*

Such requirements refer for instance to the obligation to have specific qualifications in order to hold shares in a company. There is a wide ranging diversity of shareholding requirements ranging from 100% capital requirement to be held by a qualified professional to 51% of capital and/or voting rights to be owned by qualified professionals (leaving then 49% to third parties, i.e. non-professionals). Sometimes, the capital or part of the capital may be held by professionals having the same qualifications or by professionals having related qualifications. For instance, in a law firm, the capital may be owned by related legal professions.

Shareholding requirements are very often closely linked to specific legal form requirements.

They are very often applied in the professional services sector. However, **Luxembourg** abolished a shareholding requirement in the craft/construction and certification sector (before, the qualified person/owner needed to have a majority share).

In the professional services sector, shareholding requirements have been made less stringent in certain Member States. Major changes have been made to raise the amount of capital that can be owned by third parties in companies providing professional services. For instance, in **France** the part of the capital which can be held by third parties in professional partnerships has raised to 49% from the previous 25%. The same requirement applies in **Spain** as regards professionals exercising their activities in a professional partnership.

However, shareholding requirements still apply in this sector in **Austria** (accountants, tax advisors, engineers, patent agents), **Belgium** (lawyers, architects, accountants and tax advisors), **Bulgaria** (lawyers and designers), **Cyprus** (lawyers), the **Czech Republic** (construction engineers, architects), **Denmark** (lawyers), **Estonia** (lawyers), **France** (lawyers, accountants, veterinarians, architects, patent agents, land surveyors), **Germany** (lawyers, tax advisors, patent agents, architects, engineers), **Greece** (lawyers, accountants), **Italy** (all regulated professions), **Lithuania** (lawyers), **Luxembourg** (lawyers), **Malta** (lawyers, accountants, auditors, architects, engineers), the **Netherlands** (lawyers, accountants), **Poland** (tax advisors and patent agents), **Portugal** (lawyers, accountants exercising in a professional partnership), **Romania** (lawyers, patent agents, insolvency practitioners), **Slovakia** (lawyers, insolvency practitioners, tax advisors, architects, engineers), **Slovenia** (lawyers), **Spain** (all regulated professions exercising in a professional partnership), **Sweden** (lawyers, accountants) and the **United Kingdom** (lawyers, auditors).

*In the **United Kingdom**, 75% of the shares in a Legal Disciplinary Practice (LDP) must be held by legally qualified persons. Furthermore, in Scotland and Northern Ireland, all shareholders of a solicitor's office are required to be solicitors.*

*In **Portugal**, in professional firms providing legal and accountancy services, 100% of the capital must be held by lawyers or the respective professionals.*

*In **Slovenia**, only lawyers may be shareholders or owners of law firms.*

In the real estate sector, capital requirements have been identified in **France** where land surveyors have to hold 51% of the capital of the company.

In the crafts, construction and certification sector, such requirements have been identified in **Italy** (crafts) and **Portugal** (construction).

Minimum capital requirements, i.e. the obligation to have a minimum amount of capital in order to start a specific activity (whereas a general minimum shareholding requirement such as for limited liability companies of any kind does not fall into this category), have been abolished in the tourism sector, for instance for travel agencies in **Belgium** (except for the Flemish region), **Ireland**, **Portugal** and **Spain**.

#### 2.2.4. *Ban on having more than one establishment — Article 15(2)(e)*

Requirements limiting the provider to only one establishment in a given Member State are rare. However, in **Luxembourg**, lawyers can only open one office ('*cabinet*') in the territory.

#### 2.2.5. *Obligation to apply fixed, minimum or maximum tariffs — Article 15(2)(g)*

Major progress has been made as regards compulsory tariffs.

**Malta** removed compulsory tariffs for all services activities.

Other Member States have removed tariffs for specific service activities.

For professional services, in **Italy** and in **Greece**, fixed tariffs have been abolished by a horizontal law which may need to be reflected in sector-specific legislation. In **Spain** professional associations are no longer allowed to set indicative tariffs (compulsory tariffs had already been abolished). Fixed tariffs have also been abolished for specific services such as architects' services in **Belgium** and partly in **Germany**, for veterinary services in **Romania**, for financial auditors in **Bulgaria**,

Fixed tariffs have also been removed for diverse services: employment agency services in **Ireland**, waste management services in **Belgium**, catering services in **Hungary**, and tourist and mountain guide services in **Italy**.

By contrast, fixed tariffs have been maintained in the professional services sector in **Bulgaria** (lawyers, architects, engineers in investment design, cartographers and cadastre service providers, veterinarians), **Cyprus** (lawyers), **Germany** (veterinarians, insolvency administrators, architects, engineers), **Poland** (lawyers and patent agents), **Slovakia** (insolvency administrators), **Slovenia** (lawyers, insolvency practitioners) and **Sweden** (professional housing agents).

In the tourism sector, compulsory tariffs have been identified in **Cyprus** and **Italy**, mostly in tourism related professions.

In the crafts, construction and certification sector, in **Germany**, many expert services, mainly related to the construction of buildings, have to respect specific tariffs (*'Sachverständigentarife'*).

### 2.3. Tacit approval of applications for authorisation — Article 13(4) of the Directive

Tacit approval of applications for authorisation, i.e. silence from the administration means approval, is an important way of cutting red tape as it means that an authorisation will be deemed to have been granted if an application has not received any response within a set time period.

Most Member States have introduced the principle of tacit approval in their horizontal legislation implementing the Services Directive. However, in order to provide legal certainty and transparency to service providers, these Member States may have to modify accordingly sector –specific legislation. Other Member States have introduced this principle directly in sector specific legislation.

Irrespective of the way this clause has been implemented; it is important that Member States ensure that cases where tacit approval does not apply are limited to matters duly justified by overriding reasons relating to the public interest.

Where Article 13(4) violations are identified, they must be corrected as a matter of priority.

Tacit approval ensures that silence from the administration means approval, In order to ensure that authorities have the time necessary to take a decision, it is for each national legislator to set the time period needed for examining an application, taking into account the complexity of the application. In any event, the authorisation procedure must be processed within a reasonable period. The Directive also allows Member States to put in place different arrangements than the acceptance of an application by tacit approval, if this can be justified by overriding reasons relating to the public interest. However, different arrangements should be the exception rather than the rule, and should not be applied on a case-by-case basis.

Most Member States have introduced the principle of tacit approval in their horizontal legislation implementing the Services Directive. **Germany, Portugal, Romania, Slovenia** and **Spain** have provided for tacit approval in other horizontal legislation (e.g. on general administrative procedures). In some of these Member States the clause introduced in the horizontal law should prevail over sector-specific legislation that does not lay down any rules on tacit approval or unless sector-specific rules contain explicit provisions to the contrary (e.g. **Estonia, Finland, Ireland** and **Latvia**). In **Italy**, the principle of tacit approval has been set in the laws regulating the administrative system as a horizontal general principle before the adoption of the implementing law, which reiterates and confirms it. The principle has a 'horizontal and national' set of exceptions, and some of them are set out in special sectoral provisions derogating from the general principle. The situation is however complicated by the fact that many sectors fall under the competence of the regions where the principle is not systematically provided for.

For other Member States the horizontal law just lays down the principle of tacit approval, which then has to be made applicable specifically in sector-specific legislation (e.g. **Austria**, the **Czech Republic**, **Germany**, **Romania** and **Slovakia**). **Luxembourg** has introduced in its horizontal law a list of sectors/laws to which the principle of tacit approval does not apply (e.g. for waste management and the fight against pollution). In the **Netherlands**: the law provides that the decision will take effect on the third day after the deadline for the administration to take a decision has expired.

Three Member States, namely **Denmark**, **France** and **Sweden**, have not adopted horizontal rules on tacit approval and seem to apply the principle only partially or not at all. In **Sweden** sector-specific legislation has been amended in very few sectors in order to provide for tacit approval. In **Denmark** several laws have been identified where tacit approval does not apply such as in some construction or craft related activities. In **France**, there are laws providing for tacit approval (e.g. registration of travel agents and tour operators, collecting societies and modelling agencies) but this principle is not imposed in a systematic way.

#### **2.4. Nationwide validity of authorisations — Article 10(4) of the Directive**

The Directive stipulates that the territorial scope of authorisations should extend to the entire territory of a Member State. This is an important way of cutting red-tape.

The nationwide validity of authorisations is particularly relevant for Member States with decentralised administrative structures. If, in a Member State, the granting of an authorisation for a given activity is within the remit of regional or local authorities, the Directive does not require Member States to change this. However, the mere fact that the competence to grant authorisations lies with local or regional authorities is not in itself a valid reason justifying a territorial limitation of the validity of the authorisations.

Rather, once an authorisation has been granted by the competent regional or local authority (for example of the place where the provider sets up his establishment), the authorisation will, in principle, have to be recognised by all other authorities of the Member State.

Member States must ensure that cases where nationwide validity of authorisations does not apply are limited to matters duly justified by overriding reasons relating to the public interest.

Where Article 10(4) violations are identified, they must be corrected as a matter of priority.

Authorisations that are not granted for the entire territory of a Member State but only for a specific part are likely to hinder the exercise of service activities. This is why, as a general principle, the Directive stipulates that the territorial scope of authorisations should extend to the entire territory of a Member State. However, Member States may limit the territorial scope where justified by overriding reasons relating to the public interest.

This requirement is particularly relevant for Member States with decentralised administrative structures. The Commission has therefore examined the implementation of this provision in the six Member States of the Union with a federal or regional structure.

In **Austria** and **Germany** there is no horizontal rule, but the nationwide validity of authorisations can be found in sector-specific legislation, which mainly provides for automatic recognition or the possibility of recognition of authorisations obtained in another part of the territory.

**Italy** has expressly stipulated the nationwide validity of authorisations in the horizontal law implementing the Services Directive and the principle can also be found in sector-specific legislation. However, a few provisions where the principle is not applied have been identified in both national and regional legislation on tourist guides and travel agencies. In **Spain**, the horizontal law implementing the Services Directive also stipulates that the geographic validity of authorisations can be limited to part of the Spanish territory only for overriding reasons of public policy, public security, public health or the protection of the environment. Other overriding reasons relating to the public interest can, however, be relied on to limit the geographic validity of authorisations linked to a physical establishment.

In **Belgium**, the principle of nationwide validity has been introduced in the horizontal legislation, but does not seem to be guaranteed throughout the country as an exception to this principle is allowed for authorisations granted by authorities of the regions, communities, provinces and municipalities. As a consequence, nationwide validity only applies if the authorisation is granted by a federal authority. All regional laws identified limit the scope of the authorisation to their own territory and no mechanisms have been set up to recognise authorisations issued in another part of the country.

In the **United Kingdom** the horizontal law implementing the Services Directive contains an important exception whereby the territorial scope of an authorisation issued by an authority whose functions relate only to parts of the United Kingdom is limited to those parts.

## **2.5. Total prohibition of commercial communications — Article 24 of the Directive**

Providers need to promote their services in order to access new markets. The Directive requires that Member States remove all total bans on commercial communications by regulated professions.

The Court of Justice has ruled that Article 24 requires Member States to remove total prohibitions on using one or more forms of commercial communication such as advertising, direct marketing or sponsorship. However, Member States retain the right to lay down targeted prohibitions related to the content or method of a form of commercial communication provided that they are justified and proportionate for the purpose of ensuring the independence, dignity and integrity of the profession, as well as professional secrecy.

In the light of the interpretation given by the Court of Justice, where a total ban on a form of commercial communication is identified, it must be corrected as a matter of priority.

Member States had to remove all total bans on commercial communications by regulated professions, while at the same time ensuring that commercial communications are compliant with the independence and integrity of the professionals. Commercial communication within the meaning of the Directive covers any form of communication designed to promote, directly or indirectly, the goods, services or image of an undertaking, organisation or person engaged in commercial, industrial or craft activity or practising a regulated profession.

The Court of Justice has ruled, in its first judgment on a provision of the Services Directive (Case C-119/09), that Article 24 of the Directive precludes national legislation which totally prohibits the members of a regulated profession, such as qualified accountants, from engaging in canvassing. According to the Court, Article 24 requires Member States to remove total prohibitions on using one or more forms of commercial communication such as advertising, direct marketing or sponsorship. However, Member States retain the right to lay down targeted prohibitions related to the content or method of a form of commercial communication provided that they are justified and proportionate for the purpose of ensuring the independence, dignity and integrity of the profession, as well as professional secrecy.

Most Member States have adopted measures to implement these obligations, mainly by implementing Article 24 in their horizontal law.

In ten Member States questions concerning compliance of the national legislation were identified. In nine of these Member States, compliance issues concern the legal profession (**Bulgaria, Cyprus, Estonia, Greece, France, Ireland, Lithuania, Portugal** and the **United Kingdom**), and three Member States have maintained restrictions on commercial communications by veterinarians (**Cyprus, France** and **Portugal**). Furthermore, restrictions have been identified in **Cyprus** regarding commercial communications by engineers, in **France** regarding the accounting sector and in **Germany** in one Land regarding surveyors.

### **3. BOOSTING CROSS-BORDER TRADE — FREEDOM TO PROVIDE SERVICES CLAUSE**

#### **3.1. Introduction**

The freedom to provide services clause contained in Article 16 of the Services Directive ensures free access to and free exercise of a service activity in the territory of a Member State for providers established in another Member State. This means that national requirements should not be applied to them unless they are non-discriminatory, justified for reasons of public policy, public security, public health or the protection of the environment and proportionate. Article 17 of the Services Directive contains a list of derogations from Article 16.

The vast majority of Member States decided to implement the freedom to provide services clause in a horizontal law and to amend sector-specific legislation, while some Member States chose to implement it through sector-specific legislation only.

In Member States that have opted for horizontal legislation to implement the Services Directive, sector-specific legislation would, as a general rule, seem to prevail over the horizontal implementing law. In order to provide legal certainty and transparency to service providers, these Member States have to modify accordingly sector –specific legislation. Most Member States have already adopted or are in the process of adopting such amendments.

Irrespective of the way the freedom to provide services has been implemented, there is a need to ensure that the legal framework is adapted to facilitate cross-border service provision and that there is legal certainty as to which requirements apply to service providers who are established in another Member State and want to provide cross-border services. This requires in particular that all relevant service sectors have been addressed and barriers removed. .

The implementation of the freedom to provide services clause is on-going with Member States still amending sector specific legislation. Member States have, in general, taken a conservative approach to the implementation of the freedom to provide services clause. Service providers are often uncertain about the rules applicable to them or are required to comply with virtually all the legislation of the Member State where they wish to provide their services. The Directive would have a much greater economic impact if the freedom to provide services is used to its full extent.

### 3.2. Implementation of the freedom to provide services clause by Member States

Member States can be grouped into two categories depending on how they chose to implement the freedom to provide services clause:

- Member States that have introduced a freedom to provide services clause in a horizontal law: **Belgium** (Walloon region and Brussels Capital region), **Bulgaria**, **Cyprus**, the **Czech Republic**, **Denmark**, **Estonia**, **Finland**, **Greece**, **Hungary**, **Ireland**, **Italy**, **Latvia**, **Lithuania**, **Luxembourg**, **Malta**, **Poland**, **Portugal**, **Romania**, **Slovakia**, **Slovenia**, **Spain**, **Sweden** and the **United Kingdom**.
- Member States that have not introduced a freedom to provide services clause in a horizontal law and chose to implement it through changes to sector-specific legislation only: **Austria**, **Belgium** (Flemish region), **France**, **Germany** and the **Netherlands**.

### 3.3. Issues arising from the implementation of Article 16 of the Directive

#### 3.3.1. *Member States that have introduced a freedom to provide services clause in their horizontal law*

The vast majority of Member States chose to implement the freedom to provide services clause through horizontal legislation.

In most cases, they copied almost literally the text of Article 16, including the four overriding reasons relating to the public interest that could justify imposing national requirements on cross-border service providers: public policy, public security, public health and the protection of the environment, and the principle of proportionality.

However, some Member States added public interest objectives to the four ones listed in Article 16 or used different terminology to implement Article 16. For example, **Sweden** added animal protection to the four overriding reasons relating to the public interest. In some Member States, the proportionality test is not explicitly mentioned (**Hungary**, **Malta**, **Poland** and **Slovakia**).

A horizontal clause is a positive signal regarding the commitment of national authorities of the Member State concerned to give full effect to the principle of freedom to provide services and a clear point of reference for the authorities and courts applying and enforcing national law. While the Commission encouraged Member States to implement the freedom to provide services clause through horizontal legislation, it likewise pointed out to Member States that they may also need to adapt sector-specific legislation to avoid conflicting national measures.

Sector-specific legislation should distinguish between requirements applicable to service providers wishing to establish and those applicable to service providers not wishing to establish in the host Member State.

The information available to the Commission regarding national implementation confirms that in Member States sector-specific legislation would generally prevail over the free movement clause introduced by the horizontal law. In practice this means that, unless sector-specific legislation is expressly amended, the free movement clause would not be effective and cross-border service providers would, in principle, have to comply with the same requirements as providers wishing to establish.

For instance in **Italy**, while implementation at national level is satisfactory on the whole, most of the legislation regulating economic activities lies within the competence of the regions, and no specific provision for cross-border services has been introduced by the regions. In many other Member States, legislation does not always, if at all, state which requirements apply to service providers wishing to become established and which to those wishing to operate on a cross-border basis (e.g. in **Bulgaria, Finland, Ireland, Latvia, Poland, Romania, Slovenia and Sweden**).

Some Member States have issued guidelines on implementation at national level for their competent authorities (**Sweden** and the **United Kingdom**). However, it would seem that as a general rule it would be difficult if not impossible for competent authorities to use the freedom to provide services clause to set aside a conflicting legal provision in sector-specific legislation. The final say on such matters would in general seem to rest with the courts.

Other Member States decided to strengthen the horizontal freedom to provide services clause by explicitly providing for the horizontal clause to take precedence if sector-specific legislation conflicts with it (**Belgium** (Walloon region and Brussels Capital region), the **Czech Republic, Hungary, Malta, Portugal and Spain**).

This approach is meant to ensure that an administrative authority would be entitled to give priority to the freedom to provide services clause over the conflicting rule unless otherwise stipulated in the sector-specific legislation. In **Belgium** and the **Czech Republic**, guidelines to explain this mechanism have been issued.

However, to date there is no information about the practical application of such a legal framework and some doubts remain as to the effects of the power conferred on national authorities not to apply a piece of national legislation on a case-by-case basis. Additionally, this rather complex situation raises issues of transparency and legal certainty. Again, it appears that a final decision as to whether a measure is justified or proportionate could only be taken in a judicial procedure.

In order to address this problem of possible conflict within a national legal order, most Member States, in parallel with the horizontal clause, have adopted ‘omnibus’ laws amending sector-specific legislation. Usually for activities within their scope these sector laws distinguish between the requirements applicable to service providers wishing to establish themselves and those providing cross-border services.

For example, **Greece** expressly stipulates that cross-border providers of tourism services are not subject to the authorisation required for established providers but to a declaration

requirement. In the **Czech Republic** and **Malta** cross-border providers no longer have to obtain a trade licence. In the craft, construction and certification sector **Bulgaria, Estonia** and **Luxembourg** have replaced authorisation schemes with notification or declaration schemes for service providers from other Member States. **Portugal** is in the process of undertaking a major reform of all its sector-specific legislation to specifically distinguish establishment requirements from those imposed on cross-border service providers

### *3.3.2. Member States that have implemented the freedom to provide services clause exclusively through changes in sector-specific legislation*

The approach of implementing Article 16 solely through changes in sector-specific legislation means that Member States had to assess all relevant sector-specific legislation to decide whether the requirements imposed on cross-border service providers were justified by one of the public interest reasons set out in Article 16 and were proportionate.

As indicated above, a horizontal clause does not by itself provide the required legal certainty. However, a purely sector-based approach risks leaving unaddressed sector specific legislation, and conflicting rules.

### **3.4. Rules on future legislation — Article 39(5) of the Directive**

The Services Directive includes rules to safeguard service providers' rights in the future. Member States must notify the Commission of requirements they intend to impose on cross-border service providers and justify them under the four reasons stated in Article 16 and ensure that these requirements are proportionate. The Commission communicates them to the other Member States.

This obligation is a constant reminder that new legislation should not impose unjustified or disproportionate requirements on cross-border service providers and should ensure the long-lasting effect of the free movement principle.

**Bulgaria, France, the Netherlands** and **Lithuania** have adopted internal rules on legislative drafting, which require the government bodies when drafting new legislative proposals to ensure that new proposals comply with the freedom to provide services clause

### **3.5. Use of derogations provided for in Article 17 of the Directive**

Some Member States seem to have made broad use of the derogations from Article 16 allowed by Article 17 in relation either to specific services, such as services of general economic interest, or to matters covered by other EU law instruments, such as Directive on the recognition of professional qualifications (2005/36/EC) or the Statutory Audit Directive (2006/43/EC).

**Bulgaria** has excluded from the application of Article 16 all matters relating to financial audit and services provided by persons with recognised qualifications, **Slovakia** has excluded all the services provided by auditors as well as services involving the verification of measuring instruments, and **Romania** has excluded architects and veterinarians. **Sweden** and **Denmark** have adopted a broad interpretation of the derogation referring to intellectual property rights by excluding from the scope of Article 16 a number of services related to the management of

intellectual property rights such as the services of patent agents in **Sweden** or those of collective management societies in **Denmark** and **Sweden**.

### **3.6. Imposing specific requirements listed in Article 16(2) on cross-border service providers**

The examples of requirements listed in Article 16(2) have already been found incompatible with the freedom to provide services by the Court of Justice in a number of cases.

Member States have made considerable efforts to abolish or replace these requirements with less restrictive measures. However, obstacles to the freedom to provide services still apply to many service activities.

Article 16(2) a) of the Directive prevents a Member State from requiring a service providers to be established in its territory to provide a service. Such a requirement makes cross-border provision of services impossible. This requirement has a similar effect to the condition to be a national or a resident of the Member State concerned prohibited by Article 14(1). Where an obligation to have an establishment in the territory where the service is provided is identified, it must be addressed as a matter of priority.

The most common requirements imposed on cross-border service providers are authorisation schemes. Horizontal authorisation schemes have been considerably reduced. However, many sector-specific authorisation requirements still apply to a broad range of services.

Notification and declaration requirements are in general less restrictive than authorisation procedures. However, depending on whether they have to be made prior to the actual service provision and on the documentation to be provided, they may be as burdensome as an authorisation requirement. In some Member States, general notification systems applying to all cross-border service providers exist.

The following sections focus on two requirements identified in Article 16(2), establishment requirements and authorisation schemes.

#### *3.6.1. Obligation to have an establishment in the territory of the Member State where the service is provided — Article 16(2)(a)*

Requiring service providers to be established in the country before they can provide a service negates the freedom to provide services. Where this obligation is identified, it must be addressed as a matter of priority.

Major changes have been made by **Portugal** and **Sweden**, which have abolished cross-cutting obligations to be established before being able to provide services.

Specific establishment requirements have also been abolished in the craft/construction and certification sector in **Austria**, **Germany**, **Lithuania** and **Spain**, in the professional services sector in **Greece** (lawyers and law firms do not need to be established any longer in the seat of the Courts of Appeal where they want to operate) and in the tourism sector for travel agencies in **Belgium** (Flemish region), **Slovenia** and **Spain**.

Nevertheless, establishment requirements continue to exist:

- in the professional services sector in **Belgium** (driving instructors and collecting societies which need to have a subsidiary in Belgium), **Cyprus and Romania** (for a broad range of regulated professions), **Lithuania** and **Slovakia** (insolvency administrators) and **Sweden** (patent agents).

*In Cyprus and Romania, this requirement applies to a broad range of regulated professions such as legal advisers, tax advisers and patent agents. In Slovakia and Lithuania it applies to insolvency administrators and in Sweden to patent agents;*

- in the crafts, construction and certification sector in **Austria**, the **Netherlands, Romania** (services involving certain equipment) and **Slovenia** (chimney sweeps).

*In Austria and Slovenia, this requirement applies to chimney sweeps while in the Netherlands it applies to certification organisations and testing laboratories performing certain tasks;*

- in the real estate sector in **Finland** and **Lithuania**.

*In Finland registration to provide real estate services can only be obtained by service providers who have a registered branch in Finland.*

*In Lithuania property assessment services have to be carried out by entities that are established in Lithuania. For the registration of an entity in Lithuania the same package of documents must be submitted for cross-border service provision as for establishment;*

- in the retail sector in **Ireland, Hungary** (issuance of meal vouchers), **Lithuania** (sale of alcohol and tobacco) and **Romania**.

*In Romania there is a general requirement that legal persons involved in retail must be established in the country.*

- in the tourism sector in **Belgium** (Walloon region — travel agents), **Bulgaria** (tour operator and tourist agents), **Portugal** (car rental), **Romania** (travel agencies) and **Sweden**. However, it seems that this requirement is in the process of being amended in **Bulgaria, Portugal and Sweden**.

*In Sweden, a responsible person domiciled in Sweden must be appointed for car rental services.*

### 3.6.2. *Obligation to obtain an authorisation, including entry in a register or registration with a professional body or association — Article 16(2)(b)*

The obligation to be authorised is still the most common one imposed on cross-border service providers. It is very disruptive as it delays the start of service provision. Registration, notification or declaration schemes or the obligation to hold a special ID document are in general less restrictive but may amount to an authorisation scheme depending on whether the requirements have to be fulfilled before providing the service and the documentation required.

The prior declaration provided for under Title II of the Professional Qualification Directive is not addressed under this section since matters covered by Title II of that Directive are excluded from the application of Article 16 of the Services Directive.

- Notification and declaration schemes

As a result of the implementation of the Services Directive horizontal notification schemes, applicable to a whole range of services, have been repealed in **Germany** and in **Luxembourg**.

*Germany* repealed its cross-cutting notification obligation for all service providers. *Luxembourg* amended its legislation so that the previous broad notification system applicable to all kinds of services, including construction, is henceforth limited to professional services.

However, horizontal notification requirements are still imposed on cross-border providers.

*A horizontal notification system requiring all self-employed service providers to notify the national authorities before actually starting to provide the service has been maintained in Belgium and is currently under scrutiny by the Court of Justice (case C-577/10).*

*A similar system has been introduced in Denmark after the implementation of the Services Directive.*

- Authorisation schemes

The implementation of the Services Directive has resulted in a reduction in the number of horizontal authorisation schemes applicable to cross-border service providers, i.e. those which made the exercise of a range of service activities subject to obtaining a licence. This is the case in **Belgium**, the **Czech Republic**, **Malta**, **Poland**, **Slovenia** and **Sweden**.

In many cases, horizontal authorisation schemes have been replaced by sector-specific notification or declaration schemes as regards cross-border service providers. In these countries, a distinction is made between the requirements applicable in an establishment scenario and in a cross-border one.

In the construction, crafts and certification sector in **Belgium**, **Cyprus** and **Spain**, authorisation requirements have been lifted for cross-border service providers regarding certain specific activities. **Bulgaria**, **Estonia**, **Luxembourg** and **Spain** replaced authorisation schemes by notification or declaration schemes for service providers from other Member States. **Portugal** is in the process of undertaking a major reform of all its sector-specific legislation to specifically distinguish establishment requirements from those imposed on cross-border service providers.

In the real estate sector authorisations have been abolished in **Germany** for cross-border real estate agents. In **Slovenia**, following the implementation of the Services Directive, the cross-border providers of real estate agency services do not have to be licensed.

In the retail sector, in the **Czech Republic** and **Malta** cross-border providers no longer have to obtain a trade license. **Luxembourg** has amended its legislation to exempt cross-border trade activities and in particular most retailers from registration or any administrative authorisations to be granted by Luxembourg authorities. **Germany** has abolished an authorisation requirement for casual traders from other Member States.

In the tourism sector, authorisation requirements have been lifted in **Belgium** (Brussels Capital region), **France** and **Spain** for travel agencies, **Malta** for tourist guides and **Portugal** for car rental activities (in the process of being amended). In **Greece** the legislation expressly states that cross-border providers of tourism services are not subject to the authorisation required for established providers but to a declaration requirement.

**Greece** has abolished an authorisation requirement for employment agencies.

However, sector-specific authorisation schemes have also been maintained.

In the professional services sector, Article 16 of the Services Directive applies in addition to Title II of the Professional Qualifications Directive. In accordance with that Directive, Member States may require a prior annual declaration to and pro forma registration with the competent professional organisation or body. However, authorisation schemes can be found in **Belgium** (driving schools need a separate authorisation for their operation, management personnel, teaching personnel and location), **Bulgaria** (cadastre engineers, architects and engineers in investment design), the **Czech Republic** (lawyers), **Finland** (registration obligation for patent agents), **Greece** (engineers and lawyers), **Romania** (legal advisers, architects, tax advisers and patent agents) and **Slovakia** (architects and patent agents).

*In France the cross-border provision of services by veterinarians as civil companies is made subject to the acceptance of the statutes by the Veterinarian Order.*

In the crafts, construction and certification sector, authorisation schemes for various activities apply in many Member States.

*In Germany, many authorisation schemes have been abolished, modified or replaced under the condition that the cross-border service provider possesses an equivalent authorisation granted by another Member State. However, depending on how the equivalence requirement is applied in practice and verified by the competent authority, this may amount to an authorisation procedure.*

*In Bulgaria, providers carrying out technical supervision of high-risk equipment are subject to licensing, while providers who carry out services on maintenance, repair and modification of such equipment are subject to registration.*

*In Romania, authorisation and special registration requirements must be fulfilled for authorised electricians, specialised technical staff, energy auditors, designers.*

*In Portugal, an authorisation for cross-border service providers in the construction sector has been simplified but maintained. It is in the process of further revision.*

*In Slovenia, a craft permit is required by law but reported as not being requested in practice. Authorisations schemes are in place for cross-border experts or certifiers in*

*environment (verification of environment reports), certification and testing of fire protection systems, control and supervision of heating system, certification and testing of technical equipment for spraying pesticides, testing and analysis of plant protection products and analysers of seed quality.*

In the real estate sector, authorisation schemes apply to cross-border service providers in **Belgium** (real estate agent), **Bulgaria** (providers of independent appraisal cartography and land registry services), **Denmark**, **Latvia** (real estate valuers) and **Slovakia** (surveying/cartography services). In **Portugal**, an authorisation scheme for real estate agents has been replaced by notification, which is currently in the process of being further reviewed.

*In **Denmark**, cross-border land surveyors have to be registered.*

*In **Bulgaria**, providers of cartography and cadastre services must be registered. This applies in addition to the nationality requirement in force for these professions.*

In the retail sector, such requirements are applied in all Member States. These authorisation schemes often apply to particular types of selling (casual trading, market stalls and in some cases doorstep selling). Authorisations for market stalls aim to ensure equal access to a stall (when their number is limited) for all providers — those established in the Member State where the market takes place and those established outside.

*In **Spain** a municipal authorisation is required to start any activity concerning casual trading (which can only take place in limited space designed for that purpose and to which equal access needs to be ensured). In **Bulgaria**, due to the absence of distinction between establishment and cross-border provision of services, authorisation schemes and registration requirements applicable to established providers seem to be also applied to cross-border providers.*

In the tourism sector, authorisation schemes exist in many Member States.

*In **Latvia** and **Poland** cross-border tourist agents and operators need to be registered in specific databases and in **Estonia** they need to be entered in the commercial activities register. In **Ireland** cross-border tour operators and travel agents have to hold a licence and are required to meet certain capital thresholds and to take out a bond to cover them in the event that the business is unable to meet contractual and financial obligations as soon as the activity originates in Ireland. In **Slovenia**, authorisation schemes are in place for all travel agencies, tour operators, tourist guides (except for tourist guides which accompany tourist groups from abroad) and for providers of sport activities for tourists. In **the Netherlands**, an authorisation is needed for all tours with motor vehicles or for foreshore walking including when they are provided across borders.*

### 3.6.3. *Obligation to obtain a special ID document — Article 16(2)(e)*

This requirement refers to the need to be issued with a special identification document by the competent authorities of the host Member State in order to be able to provide cross-border services. Depending on the documentation required from the service provider to obtain such special ID document, this requirement may amount to an authorisation scheme.

*This requirement has been lifted in **France** for real estate agents, who are no longer required to hold a special ID card following an amendment to the specific legislation.*

This requirement does not appear to be very common. However, it has been maintained in some Member States and in particular in the crafts, construction and certification and tourism sectors.

In the crafts, construction and certification sector, **Germany** requires inspectors of specific buildings to have a specific identity card. In **Romania**, for some activities in this service sector, the providers must present a specific identification card and a special stamp (this obligation applies to electricians, operators responsible for technical supervision and verification for the use of installations/equipment, energy auditors for buildings, specialists, experts and technical auditors in the field of the protection of historic monuments).

In the tourism sector in **Austria, Greece, Poland, Romania** and certain regions in **Italy** and **Spain**, special ID cards are required for travel guides or tour guides. Very often these cards have to be worn visibly while on duty.

*In **Greece**, tourist guides need to hold a professional identity card when they are pursuing their professional activity and to show it upon any conducted control.*

## Chapter IV — Summary of the analysis of the implementation of the Services Directive per Member State

*The assessment of the implementation in each Member State is based on the information notified to the Commission according to article 39 of the Directive, the results of the Mutual Evaluation process<sup>29</sup> and the studies<sup>30</sup> that were carried out for the Commission.*

*This analysis does not prejudice the assessment of the compatibility of other national rules with the Services Directive or the Treaty.*

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<sup>29</sup> SEC(2011) 102 accompanying the Communication from the Commission "Towards a better functioning Single Market for Services – building on the results of the mutual evaluation process of the Services Directive) COM(2011)20

<sup>30</sup> [http://ec.europa.eu/internal\\_market/services/services-dir/study\\_on\\_points\\_of\\_single\\_contact\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/study_on_points_of_single_contact_en.htm) and Study "Assessment of implementation Measures in Member States" published on [http://ec.europa.eu/internal\\_market/services/services-dir/implementation\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/implementation_en.htm)

Austria adopted the last measures for the implementation of the Services Directive in January 2012. A total of 52 measures have been communicated to the Commission, some of them so called ‘omnibus laws’ amending several sector specific laws.

However, despite great efforts undertaken in particular by the Länder, the following concerns have been identified and must be addressed as a matter of priority:

- First of all, **prohibited requirements** like establishment and seat requirements in the craft sector (chimney sweeps) need to be addressed as well as an obligation for accountants, public accountants, tax advisors and patent attorneys to obtain financial guarantees from operators authorised to exercise in Austria.
- **Tacit approval of authorisations** is foreseen in sector specific legislation, but not in the horizontal acts implementing the Services Directive which contain a so called 'opt-in'-provision to which sector specific legislation can refer. Although in many cases tacit approval was introduced well before the adoption of the Services Directive, Austria has to make sure the instances in which tacit approval is not applied are limited to duly justified matters.
- As regards requirements where the Directive left a margin of appreciation to Member States to streamline the **regulatory environment for the establishment of providers**, some measures that raise doubts of compatibility with Article 15 have been maintained. For instance legal form and shareholding requirements exist for civil engineers, accountants, patent attorneys and tax advisors and a legal form requirement remains for chimney sweeps. Special attention will have to be paid to the fact that certain requirements concerning mountain guides and ski schools have been abolished in some of the Länder, but maintained and justified in others.

Concerning the **cross-border provision of services**, a wide range of sector-specific amendments have been adopted in order to implement the Directive. However, several remaining requirements hindering free provision of services have been identified both at federal and at Länder level. This concerns obligations to have an identity card issued by the authority in the tourism sector for mountain, ski and cave guides, and authorisation requirements with regard to the certification of construction products. Certain requirements, like authorisation requirements for ski schools or mountain guides have been abolished in some of the Länder, but maintained and justified in others.

The Austrian **Point of Single Contact (PSC)** is relatively well established. However the information provided is not very clearly presented which makes it difficult to use for non-nationals. Language support is currently very limited but a clear commitment exists to improve this in the near future. Online completion of procedures is well developed, including across borders where no technical obstacles exist, since neither e-identification nor e-signature are required. Improvements should be made above all to increase the clarity of information, to distinguish between establishment and cross-border provision of services and to extend the availability of other languages than German.



BELGIUM



In Belgium, transposition led to a **considerable number of modifications** in national laws as around 65 national measures were adopted in order to implement the Services Directive.

Despite the efforts made, the following concerns have been identified and must be addressed as a matter of priority:

- **Prohibited establishment requirements** were maintained, namely for travel agencies who must have premises that are publicly accessible (in Wallonia) as well as for driving schools and collecting societies who must have an office in the territory. These should be eliminated.
- Although the different horizontal laws contain provisions on the principle of **tacit approval** of authorisations, it does not apply as a general rule but only in cases specified in sector specific legislation. Belgium should ensure that the instances in which article 13(4) of the Services Directive is not applied are limited to duly justified matters.
- The obligation concerning the **nationwide validity of authorisations** as laid down in article 10(4) of the Directive has not been correctly implemented. This principle is only guaranteed for authorisations that are governed by federal legislation while regional authorisations are in general limited to the territory of the region. There are no mechanisms foreseen to recognise authorisations issued in other parts of the country. This situation should be corrected.
- As regards requirements where the Directive left a margin of appreciation to Member States to **streamline the regulatory environment for the establishment of providers**, a number of cases that raise doubts of compatibility with article 15 of the Directive exist. For instance, an obligation for real estate agents/surveyors, driving schools and accountants/tax advisors to take a specific legal form as well as shareholding requirements for lawyers, architects, accountants /tax advisors have been maintained. These should be re-examined.

In general, Belgian legislation makes a distinction between **cross-border provision of services** and establishment. Some authorisation requirements for national providers are also applied to cross-border service providers. It appears that they need to register in the '*Banque Carrefour des entreprises*' if they have to file an application for an authorisation. Authorisations applied to incoming service providers concern the activity of butchers, travel agents, real estate agents and driving schools. In addition, a horizontal prior notification ('*Limosa*') is required from all service providers for commercial, crafts and liberal activities wishing to exercise under free movement of services. In so far as this entails a general obligation for self-employed persons, a case about the legality of this notification duty is pending before the Court of Justice of the European Union.

The **Point of Single Contact (PSC)** is relatively well established and overall provision of information is good. Improvements could however be made concerning the level of availability of information and the degree of user friendliness. Online completion of procedures needs to be enhanced and integration between the central portal and the 9 decentralised business counters has to be improved.



BULGARIA



Bulgaria implemented the Services Directive by adopting a horizontal law which contained some amendments to specific legislation. The Service Activities Act entered into force on 23 February 2010. The Act includes some amendments to specific legislation such as the Tourism Act, the Spatial Planning Act, the Chamber of Builders Act, the Chambers of Architects and Engineers involved in Investment Design Act, the Energy Efficiency Act, the Crafts Act and the Consumer Protection Act.

However, despite efforts undertaken to adopt the implementing measures a number of restrictions still remain. A limited number of sector-specific legislation has been amended in the context of the implementation of the Directive and the horizontal law has no precedence over sector specific laws in case of conflict.

The following concerns have been identified and must be addressed as matter of priority:

- Some **prohibited discriminatory requirements** have been maintained, namely nationality requirements for industrial property representatives, cadastre service providers and cartographers, as well as a residence requirement for industrial property representatives.
- Contrary to Article 24 of the Services Directive, a **total prohibition of some forms of commercial communication** remains for lawyers.
- **Tacit approval** of authorisations has not always been introduced in sector specific legislation, but only in the horizontal implementing law. The relationship with sector-specific laws is unclear.
- As regards requirements where the Directive left a margin of appreciation to Member States to streamline **the regulatory environment for the establishment of providers**, some measures have been maintained which should be reassessed. For instance, legal form and shareholding requirements have been identified for lawyers, as only lawyers can form partnerships or law firms. Fixed minimum tariffs are in force for lawyers, architects, engineers in investment design, cartographers and cadastre service providers.

Concerning the **cross-border provision of services**, in the absence of a clear distinction in the sector-specific legislation between requirements applicable to establishment cases and those applicable to cross-border providers, it seems that authorisation requirements for domestic providers are also applied to incoming service providers. A clear distinction should be ensured in all sector-specific legislation.

As a result of bilateral meetings between the Commission and the Bulgarian authorities, several draft laws are being prepared to amend sector-specific legislation. They should be adopted by the National Assembly of Bulgaria by the end of 2012.

The Bulgarian **Point of Single Contact** (PSC) mainly acts as a signpost, providing information about administrative requirements and referring users to the websites of

competent authorities providing information on only a limited number of procedures. Electronic completion needs to be significantly improved. It is currently possible for a limited number of procedures through the websites of the responsible authorities (linked to the PSC portal). Improvements should be made concerning the possibility to complete online procedures (notably to ensure the recognition of e-signatures from other Member States), concerning the clarity of information (distinction between establishment and cross-border provision of services) and with regard to the availability of other languages than Bulgarian.



CYPRUS



Cyprus transposed the Services Directive mainly by way of a **horizontal law**. Additionally, a number of sector-specific amending laws and regulations are still pending before the Parliament, for professional services (architects, engineers), for the retail and for the tourism sector (tourist guides, tourist agencies). The majority of amendments in sector specific legislation are mainly for the purposes of safeguarding coherence with the horizontal law and providing for exceptions, where this is justified, to the rules imposed by the Horizontal Law. Serious concerns have been expressed by the Commission services with regard to the length of adoption procedures.

The following concerns have been identified and must be addressed as a matter of priority:

- **Prohibited residence requirements** apply to real estate services and to opticians. These requirements should be eliminated.
- Contrary to Article 24 of the Services Directive, a **total prohibition of some forms of commercial communication** remains for lawyers and veterinarians.
- As regards requirements where the Directive left a margin of appreciation to Member States to **streamline the regulatory environment for the establishment of providers**, some measures have been identified, namely, legal form requirements for architects and engineers as well as minimum tariffs for lawyers and fixed tariffs for tourist guides. These requirements should be re-examined.

Concerning the **cross-border provision of services**, it seems that the same authorisation requirements apply as for establishment purposes. However, no authorisation requirement applies where the relevant profession is also regulated in the Member State of establishment, for example in case of architects and tourist guides.

The Cypriot **Point of Single Contact** (PSC) provides a good level of information on procedures and formalities and the portal is well structured. The PSC allows for the online submission of application forms as well as the tracking of on-going procedures for some procedures and formalities, including for horizontal procedures and temporary cross border provision of services. The use of official e-IDs and qualified e-Signatures issued in a number of other Member States is currently supported, but as e-IDs are not yet issued in Cyprus, the option of using this system is not open to Cypriot nationals. Further improvements are necessary to enhance access to online procedures.



The Czech Republic implemented the Services Directive through two legislative acts: a horizontal framework law and an omnibus law amending numerous sector-specific laws, mainly in order to introduce the concept of tacit approval. The article on the freedom to provide services has been implemented both in the horizontal law and in sector-specific legislation.

The review of the national legislation revealed that no **prohibited requirements** existed in the Czech legislation. However, the following concerns have been identified and must be addressed as a matter of priority:

- **Tacit approval** of authorisations is foreseen in the horizontal law implementing the Services Directive. Furthermore, an omnibus law was adopted which amended numerous sector-specific laws in order to include the concept of tacit approval. Areas in which no tacit approval exists include the authorisation of those involved in the restoration of historical monuments and operators of zoos. The Czech Republic has to ensure that the derogations to tacit approval are applied only in duly justified cases.
- As regards requirements where the Directive left a margin of appreciation to Member States to streamline the **regulatory environment for the establishment of providers**, some measures have been identified that raise doubts as to their compatibility with Article 15 of the Directive. These concern specific legal form requirements for lawyers and shareholding requirements for construction engineers and architects. These requirements need to be re-examined.

Concerning the **cross-border provision of services**, several remaining requirements hindering free provision of services have been identified. Restrictions exist on the service provision of lawyers with regard to real estate transfers and the verification of signatures. Prior authorisation is required for land surveyors (those responsible for the verification of survey outcomes) and persons handling raw diamonds.

The Czech **Point of Single Contact (PSC)** was launched in January 2010, and integrated into an existing government-funded portal. The PSC rates highly in terms of the availability and quality of information provided. It features a large number of the relevant procedures, and online forms which are used as central access points to provide information for a variety of purposes such as application for a business license and application for VAT and income tax registration. In terms of language accessibility, the PSC makes some information available in English, but this is not the same content as the information available in Czech. Potential areas for improvement include a clearer structure of the site, providing online support tools, increasing the number of procedures that can be completed online through the acceptance of e-signatures, and increasing the amount of information available in other languages.



DENMARK



Denmark transposed the Services Directive within the transposition deadline. Denmark was the first Member State to adopt a **horizontal law** for the transposition of the Services Directive (Law No 384 of 25 May 2009 on services in the internal market).

Denmark also amended a significant number of **provisions in several sectoral laws**, such as the Law on the sale of real estate, the Law on electricians, the Law on gas installation, the Law on trade, the Law on maritime training, Law on professional diving activity and diving equipment, the Law on copyright and the Law on marketing. These amendments resulted mostly in the **elimination and simplification of authorisation schemes**. A legal form requirement that was deemed to be unjustified was eliminated in the real estate sector.

Despite the instances where simplification has been introduced, the following concerns have been identified and must be addressed as a matter of priority:

- There is no general rule in Denmark which lays down the tacit approval as a general principle for authorisation schemes. Examples of the non-application of this principle (which allows for exceptions when justified by overriding reasons and proportionate) have been identified mostly in the areas of construction and real estate. The principle of general application of tacit approval should be laid down and derogations limited to duly justified cases
- Some restrictions in the services sector still remain for **cross-border service providers** further to the implementation of the Services Directive. These restrictions consist mainly of a general cross-cutting notification obligation for any service provider from another Member State and in authorisation schemes which are applied to cross-border service providers in the areas **of construction and crafts and collective rights management**. These requirements need to be re-examined.

Denmark has an established and **well-functioning Point of Single Contact (PSC)**. The portal provides comprehensive information on requirements, allows for a personalised approach and provides for a variety of search functions. An entirely English version portal is available for foreign users. Online completion of procedures is very well covered with a more sophisticated approach for nationals and a simplified and user-friendly mode for cross-border users. Some further improvements could be made for user guidance and assistance.



ESTONIA



Estonia has transposed the Services Directive on time, via a horizontal law — the European Union Services Directive Implementation Act, passed on 10 December 2009. A number of sectoral laws have been modified with this Act (around 10 legal acts). The amendments mostly simplify temporary service provision for service providers who are legally established in another Member State.

Despite efforts undertaken, the following concerns have been identified and must be addressed as a matter of priority:

- A total prohibition of commercial communications has been identified for lawyers that should be eliminated.
- Concerning cross-border trade, the main requirement applied in sectors which are subject to specific requirements, is a registration requirement. In a number of laws this requirement has been replaced with a notification procedure for cases of cross-border service provision (mostly in construction sector related activities). However the registration requirement for trade activities (covering retail, wholesale, and some personal services) remains and should be re-examined. A more general concern is the lack of clarity and legal certainty for sectoral laws where it is not explicitly stated whether the relevant requirements are also applicable in cases of cross-border service provision or not. New legislation is currently being prepared on all economic activities (Specific Part of the Economic Activities Code), which should provide for more clarity and also replace the registration requirement for trade activities with a notification.

The Estonian **Point of Single Contact** (PSC) provides comprehensive information for service providers, going beyond the requirements of the Services Directive by covering also other relevant areas for businesses (social security, taxation, labour law, financing, legal advice, etc.). The information is presented in a clear and simple manner. Different search possibilities are provided (based on sector, requirements, business life cycle etc.). Most of the information is available both in Estonian and in English, however many forms are in Estonian only, with some exceptions (like for company registration). The completion of electronic procedures is very well covered, above all at national level but also for service providers from a good number of other Member States. Some further improvement could be achieved by distinguishing between establishment and cross-border service provision. For completion of procedures, completion from all Member States should be ensured even if many Member States are already covered.



FINLAND



Finland transposed the Services Directive on time through the **horizontal act** Provision of Services Act (1166/22.12.2009) which entered into force on 28 December 2009. No sector-specific laws were modified. Some reforms had already been undertaken with the *Freedom of Enterprise Act*, adopted in 1994.

Despite the efforts undertaken the following concerns have been identified and must be addressed as a matter of priority:

- As regards requirements where the Directive left a margin of appreciation to Member States to streamline the regulatory environment for the establishment of providers, not many measures that raise doubts of compatibility with Article 15 of the Directive have been maintained. The only ones identified concern legal form requirements for bus and truck training schools and vehicle inspection agencies which can be operated only by legal persons.
- Concerning cross-border trade, even if the regulatory regime is in general rather light, an incompatibility with the Services Directive has been identified in the real estate sector where a registration to provide real estate services can only be obtained by service providers who have a registered branch in Finland. This needs to be corrected. Authorisations were identified for the organisation of package travels where the travel manager needs to register with the package travel registry and for patent attorneys who have to register in order to provide their services. These requirements need to be re-examined.

The Finnish **Point of Single Contact** (PSC) is part of a wider enterprise Finland portal which provides information for businesses for all stages of business life cycle. The amount of information available through the portal is generally good and distinction is made for temporary cross-border service provision, even if no requirement applies for cross-border service provision. Information is generally available in both official languages and in English. The forms are however in Finnish, with some forms having also translations. The electronic completion of procedures is currently limited as far as the completion is rather one way interaction whereby forms can be downloaded and filled in on screen. The forms can be submitted mainly via post or partly by e-mail. Improvements should be made to increase the possibility of online completion of procedures.



FRANCE



In France, transposition led to a **considerable number of modifications** in national laws as around 80 national measures were adopted in order to implement the Services Directive.

Despite the important efforts made, the following concerns have been identified and must be addressed as a matter of priority:

- A prohibited requirement concerning the direct involvement of competing operators in the granting of authorisations for event promoters needs to be eliminated urgently.
- Contrary to Article 24 of the Services Directive, total prohibitions of commercial communications remain in place for lawyers and veterinarians. Such was also the case for accountants before the European Union Court of Justice judged it illegal (Judgment C-119/09).
- Although the principle of tacit approval of authorisations exists in the French legal framework, it does not apply as a general rule but only in cases specified in sector-specific legislation. France should ensure that the instances in which article 13(4) of the Services Directive is not applied are limited to duly justified matters.
- As regards requirements where the Directive left a margin of appreciation to Member States to streamline the regulatory environment for the establishment of providers, there are cases that raise doubts of compatibility with Article 15 of the Directive. For instance, although shareholding requirements for architects, accountants, and land surveyors were modified in order to reduce the share of the capital of a company that has to be owned by professionals to 51%, this has not been the case for lawyers or veterinarians. These should be re-examined. Furthermore, regulation of the retail sector was only partly simplified.

In general, French legislation makes a distinction between **cross-border provision of services** and establishment. Several remaining requirements applied to incoming service providers and hindering the free provision of services have been identified. It appears, according to the information available to the Commission, that a prior notification is imposed on cross-border modelling agencies and event promoters. Legal form and shareholding requirements as well as limitations on commercial communications are imposed on veterinarians for the cross-border provision of services. Requirements for both insurance and financial guarantees are imposed on cross-border real-estate agents.

The French **Point of Single Contact** (PSC), "*Guichet-entreprises.fr*", was launched in January 2010. Although the provision of information is very good, important improvements must be made concerning the availability and possibility for electronic completion of procedures, the user-friendliness of the site and the facilitation of access to the portal especially for foreign users (by increasing the amount of information available in other languages).



GERMANY



The implementation of the Services Directive, in particular the screening of legislation, was a complex exercise in the case of Germany, due to its federal structure and the involvement of multiple actors at all levels of government (federal, regional, local, professional orders). Germany made considerable efforts to ensure correct transposition and has made a substantial number of legislative and practical changes. Around 220 national measures have been adopted in order to implement the Services Directive.

The **main changes** that Germany has made affecting providers already established or those wanting to establish in Germany include the abolition of certain residence requirements for different types of experts mainly in the construction sector. Germany has also made requirements concerning legal form and shareholding for architects and engineers less stringent.

As regards cross-border trade and requirements imposed on incoming service providers, Germany has made a number of considerable changes, such as the abolition of the general notification obligation applicable to a wide variety of service activities as well as the abolition of the obligation to obtain an authorisation applicable to any kind of itinerant trade. In addition, Germany has also abolished a number of authorisation schemes concerning specific services notably in the real estate sector.

However, despite efforts undertaken the following concerns have been identified and must be addressed as a matter of priority:

- **Tacit approval** has been introduced in the federal Administrative Procedures Act and is also explicitly foreseen in the federal Trade and Crafts Act. However, certain sector specific legislation foresee that tacit approval of authorisations does not apply (e.g. in the construction sector the legislation on the recognition as a testing, inspection or certification body). It further seems that the rules differ between the Länder: some have foreseen a tacit approval of authorisations in areas where other Länder do not accept tacit approval. Germany has to make sure the instances in which tacit approval is not applied are limited to duly justified matters.
- As regards requirements where the Directive left a margin of appreciation to Member States to streamline the **regulatory environment for the establishment of providers**, some measures that raise doubts of compatibility with article 15 of the Directive have been maintained, for instance fixed tariffs for expert services as well as for some regulated professions like veterinarians. Shareholding and legal form requirements have been maintained for regulated professions in various degrees of restrictiveness.
- In addition there are some doubts as to whether authorisations applied to **cross-border service providers** can be justified by one of the four reasons recognised by the Directive, i.e. public policy, public security, public health or the protection of the environment, and whether those requirements are proportionate. This concerns mainly authorisations

maintained for expert services in the construction and certification sector, but also in the education sector, in particular for vocational training.

The German **Point of Single Contact** (PSC) is well established with each of the 16 Länder having its own portal. Solutions chosen for the different portals vary a lot and there is obviously also a difference in quality and development. In general improvements could be made concerning the clarity of information, i.e. distinction between establishment and cross-border provision of services scenarios, and with regard to the linguistic availability. In addition there is a need to improve the availability of on-line procedures through the Points of Single Contact.



GREECE



Greece transposed the Services Directive through a **horizontal law**, which gives multiple delegations to the competent ministers to adopt the necessary implementation measures.

Greece has adopted changes to sector specific legislation in the area of retail, in the tourism sector, for private employment agencies, for real estate agents and for professional services (lawyers and architects). Also, different circulars and ministerial decisions issued aim to interpret law 3919/2011 ‘On the principle of professional freedom’ for professions such as tax advisors and tourist guides. Measures on implementation are being monitored closely in the context of the **Memorandum of Understanding** with the Greek authorities.

Despite significant efforts undertaken by the national authorities, the following concerns have been identified and must be addressed as a matter of priority:

- **Prohibited establishment requirements** have been maintained such as a nationality requirement in the education sector. In the retail sector, a priority in obtaining a licence for outdoor sales activities is given to specific categories of persons with Greek nationality.
- Contrary to Article 24 of the Services Directive, a **total prohibition of some forms of commercial communication** remains for lawyers.
- As regards requirements where the Directive left a margin of appreciation to Member States to streamline the **regulatory environment for the establishment of providers**, the maintained measures concern legal form requirements in the retail sector, for casual trading.

Concerning the **cross-border provision of services**, a wide range of sector-specific amendments have been adopted in order to implement the Directive in the retail and tourism sector. Law 3919/2011 constitutes a more radical attempt to curb restrictive administrative requirements, but its scope is general. However, several remaining requirements hindering free provision of services still apply in the education sector. These should be re-examined.

The Greek **Point of Single Contact (PSC)** is limited to providing information only for the specific sector licensing procedures and only serves as an intermediary between the applicant and the various administrative authorities. Electronic completion of procedures is only partly available even if it is gradually being implemented. Important improvements are needed as to the availability of all relevant information and of on-line procedures. Moreover, a clearly differentiation should be made between the regime applying to established and cross-border service providers.



HUNGARY



Hungary transposed the Services Directive through a horizontal law. In addition to the horizontal law, an ‘*omnibus*’ act modified about 100 existing sectoral laws and an ‘*omnibus*’ decree amended more than 100 pieces of sector-specific secondary legislation. Moreover an additional 100 pieces of sector-specific secondary legislation were modified individually. The implementation process was completed, inter alia, by the adoption of new legislation on the Points of Single Contact, on administrative cooperation and on notification requirements. Hungary was among the first Member States to implement the Directive.

Overall the Directive has been successfully implemented in Hungary. For instance more than 50 authorisations schemes have been replaced by declarations, maximum tariff for service fees imposed on restaurateurs has been abolished.

However, since the second half of 2011, Hungary has significantly restricted access to markets which were previously open and where many foreign providers were present (big retail, sale of tobacco, meal vouchers, waste management). For that reason and despite the efforts undertaken, the following concerns have been identified and must be addressed as a matter of priority:

- As regards **requirements prohibited by the Directive**, according to a recently adopted measure the activity of issuing hot meal and holiday vouchers ('SZÉP Card') cannot be pursued by a branch office of a foreign company. Moreover, one of the conditions regarding the issuance of the SZÉP Card consists in the entity having exercised an activity falling under the same category in the Hungarian Income Tax Law for at least two years. These measures are incompatible with Article 14 of the Services Directive and must be corrected.
- On the other hand, as regards **requirements where the Directive left a margin of appreciation to Member States** to streamline the regulatory environment for the establishment of providers, a few requirements which may raise doubts of compatibility with Article 15 of the Services Directive have been maintained. This concerns restriction of market access in big retail (general ban on commercial buildings over 300 m<sup>2</sup>), sale of tobacco (legal form and strict territorial restrictions), meal and holiday vouchers (the legislator requires an infrastructure that only big nation-wide existing banks possess) and waste management (at least 50% of the shares must be owned by the State). These requirements need to be re-examined.

Hungary has transposed provisions on the **cross-border provision of services** through a horizontal law and by modifying sector-specific legislation. The selected legal technique seems to create sufficient certainty for foreign service providers with regard to applicable requirements. Only a few questionable notification requirements can be found in the construction and in the education sector.

Finally, a **Point of Single Contact** (PSC) has been set up in Hungary. A lot of detailed information can be found on the website. The use and usability is satisfactory. The connection to the competent authorities is relatively good. However, not all required procedures are

supported online. Users often need to send supporting documents by post or to present themselves in person. The search facility, FAQs and other information are

only available in Hungarian and there is only little information aimed at helping cross-border service providers. Moreover, Hungarian electronic signatures are needed to access services. Hungarian PSC is therefore of limited use to cross-border service providers and thus need substantial further improvement in this regard.



IRELAND



Ireland implemented the Services Directive through a horizontal framework law (*'ministerial regulation'*). Since its adoption, and in the context of its obligations under the Memorandum of Understanding for the EU/IMF Programme of Financial Support for Ireland, Ireland is making changes to sector-specific legislation. These changes will include the areas of the legal profession, in order to make it possible for lawyers to participate in multi-disciplinary practices. In relation to the retail sector caps on retail floor space have been raised.

Despite significant efforts undertaken, the following concerns have been identified and must be addressed as a matter of priority:

- **Tacit approval of authorisations** is foreseen in the horizontal legislation implementing the Services Directive in Ireland, but sector-specific legislation to put alternative arrangements in place has not been amended. Ireland has to make sure that instances in which tacit approval is not applied are limited to duly justified matters.
- Contrary to Article 24 of the Services Directive, a **total prohibition of some forms of commercial communication** remains for lawyers.
- As regards requirements where the Directive left a margin of appreciation to Member States to streamline the **regulatory environment for the establishment of providers**, some requirements have been maintained which should be reassessed. These concern the **travel** sector, in particular requirements that travel agents and tour operators have a set minimum capital investment in their business. The proportionality of these requirements in achieving the objective of consumer protection should be reviewed.

Concerning the **cross-border provision of services**, it seems that authorisation requirements for national providers are also applied to incoming service providers. For instance, tour operators and travel agents operating in Ireland are obliged to hold licenses issued by the Commission for Aviation Regulation. Vocational education providers such as occupational first aid training provider, manual handling instructors and lifeguard trainers are required to register with the relevant statutory bodies. Licenses are required to engage in occasional and casual trading. These should be re-examined.

Significant efforts have been made in establishing the Irish **Point of Single Contact (PSC)** but important improvements need to be made in terms of the electronic processing of procedures, expanding the range of procedures beyond initial establishment of a business, enhancing integration with information on offer from relevant bodies, increasing awareness of the portal and improving the search function.



ITALY



The Services Directive has been implemented in Italy through '*Decreto Legislativo 26 marzo 2010, n. 59*'. The implementation law is one legislative instrument of horizontal scope, which also includes sector-specific changes.

Apart from some concerns regarding the completeness and thoroughness of the transposition into sector-specific legislation, the transposition is satisfactory at national level. However, under the Italian constitutional system the subject matter of the Directive partly falls within the legislative competence shared by the State and its Regions. National legislation sets the main principles, whereas regional law regulates the details. This creates issues of legal certainty because, even though the national law should prevail over conflicting regional norms, this hierarchical relationship is only implicit. Only national courts can set regional conflicting norms aside *a posteriori*.

The following concerns have been identified and must be addressed as a matter of priority:

- The sector-specific analysis identified a few **prohibited requirements**. In the tourism sector, authorisations for ski schools and instructors are linked to residence requirements in Bolzano, Lazio, Lombardia, Abruzzo and Emilia Romagna. These incompatibilities must be corrected as a matter of priority.
- The principle of **tacit approval** was set in the laws regulating the administrative system as a horizontal general principle before the implementing law, which reiterates and confirms it. The principle has an horizontal and national set of exceptions. These exceptions are not always based on overriding reasons of public interest. The situation is complicated by the fact that many sectors fall under the competence of the regions, which have introduced several unjustified exceptions to the principle, particularly in the tourism (ski schools and instructors, hotels and guest houses) and retail sector (large retail facilities and trade in public areas). Italy must therefore make sure that the instances in which tacit approval is not applied are limited to duly justified cases.
- The implementation law correctly transposes the provisions of the Services Directive on **nationwide validity of authorisations** in a horizontal way. This ensures nationwide validity in most cases. However, the fact that regions are competent in regulating certain sectors and in granting most authorisations creates legal uncertainty. A few provisions where the principle is not applied have been identified in connection with tourist guides and travel agencies. In this context, it's worth stressing that recent legislative developments have provided a legal basis for the Government to produce laws aiming at abrogating non-proportionate restrictions, authorisations and prohibitions for the start-up of economic activities.
- As regards requirements where the Directive left a margin of appreciation to Member States to streamline the **regulatory environment for the establishment of providers**, quantitative and territorial restrictions were noted in the implementation law regarding itinerant sales, trade activities in public areas, newsagent's shops. In Veneto and in

Bolzano, limitations linked to the number of existing ski schools in the regional territory are still in place, Some restrictions concerning shareholding requirements remain, even after a few recent reforms which repealed legal form requirements in the retail sector (itinerant sales) and also made legal form and shareholding requirements less rigorous for all regulated professions.

A number of authorisation, registration or licensing requirements that also apply to **cross-border providers** were identified, especially in the tourism sector. These authorisations have in many cases been replaced by less burdensome notification obligations. However, procedures through which requirements can be imposed on cross-border service providers and authorities in charge of deciding on the imposition of these requirements often remain unidentified.

As for **Points of Single Contact (PSC)**, the situation has considerably improved recently. The Italian portal provides a good degree of information on required formalities although it does not yet allow for the completion of all administrative procedures required by the Services Directive. A particular issue is the lack of possibility to complete procedures that fall under the competence of local or regional authorities. The Italian Point of Single Contact is also difficult to use for cross-border providers, both for linguistic and technical reasons. Further improvements are needed here.



LATVIA



Latvia adopted **the horizontal law** transposing the Services Directive (*Law on the Free Provision of Services*) with some delay, on 20 April 2010. The horizontal law transposes the main principles of the Services Directive. However the Law, as first adopted, contained a number of provisions which did not transpose the Services Directive correctly. Major amendments have been made to the law (adopted on 15 March 2012) which ensure better compliance with the Directive.

Some modifications have been made to a number of sectorial laws which above all simplify the administrative procedures.

Despite the efforts undertaken, the following concerns have been identified and must be addressed as a matter of priority:

- **Tacit approval** of authorisations was initially lacking in the horizontal law but has been introduced in the amended version. Work is underway to have the provisions on tacit approval included also in sectorial legislation (around 12 amendments foreseen). Latvia has to make sure that the instances in which tacit approval is not applied are limited to duly justified matters.

For **cross-border provision of services**, Regulations of the Cabinet of Ministers still need to be adopted as foreseen by the 'Law on the Free Provision of Services' but these may finally be replaced by guidelines and specific amendments to sectorial legislation. Some concerns exist as to a possibly wide use of declarations in cases that could not be justified under the four reasons in Article 16. Compliance with the Services Directive needs to be checked once these changes have been made. Currently, requirements have been identified in the tourism sector where tourist agents and operators need to be registered and in the construction sector where economic operators who employ persons of regulated professions, i.e. builders and architects, have to be registered. These requirements need to be re-examined.

The Latvian **Point of Single Contact** (PSC) provides relatively good information and goes beyond the Directive by offering also information on other areas. The information is partially available in English but not the forms. As for electronic completion of procedures, a good portion of administrative requirements can be completed online but only at national level. Efforts are still needed to enable cross-border completion of procedures, as well as increasing the number of electronic procedures available.



Lithuania transposed the Services Directive on time via a horizontal law (*Law on Services No. XI-570 of 15 December 2009*). The law follows very closely the Services Directive and covers almost all of its provisions, including the main principles relating to the Points of Single Contact and administrative cooperation. It also sets out conditions for exercising the freedom of establishment and the freedom to provide services across borders and simplifies some administrative measures. The horizontal law prevails over sectoral laws except when priority is explicitly given to the provisions of other laws.

A number of sectoral laws have been modified in the real estate, tourism and business services sector. However, the following concerns have been identified and need to be addressed as a matter of priority:

- A **prohibited requirement** was identified in the latest amendment to the Law on Vocational Education, which foresees that in order to provide formal vocational training a natural person from another Member States must have its residence in Lithuania. This must be corrected.
- Concerning **cross-border provision of services**, an establishment requirement has been identified in the professional services sector for administration of company bankruptcy and for company restructuring, in the real estate sector concerning services for property assessment activities, in the retail sector (for specific products like alcohol and tobacco) and in the education sector for the provision of higher education services. These requirements need to be corrected.
- A **total prohibition of commercial communication** has been identified for lawyers. This requirement should be eliminated.
- As regards requirements where the Directive left a margin of appreciation to Member States to streamline **the regulatory environment for the establishment of providers**, only a few of the requirements listed in Article 15 have been identified. A minimum number of employees is still foreseen in the professional services sector for company restructuring and company bankruptcy administration. Legal form requirements exist in the tourism sector for tourism information service providers which can be provided by a legal person only. A shareholding requirement has been maintained for lawyers where the capital of professional partnerships has to be owned 100 % by professional members.

Lithuanian **Point of Single Contact (PSC)** was set up on time. Overall the information and structure of the portal is good. The PSC could however be further improved, in particular with regard to making forms available in another language than Lithuanian and by putting in place solutions for cross-border access to electronic procedures. For e-procedures the main problems are linked to the fact that only national e-identification and e-signature solutions are supported, without any alternatives for foreign users.

The implementation of the Services Directive in Luxembourg **changed the existing legislative framework** on services considerably and major efforts were undertaken to correctly reflect the principles of the Directive. One of the most important changes is the new law regulating access to the professions of craftsmen, traders, retailers, industrialists and other liberal professions. By removing obstacles consisting of numerous formalities, Luxembourg opened up the market and made access easier for service providers from other Member States.

Despite the efforts made, the following concerns have been identified and must be addressed as a matter of priority:

- **Tacit approval of authorisations** applies as a general rule and was introduced in the horizontal law. A list of exceptions however was included where tacit approval does not apply such as trade in weapons and in general for authorisations relating to the protection of environment. Luxembourg has to make sure the instances in which tacit approval is not applied are limited to duly justified matters.
- As regards requirements where the Directive left a margin of appreciation to Member States to streamline the **regulatory environment for the establishment of providers**, some measures have been identified which may raise doubts of compatibility with Article 15 of the Directive. Quantitative restrictions have been maintained for places selling alcoholic beverages and there is a ban on having more than one establishment for lawyers. Shareholding requirements have been maintained for lawyers from other Member States registered at the Bar in Luxembourg and belonging to a company that includes non-lawyers: they are not allowed to set up a subsidiary branch in Luxembourg. This situation should be corrected.

Concerning the **cross-border provision of services**, Luxembourg amended its legislation to limit the previous broad notification system applicable to all kind of services, including construction, to professional services. However, the requirement to obtain an authorisation in the education sector, e.g. for summer course as well as the need for an authorisation for providers carrying out technical studies and verifications in the field of the environment should be re-examined.

The **Point of Single Contact (PSC)** in Luxembourg is very well established. Information provided is comprehensive and goes beyond the requirements of the Services Directive in terms of areas covered. Interactive forms exist in many cases even in three languages. The online completion of procedures has been made rather simple and no advanced technical solutions are used which makes the completion possible also across borders. Some improvements can still be made concerning the availability of more on-line procedures.



MALTA



Malta transposed the Services Directive within the transposition deadline leading to a considerable number of modifications in national laws. Malta has adopted a mix of horizontal and sector specific measures, in particular by a so called ‘omnibus-law’ containing a horizontal law as well as amendments to 16 sector-specific pieces of primary legislation and many other subsidiary pieces of legislation.

In particular, Malta has changed its trading system for activities which are not covered by sector specific legislation by introducing a system of notification within 30 days from start of activity, which should make it simpler for business to start operating in Malta. Other sector specific authorization schemes were reviewed and simplified. An important number of changes also concern the introduction of new provisions to cater for situations of cross-border provisions as those situations were in many cases not specifically foreseen in the legislation. This should ensure easier access for service providers from other Member States.

However, despite great efforts undertaken, the following concerns have been identified and must be addressed as a matter of priority:

- First of all, a **prohibited residence requirement** was identified in the professional services sector for patent agents.
- As regards requirements where the Directive left a margin of appreciation to Member States to streamline **the regulatory environment for the establishment of providers**, some measures have been identified which may raise questions of compatibility with Article 15 of the Directive. They concern notably. legal form and shareholding requirements for architects and civil engineers and lawyers.

Concerning **cross-border trade**, it is not clear whether authorisations, registration or licensing requirements foreseen in sector specific legislation are also applied to incoming services providers. This concerns for instance authorisation requirements in the tourism sector like the need of a licence for a travel operator or the reservation of certain tourist guide services to holders of a specific licence. This should be re-examined and clarified.

The implementation and setting up of the Maltese **Point of Single Contact (PSC)** has taken a slow start and the first portal set up did not live up neither to expectations nor to the legal obligations as defined by the Services Directive. However in January 2012, a new portal, Business first, has been launched and significantly improves the performance of the Maltese PSC. Overall the information provision is good and goes beyond the Services Directive by providing also other key services to businesses (social security, tax related procedures). Information and forms are available in English. Some information is however still missing. Online completion of procedures is available for a big number of procedures but not yet covering all the necessary procedures and mainly limited to nationals due to lack of technical support for cross-border use of e-signatures where required. Further improvements are necessary both in terms of information coverage and availability and accessibility of online completion of procedures.

The Netherlands was one of the first Member States to achieve full transposition of the Services Directive and they did so by using different ways for its implementation. The general aspects were laid down by the Services Act in order to create a general framework for services. This however did not include transposing Article 14, 15 and 16 as such. Instead, national law was thoroughly screened to remove provisions that were in violation with the Services Directive. Together with an amendment of the non-binding Instructions for legislation and the Amendment Decree Services Directive it is ensured that future legislation respects the requirements of the Services Directive.

Despite great efforts undertaken, a number of concerns have been identified mainly in the retail and professional services sector, and must be addressed as a matter of priority:

- First of all, these concern prohibited **requirements** including a residence requirement for market stands at local level and application of economic criteria for the establishment of certain retail outlets at local level despite a clear prohibition in the spatial planning Decree (BRO). These should be eliminated.
- As regard requirements where the Directive left a margin of appreciation to Member States to streamline the **regulatory environment for the establishment of providers**, some requirements which may raise doubts of compatibility with Article 15 of the Directive have been identified. Shareholding requirements have been maintained for lawyers and accountants such as the obligation for a majority of the shares of an accountants' office to be held by registered accountants. For lawyers, all shares in the legal practice must be owned by lawyers who practice law in the partnership in question except for holding companies, foundations and persons employed by the legal partnership as non-lawyer and holding no more than one tenth of the capital. This should be re-examined.

Concerning the **cross-border provision of services**, a wide range of sector-specific amendments have been adopted in order to implement the Directive. The Amendment Act and Amendment Decree Services Directive changed the rules on doorstep selling and arbitration in civil procedures. In addition, certain authorisation requirements and requirements on the use of equipment were abolished in the construction and environmental legislation. Requirements that are still remaining are the obligation to have an authorisation or registration for cross-border service providers wanting to provide street selling, the need for establishment of certification organisations and testing laboratories and an authorisation for vocational education institutes. These requirements should be re-examined.

The Dutch **Point of Single Contact** (PSC) is very well established with a comprehensive provision of information, easy search facility, and extensive assistance as key attributes. Language support for general information is good, with some variations at the level of competent authorities and with regard to forms. The possibility to complete procedures online is relatively well covered, and accessible also cross borders, above all where no e-signatures are required. An active role was played by the Netherlands in supporting other member states to develop PSCs in a uniform and efficient way by providing for instance software applications. In general improvements could be made concerning the clarity of information, in particular the distinction between establishment and cross-border provision of services

scenarios, and with regard to the linguistic availability. In addition the availability of on-line procedures through the PSC could be further improved.



POLAND



Poland transposed the Services Directive through a **horizontal legislation**, the Act on Provision of Services (PSA) in the Territory of the Republic of Poland which was adopted on the 4 of March 2010 and came into force on 10 April 2010. The PSA applies to all services, except those explicitly excluded from its scope. Several sectoral laws were modified by the PSA in order to make them compliant with the Services Directive.

Despite the progress made, the following concerns have been identified and must be addressed as a matter of priority:

- A **prohibited requirement** has been maintained in the education sector where driving schools can be operated only by service providers having a seat or place of residence in Poland. This requirement must be corrected as the matter of priority.
- The principle of **tacit approval of authorisations** has been introduced by amending the Act on the Freedom of Economic Activity, which is the main act governing the performance of economic activities in Poland. Derogations to the principle can be made in specific acts if justified for overriding reasons of public interest. The law provides for an exception to the rule on tacit approval. Poland must make sure that the instances in which tacit approval is not applied are limited to duly justified cases. In addition Poland has to ensure that clear and binding time limits for the authorities to take a decision are foreseen in the legislation.
- As regards requirements where the Directive left a margin of appreciation to Member States to streamline the **regulatory environment for the establishment of providers**, few requirements have been identified in the Polish legislation. They concern notably legal form and shareholding requirements for legal professionals and tax advisors. The changes introduced by the means of the PSA made them less stringent. The provisions on minimum tariffs were kept for advocates, solicitors and patent agents. These requirements should be re-examined.
- Concerning the **cross-border provision of services**, the transposition of Article 16 into the Polish horizontal legislation does not provide for legal certainty with regard to the requirements that are applicable to cross-border service provision. The PSA states only a general rule that service providers from other Member States may temporarily provide services in the territory of Poland, without having to be entered in any business register. They may however be subject to the requirement to obtain a certificate, concession, licence, authorisation, approval or enter into register of regulated activities. These are usually stipulated in sectoral legislation. Poland has introduced provisions for the temporary provision of services in only some sector specific legislation. Most of the legislation analysed does not contain the distinction between the establishment and cross border provision of services, leaving it open which rules are applied to the cross border provision of services. In most cases the restrictions found in the Polish legislation concern the education, tourist and crafts, construction and certification services sectors.

The Polish **Point of Single Contact** (PSC) is still undergoing major changes and its full operability is expected by the end of 2013. Currently the information provision is relatively good and goes beyond the requirements of the Services Directive in terms of

areas covered but some mandatory information is still missing, and the level of detail is not always satisfactory. Language support is provided via unofficial translations (based on Google translate). Online completion of procedures is available but limited to national users due to advanced e-signature requirements where only national means are currently supported. Several improvements must take place concerning the quality and organisation of information, availability and possibility for electronic completion of procedures, user-friendliness and enhancing access to the portal especially for foreign users



The main act transposing the Services Directive into Portugal is a **horizontal law** (*Decreto-Lei 92/2010*) whose provisions prevail over sector-specific laws, either national, regional or local regulating specific services. In addition, the Portuguese authorities are finalising a very significant number of **sector-specific amendments** in the context of the follow-up of the Memorandum of Understanding for Portugal on specific economic policy conditionality (MoU). It is of utmost importance that sector-specific amendments which have accumulated significant delay are completed as soon as possible. The on-going state of these reforms does not allow to give a clear-cut picture of the situation.

However the following concerns have been identified and must be addressed as a matter of priority:

- **Total prohibition of commercial communications** can still be found in the statutes of professional orders (for example, that of lawyers and veterinaries) and should be addressed in the context of the on-going reform for professions whose regulation involves a professional body which is currently under preparation in the context of the MoU. An establishment requirement that existed in the car rental sector is in the process of being eliminated.
- **Tacit approval** has become the general rule. Exceptions to it, which may be justified by overriding reasons of general interest, remain in the areas of construction and education. The principle of **national validity of authorisations** has also become the general rule under Decreto-Lei 92/2010. The Portuguese authorities are planning to extend the national validity to other procedures such as the notifications foreseen in the Professional Qualifications Directive in the context of reforms monitored under the MOU.
- As regards requirements where the Directive left a margin of appreciation to Member States to streamline the **regulatory environment for the establishment of providers**, measures that raise doubts of compatibility with Article 15 of the Directive have been maintained. Shareholding and legal form requirements apply for certain highly regulated professions. These requirements are to be reviewed in the context of the pending reform of the regulated professions.

The Portuguese legislation has traditionally made no difference between requirements that can be applied to established service providers and those that can be applied to **cross-border service providers**. As a result of the yet unfinished implementation of the Services Directive, the cross-border provision of services is in the process of being rendered much easier. A cross-cutting establishment requirement has been removed. An authorisation for cross-border service providers remains in a simplified form in the area of construction and needs to be eliminated. Similarly, several authorisations previously applied to cross-border in the sector of real estate and tourism have been replaced by declarations, some of which are in the process of further simplification. Insurance requirements applicable to cross-border service providers are also being removed in some cases.

Work for the setting-up of the **Point of Single Contact** (PSC) is currently being undertaken in the context of the follow-up of the MoU. Information is available for many sectors and it gives a clear view of requirements applicable to established and to cross-border service providers. Online procedures are available for a number of services but work to extend them further should be continued and enhanced.



ROMANIA



Romania transposed the Services Directive within the transposition deadline leading to a considerable number of modifications in national laws. Romania has adopted a horizontal law as well as sector-specific laws, mainly in the following service sectors: construction, services for installations and equipment, tourism and some regulated professions.

Despite the efforts made, the following concerns have been identified and must be addressed as a matter of priority:

- **Prohibited requirements** in the retail sector with the existence of economic needs tests and the involvement of competitors in the authorisation procedure for the opening of large surface retail stores.
- Although the principle of **tacit approval of authorisation** has been introduced in some sector specific legislation, doubts remain whether in most of the services sectors (where no specific provisions exist), the general tacit approval principle provided in the horizontal law would be applicable in practice.
- As regards requirements where the Directive left a margin of appreciation to Member States to streamline the **regulatory environment for the establishment of providers**, only a few of such requirements remain except for the legal form requirement which seems to be applied in cases of professional services that rely on the personal involvement of the professional (such as services provided by lawyers or tax advisers) and where they are doubled by shareholding requirements. These requirements should be re-examined.

Regarding **cross-border trade**, concerns are raised by the fact that, where sector-specific laws are silent about cross-border provision, it is unclear which rules would be applicable and how the different competent authorities should interpret the relationship between the different provisions of the Romanian legislation, notably the relationship between the generally applicable laws on company registration which would require an establishment and registration with the Romanian trade register and the horizontal law implementing Article 16 of the Services Directive. This concerns for instance retail and travel agencies. A clear identification of rules applicable in case of cross-border provision of service should be ensured in all sector-specific legislation.

The Romanian **Point of Single Contact (PSC)** is not yet fully operational: for the time being, only a limited number of procedures are available online and mainly provide for downloading the forms. Moreover, online completion of procedures is not accessible for users from other Member States where advanced e-signatures are required. Even if technically the PSC is in place, the major problem is the lack of content in the PSC. Significant improvements are needed to cover all the necessary information and procedures and to ensure the cooperation of competent authorities.

#### Memorandum of Understanding (MoU)

Romania has signed a MoU with the European Commission and the International Monetary Fund, which provides, as part of the structural reforms that need to be undertaken, the removal of the economic needs test and the involvement of competitors for the opening of large retail stores as well as the setting up of the Point of Single Contact.



SLOVAKIA



Slovakia implemented the Services Directive through a horizontal framework law. Amendments were also made to relevant sector-specific legislation in order to implement Articles 14, 15 and 16(2) of the Services Directive. A specific issue for service providers wishing to engage in cross-border service provision in Slovakia is an apparent conflict between the country's Commercial Code and the horizontal law implementing the Services Directive, as the Commercial Code requires foreign legal persons to register in the Slovak Commercial Register as branches or legal persons.

Despite significant efforts undertaken, some concerns have been identified and must be addressed as a matter of priority:

- **Tacit approval of authorisations** is foreseen in the horizontal legislation implementing the Services Directive, which has left open the possibility for competent authorities to put different arrangements in place. Areas in which there do not appear to be any possibility for tacit approval include the authorisation of architects, insolvency practitioners, patent agents, interpreters and translators, urban planners and construction engineers, geological excavation and mining practitioners, geodesists, cartographers and metrologists, education and further education providers and driving schools. The public interest justification for this should be reviewed.
- As regards requirements where the Directive left a margin of appreciation to Member States to streamline the **regulatory environment for the establishment of providers**, some measures have been identified that raise doubts of compatibility with Article 15 of the Directive. Specific legal form requirements apply to lawyers (advocates), insolvency administrators and tax advisors, land surveyors and cartographers and health and safety training bodies. Specific shareholding requirements also apply to lawyers (advocates), insolvency administrators and tax advisors, architects and engineers. Insolvency administrators have fixed maximum tariffs. These should be re-examined.

Concerning the **cross-border provision of services**, it seems that authorisation requirements for national providers are also applied to some incoming service providers. For instance, insolvency administrators are required to register in the list of insolvency administrators. Authorisation is required for architects and patent attorneys and for a variety of construction-related crafts services. Authorisation is also required in order to provide vocational training services on a wide variety of subjects

Slovakia was among the last Member States to establish a functioning electronic **Point of Single Contact** (PSC), which was made available to the public in January 2012. The new Point of Single Contact features a large number of the relevant procedures, and very useful bilingual online forms which collate relevant information and send it to the appropriate competent authority. Potential areas for improvement include a clearer distinction of the requirements applicable to cross-border service providers as opposed to businesses considering permanent establishment, more information on procedures managed by local authorities and on recognition of qualifications, and further translation of important information into languages other than Slovak.



SLOVENIA



The Services Directive has been implemented in Slovenia via a horizontal law accompanied by amendments to sector-specific laws. Around 20 national measures have been notified as implementing measures. Changes adopted concern notably construction, services for installations and equipment, real estate and land surveying.

Despite great efforts undertaken, the following concerns have been identified and must be addressed as a matter of priority:

- The tacit approval of authorisations has been introduced by the horizontal implementing law as well as in some sector-specific legislation where it applies. However, doubts remain as to the practical effects of this principle in sector-specific legislation when tacit approval is not explicitly stated. Slovenia has to make sure that the instances in which tacit approval is not applied are limited to duly justified matters.
- As regards requirements where the Directive left a margin of appreciation to Member States to streamline the **regulatory environment for the establishment of providers**, some measures have been identified which should be reassessed. They concern legal form and capital ownership requirements where only lawyers may be shareholders or owners of a law firm, as well as minimum tariffs for lawyers.
- Concerning the **cross-border provision of services**, concerns exist where the sector-specific legislation does not explicitly provide for cross-border service provision and the sector-specific legislation is applied in the same way to cross-border providers as for established providers. Only 12 legal acts have been adopted to implement the distinction whereas 220 services are regulated activities in Slovenia. Concerns remain notably for industrial property representatives, crafts and construction, tourism, operational monitoring services. A clear distinction should be ensured in all sector-specific legislation. Moreover, the establishment requirement that remains for chimneysweepers should be eliminated.

The Slovenian **Point of Single Contact** (PSC) cannot be considered as fully functioning yet. The PSC is based on the e-Government portal available for online registration of businesses. The portal does not provide a high level of information from the Services Directive point of view and it also has a relatively low degree of readiness of e-procedures for domestic and practically none for cross-border users. The portal supports information and procedures for registration of businesses and most common supporting procedures for domestic users. It also provides some basic information for cross-border users. However, the new PSC under development is planned to profoundly modify this situation and to provide full information for home and foreign users in Slovene and English.



SPAIN



Spain transposed the Services Directive within the transposition deadline. Implementation of the Services Directive led to the adoption of a **horizontal law** at national level (Ley 17/2009) and to a **very high number of legislative modifications** in national and regional laws. The task was undertaken ambitiously and the regulatory business environment in Spain has been significantly simplified to facilitate both establishment and access for service providers from other Member States. However, it appears that the reform of rules governing the profession issued by professional associations must be completed as a matter of urgency to ensure their full compatibility with the Services Directive and the national rules implementing it.

The obligations laid down in Articles 10(4) and 13(4) of the Services Directive seem to have been correctly implemented in Spain. The authorisation schemes which have remained in legislation have been considerably simplified. **Tacit approval of authorisations** which contributes to reduce administrative burden was already of general application before the implementation of the Services Directive but the principle has been reinforced afterwards. The **national validity of authorisations** has been ensured by means of the horizontal law. The horizontal law has opted for an ambitious implementation of this principle and it only allows for reasons of public policy, public security, public health and the protection of the environment to limit the geographical scope of authorisations which are not linked to a specific physical establishment. To ensure that this ambitious implementation takes full effect, it would be desirable to reinforce this rule with internal mechanisms for administrative cooperation between regions to ensure that the complexity of the Spanish administrative structure does not result in administrative burden for businesses. It is also important to ensure that all the rules governing the professions issued by professional associations are fully adapted to this principle.

Further to the implementation of the Services Directive, no relevant examples of prohibited requirements are to be signalled in national sector-specific legislation. However local regulations which in some cases still require a Spanish identification card for the completion of some procedures must be corrected. In the tourism area, a restriction could still remain in one autonomous community related to the freedom of the provider to choose between establishment in the form of an agency, branch or subsidiary. Although the horizontal law would prevail over this provision, this inconsistency must be corrected as a matter of priority to ensure legal certainty for providers in the market.

A very significant degree of administrative simplification has been achieved with the implementation of the Services Directive in Spain. Many authorisation schemes have been replaced by prior declarations, in particular in sectors such as tourism or crafts. However, it is worth noting that there is room for further simplification **in administrative procedures** at local level, in particular as regards authorisations that affect amongst other the small retail sector.

Cases of requirements that raise doubts of compatibility with Article 15 remain in certain pieces of sector-specific legislation in particular those related with shareholding requirements for professional partnerships in certain activities such as real estate. Similarly, further to the

implementation of Article 16 of the Services Directive through a horizontal law and through the amendment of sector-specific legislation, it can now be

concluded that a significant part of the Spanish legal order has been **simplified to reduce burden imposed on cross-border service providers**. Restrictions whose justification raises some concerns are still imposed on cross-border service providers in sectors such as **crafts and real estate**.

The Spanish **Point of Single Contact** (PSC) is very well established both in terms of information provision and completion of procedures. The information provided is comprehensive and goes beyond the Services Directive by covering the whole business life cycle. Clear distinction is made between establishment and cross-border service provision and an interactive search tool is available that is tailored to users' needs for specific activities, legal form and geographical location. The Spanish PSC is available also in other foreign languages, above all for information, and sometimes also for forms. Online completion of procedures is available, as well as a tracking system that allows progress of applications to be monitored. Work should however be continued to facilitate cross-border completion of procedures that currently is rather limited and to ensure that procedures to start a business or to provide services have a sufficient degree of detail and of electronic availability in all locations, types of activity and competent authority.



SWEDEN



Sweden has transposed the Services Directive via a horizontal law adopted in 2009, as well as via amendments to sector-specific laws. All in all, around 60 national measures have been adopted in order to implement the Directive. In particular, Sweden has modified its law on foreign branches. By removing obstacles consisting of numerous formalities and a cross-cutting establishment requirement, Sweden opened up the market and made access easier for service providers from other Member States.

However, despite great efforts undertaken, some concerns have been identified and must be addressed as a matter of priority. They seem to concern in particular car rental activities, patent agents, real estate services and driving schools.

- **Prohibited requirements** were identified concerning residence requirements for car rental services and patent agents.
- **Tacit approval** does not apply as a general rule in Sweden. If some sector specific legislation was amended in order to specify where tacit approval applies, it seems that it was a deliberate decision that tacit approval should not apply to the construction sector in its entirety. Sweden has to make sure the instances in which tacit approval is not applied are limited to duly justified matters.
- As regards requirements where the Directive left a margin of appreciation to Member States to **streamline the regulatory environment for the establishment of providers**, some measures were identified that raise doubts of compatibility with Article 15 of the Directive. These concern shareholding requirements for lawyers and auditors. This should be re-examined.

Concerning **cross-border trade**, it is not clear whether the requirements that were maintained and will be applied to incoming service providers can be justified by one of the four reasons recognised by the Directive, i.e. public policy, public security, public health or the protection of the environment, and whether they are proportionate. This concerns, for instance, prior authorisation for cross-border providers offering real estate or driving school services.

The Swedish **Point of Single Contact (PSC)** is very well established. It takes a comprehensive approach and goes beyond the Services Directive both with regard to areas covered and available procedures. The PSC provides most of the information and forms also in English. Online completion of procedures is well covered but cross-border access is limited where e-identification or e-signatures are required where only national means are currently supported. Some improvements could be made concerning the clarity of information, such as the search function and to enhance the ease of procedure completion for foreign users, including developing means to accept foreign-issued e-Identification and e-signatures.



The United Kingdom implemented the Services Directive mainly by a horizontal law covering the core provisions of the Directive ('Provision of Services Regulations 2009').

In general, few sector specific amendments were made, the UK claiming to have a light touch regulatory regime. A few changes have been identified in the retail and professional services sectors. They concerned mostly amendments regarding aspects of authorisation schemes and availability of procedures electronically. Furthermore, the requirement that companies or individuals doing business in the UK must have an address in the UK was abolished.

However, the following concerns have been identified and must be addressed as a matter of priority.

- The obligation to ensure **nationwide validity of authorisations** has not been correctly implemented. The horizontal law explicitly limits the validity of authorisations granted by devolved administrations (England and Wales, Northern Ireland and Scotland) to their respective territory and there is no mechanism of recognition of authorisations granted by one devolved administration by the others.
- Contrary to Article 24 of the Services Directive, a **total prohibition of some forms of commercial communication** remains for lawyers.
- As regards requirements where the Directive left a margin of appreciation to Member States to **streamline the regulatory environment for establishment of service providers**, some remaining restrictions have been identified in the UK. The most severe ones concern the legal form and shareholding requirements for lawyers in Scotland and Northern Ireland: advocates in Scotland and barristers in Northern Ireland can only exercise their activities as sole practitioners. Solicitors in Scotland can form a limited liability company but all members and directors must be solicitors; in Ireland solicitors can use a company structure in so far as it is recognised to provide solicitor services and all members and shareholders must be solicitors or recognised bodies.

The UK **Point of Single Contact** (PSC) is well established and the UK belongs to the group of Member States with the best PSCs. It has a very high degree of readiness for domestic and cross-border users. The advanced search function is also a very important asset. However, improvements could be made concerning the on-line availability of procedures.

## **Draft report on the implementation of the Services Directive**

### **ANNEXES**

## **Annex I – Technical annexes**

## ANNEX I A) - EU LEGISLATION APPLYING TO SERVICES SECTORS

	<p style="text-align: center;"><b>Main sectors covered by the Services Directive (2006/123/EC)</b></p>
	<ul style="list-style-type: none"> <li>• Business Services including professional services (<i>lawyers, architects, accountants, tax advisers, consulting agencies, communication and marketing agencies, patent agents, certification services, sport intermediaries, artist managers, recruitment agencies, interpreters, veterinaries, land surveyors ...</i>)</li> <li>• Construction services and crafts activities</li> <li>• Retail</li> <li>• Real-Estate</li> <li>• Tourism (<i>Hotels, restaurants, cafés, travel agents, tourist guides...</i>)</li> <li>• Private Education</li> </ul>
<p><b>Services Sectors</b></p>	<p style="text-align: center;"><b>Main EU legal instruments covering the sector</b></p>
<p><b>Energy</b></p>	<ul style="list-style-type: none"> <li>• <b>Internal market for natural gas</b> Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC.</li> <li>• <b>Internal market in electricity</b> Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (Text with EEA relevance).</li> <li>• <b>Internal market in gas</b> Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (Text with EEA relevance).</li> </ul>
<p><b>Financial Services</b></p>	<p><b>Action plan for Financial Services and follow-ups</b> (Directive 2006/43/EC, Directive 2006/46/EC, Directive 2007/63/EC, Directive 2007/44/EC, Directive 2009/14/EC, Directive 2007/36/EC, Directive 2007/64/EC, Directive 009/111/EC, Directive 2009/44/EC, Directive 2010/76/EU, Directive 2009/49/EC, Directive 2011/61/EU, Directive 2011/89/EU)</p>
<p><b>Healthcare</b></p>	<ul style="list-style-type: none"> <li>• Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare.</li> <li>• Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications</li> </ul>

<p><b>Postal Services</b></p>	<ul style="list-style-type: none"> <li>• Directive 97/67/CE</li> <li>• Directive 2002/39/CE</li> <li>• Directive 2008/06/CE</li> </ul>
<p><b>Telecom</b></p>	<ul style="list-style-type: none"> <li>• Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications</li> <li>• Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to the electronic communications networks and services as amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009</li> <li>• Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services as amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009</li> <li>• Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services as amended by Directive 2009/140/EC.</li> <li>• Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities as amended by Directive 2009/140/EC.</li> <li>• Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector as amended by Directive 2006/24/EC and Directive 2009/136/EC</li> </ul>
<p><b>Transport</b></p>	<ul style="list-style-type: none"> <li>• <b>Road transport</b></li> <li>• Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market</li> <li>• Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services</li> <li>• Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70</li> <li>• <b>Maritime transport</b></li> <li>• Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport</li> <li>• Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage)</li> <li>• <b>Rail transport</b></li> <li>• Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways, OJ L 237, 24.8.1991, p. 25.</li> <li>• Regulation (EU) No 913/2010 of the European Parliament and of the Council of 22 September 2010 concerning a European rail network for competitive freight</li> </ul>

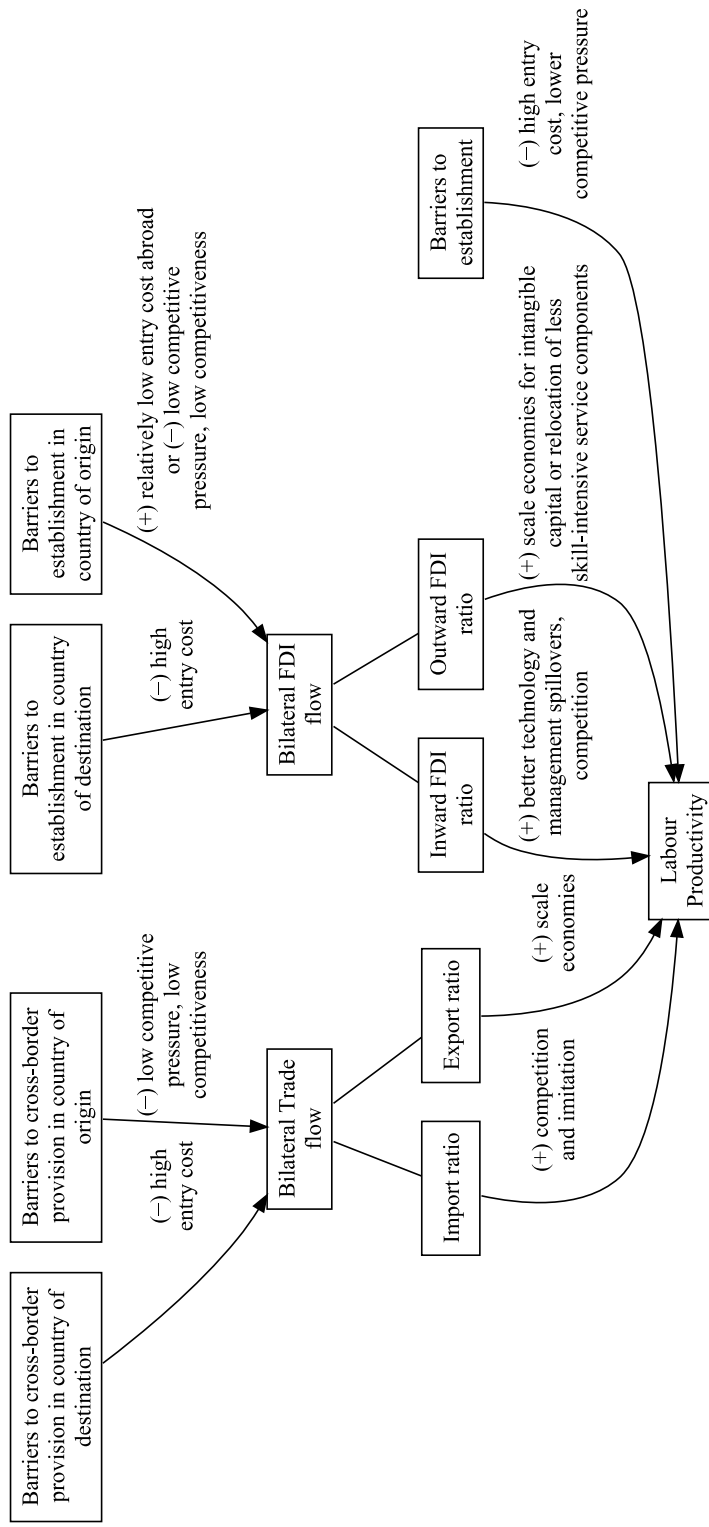
	<p><b>Air transport</b></p> <ul style="list-style-type: none"> <li>• Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community</li> <li>• Council Directive 96/67/EC of 15 October 1996 on access to the ground handling market at Community airports)</li> </ul> <p><b>Inland navigation</b></p> <ul style="list-style-type: none"> <li>• Council Regulation (EC) No 1356/96 on common rules applicable to the transport of goods or passengers by inland waterway between Member States with a view to establishing freedom to provide such transport services</li> <li>• Council Regulation (EEC) No 3921/91 laying down the conditions under which non-resident carriers may transport goods or passengers by inland waterway within a Member State</li> </ul>
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	<p><b>Sectors not covered as such by secondary EU legislation</b></p> <ul style="list-style-type: none"> <li>• Gambling</li> <li>• Activities which are connected with the exercise of official authority (as set out in Article 51 of the Treaty)</li> <li>• Private security services</li> <li>• Notaries, bailiffs</li> <li>• Taxis and port services</li> </ul>
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## ANNEX I B) - REQUIREMENTS ASSESSED FOR THEIR ECONOMIC IMPACT

<b>1) Article 9 authorisations</b>
a) Prior autorisation to access the activity?
b) <b>for retail only:</b> licences relating to outlet siting?
c) <b>for retail only:</b> specific authorisations linked to the sale of certain products?
d) <b>for retail only:</b> economic needs test?
<b>2) Article 14 requirements</b>
a) Knowledge of (abolished) discriminatory or nationality/residence requirements?
b) prohibition on having an establishment in more than one member state?
c) Involvement of competitors in granting of authorisations?
d) obligation to provide or participate in a financial guarantee or to take out local insurance?
<b>3) Article 15 requirements</b>
a) quantitative or territorial restrictions?
b) legal form requirement?
c) shareholding requirements?
d) ban on having more than one establishment?
e) requirements on minimum number of employees?
f) minimum and/or maximum tariffs?
<b>4) Article 16 requirements</b>
a) establishment requirement?
b) prior authorisation?
c) notification/registration?
d) insurance requirement?
e) tariffs?
f) general free movement clause in horizontal law ?
<b>5) Article 25 requirements</b>
Restrictions on multidisciplinary activities?

**ANNEX I C) - CONCEPTUAL FRAMEWORK OF THE ECONOMIC ASSESSMENT**



## **ANNEX II: Detailed analysis per Member States ("Country fiches")**

*The assessment of the implementation in each Member State is based on the information notified to the Commission according to article 39 of the Directive, the results of the Mutual Evaluation process<sup>31</sup> and the studies<sup>32</sup> that were carried out for the Commission.*

*This analysis does not prejudice the assessment of the compatibility of other national rules with the Services Directive or the Treaty.*

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<sup>31</sup> SEC(2011) 102 accompanying the Communication from the Commission "Towards a better functioning Single Market for Services – building on the results of the mutual evaluation process of the Services Directive) COM(2011)20

<sup>32</sup> [http://ec.europa.eu/internal\\_market/services/services-dir/study\\_on\\_points\\_of\\_single\\_contact\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/study_on_points_of_single_contact_en.htm) and Study "Assessment of implementation Measures in Member States" published on [http://ec.europa.eu/internal\\_market/services/services-dir/implementation\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/implementation_en.htm)

## I. Points of Single Contact

Austria has set up **nine points of single contact**, one for each of the nine Länder. All of them are connected to the national PSC portal ([www.eap.gv.at](http://www.eap.gv.at)) which offers access to the nine portals following the geographical locations selected by the end-users. PSCs can be contacted by phone or in person.

The degree of information offered on the Austrian PSC is good, although an improved search function could help users to find the relevant information easier and faster. This seems particularly important for service providers from other Member States which are generally less familiar with the legal or administrative system in Austria.

The development of the PSC has also led to standardisation and simplification of processes and to the development of more than 100 new e-forms. This is a very good example of administrative simplification for businesses which benefits both national and foreign service providers.

The most important procedures are available online and procedures for online completion are also accessible to users from abroad. Certain improvements on-line completion of procedures can still be made, but it has to be noted that, where available, the usability of online forms is very good and highly developed.

An electronic assistant, the so called "*Dienstleistungsassistent*" is available at the general portal and guides providers through the different steps of the procedure in German and English. However it seems that it was difficult to locate and use this function for users who started their search directly in one of the geographical PSC.

Concerning the linguistic availability the study<sup>33</sup> established for the Commission clearly indicated that the use of the PSC was considered rather difficult for service providers not familiar with German. However, it seems that in the meantime some of the nine PSC provide all the information available in English and there is a formal commitment of all PSC to provide the information in English. Depending on the geographical location, some of the PSC also offers information in other languages.

In addition, direct assistance to users is provided by phone and by mail in German and English and if possible also in other languages.

The overall use and usability of the Austrian PSC is above average. However, improvements could be made concerning the distinction regarding information on permanent establishments or temporary provision of services even if some progress has been noted.

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<sup>33</sup> [http://ec.europa.eu/internal\\_market/services/services-dir/study\\_on\\_points\\_of\\_single\\_contact\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/study_on_points_of_single_contact_en.htm)

## II. Implementation of and compliance with key provisions

After a very promising start, the implementation work got seriously delayed mainly for political reasons not linked to the Services Directive.<sup>34</sup> Austria finally adopted the last measures for the implementation of the Services Directive in January 2012.

A **horizontal (federal) law** was adopted in November 2011, however without covering the core provisions of the Directive on the freedom to provide services. Austria considered that these provisions were better implemented by amending existing laws at federal and Länder levels.

In general, few legislative changes were made to federal legislation<sup>35</sup>, whereas with 45 measures adopted to implement the Services Directive changes at Länder level were more substantial. The most important matters which are within the legislative and executive power of the Länder and where changes were made concern the following sectors: construction and certification sector and the conduct of certain professional activities (e.g. ski instructors, mountain guides, chimney sweeps, dancing schools).

### A. Streamlining the regulatory environment for services

#### 1. Requirements applying to providers established or wishing to establish in Austria (articles 14 and 15 of the Services Directive)

The evaluation of the implementation of the Services Directive has revealed, on the one hand, that requirements prohibited by article 14 of the Directive can still be found in Austrian legislation, in sectors of economic importance as well as for economically less important activities. On the other hand, as regards requirements where the Directive left a margin of appreciation to Member States to streamline the regulatory environment for the establishment of providers and which are mainly dealt with in article 15 of the Directive, a few of such requirements have been maintained. They concern basically the same sectors where prohibited requirements still exist.

Concerning **professional services, there is an** obligation for accountants, public accountants, tax advisers and patent attorneys to obtain insurance from an operator who is authorised to exercise in Austria. This requirement could in its factual consequences raise issues of compatibility with article 14(7) of the Directive, which prohibits any obligation to obtain financial guarantee or insurances from operators established in the same Member State, given that it is highly likely that insurance companies authorised in Austria are also established in Austria.

In addition an obligation for service providers to take a specific legal form has been maintained for civil engineers, accountants, patent attorneys and tax advisors. Shareholding requirements have been maintained for the same professions. The fact that

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<sup>34</sup> A draft horizontal law had been pending in the Austrian Parliament since December 2009 but could not get the 2/3 majority required for its adoption. Given the delay in the implementation, the Commission decided on 27 October 2011 to refer Austria to the Court of Justice over incomplete transposition of the Directive (IP/11/1283). Following the adoption and the notification of the last implementing measures the Commission has decided on 25 April 2012 to close the case against Austria.

<sup>35</sup> Concerning the federal state, Austria has reported the adoption of the horizontal law in November 2011 implementing Articles 1 to 8, 13 and 28 to 33 of the Services Directive, as well as the amendments of the Law on unfair commercial practices and the law concerning patent agents.

in the same sector and for the same professions prohibited requirements as well as requirements which had to be evaluated by Member States have been maintained, might lead to the conclusion that the screening has not been done thoroughly concerning the laws and regulations governing those professions or that requirements have been maintained on purpose.

Concerning **crafts**, in particular chimney sweeps, the situation is quite similar. First of all the requirement to have a seat in Austria as well as the requirement for established chimney sweeps to restrict the core activities to a certain area was not abolished. In addition the need for a specific legal form for the activity of chimney sweeps was maintained. The justification for keeping these requirements has to be put in question.

As far as the **retail sector** is concerned, prohibited requirements have been found notably in the legislation concerning the so called "*Tabakmonopol*": tobacco shops, where an economic needs test might be carried out and where the regional Commission of Tobacconists which consists also of competitors of a service provider has to be consulted for the authorisation or relocation of a tobacco shop.

In the **tourism** sector, the assessment of the implementation revealed the interesting fact that some Länder have abolished requirements which have been maintained and justified by other Länder. This concerns in particular ski schools and mountain guides. In two Länder ski schools may accept clients only in the territory where the ski resort/territory is located. One Land foresees an obligation of a ski school to inform another ski school prior to providing ski education in the ski school area of the latter, whereas this requirement has been abolished by other Länder. And finally in one Land there is still a ban on having more than one establishment as a permit for running a ski school may be granted only if the person is not yet holder of a ski school permit in this Land. Concerning mountaineering schools one Land has kept the obligation that the school needs to be managed by the holder of the permit himself which might constitute a requirement contrary to article 15(2) e) of the Directive. In any case, similar provisions were abolished by other Länder. It is equally interesting to note that while several prohibited requirements concerning the need for an establishment or for the indication of an address have been abolished in the tourism sector, the federal law on crafts remains ambiguous as to whether there is an establishment requirement for tourist guides. This might need clarification.

The situation in the **education sector** concerning dancing schools is similar to the tourism sector. Whereas some Länder have changed the legislation on dancing schools to bring it in line with the Services Directive, others have maintained the requirement that training in dancing skills shall be provided personally by the natural person who is theoretically and practically sufficiently skilled. This requirement could be considered a legal form requirement as it seems to exclude the provision of service by legal persons.

## 2. Nationwide validity of authorisations (article 10(4) of the Services Directive)

Authorisations which are not granted for the whole territory of a Member State but only for a specific part are likely to hinder the exercise of service activities. Austria is a federal State with nine Länder and it is thus important that, as a general rule, the authorisation received by one Land is also valid or can be recognized in another Land.

There is **no horizontal rule** concerning the nationwide validity of authorisations.

Article 10(4) of the Services Directive has not been transposed by the federal horizontal law, which means that nationwide validity of authorisations **has to be foreseen in sector specific legislation**.

Some of the Länder have included the nationwide validity as a **general principle in the horizontal legislation** transposing directive 2005/36/EC on the recognition of professional qualifications which applies to most of the important economic sectors. For those Länder which have not adopted a horizontal act for the implementation of Directive 2005/36, there are basically two possibilities foreseen in different legislations: either **automatic recognition of qualifications** acquired in another Land or other Member State is explicitly foreseen or the law provides for the **possibility to have those qualifications recognized**.

### 3. Tacit approval of authorisations (article 13(4) of the Services Directive)

Tacit approval, an important mean to cutting red tape as it foresees that an authorisation will be deemed to have been granted to the provider in case an application has not received any response within the set time period, is **not foreseen in a horizontal act of law**, but in sector specific legislation.

For example, tacit approval has been specifically foreseen for authorisations in the following sectors and legislations: opening of a kindergarten in the education sector or issuing certificates in the construction sector.

However, it has to be noted that in many cases tacit approval has been introduced in the legislation well before the adoption of the Services Directive.

At the same time, sector specific legislation has been identified where tacit approval has not been specifically foreseen (e.g. use of explosives, funeral facilities). It is also interesting to note that differences between the Länder have been identified with regard to sector specific legislation: comparable legislation foresees or does not foreseen tacit approval of authorisations (e.g. in the tourism sector there are differences concerning the authorisations of ski schools). The justification of such differences will have to be verified.

### 4. Total prohibition of commercial communications (article 24 of the Services Directive)

No total prohibition of commercial communications has been identified.

## **B. Boosting cross-border trade**

### 1. National implementation

The core chapter of the Directive on the freedom to provide services has not been introduced in the horizontal law which was adopted to implement the Services Directive. As a matter of fact, Austria considered that a horizontal provision would not have any additional value and that rules concerning the cross border provision of services had to be implemented by amending existing laws at the federal and the Länder levels.

The probably most important rule applying to cross border services is contained in the **Federal Commerce and Industry Regulation Act** (“*Gewerbeordnung*”) which covers the majority of commercial and crafts activities. As a general rule, service activities in the scope of the Act must be notified to the competent authority which has to assess whether the legal requirements (e.g. legal age, professional qualification for regulated professions) for the specific commercial activity are fulfilled. The operator can start the activity on the day of registration, provided that the documents required by law are submitted in full. This was considered in compliance with EU law and therefore maintained. For certain sectors, such as master builder, chemical laboratories, gas and sanitation installations engineering, debt collection services, chimney sweeps, commercial and financial consultants and arms trade, which are considered sensible activities among “regulated professions” an authorisation is necessary in order to legally start that activity. However the Act also **contains a specific rule for the provision of cross border services** which has been introduced in order to implement Directive 2005/36/EC. According to this provision, nationals of an EU Member State or EEA country, who are established in another Member State of the EU or EEA and are providing services there on a legal basis, can provide services on a non-permanent and occasional basis under the same conditions as domestic traders. So far there is no jurisprudence concerning the interpretation neither of “non-permanent and occasional basis” nor about what has to be understood under “the same conditions as domestic traders”.

Similar rules as the one concerning commercial and craftsmen activities can be found in other sector specific laws at federal level, like the Act on Public Accountants and Tax Advisors, the Act on Balance Accountants or the Act on Civil Engineers.

## 2. Distinction between freedom of establishment and free provision of services

A part from the examples mentioned above, legislation in general does not distinguish between a service provider that wants to establish a business in Austria and a service provider wishing to provide temporary cross border services.

## 3. Issues with the free provision of services clause

The federal legislator did not consider that a lot of legislative changes were needed to achieve compliance with the Services Directive. On its website the Ministry of Economy, which was coordinating the implementation work, states that in Austria the need for amendments was assessed as being low.<sup>36</sup>

### *Examples of requirements that have been maintained*

Finally in the **professional services sector** the relevant law only provides for rules for cross-border activities of balance accountants and not for other accountants which seem to imply that all the requirements applied for established providers will also apply to incoming services providers.

In the **construction, certification and crafts services sector**, all Länder laws foresee authorisation requirements with regard to the certification of construction products. An establishment requirement for chimney sweeps has been identified which implies that the

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<sup>36</sup> <http://www.bmwfj.gv.at/wirtschaftspolitik/standortpolitik/seiten/eu-richtlinie%C3%BCberdienstleistungeniminnenmarktundihreumsetzungin%C3%96sterreich.aspx>.

cross border provision of such services is prohibited in Austria. The obligation of house owners to contract chimney sweeps exclusively from their respective territory in some Länder may also constitute a prohibited restriction in terms of the Services Directive.

Concerning the **retail sector**, products with medical effects might only be sold after having obtained a specific authorisation.

Most requirements which have been maintained concern the **tourism sector**, where it can be observed that requirements and justifications seem to differ between the Länder. Service providers from other Member States wishing to provide temporary cross border services in some Länder still need to have an authorisation, e.g. for running ski schools and engaging as ski, cave or mountain guide, whereas in other Länder for those same activities a notification regime has been maintained. For some of those activities there is also an obligation to wear special badges or to have a special identity card.

Finally, there is also an establishment requirement for tourist guides or at least an ambiguity in the legislation which should be clarified.

As far as the **education sector** is concerned authorisations are needed for training in dancing.

## **I. Points of Single Contact**

The Belgian point of single contact consists of a central PSC website, called [www.business.belgium.be](http://www.business.belgium.be) and nine so-called 'enterprise counters', which have online portals and physical offices. Those enterprise counters are managed by private operators, but are recognized/mandated by the Belgian authorities. This cluster of business counters was developed already before the adoption of the Services Directive in order to execute a number of tasks for businesses that previously were performed by different authorities.

The provision of information is generally good because of the assistance by the 'procedure guide'. Improvements could however be made concerning the availability of information by providing a real one-stop source for information and procedures instead of being obliged to visit other sites for transactions. The structure and overview of the website could be improved in order to allow users to find back quickly relevant (sector-specific) information. Another improvement could consist in a clear differentiation for all administrative formalities applicable to businesses wanting to enter Belgium on a temporary basis.

The electronic completion of procedures is the weakest point of the Belgian PSC. The purpose of the business.belgium portal is rather to give information and to redirect users to other websites, and therefore does not allow for documents and forms to be retrieved electronically, or for the submission of signed electronic documents. This is the case for some procedures on some of the business counter portals. Furthermore, the required infrastructure to ensure compliance with the Commission Decisions governing cross-border acceptance of eSignatures is currently not foreseen on the business counter portals. This is however not problematic since eSignatures are at any rate not required of service providers at the moment.

Assistance to PSC users is provided by the 'procedure guide'. Here anyone can find information about applicable procedures and requirements by filling in the business activity, the sector and the location. For individual assistance businesses have to turn to the business counters.

The portal is available in Dutch, French, English and German. It should be noted that not all information is available in those four languages. English is not always supported and foreign businesses that find English information on the business.belgium portal might then be referred to French or Dutch webpages at the level of the business counters.

The overall use and usability of the Belgian PSC is above average.<sup>37</sup> However, improvements could be made concerning the availability of information (more user friendly), enhancing online completion of procedures, integration between the central portal and the 9 decentralised business counters, and promoting awareness of the PSC among business users.

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<sup>37</sup> [http://ec.europa.eu/internal\\_market/services/services-dir/study\\_on\\_points\\_of\\_single\\_contact\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/study_on_points_of_single_contact_en.htm)

## II. Implementation of and compliance with key provisions

The federal as well as regional levels have adopted a horizontal law, containing the general provisions, as well as sector-specific laws, which should align existing legislation with the Services Directive.

A horizontal federal law was adopted in 26 March 2010 which serves as a framework law; together with a vertical law of 22 December 2009 which amends around 10 existing acts in conformity with the Services Directive.

At the level of the Communities and Regions, all regional authorities opted for horizontal as well as sectorial texts in order to ensure correct transposition of the Services Directive,

In general, most legislative changes were adopted on regional level apart from some substantial changes on Federal level. The most important changes were made in the following sectors: travel agencies in Flanders and Wallonia, obligatory registration of building contractors, registration in the commercial register (CBE) and commercial establishments (licence).

### A. Streamlining the regulatory environment for services

#### 1. Requirements applying to providers established or wishing to establish in Belgium (articles 14 and 15 of the Services Directive)

Concerning **professional services**, shareholding and legal form requirements were found to exist in the legislation governing lawyers, architects, accountants and tax advisors.

For architects, natural persons who are mandated to exercise the profession of architect and who are registered with the Body of Architects must have, directly or indirectly, at least 67 % of the shares (the Act of 20 July 2006) as well as the voting rights of an architectural company. Only persons whose profession are compatible with the profession of architects and who must be notified to the Body of Architects can hold the other shares. For lawyer, the majority of capital must be held by qualified lawyers.

In order to use the title of accountant or tax advisor, the majority of voting rights and shares must be in the possession of accountants or tax advisors who are members of the Institute of Accountants. There is also an obligation for the accountants/auditors and tax advisors to take the specific legal form of a civil company established in the form of a commercial company in accordance with Belgian law, or a company established under foreign law and authorised to provide accountants/auditors or tax advisors services in the Member State of establishment

Other requirements which have been removed or made less stringent concern the legal form requirement for recovery of debt services and tariffs for architects in Belgium.

No requirements have been identified in the **crafts, construction and certification services** sector. Tariffs for waste management services for instance have been abolished.

In **the real estate sector**, the Act on the protection of the title of surveyor foresees that only natural persons can exercise the profession of surveyor. There is however, a possibility for legal persons to exercise the profession, but the professional liability arising from the duties is reserved to the surveyor personally and cannot be restricted.

As regard the licence for commercial establishments in the **retail sector**, Belgium has made many efforts to bring this legislation in line with the Services Directive and, in particular, to eliminate economic need tests such as the assessment of impact on existing retail stores. It is still to be assessed whether the decision to regionalise the licensing system would bring further simplification.

In addition accreditation is needed for natural and legal persons that want to provide services creating new jobs, mainly for long-term unemployed persons that meet local needs. One of the criteria for this accreditation is ‘the integration of the service provider in local social and economic life’. It is worth noting that a high degree of integration is possible almost exclusively for natural and legal persons already established for a long time in Belgium, a condition which could be considered discriminatory against incoming service providers.

With regards to exercise and organisation of fairs and ambulant activities, the Mayor may determine the location, days, hours and specialisation of ambulant activities and might even reduce the number of pitches per company to maintain the diversity of the supplied services. This could be considered as a territorial/quantitative restriction. In addition, the establishment and operation of night shops and private telecommunications offices can be restricted by the Mayor to certain parts of the municipality. Also, the accreditation of a service that creates jobs for long-term unemployed persons (“local service economy”) may only be granted to those entities specified in the Belgian legislation, which could be considered to be an obligation to take a specific legal form.

No forbidden requirements were identified in the legislation in Flanders, Wallonia and Brussels, regarding the **tourism sector**. Recently a shareholding requirement for every person wanting to start a travel agency<sup>38</sup> has been abolished for the Flemish region<sup>39</sup>. This requirement has also been abolished for the Walloon Region<sup>40</sup>. However this restrictive requirement is still in place for the Brussels-Capital Region. A minimum capital requirement for travel agents has been abolished in Belgium, except for the Flemish region.

A number of requirements reserving an activity to a particular service provider and placing an obligation on a provider to take a specific legal form were identified in the **education sector**. These relate to vocational training courses for continuing education for SMEs where there is the obligation that courses have to be organised by an appointed Institute by the Government. Driving schools need to be run by natural persons or commercial companies, excluding civil companies. There is also the requirement to take the form of a non-profit organisation, which was found to apply in relation to organisations verifying the quality of education in the Flemish region, and centres offering adult education in the German-speaking Community.

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<sup>38</sup> Article 8 of the Royal Decree of 30 June 1966 on travel agencies, *Belgisch Staatsblad* 27-07-1966.

<sup>39</sup> By Article 36 of the Decree of the Flemish government implementing the Decree of 2 March 2007 on travel agencies.

<sup>40</sup> By Article 29 of a Decree of 27 May 2010.

Driving instructors are obliged to have an establishment unit in Belgium. In addition a driving school is obliged to have an authorisation for the operation, its management personnel, its teaching personnel and the location.

## 2. Nationwide validity of authorisations (article 10(4) of the Services Directive)

Belgium is a federal state with political power spread into three levels: federal level, Community level and the level of the Regions. From a legal point of view, all levels are equal and each of the Belgian legislators is competent to implement the Services Directive to the extent that the matter falls within its responsibilities.

Consequently, nationwide validity of authorisations is guaranteed by authorisations that are governed by federal legislation while the validity of regional authorisations is in general limited to its territory. The horizontal decrees of the Flemish Region and the Wallonia Region for example ensure right of access and exercise of services activities throughout the territory of the Flemish Region and the Wallonia Region<sup>41</sup>. The German-speaking Community however guarantees nationwide validity of their authorisations as the service provider has the right to exercise the activity throughout the Belgian territory.

## 3. Tacit approval of authorisations (article 13(4) of the Services Directive)

The different horizontal laws have implemented the principle of tacit approval of authorisations, but it does not apply generally. Sector specific legislation was amended in order to specify where tacit approval applies. For example, it has been explicitly introduced for the authorisation to operate as a travel agent in the Flemish region.

Considering that an exception could be justified by overriding reasons of general interest, tacit approval does not apply in the following sectors: construction sector, travel agents, tourist accommodation and camping parks in Wallonia, food and beverage, education services, debt collecting activities.

However, in sectors where the principle of tacit approval does not apply there are general commitments that the application process should be easy, as quickly as possible and at a reasonable cost.

## 4. Total prohibition of commercial communications (article 24 of the Services Directive)

No total prohibition of commercial communications has been identified.

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<sup>41</sup> Decree of 25 June 2010 partially transposing Directive 2006/123/EC of the European Parliament and the Council of 12 December 2006 on Services in the Internal Market, *Belgisch Staatsblad* 2-08-2010 and Decree of 10 December 2009 transposing Directive 2006/123/EC of the European Parliament and the Council of 12 December 2006 on Services in the Internal Market concerning the matters referred to in Article 138 of the Constitution, *Belgisch Staatsblad* 24-12-2009.

## **B. Boosting cross-border trade**

### 1. National implementation

The federal government and each regional authority implemented Article 16 of the Services Directive by means of horizontal legislation together with changes in some sector-specific laws. The Flemish government however has only introduced sector-specific changes.

The Walloon region and Brussels Capital region expressly provided that the horizontal decree on services will prevail over sector specific legislation in case of conflict. In this case cross-border service providers can rely on the freedom to provide services clause even if sectorial provisions say otherwise.

### 2. Distinction between freedom of establishment and free provision of services

Concerning cross-border trade, it seems that some authorisation requirements for national providers are also applied to incoming service providers. In general, Belgian legislation makes a distinction between the two. In addition, it seems doubtful whether those authorisations applied to incoming services providers can be justified by one of the four reasons under Article 16 (public policy, public security, public health or the protection of the environment) and whether they are proportionate. This concerns for instance, authorisation for ambulant and fair activities, authorisation for the activity of butcher, obligation for travel agents to have premises in the territory, authorisation for real estate agents, establishment and authorisation requirements for driving schools, and authorisation and shareholding requirements for architects, accountants and lawyers.

### 3. Issues with the free provision of services clause

In Belgium, a general requirement for business registration at the '*Banque Carrefour des entreprises*' exists for the establishment of service providers. Enterprises (natural and legal persons) that want to establish in order to provide services on the Belgian territory have to be registered at the CBE. It appears, according to the information of the Commission, that cross-border service providers need to register in the CBE if they have to file an application for an authorisation that is covered by the Services Directive.

A horizontal prior notification ('*Limosa*') is required from all service providers for commercial, crafts and liberal activities, including activities in the construction sector, wishing to exercise under free movement of services. The *Limosa* notification entails a horizontal obligation also for self-employed persons providing cross-border services in Belgium to file a prior notification with the Federal Service for Social Security. A case about the legality of this notification duty is pending before the Court of Justice of the European Union.<sup>42</sup>

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<sup>42</sup> Case C-577/10, *Commission v Belgium*; see press release IP/10/680; <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/680&format=HTML&aged=1&language=en&guiLanguage=en>.

*Examples of requirements that have been maintained*

In the **professional services sector**, collecting societies must be established in Belgium.

Concerning the **construction and crafts sector** there is an authorisation requirement for contractors.

**Real estate** agents are allowed to provide their services on occasional and temporary basis in Belgium only after they have obtained permission from the Professional Institute for Real Estate Agents. Each real estate agent is obliged to make note of his number of permission obtained from the Professional Institute on all his documents and on his website. No justifications for this authorisation requirement were provided in the legislation. For surveyors, registration at the Federal Council of Surveyors is needed for all service providers.

As far as the **tourism sector** is concerned, in the Wallonia and Brussels-Capital Region, travel agents must have premises in their territory, which must be accessible to the public. The former authorisation requirement for travel agents has been replaced by a less stringent notification system.

Finally, in the **education sector**, driving schools are required to have at least one establishment unit in Belgium and must obtain several authorisations such as for the operation, the managing personnel, the teaching personnel and its location and physical premises. As such, cross-border provision of services for driving schools does not seem to be possible in Belgium. Centres providing training to environmental specialists and laboratories that analyse water, air and soil in the Flemish region, need to be accredited.



**BULGARIA**



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## **I. Points of Single Contact**

The Bulgarian portal does not give access to the electronic services, but provides information to complete the relevant types of administrative requirements. It mainly acts as a signpost, providing information about administrative requirements and referring users to the websites of competent authorities and provides information on only a limited number of procedures. The level of information provided is low and can be considered not sufficient for the services providers. There is no physical point of single contact.

On-line completion of procedures needs to be significantly improved. Electronic completion is currently possible for a limited number of procedures through the websites of the responsible authorities (linked to the PSC portal). In many cases, however, the use of paper forms and non-electronic procedures is still required. Electronic signatures are required for the submission of forms and related documentation, however only the Bulgarian electronic signature is accepted.

The Bulgarian PSC provides some facilities to help users obtain information. When users encounter problems a telephone number and e-mail are provided. However they are not easy to detect on the website. Moreover the contacts provided are not the ones responsible for the content of the website, but mainly for technical questions.

Regarding the linguistic availability, the PSC is accessible only in Bulgarian. Improvements in this area are necessary to enable foreign users the access to the content and the use of the portal.

The overall use and usability of the Bulgarian PSC is perceived to be average.<sup>43</sup> However, improvements could be made concerning the availability of procedures and information, the clarity and accessibility of the information provided (notably ensure a clear and distinct information on requirements applicable in case of establishment and the ones applicable in case of cross-border provision of services). Another area noted for improvement is the lack of information on municipal regulation and specifically the registration regimes.

## **II. Implementation of and compliance with key provisions**

The Bulgarian horizontal implementing law, the Service Activities Act, entered into force on 23 February 2010. The Act includes some amendments to specific legislation such as the Tourism Act, the Spatial Planning Act, the Chamber of Builders Act, the Chambers of Architects and Engineers involved in Investment Design Act, the Energy Efficiency Act, the Crafts Act and the Consumer Protection Act.

In general, few legislative changes were made to sector-specific legislations with the amendments of only the 7 sector-specific laws mentioned above.

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<sup>43</sup> [http://ec.europa.eu/internal\\_market/services/services-dir/study\\_on\\_points\\_of\\_single\\_contact\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/study_on_points_of_single_contact_en.htm)

## A. Streamlining the regulatory environment for services

### 1. Requirements applying to providers established or wishing to establish in Bulgaria (articles 14 and 15 of the Services Directive)

The evaluation of the implementation of the Services Directive has revealed, on the one hand, that some requirements prohibited by Article 14 of the Directive can still be found in Bulgarian legislation in the area of professional services. On the other hand, as regards, requirements where the Directive left a margin of appreciation to Member States to streamline the regulatory environment for the establishment of providers and which are dealt with in Article 15 of the Directive, a few of such requirements have been maintained in the area of professional services.

Concerning **professional services**, the most striking requirement prohibited by the Directive and maintained in Bulgaria is the nationality requirement for cartographers and cadastre service providers, as well as industrial property representatives. In addition, industrial property representatives must have their residence in Bulgaria. Those requirements are clearly against article 14(1) of the Services Directive which prohibits requirement based on nationality and residence. However, those laws are currently under review and should be amended in the course of the year.

In addition, an obligation for service providers to take a specific legal form and to respect rules relating to the shareholding of companies has been maintained in the legal profession, as well as in architectural/engineering professions holding specific company titles only. Fixed minimum tariffs are still in force for lawyers, architects and engineers in investment design, cartographers and cadastre service providers whereas the Professional Organisation of Veterinarians is entitled to determine the minimum prices for carrying out veterinary activities. Minimum tariffs for independent financial auditors were abolished through the implementation of Services Directive.

Concerning **crafts, construction and certification services**, an obligation for service providers to take a specific legal form has been maintained for persons who carry out technical supervision of high-risk equipment and persons who carry out services on maintenance, repair and modification of such equipment. According to the Technical requirements of Products Act, the providers must be legal persons, registered in the Commercial Register (Article 34a and 36).

In the area of **education**, an obligation to take a specific legal form has been maintained. Bulgarian private schools with foreign participation may be opened by associations registered in Bulgaria between Bulgarian and foreign individuals and/or legal persons; foreign private schools may be opened only by foreign legal persons. In addition, only legal entities can open vocational training centres. The vocational centres can be opened by associations registered in Bulgaria between Bulgarian and foreign individuals and/or legal persons or in cases of foreign vocational centres, by foreign legal persons.

### 2. Tacit approval of authorisations (article 13(4) of the Services Directive)

Tacit approval has been implemented via the Services activities Act (the horizontal implementing law of the Services Directive). However, sector specific legislation was not always amended in order to specify where tacit approval applies.

Tacit approval does not apply in the following sectors in their entirety: tourism, construction, education, crafts and business services. This raises some doubts as to the use of the exception under Article 13(4) of the Directive and the relationship between the horizontal implementing law and sector-specific laws.

3. Total prohibition of commercial communications (article 24 of the Services Directive)

No amendment has been adopted to sector-specific legislation. Rules applicable to commercial communications for regulated professions are not known. Prohibitions for some forms of commercial communications remain for lawyers and constitute thereof an infringement of Article 24, paragraph 1 of the Services Directive.

**B. Boosting cross-border trade**

1. National implementation

The core chapter of the Directive on the freedom to provide services has been implemented in the horizontal implementing law. Article 19 of the Services Activities Act implements the principles set out in Article 16 of the Services Directive, i.e. that requirements can be imposed on incoming service providers only if such requirements are non-discriminatory, are justified for reasons of public policy, public security, public health, or the protection of the environment, and are proportionate to the pursued objectives.

In addition, the Transitional and Final Provisions of the Services Activities Act require that national competent authorities undertake all those measures necessary to ensure that existing authorisation schemes and requirements for service providers are in conformity with the provisions of the Services Activities Act within two months from its entry into force.

A specific provision in the horizontal implementing law lays down a mechanism to control the process of creating new statutory instruments that introduce requirements for access to services or the exercise of service activities.

2. Distinction between freedom of establishment and free provision of services

The transposition approach in the sector-specific legislation is rather divergent. Some of the Acts (the Tourism Act, the Spatial Planning Act, the Chamber of Builders Act, the Chamber of Architects and Engineers involved in Investment Design Act, the Energy Efficiency Act, the Crafts Act and the Consumer Protection Act) have been amended by the Transitional and Final Provisions of the Services Activities Act itself while others (like the Professional Qualifications Recognition Act and Independent Appraisers Act) were subsequently amended. Thus, special provisions on the freedom of establishment and on cross-border service providers have been introduced. However, even though most of the necessary changes are being prepared, the majority of the relevant sector-specific legislation has not yet been amended. As a result, these Acts make no distinction between the requirements applicable to the cross-border service providers and those established in the territory of Bulgaria. Thus it seems that these requirements (authorisations, registrations) could apply for both categories of service providers.

### 3. Issues with the free provision of services clause

Serious concerns are raised by the fact that it seems that the sector-specific legislation does not distinguish between requirements applicable to establishment and to cross-border provision of services.

Bulgaria has interpreted the provision in Article 17(6) of the Services Directive by excluding from the scope of the freedom to provide services clause all the services provided by regulated professions whereas the exclusion foreseen in the Services Directive covers only matters linked to the recognition of professional qualifications (title II of Directive 2005/36). Similarly, the exclusion of audit services is broader than the one foreseen under Article 17(13) by excluding all audit services and not only matters covered by Directive 2006/43.

The scope of the derogation foreseen for intellectual property rights (Article 17(11)) has also been broadened by excluding services in the field of intellectual property rights.

#### *Examples of requirements that have been maintained*

In the **sector of professional services**, there are no specific provisions concerning cross-border provision of services in sector-specific legislation, neither in the Services Activities Act for regulated professions. The implementation of Article 16 of the Services Directive for regulated professions and matters not covered by title II of Directive 2005/36 is lacking in the Bulgarian legislation. Some sector-specific laws are in the process of being amended such as the veterinary law. However, in other laws such as the law on architects and engineers in the investment design or the Bar Act, a clear distinction between establishment and cross-border provision of services is still missing but is foreseen in the draft amendments to the laws.

Concerning **crafts, construction and certification services**, the Chamber of Builders Act was amended and now the registration of service providers in registries in their Member State of establishment is recognized as equivalent to the registration required under the Bulgarian law. Similarly, for crafts, the authorisation scheme that was in place for cross-border service providers in the area of crafts was removed and was replaced by an obligation to notify. Notifications must include details such as the address of the service provider in the Member State of establishment; the address where the craft activity will be carried out in Bulgaria; evidence of the formal qualification as craftsperson. Providers carrying out technical supervision of high-risk equipment are subject to licensing, while providers who carry out services on maintenance, repair and modification of such equipment are subject to registration.

In the **real estate sector**, persons providing independent appraisals, cartography and cadastre services must be registered. Cross-border providers are prevented from providing services by the nationality requirement currently in force for cartographers and cadasters. This legislation is under review and should be amended in the course of this year.

In the **retail** sector, authorisation schemes and registration requirements applicable to established providers seem to be also applied to cross-border providers in the absence of clear distinction between the provisions applicable to established providers and cross-border service providers. Authorisation schemes or registration requirements are set out for the sale or distribution of a number of specific products such as grain, veterinary

products, tobacco, alcohol, precious metals and stones, plant protection products, cultural objects, trade of ferrous and non-ferrous metal waste, duty free trade. There is also an obligation to register merchandisers and branches of foreign merchandisers in Bulgaria, as well as commercial sales. The municipalities have also laid down requirements for the provision of retail services in their territory through the adoption of local ordinances. Authorisation schemes are set out for outdoor sales in local markets and public areas (ambulant sales) as well as for the sale of tobacco articles; some municipalities have laid down notification schemes for wholesale and retail services.

As far as **the tourism sector** is concerned, some issues with requirements prohibited by Article 16(2) were noted. They concern the requirement for a tour operator or travel agents, established in a Member State of the European Union or EEA country, also to be established in the territory of Bulgaria. The registration procedure foreseen for tour operators and travel agents has been repealed and replaced by an obligation to register *ex officio* upon submission of documentation, certifying their right to carry out such activities in another Member State and a certificate or document issued by a credit institution or insurance company, containing evidence of professional insurance. But cross-border tour operators and tourist agents carrying out activities in Bulgaria must enter into agreements with registered tour operators and travel agents, licensed insurers and carriers, guides, animators, mountain guides, ski teachers, etc. as well as with persons, who carry out tourist activities in categorized tourist sites. However, the Tourism Act is currently under review and expected to be adopted by mid-2012.

In the **education** sector, a decision of the Parliament is necessary to open higher education institutions. Similarly, a decision of the Council of Ministers is necessary to open private schools. The vocational training centres are subject to licensing by the National Agency on professional education and training. An authorisation from the Minister of Transport is necessary to operate a driving school (the applicant should have the necessary expertise and knowledge to provide driving lessons and practice). Those requirements seem to be applicable to cross-border service providers in the absence of explicit provisions on cross-border services in the sector-specific laws.



CYPRUS



## I. Points of Single Contact

The PSC in Cyprus has been established based on the decision of the Council of Ministers of the 16<sup>th</sup> of December 2009 and the articles 6-9 of the law for the free establishment of service providers and the free movement of services (16/07/2010), and operates within the auspices Ministry of Commerce, Industry and Tourism.

The PSC Cyprus portal provides information and application forms regarding procedures and formalities needed for the access to and exercise of service activities that fall within the scope of the Services Directive and information regarding the horizontal procedures and formalities related to the setting up of a business in the Republic of Cyprus (income tax registration, VAT registration, social security registration, registration of companies, temporary residence and employment permits). Furthermore application forms for some procedures required for the access to, and exercise of, service activities and for some horizontal procedures related to the establishment of a business in the Republic of Cyprus (social insurance) can be submitted online.

Overall, information regarding the application procedure (application forms, list of supporting documents, onsite inspections – examinations, applicable deadlines, applicable fees, licence duration), eligibility criteria, contact details and link to competent authority, obligations and supervision, contact details of related professional associations, legislation, Public Registry where applicable, and links related procedures are included in the information content.

One of the most positive aspects of PSC of Cyprus use the numerous navigation tools for searching procedures (i.e. drop down menu by service sector, index by alphabetical list of procedures, index by service sector, search engine for procedures, general site search engine) whereby a clear distinction of procedures related to establishment and cross border service provision is provided. Also, the provision of customized online tracking, through the personal space, of the on-going procedures (applications submitted electronically) is well-structured and sufficient; supporting documents can be submitted along with the online application forms. Specifically, registered users can electronically submit application forms online through direct data entry attach supporting documents including the receipt of payment and electronically sign the whole package. Through the "Personal Space", service providers can view the application form submitted as well as track the progress of their on-going procedures.

Potential areas for improvement include online payment via enabling e-signatures and certifying users digitally and the development of the site in the Greek version, since now it is only available in English. In parallel, the launching of electronic submission of application forms and electronically tracking the on-going procedures through the personal space of the Cypriot PSC, is expected to contribute to simplification of procedures and reduction of administrative burden.<sup>44</sup>

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<sup>44</sup> [http://ec.europa.eu/internal\\_market/services/services-dir/study\\_on\\_points\\_of\\_single\\_contact\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/study_on_points_of_single_contact_en.htm)

## II. Implementation of and compliance with key provisions

### A. Streamlining the regulatory environment for services

#### 1. Requirements applying to providers established or wishing to establish in Cyprus (articles 14 and 15 of the Services Directive)

The evaluation of the implementation of the Services Directive has revealed that quite a number of requirements prohibited by article 14 of the Directive can still be found in Cypriot legislation, in sectors of economic importance as well as for economically less important activities. As regards requirements where the Directive left a margin of appreciation to Member States to streamline the regulatory environment for the establishment of providers and which are mainly dealt with in article 15 of the Directive, a number of such requirements have been maintained. Although the Commission services have been in contact with the Cypriot authorities in order to eliminate those requirements, draft legislation concerning most of the requirements has been communicated to this end but it has not been adopted yet.

Concerning **professional services**, shareholding requirements have been maintained also for lawyers, where only lawyers can be shareholders of a lawyers' company. For lawyers minimum tariffs seem to have been maintained as well.

Concerning **crafts and construction services**, no evidence has been found of the existence of such requirements.

In the **real estate sector**, both natural and legal persons must have a registered office or place of business in the Republic of Cyprus. The registration of a legal person as a real estate provider is done separately from the registration of a natural person that is also required in parallel.

As far as the **retail sector** is concerned, prohibited requirements have been found notably in the legislation concerning opticians where there is an obligation to have a permanent establishment in Cyprus.

In the **tourism sector**, the Travel Agencies and Travel Guides Law provides that for the grant of a licence to establish and operate an agency, a guarantee of 20.500 EUR must be deposited by the entrepreneur. For the renewal of an existing operation licence, it is required that the guarantee already in force for the said equal amount, be valid in accordance with the following provisions: Provided that, in the case of a licensed Office which takes over the organization, the promotion and the execution of programs of organized excursions and tours abroad, by any means of transportation, the deposit of an additional guarantee of twelve thousand pounds shall be required.

Regarding car rental services, obligation for a permanent residence in Cyprus still apply after the legislation adopted at the end of April 2012.

Finally, with regard to private universities in the **education sector**, the person establishing the university must be a legal person registered in Cyprus. Also, there are a number of requirements in place with regard to legal form (only by legal person) and shareholding, where for the preliminary registration of the private universities it is required to include at least seven (7) persons proposed as members of the Temporary Governing Body.

## 2. Tacit approval of authorisations (article 13(4) of the Services Directive)

The concept of tacit approval was introduced in the horizontal law and more specifically in Article 13(4) of Law 76(I)/2010 provides that any other laws may provide for different arrangements when this is justified by overriding reasons relating to the public interest, including a legitimate interest of third parties. Areas in which the provisions of Article 13(4) of the Directive are not directly transposed, are those involving gas stations, real estate agents, travel agencies and tourist guides, car rental services, hotels and rooms for tourists, private schools, private universities (the Law on higher education refers to a time limit of four months within which the Ministry of Education and Culture is obliged to reply), protection of beaches, protection of animals. The above mentioned areas do not foresee the tacit approval.

Nevertheless, for most service sectors no specific provisions on tacit authorisations were adopted and serious doubts remain as it is not clear how the general tacit authorisation principle mentioned in the horizontal act would be applicable in practice.

## 3. Total prohibition of commercial communications (article 24 of the Services Directive)

A number of total prohibitions of commercial communication were identified. Following contacts between Commission services and the Cypriot authorities draft legislation to eliminate most of the requirements has been communicated but it has not been adopted yet.

Regarding lawyers, the law prohibits any advertising to be made in newspapers or magazines, on the radio or television and to appear in posters or on advertising board.

The current code of conduct for engineers prohibits any direct or indirect advertisement.

Also, for veterinarians, advertising via the press or via any other means is prohibited with the exception of some limited circumstances.

## **B. Boosting cross-border trade**

### 1. National implementation

Cyprus transposed Articles 16(1) and (2) through sections 16(3) and 16(4) of the horizontal law of 2010, Law 76(I)/2010 (the Law).

The transposition of Article 16 of the Services Directive is, in general, literal. The only apparent difference in wording is the fact that Article 16(1)(b) has not been literally transposed and the relevant transposing section of the national law (section 16(3)(b)) does not use the wording 'public policy' as an overriding reason, but the words 'public order' instead.

Where the requirement to obtain a licence is concerned, the legislation does not make a distinction between established or cross-border providers. The applicable Horizontal Law is drafted in a general manner; it applies to any service and does not provide for a list of requirements to be applied by competent authorities to cross-border services in specific areas, such as retail, tourism, etc. According to section 5(3) of the Law, the provisions of

the Law, unless otherwise provided, prevail over any contrary provision of any other law in the Republic.

As the situation now stands, other national laws have not yet undergone any legislative changes in order to clearly specify which rules do or do not apply to specific cross-border services. Thus, it appears that it is for the competent authorities to decide in each case whether a rule complies with these requirements or not. This would seem problematic in view of legal certainty and effectiveness of the implementation.

## 2. Distinction between freedom of establishment and free provision of services

In the vast majority of legislation no difference is made between a service provider that wants to establish a business in Cyprus and a service provider wishing to provide temporary cross border services. The PSC gives a clear indication either about the rules that apply for an establishment in Cyprus and the rules for temporary services provision, however very often the same rules apply.

## 3. Issues with the free provision of services clause

As regards the Article 16 requirements, a number of authorisation, registration or licensing requirements that presumably apply also to cross-border providers apply in the retail, tourism, education, construction service sectors and in the professional services. However, it is noted that with respect to those activities that are classified as regulated professions in Cyprus, the relevant requirements are generally equivalent to those foreseen by Article 7 of Directive 2005/36/EC and benefit from the derogation from Article 16 of the Services Directive as provided by Article 17(6) of the Services Directive.

### *Examples of requirements that have been maintained*

In the **construction sector**, as far as the planning, design, installation and maintenance of electrical and mechanical machinery and systems are concerned, licence or authorisation requirements are maintained for the purpose of preserving the quality of services to be provided by qualified persons having adequate education and experience.

**Real estate agents** from an EU Member State, wishing to provide cross-border services in Cyprus may provide such services subject to a prior written notification to the registration Council of Real Estate Agents.

Concerning the **retail sector**, obligation to obtain an authorisation or a registration apply to the marketing of veterinary products, sale of firearms and explosives, trade in motor vehicles and general establishment of a business or trade in a municipality.

In the **tourism sector**, for tourism services on beaches licence or authorisation requirements remain in place for cross-border service providers.

For car rental services, the new legislation adopted at the end of April 2012 provides that for the temporary provision of cross-border services an authorisation (approval) is required together with the obligation to be established in Cyprus. A minimum number of the cars, which have to be registered in Cyprus, is required (more than 15).



## I. Points of Single Contact

The Czech electronic **Point of Single Contact** was launched in January 2010, and integrated into an existing government-funded portal providing advice to businesses, BusinessInfo.cz. The Czech PSC is above average in terms of the availability and quality of information provided.

The Czech PSC offers comprehensive information on the majority of procedures that businesses would need to complete, even going beyond the requirements under the Services Directive to meet businesses' needs in providing information on social security and tax formalities. Only in the provision of information to the restaurant and catering sector, which falls largely under the responsibility of local authorities, is the situation with regard to information provision less positive.

As regards language accessibility, the Czech PSC makes some information available in English, but this is not the same content as the information available in Czech. Google Translate is used as a support tool.

The PSC features online forms which are used as central access points to provide information for a variety of purposes such as application for a business license and application for VAT and income tax registration. In terms of electronic completion of formalities, the integrated online forms are used to centralise the information collected and to forward it on to the relevant competent authorities for further processing. This system is perceived as very user-friendly. Some electronic procedures (e.g. for architects) are dealt with on websites linked to the PSC, but the user is automatically redirected to them. Procedures that cannot be dealt with through the online form system and for which there is no electronic support concern mainly those dealt with by local authorities, which offer one-way interaction through downloadable forms. E-signatures are not implemented as an internal application for services in the portal and thus cannot be used to complete electronic procedures via the portal. However, e-signatures can be used while submitting a completed form via e-mail to the PSC or competent authority. Electronic payment is not supported.

In terms of user-friendliness, the sheer volume of information on the Czech PSC portal can be confusing for users, and the planned clearer structuring of the site will be beneficial. Furthermore, user testing of the PSC<sup>45</sup> indicated that there is no clear distinction made between foreign businesses considering permanent establishment and those considering temporary cross-border service provision.

Potential areas for improvement include a clearer structure of the site, providing online support tools, increasing the number of procedures that can be completed online through the acceptance of e-signatures, and increasing the amount of information available in English.

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<sup>45</sup> [http://ec.europa.eu/internal\\_market/services/services-dir/study\\_on\\_points\\_of\\_single\\_contact\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/study_on_points_of_single_contact_en.htm)

## II. Implementation of and compliance with key provisions

The Czech Republic implemented the Services Directive in 2009 through two legislative acts; a horizontal framework law and an omnibus law amending numerous sector-specific laws, mainly in order to introduce the concept of tacit approval. The article on the freedom to provide services was implemented both in the horizontal law and in sector-specific laws. The Czech authorities also produced guidance on the national implementation of the Services Directive, including on the interpretation of the principles of non-discrimination, necessity and proportionality set out in the Directive.

### A. Streamlining the regulatory environment for services

#### 1. Requirements applying to providers established or wishing to establish in the Czech Republic (articles 14 and 15 of the Services Directive)

As regards requirements where the Directive left a margin of appreciation to Member States to streamline the regulatory environment for the establishment of providers and which are mainly foreseen in article 15 of the Directive, there are a number of requirements in place in the Czech Republic with regard to legal form and shareholding, particularly in the professional services sector.

For instance, in the **professional services sector**, legal services can only be provided by attorneys (natural persons) or by unlimited companies, limited partnership companies or limited liability companies established by attorneys. Other forms of legal person, such as joint stock companies or cooperative societies are prohibited from providing legal services. Similarly, cooperative societies are prohibited from providing the service of patent attorney.

However, it seems that legal persons established on other EU Member States can provide the services of lawyer or patent attorney regardless of legal form, so these restrictions are applicable only to Czech firms. But established "foreign companies" must meet another requirement, namely that the provision of legal services be their only activity.

Requirements that limit the shareholding by third parties have been identified in the Czech legislation on the legal profession, on certified architects and engineers, and on patent attorneys, whereby only lawyers can be partners of companies providing legal services, and only authorised architects or authorised engineers can be partners of unlimited companies providing services in their profession. Other, but less stringent, requirements apply to architects and engineers as partners in limited partnership companies.

#### 2. Tacit approval of authorisations (article 13(4) of the Services Directive)

Tacit approval, an important mean to cutting red tape, as it foresees that an authorisation will be deemed to have been granted to the provider in case an application has not received any response within the set time period, is was introduced in the horizontal law amending implementing the Services Directive in the Czech Republic. Furthermore, an omnibus law was adopted which amended numerous sector-specific laws in order to include the concept of tacit approval. Consequently, tacit approval has been introduced in the approval process for energy auditors, construction safety specialists, those responsible for geological works, those involved in nature and birdlife conservation, experts in the calibration and repair of metrology instruments

Areas in which there do not appear to be any possibility for tacit approval include the authorisation of those involved in the restoration of historical monuments and operators of zoos. Furthermore, given the fact that entry to the profession relies on the passing of examinations organised by professional chambers, tacit approval of architects, engineers, construction technicians and the regulated profession ‘verifier of land survey outcomes’, it is not practically possible to apply the principle of tacit approval.

3. Total prohibition of commercial communications (article 24 of the Services Directive)

No total prohibition of commercial communications has been identified.

## **B. Boosting cross-border trade**

1. National implementation

The article on the freedom to provide services was implemented in the Czech Republic both in the horizontal law and in sector-specific laws. The competent authorities in the field of services, and their competences in each relevant area, are defined in the sector-specific legislation. The Czech Ministry of Industry and Trade has published guidelines to assist service providers and responsible public authorities in the interpretation of the principles of non-discrimination, necessity and proportionality.

2. Distinction between freedom of establishment and free provision of services

A distinction is made between the requirements applicable to foreign service providers wishing to establish in the Czech republic and those wishing to offer their services on a temporary cross-border basis, as the horizontal law states that requirements imposed by the Czech legislation on cross-border service providers are considered as met if the provider meets equivalent or essentially comparable requirements in another Member State.

3. Issues with the free provision of services clause

The Czech horizontal law implementing the Services Directive states that a provider is entitled to provide cross-border services on the basis of authorisation granted by the Member State of establishment. However, it also states that other national legislation may regulate otherwise, without mentioning the specific justification reasons of defines the principles of public policy, public security, public health or the protection of the environment. The specific justification reasons are defined in detail in binding guidance on the national implementation of the Services Directive.

### *Examples of requirements that have been maintained*

In the **real estate** area, cross-border service providers in the area of verification of land-survey outcomes for the purpose of exercise of public authority (land register, administrative proceedings in construction, maps for defence purposes) (a regulated profession in the Czech Republic) must apply for an official license, rather than simply notify their intention to provide services, as is the case for other activities in this sector.

In the **retail** sector, persons wishing to handle raw diamonds must register, or prove that they have an equivalent license issued by another EU Member State. Persons involved in

the handling of sources of ionizing radiation, including the selling, export and distribution of such nuclear products, must obtain a license from the Czech State Office for Nuclear Safety, even if they already have an authorisation for the same kind of activities issued by the Member State of establishment.

## I. Points of Single Contact

The Danish Point of Single Contact is well established.

A business portal ([www.virk.dk](http://www.virk.dk)) had already been established in Denmark in 2003 and it has been upgraded several times since then. This portal is almost entirely in Danish, although forms are sometimes available in English and in other languages. The portal is primarily was made for entrepreneurs established in Denmark, with the aim of having a one-stop shop for businesses in dealing with the government.

With a view to fully implementing the Services Directive, a separate portal integrated in [www.virk.dk](http://www.virk.dk) was launched on 31 December 2009, *BusinessInDenmark (BID)* ([www.businessindenmark.dk](http://www.businessindenmark.dk)). This portal is entirely in English and is directed at foreign companies looking to do business in Denmark. BID carries the EUGO logo and is part of the EUGO network.

In terms of **information provision**, it would seem that the Danish PSC performs well and it even goes beyond the minimum legal requirements. It also offers information on for example tax requirements. However, it would seem that there is room for improvement of the search function.

There are also a **very significant number of online procedures** available. Completion of these procedures is easy and involves no barriers for cross-border providers. A tool for signing documents with e-signatures as well as a validation tool for the e-signatures will be implemented on the portal during May 2012.

Finally, the content of a form or information on an obligation/procedure in the Danish PSC are the responsibility of the relevant authorities. Overall, the administration, organization and back office of the points of single contact seem to be good but efforts should be continued to enhance the integration of all relevant authorities in the portals.<sup>46</sup>

## II. Implementation of and compliance with key provisions

The main act transposing the Services Directive in Denmark is a **horizontal law** (Law No 384 of 25 May 2009 on services in the internal market).

The Danish implementation of the Services Directive has also required amendments to a substantial number of **sector-specific legal acts**, such as the Law on the sale of real estate, the Law on electricians, the Law on gas installation, the Law on trade, the Law on maritime training, Law on professional diving activity and diving equipment, the Law on copyright and the Law on marketing. In particular, a legal form requirement regarding real estate agents was abolished, an authorisation requirement for land surveyors providing their services on a temporary basis was lifted, a ban on issuing discount coupons for "temporary service providers" was lifted, and an obligation for providers of

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<sup>46</sup> [http://ec.europa.eu/internal\\_market/services/services-dir/study\\_on\\_points\\_of\\_single\\_contact\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/study_on_points_of_single_contact_en.htm)

certain types of commercial flying activities to have their principal establishment in Denmark was abolished.

#### A. Streamlining the regulatory environment for services

##### 1. Requirements applying to providers established or wishing to establish in Denmark (Articles 14 and 15 of the Services Directive)

The implementation of the Services Directive has led to the elimination of administrative burden in several authorisation schemes applicable to providers established in Denmark. While authorisation schemes for stockbrokers, auctioneers and shipping agents were abolished, other **authorisation schemes were simplified** (a limitation in time of electricians authorisations was removed, the requirement that gas-fitters and professional divers may not have any debt to the public authorities was abolished).

As regards **Article 14 of the Services Directive**, Article 10 of the horizontal law implementing the Services Directive (Law 384/2009) reproduces the list of prohibited requirements laid down in that provision. It would appear that currently no other prohibited requirements of this type have been identified in sector-specific legislation.

As regards **Article 15 requirements**, which need to meet the tests of justification on overriding reasons of general interest and proportionality, the Danish legislation has chosen not to transpose Article 15 of the Services Directive in the horizontal law itself. The requirements have been put down in an administrative act instead (Adm. Act 1361/2009). It would appear that certain Article 15 requirements have been maintained in the Danish legislation.

In the field of **professional services**, a requirement for law firms to take a special legal form as well as a shareholding requirement for law firms has been maintained.

In the **construction/crafts** sector services provided by authorised energy consultants carrying out energy labelling of buildings and services provided by boiler and by heating system consultants have been maintained.

In the **real estate sector** a requirement on land surveying businesses to take special legal form and a shareholding requirement have been maintained. A requirement for real estate agencies to take a special legal form was however abolished.

In the **tourism sector** a quantitative and territorial restriction applies to renting of holiday homes, but the justification would appear to be related to the Danish reservation pursuant to Protocol 32 on the Acquisition of Property in Denmark.

##### 2. Tacit approval of authorisations (article 13(4) of the Services Directive)

Tacit approval for authorisation requests does not apply as a general rule in Denmark. The horizontal law has not implemented the provisions of Article 13(4) of the Directive. Instead the principle of tacit approval has been implemented in sectoral legislation where relevant. In future legislation, competent authorities are instructed on the principle through the law making process. Considering that an exception could be justified, tacit approval does not apply for the following sectors: for certain authorisation schemes applicable in the construction sector and for certain environmentally hazardous activities.

3. Total prohibition of commercial communications (article 24 of the Services Directive)

No total prohibition of commercial communications has been identified.

**B. Boosting cross-border trade**

1. National implementation

The horizontal law implementing the Services Directive (Law 384/2009) contains a provision which implements Article 16(1) of the Services Directive. The Act does however not list all the prohibited requirements mentioned in Article 16(2) of the Services Directive, as this follows indirectly from the relevant provision in the horizontal law.

As regards the derogations to Article 16 of the Services Directive, it would appear that Denmark has interpreted the provision in Article 17(11) of the Services Directive on intellectual property rights broadly. The potential conflict of these provisions with Article 16 of the Services Directive was addressed explicitly by the Danish Minister for Culture in her explanatory notes to the proposal for amendment of the Copyright Act, which aimed at transposing the Services Directive. The view expressed by the Danish authorities on this derogation are incompatible with both Articles 16 and 17(11) of the Services Directive. As a result of this interpretation, Article 75a(1) of the Danish Copyright Act (LBK202/2010) requires representatives of copyright owners who – on a commercial basis – make agreements regarding the public performance of musical works to obtain a prior authorisation from the Danish Minister for Culture.

2. Distinction between freedom of establishment and free provision of services

There is no evidence indicating that this distinction is problematic in Denmark. Law 384/2009 contains definitions which should ensure a correct application of the concept of cross-border service provider/provision in line with the Services Directive.

3. Issues with the free provision of services clause

Despite the implementation of Article 16 in the Danish legal order by means of a horizontal provision and by means of sector-specific amendments (for example, the obligation for providers of certain types of commercial flying activities to have their principal establishment in Denmark was abolished in the context of the implementation of the Services Directive), a number of requirements applicable to cross-border service providers have remained in sector-specific legislation despite the fact that their justification and proportionality could be questioned.

The first requirement concerns a **cross-cutting notification obligation**, the extension to self-employed service providers established in other Member States of the obligation to send a prior notification to the Danish Registry of Foreign Services (RUT) at the latest by the time they start providing services in Denmark pursuant to LBK256/2011. The Danish authorities have justified the obligation on the need for a possibility to carry out effective control to supervise compliance with certain rules on taxes as well as on health and safety at work that apply to the self-employed ensuring both public security and public safety.

Several authorisation requirements that are applied both to established and to cross-border service providers have also been identified in the area of **construction and crafts** for certain specific activities that are regulated professions. The authorisation schemes would appear however to go in some instances beyond the requirements allowed by the Professional Qualifications Directive. The common denominator of these requirements is that they seem to have been justified on the protection of the service recipient.

Finally, the Danish Copyright Act requires representatives of copyright owners who – on a commercial basis – make agreements regarding the public performance of musical works to obtain a prior authorisation from the Danish Minister for Culture. A similar authorisation requirement applies to performing artists and record companies. These groups may only raise claims for payment related to the public use of their works through a collective organization authorised by the Danish Minister for Culture.



ESTONIA



## I. Points of Single Contact

The Point of Single Contact in Estonia <http://www.eesti.ee/eng/topics/business>, is part of the general e-government portal in Estonia [www.eesti.ee](http://www.eesti.ee).

The Estonian portal provides comprehensive information and services to fulfil the requirements falling under the Services Directive and beyond, in terms of areas and topics covered. The portal takes a business perspective and covering the whole business life cycle (from starting to winding up), and covering also information on social security, taxation, labour law, legal and financial aid etc.

Information about the applicable requirements and on how to complete administrative procedures can be accessed or searched in a number of different ways which include searching/access by type of user, stage in the business life cycle, by a thematic index of procedures (company registration, tax, etc.), by sector and by an index of competent authorities. Information per sector is presented in a clear and easy manner, and contains information from legal requirements to details on the procedures to be followed, including payment of state fees and contact details for submission of applications, where applicable.

The majority of the information is available also in English, besides Estonian. Some interactive tools that are meant to assist users (like a portal guide) are available only in Estonian. Web forms exist partly in English (e.g. for company registration, registration in the economic activities register). Official forms are mainly available in Estonian, but a limited number of forms are also available in English.

For completion of procedures, e-identification and e-signatures are often necessary, mainly for authorisation procedures. eID is mainly required for fully interactive online services which facilitate the completion of procedures (company registration). With respect to the eID cards, currently e-identification from 11 Member States is available, in addition to various e-identification means available in Estonia. Web forms can be signed online and electronically signed documents can be sent to the authorities via e-mail (editable PDF forms). Tracking possibilities are available for obtaining information on the state of submitted applications/forms and sent forms are accessible in a secure environment.

Online assistance to service providers is available in a variety of ways (downloadable guides and demos). The available sources of help are generally good and easy to use. Online help is available by email and at the end of sector specific information contact details are given for further assistance.

Overall the Estonian PSC seems to have the required information available, to a large extent also in English, and allows the majority of procedures to be completed online. The completion of procedures is nearly 100% available nationally. For cross-border cases a good number of non-national e-identification tools are supported and electronic signing is possible either on web forms or on documents that can also be submitted, e-signed, via email to the competent authorities.

More than 120 competent authorities are linked to the PSC.

According to the Deloitte study<sup>47</sup>, which carried out some user testing of PSCs, the overall use and usability of the Estonian PSC was perceived to be high.

Most of the user group found that the way the information was provided (in terms of layout and web design) was of good quality and user friendly. Navigating the portal was generally thought to be easy. It was noted that there was sufficient information on where to find more information (and links to other websites were provided).

Further improvements could be done above all for cross-border service provision, to make a clear distinction between establishment and cross-border service provision even if no requirements apply to the latter. Some further efforts should also be undertaken for cross-border access to e-procedures.

## **II. Implementation of and compliance with key provisions**

### **A. Streamlining the regulatory environment for services**

#### 1. Requirements applying to providers established or wishing to establish in Estonia (articles 14 and 15 of the Services Directive)

No prohibited requirements were identified in Estonian legislation.

In the **education sector**, a legal form requirement exists for private schools (which cover all types of education institutions from nurseries to higher education, adult education institutions) which have to be either an agency of a public limited company or a private limited company registered in the Commercial Register or an agency of a foundation or non-profit association.

#### 2. Tacit approval of authorisations (article 13(4) of the Services Directive)

The principle of tacit approval has been implemented via the horizontal law transposing the Services Directive (European Union Services Directive Implementation Act). In some laws the principle of tacit approval is clearly stated but in some sectoral laws where authorisations exist, no specific mention of tacit approval is made. In these cases the tacit approval should be applicable via the horizontal law. In some cases a different approach has been taken, justified by protection of environment and public security, and tacit approval does not apply.

#### 3. Total prohibition of commercial communications (article 24 of the Services Directive)

A total prohibition of commercial communications has been identified for lawyers.

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<sup>47</sup> [http://ec.europa.eu/internal\\_market/services/services-dir/study\\_on\\_points\\_of\\_single\\_contact\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/study_on_points_of_single_contact_en.htm)

## **B. Boosting cross-border trade**

### 1. National implementation

Article 16 has been implemented by way of a clause in horizontal law (Section 17 of the European Union Services Directive Implementation Act/EUSDIA), without copying the list of prohibited requirements of Article 16(2). It also provides that restrictions to the freedom to provide services may be established by law, that these must be non-discriminatory, justified for reasons of public policy, public security, public health or the protection of the environment and be proportional. Exceptions in Article 17 of the Services Directive are directly referred to.

### 2. Distinction between freedom of establishment and free provision of services

However there are a number of relevant laws that impose authorisation, registration or notification procedures. Some of these laws do not explicitly state whether the relevant requirements are also applicable in cases of cross-border service provision or not.

### 3. Issues with the free provision of services clause

The horizontal law provides for the principle of freedom to provide services, but due to the hierarchy of legal norms specific requirements would still apply (based on the *lex specialis derogat lex generali* principle). Some of these laws therefore may not respect the conditions for imposition of an authorisation requirement on cross-border service providers. This concerns for example the Trading Act, the Weapons Act, the Tourism Act, laws on safety (mostly those linked to crafts and construction services where notification is required).

More clarity and better transposition of the Services Directive, including for cross-border service provision, will be ensured however, via the General Part of Economic Activities Code (GPEAC) which has been adopted in February 2011, but will only enter into force on 1 January 2014. This Code is a framework law and establishes the principle that its provisions apply in all service sectors, not only those covered by the Services Directive, unless the sector-specific legislation provides otherwise. The GPEAC codifies the general requirements (including licensing or registration requirements) imposed by the Economic Law in Estonia. Article 16 of the Services Directive is covered by GPEAC. GPEAC (Article 22) specifies that cross-border service providers who provide temporarily services in Estonia are excluded from the obligation to obtain a licence or register the activity and no restrictions referred to in Article 16(2) of the Services Directive can be imposed.

#### *Examples of requirements that have been maintained*

A number of requirements apply to incoming service providers.

In the **crafts, construction and certification services sector**, the transposition of the Services Directive led to the abolition of the registration requirements under the Building Act<sup>48</sup>, the Pressure Equipment Safety Act, the Lifts and Cableway Installations Safety

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<sup>48</sup> The Building Act covers the activities of building, designing, conducting site investigations, exercising owner supervision, performing expert assessments of building design documentation, evaluating construction works and engaging in project management.

Act, the Gaseous Fuel Safety Act, the Electrical Safety Act, and the Machinery Safety Act. These were replaced in each case by a simplified notification procedure. The notification procedure requires a formal notification of the Technical Surveillance Authority, without any legally binding form of notification. It is not clear whether this notification procedure is linked to professional qualifications.

In the Pressure Equipment Safety Act, the Lifts and Cableway Installations Safety Act, the Gaseous Fuel Safety Act, the Electrical Safety Act, and the Machinery Safety Act, different safety requirements related to the use of equipment have been maintained due to health and safety considerations, which could fall under the exemption in Art 16(2)f.

In the **retail sector** a general requirement for traders exists to be registered in the Register of Economic Activities. As far as nothing is specifically said on cross-border service provision with regard to that requirement, it could be deduced that it may be applied also to cross-border service provision despite the horizontal law that establishes the freedom to provide services.

The Act covers retail and wholesale of goods and personal services (like hairdressers) in its different forms, including street selling, markets. Street and market traders need to obtain a trading permit and must perform their activities at locations authorised by the local government.

Some special requirements are maintained as regards trade in some specific products, like alcohol, tobacco, weapons, food, liquid fuel. All these trade related requirements apply both to domestic and cross-border providers.

In the **tourism sector**, an undertaking may only operate as a travel undertaking in Estonia if it is registered in the commercial activities register. This requirement applies also for cross-border service provision. Tour guides and guide interpreters need to prove their professional competence, but how this is to be done is not very clearly specified.

In the **education sector**, an activity licence is required for training drivers of power-driven vehicles including for cross-border service provision in the traffic act and they need to be registered.



FINLAND



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## I. Points of Single Contact

The PSC in Finland is a part of the Enterprise Finland (<http://www.yrityssuomi.fi/web/enterprise-finland>) portal which is structured based on the company lifecycle. The PSC takes a comprehensive approach and provides information on the entire business life cycle, except social security formalities. Information on service activities on the PSC is presented on the basis of sectors and the type.

One aspect that could be improved is to indicate the absence of requirements where appropriate, as this is also a valuable information for service providers.

The PSC portal is available in the official languages, Finnish and Swedish, and to a large extent in English. Official forms are available in Finnish and Swedish (only forms in the official languages can be submitted) but for some forms translations are available as comments on the online form that do not appear when printing the form out (particularly for those required to establish a company). On the municipality level no additional language assistance is provided.

In general the only possibility to complete procedures online consist of downloading a PDF format (from eForms repository), which can be electronically filled in but needs to be sent via regular mail or in some cases via e-mail to the competent authority.

Most procedures are free of charge, except for company registration where no direct e-payments are available. Users have to pay through a web-bank or other means, and attach a proof of payment with their registration documentation.

Currently no tracking system is available and businesses receive replies from the authorities via e-mail.

However, basic e-procedures are currently under development, which would include an e-Office for businesses that contains also e-identity and e-delivery functions.

The Finnish PSC provides assistance to users through a dedicated phone service and a Service Request form. The phone service is available in Finnish and English. Additional information can be requested through the Service Request form.

According to the Deloitte study<sup>49</sup>, which carried out some user testing of PSCs, the overall use and usability of the Finland PSC was perceived to be average.

Further improvements should be undertaken to allow electronic completion of procedures. From the users' perspective, an interactive search tool would be useful helping to find information specifically needed for a particular case and the PSC could have a less "bureaucratic" feel.

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<sup>49</sup> [http://ec.europa.eu/internal\\_market/services/services-dir/study\\_on\\_points\\_of\\_single\\_contact\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/study_on_points_of_single_contact_en.htm)

## **II. Implementation of and compliance with key provisions**

### **A. Streamlining the regulatory environment for services**

#### 1. Requirements applying to providers established or wishing to establish in Finland (articles 14 and 15 of the Services Directive)

No prohibited requirements were identified for mainland Finland. For Åland, service providers must be residents or have their domicile when they want to provide services in **retail** and **food and beverages** sectors.

In **retail**, despite the 2011 law on land use planning and construction, there is still scope for further simplification through a less restrictive zoning and planning regime.

In the **education sector**, a legal form requirement exists for bus and truck training schools which can be operated only by legal persons.

#### 2. Tacit approval of authorisations (article 13(4) of the Services Directive)

The principle of tacit approval has been implemented via the horizontal law transposing the Services Directive (Services Act). No specific mention of tacit approval has been made in sectorial laws. At the same time no clear exceptions or provisions going counter to the tacit approval principle seem to have been established either. In the majority of cases where authorisations exist the legislation does not specify the applicable conditions for authorisation and the horizontal law is applicable.

#### 3. Total prohibition of commercial communications (article 24 of the Services Directive)

No total prohibitions of commercial communications have been identified.

### **B. Boosting cross-border trade**

#### 1. National implementation

Implementation of Article 16 is done by way of a clause in the horizontal law (Section 5 of the Provision of Services Act) which contains the principle of freedom of service provision. It also provides that restrictions may be established, if compliant with the conditions set in Article 16, by a court or competent authority who could only restrict temporary provision of a specified service under specific powers granted to them. The powers of the authority concerned must therefore be based on a provision laid down elsewhere in legislation.

Article 16(2) or the prohibited requirements, has not expressly been transposed. However, it seems that Finnish legislation does not contain any prohibited requirements.

#### 2. Distinction between freedom of establishment and free provision of services

Sectorial laws imposing obligations on economic operators do not make a distinction between establishment and cross-border service provision.

### 3. Issues with the free provision of services clause

The main issue is the compliance of sectorial laws with Article 16 of the Services Directive. Namely, as sectorial legislation does not distinguish between establishment and cross-border service provision, these should contain only restrictions that can be justified in cases and under conditions set out in Article 16 which may not always be the case.

The Provision of Services Act (1166/22.12.2009) refers to the Business Act and explicitly declares that the same business rights apply to cross-border services. Both the Business Act and the Provision of Services Act are horizontal by nature and they have an equal hierarchical value. The Business Act declares in Section 3 that certain listed business activities (like services related to electrical installations and equipment, housing agents, entertainment services, accommodation and restaurant services etc.) are submitted to additional sector-specific laws. These activities as a rule require a licence or a permit. Since Section 3 of the Business Act does not distinguish between establishment and cross-border service provision services, it applies, with all the sector-specific laws listed in this provision, to both cases.

The provincial horizontal legislation in Åland consists of the Business Act (Landskapslag 1996:47 *om rätt att utöva näring*). This Act limits the right to carry out a business to natural persons having a residential status and to legal persons having their domicile in the Province.

#### *Examples of requirements that have been maintained*

In **real estate**, providing real estate services is subject to registration. The application for registration must also include information on the registered branch in Finland and its location. It seems therefore that only service providers who have a registered branch in Finland can apply for registration.

In the Province of Åland, only registered agents can provide services in the real estate market. The registration implies that the applicant has passed a professional examination and represents a company with a registered branch in Finland. The real estate office must appoint a responsible manager with a qualification of a registered agent.

In the **tourism sector** the organisation of package travels requires registration of the travel manager with the package travel registry, which is kept by the Consumer Agency.

The Province of Åland has a permit obligation for non-residential service providers to enter the market in the tourism sector.

## I. Point of Single Contact

The French authorities have chosen to implement both a physical Point of Single Contact ("PSC"), system (through the network of Business Formalities Centres "*CFE / Centre de Formalités des Entreprises*") and an electronic PSC called "*Guichet Entreprises*" ([www.guichet-entreprises.fr](http://www.guichet-entreprises.fr)), which has been in place since January 2010.

The "*Guichet Entreprises*" website provides a high quality information service. Comprehensive information on the rules applicable to the establishment and the exercise of service activities is available on "*Guichet Entreprises*". The information is classified by occupations and professions and therefore easily understood by operators wishing to establish or do business on a temporary basis in France. Specific headings indicate the obligations imposed on operators wishing to provide a temporary service.

Moreover, this site is accessible by individuals and businesses living in France as well as by those from other EU Member States, allowing for the online completion of the business creation procedure and a number of other administrative procedures but their number is quite limited.

However, improvements could be made in terms of usability: the information provided is almost complete but the sorting and search functions could usefully be improved. It is often difficult to access the relevant information. In addition, the site's accessibility to cross-border providers is not optimal, with information available only in French.

Regarding the assistance provided to users, since France has chosen to establish a physical PSC network throughout its territory, personalised assistance is possible, at least within France. These PSCs (the so called "*Centre de Formalités des Entreprises*") are able to accommodate and guide service providers in the completion of procedures both for establishing and exercising their activities in France. However these physical PSCs are only partly operational. Better visibility of the support tools available to users on the "[Guichet-Entreprises.fr](http://Guichet-Entreprises.fr)" website would be beneficial.

Overall, although French PSCs offer comprehensive information on a very wide range of service activities, significant improvements could be made in terms of user-friendliness and the provision of information in other official languages of the European Union. The roll-out of new procedures that can be completed online will also have to be accelerated significantly.

## II. Implementation of and compliance with key provisions

### A. Streamlining the regulatory environment for services

Unlike the majority of Member States, **France has not transposed the Directive through a horizontal law**. Certain provisions of a horizontal nature (information obligations towards service recipients, provisions on administrative cooperation and the use of IMI, and the implementation of Points of Single Contact), whose applicability covers the entire field of the Services Directive, were adopted on the occasion of the

adoption of certain sectoral laws. The assessment of compliance with the Services Directive has been done through a review of sectoral laws governing service activities.

As the French legal and administrative system is based on a significant degree of centralisation, service activities are governed by rules with national scope. There has been no regulatory intervention at the local or regional level. However, as part of the implementation of the Directive, close to 80 regulatory measures (including 13 legislative acts) were adopted as part of the transposition of the Services Directive and over a hundred business services have been reformed.

France made considerable efforts to ensure consistent implementation of the Directive and has carried out major legislative or administrative changes. The regulation of some activities has been substantially reformed or their exercise considerably simplified. For instance, in the field of **professional services**, the profession of "avoués" has been abolished by a merger of its activities with those performed by lawyers. Also, the minimum level of a company's capital that has to be controlled by professionals has been reduced to 51% for land surveyors, accountants and architects. In the **retail sector**, legislation regarding store opening was relaxed. In the **tourism sector**, the specific authorisation required to open hotels was eliminated. Travel agents' activities and the classification of tourist accommodations have been significantly simplified: the four authorisation schemes that existed before (license, "habilitation", approval and authorisation) have been replaced by a new, simplified system and the obligation for travel agents to exercise their activity on an exclusive basis has been done away with.

In general, it appears that the screening process was carried out in an efficient and systematic way. The entire scope of service activities was covered. However, regarding the effects of this screening process, although French authorities reformed many professions and simplified numerous services activities, these simplifications were not always carried out to the maximum extent. Therefore, the proportionality and necessity of certain remaining requirements can be debated. For instance, in the retail sector, regarding the authorisation for store opening, although the "loi de Modernisation de l'Economie n° 2008-776 du 4 août 2008" raised the threshold above which an authorisation is still required from 300 m<sup>2</sup> to 1000 m<sup>2</sup>, a derogation was introduced in order to give municipalities with less than 20,000 inhabitants the possibility to maintain the authorisation procedure for premises over 300 m<sup>2</sup>.

1. Requirements applying to providers established or wishing to establish in France (articles 14 and 15 of the Services Directive)

The screening and elimination of prohibited requirements seems to have been done in a thorough way. The only such requirement identified concerns the direct involvement of competing operators in the granting of authorisations for event promoters. This requirement needs to be eliminated urgently.

As regards requirements where the Directive left a margin of appreciation to Member States to streamline the regulatory environment for the establishment of providers, cases that raise doubts of compatibility with Article 15 of the Directive exist. For instance, regarding **professional services**, although shareholding requirements for architects, accountants and land surveyors were modified in order to reduce the share of the capital of the company that has to be owned by professionals to 51%, this has not been done for lawyers or veterinarians. These should be re-examined. Legal form requirements are also imposed, again notably on lawyers and veterinarians.

## 2. Tacit approval of authorisations (article 13(4) of the Services Directive)

Although the principle of tacit approval of authorisations exists in the French legal framework, it does not apply as a general rule but only in cases identified in sector specific legislation. France should ensure that the instances in which article 13(4) of the Services Directive is not applied are limited to duly justified matters.

## 3. Total prohibition of commercial communications (article 24 of the Services Directive)

Contrary to Article 24 of the Services Directive, **total prohibitions of commercial communications** remain for lawyers and veterinarians.

For **accountants**, in 2011 the Court of Justice of the European Union made its first judgment<sup>50</sup> on the provisions of the Services Directive in the context of a preliminary ruling aiming at clarifying the scope of Article 24 of the Directive on commercial communications and its application to regulated professions. The issue in question was to clarify whether a Member State (France) could maintain a total ban on canvassing for a regulated profession (accountants). In light of the provisions of the French legislation in question, the Court noted that it included a total ban on any canvassing activity regardless of its form, its content or the means employed. So this ban corresponded to the prohibition of all means of communication. The Court held that the provisions in question were covered by Article 24(1) of the Services Directive prohibiting a total ban to perform acts of solicitation for regulated professions. In France, the legal consequences of this judgment do not seem to have been applied to regulated professions other than accountants, notably veterinarians or lawyers.

## B. **Boosting cross-border trade**

### 1. National implementation

Certain authorisation procedures that are still imposed on cross-border providers raise doubts as to their proportionality and their justification with regards to the four compelling reasons of general interest listed in Article 16 of the Services Directive (public order, public safety, public health and environmental protection). This particularly concerns the obligations of insurance or financial guarantee imposed on cross-border operators (in the **real estate sector**) or prior declaration requirements that remain in force (for modelling agencies or event promoters).

### 2. Distinction between freedom of establishment and free provision of services

In general, French legislation makes a distinction between the cross-border provision of services and establishment. The French authorities' decision not to implement the Directive through a horizontal law but to ensure compliance with the Services Directive through a revision of the various sectoral laws regulating the activities of services allowed for a clear legal distinction to be made between the situations of establishment and the temporary cross-border provision of services.

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<sup>50</sup> CJUE C-119/09

Indeed, each national law governing a service activity has been specifically modified and the two legal situations have been addressed specifically. It is thus possible to know which provisions are applicable to operators wishing to establish themselves and which rules apply to operators willing to engage in cross-border provision of services in France. The legal clarity and predictability are thus fully insured. Moreover, the French Point of Single Contact ("*Guichet Entreprises*"), on its website, provides comprehensive information on the legal requirements applicable to the professions in which the situations of establishment and cross-border of services are clearly distinguished.

It is highly important to ensure long-term compliance with the obligations set up by the Services Directive regarding the freedom to provide services. If national laws had to be modified during the implementation process, it is also necessary to guarantee that future legislation will not contravene the principles of the Directive (particularly when the possibility to appeal to the administration or judge appear relatively limited). In this perspective, the French authorities have adopted an inter-ministerial circular to ensure that new legislation and regulations that have to be notified to the Commission and Member States (under the procedure provided by Articles 15(2) and 39(5) of the Directive) are subject to a centralised review to ensure proper compliance with the requirements of the Directive. It can therefore be reasonably estimated that the compliance of new legislation will be ensured.

### 3. Issues with the free provision of services clause

In the **construction sector**, the main requirement imposed on cross-border service providers is an obligation to have insurance that provides ten-year liability cover for buildings.

In the **real estate sector**, a requirement for a financial guarantee is also imposed for certain activities (involving money management).

For **professional services**, professional liability insurance requirements are imposed on architects, land surveyors, accountants, lawyers and veterinarians. Restrictions with regard to legal form and capital ownership and prohibitions on commercial communications are also imposed on cross-border veterinarians. A prior notification requirement is also imposed on modelling agencies and event promoters performing cross-border services.



GERMANY



## I. Points of Single Contact

Germany has one portal ([www.dienstleisten-leicht-gemacht.de](http://www.dienstleisten-leicht-gemacht.de)) that links to the portals of the 16 Länder which each has its own portal solution. The various portals differ quite substantially, some of them are part of a larger e-government portal, others are managed by regional councils.

The level of information available has generally been considered very good and the structure of the information provided as well as the quality of the navigation and assistance facility have been praised for more than one portal.

It seems that eSignatures of other Member States might be used to sign an application but that it not yet always guaranteed that the signature can actually be verified. In case of doubt, applicant might therefore have to be contacted to send a signed application by post or mail.

The development of the PSC has also led in general to standardisation and simplification of processes which has resulted in more use of eSignatures and improvement in operational processes.

Assistance to users varies according to the portal, but some of the portals tested have been praised for their assistance to users, for instance by providing a checklist to providers helping them to address problems or to find further information. Other portals offer guides, FAQ's and downloadable guides. Assistance has generally been qualified good, easy to use and comprehensive. There is also assistance by phone or by mail.

The overall use and usability of the German PSC is above average.<sup>51</sup> However, improvements could be made concerning the presentation of different business situations, i.e. in particular the distinction between establishment and cross border provision of services, which is of special importance for users of the portal from other Member States and less familiar with the German legal and administrative system.

Other necessary improvements concern the availability of on-line procedures as on-line completion of procedures is in general only ensured for a limited number of procedures.

And finally, the linguistic availability of the Point of Single Contacts could be improved even if some of the portals offer already information in languages of other Member States (for instance the Point of Single Contact of Rhineland-Palatinate offers information in French and English, the portal of Brandenburg provides information in English and Polish).

## II. Implementation of and compliance with key provisions

In general, Germany made considerable efforts to ensure correct implementation of the Services Directive and has made a substantial number of important legislative and practical changes. In particular the screening of legislation was a complex exercise due to the federal structure and the involvement of multiple actors at all levels of government

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<sup>51</sup> [http://ec.europa.eu/internal\\_market/services/services-dir/study\\_on\\_points\\_of\\_single\\_contact\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/study_on_points_of_single_contact_en.htm)

(federal, regional, local, professional orders). Germany made a major coordination effort by using its own on-line tool.

In contrast to the majority of Member States, Germany decided to not adopt a horizontal law implementing the general principles of the Directive but opted to implement those principles through modifications to existing sector specific legal acts.

Around 220 national measures have been adopted at federal level, by the Länder as well as by professional associations in order to implement the Services Directive and as many of them were so called “omnibus acts” (“*Artikelgesetze*”), each of which amending a series of sector-specific laws, the actual number of legislative acts having been modified amounts to around 400 acts.

Germany has also adopted new general procedural instruments in the Administrative Procedures Act (*Verwaltungsverfahrensgesetz*) in particular concerning the points of single contact, the rules on administrative cooperation and tacit approval.

#### **A. Streamlining the regulatory environment for services**

##### **1. Requirements applying to providers established or wishing to establish in Germany (articles 14 and 15 of the Services Directive)**

In the **professional services sector** no prohibited requirements have been identified, but shareholding and legal form requirements have been maintained for lawyers, tax advisors, patent agents, architects and engineers. In addition there are also fixed tariffs for veterinarians, insolvency administrators, architects, engineers.

In the **crafts sector**, the Trade and Crafts Code determines which occupations pertain to the crafts sector. The so called Annex A lists the occupations for which in general a master craftsman’s examination (*Meisterprüfung*) is required for self-employment. Case law permits such requirement only for crafts (particularly) susceptible to dangers (public health).

As far as the **construction and certification services sector** is concerned there is still a certain involvement of competitors in the decision making process whether or not to grant an authorisation, although rules have been rendered less stringent as those bodies now only have to confirm to the competent authority that the applicant fulfils all the necessary application requirements. Moreover, many expert services in relation to the construction of buildings and a few in relation to other expert services still contain specific tariffs ("*Sachverständigentarife*").

##### **2. Nationwide validity of authorisations (article 10(4) of the Services Directive)**

There is no horizontal rule on nationwide validity of authorisations.

Nationwide validity however can be found in sector specific legislation in different ways:

Certain legal acts explicitly state that the authorisation granted is valid for the whole national territory (e.g. federal law concerning inspection bodies for wastewater discharge). Other texts clearly foresee that the recognition of an expert in another part of the country is ensured (e.g. law of the Land Baden-Württemberg or of the Land Berlin

concerning the authorisation of a testing engineer and testing expert in the construction sector).

In other legislation nationwide validity is assured by registration of a professional in one professional Chamber which gives the right to exercise the activity in the entire national territory (e.g. the registration of a veterinarian in one regional chamber of veterinarians enables him to exercise activity anywhere in Germany).

According to the information of the Commission a sort of "mutual recognition" applies within Germany, e.g. an applicant will be registered in the professional list without any further exams if he is already registered in a professional list of another Land which has comparable conditions (e.g. requirements for the registration in the list of consulting engineering) or authorisations of another Land might only be accepted if they are "comparable" (regulation on experts in the building sector). Depending on how this system of mutual recognition is applied in practice with regard to cross border situations, but also within Germany, three scenarios can be distinguished: i) recognition of an authorisation without further examination, ii) recognition of an authorisation if the authorisation has been granted under similar/comparable conditions and iii) an authorisation is not recognized at all and the service provider has to apply for a new authorisation. Depending on how authorities examine what are "similar/comparable" conditions, this might also be qualified as imposing a new authorisation which might also raise questions as to the application of the freedom to provide services clause.

### 3. Tacit approval of authorisations (article 13(4) of the Services Directive)

Tacit approval as a general rule has been introduced in the Federal Administrative Procedures Act ("*Verwaltungsverfahrensgesetz des Bundes*"). This law provides first of all for a general deadline of 3 months for the administration to take a decision. This general deadline applies unless a specific legislation provides for a different deadline. Furthermore it foresees that "*the authorisation applied for is deemed to be granted after the expiry of a deadline set for the decision (tacit approval) if this is provided by law and if the application is sufficiently precise.*"<sup>52</sup> The federal administrative procedures act is therefore the basic provision for tacit approvals. Whereas the Länder of Berlin, Niedersachsen, Rheinland-Pfalz and Sachsen refer to the Federal Administrative Procedures Act, the other Länder have their own Administrative Procedures Act.

Another important horizontal act, the federal trades and craft acts ("*Gewerbeordnung und Handwerksordnung*") also explicitly foresees the tacit approval of authorisations.

Concerning the sector specific legislation (at Länder level), tacit approval of authorisations can be found in all the sectors examined mostly with a reference to the Federal Administrative Procedures Act.

In certain legislation it is explicitly foreseen that tacit approval of authorisations does not apply (e.g. in the construction sector the legislation on the recognition as a testing, inspection or certification body). It further seems that the rules differ between the Länder: some have foreseen a tacit approval of authorisations in areas where other Länder do not accept tacit approval. This raises some doubts in particular with regard to

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<sup>52</sup> "*Eine beantragte Genehmigung gilt nach Ablauf einer für die Entscheidung festgelegten Frist als erteilt (Genehmigungsfiktion), wenn dies durch Rechtsvorschrift angeordnet und der Antrag hinreichend bestimmt ist.*"

the justifications invoked by the Länder not granting a tacit approval of authorisations. Other examples where tacit approval does not apply have been found e.g. in the food and beverage sector for the opening of a restaurant or the recognition of universities in the education sector.

4. Total prohibition of commercial communications (article 24 of the Services Directive)

Total prohibition of commercial communications still exists for officially appointed surveyors ("*öffentlich bestellte Vermessungsingenieure*") in the Land of Nordrhein-Westfalen. It seems that the German authorities justify this restriction with reference to article 51 TFEU (exercise of public authority).

## **B. Boosting cross-border trade**

1. National implementation

Germany has no horizontal provision implementing the freedom to provide services clause as there is no horizontal law implementing the Services Directive. The Directive, including the freedom to provide services clause, has therefore been implemented by way of amendments to sector-specific legislation at all levels of government.

As a main implementation measure, federal legislation abolished the cross-cutting notification requirement and various authorisation requirements under the Federal Trade Act (*Gewerbeordnung*) so that for cross-border services many of these **requirements were removed in the field of retail, tourism, food and beverages, real estate and crafts.**

The Länder mainly abolished, modified or replaced authorisation schemes that were linked to catering services, expert services under the Federal Consumer Goods and Food Act and, in the construction sector, to services such as services of structural inspection engineers, services to present building documents, services to verify the stability of a building or its fire safety, expert services under the federal soil protection act, expert services in relation to water management, interpretation and translation services for courts and authorities and services by training facilities for harbour safety officers.

2. Distinction between freedom of establishment and free provision of services

When regulating cross-border services, the federal and the Länder legislation follow different approaches to distinguish between established providers and cross-border services.

The term 'establishment' is only defined under the Federal Trade Act, as 'fixed office (*feste Einrichtung*) on the basis of which businessmen actually exercise their commercial businesses on a self-employed basis and for an undefined time'. This definition does not explicitly apply to services not regulated under the Federal Trade Act. However, since the sector-specific legislation implementing the freedom to provide services clause refers to the term 'establishment' without separately defining it, it seems that the sector-specific legislation should be construed so that the definition of 'establishment' under the Federal Trade Act is analogously applicable to the sector-specific legislation.

In general sector specific laws distinguish the exercise of an activity according to the case law of the European Court of Justice and refer to the provision of 'occasional and temporary services'.

### 3. Issues with the free provision of services clause

As set out above a significant number of requirements concerning incoming service providers have either been abolished or modified to render the national legislation compliant with the freedom to provide services clause. However, it seems that many requirements have been maintained which might not comply with the core provisions of the Directive concerning cross-border trade.

#### *Examples of requirements that have been maintained*

Most requirements that were maintained were identified in the **crafts, construction and certification services sector**.

Many federal authorisation requirements for experts in the field of the environment and many authorisation schemes under the Länder legislation were abolished, modified or replaced under the condition that service providers from other Member States already possess an equivalent authorisation granted by another Member State. For instance, rules have been changed in some Länder concerning different experts active in the construction sector such as engineers verifying the stability of buildings or certifying fire safety, and their obligation to be registered in a list (i.e. of the Chambers of Engineers) has been rendered less stringent in the way that providers having to comply with equivalent requirements in their country of establishment do not have to be registered on the list in Germany. Similar rules apply to environmental experts (i.e. for instance supervision of use of certain products, emission water and soil measuring and control): procedures have been rendered less stringent and only ask for an authorisation under certain conditions (i.e. for instance if equivalent authorisation was granted in the home Member State).

In this context there are often differences between the Länder. Whereas some have rendered authorisation procedures for cross-border services providers less stringent, others have maintained the rules and apply authorisation procedures without taking into consideration whether comparable authorisations have been obtained by service providers in their Member States of establishment. In addition it is often not clear from the text of the legislation, whether and when (before or after the start of the service) the equivalence of the authorisations is checked. If the competent Länder authorities check the equivalence of the authorisations before the service provider is entitled to carry out his service, then, de facto, this could have the effect of an authorisation procedure and hence would have to be justified under the freedom to provide services clause of the Directive. It will also have to be verified how the requirement of equivalence of authorisations will be applied in practice.

Other authorisation/registration requirements of the Bund and the Länder, for instance registration requirements for the service to present building documents (*Bauvorlageberechtigung*) under the Länder legislation, were replaced with notification requirements. Notification requirements are, in general, less restrictive than an authorisation requirement. However, service providers still need to notify their services to the competent authorities and provide the requested documents before they can commence their services.

Another example in the construction sector concerns the need for inspectors of specific buildings to have a specific identity card that is handed out to them as part of the authorisation procedure and to present this identity card on request to the competent authorities.

In some Länder authorisation procedures still include the verification of equipment. As those rules have not been changed they also apply to cross-border service providers (e.g. certain Länder laws regulating expert services carried out under the Federal Equipment and Product Safety Act).

Concerning the **retail sector**, authorisation requirements have been identified concerning the sale of sensitive goods (germs, explosives), the collection of wild plants and for the sale of goods at cemeteries (as laid down in municipality cemetery ordinances with reference to public order).

As far as the **education sector** is concerned, authorisations are required for driving schools as well as for educational training for psychologists, psychotherapists, training for veterinarians and pharmacists, specialist and advanced training for architects and engineers, training for nurses.



GREECE



## **I. Points of Single Contact**

The Greek Point of Single Contact (PSC) was built on an existing e-government website, namely ERMIS Infrastructure hosts the official Greek portal for Public Administration providing citizens and businesses alike a central information and e-services hub.

As far as business start-up and activity in Greece are concerned, the Greek PSC mostly covers the licensing procedures, whereas the business launching and registration procedures are covered by different governmental sites, such as 'Start Up Greece' ([www.startupgreece.gov.gr](http://www.startupgreece.gov.gr)) that shares information about starting a business in Greece and funding opportunities, and the General Commercial Registry ([www.businessportal.gr](http://www.businessportal.gr)).

The Greek PSC is linked to a network of 54 physical PSCs, which have been selected to serve the Services Directive purposes– KEP- that have been operating in Greece for about a decade. The electronic PSC serves as a central hub, transferring information and applications to the physical PSCs, according to their geographic area of responsibility. The Greek PSC has a Greek and an English version, although the English version is not fully developed.

In terms of information provision, the portal is restricted in providing information only for the specific sector licensing procedures.

One of the good features of the Greek portal is the interactive search tree that provides checklists by service sector as well as the navigation environment, which is accompanied by graphics. The portal has a well operating search machine (in Greek – searching in English depends on the degree of specific procedures translation).

The Greek PSC portal has incorporated a STORK functionality, which allows for e-ID holders from a number of other Member-States to use them.

The quality of the content varies, since there are procedures missing and procedures which have not been updated according to the latest simplifications of the regulative framework and to the latest circulars and Ministerial Decisions issued. Full case handling of administrative tasks is not possible, even though several procedures can be fully completed online. The content of the PSC portal regarding licensing procedures for cross-border service providers has been enhanced during the period of the PSC initial operations. However, there is still need for this content to be enriched, including more licensing procedures. Moreover, there is also need for the existing content to be updated, since the regulative framework implementing the Services Directive is under constant modification and simplification.

Overall the Greek PSC portal offers a relatively satisfactory level of services online but there are still things to be done to improve its efficiency and to make it a real tool that will be used by service providers and public administration.

## II. Implementation of and compliance with key provisions

The Services Directive was mainly implemented into Greek law by law 3844/2010 (Gov. Gaz. A' 63, 3-5-2010).<sup>53</sup> This is a general text, transcribing into Greek law the text of the Services Directive. Furthermore, this law provides the competent Ministers with the necessary delegation of powers for the adoption of, at least, sixteen sets of implementation measures. On this legal basis, several ministerial decisions have been adopted in retail sector, tourism sector and professional services; most of them are of a sector-specific/vertical nature and are intended to implement Articles 14, 15 and/or 16 with respect to specific service activities.

A number of laws, ministerial decisions and presidential decrees have been issued, together with circulars as guidance aim to implement the new provision in practice.

In March 2010, however, Greece has entered into the Memorandum of Understanding with the European Commission/European Central Bank/International Monetary Fund, which is being updated and its application monitored on a three-monthly basis, and which imposes quite precise and demanding obligations of trade liberalisation, rationalisation and reduction of red tape.

Several obligations undertaken by Greece under the Memorandum correspond to requirements that according to the Services Directive should be abolished or, at least, evaluated. The sanction for failure to comply with the Memorandum undertakings is much more drastic and immediate than any of the sanctions likely to be imposed under EU law, since breach of the Memorandum may lead to a termination of the funding of Greece's sovereign debt. Therefore, as far as the implementation of the Services Directive is concerned, there is a clear synergy with the application of the Memorandum.

### A. Streamlining the regulatory environment for services

#### 1. Requirements applying to providers established or wishing to establish in Greece (articles 14 and 15 of the Services Directive)

The evaluation of the implementation of the Services Directive has revealed, on the one hand, that a number of requirements prohibited by article 14 of the Directive can still be found in Greek legislation, in the retail and education sectors. On the other hand, as regards requirements where the Directive left a margin of appreciation to Member States to streamline the regulatory environment for the establishment of providers and which are mainly foreseen in article 15 of the Directive, a number of such requirements have been maintained and they concern basically the same sectors where prohibited requirements still exist.

Regarding **professional services**, some requirements which have been maintained in Greece concern shareholding requirements for chartered accountants and for lawyers, where only lawyers can be shareholders of a law firm. Before the adoption of Law 3919/2011 almost all professions had a system of fixed prices, and after its adoption all

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<sup>53</sup> Given delays with the adoption of other texts necessary for the implementation of the Services Directive, the Commission decided on 27 October 2011 to refer Greece to the Court of Justice over incomplete transposition of the Directive (IP/11/1283). Following the adoption and the notification of the last implementing measures the Commission has decided on 31 May 2012 to close the case against Greece.

the minimum and fixed tariffs were repealed. However, sector specific legislation is still needed. Pricelists are maintained but only to serve as 'reference prices' or as the basis for the calculation of pre-paid tax and/or social charges due by the professionals for lawyers and engineers.

Furthermore, for accountants and architects/engineers experience is required in order to be promoted from a grade to another.

In the **construction** and **crafts** sector, no particular prohibitions apply.

In the **real estate sector**, no particular prohibitions apply and the real estate sector is set by the 'Business Friendly Greece law', adopted the 11<sup>th</sup> of April 2012, which abolished the restrictions in place.

As far as the **retail sector** is concerned, the legal form requirement for ambulant trade in the retail sector (only for natural persons) is maintained and other prohibited requirements have been found notably in the legislation concerning outdoor sales which were amended in order to comply with the Services Directive's requirements; however, a *numerus clausus* system for the delivery of authorisations upon the opinion of the committee has been maintained, itself connected to an economic test. The requirement of prior residence for two years has been abolished, but priority to obtain a licence is given to specific categories of persons (Greek Romas, repatriated Greeks from North Epirus and Pontus). Furthermore, the system of delivery of authorisations is characterised by both quantitative and territorial restrictions.

In the **tourism sector** several amendments took place and fixed tariffs and a number of restrictions were abolished. Furthermore, the simplification of yacht brokering agencies is already provided in a Joint Ministerial Decision.

In the **education sector** Greek nationality is required for founders of private schools and the majority shareholding should also belong to Greek nationals.

## 2. Tacit approval of authorisations (article 13(4) of the Services Directive)

Tacit approval, an important mean to cutting red tape, as it foresees that an authorisation will be deemed to have been granted to the provider in case an application has not received any response within the set time period, is foreseen in article 14 (4) of the law 3844/2010. Additionally, it is provided by law on administrative performances that if the administration does not reply to an application within 50 days, the authorisation is deemed to have been granted.

In February 2011 the Greek legislator passed Law 3919/2011 on the "principle of professional freedom, elimination of unnecessary restrictions for the access to and exercise of professions", which came into force on 2 July 2011. Its scope is to enforce some of the provisions of Directive 2006/123/EC. Article 3 of Law 3919/2011 foresees that the requirement for an administrative license is abolished and a person is considered to legally exercise a profession if three months have passed from the date he/she has submitted the notice of initiating the professional activity and has submitted all the necessary documents that certify that he/she satisfies all legal requirements connected to the professional activity in question.

The administration would have three months from the date the notice of initiation was submitted to issue a decision prohibiting the exercise of the profession. The professions

excluded from the above provisions are those of the notary, lawyer, engineer, pharmacist and professions in the field of public transport (i.e. taxi drivers). The second paragraph of Article 3 of Law 3919/2011 foresaw, that until the 2 July 2011, on the initiative of each Minister, presidential decrees should have been issued, when necessary, instituting derogations from the above rule. At the time Law 3919/2011 was published, the Ministry of Economy issued a list of 136 professions considered to be “liberalised” by virtue of the provisions of Article 3.

The very general and on occasion vague formulation of Article 3 of Law 3919/2011 has raised serious legal concerns as to its interpretation but mostly as to the way it can practically be enforced. A number of sector-specific circulars have been issued in order to interpret the implementation of Article 3.

3. Total prohibition of commercial communications (article 24 of the Services Directive)

Article 25 of law 3844/2010 almost literally transposed the provisions of Article 24 of the Services Directive. However, total prohibitions of commercial communications still exist for lawyers after the latest adoption of law 4038/2012 in the TV, the radio and the billboards.

**B. Boosting cross-border trade**

1. National implementation

Greece has adopted a horizontal transposition law (law 3844/2010) which may serve only as a reference document because it gives multiple delegations to the competent ministers, for them to adopt the necessary implementation measures. So far, however, the implementation measures adopted are scarce and concern very few economic activities.

2. Distinction between freedom of establishment and free provision of services

After the latest legislative amendments and the adopted circulars distinction take place between a service provider that wants to establish a business in Greece and a service provider wishing to provide temporary cross border services with retail sector, ambulant trade, education sector and tourism sector (sector specific amendments through the adoption of ministerial decisions, laws and circulars). The Point of Single Contact gives an indication about the rules that apply for an establishment in Greece and the rules for temporary service provision but the lack of update lead to uncertainty.

3. Issues with the free provision of services clause

*Examples of requirements that have been maintained*

In the **professional services sector**, most of these are likely to come under the deregulatory effect of law 3919/2011, which abolished most of the restrictions. A number of circulars for the implementation of this law have been issued but cross-border provision of services is not specifically dealt with. An issue which may need some clarification is the way that experience acquired in other Member States is to be taken into account in order for the various classifications to be applied to foreign professionals such as for tax advisers.

**Construction, crafts and certification services sectors** are not subject to any of the requirements foreseen in Article 16(2) of the Services Directive, and the same applies for cross-border service providers.

In the **real estate services** there was a registration requirement, which was abolished by the by the 'Business Friendly Greece law', adopted the 11<sup>th</sup> of April 2012, where it is specified that cross-border providers of real estate services do not need to register with the General Commercial Registry as the Greek counterparts should do, as long as they fulfil the requirements for the profession in their country of establishment.

The most important development in relation to Article 16 of the Services Directive has been done in the **tourism sector**. The authorisation and registration requirements imposed on established service providers do not apply to cross-border service providers and a mere declaration requirement has been put in place.

Moreover, it has been clearly set that cross-border service providers from other Member States are not subject to certain requirements, and the requirement that tourist guides had to be in a fixed employment relationship with the tour operators they were working with, is abolished.

Finally, most requirements which have been maintained concern the **education sector**, where no cross-border services are foreseen without establishment. Also, natural persons need to have the Greek nationality, while legal persons need to fulfil the double condition of being established in Greece and having Greek majority shareholding. Therefore, service provision, in the sense of Article 16 of the Services Directive, does not seem to be possible at the level of educational institutions. A Joint Ministerial Decision foresees the free cross-border provision of some educational services, such as teachers in training schools, private tutoring at home, and teaching foreign languages.

## **I. Points of Single Contact**

The PSC portal was built on an existing eGovernment portal, launched in September 2003, the scope of which is much broader than the Services Directive, addressing both businesses and citizens and covering also procedures related to tax and social security formalities. There are two portals linked to the PSCs in Hungary.

1. [www.magyarorszag.hu](http://www.magyarorszag.hu) is for all users. It is mostly providing information or downloadable documents to users and does not require identification.
2. [www.ugyfelkapu.magyarorszag.hu](http://www.ugyfelkapu.magyarorszag.hu), the so-called Client Gate, is a sub-site to magyarorszag.hu. The site provides a platform for diverse electronic services (e.g. tax-return, notifications). Users have to sign up to complete processes, for which users first have to pay a visit in person to one of the Hungarian Registration Offices or a Hungarian embassy. Alternatively e-signature issued in Hungary can be used for the services available online.

The information provided on the PSC is comprehensive and thorough. The quality of the search facility is generally good, however, that facility, FAQs and several other user support elements are only available in Hungarian and their use require an already good knowledge of the legal background. There is little information targeted specifically on cross-border service providers.

Overall the Hungarian PSC still has a long way to go to be fully functioning for both Hungarian and foreign users. Although the scope of procedures covered by the portal is quite comprehensive, the level of maturity of eGovernment is still relatively low for many procedures since several competent authorities do not use the technical infrastructure to provide electronic completion of procedures through the PSC. Therefore users are still often required to send supporting documents by post or to present themselves in person in order to use the electronic portal.

The barriers for foreigners are extremely high, for linguistic reasons and because of the obligation to obtain Hungarian electronic signatures or to register. The same holds true for other components related to the completion of procedures, notably the use of online payment tools, tracking methods and the submission/ storing of supportive documents.

In its study<sup>54</sup>, Deloitte rated the Hungarian portal lower than the average of all portals. The biggest weakness is its limited usability for foreign businesses, much improvement is needed on this front.

## **II. Implementation of and compliance with key provisions**

The Services Directive was implemented by the Hungarian Services Act<sup>55</sup>, which lays down the general rules applicable to all service sectors and establishes provisions on the

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<sup>54</sup> [http://ec.europa.eu/internal\\_market/services/services-dir/study\\_on\\_points\\_of\\_single\\_contact\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/study_on_points_of_single_contact_en.htm)

<sup>55</sup> Act LXXVI of 2009 on general rules on the taking up and pursuit of service activities

exercise of the freedom of establishment and the free movement of services. This framework law of general application entered into force on 1 October 2009.

In addition to the horizontal law, an "*omnibus*" act modified about 100 existing sectoral laws and an "*omnibus*" decree amended more than 100 pieces of sector-specific secondary legislation. Moreover an additional 100 pieces of sector-specific secondary legislation was modified individually. Notably more than 50 authorisation schemes have been replaced by declarations.

Hungary was among the first Member States to implement the Directive. The Hungarian transposing legislation covers the same scope as the Directive. The legislative technique and the large number of amendments of sector-specific laws indicate that the Hungarian legislator aimed to implement the Directive thoroughly. However, since the second half of 2011, Hungary has significantly restricted access to markets which were previously open and where many foreign providers were present (big retail, sale of tobacco, meal vouchers, waste management).

#### A. Streamlining the regulatory environment for services

##### 1. Requirements applying to providers established or wishing to establish in Hungary (Articles 14 and 15 of the Services Directive)

The legislator seems to have removed all requirements prohibited by Article 14. However, according to a recently adopted measure the activity of issuing hot meal and holiday vouchers ("*SZÉP Card*") cannot be pursued by a branch office of a foreign company. Moreover, one of the conditions regarding the issuance of the *SZÉP Card* consists in the entity having exercised an activity falling under the same category in the Hungarian Income Tax Law for at least two years. These measures are incompatible with Article 14 and must be corrected as a matter of priority.

On the other hand, as regards requirements where the Directive left a margin of appreciation to Member States to streamline the regulatory environment for the establishment of providers and which are mainly dealt with in Article 15 of the Directive, a few of such requirements have been maintained which raise doubts as to their compatibility with the Directive.

Most of such cases were identified in the **retail sector**. An issue of particular importance concerns the so-called "Plaza stop law", which bans generally and everywhere the construction of commercial buildings over the size of 300 m<sup>2</sup>, unless special exemption is given. The territory where small-scale producers of agricultural products can sell their produce is also restricted, and small-scale producers must be natural persons. Legal form requirements were also identified with regard to the sale of natural gas, which can only be performed by legal persons. Through legal form and strict territorial restrictions, a recent law on tobacco sale limits access to the market, and the conditions for getting a license based on social policy considerations might discriminate indirectly against foreign operators.

Regarding **professional services**, a recent law has imposed conditions to issue meal and holiday vouchers that are too restrictive and unjustified, since they require an infrastructure that only big nation-wide existing banks possess. A new shareholding requirement for companies (at least 50% of the shares must be owned by the State)

foreclose private operators (including foreign ones) previously present on the market of waste management without justification.

2. Tacit approval of authorisations (Article 13(4) of the Services Directive)

Tacit approval applies by virtue of a horizontal provision and sectorial provisions. Based on the Services Act, tacit approval must be used for all services falling under the scope of the Service Directive, unless it is expressly excluded by a sectorial legislation.

Thus, tacit approval seems to have been successfully implemented in Hungary. The only identified exception is the case of the accountants, where tacit approval is explicitly excluded.

3. Total prohibition of commercial communications (Article 24 of the Services Directive)

No total prohibition of commercial communications has been identified.

## **B. Boosting cross-border trade**

1. National implementation

Hungary has transposed Article 16 of the Directive also through the horizontal Services Act and by modifying sector-specific legislation. The Act states that only the following requirements can be applied to cross-border service providers: authorisation requirements, notification requirements and the obligation to possess an identity document specific to the exercise of a service activity. Moreover, these requirements can only be applied to cross-border services if the specific rules are justified for reasons of public policy, public security, national security and defence, public health and the protection of environment, and if the relevant sector-specific legislation explicitly states that the requirement is applicable to cross-border services. This seems to create sufficient certainty to foreign service providers as to when a requirement applies to them.

2. Issues with the free provision of services clause

With respect to the Article 16 requirements, apart from the cross-border aspects of the cases concerning Articles 14 and 15 mentioned above, only some questionable notification requirements can be found in some sectors.

In the field of **construction**, foreign building contractors must notify their activities in Hungary. In the notification of this measure by Hungary, it was claimed that the system is justified by public policy.

Similar concerns may be raised against notification obligations concerning cross-border adult **education** services.

## I. Points of Single Contact

The Irish Point of Single Contact is a relatively basic website that relies largely on offering links to the relevant websites where detailed information on each of the procedures can be found. For instance, in testing, only 10% of the information on the required procedures was to be found on the PSC portal itself, while 90% was covered by the websites of the competent authorities linked to by the portal. Although users can ultimately find the information that they need, there is no single registration or login to the PSC, therefore users have to register to each agency to which they are re-directed, and there is no basic search function to locate relevant information on the site.

As regards the electronic completion of procedures, a positive aspect for the Irish PSC is that it does not present any technical obstacles to the completion of procedures for users coming from another Member States. However, this is in the context of a portal through which very few transactions can be carried out by electronic means. A particular issue concerns the fact that documents and forms cannot be submitted electronically, e-payment tools are not used and there is no way to track a procedure electronically. Even on the linked websites, there are only a few instances concerning company registration where two-way interaction is possible. Otherwise, forms are simply downloaded and need to be submitted separately. Article 8(1) of the Services Directive states that it should be possible to complete all necessary procedures and formalities at a distance and by electronic means through the PSC and the relevant competent authorities. In Ireland, although electronic procedures are utilised in terms of certain registrations, applications etc. there is, in fact, no statutory obligation on competent authorities to necessarily adhere to electronic procedures. Therefore, imposing these obligations on competent authorities continues to be challenging.

In terms of usability, the Irish PSC does not score very highly<sup>56</sup>. While the presentation of information on the site has been found to be clear and useful and the site easy to navigate, much remains to be done in order for the Irish PSC to act as a truly useful source of information for entrepreneurs within and outside of Ireland, particularly through better integration of the PSC with the other government or agency sites to which it redirects users.

The Irish PSC is not easy to find if one doesn't know its exact web address, and efforts need to be made to improve this, as well as in promoting the existence of the PSC with bodies that provide support to businesses in Ireland. Information on the site should also be extended to procedures to be followed in the life of a business after establishment. Assistance to users is very limited, and information is available only in English. Continued efforts will be needed to enhance the user experience when accessing the site and to improve the wider e-Government capability of the portal.

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<sup>56</sup> [http://ec.europa.eu/internal\\_market/services/services-dir/study\\_on\\_points\\_of\\_single\\_contact\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/study_on_points_of_single_contact_en.htm)

## II. Implementation of and compliance with key provisions

Ireland implemented the Services Directive through a horizontal framework law ("ministerial regulation") which was adopted some 11 months after the transposition deadline<sup>57</sup>. There is no evidence that Ireland has amended sector-specific legislation to bring it into line with the provisions of the Services Directive. If sector-specific legislation is domestic in origin (i.e. not implementing EU rules), then the horizontal legislation implementing provisions of the Services Directive, for instance article 16 on the freedom to provide services, will prevail over sector-specific legislation in cases of conflict.

### A. Streamlining the regulatory environment for services

#### 1. Requirements applying to providers established or wishing to establish in Ireland (articles 14 and 15 of the Services Directive)

As regards requirements where the Directive left a margin of appreciation to Member States to streamline the regulatory environment for the establishment of providers and which are mainly foreseen in article 15 of the Directive, a few of such requirements have been maintained. They concern the tourism and the retail sector.

In the **travel** sector, there is a requirement for travel agents and tour operators to set minimum capital investment in their business. They are especially required to take out particular bond that such businesses are required to take out to protect their customers. In putting another financial burden on businesses, it may act as an obstacle to growth in the travel agency and tour operator sector. The guideline as to the minimum capital investment in the business is a practical approach directed towards protecting the customer.

Caps on the size of **retail** outlets can act as an impediment on new entrants wishing to enter the market, such as operators of large hypermarkets that are more common in some EU Member States. In this regard the draft Retail Planning Guidelines, taking into account recommendations of a recent study<sup>58</sup>, will revise the floor space caps with different limits for different retail activities and depending on location of the outlet.

#### 2. Tacit approval of authorisations (article 13(4) of the Services Directive)

Tacit approval, an important tool for the cutting of cutting red tape, as it foresees that an authorisation will be deemed to have been granted to the provider in case an application has not received any response within the set time period, is **foreseen in the horizontal law** implementing the Services Directive in Ireland.

Following the wording of the Services Directive, the Irish horizontal law has left open the possibility for competent authorities to put different arrangements in place. Sector-specific legislation has not been amended to specify such different arrangements. The horizontal legislation, and the possibility for tacit approval, exists for patent and trade

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<sup>57</sup> European Union (Provision of Services) Regulations 2010 (S.I. No. 533 of 2010) give effect to the Services Directive in Ireland, with the exception of Article 42 of the Directive, which was transposed separately by the European Communities (Court Orders for the Protection of Consumer Interests) Regulations 2010 (S.I. No. 555 of 2010).

<sup>58</sup> Forfás Study Review of the Economic Impact of the Retail Cap (April 2011)

mark agents and copyright licensing bodies, casual trading near a harbour, the registration of hotels, guest houses and other tourist accommodation, the use of premises for an activity involving the contained use of genetically modified organisms and surf training.

Competent authorities may decide to check the professional qualifications of service providers in the health, social care and veterinary professions who are not eligible for automatic recognition under Articles 21 to 49 of the Professional Qualifications Directive. In such cases, in the absence of a reaction from the competent authority within the deadlines set, the service may be provided.

Sector-specific legislation containing the procedures for authorisation of tour operators and travel agents, vocational education and training providers, those involved in the health and safety of workers in the construction and other related industries, and driving instructors describe such approval processes without reflecting any arrangements for tacit approval. In the absence of the different arrangements provided for in the horizontal law, the possibility for tacit approval can be deemed to apply, but this may not be implemented in practice.

3. Total prohibition of commercial communications (article 24 of the Services Directive)

No total prohibition of commercial communications has been identified. However, there are currently strict limitations placed on the possibility of barristers to advertise their services. However this issue is to be revisited with the establishment of a new Legal Services Regulatory Authority as set out in the Legal Services Regulation Bill 2011.

**B. Boosting cross-border trade**

1. National implementation

The core chapter of the Directive on the freedom to provide services was introduced in the horizontal law which was adopted to implement the Services Directive. Article 16(1) and 16(2) are transposed into Irish law by means of Regulation 6 of the 2010 Regulations which are largely compliant with the letter and spirit of the Services Directive.

2. Distinction between freedom of establishment and free provision of services

The 2010 Regulations acknowledge the freedom of cross-border service providers to operate within Ireland, subject to constraints whereby competent authorities can impose requirements on cross-border service providers where justified under the four core criteria of public policy, public security, public health, or protection of the environment. These provisions are therefore in conformity with the principle of the freedom to provide services.

However, with the exception of some of the professional services sector (particularly lawyers and auditors that are subject to a specific EU legal framework), the distinction made between the requirements applicable to foreign entrants wishing to enter the Irish market through freedom of establishment and those wishing to offer their services on a temporary cross-border basis may not always be clear. Business users involved in the testing of Ireland's Point of Single Contacts highlighted this point as being confusing to those wishing to assess their obligations.

### 3. Issues with the free provision of services clause

In principle, cross-border service providers have the right to provide services in Ireland if they comply with the conditions set in their Member State of establishment. However given that sector-specific legislation co-exists with the horizontal legislation, service providers would need to verify if additional requirements apply in the sector-specific laws (which may only be permitted for reasons of public policy, public security, public health or environmental protection).

#### *Examples of requirements that have been maintained*

With regard to the **construction and crafts sectors**, electricians and gas installers in Ireland generally register with the relevant designated body (RECI or ECCSA for electricians and RGII for gas installers), which in turn ensure that their members comply with quality and safety standards. It is not compulsory for all electricians and gas installers to register with these bodies, but it may be very difficult for them to secure work unless they do so. Cross-border gas installers who wish to carry out work on with liquid petroleum gas may be subject to criminal sanctions unless they are registered with RGII.

As mentioned above, in the **travel** sector, tour operators and travel agents operating in Ireland, and involved in the provision of tourism and travel services to destinations outside of Ireland are obliged to hold licenses issued by the Commission for Aviation Regulation. This requirement does not allow travel agents or tour operators active in other EU Member States to provide services on the basis of the authorisations obtained in their Member State of establishment. Furthermore they are obliged to meet certain capital thresholds and to take out a bond to cover them in the event that the business was unable to meet contractual or financial obligations. These requirements are supposed to protect the consumer.

As regards the **education** sector, vocational education providers such as occupational first aid training providers, manual handling instructors and lifeguard trainers are required to register with the relevant statutory bodies.



## **I. Points of Single Contact**

Given the large amount of legislative instruments stemming from the different national and local authorities, and the absence of a centralised system of publication of laws or an online database of the legislation in force, points of single contact are essential to help cross-border or established service providers in Italy.

Points of single contact have been set up by local authorities in every city hall in Italy, or within the premises of the competent Chamber of Commerce. These local physical points can be traced using the central website, through a specific search.

Generally speaking, the degree of information offered on the website is quite good and comprehensive. Support tools for users are provided, which also provide assistance in English. However, the portal is not well known, so more communication and promotion activities will be necessary.

The website enables users to carry out procedures through one single communication which allows them to handle several administrative requirements altogether. However, this is not always possible across all business sectors. In some cases, users are allowed to complete the requirements through the web site, in other cases they will only be able to acquire information without the possibility to submit an online application. Electronic identification and electronic signatures are required to gain access to the private area and to submit the filled forms. Online completion of procedures is easy, and the number of forms required has been reduced.

One of the main problems lies in cross-border procedures. In fact, the website lacks information regarding cross-border provision of services as well as online forms in English. Electronic logins and signatures can also constitute an obstacle for cross-border providers.<sup>59</sup>

## **II. Implementation of and compliance with key provisions**

The subject matter of the Services Directive partly falls within the legislative competence shared by the State and its Regions. This means that the central State has the power of setting the legislative principles the regions will need to comply with when laying down more detailed provisions. Regional norms passed before the implementation law and conflicting with the national law should therefore be considered abrogated and Regions have a constitutional duty to finalise the implementation of the Directive. However, this hierarchical relationship is only implicit and this undermines legal certainty. In fact, in this situation, Italian courts would be the only authorities entitled to set aside conflicting regional rules, becoming the only guarantee for the correct application of the principles set out in the Directive. However, the implementation law has introduced a mechanism that aims to prevent future inconsistencies by requiring local and national authorities to

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<sup>59</sup> [http://ec.europa.eu/internal\\_market/services/services-dir/study\\_on\\_points\\_of\\_single\\_contact\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/study_on_points_of_single_contact_en.htm)

notify any bill containing new requirements. Failure to do so will result in the requirement being considered nil and void.

It must be emphasised that with the entry into force of the national law implementing the Services Directive, Italy has dropped its previous system of authorisation schemes in favour of a lighter system of notifications and declarations. The Italian legislator has introduced the SCIA (Certified notification on the commencement of activity). According to the new rules, each act of authorisation, licence, concession, permission, is replaced by a notification made by the provider. The notification can be made by mail or online and the activity can be commenced on the same day in which the notification is made.

The provisions on liberalisations and administrative simplification contained in a law recently adopted (January 2012) introduce some relevant changes in this respect. In fact, this law empowers the government to propose new legislation with the aim of repealing unjustified restrictions and authorisations on economic activities, removing any discrimination or obstacle to new economic actors and promoting fair competition in the market. Furthermore, the text of the law expressly refers to EU principles. The exact content of these forthcoming reforms should be disclosed gradually up until the end of 2012.

#### **A. Streamlining the regulatory environment for services**

##### **1. Requirements applying to providers established or wishing to establish in Italy (Articles 14 and 15 of the Services Directive)**

The Italian legislator has transposed in the horizontal implementation law all provisions contained in Article 14. It has also removed all provisions imposing on service providers the burden to prove the existence of economic need or demand or to assess the economic impact of the activity on the market through economic tests. However, a sector-specific analysis of the regional laws identified a number of requirements which are prohibited under Article 14, notably in the retail and tourism sectors. Regarding art. 15 requirements, and in particular fixed tariffs, it is worth stressing that art. 9 of the recent d.l. 1/2012 abrogates all legislation imposing fixed tariffs in the field of regulated professions. However sector specific legislation may still be needed.

Quantitative or territorial restrictions were also noted in the retail and tourism sectors. Requirements reserving access to particular providers were identified in the tourism, and education service sectors. Legal form and shareholding requirements have been maintained in the education sector for the professional services and for the crafts sector.

As for **professional services**, shareholding and legal form requirements are always connected in the Italian system, and they are applicable to all professions. Recent reforms have opened the possibility for professionals to choose from a wider variety of legal forms, notably limited liability companies with non-professional members. A few limitations have been maintained, some of which, interestingly, are linked to the age of the members (who must be no older than 35) and the amount of shares which can be held by non-professionals (no more than 1/3).

In the **retail** sector, authorisations to open a newsagent's shop are subject to specific assessments carried out by the competent local authority and approval of trade unions. A number of national and regional laws set quantitative and territorial restrictions for retail

activities, particularly those linked to large retail facilities or those which take place in public spaces. They are often justified by the need to promote the sustainable development of local economies. Reforms abrogating legal form requirements for itinerant retailers, which started in 1998, have now been completed through the implementation law, which states that all types of legal person can obtain an authorisation for itinerant retail activities.

The **tourism** sector falls within the scope of regional competences, therefore the national implementing law has little impact on this sector. A number of regional instruments containing prohibited requirements were identified. Residency within the region where the service is provided is required for ski instructors, and travel agencies need to prove that their activity is insured and that they have obtained financial guarantees for reimbursing consumers, although they are not forced to obtain these guarantees in Italy. As for requirements to be evaluated, territorial or quantitative restrictions and fixed tariffs difficult to justify can be found. For example, obtaining an authorisation to open a ski school can sometimes depend on the number of ski schools existing in the region, or the amount of tourists coming in the region. Fixed tariffs in the field of ski instructors and mountain guides and restrictions connected to the distribution of ski schools and resorts are especially common (Veneto, Trento, Emilia Romagna, Lazio). However, requirements limiting the choice of the ski instructors between principal and secondary establishment have been removed.

The national implementing law of the Services Directive does not make any change to the **education** sector. National laws on education and vocational training do not pose significant problems, but it should be stressed that they require legal persons established for educational purposes to be non-profit oriented without giving any justification.

As for the **crafts and construction** sector, restrictions on legal form and shareholding of companies were identified in relation to craftsmen: the majority of shares must be held by members who can be qualified as craftsmen. Chimney sweeps in the province of Bolzano have to comply with tariffs imposed by the local authorities.

## 2. Nationwide validity of authorisations (Article 10(4) of the Services Directive)

The Italian implementation law transposes the wording of Article 10(4) almost literally, therefore ensuring validity of authorisations throughout the whole country. However, given the specificities of the Italian legal system, it is up to the regional and local authorities to grant authorisations for several activities (e.g. carpenter, social operator, gardener, amongst others).

All the qualifications regulated by the Regions have a nationwide validity. A few exceptions have been mostly identified in services related to **tourism**: in a few regions (Puglia, Friuli, Lazio, Lombardia, Marche) specific authorisations are required to transfer a branch or the headquarters of travel agencies. Furthermore, the qualification for the profession of tourist guide is only valid in the Region which issued the qualification, because a qualification of "national tourist guide" does not exist yet.

## 3. Tacit approval of authorisations (Article 13(4) of the Services Directive)

The principle of tacit approval of authorisations has been correctly transposed in the Italian implementation law as a horizontal rule applicable in all cases where a licence, approval or other authorisation is needed for the provision of services. It should be noted

that this principle already existed in the Italian administrative legal system since it had been introduced by the 1990 law on administrative procedures and is widely applied in a way which fully complies with the Services Directive.

Most activities can now be started following the aforementioned SCIA notification, and where an authorisation is still required, the principle of tacit approval applies as a general rule. However, there are several cases, both in the national and regional laws, where the principle is not mentioned: when this occurs, the principle does not apply. In some cases, the absence of tacit approval is duly justified by overriding reasons of public interest, which is particularly the case in the construction and the food sector. For example, the national law requires an explicit authorisations from public authorities to build gas pipelines and cableway structures due to public safety and environmental protection. Under the implementation law, most activities involving the sale of **food and beverages** must receive an explicit authorisation by public authorities, which is justified by health reasons. Relocation and transfer of ownership of the activity, instead, are subject to a regime of tacit approval.

However there are still numerous cases where no justification compliant with art.13(4) of the Services Directive can be found and where Italy must make sure that the instances in which tacit approval is not applied are limited to duly justified matters.

Furthermore, the problem of legal certainty in Italy, described above, comes into play once again: the provisions contained in the Italian implementation law set principles for the regional law to abide. As such, it prevails over any contrary regional provisions. However only a judge can set aside regional laws which do not comply with principles established at national level.

In the **tourism** sector, several regional laws require an explicit authorisation to open travel agencies (Lazio, Puglia), various type of touristic accommodations such as hotel and guest houses (Liguria, Veneto, Abruzzo, Sardinia) and agriturismo (Piemonte, Trento, Abruzzo). Ski schools (Bolzano, Piemonte, Liguria), ski instructors (Valle d'Aosta, Toscana, Lombardia, Bolzano, Trento, Umbria, Marche, Veneto, Liguria, Campania, Molise, Basilicata, Calabria) and alpine guides (Lombardia, Bolzano) are very often subject to an explicit authorisation regime. In the **business** sector, the issue of a lack of tacit approval is mostly linked with the activity of beautician (Piemonte, Lombardia, Liguria, Lazio, Basilicata, Sicily) and with social services (Tuscany, Veneto, Friuli). As for the **retail** sector, the issue is often connected with the set-up, the relocation and the enlargement of large retail facilities (Liguria, Sardinia, Lombardia, Friuli, Trento, Veneto, Abruzzo, Sicilia, Basilicata), a domain where even national laws do not foresee the principle of tacit approval. While eliminating the residence requirement, the implementation law has also maintained an explicit authorisation regime for trade in public areas, which is regulated in detail by the regions.

#### 4. Total prohibition of commercial communications (Article 24 of the Services Directive)

No total prohibition of commercial communications has been identified.

## **B. Boosting cross-border trade**

### 1. National implementation

The Italian implementing law does not contain at first sight a specific provision on cross-border services. However, a systematic reading of its provisions provides a satisfactory definition of cross-border service provider, making sure the principle is implemented. Furthermore, a number of provisions stress the fact that a service provider is someone exercising a profession or an economic activity in Italy on a temporary and occasional basis.

The horizontal nature of the Italian implementing law on the one side, and the hierarchic superiority of the Italian implementing law over conflicting norms should ensure, in principle, a sound implementation of the free movement of services. However, this technique does not exclude the possibility of the erroneous application of conflicting norms that have not been expressly abrogated. Moreover, the fact that regional laws are not published in the national official journal could create considerable and serious uncertainty for analysts and operators in the market.

As for the grounds of public order, public safety, public health or protection of the environment, it is still unclear how they will be identified. Since they are not defined by the implementation law, their assessment can only take place *a posteriori* by looking at the rules implementing the Directive in the different sectors and activities. It is also difficult to tell which authority will have the power to determine if one of the four grounds should apply.

### 2. Distinction between freedom of establishment and free provision of services

As previously stated, the implementation law provides for an indirect definition of cross-border services, and a definition of establishment, therefore clarifying the distinction between the two. Service providers established in another Member State do not need to comply with the requirements usually applicable to service providers established in Italy. But, again, the national law does not specify when and which authorities are in charge of deciding whether one of the four grounds justifying administrative requirements should apply. This uncertainty is aggravated by the absence of any specific provision for cross-border services in the different laws regulating the access to professions and other economic activities.

It's worth stressing that following the entry into force of the Services Directive, many regions amended their legislation on retail activities to ensure compliance with the free provision of services clause. The obligation to have an establishment where the service is provided has been repealed in all regions.

### 3. Issues with the free provision of services clause

The main problems here are again linked with the complexity of the Italian legal system and the existence of regional provisions conflicting with the Services Directive and the implementation law.

### *Examples of requirements that have been maintained*

Concerning **professional services**, the national implementing law allows requirements applicable to professionals established in Italy to be imposed on service providers only for reasons related to public policy, public security, public health or protection of the environment. Neither the implementing law, nor other sector-specific instruments however explain which requirements and which authority can decide to make those requirements applicable to service providers that are not established in Italy.

A similar situation can be observed in the **tourism** sector where most activities are also subject, to a certain extent, to authorisation schemes. It should be noted however that the pre-existing requirements have been translated to a mere declaration of commencement of the activities (*Dichiarazione Inizio Attivita'*), which serves as both registration and authorisation. It's worth mentioning the peculiar case of *agriturismi*. Here the authorisation is linked to a quality of the person seeking to provide the *agriturismo* service: i.e. the status of *imprenditore agricolo* (agricultural entrepreneur). This condition basically requires establishment in Italy to own an *agriturismo*. Furthermore, special ID cards are compulsory for tourist guides and ski instructors in Veneto.

## **I. Points of Single Contact**

The Latvian PSC was set up in 2009 and was built on the existing government e-services portal [www.latvija.lv](http://www.latvija.lv), with a specific part implementing the PSC (<https://www.latvija.lv/EN/WebLinks/Portal/services.htm>). The portal goes beyond the requirements of the Service Directive.

The Point of Single Contact in Latvia provides in general a good level of information. Information is lacking however for cross-border service provision and may vary depending on the geographical location or municipality. Information can be accessed or searched in a number of different ways (by service sectors, thematic index of procedures, licenses; company registration; etc.). Key information and general information is available in foreign languages (English and Russian) but practically no forms exist in other languages.

The state portal offers the possibility to complete a relatively high number of procedures electronically (downloading, filling in and sending forms, mainly by e-mail). There are still procedures that are not yet available online. E-ID is mainly required for fully interactive online services and e-signatures are required to complete the procedures online. eDocuments can be signed through an online application and sent by e-mail to the competent authorities, or in some cases uploaded directly. Even if legally accepted, e-signatures and e-identification from other Member States are not yet supported technically but developments are underway.

The portal provides a variety of online and offline support and a number of advice tools: guidelines, help documents – user assistance; frequently-asked-questions, demos or video. Information on general procedures and step by step instructions are available in English. In addition, an e-service Helpdesk is available, which can be contacted by phone or email.

According to the Deloitte study<sup>60</sup>, which carried out some user testing of PSCs, the overall use and usability of the Latvian PSC was perceived to be average.

Further improvements are necessary to put in place missing electronic procedures as well as technical solutions to allow for cross-border use of e-identification and e-signatures. From the users' perspective, online content and information availability in foreign languages should be enhanced.

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<sup>60</sup> [http://ec.europa.eu/internal\\_market/services/services-dir/study\\_on\\_points\\_of\\_single\\_contact\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/study_on_points_of_single_contact_en.htm)

## **II. Implementation of and compliance with key provisions**

### **A. Streamlining the regulatory environment for services**

#### 1. Requirements applying to providers established or wishing to establish in Latvia (articles 14 and 15 of the Services Directive)

No prohibited requirements or requirements where Member States have some margin of appraisal were identified in the Latvian legislation.

#### 2. Tacit approval of authorisations (article 13(4) of the Services Directive)

The principle of tacit approval was missing in the horizontal law as adopted in 2010 but has been introduced in the horizontal law via the amendments adopted in March 2012. Some work is still on-going on sectorial legislation to have it included there as well and to identify if different arrangements need to be put in place, if justified.

#### 3. Total prohibition of commercial communications (article 24 of the Services Directive)

The removal of total prohibition of commercial communications was not transposed by Latvia in the original version of the horizontal law but is now transposed via the amendments adopted in March 2012. However, no total prohibitions of commercial communications have been identified in Latvian sectorial legislation.

### **B. Boosting cross-border trade**

#### 1. National implementation

Article 16 has been implemented by way of a clause in horizontal law (the Law on the Free Provision of Services). Some principles of Article 16 have not been fully compliant with the Services Directive, in particular with regard to the principles of necessity and proportionality which have however been corrected via the amendments adopted in March 2012. The same applies to some provisions of Article 16(2) of the Directive, which were initially transposed in a deficient manner, but have been corrected via the amendments of March 2012.

Section 15 of the Law on the Free Provision of Services foresees that the criteria for temporary cross-border services and applicable requirements are to be provided by the Regulations of the Cabinet of Ministers (RCM).<sup>61</sup> However, the need for the Regulations is under revision and alternatively necessary amendments could be made in sectorial legislation, and guidelines drawn up for administrative use.

#### 2. Distinction between freedom of establishment and free provision of services

No distinction is made in sectorial legislation between establishment and cross-border service provision. The Regulations on the cross-border provision of services, as foreseen under Section 15(3) of the Law on the Free Provision of Services have not yet been adopted but it can be seen from the wording of Section 15 (3) that a declaration will be foreseen with an indicative list of service to which it would apply. Depending on the

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<sup>61</sup> Article 15(3) of LFPS.

exact nature and required documentation as well as the services that will be covered, this requirement may raise concerns with regard to its compatibility with Article 16 of the Services Directive.

Currently the absence of these Regulations creates some legal uncertainty as to applicable requirements to cross-border service provision. The Law on the Free Provision of Services should in principle take precedence over sector specific requirements because most of the sector specific requirements are laid down in Regulations that have a lower hierarchical status in the Latvian legal system than laws. When it comes to laws that have the same status as the Law on the Free Provision of Services, the latter is considered to be *lex specialis* but this is still subject to the interpretation by the court where some additional insecurity may rise from the wording of Section 3(2) of the Law on the Free Provision of Services which could be interpreted as giving precedence to sectorial laws over the Law on the Free Provision of Services.

### 3. Issues with the free provision of services clause

The main problem is the above mentioned lack of clarity as to applicable provisions due to the missing Regulations, still to be adopted.

#### *Examples of requirements that have been maintained*

In case of **professional services**, real-estate evaluators and geodetic work performers must be certified that seems to amount to an authorisation in essence. This requirement is currently under revision to provide for a mutual recognition principle.

In the **construction** sector, a service provider employing at least one person who has the right to run an independent practice (builder's practice or architect's practice) must be registered in the Construction Merchants' Register.

In the **retail sector** an authorisation is required for sales in markets and street selling (authorisation from local-governments).

In **tourism**, tourism agents and operators need to be registered in the specific database of tourist agents and tourist operators.

## I. Points of Single Contact

There is one Point of Single Contact in Lithuania, i.e. [www.verslovartai.lt](http://www.verslovartai.lt) for users based in Lithuania and for users from outside Lithuania. The portal is linked to a physical infrastructure of the PSC. The Lithuanian PSC thus goes beyond the minimum requirements set by the Services Directive (the thematic areas covered by the portal include starting up a business - encompassing both advice on grants, loans, funding, intellectual property, and advice on legal structures, company registrations, permits, insurance -, employment, taxes and social security issues).

The portal home page is in Lithuanian with a button linking directly to the English version. However the portal in English is less detailed than the one in Lithuanian.

The Point of Single Contact in Lithuania does not yet cover all the necessary information. The PSC is good at information for company registration, permits, tax and social security formalities, but lacks information on requirements related to premises/location of the service provider and cross-border procedures. For cross-border service provision, the availability of information varies by business sector, especially when it comes to detailed information (guidance on what forms and supportive documents have to be submitted as part of an application, whether originals or simple copies are accepted, etc.).

A good practice is the use of interactive questionnaires that provide checklists for starting a business or applying for a license. Questionnaires are developed by certain field of activity, when starting a business or verification questionnaires, helping business to check, whether there activity is exercised in according with the requirements as well as helping get ready for the visits of the controlling authorities.

The Lithuanian portal provides information in English language however, all forms which are required to be filled in are in Lithuanian only.

The portal does not provide a clear distinction for foreign businesses considering permanent (i.e. an establishment) and cross-border service provision.

Overall, the electronic procedures provided by the Lithuanian portal are the same for permanent establishment of a business and for temporary provision of services, if any requirements are applied for the latter. A good part of the covered procedures can be completed online, except for some licences and registrations. Online availability is lower (if not absent) for procedures relating to the premises of the providers and the place the service is carried out (downloadable forms).

For completion of procedures, eID and e-signatures are required. Only national tools are supported, and no cross-border identification is currently available.

Payments can be conducted via online e-bank transfers; credit and debit cards are not supported. Proof of payment is to be provided by scanning the transfer confirmation.

No **tracking services** exist which would enable users to monitor the progress of their procedures. Information by competent authorities is provided to service providers via e-mail or phone call.

Solutions for supporting cross-border eIDs and e-signatures are under development.

The portal provides interactive tools to obtain information (downloadable guides, videos and demos or case studies). These are generally good, easy to use and comprehensive.

If no answer can be found in the provided tools, a help message in the portal can be used. A user can choose a topic from a drop-down list and write a question to the PSC.

Overall the usability of the Lithuanian PSC<sup>62</sup> by end-users was deemed to be very good with some wishes for improvements to extend the coverage of interactive tools to all sectors and also make it overall available in EN, improve the structure of information including by making a clear distinction between requirements and procedures for permanent establishment and cross-border provision of services, implementation of web forms, allow service providers from other MS to use their eID and e-signs and translate forms.

## **II. Implementation of and compliance with key provisions**

### **A. Streamlining the regulatory environment for services**

#### **1. Requirements applying to providers established or wishing to establish in Lithuania (articles 14 and 15 of the Services Directive)**

The new version of the Law on Control of Weapons and Ammunition entered into force on 1 March 2011 and abolished the requirement based on nationality and residency. On the contrary, the latest amendment to the Law on Vocational Education, which entered into force on 10 June 2010, foresees that in order to provide formal vocational training a natural person from another Member States must have its residence in Lithuania. According to Article 14, requirements that discriminate on the bases of residence are prohibited and need to be abolished.

The requirement that service providers have to take a specific legal form was abolished in significant number of sectorial laws. Nevertheless, the latest amendments to the Law on Tourism introduced a specific legal form requirement for the tourism information service providers which can only be operated by a legal person. Moreover, the requirement fixing a minimum number of employees still remains for some areas, namely – company restructuring administration and company bankruptcy administration. The shareholding requirement has been identified in the Law on the Bar for the professional members whereby lawyers have to own 100 % of the capital of professional partnerships.

#### **2. Tacit approval of authorisations (article 13(4) of the Services Directive)**

The principle of tacit approval has been implemented via the horizontal law transposing the Services Directive, namely Article 7(3) of the Law on Services. In addition tacit approval has been included explicitly in majority of sectorial laws. The horizontal Law on Services also foresees that derogations for tacit approval could be introduced, but only in laws and if justified by overriding reasons relating to the public interest, including legitimate interest of the third parties. For example, such derogations have been introduced in the Laws on Control of Circulation of Civil Pyrotechnic Means, on Vocational Education, on Maintenance of Potentially Dangerous Equipment.

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<sup>62</sup> [http://ec.europa.eu/internal\\_market/services/services-dir/study\\_on\\_points\\_of\\_single\\_contact\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/study_on_points_of_single_contact_en.htm)

3. Total prohibition of commercial communications (article 24 of the Services Directive)

Article 15 of Law on Services literally transposes the provisions of Article 24 of the Directive. One total prohibition has been identified for lawyers in Article 42 of the Law on the Bar which contains a total prohibition on commercial communications. The type of information that can be communicated can merely be informative and is therefore narrower than a commercial communication as defined by the Directive.

**B. Boosting cross-border trade**

1. National implementation

Article 16 has been implemented by way of horizontal legislation with additional sector-specific laws. The Law on Services seems to transpose most of the requirements covered by Article 16 of the Services Directive correctly and completely. The transposing legislation does not contain provisions expressly transposing Article 16(2) of the Services Directive; however, the Law on Services does not allow any restrictions on freedom to provide services in Lithuania, except cases foreseen in the Law on Services or other laws. Such laws must follow the principles of non-discrimination, necessity and proportionality referred to in Article 16(1) of the Services Directive. The four reasons justifying the imposition of Lithuanian requirements on cross-border service providers established in other Member States namely, public policy, public security, public health and protection of the environment are laid down by Article 9, section 3, paragraph 2, of the Law on Services.

2. Distinction between freedom of establishment and free provision of services

The Law on Services enables service providers established in other Member States to provide services in Lithuania without having to comply with additional requirements, unless specific requirements are established by laws. This means that only laws, not secondary legislation, may impose additional requirements on service providers from other Member States. Such laws, in so doing, must meet the principles of non-discrimination, necessity and proportionality.

3. Issues with the free provision of services clause

*Examples of requirements that have been maintained*

In the **professional services sector** there remain a number of requirements, applied to incoming service providers. The Law on Company restructuring and the Law on Company bankruptcy foresee an establishment requirement for the legal persons and an obligation on the all service providers to obtain an authorisation from the competent authority.

In the **crafts, construction and certification services** sector, the Law on Construction foresees an examination of legal knowledge under the programmes approved by the body authorised by the Lithuanian Government for engineers intending to exercise temporary service activity in Lithuania.

In the **real estate sector** property assessment services have to be carried out by entities that are registered in Lithuania. For the registration of an entity in Lithuania the same package of documents must be submitted for cross-border service provision as for establishment.

In the **retail sector** the Law on Alcohol Control as well as the Law on Tobacco Control still contains establishment requirement.

## **I. Points of Single Contact**

Luxembourg has set up one virtual point of single contact, <http://www.guichet.public.lu>, which is aimed at citizens and businesses users based in or outside Luxembourg. Physical PSCs are run by the Chamber of Commerce and the Chamber of Trades, the so called "Espace Entreprises" and "Contact Entreprises".

The degree of information offered on the PSC of Luxembourg is generally very good. A simple and advanced search function is offered to help users find the relevant information easier and faster. This seems particularly important for service providers from other Member States which are generally less familiar with the legal or administrative system in Luxembourg.

The establishment of the PSC has also led to the development of an interactive form, available in French, German and English, where the provision of occasional services in Luxembourg can be notified to the relevant authority by simple mail.

On-line completion of procedures is in general good but can however still be improved by the Luxembourg PSC in order to avoid documents to be send by post.

Several support tools are being offered to users such as online help through FAQs, search function and email to the physical PSCs. For technical questions and business permits helpdesks are being offered.

The linguistic availability of the information offered on the PSC in Luxembourg is considered well as it offers for instance most electronic forms, the search facility, the FAQs and several other user support elements in English and French.

The overall use and usability of the Luxembourg PSC is above average.<sup>63</sup> However, some areas of improvement could be made such as the set-up of an improved search function to assist users in finding the relevant information. Another improvement that would benefit service providers is the provision of more online services and the use of marketing activities to increase awareness about the point of single contact website.

## **II. Implementation of and compliance with key provisions**

In May 2011, Luxembourg adopted the law related to services in the internal market. It is a framework law of horizontal application transposing almost literally the provisions of the Services Directive. Relevant sectorial laws were checked as well and adapted to be aligned with the requirements of the horizontal law. The number of sector-specific laws to be amended was relatively small because most economic activities are covered by the new law regulating access to the professions of craftsmen, traders, retailers, industrialists and other liberal professions. The legislative process is on-going for the law on alcohol serving establishments.

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<sup>63</sup> [http://ec.europa.eu/internal\\_market/services/services-dir/study\\_on\\_points\\_of\\_single\\_contact\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/study_on_points_of_single_contact_en.htm)

## A. Streamlining the regulatory environment for services

### 1. Requirements applying to providers established or wishing to establish in Luxembourg (articles 14 and 15 of the Services Directive)

Concerning **professional services**, several restrictions still exist with regard to the profession of lawyers such as the shareholding in law firms. The establishment of a branch in Luxembourg of a law firm established in an EU Member State that includes non-lawyers is prohibited. A lawyer can open only one office in Luxembourg. Concerning legal form, the law of 16 December 2011 concerning the exercise of the legal profession as a legal entity has broadened the possibilities for the legal profession making it possible for European law firms to provide services in Luxembourg without having to modify their original legal form.

No forbidden requirements in **crafts, construction and certification services** as Luxembourg abolished the obligation to have the opinion of a committee, including persons from the same profession, on the application for authorisation of a profession in this sector. Other requirements were abolished in the course of the transposition of the Services Directive such as a shareholding requirement obliging the qualified person to have a majority share and a ban on having more than one establishment in the crafts/construction sector.

No forbidden requirements in **real estate** sector. To be noted that in the case of real estate agents Luxembourg abolished a procedure including competitors in the decision making process. Before, when deciding on an application for authorisation the authorities received the opinion of a committee that included among others competing real estate agents. This forbidden requirement was removed by the new Law regulating certain professions.

Under the former law regulating certain professions a market study had to be provided in the application for authorisation of **retail** spaces of more than 2000 square metres. This requirement was abolished by the new 2011 Law regulating certain professions. Authorisations for these retail spaces however are still subjected to specific criteria regarding the quality of urban planning and consumer protection such as the equilibrium between activities in city centres and urban zones.

In the other sectors examined, i.e. the **tourism and education sector** no such requirements have been identified.

### 2. Tacit approval of authorisations (article 13(4) of the Services Directive)

Tacit approval applies as a general rule and was introduced in the horizontal law. A list of exceptions however was included where tacit approval does not apply to aspects of public interest and public security such as weapons trade and protection of environment. Consequently, the laws that are not mentioned in the list should be understood as providing for a tacit approval scheme.

In practice, it seems that Luxembourg has set a term of three months for administrations to reply on the submission of a complete request. If they do not respond within this deadline the authorisation should be considered to be given.

3. Total prohibition of commercial communications (article 24 of the Services Directive)

Luxemburg has abolished all total prohibitions on commercial communications by regulated professions in his horizontal law implementing the Services Directive.

No total prohibition of commercial communications has been identified.

**B. Boosting cross-border trade**

1. National implementation

Luxembourg implemented the freedom to provide services clause foreseen by article 16 of the Services Directive by way of a horizontal law as well as by sector-specific legislation. The horizontal law related to the services in the internal market literally reproduced Article 16(1) and Article 16(2) of the Services Directive. With regard to article 16(3), no mention is made of overriding reasons of general interest other than public policy, public security, public health or the protection of the environment. The exemption for labour conditions was also included in the general law on services in the internal market.

2. Distinction between freedom of establishment and free provision of services

Even before the adoption of the law related to services in the internal market, the Government started to align its legislation to the freedom to provide services clause. The authorisation for electricians, for established as well as foreign entrants, to work in installations of the electricity distribution grid was abolished as this was considered to be a restriction to the freedom to provide services. Other requirements such as accreditation for auditors, horizontal authorisation for the establishment of economic activities were brought in line with the letter and spirit of the Services Directive.

3. Issues with the free provision of services clause

However, cross-border service providers will still need to apply for an authorisation for child welfare and assistance to persons in need, technical studies and verifications in the field of environment and accreditation for institutes of higher education. In addition, the selling of alcoholic drinks outside the premises can only be carried out in the territory of a municipality by the persons established there, excluding incoming service providers.

*Examples of requirements that have been maintained*

Regarding **crafts, construction and certification services**, individuals or private or public entities other than the State which carry out technical studies and verifications in the field of the environment must apply for an authorisation. Cross-border service providers undertaking these activities in Luxembourg are not exempted from this authorisation. No explicit justification is provided by the legislator, though this authorisation may however have been maintained following screening on grounds of environmental protection.

In the **retail sector** several requirements have been abolished. Before the entry into force of the new law on regulated professions, there was no derogation from the requirement

for an authorisation for cross-border service providers hawking certain goods (e.g. bread, milk, sugar) temporarily and occasionally in Luxembourg. Furthermore, there was a notification obligation for all kinds of (trade) services, including construction. Now, the new law on regulated professions exempts incoming service providers from any administrative authorisation such as registration with the trade register.

In the other sectors examined, i.e. the **professional services, real estate, tourism and education sector** no such requirements have been identified.



MALTA



## I. Points of Single Contact

The first portal that was set up in order to implement the Services Directive contained the relevant information in English and Maltese language, but was lacking a search facility as well as a distinction between permanent establishment and cross border activity scenarios. The possibility to complete procedures on-line was only available for a very limited number of procedures.

However **in January 2012, a new portal, “Business first”, was launched and significantly improves the performance of the Maltese PSC.** It is still too early for a more detailed analysis of this new site, as the new portal has not been tested in the same way as was tested the old version and the PSCs from other Member States.

As far as it can be evaluated so far, the new portal provides generally very good and complete information and the information offered goes well beyond the scope of the Services Directive and covers also procedures like VAT registration, social security contributions, residence permits, employment licences. All applications are available in English and some in Maltese too.

Improvements could still be made concerning the on-line availability of procedures and the distinction between establishment and cross-border scenarios.<sup>64</sup>

## II. Implementation of and compliance with key provisions

Malta adopted a mix of horizontal and sector specific implementing measures. The horizontal law which was enacted as an omnibus act included amendments to sixteen pieces of primary sector specific legislation, mainly in the general trade, tourism, regulated professions and education sector.

### A. Streamlining the regulatory environment for services

#### 1. Requirements applying to providers established or wishing to establish in Malta (articles 14 and 15 of the Services Directive)

Article 14 of the Services Directive has been almost literally transposed in the general horizontal implementation act. It provides that competent authorities are expressly prohibited from making access to or the exercise of a service activity in Malta subject to compliance with any of the requirements listed in the Directive as being prohibited. This implies that in principle the prohibited requirements can never be imposed in any service sector. However, such requirements have been identified in sector specific legislation and even if the horizontal law should prevail, there is some legal insecurity for service providers whether or not to they have to fulfil those requirements.

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<sup>64</sup> [http://ec.europa.eu/internal\\_market/services/services-dir/study\\_on\\_points\\_of\\_single\\_contact\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/study_on_points_of_single_contact_en.htm)

Concerning **professional services**, legal form and shareholding requirements for architects and civil engineers and auditors as well as for lawyers have been maintained.

As far as the **retail sector** is concerned, it seems that for selling of alcoholic beverages there is an economic needs test which has been maintained.

Furthermore quantitative and territorial restrictions concerning timeshare and timeshare like products promotion have been maintained as the number of licences issued by the authority is limited to any one marketer to a maximum of eight operators. Timeshare representatives also have to display prominently the identity document issued by the authority. In addition a whole series of other requirements still apply, like special qualification training from recognised training institution or at least two years' experience in the management of a similar business activity as a condition to obtain a licence for tourist accommodation, catering establishments, incoming tourism agencies, organised excursion operator and travel agencies. And finally, for special designated locations (such as prehistoric sites and UNESCO Heritage sites) tourist guides have to possess specific knowledge of the designated location which is recognised by the authority.

## 2. Tacit approval of authorisations (article 13(4) of the Services Directive)

Tacit approval, an important mean to cutting red tape, as it foresees that an authorisation will be deemed to have been granted to the provider in case an application has not received any response within the set time period, has been implemented by the horizontal law implementing the Services Directive.

The horizontal law also foresees that different arrangements may be made if justified by overriding reasons relating to the public interest. In this respect a quite considerable number of those exceptions have been identified. For instance the Trading License Regulation, the Building (Price Control) Act, the Malta Travel and Tourism Act for the operation of a tourist accommodation or a catering establishment, the Timeshare Regulations, the Travel Operators Regulations, the Recreational Diving Services Regulations do not foresee tacit approval of certain authorisations where it is deemed that there are overriding reasons relating to the public interest.

Tacit approval has been specifically foreseen in sector specific legislation for instance concerning the licensing of tourist guides, the authorisation for car rental services or the authorisation for the temporary provision of services as a civil and structural engineer in Malta.

## 3. Total prohibition of commercial communications (article 24 of the Services Directive)

No total prohibition of commercial communications has been identified.

## **B. Boosting cross-border trade**

### 1. National implementation

Malta implemented the freedom to provide services clause in the horizontal Services Act.

The Services Act uses very similar wording to the Directive and states that incoming service providers cannot be prevented from providing services by the imposition of requirements which are discriminatory, unnecessary or disproportionate.

## 2. Distinction between freedom of establishment and free provision of services

In general there is no systematic distinction between freedom of establishment and free provision of services.

However, Malta has introduced specific provisions for cross-border providers in some sector specific legislation (e.g. accountancy profession, architects and veterinarians). Where no such distinction is made, the competent authority will have to decide on a case by case basis whether or not a requirement imposed on a service provider complies with the free provision of services principles as laid down in article 16 of the Directive.

For example, the Trade Licensing Act, which covers those commercial activities that are not otherwise governed by any other sector specific law, provides for the possibility of the regulatory authority to impose requirements with regard to the provision of a particular service activity, where these are justified for reasons relating to public policy, public security, public health or the protection of the environment. In order to establish whether a service provider is established or exercising his freedom to provide services the competent authority "*shall assess and decide each case on its individual merits and in conformity with EU law and Court of Justice case-law*".

## 3. Issues with the free provision of services clause

In general Malta has removed establishment requirements and replaced authorisation schemes for cross-border service providers such as tourist guides, employment agencies and sellers of time-shares by less restrictive notification requirements.

### *Examples of requirements that have been maintained*

In the **professional services sector**, no requirements applying to incoming service providers have been identified.

Concerning the **retail sector**, a certain number of authorisation schemes have been replaced by notification or information obligations and a prohibition on regulatory authority from imposing discriminatory, unnecessary or disproportionate requirements on incoming providers except where these are justified for the four reasons mentioned in the Directive.

In the **tourism sector**, prior notification is still required for time share promotion services and for tour operators and recreational diving services.

However for certain activities requiring a licence the legislation does not distinguish between establishment and cross border provision of services. It is not clear how this legislation interacts with the Services Act and how it is applied in practice to incoming service providers.

## **I. Points of Single Contact**

The Netherlands has one portal which leads to all the information and transactions that entrepreneurs need when starting up or running a business in the Netherlands. It was built on the existing portal Answers for Business. This portal aims to integrate the public authorities on all levels including Ministries, municipal authorities, provincial authorities and water boards. Because of the decentralized governmental system in the Netherlands, the website contains basic information and links towards specific information, forms and transactions which are made available on the websites of more than 600 Competent Authorities.

The level of information available is considered very good as a clear guiding facility is being offered. Direct assistance and advice via a chat function is also seen as best practice as it significantly improves the usability of the Point of Single Contact.

Improvements can be made in general on the presentation of different business situations, i.e. in particular the distinction between establishment and cross border provision of services, which is helpful for users of the portal from other Member States who are less familiar with the Dutch legal and administrative system.

The development of the PSC has led to the offer of a relatively high number of electronic procedures. Most of them can be submitted by means of two-way interaction using the Message Box while the documents can only be obtained through the websites of the competent authorities.

Consequently, on-line completion of procedures can still be improved by offering more full electronic case handling.

The Dutch PSC portal provides for a number of highly praised interactive tools to assist PSC users to obtain information. Online help and guidance is provided by email, chat, Twitter and an easy search facility. A telephone number is also at the disposal of users.

The linguistic availability of the PSC however could be improved as user support elements on the linked sites of competent authorities were frequently only offered in Dutch and therefore provide insufficient support for foreign visitors.

The overall use and usability of the Dutch PSC is above average<sup>65</sup>. However, improvements could be made concerning the clarity of information (distinction between establishment and cross border provision of services scenarios), the linguistic availability and the availability of full on-line procedures.

## **II. Implementation of and compliance with key provisions**

In general, the Netherlands made considerable efforts to ensure correct implementation of the Services Directive and has made a substantial number of important legislative and practical changes. In particular the screening of legislation was a complex exercise due to

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<sup>65</sup> [http://ec.europa.eu/internal\\_market/services/services-dir/study\\_on\\_points\\_of\\_single\\_contact\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/study_on_points_of_single_contact_en.htm)

the existence of more than 600 competent authorities including local authorities such as municipalities and provinces.

In contrast to the majority of Member States, the Netherlands decided not to transpose specific provisions of the Services Directive through horizontal rules, and instead amended non-binding instructions on legislation on the one hand and relied on adapting those pieces of sector-specific legislation that conflicted with the Directive on the other hand. Around 20 national measures have been adopted in order to implement the Services Directive.

The general framework included in the Services Act contains important parts on the Point of Single Contact such as rules on information, (electronic) assistance, and legal remedies for service providers, business customers and consumers. Also, guidelines are being given to competent authorities on how to proceed with authorisations and to provide mutual assistance to guarantee a good administrative cooperation. Several Acts have been amended by the Services Act for instance the general Act on administrative law, the Civil Code, the Act on enforcement of consumer protection and the Code on Civil procedures.

#### **A. Streamlining the regulatory environment for services**

##### 1. Requirements applying to providers established or wishing to establish in the Netherlands (articles 14 and 15 of the Services Directive)

No forbidden requirements were identified in the **professional services sector**; however, some requirements subject to the evaluation of Member States have been identified like requirements relating to the shareholding of companies for lawyers and accountants. For lawyers all shares of the legal practice must be owned by lawyers who practice in the partnership in question except for holding companies, foundations and persons employed in the legal partnership as non-lawyers and holding no more than 1/10 of the capital. Concerning accountants the majority of shares of an accountant office has to be held by registered accountants.

The requirement that inspection of certain heating machines has to be performed only by companies established in the Netherlands has been abolished in the **crafts and certification sector**.

In **retail sector**, persons that want a licence for a market stand should have their legal residency in the Netherlands. The system of spatial planning still allows for zoning schemes in which rules regulating the establishment of certain retail outlets (such as large stores, stores selling do-it-yourself commodities etc.) take economic considerations into account for the granting of the relevant licence, despite a clear prohibition in the spatial planning decree (BRO).

##### 2. Tacit approval of authorisations (article 13(4) of the Services Directive)

Tacit approval of authorisations which contributes to cut red tape is foreseen in the general Act on administrative law. In addition the Services Act includes provisions on good administration and assistance to service providers, for instance information and assistance should be given by competent authorities as quickly as possible in an up-to-

date, clear and transparent manner. The law provides that the decision shall take effect on the third day after the time period for the administration to take a decision has ended.

3. Total prohibition of commercial communications (article 24 of the Services Directive)

No total prohibition of commercial communications has been identified.

**B. Boosting cross-border trade**

1. National implementation

Dutch legislation generally does not make a distinction between, on the one hand, a situation where a service provider is established in the Netherlands or will establish itself in the Netherlands and, on the other, a situation involving the temporary provision of a cross-border service by a service provider from another Member State. Thus the Netherlands decided not to transpose Article 16 of the Services Directive in general through horizontal rules, and instead assessed much of their legislation against the strict requirements of Article 16 and relied on adapting those pieces of sector-specific legislation that conflicted with these rules. In addition, the Netherlands amended non-binding instructions for the legislator. According to the Dutch legal order the national government is empowered to require regional or local authorities to correct their regulation in case of non-compliance with EU legislation.

The most important legislation applying to cross border services is contained in the Trade Registry Decree and in an Act of Parliament modifying the General Administrative Law Act, the Services Act and several other Acts where the principle of tacit approval is included.

Other amendments of provisions applying to cross border services are for instance rules on exclusion of arbiters based on nationality in arbitration cases, provisions in the retail sector, the abolition of the permit for assessors dealing with damage from disasters/major accidents and a requirement regarding construction waste.

2. Distinction between freedom of establishment and free provision of services

The use of sector-specific amendments on the one hand and the Instructions for legislation on the other hand sets the distinction between a service provider that wants to establish a business in the Netherlands and a service provider wishing to provide temporary cross border services. This means that a vast majority of the legislation should be in conformity with the free provision of services clause as it must be either included in the legislation or covered by the Instructions. The Netherlands decided to screen and assess its legislation against the strict requirements of article 16 for cross-border as well as for domestic providers. The maintained requirements will therefore usually apply to both these scenarios.

3. Issues with the free provision of services clause

The specific way in which the Netherlands has implemented the free provision of services clause seems to provide a sufficient transposition of the obligations of the Services Directive. However, the Instructions on legislation do not form binding

legislation and give competent authorities the right to deviate from the instructions if careful explanations are being given for that. In addition, those Instructions do not apply to local authorities but in order to ensure that municipalities would comply with the Services Directive, model decrees have been issued by the Association of Netherlands Municipalities. Internal remedies can be imposed in case local authorities do not comply with those instructions.

*Examples of requirements that have been maintained*

In the **Crafts and certification sector** several requirements can be identified such as certification organisations and testing laboratories performing certain tasks need to have an establishment in the Netherlands. Inspectors of heating machines must be appointed by the Minister of Infrastructure and Environment. Noise emission inspectors for materials used outdoors need to obtain an accreditation. Certification organisations and testing laboratories where tasks regarding construction guidelines are concerned have to be appointed by the Minister (but service providers from other Member States are also eligible for appointment and accreditation).

In the **retail sector**, the Doorstep Selling Act (*Colportagewet*) used to impose on salespersons not residing in the Netherlands an obligation to date stamp contracts in Rotterdam while salespersons residing in the Netherlands could do this in the municipality where they sold the goods. The date stamp duty has been deleted altogether. Also, the certification of personal equipment and machines sold in supermarkets was abolished. The obligation to have an authorisation or registration for incoming service providers still exists for street selling in The Hague, to trade in live animals, to organise a flea market.

The obligation to have an authorisation or registration for incoming service providers still exists in the **tourism sector** such as for tours with motor vehicles and Foreshore walking.



**POLAND**



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## **I. Points of Single Contact**

The Polish Point of Single Contact consists of an online portal (eu-go.gov.pl) created as a common initiative of the Ministry of Economy (coordinator), the Polish Chamber of Commerce and the Institute of Logistics and Warehousing. The PSC portal is developed within an e-government project called UEPA, which aims to simplify administrative procedures and make them electronically available till the end of 2013. The PSC is integrated to the ePUAP platform (electronic platform for public services). Whereas the PSC page provides the relevant information on requirements and procedures, the actual completion of procedures is carried out through the ePUAP portal.

In terms of information provision, the Polish PSC goes beyond the minimum requirements of the Services Directive. Information provision is in general good but not fully satisfactory as some information is still missing, is not sufficiently detailed (e.g. deadlines, means of redress, supportive documents to be submitted) or too detailed. Information can be access or searched in number of different ways: by type of users, service sectors, thematic index of procedures.

The scope of procedures available online varies and online completion in most cases is not possible yet, but the process of implementing online procedures is still on-going. E-signatures or national solution (so called trusted profile) are required to complete most procedures online, ePUAP platform does not support the foreign e-signatures. The tracking of the procedures and online payment are not possible on PSC portal.

The number of assistance services is available to PSC's users (e.g.FAQ, Helpdesk). These are generally good and easy to use.

The focus groups taking part in the Deloitte's assessment of the PSC expressed a relatively low level of satisfaction with the content on the portal mostly due to the problems with the completion of procedures. Therefore the extension of the scope of available procedures and the possibilities for their full electronic completion is highly recommended.

Improvements should be made also for cross-border provision of services. Although the PSC provides a separate section for temporary provision of services, it is difficult to understand different requirements applicable to foreign service providers.

The test users expressed more positive outlook about the portal's accessibility and in general they found it is easy to use<sup>66</sup>. The Polish PSC is easily accessible and its positioning is very good in search engines. Nevertheless the awareness about the portal is low and needs to be improved in order to increase its uptake by business.

Polish PSC is not translated into other languages, but provides an electronic translation facility. This does not seem to be problematic for the access to information but completion of procedures for foreign user is difficult as they are only available in Polish.

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<sup>66</sup> [http://ec.europa.eu/internal\\_market/services/services-dir/study\\_on\\_points\\_of\\_single\\_contact\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/study_on_points_of_single_contact_en.htm)

## II. Implementation of and compliance with key provisions

### A. Streamlining the regulatory environment for services

#### 1. Requirements applying to providers established or wishing to establish in Poland (articles 14 and 15 of the Services Directive)

Implementation of the Article 14 and 15 of the Services Directive was done through sector specific legislation. The evaluation of the implementation of the Services Directive has revealed that most of the requirements prohibited by Article 14 of the Directive have been removed by changes in the sector specific laws. The requirement still maintained in the Polish legislation concerns the **education sector**: a driving school can only be operated by the entrepreneur having a seat or place of residence in Poland, which constitutes a requirement contrary to article 14 (1) of the Services Directive.

Some requirements where the Directive left a margin of appreciation to Member States to streamline the regulatory environment for establishment of providers and which are foreseen in article 15 of the Directive have been identified. The obligation for the legal professionals and tax advisors to be exercised by natural persons or partnerships has been made less stringent by allowing additional option of a joint-stock limited partnership. For patent agents and tax advisors additional legal forms of joint stock and limited liability companies are available (those are coupled with the shareholding requirements: majority of votes and shares must belong to the members of the relevant profession, the majority of the members of the management board need to be the members of the profession, the sale of the shares requires the approval of the management board). For patent agents, solicitors and advocates minimum tariffs have been identified.

#### 2. Tacit approval of authorisations (article 13(4) of the Services Directive)

Poland introduced a tacit approval of authorisations through Article 46 (7) of the horizontal law, which amends the Act of 2 July 2004 on the Freedom of Economic Activity (FEA). FEA is the main act governing the performance of economic activity on the territory of Poland. According to this change tacit approval constitutes a general rule unless the law stipulates otherwise. If the authority fails to decide on the application within the indicated time limit set, it is deemed that the authority has decided as requested by the entrepreneur, unless the provisions of specific acts provide otherwise due to overriding reason relating to the public interest. The Polish code on administrative conduct stipulates the general rule that the bodies of public administration should deal with the matters without unnecessary delay. This is not however a fixed and clear period.

The Act of 4 March 2010 foresees also exceptions to the rule on tacit approval for specific activities. The exception to the rule on tacit approval concerns: training services for the aviation personnel, provision of aviation services other than air transport, wholesale sale of alcoholic beverages above and below 18%, sale of alcohol for inside and outside consumption, authorisation for the sale of alcohol for the reception organizers.

#### 3. Total prohibition of commercial communications (article 24 of the Services Directive)

Article 8 of the Act of 4 March 2010 conforms to the provisions of article 24 of the Directive, which does not contain any prohibitions on the commercial communications

by the regulated professions. In Poland rules on commercial communication are often stipulated in the rules issued by the professional association.

## **B. Boosting cross-border trade**

### 1. National implementation

Poland implemented Article 16 of the Services Directive in Article 4 of the PSA (horizontal legislation). The article introduces a general rule that service providers from other Member States may temporarily provide services in the territory of Poland, without having to be entered in any business register. The same Article specifies that temporary provision of services may be subject to the requirement to obtain a certificate (*certyfiakat*), concession (*koncesja*), licence (*licencja*), authorisation (*zezwozenie*), approval (*zgoda*), entry in the register of regulated activity (*wpis do rejestru dzialalnosci regulowanej*) or to other appropriate register if the provision of the specific law imposes such obligation on the grounds on public policy, public security, and protection of public health or the environment.

Only one of the principles listed in article 16(1) of the Services Directive, the principle of necessity is mentioned in the PSA. The horizontal legislation does not mention the principle of proportionality and non-discrimination. No examples of provisions that would directly or indirectly discriminate against service providers from another Member States were found in Polish legislation. As regards the principle of proportionality, there are still provisions in the Polish legislation which contradict it.

### 2. Distinction between freedom of establishment and free provision of services

The legislation does not provide for a clear distinction between a service provider that wants to establish a business in Poland and a service provider wishing to provide temporary cross-border services. Poland has introduced provisions for temporary provision of services in some sector specific legislation (e.g. Act on Detective Services, Postal Law, Act on Plant Protection). However in most cases this distinction is missing.

### 3. Issues with the free provision of services clause

The implementation of the Article 16 raises certain doubts regarding the interpretation of the implementing provision especially in reference to the provision stating that temporary provision of services may be subject to the requirement to obtain a certificate, concession, licence, authorisation, approval, entry in the register of regulated activity or to other appropriate register if the provision of the specific law imposes such obligation on the grounds on public policy, public security, and protection of public health or the environment. Two possible interpretations emerge. First interpretation is straightforward and requires an explicit statement in the specific law that a rule also applies to cross-border services. The second possible interpretation stresses that certain rules can be applied to cross-border services, irrespective of whether relevant law states explicitly that the rule also applies to such services. It has been noted that this may lead to confusion and also different interpretation and arbitrarily application by the authorities to cross-border service providers. Taking into account that most of sectoral legislation does not make a distinction between the establishment and temporary provision of services, it

is probable that competent authorities will apply the same rules to national and cross – border service providers.

#### *Examples of requirements that have been maintained*

Most requirements which have been maintained concern the education, the tourism and the crafts, construction and certification services sectors.

In the **crafts, construction and certification services**, the authorisation is required for the provision of the services of repairing or modernisation of technical devices as well as manufacturing of materials and elements used in the modernization or repair by service providers from other Member States. This requirement was added by the horizontal legislation implementing the Services Directive (PSA).

As for the **tourism sector**, requirements regarding registration and possession of a special identity document could be identified. Travel operators and travel agencies are required to enter into register of regulated activity maintained by voivodship marshal. The entry into register (register of organizer of trainings for candidates for tourist guide and tour guide) is also required for providers of training to travel guides and tour guides.<sup>67</sup> Obligation to possess special card ("*legitymacja*") and ID ("*identyfikator*") is foreseen for tourist guides and tour guide. These documents should be displayed by the tourist guide and tour guide when performing their duties as a confirmation of their competences.

In the **education sector** driving schools operators have an obligation to have establishment and enter into register of regulated activity maintained by starosta. A number of requirements have been identified in particular for the provision of vocational training leading to professional qualifications. The requirement to enter in the relevant register have been identified for service providers : conducting additional training for drivers licence, conducting training for the purpose of road transport and providing training on plant protection. Service providers wanting to provide training to recreational managers and camp counsellors must obtain approval from the regional educational authority ("*kuratorium oświaty*"). Providers of special courses for the trainers (first degree, second degree and master degree trainer) are required to obtain the approval of the Minister of Physical Education.<sup>68</sup> Additionally service providers providing training to drivers for the purpose of road traffic, service providers conducting additional training for driving licence holders, service providers providing training for drivers transporting hazardous goods, services providers providing training for the railway carriers transporting hazardous goods, and service provides conducting trainings for operators of machines and other technical instruments for soil moving, construction and road – building works are obliged to have facilities and teaching equipment, which seems to be contradictory to the rule of proportionality provided in Article 16 (1) of the Services Directive.

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<sup>67</sup> The proposal for the Act on the changes to the acts regulating the exercise of some professions contains the deletion of this requirement, except for mountain tourist guides.

<sup>68</sup> The proposal for the Act on the changes to the acts regulating the exercise of some professions contains the deletion of this requirement.



## I. Points of Single Contact

The setting up of the Portuguese point of single contact ([www.portaldampresa.pt](http://www.portaldampresa.pt)) is progressing well. Work for the setting-up of the Point of Single Contact is currently being undertaken in the context of the follow-up of the “Memorandum of Understanding for Portugal on specific economic policy conditionality” (MoU) dated 3 May 2011.

Portugal had **well-established business portal for the creation and registration of companies** (*Portal de Empresa*). This portal provides well-functioning handling services related to company registration, As regards information and completion of other procedures granting access to a service, it appears that at the time of the assessment commissioned externally and which has been integrated in this report the point of single contact was undergoing some restructuration and the procedures under the Service Directive could not be assessed properly. As of the end of October 2011 however, **information on procedures governing access to services have been available for many sectors**. The lay-out of the information presentation has been recently modified to give a more clear view of requirements applicable to established and to cross-border service providers. Updates on the legal framework applicable shall be updated as soon as all the pending sector-specific amendments are adopted in the months to come. For the moment, information is presented in Portuguese and automatic translation tools into other languages are offered to users. Work is to be undertaken to improve the quality of these translations.

**Online procedures are available for a number of services but work to extend them further should be continued and enhanced.** This work needs to await for sector-specific amendments that are to be adopted in the next months. Work should be continued to facilitate cross-border completion of procedures and to ensure that procedures to start a business or to provide services have a sufficient degree of detail and of electronic availability in all locations, types of activity and competent authority.

The PSC authorities **cooperate with competent authorities** (at national and at local level) to ensure that the workflows of the procedures are correctly transposed into the PSC, in particular in the context of the Zero Licensing Project for retail and food and beverages. For this purpose authorities are also receiving training on the application that supports the back-office, to empower the different authorities with the necessary knowledge to make small changes in the workflow, when required due to changes in legislation. This collaboration needs to be stepped up as a matter or urgent to allow for the faster integration of procedures in the PSC.<sup>69</sup>

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<sup>69</sup> [http://ec.europa.eu/internal\\_market/services/services-dir/study\\_on\\_points\\_of\\_single\\_contact\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/study_on_points_of_single_contact_en.htm)

## II. Implementation of and compliance with key provisions

The implementation of the Services Directive in Portugal required a very significant amount of legislative work, which is currently still on-going within the context of the financial aid monitoring under close scrutiny from the Commission services. Due to the on-going state of the reforms, the picture below may not be updated.

The main act transposing the Services Directive into Portugal is a **horizontal law**, Decreto-Lei 92/2010, whose provisions prevail over sector specific laws, either national, regional or local, regulating specific services

The Portuguese authorities are still in the process of completing a **very significant number of sector-specific amendments** to ensure that requirements in sector-specific legislation are adapted to the Services Directive. These sector-specific amendments were partly contained in the horizontal law but are mostly being carried out through amendments of specific acts.

- Firstly, the Portuguese horizontal law expressly amends legislation in the following sectors: thermal management (DL 142/2004); activity of dolphin and whale watching in the waters of Portuguese mainland (DL 9/2006); quality of drinking water (DL 306/2007); municipal services of public water supply, wastewater disposal and urban waste management (DL 194/2009); multi-municipal services of public water supply and urban waste management (DL 379/93); and incineration or co-incineration of waste (DL 85/2005).
- In addition, a significant number of sector-specific amendments has been adopted by specific acts which have amended the Corporation Code (DL 49/2010) with a view to removing an establishment requirement which applied in a cross-cutting manner, the industrial property agents (Law 17/2010) to allow for the provision of services in Portugal to providers established in other Member States, leisure activities (DL 32/2011), holiday products (DL 37/2011); the “Zero Licence” (DL 48/2011), travel and tourism agencies (DL 61/2011), construction and real estate agents (DL 69/2011), waste landfills, cartographic production and abstraction of groundwater (DL 84/2011) and funeral services (DL 109/2010), DL 77/2011 on marketability of natural gas in free market, amending DL 30/2006, DL 78/2011 on marketability of electricity in free market, amending DL 29/2006, DL 99/2011 amending DL 64/2007 on Social Support Institutions, nature tourism establishments (Portaria 47/2012, water parks (DL 86/2012) and EMAS Auditors (DL 95/2012).

Finally, it is worth noting that under the above-mentioned MoU of 3 May 2011, the Portuguese authorities agreed to adopt the remaining necessary amendments at the time with a view to modifying the sector-specific legislation to fully implement the Services Directive. Portugal committed to adopt new legislation in the first semester of 2012. It is **of utmost importance that all the pending reforms which have accumulated significant delays are completed as soon as possible.**

## A. Streamlining the regulatory environment for services

### 1. Requirements applying to providers established or wishing to establish in Portugal (Articles 14 and 15 of the Services Directive)

The implementation of the Services Directive is resulting in general in a very significant reduction of administrative burden in Portugal. A very significant number of authorisations have been transformed into prior declarations and a considerable number of requirements applicable to the access and exercise of an activity have disappeared.

As regards **Article 14 requirements**, Article 11 of Decreto Lei 92/2010 which prevails over sector-specific legislation reproduces the prohibition contained in the Directive. Further to the on-going implementation of the Services Directive, it would appear that this type of requirements can no longer be identified in sector-specific legislation. In particular, it appears that numerous requirements that did not recognize insurance acquired in other Member States have been removed from sector-specific legislation (construction, real estate, tourism).

As regards Article 15 requirements, which need to be subject to a necessity and proportionality criterion, many examples of them can still be found in sector-specific legislation.

The obligation to take a **specific legal form** in Portugal is applicable to sectors like tourism (car rental), pending elimination, and private higher education. A legal form requirement formerly applied to real estate agents was eliminated.

Requirements on **capital shareholding** have been identified for certain highly regulated professions (regulated professions, in particular lawyers and accountants).

In Portugal, a **minimum number of employees** is required for construction, technical services (inspection and maintenance of lifts, skip hoists, escalators and moving walkways), installation of gas networks, placement agencies (all in the process of being amended) and also for diving services, holidays camps and whale watching.

**Maximum tariffs** exist for the servicing of lifts, escalators and moving walkways and for the inspection of gas distribution networks and premises in buildings.

### 2. Nationwide validity of authorisations (Article 10(4) of the Services Directive)

For the authorisations that remain in the Portuguese legal order, simplification has been ensured by the horizontal law transposing the Services Directive. For example, the national validity of authorisations has become a **general rule** through Article 17, paragraph 1 of Decreto-Lei 92/2010. The regime for tourist guides in the autonomous regions has however not been adapted to this requirement so the application of the principle will need to be ensured through the horizontal law.

The Portuguese authorities are planning to go beyond the rule foreseen in the Services Directive and to extend national validity to other procedures such as the notifications foreseen in the Professional Qualifications Directive in the context of reforms of Lei 9/2009 on the recognition of qualifications which is being monitored under the MOU. Also the notification shall be valid indefinitely in time, except for those professions belonging to the security sector.

3. Tacit approval of authorisations (Article 13(4) of the Services Directive)

Tacit approval has become the **general rule** under Article 9, 2 (b) of the Decreto-Lei 92/2010 unless an overriding reason of general interest justifies the contrary. Article 9(2) of DL 92/2010 cross-refers to the tacit approval regulated in the Portuguese Administrative Procedure Code. Examples of non-tacit approval remain in sector-specific legislation, in particular in the area of private higher education, aerial services and weapon sales.

4. Total prohibition of commercial communications (Article 24 of the Services Directive)

The prohibition of total bans on commercial communications has been laid down in Article 14, paragraph 1 of Decreto-Lei 92/2010. Article 14(1) of DL 92/2010 bans the conditions which impose an absolute prohibition of commercial communication with regard to the regulated professions. There may be still be some cases of total prohibition of commercial communications laid down in the **statutes of professional orders** (for example, that of veterinaries). These remaining restrictions should be addressed in the context of the on-going reform for professions whose regulation involves a professional body which is currently under preparation in the context of the MOU.

**B. Boosting cross-border trade**

As a starting point, it should be indicated that Portuguese legislation made no difference at all between requirements that can be applied to established service providers and those that can be applied to cross-border service providers before the implementation of the Services Directive (with a notable exception in law governing tourism services). This resulted in a high administrative burden which rendered the provision of services in the Portuguese territory very difficult. Several examples of this were challenged successfully before the European Court of Justice.

1. National implementation

Once the implementation of the Services Directive will be completed in Portugal, the structure of Portuguese legislation shall adequately reflect the two freedoms foreseen in the Treaty. Sector-specific legislation in the area of services shall clearly distinguish between requirements applicable to established service providers and to cross-border ones. This novelty should be welcome as a very significant progress in the alignment of Portuguese legislation with the internal market principles.

As regards the implementation of Article 16 of the Services Directive in Portugal, it is being ensured both through the horizontal law transposing the Services Directive and through exhaustive sector-specific amendments. Certain doubts were raised at some point as to whether the implementation of Article 16, paragraph 1 is clear enough in the text of the horizontal law. While the implementation of the general principle and of its application to requirements listed in Article 16, paragraph 2 of the Directive leaves no doubt as to its correction, questions may therefore arise as to whether the implementation of Article 16 of the Services Directive also extends to any other conditions on the exercise of the activity, such as insurance obligations, tariffs, and restrictions on the provision of multidisciplinary services or legal form requirements, for example, when

these are not checked through a prior authorisation or declaration<sup>70</sup>. The theoretical question of whether such requirements can be applied to cross-border service providers and, if yes, under what conditions remains. However, to the extent that sector-specific legislation is being exhaustively amended in Portugal this margin of doubt should have a very limited impact or none.

## 2. Distinction between freedom of establishment and free provision of services

The horizontal law implementing the Services Directive in Portugal contains definitions which correspond to those of the Services Directive and which should largely ensure a correct distinction of the situation of established and cross-border service providers. Furthermore, most sector-specific legal frameworks currently differentiate between provisions applicable to established service providers and to cross-border service providers, which should help guarantee a correct understanding of the distinction by competent authorities called to implement requirements laid down in those regimes.

## 3. Issues with the free provision of services clause

As indicated above, sector-specific amendments currently on-going are bringing significant changes to the Portuguese legal framework applicable to cross-border service providers.

An important amendment that has an impact in all sectors has been the elimination in the *Código das Sociedades Comerciais* (Corporate Code) of the obligation that previously applied to companies that were not established in Portugal but want to provide services there for more than one year to open up a representation (a branch or agency) in Portugal. This is no longer the case for cross-border services. An establishment requirement in the tourism sector (car rental) is in the process of being abolished.

**Authorisations** were applied for cross-border provision amongst others in following sectors **construction, real estate, aerial photography, ticket sales, market salespersons, car rental without a driver, placement services and driving schools.** **Insurance requirements** have also been reported as being applicable to both established and cross-border service providers alike in respect of several service activities, such as accountants and statutory auditing, construction, real estate agencies, servicing of lifts, escalators and moving walkways, travel agencies.

Further to the implementation of the Services Directive, authorisations for travel agencies have been lifted. Authorisation for cross-border service providers in the areas of construction, real estate and placement services are in the process of being replaced by prior declarations. Authorisations for ticket sales, market salespersons and car rental without a driver are to be eliminated altogether. Some authorisations for cross-border services shall, however, be maintained in very sensitive areas such as weapon sales,

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<sup>70</sup> Different interpretations can be held in this regard. Articles 4(1) and 4(3) of DL 92/2010 need to be read together with its Articles 8(1) and 8(2)(a) and (b) which clarify the meaning of “administrative authorisation” and “prior communications”. The administrative authorisations can be, namely, licences, authorisations, validations, authentications, certifications, acts issued after a prior communication. This definition contains only examples of what is included. The expression “authorisation” mentioned in Article 4(3) of DL 92/2010 could refer to all possible kinds of requirements. However, one could also take the view (in light of the cross-reference to the definitions in Article 8) that it only relates to requirements on access to the activity such as authorisation schemes or equivalent.

whale watching, aerial services and private higher education. Insurance requirements in the area of construction and travel agencies are also being or have been significantly simplified with the purpose of rendering cross-border service provisions easier. In other instances they are being removed entirely (real estate).



ROMANIA



## I. Points of Single Contact

The Romanian Point of Single Contact even if technically operational cannot be considered as fully functioning at the moment: the e-identification requirements are such that it is only accessible to Romanian entities or individuals. Furthermore, the content is rather basic. Currently there are 45 procedures available online.

For the time being, only the use of the Romanian language has been envisaged, with assurances from the authorities that translation in other languages will be provided and gradually added. The user's guide in English is available on the PSC but it is difficult to locate as it needs to access through links in Romanian.

In addition, the Romanian authorities are not in compliance with the relevant Commission Decisions with regard to the establishment, maintenance and publication of trusted lists of certification service providers supervised/accredited by Member States.<sup>71</sup>

The **major obstacle to the completion** of the Romanian Point of Single Contact has been the lack of designation of a coordinating entity and the **lack of buy-in to the process from the relevant competent authorities**. However, such ownership is crucial if the staff in the related competent authorities are to be trained and instructed to input and update the relevant information on the Point of Single Contact site. So far this issue seems not to be resolved in a satisfactory manner, which is delaying the development of the PSC.

The portal was not available at the time of the testing done by the Deloitte therefore its usability has not been assessed.<sup>72</sup>

These issues have been raised repeatedly with the relevant Romanian authorities and have been included in the Memorandum of Understanding but to date without much success.

## II. Implementation of and compliance with key provisions

Romania has adopted a horizontal law (Government Emergency Ordinance 49/2009 approved by Law 68/2010) as well as sector-specific laws. A total of 62 national measures have been adopted, mainly in the following sectors: construction, services for installations and equipment's, tourism and some regulated professions.

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<sup>71</sup> Decision 2009/767/EC, as amended by Decision 2010/425/EU.

<sup>72</sup> [http://ec.europa.eu/internal\\_market/services/services-dir/study\\_on\\_points\\_of\\_single\\_contact\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/study_on_points_of_single_contact_en.htm)

## A. Streamlining the regulatory environment for services

### 1. Requirements applying to providers established or wishing to establish in Romania (articles 14 and 15 of the Services Directive)

Concerning prohibited requirement, two were identified in the retail area: an economic needs test and the involvement of competitors in the authorisation procedure for the opening of large surface **retail** stores. This issue has been raised with the Romanian authorities who have communicated draft legislation addressing this failure. The required legislative amendments have not been adopted yet. The elimination of these requirements has also been included as a condition in the MoU. In the area of education, a provider established in another Member State can only choose to set up a branch in Romania and is not able to set up another form of establishment.

As regards requirements where the Directive left a margin of appreciation to Member States to streamline the regulatory environment for the establishment of providers only a few of such requirements remain in the Romanian legislation except for the legal form requirement, which seems to be applied both in cases of **professional services** that rely on the personal involvement of the professional (such as services provided by lawyers or tax advisors) and where they are doubled by shareholding requirements.

### 2. Tacit approval of authorisations (article 13(4) of the Services Directive)

Romania had adopted a generally applicable law introducing the principle of tacit authorisation in respect of administrative authorisations prior to the implementation of the Services Directive by a horizontal act in order to cut red tape and to facilitate the operation of businesses in Romania.

However, this legal act states that each administrative authority should publish at its main office and also on the website the specific cases of authorisation where the tacit approval procedure is applicable. Taking into account this provision, it may be considered that the tacit approval procedure is not enforced automatically, but that each relevant authority should decide and communicate upon how it envisages applying the said procedure.

Sector specific legislation was amended in order to specify where tacit approval applies (for example in the case of works in the field of fight against fire). Moreover, a reference to the authorisation procedure provisions of the horizontal law implementing the Services Directive was explicitly introduced for external services for the prevention and protection of labour health and safety and legal metrology, which would presumably mean that tacit authorisation applies. In addition, some sector specific acts (especially in the tourism sector) make a special reference to the application of the general rules of the horizontal law implementing the Services Directive, which would complete the sector specific legislation. In this case, it can be assumed that the tacit authorisation would also apply.

Nevertheless, for most services sectors no specific provisions on tacit authorisations were adopted and serious doubts remain as it is not clear how the general tacit authorisation principle mentioned in the horizontal act would be applicable in practice.

### 3. Total prohibition of commercial communications (article 24 of the Services Directive)

No total prohibition of commercial communications has been identified.

## **B. Boosting cross-border trade**

### 1. National implementation

Romania reproduced in its horizontal legislation the text of Article 16(1) and (3), which seems to imply that, if sector specific legislation does not make a distinction between established and cross-border providers, a case-by-case analysis (implying justification and proportionality) is needed.

However, according to the information available to Commission services, concerns remain as to the practical implementation of this provision. Actually, in Romania, a general principle of legal interpretation says that sector-specific legislation would prevail over the free movement clause introduced by the horizontal law (*lex specialis* prevails). It would seem that in case the specific law is silent over certain aspects, the general law could be used to complement the specific regulation but could not reverse conflicting provisions. However, general laws are also other laws than the one transposing the Services Directive such as the law on the trade register, which requires an establishment. No information has been provided as to the relationship between the different laws and how the competent authorities implement in practice the freedom to provide services principle. Nevertheless, it should be pointed out that the Romanian legislation recognises in Article 148 of its Constitution the primacy of EU law. Thus, an horizontal law implementing a European directive would take precedence over conflicting provisions contained in national legislation.

No information is currently available on which of these interpretations would be followed in practice by competent authorities or Romanian courts.

### 2. Distinction between freedom of establishment and free provision of services

The Romanian legislation does not provide for a text making a clear distinction between services provided through an establishment or cross-border on temporary basis so the principles set by the European Court of Justice would apply.

Specific legislation sometimes includes separate provisions for the cross-border providers but without indicating specific means of identifying them. Nevertheless, no problems seem to be arising in practice due to this distinction.

### 3. Issues with the free provision of services clause

Concerning cross-border trade, serious concerns are raised by the fact that it seems that for any services in **all sectors** where the sector specific legislation does not expressly provide for cross-border service provision, the specific rules will be complemented with the rules set out in the general transposition rules which could lead to requiring an establishment and registration with the Romanian trade register.

#### *Examples of requirements that have been maintained*

In the **professional services sector**, a special identity card is required for fiscal advisers. An establishment requirement and an authorisation are requested for legal advisers, architects, tax advisors and patent lawyers. Separate rules exist when these services are provided by professionals organised as a company.

In the **crafts, construction and certification services sector**, there establishment, authorisation and legal form requirements have been maintained, coupled with a restriction for the self-employed, for services that involve boilers, pressure vessels and hoisting equipment as well as for providers that design, execute, audit and exploit the electrical installations from the electro-energetic system. Moreover, for individuals performing the actual works in some technical professions that involve boilers, pressure vessels and hoisting equipment, the person has to have previous experience in Romania. A special identity card is required for authorised electricians, operators responsible for the technical supervision and verification for the use of the installations or equipment, specialised technical staff, energy auditors and technical auditors in the field of the protection of historical monuments.

No specific law exists for the **real estate sector** and thus service providers (national and cross-border) have to comply with the general provisions imposing, amongst others, an obligation on services providers to have an establishment in Romania in order to be registered in the Romanian trade register.

Concerning the **retail sector**, Romania requires that legal persons involved in retail are established in Romania.

In the **tourism sector**, an establishment is required for travel agencies and a special identity document for tourist guides. In Romania, authorised tourist guides must wear a special and customized badge. However, this requirement does not apply to foreign tourist guides accompanying groups of foreign tourists.

As far as the **education sector** is concerned establishment and authorisation in Romania are required for education in general, as well as for professional training for adults (authorisation required only for those wishing to issue certificates with national recognition) and driving schools (in addition to requirements affecting the use of equipment).

#### *Use of exceptions article 17*

In respect of the scope of application of Article 16, Romania **excluded the services of architects and veterinarians from the application of Article 16**, in contradiction with the limited exceptions provided in Article 17 of the directive.



**SLOVAKIA**



## **I. Points of Single Contact**

Although Slovakia has had physical PSCs in place since 2007 its online Point of Single Contact (PSC) has only been available to the public since January 2012, therefore any assessment of the availability and quality of information and procedures on the site can only be a preliminary one.

The Slovak PSC offers a wide range of information on the majority of procedures that businesses would need to complete. With regard to language support, only general information is available in English. While the online forms are very helpfully provided in a bilingual form, business users may find it difficult to identify the appropriate procedures and find the relevant forms as most of the detailed information is available in Slovak only.

In terms of electronic completion of formalities, the Slovak PSC makes use of integrated online forms which are used to centralise the information collected and to forward it on to the relevant competent authorities for further processing. This system is perceived as very user-friendly. Procedures that cannot be dealt with through this system and for which there is no electronic support concern mainly those dealt with by local authorities. Where necessary, scanned documents can also be attached to the relevant forms. E-signatures are required for the submission of forms and the completion of procedures, and currently Slovak and Czech e-signatures can be accepted. Electronic payment is not supported, but instructions for credit transfers are given.

However while it largely fulfils the requirements under the Services Directive it does not entirely meet businesses' needs in that it does not include information on social security and also on procedures that fall under the responsibility of local authorities, which are particularly important in the restaurant and catering sector. User testing of a pilot version of the PSC<sup>73</sup> indicated that there is no clear distinction made between foreign businesses considering permanent establishment and those considering temporary cross-border service provision, but improvements have been made to the site in recent developments.

## **II. Implementation of and compliance with key provisions**

Slovakia transposed the freedom to provide services provision of the Services Directive through both horizontal and sector-specific legislation. The horizontal law contains general provisions regulating the performance of the specific activities, the procedure for submitting applications for authorisation, the procedure for the granting of authorisation, and the performance of supervision. This law applies to all circumstances unless otherwise provided by sector-specific legislation.

Slovak legislation provides that a cross-border service provider may provide services in the territory of the Slovak Republic if he/she complies with the conditions set under the laws of the Member State of establishment, unless the relevant Act provides otherwise,

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<sup>73</sup> [http://ec.europa.eu/internal\\_market/services/services-dir/study\\_on\\_points\\_of\\_single\\_contact\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/study_on_points_of_single_contact_en.htm)

and that a service provider shall be obliged to ensure that the same conditions of access to services apply to all recipients of such services regardless of their nationality, place of permanent residence or registered office. In line with the Services Directive, it further sets out that the imposition of requirements for the provision of services by cross-border services providers may only be justified for reasons of public policy, public security, public health or environmental protection.

#### **A. Streamlining the regulatory environment for services**

##### 1. Requirements applying to providers established or wishing to establish in Slovakia (articles 14 and 15 of the Services Directive)

The evaluation of the implementation of the Services Directive has revealed that there do not seem to be any prohibited requirements in Slovakia.

As regards requirements where the Directive left a margin of appreciation to Member States to streamline the regulatory environment for the establishment of providers and which are mainly foreseen in article 15 of the Directive, a few of such requirements have been maintained with regard to legal form and shareholding, particularly in the professional services and education sectors.

In the **professional services** sector, lawyers from other EU Member States operating in (but not established in) Slovakia cannot be members of associations, partners of public commercial companies or limited partnership companies, and cannot be partners and representative agents of limited liability companies. Tax advisors in the form of legal persons can only be in the form of public commercial companies or joint-stock limited partnerships where registered tax advisors have at least 75% of the capital or voting rights. Architects and engineers are subject to shareholding requirements, whereby they may establish companies to provide their services only if they hold a majority of the shares of the company. Insolvency administrators have fixed maximum tariffs. Only natural persons can act as mediators.

In the **real estate** sector, only natural persons can provide the services of land surveyor and cartographer, where the result serves for public or municipal/local authorities.

And as regards **education**, entities providing certain training services in the area of health and safety in the workplace must be established as legal persons.

##### 2. Tacit approval of authorisations (article 13(4) of the Services Directive)

The concept of tacit approval was introduced in the horizontal legislation implementing the Services Directive in Slovakia. In accordance with the wording of the Services Directive, the Slovak horizontal law has left open the possibility for competent authorities to put different arrangements in place but sector-specific legislation does not appear to have been amended to specify such different arrangements.

As a result, areas in which there do not appear to be any possibility for tacit approval include the authorisation of architects, insolvency practitioners, patent agents, interpreters and translators, urban planners and construction engineers, geological excavation and mining practitioners, geodesists, cartographers and metrologists, education and further education providers and driving schools.

3. Total prohibition of commercial communications (article 24 of the Services Directive)

No total prohibition on commercial communications has been identified.

**B. Boosting cross-border trade**

1. National implementation

Article 8(1) of Slovakia's horizontal law implementing the Services Directive (Act 136/2010) provides that a cross-border service provider may provide services in the Slovak Republic if he complies with the conditions set in his Member State of establishment, unless the Act provides otherwise. It further sets out that the imposition of requirements for the provision of services by cross-border services providers may only be justified for reasons of public policy, public security, public health or environmental protection. However although cross-border provision is dealt with in sector-specific legislation, there are a number of authorisation schemes which also seem to apply to cross-border service providers. These include: tax advice, insolvency administration, mediation, interpretation and translation services, surveying/ cartography, pollution prevention and control, environmental management and audit, and real estate activities.

2. Distinction between freedom of establishment and free provision of services

A distinction is made between the requirements applicable to foreign service providers wishing to establish in Slovakia and those wishing to offer their services on a temporary cross-border basis, whereby businesses establishing in Slovakia must notify the authorities, and unless stated differently in the applicable sector-specific law, can start providing their services on the day of notification. This obligation does not, in principle, apply to cross-border service providers, unless provided for in sector-specific legislation, in which case cross-border providers can use using a specific notification form available on the website of the Ministry of the Interior.

3. Issues with the free provision of services clause

In principle, cross-border service providers have the right to provide services in Slovakia if they comply with the conditions set in their Member State of establishment. However given that sector-specific legislation co-exists with the horizontal legislation, service providers would need to verify if additional requirements apply in the sector-specific laws (which may only be permitted for reasons of public policy, public security, public health or environmental protection).

*Examples of requirements that have been maintained*

As regards the **professional services sector**, insolvency administrators are obliged to register in the list of insolvency administrators in order to act in bankruptcy and rescheduling proceedings. Architects are required to register. Patent attorneys are subject to a notification procedure in which they are obliged to disclose the presumed time during which they will provide their services.

Most **construction-related services** are considered to be regulated professions in Slovakia and rules applicable to them are set out in sector-specific legislation. Construction safety coordinators must pass an examination for construction manager,

construction inspector or safety technician. It is not clear whether foreign entrants need to pass such examinations or if they can benefit from recognition of their qualifications. Prior authorisation or registration is required for construction-related services including gas installation and technical certification of building products. The restoration of cultural monuments and works of art is also subject to prior registration.

In the **education** sector, there are authorisation requirements in the area of vocational training with regard to mining safety, worker safety, fire prevention, environmental management and audit and industrial accident prevention. Furthermore driving schools are obliged to register.



**SLOVENIA**



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## **I. Points of Single Contact**

The Slovenian PSC cannot be considered as fully functioning at the moment: it is based on the e-Government portal available for online registration of businesses.

The current Slovene portal provides very limited information and services to complete the relevant types of administrative requirements. In general the portal offers on-line registration of a company and it provides limited information necessary for the start-up of the business.

The current Slovene PSC allows the full online completion of some administrative tasks, connected to registration of a company and most common supporting procedures. However, the required infrastructure to ensure compliance cross-border acceptance of e-ID and e-Signatures still has to be implemented. Currently, foreign business cannot submit online applications, if they do not obtain Slovenian tax number and a digital certificate of the certification authority of Republic of Slovenia. The Ministry for Justice and Public Administration, responsible for horizontal measures and central key-enablers in the field of e-government, is developing a Central authentication system to support authentication of foreign users, taking into account also the solutions from the large scale pilot STORK.

The current portal offers several email contacts based on different competent authorities. Areas covered are registration, business license, taxes and social security, crafts and construction. Online help is available by email and phone. In order to take into consideration the user needs, the portal collects regularly their feedbacks and experiences through different methods.

The overall use and usability of the Slovenian PSC is perceived to be below the average<sup>74</sup>. The foreign users cannot use the portal while for domestic users it is simpler to go to the physical contact point. Improvements could be made concerning the availability and completeness of procedures and information, the structure, the clarity and accessibility of the information provided and user-friendliness, especially for the foreign users. However, the new PSC under development is planned to profoundly modify this situation and to provide full information for domestic and foreign users in Slovene and English.

## **II. Implementation of and compliance with key provisions**

After a promising start with the adoption of the horizontal implementing law, the implementation work got seriously delayed regarding the adoption of all amendments to sector-specific legislations.

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<sup>74</sup> [http://ec.europa.eu/internal\\_market/services/services-dir/study\\_on\\_points\\_of\\_single\\_contact\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/study_on_points_of_single_contact_en.htm)

## A. Streamlining the regulatory environment for services

### 1. Requirements applying to providers established or wishing to establish in Slovenia (articles 14 and 15 of the Services Directive)

No prohibited requirement has been identified in the Slovenian legislation for any of the assessed sectors.

As regards requirements, where the Services Directive left a margin of appreciation to Member States to streamline the regulatory environment for the establishment of providers and which are mainly dealt with in Article 15 of the Directive, a number of such requirements have been maintained. They concern professional services and the real estate sector.

Concerning **professional services**, requirements relating to shareholding of companies can be found for lawyers: the ownership of lawyers' offices is reserved only to lawyers. Collecting societies must also be organised as non profit organisation. In addition, lawyers are subject to minimum tariffs while insolvency practitioners must respect minimum and maximum tariffs.

In the **real estate sector**, the law prescribes maximum tariffs to be complied with by real estate agency services<sup>75</sup>.

### 2. Tacit approval of authorisations (article 13(4) of the Services Directive)

Tacit approval, an important mean to cutting red tape, as it foresees that an authorisation will be deemed to have been granted to the provider in case an application has not received any response within the set time period, has been implemented via the Act on services in the Internal Market (horizontal implementing law of the Services Directive) and in certain areas of sectoral legislation (10acts), where it actually applies. However, where sector specific laws have not been amended, certain doubts remain as to the practical effects of the tacit approval principle provided in the Act on services in the Internal Market

### 3. Total prohibition of commercial communications (article 24 of the Services Directive)

The Slovenian horizontal implementing law has implemented this article of the Services Directive. In addition, the Act on Media lays down a general presumption that advertisement activities should be free for all professions unless limited by law. No total prohibition on commercial communications for regulated professions has been identified in sector-specific legislation.

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<sup>75</sup> 4 % of the price of the property which is being sold

## **B. Boosting cross-border trade**

### 1. National implementation.

The core chapter of the Directive on the freedom to provide services has been transposed into Slovenian law by the combination of a horizontal law (the Act on the Services in the Internal Market) and amendments to sector-specific legislation.

The Act on the Services in the Internal Market implements generally the principles set out in Article 16 of the Services Directive, i.e. that requirements can be imposed on incoming service providers only if such requirements are non-discriminatory, are justified for reasons of public policy, public security, public health, or the protection of the environment, and are proportionate to the objectives pursued. However, this Act does not amend directly sector-specific legislation.

Only 15 legal acts seem to have been amended to implement the freedom to provide services clause, but the rest of the Slovenian sector-specific legislation has not been modified.

### 2. Distinction between freedom of establishment and free provision of services

The implementation approach in the sector-specific legislation might be incomplete. Actually, the proper implementation of the freedom to provide services clause requires the conformity of sector-specific legislation with the Services Directive since the horizontal law has no precedence over sector-specific legislation.

### 3. Issues with the free provision of services clause

Most sector-specific legislation does not seem to distinguish between establishment and cross-border provision of services. Thus it seems that the requirements in force (authorisations or registrations) could apply for both categories of service providers. In addition, in some sectors (chimney-sweepers, operational monitoring), it seems that providers from other Member States cannot provide cross-border services. They are reserved to selected providers in Slovenia.

According to the results of the study, in the sector of crafts, the competent authorities seem to abstain from requiring craft permits required in the sector-specific legislation in order to comply with the freedom to provide services clause.

#### *Examples of requirements that have been maintained*

In the sector of **crafts, construction and certification services**, the law does not make any distinction between established and cross-border providers: both have to acquire a craft permit to provide craft services<sup>76</sup>. However, in practice it seems that the Small Crafts Chamber does not require craft permits or registration in case of cross-border provision of service. Regarding the certification services, the legal acts again do not provide specific provisions for the cross-border provision, implying that the same requirements are applicable as those for established providers.

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<sup>76</sup> The law explicitly states that the qualifications and previous work experience which were acquired in other Member States are recognised in Slovenia.

As far as **real estate services** are concerned, the legislation in the real estate sector was amended to implement the Services Directive. An easier access for cross-border providers is foreseen: the providers of real estate agency services do not have to be licensed, whereas for the cross-border provision of land-surveying services, the registration is an automatic result of notification of service. However, every provider – even cross-border providers – must observe the prescribed tariffs foreseen for real estate activities.

As far as **tourism** is concerned, authorisation schemes are in place for travel agencies, tour operators, tourist guides (except for tourist guides which accompany tourist groups from abroad) and for providers of sport activities for tourists. For tourist guides, municipalities can provide special conditions for the providers providing services in designated tourist locations.



SPAIN



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## I. Points of Single Contact

The Spanish point of single contact ([www.eugo.es](http://www.eugo.es)) is well established. Its setting up has involved the coordination of numerous competent authorities at different levels of government. Most of the regulatory requirements related to the establishment and provision of services involve national, regional and local authorities. In Spain, there are 17 autonomous communities, 2 autonomous cities and more than 8,000 local entities.

As regards the presentation of applicable requirements, the **information** on the legal framework with which service providers have to comply has been standardised and organised on three starting steps (location, activity and method of provision) and is perceived as generally good.

The Spanish point of single contact acts mainly as a gateway to online procedures from other competent authorities, which are responsible of the electronic availability of their own procedures. That means that the **availability of electronic procedures depends** mainly on the development of e-government within each public administration and the level of e-government services differs from one territory or city to another. Work should be continued to ensure that procedures to start a business or to provide services have a sufficient degree of detail and of electronic availability in all locations, types of activity and competent authority.

Services provided through the Spanish point of single contact, except for accessing general and specific information, require identification tools such as e-identification, e-signatures or user login. Those tools are needed especially when starting an online procedure or when logging in the personal area of the portal. Regarding cross-border users, the Spanish point of single contact –EUGO.es portal- permits access to the Personal Area to service providers who are in possession of European Digital Credentials that can be checked in its national supplier of identity through STORK network (Iceland, Austria, Estonia, Spain, Italy, Liechtenstein, Lithuania, Portugal, Slovenia, Finland or Sweden).

General information is generally available in Spanish, Catalan, Basque, Galician, English and Portuguese. However, specific documentation for the completion of procedures under the responsibility of competent authorities are often only found in Spanish, and sometimes even only in one of other Spanish co-official languages. Efforts should be continued to enhance **availability of information in other languages** with a view to facilitating use of the PSC.<sup>77</sup>

## II. Implementation of and compliance with key provisions

Implementation of the Services Directive in Spain entailed a very significant amount of legislative work given its complex administrative structure.

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<sup>77</sup> [http://ec.europa.eu/internal\\_market/services/services-dir/study\\_on\\_points\\_of\\_single\\_contact\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/study_on_points_of_single_contact_en.htm)

The main act transposing the Services Directive into Spanish Law is a **horizontal law** adopted at national level, whose provisions prevail over regional laws regulating sector-specific services (Ley 17/2009, de 23 de noviembre, sobre el libre acceso a las actividades de servicios y su ejercicio<sup>78</sup>). The content of the horizontal law is ambitious in its approach.

The Spanish authorities also undertook a **very significant number of sector-specific amendments** to ensure that requirements in sector-specific legislation are adapted to the Services Directive. An omnibus law (Ley 25/2009, de 22 de diciembre, de modificación de diversas leyes para su adaptación a la Ley sobre el libre acceso a las actividades de servicios y su ejercicio<sup>79</sup>), adapts the State laws, most of them sectoral, to Law 17/2009 and it also extends the principles of good regulation to sectors not affected by the Services Directive. Two other laws with sector-specific amendments were passed at the Central Government level: one for retail<sup>80</sup> and one for environmental impact assessment<sup>81</sup>. In addition to the amendments to national laws, adaptations were necessary at the level of State regulations. By April 2010, 118 Royal Decrees (RD) and 21 Ministerial Orders had been amended through 51 Royal Decrees and one Ministerial Order. 24 Royal Decrees had been fully repealed. At the Autonomous Communities level, the adaptation took place through amendments to sector-specific laws introduced (either by regional omnibus laws or by sector-specific regional legislation) and amendments affected mostly retail and tourism service activities.

#### **A. Streamlining the regulatory environment for services**

##### **1. Requirements applying to providers established or wishing to establish in Spain (Articles 14 and 15 of the Services Directive)**

The implementation of the Services Directive has resulted in a very significant reduction of administrative burden in Spain. Numerous authorisations have been transformed into prior declarations and a considerable number of requirements applicable to the access and exercise of an activity have disappeared.

As regards prohibited requirements for access to an activity, Article 10 of Ley 17/2009 (the horizontal law implementing the Services Directive) does no longer allow for the application of requirements listed in Article 14 of the Services Directive. A significant amount of prohibited requirements has been eliminated from sector-specific legislation (such as for example, economic tests required for the granting of authorisations for large-scale commercial surfaces or the intervention of competitors in the granting of individual authorisations, which were requirements previously found in retail legislation) and from the statutes of professional associations. It can thus be concluded that further to the implementation of the Services Directive, no relevant examples of these prohibited requirements are to be signalled in sector-specific legislation although it may well be that

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<sup>78</sup> BOE num. 283, de 24.11.2009 - Law 17/2009, of 23 November, on Free Access to Service Activities and its Exercise

<sup>79</sup> BOE núm. 308, de 23.12.2009 - Law 25/2009, of 22 December, amending diverse laws to adapt them to Law 17/2009-

<sup>80</sup> Ley 1/2010, Ley 1/2010, de 1 de marzo, de reforma de la Ley 7/1996, de 15 de enero, de Ordenación del Comercio Minorista (BOE num. 53 de 02.03.2010) - Law 1/2010, of 1 March, amending Law 7/1996, January 15, on Retail Trade.

<sup>81</sup> Ley 6/2010, de 24 de marzo, de modificación del texto refundido de la Ley de Evaluación de Impacto Ambiental de proyectos (BOE núm. 73, de 25.03.2010) - Law 6/2010, of 24 March, amending the Consolidated Law on Environmental Impact Assessment

there are cases of local regulations that still require a Spanish identification card for the completion of some procedures. In the tourism area, some restrictions could still remain in some autonomous communities related to the freedom of the provider to choose between establishment in the form of an agency, branch or subsidiary. Most of the autonomous communities where this problem appears, allow travel agents to establish branches leaving no other options although the horizontal laws would prevail over this restriction.

Sector-specific amendments in the Spanish legal order have also considerably reduced administrative burden by eliminating unjustified and disproportionate requirements. In accordance with Article 15 of the Services Directive, Article 11 of Ley 17/2009 (the horizontal law implementing the Services Directive) only allows for sector-specific legislation to impose these requirements if justified by an overriding reason of general interest and proportionate. A very significant review of sector-specific legislation has been carried out to ensure that Article 15 requirements were conformed to Article 11 of Ley 17/2009. Certain Article 15 requirements relating to the shareholding of companies have been maintained in legislation in a mitigated form, such as shareholding requirements for professional associations<sup>82</sup>.

There are still, however, cases of requirements that raise doubts of compatibility with Article 15 in certain pieces of sector-specific legislation. For example, the obligation for the service provider to take a specific legal form in the regulation of **land and real estate agents** and requirements to have a specific qualification in order to hold share capital can still be found in certain professional association rules would not appear to be justified. As a result, reforms of the statutes of some professional associations still appear to be necessary to ensure that providers have legal certainty. However, the horizontal law would prevail over those restrictions.

## 2. Nationwide validity of authorisations (Article 10(4) of the Services Directive)

As indicated above, numerous authorisations have been transformed into prior declarations. The remaining authorisations have been generally simplified. In a country with a regional structure as complex as the Spanish one, the implementation of Article 10, paragraph 4 of the Services Directive was of particular relevance to reduce business barriers. The Spanish authorities opted for an ambitious implementation of the principle by means of a **general rule** laid down in Article 7 of Ley 17/2009. This provision only allows for reasons of public policy, public security, public health and the protection of the environment to limit the geographical scope of authorisations which are not linked to a specific physical establishment. For authorisations linked to a physical establishment other overriding reasons of general interest can be invoked. The Spanish authorities are considering reinforcing mechanisms to guarantee the right application of this provision in practice such as internal administrative cooperation.

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<sup>82</sup> Law 2/2007, of 15 March, on professional partnerships requires as a minimum that the majority of the share and voting rights or the majority of the shareholders equity and the number of partners in the non-sharing companies belong to professional partners.

3. Tacit approval of authorisations (Article 13(4) of the Services Directive)

Before the implementation of the Services Directive **tacit approval was already a principle of general application** in administrative procedures in Spain in light of Ley 30/1992 on administrative procedures. In this regard, the implementation of the Services Directive has not introduced a significant change in the Spanish legal order. Nonetheless, the horizontal law (Ley 17/2009) modified Ley 30/1992 to reinforce the positive silence principle (negative silence has to be settled in laws and only in general interest exceptional circumstances).

4. Total prohibition of commercial communications (article 24 of the Services Directive)

No total prohibition of commercial communications has been identified.

**B. Boosting cross-border trade**

1. National implementation

Further to the implementation of the Services Directive, it can be generally said that the structure of Spanish legislation at national and regional level adequately reflects the two freedoms foreseen in the Treaty, without prejudice to possible remaining isolated cases of bad implementation. This novelty should be welcome as a very significant progress in the alignment of Spanish legislation with the internal market principles.

Article 12(3) of Ley 17/2009 implements Article 16 of the Services Directive. Law 17/2009 produced an automatic derogation from provisions of equal or inferior hierarchical level that conflict with its provisions. As a direct consequence of the repealing provision, an administrative authority may decide not to apply provisions of equal or inferior hierarchical level conflicting with provisions of Law 17/2009. In addition, taking into consideration that this Law was adopted in accordance with the exclusive competences of the State to develop basic legislation in the fields it covers, regional legislation must respect its provisions<sup>83</sup>. As a result Article 12(3) of Ley 17/2009 prevails over conflicting provisions of equal value at regional level.

However, rules on the conflict of laws are not the only way with which the Spanish legal system relies upon to ensure compliance of sector-specific legislation with Article 16 of the Services Directive. In addition to the prevailing horizontal law, sector-specific legislation at national and regional level has been reviewed and when necessary amended to eliminate requirements that do not comply with Article 12(3) of the Spanish horizontal law.

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<sup>83</sup> Nevertheless, in case a conflicting law was adopted an unconstitutionality appeal before the TC would be promoted to declare that void contrary to Ley 17/2009. According to Organic Law 2/1979, of 3 October, of the Constitutional Court, the unconstitutionality appeal can be submitted by the President of the Government, the Ombudsman, fifty members of the Spanish Parliament or fifty members of the Senate. These parties can exercise this action within three months from the official publication of the legal act containing provisions contrary to the Constitution. In addition to the unconstitutionality appeal, any judge or Court can submit an unconstitutionality question to the TC when a Law applicable to the case it is analysing and on whose validity the judgment depends may be contrary to the CE.

## 2. Distinction between freedom of establishment and free provision of services

Law 17/2009 includes definitions which should ensure a correct application of the concept of cross-border service provider/provision in line with the Services Directive. Furthermore, most sector-specific legal frameworks currently differentiate between provisions applicable to established service providers and to cross-border service providers, which should help guarantee a correct understanding of the distinction by competent authorities called to implement requirements laid down in those regimes.

## 3. Issues with the free provision of services clause

Despite the implementation of Article 16 in the Spanish legal order by means of a horizontal provision and by means of sector-specific amendments, a number of requirements applicable to cross-border service providers have remained in sector-specific legislation despite the fact that their justification and proportionality could be questioned. It has to be added that many of these would be no longer applicable in principle in view of the tacit derogation operated by Ley 17/2009 but their existence in paper does not contribute to legal certainty for service providers.

In the area of **crafts**, sector-specific legislation has been amended to implement the Services Directive. However, certain requirements such as certain registration obligations or requirements on the exercise of the activity remain applicable for cross-border services.

In the **real estate** sector, some restrictions still remain and require amendment to ensure conformity with the horizontal law transposing the Services Directive which prevails in any event. In some autonomous communities, for example, the statutes of the professional associations would still require that the provider has its principal establishment within the territory of the association. In this specific case, not only the horizontal laws (Ley 17/2009 y Ley 25/2009) but also the professional associations law (Ley 2/1974) again prevail.



SWEDEN



## I. Points of Single Contact

Sweden used an existing website ([www.verksamt.se](http://www.verksamt.se)) and developed it further in order to implement the Services Directive. In general, Sweden takes a comprehensive view of the PSC with the aim to provide for information and completion of procedures beyond the scope of the Services Directive, both in terms of procedures and in terms of economic activities.

The degree of information offered on the Swedish PSC is generally very good and is provided in simple and clear language and well-structured. The content of information provided is comprehensive and goes beyond the minimal legal requirements as provided for in the Services Directive. For instance, information is also offered concerning tax and social security requirements.

An important number of procedures can be completed online. However, many procedures require the use of Swedish e-ID or e-signature which is difficult to fulfil for foreign service providers. It would be important to enhance the ease of procedure completion for foreign users by developing means to accept foreign-issued e-Identification.

Most of the information on the PSC is translated to English which is a big advantage for cross-border service providers. An improved search function and a clear distinction between cases of establishment and cases of cross-border provision of services would even increase the usability of the PSC in particular for incoming service providers.

The overall use and usability of the Swedish PSC is above average<sup>84</sup>. However, improvements could be made concerning the clarity of information by further developing the search function and by enhancing the ease of procedure completion for foreign users, in particular by developing means to accept foreign-issued e-Identification.

## II. Implementation of and compliance with key provisions

Sweden adopted its horizontal law and a considerable number of sector specific legislation within the transposition deadline. Around 60 national measures have been adopted in order to implement the Services Directive. In addition, Sweden has modified its law on foreign branches in 2011. By removing obstacles, in particular an establishment requirement, Sweden opened up the market and made access easier for service providers from other Member States.

Before Sweden changed the law, operators legally established in the EU wishing to pursue an economic activity in Sweden were subject to formalities likely to dissuade or even prevent them from offering their services to Swedish businesses and consumers. Even for temporary activities, operators had to be established and registered as a branch in the Swedish register of foreign branches before starting work. The alternative was to set up as subsidiary, involving even more red tape. The procedure for registering the branch could take up to eight months. Finally, an operator established in another Member

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<sup>84</sup> [http://ec.europa.eu/internal\\_market/services/services-dir/study\\_on\\_points\\_of\\_single\\_contact\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/study_on_points_of_single_contact_en.htm)

State needed both an agent responsible for receiving notifications of documents and a representative, both domiciled in Sweden.

#### **A. Streamlining the regulatory environment for services**

##### 1. Requirements applying to providers established or wishing to establish in Sweden (articles 14 and 15 of the Services Directive)

The evaluation of the implementation of the Services Directive has revealed that a few requirements prohibited by article 14 of the Directive can still be found in Swedish legislation. Also, some requirements where the Directive left a margin of appreciation to Member States to streamline the regulatory environment for the establishment of providers and which are mainly dealt with in article 15 of the Directive have been maintained.

Concerning **professional services**, it seems that there is an involvement of competing operators in the granting of an authorisation for establishment for lawyers as lawyers already established in Sweden shall confirm the good reputation of the candidate lawyer. In addition, only a Member of the Swedish Bar Association may be a shareholder or partner of a legal practice conducted in the form of a limited liability company or partnership. Similarly, only accountants may be shareholders or owners of an accounting undertaking conducted in the form of a limited liability company or partnership. Moreover, it seems that a patent agent has to be domiciled in Sweden in order to be entitled to receive documents.

Finally, in the **real estate sector**, fixed maximum tariffs on professional housing agency services (letting agents) have been maintained.

In the **tourism sector**, a residence requirement has been maintained for car rental services as a responsible person domiciled in Sweden has to be appointed.

##### 2. Tacit approval of authorisations (article 13(4) of the Services Directive)

Tacit approval does not apply as a general rule. Sector specific legislation was amended in order to specify where tacit approval applies. For example, it has been explicitly introduced for the authorisation to operate as a car rental business.

In particular, it seems that it was a deliberate decision that tacit approval should not apply to the construction sector in its entirety. Moreover tacit approval does not seem to apply to environmentally hazardous activities, to debt collecting activities and to company registration.

Sweden will have to ensure that the instances in which article 13(4) of the Services Directive is not applied are limited to duly justified matters.

##### 3. Total prohibition of commercial communications (article 24 of the Services Directive)

No total prohibition of commercial communications has been identified.

## **B. Boosting cross-border trade**

### 1. National implementation

Sweden implemented the freedom to provide services clause of Article 16 of the Services Directive by way of a horizontal law provision as well as by sector-specific law. This horizontal provision does not in itself guarantee a complete implementation of Article 16 as it is not unconditional, nor does it mention that the freedom to provide services may only be restricted for reasons of public policy, public security, public health or the protection of the environment.

The provision in the horizontal law must therefore be seen in the light of the other implementing measures carried out by the Swedish Government in the sector-specific legislation. The Swedish Government has carried out a careful screening of the national legislation and amended a number of Acts in order to ensure conformity with the Services Directive. In addition, according to the Swedish legal order, the horizontal law, including the provision implementing the freedom to provide services clause, must be interpreted in the light of the preparatory legislative work that refers clearly to the Directive and the principles deriving from it.

### 2. Distinction between freedom of establishment and free provision of services

It seems that this implementation implies, in case that sector specific legislation does not make a distinction between an established and a cross-border service provider, that the competent authority has to decide on a case-by-case basis whether a requirement applicable to providers established in Sweden shall also be applied in the same manner to a service provider established in another Member State wanting to provide temporary services in Sweden.

In view of this, the effectiveness of the Swedish implementation of the freedom to provide services clause will depend to a large extent on the way this clause is implemented in practice. However, no practical experience has been documented so far.

The Swedish government has issued brochures for the attention of local authorities explaining how the Services Directive, including the freedom to provide services clause, has to be applied in practice.<sup>85</sup>

### 3. Issues with the free provision of services clause

Following their screening, the Swedish authorities had identified only few requirements which should, according to the Directive, not be applied anymore to incoming service

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<sup>85</sup> "The Services Directive - general guidelines for authorities and municipalities" (non-official translation) published in Nov 2011:

<http://www.kommers.se/Documents/Dokumentarkiv/Publikationer%20i%20PDF/%c3%96vriga%20publikationer/Publikation%20-%20Tj%c3%a4nstedirektivet%20-%20s%c3%a5%20p%c3%a5verkas%20myndigheter%20och%20kommuner.pdf>

"How the Services Directive applies on local authorities" (non-official translation) published in Dec 2011:

<http://www.kommers.se/Documents/Dokumentarkiv/Publikationer%20i%20PDF/%c3%96vriga%20publikationer/Publikation%20-%20Kommunernas%20regel%c3%b6versyn%20utfifr%c3%a5n%20tj%c3%a4nstedirektivet.pdf>

providers. As a consequence, only a limited number of sector specific legislative acts have been amended in order to ensure the implementation of this part of the Directive. However, according to the information of the Commission, problems of compatibility with the freedom to provide services clause still exist, namely as regards car rental services and patent agents.

In addition, it seems that it might have been considered that authorisation regimes applicable to service providers established in Sweden should apply to the same extent to service providers established in other Member States providing their services in the Swedish territory on a cross-border basis (e.g. in the retail sector concerning health and safety requirements of products or premises). This causes some doubts and concerns as to the justification by one of the four reasons recognized by the Directive. In this respect special attention will have to be paid to the very broad interpretation of the notion of “*public policy*” which includes also animal welfare.

#### *Examples of requirements that have been maintained*

In the **tourism sector**, there is an obligation for providers of car rental services to appoint a "responsible" person domiciled in Sweden. In addition there are some questions concerning insurance obligations in the sector. It seems that the requirement to provide a guarantee with the competent authority in Sweden does not apply to cross-border provision of travel services other than package travel, but that the obligation applies to package travel activities and in any case to resellers in Sweden acting on behalf of a provider established in another Member State.

As far as the **education sector** is concerned, it seems that the authorisation scheme for driving school is also applicable to cross-border service providers.

#### *Use of exceptions article 17*

Sweden has interpreted broadly the **exception of the freedom to provide services clause as foreseen in Article 17(11)** of the Services Directive and concerning intellectual property rights. The competent authority may request the owner of an intellectual property right who is not domiciled in Sweden to have an agent residing in Sweden who is entitled to receive for him service of writs of summons, notifications and other documents in legal cases and matters concerning the patent.



## I. Points of Single Contact

The UK Point of Single Contact has two entry points depending on whether the user is based in the UK ([www.businesslink.gov.uk](http://www.businesslink.gov.uk)) or outside the UK ([www.UKwelocmesbusinesslink.gov.uk](http://www.UKwelocmesbusinesslink.gov.uk)).

Information available is presented in simple and clear language which is of particular advantage to cross-border service providers who are not familiar with the administrative system of the UK. The content of the information provided goes well beyond the minimum requirements set out in the Services Directive and covers for instance also information on social security and tax issues.

A relatively high number of procedures can be completed on-line, but the degree of on-line sophistication seems to depend on whether it concerns an establishment or a cross-border scenario.

The portal can accept electronic signatures, also from other Member States, but electronic signatures in general are not used for verification purposes but rather to lock down documents and forms completed by users so that others cannot tamper with them.

The PSC offers a high degree of readiness for domestic and cross-border users. The interactive search tree that provides checklists by sector or company type has been considered as one of the best examples of good practice and very user-friendly.

The homepage for users from outside the UK provides also for a help button linking directly to versions of the site in 24 other languages, even if information in other languages only covers core and general information.

The UK PSC is well established and the overall use and usability have been rated above average<sup>86</sup>. However, in order to enhance the usability of the PSC, a clear distinction between establishment and cross-border situations would certainly be appreciated in particular by cross-border service providers. Improvements concerning the on-line availability of procedures would certainly benefit all service providers.

## II. Implementation of and compliance with key provisions

The main piece of implementation is the "*Provision of Services Regulation 2009*", an omnibus law which implements the principles of the Services Directive in a cross-cutting way and amends some sector specific regulations.

Another important element relevant to the implementation of the Services Directive was the amendment of the Companies Act which abolished a general obligation for anyone doing business in the UK to have an address in the UK. This requirement was indirectly discriminatory against persons established in other Member States who did not have a place of business in the UK.

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<sup>86</sup> [http://ec.europa.eu/internal\\_market/services/services-dir/study\\_on\\_points\\_of\\_single\\_contact\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/study_on_points_of_single_contact_en.htm)

In general, few sector specific amendments were made, the UK claiming to have traditionally a light touch regulatory regime. Besides a few sector specific changes contained in the horizontal law (street trading/peddlars and licensing of pubs/bars/restaurants etc.) which concerned mostly amendments regarding aspects of authorisation schemes and availability of procedures electronically, changes in sector specific legislation concern insolvency practitioners (authorisation scheme and insurance), veterinarians, bars and restaurants and certain services in the area of gas supply, distribution and storage.

#### **A. Streamlining the regulatory environment for services**

##### **1. Requirements applying to providers established or wishing to establish in the United Kingdom (articles 14 and 15 of the Services Directive)**

No requirements prohibited by Article 14 have been maintained in the UK. The few requirements which existed in UK legislation prior to the implementation of the Services Directive have all been removed.

However, a number of requirements where the Directive left a margin of appreciation to Member States to streamline the regulatory environment have been identified, mainly concerning **professional services** where there is still a number of requirements, imposed by Professional rules, relating to the shareholding of companies and/or obligations to take a specific legal form, in particular with regard to lawyers and auditors. Some particularly stringent requirements regarding legal form and shareholding in the legal professions where advocates in Scotland and barristers in Northern Ireland can only provide services as single practitioners and the solicitors are subject to shareholding obligations in both of them, raise questions as regards their proportionality. The shareholding requirements are in the process of being relaxed.

##### **2. Nationwide validity of authorisations (article 10(4) of the Services Directive)**

Authorisations which are not granted for the whole territory of a Member State but only for a specific part are likely to hinder the exercise of service activities.

The United Kingdom implemented the principle of nationwide validity of authorisations in the horizontal law which foresees that an authorisation granted by a competent authority must enable the provider of the service to have access to the service activity or to the exercise it throughout the United Kingdom. However the law also contains an exception for cases where the functions of the competent authority relate only to part of the United Kingdom. For those cases, the authorisation granted is only valid for that particular part of the country and no mechanism to ensure nationwide validity, such as recognition of authorisations issued by other devolved administrations, is provided for.

##### **3. Tacit approval of authorisations (article 13(4) of the Services Directive)**

The principle of tacit approval is an important means of cutting red tape as it foresees that an authorisation is deemed to have been granted to the provider in case an

application has not received any response within the set time period. The UK has foreseen this principle in its horizontal law implementing the Services Directive.<sup>87</sup>

In its Guide for Business on the Provision of Services Regulations<sup>88</sup> the UK authorities explain that "*failure to respond within the advertised time implies that your licence has been granted thus enabling you to start doing business.*"

Nevertheless, there are quite a few exceptions to this principle. Those exceptions can be found in almost all sectors, but mainly in the construction and tourism sector.

The United Kingdom will have to ensure that the instances in which article 13(4) of the Services Directive is not applied are limited to duly justified matters.

#### 4. Total prohibition of commercial communications (article 24 of the Services Directive)

The horizontal law rules out any prohibition of commercial communication for regulated professions.

However it appears that the *Law Society of Scotland practice Rules* governing advertising and promotion of solicitors in Scotland contain a prohibition on direct or indirect approaches to members of the public but only where the solicitor knows or ought to know that the person in question is a client of another solicitor (or equivalent- including registered foreign lawyers and registered European lawyers).

### **B. Boosting cross-border trade**

#### 1. National implementation

The horizontal law giving effect to the main provisions of the Services Directive also implements the freedom to provide services clause as foreseen in Article 16 of the Directive, which has been literally reproduced. The horizontal law being an omnibus law, it also amended certain sector specific legislation, e.g. concerning pedlars, employment agencies.

The UK carried out an in-depth screening process and identified around 280 pieces out of several thousands to be assessed for their compliance with the Directive. 24 of those legislative acts were finally amended to comply with the Services Directive. However, it seems that only one piece of legislation, namely the Companies Act was modified in order to ensure compliance with the freedom to provide services clause.

#### 2. Distinction between freedom of establishment and free provision of services

The horizontal law refers to the general principles of non-discrimination, necessity and proportionality and to the justified reasons for imposing requirements to incoming

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<sup>87</sup> "*In the event of failure to process the application within the period set or extended in accordance with the preceding provisions of this regulation, authorisation is deemed to have been granted by a competent authority, unless different arrangements are in place.*"

<sup>88</sup> <http://www.bis.gov.uk/files/file53100.pdf>

service providers. The reasons mentioned are the four reasons recognized by the Services Directive.

### 3. Issues with the free provision of services clause

Requirements maintained and applied to incoming services providers seem to concentrate on the retail and construction sector.

#### *Examples of requirements that have been maintained*

In the **construction sector**, a number of specific Article 16 requirements with regard to obtaining consent before carrying out certain works or activities have been maintained, such as licence for specific works on highways or concerning waste management. Curiously enough there is also an authorisation requirement for window cleaners in Scotland.

Concerning the **retail sector**, most requirements identified took the form of authorisations. The majority of those authorisations are concerned with licensing the retail sale of alcohol. Licences are also required for other services, including second-hand dealer's licences, metal dealers and street traders.

As far as the **education sector** is concerned, a number of registration requirements exist in relation to driving instruction.