

Mutual evaluation process of the Services Directive

Summary of stakeholders' consultation

Introduction

This consultation was undertaken by the Commission services in the context of the "mutual evaluation process" foreseen by the Services Directive¹. Its objective was to obtain feedback from consumers, businesses and any other interested parties as to their assessment of national measures implementing some specific parts of the Services Directive.

This means that the consultation did not cover all the aspects of the implementation of the Services Directive but was limited, according to Article 39 (2) of the Directive, to those national measures implementing four specific articles, which also formed the object of the mutual evaluation. Thus, the consultation concerned national measures consisting in requirements applicable to establishment of service providers (authorisation schemes and a number of other specific requirements such as territorial or quantitative limitations, legal form and shareholding requirements, fixed tariffs), national measures which limit the possibilities of providers to engage in multidisciplinary activities and national measures imposed on cross-border service providers.

The deadline for replies was September 13, 2010 and a total number of 79 replies were received.

These replies came from a wide range of respondents: individual citizens (mostly exercising a regulated profession), trade unions, consumer protection associations, chambers of commerce, individual businesses and business organisations.

The replies received do not cover all the Member States. Most of the respondents provided information about legislation in their Member State of origin but a number of replies, mostly sent by chambers of commerce or professional bodies, raised questions about specific legislation and described difficulties faced in particular by cross-border service providers in several Member States.

General remarks

- General issues concerning the internal market for services

A number of respondents addressed issues going beyond what was covered by the consultation, including in areas that fall outside the scope of the Services Directive. For instance, administrative obstacles linked to payment of VAT or taxes when doing business cross-border were mentioned mostly by chambers of commerce. Professional associations and chambers of commerce mentioned declarations and other formalities required in respect of posting of workers.

¹ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market published in the OJ L 376 of 27.12.2006.

The European standardisation bodies that replied to the consultation stressed the fact that the European Commission should consider promoting the use of standards for services in order to foster a true internal market, following the example of product standards.

Some consumer protection organisations and trade union federations made general comments about the need for a horizontal approach aiming at ensuring the quality of services, one respondent suggested the setting up of an 'Observatory' to monitor service quality in the EU, while another respondent stressed the importance of the European Commission taking the lead in respect of promoting service quality through legislation as opposed to standardisation.

- General comments about the Services Directive or about the mutual evaluation process

Several respondents considered that the Services Directive should bring a long-awaited 'internal market effect' in the economic sectors covered by it, in particular by stimulating the growth of cross-border service provision.

Several replies mentioned the Points of Single Contact set up by Member States according to the obligations provided by the Services Directive. In this respect, respondents stressed that the Points of Single Contact should be operational in all Member States and should provide more than information on matters covered by the Services Directive. In particular, trade unions suggested that Points of Single Contact should offer, in addition to aspects covered by the Services Directive, information about labour law, posting of workers, taxes, as well as the possibility of completing related procedures online.

Administrative cooperation obligations set by the Services Directive were referred to in a number of replies, amongst others advocating an extension of such cooperation to other topics than those covered by the directive (a trade union reply mentioned labour law and social protection).

French respondents active in the social and healthcare fields as well as local authorities took the opportunity to express some general concerns as to the implementation of the Services Directive in France in respect of social services.

Representatives of trade unions at European level pointed to the importance of further analysis of the ex-post impact of the Directive, especially in the social field, as well as its effects on other EU instruments. A small number of national trade unions or national trade union federations replied to the consultation remarking, as a general comment, that they would have liked to have been more involved both in the decision making process and in the implementation phase. Suggestions were made as to the need to engage in an ex-post analysis of the effects of the Services Directive five years after the implementation deadline will have expired. Such analysis should also assess the situation of posted workers and the extent to which the Services Directive had an impact. Representatives of national trade unions expressed their regret that the current consultation did not aim at collecting more general feedback as to the Services Directive and its implementation or about the internal market in general.

- Relationship between other EU legislation and the Services Directive

Several respondents considered that the application of certain EU instruments by national administrations leaves room for improvement and considered that the European Commission should provide clarification as to the applicable rules in areas which are also covered by other EU legislation. The EU legal instruments mentioned, whose implementation and application

in national law create difficulties, in particular when seen in the light of the Services Directive, were: Directive 2005/36/EC on the recognition of professional qualifications; Directive 90/314/EEC on package travel, package holidays and package tours; Directive 2008/98/EC on waste and repealing other directives (Waste Framework Directive); Regulation (EC) 1013/2006 on shipments of waste; and Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.

Article 9 Authorisations

On a general level, a significant number of respondents considered that several Member States did not proceed to a proper proportionality analysis when deciding to maintain certain authorisation schemes. Some others, in particular consumer representatives, considered that eliminating authorisations could be detrimental to consumers.

Certain horizontal authorisation schemes (i.e. authorisation schemes applicable to all or to a plurality of service activities) were considered to be especially burdensome for entrepreneurs, such as the general trade licence required in Luxembourg.

More general comments were made in respect of what the respondents consider to be excessive regulation of certain professions, where too many different licences are claimed to exist, sometimes for rather simple activities (e.g. in the construction sector).

According to the opinion of some, authorisations required in the tourism sector continue to hamper the development of service activities in this important sector. Respondents pointed to specific authorisation requirements imposed for activities at certain sites or areas, in several Member States, which are applied in addition to specific requirements of professional qualifications. Such authorisations raise similar problems as the ones indicated in the replies mentioned previously where an excessive regulation or fragmentation of a profession can be noticed.

It was also pointed out that duplication and opacity of authorisation procedures in the area of retail establishments cause significant problems, sometimes aggravated by (disguised) economic needs tests and an involvement of competitors in decisions on individual cases, which seems to be the case in Belgium, Germany (in some Länder), Luxembourg and Spain (in some regions). These replies seem to indicate a certain lack of administrative simplification for such authorisation procedures.

Article 15 Requirements

Despite the legislative changes that the implementation of the Services Directive should have led to in the Member States, respondents considered that several requirements covered by Article 15 of the Directive have been maintained without being justified or proportionate or that they could have been replaced by less restrictive means.

The requirements mentioned by the respondents are quite varied in terms of type of requirement and in terms of service activities mentioned.

Legal form requirements were reflected by a number of replies as being serious obstacles to freedom of establishment and doubts were raised as to the proportionality of such

requirements, especially when they are imposed on all regulated professions (France, Italy, Latvia and Spain were mentioned as examples). In addition, a large number of replies were sent by representatives of the veterinarian profession in France, complaining, among other issues, about legal form requirements imposed on them.

Other replies concerned requirements imposed on accountants in France, such as shareholding restrictions and restrictions on the number of employees, which were considered by a respondent to be unjustified.

Tariffs imposed on lawyers, architects and engineers and the ban on lawyers having more than one establishment in Greece were signalled as persisting problems for establishment of professionals in these areas.

Several replies addressed the issue of reserve of activity. Respondents referred in particular to reserve of activity in France and in Spain.

Several replies to the consultations were also sent by representatives of the regulated professions (mostly professional associations). On the whole, these replies state, without entering into details, that no unjustified or disproportionate requirements exist in their Member State.

Article 25 Restrictions on multidisciplinary activities

Not many replies addressed restrictions on multidisciplinary activities. However, these types of restrictions were signalled in the area of "geomètres topographes" in France, where it seems that their activity is incompatible with the activity of land surveyor. Several respondents criticized the fact that tourist guides in Italy are restricted from providing other services. Veterinarians from France pointed to restrictions on the possibilities to provide a range of services to animal owners.

Article 16 Requirements for cross-border services

Some respondents expressed general concerns over the correct implementation of the Services Directive in respect of cross-border provision of services. The implementation of the Directive required Member States to engage in a proportionality analysis on the basis of a limited number of justifications (public policy, public security, public health, protection of the environment) for maintaining requirements applicable to cross-border service providers.

Many replies raised specific examples of requirements applicable to cross-border provision of services which are perceived by the respondents as unjustified by one of the above-mentioned reasons or disproportionate.

Some of these requirements seem to be applicable to all service activities, being imposed by some Member States in a cross-cutting manner, by reason of the fact that the service provider is established in another Member State. Declarations that cross-border service providers need to submit, were raised by several respondents as being a serious obstacle, many of them mentioning the LIMOSA system in Belgium and the RUT-register in Denmark.² Several

² LIMOSA is a mandatory declaration applicable to non-Belgian employers and self-employed person which intend to carry out temporary activities in Belgium. This declaration must be submitted electronically and in

respondents mentioned as a particularly burdensome aspect of the LIMOSA system the fact that they need to submit for each assignment a declaration in advance and to indicate details of the assignment.

Several respondents raised concerns over what they considered to be overly complicated or burdensome authorisation procedures, comments which were often linked with a call for further administrative simplification in general. A specific example concerned scaffolding work, in the context of construction activities, described as being subject to very stringent and burdensome prior authorisation procedures in Denmark (in which extremely detailed information on specific prior activities and measures to ensure health and safety is demanded).

The issue of certification requirements, being perceived as obstacles to cross-border service provision, was raised by representatives of the business community. This issue was illustrated by the example of requirements imposed in respect of services provided by electricians, plumbers and heating installers in Denmark and Sweden, where these providers have to be certified before they can provide their services.

Insurance obligations were mentioned by several replies as obstacles to cross-border provision of services. They were seen as not justified by one of the four reasons provided by Article 16 of the Services Directive or as being disproportionate. For instance, insurance or financial guarantees in the field of real estate services or for travel agents in general were considered by some respondents to be in violation of Article 16.

The issue of the French decennial insurance required in the construction field was raised by several chambers of commerce and business associations from other Member States. The respondents considered this insurance to be very costly or impossible to obtain by service providers from other Member States.

Many replies received from veterinarians practising in France mentioned, in addition to requirements applicable in case of establishment, the existing restrictions on commercial communications for their regulated profession, which they consider should be abolished.

In addition to national rules considered by the respondents to be infringing the Services Directive, some replies mentioned in this context burdensome requirements which are imposed at national level as a result of the implementation of different EU law instruments. This seems to be the case when Member States implement EU requirements by imposing each their own authorisation scheme or specific requirements on incoming service providers without recognising or taking account of authorisations already issued by or requirements complied with in the Member State of establishment. EU legislation is thus applied in such a way that no internal market considerations are taken into account and service providers are faced with fragmented, national markets. The examples provided by the respondents include services such as waste management or mandatory safety trainings in the construction sector in Ireland, Luxembourg, Spain and the UK. Respondents considered that such rules should not lead to a multiplication of requirements, should not be applicable to cross-border provision of services or that Member States should recognise when the same requirements have been met in another Member State under similar conditions.

advance. RUT is a register where non-Danish service providers need to be registered before providing services in Denmark in respect of posted workers but also, according to one of the respondents to the consultation, soon to be applicable to self-employed non-Danish service providers.