

# MEETING OF THE COMPETITIVENESS COUNCIL

24-25 SEPTEMBER 2009

## IMPLEMENTATION OF THE SERVICES DIRECTIVE: MAKING THE INTERNAL MARKET FOR SERVICES WORK BETTER INFORMATION NOTE FROM THE COMMISSION

The Directive on services in the Internal Market (the "Services Directive") was adopted by the Council and the European Parliament at the end of 2006. Its objective is to help realising the full potential of the largest sector of the European economy - and the one where the great majority of new jobs are created – the services sector. The reform agenda foreseen by the Directive has become even more pressing in the current economic downturn. One of the latest studies available to the Commission services<sup>1</sup> found that EU wide economic gains of the Services Directive could range between 60-140 billion Euros, representing a growth potential of 0.6-1.5% of GDP, using conservative estimates. Implementation of the Directive should therefore be seen as a cornerstone of the structural reforms that are necessary to put the EU economy back on the track of recovery.

In the last two and a half years, the European Council, the Competitiveness Council and the ECOFIN Council have stressed on several occasions the importance of a complete and timely implementation of the Services Directive, not only to unlock the potential of the services sector but also to make EU industry more competitive. The Council has also highlighted the importance of the Directive as key part of the structural reforms to be carried out in the context of the Lisbon Agenda and the Small Business Act.

In recognition both of the importance and the complexity of the Directive, and also in reply to a request from the Competitiveness Council<sup>2</sup>, the European Commission has deployed, from the start of the implementation period, particular efforts to support Member States' implementation work at political and at technical level. The Commission has also given regular updates on the state of implementation to the Competitiveness Council and to the Internal Market and Consumer Protection Committee of the European Parliament.

This coordination work at EU level is a concrete example of the new "partnership" approach between the Member States and the Commission<sup>3</sup>. It has helped to gain a common understanding of required work and to exchange best practices amongst Member States. But it is clear that the responsibility for implementation lies with Member States and the bulk of the work needs to be undertaken at national level. The Commission has indicated all along the implementation process that successful implementation requires both political support and the deployment of sufficient resources for the operational and technical work in each Member

---

<sup>1</sup> "Expected economic benefits of the European Services Directive", Netherlands Bureau for Economic Policy Analysis (CPB), November 2007

(available at: <http://www.cpb.nl/eng/pub/cpbreeksen/notitie/14nov2007/notitie.pdf>)

<sup>2</sup> Competitiveness Council meeting of 29 and 30 May 2006. Statements in Council Document No 11296/06 of 14.07.2006 (<http://register.consilium.europa.eu/pdf/en/06/st11/st11296-ad01.en06.pdf>).

<sup>3</sup> See "Commission Recommendation of 29 June 2009 on measures to improve the functioning of the single market", OJ L 176, 7.7.2009, p.17.

State. More than two and a half years into the implementation period and according to information available to the Commission services, it would appear that in some Member States the political commitment to full and timely implementation has, unfortunately, not been translated into appropriate action.

As we are entering the closing stages of the implementation process, it is important to take stock of what has been achieved and, most importantly, what remains to be done. The provision of detailed information on the state of play has also been requested by Member States in prior meetings of the Competitiveness Council. This is an understandable request. The realisation of the full economic benefits of the Services Directive depends on the achievement of a level-playing field throughout the Internal Market.

The description contained in this note is of a factual nature. The Commission will only be able to judge the completeness and quality of the implementation in each Member State after the implementation deadline of the 28<sup>th</sup> of December this year.

## STATE OF PLAY IN KEY AREAS

### *1. The review of national legislation*

The Services Directive requires Member States to carry out a comprehensive review of their legislation. They need to identify and assess all requirements affecting the establishment of services providers and the cross border provision of their services. The aim of this exercise is to simplify requirements which are burdensome and modify or abolish those that are unjustified, discriminatory or disproportionate. This is a major project requiring unprecedented efforts of coordination from Member States as regards implementation of EU law (between different departments as well as the central, regional and local levels in national administrations).

In the information note that the Commission tabled to the Competitiveness Council of 29-30 May 2008<sup>4</sup> the need to complete this process "*as early as possible in 2008*" leaving sufficient time for the adoption of required legislative changes was one of the identified priority actions.

By now, the review of legislation at national level has been completed in the large majority of Member States. The fact that, after more than two and a half years, there is still a small group of Member States where this preliminary work has not been completed yet, gives however cause for serious concern. It should be kept in mind that the results of the review of national legislation are not only the necessary prerequisite for deciding the required legislative changes. They will also be the subject of discussion and "peer review" during the process of mutual evaluation that is foreseen in the Directive and will take place in 2010. Member States which have not yet finalised the screening of legislation at national level need to make an extraordinary effort as a matter of urgency.

There are a number of Member States where regions have important competences as regards the regulation of services and where therefore an important effort of coordination is also required at that level. The information available to the Commission on the state of progress of the regions in those countries is limited but Member States are obviously aware of the fact that the implementation obligation remains notwithstanding difficulties resulting from their internal legal order. The situation is similar as regards implementation at local level.

---

<sup>4</sup> Information note from the Commission on the "Transposition of the Services Directive", 27 May 2008 (Council doc. nr. 10013/08).

## **2. The adoption of implementing legislation**

According to the information available to the Commission services the overwhelming majority of Member States have opted for the adoption of a "horizontal act" as framework legislation for all services covered by the Directive. The alternative (which is also valid but requires an extremely rigorous and systematic approach) is to introduce the general principles established in the Directive in existing legislation, be it of a cross cutting nature or sector specific (France and Germany seem to have opted for this approach). In addition, all Member States will need to make changes in existing laws, regulations and administrative provisions to ensure their conformity with the obligations in the Directive.

### Horizontal legislation

Denmark has been the first Member State to adopt its horizontal implementing legislation. It has been followed by Romania, Hungary and the Czech Republic.

The parliaments in Austria, Luxembourg, Malta, the Netherlands, Spain and Sweden are in the process of examining these countries' draft "horizontal laws". On the basis of the information available to the Commission services, discussions are about to start in the parliaments of quite a good number of Member States where draft proposals have already been adopted by the government or are almost ready. Thus, progress can be expected in many Member States in the next two months. The situation however becomes urgent for a number of Member States which are still in the process of drafting their horizontal legislation. It is now crucial that legislative procedures are completed as quickly as possible to ensure the horizontal implementing legislation is in force at the end of 2009.

### Other changes in legislation

A considerable number of changes in sector specific legislation required by the Services Directive will have to be adopted by each of the Member States. This constitutes the bulk of the legislative work and not only requires intensive coordination efforts but in particular the putting in place of efficient decision-making procedures. A good number of Member States are drafting "omnibus laws", i.e. laws aggregating the amendments to different existing pieces of legislation. To give an idea of what this means: the first "omnibus laws" which have already been adopted (Denmark, Hungary and the Czech Republic) together with those that are already in national parliaments (Spain, The Netherlands, Sweden) modify about 300 legislative acts (and in all of these countries there will be further changes required in other laws, regulations or administrative provisions). First legislative changes have also been adopted in France, and Germany. The changes adopted or being examined in national parliaments so far relate in particular to areas such as retail services, tourism services or quite a few regulated professions services (including lawyers, tax advisers, patent agents, craftsmen). They include both changes in requirements applicable to establishment of business and changes in requirements applicable to the cross border provision of services by service providers lawfully established in other EU countries.

Inevitably, the Member States where the screening of legislation has not yet been finalised, or where delays in the drafting of legislation are important, are equally at risk of late or incomplete implementation on this front. Legislative and regulatory procedures need to be started without further delay in these countries.

## **3. The setting up of the "Points of Single Contact"**

One of the most visible benefits of the Services Directive is the setting up, in each Member State, of so-called "points of single contact". The "points of single contact" aim at facilitating life for SMEs in their daily dealings with administrations. They will allow service providers to obtain all relevant information and complete the required procedures through a single access

point, without having to contact a whole range of administrative bodies or professional organisations. Furthermore, according to the Directive, completion of these procedures must be possible by electronic means and across borders.

The setting-up of "points of single contact" is strongly called for by the business community, which is following work in Member States closely. The European Parliament has also shown a particular interest in the monitoring of this issue.

Like the review of legislation, the setting-up of "points of single contact" is a demanding project that requires intense coordination and cooperation at all administrative levels. In its information note to the Competitiveness Council of 29-30 May 2008 the Commission already identified as a priority action the development during 2008 of concrete solutions for the architecture and practical functioning of the "points of single contact" in order to leave sufficient time for implementation and testing in 2009. In some Member States, political decisions regarding the responsibility for setting-up and managing the "points of single contact" were slow but as a result of increased efforts during the second half of the implementation period, the overall picture has considerably improved. The key decisions as to the concept and architecture of the "points of single contact" as well as the responsibilities for setting them up seem to have been taken in a large majority of Member States, where work is ongoing at more or less advanced stages.

In several Member States, work is further advanced and pilot projects or tests of prototype versions have been or are being carried out. Spain, Portugal and France have launched pilot projects to test the completion of sample procedures in their countries. For example, Portugal is testing procedures relating to tourism activities, whereas France has chosen a sample of several professions (including architects and real estate services). Other countries or regions in countries (i.e. a number of Länder in Austria and Germany) are currently engaging in similar exercises. The Netherlands, the UK and Estonia have engaged in an exercise of mutual testing to make sure their "points of single contact" solutions are user-friendly and easily understandable for businesses from other countries – a key issue when it comes to encouraging SMEs to make active use of their Internal Market possibilities.

In general, a substantial amount of such cooperation and best practice exchange activities have developed between Member States in this area. Two large events were organised in 2008 and 2009 by Austria, Denmark, France, Germany, The Netherlands, Sweden and the UK, where almost all Member States participated and which have allowed the creation of a community of national experts on the "points of single contact". Member States have also teamed up to develop a common branding and a logo for the "points of single contact", with the objective to enhance awareness and trust. This work has been coordinated by the UK and The Netherlands. Furthermore one Member State, The Netherlands, is making available a "tool box" of open source building blocks, which can be used by other Member States when building their "points of single contact".

In a minority of Member States the practical work to build the "points of single contact" seems to not have started yet (or to be in very early stages only), which gives cause for serious concern. This is unfortunate in particular taking into account the benefits that could be drawn from the best practice exchanges mentioned above and from the efforts made by a good number of Member States.

Finally, it should be noted that in the majority of Member States, an important amount of practical work remains to be done to make the cross border completion of procedures possible online. Intensive efforts of support and coordination are being deployed at EU level to help addressing existing problems to the cross border use of electronic procedures. In any event, while it is clear that the "points of single contact" will be enhanced over time and their

functionality will further develop on the basis of future technical developments and experience that will be gained from their running, it is critical that the basis for fully operational "points of single contact" is in place by end 2009 in all Member States.

#### **4. Work related to administrative cooperation and the use of IMI**

The Services Directive imposes on Member States very specific obligations of administrative cooperation between their authorities. As the Directive foresees that, in principle, competent authorities should cooperate directly, administrative cooperation will require the involvement of a potentially huge number of authorities at all levels of the national administrations as well as professional organisations. To make this possible technically, the Commission has set up the Internal Market Information system (IMI) in close cooperation with the Member States. The IMI system helps identifying the relevant interlocutors in other Member States, allows fast and structured communication by electronic means and reduces language barriers. In this context, Member States need to take organisational decisions, identify the competent authorities that need to participate in administrative cooperation, train these authorities and register them in the IMI system. This work should also have started in early 2008, as already stressed by the Commission at previous Competitiveness Council meetings.

To make sure that an operational network of authorities is in place beginning 2010, a pilot project focusing on a sample of service sectors and authorities has been running since January 2009.

The level of preparations varies significantly across the Member States and participation in the pilot project has been patchy in the first months of the pilot. But significant progress has been achieved in recent months. In total, 1209 competent authorities have been registered in the system to date<sup>5</sup>. Whereas some Member States have already registered a substantive number of authorities, such as The Netherlands (281), Germany (250), the Czech Republic (201), Spain (106) or Austria (36), a number of Member States have so far registered only very few authorities. Although part of these differences can of course be explained by differences in size and organisational structure between Member States, it is clear that some Member States need to increase their efforts considerably to be ready end 2009. The picture is similar when it comes to actual use of the system. To date, around 340 test requests have been sent in the system in total. Again, distribution of active users varies significantly and most of the test requests were sent by a small number of Member States (Austria (111 requests), Czech Republic (47), the Netherlands (45), Germany (32), Hungary (19), Spain (19), Romania (14)). All other 20 Member States taken together are only involved in less than 50 requests.

Finally, the organisation of training events at national level is a crucial success factor to get authorities acquainted with the IMI system as well as their obligations under the Services Directive. The large majority of Member States has already engaged in such activities. Large awareness raising and training events have for example been organised in Germany, Spain, Sweden, Cyprus and The Netherlands. But much more is required and here, again, some Member States need to step-up efforts to get their authorities trained and involved.

---

<sup>5</sup> The data mentioned in this note has been extracted from the IMI system on 31 August 2009.