

# Services Directive implementation enters the decisive phase



The final adoption of the Services Directive in December 2006 successfully concluded negotiations on one of the most ambitious Single Market projects in recent years. The ongoing three year implementation period of the Directive ends on 28 December 2009. By that date, Member States will have to fully transpose its provisions into national law and put in place several practical arrangements, such as the 'Points of Single Contact' for service providers and a system of administrative cooperation between the national administrations. If properly implemented, the comprehensive simplification programme set out by the Directive should make life easier for the 'end-users' and main beneficiaries of the Single Market - SMEs and consumers - and create more consistent and transparent framework conditions for the most important area of economic activity in the EU - the services sector.

At the mid-term of the implementation process, Single Market News takes a look at the progress achieved so far and the challenges ahead for this demanding process.



## A challenging implementation process...

Implementing the Services Directive constitutes a major challenge for the Member States. It not only involves changes in legislation – as is the case with all EU Directives - but also requires Member States to manage several large scale projects, involving important coordination efforts throughout all levels of the national administrations. Member States have to set up "Points of Single Contact" for service providers, allow for electronic completion of all administrative procedures, review and adapt their administrative and legal requirements and put in place a comprehensive system of administrative cooperation between national administrations. In most Member States, these projects require active participation of competent authorities, including professional bodies, at regional or even local level.

"One positive conclusion even before the end of the implementation period: the Services Directive has significantly increased the commitment of Member State administrations to the Single Market"

## ... managed in close partnership

Because of this complexity, the Commission has very early in the process taken the commitment to actively assist Member States in their efforts. Thus, since the final adoption of the Directive, significant efforts and resources have been deployed to facilitate and coordinate its implementation .



Commissioner Charlie McCreevy: "...strong political backing and deployment of sufficient resources are key to making the Single Market in services a reality for businesses and consumers."

An important achievement of the first half of the implementation process is that all Member States are 'on board', participating actively in work and taking ownership of this large project. Very close working relationships have been established between the Commission and the Member States based on both regular bilateral contacts and "expert group" meetings with all 27 Member States (and the three EEA countries). Intensive contacts are also taking place between the Member States themselves. Technical discussions and exchanges of best practices have proved to be vital to gain a common understanding on several aspects of the Directive and create a level playing field in implementation.

Contacts with Member States therefore allow one positive conclusion even before the end of the implementation period: the Services Directive has significantly increased the commitment of Member State administrations to the Single Market. This fact alone is remarkable given the difficult and often divisive discussions that accompanied the initial proposal.

#### A political priority (at all levels)

Proper implementation of the Directive is of crucial importance for revitalising the business environment in the EU, all the more so in the face of the current risk of economic slowdown. This has been emphasised on many occasions. The Spring European Council of March 2008 confirmed its consistent commitment to a "complete, coherent, and timely implementation of the Services Directive", which it highlighted as an immediate priority for action. The same holds true for the European Parliament, which is following implementation closely.

To ensure that the main beneficiaries of the Directive, SMEs and consumers, can fully reap its advantages, business and consumer organisations, as well as other stakeholders, keep a watchful eye on Member States' progress (see box below). The Directive also features among the key policy actions of the recently adopted 'Small Business Act' for Europe, which aims at improving and streamlining framework conditions for SMEs. In a general manner, the Directive underpins and complements the overall programmes of microeconomic reforms which are currently being implemented across the EU, including in the context of the Lisbon Strategy. In most Member States, the implementation process therefore enjoys a high political profile and is used as an opportunity to further push vital modernisation and simplification efforts.

#### The need to free up services markets

The economic evidence for this is clear. Services are the main driver of growth and jobs in Europe, representing around 70% of GDP and employment. They have been source of an impressive 95% of new jobs created in recent years.

Despite this exceptional economic performance, their significant growth potential largely remains untapped due to numerous barriers that hinder trade between Member States and the setting-up of new businesses in general. The most telling indicator for this is that services

#### Stakeholder involvement in implementation

Stakeholders are increasingly monitoring the implementation process, both at EU level and in the Member States, as they are the main beneficiaries of a borderless Single Market.

In July 2008, EuroChambers, the association of European Chambers of Commerce and Industry, published its third survey on the state of implementation of the Services Directive. The survey looks at progress achieved in the Member States on the key aspects of the Directive and points out areas in which efforts need to be enhanced to ensure timely and consistent implementation, in particular as regards the setting up of the 'Points of Single Contact'. EuroChambers carries out this exercise every six months.

BusinessEurope, the Confederation of European Business, is organising a high level event on the Services Directive, to be held on 24 November in Brussels. The results of a comparative study on implementation in the Member States will be presented at that event. National business, consumer and trade associations are generally in close contact with their respective governments to follow progress and provide their input.

still only account for around 20% of cross-border trade in the EU. Today, companies who want to set up an establishment or provide services in another Member State still face numerous legal and administrative barriers, involving substantial delays and costs in terms of legal fees and staff dealing with procedures.

Many requirements imposed on providers are excessive and contrary to EU law. This has a particularly dissuasive effect on SMEs - around 98% of all services companies in Europe - who very often abandon the idea of testing new markets.

The absence of a real internal market for services also harms recipients, not only consumers but also business, as existing barriers limit choice and lack of competition keeps prices unnecessarily high. Moreover, in a number of cases recipients are faced with discriminatory practices when they use services from other Member States, such as price discriminations or refusals to sell.

The Services Directive aims at knocking down these obstacles and releasing the unexploited potential of services. It sets out an ambitious programme of administrative and regulatory simplification that will allow providers and recipients of services to effectively exercise their rights and benefit from the advantages offered by the Internal Market.

The main tasks to be performed by Member States in implementation of the Directive can be articulated around three large scale projects.

#### Review and adaptation of national legislation

First, Member States have to carry out a comprehensive review of their legislation on services. The Directive basically requires them to 'clean their house', have a critical look at their existing regulatory framework and get rid of unjustified complications and red tape. Member States have to simplify their authorisation schemes for services and make them more transparent.

Furthermore certain particularly restrictive and discriminatory requirements have to be removed, such as the case-by-case application of economic needs tests (obliging the provider to prove the existence of an economic need or market demand for his service) or nationality or residence requirements imposed on the provider or his staff.

Member States also have to abolish requirements which they may currently apply to service providers established in other Member States, such as prior declarations or the obligation to obtain an authorisation in the Member State where the service is provided.

This review and simplification of national legislation re-

### Priority Action presented to the Competitiveness Council, May 2008

- The setting up of "points of single contact" - the basic organisational decisions need to be taken without further delay in all Member States. Concrete solutions as to their architecture and practical functioning need to be developed during the remaining of 2008 so as to have sufficient time for their implementation and testing in 2009;
- The availability of electronic procedures and the possibility to use them across borders - a clear commitment to develop in 2008 a common approach on the key issues linked to cross border use of electronic procedures is crucial;
- The review of national legislation - it should be completed as early as possible in 2008 so as to allow for sufficient time for the drafting and adoption of the required legislative measures and for the preparations of the reports which need to be submitted to prepare the process of "mutual evaluation";
- The organisation of administrative cooperation - sustained efforts and the active engagement of Member States are required in 2008 to take all the necessary decisions for the running in 2009 of a Services Directive-IMI pilot project. Member States also need to start identifying the competent authorities that will participate in the administrative cooperation system and dedicate substantive efforts to their awareness raising and training.

quires a high degree of internal coordination within the Member States, as requirements may exist at central, regional or local level as well as in the rules of professional bodies. The resulting regulatory simplification will significantly reduce administrative burden, legal research and compliance costs for businesses.

To enhance transparency and enable the exchange of modernisation practices between Member States, the 'screening' process will be followed up - in 2010 after the end of the implementation period of the Directive - by an innovative exercise of 'mutual evaluation' between Member States. The idea behind this 'mutual evaluation' process is that all Member States, the Commission and stakeholders will work together to assess the depth and quality of the results obtained in the review and simplification of national legislation on services.

#### 'Points of Single Contact' and electronic procedures

Second, Member States have to set up so-called 'Points of Single Contact', destined to become the single interlocutors through which service providers can easily obtain all relevant information and complete all necessary procedures - without having to contact a number of administrative or professional bodies, as is the case today.



Member States are free to designate the bodies in charge of setting up the 'Points of Single Contact' and to decide on their number and financing. Their setting-up requires Member States, at all levels of their administration, to rationalise and modernise administrative procedures. This will considerably speed up procedures and reduce costs.

The possibility to complete all procedures through 'Points of Single Contact' has to be available at a distance and by electronic means, meaning that Member States will have to provide for eGovernment services that can also be used across borders – by applicants who reside and providers who are established in other Member States. It is the first time that Member States are under a legal obligation to put in place such eGovernment services and make their use possible across borders. This is a particularly challenging objective and the Commission is closely assisting Member States in finding a common approach to the key issues linked to it such as the cross border use of electronic signatures.

#### Administrative cooperation between Member States

A third large scale project is the setting up of a network of administrative cooperation between Member States' authorities. The aim is clear: enhance trust in the internal market by helping administrations work together on a regular basis.

The Internal Market Information system (IMI) is the electronic tool that will provide the basis for administrative cooperation. IMI is currently being developed by the Commission in close cooperation with the Member States. It will allow competent authorities to easily identify their counterparts in other Member States and exchange information with them, using pre-translated forms and comprehensive search facilities. A first version of IMI is currently being tested to support the administrative cooperation provisions of the 'Professional Qualifications Directive'. Work with Member States to prepare its use (including some new specific functionalities) in support of administrative cooperation under the Services Directive is underway. To make sure that the system will be fully tested and operational by the implementation deadline, a pilot project will be launched in the beginning of next year.

## A Framework Directive for services

The Services Directive covers a wide array of service activities as it applies to all services that are not explicitly excluded from it.

By way of examples, it covers services such as construction and crafts, retail, most of the regulated professions (such as legal and fiscal advisers, architects, engineers and accountants), business-related services (such as office maintenance, management consultancy and advertising), tourism, catering and accommodation services, real estate services or renting and leasing activities.

Several service activities are explicitly excluded from its scope of application, notably financial services, electronic communications networks, transport services, health services, audiovisual services, gambling activities and certain social services.

#### Moving on, now...

A substantial amount of work has been accomplished in the first half of the implementation period. But a lot remains to be done by the end 2009 deadline and efforts need to be stepped up in certain areas. On 29 May 2008, Commissioner McCreevy participated in the meeting of the Competitiveness Council to provide ministers with an overview of the state of implementation at mid-term stage.

On this occasion the Commissioner invited Member States to carry out four priority actions without further delay to be able to meet the Directive's implementation deadline (see box on page 13).

Looking forward, the Commissioner emphasised that "Member States need to make sustained and consistent efforts throughout the remainder of the implementation process," adding that "strong political backing and deployment of sufficient resources are key to making the Single Market in services a reality for businesses and consumers."

