

## SERVICES DIRECTIVE

### EXPLANATIONS AND PRACTICAL EXAMPLES

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**Note:** The examples provided here are a selection of the legislative changes that have been made by various Member States as a result of the implementation of the Services Directive. They aim at illustrating concrete simplification measures that will facilitate life for entrepreneurs –whether they want to start a business or develop their activities, at home or abroad- and of citizens, who as a result will have access to a wider choice of services from different countries.

#### **I) THE SERVICES DIRECTIVE PROMOTES THE CREATION OF COMPANIES AND BRANCHES (IN THEIR HOME COUNTRY OR IN ANOTHER MEMBER STATE)**

##### Current challenge:

At present, potential entrepreneurs and business are often faced with cumbersome formalities, lengthy and non-transparent procedures and excessive requirements. SMEs and, above all, micro-enterprises (which have fewer than 10 employees but make up 90% of all businesses!) are the main victims of this.

##### Solution provided by the Services Directive:

The Services Directive requires Member States to **simplify/update** their **legal frameworks** and to **make procedures more transparent and effective**. This has been done while ensuring the attainment of public policy objectives such as consumer protection or the protection of the environment.

##### Examples:

- **Abolition of authorisation procedures and requirements deemed disproportionate or unnecessary:**

- Travel agencies wishing to establish themselves in France will no longer need to undergo a potentially lengthy authorisation procedure. In future, simple prior registration will be sufficient to start this activity.
- Italy has abolished prior authorisations for a whole range of activities including teleshopping, small food businesses, hairdressing, dry-cleaning and beautician services. In future, simple notification will be sufficient to start these activities.
- France has also abolished specific authorisations for small retail shops. Shops of less than 1 000 m<sup>2</sup> will now be able to start their activities without having to wait for a specific "retail" authorisation.
- Malta has abolished all compulsory tariffs for the regulated professions. For example, engineers established in Malta are now free to set their own prices for the services they provide.
- Belgium has lifted restrictions relating to the legal form of real estate agents. Real estate agents are now able to establish themselves in the legal form of their choice (whereas they previously had to establish themselves as natural persons, which posed problems, particularly for real estate agencies already established in other EU countries).

- **"National" validity of authorisations** (*businesses will not longer have to obtain multiple authorisations if they wish to pursue their activities in other regions of the same country*).

- An architect's office established in Bavaria is now authorised to submit building projects throughout Germany – without having to apply for authorisation or register with the authorities in each federal state (*Bundesland*).
- A tourist guide who is authorised in Andalusia will be free to provide their services throughout Spain - without having to apply for authorisation or submit additional notifications to the other regional authorities.

- **Abolition of "economic needs tests"**. These preliminary tests, to be carried out by the those seeking an authorisation, may give rise to arbitrary decisions and are very expensive. For example, a distributor informed the Commission that 22 authorisations applied for across Europe had cost them 5.9 million euros in total (for different economic studies, legal advice, etc.).

- Spain has abolished the requirement to undergo an economic test for opening large shopping complexes. A German retailer will be able to open a supermarket without having to prove that there is an economic need for their activities (and, therefore, without having to commission an expensive prior study).
- Italy has abolished economic tests and quantitative limits for opening restaurants and cafés. A French restaurateur will be free to open a restaurant in Milan without having to prove that there is an economic need or to show the impact on existing restaurants.

- **Application of the "tacit agreement" principle**. This is a major element of administrative modernisation: If there is no response to a request for an authorisation, a permit, etc. within the time-limit specified, the authorisation/permit will be deemed to have been granted.

- Driving instructors establishing themselves in the Czech Republic are now able to benefit from the principle of "tacit agreement". If the authorities do not respond to a request for authorisation within the period laid down by law (for example, one month), the authorisation will be deemed to have been granted and the service providers in these sectors will be able to launch their activities.
- A company wanting to open a car hire business in Sweden will benefit from the principle of tacit agreement in Sweden. If the authorities do not communicate their decision within the period laid down by law, the activity may be launched.
- In Luxembourg, the principle of tacit agreement will apply to all authorisations for activities that do not give rise to environmental or security risks, and so will cover a wide range of commercial activities, including small shops and craft activities<sup>1</sup>. If the administrative authorities fail to respond within a period of three months, authorisation to commence the activities in question will be deemed to have been granted.
- In Italy, all the regulated professions, including engineers, architects, lawyers, etc., can now benefit from the principle of tacit agreement. If the administration fails to respond before the statutory deadline, an architect is free to start his activities.

<sup>1</sup> This amendment is currently in the process of being adopted.

- **Possibility of carrying out "multidisciplinary" activities.** The Services Directive requires Member States to allow operators to pursue several activities jointly or in partnership while ensuring that this does not affect the independence and impartiality of the provider in the case of the regulated professions. This is important to stimulate services innovation and to encourage the development of new business models.

- In Poland, it is now possible to pursue the activities of a lawyer, patent agent and tax consultant jointly. Before the introduction of the Services Directive, each of these activities had to be pursued exclusively, and to the exclusion of the others.
- In Spain, travel agents are no longer obliged to pursue their activities in an exclusive manner. A Portuguese service-provider wishing to establish an "adventure" travel agency in Madrid while also selling sports equipment will now be able to do so without having to set up two separate companies.

## II) THE SERVICES DIRECTIVE REQUIRES MEMBER STATES TO SET UP "POINTS OF SINGLE CONTACT"

### Current challenge:

One of the main challenges for potential entrepreneurs and businesses is to identify the rules that apply and the formalities they have to complete. This traditionally entails high costs. Small companies do not have the necessary human and financial resources. For example, a company selling electronic equipment has informed the Commission that it had to spend 100 000 euros to identify the rules that apply in (only) five different Member States.

### Solution provided by the Services Directive:

The Services Directive obliges Member States to set up electronic "Points of Single Contact" – national e-government portals via which companies can identify and complete the administrative formalities relating to establishment as well as the formalities, if any, relating to the cross-border provision of services. These Points of Single Contact **can be used by "domestic" businesses as well as by service providers from other Member States**. They can be found easily – for example, by going to the European Points of Single Contact portal ("EUGO") hosted on the European Commission website ([http://ec.europa.eu/internal\\_market/eu-go/](http://ec.europa.eu/internal_market/eu-go/)).

The use of these Points of Single Contact **will considerably reduce the cost of transactions** - both for businesses and the administrative authorities:

- According to research conducted by the Netherlands, the **use of Points of Single Contact could bring savings of some 60 million euros a year in that country**.
- According to a study conducted by the United Kingdom, the systematic use of Points of Single Contact **should allow cost savings between 3.8 and 13.7 euros per transaction**, representing potential short-term gains of around 20 million euros in that country.

### Examples

- An English consultancy established in London wishes to open a subsidiary in France. Now, via the French Point of Single Contact, it will be able to complete the **procedures necessary for establishing** in France:
  - obtaining all information relating to the required formalities;
  - submitting all necessary applications (trade register entry, proof of professional qualifications held by staff, etc.);
  - submitting all relevant documents (diplomas, extracts from criminal record, proof of insurance, etc.);
  - receiving authorisations and other responses from the French authorities.
- The Points of Single Contact **also benefit domestic businesses**. A Dutch kitchen-installer established in Amsterdam wishes to open a branch in Rotterdam. Via the Dutch Point of Single Contact, they can obtain all the information required and can complete the necessary formalities online.
- A Point of Single Contact may also be used by businesses wishing to provide services across borders, without actually setting up an establishment. An Estonian vet providing services across the border to clients in Finland will be able to use the Finnish Point of Single Contact to declare his/her professional qualifications.

### III) THE SERVICES DIRECTIVE FACILITATES THE FREE MOVEMENT OF SERVICES

#### Current challenge:

At present, there are numerous obstacles to the free movement of services. When a service-provider wishes to provide a service from their home Member State to another Member State on a temporary basis (for example, an Irish plumber wishing to provide their services temporarily in the UK) they may be subject to a legal obligation to establish themselves in the other Member State, they may need to obtain an authorisation there, etc.

#### Solution provided by the Services Directive:

The Service Directive considerably facilitates the free movement of services throughout the EU and prohibits a number of requirements that are discriminatory or particularly restrictive.

#### Examples

- A freelance computer repairman who is established in Hungary is free to provide their services in the Czech Republic **without having to obtain a business permit there** and without having to be entered in the Czech trade register.
- An industrial cleaning company established in *Denmark* which provides cleaning services for several buildings in Germany will no longer be required to enrol in the German trade register. In the same way, an Austrian accountant established in Vienna who wishes to provide his/her services to a company established in Belgium **will no longer have to enrol in the Belgian trade register**. A Finnish electrician who provides services to customers in Estonia **will no longer have to enrol in the register of economic activities** in order to provide his services.
- A qualified tourist guide established in Poland who wishes to provide their services in Austria (by accompanying a group of Polish tourists, for example) **can no longer be required to establish themselves in advance** in Austria or to obtain authorisation from the Austrian authorities.
- An Irish tax consultant wishing to provide consulting services to companies in Sweden **will no longer have to have a representative** domiciled in Sweden – they will now be able to provide their services on a cross-border basis.
- Hungarian property experts will be free to provide their services in Latvia **without having to submit in advance a notification** to the Latvian authorities.
- Polish companies can now decide to outsource their book-keeping tasks to accounting experts established in other Member States – this was not possible prior to implementation of the Services Directive.

#### IV) THE SERVICES DIRECTIVE GIVES CONSUMERS EASIER ACCESS TO SERVICES

##### Current challenge:

Today, consumers often face restrictions applied by public authorities or by businesses because they come from or live in another EU country.

##### Solution provided by the Services Directive:

**→ The Services Directive prohibits such treatment if it is discriminatory. It lays down the principle of "equal access" to services.**

Any difference in treatment will have to be the result of objective, relevant differences in the situation of the service consumers. For example, higher delivery charges (for delivery of furniture by lorry, for instance) could be justifiable because of distance.

##### Examples:

- To date, Hungarian school classes wishing to go skiing at winter sports resorts in Austria were not able to benefit from the preferential conditions that certain ski hire shops offered to Austrian schoolchildren. Thanks to the Services Directive, Hungarian schoolchildren are now also able to benefit from the discounts granted to Austrian pupils.
- A Finnish construction company wishing to hire industrial equipment in Denmark (to carry out a major construction project) will no longer be required to lodge a higher deposit than a company established in Denmark.