

Services in the internal market. Services Directive

2004/0001(COD) - 12/12/2006 - Final act

PURPOSE: to establish general provisions on the free movement of services in the internal market.

LEGISLATIVE ACT: Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market.

BACKGROUND: a number of Articles in the Treaty on European Union provide for the free movement of services. They are:

- Article 14 (2): establishing the internal market in which the free movement of services is ensured;
- Article 43: freedom of establishment; and
- Article 49: the right to provide services within the Community.

Yet, more than ten years after the completion of the internal market, the **internal market in services** has yet to be fully realised. Although enshrined in primary EU legislation, the free movement of services, in practice, has been hampered, hindered and prevented through the continued use of national barriers. These barriers can not be removed solely by relying on the direct application of Article 43 and 49 of the TEU, since tackling infringements, on a case by case basis, would be both complicated and lengthy. Further, for Article 43 and 49 to be fully effective national administrations would need to first set up a system of administrative co-operation – a system which can only be achieved through secondary legislation.

CONTENT: the purpose of this Directive, therefore, is to establish a general legal framework offering, on the one hand, freedom of establishment for service providers beyond their national borders and the free movement of services, on the other. The legislation has been drafted to allow for a high level of consumer protection. The key elements of the Directive can be summarised as follows:

1. General provisions

The Directive establishes the general provisions for facilitating the freedom of establishment for service providers and the free movement of services. It does not deal with:

- the liberalisation of services of general economic interest;
- the privatisation of public entities;
- the abolition of monopolies that currently provide services;
- nor does it deal with aid granted by Member States under competition rules.

The Directive does not affect Member States':

- right to define what they consider to be services of general economic interest;
- national criminal law;
- labour law (i.e. employment conditions and work contracts);

- right to conclude and enforce collective agreements and to take industrial action in accordance with national law.

The scope of the Directive is very specific. It will not apply to: **non-economic** services of general interest; (the Directive later specifies that certain **economic** services of general interest will also be excluded from the Directive. They include, *inter alia*: postal services; the electricity sector; the gas sector; water distribution and waste water services); financial services; electronic communication services and networks; transport services; temporary work agencies; healthcare services; audiovisual services; gambling activities; activities connected to official work; social services; private security services; and services provided by notaries and bailiffs.

In cases where service sectors are already regulated under EU legislation then existing provisions will prevail over the provisions set out in this Directive. The Directive will not concern rules of private international law.

2. Administrative simplification

To date, one of the main causes of market fragmentation has been overly cumbersome administrative procedures. One of the key aspects of this Directive, therefore, is to provide for administrative simplification. As a result, the Directive provides that in future, application forms will be based on a standard European form, which will be developed by the Commission in accordance with comitology procedures. Service providers seeking the cross-border establishment of their activities will be able to apply through a national “Single Contact Point”. The single contact points will: provide applicants with all the necessary information needed to establish themselves abroad; set up a system whereby all procedures and formalities can be easily completed; and allow for applications to be submitted at a distance and by electronic means.

3. Freedom of establishment

Those seeking “the right of establishment” will not be subject to authorisation schemes. Authorisations will only be permitted on condition that they are non discriminatory; they are justified on the grounds of public interest; and the objective can not be achieved by less restrictive measures (i.e. an inspection would take place too late). Any authorisation that fulfils these criteria must, in any case, be reported to the Commission.

4. Free movement of services

Member States must respect the right of service providers to operate in a country other than the one in which they are established. As such, service providers will not need: to be established in the territory in which they are seeking to work; to obtain an authorisation; to register with a professional body or association; or be banned from setting up a certain type of infrastructure which they may need to supply the services in question. Only requirements concerning public policy, public security, public health or the protection of the environment may be imposed on a service provider.

The above, however, will not apply to services of economic interest such as, the postal sector; the electricity sector; the gas sector; water distribution services etc.

5. Quality of services

In order to protect consumers, the Directive lists a number of provisions, applicable to the service industry. For example, service providers must provide the Member States with their name; legal status;

geographic address of establishment; registered trade number; authorisation scheme (where relevant); VAT number; after sales guarantees etc. They must also, where necessary, subscribe to a professional liability insurance.

6. Administrative co-operation

The Directive obliges Member States to offer each other mutual assistance and to put in place measures for effective co-operation in order to ensure the correct supervision of providers and the services they provide. An “alert” mechanism is also set out.

7. Convergence programme

The Member States will, in co-operation with the Commission, take accompanying measures to encourage the drawing up, at a Community level, of codes of conduct which seek to facilitate the provisions of a service.

ENTRY INTO FORCE: 28 December 2006.

TRANSPOSITION: 28 December 2009.