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INFORMATION NOTE

from: General Secretariat of the Council
to: Council (Competitiveness and Growth)
Subject: Services Directive - State of play of transposition

Delegations will find attached an information note from the Commission on the above subject which will be dealt with under " Any other business", agenda item 12 (f) at the Competitiveness Council on 1-2 March 2010.

MEETING OF THE COMPETITIVENESS COUNCIL

1-2 MARCH 2010

STATE OF IMPLEMENTATION OF THE SERVICES DIRECTIVE

Information note from the Commission services

The Services Directive is a horizontal internal market instrument which concerns a large variety of economic activities. Its proper implementation is a unique opportunity to modernise and simplify Member States' regulatory frameworks and to lift barriers to the functioning of the Internal Market for services. Over the last three years, this has been highlighted on many occasions by the European Council, the Competitiveness Council and the ECOFIN Council.

The Directive required important legislative changes, including the in-depth review of the regulatory framework applicable to the services sector. It also required the undertaking by Member States of a number of ambitious projects, such as the setting up of Points of Single Contact for businesses.

Delivering both the legislative changes and the practical measures required by the Directive needed a sustained and unprecedented effort throughout all levels of national administrations as well as strong political backing. For this reason, the Commission deployed since the adoption of the Directive end 2006 a significant effort to support Member States' implementation work both at technical and political level. It has also provided regular updates on the state of implementation to the Council and to the European Parliament¹.

The Commission continues to be fully committed to support the work of Member States - our common target should be to ensure an ambitious implementation of the Directive. Moreover, work does not stop here, certain aspects of the Directive like the Points of Single Contact or the system of administrative cooperation are long-term projects that should be further developed and expanded beyond the implementation deadline.

¹ See Information Notes made public at the occasion of the Competitiveness Council May 2008 and September 2009

The objective of this note is to give a first overview of the state of implementation of the Services Directive as it stands two months after the expiry of the transposition deadline and, where required, to point out to the need for urgent action on a number of issues and in a number of Member States. At this very early stage the information provided in the note cannot be but of a factual nature and does not pretend to be exhaustive. An in-depth assessment of all aspects of implementation and their quality in the 27 Member States has already started and will continue in the following months.

WHAT NEEDED TO BE DONE? - WHAT HAS BEEN ACHIEVED?

1. The review of the legislative framework applicable to the services sectors covered by the Directive

Member States had to identify and assess the requirements affecting the establishment of service providers and the cross border provision of their services. This review of legislation required unprecedented efforts of coordination from Member States - between different departments as well as the central, regional and local levels in national administrations. The ultimate goal was to simplify requirements which were burdensome and modify or abolish those that were unjustified, discriminatory or disproportionate.

Almost all of the Member States have finalised the screening of their legislation. The results have been communicated to the Commission electronically.

To give an idea of the amount of information received: in total, Member States have communicated almost 16.000 requirements imposed on the establishment of service providers (authorisation schemes and other requirements) and over 19.000 requirements imposed on the cross border provision of services. This "picture" of the state of the Internal Market for services will be assessed and will constitute the basis for the 2010 "mutual evaluation exercise" foreseen in the Directive. It will provide a valuable factual base when assessing the need for future policy initiatives.

An already tangible result of the screening process is the "internal market effect" it has created in Member States: it has forced all those involved in it - whether at central, regional or local level - to look into their laws and regulations through "internal market glasses" when assessing their domestic regulation.

2. *The adoption of implementing legislation*

Member States had to implement the general principles and obligations established in the Directive. Most Member States have opted for the adoption of one horizontal law to do so. An alternative and equally valid approach is to opt for several specific acts (be them of a cross cutting nature or sector specific)¹. In addition, following the review of existing legislation, all Member States needed to modify/abolish existing laws and regulations to ensure their conformity with the Directive.

"Horizontal legislation"

- 13 Member States have adopted their "horizontal legislation": Bulgaria, the Czech Republic, Denmark, Estonia, Finland, Hungary, Lithuania, Malta, the Netherlands, Romania, Spain, the UK and Sweden.
- 10 Member States have their horizontal legislation in Parliament: Austria, Belgium, Cyprus, Greece, Italy, Latvia, Luxembourg, Poland, Slovakia and Slovenia.
- In 2 Member States – Ireland and Portugal- the drafting of the horizontal legislation does not seem to be finalised yet.

"Specific legislation"

- 8 Member States have concluded the adoption of changes in sector specific legislation: Bulgaria, the Czech Republic, Denmark, Estonia, Hungary, Malta, the Netherlands and Sweden.
- Germany and Spain have almost concluded the adoption of changes in sector specific legislation (some legislation at regional level is still pending in both countries). France has already adopted a number of important pieces of legislation but still has two proposals pending in Parliament. The UK also has some legislation pending.
- Belgium, Italy, Latvia, Lithuania, Slovakia and Poland have most of their proposed changes in sector specific legislation before their Parliaments.
- In the remaining 9 Member States - Austria, Cyprus, Finland, Greece, Ireland, Luxembourg, Portugal, Romania and Slovenia - the drafting of the required changes to sector specific legislation has accumulated a significant delay.

To give an idea of the scale and nature of changes in legislation (in total): well over 600 legislative acts have been modified so far. The changes relate to areas such as retail services, tourism services, construction services, many services of the regulated professions, business services, etc. They include administrative simplification measures as well as the lifting of regulatory barriers to the establishment of businesses and the cross border provision of services.

¹ This approach has been followed by France and Germany

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

Member States had to set up the so-called Points of Single Contact (*PSCs*) to facilitate life for SMEs in their daily dealings with administrations. The organisational and technical challenges involved in the setting up of the PSCs are significant. Member States needed to ensure that, as from end 2009, service providers can obtain all relevant information and complete the required administrative procedures through a single access point, without having to contact a whole range of administrative bodies or professional organisations. Member States also need to ensure that completion of these procedures is possible by electronic means and across borders.

- A "first generation" of PSCs websites is available now in 21 Member States¹. These portals provide businesses with extensive information regarding the procedures and requirements they need to comply with. In 14 Member States², the PSCs already allow, to different degrees, for the online completion of procedures.
- The Commission has set up an EU portal that allows businesses to easily identify the PSCs of all Member States³. This portal, which is available in all EU languages, has been launched in January 2010 and provides direct links to all national PSC websites.
- Substantive work has been undertaken with Member States to facilitate the cross border use of electronic procedures in the PSCs. This includes the adoption last year of a Comitology decision obliging Member States to establish national "trusted lists" with common information required for the cross border validation of e-signatures⁴. Also a "list of lists" has been established at EU level to facilitate the use of the national "trusted lists". Further measures to facilitate the cross border use of e-signatures and e-documents are under discussion with Member States.
- Close cooperation amongst many Member States has emerged in this area. Member States have developed a "common branding" and logo and have engaged into "mutual testing" of their PSCs. A large number of Member States have decided to make information content on their PSC websites available in languages other than their own. Different language versions of the PSCs are already available in 9 Member States.

¹ AT, BE, BG, CY, CZ, DE, DK, EE, ES, FI, FR, HU, IE, LV, LT, LU, MT, NL, PT, SE, UK

² AT, CZ, DK, EE, FI, FR, DE, HU, LT, NL, PT, ES, SE, UK

³ [Http://ec.europa.eu/internal_market/eu-go/](http://ec.europa.eu/internal_market/eu-go/)

⁴ Commission Decision 2009/767/EC of 16 October 2009 setting out measures facilitating the use of procedures by electronic means through the points of single contact under Directive 2006/123/EC on services in the internal market (OJ L 274, 20.10.2009)

4. *Administrative cooperation obligations - use of the Internal Market Information System*

The Services Directive imposes on Member States very specific obligations of direct administrative cooperation between their authorities. This potentially requires the involvement of a high number of authorities at all levels of the national administrations as well as professional organisations. To make this possible technically, a special Services Directive application of the Internal Market Information system (IMI) has been developed in close cooperation with the Member States. To make this system work, Member States needed 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.

- A Comitology decision was adopted last year to make compulsory the use of the Internal Market Information System (IMI) for the purposes of administrative cooperation under the Services Directive¹.
- Around 4200 authorities have been trained and registered in the IMI system to date to deal with "Services Directive" requests. Following a pilot project carried out throughout 2009, a solid basis for administrative cooperation appears to be in place. Around 1300 exchanges of information between Member States' authorities have taken place in 2009 on a test basis to get IMI users acquainted with the system and their obligations under the Directive.

WHAT REMAINS TO BE DONE? PRIORITIES FOR ACTION AND NEXT STEPS

Three priority fronts for Member States can be identified at this stage:

- Finalisation of the screening of legislation in the few remaining countries (*Greece, Slovenia*) where this has not been done. This is the prerequisite to identify the required changes in existing legislation and it is also essential for the process of mutual evaluation.
- In the case of *Ireland and Portugal* it is essential to finalise the drafting of the horizontal implementing laws. It is equally urgent to finalise the drafting of all required changes in existing legislation in the case of *Austria, Cyprus, Finland, Greece, Ireland, Luxembourg, Portugal, Romania* and *Slovenia*.
- Urgent work on the Points of Single Contact is required in those countries where either they are still missing or they are clearly insufficient in their functions (*Greece, Italy, Poland, Slovakia, Romania*, and *Slovenia*). Equally, most Member States need to step up efforts to allow for the completion of all procedures and formalities through the PSCs.

¹ Commission Decision 2009/7739/EC of 2 October 2009 setting out the practical arrangements for the exchange of information by electronic means between Member States under Chapter VI of Directive 2006/123/EC on services in the internal market (OJ L 263 , 07.10.2009)

The Commission will continue to work with Member States on key issues such as the improvement of the Points of Single Contact (which should develop into fully fledged e-government centres), the lifting of barriers for the use of electronic procedures across border and the use of IMI for the administrative cooperation obligations under the Directive.

However, it should be clear that in the end, the responsibility for a proper and timely implementation of the Services Directive lies with Member States and the Commission will not shy away from taking the steps required to ensure the completeness and quality of its implementation.

The Commission will also make full use the 2010 "mutual evaluation process" foreseen in the Directive. In the course of this process, already launched, Member States and the Commission will assess the results of the review and changes in legislation undertaken to implement the Directive. Interested parties will also be consulted. The objective of this innovative exercise is to create transparency, exchange best practices and assess the need for further initiatives. As foreseen in the Directive, the Commission will submit, by the end of the year, a report on the results of the "mutual evaluation process" to the Council and the European Parliament.
