



Position Paper

April 2017

An initial reaction to the Services Package

Executive Summary

On 10 January, the European Commission published the Services Package composed of 3 legislative proposals and 1 non-legislative Communication. All proposals are linked to the Services Directive. The proposals come several years after the entry into force of the Services Directive and reflect the sub-optimal impact of this important piece of legislation designed to enhance the free movement of services within the internal market.

While a follow-up on the mentioned directive was long overdue and welcome, the proposals are underwhelming overall and do not live up to the expectations of the business community. In order to increase cross-border service provisions, complex administrative procedures should be tackled, as well as different national services rules. The package addresses these elements, but the measures proposed are on the whole unconvincing.

A new European Services e-card

General considerations:

More than 10 years after the introduction of the Services Directive, figures show that the level of cross-border activity of service providers from certain sectors remains far below its potential. Some of the reasons as to why so few companies offer temporary services or consider secondary establishment in another country are linked to well-known issues that the e-card proposals fail to address. These issues relate to authorization schemes, differences in consumer protection regimes and varying business regulations in general.

While, if applied well, the proposals can deliver some marginal improvements, the bigger issues are not tackled. There is also a nagging concern among Chambers that, contrary to its objectives, the e-card may in fact legitimize unwarranted and unnecessary obstacles that member states should already have removed in compliance with the provisions of the Services Directive.

If the e-card serves merely to simplify the process of complying with disproportionate, unwarranted, overly bureaucratic and constantly changing rules and procedures, it would be misguided and fail to address the root cause of avoidable burdens.

Moreover, member states' track record in implementing tools in this field is far from enviable, so questions remain about their commitment to the e-card. Overall, businesses need a more ambitious and robust approach to removing the many barriers that remain to the cross-border provision of services.

Specific comments:

Administrative complexity is a regularly cited obstacle to service providers doing business with other member states. Indeed, EUROCHAMBRES has frequently cited the negative impact of such non-tariff barriers within the single market. The Services e-card seems like a genuine and potentially impactful attempt to address this problem in the services sector.

In particular, EUROCHAMBRES welcomes:

- That the card will be available to businesses for secondary establishment in other member states, but most importantly to those that temporarily provide services and where the barriers most pressingly need removing
- The standardized approach for applying for an e-card in all official European languages and in relation to all member states,
- The default approval mechanism and other measures that should encourage the country of destination authorities to process applications swiftly
- The voluntary nature given many remaining questions about the added value.

However, as previously stated, doubts remain among businesses and Chambers. Previous initiatives such as the Points of Single Contact (PSCs) have flattered to deceive. There is a concern that – if poorly applied, - the new system could create additional hurdles for businesses, rather than reducing existing burdens, which would of course render the whole initiative counter-productive.

It is planned that the system will be based on IMI. Past experience has however shown that this system has not always proved to work adequately. Therefore, if authorities are to communicate through IMI, the shortcomings of the system need to be analyzed and addressed.

Linked to the previous point, it is essential that the relationship between this initiative and the existing PSCs is clarified and proves complementary. The services e-card should be used to develop the PSCs and the IMI further and professionalize their services. The forthcoming Single Digital Gateway proposal will consequently also be of great relevance and synergy with the e-card procedures will be crucial. The benefits for establishment but most importantly for the temporary provision of services in another member state seem relatively limited if many procedures still need to be done locally (eg procedures related to VAT obligations).

Improved notification of draft national laws on services

General considerations:

A notification procedure is already in place for amendments by national authorities to rules pertaining to the Services Directive. The procedure has unfortunately not proved effective over the years and therefore a revision of the rules is very welcome. The underperformance of the mechanisms which are in place today has shown that, if the Services Directive is to be implemented correctly, one of the conditions sine qua non is the introduction of a TRIS-like (Technical Regulation Information System) procedure.

EUROCHAMBRES believes that, like the TRIS procedure, the proposed new procedure will not impinge on the sovereignty of the member states. If a revision to national rules that relate to the provisions of the Services Directive is under consideration, it is in everyone's interest – public and private sector alike - to ensure compatibility with EU law before adoption and application. This avoids the launch of infringement proceedings and frustrations and unjustified new obligations for businesses.

Recommendations:

Most problematic is that under the current rules, IMI does not offer access to the content of notifications for third parties. Addressing this lack of transparency regarding national measures is crucial for the effectiveness of the proposal.

It will be possible to react in a timely way, before a law was adopted. We welcome this 'prevention rather than cure' approach. Often, infringement proceedings take years, by which time the harm to businesses and the economy more widely is already done. The proposed new procedure should avoid this scenario.

This initiative fits well with the ambition of the current Commission to "*do less but better*". Although SMEs would welcome a more robust approach to addressing barriers to the cross-border provision of services not contained within the scope of the Services Directive, it is most important at this stage to fix what doesn't work within the existing framework. If member states are serious about their commitments to an SME and trade friendly policy framework, offering support for this measure should be at the top of their list of priorities.

The fact that more information will have to be provided on the proportionality of the new laws is legitimate and meets a real need.

EUROCHAMBRES welcomes the extension of the scope of the notification obligations (incl. authorization schemes). There seemed to be no reason in the first place not to include certain procedures in the notification process.

We also welcome the references to greater transparency in the notification procedure given that stakeholders – notably businesses – will be the end 'users' of revised rules. We underline that this needs to be thought through carefully by the Commission so as to ensure that intermediary organisations such

as Chambers are able to contribute to this process on behalf of smaller businesses that typically won't have the time or resources to do so.

A proportionality assessment of national rules on professional services

General considerations:

There are many cases where unnecessarily burdensome and outdated rules can make it unreasonably difficult for qualified candidates (who are service providers) to access certain regulated jobs in other member states. In line with the subsidiarity principle, member states should decide for themselves how to regulate professions and whether to introduce new national professional requirements. Nonetheless, these requirements should of course be proportionate. It is clear that this is not always the case, which is to the detriment of the business community, the economy and the single market. However, EUROCHAMBRES maintains that such member state breaches of requirements set out in EU legislation should be addressed through the established infringement procedures at the disposal of the European Commission, rather than additional legislative requirements.

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