

**BENEFITS OF THE
SERVICES DIRECTIVE**

UNICE issued its views on the proposal for a directive on services in the internal market (hereinafter “the proposed directive”) in October 2004¹. The purpose of the present paper is to illustrate the advantages of the proposed directive further and to provide additional evidence of the need for a genuine internal market for services in the EU in order to attain the growth and competitiveness objectives of the Lisbon agenda.

A. CREATION OF A GENUINE INTERNAL MARKET IN SERVICES

Free movement of services is an essential element that is still missing in the completion of the internal market in Europe. People, goods and capital can now cross borders without facing unjustified restrictions. Businesses, workers and consumers can benefit greatly from the increased size of the internal market in goods, capital and over 450 million consumers. The EU economy has built up tremendous strength from allowing economic actors to take advantage of the scale of the market.

But barriers still exist in the area of free movement of services. In fact, the single market in services, although enshrined in the text of the treaty from its conception, does not exist in practice. There are some sectoral exceptions where progress has been made, e.g. financial services, but this was because of the necessity to put into place the free movement of capital.

The reality is that we operate in an “internal” market, with 28 different sets of legislation for a wide range of service sectors². The large majority of other service suppliers who want to widen their horizons in other EU countries have to comply with these different sets of obligations in each country. In practice, many of them do not even get as far as starting on a “foreign” adventure. All these rules and permits are holding back the entire European services economy, which represents 70% of EU GDP. For goods sectors, companies have integrated the notion of the EU market. In service sectors, outside their own domestic market, any activity is still considered as providing a service in a “foreign country”, not within the European Union entity. For a European service provider, there is no difference between establishing itself or selling its service in the EU or in any other country in the world that has opened its market in the framework of the GATS negotiations, as most of the OECD countries and many others have done in a large number of service sectors in the framework of the WTO negotiations.

The European Court of Justice (ECJ) has repeatedly confirmed the rights of service providers to practise their freedom of establishment and freedom of movement of their services in other EU Member States. But, the impacts of the judgements are limited to the parties and to other plaintiffs that take advantage of the case law. Notwithstanding the fact that Europe does not want to be ruled by a “government of judges”, ECJ case law is clearly not sufficient to achieve completion of the internal market in services.

¹ See UNICE position paper on the directive of 4 October 2004 (www.unice.org).

² With the Agreement on the European Economic Area, the EU Internal Market was in 1994 extended to include the three EFTA countries, Norway, Iceland and Liechtenstein, thus the Internal Market now consists of 28 countries.

B. REINVIGORATING THE EUROPEAN ECONOMY

The European Union has as one of its highest priorities fulfilling the Lisbon Agenda whereby Europe must become the most competitive knowledge-based economy in the world. Many studies have established that Europe must give high priority to completion of the internal market in order to achieve that objective. The services sector plays a crucial role in this regard.

If Europe wants to be the most innovative economy in the world, there must be more competition in the services sectors. Competition leads to innovation and higher productivity as well as creation of new jobs. To encourage businesses to invest in research, innovation and development of new services, they need to be able to take advantage of the full scale of the EU market so as to be sure that the investment costs can be recouped. According to experts, around 50% of the services that we will consume in 2050 have not yet been invented. We must ensure that Europe invents a large proportion of them.

The proposed directive will be instrumental in fulfilling the employment goals of the Lisbon agenda. Roughly 96% of total net job creation in the EU between 1997 and 2002 came from service sectors. This shows the high employment-generating potential of service sectors – a potential that needs to be released further if we want to prevent the ongoing evolution from a manufacturing-based to a services-based economy from resulting in net job losses.

Empirical evidence shows that full implementation of the proposed directive will lead to increased trade and cross-border investment in services. This will generate higher income, which in turn increases the demand for services and employment in these sectors. Last year the Netherlands Bureau for Economic Policy Analysis (CPB) calculated that the removal of barriers to trade and establishment as foreseen by the proposed directive would in time produce 15 to 35% growth in both intra-EU services trade and the stock of direct investment in services.³

According to a recent report carried out by Copenhagen Economics⁴ for the European Commission, full implementation of the proposed directive in the service sectors covered would bring about the following:

1. Creation of 600,000 additional jobs in the EU;
2. Reduction of existing barriers to service provision by more than 50 %;
3. Reduction of the prices of the services concerned by the directive which will benefit both consumers and firms using these services as inputs;
4. Benefits for European consumers, businesses and governments from enhanced productivity, higher employment and increased wages;
5. A wage rise of 0.4 per cent in the EU while the price of services in the EU would fall – by an average of 7.2 per cent in the regulated professions.

C. CONCRETE BENEFITS FOR ALL EUROPEAN ECONOMIC PLAYERS

In addition to the benefits and the macro-economic figures mentioned above, the proposed directive is expected to bring about concrete benefits for all interested parties, namely service providers, consumers, employees and governments. It has to be stated however that, in order to realise the full potential of the proposed directive, some clarifications would have to be made to the current text. The normal legislative process in the EU institutions and a constant dialogue with interested stakeholders should be used for that purpose.

³ CPB Netherlands Bureau for Economic Policy Analysis, A quantitative assessment of the EU proposals for the Internal Market for Services, September 2004.

⁴ "Economic Assessment of the Barriers to the Internal Market for Services", January 2005 available at: http://europa.eu.int/comm/internal_market/services/docs/strategy/2004-propdir/2005-01-cph-study_en.pdf.

I. Benefits for service providers

a) Accelerate the authorisation process for EU companies

One of the main objectives of the proposed directive is to facilitate the establishment of a business in another Member State, *inter alia* through creation of a one-stop shop in each Member State to which businesses from other European Union countries can turn with all their administrative questions. This will reduce the costly and lengthy administrative burden and allow a quicker authorisation process, with wider use of e-government. Thus, companies that were hesitating to set up an office (subsidiary or branch) in another country (and in particular in a neighbouring country), due to the complex procedure involving many different administrations (regulatory authority and/or the professional body of the sector, social administration, fiscal administration, trade register, etc.) will have to deal with just one a “single point of contact”, where all formalities will be completed.

The proposed directive aims to simplify the procedures by asking the governments to accept any documents from another Member State which serve an equivalent purpose to what they ask for in their own internal process. It is the additional cost faced by providers due to different regulatory requirements, as confirmed by the recent CPB study (see above) which deters service companies from establishing and providing cross-border services. By the end of 2008, it should be possible to fulfil all these procedures electronically. This should further speed up and reduce the costs of authorisation. Authorisations should be handled within a short pre-determined period of time and absence of reply after the deadline would imply a positive response. Currently, a representative of the applicant company must often visit the authorities many times and wait for replies. Certified originals of documents from the home Member State's authority are often required. This extends the process even more and further discourages potential applicants.

Example:

Economic need tests for opening new commercial presence are often burdensome and costly:

1. A Swedish company indicated that the costs of the study plus external consultant and use of internal coordinating staff ranged from € 165,000 to € 475,000 per test. The total for 22 applications in the EU amounted to € 5.9 million.
2. According to another company, the direct and indirect costs of gaining the requisite advice on legal and regulatory requirements in order to establish a presence in a single EU Member State stood at between € 80,000 and € 160,000.

b) An opportunity to test a market without the establishment burden

Another important purpose of the proposed directive is to facilitate cross-border service provision, *inter alia* through introduction of the country-of-origin principle: the legislation of the country where the business has its head office is applicable in the commercial transaction. As indicated above, most small and medium services companies (SMEs) do not even attempt to set up abroad because of the complexity of obtaining the authorisation. Similarly, the large majority of SMEs currently do not attempt to export their services to other EU Member States. Indeed, for many service sectors, the providers have to know the legislation of the recipient countries, and therefore adapt the product to the different legislations of the countries in which they want to operate in. This is a major brake on development of the services economy. By allowing the provider to offer its services across EU borders under the national conditions applicable in his own Member State, these disincentive obstacles will be lifted and should provide an opportunity to companies, particularly SMEs, to go to a neighbouring market and test whether they might find new consumers for their services.

The proposed directive not only facilitates the provision of services between EU countries by establishing the country of origin principle but also ensures that the service provider will benefit from simplified administrative procedures.

It is important to understand the concept of the country of origin principle and its practical implementation. First and foremost, it covers only cross-border service provision. It means that as soon as the provider decides to establish in the country, it is the host country legislation which applies. Second, there is an extensive list of derogations from the principle, general or transitional, that have been introduced with a double purpose. One is to take into account the existence of specific Community legislation already in force. Other proposed derogations are justified on the basis of security, safety and public order or protection of consumers and the environment.

Among the derogations from the country of origin principle are matters covered by directive 96/71/EC on posting of workers. This ensures that any company which sends employees abroad to provide its service for a short period of time has to comply with important parts of the working conditions of the host country legislation, thus preventing any risks of lowering social protection. Given that a large majority of the services still require face-to-face contact with the client, it is clear that a company that might have found a new clientele in another country will not continue for long to run two different systems for its same employees (one when they are working in the home country, and one when they are working in another country/ies). That company might be encouraged to set up a new office in that country where it has discovered a reservoir of new clients. Given that the directive will facilitate the establishment (see paragraph A above), it would be easier to do this. But it would mean that the country of origin principle will no longer apply to that company, and as a result, employees working in another country will be subject to host country legislation.

Examples of companies that could have benefited from the proposed directive:

1. A French firm commissioned to install an electrical appliance in Luxembourg found it would have taken twice as long to satisfy the Luxembourg notification requirements as to carry out the installation - so it dropped out of the contract.
2. A Belgian firm found it had to notify the French authorities just to be entitled to measure a kitchen with a view to a contract there - so it decided it was not worth it.
3. German companies meeting German and EU standards for installing fire protection are obliged to satisfy Dutch ability tests,
4. A Dutch service provider is required to obtain a Belgian VAT number just to participate in a Belgian exhibition.

II. Benefits for consumers

The proposed directive also aims to improve rights, information and quality of services for those who use the services. For instance, the country of the customer may not impose restrictive measures so as to forbid or to discourage him from purchasing services provided by a company from another EU Member State (prior declaration, limit of fiscal deductions, etc.).

All categories of users of services will benefit from the directive: private (individual) consumers and companies acting as consumers of services.

- a) Private (individual) consumers: The introduction of new service providers in the national EU markets will allow consumers
 - to have larger choice of services, discover new services that might have not been introduced into their market due to lack of competition;
 - to enhance quality of service and better information on service providers

- to buy services in the local market at a lower price, due to increased competition between providers and a reduction in providers' costs because of higher potential economies of scale.
- b) Companies acting as consumers: This category of consumers would also benefit greatly from the completion of the internal market in services. Manufacturing companies that are used to the concept of the "EU Internal Market" know that there are probably opportunities to find better service providers from other EU Member States (newly established in the host country, or providing a service temporarily from their home country, in particular in the border regions).

The proposed directive sets up an assistance process for the recipients of services. Member States will have to ensure that users can obtain, in their Member State of residence, all the necessary information they might need on the legislation of the country of the provider, e.g. consumer protection, legal dispute settlements, etc.

The proposed directive also puts a strong emphasis on the quality of services, aiming to ensure consumer rights. In particular, EU governments are asked to ensure that proper information on providers and their services is available to consumers, just as is the case for a national provider (name, address, registration number, supervisory authority, contractual clause on the law applicable, etc., professional insurance and guarantees when necessary, after-sales guarantees).

Finally, for EU consumers of non-hospital healthcare services in another EU country, the Directive ensures that the assumption of related costs is the same as that assumed by the social security system of the country of residence of the consumer.

III. Benefits for employment

It is also argued that the introduction of further competition in the services sector and the potential entry of new companies from other EU Member States might result in the destruction of existing jobs. It has been repeatedly proven that the market in the services sector will continue to grow and that there will be a large reservoir of new opportunities for the services market in Europe. This would lead to higher employment and creation of new and more innovative services through more efficient and competitive organisation of services.

This conclusion has been shown in multiple studies, and further illustrated by the experience from the liberalisation of some services sector in recent years, for example in the telecommunications sector, where analysts agree that innovation has been accelerated by the introduction of competition in the EU market, and that it has been accompanied by the creation of jobs. A large body of empirical and theoretical OECD research relating to different service sectors shows that reducing the level of regulation, as targeted by the proposed directive, generally leads to significant employment gains in the sectors concerned.

IV. Benefits for governments

In all sections of the proposed directive, EU governments are asked to strengthen their cooperation. The governments will thus build up mutual trust between themselves, in particular through harmonisation of legal provisions, cooperation on supervising services and promotion of codes of conduct at EU level. The obligations on Member States to exchange information on the various laws in place and to examine the compatibility of their legal system and authorisation processes in the various service sectors with the proposed directive's requirements would improve the efficiency of internal procedures in the public administration. This in turn should create a better mutual understanding of the legal processes which should lead to a regulatory convergence, which would strengthen the notion of a European internal market for services.
