



SPEAKING NOTES

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STATE OF PLAY AND CHALLENGES WITH IMPLEMENTATION

Despite the substantive reduction in its scope and the ambiguity of certain provisions, the services directive adopted in 2006 should facilitate freedom of establishment, simplification and modernisation of national requirements, quality of services, information to recipients and transnational administrative cooperation. Also, restrictions on cross-border services are now only allowed subject to stricter conditions and greater transparency.

However, the directive will deliver the above objectives only if it is transposed and implemented swiftly and ambitiously at national level. Member States are due to implement it by the end of 2009 and should consider it a priority in the coming years and devote adequate resources to ensure a high quality transposition.

For BUSINESSEUROPE, action should focus on the following aspects.

1. National screening and reduction of administrative burden

Member States should speed up the review and simplification of national regulations, procedures and formalities for establishment of, access to and exercise of the service activities covered by the directive. This should result in genuine administrative simplification which means simplifying or if necessary removing those requirements that place unnecessary burdens and/or are out of date. We are concerned about pro forma national screenings that seek to preserve the status quo as well as about the completeness and accuracy of some national screenings.

2. Points of Single Contact

This is one of the most important elements of the directive for service providers and users. Member States must create points of single contact (PSCs) that provide, also by electronic means, the necessary information and allow completion of all procedures

and formalities relating to establishment, access to and exercise of a service activity. Effective and well functioning points of contact are instrumental for facilitating establishment and cross-border services.

There are a variety of models that can be used to create PSCs. Member States should choose a model that allows carrying out the above-mentioned tasks and meets the needs and expectations of the users mainly service providers including online solutions that allow enterprises to gather information as well as comply with administrative formalities at a distance, in a quick and user-friendly way.

3. Application of article 16/Freedom to provide cross-border services

Article 16 is the result of a difficult political compromise. Its practical implementation at Member State level is therefore essential and should be as uniform as possible.

Member States shall not apply their legislation on services provided from other Member States unless non-discriminatory, proportionate and justified for one of the following reasons: public policy (ordre public), public security, public health, protection of the environment.

It is vital that the grounds on which Member States can justify national restrictions on foreign service providers are interpreted and implemented strictly and are not enlarged arbitrarily by Member States.

The Commission should evaluate together with Member States the possibility to establish a public register of all the national requirements that Member States must notify according to article 39, in particular those referring to article 16. We strongly believe that there should be consequences for failure to notify by national authorities. We would see some merits in enlarging the notification system established by the directive 98/34 (the transparency directive) for technical specifications for goods and electronic services to cover all services.

4. Administrative cooperation

Member States shall give each other mutual assistance, and to put in place measures for effective cooperation with one another in order to discharge their enforcement responsibilities. This is essential for the smooth functioning of the directive. The Internal Market Information system (IMI) is useful for articulation of the cooperation and mutual assistance. We appreciate the Commission's efforts in setting up the system and encourage Member States to work together with the Commission and to put in place the necessary organisational arrangements internally to have IMI up and running in time before the deadline for implementation.

5. Reporting obligations and transparency

Member States bear important reporting duties such as reporting to the Commission on authorisation schemes, requirements restricting the freedom of establishment, multidisciplinary activities and implementation of article 16 on cross-border services. Beyond these reporting obligations, Member States should indicate clearly how they have implemented the directive and make this information public. This is a key for both service providers and recipients to ensure transparency and legal certainty.

6. Interoperability and e-procedures

Regarding e-procedures, there is a need for achieving cross-border compatibility of solutions so that business from one Member State can actually access and complete procedures in another Member State at a distance from their home State. Setting up the system would otherwise prove useless to business.

Member States and the Commission should also ensure that the e-structure of the directive is duly in place by the set deadline particularly making use of the e-signature directive and other initiatives at Community level to provide a full electronic interoperability of national systems.

7. Assistance for transposition

BUSINESSEUROPE fully supports the Commission's work and pro active role to assist Member States in national transposition. Regular meetings gathering the Commission and the Member States' relevant experts contribute to better dialogue and are necessary for correct and uniform transposition. In this context, instruments such as the Commission's Handbook on implementation of services directive are particularly useful.

Also dialogue with stakeholders can facilitate a good transposition. Business particularly service providers can play an important role in helping Member States in the transposition. They deal on a daily basis with the regulations and administrative formalities relating to services and can provide their expertise and market experience. BUSINESSEUROPE is committed to contribute with the assistance of its national members to the process. To that end, BUSINESSEUROPE is preparing a comparative report on national transposition.

The report will be published and presented in a special event gathering speakers from the EU institutions and the business world to take place in the second half of November this year.

This will serve to reiterate, one year before the deadline for transposition, the importance of a correct national transposition of the services directive and highlight issues of importance for business on the basis of the information provided from national federations.