

30 May 2012

## Building a genuine single market for services

### KEY MESSAGES

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Despite the progress made by the Services Directive, companies still experience barriers to the free movement of services across Europe.

To unleash the growth potential of a better functioning single market for services, BUSINESSEUROPE strongly recommends to:

- Achieve high quality implementation and strong enforcement of the Services Directive in every Member State.
- Simplify administrative procedures and allow for their completion online through the Point of Single Contact (PSCs). Also better promote the PSC portals.
- Reduce the number of regulated professions.
- Ensure easier and faster recognition of professional qualifications across borders.
- Conduct a thorough assessment of existing national insurance requirements and limit double insurance obligations.
- Make use of European rather than national standards where fit.
- Collect more accurate data on the services industry and promote service innovation.
- Promote the European Private Company Statute (SPE) to enhance the mobility of companies.

### KEY FACTS AND FIGURES

Services account for almost 70% of EU GDP and around two-thirds of total employment in Europe.

At present 9 out of 10 new jobs are created in Europe's services sectors.

Last year 80% of all start-ups in France were service companies.



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## **BUILDING A GENUINE SINGLE MARKET FOR SERVICES**

### REMOVING REMAINING BARRIERS AND TACKLING OUTSTANDING CHALLENGES

#### **1. Introduction**

From 1998 to 2008, Europe's services sector grew by an annual average of 2.8% while EU growth averaged 2.1%. Employment in the sector grew by 2% a year, compared with 1% for the economy as a whole.<sup>1</sup> In addition, services are the most important source of foreign direct investment (FDI) in Europe.

Yet, despite the existence of the single market, since 2004 trade in services between the EU and the rest of the world has been growing faster than inside Europe. This is because European service companies are still faced with many administrative, regulatory and linguistic barriers when operating across borders.

Only 20% of the services provided in the EU have a cross-border dimension, accounting for just 5% of EU GDP compared with 17% for manufactured goods. Even taking into account that some services are in nature more local and less tradable than goods and the fact that establishment of businesses abroad is not included in these calculations, these figures are relatively low.

Services can appear at any stage in the value chain and across all sectors of the economy, including manufacturing. In fact, about 75% of trade in services concerns the supply to other businesses (B2B). Therefore a better functioning, open and competitive European services industry will enhance the competitiveness of the EU economy as a whole. This is of crucial importance in the face of tough global competition in particular from India and China.

#### **2. The Services Directive**

The Services Directive<sup>2</sup> adopted in 2006 was the most significant step forward to facilitate the free movement of services since the establishment of the single market in 1992 under the Single European Act.

Its objective was to further integrate European services markets by removing legal and administrative barriers to the development of service activities across borders. In addition, Member States were obliged to set up so-called Points of Single Contact (PSCs) to provide businesses with information and assistance anywhere in the EU.

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<sup>1</sup> Source: the brochure "[Single Market Act – together for new growth](#)", the European Commission, December 2011.

<sup>2</sup> [Directive 2006/123/EC](#) of the Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376, 27.12.2006.



## 2.1. The Services Directive: achievements

By the Directive's transposition deadline at the end of 2009, BUSINESSEUROPE observed disparate results among Member States.<sup>3</sup> While some had made significant efforts, others were lagging far behind in terms of quality and timing of implementation.

Now more than two years after the transposition deadline, important improvements have been made to the legal framework applicable to service companies across Europe. Many existing procedures, formalities and authorisation schemes have been simplified and made more business friendly, also for foreign providers (see box 1).

In addition, many unjustified and discriminatory national requirements and disproportionate burdens on domestic and foreign service providers, in particular in a cross-border setting, have been abolished.

### **Box 1: Reported positive effects of the Services Directive\***

- *Simple notifications often replaced lengthy registration procedures*
- *Better and more frequent application of "tacit agreement" principle*
- *Declarations or prior notification often replaced strict authorisation schemes*
- *Many authorisations now have national validity and unlimited duration*
- *More freedom to carry out "multidisciplinary activities"*
- *Less need to enroll in trade register for temporary service provision*
- *Less need to apply for business permit for temporary service provision*
- *Less restrictions on legal form*
- *Less requirements on prior establishment*
- *Less rules on compulsory prices or tariffs*
- *Less demands for prior "economic needs tests"*
- *Less minimum capital requirements*
- *Less quantitative and territorial restrictions*

*\* by BUSINESSEUROPE's national member federations (2012).*

The Mutual Evaluation Process conducted in 2010 under the Services Directive was a novel tool where the people directly responsible for the transposition and implementation of a Directive came together on a regular basis to discuss difficulties and exchange views, ideas and approaches.<sup>4</sup> This proved a valuable exercise, beneficial for the quality of implementation and for creating a better mutual understanding of how rules can be applied differently on the ground.

<sup>3</sup> More information: BUSINESSEUROPE's report "[Unleashing cross-border services](#)", January 2011.

<sup>4</sup> More information: [http://ec.europa.eu/internal\\_market/services/services-dir/mutual\\_evaluation\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/mutual_evaluation_en.htm)



The Points of Single Contact are the most tangible benefit of the Services Directive for European businesses.<sup>5</sup> By providing accurate information and assistance they can truly facilitate the life of both domestic businesses, but also for companies from abroad.

In most countries, the simplification of rules and procedures initiated by the Services Directive is a trigger for further modernisation of public administration and development of e-governance. This is a very positive development as innovative e-government solutions can save time and costs for public administrations as well as for companies.

## **2.2. The Services Directive: outstanding issues**

However, despite the progress made, there is much room for improving the *quality* of implementation. Moreover, the European Commission should not only focus on timely transposition and implementation, but rather concentrate its efforts on correct application and enforcement of the Directive on the ground.

### **BUSINESSEUROPE is worried about the following outstanding issues:**

- Some of the progress reported outlined above (see *box 1*) was not reported in all Member States and the progress made differs considerably between countries.
- In some cases, governments and responsible authorities did not conduct a proper proportionality analysis for national rules and authorisation schemes. As a result overly burdensome and disproportionate national rules often remain in place (see *the example in box 2 below*).
- National administrations have often maintained existing authorisation schemes by using justifications relating to public interest such as public health, public security or the protection of workers. It remains to be seen whether these are indeed always based on solid grounds.
- Not all Points of Single Contact function well. In most cases, there is much room for improvement, in particular as regards the completion of procedures entirely online, the use of e-signatures, their general functionality, language offer and user-friendliness.<sup>6</sup>
- Considering the progress made and the significant promotional activities organised, in particular by the European Commission and business federations, it is deeply disappointing that most companies are still unaware of the new opportunities created by the Directive such as the possibility to use the Points of Single Contact. Some governments have not made sufficient progress to provide guidance and information to raise awareness of the created opportunities. In some countries, foreseen information campaigns were cancelled due to a lack of human and financial resources.

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<sup>5</sup> Find all Points of Single Contact via the "[EUGO portal](#)".

<sup>6</sup> For more information: BUSINESSEUROPE's report "[Are the PSCs truly making things easier for European companies?](#)", November 2011.

**Box 2: Example - remaining burdensome national rules can have drastic results**

*In 2010, a small Danish training company specialised in training courses for technicians working with monitoring, repair and installation of windmills, organised an in-house training course for a big international group, working in the UK. The company therefore hired a UK authorised teacher with accredited qualifications in FAW/EFAW (first aid at work) who came to Denmark to train the course participants with aim to provide successful candidates with the British First Aid Certificate (FAW/EFAW).*

*After the training course it turned out that the attained certificates were invalid in the UK because the course did not take place on British territory. The case was unsuccessfully taken up in the SOLVIT-network and the company lost its big customer and future contracts. It finally went bankrupt.*

**2.3. Limitations of the Services Directive**

The Services Directive does not cover all service sectors. The sectors it applies to represent a share of around 40% of EU GDP and employment. The sectors not covered by the Directive are often covered by European sectoral legislation due to their specific nature or special characteristics, for instance in the area of financial services or certain social services. Services which are not covered by any EU legislation are often only provided locally and in most cases lack a cross-border dimension.

In sum, about 90% of the services provided in Europe are in some way covered by EU legislation. Often, additional national rules further complicate the legal framework in which service providers have to operate.

BUSINESSEUROPE aims for a well-functioning European single market for all service sectors, regardless if they are covered by the Services Directive or any other horizontal EU instrument or more specific sector legislation. The aim should be to boost cross-border service provision and establishment in all sectors of the services industry.

Therefore, improving the *quality* of implementation of the Services Directive while at the same time facilitating cross-border service provision and establishment in the sectors that are excluded from its scope, for example through the development of European standards, is absolutely fundamental.

This should be a parallel process taking a true *single market perspective*. Examples of excluded sectors, where progress can be made are private security services, certain transport (e.g. urban transport and taxi services), healthcare and social services and temporary work agencies' services.

In the above context, BUSINESSEUROPE urges national governments to focus now on achieving high quality implementation, application and enforcement of the Services Directive in all Member States, and even though in the future it should cover as many sectors as possible, we recommend not to revise the Services Directive at this stage.



### **3. 10 RECOMMENDATIONS for building a genuine single market for services**

Despite the progress made by the Services Directive, companies still experience barriers to the free movement of services across Europe. The main challenges relate to the outstanding issues regarding the Services Directive (*outlined above*), the compatibility and complexity of the different European and national rules, remaining burdensome procedures and formalities, the mobility of workers and enforcement of existing legislation. There is also a need to make better use of European standards, promote service innovation and collect more accurate data on the services industry.

To unleash the huge growth potential in the area of services, remaining obstacles must be removed and the legal framework streamlined and improved where possible, also beyond the remit of the Services Directive.

In this context, BUSINESSEUROPE strongly recommends to:

#### **1) Fully implement, apply and strictly enforce the Services Directive**

This should be done as a matter of urgency. The economic gains of full implementation of the Services Directive are estimated to be between 60 and 140 billion Euro, representing a growth potential of 0.6 – 1.5% of EU GDP. The actual effect should be even greater as this figure does not take into account its domestic effects and the overall modernisation of public administrations as a spillover effect of the Directive, which should be significant.

Member States that have only adopted framework horizontal laws implementing the Directive but have not or hardly changed sector-specific legislation to remove unjustified barriers need to catch up and open their markets. It is particularly important that the European Commission ensures that Article 16, which is one of the pillars of the Services Directive with its clause on the freedom to provide services, is consistently and fully applied in all countries.

In the Services Directive there is an obligation for Member States to notify the European Commission of any new requirements they put in place that affects the free movement of services or establishment. This provision is key to avoid new regulatory barriers and steer clear of any protectionist measures that might be tempting in times of crises. There is a need to underline this obligation to national administrations and ensure that notification systems are used on a daily basis and work properly.

#### **2) Further develop the Points of Single Contact**

Companies can greatly benefit from the information and assistance provided by the Points of Single Contact, but only when they function well and respond to the needs of their users.



Businesses consider the possibility to complete procedures entirely online as the most important benefit that Points of Single Contact can provide, because it saves time and money, and offers an easy way to fulfil necessary obligations. Therefore, Member States should ensure that more procedures and formalities are made available for online completion, also from abroad.

Furthermore, the language offer should be developed in terms of quantity and quality to attract more foreign service providers. It is also important that e-signatures function better and that the overall interoperability and user-friendliness of the different Points of Single Contact improves.<sup>7</sup>

BUSINESSEUROPE advocates a shift from the current compliance perspective to a competitiveness focus, where the Points of Single Contact will go beyond what they are required to do by law to better match the real needs of companies anywhere in the EU.

### **3) Better promote the tools put in place by the Services Directive**

It is deeply disappointing that most companies are simply not aware of the existence of the Points of Single Contact. In addition, 90% of PSC users are national companies, while they were primarily set up to boost cross-border service provision and establishment abroad.

BUSINESSEUROPE and its member federations have made considerable efforts by publishing brochures and reports and by organising events at European and national level (*see box 3 for examples*). Unfortunately, the level of commitment from Member States to promote the new opportunities such as administrative simplification and the possibility to use the Points of Single Contact differs substantially.

It is essential that Member States now fully commit to organising more effective national promotion and communication campaigns to inform companies and in particular SMEs and start-ups of the new possibilities created by the Services Directive. National governments need to realise the high return on investment of a better used PSC portal and fully commit to a comprehensive communication strategy.

For instance, progress can be easily made by informing the “information providers” of the actual existence of the Points of Single Contact. These are the entities that companies deal with in their “day-to-day” business such as banks, tax authorities or local chambers of commerce. They are in an excellent position to promote the PSC portals directly to their intended users.

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<sup>7</sup> For more recommendations: BUSINESSEUROPE’s report “[Are the PSCs truly making things easier for European companies?](#)”, November 2011.



### **Box 3: Promoting the Services Directive and Points of Single Contact**

#### **Example 1**

*On 14 February 2012, the Groupement des Professions de Services (GPS) and MEDEF, the French business federation and member of BUSINESSEUROPE, organised a conference in Paris on the single market for services. The conference was attended by representatives of business organisations and companies in France.*

*Many realised how the Services Directive greatly simplified the life of new entrepreneurs and the need to better promote tools such as the Points of Single Contact. BUSINESSEUROPE presented its views along with the European Commission and the French Ministry of Finances. Philippe Herzog, special advisor to Commissioner Michel Barnier, concluded the successful event.*

#### **Example 2**

*In 2009, VNO-NCW, the Dutch business federation and member of BUSINESSEUROPE, in cooperation with the Dutch Ministry of Economic Affairs organised a series of workshops in the Netherlands to inform businesses about the contents of the Services Directive and its impact on service provision in Europe. The Dutch Point of Single Contact was promoted in an interactive way to companies.*

*The Dutch Ministry of Economic Affairs also published a leaflet to inform businesses about the Services Directive, which VNO-NCW distributed among its members.*

#### **4) Ensure that EU and national rules are compatible and correctly applied**

Services providers have to comply with a whole range of different rules and complete procedures before being able to provide their service. They are subject to EU legislation such as the Services Directive, the e-Commerce Directive and the Directive on Professional Qualifications. Also, companies need to comply with sectoral legislation and additional national rules and regulations.

In some cases, there is a lack of clarity which rules apply due to wrong implementation, application or enforcement of existing rules at all levels of government. This leads to legal uncertainty and negatively affects the willingness of companies and in particular SMEs to operate abroad.

Therefore, BUSINESSEUROPE looks forward to the results of the *performance checks* launched by the European Commission in 2011 which aim to assess the compatibility of the different legal instruments and how different pieces of EU legislation in the areas of business services, construction and tourism are applied and work on the ground.





## **5) Reduce the number of regulated professions**

Companies across Europe are struggling with skills shortages, but the scale of shortages experienced differ from one country to another. Increased intra-EU mobility would contribute to easing the situation by reducing mismatches and filling vacancies.

The existing EU framework for the recognition of professional qualifications has contributed positively to intra-EU mobility of professionals, but the recognition process can still be too lengthy and burdensome. Removing unnecessary obstacles to the recognition of professional qualifications will therefore heavily contribute to a further completion of the single market for services.

In the first place however, there is a need to explore whether there are valid grounds to reserve certain professions for people holding particular qualifications. While there are about 800 regulated professions within the EU, there is a considerable variety in this respect between Member States. In fact, over 25% of these professions are only regulated in one single Member State.

Against this background, BUSINESSEUROPE welcomes the European Commission's proposal for a mutual evaluation exercise on the regulated professions. A systematic screening should be conducted to investigate whether the number of regulated professions could be reduced in order to foster mobility between Member States.

The decision on whether to regulate access to a profession should remain a national competence, but it needs to be justified by an overriding reason of general interest, such as public health, it should secure the attainment of the objective pursued and it should not go beyond what is strictly necessary. At the same time, Member States should be obliged to set clear and relevant conditions for access to the professions they choose to regulate. The requirements that need to be fulfilled to carry out certain regulated professions are burdensome and sometimes simply not reasonable.

## **6) Develop European service standards where fit**

Voluntary service standards can contribute to the completion of the single market for services by reducing the number of (conflicting) national standards and thus removing potential trade barriers. In addition, they can create a level playing field, offering new opportunities for economies of scale and improved market access, while contributing to the overall competitiveness of the Europe's services industry.

However, given the great variety and large number of service sectors in Europe - which are often evolving at a fast pace - the need to develop a certain service standard must be determined on a case-by-case basis and should always be created out of market needs. Adapting to new standards creates extra costs for companies and might not always be necessary or desirable.



Service standards need to be voluntary and market-driven, whereby the needs of economic operators and stakeholders directly or indirectly affected by the standard prevail. In cases where the European Commission decides to issue a mandate for the development of a certain service standard, it is of fundamental importance that it is developed where there is a demand from the market and is only requested following a comprehensive consultation of stakeholders.

**Box 4: Example of a “good” European service standard - measuring energy consumption and emissions**

*CEN/TC 320 on Transport - Logistics and services - Freight transportation services - Declaration and reporting of environmental performance in freight transport chains*

*The standard lays down the methodology for calculation, declaration and reporting on energy consumption and GHG emissions in transport services (goods and passengers transport). It helps to build a level playing-field for companies providing such transport services, creating more competition and higher quality services.*

## 7) Promote and fully benefit from the power of service innovation

There is a strong need for better awareness of the power of service innovation. Policy-makers at all levels (European, national and regional and local), but also companies should be made aware of its unrealised potential to gain competitive advantages and increase productivity.

Due to their intangible nature, it is more difficult to measure innovation in services compared with goods. There is a need for more precise ways and indicators to measure service innovation. This is important as the success of a product (good + service) often depends on its service element as it is the way to distinguish it from the competitor through innovation.

In addition, European innovation policies and programmes, such as the 8<sup>th</sup> Framework Programme, need to be adapted where appropriate to new or emerging business realities and better reflect the importance of service innovation and support it as a driver for more growth and jobs.

At the same time, BUSINESSEUROPE emphasises that competition is the best way to foster innovation in services, in business services as well as the operational service sector.<sup>8</sup> Creating the right business environment for companies and in particular for start-ups and SMEs is key to their ability to innovate.

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<sup>8</sup> More information: BUSINESSEUROPE’s position paper “[Fostering innovation in services – a key driver for growth](#)”, May 2011.

**Box 5: Example of innovation in the services industry - BlaBlaCar.com**

*Founded by Frédéric Mazzella in 2006, BlaBlaCar is a new community-based travel service. Mazzella: “Of course, we could call it a ride sharing website but it really is a travel revolution. We really think of it as a new social, low cost and environmentally friendly way to travel”.*

*The service has initially begun under the name Covoiturage.fr in France and has been a phenomenal success amongst drivers and passengers alike who are hardly hit by increasing petrol prices and rising public transport costs. The site was founded in 2006 and already gathers over 1.8 million drivers and passengers in Europe.*

*The community is growing by over 80,000 new users every month. BlaBlaCar is the largest European social ride sharing network with presence in the UK, France, Belgium, Spain and Italy. It has offered already more than 10 million trips since its beginning which represents more than 1 billion miles shared between drivers and passengers.*

**8) Ensure more competition in the provision of public services**

Efficient, cost-effective and high quality public services are essential for European society. They enhance our quality of life and greatly contribute to promoting territorial and social cohesion in Europe.

Yet, today’s context of rapidly deteriorating public finances is reducing many member states’ room for manoeuvre in *delivering* good public services and infrastructure.

Stronger partnership between the public and private sectors can help respond to these challenges and generate added value for society in the form of wider choice and innovative solutions, better value for money and new sources of financing.

The European Commission should support and encourage the deployment of public-private partnership (PPP) structures and ensure more competition in the public sector and fair treatment of the private operators in the delivery of public services.<sup>9</sup>

**9) Enhance the mobility of service companies**

There are other barriers that hinder the free movement of services, which not only affect Europe’s service sectors but the single market as a whole. Nevertheless, the examples of barriers outlined below are particularly burdensome on services providers.

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<sup>9</sup> More information: BUSINESSEUROPE’s position paper “[Public services in the 21<sup>st</sup> Century: Driving for excellence – towards a stronger public and private partnership](#)”, November 2009



According to the European Commission only 8% of SMEs engage in cross-border trade and just 5% have subsidiaries or joint ventures abroad. One of the reasons preventing them to go abroad is the fact that the freedom of establishment provided for in the Treaties remains incomplete. This greatly reduces the mobility of companies in Europe.

## Legal form and capital ownership requirements

In most cases, a company cannot move out of the Member State where it was formed and established in another Member State while preserving its legal capacity.<sup>10</sup> Businesses are forced to take a legal form different from that in their mother company due to restrictions as to the legal forms available to operators or a simple prohibition to take on a specific legal form.

These limitations cause difficulties for service providers or professionals wanting to establish themselves in another Member State as they might not be able to take the form best suited for sharing responsibility, taxation or financing purposes. In addition, companies have to spend considerable resources in the form of legal expertise and additional operating costs in order to enjoy their freedom of movement. Compliance costs related to the establishment of subsidiaries can go up to 10,000 Euro and day-to-day operational costs related to the operation of companies in other Member States reach 8,000 Euro a year<sup>11</sup>.

BUSINESSEUROPE considers that a European Private Company Statute (SPE) would allow entrepreneurs to comply with the same, simple and flexible company law provisions across the Member States and to overcome the obstacles they currently face when crossing borders. Through this instrument, costs related to access to information and legal counselling will be reduced, thereby increasing the appeal of cross-border activities.

Although capital ownership requirements might be rightly put in place to ensure the independence or personal involvement of a shareholder or entrepreneur in a company, they often create barriers to the functioning of the single market for services. The proportionality as regards effects and aims, and their justification needs to be made subject to a thorough assessment.

## Overlapping or burdensome insurance obligations

There is a need to further assess the issue of double insurance obligations. A service provider from one Member State adequately insured to provide its services, also vis-à-vis foreign clients might be obliged to take an additional insurance in order to serve across borders. Indeed, we also found that in some cases where service providers wish to obtain insurance in another Member State to be able to provide their services cross-border, they experience that it is difficult to find a proper insurance at market prices. The insurance offer seems very limited and the market is small or even non-existent. In some cases, enrolment in a foreign chamber of commerce or business register is a precondition for a company from abroad to obtain insurance.

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<sup>10</sup> Source: [Report](#) of the reflection group on the future of company law, April 2011.

<sup>11</sup> Source: [Commission Staff Working Document](#) on the SPE, 2008.



In this context, BUSINESSEUROPE calls for a thorough assessment of existing national insurance obligations and requirements with the aim of ensuring fairness and creating a better level-playing field for companies wishing to operate across borders.

## **10) Ensure better data collection and increase expertise on services**

Already in classical high school education, but also in universities throughout Europe, the focus of business and economy courses remains on the manufacturing industries. There is a need to inform people better about the important role of services in the European economy and for the competitiveness of Europe as a whole. Still the data collection on the specificities of Europe's services sectors is scarce and economic analyses of the services industry much less advanced than for classical economic sectors, such as manufacturing, fisheries or agriculture.

The basis of good European and national policies are facts and figures. A lack of this information will result in inaccuracies and possibly bad policy. There is a need to allocate more resources to the collection of relevant data. This might include new ways of measuring economic impact of services and their relation with classical industry as they can appear at any stage in the value chain and across all sectors of the economy.

In this context, BUSINESSEUROPE urges Eurostat but also universities, think tanks and other data collecting and research institutions to step up their efforts in collecting more precise data on Europe's services sectors.

## **4. Conclusion**

Building a genuine single market for services where services can move across Europe more freely and where it is easier for companies to operate across borders is key for renewed growth and for creating more jobs. This is urgently needed in times of crises, but also in the in the face of tough global competition.

Europe needs to be more competitive. There is a great unleashed potential in Europe's services sector to achieve this. In the context of ever greater demand for more and better services, and the need for more innovative services in the light of an ageing population and competition from outside the EU, there is a lot to gain. The recommendations above point to where the most urgent action is needed to achieve a better functioning single market for services.

Although not addressed in detail above, the next frontier will be tackling the barriers for the provision of *online* services across Europe. There are many obstacles in the area of e-commerce that need to be addressed simultaneously, which requires a clear vision and future-proof approach to regulation that needs to be proportionate and light touch.

**In the light of all of the above, BUSINESSEUROPE urgently calls on the European Institutions, Member States and other key stakeholders to work together and increase collective efforts to fully unleash the great growth potential in the area of services.**

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