

## **The Services Directive: Freedom or Fragmentation?**

**BusinessEurope conference  
marking 10 years of transposition of the Services Directive**

**Monday 23 March 2020, 14.30-18.00 | Brussels,  
Permanent Representation of the Netherlands to EU**

### **BACKGROUND NOTE FOR THE PANELS**

---

#### **BUSINESS PANEL: TOUGH TALK ON THE MARKET REALITIES**

*Remaining barriers to provision of services in the EU, services and digitalisation, services and greening the economy. A “business journey” perspective*

\*\*\*

In its strategy paper “Priorities for the Single Market beyond 2019”, BusinessEurope calls for *further opening and integration* of the services markets and stresses that the Single Market for services should be a key priority for the Commission. BusinessEurope consistently continues to defend its position that making services more competitive can be done by ensuring that services can move *more freely* throughout the Single Market.

Nevertheless, businesses accept that there is a need to update the fact base on barriers for the services sector in order to establish links between services policy, applicable law, consumer legislation, public procurement, social policy, digitisation/data etc. Such a comprehensive assessment was last done by the Commission in 2002, before the proposal of Services Directive. BusinessEurope contributes to this update of the fact base on remaining barriers through its reach-out to the Commission, the Council and the European Parliament. Among major obstacles, businesses mention disproportionate and unevenly applied rules on posting of workers and social security, complexity of VAT rules, finding skilled labour force and facing barriers to its free movement in the Single Market, problematic access to information, and even forced establishment in order to provide a service in another Member State. It is stressed that often barriers stem from decisions made by different government levels, from national to local authorities.

This panel is yet another opportunity for businesses to share insights and practical examples of the issues they face throughout a “business journey” on the Single Market.

\*\*\*



- Where are we standing between the freedom to provide services and market fragmentation from the business perspective? How much and what kind of a change took place over the last 10 years in terms of ease of trade in services on the Single Market?
- How do rules on different aspects of business activities, such as social, consumer or digital rules, for example, affect cross-border provision of services? Are they consistent with the freedom to provide services, presumably strengthened by Services Directive?
- Do the present rules on services allow enough room for the services businesses to play a role in the circular economy and deploy new business models through digitalisation? What do businesses need to be successful in that regard?
- What concrete barriers prevent services companies from expanding across the Single Market?

**Outcome of the business panel: key takeaways on what major barriers remain, on how cross-border provision of services has changed recently and what new challenges emerge for businesses; practical examples of the barriers that companies face.**

## **The Services Directive: Freedom or Fragmentation?**

**BusinessEurope conference  
marking 10 years of transposition of the Services Directive**

**Monday 23 March 2020, 14.30-18.00 | Brussels,  
Permanent Representation of the Netherlands to EU**

### BACKGROUND NOTE FOR THE PANELS

---

#### **POLICY PANEL: OVERCOMING A POLITICAL IMPASSE - TOUGH TALK ON THE WAY FORWARD**

*From negotiations on the Services Directive to failures with regard to the “2017 Services Package”, a bumpy road to a more efficient services market that could boost growth, jobs and international competitiveness. A recipe for the policy consensus in the coming 5 years.*

\*\*\*

It has been over 10 years since application of the Services Directive ([Directive 2006/123/EC](#)) and it is still widely acknowledged that Member States fail to implement it fully and that the Commission fails to enforce it. The EU and its citizens are losing welfare with the untapped potential of opening the services markets<sup>1</sup>.

Only at the end of its mandate in spring 2019, last Commission initiated a few rounds of infringement procedures against non-complying Member States, taking action against all the Member States infringing the Services Directive and the Recognition of Professional Qualifications Directive ([Directive 2005/36/EC](#), as amended by [Directive 2013/55/EU](#)).

In 2017 the previous Commission also proposed a package of 4 legislative initiatives, the “Services package”, which were of administrative nature and only aiming at improved

---

<sup>1</sup> the services sector generates around 70% of the EU GDP with the following potential after 2019 (from EP study “Contribution to Growth”, J. Pelkmans, 2019):

- ✓ overall €389bn or 2.28% of EU GDP;
- ✓ €284bn under full implementation of the Services Directive;
- ✓ €85bn in professional services;
- ✓ €20 bn public procurement of services



implementation of the above-mentioned directives in the area of services. Still, only 1 legislative proposal out of 4 in this package was adopted, notably the [Directive 2018/958](#) on Proportionality Test before Regulating a Profession. Regardless of this, meeting the proportionality criterion under the Services Directive remains a much broader issue that should be additionally addressed.

Over the last 10 years, the EU has moved on services very little and has been constantly losing ground to the US and other economies further (as to be presented by Copenhagen Economics at the start of the conference). The EU should take immediate steps to improve free movement of services - the Commission made an attempt with its Action Plan on Implementation and Enforcement of the Single Market rules on 10 March. There is no dedicated agenda on services from this Commission yet, though.

\*\*\*

- Where are we standing between the freedom to provide services and market fragmentation from the policy maker's perspective? What can be done in order to have a strong and supported agenda on services?
- Can the main common points between policies on opening services markets and supporting circular economy goals be identified?
- How to ensure that a need for socially acceptable policy on services does not undermine the fundamental Treaty freedom to provide services across the borders and ambition for more market integration? How the sensitivities, such as those around a vague concept of social dumping, will be addressed?
- What are the major EU Single Market legislation design flaws that lead to uneven implementation or unenforceable rules? When will Europe be ready to renew discussions on the country-of-origin principle in services?

**Outcome of the policy panel: key takeaways on what could be a response to challenges of implementation of the Services Directive, solutions to issues flagged by the business panel, and answering the question: what services agenda for the future and who is capable of making a meaningful step forward now?**