



6 April 2016

## Comments on proposed “Services Passport”

### CONTEXT

On 28 October 2015, the European Commission presented its [Single Market Strategy](#) to deliver a fairer and deeper single market - a key priority of the Juncker Commission. The strategy sets out a number of actions - both legislative and non-legislative - to be taken in the next years to remove remaining obstacles to free movement and make the single market work better.

The strategy rightly focuses on removing barriers to the free movement of services in the single market, an area where companies still experience many barriers, also in terms of establishment in another Member State.

One of the main actions announced by the Commission is to come with a **legislative initiative** in 2016 to introduce a “**services passport**” with a harmonised notification form and an electronic document repository to increase certainty and reduce barriers for service providers who want to access other EU markets in order to expand their activities.

*This position paper constitutes BUSINESSEUROPE’s general position on the concept and indicates what elements need to be taken into account for such a passport, ahead of the Commission public consultation that is expected in spring 2016, without prejudice to further comments on this issue when the public consultation or eventually the legislative proposal is published.*

#### The services passport

The aim of the services passport is to enhance the cooperation between the *home* and *host* Member State(s) in supporting service providers going cross-border.

Upon request, the authorities of the home Member State will issue a services passport to help a company demonstrate that it will satisfy the applicable requirements in the Member State where it wants to provide the service. The host Member State will remain responsible for defining these requirements, as long as these requirements comply with the relevant provisions of EU law.

Following the “once only” principle, the services passport would eliminate the need for multiple requests for information and documentation already provided to the home Member State, through the creation of a “common electronic repository” of documents



by the home country administration upon the request of a service provider. In combination, the harmonised notification form and the electronic document repository would ease compliance with existing ex ante notification and control requirements.

The passport would cover the **construction sector** (5.9% of EU GDP and 6.6% of EU total employment) and so-called “**business services**” - so all services provided by any organisation to other public, private or third sectors organisations - where many different services *could* be considered to fall within this broad definition. Business services account for 11.7 % of EU GDP and 12.6% to overall employment.

## GENERAL COMMENTS

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While representing 70% of EU GDP and employment - the largest chunk of the economy - services provision across the border is underdeveloped. Services traded across borders account for just 5% of EU GDP compared with 17% for manufactured goods traded throughout the single market. The simple reason is that there are still too many administrative and regulatory barriers that discourage companies from providing services across borders. Despite the progress made through the 2006 Services Directive, the single market for services is not a reality yet.<sup>1</sup>

At the same time, the growth potential in the area of services is huge. Not only linked to better implementation of existing EU legislation - which can add roughly 1.5% to EU GDP – but also linked to the development of more competitive business services and e-commerce. Many services are delivered to other companies (B2B), including manufacturing industry. Therefore, their efficiency and competitiveness directly impacts the performance of the European economy as a whole. This is vital to make Europe more competitive globally.

Full implementation and correct application of the 2006 Services Directive would resolve many of the problems currently faced by service providers in the single market. Therefore, BUSINESSEUROPE continues to urge national governments to truly commit to ensuring more ambitious implementation and correct application of the Directive on the ground and make the necessary reforms in the services sector to allow more cross-border provision and easy establishment abroad.

It entails that Member States need to revisit national requirements under Article 15 and 16 that were subject to poor proportionality analyses and adapt or remove burdensome requirements where possible, or re-assess if there is not a less restrictive alternative measure to achieve the same goal. Furthermore, Member States must urgently remove all remaining discriminatory and unjustified national requirements – such as discriminatory residence requirements, restrictions on multidisciplinary activity, “economic needs tests” or prohibitions on commercial communication – that should have already been removed by the Directive and avoid the introduction of new ones.

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<sup>1</sup> More information here: BUSINESSEUROPE’s [position paper](#) “*Remaining obstacles to a true single market for services*”, 15 December 2014.



### The Single Market Strategy – proposal for a better notification procedure for services

In this context, BUSINESSEUROPE supports the introduction of a **legal instrument to improve the current notification procedure for services** announced in the Single Market Strategy. It should ensure that extra national requirements are always notified and can only be kept if proportional and in line with EU legislation and single market principles. Member States must be obliged to notify any new additional regulation imposed on service providers and the “burden of proof” should be on national authorities to show these measures are needed and proportional to reach a certain (public interest) goal. Otherwise the national measures are de facto considered void and will therefore not apply. BUSINESSEUROPE is in favour of a “standstill clause” for the time that the Commission is assessing whether or not new national regulations are in line with EU legislation and single market principles.

The revised notification obligation/procedure should include national requirements that go beyond the current scope of the notification obligations in the 2006 Services Directive. The existing obligation to notify merely covers national requirements of an “establishment nature” (art. 15, 2). However, under a revised notification procedure, national requirements concerning the nature, content or performance of the service in question should also be subject to the notification obligation. Furthermore, a revised notification procedure should provide transparency about the notified requirements, as well as the comments and objections from other Member States and the Commission.

At the same time, the Commission must stick to its “**zero tolerance policy**” by more resolutely launching targeted infringement procedures in cases of non-compliance with the Services Directive and other relevant EU legislation. The Commission should reintroduce its formal regular reporting on services in the form of “information notes” as done in 2009 and 2010 to the Competitiveness Council, and also the European Parliament to raise awareness of remaining barriers, put pressure on national governments to improve and help to create the necessary political momentum to address remaining obstacles. The European Parliament must take stock of progress made through more precise benchmarking, making use of “naming and shaming” and detailed reporting to put pressure on the Member States that are lagging behind.

In this context, BUSINESSEUROPE was pleased to see that on 25 February, the Commission announced to take further steps in its infringement procedures for lack of a compliance with the Services Directive against a number of countries on the grounds that their national rules include excessive and unjustified obstacles in the area of professional services.



## THE SERVICES PASSPORT – SPECIFIC COMMENTS

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1. **BUSINESSEUROPE supports the aims of the services passport, but only if it:**
  - **Reduces administrative burden** for companies by allowing them, with the passport, to “skip” certain administrative procedures and formalities already fulfilled and completed in the *home* Member State.
  - **Leads also to regulatory simplification** and streamlining as public authorities become more aware of each other’s procedures and follow best practices.
  - **Truly makes it easier** for service providers to find out which requirements they must comply with in a host Member State and to demonstrate that they comply.
  - **Creates more transparency**, and better and more structured information than today about which requirements a service provider must comply with in various Member States.
2. While the development of a well-designed services passport can reduce administrative and regulatory burden, it would not solve the challenges for companies related to diverse national requirements for providing services in a different country. It is stated very clearly in the Single Market Strategy that the host Member State will remain responsible for defining these requirements. It means that the home country might in certain cases not have access to the information that host Member State is requesting.
3. For its success, it is essential that there is **real added value** for a company to ask for one, otherwise the passport will not be used (as it is rightly voluntary). This means the gains in terms of time (and therefore cost) savings need to be substantial and administrative processes need to be easier and shorter. At the moment many important details about what the “services passport” should entail are still up for debate and for making this concept work, relevant stakeholders - in particular the (representatives of the) users, namely large companies, SMEs and start-ups - need to be closely involved.
4. The final design of the “**issuing process**” must be crystal clear about the responsibilities of the home and those of the host country. Otherwise, it might merely add administrative burdens for public authorities but also for companies that have to engage in a lengthy process with both the home and host Member State in order to obtain and make use of a service passport that is meant to save time and therefore costs.
5. Understandably some Member States are concerned that handing out a passport will mean **extra tasks and additional burden** on public authorities and national bodies, and an extra strain resources. However, at the same time, Member States need to take into account that in the end it will be a “net-game”, as some administrative procedures that “foreign” companies now have to go through can be skipped because of the passport.



6. It will be a challenge for public administrations to know precisely which information is required to fulfill the requirements in a host Member State, also because these **requirements differ per country**. This issue requires more reflection and here is where the electronic document repository could ease discrepancies between Member States.
7. The creation of a **database** or repository is a necessary part of the passport. It should be carefully assessed whether it could be built on existing information structures such as the Internal Market Information (IMI) System. There should be a common interface for public authorities and clear compartments where the different information would be located and could be verified. Smart language solutions need to be found and navigation must be seamless. Access to company information and identification could be linked to company register numbers or a VAT number. It is essential that the database or repository is up to date. Any ICT solution and system to be put in place should be designed with this purpose in mind.
8. As regards which national body should be responsible for giving out the passport, there is no one-size-fits-all approach. Once the different elements and scope of the passport have been designed and decided upon, it should be up to each Member State to decide which **administrative body** would ensure implementation and issue the passport.
9. BUSINESSEUROPE is doubtful whether including information on **posted workers** (information to companies on existing requirements in various countries, and confirming adherence to them) could lead to reduction of administrative burdens and sees risks that this could create confusion with the rules on notification laid down in the 2014 Enforcement Directive.
10. As regards the **scope**, more debate is needed on which sectors will benefit from such a passport and need to be covered by the proposal.
11. BUSINESSEUROPE believes it is positive that **construction** will be covered; accounting for 6% of EU GDP and constituting a key component of the EU. Moreover, construction is one of the most regulated services sectors in Europe and its recovery from the economic and financial crisis is proving to be slow and difficult. The EU construction market is characterised by a low level of integration, both in terms of temporary cross-border service provision and in terms of establishment in other Member States. Here the services passport – if well-designed – could potentially make a positive contribution.
12. Generally, **business services** range from technical services such as engineering, architecture and IT, to other professional services such as legal services, employment services and facility management. As one of the largest service sectors, business services - according to Commission figures - contribute 11.7 % to EU GDP and 12.6% to overall employment. Business services sectors suffer from limited cross-border trade and investment. In addition, despite its increased economic significance in terms of size, the productivity of the sector is low, in particular compared to the US. The sector is not only important in its own right but has important links to other sectors of the economy. As the manufacturing industry



is an important consumer of business services, increased competition and productivity gains in business services would entail important benefits for the manufacturing industry as well. Therefore, if well designed, in general BUSINESSEUROPE is in favour of facilitating cross-border provision of business services and establishment of services provided in this sector through the services passport.

13. The **definition** used by the Commission High Level Group on business services is: “*All services provided by any organisation to other public, private or third sectors organisations*”. This definition is very broad and could cover many different services. The broad definition and wide range of very different services poses a challenge for including such services for the passport.

For example, the following services *could* be considered “business services” (*non-exhaustive list*) and are up for debate to fall within the scope of the passport:

- *accountants*
- *advertising*
- *architects*
- *consulting*
- *engineers*
- *lawyers*
- *legal services*
- *logistics and shipping*
- *human resources, staffing*
- *leasing*
- *security*
- *outsourcing*
- *facility management*
- *Etc.*

14. As many business services are also regulated under Directive 2013/55/EU on the recognition of **professional qualifications** and linked to the IMI Regulation, this should be carefully taken into account when determining the scope and various elements of the passport. In any case, strategic services such as business consultancy services, architects and engineers should be considered. Services that are excluded from the scope of the 2006 Services Directive, such as private security services should not be considered.

## The Single Market Strategy – proposal for a Single Digital Gateway

15. Linked to the development of the services passport, BUSINESSEUROPE supports further actions to address barriers linked to burdensome **legal form and shareholding requirements** and to specifically address selected regulatory obstacles faced by accountants, architects, civil engineers and in the construction sector.



16. Duplication and confusion should be avoided with existing initiatives such as the European Professional Card and the European Single Procurement Document (ESPD). It also has to be carefully considered how the services passport could complement the [Points of Single Contact](#) that were set up under the 2006 Services Directive, which were also meant to streamline administrative procedures and save time and costs for companies and assisting them to operate across borders. In particular, as the Points of Single Contact should be transformed into fully-fledged online business portals (for goods and services) under the new **Digital Single Gateway** initiative introduced in the Single Market Strategy offering companies all the information and assistance they need to operate across borders and on the home market, including offering the possibility to complete procedures entirely online.

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