



26 July 2016

Response to “Services Passport” public consultation

INTRODUCTION

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 response to the ongoing Commission [public consultation](#) on the Services Passport and outlines its general position on the concept and indicates what elements need to be taken into account for such a passport to become of real added value for companies.

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.

The idea is that upon request of the company (so voluntarily), 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, a harmonised notification form and an electronic document repository would ease compliance with existing ex ante notification and control requirements.

At the moment, 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.

BusinessEurope also observes that *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. It has to be noted that this is often the result of differences in specific national legislation between countries, but also the fact that in construction often production units, resources and machinery need to move across borders.

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. 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.

The state of the single market for services

While representing 70% of EU GDP and employment - the largest chunk of the economy - **services provision across the border is relatively 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. It also often has to do with a lack of trust, information and clarity about what it means to do business in another Member State. Despite the progress made through the 2006 Services Directive, the single market for services is not a reality yet.¹ Even taking into account that some services are in nature more local and less tradable than goods and the fact that establishment of businesses or subsidiaries abroad is not included in these calculations, these figures are relatively low.

Yet, at the same time it is clear that **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 the booming of e-commerce (yet, this is still mainly the case at

¹ More information here: BusinessEurope's [position paper](#) “*Remaining obstacles to a true single market for services*”, 15 December 2014.



national level, and cross-border e-commerce is still relatively underdeveloped due to legal fragmentation and other obstacles). 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. Better, more efficient, affordable and customer-focused services are vital to make Europe globally more competitive.

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.

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 should be de facto considered void and must 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 also reintroduce its formal regular reporting on services in the form of “information notes” as was carried out in 2009 and 2010 to the Competitiveness Council, and also to 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 2016, 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

KEY MESSAGES:

1. **BusinessEurope supports the novel approach** that the Commission has taken with its 2015 Single Market Strategy to move beyond the classical line of ensuring better implementation of the 2006 Services Directive. Although of fundamental importance, it is welcome to come with new ideas and methods to further integrate national services markets, boost cross-border services provision and remove remaining administrative, regulatory and other barriers to the free movement of services in the single market and establishment abroad.
2. While **the Services Passport as such is a bold idea** meant to boost cross-border service provision and help companies to expand their business, its success will depend very much on the way it is designed and how it will work in practice. Surely companies will benefit from less administration and less bureaucracy and feel more confident with a passport issued by the home Member State when going across borders. However, the real barriers that companies experience are of a regulatory nature. BusinessEurope therefore 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.
3. Moreover while welcoming the concept as such, the Commission has to **listen very carefully to and take into account the views of the sectors and companies specifically targeted** with this passport approach within construction and the business services sectors. This is particularly important as companies within the construction sector deliver a very wide variety of services, and this is even more the case when assessing business services, which include (non-exhaustive): *accountants, advertising, architects, consulting, engineers, lawyers, legal services, logistics and shipping, human resources, staffing, leasing, outsourcing, facility management and many more services*².

² The definition of 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.



As many business services are also regulated under Directive 2013/55/EU on the recognition of professional qualifications and linked to the Internal Market Information Regulation 1024/2012/EU, this should be carefully taken into account when determining the scope and various elements of the passport. Services that are excluded from the scope of the 2006 Services Directive, such as private security services should not be considered. Before publishing any proposal, it needs to be crystal clear which specific services can benefit from the passport - if well-designed - and what the companies in these sectors need for such a passport to be of added value.

4. 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 **Single Digital Gateway** initiative (also 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.
5. Following from point 4, it is absolutely essential to **ensure good coordination and a strategic approach** in terms of different Commission work-streams such as the work on the Single Digital Gateway and the Services Passport. It is already not a good sign that the public consultation on the passport will be over (end of July 2016) before the public consultation on the Single Digital Gateway has commenced (now expected to be launched in the 3rd quarter of 2016). These initiatives are clearly very much linked and therefore it is incredible that the Commission has committed to delivering on a legislative proposal for a passport even before the public consultation on the Single Digital Gateway has ended. Coordination and the end of the “silo-mentality” are both of fundamental importance to truly improve the functioning of the single market. Duplication and confusion should also be avoided with existing initiatives such as the European Professional Card, the VAT mini One Stop Shop and the European Single Procurement Document (ESPD).
6. In the above context (points 1 – 5) BusinessEurope supports the aims of the Services Passport, namely to:
 - Address administrative obstacles that businesses experience when they either provide temporary cross-border services or want to establish themselves abroad.
 - Eliminate the need for multiple requests for information and documentation already provided (i.e. benefit from the “once only” principle).
 - As a company deal with and be supported by “one single interlocutor”, namely its familiar *home* Member State when going abroad, fostering trust and creating a much clearer and reliable procedure for service providers. This opposed to a company needing to deal with a number of different public authorities in the *host* Member State.



- Benefit from electronic procedures with clear timelines to process applications.
- Automatically solve many translation / language issues, i.e. more mutual recognition. This can save translation costs of for instance certificates.
- Build trust through facilitating better interaction between home and host Member States.
- Ultimately (be a source of information) to address regulatory barriers in key services sectors, such as accountancy, architecture, engineering and construction, for instance linked to legal form, shareholding requirements and fixed tariffs. Regulatory barriers³ are often also linked to the many regulated professions and specialisations in Europe.⁴

7. However, BusinessEurope can only support the Services Passport if it:

- **Truly 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.
- **In addition leads also to regulatory simplification** and streamlining as public authorities become more aware of each other’s procedures and follow best practices. It is fundamental to develop a comprehensive work-stream in addition to the passport to tackle remaining regulatory hurdles, which are often more difficult for companies to overcome than administrative difficulties such as lengthy administrative procedures. The Commission needs to prioritise this category of barriers.
- **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 at present about which requirements a service provider must comply with in various Member States.
- **Has a very clearly defined scope in agreement with the stakeholders directly affected**, meaning the companies and sectors that are now being considered under the category “construction” and “business services”. If the companies and sectors are not convinced of the added value of the passport, it will not be used as the passport is rightly voluntary. Service sectors that would

³ More information on **regulatory barriers** here: BusinessEurope’s [position paper](#) “*Remaining obstacles to a true single market for services*”, 15 December 2014.

⁴ There are about 5000 of these regulated professions in Europe. Whilst in certain cases there may be valid policy reasons to justify this practice - for complexity, security or safety reasons - this does not always seem to be the case. Many activities are regulated in only a few Member States and more than 25% of them are regulated in just one Member State. The high number of regulated professions and specialisations is fragmenting labour markets and hampering service provision or establishment across borders.



fall outside of these two categories of services, but might be suitable to benefit from a well-designed Services Passport must be carefully considered as well.

- **Leads to a clearer overview for companies of which procedural steps to follow** to provide services across borders or establish itself in another Member State. Although significant differences and various additional national requirements are likely to remain (see point 8 below).
- Has at its core **an electronic harmonised form** with the same format in all EU Member States.
- **Rightly remains voluntary** for businesses. It is clear that the passport should not de facto become obligatory with host Member States favouring companies with a passport.
- The Commission provides public authorities with very **clear guidance** on how the passport should be implemented nationally and should work in practice.
- The Commission **ensures strict and strong enforcement**, and guards the quality of the passport at a high level in all Member States to ensure smooth cooperation between different countries and to ensure that companies in the targeted sectors can truly benefit from a well-functioning passport.

Detailed considerations:

8. While the development of a well-designed Services Passport can reduce administrative burden and support companies in going abroad, it will not solve the challenges for companies related to diverse national requirements for providing services in a different country (such as different national technical and license requirements). As is very clearly stated in the Single Market Strategy, the host Member State will remain responsible for defining these requirements. It also means that the home country might in certain cases not have access to the information that host Member State is requesting.
9. 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. In order to make the concept work, relevant stakeholders - in particular the (representatives of the) users, namely large companies, SMEs and start-ups - in the construction and business services sectors (and perhaps other sectors considered to be included in its scope) need to be closely and directly involved in its design.
10. The passport should be designed to include both temporary cross-border provision and establishment abroad. Together with stakeholders from the sectors concerned, it should be agreed what information is necessary to include. It is important to make a distinction (also in terms of procedures, formalities, approval) if it concerns



temporary cross-border service provision that requires moving people compared to cross-border service provision that requires moving the service itself or a production unit.

11. 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.
12. Basic information on whether a company going abroad is already properly insured *could* be included in the passport (e.g. regarding professional indemnity insurance), with the relevant insurance policy / certificate as an attachment. Furthermore, in close cooperation with the insurance, construction and relevant (business) services sectors, it should be explored whether information on a company's track record or more detailed information on the type of insurance, duration and precise cover is useful to include.
13. 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. Yet, it is clear that here the electronic document repository must play an important role in easing discrepancies between Member States.
14. The creation of a **database** or electronic 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 and translation 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.
15. The passport should be issued **free of charge**.
16. The final design of the "**issuing process**" must be crystal clear, in particular concerning 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.
17. After a company has provided the relevant information needed to issue a passport, there should be a certain **deadline for receiving the (electronic) passport**. It has to be considered if there needs to be a difference in terms of deadline / timing per service sector and whether a distinction is needed between temporary cross-border provision and establishment. This is likely the case. Also, what would happen if a



public authority fails to make the deadline? Trust in the ability of public authorities to deliver the passport on time is fundamental for the success of the passport.

18. A home Member State should be able to refuse the issuing of the passport, for instance if the company is facing criminal or legal charges.
19. In terms of “**signing**” the passport, it merely has to be clear that the electronic document or paper version is authentic. An excessively cumbersome signing process on the side of the home and host Member State, but also on the side of the company can lead to unnecessary delays harming business opportunities and not adding to the support for and success of the passport.
20. The passport should not be made public. It should only be available to the relevant home and host Member State and the company concerned. Key information about a certain company is already publicly available in national company registers or with Chambers of Commerce.
21. Company information can change. The frequency of change depends very much on the specific sector considered and whether it is a case of temporary cross-border service provision or establishment. This has to be carefully considered when determining an “**expiry date**” for the passport. If the company is responsible for updating the information, especially on a too frequent basis, it might discourage businesses from requesting this voluntary passport (point 23 below is important to consider in this regard).
22. 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. At the same time, one needs 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. It is important to companies that the limited resources of the Member States’ public authorities are not strained but used in the most appropriate way.
23. 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. At the same time, it should be clear to businesses where to go to request a passport.
24. BusinessEurope would advise to come with a different name than “*Services Passport*”, as it has misleading connotations.

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