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## KEY COMPONENTS FOR BUILDING A TRUE SINGLE MARKET FOR SERVICES

### 1. FACTS AND FIGURES<sup>1</sup>

- Services in Europe account for more than 65% of EU GDP and employment.
- From 1998 to 2008, Europe's services sector grew by an annual average of 2.8% while EU growth averaged 2.1%. In the same period employment in the sector grew by 2% a year, compared with 1% for the economy as a whole.
- Services also proved quite resilient during the economic crisis: services turnover fell by 8.5 % in the EU-27 in 2009 compared with the year before but rebounded in 2010 increasing by 5.0 %.
- Yet, only 20% of the services in the EU are provided across borders, 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 or subsidiaries abroad is not included in these calculations, these figures are relatively low.
- Services are an essential part of the EU industry, be it as inputs or as outputs. In fact, 75% of trade in services concerns the supply to other businesses (B2B), hence their importance for the overall competitiveness of the EU economy.
- Moreover, the biggest *client* of service companies are service companies, which reveals a genuine "*economy of services*". Generally, we also see that manufacturing companies are providing more and more additional services related to their product(s), a so-called process of "*servicification*".

### 2. THE SERVICES DIRECTIVE

#### Implementation

- More than three years after its transposition deadline, BUSINESSEUROPE regrets to observe that the 2006 Services Directive is still not fully implemented and correctly applied in all Member States.<sup>2</sup>
- This is unacceptable, especially as it has been calculated by the Commission that achieving high quality implementation and stronger enforcement of the Directive in

<sup>1</sup> Source: European Commission & EUROSTAT – June 2012 Services Package, Single Market Acts 1 & 2, January 2011 Services Communication and BUSINESSEUROPE.

<sup>2</sup> More information on business' views on the implementation of the Services Directive here: "[BUSINESSEUROPE position paper – Building a genuine single market for services](#)" of May 2012.



all Member States alone can bring additional gains of about 1.8% of EU GDP (about €330 billion). We can simply not afford to miss this potential for growth.

- It has proven challenging to ensure that all national and sectoral rules applicable to service providers comply with the Services Directive and that its provisions are indeed well-applied and enforced on the ground.
- Another major challenge lies in the fact that the decision to abolish certain restrictions (Article 15 and 16), which may in some limited cases be justified under the Services Directive for an overriding reason of general interest, are left to Member States to make. Member States have a large area of discretion, a so-called “grey zone”, where they solely decide on the basis of proportionality whether a certain national restriction is justified or not.
- In principle this is justified, however, BUSINESSEUROPE observes that in several 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 rules often remain in place. Or worse, they are kept to protect local, regional or national interests going entirely against the European spirit of the Directive.
- To address this last challenge, the Commission calls on Member States to re-assess the economic benefits of eliminating such restrictions and take actions where necessary. Yet, BUSINESSEUROPE has serious doubts whether such a voluntary approach will be fruitful. It might be more helpful to further clarify the concepts of “proportionality” and what exactly constitutes an “overriding reason of general interest”. In any case, we call for an open debate on the proportionality analyses that have been made and the degree to which Member States have used their room for manoeuvre and kept certain restrictions which are at the very least questionable.
- In the above context, we repeat that Member States must always respect the substance of a Directive or Regulation, avoid ambiguities and refrain from adding additional requirements (i.e. “goldplating”), which could lead to additional unnecessary costs for businesses.
- We do fully support the Commission’s approach to apply a “zero tolerance policy” through infringement procedures in cases of non-compliance with the unequivocal obligations of the Directive (e.g. the prohibited requirements in Article 14). However, we strongly believe the Commission should dedicate the appropriate means to launch infringement proceedings concerning *all* key requirements covered by the Directive, such as those related to quantitative restrictions, tariffs or authorisation schemes, which clearly breach the Directive. These should cover requirements regarding both establishment and the temporary provision of services.
- We also believe it is positive that the Commission has launched a peer review (on Article 15 and 16) with Member States at the end of 2012 focusing on company structures, capital ownership requirements and the “freedom to provide services – clause” and keenly await its results in 2013.



- Although its scope is broad, the Services Directive does not cover a whole series of important requirements that directly affect services providers. Instead of reasoning in terms of separate legal texts and policy areas, the Commission should carry out further in-depth analysis of the practical functioning, including remaining problems and barriers of services markets in general and the real needs that exist on the ground. This analysis should also take into account all relevant areas not dealt with by the Services Directive, such as professional qualifications, posting of workers, the e-commerce Directive, consumer protection rules regarding the applicable law (Rome I and Rome II Regulations) or the jurisdiction of courts (Brussels I Regulation).

A first step in this direction has been taken in 2012 with the “*performance checks*” in the construction, business services and tourism sectors. It is now time to go one step further. We need a truly **integrated approach** to services in Europe.

### Reporting and measuring progress

- The Commission (DG MARKT) used to provide regular (in 2009 and 2010) public “information notes” to the Competitiveness Council on “*the state of implementation of the Services Directive*”, which put pressure on Member States to make progress. Regrettably, the Commission ceased to prepare these detailed notes, which included the mentioning of specific countries (*naming and shaming principle*).
- BUSINESSEUROPE urges the Commission to reintroduce this formal reporting to the Council, and also to the European Parliament, but on the broader topic of the state of the single market for services. Beyond quantitative implementation data, this reporting should also take into account the real results / functioning of services markets on the ground as well as the barriers and problems faced by businesses and consumers, also to create more transparency on the outstanding issues and better benchmark progress made. In light of the above, it is positive that from 2012 on, the Commission includes a services part in country-specific recommendations in the context of the European Semester, and also includes a specific services section in its annual report on the “*state of the single market integration*” which feeds into the Annual Growth Survey.

### Scope

- The Services Directive does not cover all service sectors. The sectors it applies to represent a share of around 45% of EU GDP. 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.
- Currently, 90% of the services provided in Europe are already in some way covered by EU legislation. Services which are not covered by any EU legislation are often only provided locally and in most cases lack a cross-border dimension.



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

#### **Article 20 on “access to services”**

- Article 20 of the Services Directive is an important tool to improve the functioning of the single market. It is also in the interest of businesses as service recipients to have access to services throughout the EU and not be subject to differential treatment in price or otherwise, or refusal of supply.
- Besides the criteria that may justify different conditions of access to a service applied by the provider mentioned by the Commission in its Staff Working Document, there might be other criteria not mentioned that have the same affect, such as language barriers or strategic promotional reasons.
- We agree that creating more transparency on objective reasons for differential treatment could be an alleviating factor for recipients' frustrations (consumers and businesses) for not having access to a certain service or receiving differential treatment.
- However, the Commission should be very careful with putting extra burdens on companies - especially in today's difficult economic circumstances - to explain why they do not deliver their service in a certain Member State, in particular for companies operating online (the sale of a good online is considered a service).
- Most businesses would be willing to enlarge their client-base and therefore their business to other markets where conditions make it possible and profitable. Whenever that does not happen, it is because of *objectively justified reasons* - often related to barriers in the single market - for which a company cannot be blamed. Therefore, not only would a company lose business opportunities because of regulatory barriers or other reasons for which it has no fault, but also it would have the burden (which is a cost!) to explain this to the public for the sake of transparency. This would severely harm SMEs and start-ups and even have companies refrain from offering or promoting their services online.



### 3. POINTS OF SINGLE CONTACT

- Companies can greatly benefit from the information and assistance provided by the Points of Single Contact (PSCs) set up under the Services Directive, but only if they truly relieve administrative burdens and respond well to the needs of their users. In particular, European businesses want PSCs that make their life easier by offering:
  - The possibility to complete all necessary procedures and formalities to provide a service domestically or in another Member State on a temporary basis or through establishment, entirely online through the PSC portal to save both time and costs.
  - This requires better cooperation between PSC management and the authorities responsible for final approval of these administrative procedures. In general, the PSC portals should answer any request as rapidly as possible. In many instances, automatic authorisation (i.e. tacit approval) after a certain period could offer a pragmatic solution.
  - More and accurate information on a wide variety of service activities, also including practical information needed for doing business, such as information on applicable labour law, tax and VAT rules, insurance, social security or on providing services in an online environment. This can already be partly achieved by creating links with websites of other relevant authorities, public bodies and information sources.
  - These PSC services should be offered in multiple languages to attract more foreign service providers and trigger investment. In addition, interoperability between the different national PSCs needs to be improved by offering cross-border e-signatures and user-friendly e-identification.
- BUSINESSEUROPE believes Member States must sign up to an ambitious “*PSC Charter*”, which lays down quantitative indicators for better measuring progress made in improving the functioning and user-friendliness of the PSCs and offers transparency by regularly presenting the progress made.
- National governments should modernise and further simplify administrative procedures for service companies through better functioning PSCs, which positively affects the creation of new business and can provide gains up to 0.21% of EU GDP. Moreover, public authorities can cut costs by doing this and by making better use of e-government tools.
- There is a need to overcome technical barriers to cross border use of PSCs: Improve the interoperability of the different national PSCs by ensuring that e-signatures work well across borders and by setting standards for online identification and authentication.
- The European Commission, European Parliament, Member States and relevant stakeholders should better and more actively promote the PSCs and create more



awareness amongst the business community of the possibility to make use of PSC services. Therefore, it is very positive that the Commission has announced to launch a PSC communication campaign in 2013, supported by relevant stakeholders.

#### **4. OTHER ISSUES TO BE ADDRESSED**

1. **Make better use of European standards:** Voluntary services standards can benefit the services industry by reducing the number of (conflicting) national standards and thus removing potential trade barriers. However, the need to develop a certain horizontal service standard must be determined on a case-by-case analysis based on thorough impact assessment and must always be market driven, following a comprehensive consultation of relevant stakeholders.
2. **Ensure better recognition of professional qualifications:** The recognition of professional qualifications throughout Europe is fundamental for a well-functioning services industry as the free movement of labor is often a prerequisite for cross-border service provision and establishment abroad.
3. **Reduce the number of regulated professions and specialisations:** there is also a strong need to reduce the number of regulated professions in Europe (about 800 of which 25% are only regulated in one Member State) that are fragmenting labour markets, prioritising the professions and sectors which have the largest growth potential and are most regulated or only regulated in one Member State. For instance in Italy there are 27 professional orders (categories) and “guilds”. Each of these has its own particular codes which add organisational rules and behavioral limits to limits already imposed by the national and regional law. In practice, this makes it more difficult to provide services in Italy (and all other countries with such structures) for companies coming from other Member States.
4. **Address double insurance problems:** There is a need to further assess the issue of double insurance obligations, provide legal clarity in this area and put an end to double regulatory burdens. In some cases service providers adequately insured to provide its services in one Member State, also vis-à-vis foreign clients might be obliged to take an additional insurance in order to serve across borders. 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. We welcome the Commission’s initiative to look into this.
5. **Enhance the mobility of service companies:** Heavy legal form and ownership requirements – that significantly differ between Member States - can hamper or even prevent establishment abroad. Therefore, following the ongoing Commission peer review with Member States on these matters, we urge the Commission to launch a thorough assessment of the proportionality of the existing rules in this area



as regards effects and aims, and their justification, monitored by the European Parliament. In addition, we ask for the removal of all obstacles to the exercise of professions in corporate form such as joint-stock companies.

6. **Promote the power of service innovation:** Service innovation can help Europe to transform and modernise the way products and services are offered, while driving up productivity and creating competitive advantages for companies. Competition is the best way to foster service innovation. Therefore, it is fundamental to remove remaining barriers in the single market to create a competitive and dynamic environment and to enhance other framework conditions through smart regulation, the availability of adequate funding and public procurement of innovative solutions. In this regard, it is very positive that scope of activities eligible for funding has been broadened in the Horizon 2020 proposals, also to foster more service innovation.
7. **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. Yet, there is a need to inform people better about the important role of services for the competitiveness of the European economy.

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.

For instance, we have some idea of the quantity of services provided across borders, but we never measure the number of companies that have established themselves in another Member State, nor do we measure whether it has been made easier to start-up a business or subsidiary in another country. This is not reflected in any data or figures, while it would be very interesting to measure the number of true "*European companies*", i.e. businesses that have been set up in a country other than the home country of the entrepreneurs.

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.

8. **Further develop the Internal Market Information (IMI) system:** Public authorities should make better use of the IMI system to share information, not only for the recognition of professional qualifications, but also in new legislative areas, such as the Regulation on the cross-border transport of euro cash by road between euro-area Member States and others.



9. **Make retail services more competitive:** BUSINESSEUROPE welcomes many of the initiatives announced in the Commission’s recent Retail Action Plan presented in February 2013 that also affect the broader functioning of Europe’s services markets and aim to remove remaining barriers to the creation of an efficient and competitive single market in retail, but the effectiveness of many of the proposals will depend on its details and the follow-up actions. Therefore, we will closely monitor the implementation of the announced measures, as well as the conclusions of the permanent Group on Retail Competitiveness.
  
10. **Solve issues related to spatial planning:** We urge the European Parliament to ask the Commission to assess how commercial and palatial planning rules are applied by the competent authorities on the ground. We observe that in some cases service providers are hindered by disproportionate spatial planning rules, for instance by imposing economic needs tests or additional requirements, which are sometimes used in a manner that restricts competition and protects local interests.
  
11. **Enforce the Posting of Workers Directive without creating new barriers:** BUSINESSEUROPE strongly supports proper enforcement of the Posting of Workers Directive. But measures to improve enforcement should not impose disproportionate burdens on companies, and should not create additional barriers in the single market. Providing better information for companies and workers and improving administrative cooperation between Member States are the key to ensure better compliance with the Directive in practice. Imposing an EU system of joint and several liability in subcontracting is not the right way to enforce the Directive. Such a system will hamper development of the single market and undermine the competitiveness of European companies at a time when all EU policies should support economic growth.
  
12. **Reinforce the horizontal “mutual recognition principle” in services:** Trust and mutual recognition are essential elements of a well-functioning single market in services. In areas where full harmonisation is not desirable or feasible, *the principle of mutual recognition* can help to improve the functioning of Europe’s services markets by providing a certain degree of flexibility and cross-border acceptance.

More mutual recognition would also lead to a significant reduction of administrative and regulatory burdens – as business would have the possibility to provide their services in another Member States without additional formalities or heavy procedures as long as they comply with the essential national and European (safety, health, consumer protection, etc.) requirements. For example, more mutual recognition in areas such as expert accreditation, authorisations or the recognition of certificates can greatly facilitate cross-border service provision and establishment abroad.

13. **Boost the productivity of business services:** Many different services industries fall under the term “business services”, including professional services (such as accountancy, legal, engineering, marketing, tax, management consultancy and architect services), but also IT, software services, technical testing, contract research, labour search services (such as temporary work and headhunting), industrial cleaning and security services. Business services are mostly provided to



other businesses, hence their importance for the overall competitiveness of the EU. Yet, the business services industry has booked no productivity growth during the last 2 decades, which is worrying. A lack of competitive selection contributes to the productivity stagnation. Actions need to be taken and BUSINESSEUROPE eagerly awaits the setting-up of the High Level Group on Business-Related Services that will analyse the shortcomings of this crucial sector for the economy.

14. **Ensure less complexity in the administration of tax for EU cross-border activities:** less complexity in the administration of taxes for both companies and citizens would enhance mobility and therefore benefit the free movement of services.
15. **Fully grasp the huge potential of online services:** The selling of goods online is considered a service. Hence, the (overall positive) impact that the rise of the internet and e-commerce in particular is having on existing business models and the daily operations of companies providing services. Yet, while e-commerce is rapidly taking off at national level, cross-border e-commerce is lagging behind.

There is a strong need to boost consumer confidence and business trust in cross-border e-commerce by addressing the excessive fragmentation of applicable rules (e.g. different VAT regimes, data privacy, payment systems, consumer protection and product information), and apply an “e-commerce test” to all relevant new legislation. In addition, there is a need to reform the copyright system in order to create a real single market in this area, including for cross-border licensing and collective management of rights. Of course the digital world changes very quickly, so also the environment for providing online services. Policy-makers dealing with the Digital Single Market need to realise this and follow its pace. The entire approach to regulation needs to be proportionate, light touch and future-proof.

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