



EUROPEAN COMMISSION

Brussels, 8.6.2012
SWD(2012) 147 final

COMMISSION STAFF WORKING DOCUMENT

on the result of the performance checks of the internal market for services (construction, business services and tourism)

Accompanying the document

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions

**on the implementation of the Services Directive.
A partnership for new growth in services 2012-2015**

{COM(2012) 261 final}

{SWD(2012) 146 final}

{SWD(2012) 148 final}

COMMISSION STAFF WORKING DOCUMENT

on the result of the performance checks of the internal market for services (construction, business services and tourism)

Accompanying the document

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions

**on the implementation of the Services Directive.
A partnership for new growth in services 2012-2015**

This document is a European Commission staff working document for information purposes. It does not represent an official position of the Commission on this issue, nor does it anticipate such a position

TABLE OF CONTENTS

| | | |
|--------|---------------------------------------------------------------------------------------------|----|
| 1. | BUILDING AN INTERNAL MARKET FOR SERVICES: ACKNOWLEDGING THE PROGRESS ACHIEVED | 3 |
| 2. | WHY WERE THE PERFORMANCE CHECKS NECESSARY? PURPOSE AND METHODOLOGY OF THE EXERCISE | 3 |
| 3. | THE RESULTS OF THE PERFORMANCE CHECKS..... | 5 |
| 3.1. | Remaining challenges common to the three sectors..... | 5 |
| 3.1.1. | The challenge of internal market rules not being fully implemented | 5 |
| 3.1.2. | Challenges beyond full implementation of existing rules | 6 |
| 3.1.3. | Selling to consumers throughout Europe | 7 |
| 3.1.4. | Insurance coverage for cross-border service provisions | 7 |
| 3.2. | Sector-specific barriers | 8 |
| 3.2.1. | Construction | 8 |
| 3.2.2. | Business services | 9 |
| 3.2.3. | Tourism..... | 9 |
| 4. | CONCLUSIONS: REMAINING CHALLENGES | 11 |
| 4.1. | Realising the full potential of existing legislation..... | 11 |
| 4.2. | Further facilitating the provision of services in certain sectors..... | 11 |
| 4.3. | Duplication of requirements laid down in EU sector-specific legislation | 12 |
| 4.4. | Insurance for cross-border service provisions | 12 |
| 4.5. | Lack of full harmonisation of consumer protection rules | 13 |
| | ANNEX I: FINDINGS BY SECTORS | 14 |

1. BUILDING AN INTERNAL MARKET FOR SERVICES: ACKNOWLEDGING THE PROGRESS ACHIEVED

The adoption of Directive 2006/123/EC on services in the internal market (Services Directive) and its implementation by Member States has eliminated a significant number of barriers to the provision of services in the internal market.

However, work remains to be done to deliver the full potential of the internal market for services. In its Communication of 27 January 2011, "Towards a better functioning Single Market for services", which presented the results of the mutual evaluation process provided for by the Services Directive¹, the Commission announced an ambitious work plan to further improve the practical functioning of the internal market. One of the key actions was the launching of "performance checks" of the Single Market for services with a view to assessing how different pieces of EU legislation interact and are jointly applied on the ground by Member States in three important economic sectors (construction, business services and tourism). The exercise has allowed the identification of a number of remaining barriers for services in the internal market that businesses face in their daily lives, some of which cannot be eliminated by the Services Directive on its own as explained in detailed below.

The identification of remaining barriers complements the identification of remaining instances of incomplete implementation of the Services Directive carried out in the Commission Staff Working Paper on Detailed Information on the Implementation of the Services Directive that, together with this document, accompanies the Communication from the Commission to the European Parliament and to the Council on the implementation of the Services Directive in accordance with Article 41 of the Services Directive, "A Partnership for New Growth in Services 2012-2015" (Communication for New Growth in Services). Actions to tackle the identified challenges hampering further growth for services are laid down in the Communication for New Growth in Services.

2. WHY WERE THE PERFORMANCE CHECKS NECESSARY? PURPOSE AND METHODOLOGY OF THE EXERCISE

The construction (6.3 % GDP), business services (11.7 % GDP) and tourism (4.4 % GDP) sectors were identified as candidates for the performance checks because of their potential for cross-border service trade within the EU.² Lessons drawn from these three sectors should provide useful insights and help identify best practices to stimulate growth in other economic sectors too.

One major novelty of the exercise has been the holistic assessment of the impact of various pieces of EU legislation on business activities. The performance checks have been carried out on the basis of three sector-specific case studies. One involved construction, architecture and related services. The other two concerned business services

¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - *Towards a better functioning Single Market for services – building on the results of the mutual evaluation process of the Services Directive*, COM (2011) 0020 final.

² Source: Eurostat, National Accounts Statistics, Gross Value Added, 2009

(tax advisers) and tourism services (tourist guides, travel agents and tour operators), respectively.

Member States were called upon to explain in detail how national rules implementing the relevant directives would be applied on the ground to potential service providers wishing to establish themselves or provide cross-border services in their territory.³ The responses received were discussed with Member States in the Services Directive Expert Group between 19 December 2011 and 27 April 2012. The case studies were published, and interested parties were invited to comment.⁴

The scenario for the **construction sector** involved the combined application of Directive 2005/36/EC on the mutual recognition of professional qualifications (hereafter Professional Qualifications Directive), Directive 2000/31/EC on E-Commerce (E-Commerce Directive), the Services Directive and of the rules of the Treaty on the Functioning of the European Union (TFEU), as well as of Directive 2006/114/EC concerning misleading and comparative advertising, Directive 2002/91/EC on the energy performance of buildings, Directive 2008/98/EC on Waste and Regulation 842/2006/EC on certain fluorinated greenhouse gases. The scenario for **business services** involved the combined application of the Professional Qualifications Directive, the E-Commerce Directive, the Services Directive and the TFEU rules. Finally, the scenario for the **tourism sector** involved the combined application of the Professional Qualifications Directive, Directive 90/314/EEC on package travel, package holidays and package tours (Package Travel Directive), Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (Unfair Contract Terms Directive), the E-Commerce Directive, the Services Directive and the TFEU rules.

As with the mutual evaluation process⁵, the performance checks have proven the value of innovative tools for governance of the internal market. They have shown the usefulness and importance of raising internal market awareness in the daily work of competent authorities at all levels. National authorities responsible for supervising different policies were called upon to cooperate in assessing the impact that the concrete implementation of the rules they apply on a daily basis could have on the internal market for services from the perspective of service providers who are subject to the cumulative application of all the European rules in the various areas.

³ The questionnaires and the detailed background notes summarising responses by Member States can be found at http://ec.europa.eu/internal_market/services/services-dir/mutual_evaluation_en.htm

⁴ Member States were invited to consult interested parties on the questionnaires.

⁵ See COM (2011) 0020 final, referred to above in footnote 1.

3.

THE RESULTS OF THE PERFORMANCE CHECKS

3.1. Remaining challenges common to the three sectors

Barriers identified as common to the three sectors assessed will be presented first. Given their cross-cutting nature, the solutions proposed to tackle them are expected to have the potential benefits for other sectors of the services economy. Barriers specific to the three sectors will be analysed in detail in Section 3.2.

3.1.1. The challenge of internal market rules not being fully implemented

The Services Directive, the E-Commerce Directive and the Professional Qualifications Directive aim to facilitate the provision of services in the internal market by reducing the burden that business and professionals face in their daily lives. However, the exercise has revealed that a number of significant challenges still exist for businesses, in particular when they wish to provide services in other Member States.

The performance checks have revealed a number of **instances of deficient implementation** of the three above-mentioned Directives, depriving citizens and businesses of the benefits they aim to provide. For example, certain Member States do not allow providers to acquire insurance in other Member States. Total bans on a form of commercial communications, which are prohibited by the Services Directive, still apply in some Member States. The situation for cross-border service providers seems particularly challenging with regard to **cross-border** service provisions where businesses (when providing services both online and offline) are often confronted with requirements which are imposed on them in addition to those to which they are subject in the Member State where they are established. This corroborates the findings of the Commission Staff Working Paper on Detailed Information on the Implementation of the Services Directive which accompanies the Communication for New Growth in Services. Certain requirements affect all sectors, such as horizontal notification obligations laid down for cross-border service providers in some Member States. Other barriers are sector-specific and concern requirements applied to service providers established in other Member States, such as notification or authorisation required to perform a given activity, or insurance obligations duplicating those to which providers are subject in their own Member States. Finally, certain Member States make information society services subject to regulatory requirements that might contravene the internal market clause in the E-Commerce Directive.

Furthermore, as was already highlighted in the 2011 Evaluation Report on the Professional Qualifications Directive⁶, certain administrative and procedural burdens connected with the recognition of professional qualifications **hamper cross-border service provision for professionals**. First, Member States have divergent views as to the need to use the possibilities provided for in the Professional Qualifications Directive (prior annual declaration and subsequent registration *pro forma* for cross-border service providers), as to the way to apply

⁶ http://ec.europa.eu/internal_market/qualifications/docs/news/20110706-evaluation-directive-200536ec_en.pdf

them (documents required and their form) and as to those professions for which a prior verification of qualifications can be justified for reasons of public health and consumer safety. In federal countries that regulate professions at regional level, professionals sometimes have to submit several declarations when they want to exercise their activities in more than one region. This diversity of practices renders the provision of services in other Member States more complicated and highlights the need to simplify and ensure the transparency of the rules applicable. Moreover, certain existing practices would appear to contravene EU rules. In the construction sector, for example, some Member States carry out prior checks of qualifications for professions that should benefit from automatic recognition such as architects and, to some extent, certain crafts.⁷ In the tourism sector, tourist guides who wished to have their qualification recognised were asked until very recently in certain instances to show a certificate of military service. Finally, certain practices such as those concerning the form of the documents to be submitted for the recognition of professional qualifications (certified copies for non-essential documents) raise questions of consistency with the Code of Conduct for the Professional Qualifications Directive.⁸

Finally, the cumulative application of internal market rules (namely the Professional Qualifications Directive, the E-Commerce Directive and the Services Directive) lacks consistency and coherence. For example, tariff or legal form requirements applicable to certain professional services cannot be applied to cross-border providers on the basis of Article 5(3) of the Professional Qualifications Directive (since they are not directly linked with professional qualifications). Member States are only allowed to impose such rules on cross-border service providers if they are justified under Article 16 of the Services Directive.

3.1.2. *Challenges beyond full implementation of existing rules*

Some of the remaining challenges cannot be addressed by ensuring compliance with unequivocal obligations laid down in existing internal market directives.⁹ For example, Member States may reserve, in accordance with the TFEU, the provision of particular services to professionals holding specific qualifications.¹⁰ **Significant divergences in the regulation of professions** are apparent across the different Member States in the sectors analysed. This wide variation in regulation adds complexity to the provision of professional services in the internal market.

For professionals acting through **corporate structures**, additional challenges stem from the wide diversity of legal form and shareholding requirements maintained by some Member States for some professional services. The Services Directive left a margin of discretion to Member States for the maintenance of requirements that are subject to the tests of necessity and proportionality. Within this margin, Member States have often simply opted for preserving their status quo instead of relaxing them further without impairing service quality. This means businesses may be required to adapt their legal form or their shareholding structures in order to set up secondary establishments or provide a specific

⁷ For professions benefiting from automatic recognition on the basis of professional experience – see Articles 16 *et seq* of the Professional Qualifications Directive (and its Annex IV)

⁸ See http://ec.europa.eu/internal_market/qualifications/docs/future/cocon_en.pdf

⁹ See Chapters II 2 and 3 of the Communication for New Growth in Services.

¹⁰ See notably the judgments of the Court of Justice in cases C-294/00, *Grabner*, and C-3/95, *Reisebüro Broede*

professional service, which renders them less able to respond effectively to market demands. This is explained in further detail in the business scenario analysis below.

3.1.3. Selling to consumers throughout Europe

A significant part of the existing consumer protection *acquis* has so far been based on minimum harmonisation, although more recent legislation has provided to a very large extent for full harmonisation.¹¹ The tourism scenario assessed areas where a minimum harmonised level of consumer protection is set, such as in the Package Travel Directive and the Unfair Contract Terms Directive. In those areas, the performance checks exercise has shown that whenever Member States have been going beyond the minimum harmonisation rules, service providers willing to provide services across borders are often confronted with the need to adapt their practices to such legislation in other Member States.¹² With regard in particular to the implementation of the Package Travel Directive, the remaining challenges concern pre-contractual information requirements and liability as described in more detail in the tourism scenario below.

3.1.4. Insurance coverage for cross-border service provisions

A particular difficulty identified in the three scenarios concerns insurance obligations to which service providers are subject, be it by virtue of EU rules (such as insurance obligations that Member States may impose on tour operators and travel agencies to provide evidence of the insolvency guarantee required by the Package Travel Directive) or by virtue of national legislation. A significant number of Member States do not take account of insurance obligations complied with in the Member State of establishment, which results in the duplication of insurance coverage costs borne by businesses in tourism (in particular for travel agencies and tour operators), business services and construction sectors.

Problems related to insurance do not only result from a duplication of requirements. In addition, businesses and professionals in search of insurance for their cross-border service provisions (be it insurance acquired in their Member State of establishment or in the Member State where they intend to provide services) face a practical problem: insurance to provide services in other Member States is difficult to find in the market, whether in their Member State of establishment or in the Member State here they intend to provide services.¹³

¹¹ See notably Directive 2005/29/EC on Unfair Commercial Practices and, more recently, Directive 2011/83/EC on Consumer Rights which have provided to a very large extent for full harmonisation in their respective areas.

¹² See Chapter II 6 (2) of the Communication for New Growth in Services.

¹³ See Chapter II 2 of the Communication for New Growth in Services.

3.2. Sector-specific barriers

3.2.1. Construction

This Section refers only to findings that are specific to the construction scenario. This scenario focussed exclusively on cross-border service provision, whereas the other two scenarios covered establishment issues as well.

3.2.1.1. Mutual recognition of accreditation and authorisations issued on the basis of sector-specific EU directives

The exercise has shown that businesses and professionals face problems because of the lack of mutual recognition clauses in sector-specific EU legislation that provides for authorisation or registration schemes or the certification of experts.

EU law sets up a system of controls at national level for persons performing activities involving fluorinated greenhouse (F-gases) in refrigeration systems, energy efficiency certification and waste treatment and transport. The performance checks verified to what extent authorised or certified service providers can exercise their activities in other Member States on the basis of the certificate or authorisation obtained in their Member State of establishment. Duplication of requirements hinders the exercise of activities in the case of both secondary establishment and of cross-border service provision.

As regards **F-gases**, the exercise has shown that the vast majority of Member States have made provision in their national legislation for automatic recognition of certificates issued in other Member States for those handling these gases (for instance when installing air conditioning systems). This is specifically required by EU law.¹⁴ Member States that have not yet done so committed in the course of the performance checks to insert such recognition clauses in their legislation.

As regards the **energy performance of buildings**, EU legislation (which has been recently reviewed) offers Member States two options for regulating access to the activity: through qualifications, resulting in the application of the Professional Qualifications Directive to ensure the recognition of professional qualifications obtained in other Member States; or through accreditation. While Regulation 765/2008 establishes a general legal framework for accreditation and mutual recognition of accreditation certificates by public authorities, the situation remains uncertain in those areas and Member States where accreditation is not used systematically. In contrast with the situation regarding the handling of F-gases, the recognition of experts legally established in other Member States for the purposes of certifying the energy performance of buildings faces specific difficulties.¹⁵ These difficulties are related to the fact that Member States have established, amongst others, different calculation methodologies and procedures for assessing the energy performance of buildings which then require specific training to be properly applied.

¹⁴ Regulation 842/2006/EC of 17 May 2006 on certain fluorinated greenhouse gases and its implementing Regulations regarding requirements for certification and training..

¹⁵ http://www.epbd-ca.org/Medias/Downloads/CA_Book_Implementing_the_EPBD_Featuring_Country_Reports_2010.pdf.

Finally, concerning **waste-related activities**, the exercise has not sufficiently clarified the legal situation for providers who wish to operate in other Member States in this field. Under Chapter IV of Directive 2008/98/EC on Waste, Member States require permits or registration for waste-related service activities. For the majority of Member States, however, it is not clear whether providers legally established in another Member State and complying with its domestic regulation could benefit from mutual recognition to avoid duplication of procedures or would be forced to register in a Member State where they intend to operate only temporarily.

3.2.2. *Business services*

This Section refers only to findings that are specific to the business services scenario, which analysed in particular the provision of tax advice services.

3.2.2.1. Regarding legal form and capital ownership requirements

The business services scenario has shown that despite the implementation of the Services Directive, various corporate structure limitations and capital ownership requirements have remained in place in many Member States for the provision of certain professional services. The Services Directive obliged Member States to ensure that these requirements comply with the principles of necessity and proportionality. Member States have often opted for preserving the status quo in this exercise. Companies in the business services sector are thus obliged to adapt their structure when they establish in other Member States or sometimes even when they wish to provide cross-border services. However, a number of Member States, even though they regulate the profession, make the full range of company forms available and allow non-professional shareholders without restriction or with only certain limitations. Finally, certain Member States have introduced specific company structures for providers of professional services with the aim of allowing them to find an appropriate business structure while safeguarding certain specificities of the professions in question.

3.2.2.2. Regarding commercial communications

The exercise has shown that not all total bans on a form of commercial communication for regulated professions have been removed, as required by Article 24(1) of the Services Directive.¹⁶ Total bans on some forms of commercial communications still apply for professional services in a limited number of Member States (ban on canvassing or TV advertising for certain professions).

3.2.3. *Tourism*

This section refers only to findings that are specific to the tourism scenario.

3.2.3.1. Specific profession-related challenges

Tourist guides who wish to provide services to clients in other Member States face difficulties due to the fact that the distinction between establishment and cross-border service provision would seem to be particularly difficult to apply in practice for the

¹⁶ See judgment of the Court of Justice of 5 April 2011, *Société Fiduciaire*, C-119/09.

national competent authorities (case-by-case analysis). As a result, tourist guides are often subject to the rules applicable to establishment where they only wish to provide cross-border services.

3.2.3.2. Divergence of consumer protection rules governing package travel sales

Travel agents and tour operators suffer from divergent consumer protection rules due to the absence of maximum harmonisation in a large part of the EU consumer acquis, which constitutes a significant barrier for the cross-border provision of travel agency services.

As regards the **Package Travel Directive** in particular, it would seem that the degree of harmonisation achieved with pre-contractual information requirements results in obstacles to the provision of cross-border services. The Package Travel Directive currently prescribes minimum rules for the information that must be given to consumers in brochures, before the contract is signed, before departure and in the contract. Almost all Member States have added some obligations. These requirements are sometimes applied to businesses established in other Member States that provide services, both online or offline. This makes it difficult, for instance, for a package travel organiser to carry out marketing campaigns or produce brochures that can be used in several Member States.

The Directive contains rules concerning the liability of package travel organisers and retailers, who must accept responsibility for the performance of the services offered. It mentions both the organiser and the retailer, which leaves in the discretion of the Member States to decide which one of them should be obliged to meet the obligations under the Directive. The Directive also specifies that the organiser and/or retailer that is party to the contract must provide sufficient evidence of security for the refund of any money paid over and for repatriation of the consumer in the event of insolvency. In this regard, too, the Directive leaves broad discretion to the Member States regarding the choice of the appropriate measures. The different implementation options adopted at national level often result in travel agents and tour operators having to acquire additional insurance and guarantees to provide services in other Member States, both online and offline, because those acquired in their Member State of establishment are not recognised as sufficient by other Member States.

The **Unfair Contract Terms Directive** sets a minimum level of harmonisation. It introduces the notion of 'good faith' in order to prevent significant imbalances between the rights and obligations of consumers on the one hand and those of sellers and suppliers on the other. This general requirement is supplemented by a non-exhaustive list of examples of terms that may be regarded as unfair, set out in its Annex. The exercise has shown that Member States have gone beyond this list in some cases, which results in businesses having to adapt some of their contract terms to be able to provide services cross-border.

4. CONCLUSIONS: REMAINING CHALLENGES

The conclusions drawn from the performance checks exercise are set out below. Detailed follow up actions to address each of the identified challenges are proposed in the Communication for New Growth in Services.

4.1. Realising the full potential of existing legislation

Businesses and professionals are not always able to make use of the benefits they are supposed to gain from the internal market. This is often due to the incomplete or incorrect implementation of the Services Directive, the Professional Qualifications Directive or the E-Commerce Directive. Further efforts are needed to ensure that these rules are applied on the ground in a consistent and coherent way.¹⁷

It is also important to ensure that the full implementation of internal market rules translates into benefits on the ground for businesses and professionals. Indicators that a correct application of the rules is taking place on the ground are normally updated PSCs reflecting legislation adapted to the Services Directive and evidence of a better use of the IMI. Actions will be taken to facilitate the emergence of these indicators.¹⁸

4.2. Further facilitating the provision of services in certain sectors

Some of the remaining challenges cannot be addressed by correcting the implementation of internal market directives. Certain actions already taken under the Single Market Act aim to address some of the shortcomings set out in this paper. This is particularly the case with the recently proposed **modernisation of the Professional Qualifications Directive** to which Chapter II 3 of the Communication for New Growth in Services refers. The quick adoption of the Commission's proposal is essential to further facilitate the cross-border provisions of services and the establishment of professionals in other Member States.

For cross-border service provision, the clear identification of the professions that can be subject to prior recognition of professional qualifications should remove uncertainty for professionals. The country-wide validity that the proposal would introduce for annual declarations would also significantly reduce red tape for professionals providing cross-border services.

Significant **divergences** in the regulation of professions appeared across the different Member States in the three sectors analysed. This wide diversity of regulation adds complexity to the provision of professional services in the internal market. The transparency and mutual evaluation mechanism contained in the proposed modernisation of the Professional Qualifications Directive would help to reduce this complexity, by reviewing the need for qualification requirements. Following the adoption of this proposal, the Commission intends to present a Communication in 2013 on the basis of developments in Member States which are currently in the process of reviewing regulation of their professions, notably the need for a high level of qualifications. The

¹⁷ See Chapters II 1 and 5 of the Communication for New Growth in Services.

¹⁸ For PSC see Chapter II 7 of the Communication for New Growth in Services.

future Communication shall also define a methodology for the mutual evaluation of requirements related to professional qualifications and reserved activities, notably by clarifying which information will be required from Member States on the justifications of their regulated professions as indicated in Chapter II 3 of the Communication for New Growth in Services.

As regards difficulties with requirements concerning legal form and shareholding, which often still apply to specific professions, the performance check exercise has confirmed that there is a need for Member States to reassess their regulation on company forms and capital ownership in professional services and to develop solutions to prevent obstacles to the free movement of professional services resulting from these rules, as indicated in Chapter II 2 of the Communication for New Growth in Services. The margin of discretion that the Services Directive leaves to Member States when assessing the necessity and proportionality of these requirements should not be applied in a way that hampers further growth in the internal market for services.

4.3. Duplication of requirements laid down in EU sector-specific legislation

A problem stemming from lack of mutual recognition and hence duplication of requirements has been identified regarding the implementation of sector-specific EU rules that require authorisation or accreditation of experts, notably for certification of the energy performance of buildings and for waste shipment. The application of Regulation 765/2008 on accreditation should enhance acceptance and recognition of certificates. However, there is no clear provision on recognition of the accredited experts when they wish to provide cross-border services. A mutual recognition clause in sector-specific EU legislation, as already exists in the area of F-gases, would resolve these problems. Particular efforts might be necessary to overcome difficulties created by differing technical standards in Member States for the certification of energy performance. The recent proposal for a revised Directive on energy performance¹⁹ introduces a clause that calls on Member States to make publicly available the certification schemes or equivalent qualification schemes for energy service providers and to cooperate among themselves and with the Commission on comparisons between and recognition of the schemes. Actions will be taken to achieve this objective as indicated in Chapter II 6 (1) of the Communication for New Growth in Services.

4.4. Insurance for cross-border service provisions

Some Member States still do not allow service providers established in their territory to contract insurance in other Member States. In addition, a significant number of Member States do not take account of insurance obligations complied with in the Member State of establishment, which results in the duplication of insurance coverage costs borne by businesses in the tourism (in particular for travel agencies and tour operators), business services and construction sectors.

In addition, finding insurers that offer adequate coverage for cross-border service provision, either in the Member State of establishment or in the Member State where the service is to be provided, can be difficult (notably in the construction and tourism sectors). Actions will be taken to ensure that these problems are tackled as indicated in Chapter II 2 of the Communication for New Growth in Services.

¹⁹ COM/2011/0370 final - COD 2011/0172.

4.5. Lack of full harmonisation of consumer protection rules

In areas where minimum harmonisation still applies, whenever Member States have been going beyond the minimum harmonisation rules, service providers willing to provide services across borders are often confronted with the need to adapt their practices to such legislation in other Member States. Growth in the internal market calls for progress towards further harmonisation in certain pieces of legislation where appropriate and necessary as indicated in Chapter II 6 (2) of the Communication for New Growth in Services, as shown notably by the results of the tourism scenario.

ANNEX I: FINDINGS BY SECTORS

CONSTRUCTION

| | |
|---------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>Economic data</u> ²⁰ | |
| GDP (2009) | 6.3% |
| Average growth rate (1999-2009) | 2.38% for construction 1.1% for all sectors of the EU economy |
| Contribution to EU employment (2009) | 7.2% |
| Average employment growth rate (1999-2009) | 1.28% for construction 0.77% for all sectors of the EU economy |
| Activities covered in the exercise | Architects, civil engineers, general construction companies, craftsmen, energy performance certification service providers, air conditioning installers, waste management and transportation activities |
| Regulation of the activity (linked to professional qualifications) | Strong diversity of regulation : - Certain Member States reserve activities (mostly architectural activities and crafts) to regulated professions in the sense of the Professional Qualifications Directive. Other Member States do not reserve access to the various construction activities to specific regulated professions but do control the use of professional titles. |
| Professional qualifications required | Application of the Professional Qualifications Directive (PQD) on the ground: - For the cross-border scenario, divergent views of Member States as to the need to use the possibilities provided for in the PQD (prior declaration and registration <i>pro forma</i>) and the way to apply them (documents to be required and scope of the prior declaration) - Automatic recognition of professional qualifications in Annex IV not always a reality |

²⁰ Source: Eurostat, National Accounts Statistics: gross added value and total employment

| | |
|------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Corporate structure requirements | For the temporary cross-border provision of services (to which this scenario was limited), no specific problems regarding corporate structure requirements were identified. |
| Insurance | <p>Obstacles to obtaining insurance for cross-border service provision</p> <p>Lack of recognition of compliance with insurance requirements (especially regarding building-related insurance)</p> |
| Relationship between different EU instruments | <p>For construction-related activities:</p> <p>Need to ensure mutual recognition of authorisations or certificates issued in other Member States for certain activities (energy performance of buildings and waste-related activities) where EU law does not explicitly include mutual recognition obligations.</p> <p>Where EU legislation explicitly includes mutual recognition obligations (fluorinated greenhouse gases), lack of compliance with such obligation in a very limited number of cases.</p> <p>For energy performance, lack of sufficient alignment in standards stands in the way of mutual recognition at present.</p> <p>Lack of clarity on the relationship between the Professional Qualifications Directive and the Services Directive and need to ensure coherent application of these directives on the ground.</p> |

BUSINESS SERVICES

| | |
|----------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Economic data²¹ | |
| GDP (2009) | 11.7% |
| Average growth rate (1999-2009) | 2.38% for business services 1.1% for all sectors of the EU economy |
| Contribution to EU employment (2009) | 11.7% |
| Average employment growth rate (1999-2009) | 3.54% for business services 0.77% for all sectors of the EU economy |
| Activities covered in the exercise | Tax advisers |
| Regulations of the activity (linked to professional qualifications) | Diversity of regulation of the activity: - Access to professions is free in 17 MS but subject to professional qualification requirements in 11 MS. - 3 MS regulate the use of professional title. - Diversity in the scope/degree of reserved activities. |
| Professional qualification requirements | Application of the Professional Qualifications Directive on the ground: - variations in the application of compensation mechanisms - issues of compliance with the Code of Conduct (forms of documents to be submitted), - divergent views among MS as to the need to use the possibilities provided for in the PQD (prior declaration and registration <i>pro forma</i>) and the way to apply them (documents required and scope of the prior declaration) |
| Corporate structure requirements | Wide diversity of regulation: - some MS limit the legal forms available or require capital ownership to belong to qualified professionals, - some MS do not provide for any limitation, - some MS have introduced specific company structure for professionals and allow non-professionals to be shareholders up to 49 %. |

²¹ Source: Eurostat, National Accounts Statistics: gross added value and total employment

| | |
|------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Insurance | Insurance taken out by the professional in another Member State is not always recognised |
| Advertising | Total ban on some forms of commercial communications still apply in certain Member states → issue of compliance with the Services Directive (Article 24(1)) |
| Consumers | |
| E-provision of services | Not fully compliant application of the E-commerce directive (e-providers are sometimes subject to a prior recognition of their professional qualifications) |
| Relationship between different EU instruments | The relationship between the Professional Qualifications Directive, the Services Directive and the E-Commerce Directive needs to be clarified in some respects. Need to ensure coherent application of these directives on the ground. |

TOURISM

| | |
|--------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>Economic data</u> ²² | |
| GDP (2009) | 4.4% |
| Average growth rate (1999-2009) | 2.04% for tourism 1.1% for all sectors of the EU economy |
| Contribution to EU employment (2009) | 6.1% |
| Average employment growth rate (1999-2009) | 2.56% for tourism 0.77% for all sectors of the EU economy |
| Activities covered | Travel and tour operators, travel agents |
| Regulations of the activity linked to professional qualifications | Wide variation in the regulation of travel agents/tour operators: - Travel agents are a regulated profession in 9 Member States Wide variation in the regulation of tourist guides - Tourist guides are a regulated profession in 14 Member States |
| Regulation of the activity | Authorisation and notification schemes to ensure compliance with insurance and security obligations, sometimes also in cross-border cases |
| Professional qualification requirements | Application of the Professional Qualifications Directive on the ground: For travel agents and tour operators: - variation in the application of compensation mechanisms - issues of compliance with the Code of Conduct (forms of documents to be submitted) - divergent views among Member States as to the need to use the possibilities provided for in the PQD (prior declaration and registration <i>pro forma</i>) and the way to apply them (documents to be required and scope of the prior declaration), For tourist guides: application on the ground, difficulties with control, establishment vs.service provision |

²² Source: Eurostat, National Accounts Statistics: gross added value and total employment

| | |
|------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Corporate requirements structure | -- |
| Insurance | <p>Duplication of insurance obligations for the performance of contract. Wide discretion given by Package Travel Directive on the liability of travel agents and tour operators renders cross-border provision more difficult.</p> <p>Insolvency protection: duplication of requirements to meet obligation under the Package Travel Directive</p> <p>Difficulties in obtaining insurance for cross-border service provisions.</p> |
| Advertising | --- |
| Consumers | <p>Lack of full harmonisation for pre-contractual information requirements in the Package Travel Directive renders cross-border provision of services more difficult.</p> <p>The absence of a fully harmonised list of unfair contract terms in the Unfair Contract Terms Directive renders more difficult cross-border provision of services</p> |
| Relationship between different EU instruments | Need to ensure coherent application of the Services Directive, the Professional Qualifications Directive and of the E-Commerce Directive on the ground. |