

ANNEX

THE REGULATORY FRAMEWORK APPLICABLE TO SERVICES IN THE EU IMPROVEMENTS AFTER THE IMPLEMENTATION OF THE SERVICES DIRECTIVE

The regulatory framework applicable to services in the EU has improved considerably with the implementation of the Services Directive. This improvement is still ongoing as a number of Member States have not yet completed all the changes required to comply with the Directive¹.

In addition to adopting legislation implementing the general principles and provisions of the Directive in a horizontal manner, most Member States have undertaken a thorough examination of the requirements they imposed on service providers wanting to establish in their territory or wanting to provide services there on a temporary basis. Many Member States have abolished or modified requirements that were found to be discriminatory, unjustified or disproportionate. To illustrate the concrete results of this work, this annex presents a number of examples of important changes made as well as some of the sectors that are expected to benefit the most from these changes.

IMPROVEMENTS TO THE LEGAL FRAMEWORK APPLICABLE TO THE ESTABLISHMENT OF SERVICE PROVIDERS

Important progress has been made as regards prior authorisation schemes – one of the most common requirements imposed on service providers.

In those Member States where cross-cutting authorisation schemes are in place (i.e. schemes applied generally to service activities or at least to a high number of different service activities) a number of changes have been introduced to make them less burdensome. For instance, in **Slovakia** all authorisations covered by the Trade Licences Act have been replaced by declarations. **Malta** has replaced a good number of authorisation procedures under its general trading licence by declarations. So has **Hungary**, as regards the general authorisation scheme in the retail sector and the new act on individual entrepreneurs. Similar changes are pending in **Bulgaria** and have been announced by **Cyprus**.

Sector-specific authorisation schemes have been abolished or simplified in a number of key economic sectors.

For instance, in the retail sector there have been significant improvements in particular as regards the conditions for the opening of large and medium-sized retail establishments. "Economic needs tests" (such as the making of the granting of an authorisation subject to proof of the existence of a market demand) in authorisation regimes applicable to retail services have been eliminated in **Belgium, France, Italy and Spain**. **The Netherlands** have introduced in their zoning regulations an explicit prohibition of such practices. **Luxembourg** and **Greece** have announced similar changes to their existing authorisation schemes. Furthermore, some Member States like **France, Italy or Spain** have raised the thresholds

¹ On the basis of the information reported to the Commission by Member States themselves this is notably the case of Cyprus, Greece, Lithuania, Portugal and Slovenia where a high number of planned changes have been reported. Work also seems to be ongoing in countries like Austria, Bulgaria, Ireland, Latvia or Luxembourg.

above which retailers need to apply for an authorisation, thus facilitating the establishment of smaller retailers. In addition, the criteria for the granting of authorisations have often been clarified and/or simplified. Authorisation schemes applicable to the retail of specific products have in a number of occasions also been abolished, modified or replaced by declarations. The regulatory framework for other forms of retail such as itinerant sales (e.g. in **Germany, Italy, Latvia, Spain** or the **United Kingdom**) or franchises (e.g. in **Spain**) has also been simplified.

In the field of construction, a high number of authorisation schemes that were previously imposed on service providers have also been abolished or made less stringent. The examples are as varied as services in the construction sector are. For instance, changes in **Sweden** cover activities such as the inspection of lifts and other motor-driven installations and in **Hungary** activities such as energy efficiency certification or design of built-in fire protection installations. Of a more cross-cutting nature are changes such as those in **Latvia** where the obligation imposed on professionals working in construction activities to obtain a "builder's practice certificate" is being replaced by a registration obligation and those in **Bulgaria** where changes have been adopted in order to recognise registrations already made in another Member State. In **Portugal** a horizontal authorisation scheme imposed on several construction service providers has also been reported as in the process of being modified.

Other sector-specific authorisation schemes applying to very different service activities have been abolished or simplified in a number of key economic sectors and in a good number of different Member States. Besides construction and retail, the sectors of tourism and business services seem to have been among the main beneficiaries of this simplification.

Clearly, there has been a trend in a number of Member States to replace authorisations by declarations. **Italy** has established a general principle that all economic activities that previously required an authorisation (save in exceptional cases) can be started upon filing a simple declaration to the competent authorities; in **Hungary** more than 50 authorisation schemes have been replaced by declarations (for various activities ranging from tourist guides, private recruitment agencies to property management); in **Spain**, more than 30 authorisation schemes in the area of industrial services have been replaced by declarations (e.g. companies installing high voltage lines, high pressure equipment or lifting equipment), etc, etc. Administrative simplification efforts have also been directed to eliminate duplication of authorisations.

It is also important to stress that most Member States have by now incorporated in their national legal systems the principle of tacit agreement in the granting of authorisations, their unlimited duration or the recognition of their national validity.

Other changes in legislation affecting the establishment of service providers have been particularly important in the area of the regulated professions. A number of legal form requirements (such as the obligations imposed on providers of certain services to operate as natural persons or under specific legal forms) have been abolished or made less stringent: for example, in **Poland** for the legal professions and tax advisers, in **Germany** for architects and engineers and in **France** for accountants. Other activities benefiting from this type of changes include recovery of debt services in **Belgium**, real estate agents and accountants in **Denmark**, travel agents in **Spain** and itinerant sales in **Italy**. Similar changes are pending in **Portugal, Estonia** or **Lithuania**. Equally burdensome for the regulated professions are capital ownership requirements (such as the obligations to have a specific qualification in order to hold capital, thus limiting the amount of capital that can be held by third parties). These have been made less stringent in several cases. Important changes, due to their cross cutting nature, have been adopted to raise the amount of capital that can be owned by third parties (i.e. non-

professionals) in companies providing professional services for instance in **France** or in **Spain** (in both countries such external participation in capital can now go up to 49%). Other important changes related to shareholding restrictions are pending, for instance in **Luxembourg** for crafts.

Minimum capital requirements (i.e. the obligation to have a minimum amount of capital in order to start an activity) have also been abolished in a number of Member States, notably in the tourism sector, for instance, for travel agencies in **Spain** or **Belgium** (similar changes, covering car rental too, are pending in **Portugal**). Quantitative and territorial restrictions (for instance, requirements fixing the number of providers according to population or through a minimum geographical distance between them) have also been abolished - or are in the process of being abolished - in a number of cases. This has been done as regards activities as varied as the establishment of petrol stations in **Italy** and **Spain**, travel agencies in **Italy** or the services of ski schools in **Austria**. Similar changes have been notified as pending in **Cyprus**, **Greece** and **Portugal**. A similar type of restriction - bans on having more than one establishment - have been abolished in some **Italian** and **Austrian** regions for ski instructors or in **France** for veterinaries, while their abolition is pending in **Greece** for employment agencies.

Important progress has been made as regards compulsory tariffs. In some cases, this has led to a complete abolition of all tariffs such as in the case of **Malta**. In others, changes affect all tariffs for specific types of service activities such as in the case of **Italy** where all legislation providing for compulsory fixed and minimum tariffs as regards liberal professions has been repealed or in the case of **Spain** where professional associations are no longer allowed to set up indicative tariffs (and where compulsory tariffs had already been abolished). Tariffs have also been abolished for specific services such as architect services in **Belgium**, veterinary services in **Romania**, employment agency services in **Ireland**, waste management services in **Belgium**, catering services in **Hungary**, and tourist and mountain guide services in **Italy**. **Germany** has abolished tariffs for some of the services provided by architects. A general reform to eliminate tariffs applicable to several regulated professions is pending in **Greece**.

Finally, obligations to exercise an activity exclusively or restrictions on exercising the activity jointly or in partnership have also been abolished, for instance in **Belgium** and **Spain** for travel agencies, in **Cyprus** for real estate agents and building contractors or in **France** for auctioneers. In some cases they have been significantly lightened such as in the case of **Poland** for advocates, legal advisors, tax advisors and patent agents.

IMPROVEMENTS TO THE LEGAL FRAMEWORK APPLICABLE TO THE CROSS-BORDER PROVISION OF SERVICES

Many Member States have made important changes aiming at lifting unjustified barriers to the provision of cross-border services into their territory. The inclusion of “free movement clauses” in the new horizontal laws or in sector-specific legislation should greatly improve the situation of business and self employed wanting to provide services across borders.

These general clauses have been often accompanied by further modifications in existing legislation. As a result, most of the remaining establishment requirements (i.e. requirements obliging the service provider to be established in the country before it can provide the service) have been abolished. Some of the changes, such as those in the commercial code in **Portugal**, are particularly relevant because of their cross-cutting nature. Specific establishment requirements have been abolished for services in important sectors such as the construction and maintenance sectors (for instance in **Austria** or **Germany**), the tourism sector (in

Belgium, Spain or Slovenia), the business services sector (such as for interpreters and translators in **Germany**) or regarding inspection services (**The Netherlands**). Plans aiming at abolishing establishment requirements remaining in different sectors (such as land surveying activities or property and business assessment services) exist in **Slovenia** and **Lithuania**.

Prior authorisations imposed on those that want to provide cross-border services have also been removed. Again some of these changes are particularly important due to the cross cutting nature of the laws they modified or their large scope. For instance, in the case of the changes to the Foreign Branches Act in **Sweden**, to the obligation to obtain a trade licence in the **Czech Republic**, to the Trading Licence Act in **Malta**, to the National Court Register and the Register of Business Activity in **Poland**, and to the general business registers in **Belgium**. Changes of a similar nature have been adopted in **Bulgaria** and **Slovenia** for crafts, in **Estonia** for construction and related activities, in **Germany** for itinerant sales. **Portugal** has reported that the general authorisation scheme for construction activities is in the process of being modified. In **Cyprus** the special permit imposed on cross-border providers of construction services is being abolished.

In addition, authorisation schemes existing for specific service activities have been removed or made non-applicable for cross-border services (in some cases they have been replaced by notification requirements) in important sectors such as the construction sector, the business services sector, the tourism sector, the education sector or the services of the regulated professions. Services as diverse as building contractors, gas installation services, property developers, engineering consultancies, patent agents, travel agencies, tourist guides, distant sales, auctioneering, real estate agents, recruitment services, driving instructors, car rental, commercial agents or services of foreign higher education institutions or of vocational training can now be provided across the borders in a majority of Member States without being imposed a prior authorisation.

A number of notification requirements imposed on cross-border service providers have also been abolished. Some of these changes are again particularly important due to their cross-cutting nature such as the removal of the horizontal notification scheme for cross-border service providers in the trade law in **Germany**.

Other types of requirements applied to cross-border services have also been abolished. For instance **Denmark** has made requirements limiting the use of certain marketing methods (such as the use of vouchers and prize competitions) not applicable to cross-border retailers providing services in their territory. **Sweden** has reported that the law on contractual terms between traders, the obligation to provide guarantees for trips other than package tours, and certain rules on distant/doorstep selling/off-premises sales do not longer apply to cross border service providers. Tariffs have been abolished in **Germany** for architects and engineers providing services from an establishment in another Member State. An obligation to have a financial guarantee for professionals wanting to exercise real-estate activities in **France** has been modified in order to impose it only on certain types of activities. The **United Kingdom** has abolished the obligation to have an address in its territory that was previously imposed on providers from other Member States wishing to provide cross-border services in this country. Also obligations on the use of equipment or insurance obligations have been modified in a number of areas to, at least, take account of requirements complied with by the service provider in the country of establishment.