



## **BARRIERS FOR SERVICE PROVIDERS IN THE EU INTERNAL MARKET**

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### **Abstract**

The free provision of services in the European Internal Market is still being prevented from coming into fruition by serious obstacles. The crucial step to the elimination of barriers and liberalization of market access for service providers was to be the implementation of the Services Directive in 2009. However, the provision of services across the EU is still subject to restrictions stemming mostly from differences in the Member States' national regulations and, therefore, service providers cannot exploit the potential of the EU Internal Market to the full extent. The aim of the paper is to identify barriers preventing service providers from free access to the European Internal Market and to present the most important ones. The paper is based on an analysis of the literature, especially of documents and reports of the EU institutions and other European research bodies.

The obstacles facing service providers in the European Internal Market are mainly of a regulatory nature. The most significant ones include differences in legislation and a lack of initiative to simplify it, problems with access to information, differences in the recognition of qualifications resulting in restrictions on access to service activities, divergent and disproportionate regulations of service professions and, last but not least, problems with civil liability insurance for service providers.

### **Introduction**

The European Union is currently the most integrated group of countries in the world. Since its founding, there has been an ever closer co-operation between Member States, leading to the

creation of an economically integrated area. The idea of an internal market as one of the stages of integration was supposed to allow service providers (individuals and businesses) to provide their services in a free and unrestricted manner in the entire territory of the EU. This was a crucial issue, as service markets were characterized by a great number of restrictive regulations and other barriers. A milestone in the process of eliminating barriers and liberalizing market access for service providers was to come with the implementation of the Services Directive in 2009. However, at present, 25 years after the implementation of the idea of the Internal Market and 7 years after the implementation of the Services Directive, there are still barriers to the free provision of services in the European internal market. The action towards liberalising the intra-EU provision of services is important especially due to the fact that services account for over 70% of the EU's GDP and an equal share of its employment (European Commission 2016). Additionally, about 90% of new jobs are created in services (European Commission 2017b). The further growth and development of the service sector in EU Member States depends on both capabilities of national economies and international trade. The latter has increased since 2005 by 63% (from USD 1266 bln to USD 2063 bln) (WTO 2018). However, despite the fact that in 2016 intra-EU trade accounted for over 55% of all commercial operations, there was an overall downward trend, for in 2005 it accounted for over 58%. To reverse this trend, the focus should be increased on reducing barriers to the free provision of services in the European Union.

The aim of the article is to characterize barriers to service providers in the European Union and to present the most important ones. The paper is based on the analysis of the primary literature, especially documents and reports of the EU institutions and other European research institutions.

## 1. Freedom to provide services

Services are one of the cornerstones of the European market alongside commodity trade, social mobility and capital flows. In the light of the Treaty provisions, services are defined as activities “not covered by the provisions on the free movement of goods, capital and persons” (Article 57 of the Treaty on the Functioning of the European Union (TFEU)). Treaty provisions also set out two basic features of services under the freedom to provide services, namely cross-border (Article 56) and remuneration (Article 57).

Service activities across the EU of a cross-border nature should be distinguished from a commercial presence. The first one occurs when the service provider offers services in the EU without having permanent representation in any Member State other than the country of origin, while the second one occurs when service providers create a permanent subsidiary in the importing country. The distinction between these two approaches results from the treaty provisions and the case law of the European Court of Justice (ECJ). Unlike freedom of establishment, the provision of services is characterized by the transitional nature of services, and, as the ECJ points out, cross-border provision of services does not entail the need to establish and operate in another Member State (ECJ 1995). This paper addresses only barriers to the freedom to provide services, not to barriers to the freedom of establishment.

Cross-border services may take the following forms (Molle 2006, p. 87-88):

- Cross-border supply with no spatial movement of service provider and consumer because the service is rendered through trans-border flows of information,

- Production abroad from a home base while service providers move to another Member State to provide their services there,
- Consumption abroad while service consumers move to another Member State in order to purchase services,
- Simultaneous movement of the service provider and the recipient to another Member State in order to provide and purchase the service.

## 2. Barriers prior to the introduction of the Services Directive

Article 56 TFEU states that “restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals established in a Member State other than that of the recipient.” This article has been in treaties since 1958, but no action was taken to implement it until the 1990s. The signing in 1987 of the Single European Act was the beginning of the implementation of the internal market idea, and therefore the freedom to provide services. Under the Single Act, the internal market was to be fully operational by the end of 1992. However, the service sector was characterized by such a large number of non-tariff barriers that putting this plan into practice proved to be impossible.

International trade in services is harder to control than that in goods, therefore tariffs were seldom practiced, the preference being for non-tariff barriers, such as regulatory restrictions in particular. Trade in services could be hampered by (Molle 2006, p. 89):

- Quantitative restrictions, notably on domestic consumption,
- Shares of markets reserved for home producers,
- Subsidies,
- Government procurement,
- Currency controls on transfers to foreign countries for services provided,
- Restrictions on the qualifications of manpower required to perform certain services,
- Technical requirements for capital goods,
- Customs valuation problems for goods required to perform services,
- Discriminatory performance requirement,
- Selective taxation.

The heterogeneity of regulation of service markets has significantly reduced the cross-border provision of services. Prior to the implementation of the Services Directive in the European Union, there were around 35,000 regulatory barriers to the provision of services across borders and through permanent representation (European Commission 2011a, p. 9). These mostly concerned the operating conditions, including sale and distribution of services, as well as the post-warranty service (Corugedo, Perez Ruiz 2014).

Barriers considered to be the most restrictive to cross-border provision of services prior to the introduction of the Services Directive have been identified as (Kulawik, Jankowski 2010, p. 5):

- Difficulties in obtaining information on formalities,
- Difficulties in ascertaining the competent authorities responsible for issuing permits and other formalities,
- Need to address multiple bodies to obtain different permits,
- Opaque and unreasonable requirements,

- Long, complicated and costly procedures.

Countries with the highest number of regulatory obstacles at the time of the survey were Germany, the Netherlands, Spain and Austria, while countries offering the most unrestricted access to their services markets were Cyprus, Malta, Luxembourg and Finland (Corugedo, Perez Ruiz 2014).

### 3. Changes introduced by the directive and the present situation

The greatest expectations regarding the elimination of barriers and the liberalization of market access for service companies were related to the implementation of the Services Directive 2006, which entered into force in 2009. With regard to the elimination of barriers, the Directive obliged Member States to simplify procedures related to undertaking and carrying out service activities, and in particular to eliminate the need for authorization to provide services in situations where this was not necessary. Facilitations resulting from the provisions of the Services Directive should also result from:

1. Establishing the need for establishing single points of contact in each Member State, in which service providers can perform all procedures related to the setting up and pursuit of a service activity,
2. Introducing an obligation, as required of the Member States, to organize administrative procedures so that they can be implemented electronically.

In addition, in order to prevent the introduction of new barriers to the abolition of the directive, the provisions of this act obliged the EU Member States not to introduce their own requirements and procedures regarding all service-oriented activities either on providers and recipients of services, unless they are necessary, especially for public safety reasons.

In spite of its great contribution to the free movement of services, the Services Directive did not fully cover all the issues related to the effective functioning of this freedom. Among the problems remaining to be solved are (Kulawik, Jankowski 2010, European Commission 2013, CEPS 2014, Kawka 2015, European Commission 2015a):

- Lack of a clear definition of the concept of “cross-border provision of services”, which means that the interpretation of individual circumstances, in which service providers are and will remain is still subject to decisions of national administrations and the judiciary,
- Problems with access to information,
- Lack of simplification of law and regulations,
- Unjustified restrictions on Member States, large differences in national regulations on labor, taxation, health and safety, consumer protection and contract law,
- Differences in regulations for professionals and restrictions on access to professional activities,
- Requirements of mandatory legal forms of companies and property requirements,
- Insurance requirements for cross-border activity,
- Restrictions on the ability to acquire services on the basis of nationality or place of residence,
- Higher prices for service providers from other Member States, especially on the Internet.

## 4. The most significant barriers for service providers in the EU

Among the aforementioned barriers, five can be regarded as the most difficult for service providers (individuals and businesses) to overcome when providing services within the EU (APPG 2013, p.16; European Commission 2015b, p. 16-23; Eurochambres 2015, p. 3).

### 4.1. Diverse legislation and no clear legal simplification

The problems of simplification stem from several factors. Firstly, the provision of services in the EU is regulated at two levels of law: European and national. The law created by treaties and other EU acts sets up basic principles for the functioning of the European Single Market in services, while detailed solutions are left for Member States. Therefore, the Services Directive is not a law that is directly implemented in national legislative systems, but acts as a legislative instrument establishing a general framework to which the Member States should adapt. This solution creates an environment conducive to the operation of very diverse national solutions. Secondly, differences in implementation as well as the number of National Implementing Measures (NIMS) regarding the Services Directive vary considerably across Member States. Most countries have decided to adopt one horizontal law, while Germany and France have implemented several horizontal laws (European Commission 2016). With regard to sectoral national law governing the sphere of services, the differences between the countries are much higher: from one legislation in Bulgaria and Estonia to 220 domestic acts in Germany and 423 in Hungary (EUR-Lex 2017). And thirdly, there is a lack of explicit support from some Member States for further liberalization of trade in services, as well as a large number of exceptions, which make certain types of services exempt from the adopted rules (Kawka 2015, p. 139).

Actually, no segment of services can be perceived as one where the idea of single market is fully implemented. That is especially due to the functioning of separate regulations at Community and national levels regarding both sectoral and other services. As for sectoral services, barriers exist in every sector<sup>1</sup>.

### 4.2. Problems with accessing information

The unsatisfactory operation of single points of contact is another shortcoming in the freedom to provide services. Here, the most serious problems are with the inclusion of these points in the e-government system (European Commission 2013). This obligation has been satisfactorily fulfilled only in some countries (e.g. Estonia, Spain, the Netherlands or Sweden), while other countries have failed to comply so far (e.g. Belgium, Germany, Latvia or Romania).

In addition, service providers are having problems in obtaining specific and detailed information and legal advice from the competent authorities in individual cases. That is due to the fact the Service Directive requires that only general information should be provided on how the solutions under the service directive or national legislation operate in a given country. Additionally, this information might not be available in language versions other than the official language of the country, since it is not required, but only suggested.

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<sup>1</sup> Barriers that exist in different sectoral services are presented in: Monteagudo et al 2012;. CEPS 2014; EU High Level Group 2014;. Canton et al.2014; European Commission 2015b.

### **4.3. Differences in the recognition of qualifications and the resulting restrictions on access to service activities**

Member States differ fundamentally in terms of authorization requirements for service activities, particularly in relation to professional services. In addition, authorization procedures are time-consuming, obscure, and cumbersome (European Commission 2015b, p. 17, Eurochambres 2015, p. 3). Restrictions on access to service activities take the form of authorizations or registration in relevant professional organizations. Additionally in some Member States, authorization schemes are rigorous in that they impose technical and professional conditions, the obligation to employ a sufficient number of qualified personnel or equipment requirements, and even the legal and organizational requirements (European Commission 2015b, p. 20).

### **4.4. Divergent, inappropriate and disproportionate regulations of service professions**

Barriers to the free movement of services may also be imposed by national legislation governing access to certain professions or particular types of service. In 2005, the Directive on the Recognition of Qualifications (Directive 2005/36/EC amended by the Directive 2013/55/EU) was adopted, aiming at enabling every EU citizen to qualify for a regulated profession or activity in any Member State other than the Member State in which he or she qualifies. The provisions of the Directive “guarantee persons having acquired their professional qualifications in a Member State to have access to the same profession and pursue it in another Member State with the same rights as nationals without prejudice to compliance by the migrant professional with any non-discriminatory conditions of pursuit which might be laid down by the latter Member State” (Recital 3 of Directive 2005/36/EC). This means the need for official recognition of qualifications under the conditions of the EU Member States, which differ and do not make a single coherent system for the recognition of qualifications and skills (Ponikowska M. 2015, p. 81).

In the first half of 2017, more than 800 types of services<sup>2</sup> were listed in the Regulated Professions Database, which are considered as the regulated professions in one or more EU Member States and reserved for qualified operators. The EU Member States differ significantly in terms of the number of regulated professions from 76 in Lithuania to 545 in Hungary (European Commission, 2017a) as well as in the percentage of persons who perform these professions from 15% in Denmark to 33% in Germany (European Commission 2011b, p.7).

The legitimacy of the recognition of a particular type of service activity as a regulated profession is based on an individual assessment of the Member State, leading to a considerable variation in the number of regulated professions as well as to the situation that some specific professions are regulated only in one Member State. This applies to as many as 25% of regulated professions (ex. maid, bartender, photographer or corset-maker) (European Commission 2011b, p. 7). Such solutions constitute a significant barrier to the creation of a single market in services and cause a great deal of hindrance for companies or individuals wishing to provide services in Member States other than the home state.

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<sup>2</sup> Taking into account the various nomenclatures and substantive scopes used in various EU countries in respect of particular service activities, more than 6,000 names of service occupations are registered in the Regulated Professions Database.

#### 4.5. Discrepancies and lack of transparency and mutual recognition in civil liability

While the Services Directive ensure the mutual recognition of equivalent or substantially comparable insurance policies, mutual recognition is rarely practiced. The European Commission points out two reasons for such a situation. Firstly, there are divergences in the Member State requirements and, secondly, no practical tools have been developed to assess the equivalence of insurance policies applied in the Member States. In this respect, there are large discrepancies in professional liability insurance both between countries and between occupations (European Commission 2015b, p. 23).

### Conclusions

The EU Internal Market in services should be an area without internal borders to ensure free movement services. Its benefits should be liberalization and reduction of access barriers to service sectors, as well as opening of the European service markets for service providers from any Member States. However, it is essential to underline that so far these benefits have not been exploited to the full extent due to the fact that freedom of provision of services is subject to restrictions deriving from the nature of services as such (ex. intangibility, often simultaneous production and consumption of service or the need for the service recipient to be present) and differences in the applicable national regulations. The problem is not only the application of specific service requirements by individual Member States, but also the fact that these requirements differ essentially (Czermińska 2015: 22).

Besides the sectors of regulated services, such as transport or financial services, implementation of the Services Directive has led to the elimination of some barriers or the reduction of their restrictiveness (Mustilli, Pelkmans 2013: 64). Additionally, the European Commission is stimulating Member States to further liberalization efforts towards full freedom of movement of services<sup>3</sup>. These efforts should be continued because there are still barriers of a regulatory and administrative nature and the adaptation costs associated with adjustment to different national regulations are not offset by the economies of scale resulting from operations on a larger market. Such a situation is detrimental for service providers, especially small and medium enterprises, and prevents them from a full use of the potential of the EU Single Market.

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<sup>3</sup> For example: "Partnership for New Growth in Services 2012-2015" (European Commission, 2012) or the current strategy entitled "Improving the Single Market: More Opportunities for Citizens and Business" (European Commission 2015c) or the last proposal of package of the four initiatives: "A services economy that works for Europeans" (European Commission, 2017b).

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## **BARIERY DLA FUNKCJONOWANIA USŁUGODAWCÓW NA RYNKU WEWNĘTRZNYM UNII EUROPEJSKIEJ**

### **Streszczenie**

Realizacja swobody świadczenia usług na unijnym rynku wewnętrznym ciągle doświadcza wielu utrudnień. Momentem przełomowym w procesie likwidacji barier i liberalizacji dostępu do rynków dla usługodawców miało być wdrożenie dyrektywy usługowej w 2009 roku. Jednak świadczenie usług podlega nadal ograniczeniom wynikającym ze zróżnicowania regulacji krajowych w Państwach Członkowskich, w wyniku czego usługodawcy nie mogą w pełni wykorzystać potencjału jednolitego rynku unijnego.

Celem artykułu jest identyfikacja barier utrudniających usługodawcom świadczenie usług na obszarze UE oraz przedstawienie najistotniejszych z nich. W pracy oparto się na analizie literatury przedmiotu, a zwłaszcza dokumentów i raportów instytucji unijnych i innych europejskich instytucji badawczych. Utrudnienia w dostępie do rynków usług państw członkowskich UE są przede wszystkim natury regulacyjnej. Do najistotniejszych należy zaliczyć: zróżnicowane prawodawstwo i brak wyraźnego uproszczenia prawa, problemy z dostępem do informacji, różnice dotyczące uznawania kwalifikacji i wynikające stąd ograniczenia w dostępie do wykonywania działalności usługowej, rozbieżne, niewłaściwe i nieproporcjonalne regulacje zawodów usługowych, a także rozbieżności oraz brak przejrzystości i wzajemnego uznawania w zakresie ubezpieczenia odpowiedzialności cywilnej.

**Słowa kluczowe:** usługi, rynek wewnętrzny, bariery, Unia Europejska

**Klasyfikacja JEL:** F15, L80, O52

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