Contribution to Growth: The Single Market for Services

Delivering economic benefits for citizens and businesses

€ 284 bn
Services Directive (excluding professional services)

€ 85 bn
Professional Services

€ 20 bn
Public Services Procurement
Contribution to Growth: The Single Market for Services

Delivering economic benefits for citizens and businesses

Abstract

The study surveys generic economic impact studies on services in the single market, summarizes the achievements of the EU legislator in the single services market in the period 2010 – 2018 as well as the principal non-legislative initiatives, discusses the estimated economic benefits of those achievements up to 2018 and attempts to identify the potential for further economic benefits in the near future. Suggestions for continued and new initiatives for the single services market are provided.

This document was prepared by Policy Department A: Economic and Scientific Policy, at the request of the Committee for the Internal Market and Consumer Protection.
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<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>BREXIT</td>
<td>Process of the UK leaving the EU</td>
</tr>
<tr>
<td>CEN</td>
<td>European Standardisation body for non-electric goods</td>
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<td>CENELEC</td>
<td>European Standardisation body for electric/teric goods</td>
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<tr>
<td>CEPS</td>
<td>Centre for European Policy Studies (Brussels)</td>
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<tr>
<td>CETA</td>
<td>Comprehensive Economic and Trade Agreement (EU/Canada)</td>
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<td>CJEU</td>
<td>Court of Justice of the EU</td>
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<td>COM</td>
<td>European Commission (abbreviation used in some cases)</td>
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<td>CoNE</td>
<td>Costs of Non-Europe (EP project)</td>
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<td>CSR</td>
<td>Country-Specific Recommendations (in the European Semester)</td>
</tr>
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<td>ECN</td>
<td>European Competition Network (of Member States' authorities + Commission)</td>
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<td>EEA</td>
<td>European Economic Area</td>
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<tr>
<td>EFTA</td>
<td>Europe Free Trade Association</td>
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<tr>
<td>EIB</td>
<td>European Investment Bank</td>
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<tr>
<td>EMU</td>
<td>European Monetary Union</td>
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<tr>
<td>EPEC</td>
<td>Expertise Centre of Private/Public Partnerships of the EIB</td>
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<tr>
<td>ESPD</td>
<td>European Single Procurement Document</td>
</tr>
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<td>FDI</td>
<td>Foreign Direct Investment</td>
</tr>
<tr>
<td>FTA</td>
<td>Free Trade Area</td>
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<td>GATS</td>
<td>General Agreement on Trade in Services (of the WTO)</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<tr>
<td>ICT</td>
<td>Information and Communications Technology</td>
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<td>IMCO</td>
<td>Internal Market and Consumer Protection committee (of the EP)</td>
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<td>Acronym</td>
<td>Description</td>
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<tr>
<td>IMI</td>
<td>Internal Market Information system (between Member States’ officials)</td>
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<td>IMF</td>
<td>International Monetary Fund</td>
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<td>KIBS</td>
<td>Knowledge-Intensive Business Services</td>
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<tr>
<td>MEAT</td>
<td>Most Economically Advantageous tender</td>
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<tr>
<td>NGO</td>
<td>Non-Governmental Organisation</td>
</tr>
<tr>
<td>NMR</td>
<td>Restrictiveness Indicator of the OECD for retail and network industries</td>
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<tr>
<td>OECD</td>
<td>Organisation for Economic Cooperation and Development</td>
</tr>
<tr>
<td>PMR</td>
<td>Product Markets Restrictiveness (indicator)</td>
</tr>
<tr>
<td>PRO-SERV</td>
<td>Professional Services Restrictiveness indicator</td>
</tr>
<tr>
<td>PSC</td>
<td>Point of Single Contact (under Services directive)</td>
</tr>
<tr>
<td>QUEST</td>
<td>Macro-economic model of the European Commission (Quest-III)</td>
</tr>
<tr>
<td>REFIT</td>
<td>Regulatory Fitness and Performance Programme</td>
</tr>
<tr>
<td>R&amp;D</td>
<td>Research &amp; Development</td>
</tr>
<tr>
<td>RRI</td>
<td>Retail Restrictiveness Indicator</td>
</tr>
<tr>
<td>RSB</td>
<td>Regulatory Scrutiny Board</td>
</tr>
<tr>
<td>SME</td>
<td>Small &amp; Medium Enterprise</td>
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<tr>
<td>TFEU</td>
<td>Treaty on the Functioning of the EU</td>
</tr>
<tr>
<td>TiSA</td>
<td>Trade in Services Agreement (of the WTO; negotiations suspended)</td>
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<tr>
<td>WTO</td>
<td>World Trade Organisation</td>
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EXECUTIVE SUMMARY

This study deals with the economic benefits of a deeper single market for services and the closely related ‘better regulation’ of services by the Member States. More precisely, the work focuses on services falling under the remit of the European Parliament’s IMCO Committee (for the Internal Market and Consumer Protection), except for the Digital Single Market for which a separate study has been published (Marcus et al, 2019). The study undertakes a three-steps approach. First, a survey will be provided of the legislative and implementation initiatives and other actions over the period of the last two legislatures of the European Parliament, say, from the beginning of 2010 to 2018 inclusive. This is done for four types of services: public procurement of services, professional qualifications and services more broadly, services under the Services directive 2006/123 (other than professional services) and a closer scrutiny of one major market falling under dir. 2006/123, namely retail services. Second, an analysis is conducted of the quantifiable economic benefits of the achievements – legislative and Member States’ reforms – in these four services domains, to the extent that the literature and data allow. Third, the further potential (after mid-2019) for economic benefits in these four services domains is estimated, basing ourselves on what literature is available and its interpretation. These three steps in the study are preceded (in chapter 2) by a brief non-technical survey of the analytical economic literature on a deeper EU single services market and its various impacts on competition, prices, ICT investment, productivity and e.g. the competitiveness of EU manufacturing industry (using services as inputs).

The recent economic literature has confirmed time and again that the regulatory restrictiveness of services regulation (for the services in this study, mainly at the Member States’ level) is damaging for the proper functioning of the single services market as well as for economic growth of the EU. This is not to say that many services should not be regulated for sound reasons, namely to protect consumers and users in the presence of major asymmetries of information between service providers and clients. However, the EU is a revealing laboratory in this respect: Member States differ in many ways how and how intrusively they regulate services. As long as Member States applying a light(er) regime do not suffer from market failures, it is exceedingly hard to rationalize a very restrictive services regime as being in the public (national and EU) interest. What ought to be done is to regulate services ‘proportionately’ and enact reforms if, for whatever reasons in the past, ‘disproportionate’ regulation has survived. Besides the benefits for competition and (lower) prices and mark-ups that a reduction of undue restrictiveness yields, it has been shown to strongly support ICT investment in services (where the EU lags behind the US), productivity of services and – via forward linkages - the competitiveness of EU industry. In addition, with a systematic reduction of undue restrictiveness, also regulatory heterogeneity between the Member States (costly for business, and very often serving no public purpose) will fall which stimulates intra-EU services trade and FDI.

Chapter 3 surveys the many initiatives undertaken by the European Commission, the legislation enacted by the EP and Council, and implementation efforts of the Member States (with a great deal of pressure from the Commission). Although progress has been made in services procurement, not much is known about its details, whilst the concessions directive (a pure services directive) is still subject to legal uncertainty. The Services directive has been enacted late 2006 but its repercussions and follow-up have remained a major plank of activity for the Commission and the Member States for the entire period. And even in 2019 much remains to be accomplished despite the undeniable progress achieved. Chapter 3 also zooms in onto professional qualifications and the recognition rates between Member States and professional services regulation, as well as onto the retail sector which turns out to be still characterized by high regulatory restrictiveness as to entry and, for a few Member States, as to operational regimes.
The orders of magnitude of the economic benefits of the achievements in the period 2010 – 2018 are the following. With several important caveats, the following benefits of achievements in the four service areas are listed in Table ES1.

Table ES1. Estimated benefits of achievements over 2010–2018

<table>
<thead>
<tr>
<th>Service Area</th>
<th>Benefit Estimate</th>
</tr>
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<tbody>
<tr>
<td>Public services procurement</td>
<td>€14 bn</td>
</tr>
<tr>
<td>Professional qualifications</td>
<td>Many indications for positive benefits but no hard estimates</td>
</tr>
<tr>
<td>Services under dir. 2006/123</td>
<td>€236 bn (including professional qualifications and retail)</td>
</tr>
<tr>
<td>Retail services</td>
<td>Recent research indicates benefits but no hard estimates</td>
</tr>
</tbody>
</table>

The separate attention for retail and professional qualifications (or, broader, professional services) is certainly warranted as these two areas exhibit quite a lot of restrictive regulation by Member States. So far, economists have published a stream of partial analyses, highly valuable (given the impact on competition, productivity, etc.) but no macro-economic estimates. Chapter 3 therefore relies on the more general economic benefits analysis available for the Services directive as a whole (i.e. €236 bn). Together with services procurement, this is almost 1.5% of EU GDP. The reader is cautioned that this estimate is a rather crude one and should be regarded as an order of magnitude; it awaits a superior method with a suitable model and better data.

Chapter 4 discusses the rough estimates of the current benefits potential for these areas in the single services market. For the potential of economic benefits, we can derive an estimate for professional services separately (unlike for the achievements) of €85 bn, about 0.5% of EU GDP. For public services procurement, it is possible to identify a rounded figure of €20 bn. The full implementation of the Services directive (other than for professional services) in words and spirit represents a benefits potential of no less than €284 bn, that is 1.67% of EU GDP. These results are summed up in Figure ES 1 below. Altogether €389 bn or 2.28% of EU GDP. Also here, the reader is cautioned that the result is a rather crude estimate, more like an order of magnitude, awaiting a more rigorous method with a suitable model and better data.
This great potential benefit of further credible action with respect to services under the IMCO Committee’s remit should encourage both Commission and European Parliament, and even more the Council, to engage in an active pursuit of these gains.

Some of the policy suggestions for the Commission, EP and Council include the following. In services procurement, these are mainly about the concessions directive and the full 8 steps of digitalisation of procurement by Member States, which require system renewal and a number of other reforms such that the costs of cross-border procurement (not least, for SMEs) fall drastically. Also ‘strategic’ procurement implies considerable renewal of procurement practices, including the reduction of the enormous fragmentation between hundreds of thousands of contracting public authorities in the Union. For professional services there could be more explicit attention for the causes of the low recognition rates between Member States for hundreds of regulated professions other than the well-known ‘heavy’ ones. The Commission is encouraged to continue an active infringement policy in the field of professional services more generally as the expected gains are likely to be significant. This could be preceded by CSRs in the European Semester so as to have constructive discussions with the Member States first. There should be an annual report bringing together the national reforms in professional services, the many proportionality tests of Member States in an accessible fashion, the infringement cases in the area and their outcome, and the follow-up of CSRs of the previous 5 years. When coherent, this can be used as a strategic tool in Council, but equally well in the EP. The idea behind such a report is that Member States should not regard their competences as fully autonomous! The single market and broader EU principles (like proportionality of regulation) remain paramount and for good economic reasons, too. The more Member States insist on their regulatory autonomy, the more they assume a special responsibility to aim for ‘better regulation’ of professional services in the EU for the purpose of potential and actual mobility, for economic growth and the consumer interest.

Today’s assessment of the Services directive’s implementation and enforcement is simple: the glass is half-full.
The recent detailed studies on construction and on cross-border installation services ought to be followed up with an active policy of pilots and perhaps infringements. However, much of the restrictiveness remains at the local level and even national governments do not always know the details. A major problem is that the Council claims repeatedly to be in favour of pursuing the benefits of a genuine single services market, but in actual practice this credo is not followed at home. A new strategy together with the Council is needed which ensures ‘ownership’ of national governments and their leaders of an ambitious services agenda. In addition, greater receptibility of a mutual recognition approach in services – so far, dramatically underutilized – would be a practical way forward that SMEs and business in general would greatly appreciate and which need not hurt anyone. For retail, the development of the Retail Restrictiveness Indicator is a useful device for discussions with Member States and regions. The RRI should be broadened and used for more systematic economic analysis of the performance of EU retail, in the light of productivity, digitalisation and the disruptions coming. The key is to find effective ways to link up with the local level of decision-making about retail. Finally, the Commission could develop ‘guidance’ to assess proportionality of retail establishment rules, to be used by authorities at all government levels.
1. INTRODUCTION

This study deals with the economic benefits of a deeper single market for services and the closely related ‘better regulation’ of services by the Member States. More precisely, the work focuses on services falling under the remit of the European Parliament’s IMCO Committee (for the Internal Market and Consumer Protection), except for the Digital Single Market for which a separate study has been published (Marcus et al, 2019). The study undertakes a three-steps approach. First, in chapter 3, a survey will be provided of the legislative and implementation initiatives and other actions over the period of the last two legislatures of the European Parliament, say, from the beginning of 2010 to 2018 inclusive. This is done for four types of services: public procurement of services, professional qualifications and services more broadly, services under the Services directive 2006/123 (other than professional services) and a closer scrutiny of one major market falling under dir. 2006/123, namely retail services. Second, in the second half of chapter 3, an analysis is conducted of the quantifiable economic benefits of the achievements – legislative and Member States’ reforms – in these four services domains, to the extent that the literature and data allow. Third, in chapter 4, the further potential (after mid-2019) for economic benefits in these four services domains is estimated, basing ourselves on what literature is available and its interpretation. These three steps in the study are preceded (in chapter 2) by a brief non-technical survey of the analytical economic literature on a deeper EU single services market and its various impacts on competition, prices, ICT investment, productivity and e.g. the competitiveness of EU manufacturing industry (using services as inputs).

In the concluding chapter it is argued that the considerable economic benefits potential of a deeper services market in these four areas amounts to a great opportunity for the EU and Member States alike, that ought to be exploited by the new Commission, the new European Parliament and, not least, by the Member States individually and jointly in the (European) Council.
2. BENEFITS OF THE SINGLE SERVICES MARKET IN ECONOMIC ANALYSIS

KEY FINDINGS

This chapter lays the groundwork for two following chapters. Chapter 3 surveys the achievements by the EU legislator and the EU Member States with respect to the single services market in the period 2010 – 2018 and the benefits reaped due to these achievements. Chapter 4 sets out the unrealized potential of benefits of the single services market and makes policy suggestions for the next Commission and the next European Parliament to ensure that the EU will actually enjoy those considerable economic benefits. This groundwork consists of a reminder of how deep the single services market already is and how much deeper still it should become and a non-technical survey of the analytical literature on the economic benefits of deeper services market integration such as extra GDP, higher productivity, more competition and dynamism in such markets, benefits for consumers like lower prices without loss of quality and higher competitiveness of the EU manufacturing sectors (e.g. linked to “servitization”). The emphasis is on quantitative benefits but a short note on qualitative benefits and on the temporary adjustment costs of reforms is provided.

2.1. Ten steps of services market integration

When studying ‘the’ benefits of the single services market, one has to first identify how ‘deep’ the integration of the internal market for services actually is or is expected to be after the pursuit of a strategy of deepening. In other words, the benefits of the single market are usually a matter of degree. The comparison of the single market with an economy which would be fully closed (say, in services) might have been more or less correct 6 decades ago, but does not apply nowadays. Today’s alternative to a single services market consists of an international trade regime under the GATS which is incomparably weaker than the EU internal market [no free movements and no unrestricted cross-border FDI in services, or mode 3 in WTO language, and in EU language no ‘right of establishment’] and which is weakened much further by the numerous reservations of WTO partners in the annexed GATS schedules of commitments for liberalisation in services trade. This major discrepancy was brought home once again in the BREXIT saga when the UK government insisted in the Chequers proposals on BREXIT (July 2018) that there would be a common rule book on trade in goods but not on trade in services. This automatically implies that the commitments for access to the EU single services fall back to GATS level whilst free movement and the right of establishment no longer apply, unless one improves (to a modest degree, one ought to add) beyond the GATS level in (say) an Association or FTA agreement like CETA. If one were to go for the Swiss option in services – considerably more ambitious than CETA –, the arrangement comes close to a genuine internal services market regime but with a major carve out for financial services. It logically includes a governance regime similar to that...
In other words, the best alternative to today’s single market for services – imperfect and subject to considerable further improvement as it is – is a far cry from what the EU has achieved so far. The ‘ordinary’ GATS alternative without a FTA of whatever kind is simply in another class of much lower ambition, hence much lower benefits. It ought to be noted as well that EU Member States have maintained a host of restrictions to both cross-border trade in services and to FDI in services which apply to third countries but not to EU countries. Therefore, in order to appreciate the benefits of the single market for services, it is crucial to first realize how far the EU has come compared to alternative arrangements, even when the internal services market now accomplished can be deepened much further still. This is illustrated in Figure 1.

Figure 1. Services market integration: steps for deepening (Illustrations only)

<table>
<thead>
<tr>
<th>(10)</th>
<th>Potential for deepening the single services market, dependent on:</th>
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<tbody>
<tr>
<td></td>
<td>• Remaining restrictions + implementation + tougher enforcement</td>
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<tr>
<td></td>
<td>• More harmonization (where relevant)</td>
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<tr>
<td></td>
<td>• Effective EU agencies</td>
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<tr>
<td></td>
<td>• More common infrastructure (e.g. in network industries)</td>
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<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>(9)</td>
<td>Internal market for services around 2018</td>
</tr>
<tr>
<td>(8)</td>
<td>Internal market for services around 2010 (with Services Dir., etc.)</td>
</tr>
<tr>
<td>(7)</td>
<td>Internal market for services around 2000 (when services became a priority)</td>
</tr>
<tr>
<td>(6)</td>
<td>Pre-Single-Act internal market for services</td>
</tr>
<tr>
<td>(5)</td>
<td>A FTA with market-access &amp; domestic regulation commitments of CETA-level</td>
</tr>
<tr>
<td>(4)</td>
<td>WTO TiSA*, a plurilateral WTO (draft) Agreement with GATS-plus commitments</td>
</tr>
<tr>
<td>(3)</td>
<td>GATS-regime with (on average) unambitious market access commitments</td>
</tr>
<tr>
<td>(2)</td>
<td>Ad-hoc and selective openness, no GATS</td>
</tr>
<tr>
<td>(1)</td>
<td>Nearly-closed economy for services exchange</td>
</tr>
</tbody>
</table>

Notes: No distinction is made, here, between restrictions of cross-border trade and FDI restrictions (for services) in another country. The size of the bars does not exactly represent the degree of restrictiveness, is only indicative.

*TiSA negotiations are suspended in the WTO

When reading from the bottom (step 1), the most restrictive option is given first (near-autarky). Today the lowest relevant option is step 3: the GATS regime. Steps 4 (TiSA) and 5 (mimicking CETA) reflect two options going further (‘deeper’) than the GATS but even option 5 has no free movement and no guaranteed right of establishment, because these are unthinkable in non-EU international trade. One should read this discrepancy with CETA properly: with intra-EU free movement, and the right of establishment, there is bound to be considerable and at times far-reaching harmonisation of regulation and supervision as a condition of accepting a full exposure to these modes of services supply across (intra-EU) borders. Such harmonisation is not the subject of FTAs, not even in CETA (or, for that matter in the FTA with Singapore). Therefore, step 6 is a much deeper arrangement for services, even when – before the Single European Act (1987) – numerous intra-EU restrictions for services had survived. Step 7 (the single services market around 2000) differs from 6 in that a lot of deepening and harmonisation of the EEA with respect to surveillance of implementation, enforcement and dispute settlement, the latter in line with CJEU case law. This governance regime is the subject of ongoing negotiations with Switzerland.

5 These restrictions for non-EU countries’ services suppliers originate from these Member States’ GATS schedules of commitments (and by implication, the retained reservations)
had taken place in e.g. the six modes of transport, selected financial services, the network industries and professional qualifications, in addition to a kind of mutual recognition having emerged from CJEU case law. A further boost was given under the so-called Lisbon process, launched in 1999, with an explicit priority for the single services market. Step 8 (internal market for services around 2010) comprises the many reforms under the services directive of 2006, the amalgamation of professional qualifications directives, further deepening of crucial network services and the outset of a new wave of tighter directives and regulations in financial services following the crisis of 2009. Step 9 represents two legislatures of the EP from 2010 to 2018 with quite some progress in services (under a range of EP committees). Despite the gradual progress so far, step 10 is meant to reflect today’s full potential for deepening, and with it, the benefits that can still be reaped by promoting a better functioning single services market. The full potential for all services requires not merely deepening but also other decisions such as more effective EU Agencies (e.g. on telecoms) and, in some sectors, a long-run EU-wide blueprint for infrastructure with continental and not just national mobility in mind (as e.g. exemplified by the nine rail freight corridors). These considerations fall outside the present analysis which is solely concerned with the remit of the EP IMCO committee. The present study is concerned with the benefits of steps 9 and 10.

2.2. Economic benefits, what the literature says

2.2.1. Introducing the benefits and their underpinning

Fundamentally, the direct economic benefits of the single market for services are no different than those from the single market as a whole, be they induced by free movement of goods, capital, workers or codified technology & ideas (e.g. patents, copyright, designs, trademarks). The EU’s single market provides

(1) scale due to the large market which can be exploited under similar regulatory conditions, and lowers average costs, other things equal

(2) greater variety and choice both for consumers and manufacturers as well as services suppliers, again under regulatory conditions which are (or should be) similar, ‘justified’ (by the public interest, usually the prevention of market failures) and proportional,

(3) greater and sometimes different competitive pressures, given the appropriate and proportional harmonization of regulation, which – in turn – engender better outcomes for users and consumers, whether in terms of costs or quality and variety (or indeed a combination of those) as well as new opportunities for innovation, be it technically or in business models, services products or otherwise.

However, these economic benefits are formulated in a rather general fashion and need to be substantiated in more precise ways. Such benefits also take on somewhat different forms dependent on the sectors of activity. It is also crucial to distinguish the various modes of services provision because their delivery is quite different. Moreover, there are important complementarities between services and goods: once services become less restrictively regulated (without of course re-introducing market failures), in turn facilitating cross-border competition, there is likely to be a beneficial multiplier effect for manufacturing because services form an important input in manufacturing and its exports, aggrandizing the economic gains from better services regulation and/or easier intra-EU market access for certain services. Nowadays, such multiplier effects are critical for global and European value-chains,

6 Of course, the single services market brings other, non-economic benefits as well. These may consist of social, health and e.g. cultural benefits. The present study is designed for a focus on economic benefits, however.

7 In the literature sometimes called ‘knock-on’ effect (e.g. in OECD work), referring to the extra burden of restrictive regulation (the obverse of positive spill-overs following a relaxation of regulation of services).
too, because services form an ever greater input in such value-chains and the competitiveness of the final goods (and services where relevant) hinges on the quality and costs of EU-origin services (apart from – say – R&D and innovation). Finally, services delivery to consumers and users is undergoing drastic change because of ICT and the internet and this augments competition inside EU countries as well as between them. As a result, transparency and hence comparability of certain types of services has increased which should be pro-competitive; in specific instances, the service delivery can be done via the internet (which cuts costs and augments speed, without – for simple services – reducing quality) – this also applies to some government services but equally to e-health and e-education; when services require personal contact and trust, relatively routine follow-up activities can be performed directly via the internet, and preparation of personal meetings can be done more swiftly and at lower costs; just-in-time logistics but also teleconferencing critically depend on internet services; etc., etc. This is not to say that suddenly all services can be delivered via the internet, or, that many services can henceforth be traded between EU countries without much or any direct contact between the supplier and the consumer or user. Also today many services still require intense and regular personal and close contact(s), so much so that the delivery of such services across intra-EU borders is not competitive in trust and (perceived) quality without going for local establishment in one or more other Member States. An extreme and special case is retail: retail services provision cannot be internationalised by their very nature, except for cross-border shopping near intra-EU frontiers. The only option is FDI in the country at stake. However, in international (including intra-European) value-chains, services have multiple functions: besides serving as inputs, some services fulfil crucial coordination functions that lubricate value-chain management on a permanent basis.

Against this complicated background, the question of the benefits of deeper EU market integration in services has to be addressed. As services have no tariffs, and the EU has unquestioned free movement for services and companies enjoy the right of establishment, it is regulation which is central to the potential of benefits which can be reaped from deepening the single services market. The main issue here is regulation at the Member States’ level, not EU services regulation. Services regulation can be overly restrictive for the purpose of minimizing market failures in EU country A, which would unnecessarily restrain growth and employment of these services and possibly throttle innovation or new business models in A. But – more often than not – it would also reduce or even block the exercise of ‘free’ movement as the regulatory barriers would simply be too costly to trade services across intra-EU borders and/or reduce or block the provision of such services in other EU countries via FDI. Precisely because the EU enjoys free movement of services and companies the right of establishment, domestic regulation and the performance of the single market are intertwined. In particular, in the areas focused on in the present study, the interdependence between domestic regulation and single market opportunities is critical: services under the 2006 services directive, with a separate focus on retail as

8 In the economic literature this is known as the ‘proximity burden’. After all, services are a ‘flow’ phenomenon, not a stock, and not storable. Hence, the need for proximity in exchange of services, which can be seen by services companies as a ‘burden’ in their strategy to exploit the opportunities of the EU internal market. See e.g. Francois & Hoekman (2010). It is this ‘burden’ that is probably on a downward path over the last 2 decades or so, certainly with lower transport costs and the internet.
9 This is ‘mode 2’ in GATS terminology, the consumer moving to the provider.
10 Of course, there might well be instances where EU services regulation is unjustified, disproportional or otherwise too strict in order to overcome market failures. Given the agreement by a qualified majority of 28 EU countries, this probability is far lower than domestically. It might also be challenged under basic treaty principles. Still, the position of the UK under BREXIT is that – selectively – the UK would choose its own regulatory strategy in services, thereby suggesting that, somehow, EU services regulation in some sectors might be too strict. This form of ‘regulatory competition’ can be healthy or indeed distortive, depending on whether the objectives of such rules properly address market failures or not, and remove undue risks to consumers and users. In the margin, it is also about implementation of EU rules where the objectives are shared: for example, the new, more strict prudential rules for banking are widely shared in the EU (some even want them to be stricter), but this does not necessarily justify the many duplicative and bureaucratic controls of these rules banks seem to be subjected to at the moment.
well, professional (and domestically regulated) services and public procurement in services. Thus, the implementation of the Services directive has engendered both major and intrusive domestic reforms in the relevant services and the elimination of the worst barriers to free movement of these services as well as to the right of establishment in these sectors. How incredibly complicated it remains to assess the resulting implementation, after the three-years self-screening of Member States’ laws and the 2010 mutual evaluation exercise, can be gauged from the extensive report of the mutual evaluation. For all practical purposes, the mutual evaluation forms the starting point of further legislative, implementation and enforcement work under the 7th and 8th legislature of the European Parliament. It is the state of the implementation of the Services directive which formed the empirical basis of the estimated 0.8% addition to EU GDP generated by this removal of intra-EU barriers (Monteagudo, Rutkowski & Lorenzani (2012), with a remaining potential of another 1.8% of EU GDP upon further removals and reforms. Reforms or new EU legislation in the other four areas (see above) are all of a later date and will be dealt with in other (sub)chapters, but in particular in chapter 3.2.

There is a fifth category of services that is of potential interest: cross-border intra-EU temporary service provision. Although the data are not fully reliable, the rough estimate is that some 2 million posted workers in the EU provide such temporary services across borders every year. It is a small segment of the services market but it surely is no longer trivial. The political and social attention paid to this small segment is enormous and can only be explained by the many problems of labour law and enforcement and the broader social context. In economic terms, these many problems are an unfortunate consequence of having a single EU market with a kind of ‘wage dichotomy’ between (say) ‘East and West’. The possibilities found in EU law were exploited by dubious new entrants at the costs of income and legal certainty of these posted workers from the East temporarily working in the West, so to say. The 2014 Enforcement directive for posted workers and the 2018 revised Posted Workers directive, as well as CJEU and recent national court cases have significantly improved the situation, although – again – much depends on careful and proper implementation and verification. This legislative work does not fall under the EP IMCO committee but under the EMPL committee, in view of the social and labour law issues at stake. However, in the final analysis, the posted workers legislation and enforcement is about temporary services. The outcry and sensitivities about posted workers ought to deal, rightly, with social certainty for the workers, proper regulation of work and non-wage income, with liabilities along the value-chain (or subcontracting), etc., but it should not lead to an increase of regulatory or administrative barriers of the services themselves. The present study will not analyse the economic impact of the two legislative initiatives (and case law) for posted workers, but there are lingering, if not increasing, concerns that the administrative implementation and enforcement of the new rules risks to ‘overshoot’ what is necessary and legitimate for Member States to do in this area. Such overshooting of administrative requirements hits particularly the bona-fide companies offering temporary services across borders, and if this would be correct, then it represents an administrative failure that should be corrected. There is every reason to better protect the posted workers, especially from new Member States, but there is no reason to throttle the services involved.

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11 Elimination of 6 heavy barriers under Art. 16/2, an explicit permission (in Art. 16/3) of 4 types of national regulatory requirements in the public interest (but of course still subject to treaty principles such as justification and proportionality) and the obligation for Member State A to impose no restrictions affecting the recipients of services from any Member State B.

12 8 heavy barriers eliminated under Art. 14; conditionally 9 ones evaluated under Art. 15; and to some extent another 7 ones under Arts 9 – 13.

The EU Labour Authority will, understandably, become a watchdog on labour issues; it would be important, however, not to ignore that the services at stake are the very reason why posted workers exist and fulfil a useful economic function in the single services market.

2.2.2. Non-technical survey of empirical economic literature on benefits

In order to stylize and simplify the survey of the analytical literature on the economic benefits of a well-performing single services market, it is useful to distinguish six aspects of pursuing a sound combination of intra-EU liberalisation and proportionate regulation in services. All these six aspects need attention but frequently several of them hang together in different combinations. The six aspects are: (i) using the US services growth trends as a benchmark; (ii) EU’s services productivity problem; (iii) the competitiveness of EU industry as (in part) determined by the services incorporated in industrial output, (iv) linking restrictiveness of services regulation to (domestic) competition, (v) more than in goods, intra-EU business strategies in services suffer from undue regulatory heterogeneity between Member States, (vi) apart from the degree of restrictiveness of services regulation, it is also important to address governance and regulatory/administrative capacity.

i. Why US services growth trends outpace the EU ones

In the late 1990s, US market services trend growth started to clearly outpace EU services growth trends, whereas before the EU and US experienced similar trends. By 2005 the decade since 1995 showed a 1% average annual growth rate for the EU as against a 3% average for the US. It was found that some services sectors such as retail & wholesale, financial services as well as business services – seen as typical ICT-using sectors – marched ahead in the US whereas consumer services remained just as flat as in the EU. Subsequent research by Van Reenen et al (2010) found that such discrepancies in growth trends in market services, largely driven by ICT-use in services, could be explained by rigid labour laws and practices (which prevent or slow down the required re-organisation inside firms) for 45% of the discrepancy, and another 16% by relative restrictiveness of services regulation; there is also a skills effect. Barrios & Burgelman (2008) found what they call ‘an ICT deterrence effect’ for ICT (and its growth impact) in countries with rigid, heavily regulated credit, services and labour markets. This also fits well with the path-breaking work by Brynjolfsson (2011) showing that ICT improves productivity in two other ways than the mere performance of the ICT equipment itself: catalyzing intra-firm organizational change, and altering the innovation process (also of business models) itself. This is affecting profoundly sectors such as logistics, retail, wholesale, postal services, and e.g. advertising, and this tendency for disruptive change might spread to other services sectors to some degree. Recently, Jungmittag (2018-a) has found a strong negative correlation between (strict) entry as well as doing-business regulations and ICT investment. This finding is bound to have a negative effect on retail productivity in the EU.

ii. The EU’s services productivity problem

When services came in the EU spotlights, say 20 years ago, it was swiftly realized that the EU had a major services productivity problem, in particular (but not only) in business services. Kox & Rubalcaba (2007) start from the worrying observation that over 24 years (1979 – 2003) the direct contribution of business services to (EU15) productivity growth has been negative (!). But this should not be misread: it does not mean that business services were not dynamic.

14 Between 1980 and 1995, 1.4% versus 1.5% average annual growth of labour productivity in services. All data quoted from Mustilli & Pelkmans (2012) and sources quoted there.

15 The emphasis in the text is on how services in the single market are affected. However, other influences matter, too at the time, low and slow take-up of broadband investment, low R & D on ICT in Europe and the lack of leading ICT firms (including platforms) in the EU.
Contribution to Growth: The Single Market for Services

Business services acted as a jobs machine in those 24 years, going from nearly 7 million workers in 1979 (in EU15) to 19.5 million in 2003, adding more employment than all other services together. In manufacturing there was a net loss of jobs. But in value-added (in constant prices) the direct contribution of business services is not so great – some 12.7% in total. Therefore, the structural change in the EU economy towards (business) services benefitted the sector but it remained merely a quantity (and jobs) change – its productivity remained constant (for KIBS\(^{16}\)) or fell even (for non-KIBS such as industrial cleaning, packaging firms, security services, call centres, and agencies for temporary labour, sectors using relatively more part-time labour). Some business services subsectors were so new that pure turnover growth and entry into the market was all that mattered. With greater maturity, one should expect at least some push to emphasize efficiency in order to survive in the market. Meanwhile, the sector has grown further and it is now so big that a less-than-mediocre productivity performance will act as a drag on the EU economy as a whole. Taken the two together (the size and maturity of the sector nowadays and the knowledge-intensity), there is every reason to stimulate better performance if only for the sake of economic growth EU-wide. After all, the lack of productivity growth in the sector was largely possible because strict regulation and related high entry barriers, as well as (in some professions) onerous operational barriers protected the firms against ‘too much’ rivalry, so that the need to seek efficiency besides increased turnover was not pressing. It is likely therefore that some growth can be generated by increasing competitive pressures via better regulation of these services in the Member States. Also the World Bank (2016)\(^{17}\) insists that services could come ‘to the rescue’ for growth in Europe: the reduction of regulatory restrictiveness of services in the EU would give a boost to services productivity in Europe, by (on average) as much as 5%.

However, the importance of the growth issue linked to business-related services reaches much wider, due to backward and forward linkages and induced spill-overs, an aspect which deserves separate treatment. In addition, it should not be forgotten that also retail in Europe has a productivity problem (and certainly if compared to the US). As suggested by the work of Jungmittag (2018-a), this might well be due, in part, to the negative impact of regulatory restrictiveness in retail on ICT investment.

**iii. Spillovers from services, servitization and the competitiveness of EU industry**

Business services and several other services act as inputs into the manufacturing sector\(^{18}\) and the share of these inputs increases steadily.\(^{19}\) In addition, services are also produced inside manufacturing. The two phenomena cause a degree of blurring of the distinction between manufacturing (or, ‘industry’) and ‘services’. This ‘servitization’ of industry makes the productivity performance and both quality and price of business services critical for the competitiveness of European industry.\(^{20}\) An interesting finding by Wolfmayr (2011) is that more imported (and not domestic) services by the manufacturing firm yields a higher share of goods exported, suggesting that either the quality or the price (or both) of domestic services is not satisfactory for the firm and the single market for services allows better ‘service’, inducing higher exports. More generally, services induce both forward and backward linkages. Based on OECD data, Corugedo & Perez Ruiz (2014) report services-induced forward linkages of 2.8 and backward linkages of 1.8.

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\(^{16}\) Knowledge-intensive business services

\(^{17}\) See https://euagenda.eu/upload/publications/untitled-46348-ea.pdf

\(^{18}\) And, to some extent into some other services

\(^{19}\) In Falk & Jarocinska (2011), it is shown that purchased services by manufacturing firms increase between 1980 and 2005.

\(^{20}\) The most detailed recent study of servitization of EU industry is from the ECSIP consortium, for the European Commission; see Stehrer, Baker et al (2014). A recent study focuses on SMEs and their servitization potential. It found, inter alia, that between 2000 and 2014 servitization increased but that SMEs run up to several barriers. See Technopolis, Dialogic & Cambridge Service Alliance (2018).
For this reason alone, the performance of services gets magnified when used in manufacturing. Putting it differently, with below-standard performance in services, the manufacturing sector become less competitive - in the literature this is called the ‘knock-on effect’, framed in a negative way. For EU strategy, it is best formulated as follows: forward & backward linkages of services should best be combined with liberalization and better regulation, such that the competitiveness of EU industry gets a boost. In the work of the IMF (Corugedo & Perez Ruiz, op. cit.), the model-based calculation of sector multipliers, \( \text{for the case of France} \) yields 3.88 for ‘other business activities’, no less than 4.16 for transport and storage and still 2.30 for retail & wholesale. Thus, the share of these services sectors in GDP underplays their significance for economic growth due to these amplification effects of up to more than 4 times! Moreover, there are convincing indications that downstream companies are discouraged in innovation, hence, productivity, because under strict regulation there is a risk that the rents would be captured by upstream firms (Cette, Lopez & Mairesse [2016]). It is therefore of the greatest importance that domestic liberalization of these services sectors and removal of undue administrative barriers in the single market, combined with proportional regulation, is pursued so that services incorporated in manufactured goods can induce a maximum positive impact on economic growth. Insofar as European and global value chains incorporate servitization, the leadership of value chains depends increasingly on the quality and competitiveness of the services inputs, be it inside manufacturing companies or purchased services in the single market. Better regulation of services in the single market contributes to making the services inputs more competitive.

There is a stream of econometric literature carefully identifying how services reform can help improve the performance of manufacturing, beginning with the knock-on effects in Conway & Nicoletti (2006), in Barone & Cingano (2011) with sectoral data, Arnold, Nicoletti & Scarpetta (2011) finding that the (negative) knock-on effect is higher for ICT-using sectors than for sectors relatively unaffected by ICT use, in Van der Marel, Kren & Iooty (2016) (similar to Barone & Cingano [2011] but with firm level data) and other sources. Therefore, there is no longer any doubt about the critical importance of liberalization and proportional regulation of services in the single market, and not merely for the sake of more competitive services but even more for the competitiveness of EU manufacturing overall and in international value chains.

Another confirmation of the detrimental effects of overly restrictive services regulation can be traced via the STRIs (Services Trade Restrictiveness Indicators) of the OECD. Nordas & Rouzet (2015) show rigorously that more restrictive countries import fewer services (after all reasonable controls in the model are allowed for) and export fewer services! The negative effect on services exports is twice as strong as on imports. The authors attribute this latter effect to the fact that such restrictions are mainly exercised behind the border and negatively affect the competitiveness of local firms. Again, a properly functioning single services market will minimize such negative effects.

Finally, new research based on ‘trade in value added’ by Miroudot & Cadestin (2017) has shown that the role of services in trade flows is far greater than hitherto realized. To understand this, one should not use nominal trade flow statistics but trace the value-added of manufactured goods exported from a country A; this can be done with detailed input-output statistics. Not only can one filter out the imports incorporated in the manufacturing exports of A, but also trace the services incorporated in what looks like a manufactured export good. It was swiftly found that the service content (domestic or foreign) of manufactured exports was much higher than expected before. With the newest dataset the

\[21 \text{ The GDP and employment responses to a 1% rise in sector-specific TFP (=total factor productivity)}\]

\[22 \text{ See also Van der Marel (2017), Correa-Lopez & Domenech (2017) and Gal & Hijzen (2016)}\]

\[23 \text{ S. Miroudot & C. Cadestin (2017), Services in global value chains, OECD Trade Policy Papers no. 197, Paris}\]

\[24 \text{ In the WIOD database of the OECD and the WTO.}\]
services share of manufacturing exports of OECD countries is no less than 37%. In addition, it is also realized more and more than even inside manufacturing firms services are supplied. Adding those, the total share of services in manufacturing goods amounts to 53%! The policy implication of this finding for the single services market is crucial. The EU’s competitiveness of manufacturing depends ‘not only’ but indeed critically on the price/quality aspect of services. The EU single services market should therefore be competitive and innovative, not unduly restrictively regulated and administratively mired in red tape that can be avoided or minimized!

**iv. Reforming disproportionate regulation and generating healthy competition**

When opening up a market in goods, one can separate tariffs from domestic regulatory issues. In other words, tariffs can be cut or removed, whilst domestic regulation can remain the same. In services, however, opening up to the EU single market can only be done via a change in domestic regulation, either as a unilateral reform or by means of harmonization. Of course, even then one can pursue lighter forms of opening up (say, lifting discrimination for other EU service providers, but not reducing the restrictiveness of the regulation) or more far-reaching ones (say, assessing services regulation with a careful justification [what the CJEU calls ‘necessity’] and a rigorous proportionality test). Therefore, domestic services reforms and the (better) functioning of the single services market go hand-in-hand. But the drivers of these changes can still be different. In the EU, goods regulation tends to be harmonized (mostly) or mutually recognized (most of the remainder) but this is much less the case in services. Even in (relatively) more recognized service sectors such as the 6 modes of transport and network industries, there is still considerable scope for national regulation and intervention.25 Business services are typically governed by shared powers between the Member States and the EU, and the way these are exercised by the Member States is often not in the spirit of the single market.

It is presumably for this fundamental reason that the Commission has been harping on pro-competitive domestic reforms in services for two decades because one can demonstrate the direct advantages for the Member States.26 That this automatically helps the single services market, too, is a ‘collateral benefit’. It also tends to support overall EU economic growth. Thus, the Commission has actively promoted research on the effects of pro-competitive services reforms, especially for professional services where shared powers apply.27 This line of research concentrates on linking the restrictiveness of domestic regulation with performance indicators of local competition.

The idea is that the restrictiveness of regulation – for addressing market failures, hence protect consumers and users of such services against charlatans and misleading practices – can go (much) too far and also regulate more aspects than is ‘justified’. This can happen because the regulatees tend to understand much better the details and risks of their work than general decision-makers and the public. This gives them a significant advantage in the process of regulation and its reform. Disproportionate regulation tends to throttle competition, to the (private) benefits of the regulatees. Once that is the case, vested interests become engrained and domestic reforms are resisted or weakened. Observing the incredible variety between Member States of what professions, and for each profession what aspects, are regulated or not, forms a prima facie justification for asking hard questions on the degree of competition in certain services, as a result of (disproportionate?) domestic regulation.

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25 Only in financial services, deeper and more far-reaching harmonisation has come about as a result of a very profound and disruptive financial crisis.

26 Unless one assumes that governments of Member States formulate their ‘public interest’ criterion in close association with the regulatees (i.e. the professional or trade associations), perhaps facilitated by asymmetries of information.

27 But there is still language such as the ‘prerogative’ of the Member States! Section 3.2.2 explains in some detail the obligations of the Member States in pursuing disproportionate regulations and related reforms having been accomplished under the legislatures between 2010 and 2018.
Three important and fairly detailed economic studies have focused on the churn rates (adding the sectoral death rate and the birth rates of firms per year) and mark-up (above competitive prices) of EU services as indicators of reduced competition. This is expressly linked to the restrictiveness of individual EU countries’ services regulation. In Schumpeterian approaches to market functioning, the churn rate forms a yardstick of the challenges for incumbents arising from new entrants but also on the robustness of incumbents causing new entrants as well as weakly performing incumbents to die. In other words, performance and e.g. productivity and quality is permanently tested in vibrant markets. Canton, Cirici and Solera (2014) focus on the churn rate in markets for professional services and find churn rates to be relatively low (so, reduced rivalry); they also find that a reduction of an indicator for the restrictiveness of services regulation by 1 point (of a range between zero and 6) increases allocative efficiency by 5.7% (which should normally translate into higher growth) whereas profitability falls by 5.4%.28 Thum-Thysen and Canton (2015) focus on sectoral mark-ups for professional services which tend to be fairly high in restrictively regulated markets; these fall with lower restrictiveness. In Thum-Thysen and Canton (2017), greater precision is achieved by means of firm-level data for 13 EU countries: greater restrictiveness in accounting and engineering is found to yield higher mark-ups, and also greater than when using sectoral (i.e. less granular) data. These studies are necessary but not conclusive evidence of the growth-throttling effects of too weak domestic reforms in the single services market. In Pelkmans (2017, for the EP), some criticism is levelled against too rash conclusions about the economic interpretation of churn rates in particular, especially in services. There is also some evidence from recent sectoral services reforms in several Member States. In order to follow-up on these interesting studies with more detail, it may well be advisable to bring in the competition authorities (or their network, the ECN) for careful scrutiny, as indeed is also the advice from the IMF (cf. Corugedo and Perez Luiz, 2014, p. 21, Box 2) given the experience of Greece during the crisis.

Jungmittag (2018-a) finds a negative relationship between regulatory restrictiveness in retail (esp. entry) and the ‘churn rate’. In addition, he finds a negative relationship with labour productivity in retail. Moreover, retail consolidation driven by scale economies has generated strong buying power and clearly one-sided practices such as ‘slotting fees’ for suppliers to ensure shelf space.

v. Damaging regulatory heterogeneity in services

More still than in goods markets, services trade in the single market suffers from undue regulatory heterogeneity between Member States. It is often suggested that this heterogeneity is also greater than between the US States. It is therefore a plain disadvantage when small entrants (or, start-ups) in services seek to scale up over the entire single market. First, the nature of this heterogeneity has to be properly understood and, secondly, it would be useful to appreciate its economic drawbacks in rough orders of magnitudes.

Regulatory heterogeneity is distinct from ‘diversity’. The EU is rightly proud of its slogan: “Unity in diversity”. Apart from cultural, historical and political reasons, this is also justified for economic reasons. Diversity is about deeply felt preferences which can of course differ between EU countries (and even regions). Such preferences ought to be respected in the EU; if not (say because of harmonization or sometimes even because of free movement when a certain type of domestic regulation that expresses this deeply felt preference would be outlawed), the economic welfare in that EU country would be negatively affected. However, in markets, diversity in such deeply felt preferences is rare in Europe and those rare instances can easily be accommodated by the EU. The large majority of regulatory differences between Member States are not based on diversity but on numerous administrative requirements which differ (in substance) only trivially as well as on different procedures and varying

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28 When splitting regulation into entry regulation and conduct regulation, the latter turns out to be the bigger problem.
divisions of competences between public bodies (etc.), and usually do not take into account that some market players wish to exploit the single market of all 28 countries. In the well-known Kox/Lejour (2005) model, now widely quoted, it is shown that regulatory heterogeneity in services can be extremely costly if – for every national market in the EU – an idiosyncratic regulatory regime would apply. For goods, such a situation is rare, not only due to harmonization but especially because of technical standards (which are overwhelmingly European nowadays) which provide a reference for goods in many markets. In the Kox/Lejour model, a cross-border service provider from A trying out EU country market B would incur high fixed costs of familiarizing him/herself with regulation and institutions whilst getting registered and informed on practical day-to-day operations, costs which can only be earned back once sufficient turnover is made in B (and hence average costs fall drastically). But precisely the initial stage of entry in B is difficult because the high extra costs will burden a still small turnover. And the saga goes on in EU countries C and D, etc. A lot of these costs are not based on ‘diversity’ of preferences, but mainly the result of purely domestic procedures and traditions, that is, regulatory heterogeneity. It would be far too simple to insist that these are merely matters for the Member States, not for the EU as such. Both for the better functioning of EMU and for the sake of a deeper single market in goods and services, the evolving programmes for structural reforms have emphasized the easing of ‘doing business’ indicators and the annual recommendations to Member States in the European Semester comprise many specific cases over a number of years. There are important economic reasons behind these assessments as the survey by Canton & Petrucci (2017) shows: improving these indicators (esp. of starting a [services] business) has a significant positive impact on investment and in particular ‘intangible’ investment, on firm dynamics (like entry and ‘upscaling’) and allocative efficiency. Some of these indicators are not strictly about regulatory heterogeneity and the indicators are relevant both for goods and services markets. However, precisely what matters for heterogeneity and the application of the Kox/Lejour reasoning are the regulatory and administrative hurdles to start a business which differ between Member States and many EU countries have relatively high such barriers (although Canton & Petrucci, op. cit., show that EU countries have recently improved these Doing Business indicators). Ciriaci (2014) demonstrates that relatively high ‘red tape’ barriers have negative effects on a firm’s entry. It is important to appreciate that this finding is only part of the story: the crux of the Kox/Lejour model is that such heterogeneity renders an EU-wide single market business strategy in services a tough and costly steeple-chase!

Addressing the high costs of regulatory heterogeneity so that the single services market can function much better, runs into two problems. One is about competences. In most of these procedural and administrative requirements, Member States are competent. Despite the European Semester (based on Art. 121, TFEU), ‘Brussels’ is often too quickly seen as interfering too much in the ‘legitimate’ right-to-regulate of the Member States. However, that is only a valid argument if the right-to-regulate concerns genuine and distinct preferences which is only rarely the case. The other problem is about the distinction between diversity and heterogeneity. In some border cases, this distinction might well be hard to make in actual practice as a Member State might pretend that issue x is a genuine preference, even when it is not, and this is almost impossible to challenge. Still, the European Semester is an exercise with and largely by the Member States and it is there where the decisions ought to be followed up. In the medium-run, this would surely help improve the proper functioning of the single services market.

29 Well-known from the World Bank since 2004
30 These include the stock of patents, the flow of new patents, other IPRs (e.g. copyright and trademarks), know-how agreements, brand recognition, ‘goodwill’, R & D and product quality.
The extent of regulatory heterogeneity is not easy to measure but due to sustained research by the OECD the pointers have become stronger over time. Simulations by Kox & Lejour (2006) show that drastically reducing heterogeneity in services regulation under the Services directive could boost intra-EU trade in services by between 30% and 60%. Kox & Nordas (2007) simulate three ambitions of reducing regulatory heterogeneity but for the OECD (not the EU): countries with (bilateral) heterogeneity indices above the average are assumed to reduce restrictiveness to the OECD average (trade increases with 2.5%); full harmonization (no heterogeneity) for the countries with low heterogeneity indices (trade increases with 25%); eliminating heterogeneity as an exercise to identify the potential (60% increase in trade for OECD countries). In Nordas & Kox (2009), another heterogeneity index is employed, based on the ten Doing Business indicators from the World Bank. Using this index (which does not fully reflect the crucial single market issues but focuses on the administrative and procedural issues noted above), a simulation assuming harmonization to the lowest bilateral heterogeneity index in the OECD could increase FDI in services by between 13% and 30%. Fournier (2015) shows that domestic reforms over the last decade-and-a-half tend to reduce regulatory heterogeneity somewhat which is, in and by itself, conducive for market integration.

vi. Domestic reforms, regulatory capacity and governance

It is long known that regulatory reform, also in services, requires much more than ‘merely’ change laws. Detailed implementation issues connected with sufficient knowledge of such sectors (without getting captured politically), administrative guidance which is as light as possible yet effective, prompt enforcement which might require agile and trained agencies or bodies backed up by an efficient legal system are all needed for solid and steadfast reform strategies. It is far worse if a country pursuing less restrictiveness in services suffers from corruption and/or the weak application of the rule of law. Beverelli, Fiorini & Hoekman (2017) show that countries with high institutional quality benefit the most from lower services trade restrictions in term of increased productivity in downward manufacturing industries. This effect operates mainly via trade that involves local establishments (FDI). The previously quoted findings on intangible investment hinge, in part, on the quality (e.g. reliability) of public institutions.

2.3. Qualitative and quantitative benefits

Economic benefits come in three types: benefits which have been quantified in euro’s; benefits which are presented as qualitative but can be quantified if data and models become available (but this might be costly); qualitative benefits which cannot, by their nature, be quantified and indeed which need not. There is nothing intrinsically ‘better’ when benefits are quantified, but this way of presenting the analysis has advantages. One advantage of quantified benefits is that – for the purpose of the single market – all kinds of distinct benefits can be added up to one single figure for purposes of communication. Communicating qualitative benefits is harder and can be time-consuming, and is also more demanding for the recipient. A second advantage is that qualitative benefits are difficult to compare in terms of weight or priority whereas quantitative benefits can be better prioritized. It is nevertheless too narrow to focus solely on quantification. As noted, some benefits are simply not quantifiable (like ‘trust’ and what it brings, important in services) and some other benefits might be quantifiable in principle but the data requirements (often an obstacle in impact assessments) are not proportionate or beyond budget at EU or national or even local levels.

32 Shepherd & Hoekman (2015) had already shown that lower restrictions to services trade lead to higher exports of manufactures. Van der Marel (2016) had already shown that, for goods in sectors making relatively intensely use of services, regulatory capacity helps to boost exports of those goods.

33 See e.g. Thum-Thyssen, Voigt et al (2017, op. cit.). See also Egert (2017) for the OECD.
In Commission Impact Assessments of new legislative proposals, quantification of benefits is strongly encouraged. In case of ex-post evaluation, however, this is not the case. In the early stages of EU impact assessments, quantification was often a weak spot. The CEPS data base of the first seven years of EU impact assessment shows this, see Figure 2.

Figure 2. Benefits in EU impact assessments: 2003 - 2011

However, when inspecting Figure 3, the scores for benefits have not improved that much 6 years later. When benefits are quantified in impact assessments, they are often only partially quantified. A Joint Working Group of the RSB, the Secretariat-General and the Joint Research Centre presented a report on quantification in the spring of 2018, promoting the standard quantification template (of the RSB) and analysing the possible information deficits on data sources. The report calls for more assistance to the Commission Services on methodological issues, including the quality and robustness of modelling. But the report agrees with our point above as follows: “Quantification remains challenging, is not always feasible and sometimes disproportionately costly.”

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2.4. On temporary adjustment costs and how to address them

It is sound to focus on the benefits for society when regulation is decided or reformed. Indeed, debates in EU circles are too often about the costs, with benefits taken for granted. This is mistaken. The EU (but also Member States themselves) should regulate for benefits — this is the rationale. What matters for costs is that they ought to be minimized, without losing out on the objective of the regulation, and that costs are lower than the benefits, preferably much lower.

The costs are usually identified for business and the administration, even for citizens in some cases. That is correct, but incomplete. The gains from regulation, or, as the case might be in case of the single services market, from regulatory reform in services at the Member State level, should be (much) bigger than the administrative and business compliance costs, but the temporary adjustment (costs) of workers should not be forgotten. On the whole, adjustment in services to a deep regulatory reform is rarely as radical as in goods trade when comparative advantages between the importing and the exporting countries can be very big in some types of products. And one should also not make the mistake that any adjustment by incumbents is a societal cost that should be deducted from the overall gains—on the contrary, if existing rules and practices have shielded services firms from domestic and/or EU-wide competition (both entry and conduct rules) and reform alters that, this is bound to yield a societal gain. Nevertheless, any non-trivial regulatory reform will have temporary social adjustment costs and this has to be anticipated. There has been scarce attention in economic analysis on the short-run adjustment costs of regulatory reforms, except in highly specific sectors. However, in Gal & Hijzen (2016), the very purpose of the analysis is to focus on the short-run effects of reforms e.g. in professional services and retail, with the help of firm-level data.

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35 In some services such as air transport, telecoms and gas & electricity, the initial phases of the European liberalization were more disruptive, but these days are long passed. In services under the Services directive and in professional services, such major changes have been observed in e.g. Greece during the crisis, and selectively in other EU countries in some services sectors, but have become less likely nowadays precisely because the worst forms of protectionism have been eliminated by the Services directive.
The authors find that the short-run effects of reforms differ with firm size, for instance, in retail the large and potentially more efficient business tend to benefit more (whereas in network industries, the opposite is true). Reforms in services also tend to lead to more entry (which might actually not be welcomed by stakeholders).

In Commission Impact Assessments, the social aspects are a lengthy compulsory section. The EU cannot however offer much social support for retraining (in the margin only, with the EU Social Fund), let alone temporary income support, which is typically a power of the Member States. In services much of the reform is at the national level and it is therefore up to national authorities to address the social aspects of the adjustment at regional and national level. If and when some Member States fail to provide genuine, temporary income security or social support, for those having difficulty finding new jobs in the labour market or experience objective difficulties in relocating, the rationale of reform might be undermined.

36 An example could be the capital loss from selling one’s house when moving elsewhere.
3. ACHIEVEMENTS IN SERVICES FROM 2010 – 2018

KEY FINDINGS

Over the period 2010 – 2018, the EU institutions have been active on the services domains falling under the EP/IMCO Committee, both with new legislation and with various non-legislative efforts such as guidance for Member States’ reforms, insistence on better implementation and enforcement, pilot and infringements procedures and various partnerships between the European Commission and the Member States. The chapter surveys the achievements in public services procurement, professional qualifications and services, services falling under the Services directive (other than professional services) and retail (as a large subset of the Services directive). Progress has been made in all four services domains but there clearly is also resistance or occasionally even a state of denial. One (of several) area(s) where this has been revealed is the proportionality test for new national or regional legislation of professional services. Moreover, in retail new studies and data have better shown the varying restrictiveness at national but often even local level.

The benefits of the achievements are, more often than not, expressed in micro-economic and qualitative terms (such as pro-competitive reduction of mark-ups of providers, higher sectoral productivity, etc.) and cannot easily be converted into GDP increments. Neither can one rely on ex-post evaluation reports as these are frequently entirely qualitative in nature. For public services procurement, a rough estimate of the benefits amounts to €14 bn (but this does not yet include the benefits of the 2014 directives). For the Services directive the benefits in this period are estimated, again crudely, at €197 bn for the reduction of restrictiveness (where appropriate), plus some €39 bn for the gradual improvements of the Points of Single Contact. Quantification of realized benefits up to 2018 inclusive for professional services separately or for retail separately proved to be impossible.

The present chapter discusses the achievements of the EU, the co-legislation of the EP and the Council, during the 7th and 8th legislature from early 2010 until mid-2018. It is also relevant to be aware of the many non-legislative activities and discussions with EP involvement. It discusses the economic benefits of these achievements, too. First the IMCO committee’s remit in services is identified and legislation in 4 areas of services is listed. A brief word on implementation and enforcement has been added as well. Subsequently, the empirical economic evidence of benefits, preferably quantitative benefits of those achievements, will be set out. The chapter ends with a note on the benefits analysis found - or rather only too rarely found - in ex-post evaluation.

3.1. The single services market and the IMCO committee’s remit

Following the European Parliament’s mapping of IMCO related legislation, the present study focuses on public procurement in services and concessions, professional qualifications and services, the follow-up of the Services directive and the retail sector.

It is good to note what is not covered in the present study. Parallel to this study, a study on European Public Procurement has been published by the European Parliament, authored by Becker, Niemann & Halsbenning (2019). Whereas our study solely focuses on services procurement, their study is principally about goods and especially geared to the promotion of cross-border procurement, SME

participation (in great depth) and competition aspects. The two approaches are therefore complementary. The digital single market is covered by the IMCO remit but will be addressed in a separate study by Marcus et al. (2019).

3.2. Achievements: proposals and passed legislation

3.2.1. Public procurement in services and concessions

Public procurement of EU Member States adds up to an enormous expenditure: in 2015 (last published data) the total was around €2 trillion, some 14% of EU GDP. Many of these expenditures are small and hence do not fall under EU directives as they remain below thresholds. Other ones are excluded. Some €450 bn fell under EU public procurement directives, still some 3.2% of EU GDP. A single services market with competitive and open public procurement in such services would undoubtedly yield significant benefits, also in euro terms.

The period 2010 – 2018 saw important legislative and non-legislative activities in the EU public procurement regime as summarized in Table 1.

Table 1. EU achievements/activities in public procurement: 2010 - 2018

<table>
<thead>
<tr>
<th></th>
<th>new/amendments</th>
<th>basic reference</th>
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<tbody>
<tr>
<td>1.</td>
<td>legislative</td>
<td>amendments</td>
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<tr>
<td></td>
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<td>Dir. 2014/24/EU, OJEU L 94 of 25 March 2014, pp. 65 ff. replacing dir. 2004/18; on public works, supply and service contracts; some special rules on the procurement of social, cultural and health services</td>
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<td>2.</td>
<td>legislative</td>
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<tr>
<td></td>
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<td>Dir. 2014/25/EU, OJEU L 94 of 28 March 2014, pp. 243 ff.; on procurement of utilities not (yet) in competitive markets</td>
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<td>3.</td>
<td>legislative</td>
<td>new</td>
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<tr>
<td></td>
<td></td>
<td>Dir. 2014/23/EU, OJEU L 94 of 28 March 2014, pp. 1 – 64; on concession contracts; concession contracts are essentially about Public-Private partnerships, not fully comparable to regular public procurement (some transport sectors excluded as they are under similar, sector-specific rules)</td>
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<td>4.</td>
<td>Facilitation, implementation, guidance, etc.</td>
<td>recommendation</td>
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<td></td>
<td><strong>new/amendments</strong></td>
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<tr>
<td>30 PE 631.054</td>
<td>European Single Procurement Document (ESPD); Dir. 2014/55 is mainly about a European standard to be developed by CEN/CENELEC – including tests and approval, the standard ought to be officially available by 27 May 2017 (art. 3). NOTE that the three directives under 1., 2. And 3., above, comprise an e-procurement clause coming into force latest in March 2018</td>
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<tr>
<td>6.</td>
<td>Towards strategic procurement; COM(2017)572</td>
<td>Advocates ‘strategic’ procurement and a broad collaborative partnership with the Member States, with six strategic priorities; Guidance on the use of innovative, green and social criteria; also, special support for the procurement aspects for large infrastructure projects</td>
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<td>7.</td>
<td>Follow-up of defence procurement dir. 2009/81/EC</td>
<td>Guidance announced on cooperative procurement between Member States (key in defence); see also 8., below; Notice providing guidance on government-to-government contracts in defence (in Nov 2016);</td>
</tr>
<tr>
<td>8.</td>
<td>European Defence Fund</td>
<td>European Defence Fund has two windows. One on defence research with initial funding of €90 mn over 2017–2019, but expected to expand to some €500 mn p.y. in the near future – should be regarded as a way to leverage collaborative research (R &amp; D are services); The other is called the capacity window with a proposed budget of €500 mn p.y., mainly for the European Defence Industrial Development Programme, to prevent fragmentation (a great problem in European defence) and promote the internal market for defence; for the new MFF a possible target funding of €1 bn p.y. has been specified by the COM; how much of all this is about ‘services’, rather than goods, is not known; since defence goods and services are not part of the ‘single market’, this study will not deal with the subject</td>
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<tr>
<td>9.</td>
<td>Implementation improvements</td>
<td>Review Remedies dirs and networking</td>
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</table>

The first two 2014 directives amount to an improvement of the 2004 directives. The main elements are as follows. First, procedures have been simplified with lower costs for bidders. Second, electronic self-declaration is included, indeed encouraged, again cutting costs and stimulating further digitalisation with greater efficiency. Third, the submission of documents has been curtailed significantly, a major improvement being that only the winning company is held to submit all the required documents. Fourth, for SMEs the access to public procurement is facilitated by limiting turnover requirements and the option to divide tenders into lots. Fifth, the new rules are helpful for ‘strategic’ rather than mere administrative public procurement. It is encouraging procurement of a social nature, for the support of environmental policies and of innovation. What should also help in some of such instances is the ‘competitive dialogue’ with bidders, prior to the final decision. Sixth, whereas the threshold for ‘normal’ services is €209 000, three types of public or quasi-public services are implicitly considered to be typically domestic (given cultural and social traditions), unless the amounts of procurement are high. Thus, for social, cultural and health services, the threshold has been increased, for this reason, to €750.000. Moreover, for these types of services, there is a ‘light-touch’ regime (for example, EU rules for technical specifications are not compulsory).

So far, little is known about the empirical economic effects of the new directives for ‘regular’ public procurement and about the soft but useful measures to professionalize public procurement, do more cooperatively and strategically. The three 2014 directives have come into force only in 2016 and its e-procurement clause (only submissions of bids electronically) in March 2018. The obligation to shift to e-procurement is widely supported by Member States and business but the practical details are as much a problem as a solution.\(^{38}\) Hence, the importance of a common European standard (see COM Implementing Dir. 2016/7) because many Member States have invented their own e-standards for this purpose, thereby making cross-border e-procurement more rather than less expensive and inflicting a national bias in e-procurement as being cheaper. Combining a common European standard for submission of bids with ESPD and reliance on eCerts\(^ {39} \) would enable the digital integration of public procurement tenders and bids, nationally and for intra-EU purposes. The ideal final solution of this integration would include a total of 8 steps.\(^ {40} \)

It is particularly regrettable that there is no information on how the concessions directive works and what data it would show. One clear reason is that the transposition and implementation by Member States proved to be slow and some were simply too late (i.e. in 2017 rather in 2016).

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\(^{39}\) A mapping tool used to identify and compare certificates requested in public procurement procedures across the EU, see https://ec.europa.eu/tools/ecerts/search

Moreover, the concessions directive has helped to clarify the legal situation for Public-Private Partnerships (PPPs) which usually undertake concessions. But not sufficiently. The legal complexities cannot be elaborated here but quotes from an authoritative EIB publication\textsuperscript{41} confirm this. The data on concessions is also either absent or at best very poor and anything but recent. In the 2011 impact assessment\textsuperscript{42} there is a ‘guesstimate’ of around €138 bn for all the years 2000 – 2009, that is, on average some €14 bn a year.

The thrust of the Commission’s procurement strategy, that is, to develop much more the strategic nature of public procurement for policy purposes where appropriate, is a clear trend meant to transform the perspective of public buyers at national and regional levels. The six priorities include (a) ensuring a wider ‘take-up’ of strategic public procurement (e.g. via guidance, voluntary ex-ante assessment – by the Commission – of large infrastructure projects, exchange of good practices for specific sectors like health), (b) professionalising public buyers by establishing an EU competence framework with essential skills procurers need, with an e-competence centre and library, establish an EU-wide network of national innovation procurement centres, etc. (note how crucial this approach is because there are probably some 350 000 public buyers in the EU, many of which are procuring only occasionally and on a small scale, lacking market experience, etc.\textsuperscript{43}), (c) improving access (for SMEs) (see Becker et al., 2019), (d) increasing transparency and integrity e.g. via publicly accessible contract registers, good protection of whistleblowers, etc., (e) boosting the digital transformation of procurement, and (f) cooperative public procurement via (domestic) ‘aggregation’, for example via central purchasing bodies, as well as joint cross-border procurement.

Recent studies undertaken for the Commission have revealed some core facts or probabilities in two areas: one in import penetration in public procurement, and one on the Remedies directive’s effectiveness and efficiency. With respect to the first aspect, considering public procurement in the framework of the single (services) market, import penetration is an important measure of openness of public buying in a Member State. But not the only one. If public procurement rules (i.e. mainly EU rules and disciplines, as well as implementation by Member States) are credible, the potential competition from companies from other EU countries will be priced in in the offers made by local companies, and the upshot might well be that the actual import penetration remains quite low. In an interesting study by VVA, London Economics and JIIP (2017),\textsuperscript{44} the lack of relevant data has been overcome by elaborate input-output analysis and painstaking matching of offers with the country of origin of the mother company (if a subsidiary). The results are that direct (intra-EU) cross-border procurement amounted to 3% of the value of awards in 2015 and indirect (via subsidiaries of non-domestic firms) some 20.4%. Both have increased since 2009. Public import penetration is everywhere less than import penetration for private firms. The authors also find that a ‘domestic bias’ is hard to trace; indeed, there are powerful other explanations for the propensity to buy local. One such powerful explanation is the composition

\textsuperscript{41} The EPEC centre of the EIB is specialized in providing expertise in concession-type financing and its legal and institutional conditions (it is also supported by the Member States). In EPEC (2016), several important legal issues are discussed. Two quotes as an illustration First, “the key question …under the new concession directive is in fact a fundamental one regarding what constitutes a concession for procurement services” (p. 28) and “What is more difficult to determine is whether there is scope to procure availability-based PPPs under the Concession Directive” (p. 21).

\textsuperscript{42} SEC (2011) 1588 of 20 Dec 2011, Impact assessment of an initiative on concessions, ch. 3 and an important footnote 125 on p. 29 provide some scattered data for a number of Member States (all up to 2009) with many different measures rods, hence incomparable. It should be realized that, in these years, it was even less clear (and not harmonized) what a concession was.

\textsuperscript{43} This splintered landscape might also be one of the reasons why the MEAT principle the Commission advocates is applied with great variability by Member States. (MEAT = Most Economically Advantageous Tender), from less than 10% for Croatia to more than 90% by France. See Figure 7 in European Semester Thematic Factsheet – Public Procurement (2018).

\textsuperscript{44} VVA, London Economics & JIIP (2017), Measurement of impact of cross-border penetration in public procurement, February, https://publications.europa.eu/publication-detail/-/publication/5c148423-39e2-11e7-a06e-01aa75ed71a1
of acquisitions: 58% of public purchases are found in security, public administration & defence, social security, education and health, all sectors with a high natural propensity to buy local.

As to the second aspect, Europe Economics & Milieu (2015)\(^{45}\) made a study for the Commission on the effectiveness and efficiency of the Remedies directive. This directive depends heavily on the domestic structure and tradition of legal enforcement in this area, creating considerable differences in the practical working of complaints and remedies (e.g. Pelkmans & Correia de Brito, 2012, pp. 90 – 95). Surprisingly, the study is very positive about the practical working of remedies: direct and effective way for rapid action (in case of an alleged breach), widespread use made of it, relatively small costs to engage in review cases and (some) savings can be attributed to past complaints.\(^{46}\) The Commission's communication does not signal any initiative for amendment as the assessment is that the remedies are seen as making procedures more fair and help to build trust.

3.2.2. Professional qualifications and services

Professional services and the required qualifications are mainly regulated by the Member States. However, other than with respect to qualifications, professional services fall under the Services directive 2006/123. Therefore, this section on qualifications and section 3.2.3. on the follow-up of the Services directive might overlap somewhat. Moreover, the regulation of qualifications by Member States is governed by general disciplines in the TFEU, in particular non-discrimination as to nationality, proper justifications in terms of overriding public interests (usually, preventing market failures with respect to users and consumers) and proportionality of the measures given the objectives.

In many Member States, regulated services and service providers come from a fairly restrictive tradition over many decades, although in some Member States more so than in other ones. This gives rise to two preponderant issues in this area of the single services market. First, if regulation is more strict than a justification and proportionality test would support, there is bound to be an unnecessary regulatory cost to consumers and users, and a great likelihood that competition (via conduct rules and/or entry rules concerning new providers) would be throttled. In turn, this would weaken incentives to perform and may well lead prices to go up, in the longer run presumably also reduce productivity growth. This fear is borne out by trend growth of productivity for professional services in the EU which is already negative for decades!\(^{47}\) Overregulation and anti-competitive provisions may become a drag on an economy which needs growth. Since services are by far the biggest economic activity nowadays for GDP, a vibrant EU economy requires action in the field of professional services as an important subset [some 22% of all persons in EU services work in this sector]. The EU and its Member States have, time and again, committed to pursue growth oriented strategies in a coordinated fashion (based on Art 121, TFEU), so it is a shared EU and Member States’ interest to reform professional regulation where it is disproportionate or perhaps not even justified in the first place. Second, if national regulation is restrictive and not harmonized, it acts as a huge (at times, a prohibitive) barrier to free movement of services and of the service providers, whether on a temporary basis to provide cross-border services or for local establishment (as entry rules are tough and might require years of experience, for example). This means that, with anti-competitive and/or disproportionate regulation, the single market for professional services will remain crippled and underperform.


\(^{46}\) The last one of these conclusions, however, is based on only one Member States (CZ) due to heavy data requirements.

\(^{47}\) See section 2.2.2., infra. For such trends, see Kox & Rubalcaba (2007) for the period 1979 – 2003. Recently, it seems to be no different, see Van der Marel (2017), Figures 1 and 2 for 2013/14.
In the period 2010 – 2018, the Commission and the EU legislator have been active in the field of regulation of professional qualifications and services. The most important initiatives are summed up in Table 2.

Table 2. EU achievement/activities in professional services/qualifications: 2010 - 2018

<table>
<thead>
<tr>
<th>Legislative/other</th>
<th>Amendments/new</th>
<th>explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Legislative directive</td>
<td>Amendments</td>
<td>Modernisation of the 2005 Professional Qualifications Directive 2005/36 into Dir. 2013/55. The main issue is to simplify and facilitate the (often complicated and slow) recognition of qualifications in other Member States, for applicants wishing to establish in other EU countries or provide temporary services. Also, more intense administrative cooperation between Member States is foreseen and to a degree compulsory (e.g. via IMI).</td>
</tr>
<tr>
<td>2. Legislative directive</td>
<td>new</td>
<td>Dir. 2018/958 of 28 June 2018, on a proportionality test before adoption of new national regulation(s) for professionals; the background of this directive is a long period of discussion, and sometimes a dialogue-of-the-deaf, on the ‘proportionality’ obligation in the 2013 directive (preceded by a similar clause in the 2005 directive) and the submission under National Plans of proportionality tests in all regulated professions per Member States (so, in total some 5500 tests); these submissions were very mixed, with many disappointing ones, not serving the purpose of the exercise</td>
</tr>
<tr>
<td>3. Non-legislative; reviews/work plans for reforms of Member States, setup for Mutual Evaluation, etc.</td>
<td>COM(2013)676 and follow-up; Mutual Evaluation in 2014/15; COM (2016)820 and SWD(2016)436 of 10 Jan. 2017 on reform recommendations in professional services</td>
<td>Further to Art. 59 of the revised Professional Qualifications directive, the COM has actively pursued a ‘reviews and mutual evaluation’ strategy with the Member States for over 3 years; despite the considerable efforts of Member States (with National Plans to reform, and in the Mutual Evaluation) and the Commission (see also item 2., above, on proportionality), the COM has expressed doubts about the effectiveness of the ‘reviews and Mutual Evaluation’ and is seeking other ways to proceed (including infringement cases, proportionality assessments, the European semester)</td>
</tr>
<tr>
<td>Legislative/other</td>
<td>Amendments/new</td>
<td>explanation</td>
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<tr>
<td>4. Non-legislative (COM recommendations)</td>
<td>Regular; in annual European Semester (directed to selected Member States)</td>
<td>Recommendations to selected Member States to reform specific laws or decrees (etc.) considered as disproportionate and/or unnecessary, in the framework of EU’s (annual) growth survey</td>
</tr>
<tr>
<td>5. Non-legislative COM initiative for refined analytical and information basis to assess the restrictiveness of national regulation of professional services providers</td>
<td>In SWD(2016)436 (see also 5., above), chapter V., the New Restrictiveness Indicator is presented technically</td>
<td>In the lengthy chapter IV of SWD(2016)436, all EU Member States’ professional services regulation for 7 important professions is assessed based on a new Restrictiveness Indicator, much more refined than the OECD PMRs; a 2017 EP/IMCO report assesses the properties of the new indicator, called PRO-SERV</td>
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</table>

Table 2 shows clearly the struggle of the Commission, and to some extent the European Parliament, to get the Member States to move on lowering the restrictiveness of their laws on professional qualifications and other restrictions e.g. on conduct. Unlike in goods where – more often than not – harmonization is accomplished sooner or later, and where technical standards are frequently already partially or entirely Europeanized or even global, most Member States have lowered the restrictiveness of their laws on professional services only selectively and too often partially. Many Member States do not seem to perceive the importance of having proportionate regulation, and no more, and the critical issue of a sound justification of regulation in this area. The EU has enacted two directives in these 8 years. The revised directive on Professional Qualifications has proved to be most useful and has also formed the basis for additional reform efforts. One such reform concerns the proportionality of restrictive regulation: a long winding road on ‘proportionality’ as an obligation under Art. 59 of the revised directive (if not under the TFEU treaty). Based on National Plans, Member States have submitted (although several dragged their feet endlessly) proportionality self-assessments or rationales. Reading Commission Staff document (2016) 463 is an uncomfortable experience, as it is more than obvious that – in a number of professions that are regulated – some Member States have simply not cared to reflect on the proportionality of their laws in this field despite their self-interest, despite the obligation in the 2013 directive, despite the Mutual Evaluation exercise (for 2 years over 2014 and 2015) and despite the Commission’s help in suggesting how such tests can be made. And many Member States have submitted weak tests in some regulated professions. It is this sad situation that forms the background of the proportionality directive of 2018. With this directive, the most restrictive forms of regulation can be addressed more effectively. The criteria in the directive are probably not ‘hard’ and precise enough to go much beyond that but it does serve as an incentive to instil in the governments’ mindsets of Member States to justify restrictiveness and reflect on the rationale of such regulation much more seriously.

48 SWD(2016) 463 of 10 Jan. 2017 on a proportionality test before adoption of new regulation of professions [an Impact Assessment of the draft directive on the proportionality test, as item 2 in Table 2]
The Commission has been active in non-legislative work. Item 5 is in fact a stream of activities on national reforms with respect to professional services regulation over a number of years and with great intensity but yielding, so far, a less than satisfactory outcome. The idea of national regulatory autonomy on an important area in the single market is of course far from absolute; on the contrary, ‘necessity’ (the justification) and proportionality of both national and EU regulation are quasi-constitutional principles in the EU, and indeed for sound reasons. This has everything to do with the ‘benefits’ of proportionate national regulation for growth and for the proper functioning of the single services market. Any regulation anywhere should always be the result of an objective analysis of the question: Why regulate? The rationale of regulation should be about the benefits. The benefits in professional services regulation consist in pre-empting or overcoming market failures. What kind of regulatory instruments (and why) and how strict their application, and why the barriers to entry (and how ‘high’) and why restrictive rules of conduct, and what kind of such rules, and how far should the cumulation of such rules go? If Member State A does not show market failures when not or less regulating service X, what rationale is there for B to go on regulating service X, or, why would it go much further in its restrictiveness than A? The ‘reviews and mutual evaluation’ approach was partially successful in that some Member States did introduce reforms. The National Plans for reforms may well bring a more systematic reflection about the rationale and proportionate limits of what is regulated and how, certainly in combination with the roughly 5500 proportionality ‘tests’ for all the regulated professions in all the Member States. The Commission has collected all these National Plans on its website but no intention has been announced to write an analytical report on the plans and the likely benefits they might bring in terms of growth and for the functioning of the single market. Therefore, the benefits of reducing restrictiveness via national services reforms and its impact on growth or productivity cannot possibly be ‘guesstimated’ without in-depth and painstaking empirical research. Neither does there seem to be an annual report on whether these plans have meanwhile been implemented and/or an estimate of the expected and realized benefits per Member State. But the successes might emerge only slowly in the longer run and are far from certain because the sectoral professional lobbies are strong and persistent. In 2018, lobby pressures from the crafts sector in Germany were noticed for a reversal of crafts liberalisation (even bringing ‘Meister’ back). The situation in early 2019 is not clear but the Monopolkommission has published strong objections. As item 6 explains, the Commission has also employed the option of Recommendations to selected Member States on overly restrictive professionals services legislation in the European Semester. Finally, Member States have reporting duties under the same Art. 59 (5) and (6). One is to report any newly introduced requirement six months after adoption (including the reasons why these are ‘proportional’). Another reporting obligation consists of the two-yearly obligation to report to the Commission on requirements that have been removed or made less stringent. The Commission now proceeds with infringement cases in some instances. In addition, a lack of follow-up by Member States of the ‘Guidance on Reform Recommendations’ (parallel to the proportionality proposal at the time) is also enforced by infringement cases.

Finally, the Commission has developed a new restrictiveness indicator for professional services, to be named PRO-SERV in this study, extending and improving the OECD PMRs. In Pelkmans (2017), a report for the IMCO ctee of the EP, this PRO-SERV indicator has been assessed: it is more refined (by adding another 10 items to the OECD list of 11 measures), uses weighting to account for the more important sectors and hence addresses a good deal of the criticism on the PMRs as too incomplete and simple

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49 Monopolkommission (2019), Policy Brief no. 2, see https://www.monopolkommission.de/images/Policy_Brief/MK_Policy_Brief_2.pdf
50 The OECD PMRs are the regulatory restrictiveness indicators widely used in the OECD.
51 It should be noted that the OECD has meanwhile slightly enriched its PMR, reducing the difference with PRO-SERV.
when applied to professional services. PRO-SERV shows even more clearly that there are enormous regulatory discrepancies between the Member States which cannot easily, or in some instance not at all, be rationalised, and yet are maintained. This critical finding alone strongly suggests that there is a huge potential for ‘better regulation’ of professional services in many Member States, without affecting in any way the public interest of ensuring that market failures are pre-empted. Those who maintain that a ‘better regulation’ of professional services in a restrictive Member State for the relevant service would damage the public interest, ought to demonstrate whether and why the public interest in other Member States with lighter regulation is endangered. If that cannot be done convincingly, it follows that the restrictiveness would seem to serve private interest of the providers. So far, PRO-SERV is only a single snapshot. However, PRO-SERV is quite data intensive and requires maintenance in order to serve the accurate monitoring of the Member States’ reform processes over time in this area. There have been suggestions about PRO-SERV being updated every two years. In the longer run, PRO-SERV – if available for several years – can be utilized for the rigorous simulation of the wider economic benefits, especially including the positive spill-over effects for industry and European value-chains. At the moment, these are not available.

3.2.3. Follow-up on the 2006 Services directive

With some 45% of EU GDP covered by the economic activities of the services sectors falling under the Services directive 2006/123, it is of preponderant importance for the single services market. It is a directive with a wide scope – many sectors fall under it – and its principles may have quite far-reaching consequences, despite the fact that there is no substantive harmonisation. Strictly spoken, the legislative work on the directive was done before the two legislatures relevant for this study, hence “all there is left” is implementation and enforcement. Normally, that is routine for enacted directives. The implementation is a duty of the Member States and the enforcement, too, be it that the Commission and the CJEU have a role to play as well.

However, the following subsection shows that this routine does not apply in the special case of the Services directive. It is still true that the implementation route has mainly been travelled by the Member States, often in close cooperation with the Commission. But the importance of this directive and its numerous implications dictate a close monitoring role for the EP as well as active positioning on some troublesome aspects. In a few instances, the question even came up whether or not additional follow-up legislation would be required to support the functioning of the directive.

Table 3 re-iterates which services sectors fall under the directive and which ones not.

<table>
<thead>
<tr>
<th>Sectors under dir. 2006/123</th>
<th>Sectors NOT under dir. 2006/123</th>
</tr>
</thead>
<tbody>
<tr>
<td>Distributive trade (wholesale, retail)</td>
<td>Financial services</td>
</tr>
<tr>
<td>(most) regulated professions *</td>
<td>Electronic communication services</td>
</tr>
<tr>
<td>Construction services and crafts</td>
<td>Transport services (six modes)</td>
</tr>
<tr>
<td>Business-related services (such as office maintenance, management consultancy, events organisation, debt recovery, advertising, recruitment services)</td>
<td>Healthcare services (as reserved to regulated health professions)</td>
</tr>
<tr>
<td>Sectors under dir. 2006/123</td>
<td>Sectors NOT under dir. 2006/123</td>
</tr>
<tr>
<td>---------------------------------------------------------------</td>
<td>---------------------------------------------------------------</td>
</tr>
<tr>
<td>Tourism services</td>
<td>Temporary work agencies</td>
</tr>
<tr>
<td>Leisure services (amusement parks, sports centres)</td>
<td>Private security services</td>
</tr>
<tr>
<td>Installation and maintenance of equipment</td>
<td>Audio-visual services</td>
</tr>
<tr>
<td>Information society services (publishing for print &amp; web, news agencies, computer programming)</td>
<td>gambling</td>
</tr>
<tr>
<td>Accommodation &amp; food services (hotels, restaurants, caterers)</td>
<td>Certain social services (non-market based)</td>
</tr>
<tr>
<td>Training &amp; education services (market-based, not when subsidized by the state)</td>
<td>Services provided by notaries and bailiffs (based on acts of governments)</td>
</tr>
<tr>
<td>Rentals &amp; leasing (incl. car rentals)</td>
<td>Real estate services</td>
</tr>
<tr>
<td>Household support services (cleaning, gardening, private nannies)</td>
<td></td>
</tr>
</tbody>
</table>

Note: * except as the regulation of professional qualifications is concerned – this area is (largely) up to the Member States; note that a number of services in the right-hand column fall under specific, sectoral EU regulation – for private security services, gambling, certain social services and services by notaries, there is no EU regulation.

The new notification draft directive with a 3 months prior notification of planned services laws – a duty which is routine for 3 ½ decades in technical legislation on goods52 – has run into some opposition of an ideological nature (‘undermining local democracy’; ‘unduly limiting the right to regulate; ‘Bolkestein returns’) which might well mix up the reporting obligation with the substance of the services directive whilst remaining indifferent about the major or frequent violations of EU law in Member States’ proposals with respect to services. In Kainer (2019, for the EP/IMCO) a careful assessment of the criticism is made. The more sensitive difference with the goods directive 2015/1535 is that, in the case of services and the finding of a serious breach of EU law, the Commission can intervene directly on the basis of a Decision (after consultation) instructing the Member State to refrain from enacting the notified measure. In the goods variant of notification, this is not possible, only a recommendation can be made, followed – presumably – by a costly infringement procedure.

52 Detailed explanation of this goods directive [formerly dir. 98/34, after revisions, now dir. 2015/1535] and statistical analysis over two decades in Correia de Brito & Pelkmans (2012)
The IMCO committee has, wisely, reduced this intervention in the case of services by tying it to violations of Art. 15/2 of the Services directive only – where severe restrictions are specified. In any event, at the moment of finalizing this study, the draft directive had not yet been enacted.

Even more opposition emerged against the e-card proposal. The problem here turned out to be that the construction sector itself (a key player for this proposal) was against the draft directive and even feared abuse by dubious companies. NGOs and labour unions felt it would facilitate social dumping and dubious practices. BusinessEurope, though in favour, had a number of objections and conditions. In the end, the EP/IMCO committee rejected it in March 2018.

The main issue for the purpose of this study therefore is fully-fledged and proper implementation. Under the massive Service directive, this has proven to be a tall order. And indeed it still is, today! It is a major challenge for at least three reasons: (i) the directive has a huge scope; (ii) besides specific ‘bans’ (Art. 14 and Art. 16/2) and conditional prohibitions (Art. 15 and Art. 16/3), the directive is based on principles, disciplines and procedures, not on substantive harmonisation; (iii) there is a large number of decision-makers and other players involved, different in almost every EU country – national, regional and local levels of government, professional bodies, regulators or supervisors. Table 4 provides the main achievements or efforts of implementation of the Services directive.

<table>
<thead>
<tr>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>COM Handbook of the Services directive</td>
</tr>
<tr>
<td>2007 - 2009</td>
<td>Member States’ massive screening of national and regional legislation (in order to ensure compatibility with the directive) and enactment of ‘omnibus laws’ for services</td>
</tr>
<tr>
<td>2010</td>
<td>Mutual Evaluation of the implementation, amongst the Member States, with the COM; national requirements such as prior notification, registration requirements and ‘territorial’ restrictions were evaluated</td>
</tr>
<tr>
<td>2011 - 2012</td>
<td>Performance check; on how the Services directive, the e-commerce directive and the Professional Qualifications directive interact, with special attention in three sectors: construction, business services, tourism; a number of shortcomings in implementation were discovered</td>
</tr>
<tr>
<td>2012</td>
<td>First services package, comprises: a. a progress report of implementation, esp. the removal of unjustified barriers (e.g. compulsory tariffs seem to have largely disappeared); b. identification of remaining barriers, that should have been removed (including severe ones such as residence requirements, or, economic needs tests); c. some further measures proposed to improve the functioning of the single market for services</td>
</tr>
<tr>
<td>2012 - 2013</td>
<td>COM conducted a peer review on legal form and shareholder requirements (both can be a major problem, given different business models in the origin country)</td>
</tr>
</tbody>
</table>

53 Other amendments include the explicit requirement [only] of a violation of the Services directive, a requirement for the Commission to provide detailed reasons for its finding and for the Member State to come up with a reasoning on the compatibility with the Services directive.
<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>For major efforts on professional services regulation of the Member States (the qualification elements of which do not fall under the Services dir.), see section 3.2.2. and Table 2</td>
</tr>
<tr>
<td>2013 - 2014</td>
<td>Study of the national measures implementing the Services dir., in particular Art. 14 (bans of extremely restrictive provisions with respect to establishment), Art. 15 (verification of the justification and proportionality of 8 types of national restrictions listed in Art 15) and Art. 16/2 (bans of extremely restrictive provisions with respect to cross-border services trade) as well as Art. 16/3 (national regulatory autonomy about restrictions with respect to cross-border trade, with only 4 types of justifications about such derogations)</td>
</tr>
<tr>
<td>2014</td>
<td>Given the further need for services reforms in the Member States, a Work Plan was agreed on reporting of national reforms in services markets; also, a study was published on insurance for cross-border services (where the market ‘fails’, hindering such services provision)</td>
</tr>
<tr>
<td>2014 - 2015</td>
<td>Nine stakeholders workshops in key cross-border regions (+ a questionnaire, collecting more evidence) on practical issues / barriers in the single services market</td>
</tr>
<tr>
<td>2015</td>
<td>New ‘Single market Strategy’, with considerable attention for the potential economic benefits of ‘better services regulation’ in the single market; announces proposals on e-card for service providers and a reform of the notification under the Services directive</td>
</tr>
<tr>
<td>2016</td>
<td>European Court of Auditors calls for a tougher, more assertive enforcement strategy for the European Commission and e.g. for a system of prior notification of new services regulation of Member States’ Study about simplification and mutual recognition in the construction sector under the Services directive. The study concludes, that the spirit of the Services directive seems not to have penetrated the regulatory environment of construction in a number of Member States. The overall restrictiveness of authorisation schemes is high (except in some countries), there is considerable room for simplification (an objective of the directive), such that horizontal authorisations now still act as barriers. There is a ‘lack of clear mutual recognition principles and procedures’. The administrative burden is unnecessarily high, and at times truly disproportionate.</td>
</tr>
<tr>
<td>2017</td>
<td>Second services package. Proposals for the e-card in COM (2016)824 of 10 Jan 2017 [draft Regulation and draft Directive meanwhile rejected by the EP]; proposal for a new form of notification (with three months prior notification) in COM(2016)821, which is still pending;</td>
</tr>
</tbody>
</table>
Note that, tucked away in Annex 4 of the Impact Assessment of the e-card proposal (in SWD(2016)439, pp. 102 – 132), one finds a ‘brief evaluation’ of the Services directive, concluding that – 10 years after its enactment – it has been ‘partially effective’; however, implementation is incomplete, the regulatory environment is still ‘highly divergent’ between Member States, providers going across intra-EU borders still incur ‘significant administrative burdens and costs’, and the administrative cooperation between Member States is ‘currently not working in practice’; also the Points of Single Contact are only ‘partially efficient at most’.

A second study on the construction sector, this time on cross-border installation services and the national ‘market access’ procedures they are subjected to. There are no internal market clauses, except for F-gas installation controls, and this omission leads to a disregard of the merits and fulfilled procedures of service providers from other EU countries. Procedures are burdensome, online information is often scarce and administrative costs can be high (when schemes are complex), as high as €10 000 or more.

Table 4 demonstrates the point made above, namely, that the implementation process is a struggle that will only yield the expected benefits of the directive very gradually and with a lot of efforts. It is exceptionally hard, if not impossible, to come up with estimates of how much of these gains have meanwhile been realized. So far, the few calculations of benefits hinge on legislative reforms that can be pinpointed clearly and identified as a removal (or not) of certain major barriers forbidden by the directive. And of course this is necessary, even though such an approach is inevitably rather crude. But the various studies listed in Table 4 also show that implementation issues and lingering barriers are often hidden ‘deeply’ in technical and administrative procedures of an intricate nature that cannot be caught by simple legislative changes. Moreover, e.g. in construction, the practical implementation is done at the local level, which renders it still more complex and sometimes even arcane to identify and evaluate the barriers involved and their costs.

The Commission has undertaken many efforts, in different ways, to motivate and incentivize the Member States to reform more and more deeply. It has also done a lot of work to identify (in studies) in detail the concrete barriers for business and consumers despite the Services directive. Nevertheless, as the EU Court of auditors (2016, para. 113 and para. 120) has concluded, the Commission ‘did not sufficiently challenge the proportionality justification provided by some Member States’, had (in 2016) pursued ‘only nine infringement cases’ and ‘has no systematic strategy to strengthen the single market in services’. It is possible that the Commission makes a political economy calculation about the wisdom of a harsh litigation approach in a very large number of instances. There is a fear in some circles in the Brussels circuit (and in national capitals) that too fierce litigation on services might backfire, as indeed happened to some extent with the e-card proposal and even with the proposed reform of the notification under the Services directive. Given the efforts the Commission has made for more than 10 years, given the (now) much better known technical and administrative details down to the local level, given the frequent and extensive attempts to cooperate with the Member States in e.g. proportionality and other aspects, there inevitably comes a point to initiate more pilot cases or straight infringement cases, in order to deepen the single market for services decisively.
And it seems that this point has been passed. The Commission has pursued more infringement procedures in 2017 and 2018, and announced a major infringement move to 27 (!) Member States with respect to professional services and other services under the Services directive\(^{54}\) in January 2019.

### 3.2.4. Addressing barriers in the retail sector

The retail sector falls under the Services directive.\(^{55}\) It is dealt with separately in this study because it tends to be rather restrictively regulated at several levels, it is a very large sector and one with many backward linkages in goods and services. It represents no less than 8.6% of jobs in the EU, with 63% women, and 4.5% of value added in the EU. 3.6 million companies are active in retail. It has important links with many sectors, such as wholesale, manufacturing, farming and selected services (transport, logistics, business services).

During the legislatures between 2010 and 2018, the retail sector came more and more in focus. After some debates on food labelling in the single market and a longer and more controversial discussion and analyses on ‘unfair trading practices’ between (often) small suppliers (e.g. farmers) and big or very big retailers – both subjects of interest but not relevant for the present in-depth study – a European Retail Action Plan was developed, addressing ‘the key obstacles to the smooth functioning of the EU retail sector’. Its orientation was mostly about the sector’s performance and growth and jobs. A High Level Group on Retail Competitiveness was set up and reported in 2015 – its orientation was about competitiveness (with emphases on e-commerce, innovation, SMEs and working environment issues).

Subsequently, the single market aspects of retail received much more attention. So far, the Commission assumed an approach of deep investigation and fact-finding as well as a Partnership with the Member States to promote ‘best practices’ of regulation in the sector. Detailed studies were made on establishment restrictions and on operational restrictions,\(^{56}\) a Retail Restrictiveness Indicator was developed with an establishment window and an operational restrictions window\(^{57}\) and guidance was formulated. A High Level conference with many stakeholders was organized in July 2018. It is therefore a cooperative and persuasion approach, stressing that reforms, also at the regional and local level, are in the interest of the regions and the sector, if only for competitiveness given the profound challenges for retail in the digital age.

However, the in-depth reports leave little doubt that many restrictions uncovered in the surveys would seem not always to be compatible with the rules of the Services directive and/or with the general principles of the TFEU (e.g. for operational restrictions which fall outside the directive). One such problematic instance is the apparent persistence of the ‘economic needs test’ (clearly banned under Art. 14 and removed by many Member States) in some countries or regions, or a committee system looking into the case of a new entrant (equally forbidden). However, the factual information is not fully clear. The relevant authorities sometimes hide the test or a committee system by making it a part of local spatial planning rules, rather than retail rules, but this is of course incorrect – the Visser ruling of the CJEU has confirmed this (note 53). Such tests are simply an anti-competitive misfit in a market environment: competitors and/or officials get to know the details (and perhaps the market analysis) of the entrant and subsequently assess the business judgment of that entrant – with a great likelihood of


\(^{55}\) This is irrespective of the incorporation of regulation in planning rules, etc. and not recognisably as retail regulation. CJEU judgment Visser Vastgoed, case C-31/16, ruled on 30 January 2018


\(^{57}\) The RRI is explained in SWD (2018) 236 (as above) and analysed in an audit done by the Joint Research Centre by Dominguez-Torreiro, Caperna & Saisana (2018). It will be dealt with in 3.3.4. It should be noted that the RRI is more refined (but, in terms of data, more demanding) than the retail component of the OECD’s PMRs.
vested interests in mind - and (can) use that for a decision on establishment. The claim in the COM paper of the greater retail competitiveness and ‘fit’ for the 21st century may be analytically correct, but in actual practice would seem to be no stronger than the effect of persuasion, since no other instruments are specified anywhere. In COM(2018) 219 (also of 19 April 2018), p. 15, there is a single line on monitoring being the basis for priority-setting in the COM’s enforcement policy. One reason for this approach is the priority given to closer cooperation with the Member States about what often are regional and local rules and practices. This also creates an information gap with many national governments about the details of implementation in regions and cities. One possible indication for this information gap is the fact that the IMI system (between officials in all Member States, for the purpose of exchange on procedures, recognition, etc.) has some 8000 officials from regions and cities listed but only a negligible share of them ever use the IMI. In terms of economic benefits, this undoubtedly useful partnership approach is best seen as necessary but not sufficient – after all, this is 12 years after the enactment of the Service directive! It is unclear whether and when these expected benefits in retail can be reaped.

3.3. **Empirical evidence on economic benefits and potential mobility**

There is a gap, if not a cleavage, between broader economic analysis of services liberalisation in the single market (as summarized in section 2.2) and the quantification of economic benefits of the legislation enacted by the EP (complemented by softer approaches and enforcement) since early 2010. Quantification of economic benefits of enacted services legislation in IMCO’s remit is usually not available. Furthermore, for the professional qualifications directives, what is interesting is not only the actual but also the potential mobility of professionals in the EU. This will be explained below.

3.3.1. **Public procurement in services**

As shown in section 3.2.1, it has already proven difficult to trace the flows of cross-border procurement in direct and indirect form. Via a heavy investment in input-output analysis as well as the elaborate matching of offers with the country of origin, VVA, London Economics & JIIP (2017) found a 3% EU direct cross-border procurement and some 20.4% indirect via subsidiaries for the year 2015, higher than in 2009. To identify the economic benefits of EU public procurement in services is even harder and studies are scarce.

The last benefit calculation of the EU public procurement directives is found in the evaluation of the 2004 directives, based on data about procurement in 2009. In that evaluation, competitive results were assessed as good (5.4 bids per invitation on average), the average cost of an above-threshold procedure for bidders was then €28 000 which is quite high and which implies many cases with far higher costs (a barrier for SMEs), but the estimated savings (for governments) amounted to some €20 bn. The true economic benefit of EU-wide competitive public procurement is found in such savings for the public purse. In 2009 the procurement expenditure above thresholds in the EU was €420 bn, so the estimated savings amount to some 5% of expenditure. Later, the crisis has put downward pressure on public expenditures of the Member States, also for procurement. In 2012 total EU governments’ procurement above thresholds, including utilities and defence, amounted to €402 bn, rising again to €450 bn in 2015 (excluding utilities and defence, €349 bn). Singling out services only, the total in 2015 was €120 bn, with goods amounting ‘only’ to €79 bn and ‘works’ €86 bn (excluding utilities and defence).


59 Given that, with more than 4 other bidders on average, the probability of getting the contract was rather low.
Thus, services is a large category in public procurement but, as noted before, the bulk of these purchases have a strongly local character (e.g. social security, education and health, but also security and public administration & defence, where services might be less prominent).

Europe Economics (2014) made an attempt to update and adjust the 1988 Cecchini results for public procurement. In the update, the original levels of procurement expenditure from the mid-1980s are updated to current levels (2012); moreover, in 1988 there were 12 EU countries, now there are 27 (Croatia not yet). The savings of a 2006 study have also been scaled up. This yields a kind of extrapolated ‘potential’ of the Costs of Non Europe (=CoNE) in procurement for 2012 between €43 bn to €102 bn. The annual savings for 2012 based on this extrapolation would be between €6.2 bn and €35.5 bn, leaving a remaining Cost-of-Non-Europe of €36.5 bn to €66.5 bn. This result is not split up between goods and services.

However, the 2014 directives are not incorporated in this (rough) estimate, let alone the partnership and persuasion approach from the Commission with respect to infrastructure, strategic procurement, etc. All of these could in principle be ways to realize the future potential of benefits. Also the new defence approach (since 2017) and its possible impact on cross-border procurement in the EU is not in.

On the new concessions directive (see Table 1 in 3.2), no reporting has been announced. However, there is a ‘guesstimate’ of €2 bn savings per year based on experience in the period 2000–2009 in the 2011 Impact Assessment. Since no Public Procurement Indicators have been published after those of 2015, there are so many loose ends that it is not possible to approximate the 2017 ‘potential’. With the recent growth in the EU, the addition of Croatia, and low but positive inflation, the benefits for 2012 might have gone to a range of some €8 bn to €40 bn for 2017, even when the new directives (including on concessions and the new obligation of e-procurement, expected to yield major efficiency gains) and the soft approaches by the Commission would have no effect whatsoever. Since the latter is unlikely, a range for benefits of some €10 bn to €50 bn or even €55 bn seems reasonable – of course, this is mere informed guess work in the absence of hard data. There is one example (from Portugal) of extra savings due to e-procurement, on top of savings due to open competitive procurement following the directives, adding another 7%, which is significant. If one were to assume that all Member States would enjoy just half of this saving, the benefits of e-procurement by 2019 would be quite large, perhaps in the range of €10 bn to €13 bn a year. For 2018, this is likely to be in the range of €12 bn to €15 bn a year. Thus, altogether a range of estimated gains of €22 bn to €65 bn. This extrapolation and partial revision of Cecchini does not include dynamic effects, nor does it incorporate ‘concessions’, so the economic benefits up to 2018 could be (much) higher still. If one were to add structural improvements for each Member State in the digitalized procurement system (see (Becker et al, 2019), the benefits would augment further (see section 4.2.1.).

Moreover, the ‘linear’ extrapolation of benefits, other than for e-procurement, to the range of €10 bn to €55 bn assumes that the underlying parameters found in the study with 2009 data are still valid.

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60 Europe Economics (2014), Costs of Non-Europe, Public Procurement and concessions, www.europarl.europa.eu/RegData/etudes/STUD/2014/536355/EPRS_STU(2014)536355_REV1_EN.pdf, pp. 44 - 51; the Cecchini report has a popular version and an analytical version. For the latter, see Emerson et al. (1988) and its background study on public procurement.

61 The authors employ a second calculation, with a remaining CoNE calculation of €57.3 bn. Note that the first calculation’s average (of €66 bn and €35 bn) is around €20 bn, the same as in the calculation for the Commission based on 2009 data.

62 See footnote 42. The footnote 125 of the Impact Assessment provides this ‘guesstimate’.

63 In a summary note by DG EcFin for a conference ‘Assessing product market reforms in Italy, Greece, Portugal and Spain’ held on 25 November 2013, unpublished, p. 50. Thus, if savings are 10% without e-procurement, they would be 17% with e-procurement.

64 Total benefits (before the new directives, so conservative for 2019) are said to amount to €20 bn for the EU (5% of €450 bn for 2015). Adding another 3½% would be roughly €13 bn, enjoyed by business and governments.
However, this is not sure. In COM (2017) 572 of 3 Oct. 2017 (p. 5), the Commission openly doubts whether the very basis of ‘open competition’ on which EU-wide public procurement relies, is being upheld. “This competitive process is either not present or it is losing intensity. 5% of public contracts published in TED are awarded after negotiation, without a call for tender being published. Between 2006 and 2016, the number of tenders with only one bid has grown from 16% to 30%. The average number of offers per tender fell from five to three in the same period.” This shows that careful new field research and modelling is required to get a better idea of the benefits of EU public procurement in 2019, including the new directives and e-procurement.

3.3.2. Professional qualifications, economic benefits and intra-EU mobility of professionals

In trying to assess the economic benefits in the area of professional qualifications in the period 2010-2018, two aspects are looked at: the greater facilitation of intra-EU cross-border mobility of professionals, both potential and actual, and the reduction of overly strict regulation of professional services via domestic reforms or otherwise, as discussed in section 3.2.2.

A major plank of improving the single market for professional services is the potential and actual mobility of those professionals in the Union, be it for temporary provision of services or for establishment in another EU country. The potential mobility across intra-EU borders for establishment is given by recognition decisions of the host (intended destination) country. With the several improvements of the system in dir. 2013/55, it would seem that recognition has been facilitated. In 2018, the Commission has provided a performance exercise in the scoreboard for a three-years period (2014 – 2016), finding that the average positive recognition rate is 93.5% (with a standard deviation of 9.2%) for a total of 152 066 cases. In the ‘general system’, there is normally no automatic recognition and ‘compensatory measures’ (like a test, etc.) can and are often imposed. The average positive recognition rate without compensatory measures amounts to only 36.1%, but with large variation between EU countries (standard deviation of 20.7%). Unsurprisingly, for professions under the automatic system, recognition rates are very high. Figure 4 depict recent overall recognition rates for all EU countries, suggesting that the current system under dir. 2013/55 works. Of course, for a detailed assessment much more is needed and this report is not the place to go so deep into the matter. Figure 5 shows the (so-called ‘quick’) recognition rates by EU country in the ‘general system’ when no compensatory measures are imposed and the great variation between Member States is immediate clear. Another way of saying the same is that, for the high average of recognition (93%, Figure 4) to be reached, many countries impose additional requirements and indeed many applicants are ready and capable to fulfil such requirements.

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65 What has not been included here are the benefits of solid whistleblower protection in public procurement, thought to amount to a range of €5.8 bn - €9.6 bn. See Milieu (2017, for the Commission).

66 See http://ec.europa.eu/internal_markets/scoreboard/performance_per_policy_area/professional_qualifications/index_en.htm
Figure 4. Positive recognition rates by EU country (2014-2016)

Source: Commission website (see footnote 66); no data from Croatia and Luxembourg.

Figure 5. Positive recognition without compensatory measures (2014 – 2016)

Source: Database on regulated professions (validated up to 15 November 2017).

Figure 6 shows, however, that the actual recognition numbers are biased towards only some Member States, led by the UK with over one-third of all cases in the EU. Indeed, nine EU countries (on the right hand side) seem to have taken no recent recognition decisions at all and some others very few. Most of these are new Member States. Only 12 EU countries seem to have non-trivial numbers. Negative decisions are relatively few, again. Another striking feature of Figure 6 is that the UK has a far higher rate of recognition without compensatory measures (around 50%); Austria is the only other country with a high rate. In all other countries, compensatory measures dominate the scores. Finally, with BREXIT, assuming that the new treaty to be concluded between the UK and the EU would be much weaker for services than today’s acquis [unlike goods, where a ‘common rulebook’ is proposed], one might expect a drastic fall in the recognition numbers. The popularity of the UK would seem to be explained by a combination of its relaxed assessment of qualifications from other Member States, not
least because in many professions, its regulation is less strict, and the language premium – practically all professionals in the EU master English to some degree, no other EU country has that property.

Figure 6. Recent recognition decisions by EU Member States

For illustrative purposes, Figure 7 provides a flow picture: professionals from the more important origin (EU) countries going to what destination country? This flow picture is made up on the basis of five professions with the highest numbers: dental practitioners, medical doctors, nurses (all three in the automatic system) and physiotherapists as well as secondary teachers. Over the 2010-2016 period, arrivals in the UK were as high as 75 000 but even Belgium saw 11 000 arrivals (partly due to an EU effect) and e.g. France 9 500. More painful is the brain drain from Central Europe or countries having suffered in the crisis, with Spain in the lead (26 500), Romania (22 500), Greece (15 500), Poland and Portugal (both 10 500). From a short-run economic point of view these outflows helped these individuals and (in the margin) the adjustment in such countries, but from a longer-run point of view, this highly skilled group of exiting persons may well reduce the growth capacity of the origin country (so-called hysteresis effects).

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67 See also Pelkmans (2017, for the EP/IMCO) for detailed comparisons for 7 professions between all EU countries on the basis of PRO-SERV.
Figure 7. EU country-to-country flows of professionals: 2010 - 2016

Source: see Figure 4; 5 most important (‘mobile’) professions.

Figure 8 summarizes the recent decisions on recognition but from the origin countries side. The UK is no longer so prominent as compared to the recognition by host countries: five EU countries show higher totals than the UK. Interestingly, Germany leads but Poland, Spain and Romania follow fairly closely. Such recognition is merely ‘potential’ mobility – whether the candidates actually relocate (‘establish’) cannot be read from Figure 8.

Figure 8. Recognition given to applicants from origin countries, 2005-2018
Figure 9 shows the most recent developments in recognition by host countries, so far as statistics are available. Broadly, the pattern today is the same as noted before, with the UK dominant; the rate is conspicuously high for Belgium but this could be due to a single year.

Figure 9. Recognition by host countries, 2017-2018

In circles of professional services providers, the argument is sometimes heard that the facilitation of recognition is fine, but what really matters for the single market is the actual establishment of professionals in other Member States. One simple criterion is whether the establishment of professionals from other EU countries is greater than for other citizens, or not. To the extent that national regulation of these services is more restrictive, it would be relatively difficult to fulfil the recognition criteria and/or compensatory measures, and this might well lead to foreign EU professionals assuming a lower share in employment than other citizens. This indicator cannot be read from the above graphs on potential mobility. For 2015 the European Commission has made a comparison as follows: with citizens from other EU countries assuming a share (on average) of 3.6%, four professional services providers have lower shares (consistent with the notion that they face considerable restrictions), namely, accountants (3.2%), real estate professionals (2.8%), civil engineers (2.3%) and lawyers (1.65%); however, architects have a share of no less than 6.5% – it is true that architects enjoy a kind of automatic recognition, unlike the other four. Therefore, actual establishment is often below the EU citizen’s average but not in every profession. It should also not be forgotten that medical and paramedical professional mobility (all under automatic recognition) is quite high in the EU, be it also driven by the East/West wage dichotomy – as noted, this ‘benefit’ might cause negative long-run (brain drain) effects in some of the sending countries (Central Europe and Spain). Indeed, of the first 12 professions being recognized the most in the EU (all more than 10 000 by 2018), no less than 7 are (para-)medical, with a total of 380957 recognitions, most of these with automatic recognition.

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68 European Commission (2016), European Semester Thematic Factsheet, regulation of professional services, see https://ec.europa.eu/info/sites/info/files/european-semester_thematic_factsheet_regulation_professional_services_en.pdf
69 Lawyers are consistently the more restrictively regulated in many Member States, see Pelkmans (2017, for EP/IMCO), hence, one might see it as consistent with restrictiveness; however, precisely in law, country-specific legal and other traditions and local knowledge are critical for trust and competence and language requirements will be at the highest level as well.
70 Medical doctors, nurses, physiotherapists, dental practitioners, second level nurses, veterinary surgeons and pharmacists
The four professions usually mentioned when discussing regulatory restrictiveness (architects, lawyers, civil engineers and auditors) together have 35517 recognition decisions (architects the most with 14285), only some 9% of the total of (para-)medical ones. Although no hard proof, it can be read as consistent with the complaints about overly high restrictiveness.

The second aspect is all about the benefits of reducing overly strict professional services/qualifications regulation. Although recently a flurry of analytical economic papers on professional services and their qualifications has been published (cf. section 2.2), most of this literature boils down to a well-underpinned advocacy for better regulation or domestic reforms of professional qualifications/services regulation in the EU. It is by now a strong body of economic analysis but remains largely of a qualitative nature. Where econometric analysis yields quantitative results, it is usually concerned with demonstrating that (too great) restrictiveness throttles competition (and that includes potential competition from other EU countries). As noted before, regulatory restrictiveness reduces the ‘churn’ rate (i.e. the dynamism of markets as expressed in the addition of birth rates and death rates of companies), and increases the mark-up and/or profit rates of professional service providers. These are accepted signs of reduced competition which benefits the relevant service providers, engender negative spill-overs to forward linked sectors in the value-chains (which magnifies the costs in terms of competitiveness of manufacturing considerably) and raise prices of the services at stake for business users and consumers.

There are few rigorous empirical economic studies available (as far as the author knows) on the overall economic benefit of better professional services regulation in the EU in the period 2010 - 2018. The micro indicators of better professional services market functioning, in particular with a view to competition, have rarely been inserted in macro-econometric models because this presents significant hurdles, except when stylizing them via their impact on competition (i.e. lower mark-ups and easier entry). An exception is an exercise in Canton, Thum-Thysen & Vogel (2017) with the help of the Commission’s QUEST model which arrives at around 1% of GDP. The exercise consists in simulating a ‘closing-the-gap’ in regulatory restrictiveness in professional services between Germany (restrictive) and the UK (much less restrictive), leading to a positive impact on allocative efficiency, in turn forcefully augmenting labour productivity (more than 12%). This is a considerable economic impact given that the impetus originates only from the professional services sector. Applied to the 2018 EU GDP (conservatively taken as €17 tr.) for the entire EU, this would amount to €170 bn in the longer run as the order of magnitude (see also section 4.1.2.). This is an overestimate because EU countries differ in restrictiveness in complex ways and, in any case, many are not as restrictive as Germany. There seems to be no way of knowing how much of the implied reductions in restrictiveness in professional regulation Member States have actually been realized because there is no authoritative survey of these reforms. In the case of Germany, there has been no new reform in professional qualifications after 2004. The overview of the Mutual Evaluation in 2014/15 does not provide a systematic listing of realized reforms, there seems to be no survey of the realized reforms announced in the national reform plans for this sector and the PRO-SERV indicator is, so far, only a snapshot.

71 Varga, Roeger and In ’t Veld (2013) explain the modelling technicalities in detail and simulate several “structural” reforms for Spain, Greece, Portugal and Italy. Focusing on market competition, they find a slightly negative short-run impact on GDP and jobs, but significant positive GDP effects for the long run (3% in Greece, almost 3% in Portugal and Spain and only 0.3% in Italy (as mark-ups are close to the competitive levels). However, these are goods mark-ups – the query remains how big they might be for professional services. A similar exercise is done for entry cost reduction but again in goods. Many other simulations studies of structural reforms discussed in Varga et al., op. cit., lump together all kinds of structural reforms and do not focus on professional services as such.

72 However, like in many Member States, there are smaller changes in federal and Landes laws or practices. DG Grow has let the author know that, recently, Germany adjusted its acceptance of foreign tax advisors supplying services in Germany (after a CJEU case) and e.g. a facilitation for teachers in Saxony (leading to a sudden flux of more than 50 positive recognitions in 2017).
A new data collection for PRO-SERV would provide a perspective on reforms in this area which might be stylized in a simulation of GDP effects.

For France, however, some interesting empirical simulations have been produced. In Inspection Generale de Finance (2013) it is shown that proposed reduction of restrictive regulation for a group of 37 regulated professions would increase GDP by 0.5% and jobs with 120,000 over 5 years. Corugedo & Perez Ruiz (2014), relying on input-output analysis for France, simulate the following: a 6% cut in regulatory barriers to entry in services (so, not solely professional services) leads to a 1% increase in total factor productivity, in turn inducing almost 2% increase in GDP due to amplification effects. The latter reflect positive spill-overs to forward-linked sectors in the wider economy, including manufacturing.

3.3.3. Better functioning of the Services directive

The economic benefits of the complete implementation of the Services directive have long been expected to be quite large. In the period 2010 to 2018 a number of legislative and implementation activities have been undertaken (see section 3.2.3.) but these have not resulted in anywhere near full completion of the implementation. Therefore, there remains a significant potential of future benefits that will be discussed in section 4.1.3.

That the benefits of full implementation might well be quite large is not so surprising because the sectoral scope of the directive is extremely large, because the initial (ex ante) restrictions were considerable or even high in many EU countries, because a number of EU countries maintained – in part – pretty protectionist regulatory practices which are now prohibited or only allowed under strict disciplines, and, finally, because the economic size of the relevant services sectors is unusually large, as much as some 45% of EU GDP in terms of their value-added.

The economic literature on the economics of the Services directive can be divided into three episodes. The first episode saw publications anticipating the directive’s adoption or following directly after its enactment. There are two major problems with these contributions. One is that they were based on the original 2004 Commission proposal, with the origin principle as the basis, which was removed later. The other problem was data, always a problem to be sure but this was initially particularly large, so ingenious indirect ways had to be conceived to tackle the question. In Monteagudo, Rutkowski & Lorenzano (2012, pp. 11 – 16), this early literature is carefully discussed, with its inevitable shortcomings. It shall not be discussed here as the study from Monteagudo et al, op, cit, has overtaken the early work.

The second episode is dominated by the Monteagudo et all study and a repeat version, with newer data from the Member States, three years later. This section will be based on that work.

The third episode, until late 2018, comprises a few scattered though interesting contributions, but none of these move beyond either partial approaches or beyond a purely micro-economic approach, showing how market performance can improve with the application of the directive. No GDP estimates are available.

The great advantage from the Monteagudo et al study is that it attempts to derive GDP effects from Member States’ data showing the factual removal (or not) of barriers that should be removed under the Services directive. This is very data intensive and such data is not readily available. However, in 2010 EU

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73 Exhibiting weak competition.
Member States (and the Commission) engaged in a major Mutual Evaluation exercise for a year yielding exactly such data as the very basis for the evaluation.

Also, the second exercise in 2014/5 could rely on reporting from the Member States, for the period following the Mutual Evaluation. The first study by Monteagudo et al., op. cit., produced the following estimates:

1. The benefits from the initial screening and national reforms driven by the Services directive amount to 0.8% of EU GDP. In terms of the EU’s 2018 GDP this would amount to some €146 bn.

2. The potential for further economic gains depend on assumptions made for a simulation in the Monteagudo et al model. We refer to section 4.1.3. One scenario by the authors assumes that all EU countries would somehow become an ‘ideal’ EU country with an EU level average of barriers: this yields another 0.4%. Another scenario assumes a near-complete reduction of barriers as required by the directive, and this would yield some additional (to the first 0.8%) 1.8% of EU GDP.

3. The effects on Member States of the first 0.8% of EU GDP vary greatly over a range of 0.3% to 1.5% of their respective GDP.

4. The effects on intra-EU trade and FDI amount to respectively some 7% and some 4%. It is quite possible that these effects are larger in the longer run, but the model has been elaborated only for the shorter run (hence, labour productivity effects remain very small, as these take time). It also implies, as the authors confirm, that the ‘domestic channel’ of generating these benefits (i.e. lower restrictiveness) is much more important in economic terms than the ‘cross border channel’.

5. Interestingly, and often overlooked, the frequently quoted 0.8% is an underestimate for an important reason: only about half of the economic size of what falls under the directive has been included in the exercise (covering some 20% of EU GDP). Twenty services sectors falling under the directive were included, on the advice of experts asked to specify which sectors would tend to be mainly affected. Thus, when including the remaining sectors under the directive (another 20% of EU GDP), one might mechanically extrapolate the initial effect from 0.8% to some 1.6% of EU GDP but this would not be justified as the left-out sectors would be much less affected. A reasonable (and prudent) ‘guesstimate’ would be that the impact would amount to one-fourth of that of the other sectors: that is, 0.20% of EU GDP which in 2018 would be some €34 bn.

6. The study also assessed the benefits of the Points of Single Contact (PSC). For reasons of data scarcity, it relied on the World Bank’s data base for ‘Doing Business’ which is not a good replica of the aspects of the Points of Single Contact – but better second-best than none. In any event, the Points of Single Contact have remained a headache of the Services directive, even though Arts 5 – 8 stress various forms of simplification and facilitation. A report in 2015 found that the performance of PSCs is ‘mediocre’, both in terms of the requirements of the directive and the Charter for PSCs but also with respect to business expectations. A recent structured self-assessment in the Single Market Scoreboard showed progress once gain but many Member States fail to deliver what is expected.

74 The left-out sectors include: one big sector (wholesale) but which is suspected not to suffer too much from barriers, and a range of other sectors such as training & private education services, (car) rentals and leasing services, information society services (e.g. publishing for print and web, news agencies, computer programming), many business-related services (e.g. advertising, office maintenance, management consultancy, event organisation, debt recovery, and recruitment services) and leisure services, other than travel agencies (which are covered) (e.g. sports centres and amusement parks).


For instance, e-signature and e-ID remain a considerable problem, and details on procedures are often insufficient. The simulation in Monteagudo et al., op. cit., demonstrates that such simplification and facilitation yield valuable benefits. The already realized progress in late 2011 with respect to the Points of Single Contacts is estimated to generate benefits of 0.133% of EU GDP (some €22 bn). In the medium run the PSCs should be combined with procedural streamlining, as the directive’s spirit indicates, and may yield some additional 0.06% - 0.15% of EU GDP and in the longer run even 0.09% - 0.21% of EU GDP. The medium run after 2011 would reasonably cover the period 2012 to 2018. With a mid-point of the medium-term estimate of 0.1%, the benefits amount to €17 bn.

The second exercise was a repeat\(^77\) of the study with newer data, namely, the implementation of the directive after 2011, more precisely over 2012-2014. This study resulted in an estimated 0.1% additional GDP effect (some €17 bn) for what was reformed in the period up to the end of 2014. Given that there was still a substantial reform ‘residual’ with the Member States, this result is disappointing. One can interpret this as a disinterest of Member States to pursue a full implementation of the Services directive. It confirms the overall thrust of section 3.2.3. Indeed, also the background data confirm this. In Figure 10 it is shown that 12 Member States did not undertake any services reform in this period and two exhibit a reversal towards restrictiveness. Of the remaining 13 Member States (Croatia is not yet in), 10 were either under economic adjustment programmes (due to the crisis) or were given CSRs in the European Semester. Worse, six Member States without any reforms had been given CSRs, and Ireland, in an adjustment programme at the time, even showed a mixed picture.

\(^{77}\) Technically, it was not exactly a repeat, in one respect at least. For simplification reasons, the formerly estimated productivity shocks are also used for the new calculation, under the facilitating assumption of a linear relationship between that productivity shock and the GDP impact per country.

Altogether, in the period up to 2018, the following estimated economic benefits of the implementation of the Services directive have been realized so far: €146 bn + €34 bn + €22 bn + €17 bn + €17 bn = €236 bn. Given the method of calculation, it is a proxy and one has to regard this figure as being subject to considerable uncertainty.

\(^{77}\)
No new attempt to monitor and assess economically the progress in implementing the Services directive has been undertaken. This might have been discouraged by the attitude of the Member States on further reforms but it is also data intensive which acts as an impediment. Late 2018 the European Commission commissioned an objective external investigation of the restrictions of 28 Member States and the three EEA/EFTA countries under the relevant articles of the directive. This data collection might serve as a data base for renewed estimates of the benefits of further implementation and reforms. An advantage might well be that, if (an important ‘if’) data collection is well done, it would no longer depend on the administrations of the Member States; it is not impossible that the reporting might be of higher quality.

3.3.4. Lowering barriers in retail

Detailed studies (cf. section 2.2.2, item iv., and section 3.2.4.) on retail restrictions have shown clearly that retail is subjected to considerable and often heavy regulation (and slow application upon a request to enter) at regional and local levels in the EU. Much of this regulation would seem to be justified in terms of aims, although at times the means to pursue the objectives exhibit excessive restrictiveness, or are of doubtful legality or even non-transparent, and their application of unpredictable duration. But the objectives frequently tend to incorporate a strong element of local specificity as well. It is therefore a particularly difficult area of regulation to assess, and even more so from an EU-level point of view. So far, the economics of retail regulation have typically focussed on issues of local, regional and national competition and market functioning, including the churn rate and mark-ups, and the related competitiveness. The degree of restrictiveness may go so far that a range of negative effects become unavoidable. Quoting the Commission from its economic assessment underpinning its communication on ‘A European retail sector fit for the 21st century’ is telling: “Stepping up reforms to reduce regulatory barriers in the retail sector would have a number of positive economic effects. Increased competitive pressures would lead to the entry and survival of more efficient and innovative firms. Consumers would enjoy lower prices, more variety, innovation and higher quality. This would also have positive spill-over effects in other sectors of the EU economy. This is particularly needed in the wake of the digital revolution. Retail regulatory frameworks should be modernised to allow retailers to better address the challenges they are facing without prejudicing the public policy objectives at stake”.

The Commission has developed a Retail Restrictiveness Indicator (RRI) in 2018, both for restrictions with respect to establishment and with respect to operational restrictions. See Figure 11. The establishment pillar of the RRI is striking for its enormous discrepancies between Member States, ranging from around 1 to around 4.3. These discrepancies are less extreme for the operations restrictions pillar, but still the range is from 0.5 to 3.2; however, the overall picture for operation restrictions is far less intrusive than for establishment, with the former remaining below 1 for 15 Member States. Even though many of these regulatory restrictions may well be justified by their objectives, there is a lingering doubt about the instruments and their application. In any event, with some reservation because of the local character of the issues at stake, it is hard to defend that all such measures and their restrictive nature in

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78 Art. 9 (2 restrictions), Art. 13/4, Art. 14 (5 restrictions), Art. 15 (7 restrictions), Art. 16 (5 restrictions), Art. 23 (1 restriction), Art. 25 (1 restriction) as well as 4 other horizontal restrictions (e.g. professional title protection, advertising, etc.). This is a little more comprehensive than the restrictions covered in Monteagudo et al. (see their Table 2, p. 66). Thus, Art. 13/4 is not included in the latter, Art. 14 had ‘only’ 4 restrictions, Art. 15 ‘only’ & Art. 23 was also not in, neither were the four other restrictions such as ‘title protection’, etc. On the other hand, under Art. 9 three distinct retail restrictions were included in Monteagudo. Overall, the new data base is slightly more comprehensive than in Monteagudo. This might also have been helped by the new PRO-SERV indicator for professionals.


80 On a range from 0 to 6.
the most interventionist EU countries can be fully justified and are proportionate, when in many other EU countries the degree of restrictiveness is far lower. This goes for both establishment and for operational issues. If this is correct, there must be a considerable potential to go for better retail regulation, and this should be expected to generate appreciable economic benefits. Moreover, as clearly demonstrated in the economic analysis and the descriptions of the disadvantages of brick-and-mortar shops compared to online shops, given ill-adapted regulation in digital times, the implied discrimination not only seems to inflict an unfair burden on brick-and-mortar but also prevents these shops to compete with agility with the new competitors.

Figure 11. The Retail Restrictiveness Indicator, on establishment and operations

Only some of the regulatory retail restrictiveness is incorporated in the empirical analysis of the economic impact of the Services directive. The refinement of the RRI has not, so far, been exploited for estimates of a macro-economic nature. This is likely to be difficult because some regulations or applications are truly local, whereas other restrictions are hard to interpret and assess.\(^81\) Also, the transmission channels may not always be so clear as for a more stylized approach, i.e. the ‘trade channel’ will be of trivial importance in retail (but crucial in terms of FDI) and the ‘domestic channel’ might be even more crucial than in the overall analysis of the Services directive.\(^82\)

\(^{81}\) For instance, the ‘level of detail in planning’ can be stretched and interpreted in several ways; restrictions on shop opening hours has a great variety; etc.

In any event, although with the RRI a suitable data base is available, no macro estimates of the economic impact of a reduction of retail restrictiveness are available for the EU.

3.4. Economic benefits and ex-post evaluation

The quantified economic benefits from achievements in the legislative and related work with respect to services are not easy to come by. As noted, it is frustratingly rare to find quantitative economic benefits in the impact assessments relevant to the present study. These ex-ante exercises tend to be mainly focused on qualitative benefits, valuable in themselves usually but highly complicated and diverse, whilst unsuitable to present them in an aggregate form or figure, not even as an order-of-magnitude. Of course, quantified benefits should not be overrated either: they might miss out on what is simply not quantifiable, and ignore the many subtleties which are done at least some justice in an elaborate qualitative assessment. In these aspects, many impact assessments are insightful and should help MEPs, business, citizens and journalists to appreciate the expected effects of a draft piece of legislation and the rationale of the proposal.

However, when the aim is to foster growth and productivity of the EU economy via the more effective exploitation of the single services market, the ‘bottom-line’ query to ask what the single services market strategy does for economic growth is justified. Whereas it is inappropriate and unduly narrow to concentrate solely on that query, as the single market yields many qualitative benefits too, the bottom-line query does deserve an answer. And if the answer cannot be extracted from the ex-ante impact assessments, one might nevertheless have justified expectations from ex-post evaluation a number of years later.

Unfortunately, it turns out that ex-post evaluations do not provide such quantified benefits for the relevant achievements listed before. This has several reasons. First, the period of evaluation cannot be too short, say, a minimum of five years or so. This must imply that evaluations of legislation enacted in 2013 or later would only be conducted in the course of 2018 at the earliest and hence be too late for the present study. In other words, most of the achievements of the 7th and 8th legislatures would simply not be candidates for ex-post evaluation today. Second, the system of ex-post evaluation has only been structured and tightened quite recently. This has been a very long process that need not be detailed in the present study. Nevertheless, only recently Commission-wide guidelines have been developed, the publication and traceability of evaluations have been improved and other improvements have been introduced, such as the intention to proceed ‘back-to-back’, that is, basing the proposed amendment of a directive/regulation on a prior evaluation. The first complete repository of evaluations and studies covering the year 2016 was published in 2017. Having this repository seems trivial but two examples relevant for the present study illustrate that – without such an annual overview – ex-post evaluations are unlikely to receive the attention they deserve or indeed even be known to more than a few.

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83 Also keeping in mind the period before the directive or regulation is actually coming into force and the period of implementation for the Member States. Moreover, frequently, evaluations are long-term projects of more than a year.

84 A quick summary can be found in European Court of Auditors (2018), pp. 9 – 12.


86 As Lorna Schreffer (2017, p. 5) writes “Until recently, the overall picture of Commission evaluations remained complex and difficult to reconstruct for external actors.” and there was no unique repository. Since there are many hundreds of evaluations, not to mention ‘supporting studies’, this amounted to a major problem. See the EPRS study ‘Evaluation in the European Commission’ of November 2017, www.europarl.europa.eu/RegData/etudes/STUD/2017/61102/EPRS_STU(2017)611020_EN.pdf.

One example is the location of the evaluation of the 2006 Services directive: this is not separately published (and hence no separate press release) but tucked away in Annex 4 of the Impact Assessment of the draft Regulation introducing a European e-card, a most unlikely place. Another example concerns the assessment of the functioning of Art. 20(2) of the Services directive on discrimination. This is also not separately published but hidden in Annex 8 of the Impact Assessment of the geo-blocking proposal, hardly the location one would expect. All these points would seem to indicate that the recent improvements were necessary and that, before, evaluations did not yet appear to be crucial in the policy cycle of the Commission.

Third, and most important, the set-up of ex-post evaluations is based on an evidence-based judgment of whether the implemented directive or regulation adheres to five criteria, which make entirely sense, but do not or not necessarily include (quantified) economic benefits. Thus, ex-post evaluations ask whether the regulatory intervention is:

- effective
- efficient
- relevant, given the current needs
- coherent, both internally and with other EU regulation or policies
- and has achieved ‘EU value-added’.

Two of these criteria might be of importance for (quantified) benefits: efficiency and ‘EU value-added’. The efficiency criterion is about costs, for example, to what extent are the costs proportionate to the benefits, or, to what extent are the costs justified, or, whether the regulatory intervention has been cost effective, and/or whether there are significant discrepancies in costs between Member States. By definition, the costs of regulation are critical for the net benefits of (EU) regulation. For simplicity, let us exemplify the evaluation about costs on the basis of the two ex-post evaluations mentioned previously. In the case of the evaluation of Art. 20(2) of the Service directive (no discrimination for or between service recipients), there is no available data on the costs of ‘assistance bodies’ or indeed any other costs, let alone on cost effectiveness. In the case of the evaluation of the Services directive, there must be costs of setting up and managing the Points of Single Contact as well as for administrative cooperation between Member States. However, ‘there are no details available on the costs’.

The criterion of ‘EU value added’ turns out to be not so much about the (quantified) benefits but rather about the underpinning of the subsidiarity test: does the regulatory intervention at EU level bring ‘added value’ that could not be achieved by Member States at the national level? In theory, one could perhaps imagine that this question might be answered by comparing two sets of quantified benefits, but this is typically not the nature of the answers provided. Again, let us exemplify such answers with the two cases mentioned above. In the case of the evaluation of Art. 20(2) of the Services directive (for recipients of cross-border services), the problem was the lack of enforcement by Member States and, hence, the lack of substantive added value – due to the non-fulfilment of what the directive provision regulates. The need for EU action is confirmed, also by public consultation. The conclusion about ‘value added’ is then that “…it would not be possible to achieve the objectives of the provision without an EU intervention” (p. 138). In the case of the evaluation of the Services directive, the Commission argues that the changes brought about by the directive would not have taken place without action at EU level, in part on the basis of what degree of inaction Member States displayed even (in the years before 2006)

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when the Council adopted regular conclusions about the urgent need for a deeper single market for services and for national reforms. “In conclusion, action at EU level has been creating clear value added...”, also confirmed by stakeholder feedback. The evaluation of the Services directive does sum up (in the beginning) the quantitative benefits as estimated by Monteagudo et al (2012), after the mutual evaluation, as well as a follow-up exercise in 2015. (see section 3.3.3 above). But, curiously, this is summarized only because the Commission is aware how important it is to utilize the critical argument of the (quantified) economic benefits, but not because the methodology of ex-post evaluation imposes it!

The overall inference is that ex-post evaluation is not or at best only marginally helpful to obtain a good idea of the (quantified) economic benefits of an implemented directive or regulation. In REFIT evaluations, this is bound to be even more difficult as an entire cluster or family of directives tend to be scrutinized. Moreover, REFIT is mainly focused on simplification and cost minimization, not on (quantified) economic benefits.93 In general, it is more difficult and costly to conduct economic analysis on an implemented regulation or directive than to simulate an assumed improvement of the rules or a hypothetical reduction of intra-EU barriers in e.g. services. This extra difficulty is due to a lack of data (and to generate such data might be a tall order) and the time-consuming nature of the analysis; it might also turn out to be rather costly in some instances. Nevertheless, it is important because simulated benefits tend to be overly optimistic about the outcome. In this respect, it is interesting to observe that the Commission has commissioned the detailed collection of information for all 31 EEA countries about the lingering restrictions falling under the Services directive, a huge exercise that has been initiated in December 2018 (and might take up to a year). The data could be used for a renewed ex-post evaluation of the quantified economic benefits as well as the benefits potential left.

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93 It should be noted that the initial clarity about REFIT’s purposes seems to have waned, and REFIT evaluations do no longer seem to be as distinctive as in the beginning. See the detailed criticism of the European Court of Auditors (2018), pp. 32/3.
4. ECONOMIC POTENTIAL OF DEEPER SERVICES MARKET INTEGRATION

KEY FINDINGS

Despite the many efforts to deepen the single services markets, described in chapter 3, there can be no doubt that lingering barriers are still prominent and numerous. This must mean that the unrealized benefits potential is still large. It is in the EU and Member States’ interest to exploit this potential vigorously. The – inevitably crude – estimates of potential benefits are the following: for public services procurement some €20 bn (but without any hard knowledge as yet on the concessions directive), for ‘better regulation’ of professional services some €85 bn and for the services under the Services directive (other than professional services, and including the Points of Single Contact) some €284 bn. Altogether some €369 bn. These figures are best seen as orders of magnitude. It is a huge potential for the EU, waiting to be exploited.

The policy suggestions include, among other things, guidance and more legal certainty for concessions in public services procurement and firm national strategies on digitalization of procurement as well as on ‘strategic’ procurement e.g. reducing the enormous fragmentation of public contracting agencies. For professional services, the low recognition rates for hundreds of services other than the usually discussed heavy ones (in the new PRO-SERV indicator) needs attention and infringement policy should remain vigilant, although best preceded by CSRs so as to have constructive discussions with the Member States. There should be an annual report bringing a range of aspects coherently together (including proportionality tests) as a strategic tool to raise the prominence of the services debate and improve results with the Member States. Under the very broad Services directive, some sectors need special attention (e.g. construction and cross-border installation services, with better links with the local level) but the overriding problem remains the lack of ‘ownership’ of national government and their leaders to credibly follow up on their general support for a deep EU single service market. On retail, the new Retail Restrictiveness Indicator should be broadened, discussed intensively with Member States and regions and used for more systematic economic analysis. Also, guidance on the proportionality of retail regulatory restrictiveness is needed for all authorities at all government levels.

Chapter 3 has shown that considerable efforts by the Commission and Member States have been undertaken to further pursue EU services market integration (under EP/IMCO) by means of a range of implementation approaches and by additional EU legislation. Despite these efforts, there can be no doubt that lingering barriers are still prominent and numerous. The second study by the Commission of the economic impact of the additional removal of barriers under the Services directive in the period 2012 – 2014 demonstrated that reform efforts by Member States had become very selective, with a dozen EU countries not undertaking any reforms. The lengthy mutual evaluation of the professional services regulation between the Member States in 2014 – 2015 yielded relative little progress. The evidence provided by new more sophisticated EU regulatory restrictiveness indicators such as the RRI and PRO-SERV as well as by regular CSRs in the European Semester and several very detailed studies on such barriers in e.g. construction and installation services provided a wealth of evidence about further reform needs. There is also likely to be potential for further gains in the area of public services procurement and for concessions. The new European Parliament and the new Commission later in 2019 should therefore be interested in the further potential to generate economic benefits for the EU. From all the above it is very likely that this potential is large and worthwhile. Where feasible, despite the major knowledge gaps, this potential will be set out in section 4.1. Some policy suggestions on how...
to pursue deepening of services market integration which should seek to generate these benefits is provided in section 4.2.

4.1. The benefit potential that can be estimated

4.1.1. Unrealized potential of benefits in public procurement

As section 3.3.1 has indicated, there is no authoritative macro-economic estimate of the remaining potential in EU public procurement. What can be provided are orders of magnitude which are both rather crude and incomplete. Section 3.3.1. found that the benefits up to 2018 can be summarized as being in a range of €22 bn to 65 bn, adding revised, updated and upscaled benefits a la Cecchini with a very simple calculation of some benefits from e-procurement. Of course, not all of that would apply to services, perhaps at most one-third. Taking one-third of the mid-point of the range, we end up with €14 bn for services procurement before the new legislature would come in. However, the benefits from the new 2014 directives, including the concessions directive (which is services only), and from national reforms which are beginning to be undertaken, are not in. Given the late implementation of these directives and the very recent obligation (2018 only) of using e-procurement, it will be during the next legislature that the benefits of these initiatives will gradually be realized. Moreover, the ‘strategic’ procurement approach in a partnership between the Member States and the Commission has only barely begun, with very different starting positions between Member States. Finally, much is expected from a more structural approach to e-procurement that goes much further than mere electronic bidding: it would imply 8 steps and require appreciable changes in the procurement systems. Thus, Becker et al (2019) estimate benefits of €2.6 bn for digital end-to-end processes and another €2.6 bn for interoperability and one-stop-shop portals. Again, one-third of this €5.2 bn amounts to around €1.7 bn. For the other initiatives, it is simply not possible to estimate their benefits potential at the present stage, let alone, precisely for services procurement. However, it is important to remember that this potential is likely to be significant, even when no ‘hard empirical evidence’ can be provided.

One roundabout way to give an order of magnitude for the future potential is to rely on the remaining CoNE estimate from Europe Economics (2014, see also 3.3.1), namely a range of €36.5 bn to €66.5 bn for 2012. In 2019 that range would be some €40 bn to €70 bn. For services one could again take one-third, i.e. €13 bn to €23 bn. On the one hand, this amount would be an upper estimate because the public procurement landscape in 1988 (when the Cecchini report was drafted) was incomparably more problematic for EU-wide competition and harmonisation (like the 2004 directives) was still limited. So the potential at the time was enormous. The situation today has improved considerably, even when it is unsatisfactory for today’s understanding. Therefore, relying on the potential of 30 years ago might unduly inflate the estimates. On the other hand, in the days of the Cecchini report, Member States were of course not ‘digital’ in any way and, hence, some of the potential we discern today cannot possibly be part of the potential as modelled at the time.

The conclusion is that the order of magnitude of the potential benefits of better EU public services procurement under the new legislature would be in the range of €14.7 bn to €24.7 bn, with a mid-point of €19.7 bn (rounded to €20 bn). This is little more than a back-of-the-envelope and awaits a more sophisticated and dedicated economic estimate, based on more reliable data.

4.1.2. Unrealized potential of benefits in professional qualifications

Section 3.3.2. discusses two types of impacts of the EU and Member States’ regimes: potential and actual intra-EU cross-border mobility of professionals for establishment, and, the regulatory restrictiveness for professionals and the possible effects of a reduction (where appropriate) of this restrictiveness. It should not be forgotten that the regulatory restrictiveness of professional
qualifications is of course critical for actual and potential intra-EU mobility, but that the regulatory restrictiveness of professional services is a far broader question (and falls largely under the Services directive). This can best be understood by going to PRO-SERV, the new indicator that brings together no less than 21 aspects of such regulation.94

On the actual and potential mobility, no firm empirical conclusions have been offered. What is clear is that automatic recognition (based on harmonisation) has helped enormously in facilitating intra-EU mobility of the relevant professionals. The potential mobility is radically lower for the typical regulated professions (often) seen as restrictively regulated and not harmonised, e.g. the seven professions in the PRO-SERV indicator and a few other ones. Nonetheless, it requires a careful analysis of the determinants of demand, given the non-regulatory constraints applicable in some of these sectors, before the radically lower numbers can be convincingly related to restrictiveness. Take auditors/accountants as an example with only 1417 recognitions. Going from EU country A to B, the general capability and competence in accounting is a necessary but insufficient condition to serve effectively at the level required, with the degree of trust from clients and knowledge of local laws, institutions, company and taxation practices, not to speak of the language. Thus, even when restrictiveness would be lower, the hurdles for establishment in B remain pretty high. Only very careful and detailed analysis can verify the role of restrictiveness in assessing whether 1417 recognitions is significantly below what could be expected under a less restrictive but responsible national regime. Moreover, it is rarely realized (by outsiders) how much unnecessary costs are incurred (including loss of time, up to 6 months or so) when a service provider is firmly intended to establish in another Member State. A report by Ecorys (2017), commissioned by the European Commission, describes and ‘costs’ in painstaking detail the administrative formalities in accessing markets cross-border for accountancy, engineering and architecture for 17 EU countries (that is, apart from recognition or other rules on professionals). Many of the costs and complications as well as waiting time are unnecessary: “...there seems to be considerable scope to simplify or reduce the administrative requirements to prove compliance, such as where documents already have been assessed in the home country, or even the host country” (p.8). Dependent on the scenario, costs may exceed €1 bn but might even reach as much as €3 bn in total. However, it is interesting that, in each one of the scenarios, accountancy incurs significantly lower costs than engineering or architecture, whilst at the same time, the overall total of recognitions in the EU for accountants is so low.

As shown in section 3.3.2., the detailed knowledge on the degree and details of regulatory restrictiveness with respect to professional qualifications in the EU has much improved over the last decade. With respect to qualifications more narrowly, as well as with respect to professional services (going beyond mere qualifications, hence, applicable under the Services directive), a number of reforms at Member States level have been implemented. The studies commissioned by the European Commission on selected reforms of professional services in some Member States95 confirm the general case for reforms but also show the differentiation between sectors and Member States. They cannot be utilized for a macro-economic estimate of the benefits of ‘better regulation’ of professional qualifications, and not even for that of professional services.

Some inferences from section 3.3.2. may be helpful to arrive at orders of magnitude of the potential of benefits of professional services under the new legislature. The study on Germany (Canton, Thum-Thysen & Vogel, 2017) finds that a closing-the-gap simulation with the UK (not the lowest level of regulatory restrictiveness in the EU) would yield 1% additional GDP in the longer run. As noted, this

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94 The reader is referred to Pelkmans (2017, for the EP/IMCPO); see also 3.2.2.

95 See https://ec.europa.eu/growth/content/effects-reforms-regulatory-requirements-access-professions-country-based-case-studies-0_en comprise 6 academic studies of diverse instances of liberalisation of service sectors and, in one case, a tightening.
cannot be generalized for the EU given the differentiation in restrictiveness in professional qualifications. A prudent ‘guesstimate’ amounts to one-half of this estimate, 0.5% of EU GDP. For France, two studies found resp. 0.5% extra GDP for (37) regulated professions and 2% extra GDP for all services sectors\(^{96}\) (including professional qualifications); since the latter has much wider coverage, being on the prudent side, the 0.5% might well apply here, too. In Belgium, a recent study (Ingelbrecht, Kegels & Verwerft, 2018) simulated two scenarios for reform of professional services (here, legal, accounting and architectural services). The light scenario\(^{97}\) generates an extra GDP of 0.15% in the short run and 0.21% in the long run. The strong scenario\(^{98}\) generates additional GDP of 0.29% in the short run and 0.39% in the long run. Since this is concerned with only three professional services, be it restrictively regulated ones, a wider coverage of professions may reasonably be assumed to arrive at 0.5 of GDP as well. Clearly, this is a potential for the longer run, perhaps even beyond the next legislature. This order of magnitude amounts to a potential of around €85 bn for the medium to longer run.

4.1.3. Unrealized potential of benefits for services under the Services directive
The present study focuses largely on the services falling under the Services directive, with, however, two separate subsections on respectively professional qualifications and services, and retail services. It has proven possible to obtain an estimate of the benefits potential for professional services (see above). In the case of retail services, the much greater knowledge of regulatory restrictiveness in retail today has not yet led to a macro-economic estimate of the benefits potential of retail services separately (see 4.1.4). The benefits potential for services falling under the Services directive will therefore be derived from the overall economic analysis of the implied reduction (where appropriate) of restrictiveness after the implementation of the Directive. This analysis is presented in section 3.3.3. The following will derive the remaining benefits potential from that analysis.

Monteagudo et al (2012) remains the leading source. Section 3.3.3 shows that the estimated realized benefits during the previous two legislatures (at least up until 2015) amounted to 0.9% of EU GDP i.e. €163 bn (namely, 2.6% initial total potential; with 0.8% realized until 2011 and another 0.1% realized until 2015). However, we adjusted this for the presumed benefits of the sectors left-out from the simulation (some €34 bn), plus the estimated benefits from the first stage of the Points of Single Contact (€22 bn) and the second stage (€17 bn). Altogether some €236 bn.

Thus, for the upcoming period, the remaining benefits potential can be calculated as follows. The total remaining benefits potential according to Monteagudo et al. is 1.7% of EU GDP (€289 bn). This has to be corrected for the left-out sectors and this is done in the same way as in section 3.3.3, namely one-fourth of the modelled gains: €72 bn. For the full potential of the Points of Single Contacts, another €8 bn is added.\(^{99}\) Hence, the full potential benefits to be reaped in the ideal scenario amount to €369 bn. However, this includes the benefits potential of professional services (section 4.1.2), being €85 bn. The benefits potential of the Services directive’s impact – keeping the benefits of the lower restrictiveness of professional services separate – is €284 bn or 1.67% of EU’s 2018 GDP.

\(^{97}\) Reducing the OECD’s NMR index from 2.63 to 2.16.
\(^{98}\) Reducing the OECD’s NMR index from 2.63 to 1.74.
\(^{99}\) Of the longer run benefits of the PSCs, some 0.09% – 0.21% of EU GDP, we take the mid-point (so, a little conservative), that is, 0.15%. Deduct 0.1% being the medium-term gains, already incorporated in the total of section 3.3.3, and 0.05% remains, which amounts to €8 bn.
Of course, as noted several times in this study, this calculation is a crude proxy and awaits a more sophisticated new empirical economic study with newer data. It is also fails to incorporate other crucial aspects of the ‘better regulation of services’ under the Services directive.

One such aspect is quality, a key issue for consumers and business users. Moreover, it is quite possible that longer-run dynamic effects will play a role for the cross-border channel (trade and FDI) which would render their impact more important but these have not been incorporated in the model.

With respect to quality, it is important to note that, so far, economic research has had difficulties in identifying a robust and verifiable relationship between the regulation of services and the delivered quality, or, for that matter the quality as perceived by consumers and users. The few attempts in the literature (some from the US) have failed to confirm the frequent assertion from providers originating from restrictively regulating countries that such regulation serves the purpose of ensuring high(er) quality. But these attempts are plagued by the intrinsic problems of finding hard indicators of quality of professional or some other services. The present study focuses on the verifiable and quantified benefits of better services regulation in a properly functioning single market, not on the quality issue, important as it is. Nonetheless, it is interesting that the Commission has undertaken an attempt to produce 6 case-studies in 6 distinct EU countries, with a view to improve the understanding of the relationship between regulation and quality. The work conducted shows not only that the definition of quality varies a lot within and between markets but also that quality is very hard to measure (a number of indicators have been used). Moreover, quality is multi-dimensional. Furthermore, the variability in the intensity of regulation can be a problem in the analysis. The prudent conclusion is that an increase in availability of service providers and/or competition does not necessarily have negative effects on the quality of the services provided or on survey measures of consumer satisfaction and well-being. But the authors stress that the work does not provide final conclusions.

4.1.4. Unrealized potential of benefits for retail

Given the great variability of the regulatory restrictiveness in retail, as shown in sections 3.2.4 and 3.3.4, there is bound to be a significant potential of economic benefits if disproportionate retail regulation (esp. as to entry but in some EU countries, operational regulation, too) in many Member States would be reduced and the unjustified restrictions removed. And given the size of the retail sector, with its 4.5% of EU GDP and widespread backward linkages in both goods and services sectors, and the negative impact of such restrictiveness on ICT investment so crucial in this sector, it is hardly a guess that the potential benefits would run into many billions of euros. However, it seems that a macro-economic estimate of a reduction of regulatory restrictiveness is not available, so there is no point in speculating about the quantification. For the purpose of this study, the benefits of a reduction of restrictiveness where appropriate is amalgamated in the overall benefits of the better regulation in the framework of the Services directive.

4.2. Suggestions for future services policies

The structure of the study will also be maintained for this section: section 4.2.1 will sum up the suggestions for policy initiatives and implementation issues in EU public services procurement, section 4.2.2 for professional services, 4.2.3 for the services directive and 4.2.4 for retail. Since the main focus of the present study is on the achievements of the present EU legislator (since 2010) and the benefits

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100 The 6 studies have been published in 2019 together. See https://publications.europa.eu/en/publications-detail/-/publications/bfd2b0e8-1943-11ee-8d04-01aa75ed71a1/language-en

101 If the longer-run direct and indirect (via spillovers/linkages) economic benefits would amount to 0.3% of EU GDP, it would already amount to some €50 bn.
acquired in that period as well as the benefits potential for the next EP and Commission period, the policy suggestions will remain short and indicative only.

At the outset, it is critical to underline that the overall importance of further policy initiatives in the relevant services sectors and firm pursuit of implementation issues should be fully realized by stakeholders and Member States’ and regional or local governments. From recent history in the EU circuit, and in particular in the Council, this is clearly not the case. It is perhaps not even far-fetched to suggest that some Member States’ governments, a few stakeholders and several local governments are in a state of denial with respect to particular aspects of these reforms. The EU is a services economy and even the competitiveness of EU manufacturing in Europe and worldwide depends crucially on an ever growing share of services inputs. As a service economy (almost three-quarter of EU GDP arises from services) the EU can only attain a secular growth path if services are well (i.e. proportionately) regulated and only where justified in the public interest. In turn, this should also help to stimulate innovation as it pays in a more flexible and receptible environment. The EU’s productivity problem in services is not due to the nature of services or to Baumol’s law, as shown by the US. The US services industry shows higher productivity growth than its EU counterpart for decades. Copenhagen Economics (2018, p. 35) has demonstrated that (a) the recent crisis has cost the EU dear in terms of services productivity, knocking out the entire catching up\(^{102}\) with US services productivity over 2000-2008 in the period 2009 – 2015; (b) in 2015 EU’s services productivity level had fallen back to about half of that of the US. Pleading for the economic importance for these services reforms is therefore not an ideological advocacy but based on a well-researched and underpinned economic literature as well as on a range of practical policy experiences. The sense of urgency for the EU follows from the long-run productivity problem in services that the EU is suffering from. The competitiveness of manufacturing exports also depends critically on services, as noted, more than hitherto understood: services incorporated in such goods exports amount to some 53% of the value of exports. This, too, calls for a competitive and dynamic EU services market. The next European Commission and the next European Parliament should insist on systematic ‘better regulation’ of services as a priority. Section 4.1 has also shown that major GDP increments can be gained for the EU if the potential for benefits would be realized. In other words, the case for powerful policy initiatives and firmer implementation action in services is very strong.

4.2.1. EU public services procurement: suggestions for policy initiatives and implementation

The European Commission has been active over the last 8 years in order to simplify, modernize and render more flexible the system of EU public procurement, also for services. Two directives have been updated and simplified for tenderers, a third (new) directive on concessions\(^{103}\) and a new partnership with the Member States have been proposed for more ‘strategic’ procurement. Given the dates of the coming into force of the directives, the late and improper transposition into national law\(^{104}\) (and the uncertainty about the proper application of the concessions directive) and given the very recent initiatives about strategic procurement, it is primarily during the next legislature of the EP and the new Commission that these achievements have to materialize.

The partnership is expected to: (a) exploit the more flexible rules (e.g. the competitive dialogue) for purposes of innovation (e.g. proto-types, etc.), green products or services and services with an explicit

\(^{102}\) Some 23 points on a scale of US=100, reaching 80 in 2008.

\(^{103}\) As a reminder, a special form of complex services, in fact a contract, usually a public-private partnership, for the specific [part of the] market rather than in the market, for a limited period.

social character but also for concessions and trans-European network investments via public-private partnerships - the MEAT principle should become even more wide-spread or perhaps become mandatory in most instances; (b) help professionalize public buyers (in particular, at regional and local levels); (c) improve access to public procurement (in particular for SMEs, see Becker et al [2019]); (d) improve ‘governance’ with respect to transparency, integrity and better data, as well as remedies; e. stimulate not merely e-procurement but the entire digital transformation of procurement also for cross-border, including the setting up of ‘contract registers’ with full disclosure of all relevant data on signed contracts; (f) reduce systematically the enormous fragmentation of procurement in many EU countries, with many thousands of entities in each EU country (possibly in total up to 350,000 contracting authorities, with all the drawbacks of smaller scale, higher transaction costs and insufficient professionalisation), via cooperative procurement between buyers, central public procurement bodies (or a National Agency for Public Procurement) and intra-EU cross-border cooperation where appropriate. This agenda for national reforms and new practices is ambitious and will take time. The agenda is clearly beneficial for the Member States and should also serve EU objectives of facilitating cross-border procurement and openness as well as economic growth in the EU.

In addition, there are a number of seemingly technical issues which need to be addressed. First is the rate of publication, which is low (4.5% of all procurement contracts, but with some countries being very low e.g. Germany with only 1.2%). Second, and even more worrying, is the steady increase of the share of TED tenders attracting only one single bid (i.e. no competition). This undermines the very purpose of the EU rules. This occurs most frequently in Central Europe. This phenomenon ought to be carefully scrutinised and reasons detected (e.g. are the costs of tenders too high, given the thresholds; are the specifications so specific that the risk of a single bid is ‘invited’; etc.) and addressed. Third, and possibly related, the average numbers of bidders have decreased to around 3 per bid (from around 5 in 2009). This might be explained by the combination of the thresholds, the average costs of a bid in 2009 [€28,000, that would now be around €32,000] and the past records of 5 bidders on average. The key question today is whether the new rules (e.g. submission of only few documents in the bidding phase) make a decisive difference in costs. If so, more bids might be possible.

Focusing, analytically, on services procurement has proven to be next to impossible because only the totals are known and (as far as the author knows) there has not been much detailed research on services procurement. In 2015 105 58% of public purchases were found in security, public administration & defence, social security, education and health, a good deal of which can be expected to be services of a local character, i.e. little cross-border. The now higher threshold for the group of social, cultural and health services should serve to shield typically domestic purchases from unnecessary and often pointless EU requirements. A closer inspection of services procurement more generally, however, would be most desirable. It is also urgent to clear up the issues and consequences of the concessions directive and agree on ‘guidance’ in greater detail for this large segment.

4.2.2. Professional qualifications and services: suggestions for policy initiatives and implementation

Member States regulate the professional qualifications and services and usually they do this differently. This causes barriers and may affect growth negatively. In some professions (mainly medical and paramedical, plus architects) harmonisation of qualifications requirements has proved to be sufficient in order to agree to automatic recognition of the qualifications for mobile professionals. These seven categories of professionals now show considerable intra-EU mobility. In the EU statistics (see text of

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105 See section 3.2.1.
section 3.3.2., following Figure 9) on recognition, however, there are more than 390 categories of professionals with a proven interest in potential mobility. In the large majority of these categories, there is not only no harmonisation but apparently also no private quality accreditation across intra-EU frontiers that could be recognized by EU countries. PRO-SERV has shown in a more refined fashion that there is bound to be a considerable potential to reduce restrictiveness in various ways in many EU countries. However, PRO-SERV only describes 7 categories of professional qualifications, be it important ones.

Little seems to be known about the many other regulated qualifications. The numbers for these many professions in the recognition statistics are generally low; is that due to restrictiveness or a disinterest in intra-EU mobility?

In the US, during the Obama administration, the proliferation of regulated ('licensed') professions in precisely occupations other than the (para)medical ones and the ones in PRO-SERV became an issue of considerable concern. In 5 decades, according to the White House, the share of workers licensed by US States rose from 5% to no less than 25%; incidentally, the EU has about 22% of workers in regulated professions. The barriers to entry and to intra-US migration have become higher, even for (102) lower and medium skilled occupations. The US Institute of Justice (2012) has first published a detailed analysis of these 102 low & moderate income (and skills) occupations and their licensing requirements in all US States and questions repeatedly whether all these regulations and their restrictiveness are not disproportionate or even justified. Although the authors do accept in some cases that there are sound reasons to regulate or regulate more strictly, more-often-than-not this is far from clear and a better explanation seems to be lobbying and political pressure at State level.

This constitutes a lesson for the EU and clearly forms yet another rationalization of the value of the proportionality test for each and every national regulation restricting the access to a profession via qualifications and e.g. titles. The test pays full attention to a proper justification of restrictions, in order to protect consumers and users (or, to pre-empt other market failures), but is supposed to reveal to what extent the means (restrictions) are disproportionate. Nevertheless, it is feared that proportionality tests can only squeeze out the worst cases of excessive restrictiveness which cannot be justified. These worst cases can be transferred to pilot cases with the Member States or even infringements procedures. Beyond those, the discretion for the Member States and the qualitative nature of the test will render further action less easy, unless private accreditation on an EU-wide voluntary basis would develop in certain categories (for some professions, this has been used as a solution for mobility between US States).

But a reader only has to go through the Commission's 2017 reform recommendations for regulation in the 7 professional services in PRO-SERV and having to absorb no less than 130 reform recommendations for various Member States, plus 6 more general recommendations to many Member States (in one case, even about the justification and proportionality of the regulatory regime). The document also shows in painstaking detail the incredible divergence of regimes amongst the Member States, which - in and by itself – is a testimony of the doubtful analytical underpinning of many restrictive interventions in many EU countries. The European Commission should persevere in its efforts

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107 Measured in days of prior education required

to challenge the Member States on all these details which do matter, if ever the EU wants to reap the potential benefits of a single services market.

And indeed, the Commission did act recently: in the January 2019 infringement package, 27 EU Member States (so, all except Denmark) received formal letters of notice as a step in the infringement procedures on undue restrictions for professional qualifications (and a few other services cases).

Excessive restrictiveness is also inimical for economic growth and competition, at the costs for users and consumers, as discussed earlier. Here, the Commission has become ever more active with CSRs in the European Semester. This ought to be continued. In addition, there should be an annual report, with ample publicity, on the national reforms in this domain, in which PRO-SERV, the many proportionality tests having been submitted by Member States, the infringement cases and their outcome in this area, the follow-up of the relevant CSRs of the previous 5 years and the actual reforms by Member States are brought together in a coherent fashion. Such annual reports should be drafted for at least the duration of the next Commission, or longer if necessary. As a strategic tool they need to be used in Council, in EP debates and beyond, in order to prompt the Member States into firmer and sustained action. The underlying idea of these reports is the following aspect of the EU public interest: if Member States insist on their regulatory autonomy (instead of harmonisation at the proportionate level of restrictiveness where justified), they assume a special responsibility to aim for ‘better regulation’ of professional qualifications in the EU, for the purpose of potential and actual mobility and for economic growth and the consumer interest. Verifying annually how this special responsibility is actually exercised is squarely in the EU interest.

4.2.3. Services under dir. 2006/123: suggestions for policy initiatives and implementation

The core question under the Services directive remains what the appropriate regulatory discretion is of Member States, in the absence of harmonisation. The European Commission and the European Parliament have continuous difficulties in the pursuit of the full implementation in word and spirit of the Services directive by Member States, now for more than 12 years. This point should not be misunderstood: a number of Member States have pushed through selected reforms recently and in the years 2007 thru 2009 an unprecedented ‘screening exercise’ of many thousands of laws and decrees in all Member States has taken place, with nearly 1000 new laws and decrees in order to implement the Services directive at home. Moreover, there has been scattered and slow adaptation in response to CSRs (related to the Services directive) in the European Semester, reforms as crisis measures for EU countries under surveillance and reforms in reaction to CJEU rulings. But the glass is still half full with numerous and, at times, severe barriers due to very restrictive regulation in many Member States (but not always for the same issues). In some sectors, like construction, recent detailed studies have shed more light on the national and local details of restrictions and administrative practices which might well throttle competition and surely cripple intra-EU market integration in such services (which indeed it is very low). The same goes for related services such as regarding installations in buildings, etc. The local aspects of construction regulation, licensing and other practices are not always transparent and well-known, and the PSCs have not sufficiently improved in that respect. In addition, it seems that the badly needed Enforcement directive 2014/67 for the certainty and protection of posted workers has led to some ‘collateral damage’, in the sense that some Member States have significantly increased the administrative barriers to temporary cross-border services provision, which of course was not the idea of this directive. It so happens that this issue is of great importance for the construction sector and installation services.

Besides professional services (see 4.2.2) and retail (4.2.4), probably the two biggest areas of concern under the Services directive, and the construction sector in the broad senses, there are many - often rather technical/legal - issues for which the Commission should retain vigilance. It is recommended that regular reports about such technical implementation and enforcement issues be sent to the European Parliament, so that monitoring and policy response can be adequate. Indeed, if the Council and the new Commission can come to a common strategy which ensures ‘ownership’ by national governments and by government leaders in the European Council on the single services market, other than digital (which also needs a competitive services environment anyway), the discrepancy between beautiful wording in Council conclusions (or the Presidency) and the restrictive regulatory environment services providers are faced with in day-to-day practice could be decisively reduced. In such a more stimulating strategic environment for services in Europe, it may also become more realistic to begin to apply mutual recognition between Member States. Whereas mutual recognition in goods has had its own difficulties but did move ahead with the revision of Regulation 764/2008, expected to be adopted by the EP when this study went to press (February 2019), mutual recognition has been the cindarella of the Services directive. One reason for this is the rather complicated constructions of EU case law. However, there are numerous practical and simple ways in which Member States' authorities can recognize - and hence reduce the burden on services companies entering – what other Member States have already verified and authorized. Various studies clarify beyond any doubt that there is great scope to do this, without getting constricted in some of the legal technicalities of case law – often, it is simply a matter and a willingness of exploiting administrative cooperation between EU countries.

4.2.4. Retail services: suggestions for policy initiatives and implementation

Addressing the undue regulatory restrictiveness in retail and lingering, problematic practices has been intensified only recently (see 3.2.4). The partnership with Member States, and indeed their regions where appropriate, is a sound and trustbuilding approach for retail in order to reduce or remove undue restrictiveness and deepen the empirical knowledge about the detailed practices at the local level in every Member State. This is not a short run activity: there are hundreds of regions in the EU and thousands of localities. For the full impact of the Services directive to better trickle down to local authorities dealing with retail (and, at times, inside retail organisations themselves), it is acceptable to allow one or two years. The RRI has shown that the case to address retail in depth and with knowledge about the factual and legal detail is a tall order. The Commission should utilize clear and well-documented cases in pilots or plain infringement procedures, but otherwise concentrate on the partnership with gusto and report on it after (say) 2 years.

The European Commission should further develop the economic analysis of the impact of the many restrictions found in the RRI (both for entry and operations). Ideally, a systematic overview of existing restrictions could form the basis for the economic analysis of the retail sector’s performance, including productivity, digitalisation and its readiness for what might well become disruptive change. Another recommendation is to consider whether the RRI can be updated, perhaps with a view to broaden its scope.

Finally, the Commission could develop ‘guidance’ to assess proportionality of retail establishment rules, to be used by authorities at all levels of government.

110 And of course other than the EU regulated services, as this is another domain (e.g. transport, financial, network industries).
111 See Hatzopoulos (2012) and Pelkmans (2012)
112 See e.g. the studies on construction, on installation services in Table 4 and the ECORYS (2017) study on administrative costs for firms of simply crossing the border.
5. CONCLUSIONS

This study has explored the achievements of the EU bodies in the period 2010 – 2018 in the single services market insofar as these services fall under the Services directive, or under EU services procurement rules, including the 2014 concessions directive. However, for purposes of analytical depth, professional qualifications are discussed separately [these do not fall under the Services directive] and so is retail. In actual practice, and outside issues of recognition between Member States, the study zooms in on professional services regulation which is far broader and reflects many issues of undue restrictiveness. In chapter 3 it is subsequently attempted to estimate the economic benefits for the period of 2010 - 2018, in particular the quantified benefits where possible. The background of these economic benefits are first discussed in chapter 2 by means of a survey of the economic literature of how and why undue restrictiveness of services generates a number of negative effects for the performance of services as well as for the EU manufacturing sectors. This has to do with the fact that ‘servitization’ blurs the distinction between goods and services and that – services being crucial inputs into manufacturing – multipliers in backward and forward linkages cause a magnification effects of these negative impacts. Chapter 3 provides a discussion about the economic benefits of reducing this undue restrictiveness and arrives at quantified benefits for the achievements in services procurement [ €14 bn] and for the Services directive as a whole [€236 bn], that is, not separately for retail or professional qualifications. The total realized benefits of €250 bn is nearly 1,5% of EU GDP. The reader is cautioned that this estimate is a rather crude proxy and can best be regarded as an order of magnitude.

In chapter 4 the benefits potential for the same four sectors is estimated following action by the next Commission and the next European Parliament. In order to be able to do this, ambitious degrees of implementation and enforcement and the concomitant national regulatory reforms that allow the economic benefits from these moves to be reaped by the EU, are assumed. The unrealized potential of economic benefits in services procurement is estimated to be some €20 bn, in professional services some €85 bn and from services (other than professional services) under the Services directive (including retail therefore, as no separate estimate is available) some €284 bn. Altogether an overall benefits potential under the new legislature of some €389 bn or 2.28% of EU GDP. This is undoubtedly a large potential and very welcome in the light of the many efforts of the EU to reach a higher and sustained growth path. These estimates do not include dynamic effects such as the attraction of greater ICT investments (on which the EU performance is weaker than the US for decades and for which economic research has shown that a more competitive environment is required). At the same time, the reader is cautioned that these estimates are proxies, indeed rather crude estimates, and await more rigorous economic estimates from suitable models and better data. In the coming years.

The study ends with a series of policy suggestions for the Commission, EP and Council to pursue. In services procurement, these are mainly about the concessions directive, a good initiative but still subject to legal uncertainty (inimical to a proper functioning) and the full 8 steps of digitalisation of procurement by Member States, which require system renewal and a number of other reforms such that the costs of cross-border procurement (not least, for SMEs) fall drastically. Also ‘strategic’ procurement implies considerable renewal of procurement practices, including the reduction of the enormous fragmentation between hundreds of thousands of contracting public authorities in the Union. For professional services there could be more explicit attention for the causes of the low recognition rates between Member States for hundreds of regulated professions other than the ‘heavy’ ones in the PRO-SERV indicator. The Commission is encouraged to continue an active infringement policy in the field of professional services more generally as the expected gains are likely to be significant. This could be preceded by CSRs in the European Semester so as to have constructive
discussions with the Member States first. There should be an annual report bringing together the national reforms in professional services, the many proportionality tests of Member States in an accessible fashion, the infringement cases in the area and their outcome, and the follow-up of CSRs of the previous 5 years. When coherent, this can be used as a strategic tool in Council, but equally well in the EP; it can also serve the wider public debate. The idea behind such a report is that Member States cannot and should not regard their competences as fully autonomous! The single market and broader EU principles (like proportionality of regulation) remain paramount and for good economic reasons, too. The more Member States insist on their regulatory autonomy, the more they assume a special responsibility to aim for ‘better regulation’ of professional services in the EU for the purpose of potential and actual mobility and for economic growth and the consumer interest.

Today’s assessment of the Services directive’s implementation and enforcement is simple: the glass is half-full. Much has been accomplished over the 12 years since its enactment. But surely much still has to be tackled. The recent detailed studies on construction and on cross-border installation services ought to be followed up with an active policy of pilots and perhaps infringements. However, much of the restrictiveness remains at the local level and even national governments do not always know the details. This calls for a painstaking pursuit of cases and pilots as the only practical way to improve the situation. A major problem is that the Council claims repeatedly to be in favour of pursuing the benefits of a genuine single services market, but in actual practice this credo is not followed at home in many Member States.113 A new strategy together with the Council is needed which ensures ‘ownership’ of national governments and their leaders of an ambitious services agenda, including the removal of lingering restrictions defended by powerful lobbies. In addition, more receptibility of a mutual recognition approach in services – so far, dramatically underutilized - would be a practical way forward that SMEs and business in general would greatly appreciate and which need not hurt anyone. For retail the details are only beginning to be detected in many Member States. The development of the Retail Restrictiveness Indicator is a most useful device for discussions with Member States and regions. The RRI should be broadened and used for more systematic economic analysis of the performance of EU retail, in the light of productivity, digitalisation and the disruptions coming. The key is to find effective ways to link up with the local level of decision-making about retail. Finally, the Commission could develop ‘guidance’ to assess proportionality of retail establishment rules, to be used by authorities at all government levels.

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The study surveys generic economic impact studies on services in the single market, summarizes the achievements of the EU legislator in the single services market in the period 2010 – 2018 as well as the principal non-legislative initiatives, discusses the estimated economic benefits of those achievements up to 2018 and attempts to identify the potential for further economic benefits in the near future. Suggestions for continued and new initiatives for the single services market are provided.

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