



FREEDOM OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES

As stipulated in the Treaty on the Functioning of the European Union and reinforced by the case-law of the European Court of Justice, the freedom of establishment and the freedom to provide services guarantee mobility of businesses and professionals within the EU. For the further implementation of these two freedoms, expectations concerning the Services Directive adopted in 2006 are high, as it is of crucial importance for the completion of the internal market.

LEGAL BASIS

Articles 26 (internal market), 49 to 55 (establishment) and 56 to 62 (services) of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

Self-employed persons and professionals or legal persons within the meaning of Article 54 TFEU who are legally operating in one Member State may: (i) carry on an economic activity in a stable and continuous way in another Member State (freedom of establishment: Article 49 TFEU); or (ii) offer and provide their services in other Member States on a temporary basis while remaining in their country of origin (freedom to provide services: Article 56 TFEU). This implies eliminating discrimination on the grounds of nationality and, if these freedoms are to be used effectively, the adoption of measures to make it easier to exercise them, including the harmonisation of national access rules or their mutual recognition ([3.1.5](#)).

ACHIEVEMENTS

A. Liberalisation in the Treaty

1. ‘Fundamental freedoms’

The right of establishment includes the right to take up and pursue activities as a self-employed person and to set up and manage undertakings, for a permanent activity of a stable and continuous nature, under the same conditions as those laid down by the law of the Member State concerned regarding establishment for its own nationals.

Freedom to provide services applies to all of those services normally provided for remuneration, insofar as they are not governed by the provisions relating to the freedom of movement of goods, capital and persons. The person providing a ‘service’ may, in order to do so, temporarily pursue her or his activity in the Member State where the service is provided, under the same conditions as are imposed by that Member State on its own nationals.

2. The exceptions

Under the TFEU, activities connected with the exercise of official authority are excluded from freedom of establishment and provision of services (Article 51 TFEU). This exclusion is, however, limited by a restrictive interpretation: exclusions can cover only those specific activities and functions which imply the exercise of authority; and a whole profession can be excluded only if its entire activity is dedicated to the exercise of official authority, or if the part that is dedicated to the exercise of public authority is inseparable from the rest. Exceptions enable Member States to exclude the production of or trade in war material (Article 346(1)(b) TFEU) and to retain rules for non-nationals in respect of public policy, public security or public health (Article 52(1)).

B. Services Directive — towards completing the internal market

The Services Directive (Directive 2006/123/EC of 12 December 2006 on services in the internal market), which strengthens the freedom to provide services within the EU, was adopted in 2006, with an implementation deadline of 28 December 2009. This directive is crucial for completing the internal market, since it has a huge potential for delivering benefits for consumers and SMEs. The aim is to create an open single market in services within the EU while at the same time ensuring the quality of services provided to consumers in the Union. The full implementation of the Services Directive could increase trade in commercial services by 45% and foreign direct investment by 25%, bringing an increase of between 0.5% and 1.5% in GDP (Commission communication ‘Europe 2020’). The directive contributes to administrative and regulatory simplification and modernisation. This is achieved not only through the screening of the existing legislation and the adoption and amendment of relevant legislation, but also through long-term projects (setting up the Points of Single Contact and ensuring administrative cooperation). The implementation of the directive has been significantly delayed in a number of Member States in relation to the original deadline. Its successful implementation calls for sustained political commitment and widespread support at European, national, regional and local levels.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has been instrumental in liberalising the activities of the self-employed. It has ensured a strict delimitation of the activities that may be reserved for nationals (e.g. those relating to the exercise of public authority). It is also worth mentioning the case that Parliament brought before the Court of Justice against the Council for failure to act with regard to transport policy. That case, brought in January 1983, led to a judgment of the Court (Case No 13/83 of 22 May 1985) condemning the Council for failing to ensure free provision of international transport services or lay down conditions enabling non-resident carriers to operate transport services within a Member State. This was in breach of the Treaty. The Council was thus obliged to adopt the necessary legislation. The role of Parliament has grown with the application of the codecision procedure provided for in the Treaty of Maastricht, and now of its successor, the ordinary legislative procedure, to most aspects of freedom of establishment and provision of services.

Parliament also played a crucial role in the adoption of the Services Directive, and is closely following its implementation. In addition, it is putting pressure on the Member States to fulfil their obligations under the directive and to ensure its proper implementation. On 15 February 2011, Parliament adopted a resolution on the implementation of the Services

Directive 2006/123/EC^[1], and on 25 October 2011 a resolution on the Mutual Evaluation Process of the Services Directive^[2]. Following the Commission communication of 8 June 2012 on the implementation of the Services Directive, Parliament's Committee on the Internal Market and Consumer Protection (IMCO) prepared a report on 'Internal Market for services: state of play and next steps', which was adopted in plenary on 11 September 2013^[3].

On 7 February 2013, Parliament also adopted a resolution with recommendations to the Commission on the governance of the Single Market^[4], emphasising the importance of the services sector as a key area for growth, the fundamental character of the freedom to provide services, and the benefits of full implementation of the Services Directive.

Parliament has, as a matter of priority, worked on legislative proposals concerning telecommunications services, such as a regulation on electronic identification and trust services for electronic transactions in the internal market (Regulation (EU) No 910/2014) and a regulation laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent (COM(2013) 0627, leading to adoption of Regulation (EU) 2015/2120 of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union). Parliament is concerned with financial services in the area of access to basic payment services^[5] and consumer credit and mortgage credit (Directive 2014/17/EU), and also with package travel and assisted travel arrangements ([COM\(2013\) 0512](#)). The Mortgage Credit Directive (2014/17/EU) will increase consumer protection by enforcing minimum regulatory requirements that Member States are required to meet to protect individuals with credit agreements on residential property. This directive should be implemented by the Member States by March 2016 and will help to ensure that consumers are informed and financially capable of paying their mortgage loan. Additionally, the Directive on Better Regulated and Transparent Financial Markets (2014/65/EU) aims to ensure regulation and transparency of EU-wide financial markets. Parliament is also involved in legislating on innovative services such as the life-saving in-vehicle emergency eCall ([COM\(2013\) 0316](#)), and in the verification of implementation of the Universal Service Directive and the 112 emergency number^[6]. On 28 April 2015, Parliament voted to make eCall technology mandatory in all new vehicles after April 2018.

For more detailed information please consult the study prepared for the IMCO committee on 'EU Mapping: Overview of IMCO-related legislation'.^[7]

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[1]OJ C 188E, 28.6.2012, p. 1.

[2]OJ C 131E, 8.5.2013, p. 46.

[3]Texts adopted, [P7_TA\(2013\)0366](#).

[4]Texts adopted, [P7_TA\(2013\)0054](#).

[5]Texts adopted, [P7_TA\(2012\)0293](#).

[6]OJ C 33E, 5.2.2013, p. 1.

[7][http://www.europarl.europa.eu/RegData/etudes/STUD/2015/536317/IPOL_STU\(2015\)536317_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/536317/IPOL_STU(2015)536317_EN.pdf)