

Mutual evaluation and the Services Directive

- Experiences and lessons learnt -

PART 1 : The mutual evaluation
process in the context of the
Services Directive

The Services Directive

- Directive 2006/123/EC (the “Services Directive”) was adopted in order to create a “real” internal services market and covers a large variety of service activities.
- Article 39 of the Directive : a new tool to assess how the Services directive had been implemented in the Member States, the mutual evaluation process

Provisions concerned by the mutual evaluation

- Not all the Directive requirements
- Only information on :
 - authorisation schemes;
 - requirements to be evaluated and;
 - multidisciplinary activities

Definition of the mutual evaluation process

Recital 74 of the Services directive provides a definition of the mutual evaluation process :

- *“The mutual evaluation process means that :*
- *during the transposition period Member States will first have to conduct a screening of their legislation (...). At the latest by the end of the transposition period, Member States should draw up a report on the results of this screening.”*
- *“Each report will be submitted to all other Member States and interested parties. Member States will then have six months in which to submit their observations on these reports (...).”*

The mutual evaluation *stricto sensu*

- Definition provided by recital 74 is confusing.
- It places under the umbrella of the mutual evaluation a first step that consists of a self-evaluation.
- Only the second step described under Article 39 (Member states' reciprocal evaluation) can be considered as mutual evaluation *stricto sensu*.

Methodology implemented by the Commission

- This methodology is more extensive than the evaluation process originally included in the Services Directive
- The process began at the end of 2009 and ended in November 2010 :
 - 1st step : Self-evaluation
 - 2nd step : Clusters
 - 3rd step : Plenary sessions

Who was in charge of this process?

- Mainly the Member states, as the Commission held a neutral role during the discussions.
- Important resources were dedicated by the Member states.
- The number of representatives depended on the Member states internal organization.

An innovative tool for implementation assessment?

- Has been used in the past in the Council of Europe actions aimed at countering money laundering and the financing of terrorism
- Has to be compared with existing assessment tools

Comparison with situations where nothing has been provided by the Directive

- Where nothing has been provided by the Directive :
 - the usual process is bilateral.
 - the Commission first gives its opinion and then contacts Member States where implementation is not complete in order to get some explanations. It then determines whether to take sanctions.
- Notification procedure
 - Eg : Directive 98/34/EC and Directive 2000/31/EC : Imposes an obligation upon the Member States to notify to the Commission draft regulations before they are adopted at the national level.

PART 2 : Key findings

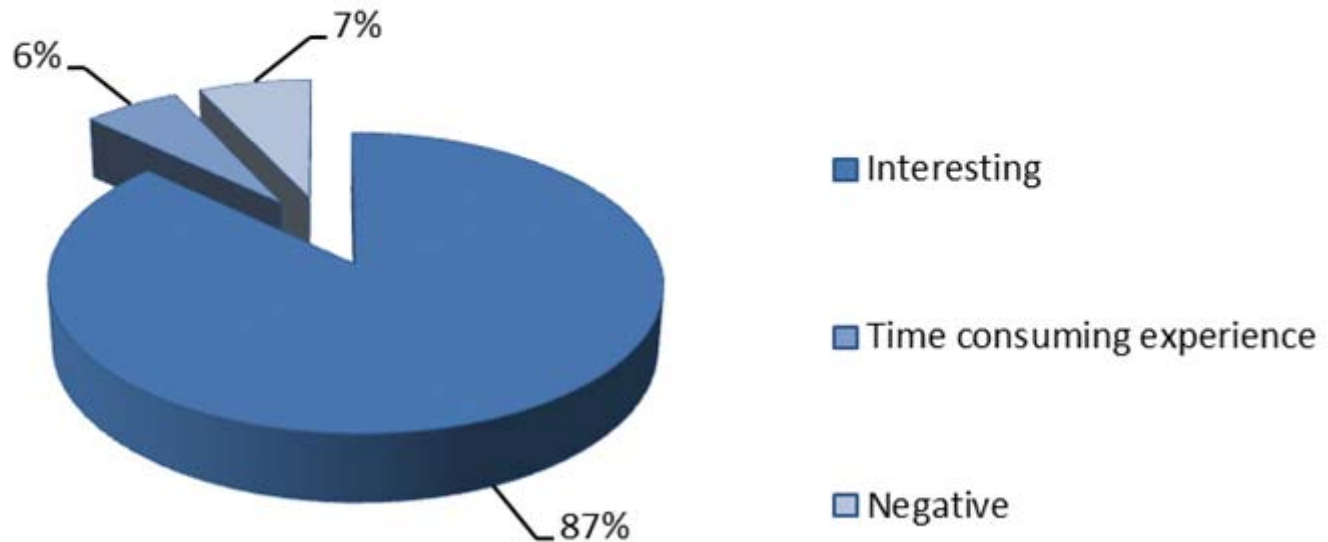
A - Experiences

The views of the Commission

- The process enabled a better understanding by the Commission of the remaining barriers and of the situation in each Member state : it helped to clarify the situation and to discuss specific issues
- Useful tool, especially by reference to the numerous measures that were notified
- In 2010, the the Commission announced its intention to develop further the internal market on the basis of the mutual evaluation process set out by the Services Directive

Member states overall experience (1)

How was your overall experience with the mutual evaluation process?



Member states overall experience (2)

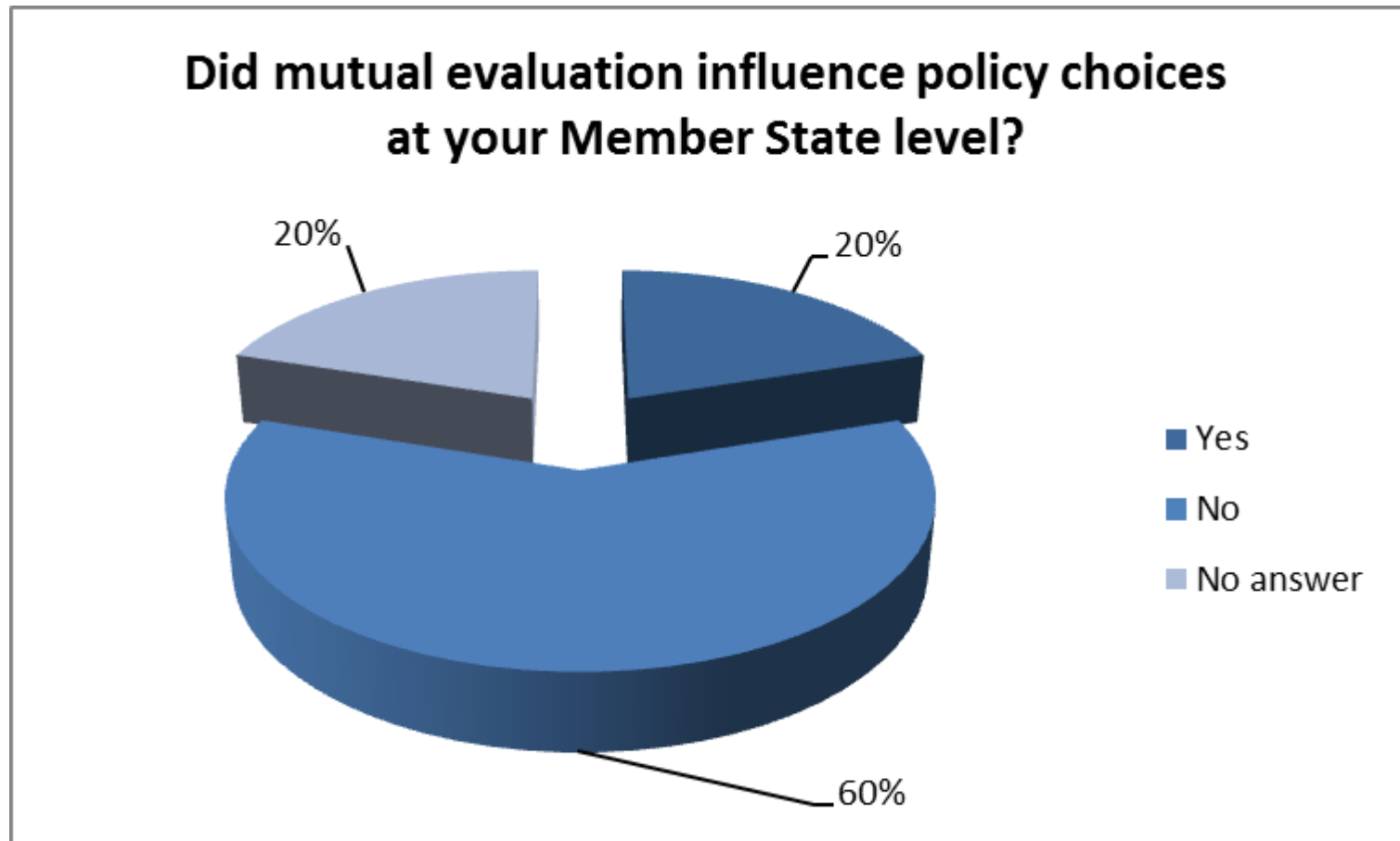
- Nearly all Member States surveyed are, in general, satisfied or very satisfied: the discussions and debates promoted a real “European spirit” between administrations.
- Some Member States have created a parallel procedure with others in order to analyze difficulties relating to the directive and find concrete solutions.

Stakeholders overall experience

- Stakeholders have been consulted at a national level, at the stage of the Directive transposition and then, during the mutual evaluation process.
- However, they were not actors of the mutual evaluation process, nor were they beneficiaries of it, given that they were not invited to participate in it or informed of its actual implementation.
- In this sense, the mutual evaluation process lacked transparency.

B – Effects

Influence on the transposition and on policy choices (1)



Influence on the transposition and on policy choices (2)

- Mutual evaluation took place after transposition.
- According to the Member States interviewed, it did not have real direct consequences on transposition
- It confirmed :
 - (i) policy choices, and
 - (ii) that implementation measures were appropriate and in line with the spirit of the Directive and to a certain extent it may have helped in filling some transposition gaps.

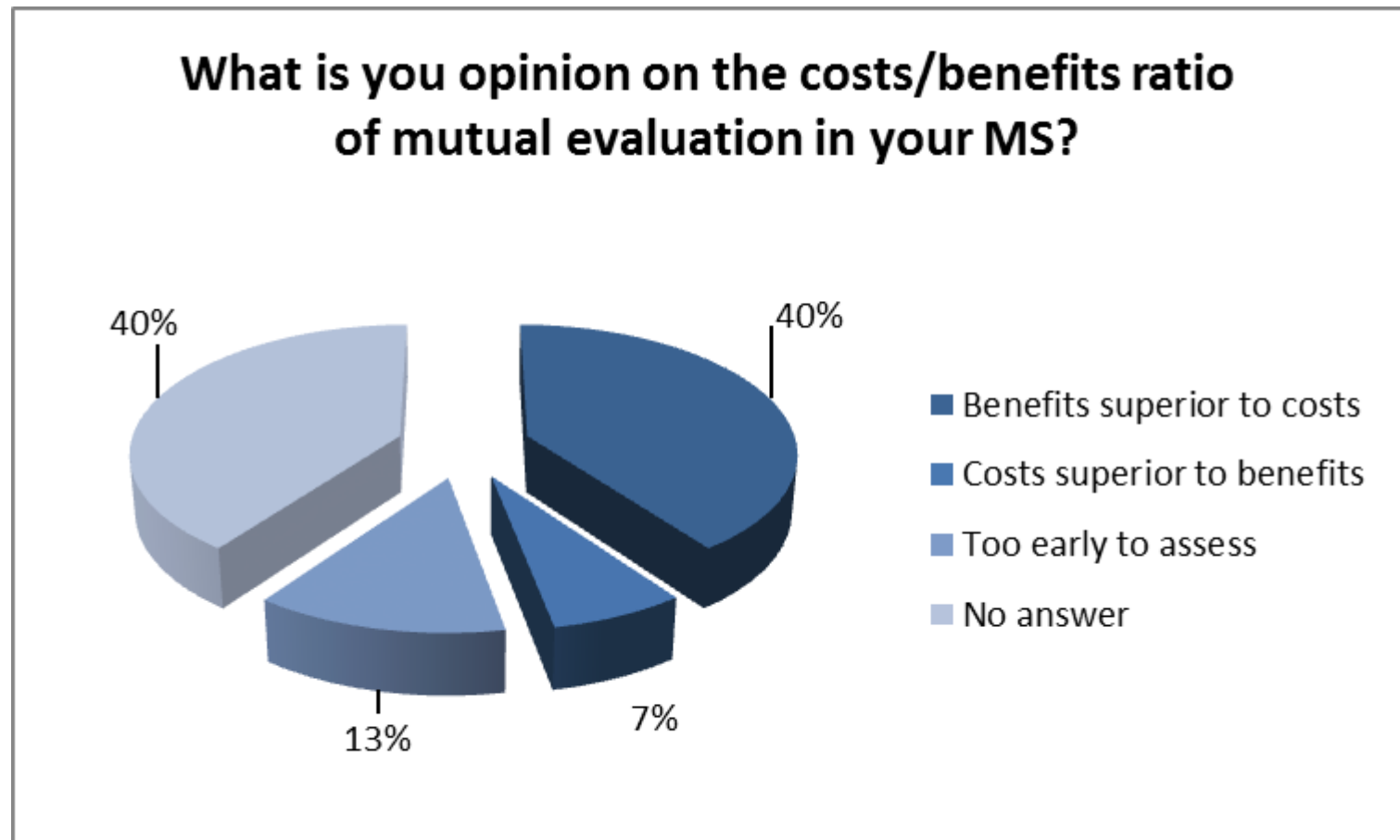
A process enabling a better comprehension of the European issues at stake

The **noticeable and unanimously** recognized effects of the process are:

- a better understanding, by Member States, of the situation in other Member States, and
- shared ideas and a “**European spirit**” developed between national administrations.

(Source : Commission. Information confirmed by the interviews)

Opinion of the Member states on the costs/benefices ratios



Costs/Benefits analysis

- Benefits of the mutual evaluation exercise outweigh the costs as long as :
 - i) the Mutual evaluation process was necessary to identify the actions to be undertaken, because of the number of requirements notified to the Commission, and as long as;
 - ii) the Mutual evaluation process helped identify the steps to be taken to consolidate the internal market.
- Incidentally, the ‘European spirit’ which developed between the national administrations is a non-quantifiable result.

Conclusion

- It can be considered :
 - As a costly exercise if the result of the process was to highlight issues on the implementation of the Directive (First Perspective).
 - It can be considered as useful and necessary if the result was to enable the Commission a better understanding of the state of the internal market and therefore of the new policy orientations to be defined (Second Perspective).

C- Lessons learnt

The timing for the mutual evaluation

- A preliminary evaluation before the Directive implementation would have been useful.
 - Eg. : Scandinavian and Baltic States
- Nevertheless :
 - The mutual evaluation process is not an assessment on implementation as such.
 - This process is oriented towards the future and the actions to be undertaken after the implementation of the Directive. This process precedes therefore any new initiatives taken by the Commission regarding the internal market.

The Clusters

- The composition of the clusters was often criticized by Member States' representatives who felt that they would have liked to discuss issues with neighbouring countries.
- However, the function of the Mutual evaluation process is less to find punctual and concrete solutions between populations living in cross-border regions than to find new lines of action for the Commission in the internal market.

A more active role of the European Commission ?

- The European Commission played a secondary role during the Mutual Evaluation process
- However :
 - it seemed that it purposefully limited its intervention so as to give Member States as much freedom as possible in the subject matters of their discussions
 - The Commission has committed itself to provide the Member States with guidelines on the implementation of the Directive based on requests made by Member States

Transparency

- Member States found that : direct participation of stakeholders is not always possible if Member States representatives are to discuss issues freely
- That the stakeholders felt that a greater degree of transparency would be advisable but that, as a whole, the process had taken their views into account
- Stakeholders' presence at the Member States meetings was not deemed possible
- Communicating some information to stakeholders on how debates evolve between Member States is possible without compromising the process

Generalizing the process?

- Since this process is time consuming, expensive and complex, it shall be used only when no other instruments would bring the necessary results themselves.
- Some components of the process could also be used in pre-transposition phases.

Other areas?

- A set of criteria can be proposed to determine whether the process is relevant to a specific area:
 - Directives;
 - Framework directives;
 - “Strategic” provisions;
 - Timing taking into account other forecast mutual evaluations.