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REPORT

on the Mutual Evaluation Process of the Services Directive
(2011/2085(INI))

Committee on the Internal Market and Consumer Protection

Rapporteur: Małgorzata Handzlik

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the Mutual Evaluation Process of the Services Directive (2011/2085(INI))

The European Parliament,

- having regard to Article 3 of the Treaty on the European Union,
- having regard to Articles 9, 49 and 56 of the Treaty on the Functioning of the European Union,
- having regard to the Commission Communication on ‘Towards a better functioning Single Market for services – building on the results of the mutual evaluation process of the Services Directive’ (COM(2011)0020) and the accompanying Commission staff working document ‘On the process of mutual evaluation of the Services Directive’ (SEC(2011)0102),
- having regard to the Commission Communication on ‘Single Market Act. Twelve levers to boost growth and strengthen confidence’ (COM(2011)0206),
- having regard to the Commission Communication ‘Towards a Single Market Act’ (COM(2010)0608),
- having regard to the Council Conclusions of 10 March 2011 on a better functioning Single Market for services – mutual evaluation process of the Services Directive,
- having regard to Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market¹,
- having regard to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications²,
- having regard to its resolution of 6 April 2011 on Governance and Partnership in the Single Market³,
- having regard to its resolution of 15 February 2011 on implementation of the Services Directive 2006/123/EC⁴,
- having regard to Rule 48 of its Rules of Procedure,
- having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinion of the Committee on Employment and Social Affairs(A7-0324/2011),

¹ OJ L 376, 27.12.2006, p.36.

² OJ L 255, 30.9.2005, p. 22.

³ Text adopted, P7_TA(2011)0144.

⁴ Text adopted, P7_TA(2011)0051.

- A. whereas services still represent only around one-fifth of total intra-EU trade while accounting for over two thirds of the EU GDP and employment,
- B. whereas activities covered by the Services Directive account for 40% of EU GDP and jobs, but whereas these activities also represent some of the most important untapped potential for economic growth and job creation in the EU, since many obstacles to trade in services still exist in the Internal Market,
- C. whereas services drive the economies of the Member States by creating jobs, growth and innovation, and whereas a well-functioning and integrated internal market in services is therefore all the more necessary in the light of the current economic and financial crisis and as a condition for recovery;
- D. whereas the Services Directive is a lever for the growth of the European Union and whereas its full and correct implementation is included in the framework of the Europe 2020 strategy and the Single Market Act,
- E. whereas, while timely and correct transposition of the Services Directive has been a challenge for the Member States' administrations, it is necessary and it is also a strong basis for the development of administrative cooperation between the Member States,
- F. whereas close to 34 000 requirements have been notified to the European Commission in the context of the screening process,

I. Introduction

1. Welcomes the Commission's Communication on the mutual evaluation process of the Services Directive and acknowledges the considerable amount of work accomplished by the Commission and, above all, Member States' national administrations, including local and regional administrations;
2. Highlights the fact that a functioning Single Market in services is a prerequisite for generating growth, decent employment and innovation in Europe and for maintaining Europe's competitive role on the world stage;
3. Notes that the overall potential of the common market in services has not been fully exploited, since owing in particular to market restrictions in the Member States only a small proportion of SMEs are providing cross-border services;
4. Considers that the first priority for the creation of a Single Market in Services is the full and complete implementation of the Services Directive in all Member States and setting up fully operational Points of Single Contact;
5. Calls therefore for consideration to be given to supplying the information at the Points of Single Contact in English as well as in the local language for the benefit of service providers and service users from other Member States, and whether an electronic signature could be used by service providers and users;

6. Stresses that mutual evaluation exercise have allowed for the assessment of the internal market for services after implementation of the Directive, especially in relation to the requirements of art. 9, 15, and 16;

II. Experiences with the Mutual Evaluation Process

7. Notes the vagueness of article 39 of the Services Directive in establishing the precise objectives of the mutual evaluation process; notes that different perceptions and expectations existed among stakeholders as regards to its purposes and results;
8. Points out that the mutual evaluation was organised after the deadline for transposition of the Services Directive provisions; underlines that the implementation of Services Directive should not be confused with the mutual evaluation exercise;
9. Deplores the delays in the implementation of the Services Directive in some Member States and considers that these have had an impact on the process of mutual evaluation;
10. Takes the view that, while the timing of the mutual evaluation process was challenging, it helped to maintain momentum after the implementation of the Directive;
11. Considers that the mutual evaluation process has proved to be a worthwhile exercise in enabling a better understanding of the remaining barriers and the situation in each Member State on the part of the European Commission and the Member States; notes that the process has enabled the Member States to get feedback on their policy choices and facilitated the promotion of best practices and increased transparency of implementation results;
12. Calls on the Member States and the Commission to initiate a dialogue on which barriers are permitted and which are not;
13. Takes the view that the mutual evaluation process was key in clarifying certain ambiguous situations still prevalent in the provision of services both at national and cross-border level, such as the mutual recognition of professional qualifications and insurance obligations imposed on cross-border service providers; highlights the fact that ultimately it helped to gauge whether or not the implementation measures adopted in each Member State are carried out according to the spirit of the Services Directive;
14. Highlights 'cluster discussions' as the core element of the mutual evaluation; welcomes the spirit of cooperation and mutual trust which has prevailed during discussions;
15. Takes the view that the mutual evaluation exercise has contributed to the development of a 'European spirit' among national administrations and enabled Member States' administrations to get to know each other better; calls on the Commission and the Member

States to ensure that the knowledge and experience gained through the mutual evaluation is maintained and used for the improvement of the Single Market in services;

16. Notes that the involvement of stakeholders in the process of mutual evaluation was limited; acknowledges that a certain degree of confidentiality was an important condition to create a mutual trust between Member States; Nevertheless, regrets that the regular feedback of the process has not been provided to the stakeholders;
17. Is conscious of the administrative costs related to the mutual evaluation, especially in Member States where regional level administration was involved in the process;

III. Results and Follow-up to improve the functioning of the Internal Market for Services

18. Takes the view that the mutual evaluation process in the Services Directive is an important instrument for identifying further initiatives aimed at improving the functioning of the internal market in services; welcomes the fact that the Commission is proposing a set of actions to build on the momentum gathered during the implementation and mutual evaluation phases;
19. Urges the Commission to keep Parliament informed about the progress and outcomes of the dialogue held with Member States on the implementation of the Services Directive; Calls on the Commission to take further enforcement measures when deemed necessary;
20. Looks forward to the announced economic assessment of the implementation of the Services Directive and its impact on the functioning of the services market; hopes that this evaluation will make it possible to measure the real impact of the directive on economic activity and employment; calls on the Commission to ensure maximum transparency when carrying out this assessment and invites the Commission to present to Parliament its findings as soon as they are available;
21. Welcomes the internal market performance check initiative and hopes that this exercise will significantly improve the practical understanding of how different pieces of EU legislation are applied and interact on the ground; Considers that the performance check exercise should be performed by taking into account the perspective of the Single Market users;
22. Calls on the Commission to involve the European Parliament closely in the performance check initiative;
23. Calls for the remaining regulatory barriers, such as the rules on reserved activities, insurance obligations, legal form and capital ownership requirements, to be tackled; calls on the Commission to concentrate its efforts on unjustified or disproportionate requirements which should be abolished in order to guarantee the smooth functioning of the Single Market;

24. Deplores the fact that no earlier action had been taken in areas where problems had long been known;
25. Regrets that the Commission has not provided criteria for choosing specific types of requirement for targeted actions; calls on the Commission to clarify the reasons why the other types of requirement mentioned in Article 15 of the Services Directive, such as the minimum number of employees and fixed minimum or maximum tariffs, were considered less important than those singled out in its Communication;
26. Calls on the Commission to collect and present data quantifying the impact of the various remaining requirements which, if removed, would improve the functioning of the Single Market for services; calls on the Commission to prioritise its targeted actions on removing those requirements which would bring the highest level of added value to the functioning of the Single Market in services in full compliance with Article 1 of the Services Directive; calls on the Commission, furthermore, to focus its action on the sectors and professions with a high growth potential for the cross-border provision of services;
27. Calls on the Commission to continue and step up work with Member States on an individual basis so as to achieve a complete and correct transposition and implementation of the Services Directive in all Member States;
28. Takes the view that many national barriers still remain in place, slowing in particular growth in professional business-to-business services; calls on the Member States to ensure that new and remaining requirements are non-discriminatory, necessary and proportionate; calls on the Commission to engage more actively with Member States to monitor closely and ensure due notification of the relevant national legislative measures relating to implementation of Article 15 of the Services Directive;
29. Urges the Commission and the Member States to work more closely together to ensure the proper application in Member States of the freedom to provide services clause in Article 16 of the Services Directive; calls on the Commission to undertake a comprehensive assessment of the state of play on the provision of cross-border services in the EU including the reasons explaining the moderate growth rate in this sector, and a detailed overview of the effectiveness of Member State implementation of the provisions of Article 16 of the Services Directive;
30. Stresses the need to ensure coherence of the implementation of the different pieces of legislation of central relevance to service activities;
31. Urges the Member States to ensure complete and proper implementation of the provisions of the Services Directive which were not included in the mutual evaluation process, such as the Points of Single Contact, and calls on the Commission to ensure strict enforcement of the relevant provisions;
32. Calls on the Commission to pay careful attention to the regular checks and evaluations of the work of the Points of Single Contact in Member States, which play a key role in making necessary information available to service-providers in an up-to-date and user-friendly manner;

33. Notes the important role of alternative dispute resolution mechanisms and problem solving tools such as SOLVIT in ensuring that service providers, and in particular SMEs, can fully exploit their Single Market rights; welcomes the Commission's announcement that it will assess the effectiveness of these tools and report on the need for further specific initiatives;
34. Shares the Commission's view that service providers, but also service recipients, should be helped to enforce their rights, and recommends to build on the existing tools such as SOLVIT;

IV. The Mutual Evaluation Process as a tool

35. Reiterates its support for the use of mutual evaluation in other policy areas, where appropriate; believes that mutual evaluation has proven innovative and useful and should be seen as a tool to improve the functioning of the Single Market;
36. Suggests, therefore, that a 'light-touch' mutual evaluation to be considered and where appropriate introduced for the mutual evaluation of policy areas covered by 'horizontal' directives under which Member States have retained significant scope for manoeuvre, with a view to obtaining more uniform legislation, creating better relations and mutual understanding between the Member States, and preventing 'gold plating';
37. Recommends that mutual evaluation should be used as a 'flexible instrument' on a case-by-case basis; suggests that the tool should be proposed in a targeted manner for inclusion in selected Directives of a 'horizontal' nature which imply numerous transposition measures and provide for a wide margin of discretion for the Member States; suggests furthermore a targeted use of mutual evaluation whereby only a key provisions of a Directive are subject to the procedure;
38. Calls on the Commission, however, to clearly define the aims and deliverables of mutual evaluation before proposing mutual evaluation on other Directives, in order to ensure that the process does not impose unnecessary burdens on the evaluating authorities;
39. Believes that 'cluster discussions' should remain the central element of the mutual evaluation process; considers that a well targeted but limited number of expert participants in cluster discussions creates the conditions for efficiency and delivering outcomes; takes the view that mutual evaluation should be developed further as a procedure for exchanging best practices and policy development experiences between Member States and that the Commission's role could be clarified in terms of providing guidance and steering the process, particularly during these cluster discussions; is of the opinion that the clusters' composition should always reflect Member States' expectations and the potential impact on the Single Market;
40. Asks the Commission to increase transparency by informing the European Parliament on the contents and progress of discussions between Member States and by presenting regular reports throughout the different stages of mutual evaluation to keep all stakeholders updated; calls on the Commission to make the main conclusions of the

cluster and plenary meetings public;

41. Points out that correlation tables and mutual evaluation have different purposes and therefore should be regarded as separate and not interchangeable policy tools, and that the correlation tables are therefore indispensable in the transposition of European legislation;
42. Instructs its President to forward this resolution to the Council, the Commission, and the parliaments of the Member States.

EXPLANATORY STATEMENT

OBJECTIVE OF THE REPORT

This report takes a look at the experiences of the mutual evaluation within the framework of the Services Directive and gives the general but conditional support to the application of this method for the other policy areas. This report also reflects on the results and follow – up of the mutual evaluation for the better functioning of internal market for services and supports actions proposed by the Commission.

BACKGROUND

The Services Directive was adopted in 2006 and remains a vital tool for the establishment of fully functioning Single Market for services. Member States have made a significant effort towards implementation. Nevertheless efforts should be stepped up for the full and correct implementation of the Services Directive and setting up of fully operational Points of Single Contact.

The mutual evaluation process was foreseen in Article 39 of the Services Directive. It is a novel tool used for the first time in the EU legal instrument. Its main goal in the framework of the Services Directive was to assess the state of the internal market for services after the implementation of the Directive.

The mutual evaluation process did not cover all the provisions of the Directive but was focused on the specific types of requirements for which the Directive did not provide for a prohibition, but which left a certain degree of discretion to the Member States. The mutual evaluation focused on the number of legal requirements typically imposed on the services providers, which concern:

1. the establishment of businesses
2. the cross border provision of services

The Commission Staff Working Paper on the process of mutual evaluation of the Services Directive gives an overview of the work undertaken by Member States. It also sheds some light on the approaches applied and policy choices by the Member States when evaluating certain requirements. Furthermore it provides a first detailed assessment of the implementation of the provisions of the Services Directive (as regards especially Article 9, 15 and 16).

EXPERIENCES WITH THE MUTUAL EVALUATION PROCESS

It should be noted that Article 39 of the Services Directive remains vague as to the precise objectives of the mutual evaluation. This lack of the precision resulted in different expectations and perceptions of process among stakeholders but also policy makers. The common confusion is to associate the mutual evaluation with the work on the implementation

and the transposition of the Services Directive. Therefore your rapporteur thinks that it is necessary to underline that the mutual evaluation took place after the implementation.

This sequence seems to be justified when taking into account that during the mutual evaluation Member States were discussing the changes in their regulatory framework and the requirements maintained, abolished or changed as the result of the implementation of the Services Directive. Thus the discussions enabled a better understanding of the situation in each Member State and the remaining barriers still in place after the implementation of the Services Directive. This should be seen as a great contribution towards the better assessment of the current state of the Single Market for services. However, the delays in the implementation of the Services Directive posed a challenge to the mutual evaluation process, as they made discussions more difficult especially for those Members States where the transposition was not finalised.

When working on the mutual evaluation, Members States have been divided in 6 clusters of 5 countries each. The clusters' composition was proposed by the Commission taking into account languages, levels of trade and geographical proximity. Not all Member States have been satisfied with the allocation made. Cluster discussions were considered a core element of the mutual evaluation. Your rapporteur hopes that the experience of direct engagement of the national administrations and the "European spirit" will be further used for the single market in services.

The mutual evaluation raised however the questions about the transparency of the process and if, or to what extent, the stakeholders should be involved in the process that directly affects them. Your rapporteur believes that the efficiency of the process requires a certain degree of confidentiality but that the reporting on the progress should have been provided to the stakeholders.

RESULTS AND FOLLOW-UP TO IMPROVE THE FUNCTIONING OF THE INTERNAL MARKET FOR SERVICES

The Commission's Communication "Towards a better functioning Single Market for services - building on the results of the mutual evaluation process of the Services Directive" uses the finding of the mutual evaluation to present further steps to fully benefit from the Single Market for services. Your rapporteur supports targeted actions proposed by the Commission, believes however, that they should be focused on the measures that will bring maximum added value to the functioning of the single market.

Without any doubt, the full and correct transposition of the Services Directive remains the urgent priority. The bilateral meetings between the Commission and the Members States on the implementation of the Directive are already taking place. Your rapporteur believes that the Parliament should be kept informed about the progress of this dialogue and when necessary the Commission should not hesitate to take enforcement measures.

The first economic assessment of the actual implementation of the Directive will also be carried out by the Commission. As the Parliament has already called for the comprehensive assessment of the Services Directive in its Resolution of 28 January 2011 on implementation of the Services Directive 2006/123/EC , your rapporteur thinks that its findings should be

made available to the Parliament as soon as they are available.

The Commission is also proposing to carry out "performance checks" to assess how different pieces of EU legislation are working in practice and how they interact. Reserved activities, legal form and capital ownership requirements and insurance requirements will be also subject to the in-depth analysis as they have been identified as still posing barriers for businesses and citizens.

The freedom to provide services in Article 16 of the Services Directive is one of the main provisions of the Services Directive. The results of the mutual evaluation show that the requirements applied to cross - border services are still considered a serious problem. Member States and the Commission should work further to ensure its proper application. According to the provisions of Article 16 (4) of the Directive the report of the application of the freedom to provide services clause should be made available by the end 2011. The Parliament awaits this report to better understand the problems encountered in the cross - border provision of services.

MUTUAL EVALUATION AS A TOOL

The overall assessment of the mutual evaluation as a policy tool is positive. The rapporteur believes that the experiences and the results of the mutual evaluation are useful and valuable and therefore proposes to extend its use to other policy areas. However the decision on the application of the mutual evaluation to other EU Directives should be balanced and should be made on the case - by case basis and should be subject to the following conditions:

- the process should be limited to the framework Directive which gives a certain degree of discretion to the Member States;
- the mutual evaluation should only cover key provisions, avoiding the situation when numerous provisions are subject to the procedure and cause unnecessary bureaucratic burdens to the Member States' administrations.

The rapporteur believes that "cluster discussions" should be further used in the process of mutual evaluation. However, the clusters' compositions should be discussed more thoroughly with the Member States taking into account their expectations and in particular an impact on the Single Market. Your rapporteur also believes that the transparency of the process should be improved. Some degree of confidentiality seems to be necessary to foster discussions between Member States' administrations but regular reports should be available to the stakeholders.

13.9.2011

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS

for the Committee on the Internal Market and Consumer Protection

on the Mutual Evaluation Process of the Services Directive
(2011/2085(INI))

Rapporteur: Frank Engel

SUGGESTIONS

The Committee on Employment and Social Affairs calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

- A. whereas services account for around 75% of EU GDP and 70% of total employment in the EU, and whereas services covered by the Services Directive account for 45% of EU GDP and 43% of employment in the EU, intra-EU trade in services represents only 5% of GDP and only 8% of SMEs currently do business abroad,
1. Notes the results of the evaluation and welcomes the future plans outlined by the Commission; calls for the remaining regulatory barriers, such as the rules on reserved activities, insurance obligations, legal form and capital ownership requirements, to be tackled; calls on the Commission to concentrate its efforts on unjustified or disproportionate requirements which should be abolished in order to guarantee the smooth functioning of the Single Market;
 2. Given that in recent years services have been the source of all net job creation in the EU, considers that the full potential of the Single Market has not yet been realised and that the Services Directive is an important tool in further unlocking this potential for sustainable and socially inclusive growth and jobs;
 3. Stresses that, as a result of the crisis, the EU labour market could remain fragmented in the long term and that renewed political resolve and resolute action are required in order to further develop the European services sector, to enhance trade in services and to further promote the freedom to provide cross-border services;
 4. With a view to bringing an effective and properly functioning Single Market in the field of

services into being, calls on the Commission to pay careful attention to the regular checks and evaluations of the work of the Points of Single Contact in Member States, which play a key role in making necessary information available to service-providers in an up-to-date and user-friendly manner;

5. Notes that certain services have been excluded from the scope of the Services Directive because of their specific nature and that there may be a need to adopt sectoral EU legislation, whilst ensuring that the principles of proportionality and subsidiarity are observed;
6. With a view to protecting EU citizens and workers against service-providers whose actions are seriously prejudicial to their health and safety or seriously damaging to their environment, stresses the potential need for enhanced mutual assistance and information exchange among Member States about their checks, inspections and investigations concerning service-providers, established on their territories, who exercise their activities in an unlawful manner;
7. Recalls that the Single Market Act includes a pledge to bring forward, in 2011, a set of measures which should improve the functioning of the Single Market for services; welcomes the measures proposed under the Single Market Act which address the labour conditions of workers delivering services in the EU, especially as regards posted workers; stresses the need to base the European Single Market on sound economic and social rules, so as to create a level playing field;
8. Believes that, for the purposes of implementing the EU 2020 Strategy and the Single Market Act, there is a need, in addition to the Services Directive, to tackle complementary issues relating to the mobility of service-providers and workers; calls, therefore, on the Commission, as part of its 'performance check' of the Single Market for services, to take account of EU instruments beyond the Services Directive, with particular reference to the recognition of professional qualifications, the portability of pension rights, and clarification of the interpretation and implementation of the rules on the posting of workers and certain social security and labour law provisions while at all times protecting workers' pension rights and entitlements;
9. Emphasises that small and medium-sized service providers, who are key drivers for employment and social inclusion, are those worst affected by unjustified or disproportionate requirements; notes the important role of alternative dispute resolution mechanisms such as SOLVIT in ensuring that service providers, and in particular SMEs, can fully exploit their Single Market rights; welcomes the Commission's announcement that it will assess the effectiveness of these tools and report on the need for further specific initiatives.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	12.9.2011
Result of final vote	+: 38 -: 3 0: 0
Members present for the final vote	Regina Bastos, Edit Bauer, Jean-Luc Bennahmias, Mara Bizzotto, Philippe Boulland, Milan Cabrnoch, David Casa, Alejandro Cercas, Sergio Gaetano Cofferati, Tadeusz Cymański, Frédéric Daerden, Proinsias De Rossa, Sari Essayah, Richard Falbr, Ilda Figueiredo, Thomas Händel, Marian Harkin, Liisa Jaakonsaari, Danuta Jazłowiecka, Martin Kastler, Olle Ludvigsson, Elizabeth Lynne, Thomas Mann, Elisabeth Morin-Chartier, Siiri Oviir, Rovana Plumb, Konstantinos Poupakis, Sylvana Rapti, Licia Ronzulli, Elisabeth Schroedter, Joanna Katarzyna Skrzydlewska, Jutta Steinruck, Traian Ungureanu
Substitute(s) present for the final vote	Georges Bach, Raffaele Baldassarre, Jürgen Creutzmann, Kinga Göncz, Evelyn Regner, Csaba Sógor, Cecilia Wikström
Substitute(s) under Rule 187(2) present for the final vote	Emma McClarkin

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	26.9.2011
Result of final vote	+: 30 -: 5 0: 1
Members present for the final vote	Pablo Arias Echeverría, Adam Bielan, Lara Comi, Anna Maria Corazza Bildt, António Fernando Correia De Campos, Jürgen Creutzmann, Cornelis de Jong, Evelyne Gebhardt, Małgorzata Handzlik, Malcolm Harbour, Philippe Juvin, Sandra Kalniete, Edvard Kožušník, Kurt Lechner, Toine Manders, Phil Prendergast, Mitro Repo, Heide Rühle, Matteo Salvini, Christel Schaldemose, Andreas Schwab, Emilie Turunen, Bernadette Vergnaud, Barbara Weiler
Substitute(s) present for the final vote	Pascal Canfin, Frank Engel, Marielle Gallo, Anna Hedh, Maria Irigoyen Pérez, Othmar Karas, Constance Le Grip, Antonyia Parvanova, Sylvana Rapti, Olle Schmidt, Kyriacos Triantaphyllides, Anja Weisgerber