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## **FREEDOM OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES**

The freedoms of establishment and service provision are pivotal for business and professional mobility within the EU. The complete implementation of the Services Directive is crucial for solidifying the internal market, but obstacles still persist. The COVID-19 pandemic added new challenges. In response, the European Parliament passed a resolution in February 2022, outlining how economic recovery after COVID-19 can best mitigate the negative effects on these vital freedoms.

### **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 out 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 ([2.1.6](#)).

### **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 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 their 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. Furthermore, 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](#)) strengthens the freedom to provide services within the EU. This directive is crucial for the completion of the internal market, since it has huge potential for delivering benefits to 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. According to the [Commission communication entitled 'Europe 2020 – A strategy for smart, sustainable and inclusive growth'](#), 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. 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 this directive has been significantly delayed. While initial reforms led to the removal of numerous barriers in the single market for services, momentum has waned since 2012. The reform efforts have decelerated, with meaningful progress mostly seen in Member States that are either receiving financial assistance or those with comprehensive national reform agendas. Despite the directive's capability to increase EU GDP by 2.6%, to date, only 0.9% of this growth potential has been realised, leaving an unexploited margin of 1.7%. The Commission [acknowledges](#) these delays but does not consider it necessary to amend the directive. Instead, it is focused on ensuring that the directive achieves its full benefits through enforcement and the introduction of the 'Services Package', which includes new legislative proposals to invigorate the services sector and address the remaining implementation gaps.

## ROLE OF THE EUROPEAN PARLIAMENT

Parliament played a key role in liberalising self-employed activities, ensuring that certain, limited activities were reserved for nationals. It also took the Council to the Court of Justice of the European Union for inaction as regards transport policy. The 1985 judgment ([Case No 13/83 of 22 May 1985](#)) found the Council to be at fault for not ensuring free international transport services, in violation of the Treaty of Rome.



Consequently, the Council had to adopt relevant laws. Parliament's role has expanded with the application of the co-decision and ordinary legislative procedures concerning freedom of establishment and service provision.

Parliament has also been integral to the adoption and monitoring of the Services Directive, urging Member States to comply with and properly execute its provisions. It passed a [resolution](#) on 15 February 2011 regarding the directive's implementation and [another](#) on 25 October 2011 concerning its mutual evaluation process. After a Commission communication in June 2012, Parliament's IMCO Committee produced a report on the status and future of the internal market for services, which the [plenary adopted](#) on 11 September 2013.

On 7 February 2013, Parliament also adopted a [resolution](#) with recommendations to the Commission on the governance of the single market, 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 prioritised proposals on telecommunications, such as regulations for electronic identification ([Regulation \(EU\) No 910/2014](#)) and a 'Connected Continent'. Parliament's [resolution](#) in July 2012 addressed financial services, including basic payment services and mortgage credit ([Directive 2014/17/EU](#)). It also tackled package travel through a [resolution](#) in March 2014. The Mortgage Credit Directive enforces consumer protection and ensures informed financial capability. The Directive on financial markets ([Directive 2014/65/EU](#)) promotes transparency. In 2019, Parliament addressed accessibility requirements ([Directive \(EU\) 2019/882](#)) to support citizens with disabilities. To bolster this, a [resolution](#) in October 2022 proposed an AccessibleEU Centre to unify accessibility experts and professionals.

A 2019 [study](#)<sup>[1]</sup> revealed that EU legislation on the free movement of services, including in professional qualifications and retail, yields substantial economic benefits: EUR 284 billion per year under the Services Directive, EUR 80 billion from professional services, and EUR 20 billion from public procurement services. Another [study](#)<sup>[2]</sup> similarly shows that the services sector, which represents 24% of intra-EU trade (up from 20% since the early 2000s) and contributes 78% to the EU's gross added value, is pivotal for growth. However, the study also identified regulatory diversity and informational challenges as factors that increase business costs and impede the free movement of services and the freedom of establishment within the EU.

In its 17 April 2020 [resolution](#), Parliament recognised the single market as pivotal for Europe's prosperity and crucial in responding to COVID-19. Additionally, in its 19 June 2020 [resolution](#), it stressed the significance of the Schengen area to the EU and urged the Member States to ease movement restrictions and work towards full Schengen integration.

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[1]Pelkmans, J., Contribution to growth: The Single Market for Services – Delivering economic benefits for citizens and businesses, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2019.

[2]Dahlberg, E. et al., Legal obstacles in Member States to Single Market rules, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020.



On 25 November 2020, Parliament adopted a [resolution](#) entitled ‘Towards a more sustainable single market for business and consumers’, which focuses on different policy areas, in particular the area of consumer protection and business’s participation in the green transition (key to enhancing the sustainability of the single market). At the request of the IMCO Committee, the Policy Department for Economic, Scientific and Quality of Life Policies of Parliament’s Directorate-General for Internal Policies published a briefing entitled ‘The European Services Sector and the Green Transition’, which contributed to this resolution.

On 20 January 2021, Parliament adopted a [resolution](#) entitled ‘Strengthening the single market: the future of free movement of services’. The resolution underlines the need to ensure the implementation of the single market rules for services and to improve the enforcement action of the Commission. It stresses the need to evaluate the level of implementation of the EU legal framework for services and to empower companies by providing them with better access to information.

The COVID-19 pandemic led to reinstated restrictions that affected free movement within the EU’s single market, including the services sector. A [webinar](#)<sup>[3]</sup> held on 9 November 2020 by the Policy Department for Economic, Scientific and Quality of Life Policies examined the pandemic’s impact, predicting significant future changes in service demand and supply due to technological progress and altered consumer habits. A [study](#)<sup>[4]</sup> presented to the IMCO Committee in February 2021 highlighted that although initial border closures disrupted cross-border professional services, the adoption of digital tools facilitated a return to some level of normalcy.

The Parliament’s [resolution](#) of 17 February 2022 on tackling non-tariff and non-tax barriers in the single market addressed the generally persisting barriers to the freedom of goods and freedom to provide services, as well as specifically how COVID-19 was detrimental to the four freedoms (the free movement of goods, the free movement of people, the freedom of services and the freedom of movement of capital). This obstacle to the four freedoms persists, despite the extent to which digital tools remedied some of the economic hardship engendered by COVID-19 restrictions.

For more information on this topic, please see the website of the [Committee on Internal Market and Consumer Protection](#).

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11/2023

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[3]Milieu Consulting SRL, The impact of COVID-19 on the Internal Market and consumer protection – IMCO Webinar Proceedings, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020.

[4]Marcus, J. S. et al., The impact of COVID-19 on the Internal Market, Publication for the Committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2021.

