

III

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Opinion of the European Committee of the Regions — The services package: An updated view from Europe's local and regional authorities

(2020/C 324/09)

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Reference documents:	Proposal for a Regulation of the European Parliament and of the Council introducing a European services e-card and related administrative facilities COM(2016) 824 final Proposal for a Directive of the European Parliament and of the Council on the legal and operational framework of the European services e-card introduced by Regulation [ESC Regulation] ... COM(2016) 823 final Proposal for a directive of the European Parliament and of the Council on a proportionality test before adoption of new regulation of professions COM(2016) 822 final Proposal for a Directive of the European Parliament and of the Council on the enforcement of the Directive 2006/123/EC on services in the internal market, laying down a notification procedure for authorisation schemes and requirements related to services, and amending Directive 2006/123/EC and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System COM(2016) 821 final Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on reform recommendations for regulation in professional services COM(2016) 820 final

POLICY RECOMMENDATIONS

THE EUROPEAN COMMITTEE OF THE REGIONS

Importance and urgency of completing the Single Market in services

1. acknowledges that the Single Market is a major achievement of EU policy that underpins European competitiveness, prosperity and consumer well-being; underlines that a properly functioning Single Market also contributes to boosting economic growth, innovation and employment at regional and local levels and that regional and local authorities, as important public procurers, benefit from a better functioning Single Market, including in services;
2. recognises that the Single Market is a work in progress and that significant barriers remain; underlines that its implementation and deepening demand greater commitment from institutional actors at all levels of governance, and that Member States in particular have important responsibilities for ensuring effective implementation;
3. underlines that Single Market policy proposals can have important territorial impacts that should be properly assessed. Territorial impact assessments contribute to measuring the possible effects of legislative proposals in a comprehensive and balanced way, covering a wide range of aspects, and are essential for many regions which are not directly involved in the legislative process, but do implement the legislation; reiterates that the CoR is ready to contribute its expertise to these assessments;
4. calls for the implementation of the Single Market to respect, as far as possible, the principles of local self-government; recalls that the European Charter of Local Self-Government⁽¹⁾ acknowledges that local authorities are one of the main foundations of any democratic regime, that the safeguarding and reinforcement of local self-government is an important contribution to the construction of a Europe based on the principles of democracy and the decentralisation of power, and that this entails that local authorities possess a wide degree of autonomy with regard to their responsibilities, the ways and means by which those responsibilities are exercised and the resources required for their fulfilment;
5. considers that a more decentralised approach to the implementation of the Single Market should be looked at, involving the decentralisation of responsibility for monitoring and controlling the correct application of EU law to agencies at Member State level, modelled on the decentralised approach to the application of EU competition rules; believes that such a decentralised approach would both help in reducing administrative burden at all levels and promote Member States' ownership of the Single Market, which is essential for its proper functioning;
6. points out that many of the most significant remaining economic barriers are in the area of services;
7. underlines that services are the major component of the European economy, accounting for around 70 % of both GDP and jobs⁽²⁾; points out, however, that the EU service sector is characterised by slow productivity growth and weak competition and by an enormous diversity of services sectors with different characteristics; notes that intra-EU trade in services represents only one third of intra-EU trade in goods and shows no signs of catching up;
8. stresses that unjustified barriers to the cross-border provision of services, mainly resulting from diverging national rules and procedures, are among the main causes of the sector's poor performance and that removing these obstacles would give service providers and customers greater opportunities to make full use of the potential of the Single Market, that further action should be based on demonstrated needs of service providers; that the enormous diversity of services sectors may require a more sector-specific approach and that regional and local governments could play an important role in solving the problems that arise;
9. stresses that services are an important intermediate input in the economy as part of global value chains and that competitive services, particularly business services, are crucial for productivity and cost competitiveness in other sectors such as manufacturing which are vital for regional and local economies;

⁽¹⁾ Council of Europe, 1985.

⁽²⁾ Commission Staff Working Document, Single Market Performance Report 2019, SWD(2019) 444 final.

10. points out that, ten years after its entry into force, the potential of the Services Directive to enhance the free movement of services has not yet been fully realised and that providers in a range of service sectors still face a wide array of barriers when they want to establish themselves in another Member State or provide services on a temporary cross-border basis; notes that estimates indicate that tackling the barriers to cross-border trade and investment in services under the framework already provided by the Services Directive could add 1,7 % to the GDP of the EU;

11. notes that of the Commission's legislative proposals in the services package only one has been adopted, namely the directive on a proportionality test before adoption of new regulation of professions; further notes that the legislative proposals for the European services e-card are blocked in the legislative process and that the proposed directive laying down a notification procedure for authorisation schemes and requirements related to services has progressed very slowly;

12. urges the Commission to analyse the most common business and professional activities in each Member State, which could already benefit from the current Services Directive, so that a comprehensive list of unnecessary costs and bottlenecks for entrepreneurs can be put together as soon as possible; also urges the Commission to draw up, as a matter of urgency, a recommendation containing a standard model for points of single contact — provided for in Article 6 of the Directive — so that Member States can follow a common design to make them as easy as possible for providers to use in their different languages, as happens in the area of technical regulations with great efficiency and minimum translation costs;

13. notes that the ECJ ruling in the *Visser Vastgoed* case⁽³⁾ could have significant implications for local and regional authorities; considers that these must be addressed by EU legislation and that the proposed notification directive is the proper framework in which to do this;

14. considers that the implications of the *Visser Vastgoed* case may not be limited to notification obligations for land use zoning plans that concern retail services but potentially extend more widely;

15. recognises the importance of a well-functioning Single Market for border regions and believes EU cross-border cooperation instruments such as EGTCs⁽⁴⁾ can play a useful role in this;

European services e-card

16. takes note of the fact that the European Parliament has rejected the European Commission's proposal for a services e-card and asked the Commission to withdraw the file; also notes that the Council was unable to reach a common position on the same file and points out that, in order to support businesses providing cross-border services, measures from the current Services Directive such as the individual contact points should be implemented properly;

17. reminds the co-legislators that the initial idea behind the services e-card, on which the proposal failed to deliver, was to reduce the administrative complexity and costs for cross-border service providers, and particularly SMEs, when fulfilling administrative formalities;

18. points out that without the implementation of a services e-card, cross-border service providers still face the same costs in fulfilling administrative formalities and that the services e-card was supposed to reduce these by half, which would have been of major benefit to SMEs;

19. therefore, recalls the need to take important steps in administrative simplification from the perspective of service providers and the unnecessary costs they still face; points out, however, that the legislative, technical and administrative burden for local and regional authorities entailed in introducing the services e-card must be proportionate to the expected benefits;

⁽³⁾ Joined Cases C-360/15 and C-31/16 decided on 30 January 2018.

⁽⁴⁾ European Groupings of Territorial Cooperation.

20. reminds the co-legislators that the Services Directive stipulates that Member States may not duplicate requirements which are equivalent to those the provider has already fulfilled in another Member State; notes, however, that this is still insufficiently applied in practice, and that service providers therefore often face the same requirements as domestic companies even though they have already complied with equivalent or similar requirements in their home Member State;

21. reminds the co-legislators that the complexity of cooperation between national authorities and the resulting administrative burden of the proposed services e-card procedure were among the main reasons why compromise was not achieved in negotiations on this issue. In this respect, calls on the European Commission to concentrate on simple and clear rules for cooperation between authorities in its future proposals;

22. points out that the significant diversity in legal form and shareholding requirements across Member States also remains an obstacle to the freedom of establishment in the business services sector;

23. equally notes that service providers experience great difficulties in obtaining legally required professional indemnity insurance cover when seeking to offer their services in another Member State;

24. also points out that national sectoral laws do not always make the necessary distinction between the requirements applicable to service providers seeking to establish themselves and those seeking to provide cross-border services temporarily, resulting in uncertainty and disproportionate regulatory requirements for cross-border service providers;

25. regrets that the aforementioned obstacles have not been lifted and still contribute to a low integration of services in the Single Market, under the framework already provided by the Services Directive;

26. therefore, urges the other institutions to find common ground to tackle the issues that the legislative proposal for the e-card is intended to tackle, thus allowing for a better implementation on the grounds of the Services Directive;

27. recognises the different approaches in Member States towards eligibility criteria for service providers to take part in tenders, which can be an obstacle to the Single Market; therefore, the potential of EU instruments should be used to streamline these approaches wherever possible;

28. draws attention to the provisions in the Services Directive aimed at increasing cross-border activities and the development of a genuine Single Market for services, through a greater convergence of professional rules at European level and calls on the European Commission to propose initiatives to incentivise professional associations at European level to use these possibilities to facilitate the free movement of service providers;

29. underlines the importance of the Services Directive and its contribution to the free movement of services in the Single Market. At the same time highlights that businesses, in particular SMEs and public authorities, face many challenges when applying the directive's rules;

Notification procedure

30. takes note of the ECJ's ruling in the *Visser Vastgoed* case and of the legal uncertainties it could entail for local and regional authorities^(?), particularly as regards the question of the obligation to notify; also as the scope might not be limited to retail services and land use planning, but could affect other regulatory activities of local and regional authorities;

(?) There are more than 95 000 municipalities in the EU, with huge size and capacity differences. In Germany and Austria together, up to 250 000 local spatial plans could in principle fall under the services directive and its notification obligation (Interim report of 15 January 2020 of a CoR-commissioned study on the Implication for local and regional authorities of the EC notification directive in the light of the January 2018 ECJ ruling).

31. sees an opportunity in the improvement of the notification procedure under the Services Package to address the issues raised by the ECJ's ruling and calls upon the co-legislators to concentrate their efforts on coming up with solutions during the current negotiations on the notification procedure, which also ensure that the procedure provides the necessary legal certainty;
32. stresses that many local and regional authorities face challenges in terms of capacity and resources to cope with the administrative burden of the current legal notification obligation — in view of the ECJ's ruling — and that any new notification procedure should take this into account in order to reduce that administrative burden as much as possible;
33. points to the need to strike the right balance between the efforts required by notification obligations and the added value for reaching the objectives of the Services Directive, taking into account that most local and regional regulations have an insignificant effect on the Single Market and are likely to comply with the Services Directive's requirements;
34. emphasises that any new notification procedure should avoid leading to unnecessary delays in the adoption of local and regional regulations, as these delays adversely affect all stakeholders involved and hinder economic activity as well as investment (for instance in retail and related real estate development);
35. calls for sufficient transparency and openness to dialogue on the part of the European Commission in the context of any new notification procedure, particularly during the phase of the procedure in which the Commission assesses whether a local or regional regulation is compliant with the Services Directive;
36. insists on the need for effective implementation of the Services Directive and therefore suggests that the European Commission come up with a set of quantitative and/or qualitative criteria to evaluate which type of local and regional regulations could be exempted from notification under the Services Directive, without this exemption standing in the way of the implementation of the Services Directive;
37. suggests that the European Commission investigate the feasibility of decentralised elements of implementation, including notification, linked to quantitative and/or qualitative criteria, as this could increase the efficiency of the implementation and lead to a more accurate assessment of the regional and local public interest; thus respecting the principle of local self-government and subsidiarity;
38. emphasises the importance of the principles of non-discrimination, proportionality and public interest as applied in the Services Directive, and underlines in the local and regional regulatory context that Recital 9 of the Services Directive explicitly excludes from its scope rules concerning the development or use of land and town and country planning.

Brussels, 1 July 2020.

The President
of the European Committee of the Regions
Apostolos TZITZIKOSTAS
