

SERVICES ON THE EVE OF THE NEW SINGLE MARKET STRATEGY

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Abstract

Services are a driving force in modern economies. However, to exploit their full potential in a European dimension, the effective functioning of the Single Market in services is necessary. However, the Single Market in services still cannot be perceived in terms of full operational efficiency. Despite the efforts undertaken by the EU, the services sector is highly fragmented along national lines and there are many restrictions that hold it back. The EU has again set itself the target to advance the Single Market. Services are one of the priorities in a new strategy and thus it is important to analyse the present situation regarding barriers that obstacle the effective functioning of the Single Market for services. It is evident that the improvement can be made only with the voluntary cooperation between Member States. And this might be the most difficult barrier to overcome. The aim of the paper is to present the situation in services sector in the European Union at the moment of launching a new strategy for Single Market.

Keywords

Services, Single Market, liberalisation, barriers, Service Directive

JEL classification

L80, O52, P17

1 Introduction

Services are a driving force in modern economies. However, to exploit their full potential in a European dimension, the effective functioning of the Single Market in services is necessary. The EU Single Market as one territory without any internal borders or other regulatory obstacles to the free movement of goods and services people and capital is, from the point of view of economic integration, one of the most important steps to deepen cooperation between the Member States. But, despite more than two decades since introducing the idea of Single Market in the European Community, free movement of services still cannot be perceived in terms of full operational efficiency. During this period, the effectiveness of liberalization was relatively low and resistance of Member States to introduce such liberalising solutions - high.

The Service Directive adopted in 2006 intended to increase the effectiveness of the Single Services Market in a way of abolishing discriminative restrictions and facilitating provision of services EU-wide. But since there is not a great progress in reducing regulatory barriers in Member States, the services sector in the European Community should be still characterised as the set of national markets rather than one single market for services. In 2015, the European Commission once again has made efforts to implement the basic principles of the Single Market to foster process of creation effective the services sector.

The aim of the paper is to present the situation in services sector in the European Union at the moment of launching a new strategy for Single Market.

The paper is structured as follows. Section two the development of the Single Market is discussed. In the section 3 the internal services market acquis is characterised. The aim and main principles of the Services Directive are presented in the section 4, followed by analysis of the present situation in the Single Market for services, especially in regard to limitations and barriers. Services market comprises of two categories of services: services ruled by the sectoral regimes and services undergoing provisions of the Services Directive. In the sixth section there is some deeper insight made into the situation in selected services, especially business services and construction services, as the ones having the highest level of restrictiveness. The future activities relating to services

announced in the new Single Market Strategy are mentioned in the last section. The paper is concluded by a general appraisal of present and future in services sectors of the European Union.

2 Since the implementation of the Single Market to a new Single Market Strategy

The Single Market was supposed to be a key step in deepening economic cooperation in an integrated structure as the European Union. Its foundations and principles were set out in the Single European Act of 1986, and their execution took place on 1 January 1993. But, since then the implementation of those provisions and regulations at the level of Member States as well as the coordination at the Community institutional level, were far from effectiveness. Moreover, after the first period of increased interest in the Single Market in the 90s, the stagnation period started in late 90s and was continued at the beginning of XXI century. The main problems of this period are identified as (Kuczevska and Stefaniak-Kopoboru, 2016):

- poor involvement of Member States in the implementation of the Community law;
- low rate of implementation of tools and complementary actions adapted to changing conditions;
- a focus shift to other areas of integration such as political and institutional changes, enlargements and the introduction and then stabilizing the euro zone.

A new impetus for actions to revisit mechanisms of the Single Market and the development of new tools and activities or reform the existing ones was given by the Monti's report (Monti, 2010). A state of the Single Market at this time has been characterized there as highly diversified between Member States with big loopholes between regulations at the Member States and Community levels. In addition, it was also characterized as having low levels of competitiveness and innovation and, unfortunately, a low level of citizens' trust.

Based on the Monti's report, in 2011, the European Commission has launched a program of reforms: “Twelve levers to boost growth and strengthen confidence” (European Commission, 2011). This strategy was supposed to lead to the development of a strong and competitive economy based on innovations, intelligent technologies and knowledge and to support entrepreneurship. However, these reforms has not been implemented. That happened due to the economic downturn arising from the crisis of 2008-2010 which caused a shift the focus on operations of stabilizing national economies in Member States, while at the Community level the focus was on measures stabilizing the euro zone (Kuczevska and Stefaniak-Kopoboru, 2013). The next attempt to improve the competitiveness of the European economy was undertaken in 2015, including a new strategy for the Single Market.

3 The internal services market acquis

The acquis for the services sector is very broad. The fundamental principles are set out in the Treaty on the Functioning of the European Union (TFEU). To make these principles a reality the horizontal and sectoral regimes needed to be set up in order to regulate specific types of services (Fig. 1).

The main horizontal regulation is the Services Directive (2006/123). The number of services covered by this Directive is very wide (e.g. retail services, business services or construction), but it does not cover all services. Some services due to their specific importance to economies are excluded from the scope of the Services Directive and are regulated by a specific sectoral laws (e.g. financial services, transport, telecommunications, postal services). The horizontal regimes include also that of public procurement and related regimes for public works, infrastructure for network industries (especially cross-border and the EU-wide ones) and, finally, two-tier government for the internal market in services, granting the EU agencies with more trust and powers (CEPS, 2014).

The sectoral services regimes were set up in regard to services of specific characteristic and a special importance to national economies as well as the economy of the whole European community. Since those regimes exist for decades, they can be assessed as quite developed, however due to the economic and technological development they need to be amended to reflect the current situation.

Finally, the services sector is not existing separately from the other sectors of the economies. Therefore the regulatory frameworks should somehow be coherent with the regulations governing other areas such as labour market and the freedom of movement of workers, trade and the freedom of goods at the intra-EU and extra-EU perspective, or consumer rights.

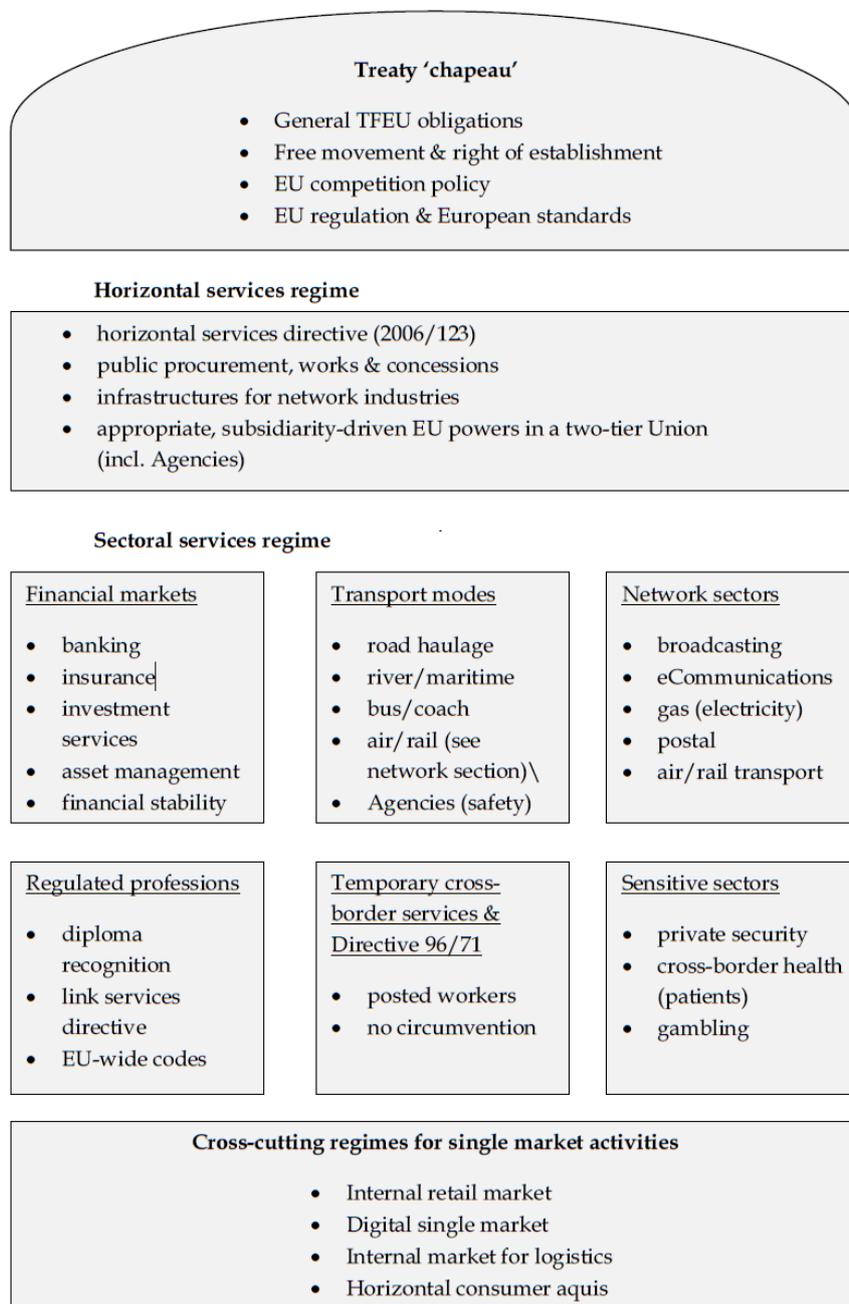


Fig. 1. Holistic view of internal services market acquis (Source: CEPS, 2014)

4 The Services Directive – aim and main principles

The services sector accounts for nearly 70% of EU GDP and is a key employment sector (CEPS, 2014; European Commission, 2016a; Erixon and Georgieva, 2016). However, this sector is also burdened with functioning of number of barriers, especially in relation to cross-border trade in services, rights for establishment business or the recognition of qualifications. Prior to the

implementation of the Services Directive there were about 35,000 regulatory barriers (Corugedo and Perez Ruiz, 2014).

Legal and administrative barriers considered to be the most limiting the effective functioning of the Single Market in services were identified as (Kulawik and Jankowski, 2010):

- difficulties in obtaining information about formalities,
- difficulties in finding competent authorities responsible for issuing licenses and other formalities,
- a need to address a number of different bodies in order to obtain various permits,
- unclear and unjustified requirements,
- long, complicated and costly procedures.

Countries with the largest number of regulatory impediments were Germany, the Netherlands, Spain and Austria, and the countries with the most open access to the services market were Cyprus, Malta, Luxembourg and Finland (Corugedo and Perez Ruiz, 2014).

Despite the general decline in interest in the internal market in the late 90s, some activities were carried out aimed at improvement of functioning of the free movement of services. Implementation of this freedom, however, proceeded in a more restricted way than it was in the case of other freedoms. Services, in general, were subject to the core principles of the EU Single Market, that have been developed through the case law of the European Court of Justice. This case law was codified into EU law with the adoption of the Services Directive in 2006 and implemented on 28 December 2009 (Directive 2006/123/EC).

The aim of the Directive was twofold: firstly, to eliminate obstacles to the development of service activities between Member States and, secondly, the establishment of general provisions facilitating the exercise of the freedom of establishment for service providers and the free movement of services, while maintaining a high level of quality of services. It should be emphasized that the Services Directive applies only to requirements which have a direct impact on the taking up and pursuit of service activities, and does not apply to requirements which should be followed in conducting such activities. Additionally, it should be stressed that it does not harmonise national regulation. It rather facilitates cross-border services activities for the services falling under it (CEPS, 2014).

The main task of the Services Directive was to simplify administrative procedures relating to access to and exercise of service activities, for example by abolishing requirements to provide certified documents proving the right to exercise particular service activities. Novum in the directive was the introduction of points of single contact (PSCs), where service providers can complete all procedures and formalities, especially to start a business (in every legal process form), to obtain all necessary permits and licenses to conduct business, and implement other procedures to provide services. Moreover, all these administrative procedures should be possible to be completed by mail, phone or electronically.

In order to prevent the introduction of new barriers in place of those abolished, the provisions of this Directive oblige EU Member States not to introduce their own requirements or procedures, unless they are essential and necessary (particularly in view of public safety). Additionally, there is imposed an administrative cooperation between EU countries in order to give mutual assistance in the supervision of service providers. That should ensure effective supervision of service providers and guarantee that such supervision does not lead to additional and unjustified obstacles for service providers (European Commission, 2016b).

The scope of the Services Directive is not limited to services provided between the EU countries only however and also covers services provided within countries (European Commission, 2016a).

5 The Services Directive in practise

Despite the large contribution to the implementation of the free movement of services, the Services Directive did not cover fully all the issues related to the effective functioning of the free movement of services. Above all, the notion of cross-border provision of services still remained imprecise [Kulawik and Jankowski, 2010]. This concept has been shaped only on the basis of the case law of

the EC Court of Justice, which should be considered inadequate from the point of view of legal certainty. Interpretation of the various situations is still subordinated to the decisions of national and judiciary authorities. Moreover, it is estimated that the introduction of the Directive has not significantly contributed to the simplification of the European laws [Kawka, 2015]. This situation occurs due to several factors. Firstly, the Services Directive is not a law that is directly implemented into the national legislation systems. It functions as the one more legislation layer added on the top of national laws, which aim at setting up a general framework. Secondly, differences in the way of implementation and the number of national implementing measures (NIMs) concerning the Services Directive vary significantly between Member States. Most of the countries decided to adopt one horizontal law, whether Germany and France implemented several acts (European Commission 2016c). As for the NIMs, differences between countries are much greater: from 1 legislative act in Bulgaria or Estonia to 220 legal acts in Germany and 423 national acts in Hungary (EUR-Lex, 2016). And, thirdly, the situation is getting more complicated due to a lack of clear support of some Member States for further liberalization of trade in services and also due the number of exceptions that make adopted common regulations not applicable to all types of services.

In relation to the PSCs, the Directive requires easy access to information, but this is limited only to assistance to providers and recipients in obtaining general information how requirements are usually interpreted or applied in a particular Member State. This does not include the obligation to the competent authorities to deliver a legal advice in individual cases. In addition, there is no obligation, but only incentive to ensure that such information should be also available in languages other than the official language of the country. The greatest problems are concerned with the integration of PSCs in the e-government structures (European Commission, 2013). This obligation has been fulfilled in some countries (e.g. Estonia, Spain, The Netherlands or Sweden), however some countries still lag behind (e.g. Belgium, Germany, Poland, Latvia or Romania).

Having the first analysis and evaluations of performance of the services sector after the implementation of the Services Directive, the European Commission has taken a number of measures and recommendations for individual Member States in order to achieve more effective implementation of the Services Directive - "A partnership for new growth in services" (European Commission, 2012). As a result of actions taken, Member States have increased their efforts to carry out appropriate reforms. But still, the degree of trade integration in the single services market amounted to approximately 5%, while in the commodities market about 22%. Also assessments of consumers regarding the single market in services were less positive than of a single market for goods (European Commission, 2013). Additionally, evaluations of the implementation of the Services Directive indicated constrains retained at the Member States level, major differences in national legislation on labour, taxation, health and safety, consumer protection and contract law as well as restrictions on access to professional activities in the field of services. There are still some lingering barriers such as a spurious justification of retained regulation in e.g. certain professions (e.g. where Member States did not have regulation), the retention of restrictions for establishment of companies via their mandatory legal form and/or ownership requirements and, finally, requirement of insurance in the absence of a market for such occasional (cross-border) activities (CEPS, 2014). Discrimination of the recipients of services was also noticeable, especially in the form of restrictions on possibilities of purchasing services on grounds of nationality or place of residence, and in increase of prices, they had to pay in such situations, especially in the online transactions (European Commission, 2013).

Services are a special kind of activity, and to a large extent, are provided within the framework of the highly specialised professions. According to the European database of regulated professions, in all Member States there are currently over 5000 regulated professions having separate national regulations where different procedures in respect to service providers from different Member States apply. This situation creates regulatory obstacles to mobility of these providers. The positive is that actions taken by the Commission in previous years resulted in a greater involvement of Member States in the process of reforms what led to easiness or abolishing many of the regulatory barriers.

However, still regulations to some professions vary greatly between individual Member States (more liberal or strict approach), especially for construction engineers, architects, accountants, lawyers, real estate agents, tour guides and patent attorneys (European Commission, 2015b).

The effective functioning of the Single Market in services relies on the will of its Member States. However, many times it is quite questionable. No such a structure as the one common market will work effectively if countries constituting it disobey provisions of the community law concerning the obligation of notification new regulatory measures planned for implementation within national regulatory regimes. That creates the legislative burden and there is no verification of the reasonableness and proportionality of new national rules that restrict the free movement of services, as well as no clarity for consumers and businesses required by provisions of the Transparency Directive (2015/1535).

6 Barriers in selected services

Services market comprise of two categories of services: sectoral services and general. As mentioned in the third section, sectoral services are excluded from the scope of the Services Directive. These services differ significantly (e.g. professional services, healthcare services, transport, financial services, gambling). Although there are separate regulations at the European and national levels for each of type of sectoral services, there is no possibility to perceive any of them as functioning in a way of the effective internal market. There are number of reports analysing barriers functioning in those sectors (Monteagudo et al., 2012; CEPS, 2014; EU High Level Group, 2014; Canton et al., 2014; European Commission 2015c). Pelkmans and Mutilli (CEPS, 2014) characterized the European markets in sectoral services as: moderate fragmented (in case of financial services and transport services other than rail), considerable fragmented (professional services) and severely fragmented (network services, eCommunications, rail services). As for services undergone the Services Directive two type of services are recognised as of the highest level of restrictiveness. These are business services and construction services.

There are four key business services sectors: accountants, architect, engineers and lawyers (European Commission, 2015c). Within these sectors rules may be different according to the type of activity considered. There is a number of regulatory and non-regulatory barriers relating to business services. The regulatory barriers refer to: 1) reserved activities, 2) authorisation requirements, 3) compulsory chamber membership requirements, 4) restrictions on corporate form, shareholding structures and multidisciplinary activities, 5) insurance requirements, 6) tariff restrictions, and 7) restrictions on advertising. The non-regulatory barriers include provision of information on legal requirements and the completion of procedures online through the Points of Single Contact.

The overall analysis of the situation in the business services was made by the EU High Level Group (2014) and the European Commission (2015b). Results of those analysis show that the business services market is highly fragmented and the levels of business services barriers varies greatly between Member States. Furthermore, there is a lack of information on procedures needed for going cross-border, excessive bureaucracy, fragmented legislation as well as taxation and insurance regimes that inhibit cross-border trade. The highest level of overall restrictiveness is in Luxemburg and Austria, while the lowest in Sweden and the United Kingdom. The results differ additionally depending on the key sector of business services and the type of restrictions.

Construction services includes construction/building companies; certification services in the area of construction; crafts businesses in construction sector. This is the second sector with the largest number of barriers in the EU (European Commission, 2015c). The regulatory barriers in construction concern in general restrictions on authorisations, registrations and notifications, especially with obtaining building permits (Ecorys, 2015). Secondly there is a number of restrictions for access to construction services. They include technical and professional capacity conditions, organisational requirements and certifications (especially to fulfil health and safety standards or special management standards), and last, but not least, economic or financial requirements. Additionally, the performance

of construction services is directly impacted by specific fields of law, including environmental, energy efficiency, urban and spatial planning, labour and social security law, with some of this legislation introduced at EU level. There is also a whole set of burdensome formalities concerned posting workers issues and requirements applicable to professional services.

The analysis undertaken by the European Union (2015c) shows that the EU construction sector is characterised by very restrictive national regulations what results in low integration across Member States and significantly lower level of intra-EU imports and exports compared to other services sectors. The highest level of overall restrictiveness is in Denmark and Bulgaria, while the lowest in the United Kingdom and the Netherlands.

7 Services sector in a new Single Market strategy

Unsatisfactory results of measures undertaken by the European Commission in monitoring and disciplining the Member States in better achievement of objectives of the Services Directive, led the European Commission to indicate this sector as a one of priority areas in a new Single Market strategy. After the economic crisis of 2008-2010, Member States have continued to focus on strengthening their economies and the Commission's assessment was needed to give a new impulse to re-engage them in the efforts for realization of Single Market per se, not only in services. On the basis of research and public consultations, including the Monti's report and 12 levers Programme, a new program of actions to improve the competitiveness of the European economy was proposed (Kuczevska and Stefaniak-Kopoboru, 2016). The new Single Market strategy as an element of this broader program has been presented by the European Commission on 28 October 2015 in the document "Upgrading the Single Market: more opportunities for people and business" (European Commission, 2015a).

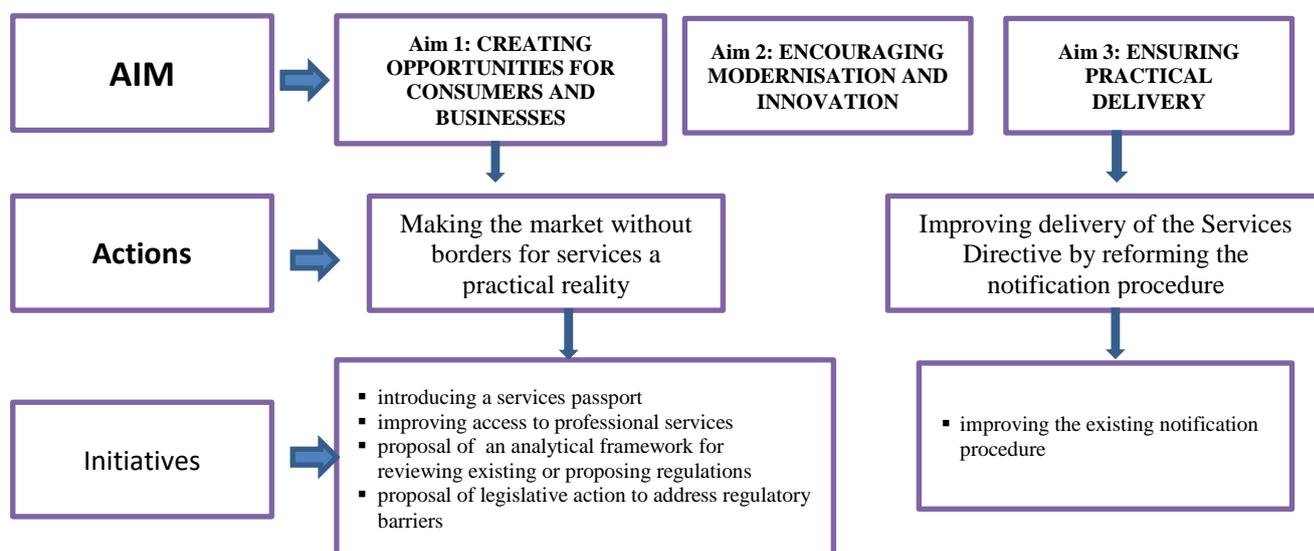


Fig. 2. Services in the new EU Single Market strategy (Source: Author's elaboration)

The new Single Market strategy is a package of measures to improve the functioning of the single market through the implementation of targeted actions in three key areas:

- creating opportunities for consumers, professionals and businesses;
- encouraging and enabling the modernisation and innovation that Europe needs;
- ensuring practical delivery that benefits consumers and businesses in their daily lives.

In these key areas there are 11 specific objectives and 22 initiatives. As regard to services there are two specific objectives and 5 initiatives (Fig. 2). Implementation of those initiatives was planned

for 2016, however at the moment of submitting this paper (June 2016), there are no information on progress in these projects.

8 Conclusions

Single Market was created with the intention to improve economic performance of the European Community. But the European Union is amalgam of different nations. Therefore it is diversified culturally and linguistically. Different approaches to the role of governments and policies management result in regulatory heterogeneity amongst Member State in the scope of national regulations concerned directly with the Single Market issues, as well as those which fall outside the internal market domain, such as private law issues or taxation, networking and trust. Additionally important determinants are cultural biases, local service traditions and national reputation what all together constitutes informational asymmetries (CEPS, 2014). As the result the services sector is highly fragmented along national lines and there are many restrictions that hold it back (Erixon and Georgieva, 2016).

The European Commission is in the process of launching a new strategy for Single Market. One of the priorities is to make the services sector a practical reality. Will this strategy be successful at the end of the day? So far, despite the efforts undertaken by European institutions, the services sector is lagging behind markets for goods. The European legislative bodies are lacking of powers to solve all the issues at the EU level and, therefore, voluntary cooperation between Member States is obligatory for the Single Services Market to become a reality. But Member States are not eager to abolish barriers of any kind that will lead to opening an access to their services markets. And this might be the most difficult obstacle to overcome.

So far the progress of liberalising the services sector in the European Union has fallen short of expectations.

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