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to: Council

Subject: Council (Competitiveness) 10 December 2010
- Information from the Commission

Delegations will find attached an information note from the Commission on the above subject which will be dealt with under "Any other business", at the Competitiveness Council on 10 December 2010.

MEETING OF THE COMPETITIVENESS COUNCIL**10 DECEMBER 2010**

STATE OF IMPLEMENTATION OF THE SERVICES DIRECTIVE

Information note from the Commission services

Almost one year has passed since the implementation deadline of the Services Directive expired, end December 2009. Over the past years the large majority of Member States has dedicated considerable efforts to deliver the benefits of the Services Directive to businesses and consumers on the ground.

Overall, the results of implementation, even if still under completion in a number of Member States, are very significant in terms of the abolition of unjustified barriers and the modernisation of the regulatory framework applicable to services. More than 1000 implementing measures (new horizontal laws and "omnibus" laws containing changes to different pieces of existing legislation) have so far been notified by Member States to the Commission. The Directive has led to the setting-up of the Points of Single Contact (PSCs) – e-government portals for businesses, now operational in most Member States. It has also brought about the creation of a comprehensive network of administrative cooperation to facilitate the free movement of services, which now links up over 5000 authorities across the EU in the "IMI" system. Furthermore, the Services Directive has created a "Single Market effect" that is quite unprecedented. Thousands of authorities at national, regional and local level have assessed their rules and the effects they have on citizens and businesses from a Single Market perspective.

But work is not completed yet. Efforts will need to be stepped up in a number of Member States in order to finalise the required changes in legislation, to set up fully operational PSCs and to further consolidate the network of administrative cooperation.

Following-up on previous information notes submitted to the Competitiveness Council, this note aims at providing an updated overview of the state of implementation and to look at further work required to ensure proper implementation and enforcement of the Services Directive in all Member States. The information provided does not pretend to be exhaustive; an in-depth assessment of all aspects of implementation and their quality in the 27 Member States is ongoing and will continue in the following months. On the basis of this assessment, the Commission will take appropriate action to ensure the complete and correct implementation of the Directive in all Member States.

STATE OF IMPLEMENTATION – DECEMBER 2010***1. The adoption of implementing legislation***

Most Member States have opted for the adoption of one horizontal law to implement the general principles and obligations established in the Directive. An alternative and equally valid approach is to implement such general principles and obligations on the basis of several acts – an approach that was chosen in Germany and France. In addition, all Member States needed to modify/abolish existing laws and regulations to ensure their conformity with the Directive.

"Horizontal" legislation

- 23 Member States have by now adopted their horizontal legislation. Since May 2010 (when the last information note to the Council on this issue was submitted), three additional Member States have adopted their horizontal laws – Cyprus, Ireland and Portugal.¹
- In 2 Member States adoption of the horizontal legislation has accumulated serious delays: Austria and Luxembourg.
- Of the 2 Member States that opted to include the general principles of the Directive in several acts (France and Germany), work seems to have been finalised in both cases.

"Specific" legislation

The review and adaptation of existing laws to ensure their compliance with the Directive is the most complex and work-intensive part of the implementation process.

19 Member States have now indicated to the Commission that they have completed their changes in specific legislation. Since May 2010, seven additional Member States indicated this to the Commission: Cyprus, Italy, Lithuania, Latvia, Portugal, Romania and the UK.² The Commission services are now in the process of assessing to what extent all the required changes have been done in these 19 Member States. Appropriate action will be taken if this assessment leads to the conclusion that not all required changes have been undertaken.

As regards the 8 remaining Member States, Germany has almost concluded the adoption of changes in sector specific legislation (some legislation at regional level seems to be still pending). France still has some proposals pending in Parliament. Belgium has already adopted most changes at federal and regional level but some seem to be still in the process of adoption

In Austria, Greece, Ireland, Luxembourg and Slovenia the drafting of the required changes to sector specific legislation have accumulated a significant delay.

2. The setting up of the "Points of Single Contact"(PSCs)³

A so-called "first generation" of PSCs is in place in 22 Member States⁴. This means that the number of Member States with operational PSCs is still the same as in May 2010. The situation does not seem to have changed significantly in the five remaining ones – Greece, Italy, Romania, Slovakia and Slovenia – where no PSC appear to be available online yet, and where efforts need to be stepped-up urgently and significantly.

- Compared to the situation earlier this year, the most notable progress has been made in Latvia, Luxembourg and Poland, where it is now possible to complete (at least some) key procedures through the PSC.

¹ Previously horizontal laws had already been adopted by 20 countries: BE, BG, CZ, DK, EE, ES, FI, GR, HU, IT, LV, LT, MT, NL, PL, RO, SK, SL, SE, UK.

² Twelve Member States had indicated previously that they had concluded this part of the implementation process: BG, CZ, DK, EE, ES, FL, HU, MT, NL, PL, SK, SE

³ The following information reflects the state of play as reported by Member States (and selectively tested by the Commission) at the end of September. It cannot be excluded that additional improvements have been made by Member States in the meantime.

⁴ AT, BE, BG, CY, CZ, DE, DK, EE, ES, FI, FR, HU, IE, LV, LT, LU, MT, NL, PL, PT, SE, UK.

- This means that, out of the 22 existing national PSC solutions, there are now 17 PSCs that allow for the actual online completion of procedures, as compared to 14 last May. Among these 17 countries electronic completion of procedures through the PSCs is available to varying degrees:
 - a significant number of procedures can already be completed online in 9 countries – Austria, Czech Republic, Denmark, Germany, Estonia, The Netherlands, Spain, Sweden and the UK
 - in the remaining 8 countries the PSCs at this stage offer the possibility to complete a number of key procedures (such as business licences or company registration) – Finland, France, Hungary, Lithuania, Latvia, Luxembourg, Poland, Portugal.
- Finally, in 5 countries – Belgium, Bulgaria, Cyprus, Ireland and Malta – the PSCs are operational but online completion of procedures does not seem to be possible yet. These PSCs seem to be limited to the provision of information.
- Even if progress has been achieved with regard to the online completion of procedures through the PSCs, difficulties remain as to their cross border use. Technical solutions for the identification and authentication of service providers and documents rely mostly on national means and their recognition and/or validation is not always ensured. The Commission and Member States continue to work to facilitate the cross-border use of the Points of Single Contact.⁵ This has also been highlighted as a priority in several key actions of the recently adopted "*Digital Agenda for Europe*"⁶. Beyond the legal obligations foreseen by the Services Directive, Member States are encouraged to make available additional services that are vital for supporting/encouraging PSC use and that are strongly called for by the business community.
- Most Member States have the intention to set up the PSCs as comprehensive e-government centres for businesses, and to make available electronic completion of procedures that are not mandatory under the Services Directive but essential for all businesses, such as procedures relating to taxation (registration for VAT or income tax) or social security registration. At this stage only 6 countries have no such plans⁷.
- 11 Member States already provide for translations in other languages than their official languages, to varying degrees⁸. Translations are available mostly in English and/or in the language(s) of neighbouring countries. Most other Member States have plans to provide translated content on their PSCs in the near future.
- In 14 Member States the PSCs are supported by physical offices (in some cases, a large number of offices, e.g. in DE, FR, CZ, BE)⁹ to which services providers can go to and get personalised assistance. 6 further Member States plan to set up such offices¹⁰.

⁵ So far, two comitology decisions on e-signatures have been adopted, Decision (2009/797/EC) OJ L274, 20.10.2009, p.36 and Decision (2010/425/EU) OJ L199, 31.07.2010, p.30. A third comitology decision is underway. In addition, a number of Member States are also cooperating in the framework of the Competitiveness and Innovation Programme (CIP) Large Scale Pilot "*Simple Procedures Online for Cross-border Services*" (SPOCS) which should lead to additional technical solutions for more user friendly PSCs.) Practical support is being provided by the Commission to assist Member States with the implementation of these Decisions.

⁶ "A Digital Agenda for Europe", COM(2010) 245 final/2.

⁷ AT, CZ, LT, GR, NL, RO

⁸ BE, CY, CZ, DK, EE, FI, LT, NL, ES, SE, UK

⁹ AT, BE, CY, CZ, DE, FI, FR, IE, GR, IT, LU, PT, SK, ES

¹⁰ EE, HU, LV, MT, PL, SI

All in all, it is clear that the development of the PSCs does not end with the implementation deadline of the Services Directive. Much work remains to be done to improve the existing PSC solutions and to make them more user-friendly and useful for entrepreneurs, both as regards the availability/presentation of information and the availability and ease of the completion of procedures online both within a Member State and across borders. This will require continuous efforts in the coming years. To accompany this work at EU level, the Commission and the Member States have recently set-up the "EUGO" network of national PSC experts.

3. Administrative cooperation and use of the Internal Market Information System

The network of authorities registered in the "Internal Market Information System" (IMI) for the purposes of administrative cooperation in the area of services is consolidating. There are now around 5200 authorities, up from 4600 authorities last May, which have been registered in the system across the Member States to deal with information exchanges on service providers. The number of registered authorities varies widely according to the Member States depending on their size, their administrative structure and their choice to organise their network of authorities in a more centralised or decentralised manner. In general, a solid structure for administrative cooperation appears to be in place in the large majority of Member States.

Practical use of the IMI system for exchanging information on service providers is picking up slowly. Since January, around 170 information requests have been exchanged between Member States' authorities, which means that the figure has tripled since last May. But the total number of information exchanges still remains relatively modest as compared to the large number of registered authorities.

This can be largely explained by the fact that the obligation to cooperate is new for authorities and requires a change in working methods. Furthermore, competences for regulating/supervising service activities often lie with authorities at regional or even local level. As a consequence, a large number of decentralised authorities, who are normally not dealing with "Single Market" questions, now have to cooperate with their counterparts in other Member States. Obviously, it takes time to properly communicate and develop this new working method in practice. But it should be clear that administrative cooperation for the service activities covered by the Services Directive is an obligation, not an option. This message needs to be passed and understood on the ground.

Significant efforts have already been dedicated to raise awareness and train competent authorities. These efforts will need to be pursued and, in a number of Member States, intensified in the coming months and years to create a real culture of administrative cooperation. Given the large size of the network of authorities, it will need to be managed and accompanied continuously at national, regional and local level. It is also important to continuously monitor the functioning of the IMI system and to make sure that it corresponds to users' needs, both from a technical and content perspective.

4. Completing implementation: priorities for further action

Urgent action is required to finalise the implementation of the Services Directive as regards the adoption of/changes in legislation and the setting-up of the PSCs. Furthermore, the PSCs and the system of administrative cooperation are long term obligations which need to be monitored and improved continuously in the coming months and years.

- Those Member States that have not yet finalised the ***adoption or modification of the necessary legislation***, be it of a horizontal or sector-specific nature, should do so without further delay.
- Urgent action is required in those countries where either the ***Points of Single Contact are still missing*** or they are clearly insufficient in their functions.
- Efforts should be pursued to allow for cross-border use of PSCs and to further develop the PSCs into ***comprehensive e-government centres for businesses*** ("second generation PSCs").
- Member States need to pursue efforts to ***consolidate the network of authorities for administrative cooperation*** through training and awareness raising activities and by monitoring the functioning of cooperation between competent authorities.