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INFORMATION NOTE

from : General Secretariat
to : Delegations
Subject : Transposition of the "Services" Directive

Delegations will find attached an Information Note from the Commission services on above subject which is on the agenda of the Competitiveness Council on 29 - 30 May under "Any other business".

MEETING OF THE "COMPETITIVENESS COUNCIL"**29-30 MAY 2008**

IMPLEMENTATION OF THE SERVICES DIRECTIVE: MID TERM STATE OF PLAY AND NEXT STEPS

INFORMATION NOTE FROM THE COMMISSION

Services are the main economic driver in Europe today. Over the past years, numerous data and economic studies have shown the *significant potential in terms of economic growth and job creation of the services sector*. This potential remains largely untapped due to obstacles to service activities in the Internal Market. Adopted by the Council and the European Parliament in December 2006, the Services Directive aims at unleashing this potential and giving a considerable boost to the services sector through a number of concrete modernisation measures. In particular, the Directive sets out an *ambitious programme of administrative and regulatory simplification* that will cut red tape, remove obstacles to cross-border activities, facilitate market access for SMEs and widen choice for consumers. The Directive will have to be implemented by 28 December 2009 at the latest.

The Services Directive is a *key element of the renewed Lisbon strategy*. Indeed, the measures it contains go in the same direction than the overall programmes of microeconomic reforms and administrative burden reduction which are currently being implemented in this framework. In the current economic situation, it is particularly important to further push these efforts in order to enhance the growth perspective in the EU. Furthermore, by *focusing on simplification measures for the benefit of SMEs* -who represent the overwhelming majority of business in the services sector- the Directive is fully in line with the "think small first" principle, the central theme of the upcoming "Small Business Act" for Europe.

The Spring European Council of March 2008 highlighted that a *"complete, coherent, and timely implementation of the Services Directive"* will be an important step towards the creation of a genuine Internal Market for services and needs to be taken forward as immediate priority. As we are now reaching the mid term of the implementation period, it is important to *take stock of what has been done so far* and to *draw the attention of Member States to those aspects where substantial efforts are required* to deliver on this commitment on time.

WORK DONE SO FAR: STATE OF PLAY ON KEY ASPECTS OF THE SERVICES DIRECTIVE

Implementation of the Services Directive is an extremely demanding task as it not only requires changes in legislation but also asks Member States to manage several large scale projects, such as the setting up of the so-called "Points of Single Contact", the implementation of a comprehensive system for administrative cooperation between Member States as well as the review of national legislation. **In response to the explicit request** from the Competitiveness Council, the Commission has deployed significant efforts and resources to provide assistance to Member States in the implementation process.

"Points of Single Contact"

The Directive requires Member States to give service providers the possibility to obtain all relevant information and complete all procedures and formalities relating to their activities through so-called "Points of Single Contact". Their setting-up requires Member States, at all levels of their administration, to rationalise and modernise administrative procedures. This should substantially facilitate market access, in particular for SMEs.

From the start of the implementation period, the Commission has tried to provide guidance to Member States so as to ensure a consistent approach to the practical implementation of this key aspect of the Directive. Work with Member States so far has focused on organisational questions - such as the possible structures and responsible bodies for the "Points of Single Contact"- as well as questions linked to the design and implementation of their functional architecture -such as the arrangement of information and the handling of procedures. Key to this work is the exchange of best practices between Member States.

During the first half of the implementation period, some Member States have carried out a substantial amount of work and developed concrete solutions for the "Points of Single Contact". However, several Member States have not yet taken the basic organisational decisions, with the result that practical work on the actual setting up of "Points of Single Contact" has not advanced far enough in those Member States.

To ensure that the "Points of Single Contact" are operational by end 2009, the basic organisational decisions – starting by the designation of the bodies that will operate as "Points of Single Contact"- need to be taken now without further delay in all Member States. Member States also need to quickly identify all procedures to be made available for completion through the "Points of Single Contact". Furthermore, concrete solutions as to their architecture and practical functioning need to be developed during the remaining of 2008 so as to leave sufficient time for their implementation and testing in 2009.

Procedures by electronic means

The Directive foresees that service providers should be able to complete the procedures and formalities linked to their service activities via electronic means. Electronic procedures should be available not only nationally but also for providers in other Member States who should be able to use them across borders. This obligation is intrinsically linked to the obligation to establish "Points of Single Contact" and it is, again, a key measure in terms of administrative simplification. Although migration towards "e-government" has been identified as a political priority at EU level for several years, with the Services Directive it has become a clear legal obligation.

In a number of Member States, there are already electronic procedures in place for national purposes but significant problems remain in general as regards the cross border use of these procedures. Against this backdrop, the Commission has taken a commitment to try to assist Member States in the work required to make the cross border use of electronic procedures possible. Problems linked to the use of e-signatures, e-identification and e-documents are being discussed now with the objective of developing, by autumn this year, a common understanding with Member States of the concrete actions required.

The Commission has insisted from the start of the implementation process on the need for Member States to ensure the required synergy between the work undertaken to implement the Services Directive and the work, already underway in most national administrations, in the area of e-government. A clear prioritisation of work for the purposes of the Services Directive is essential. Important efforts have already been made by Member States and the e-government side of national administrations is now closely involved in discussions. However, there are still a number of Member States where coordination efforts have so far been insufficient and need to be improved.

The Commission considers that clear political backing is needed to advance on this issue and, above all, sufficient resources have to be deployed by all Member States in order to meet their obligation by December 2009. This includes the setting up of electronic procedures where these are currently lacking at national level and also a clear commitment to a common approach to the key issues linked to the cross border use of e-procedures.

Review of national legislation

The Services Directive requires Member States to carry out a comprehensive review and assessment of their national legislation relating to service activities. The final aim is to abolish or simplify those requirements or authorisations that are not justified or are particularly burdensome for service providers. The review of legislation is a far reaching exercise as it covers a wide range of requirements and authorisations applied to service providers at national and, where applicable, regional or local level. The Services Directive also requires Member States to report to the Commission on the results of this review by end 2009 and to engage in a process of "mutual evaluation" of these results with the other Member States and the Commission.

The review of national legislation and, in particular, the organisation of the reporting exercise required by the Directive, has also been discussed with Member States. At the present stage, most Member States have made progress regarding the identification and evaluation of their legislation at national level. Internal guidelines have been established by most Member States to coordinate the review of their legislation and work is in progress. Work is often less advanced as regards the review of legislation at a regional and local level.

The entire review of national legislation needs to be completed as early as possible in 2008 to allow for sufficient time for the drafting of the necessary legislative measures and the completion of the subsequent legislative process in 2009. The early completion of this process is also essential for Member States to start preparing the required reports which need to be submitted by the implementation deadline.

Administrative cooperation

The Services Directive sets out a legal obligation for Member States to give each other mutual assistance. To implement this obligation, the Directive requires Member States to cooperate with the Commission in the development of an electronic system, allowing competent authorities to directly contact each other and easily exchange information.

Thus, Member States are working with the Commission on a concrete application of the Internal Market Information System (IMI) to support the administrative cooperation obligations of the Services Directive. Different aspects of this new application are being discussed with Member States and a number of key decisions will have to be taken in the second half of 2008. A pilot project on this specific IMI application will be launched at the beginning of 2009.

At this stage, Member States need to have clear commitment and actively assist the Commission in developing the system of administrative cooperation and preparing for the running of the pilot project in 2009. This implies the allocation of sufficient resources as well as ensuring the necessary coordination of these matters at national level. Member States also need to identify the competent authorities that will participate in the administrative cooperation system and dedicate substantive efforts to their awareness raising and training.

GOING FORWARD

A substantial amount of work has been accomplished in the first half of the implementation period by the Member States and the Commission. Progress has been made on several aspects of the Services Directive and a number of Member States have taken concrete measures to implement the major projects it involves. It is now crucial that sustained and consistent efforts are made by all Member States and throughout the remaining of the implementation process to advance rapidly in areas where progress has been insufficient so far. Strong political backing at national level is crucial to accelerate the momentum in these areas.

The Commission will continue to closely monitor progress made in all Member States and intends to report regularly to the Competitiveness Council on progress made and problems identified. As was already the case in the first half of the implementation process, its services fully remain at Member States' disposal to facilitate and coordinate work and provide technical assistance.

PRIORITY ACTIONS IDENTIFIED AT THIS STAGE

- The setting up of "*points of single contact*" - the basic organisational decisions need to be taken without further delay in all Member States. Concrete solutions as to their architecture and practical functioning need to be developed during the remaining of 2008 so as to have sufficient time for their implementation and testing in 2009;
- The availability of *electronic procedures* and the possibility to use them across borders - a clear commitment to develop in 2008 a common approach on the key issues linked to cross border use of electronic procedures is crucial;
- The *review of national legislation* - it should be completed as early as possible in 2008 so as to allow for sufficient time for the drafting and adoption of the required legislative measures and for the preparations of the reports which need to be submitted to prepare the process of "mutual evaluation";
- The organisation of *administrative cooperation* - sustained efforts and the active engagement of Member States are required in 2008 to take all the necessary decisions for the running in 2009 of a Services Directive-IMI Pilot project. Member States also need to start identifying the competent authorities that will participate in the administrative cooperation system and dedicate substantive efforts to their awareness raising and training.