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COMMISSION STAFF WORKING PAPER

On the process of mutual evaluation of the Services Directive

Accompanying document to the

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**Towards a better functioning Single Market for services – building on the results of the
mutual evaluation process of the Services Directive**

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1. INTRODUCTION

The process of Mutual evaluation was an innovative and evidence-based process of ‘peer review’ foreseen in Article 39 of the Services Directive¹ to assess the state of the internal market for services after implementation of the Directive. The process was based upon the results of the review of national legislation undertaken by Member States to implement the Directive. It concerned specific types of requirements for which the Directive did not provide an outright prohibition but which needed to be assessed by Member States as to their justification and proportionality during the period for implementing the Directive.

This Commission staff working document presents the results of the process of mutual evaluation. It first describes the process as such. It then sets out the detailed results as regards the requirements examined as well as the specific services sectors discussed. It ends with a description of the results of the stakeholder consultation which was also foreseen as part of the process.

2. THE PROCESS OF MUTUAL EVALUATION

2.1. Background: review of national legislation and reporting by Member States

During the three years for implementation of the Services Directive (28 December 2006 to 29 December 2009), Member States² were required to review specific requirements imposed on service providers, i.e. they needed to identify the requirements in their legislation, assess their justification and proportionality, and, where necessary, abolish or amend them. By the end of the three-year period, Member States needed to report on the results of this review.

The review of legislation concerned requirements governing the establishment of service providers and requirements governing the cross-border provisions of services.

For establishment cases, it covered:

- Authorisation schemes (Article 9 of the Services Directive)
- Quantitative or territorial restrictions; obligations on a provider to take a specific legal form; requirements relating to company shareholdings; certain requirements reserving access to a service activity to particular providers; bans on having more than one establishment in the territory of the same Member State; requirements fixing a minimum number of employees; fixed minimum and/or maximum tariffs; obligations on the provider to supply other specific services jointly with its service (Article 15 of the Services Directive); and
- Restrictions on multidisciplinary activities (Article 25 of the Services Directive).

For the cross-border provision of services (Article 16 of the Services Directive), all rules applicable to services provided on a cross-border basis needed to be reviewed (unless the

¹ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376, 27.12.2006, pp. 36–68.

² The term ‘Member States’ is used in this document to refer to the 27 EU Member States and the three EFTA countries participating in the European Economic Area (EEA), i.e. Norway, Iceland and Liechtenstein.

rules fell under one of the derogations to Article 16 contained in Article 17 of the Services Directive).

The review covered the rules applicable to a large variety of service activities, i.e. all services falling within the scope of the Services Directive.³ It concerned requirements laid down at national, regional and local level as well as those imposed by professional associations in the exercise of their regulatory powers. The review was generally carried out by those departments in national administrations responsible for the specific laws being reviewed (for example laws affecting tourism-related services were generally reviewed by the ministry responsible for tourism). It was generally coordinated by a central unit.

As said, Member States needed to report to the Commission on the results of the review. To deal with the amount of information involved in this reporting, the Commission services, in close cooperation with the Member States, set up an electronic system. Through the use of pre-formulated and pre-translated questions and answers, the system allowed Member States to access some information in all languages. It also made the information easily accessible through a common structure. Last, it helped ensure that the main information on each of the reported requirements was provided through the use of obligatory fields. The electronic reporting system was used by all Member States and was essential for the Commission services and for the other Member States to understand and make use of the information provided. During the implementation period, the information in the system was only accessible to the Member State that entered it. At the end of the implementation period, all reports were made accessible to the other Member States and the Commission.

2.2. Organisation of the mutual evaluation process

2.2.1. Preparation of the process: challenges, development of a methodology and its political endorsement

While the Services Directive called for a process of mutual evaluation, it did not set out its organisation in detail. The organisation of the process needed to address a number of important challenges, in particular:

- the high number of participants (27 EU Member States plus the 3 EEA-EFTA states);
- the vast amount of information to be dealt with;
- the limited amount of time available (about 10 months);
- the fact that important parts of the information reported were only available in the respective national languages.

To deal with these challenges, a methodology was developed in cooperation with the Member States. The aim was to ensure a good factual knowledge of the requirements to be mutually evaluated and to encourage the active engagement of all Member States. The latter was crucial: without this active engagement, the process of peer review could not have been successfully concluded.

³ For more detailed information on the scope of the Services Directive, see page 10 et seq. of the handbook on implementation of the Services Directive http://ec.europa.eu/internal_market/services/docs/services-dir/guides/handbook_en.pdf.

The proposed methodology consisted of three stages: individual self-assessments, work in clusters of 5 Member States each, and plenary meetings with all Member States.

The discussions followed a double approach. On the one hand, they focused on the establishment and cross-border requirements as such. On the other hand, they examined specific service sectors identified as priorities by Member States. The priority sectors were chosen on the basis of their economic importance as well as the level of regulation. They comprised: wholesale and retail services, construction and property-related services, real estate activities, tourism and related services, food and beverage services, services of the regulated professions, business services and private education services. Member States were of course free to discuss other sectors as well.

The proposed methodology was developed by the Commission and Member States and endorsed by the High Level Group of the Competitiveness Council (meeting of 1 October 2009). The High Level Group confirmed that the objective of the process was to obtain a detailed picture of the internal market for services and to assess the needs for future steps. The Group also stressed that the process should not be used to rank or ‘shame’ Member States. Mutual trust was key. It was finally agreed that the High Level Group would have a steering role during the process.

2.2.2. The three-step approach

2.2.2.1. First step: overview of the results of the review of legislation (‘self-assessments’)

In a first step, Member States agreed to give basic information on the main results of their review of legislation, i.e. the main changes in their regulatory framework, the main benefits expected, as well as the most important requirements maintained. This general overview was necessary to help prepare the meetings in the cluster and the plenary, where the detailed reports on individual requirements were to be discussed. The self-assessments were submitted by each Member State to the Commission by the end of January 2010. They were translated and distributed to all other Member States.

2.2.2.2. Second step: meetings in groups of 5 Member States (‘clusters’)

The aim of the work in clusters was to ensure in-depth discussions on the legal framework of each Member State. Cluster work allowed for a variety of views while nevertheless ensuring a workable size for in-depth discussion. It enabled better understanding of the individual situations in the Member States. It encouraged the active engagement of all Member States in the process.

Member States gathered in 6 clusters of 5 countries each. The composition of the clusters was proposed by the Commission taking into account (to the extent possible) languages, levels of trade, and geographical proximity:

Cluster 1: Austria, the Czech Republic, Hungary, Slovakia and Slovenia.

Cluster 2: Belgium, France, Liechtenstein, Luxembourg and the Netherlands.

Cluster 3: Bulgaria, Italy, Malta, Portugal and Spain.

Cluster 4: Cyprus, Greece, Ireland, Romania and the United Kingdom.

Cluster 5: Denmark, Germany, Iceland, Norway and Poland.

Cluster 6: Estonia, Finland, Latvia, Lithuania and Sweden.

The work in the clusters was organised by the Member States themselves with the Commission participating just as an observer. Between the end of January and the middle of March, all clusters met two or three times (generally in the capitals of different cluster members). In all clusters, Member States agreed to provide more detailed information about the existing requirements and draft 'extended self-assessments' for the service sectors that had been identified as priorities.

The results of the cluster discussions were reflected in a cluster report made available to the rest of the Member States. The reports gave a detailed and comparative overview of the situation as regards specific requirements and sectors and summarised discussions. Several cluster reports also contained best practices that had been identified during the meetings. The cluster reports generally also indicated certain issues the cluster members wanted to discuss during the plenary phase. For instance, all clusters stated that there was a need to discuss the relationship between the Professional Qualifications Directive⁴ and the Services Directive. The need to address requirements reserving an activity to specific professions was also identified.

2.2.2.3. Third step: meetings with all Member States (plenaries)

The plenary discussions started at the end of March and continued until the middle of October. These meetings were chaired by the Commission services. Several documents giving a detailed overview of the requirements and sectors under discussion were prepared.

In total, 7 plenary meetings were held. These concerned:

- 25 March 2010: Overview of the work in clusters and first discussion on horizontal/cross-cutting authorisation schemes (Art. 9).
- 19 May 2010: Continuation of discussions on authorisations (Art. 9); discussions on legal form requirements (Art. 15(2)(b)), capital requirements (Art. 15(2)(c)) and restriction of multidisciplinary activities (Art. 25).
- 20 May 2010: Discussion on tariffs (Art. 15(2)(g)), quantitative and territorial restrictions (Art. 15(2)(a)) and bans on having more than one establishment (Art. 15(2)(e)).
- 10 June 2010: Discussion on Article 16: general approaches to implementing the freedom to provide services clause and the main requirements reported by Member States.
- 15 July 2010: Continuation of the discussion on Article 16 and discussion on requirements reported in the retail sector.
- 16 September 2010: Discussion on requirements reported in the tourism sector, in the construction sector and in the business services sector.

⁴ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, OJ L 255, 30.9.2005, pp. 22–142.

- 15. October 2010: Discussion on the relationship between the Services Directive and the Professional Qualifications Directive 2005/36; discussion on requirements reported in the education sector and discussion on requirements fixing a minimum number of employees (Art. 15(2)(f)) and on obligations on providers to supply other specific services jointly with their service (Art. 15(2)(h)).

2.2.3. Stakeholder consultation

As provided for in the Services Directive, interested parties were consulted during the process of mutual evaluation. The on-line consultation took place between 30 June and 13 September. For the results, see below under point 7.

3. GENERAL REMARKS

Member States reported in total more than 34000 requirements. Most were notified by Germany, the Netherlands, Spain and Austria. At the other end, relatively few requirements were notified by Bulgaria, Cyprus, Liechtenstein, Malta, Norway, Latvia, Luxembourg and Finland. The number of notified requirements does not necessarily imply that a Member State is heavily regulated. The number depends on various factors, including the organisational structure of a Member State (federal or centralised structure; regulatory powers of local authorities) and legislative techniques (e.g. general rules versus sector-specific regulation). Significant differences in the number of notified requirements were thus to be expected. Most of the requirements notified were authorisation schemes and requirements imposed on cross-border services.

It is clear that not necessarily all existing requirements have been reported by all Member States. Not all Member States have done equally thorough work and certain differences exist in the reporting of the Member States.

Sections 4 to 6 of this document give an overview of the main requirements that were reported and discussed. They rely on the information provided by Member States in the reports as well as on the information given in the self-assessments, the work in the clusters and the discussions in the plenary meetings. The overview does not intend to provide a complete picture. This is not possible given the volume of reported requirements. The different sections focus on the requirements that have been maintained after the implementation period. They also indicate requirements that have been abolished as a result of implementation, but it should be borne in mind that Member States did not have to report all the requirements that they abolished⁵ (in some sections, therefore, only examples could be given). A number of Member States are still in the process of amending existing legislation. This is why the document sometimes refers to changes that are ‘ongoing’ or have been announced by Member States. In those cases, certain parts of the information provided may no longer be up to date (for instance, if laws have since been adopted or proposed drafts have been modified).

⁵ The Services Directive only obliged Member States to report abolished requirements if these were covered by Article 15, but not if they came under Article 9, 16 or 25.

Finally, the document describes the requirements and their justifications as reported by the Member States. It does not make a judgment as to the justification or proportionality of the requirements reported or as to the validity of the arguments and explanations given by Member States. The document does not prejudice the position of the Commission in trying to ensure the full and correct implementation of the Services Directive, including via infringement cases. Nor does it prejudice the position of the Commission regarding existing or future complaints.

4. ESTABLISHMENT-RELATED REQUIREMENTS⁶

4.1. Horizontal/cross-cutting authorisations (Article 9)

4.1.1. What is the legal backdrop? What are the relevant aspects for the Services Directive?

‘Member States shall not make access to a service activity or the exercise thereof subject to an authorisation scheme unless the following conditions are satisfied:

(a) the authorisation scheme does not discriminate against the provider in question;

(b) the need for an authorisation scheme is justified by an overriding reason relating to the public interest;

(c) the objective pursued cannot be attained by means of a less restrictive measure, in particular because a posteriori inspection would take place too late to be genuinely effective.’

Authorisation schemes are procedures that require providers to take steps in order to obtain a decision from a competent authority on access to or exercise of a service activity (by contrast, procedures that simply require providers to file a notification or declaration with the competent authorities are not considered to be authorisation schemes). Under these procedures, providers often have to supply information, documents and certificates to the competent authorities without being able to start up a new business or expand their activity until a decision on their applications has been taken. As recognised by the European Court of Justice, authorisation schemes are an obstacle to the establishment of service providers and, as such, can be maintained only if they are non-discriminatory, justified by an overriding reason of general interest and proportionate.

This section deals only with ‘horizontal’ authorisation schemes, i.e. those applying across the board to many service activities. Authorisations for specific service activities have been examined during the sector-specific discussions in the mutual evaluation process and are described in part 6 below.

⁶ The overview does not include a specific section on requirements reported by Member States under Article 15(2)(d), i.e. requirements reserving an activity to specific service providers for reasons other than professional qualifications. Most of the requirements reported and discussed related to professional qualifications. Where reservation requirements not linked to professional qualifications were reported in the priority sectors, they are included in the sector-specific parts of this paper.

4.1.2. The situation in Member States — what have we seen so far as a result of implementation?

Member States have reported a number of horizontal schemes, in particular obligations to be entered in business registers or to obtain a general trade licence, as authorisation schemes covered by Article 9 of the Directive. This is the case with Belgium (*'Banque Carrefour des Entreprises — Kruispuntbank van Ondernemingen'*), Bulgaria (craft register: *'Централен регистър на занаятчиите'*), Cyprus (general trade licence)⁷, Czech Republic (trade licence: *'živnostenské oprávnění'*)⁸, Estonia (register of economic activities: *'Majandustegevuse register'*), France (trade registers: *'Registre de commerce et des sociétés'* and *'Répertoire des métiers'*), Germany (craft register: *'Handwerksrolle'*), Liechtenstein (trade register: *'Gewerberegister'*), Luxembourg (trade licence: *'autorisation d'établissement'*), Malta (trade licence: *'Licenzi tal-Kummerċ'*)⁹, Netherlands (trade register: *'KVK Handelsregister'*), Poland (register of business activities of natural persons: *'Ewidencja Działalności Gospodarczej'*; register of entrepreneurs in the national court register: *'Rejestr Przedsiębiorców Krajowy Rejestr Sądowy'*), Slovakia (trade licence: *'živnostenské oprávnenie'*), and Sweden (different company registers held by the company registration office — *Bolagsverket'*)¹⁰.

Other business registers and general trade licences were not reported, but were nevertheless discussed by Member States during the mutual evaluation process. Although some of these business registers or general trade licences may indeed be authorisation schemes, it appears that most were not notified because they were considered simple declarations or to be outside the scope of the Directive (for example because applied for taxation purposes).

Examples include Austria (registration in the trade register: *'Gewerberegister'*), Denmark (central business register: *'CVR'*), Finland (trade register: *'Kaupparekisteri'*), Germany (trade register: *'Gewerberegister'*), Greece (general business register: *'TENIKO ΕΜΠΟΡΙΚΟ ΜΗΤΡΩΟ'*), Italy (business register: *'Registro delle imprese'* and craft register: *'Albo delle Imprese Artigiane'*), Liechtenstein (public register: *'Öffentlichkeitsregister'*), Luxembourg (trade register: *'Registre de Commerce'*), Norway (business register: *'Foretaksregisteret'*), Poland (registration, for statistical purposes, in the register of national economic entities: *'REGON'*), Romania (trade register: *'Registrul Comertului'*), Slovenia (craft register *'Obrtni Register'*), and United Kingdom (*'Companies house'*)

The discussion during the mutual evaluation process showed that these horizontal schemes can take very different forms and that their objectives can also be different.¹¹

In all Member States, legal entities, including of course service providers, are obliged to be entered in company registers for company law purposes.¹² A number of the registers

⁷ Άδεια άσκησης υπό νομικών προσώπων, επί κέρδει επιχείρησης, εμπορίου, εργασίας, επαγγέλματος κλπ., εντός των δημοτικών ορίων του οικείου Δήμου.

⁸ Depending on the activity, procedures to obtain a trade licence in the Czech Republic take the form of authorisations in some cases and declarations in others.

⁹ The trade licence in Malta has a residual scope of application, i.e. it only applies to those commercial activities that are not otherwise governed by any other specific law.

¹⁰ Sweden reported three different registers held by *Bolagsverket* (company registration office) covering both legal and natural persons: the companies register, the associations register and the trade register.

¹¹ In many cases, horizontal registration obligations can be imposed for tax or social security reasons, such as obtaining a VAT or taxpayer identification number. However, these cases were not discussed in the mutual evaluation since taxation is not covered by the Services Directive, and some of these registration requirements are stipulated by specific EU instruments (for example, VAT registrations are dealt with by Directive 2006/112/EC of 28.11.2006 on the common system of value added tax, OJ 347/1 of 11.12.2006).

mentioned above seem to fulfil primarily (albeit not necessarily exclusively) the role of company registers. Discussions showed, however, that in a number of cases the obligation to be entered in such registers also applies to individual entrepreneurs. This appears to be the case, for example, with the ‘*Registre de Commerce*’ in France and in Luxembourg, the ‘*Registro delle Imprese*’ in Italy, and the ‘*Handelsregister*’ in the Netherlands. Similar situations seem to exist in other Member States as well. This was mainly explained by Member States by referring to transparency reasons (i.e. making sure that competent authorities are aware of all businesses established in their territory) or even, in some instances, to mere statistical needs.

In other cases, cross-cutting obligations to enrol in business registers or to obtain a trade licence are imposed on service providers in order to check their good repute or their compliance with criteria concerning their activity such as professional qualifications or technical and financial capacity. This is the case, for example, with the trade licences in the Czech Republic and Slovakia, the ‘*autorisation d’établissement*’ in Luxembourg and the craft registers mentioned by Bulgaria, Germany and Slovenia. The ‘*Banque Carrefour des Entreprises — Kruispuntbank van Ondernemingen*’ in Belgium encompasses different registration obligations that appear to be imposed to ensure transparency and to verify compliance with activity-specific criteria, such as professional qualifications.

In a number of cases, these schemes — for example, the trade licences in the Czech Republic, Slovakia and Malta and the Register of Economic Activities in Estonia — encompass different procedures (authorisations or declarations), depending on the specific activity for which the licence is sought.

As a result of the implementation of the Directive, some of these horizontal schemes have been considered to be unjustified or disproportionate by Member States and have either been abolished or made less stringent. For instance, in **Slovakia** all authorisations covered by the Trade Licence Act have been replaced by declarations. **Malta** has replaced some of the authorisations under its general trading licence by declarations. In some cases, changes have been planned but not adopted yet. For instance, **Bulgaria** has indicated that a draft law currently pending before Parliament will make membership in its craft register no longer mandatory for those providers that are already subject to other registration obligations. **Cyprus** has communicated its intention to abolish the general trade licence

Besides these changes to horizontal authorisations, Member States have adopted a number of other important administrative simplification reforms benefiting service providers across the board. Often, authorisations have been replaced with declarations. For instance, **Italy** has established a general principle that all economic activities that previously required an authorisation (save in exceptional cases) can be started upon filing a simple declaration to the competent authorities. In **Hungary**, individual entrepreneurs can now start their activities upon filing a declaration instead of the multi-step authorisation scheme they were previously subject to.

¹² See for example Directive 2009/101/EC of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent (OJ L 258/11 of 1.10.2009). This Directive, which codifies a number of previous company law directives, requires certain categories of companies, in order to ensure transparency and information to third parties, to supply information and transmit documents (such as their company statutes, details of the persons authorised to represent the company, etc.) to company registers in Member States.

CONCLUSIONS:

Different types of horizontal authorisation schemes, i.e. schemes that apply to all or a large variety of services, exist in the Member States.

As a result of the implementation of the Services Directive, some Member States have reduced the scope of such authorisation schemes and replaced, for certain services, authorisations by measures such as declarations. In the discussion, some Member States raised questions about horizontal authorisation schemes, in particular as regards those requiring prior verification of conditions. Some Member States pointed out that not all services covered by such schemes needed prior verification and authorisation. It was stressed that declarations could be sufficient in many cases.

In a number of cases, the discussion showed that several layers of procedures may apply to the start of the same service activity. For example, providers may be required to enrol in a business or company law register and, on top of that, obtain from other competent authorities a general trade licence or other authorisation specific to their activity. Member States stressed the need to avoid duplication and to ensure that procedures are as simple and quick as possible. Some Member States referred to a principle in their administrative system that documents may not be required from a provider if they are already available within the administration. Others indicated that in many cases the burden of proof as regards compliance with requirements applicable to service providers has been shifted from providers to the public administration, so activities can now be started upon filing a simple declaration without having to submit any documentary evidence.

4.2. Quantitative/territorial restrictions (Article 15(2) (a))

4.2.1. What is the legal backdrop? What are the relevant aspects for the Services Directive?

'Member States shall examine whether their legal system makes access to a service activity or the exercise of it subject to compliance with ... quantitative or territorial restrictions, in particular in the form of limits fixed according to population or of a minimum geographical distance between providers'

Quantitative and territorial restrictions can take different forms. In some cases, they limit the overall number of providers in a certain territory, e.g. by imposing a maximum number of providers through limits fixed according to population or through a minimum geographical distance between providers. In other cases, they do not limit the overall number of providers but determine the geographical locations where specific service activities can be carried out.

These requirements in many cases prevent newcomers from entering the market and thus seriously restrict the freedom of establishment. Under Article 15 of the Services Directive, they can only be maintained if they are non-discriminatory, justified by an overriding reason of general interest, and proportionate.

4.2.2. The situation in Member States — what have we seen so far as a result of implementation?

Quantitative and territorial restrictions were reported by 22 Member States¹³ in many different service sectors. However, a large number of these requirements were notified by a small group of Member States for a relatively homogeneous group of activities, mainly in the retail and tourism sectors.

4.2.2.1. Limits according to population, minimum distances, and limits on the number of providers in a certain territory

Limits according to population, minimum distances or straightforward limits on the number of providers in a certain territory have been reported by several Member States. In a number of cases such requirements have been abolished — or are in the process of being abolished — as they were considered discriminatory, unjustified or disproportionate.

For instance, minimum distance requirements have been abolished in some **Italian regions** for beauticians, travel agencies and petrol stations. **Greece** and **Spain** (at regional level) have also abolished minimum distance requirements between petrol stations. Similarly, **Portugal** has indicated that it is in the process of abolishing minimum distance requirements for the establishment of driving schools. **Italy** (at national level and in some regions) has abolished limits according to the population for establishments selling food and beverages. In the same vein, **Luxembourg** has indicated its intention to abolish the limits according to the population for establishments selling alcohol. A number of regions in **Austria** and **Italy** have abolished requirements limiting to one the number of ski schools per ski resort/municipality and **Greece**

¹³ Bulgaria, Iceland, Latvia, Liechtenstein, Malta, Norway, Sweden and United Kingdom did not report any such requirements.

has indicated that it will abolish a similar requirement restricting to one the number of private art schools that can be opened per district.

The quantitative and territorial restrictions that have been maintained appear in many cases to be used by Member States as a tool to try to reduce or otherwise control the offer of services considered to involve potential risks for the recipients or risks/nuisances at the places where they are provided. In these cases, Member States sought to justify these requirements by citing the protection of the environment or urban environment and the protection of recipients or their health.

For example, minimum distances between two establishments are imposed on night shops and phone shops in Belgium (Flanders) with the aim of limiting the nuisance such shops may cause in the neighbourhood where they are located. For similar concerns — plus for public health reasons — the number of establishments that can sell alcohol is limited in France (depending on how many inhabitants live in a certain area) and in Spain (based on decisions taken by municipalities ‘to avoid concentration of these establishments’). In Ireland, all licensed premises (this includes pubs, hotels, restaurants, theatres and off-licences — i.e. shops selling alcohol for consumption off-premises) can be limited in number by municipalities.

In some cases, Member States indicated that they impose quantitative restrictions, in particular in the retail sector, as a tool to limit the concentration of certain types of establishments (notably large outlets such as supermarkets) in a given area. In particular, some regions in Italy limit the total amount of new square meters of certain types of outlets that can be authorised every year. It appears that similar restrictions apply to large-scale outlets in other Member States as well. In Greece, the number of itinerant sellers that can sell products outside commercial premises in a given municipality can be limited by the local authorities, and all ‘outside trade’ has to comply with minimum distance requirements. Greece has invoked social policy reasons and the protection of the urban environment to justify such restrictions.

In some instances, minimum distances between establishments carrying out the same service seem to be imposed because of scarcity of space and/or to prevent overcrowding in natural areas. This appears to be the case for establishments selling food and drinks on the beach in Spain and, in some instances, for holiday homes and campsites along the coast in Denmark.

By contrast, in other cases, minimum distances and quantitative limits are not imposed to limit the overall offer of certain services but on the contrary to try to ensure the widespread geographical availability of certain services. The idea seems to be that restricting the concentration of establishments in a certain area may encourage their setting up in other areas of the country or region. For example, in Italy, both national and regional legislation provide that authorisations to open new newspaper shops must take into account the population density in the catchment area. Some Italian regions have indicated that they are considering abolishing these requirements.

Finally, in a number of cases Member States have notified requirements according to which only one (or a limited number of) provider/s can exercise the same activity in a given geographical district. The justification for these requirements varies. For example, in Germany, each district can have only one dispatch centre for calls to the emergency number ‘112’. This measure was explained by the need to ensure efficient organisation of the service. In Austria, only a limited number of chimney sweeps can work in a district. Austria cited fire protection and safety as reasons as well as ‘the need to guarantee a minimum income to chimney sweeps’.

4.2.2.2. Territorial restrictions determining the geographical locations where certain service activities can be carried out

Under Article 15(2)(a), Member States also notified a number of requirements that do not limit the overall number of operators allowed in a certain territory but rather determine the geographical location or the physical place where a given service can be provided. This is done either by prohibiting the provision of a service in certain areas or by determining that certain activities can only be carried out in certain places.

Member States have indicated that some of these requirements will be abolished. For example, **Greece** has indicated that it will abolish the requirement that art traders can only establish in towns where there are offices of the governmental department responsible for the protection of cultural heritage. **Greece** has also reported that the prohibition of ambulant trade in towns with more than 20 000 inhabitants will be abolished. **France** has indicated that it will abolish the requirement that training centres for certain health professions can only establish in towns where there is a regional hospital.

Requirements of this type maintained by Member States are very heterogeneous and the reasons provided very different. All in all, the cases most frequently reported seem to concern rules that prohibit the exercise of certain service activities in the physical proximity of other activities, locations or groups of persons. In many cases, it seems that the aim is to prevent risks that these services could represent in a particular area. For example, in Greece petrol stations need to keep a minimum distance from certain places open to the public such as restaurants.¹⁴ In Portugal establishments selling alcohol and sex shops cannot establish next to schools, and in Austria vending machines cannot be set up in areas around public buildings and public transport. In the area of the regulated professions, France notified a prohibition imposed on land surveyors (*'géometres experts'*) from setting up an office in the same geographical area where they have previously worked as trainees or employees for another land surveyor. However, this requirement was notified as being made less stringent.

CONCLUSION:

With regard to quantitative and territorial restrictions, the mutual evaluation process revealed very divergent situations: while some Member States resort to such restrictions in a number of cases, in particular in the tourism and retail sectors, others do not seem to use such restrictions at all.

Different types of quantitative or territorial restrictions seem to exist and different reasons are invoked to justify them. Most of the reported cases concern limits (based on the population or consisting in minimum distances between providers) imposed by Member States on the overall number of providers of a certain service that are allowed to establish in a certain area. These restrictions seem to be used mainly to control potential nuisances due to the provision of certain services or their effects in the area where the activity is carried out. Specifically in the retail sector, the opening of large-scale outlets is sometimes limited by quotas imposed on the number of new square metres that can be authorised in a given period in a certain area.

Other restrictions concern cases where, for various reasons, Member States do not limit the number of providers but rather determine the geographical location of certain activities, in particular by prohibiting certain services in specific areas.

¹⁴ Greece has indicated that this requirement will be made less stringent by reducing the required distance from 200 m to 50 m.

As a consequence of the Directive's implementation, a good number of quantitative or territorial restrictions have been or are being amended. In the discussion, many Member States questioned the remaining requirements, in particular those that limit the overall number of service providers. It was pointed out that outright quantitative limits on the offer of certain services have detrimental effects on competition and, as a result, on innovation and development of high-quality services. In those cases where specific risks to the health of recipients or to the environment may exist, the risks could better be prevented by imposing rules, possibly including, if justified, authorisation schemes, to regulate the way in which the activities in question have to be carried out. The appropriateness of territorial restrictions imposed to ensure the widespread availability of certain services was also questioned.

4.3. Legal form requirements (Article 15(2)(b))

4.3.1. What is the legal backdrop? What are the relevant aspects for the Services Directive?

'Member States shall examine whether their legal system makes access to a service activity or the exercise of it subject to compliance with ... an obligation on a provider to take a specific legal form'

Legal form requirements can take very different forms. In some cases (often in the area of the regulated professions), service providers are obliged to operate as natural persons or under specific legal forms (mostly 'partnerships' or equivalent forms), which imply a high level of personal liability and/or independence of the provider. At the other end of the spectrum, some Member States stipulate that certain service providers can only act as legal persons, in some cases in the form of non-profit organisations. Different legal form requirements restrict service providers to different degrees: in some cases only one specific legal form is excluded, in others providers have a choice of several legal forms, and in some cases only one specific legal form is allowed.

Legal form requirements constitute serious obstacles to the freedom of establishment. They limit the choice of business models and particularly affect service providers from other Member States, which may not be able to establish unless they change their legal form or operate through a subsidiary. Legal form requirements may significantly restrict the cross-border provision of services, by preventing certain providers from offering their services across borders merely because of the legal form in which they operate. Under Article 15 of the Services Directive, they can only be maintained if they are non-discriminatory, justified by an overriding reason of general interest, and proportionate.

These requirements are often reported as necessary to ensure the independence of service providers. In some cases, they are also deemed necessary to ensure the reliability or solvency of the service provider. Some Member States have also justified certain legal form requirements by citing the need to ensure that providers possess the required skills and qualifications.

Legal form requirements are closely related to shareholding requirements and restrictions on multidisciplinary activities, in particular as regards the regulated professions. Various Member States aim to attain the same objectives through different types of requirements. Moreover, many Member States also often seem to combine these different types of requirements to try to achieve the same objectives.

4.3.2. The situation in Member States — What have we seen so far as a result of implementation?

Legal form requirements were reported by almost all Member States¹⁵ (in total more than 400). However, there are considerable differences in the number of reported requirements.¹⁶ Legal form requirements are often found in the area of the regulated professions, but also in other areas such as education services or technical control and supervision services.

¹⁵ Only Latvia and Norway did not report any legal form requirements.

¹⁶ Cyprus, Luxembourg, Slovakia and Sweden declared only a single legal form requirement, while Italy, Lithuania and Spain reported around 50 and Romania more than 100.

4.3.2.1. Requirements to provide a service as a natural person or under legal forms ensuring a high level of personal liability of the provider (mostly ‘partnerships’ or equivalent legal forms)

One of the most important, if not the most common, legal form requirements is that which limits the exercise of certain activities to natural persons or partnerships (or similar entities). Many Member States impose such a requirement on professions often referred to as ‘highly regulated professions’ or ‘liberal professions’. In general, Member States consider that such requirements are needed to ensure the independence and impartiality of the service provider as well as a high level of personal liability. In some cases, they have been deemed necessary to ensure that the activity in question is carried out by qualified professionals.

As a result of the implementation of the Services Directive, a number of legal form requirements that were considered discriminatory, unjustified and/or disproportionate have been abolished or amended. For example, in **Poland**, the obligation for the legal professions and tax advisers to be exercised by natural persons or partnerships has been made less stringent by allowing an additional option of a joint-stock limited partnership (*‘spółka komandytowo-akcyjna’*). In **Italy**, the obligation for itinerant and market traders to be individual entrepreneurs or partnerships (and not limited companies or cooperatives) was recently abolished. **Germany** has indicated that the legislation on architects and engineers has been relaxed and now offers a free choice of corporate structure and shareholdings. In **France**, following a recent reform, accountants can now provide services under any legal form, except that "commercial companies". Also in **France**, the prohibition on artist agents taking the form of a limited company (*‘société anonyme’* or *‘société en commandite par action’*) has been reported as being abolished. **Greece** also reported to be abolishing the requirement that only natural persons can provide private supportive training services to school students.

However, such requirements remain in a variety of areas and Member States. A good number (but not all) were reported.

In some cases, Member States have reported obligations to exercise certain activities as a natural person, thus completely excluding legal persons or other entities. This is the case for example in Greece for ambulant retail traders and in Austria for ski schools and mountain guides.

In many cases, Member States require professionals to exercise their activity as a natural person, in a partnership or, in some cases, in other entities providing for a high level of personal liability and/or involvement of the professional. In some cases, such requirements are in fact imposed on a variety of professions across the board. For instance, in Italy, such requirements apply to a wide range of ‘liberal professions’ (such as lawyers, accountants, architects, engineers¹⁷, etc.) which can only be exercised by individuals or in the form of a partnership (*‘società di persone’*) or an association between professionals. A similar situation exists in Latvia, where professionals need to assume particular legal forms as a condition to practice under their professional title. Similar requirements seem to exist in other Member States.

In other cases, this type of requirement is imposed on specific professions only. For instance, Poland, Portugal and Romania have reported obligations for legal professionals to operate as

¹⁷ It is not clear, though, whether this limitation fully applies to architects and engineers, given that the creation of limited companies carrying out engineering activities is allowed by Italian legislation at least in certain cases (e.g. public procurement).

natural persons, partnerships or entities designed specifically for professionals and often providing for a high level of personal liability. Similar requirements limiting the choice of available legal forms to natural persons, partnerships or similar entities have also been reported for accountants in Portugal¹⁸ and France¹⁹, insolvency administrators in the Czech Republic²⁰ and Romania²¹, veterinarians in France and Romania, architects and engineers in Austria and Bulgaria, and architects in the Czech Republic. In Belgium, real estate agent and land surveying activities can only be exercised by natural persons or by legal persons under the responsibility and control of an independent land surveyor/real estate agent.

Legal form requirements of this type have also been reported for areas other than ‘highly regulated professions’. In Italy, for example, craft companies (*‘società artigiane’*) cannot take the form of limited companies (*‘società per azioni’*).

4.3.2.2. Requirements to provide specific services as (specific) legal entities

Some Member States require the service provider to be a (specific type of) legal person in order to provide certain services, thus excluding the provision of these services by natural persons. Such requirements are often presented as necessary to guarantee the reliability and solvency of the service provider and/or a high level of quality.

Some of these requirements have been or are being abolished as a result of the implementation of the Services Directive, as they were found to be unjustified or discriminatory. In **Portugal**, for example, in the car rental sector, the obligation to operate exclusively as a *‘sociedade comercial’* has been notified as being abolished. **The Netherlands** reported the abolition of a requirement for organisations training immigrants for the obligatory ‘integration exam’ to be legal persons. These services can now also be provided by natural persons. A similar obligation to operate as a legal person is also being relaxed for gas emission control services and greenhouse inspection services in **the Netherlands**. In **Lithuania**, a requirement that only a legal entity can be certified to provide training to civil servants has been abolished.

Nevertheless, in certain areas similar requirements remain. In Italy, employment agencies can only operate as legal persons and in a limited number of legal forms. In the Flanders region in Belgium, in the field of employment services, a careers centre has to be a legal person.. Many similar requirements exist in other Member States.

Such requirements also exist in the area of private education. For instance, in Italy, private higher education activities (private universities) can only be exercised in the form of public law entities (*‘enti pubblici’*). In the Czech Republic and Cyprus, private universities also need to be legal persons.

¹⁸ The profession may not be exercised in the form of commercial companies.

¹⁹ Following a recent reform, in France accountants can now provide services under any legal form, except that "commercial companies".

²⁰ Insolvency administration services can only be provided by a natural person, an unlimited liability partnership (*‘veřejná obchodní společnost’*) or a foreign company providing the same liability guarantees.

²¹ They can also only provide services as a legal person through a closed list of legal forms.

4.3.2.3. Other limitations on the number of legal forms available to carry out certain activities

Some of the legal form requirements reported by Member States do not appear to fall into any of the previous categories. These are requirements that allow the exercise of certain activities both by natural and by legal persons, but which still limit — in different ways depending on the Member State — the choice of legal forms that can be used. The reasons justifying these requirements have been reported in a rather general manner by Member States, which, for example, in some cases cited the need to ensure that no external interests influence the work of professionals.

Some of these requirements were considered to be unjustified and were or are being abolished. For example, **Belgium** reported that a requirement that debt recovery activities had to be exercised by a natural person or by '*sociétés commerciales*' has been abolished. In **Denmark**, a restriction on the legal form of real estate agents and accountants has been repealed. In **Spain**, limitations in the choice of legal form for travel agents have been abolished.

However, requirements remain in other areas. For instance, in Denmark, land surveying activities may only be exercised by a natural person, a grouping of several land inspectors, a public limited liability company or a private limited company (but not in different legal forms). In France, land surveyors can only provide services as a legal person as '*Sociétés civiles professionnelles ou interprofessionnelles*'; '*Sociétés d'exercice libéral*' or '*Sociétés anonymes ou sociétés à responsabilité limitée*'.

In Hungary, an insolvency practitioners' company can be registered on the list of the insolvency practitioners only if it is a limited liability company established in Hungary, a limited company with registered shares, or a Hungarian branch of a company established in a Member State and authorised under Council Regulation (EC) No 1346/2000 on insolvency proceedings. In Estonia, a firm of auditors may operate as a general or limited partnership, a private limited company, a public limited company, or a European company.

4.3.2.4. Requirement to be a non-profit organisation

In a number of Member States, certain service activities can only be undertaken by legal persons if they take the form of a non-profit organisation. The reason behind this requirement is generally the need to ensure affordable prices or to prevent service providers from pursuing profit-only objectives to the detriment of recipients.

Areas where this requirement exists include social services. For example, in Austria, childcare providers are required to act as non-profit entities. In Belgium, a requirement at regional level stipulates that advice to debtors can only be provided by private establishments if they are incorporated as 'non-profit-making organisations'. In Luxembourg, organisations that inspect working conditions must operate as non-profit associations. Such requirements have also been reported for collecting societies (for instance in France, Poland or Slovenia).

CONCLUSION:

Legal form requirements have been notified by many Member States for a large variety of different services. In contrast, some Member States do not seem to limit the legal form of service providers at all, or at least have not notified any such restrictions.

Several Member States require certain service providers to be a natural person or a partnership, thus excluding companies (or other corporations). This is often the case in the

highly regulated professions such as lawyers, tax accountants or architects. These restrictions seem to be imposed to ensure the personal liability of the professionals, their solvency, independence and qualifications, or the quality of the service provided.

In other areas, Member States require service providers to be a company (or other corporation) and exclude natural persons or partnerships from exercising the activity. Such requirements are seen as necessary to ensure the solvency of the provider and the quality of the services. In some cases, Member States require certain services to be provided by non-profit organisations. Such requirements are seen as necessary to guarantee that the provider is not pursuing profit objectives to the detriment of the service recipients.

Discussions showed that legal form requirements are closely related to shareholding requirements and restrictions on multidisciplinary activities, in particular as regards the regulated professions. Various Member States aim to attain the same objectives through different types of requirements but also often seem to combine these different types of requirements to try to achieve these objectives.

Some progress has been achieved during the implementation of the Services Directive. However, it is clear that considerable restrictions remain. These concern important parts of the services sector and include services with a significant cross-border growth potential. The discussion confirmed that legal form requirements are very serious obstacles for the internal market, which are particularly burdensome for service providers from other Member States. These may in fact need to change their legal form in order to be able to exercise their activity in another Member State.

Member States have in particular questioned requirements that certain activities can only be carried out by natural persons, all the more so when these requirements are applied across the board to a wide range of regulated professions. Some Member States have argued that the solvency of the provider could be safeguarded by insurance/guarantee requirements, the quality of the service would be best ensured through requirements on the qualification of professionals, and direct involvement in service provision and independence of the provider can be guaranteed by professional rules or rules to ensure that professionals can act independently.

Legal form requirements requiring the provider to be a legal person have been questioned, since solvency could be safeguarded through insurance/guarantee requirements and the quality of the service through requirements for the qualification of professionals.

4.4. Shareholding requirements (Article 15(2)(c))

4.4.1. What is the legal backdrop? What are the relevant aspects for the Services Directive?

'Member States shall examine whether their legal system makes access to a service activity or the exercise of it subject to compliance with ... requirements which relate to the shareholding of a company'

Capital requirements include requirements to have a specific qualification in order to hold capital (thus limiting the amount of capital that can be held by third parties, i.e. persons who do not have specific qualifications) and obligations to have a minimum capital.

Requirements to have a specific qualification in order to hold capital often exist for the regulated professions. In fact, for some service sectors a large number of Member States require that the entire capital or the majority (more than 50%) is directly owned by members of specific professions.

Minimum capital requirements as a condition to set up a company carrying out specific activities have been reported by some Member States for a number of different sectors, but they seem to be comparatively less frequent.

Many capital requirements limit the possibilities for professionals to have third parties investing in their companies and can also prevent providers from entering a market (if they do not have the minimum capital or minimum share capital to be held by professionals). Both aspects severely limit opportunities for new service providers to enter the market and for already active providers to further develop their activities.

Capital requirements are particularly burdensome for providers from other Member States, who may need to change their ownership structure to establish in another EU country. Under Article 15 of the Services Directive, they can only be maintained if they are non-discriminatory, justified by an overriding reason of general interest, and proportionate.

As already indicated before, capital requirements are closely linked to legal form requirements, in particular for the regulated professions. For example, Member States that allow professional services to be carried out in the form of a company may nevertheless require members of the profession to hold the majority of shares/votes in the company (in order to try to guarantee that members of the profession have a decisive influence on the company).

4.4.2. The situation in Member States — What have we seen so far as a result of implementation?

Around 100 capital requirements have been reported by 23 Member States.²² As in other cases, Member States make use of such requirements to very different degrees. Two main categories can be highlighted.

²² The Czech Republic, Greece, Finland, Iceland, Latvia, Sweden and the United Kingdom did not report any requirement.

4.4.2.1. Requirements limiting the shareholding by third parties

Capital requirements limiting the shares held by third parties exist largely, but not exclusively, in the area of the regulated professions. Such requirements are used to ensure that the majority (more than 50%) of a company's capital is held by professionals in the sector in question. The objective cited by Member States is almost always to guarantee the independence and impartiality of professionals or to ensure that the activity is directly exercised by qualified professionals.

Following implementation of the Services Directive, capital ownership requirements have been made less stringent in several cases because they were found unjustified or disproportionate. For example, in **Luxembourg**, a shareholding requirement for crafts is reported as being in the process of being abolished. In other cases, the percentage of capital that can be owned by third parties has been raised. For instance, in **France**, the capital share that can be held by third parties in '*Sociétés d'exercice liberal*' has been raised from 25% to 49% (except for legal and health professionals). A change in French legislation raising the threshold of third parties capital to 49% has recently been approved specifically for land surveyors. In **Spain**, when professionals opt to set up a 'professional company' ('*sociedad profesional*'), the share of capital that can be held by third parties has likewise been raised from 25% to 49%.

Nevertheless, significant restrictions remain. In some cases, the capital of a company is entirely closed to non-professionals. For example, Italy has reported that 100% of the capital of professional partnerships in the 'liberal professions' has to be owned by the professional members. In Lithuania and Slovenia, this applies to lawyers, in Portugal to lawyers, accountants and auditors, and in Malta to lawyers and engineers ('*periti*').

Member States have also maintained other capital requirements. For instance, in Denmark, shares in a law firm can only be owned by lawyers actively working as lawyers in the company, its parent company or subsidiary — another law firm — or by other employees of the firm²³.

Belgium has maintained a requirement that the majority of shares in an accounting firm be held by accountants and/or tax advisors who are members of the Institute of Accountants and Tax Advisors. In France, the legislation states that accountants must, directly or indirectly via a company registered on the roll of the professional order, hold a capital share and voting rights equal to at least 75% in limited liability companies and 66% in joint stock companies and '*sociétés par actions simplifiées*'²⁴.

In Belgium, the profession of architect can be exercised in the form of legal person only if at least 60% of the company shares are owned directly or indirectly by registered architects. The remaining shares cannot be held by persons exercising a profession that may conflict with that of architect. In France, more than 50% of the company's shares and voting rights must be held by architects or firms providing architecture services. In Germany, at regional level (Bavaria and Saxony), the majority of the capital and voting rights has to be held by architects. In Austria, the engineer or architect responsible for running the business has to control more than 50% of the share capital. In the Czech Republic, the majority of shareholders and statutory representatives (executives) must be authorised architects.

²³ Other employees of the company are only allowed to own up to 10% of the shares of the company, and must pass a test to prove their knowledge of the rules of particular importance for the legal profession.

²⁴ 75% for '*sociétés à responsabilité limitée*', 66% for '*sociétés anonymes*' and '*sociétés par actions simplifiées*'.

Such capital requirements may also be found in areas other than ‘highly regulated professions’. In Italy, at least 51% of the capital of craft enterprises (*‘impresa artigiana’*, which includes for example bakers, barbers, beauticians, etc.) must be held by qualified craftsmen. As indicated above, a similar requirement is reported as being abolished in Luxembourg. Finally, in France, restrictions on the capital that can be held by non-professionals apply to activities as diverse as collecting societies or racehorse training companies.

One further remark: in some cases, it seems that professionals established in another Member State (than the Member State where the legal person is established) are more restricted in the capital they may hold than professionals established in the Member State where the legal person is established²⁵. This would seem to be discriminatory.

4.4.2.2. Requirements imposing a minimum capital requirement on companies in certain service sectors

Requirements to have a minimum amount of capital to set up or run a company in certain service sectors have also been notified by some Member States. The objective of these obligations is often said to be to enhance the liability/solvency and personal responsibility of the service provider.

In some cases, Member States have reported changes following the implementation of the Directive. For instance, in **Portugal**, a minimum capital requirement of EUR 50 000 for car rental activities has been notified as being in the process of being abolished. In **Spain**, similar obligations for travel agencies have been abolished. In **Belgium**, minimum capital obligations imposed on travel agents are also reported to have been abolished. In **Portugal**, the requirement for travel and tourism agencies services to have a minimum capital of EUR 100 000 has also been reported as in the process of being abolished.

In other cases, similar requirements have been maintained. In Italy, public limited companies acting as custom agents (*‘spedizionieri doganali’*) have to hold a minimum capital of EUR 100 000 and employment agencies must have a capital of up to EUR 600 000 Euros depending on the specific activities they carry out.

CONCLUSION:

The process of mutual evaluation has shown that there is great variation between Member States as regards capital requirements: while some Member States have reported such requirements for several different services, other Member States do not seem to resort to them at all. This may, in certain cases, be because the latter adopt a restrictive approach to activities carried out by professionals and do not allow the exercise of such activities by legal persons.

Broadly speaking, there are two different types of capital requirements: requirements to have a specific qualification in order to hold capital (thus limiting the amount of capital that can

²⁵ In Belgium, for example, for accountants and/or tax advisors, the majority of shares and the majority voting power must be held by accountants and/or tax advisors who are members of the Institute of Accountants and Tax Consultants. Accountants and/or tax advisors established in another Member State and having a qualification recognised as equivalent to an accountant or a tax advisor in Belgium can only hold a minority of shares.

be held by third parties, i.e. by persons who do not have specific qualifications) and obligations to have a minimum share capital.

As far as requirements limiting the shares held by third parties are concerned, in some cases, all shares have to be held by persons with specific qualifications (usually professionals), whereas in other cases a percentage of shares (ranging between 25 and 49%) may be held by other persons (non-professionals). Shareholding requirements are closely related to legal form requirements. For example, Member States that allow a activity profession to be exercised by a company may require members of this profession to hold the majority of shares/votes in the company in order to guarantee that members of the profession have a decisive influence on the company. Shareholding requirements that limit the shareholding of third parties are usually imposed in order to ensure the independence, impartiality and qualifications of the provider.

Requirements may also take the form of an obligation on companies active in certain sectors to have a certain minimum capital. Those were often presented as necessary to ensure the solvency of the provider.

As a result of the implementation of the Directive, a number of requirements have been amended. In most cases, the percentage of capital that may be held by third parties has been raised. Nevertheless, a considerable number of restrictions remain, in particular in the area of the regulated professions. The discussion confirmed that capital requirements can be very burdensome on service providers, in particular providers from other Member States, which may need to change their ownership structure in order to be able to exercise an activity in another Member State. Such shareholding rules have been questioned by some Member States, which consider that the application of professional rules, a distinction between voting rights and shareholding rights, and/or an obligation to ensure that the service is actually provided by a qualified person would be sufficient.

Particular doubts were also raised as to the justification for general shareholding restrictions covering a wide range of activities.

4.5. Bans on having more than one establishment (Article 15(2)(e) of the Services Directive)

4.5.1. What is the legal backdrop? What are the relevant aspects for the Services Directive?

'Member States shall examine whether their legal system makes access to a service activity or the exercise of it subject to compliance with ... a ban on having more than one establishment in the territory of the same State'

Bans on having more than one establishment in the territory of the same Member State do not prevent providers from one Member State from establishing in the territory of a second Member State (such a requirement would be prohibited under Article 14 of the Services Directive), but stop providers from setting up a second establishment there. They thus prevent providers from expanding their activities and may restrict them to a very limited market.

4.5.2. The situation in Member States — What have we seen so far as a result of implementation?

This type of requirement does not seem to be very common. Scarcely more than 30 requirements have been notified by only 9 Member States: Austria, Belgium, France, Germany²⁶, Greece, Italy, Lithuania, the Netherlands and Spain. As far as such requirements have been maintained, they have been presented as necessary to guarantee the provider's personal and full engagement in the activity carried out and hence the quality of the service provided.

Some requirements of this type have been abolished. For instance, some regions in **Austria** and **Italy** report having abolished requirements that prohibited ski instructors from working — as self-employed — in more than one ski school and that, similarly, prohibited ski schools from establishing at more than one ski station. Other bans on having more than one establishment have been abolished by **Austria** for dancing schools and by **France** for veterinarians.

Nevertheless, a small number of requirements of this type are being maintained.

In some regions in Italy and Austria, ski instructors are still subject to the prohibition on providing services in more than one ski school and ski schools cannot establish in more than one ski resort. These requirements, when maintained, have been explained by the need to ensure the full-time presence of ski instructors at the school

Greece has reported a ban on having more than one establishment for lawyers (to plead before a court outside their jurisdiction, lawyers need to be accompanied by a local lawyer) as well as for veterinary pharmacists, private schools (*'phrontistiria'*) and itinerant traders at local markets (the latter requirement is presented as a measure to combat unemployment). Austria reported a ban on having more than one establishment for chimney sweeps.

²⁶ The requirements reported by Germany were notified as having all been abolished or made less stringent.

CONCLUSION:

Bans on having more than one establishment do not seem to be very common — only a very limited number of such requirements are reported to be maintained and then only by few Member States. The bans notified concern a variety of different services, the most important ones being those affecting certain regulated professions.

Several bans on having more than one establishment have been abolished as Member States considered them to be disproportionate. The few that have been maintained are generally considered necessary to ensure the full personal involvement of the provider in its activity to ensure a high level of service quality. Such requirements have been questioned by other Member States, which have indicated that the objectives could be achieved by far less restrictive means such as the presence of qualified staff in each establishment.

4.6. Requirement to have a minimum number of employees (Article 15(2)(f) of the Services Directive)

4.6.1. What is the legal backdrop? What are the relevant aspects for the Services Directive?

'Member States shall examine whether their legal system makes access to a service activity or the exercise of it subject to compliance with ... requirements fixing a minimum number of employees'

Requirements fixing a minimum number of employees oblige businesses to employ a certain number of staff, e.g. one or more persons. In many cases, the persons need to have certain qualifications or skills; in others, no specific skills are required. Such requirements fixing a minimum number of employees need to be distinguished from requirements to have certain qualifications or specific skills to provide a service. In fact, such requirements go beyond qualification requirements in that they require the provider to employ another person in addition, whereas a qualifications or skills requirement may be met by the provider him/herself.

Requirements fixing a minimum number of employees are burdensome for businesses, which may need to employ more staff when entering markets in different Member States. This is particularly so for small and medium-sized enterprises, which normally have a limited number of staff and may not be able to hire more. This could easily prevent SMEs from establishing or providing services in Member States imposing such requirements. Under Article 15 of the Services Directive, they can only be maintained if they are non-discriminatory, justified by an overriding reason of general interest, and proportionate.

4.6.2. The situation in Member States — What have we seen so far as a result of implementation?

Requirements fixing a minimum number of employees do not seem to be used to a very large extent. They have been reported by 18 Member States²⁷. However, the number of reported requirements per Member State is rather low (around 10 or fewer).²⁸ In several cases, moreover, it seems unclear whether all reported requirements in fact call for a minimum number of employees or only require the specific service to be provided by people with necessary skills (hence enabling the provider to do it him/herself or to outsource certain activities). Requirements fixing a minimum number of employees have generally been justified as necessary to ensure the quality of the service or to protect consumers/recipients.

As a result of the implementation of the Services Directive, several such requirements considered to be unjustified or disproportionate have been abolished, for example: in **Spain** for construction services, electrical works, wholesale of pharmaceutical products, technical controls in the field of industrial safety, and driving schools; in **Germany** for services in connection with the public water supply and sewage systems; in **Italy** for ski schools and in

²⁷ The Czech Republic, Denmark, Estonia, Finland, France, Ireland, Latvia, Liechtenstein, the Netherlands, Norway, Sweden and the United Kingdom have not reported any such requirements.

²⁸ The fact that some Member States have reported a higher number of such requirements, including for instance Spain (more than 100), Italy and Portugal (around 30) may, to some extent, be due to the fact that the reported requirements are imposed in many cases at regional level.

Slovenia for driving schools. Others have been or will be made less stringent, for example for construction services in **Portugal**²⁹ and for environmental controls and geodetic services in **Slovenia**.

A large number of requirements have, however, been maintained. The requirements reported can be grouped into the following categories:

4.6.2.1. Requirements to have a fixed minimum number of employees

These requirements can be found in very different services. In some cases only one employee may be needed, in other cases two or more employees are necessary. In many cases, employees with specific qualifications or skills are required.

Requirements to have at least one employee have been notified for service activities such as: real estate services in Slovenia; driving schools for professional drivers in Poland; some retail activities (sale of fertilisers, plant propagation material, explosives) in Cyprus and Greece; sanitary services (pest control) and corporate receivership services for insolvency procedures in Lithuania; several activities including public water or public sewer services, services in energy, geology, auditing, ozone layer assessment, motor vehicle emission checks, interpreters and translators in Slovakia; fireworks shows in Iceland; funeral services in Hungary; travel agencies, construction (electrical installations) and technical vehicle inspection in Cyprus; hunting services in Romania; employment agencies in Greece, Italy and Portugal; diving schools in Portugal.

Requirements to have more than one employee have been notified for service activities such as ski schools and funeral director services in Italy and for sanitary services (disinfection) in Lithuania. Requirements have also been notified where the provider has to have a minimum number of employees with several types of skills (e.g. three teachers and one expert supervisor, one expert in agriculture and one engineer, etc.). Examples: construction in Cyprus; technical inspection of lifts, skip hoists and moving walkways, technical installation and operation of gas networks, fitting and/or repair of gas appliances, maintenance of lifts, inspection of oil-based fuel installations and inspection of gas distribution networks and premises in buildings, holiday camps, and external services for the promotion of health and safety at work in Portugal; electrical installations, technical supervision/verification of installations/equipment in pressure installations, and hoisting and fuel-based equipment in Romania; private vehicle inspection centres in Greece; insolvency practitioners in Hungary; improvement of agricultural lands in Romania and consultancy in agricultural matters in Italy.

In many of the reported cases, the justification put forward is the need to ensure the quality of the service, the protection of consumers/recipients, and the protection of public health or public security. In fact, in some cases, such requirements seem to be imposed because the minimum number of staff is deemed to be necessary to provide the service or to guarantee a high quality. In other cases, Member States want to ensure that the service can be provided at all times and thus require a certain number of staff to ensure that they can be replaced if necessary, etc. In cases where Member States require staff with specific qualifications/skills, the main objective often seems to be to ensure the provision of the service by qualified persons.

²⁹ Portugal has indicated that most, if not all, of the requirements of this kind that it had reported in this area are in the process of being made less stringent.

4.6.2.2. Requirements to have a minimum number of employees in proportion to the recipients of the service

In some cases, Member State legislation does not set a fixed number of persons that need to be employed but requires a certain number of employees in proportion to the number of recipients of the services (e.g. 1 monitor per 10 children).

It seems that this type of requirement applies mainly to the social services in several Member States: social housing, centres for the protection and care of children, adult care centres, homes for the elderly and disabled in Cyprus; social housing for persons over 65 and disabled persons in Portugal; different types of social assistance and centres for children, students, and the elderly in Luxembourg; summer camps for children and home services for the elderly in Greece; geriatric establishments, leisure activities for children and youth, and summer camps for children in Spain; a number of different social services in Italy, including social assistance for children with difficulties, services for early childhood, multifunctional residences, non-medical social services, nurseries, youth centres, socio-educational centres for the disabled and day care centres for the elderly. In these cases, due to the specific needs of service recipients and the nature of the services, a certain number of staff, often with specific skills, may well be needed to guarantee the quality of the services.

Another area where such requirements have been reported is education, for example in Spain for education services that lead to the award of officially recognised diplomas.

In most cases, such requirements seem to be justified as necessary to ensure the quality of the services, to protect consumers/recipients and/or to safeguard public health.

4.6.2.3. Requirements fixing the number of employees in a general manner

In some cases, legal requirements do not specify the precise number of employees but stipulate that the number of staff has to be 'appropriate'. This type of requirement has for example been reported for certain certification services in Germany and for education services in Cyprus and Portugal. The assessment of what is considered to be 'sufficient' or 'appropriate' is made on a case by case basis, which may leave the relevant competent authorities with a broad margin of discretion (whereas Article 10 of the Services Directive requires conditions for granting authorisations to be clear, unambiguous, objective and transparent).

Again, such requirements have been deemed to be justified to ensure the quality of the service and to protect consumers/recipients.

CONCLUSION:

Requirements to have a minimum number of employees do not seem to be used to a very large extent. Many Member States do not have such requirements at all, and the Member States that have such requirements, with certain exceptions, do not seem to impose them in many areas.

Requirements to have a minimum number of employees seem to apply mainly to technical fields, including construction, technical installations and inspections, but also exist in other areas, e.g. in the tourism sector and for some business services, social services and private education. Such requirements can take different forms: in many cases, they call for a fixed number of employees (often with specific skills). In other cases, they fix the required number in proportion to the number of recipients or in a more general way by requiring 'appropriate'

staff. The main objectives pursued seem to be the need to ensure the quality of the service, the protection of consumers/recipients, and the protection of public health or public security.

Following implementation of the Services Directive, a number of these requirements have been abolished or made less stringent because they have been found unjustified or disproportionate. However, there are still some cases where such requirements have been maintained. In the discussion, it became clear that they may in many cases not be necessary but could often be replaced by qualification requirements.

4.7. Fixed minimum and/or maximum tariffs (Article 15(2)(g) of the Services Directive)

4.7.1. What is the legal backdrop? What are the relevant aspects for the Services Directive?

'Member States shall examine whether their legal system makes access to a service activity or the exercise of it subject to compliance with ... fixed minimum and/or maximum tariffs with which the provider must comply'

Tariffs, i.e. prices imposed by the State or by professional organisations with which the providers must comply when offering their services on the market, take different forms. In some cases, tariffs predetermine the exact price to be charged by the provider. In others, they prescribe only the minimum or maximum amount to be charged. In some cases, Member States set minimum and maximum tariffs for the same services, thus leaving only a reduced margin for the provider to set the price. In a few Member States, the law seems to set fixed fees, but at the same time allows the parties to deviate from these fees by contractual agreement.³⁰ Under Article 15 of the Services Directive, tariffs can only be maintained if they are non-discriminatory, justified by an overriding reason of general interest, and proportionate.

Some Member States also have 'indicative tariffs'. Indicative tariffs are not legally binding, but may for instance be set for information purposes. In practice, however, they may have an important influence on prices. Indicative tariffs were not included in the mutual evaluation process (even though they have in some cases been reported), as they are not compulsory. However, their practical application, where they exist, needs to be carefully monitored to ensure that they do not lead to coordinated pricing behaviour among service providers. Such coordination would end up having the same effect as compulsory tariffs and would raise concern under competition rules.

Tariffs must be distinguished from administrative fees required by a competent authority, for example for granting authorisations, from fees fixed by the State for services the State receives itself, and from fees determined by a judge for the reimbursement of costs in legal proceedings. All these are different from tariffs imposed on service providers in the form of prices that the provider must comply with when offering its services to a private party. Finally, the notion of fixed tariffs for services must be distinguished from fixed prices set by law for certain goods. These fixed prices concern goods and do not involve remuneration for a service.

Fixed, minimum and maximum tariffs constitute a serious restriction on the free movement of services across the EU. They limit the possibilities of providers to decide on the price to be paid for their services and thus make access to services markets (whether via establishment or via the cross-border provision of services) more difficult. For instance, minimum tariffs limit competition on price and thus take away an important tool for service providers to compete with incumbent providers in the market. Maximum fees also constitute an important

³⁰ In the Czech Republic, the law sets the remuneration for legal services provided by lawyers only when there is no agreement in the contract between the lawyer and the client. Liechtenstein has reported that the law governing tariffs for lawyers and legal agents sets tariffs for legal services from which the parties may deviate by agreement. In Germany, the parties may also deviate by agreement from the minimum fees set by law for lawyers' activities out of court.

restriction. They are fixed by reference, amongst other things, to the national market and may therefore have a negative effect on providers established in other Member States where the situation may be different (for instance, higher cost of inputs). Maximum tariffs may also limit competition on quality. All these restrictions obviously also affect service recipients, as they have the effect of limiting their choice of services and service providers.

4.7.2. The situation in Member States — What have we seen so far as a result of implementation?

Fixed, minimum or maximum tariffs exist in many Member States to varying degrees and for a wide variety of services, with differences between Member States as regards the sectors affected by such requirements.

Such requirements have been reported by 24 Member States³¹. The reports provide a rather diverse picture of what kind of services are subjected to fixed, minimum and/or maximum tariffs. Sometimes, even the same service within the same Member State is subject to different tariff requirements (fixed, minimum, maximum or none) depending on the region concerned.

4.7.2.1. Fixed, minimum and maximum tariffs removed following implementation of the Services Directive

Eight Member States, i.e. Belgium, Germany, Ireland, Italy, Hungary, Malta, Romania and Spain, have reported the abolition of (or their intention to abolish) certain fixed, minimum or maximum tariffs in the course of implementing the Services Directive. In some cases, this has led to the complete abolition of all tariffs or all tariffs of a specific type (e.g. all minimum tariffs). In others, only certain tariffs have been abolished.

Malta has abolished all legislative provisions prescribing tariffs. The tariffs that remain are only optional/indicative.³² In **Italy**, all legislation providing for compulsory fixed and minimum tariffs, at least as regards the liberal professions, has been repealed; this also affects those tariffs imposed by professional rules, contractual provisions and codes of conduct. In **Spain**, professional associations are no longer allowed to establish indicative tariffs (compulsory price setting for professional associations had already been previously prohibited).³³

Tariffs have also been abolished for specific services, e.g.: for architects in **Belgium**, **Germany** (for consultancy services) and **Malta**; for engineers in **Malta** and **Germany** (again for consultancy services but not for planning services); for lawyers, commercial agents and 'public brokers' in **Malta**; for veterinarians in Romania, for ski instructors, mountain guides and tourist guides in certain regions of **Italy**; for testing laboratories for precious metals in **Spain**; for employment agencies in **Ireland**; for waste management services in **Belgium**; and for catering services in **Hungary**.

³¹ Only Bulgaria, Estonia, Finland, Iceland, Latvia and Norway have not reported any such requirements. However, tariffs seem to exist at least in Bulgaria for certain services.

³² However, it seems that the possibility to set compulsory tariffs through secondary legislation has been left open for certain cases, such as for engineers and veterinarians.

³³ The reason for this prohibition of indicative tariffs is that experience has shown that any guidelines on fees, even if only of an indicative nature, end up being applied *de facto* by all professionals, thus constituting a hindrance to free competition. In some exceptional cases, and to assist the judiciary in making decisions on prices, the law allows professional associations to issue reports or opinions on certain specific costs (at the request of the judiciary), but not general guidelines or recommendations on professional prices.

4.7.2.2. Fixed, minimum and maximum tariffs notified as maintained

Fixed tariffs

Fifteen Member States³⁴ have reported the existence of fixed tariffs, i.e. tariffs setting a fixed amount (and not just minimum or maximum limits).

A number of these apply to regulated professions such as lawyers (Slovenia), veterinarians (Germany), or legal procurators (Spain). However, they can also be found in other areas, including:

- Inspection and maintenance services, including for industrial installations and lifts (Portugal), the inspection of fire installations and chimney sweeps (Austria and Slovenia), car inspection (Portugal, Luxembourg), buildings or water inspection (Germany),
- Social and childcare services (Austria, Italy),
- Network services such as postal services (Lithuania, United Kingdom), water services (Hungary, Lithuania and Slovakia), gas services (Czech Republic, Lithuania, Denmark), electricity services (Lithuania, Czech Republic, Romania), thermal energy (Czech Republic), heating services (Slovenia) and waste management (Austria, Italy).

Other services where fixed tariffs have been reported include insolvency practitioners (Hungary, Germany), beach and sea sport activities (Cyprus), and rural accommodation ('agritourism' in Italy).

The objective most commonly cited by Member States to justify fixed tariffs is the protection of consumers/recipients, i.e. to ensure that consumers pay for the service received. Besides consumer protection, the quality of the service is also often put forward as a reason to impose fixed tariffs (for instance in the case of the regulated professions). The protection of fair competition is also sometimes mentioned.

In the area of network services, some Member States seem to impose fixed tariffs in sectors where there are only a limited number of providers, as they consider that the lack of market players could negatively impact consumer protection and not guarantee universal service. Ensuring access to these services also seems to be behind the fixed tariffs imposed in the social or educational sectors (the fact that these services are partly financed by the State is also mentioned).

Maximum tariffs

Fifteen Member States³⁵ have reported the existence of maximum tariffs.

The service sectors concerned by maximum tariffs are, again, diverse and cover areas such as:

- Regulated professions such as surveyors (Denmark), ski instructors and mountain guides (Italy) and lawyers (Italy)³⁶,

³⁴ Austria, Cyprus, the Czech Republic, Denmark, Germany, Hungary, Italy, Lithuania, Luxembourg, Portugal, Slovakia, Slovenia, Spain, Romania and the United Kingdom.

³⁵ Austria, Belgium, Denmark, France, Germany, Greece, Hungary, Italy, Luxembourg, the Netherlands, Poland, Portugal, Slovenia, Sweden, the United Kingdom.

³⁶ In Italy, the law repealing the obligation to comply with fixed and minimum tariffs has not repealed the obligation to comply with maximum tariffs. However, Italy has reported that it is possible to pay a

- Real estate activities (Austria, Sweden, Germany),
- Inspection services (Portugal, the Netherlands, Denmark), including chimney sweeps (Austria, Italy), inspection of fire installations (Austria), gas installation inspection (Luxembourg),
- Network services and ancillary services such as water services (United Kingdom, Belgium, Portugal), waste services (Poland), measuring energy consumption (the Netherlands), energy labelling services (Denmark), district heating services (Hungary).

Other services where maximum tariffs have been reported include: education services (training for drivers and driving schools³⁷ in Luxembourg), storing of personal and payment data for employers (Poland), plant protection (Slovenia), funeral services (Portugal), debt recovery (Austria), animal sanitary services (Austria), employment services (Belgium, Greece), , artistic agents (France) and sport agents (France).

As in the case of fixed tariffs, protecting the consumer/recipient is the reason most commonly invoked to justify maximum tariffs. The quality of the service is again also mentioned, notably for the regulated professions. In certain specific activities, such as real estate activities, the reason cited for maximum tariffs may also be to combat potential fraud.

For network services (where, as indicated before, a limited number of providers may exist), some Member States justify maximum tariffs by the need to ensure that providers perform their tasks while at the same time protecting consumers and guaranteeing access to those services.

Minimum tariffs

Only eight Member States, i.e. Austria, Belgium, Bulgaria, Cyprus, Germany, Greece, Italy and Poland, have reported the existence of minimum tariffs³⁸.

Many are found again in the regulated professions: for lawyers in Greece, Cyprus and Germany and for architects in Greece or Bulgaria. Minimum tariffs also apply to tourist guides in some Italian regions and in Cyprus. Other sectors where minimum tariffs have been reported include legal advisers in specific areas, notably pensions (Germany), construction experts (Germany), social services (childcare services in Austria or home care services in Belgium), diet experts (Cyprus) and collective management of copyright (Poland).

Member States seem to justify minimum tariffs in the regulated professions by the need to protect service recipients and ensure the quality of the services provided. The objective of ensuring fair competition (avoiding dumping) is also cited by some Member States to try to justify the existence of a minimum tariff³⁹, as is the need to ensure the ‘dignity of a

lawyer’s fee higher than the maximum when there is a disproportion between the professional service and the fee fixed by law.

³⁷ Luxembourg had notified this requirement as being repealed, but subsequently announced that this had been postponed.

³⁸ Some Member States have reported minimum tariffs while mentioning as a justification that they are not applied in practice. For example, Cyprus justifies the possibility under the law for the government to set minimum tariffs for services provided by food and diet experts by stressing that this provision has never been applied in practice.

³⁹ For example, for construction experts in Germany, the objective pursued is to ensure minimum fees for providers and fair competition (not a ‘race to the bottom’).

profession'. For social services, it seems that the objective pursued in this sector is to guarantee wide coverage of such services⁴⁰.

4.7.2.3. Application of both minimum and maximum tariffs

Four Member States, i.e. Austria, Germany, Italy and Slovenia, have reported the existence of both minimum and maximum tariffs for the same services (leaving a limited margin of discretion for the provider to set fees). The most common objective cited by Member States is again the protection of recipients, more specifically to guarantee the accessibility and quality of the service provided.

For example, Italy has reported that in some regions, ski instructors and/or mountain guides must comply with minimum and maximum tariffs, In Germany the same is true for insolvency administrators or architects⁴¹. In Slovenia, insolvency practitioners must also comply with minimum and maximum tariffs, as must chimney sweeps and inspectors of fire installations in Austria.

CONCLUSION:

As regards tariffs, the mutual evaluation process has revealed a relatively diverse picture. They are nevertheless widely used. In many cases, such rules are imposed on highly regulated professions (such as lawyers, architects and veterinarians) and in certain network services. However, to a lesser extent they are also used in other sectors. Minimum tariffs are often said to be necessary to protect the consumer or ensure the quality of the services, to ensure fair competition (avoiding dumping) and to safeguard the 'dignity of the profession'. Maximum tariffs are often justified by the need to ensure consumer protection.

As a result of the implementation of the Directive, such rules have been abolished in a number of cases, so that in some Member States no tariffs at all or no tariffs of a specific type (e.g. minimum tariffs) remain. Nevertheless, some requirements have been maintained. The discussion with Member States confirmed that the imposition of tariffs is generally perceived as a severe restriction on service providers, which impedes them from competing on price and/or on quality (in the case of maximum tariffs). Maximum tariffs seem to be largely accepted for network services where there is a monopoly or a limited number of competitors. However, in other areas tariffs are much more controversial, in particular minimum tariffs. In this respect, some Member States have pointed out that minimum prices could not guarantee high-quality services but would in fact have harmful effects on consumers by preventing them from benefiting from competitive prices. General competition rules ensuring a functioning market, general contract rules prohibiting abusive tariffs, professional rules and the proper information of consumers would be sufficient to protect the consumer.

⁴⁰ As explained by Austria and Belgium.

⁴¹ HOAI — Honorarordnung für Architekten und Ingenieure.

4.8. Requirements obliging providers to supply other specific services jointly with their services (Article 15(2)(h) of the Services Directive)

4.8.1. What is the legal backdrop? What are the relevant aspects for the Services Directive?

'Member States shall examine whether their legal system makes access to a service activity or the exercise of it subject to compliance with ... an obligation on the provider to supply other specific services jointly with his service'

Obliging service providers to supply other specific services jointly with their services considerably restricts their choice of economic activity and hinders innovative business models. It is a major burden for existing providers and a significant entry barrier for new providers. It may also have a negative effect on the availability of (non-bundled) services. Under Article 15 of the Services Directive, these requirements can only be maintained if they are non-discriminatory, justified by an overriding reason of general interest, and proportionate.

4.8.2. The situation in Member States — What have we seen so far as a result of implementation?

Obligations on providers to supply other specific services jointly with their services do not seem very common. Little more than 50 such requirements have been reported by 12 Member States⁴². Not all of the reported requirements seem to constitute clear-cut obligations within the meaning of Article 15(2) (h) of the Services Directive.

Of the reported requirements, a number have been considered unjustified or disproportionate and therefore have been abolished or have been reported as being abolished, for example for petrol stations in **Italy** (obligation to host a shop), retail in **Spain** (big commercial surfaces having to sell fuel as well), personal services in **France** (where a number of personal services had previously to be provided together) or ski schools in **Austria**, which previously had to cover a whole range of winter ski sports.

A number of requirements have nevertheless been maintained. These are quite heterogeneous, but have generally been justified by the need to protect recipients or their health. One of the most clear-cut categories seems to be services with a social objective or linked to a certain category of users. In Belgium, for example, service flats for the elderly also have to offer maintenance services and meal distribution. Requirements of this type have also been reported for energy/network services in Lithuania, where heat and hot water have to be jointly supplied (in certain conditions). In Austria, providers of educational services for social professions also have to provide continuous training. In Hungary, the sale of therapeutic equipment has to be accompanied by delivery and instructions/technical advice on the equipment.

⁴² Bulgaria, Cyprus, Denmark, Estonia, Finland, Ireland, Iceland, Liechtenstein, Latvia, Luxembourg, Malta, the Netherlands, Norway, Portugal, Slovakia, Slovenia, Sweden and the United Kingdom did not report any requirements. While most of the others reported less than 5 such requirements, Italy reported 20, Austria 10 and Spain 11.

CONCLUSION:

Obligations on service providers to supply other specific services jointly with their services do not seem to be very common. After the implementation of the Services Directive, even fewer restrictions remain.

The remaining restrictions concern various different services without clear tendencies. One of the sectors where they are found is social services, where they are justified by the protection of recipients or their health.

4.9. Restrictions on multidisciplinary activities (Article 25 of the Services Directive)

4.9.1. What is the legal backdrop? What are the relevant aspects for the Services Directive?

'Member States shall ensure that providers are not made subject to requirements which oblige them to exercise a given specific activity exclusively or which restrict the exercise jointly or in partnership of different activities.'

However, the following providers may be made subject to such requirements:

(a) the regulated professions, in so far as is justified in order to guarantee compliance with the rules governing professional ethics and conduct, which vary according to the specific nature of each profession, and is necessary in order to ensure their independence and impartiality;

(b) providers of certification, accreditation, technical monitoring, test or trial services, in so far as is justified in order to ensure their independence and impartiality.'

Restrictions on multidisciplinary activities can take two different forms:

- They can prevent the provider from exercising several activities at the same time. This requirement is usually an obligation to exercise a given activity exclusively or to refrain from a list of activities considered to be incompatible with the exercise of the given activity.
- They can prevent the provider from working in partnership with other providers (exercising a different profession). For example, multidisciplinary partnerships between lawyers and accountants may be prohibited.

In accordance with Article 25 of the Services Directive, restrictions can only be justified for the regulated professions⁴³ or for certification, accreditation, technical monitoring and testing services, and only if necessary in order to ensure their independence and impartiality.

The restrictions vary from an obligation to exercise the activity exclusively to a ban on certain specific activities or on any activities where the independence and impartiality of the provider is at risk. Obviously, if providers have to exercise an activity exclusively, this would also prevent them from working in partnership with other providers.

Restrictions on multidisciplinary activities are closely linked with other requirements. In particular for the regulated professions, they are often linked with shareholding and legal form requirements.

4.9.2. The situation in Member States — What have we seen so far as a result of implementation?

More than 230 requirements were reported by 25 Member States⁴⁴ under Article 25 of the Services Directive. The number varies considerably from Member State to Member State⁴⁵.

⁴³ As defined in Article 3(a) of the Directive 2005/36/EC on the recognition of professional qualifications.

⁴⁴ None notified by the Czech Republic, Finland, Iceland, Latvia and the United Kingdom.

⁴⁵ From 40 (Germany, France) to 21 (Belgium), 20 (Italy, Portugal), 10 (Poland), 7 (Norway), 4 (Denmark), 1 (Sweden).

The requirements concern a wide range of activities. In some cases, the restrictions notified by Member States seem to relate to activities other than regulated professions or certification and testing services. Any restriction not falling under one of these two groups should be removed in line with Article 25.

In the area of the regulated professions, the reports received concern a wide range of different services: car experts (France, Belgium), insolvency practitioners (Hungary, Romania), tax and fiscal advisers (Poland), tourist guides (Portugal, Italy), employment consultants (Italy), etc. However, a certain homogeneity among the Member States can be seen for certain professions (such as for lawyers⁴⁶, veterinarians⁴⁷, architects⁴⁸, engineers⁴⁹, accountants⁵⁰ and real estate agents⁵¹).

Restrictions to multidisciplinary activities notified for certification, accreditation, technical monitoring and testing services also cover a broad range of activities such as inspection of elevators and escalators⁵², certification, construction and real estate expertise, agricultural control, work inspection or construction inspection⁵³.

The objectives most commonly cited by Member States to justify restrictions on multidisciplinary activities are preventing conflicts of interest and guaranteeing the impartiality and independence of the professional. Some Member States also invoke consumer protection and the need to ensure the quality of the service. In the area of the regulated professions, one of the objectives cited is also to ensure compliance with the professional rules.

Limitations on multidisciplinary activities can be divided in two main groups:

4.9.2.1. Obligation for the provider to exercise an activity exclusively or restrictions on the exercise of different activities by the same provider (incompatibilities)

Following implementation of the Services Directive, a number of Member States have abolished or relaxed certain restrictions on multidisciplinary activities as they were found to be unjustified or disproportionate. In **Cyprus**, for example, the requirement to exercise exclusively the activity of real estate agent has been repealed. **France** has indicated that the obligation to exercise the activity of auctioneer exclusively will be modified. Some Member States have decided to repeal the obligation to exercise an activity exclusively and to replace it by the requirement for providers to exercise this activity as their main activity. For instance, **Cyprus** has indicated that the obligation for building contractors to exercise their activity exclusively will be replaced by an obligation to have it as their main activity. Other Member States that have exclusivity requirements have decided to relax them and authorise certain professions to work in partnership. In **Poland**, the obligation for advocates, legal advisers, tax advisers and patent agents to engage in a given service activity exclusively has been relaxed

⁴⁶ Notifications received from Cyprus, Estonia, France, Greece, Hungary, Ireland, Italy, Liechtenstein, Lithuania, Poland, Portugal, Romania, Slovenia, Sweden.

⁴⁷ Belgium, France, Greece, Spain.

⁴⁸ Belgium, Bulgaria, France, Italy, Luxembourg, Malta.

⁴⁹ Bulgaria, Italy, Luxembourg, Malta.

⁵⁰ Belgium, France, Italy, Luxembourg, the Netherlands, Portugal.

⁵¹ Denmark, Portugal and Slovenia.

⁵² Austria, France, Portugal.

⁵³ Germany.

in the legislation implementing the Services Directive. This allows these professions to cooperate within one multidisciplinary partnership.

Nevertheless, significant restrictions on multidisciplinary activities persist. For instance, in Cyprus or in Lithuania, lawyers are obliged to exercise their profession exclusively. In Bulgaria, real estate appraisers are also required to do so. In other Member States, there is no obligation to exercise an activity exclusively but there are rules on incompatibilities with other professions or activities. In France for lawyers and in Germany for tax consultants, the law lists specific professions or activities considered to be incompatible with the exercise of their activity⁵⁴. Similarly, in Italy, employment consultants, accountants and lawyers are prevented from exercising a number of other activities listed by law. In Hungary, attorneys are not allowed to engage in entrepreneurial activities in order to guarantee their liability and independence. In Luxembourg, a veterinarian is not allowed to exercise simultaneously the profession of pharmacist. Similarly, in Spain, veterinarians cannot at the same time provide pharmaceutical services or engage in the manufacturing, distribution and sale of pharmaceutical sanitary products. In the Czech Republic, architects may only perform pedagogic or publishing activities and may not perform any other activity that would endanger their independence. In Estonia, a firm of auditors can be active only in certain other areas.

In some cases, restrictions on multidisciplinary activities do not apply in general but only in specific cases. For instance, in Germany, certain structural inspectors and structural inspection engineers are not allowed to serve as experts or engineers on projects where they are involved in their planning or execution. In Bulgaria, the same person cannot participate in a construction project as both architect/engineer and builder. In other cases, Member States lay down a general principle that providers can provide any other services except where this would endanger their independence or impartiality (e.g. in France for lift inspectors, in Norway for real estate agents or in Sweden for real estate agents, who may not trade in real estate or engage in any other activity likely to discredit them as an estate agent).

4.9.2.2. Restrictions on exercising an activity jointly or in partnership

Some Member States have maintained a general prohibition on different providers exercising activities jointly or in partnership.

In Italy, Malta and Portugal, for instance, for professionals to be able to act and be registered as an association of professionals or a partnership, all partners have to be professionals of the same type. In Italy, however, multidisciplinary partnerships of professional services seem to be possible at least in certain cases, in particular between professions defined as ‘liberal professions’, insofar as more specific incompatibility rules do not apply.

In Greece, legal services cannot be provided jointly or in partnership with other services (e.g. accountants). The same requirement can also be found in Bulgaria and in Lithuania, where lawyers may practice in a partnership only with other lawyers. In Portugal, lawyers, legal consultants and accountants are subject to stringent rules on incompatibilities with other professions, both when they operate as individual service providers or in partnership.

In France, an architect cannot be an employee or partner of a natural person or legal entity that carries out construction or real estate activities.

⁵⁴ The Steuerberatergesetz (StBerG), Durchführungsverordnung zum StBerG, prohibits commercial activities, employment activities and financial administration activities for tax consultants.

In Norway, there are restrictions on offering jointly or in partnership services for the supervision of electrical systems and other services concerned with the installation and operation of electrical systems. Similarly, in Denmark, car safety inspection and car repair services may not be offered jointly or in partnership.

Some Member State laws list activities or professions considered to be compatible or incompatible⁵⁵ with the exercise of a given activity or list different professions allowed to exercise their activities jointly. As mentioned before, the Polish law implementing the Services Directive allows advocates, legal advisors, tax advisors and patent agents to exercise their activity jointly within one multidisciplinary partnership.

Finally, in some cases reported or discussed by Member States, restrictions on multidisciplinary activities in partnerships also take the form of restrictions or prohibitions on taking part in more than one professional partnership (this seems to be the case for the ‘liberal professions’ in Italy) or owning shares in companies in other sectors. For example, such a requirement can be found in Belgium, where the profession of architect can only be exercised by a legal person if the legal person has no shares in other companies and/or legal persons other than those in the same profession. A similar provision exists in France and in the Netherlands⁵⁶ for accountants.

CONCLUSION:

Under Article 25 of the Services Directive, restrictions on multidisciplinary activities can only be justified for two types of services: (i) services provided by regulated professions and (ii) certification, accreditation, technical monitoring and testing services. Nevertheless, in a few cases, some Member States seem to have maintained such restrictions in other areas as well. Those restrictions should be removed.

Restrictions on multidisciplinary activities exist in many Member States. Multidisciplinary activities are regulated either by law or by the rules of professional organisations charged with enforcing professional ethics. The number and extent of restrictions varies considerably. Restrictions can take two different forms: prohibitions on exercising other activities and prohibitions on exercising an activity in partnership with other providers exercising different activities. In both cases, the extent of the restrictions may vary from an obligation to exercise an activity exclusively to a ban on certain specific activities to rules which do not prohibit the exercise of any activity in general but only in specific circumstances, i.e. if and when the independence and impartiality of the provider is at risk. All these rules are generally presented as justified by the need to ensure the independence and impartiality of providers.

Even though several restrictions on multidisciplinary activities have been abolished or relaxed following implementation of the Services Directive, significant restrictions remain. The discussion confirmed that such requirements severely restrict innovative business models. Particular doubts have been raised regarding the most severe restrictions requiring providers to exercise their activity exclusively but also regarding requirements impeding providers from exercising certain other activities. Questions have been raised whether it would not be sufficient, in certain cases, to have a general rule authorising the exercise of different activities as long as the independence and impartiality of the provider are not at risk. Some

⁵⁵ Such as in Estonia, where services for the design, installation and maintenance of surveillance and security equipment can only be provided by persons who do not have shares in a company that manufactures or sells weapons or provides private detective services.

⁵⁶ The majority of the voting rights in an accountants’ office or organisation has to be held by accountants.

Member States consider that authorisation schemes and rules of professional ethics are sufficient to ensure independence or impartiality (any violation could be sanctioned by a posteriori control) or that it is sufficient to put in place mechanisms within a partnership or company to avoid any involvement in issues that could give rise to a conflict of interest or compromise independence.

5. REQUIREMENTS RELATED TO CROSS-BORDER SERVICES

5.1. The implementation of Article 16 — different approaches

One of the most important aspects of the implementation of the Services Directive is the implementation of Article 16, on freedom to provide services. Article 16 requires Member States to abstain from imposing their own requirements on incoming service providers established in other Member States — except where the requirements are non-discriminatory, are justified by the four reasons listed in Article 16(1) (b) and 16(3), and are proportionate. Member States have taken different approaches in implementing Article 16⁵⁷. These fall into two main categories: the ‘horizontal’ approach (with or without additional sector-specific changes) and the sector-specific approach.

5.1.1. Member States introducing a clause on freedom to provide services in their ‘horizontal law’

- Estonia, Hungary, Lithuania, Poland, Slovakia and the Czech Republic have implemented Article 16 by way of a horizontal law, that is, general legislation implementing the Services Directive. The horizontal laws of Estonia, Hungary, Lithuania and Poland seem to state that a rule can only be applied to cross-border services if the specific rule meets the criteria provided for in Article 16 and if the relevant (sector-specific) law states explicitly that the rule also applies to cross-border services. The Czech Republic and Slovakia have included a rule in their horizontal laws which, in principle, enables service providers established in other Member States to provide services in these countries without having to comply with additional requirements. Exceptions to this have to be laid down by law. The basic approach in all these Member States thus seems to be that requirements do not apply to cross-border services unless this is specifically stated in the (sector-specific) law.

Within this framework, these Member States have, to different degrees, maintained the application of certain requirements for specific cases (and have specifically stated this in the law).⁵⁸

⁵⁷ The following description concentrates on the Member States’ general approach to implementing Article 16 and changes made to existing (sector-specific) legislation which indicate clearly which rules apply to cross-border services and which ones do not. It does not deal with other changes made by Member States in respect of Article 16, such as the abolition of establishment requirements (for this see below point 5.2.1), nor with amendments made to the regulatory framework in general which of course also facilitates service provision for cross-border providers. Nor does it deal with cross-border services covered by the derogation from Article 16 provided for in Article 17 of the Services Directive.

⁵⁸ The Czech Republic seems to have made specific provisions in only two cases, i.e. for land surveyors and the handling of radioactive material. Estonia requires notification for the handling of pyrotechnic and explosive substances and an authorisation for the handling of weapons. Hungary has notified 41 areas in which they impose rules on incoming services. This includes 16 authorisation schemes (for civil explosion activities, private investigators, handling of firearms etc.) and 23 notification schemes (for patent agents, construction activities, certain accreditation activities, tour operator and travel agent activities, adult education and higher education, services related to medical aid, lobbying activities, etc.). Lithuania has notified a number of authorisation schemes, in particular for some construction works, some education services, the sale of alcohol and tobacco products and activities relating to nuclear energy. In Poland, certain requirements apply to cross-border services, inter alia for tour operators and travel agents, the packaging of or trade in plant protection products, training on trade in and the packaging and use of plant protection products, the training of aircrew in civil aviation, and certain activities relating to waste. Based on the horizontal law, it seems that Slovakia applies

- Belgium, Bulgaria⁵⁹, Cyprus, Denmark, Finland, Greece, Iceland, Ireland, Italy, Luxembourg, Malta, Norway, Portugal⁶⁰, Romania, Sweden and the United Kingdom have also chosen to implement Article 16 by way of a horizontal law.⁶¹ In their horizontal acts (or drafts as they stand now) these Member States seem to have included a clause which lays down the principle set out in Article 16, i.e. that requirements can only be imposed on incoming services if they are non-discriminatory, justified for reasons of public policy, public security, public health or the protection of the environment, and are proportionate. On this basis, it seems that, if the sectoral legislation does not state which rules can be applied to cross-border services, it is for the competent authorities to decide in each case whether a rule complies with these criteria or not.⁶²

Some of these Member States, including Belgium⁶³, Bulgaria⁶⁴, Denmark⁶⁵, Luxembourg⁶⁶, Malta⁶⁷, Portugal⁶⁸, Romania⁶⁹ and Sweden⁷⁰ have, to varying degrees, also made changes

requirements on incoming services only for SGEIs, lawyers and auditors. However, in its self-assessment it reported authorisation schemes for other services, such as translators and interpreters, too. Slovakia reported 13 authorisation schemes, including for translators/interpreters, insolvency administrators, mediation, geodetic/cartographic activities, and tax advice.

⁵⁹ Bulgaria stated that, under its system, services can be carried out freely if there are no special legal requirements imposed for cross-border services.

⁶⁰ Article 4(3) of the Portuguese horizontal law enshrines the freedom to provide cross-border services stating that cross-border service providers can freely conduct business. In addition, the Portuguese text expressly prohibits the imposition of Article 16(2) SD requirements unless they are exceptionally justified by the four reasons listed in Article 16. As regards requirements other than those laid down in Article 16(2), the Portuguese authorities have indicated that they intend to publish guidelines explaining that such requirements are only permissible if they are exceptionally justified by the four reasons listed in Article 16.

⁶¹ In Iceland and Luxembourg the current draft horizontal laws seem to contain a clause implementing Article 16 but the law has not yet been finally adopted.

⁶² Italy has, however, indicated that its competent authorities do not have the power to decide whether one of the four reasons apply in specific cases.

⁶³ Belgium seems to have clearly stated that the general register (the Banque Carrefour) does not apply to cross-border service providers. In some regions, Belgium has also replaced authorisation schemes by prior declarations for travel agencies from other Member States providing cross-border services.

⁶⁴ Bulgaria seems to have replaced, for cross-border services, an authorisation scheme for crafts with a notification scheme. Specific changes also seem to have been made to the law on tourism.

⁶⁵ Denmark has specified that temporary service providers are exempt from the Danish ban on discount coupons and price competition.

⁶⁶ Luxembourg is in the process of adopting amendments to the framework law on establishment and the framework law on social services specifying that authorisation schemes do not apply to cross-border services.

⁶⁷ From the information reported by Malta, it seems that the trading licences act, which covers a wide variety of services, has been changed so that service providers that are legally established in another Member State can in principle provide cross-border services in Malta without authorisation or notification. The service providers must, however, comply with all other requirements set out in the trading licences act. Malta has also made changes to other rules, e.g. on the sale of time-shares and on employment agencies, replacing authorisations with notification requirements for cross-border services.

⁶⁸ Portugal has amended the Code of Commerce to specify that cross-border service providers no longer need to establish and register in Portugal. Portugal has also indicated that future sector-specific amendments will expressly state the requirements that can be imposed on cross border service providers.

⁶⁹ Romania has also made certain specific changes for cross-border services in the area of tourist guides, fire prevention services, construction site supervisors and services for the design, installation, maintenance and repair of security systems.

⁷⁰ Sweden has specified that the law on terms of agreement between traders and the law on travel guarantees are not applicable to cross-border services. In addition, Sweden has indicated that certain information requirements do not apply to cross-border services, in the Act amending the Distance and Doorstep Sales Act, the Act amending the Occasional Sales Act, the Act amending the Marketing Act and the Act amending the Product Safety Act.

to sectoral legislation in which they specify the rules that can or cannot be applied to cross-border services.

In contrast, other Member States, including Cyprus, Finland, Greece, Iceland, Ireland, Italy, Norway and the United Kingdom, seem to have made no legislative changes specifying clearly which rules do or do not apply to cross-border services.

- Similar to the Member States in the previous category, Latvia and Spain have also included a clause on freedom to provide services, similar to Article 16, in their horizontal law⁷¹. From the information we have received it also seems that Latvia and Spain have in principle totally prohibited Article 16(2) requirements (Spain all, Latvia some of these requirements, including authorisation schemes)⁷².

Spain has also made many changes in sectoral legislation stating specifically which rules apply to cross-border services.⁷³

- Slovenia has also included a clause laying down the principle of Article 16 in its horizontal law. However, from the information received, it seems that the horizontal law in itself will not have the effect that competent authorities must or can disapply certain rules on cross-border services. Rather, it seems that it necessarily has to be determined in legislation which rules apply to cross-border services and which do not. If nothing is specifically stated in existing legislation, all the rules applicable to established providers would also apply to cross-border services.⁷⁴

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5.1.2. Member States without a horizontal law or a clause on freedom to provide services in the horizontal law, i.e. which rely (solely) on sector-specific changes

- Germany and France have not adopted any horizontal law and therefore have no horizontal clause implementing Article 16 in their national regulatory framework. Similarly, Liechtenstein and the (current) draft horizontal laws in Austria do not seem to include any clause implementing Article 16 of the Services Directive. To implement Article 16, these Member States thus seem to rely solely on making changes to sector-specific legislation.

From the information available to us, it seems that Germany has made a number of important changes⁷⁵; France has also made a number of changes specifically addressing the situation of cross-border service providers⁷⁶. However, Austria and Liechtenstein seem to

⁷¹ The wording of the Latvian law seems potentially broader, however.

⁷² Spain has, however, reported many requirements under Article 16 including authorisation schemes. Latvia seems to have excluded the regulated professions from this outright prohibition.

⁷³ Spain has made such changes in relation to sectors such as tourism (travel agencies, tourist guides), numerous industrial services and the retail sector.

⁷⁴ In its recently amended legislation on the construction industry, Slovenia specified that all requirements apply to cross-border services in the same way as to establishment cases.

⁷⁵ Germany has removed the general obligation to notify a commercial operation ('Gewerbeanzeige') that applies to a wide range of different activities, the authorisation scheme for itinerant sales (off-premises services) and specific authorisation schemes for estate agents, in the auctioneering sector, for property developers and property development managers for cross-border services. It has also ensured that the tariffs applicable for architects and engineers do not apply to cross-border services.

⁷⁶ These mainly concern travel agencies, top model agencies, live show managers, certain personal services and tattoo/piercing services.

have made no specific changes in the framework of the implementation of the Services Directive that state clearly which rules cannot be applied to cross-border services.⁷⁷

- The Netherlands has also not adopted any general clause implementing Article 16 and is thus relying on changes made to sector-specific legislation. The Netherlands' general approach has been to review all requirements, whether applicable to establishment or to cross-border services, in the light of Article 16 and maintain only those which are justified for one of the four reasons given in Article 16 and which are proportionate. The Netherlands thus does not distinguish between establishment cases and cross-border services⁷⁸ all legislation is in principle meant to be compliant with Article 16 of the Services Directive.^{79 80}

5.2. Overview of the most relevant requirements reported by Member States

5.2.1. Obligation on the provider to have an establishment in the territory of the Member State where it provides services (Article 16 (2) (a))

5.2.1.1. What is the legal backdrop? What are the relevant aspects for the Services Directive?

Requirements to have an establishment in a Member State are to be distinguished from requirements for the provider or the manager etc. to be resident in the Member State, which are prohibited under Article 14. Of course, they also need to be distinguished from 'mere' authorisation requirements.

⁷⁷ Austria indicated, however, that § 373a (1) of the general trade law already contains a clause which Austria considers to be in line with Article 16. This article stipulates that service providers providing cross-border services can provide these services in Austria on equal terms with Austrian service providers. Austria stated that this clause was interpreted in line with the directive as meaning that cross-border service providers would not need to get an authorisation nor make a declaration. They would, however, have to comply with rules on the exercise of the respective service activity. Austria also states that specific rules for cross-border service providers exist in other laws, in particular for tax advisers, accountants and engineers. In addition, Austria states that, as regards the Steiermark region, § 9 of the law on the recognition of professional qualifications states that service providers established in other Member States can provide their services in the Steiermark on a temporary basis. A similar rule is laid down in § 14 of the Kärnten region's law on the recognition of professional qualifications. Its second paragraph however clearly indicates that for the exercise of the service, the provider has to comply with the laws in Kärnten. In its self-assessment, Austria has indicated that only a limited number of authorisation schemes are applicable to cross-border services, for instance for boiler installation experts, pleasure visits to mines and certain events, e.g. variety shows and revues, circuses, shows with predatory animals and travelling shows.

⁷⁸ The requirement to register the trade/company is an exception, as it only applies to established providers.

⁷⁹ Changes made to the regulatory framework in general include the abolition of the authorisation scheme for the preparation/stuffing of animals, the abolition of the licence for assessors dealing with damage from disasters/major accidents, the abolition of requirements on the use of equipment and materials in the area of construction and demolition waste, and the abolition of permission for dumping processed animal by-products.

⁸⁰ In order to ensure that Article 16 standards are upheld by all Dutch legislative and regulatory authorities, the Prime Minister's Decree on Instructions for Legislation and the handbook on the implementation of European rules have been amended to allow the legislator to comply with these aspects of the Services Directive when enacting legislation.

A requirement to have an establishment makes the provision of services across borders impossible. This is why the ECJ, relying on Article 56 TFEU, has repeatedly stated that the requirement of a permanent establishment is the very negation of the freedom to provide services and has set a high threshold for justifying it, requiring that any such condition be indispensable for attaining the objective pursued. In fact, the ECJ has generally not accepted such requirements.

5.2.1.2. The situation in Member States — What have we seen so far as a result of implementation?

From our information, it is clear that most establishment requirements have been abolished or are being abolished as they have been found discriminatory, unjustified or disproportionate. For instance, for services covered by the Services Directive, **Portugal** abolished the establishment requirement provided for in its code of commerce which previously applied to services across the board. Other examples of areas for which establishment requirements have been or are being abolished include control bodies for industrial safety (**Spain**), maintenance services for electric substations (**Spain**), sales of certain alcohols⁸¹ (**Lithuania**), sales of alcoholic drinks (**Luxembourg**), the handling of pyrotechnic products (**Lithuania**), construction activities (**Austria**), test engineers (**Germany**), travel agencies (**Belgium, Lithuania, Spain and Slovenia**), property and business assessment services (**Lithuania**), the buying of non-precious scrap metal and its waste (**Lithuania**), exploration for and exploitation of crude oil (**France**), the maintenance of fire safety equipment (**Lithuania**), the organisation of auctions of movable cultural property (**Lithuania**), and the maintenance of cemeteries (**Lithuania**), etc.

As a result, based on what Member States have reported, it seems that many Member States, including Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Hungary, Italy, Liechtenstein, Luxembourg, Latvia, Malta, Norway, Portugal, Slovakia, Spain, Sweden and the Czech Republic, no longer have establishment requirements or will no longer have them once implementation is complete.

However, in some Member States, certain establishment requirements have been kept. These remaining requirements seem to concern very diverse services/sectors and have in most cases been reported by only one or two Member States. Some of these are cases, such as wholesale of alcoholic products (Lithuania) and wholesale of tobacco products (Lithuania), in which Member States do not want itinerant services of this type for reasons of public policy. Other cases concern technical experts⁸², specific certification services⁸³, chimney sweeps (Austria), certain education services⁸⁴, driving schools⁸⁵, car rental (Iceland), sale of used cars (Iceland), career services (Belgium (Flanders)), supply of vehicle registration plates (United Kingdom), and insemination services (Greece and Ireland).

To justify these requirements, Member States have mostly relied on the ‘public policy’ justification, to a lesser degree on ‘public security’, ‘public health’ and the ‘protection of the environment’. In several cases, Member States give more than one reason or even all four.

⁸¹ Lithuania specified that this requirement applied to undertakings willing to obtain a certificate which allows them to participate in a tender for the sale of ethyl alcohol obtained from wine intended for the manufacture of bioethanol to be used in the EU fuel sector.

⁸² Germany (Hamburg and Berlin) for structural inspectors / structural inspection engineers.

⁸³ Germany (Hamburg) certification in relation to sewerage systems; Greece; the Netherlands.

⁸⁴ Lithuania for vocational education and higher education; Poland for specific training for safety advisers; Romania for education services.

⁸⁵ Poland for training for learner drivers, for additional training for licence holders, for specific training for the transport of hazardous products and for specific training for road transport.

Based on these reasons, Member States have in some cases argued that an establishment requirement is necessary to ensure quality of service or the reliability of the provider. In other cases, Member States argue that the requirement is necessary to ensure that providers can easily be personally contacted. In the case of chimney sweeps, one region in Austria argues that these service providers exercise public authority. However, the main reason, which is not always spelt out clearly, seems in many cases to be that Member States want to be able to carry out controls/on-site checks at the place of establishment.

5.2.2. Obligation on the provider to obtain authorisation, including entry in a register or registration with a professional body or association (Article 16(2)(b))

5.2.2.1. What is the legal backdrop? What are the relevant aspects for the Services Directive?

Authorisation schemes impose a considerable burden on service providers from other Member States. Their application generally renders the provision of services more costly and delays its provision. In practice, authorisation schemes imposed on service providers from other Member States may have a dissuasive effect, in particular if the service has to be provided urgently but also in other cases such as when administrative hurdles are too high.

Authorisation schemes linked to the recognition of professional qualifications should in principle not exist for cross-border services, in line with the Professional Qualification Directive 2005/36. They may only be imposed for regulated professions which have public health or safety implications and which do not benefit from automatic recognition under Title III Chapter III of the Professional Qualifications Directive.

Under Article 16 of the Services Directive, authorisation schemes can only be applied to service providers from other Member States in exceptional cases if, besides being non-discriminatory, they are justified on grounds of public policy, public security, public health or the protection of the environment. And it is clear that even in those cases, they can only be maintained if it has been clearly demonstrated that subsequent controls would be too late to be genuinely effective and to enable it to achieve the aim pursued.

5.2.2.2. The situation in Member States — What have we seen so far as a result of implementation?

Authorisation is clearly the most common requirement also for cross-border services. However, the extent to which cross-border services are still subject to such schemes seems to vary considerably in the different Member States. While in some Member States, including for instance the Czech Republic, Estonia, Hungary and Spain, authorisation schemes for cross-border services remain in only a few areas, they seem to have been largely maintained in some other Member States.

Authorisation schemes have been/are being abolished or made non-applicable for cross-border services or have been replaced by notification schemes (or by ‘self-certification’ statements, i.e. declarations/statements by the provider that it complies with the relevant requirements) in many cases. Spain and Latvia have in principle prohibited authorisation schemes for cross-border service providers.

As a result of implementation of the Services Directive, there seem to be no horizontal authorisation schemes remaining for cross-border services. Horizontal authorisation schemes

have been removed or are being removed in several Member States for cross-border services. For instance, **Malta** seems to have amended its trading licences act so that service providers from other Member States can generally provide services without authorisation or notification. Similarly, **Poland** has clarified that cross-border service providers do not have to be entered in any business registers. **Bulgaria** seems to have replaced a horizontal authorisation scheme for crafts with a notification scheme. **Belgium** has clearly stated that the general business registers (Banque Carrefour) do not apply to cross-border service providers. **Portugal** has amended its commercial code so that cross-border service providers no longer need to register (nor establish). **Slovenia** is in the process of adopting a rule ensuring that cross-border craftsmen do not need to be registered in its craft register. **The Czech Republic** had already abolished the application of their trade licensing acts for cross-border services providers when it joined the EU. In **Sweden** the obligation to set up and register as a foreign branch before starting to do business there no longer applies to cross border service providers.

In addition, existing authorisation schemes for specific services have been/are being removed or made non-applicable for cross-border services (in some cases replaced by notification requirements), in important sectors such as construction, tourism, and education. This is of course in particular the case in Member States which have adopted a general rule that in principle no requirements apply to cross-border services (unless specifically stated in the law), because such rules affect many service sectors at the same time. In other cases, authorisation schemes for cross-border services have been or are being removed/made non-applicable in specific cases. Examples which have been reported to the Commission include certain construction services (**Cyprus** and **Spain**), gas installations (**Spain**), repair of pressure equipment (**Spain**), repair of refrigerators (**Spain**), property developers (**Germany**), property development managers (**Germany**), engineers/engineering consultancies (**Spain**), travel agencies (**Belgium, France** and **Spain**), tourist guides (**Malta**), cross-border retail services (**Spain**), itinerant trade (**Portugal**), distant sales (**Spain**), the auctioneering sector (**Germany** and **Portugal**), estate agents (**Germany**), certain personal services (**France**), maintenance of fire safety equipment (**Lithuania**), services of quality control of buildings (**Spain**), employment agencies (**Belgium** (Flanders), **Malta**), sale of time shares (**Malta**), top model agencies (**France**), live show managers (**France**), family mediation services (**Spain**), recruitment services (**Lithuania**), evaluation of radio equipment (**Cyprus**), driving instructors (**Portugal**), car rental (**Cyprus** and **Portugal**), commercial agents (**Greece**), environmental experts (e.g. **Slovakia**), certain training courses (**Spain**), manager of sportsmen (France), maintenance of lifts (**Portugal**), leisure activities (**Spain**), catering in mobile facilities (**Portugal**), ticket sales of shows (**Portugal**), and forest exploitation (**Belgium, Flanders**).

However, it seems that a considerable number of sector-specific authorisation schemes continue to apply to cross-border service activities. The following list illustrates the number of schemes reported and the variety of services covered, but is by no means comprehensive.

Certification, inspection, expert and analysis services, e.g. experts/certification services in the construction sector⁸⁶, certification of construction products⁸⁷, experts/certification/measuring

⁸⁶ Austria (some Länder); cases from several German Länder for structural inspectors / structural inspection engineers (*Prüfingenieure/Prüfsachverständige*) — these rules generally provide for a notification requirement if the provider has complied with similar (substantive) requirements in his Member State of establishment but for an authorisation scheme for all other cases; cases of several German Länder for certification services relating to safety and fire protection, and for the presentation of building documents (*Bauvorlageberechtigung*).

⁸⁷ Several Member States, for instance several cases from Austrian and German Länder.

concerning environmental aspects⁸⁸, energy performance certification (Sweden), verification/control of measuring equipment⁸⁹, supervision services concerning certain products (some *Länder* in Germany, and France for tanning beds), certification/testing of fire protection systems (Slovenia), verification of results of land surveying (Czech Republic)⁹⁰, testing of vehicles⁹¹, technical control/experts concerning the safety at work⁹², control/inspections of lifts⁹³, control of gas or electrical installations⁹⁴, control/supervision of heating/heating appliances⁹⁵, boiler installation experts (Austria), inspection/expert/analysis services in agricultural/food related matters⁹⁶, certification, testing of technical equipment for spraying pesticides (Slovenia), testing and analysis of plant protection products (Slovenia), experts on pipelines (Germany), control of tanks for liquid manure (Denmark), measuring the quality of petrol (Denmark), and inspection of gambling machines (one Land in Austria).

Services related to hazardous substances/equipment: e.g. different activities linked to weapons/firearms and ammunition⁹⁷, handling of explosive substances and/or pyrotechnic goods and/or explosion activities⁹⁸, handling of nuclear materials/activities related to nuclear energy⁹⁹, handling/storage of dangerous chemicals (Slovenia and Denmark), import, use and release of genetically modified organisms (Romania and Ireland), use of pesticides (United Kingdom), handling of ozone layer depleting substances (Slovakia), handling of pathogenic germs (Germany), advertising, and wholesale of narcotic drugs and psychotropic substances (Lithuania).

Services relating to animals/plants or national parks: e.g. handling/trade etc. in wild/protected animals¹⁰⁰, reproduction/insemination of animals¹⁰¹, slaughter of animals (United Kingdom, The Netherlands), killing or taking of birds in marine area (United Kingdom), animal homes (United Kingdom), animal tests/experiments (the Netherlands), embalming of wild animals

⁸⁸ Many Member States for emission measuring/controls, for example France, Denmark, Slovakia, Cyprus, Germany; many Member States for verification of environmental reports, for instance Luxembourg, Slovenia, Slovakia; many Member States concerning water, for instance the Netherlands, France, several cases from German *Länder* concerning the control of infrastructure for use of water endangering substances, several cases concerning waste water, for instance Germany; several cases concerning soil, for instance the Netherlands and Germany, several cases from German *Länder* for testing of plant protection equipment and concerning waste, as well as several cases concerning noise, for instance in Denmark, cases concerning air quality in Belgium (Flanders).

⁸⁹ Several Member States, for instance Belgium, Romania and Germany.

⁹⁰ These authorised land surveyors are different from 'normal' land surveyors, whose results they check, e.g. for the land register.

⁹¹ Several Member States, for instance Malta, United Kingdom and Denmark.

⁹² Luxembourg, France for workplace noise, radiation and air quality.

⁹³ Several Member States, for instance France, Austrian regions, and Belgium.

⁹⁴ Several Member States, for instance Luxembourg for gas, Austria (one Land), France for gas and electrical installations; the Netherlands for gas and electricity.

⁹⁵ France, Austrian regions, and Slovenia.

⁹⁶ Italy (Bolzano), Slovenia for analysis of seed quality; Germany for analysis of milk and experts for agriculture, forestry, viticulture and fisheries, Poland for ecological farming.

⁹⁷ Estonia and Hungary for the transfer, export, import etc. of firearms and marketing and repair of arms.

⁹⁸ Several Member States, for instance Hungary, Cyprus, Denmark, Lithuania for trade in pyrotechnic products; the Netherlands for firework-related activities and the use of explosives, Sweden for the sale of explosive products.

⁹⁹ Lithuania for the export, import etc. of nuclear materials, Lithuania for acquiring, keeping, and transporting radioactive materials, Lithuania for the provision of services to nuclear facilities.

¹⁰⁰ France, several cases from Romania concerning trade in wild flora and fauna, several cases from German regions concerning the collection and processing of wild animals, and the Netherlands concerning the exhibition of protected animals (and plants).

¹⁰¹ Several Member States, for examples France, Lithuania for insemination of animals, Belgium for breeding; the Netherlands for sperm collection.

(Cyprus), tests relating to dogs¹⁰², keeping, breeding, and sale of dangerous dogs (Lithuania), collection and sale of minerals, plants and animals¹⁰³, collection and processing of wild plants¹⁰⁴, organisation of animal fights (the Netherlands), activities in nature protection areas (the Netherlands and France), deforesting (the Netherlands), and commercial activities in national parks (Sweden).

Construction/crafts: e.g. construction services¹⁰⁵, setting up/maintenance of mining construction (the Netherlands), drilling services (Cyprus), welding services (France), plumbers (Denmark), work on/installation of electrical or gas appliances/ installations¹⁰⁶, maintenance of heating installations (Lithuania), maintenance and installation of cooling installations/activities with CFCs (the Netherlands), asbestos removal (France), archaeological works¹⁰⁷, construction within the marine environment (United Kingdom), and placing scaffolding on highways (United Kingdom).

Tourism-related services and leisure activities: e.g. travel agencies¹⁰⁸, ski instructors¹⁰⁹, mountain guides¹¹⁰, cave guides (Austria), organisation of events, including variety shows, circuses, art shows etc¹¹¹, diving instructors (Italy, one region), recreational diving services (Malta), fishing-related tourism (Italy, one region), marketing of time-share products (Malta), recreational games (Greece), tours in mines (Austria), tours and excursions with hired trams/cars, coaches etc. (Belgium at local level), and bullfighting (Spain — one region).

Education and training services, e.g. schools¹¹², higher education services¹¹³, vocational training¹¹⁴, advanced vocational training (France), business trainings¹¹⁵, driving instructors¹¹⁶, driving schools¹¹⁷, training for drivers (Denmark), training in the aviation area¹¹⁸, dancing schools/dancing classes¹¹⁹, dramatic art schools (Greece), training for fire protection (Slovenia and France), training related to health and safety at work (Ireland and France), training on protection of plants (Slovenia), training on phytomedicine (Slovenia), training for life saving in water (Slovenia), training on hygiene conditions for tattooing services (France), training related to plant protection products (Poland), courses in food hygiene (Denmark),

¹⁰² Several German regions for test of character of dogs and for dog owners.

¹⁰³ Several cases from Austrian regions concerning the collection and sale of minerals and animals, and trade in listed plants.

¹⁰⁴ Several cases from German regions for collection and processing of wild animals and plants.

¹⁰⁵ Several Member States, for example Malta, Lithuania for the design, construction and management of construction works and the management of technical activity in relation to construction works; and the Netherlands for construction work and digging.

¹⁰⁶ Several Member States, for instance Finland, Cyprus, Malta, and Denmark.

¹⁰⁷ Ireland, Lithuania for excavation works, and Spain.

¹⁰⁸ For instance Finland, Ireland and Poland.

¹⁰⁹ Several Italian and Austrian regions.

¹¹⁰ Several Member States, for instance some regions in Italy and Austria.

¹¹¹ Several Member States, for instance France for sports, several Austrian regions for circuses, music festivals etc. art shows, Hungary for circuses, Lithuania for organising events in public places.

¹¹² Italy, United Kingdom.

¹¹³ Several Member States, for instance Slovenia, Portugal, and Lithuania.

¹¹⁴ Several Member States, for examples Lithuania for vocational education, and Austria (one Land) for social professions.

¹¹⁵ Belgium (Vlaamse Gemeenschap).

¹¹⁶ Denmark, Ireland, Malta and the United Kingdom.

¹¹⁷ Several Member States, for instance Bulgaria, Cyprus, Finland, France, Iceland, Portugal, reported that the authorisation applies only to those cross-border service providers who set up (temporary) driving schools in Portugal.

¹¹⁸ Cyprus for pilots, Poland.

¹¹⁹ Greece for amateurs, Greece for higher private dancing schools, and several Austrian regions.

training regarding trading, packaging and application of plant protection products (Poland), and the training of dangerous dogs (Austria).

Wholesale and retail services: e.g. markets¹²⁰, itinerant/ambulant trade¹²¹, trade fairs¹²², commerce on public areas¹²³, trade in used goods (United Kingdom), retail sales of alcoholic beverages (Lithuania), retail sales of tobacco products (Lithuania), the supply of and trading in electricity and natural gas (Slovenia), energy distribution (Italy, at local level), the sale of food supplements (Cyprus), wholesale of veterinary medicines (Greece), sale of specific plants/plants products (Slovenia), trade in plant protection products (Poland), and the sale of animal by-products (United Kingdom).

Food and beverage related services: e.g. sale of food/beverages by vending machines in some regions in Italy, etc.

Services provided at courts: e.g. court expert¹²⁴, court interpreter¹²⁵, insolvency administrator¹²⁶.

Business services: e.g. real estate agents¹²⁷, employment services¹²⁸.

Other services: e.g. child care¹²⁹, housing support services (United Kingdom), services for people with disabilities (Austria in some regions), collecting societies¹³⁰, detectives (Hungary), alarm installations (the Netherlands), funeral services (Lithuania), services for cemeteries (Germany (one Land), tattooing services (the Netherlands and Spain in some regions), tanning services/solariums (Spain in some regions and Sweden), other care/support services (at home)¹³¹, consultation for debtors (Belgium, one Community), street artists (Belgium (at local level), acupuncture (United Kingdom), advertising in public spaces¹³², removal services¹³³, security system designers and technicians (Hungary), archiving (Lithuania), handling of precious metals and stones (Lithuania), bottling wines (Slovenia), services comprising the use of a plane (including aerial photography)¹³⁴, aircraft related services (Hungary), activities for protection from and prevention of professional risks (Cyprus), waste-related services¹³⁵, activities with an impact on water (United Kingdom),

¹²⁰ Greece for outdoor markets, Italy, Belgium, and Spain.

¹²¹ Several Member States, for instance Belgium, Cyprus, Greece, and Portugal.

¹²² Several Member States, for instance Greece including for trade fairs for books, Italy (Lazio), Portugal.

¹²³ Several Member States, for example Italy (one Region), 34 Irish Counties and Lithuania.

¹²⁴ Slovenia, Italy (Bolzano) for real estate matters, Slovakia.

¹²⁵ Several Member States, for instance Slovenia and Slovakia for translators/interpreters, Germany (one Land), and the Netherlands.

¹²⁶ Several Member States, for instance Slovenia, Slovakia, and the United Kingdom.

¹²⁷ Finland, Greece for brokers of civil law contracts in general.

¹²⁸ Several Member States, for instance Finland and Cyprus.

¹²⁹ Several Member States, for instance France, the United Kingdom, several Austrian regions, and Belgium (Deutschsprachige Gemeinschaft).

¹³⁰ Several Member States, for instance Malta, Slovenia, Ireland, and France.

¹³¹ United Kingdom for care home services and care services.

¹³² For instance Finland for placing signs at roads, Austrian regions, and Lithuania for installation of outside advertisements.

¹³³ France. The French authorities have pointed out that removal services which do not include goods transport do not require any authorisation or declaration. If the removal services include goods transport, it is subject to the rules on goods transport.

¹³⁴ Several Member States, for example Luxembourg; Hungary for aerial photography; Cyprus for aerial photography; Lithuania for aerial photography; and the Netherlands.

¹³⁵ Several Member States, including for disposal/management of certain types of waste or different techniques, for instance France for the collection of used oil, waste disposal of used tyres, waste disposal of textiles/shoes and disposal of electrical equipment, United Kingdom including for disposal of waste batteries, Malta and Slovenia for incineration of waste and waste management at Koper port,

mediation activities¹³⁶, training of racing animals¹³⁷, horse riders in races (Ireland), charitable collections (Germany (one Land) and United Kingdom), and operators of industrial or mobile plants (United Kingdom).

To justify these requirements, Member States have again relied on the four reasons, often on more than one reason at a time or even on all four. Based on these reasons, Member States have put forward a variety of arguments to justify specific authorisation schemes, including the need to ensure sufficient qualifications, to safeguard quality, to protect the consumer/recipient, etc. It should be noted that the justifications given under Article 16 do not in many cases seem different from the arguments put forward under Article 9.

5.2.3. Notification/declaration requirements (Article 16(1))

5.2.3.1. What is the legal backdrop? What are the relevant aspects for the Services directive?

Notification requirements are often required for the provision of a service. The alleged reason being that, on the basis of such notifications, competent authorities may be able to supervise compliance with the relevant legal framework.

Notification schemes are in many cases less burdensome than authorisation schemes. One major advantage is that they enable the service provider to start immediately upon sending the notification. However, even notification requirements can render the provision of a service considerably more difficult. In fact, in some cases, notification requirements may almost be as burdensome as authorisation schemes, e.g. if they need to be made before providing the service and to include a lot of documentation.

Under Article 16 of the Services Directive, notification requirements can only be applied to service providers from other Member States if, besides being non-discriminatory, they are justified on grounds of public policy, public security, public health or the protection of the environment and are proportionate.

5.2.3.2. The situation in Member States — What have we seen so far as a result of implementation?

On the basis of the information received by Member States, it seems that notification requirements are used much less than authorisation schemes (except in relation to regulated professions, for which many Member States may require a prior annual declaration in line with the Professional Qualifications Directive¹³⁸). In fact, in some Member States, including Denmark, Estonia, Ireland, Italy, the Netherlands, Poland and Slovakia, notification requirements of this kind do not seem to exist at all for cross-border services (or only in very few instances) whereas in other Member States including Germany, Spain, Hungary, Portugal and Austria they seem to be used to a limited extent (even though in most cases much less than authorisation schemes).

Poland for waste management, several cases from the Netherlands, including for collection of specific oils, and Romania.

¹³⁶ Slovakia, Germany (one Land) for mediation in insolvency matters.

¹³⁷ Ireland for greyhounds and horses, France for horse training.

¹³⁸ Since such notifications are covered by the derogation in Article 17 No 6, they have generally not been reported and are thus generally not included in the overview below.

Notification requirements have been/are being abolished or made non-applicable for cross-border services in a number of cases. As is the case for authorisation schemes, this certainly applies to many notification requirements in Member States whose general approach is not to apply any rule on cross-border services unless this is specifically stated. In other cases, changes may have been made to sector-specific legislation. Examples notified to the Commission include the removal of the cross-sectoral notification scheme in the **German** trade law for cross-border services.

However, notification requirements have also been maintained (or have even been introduced to replace authorisation schemes) in several cases.

From the information available, it seems that a horizontal notification scheme exists in Belgium, in Bulgaria and Liechtenstein. Belgium imposes a horizontal notification requirement on anybody providing services (or carrying out a business activity) in Belgium (with limited exceptions). Liechtenstein seems to subject all commerce (*Gewerbe*) to a notification requirement. Bulgaria seems to impose a horizontal notification obligation on cross-border services of craftsmen.

In most cases, notification schemes concern specific sectors only. Notification schemes have been reported for certain certification, expert and verifying services¹³⁹, including quality control of buildings (Spain at regional level), appraisal services linked to emission reduction activities (Hungary), noise audit (Spain at regional level); the construction sector/crafts, e.g. certain construction services¹⁴⁰, preparation of building documents¹⁴¹, construction-assembly services (Hungary), design, installation and maintenance of anti-burglary systems (Romania); handling of explosive/pyrotechnic articles¹⁴²; animal/plant related services, such as insemination services (Austria), breeding (Austria), import and use of pesticides (Germany), disinfection services and crop spraying (Germany at regional level); the tourism sector, including travel agents (Hungary), cave guides (Austria), sport services (Austria), summer camps for children (Spain at regional level), the organisation of events at sea (France), in the retail/wholesale area, including retail (in general) (one region in Spain), sale of seeds (Hungary), sale of food and beverages in public transport (Italy at regional level), the sale of food and beverages at the consumer's home (Italy at regional level), the sale of used goods (Sweden), the sale of propane and butane gases (Hungary), the rental, repair and sale of medical appliances (Hungary), wholesale of medicines (Slovenia), energy supply (Austria); the education sector, including adult education (Hungary), higher education services (Hungary), professional trainers of animals (Cyprus), training organisers for fire protection exams (Hungary); interpreters at court (Germany at regional level); other services, such as services related to blood donation (Germany at regional level), family and home care services (Belgium), tattooing (France), information services on medical appliances and medicines (Hungary), bottling of camping gas bottles (Hungary), fire fighters, distant monitoring of fire indicators (Hungary), mannequin placement services (France), detective and investigation services¹⁴³, postal and courier services (Lithuania), lobbying activities (Hungary), the use of microwaves to repair water damage (Sweden), family mediation services (Spain at regional level), roadside advertising (Spain at regional level), etc.

¹³⁹ Several cases for structural inspectors/structural inspection engineers in German regions; generally only notification requirement if qualifications are equivalent. Otherwise registration is required (Hungary).

¹⁴⁰ The Netherlands for concrete-, brickwork or plasterwork.

¹⁴¹ Several cases from German regions; generally only notification requirement if qualifications are equivalent. Otherwise registration is required.

¹⁴² Estonia for handling of explosives; Estonia for handling of pyrotechnic articles, Hungary for sale of explosives.

¹⁴³ Poland, Romania and Slovenia.

To justify these requirements, Member States have again relied in many cases on more than one of the reasons set out in Article 16 or even on all four. Based on these reasons, Member States have put forward a variety of arguments to justify specific notification requirements, including in particular the protection of the recipient/consumer. The basic reasons for notification schemes for the provision of a service as such seems in many cases to be that Member States believe that notification lets them know who is in their territory so that the competent authorities can supervise the service provision, if they wish.

5.2.4. Other requirements (Article 16(1))

In addition to establishment requirements, authorisation schemes and declarations, Member States also reported on other requirements.¹⁴⁴

The majority of information received concerned obligations on the use of equipment, insurance obligations and obligations to obtain a special ID document (in addition to the catchall item "another obligation for service providers"). In contrast, there were almost no reports of bans on infrastructure, limits on financial assistance to service recipients or obligations to have a representative in the territory.

5.2.4.1. Requirements affecting the use of equipment and material which are an integral part of the service provided (Article 16(2)(f))

Requirements affecting the use of equipment can prevent service providers from using their equipment for the provision of services in other Member States which may in many cases fully hinder the provision of the service as such, in particular if the equipment is essential and cannot easily be substituted.

Most entries for requirements affecting the use of equipment or material were made by Austria, Belgium, Germany, the Netherlands and Slovenia. Other Member States do not seem to use such requirements much or did not report them.

The requirements reported cover a range of services including expert, control or certification services¹⁴⁵, environmental detection services¹⁴⁶ and other measurement services¹⁴⁷,

¹⁴⁴ In particular, for service providers these were bans on a service provider setting up a certain form or type of infrastructure in the territory; the application of specific contractual arrangements between service providers and service recipients which prevents or restricts service provision by the self-employed; obligations on a service provider to possess an identity document issued by the competent authorities specific to the exercise of a service activity; requirements which affect the use of equipment and material which are an integral part of the service provided; obligations on a service provider to have an address or to designate a representative in the territory of the receiving Member State; obligations on a service provider to take out insurance or to subscribe to a guarantee or similar arrangement in the territory of the receiving Member State, and other obligations. For service recipients, Member States reported on obligations on a service recipient to obtain an authorisation from or to make a declaration to the competent authority before using a service supplied by a provider established in another Member State, and discriminatory limits on the granting of financial assistance to service recipients by reason of the fact that the provider is established in another Member State or by reason of the location of the place at which the service is provided and other obligations on the service recipient.

¹⁴⁵ Several Member States, for instance Austria for inspection of heating facilities and security checks of elevators; Germany for experts for emission control, experts for soil protection and brownfields, control stations for crop protection products, control stations for construction products, inspection of pipelines, experts for sewage examination, inspection of collective assets for milk and experts for waste disposal; and Slovenia for measurement of radioactivity and disposal of plant protection products.

¹⁴⁶ The Netherlands for the detection of radioactive waste.

¹⁴⁷ The Netherlands for gas measurements.

construction services¹⁴⁸, body/beauty care¹⁴⁹, solariums (Slovenia), funeral services¹⁵⁰, opticians¹⁵¹, mountain guides (Austria), veterinarians¹⁵², castration of animals (the Netherlands), slaughter of animals (the Netherlands), friendliness testing of dogs (Germany at local level), activities concerning infrastructure for handling of substances dangerous for water (Germany), road safety teaching (Slovenia), handling of used motor vehicles (Slovenia), handling of animal side products (Slovenia), waste collection and management (the Netherlands and Slovenia), and the demolition of constructions waste (the Netherlands).

In most cases, the requirements concern either the (often) movable equipment used (and seem to aim at ensuring the reliability of the results/quality of services and exact measurements) or the protection of providers or recipients (e.g. equipment/first aid kits for mountain guides). In other cases, requirements seem to relate to the premises.

5.2.4.2. Insurance obligations (Article 16(1))

Insurance obligations may also be a particular burden on cross-border service providers and may in many cases hinder service provision, for instance if the service provider's insurance cover in his home Member State does not cover the exact same risks. In this and other cases, providers may need to conclude an insurance contract before providing a service. Moreover, such insurance cover for cross-border services may in some cases be too expensive to make the service provision economically worthwhile (insurance contracts are often more expensive on a pro-rata basis for short periods). In some cases, insurance coverage for cross-border services may actually be difficult to find on the market as such.

As with other requirements, it is clear that insurance requirements have been/are being abolished or made non-applicable for cross-border services in a number of cases. Some Member States have reported this, e.g. for sports agents (**France**), measurement of radon volumes (**France**), disposal of used oil (**France**), surveyors (**France**), and intellectual property agents (**Portugal**).

As regards the insurance requirements that have been maintained, there seems again to be a considerable difference in the use (or at least in the reporting) of such requirements between the Member States. Most of the requirements were reported by France, Portugal, Germany and Spain, while the other Member States reported very few or none.

Insurance requirements were reported for certain experts and control services¹⁵³, funfair operators (Germany), certain event organisers (France), construction services (France), furniture auctions (France), architects (France), biomedical research (France), real estate agents and real estate property managers (France and Portugal), distribution of phytopharmaceutical products (France), placement services for models (France), travel

¹⁴⁸ The Netherlands, e.g. for scaffolding, ladders, piling, conveyors and other material.

¹⁴⁹ Several cases from German regions, including for sterile equipment and use of protective utensils; Slovenia for special air system in beauty salons.

¹⁵⁰ Several cases from German Länder, for requirements relating to coffins and transport vehicles; and urns for burial at sea.

¹⁵¹ Austria for equipment in their business premises.

¹⁵² Germany for the use of medicines.

¹⁵³ Several cases from German regions, including inspection of pipelines, agricultural experts, experts for soil protection and brownfield sites; experts for infrastructure handling substances dangerous to water, agricultural experts; experts for infrastructure handling substances dangerous to water; experts for water protection; experts for sewage facilities, sewage examination; France for the inspection of lifts and immovable property related experts, Portugal for inspection of gas and distribution networks and for the inspection of lifts.

agencies¹⁵⁴, tourist recreation activities (Portugal), maritime tour operators (Portugal), diving services (Portugal), certain high risk sports activities (Spain at regional level), door to door sales (Spain at regional level), aerial photography (Portugal), application of plant protection services (Portugal), lift maintenance (Portugal), installation and repair of gas appliances/installations (Portugal), accountants (Portugal).

5.2.4.3. Obligations to obtain a special ID document (Article 16(2)(e))

Requirements to obtain a special ID card are often used to try to enable an immediate and easy decision on whether a provider is allowed to exercise an activity. In this way, special ID cards are to a certain extent similar to authorisation schemes.

Requirements to obtain a specific ID document do not seem to be very common in most Member States. Nevertheless, a good number of Member States have reported some instances where this requirement still exists.

Requirements to obtain a special ID card were reported in particular in the following areas: tourist and cave/climbing guides¹⁵⁵, detectives (Austria and the Netherlands), ski instructors (Austria and Italy), experts¹⁵⁶, collection of plants for commercial purposes (Germany at regional level), any commercial activity at cemeteries (Germany at regional level), and sworn translators/interpreters (the Netherlands).

5.2.4.4. Other obligations on service providers (Article 16(1))

Austria, Germany, Portugal, Sweden and the Netherlands¹⁵⁷ reported a large number of requirements in this category, many other Member States reported very few or none at all.

A variety of different requirements were reported under this catch-all item. Requirements notified include requirements related to the exercise of the activity as such, for example on continuing education, minimum age requirements, reserves of activity, prohibitions on activity in certain areas, and requirements on the way a service must be provided, for example requirements on quality and requirements to have quality systems, protective measures, secrecy rules, management requirements, requirements to keep records, etc.

Like other requirements, these have been removed in some Member States. For instance, **Germany** has ensured that tariffs for lawyers and engineers cannot be applied to cross-border services; **France** intends to make fixed tariffs for artistic agents and sports agents non-applicable for cross-border services; **Denmark** has exempted cross-border services from the ban on using discount coupons and prize competitions as marketing tools. The **United Kingdom** has abolished the obligation to have an address in its territory that was previously imposed on providers from other Member States wanting to provide cross border services in this country. **Sweden** has stated that the obligations to designate a representative as well as a person for the service of documents who are domiciled in Sweden have been abolished and that certain information requirements do not apply anymore to cross-border services.

¹⁵⁴ Several cases from Spanish regions, Portugal, Slovenia and Finland (Aaland).

¹⁵⁵ Austria for tourist and cave guides, Greece for tourist guides.

¹⁵⁶ Germany (Sachsen) for agricultural experts; Germany (NRW) for structural inspectors.

¹⁵⁷ The relatively large number of reports under this category for the Netherlands is mainly caused by legislation reported by 441 municipalities at local level, in particular concerning provisions in the local Building Regulation and provisions in the General Local Regulation on street artists. Legislation at national level reported in this category included information obligations, obligations to mention certain matters and which EN standards are to be used for tests etc.

In other cases, such requirements seem to remain almost as in establishment cases. In addition, it seems that, in many cases, requirements have not been reported. This concern in particular requirements reported under Article 15 and 25, including legal form requirements, shareholding requirements, tariffs, quantitative restrictions and restrictions on multidisciplinary activities. The logical conclusion to draw from the fact that they have generally not been reported under Article 16 is that they will not be applied to cross-border services. But it is unclear whether this is the case in practice.

CONCLUSIONS

Member States have taken very different approaches to implementing the freedom to provide services clause:

- Several Member States have laid down a horizontal general rule that requirements applicable to established providers are, in principle, not imposed on cross-border services unless a law specifically provides for their application to cross-border services.

- The majority of Member States have included a rule similar to Article 16 of the Services Directive in a horizontal framework law transposing the directive into national law. Several of these Member States have, to varying degrees, also made changes to sectoral legislation indicating clearly which rules can/cannot be applied to cross-border services. It seems that as long as no clear indication has been given the requirement will either be applied to cross-border services or it will be up to the competent authority to decide in each individual case whether or not to apply a requirement.

- A few Member States have not chosen a horizontal approach to implementing the freedom to provide services clause but have relied solely on varying degrees of amendment to existing (sectoral) legislation.

In the discussion amongst Member States, several issues were raised:

As regards a horizontal approach, it was stressed that it was crucial to make it clear that the horizontal framework law implementing the Services Directive took precedence over existing (sectoral) legislation. A large number of Member States stressed that if the horizontal approach merely 'copied' Article 16, service providers needed legal certainty. As far as no specification had been made in sector-specific legislation the effects of the implementation would largely depend on the competent authorities to decide in each case whether or not certain requirements were applicable to cross-border services. Competent authorities could often be tempted to apply their national legislation to cross-border services, considering that the notions of 'public policy', 'public security' and 'public health' would not be very precise and may be used in a different manner in the national legal framework. The application of Article 16 would thus need to be monitored carefully to ensure that it was properly applied in practice.

As regards approaches relying on sector-specific requirements only, Member States raised questions as to the completeness of the transposition.

In the discussions it was pointed out that the real test of implementation is the question of which requirements are in practice applied to cross-border services.

It is clear that as a result of the Services Directive substantial progress has been achieved. In fact, many requirements will no longer be imposed on cross-border services. This is of course in particular the case in those Member States which have chosen an approach according to which rules are generally not applied to providers of cross-border services unless specifically stated otherwise. Other Member States have also made major changes, some of them across

the board. Establishment requirements have been/are being largely abolished; in many Member States they no longer exist. A good number of authorisation schemes have also been abolished or replaced by less restrictive measures (notification or 'self-declaration'). The result, however, seems to vary considerably between the different Member States: while some Member States have in principle fully abolished authorisation schemes for cross-border services and others have maintained very few authorisation schemes, still other Member States have maintained a large number of such schemes. Notification schemes, both sector-specific and cross-sectoral, have also been abolished in a number of cases.

The discussion showed that the number of requirements applied to cross-border services, in particular the number of authorisation schemes, are considered a serious problem by many Member States. Many of them confirmed that establishment requirements can hardly be justified. Some Member States pointed out that the argument that such requirements were necessary to allow on-site checks was no longer convincing since the Internal Market Information system (IMI) allowed efficient cooperation with competent authorities from other Member States.

The authorisation schemes and notification requirements (considerably fewer than authorisation schemes) that continue to apply to cross-border services can be found in a wide variety of cases. The areas in which they exist overlap to a large extent and cover the same service sectors. Some Member States had particular doubts about such requirements in areas such as tourism and business services, in which reasons of public policy and public security may often not be at stake (nor, in many cases, public health or the protection of the environment). Member States also pointed out that the justifications given often do not seem to differ from justifications for establishment cases.

In addition, the discussion showed that problems for the internal market persist which go beyond legal questions: in fact, insurance cover for cross-border services which may still be required in certain cases, often seems to be difficult to obtain, at least at a price allowing cross-border service providers to compete with established providers

6. THE SITUATION IN SPECIFIC SERVICES SECTORS

6.1. Wholesale and retail

This section on wholesale and retail services covers the sale of goods — business to business and business to consumer. All distribution modes, including e-commerce, have been considered under this sector. However, the majority of requirements reported by Member States seem to affect sales carried out from a physical establishment or via ambulant trade.

Requirements of particular importance in this sector seem to be authorisations for the opening of large and medium-size retail establishments. The type and degree of regulation in this sector varies considerably among Member States.

6.1.1. Wholesale and retail in general

This section deals with all the requirements on the wholesale and retail of goods except for those that apply specifically to ambulant traders and other types of distribution such as doorstep selling and vending machines.

6.1.1.1. Requirements applying to establishment

➤ *Authorisation schemes*

Most Member States do not seem to have an all-embracing authorisation scheme for wholesale and retail services. Only in Luxembourg and Belgium is the provision of wholesale and retail services subject to an authorisation, which seems to be of a horizontal nature. In both countries the scheme seems to be linked to a qualification requirement.

The vast majority of the reported authorisation schemes for the wholesale and retail of goods can be classified into two main categories: (i) authorisation schemes for the opening of large and medium-size physical retail outlets; (ii) authorisations linked to the wholesale or retail distribution of a specific product.

Authorisation schemes applicable to the opening of large and medium-sized physical retail establishments

Before a physical retail establishment, of whatever size, can be opened the premises must generally comply with health and safety requirements. At least in some instances, this compliance is checked through an authorisation scheme. Hungary has abolished a general authorisation scheme which existed for retail establishments and replaced it with a notification scheme.

In addition, some Member States (Belgium, France, Greece, Italy, Luxembourg, Portugal and Spain) have reported specific authorisation schemes for the opening of large and medium-sized physical retail establishments. Such authorisation schemes also seem to exist in other Member States, such as Austria and Romania¹⁵⁸. In some cases, the procedures for such

¹⁵⁸ For Austria, see the special authorisation scheme laid down in § 77(5) Gewerbeordnung 1994 (GewO) for retail premises above a certain size which sell everyday consumer goods. For Romania, see

authorisation schemes for the opening of large and medium-size retail establishments are integrated with the procedures for authorising the premises. In other cases the procedures may be separate.

The overriding reasons of general interest given by Member States for justifying specific authorisation schemes for the opening of large and medium-sized retail establishments are the protection of the environment (including the urban environment), country and town planning rules, the protection of workers, social policy objectives, the protection of artistic and historic heritage and the protection of consumers. Other Member States seem to protect the above-mentioned general interest by applying land use and development rules and town and country planning requirements, without having recourse to authorisation schemes¹⁵⁹.

In general, it is the size of the establishment that determines whether an authorisation scheme is required for the opening of a large or medium-sized physical retail establishment. The scope of these authorisation schemes varies considerably among the Member States. Italy requires an authorisation for establishments where the sales area is larger than 150 m² (or 250 m² for bigger municipalities). Belgium requires an authorisation for establishments larger than 400 m². At the other end of the spectrum, some Member States have authorisation schemes that apply only if the outlet has a sales area larger than 2500 m² (certain regions in Spain). In certain Member States (Italy, Greece and some regions in Spain) these thresholds vary according to the population of the municipality or the size of the territory where the new establishment will be located. Finally, certain Member States (Greece and certain regions in Spain and Portugal) also have authorisations linked to the size of the company or company group that applies for the opening of the new establishment.

The implementation of the Services Directive has led to significant changes: In many cases, authorisation schemes for opening large and medium-sized physical retail establishments have been modified. For instance, economic needs tests that were often included in these authorisations have been eliminated in Belgium, France and Spain. Similar economic needs test have been eliminated from building permit applications in The Netherlands. Some Member States (France, some regions in Spain) have raised the thresholds from which these authorisation schemes apply. In addition, the criteria for the granting of authorisations have often been clarified. Finally, the procedures to obtain an authorisation have been simplified in France and in Spain.¹⁶⁰ Luxembourg has reported that it will amend its authorisation scheme to ensure that it neither contains economic tests nor allows for the intervention of competitors in the granting of individual decisions. Greece has reported that it will abolish the economic test in its authorisation scheme.

Romania seems to have an authorisation scheme, for the opening of certain physical retail establishments, which contains an economic test and allows competitors to have a say in the granting of an individual authorisation.

Government Decision 1454/2004 approving the criteria for setting up large retail sale structures. This requires a commercial authorisation for retail outlets exceeding 1000 m².

¹⁵⁹ For example, this seems to be the case in Denmark, Germany, Finland, Ireland, the Netherlands, Sweden and the United Kingdom.

¹⁶⁰ For instance, nine regions in Spain previously had two parallel authorisation procedures for the opening of large and medium-sized retail outlet establishments. One authorisation was granted by local authorities after checking that the premises complied with health and safety requirements. The other was granted by regional authorities on grounds of the above-mentioned overriding reasons of general interest. These nine regions have now changed this system, maintaining only one authorisation procedure. This is the one carried out by the local authorities, but it now includes a binding report from the regional authorities.

Authorisation schemes linked to the distribution of specific products.

All Member States have notified authorisation schemes linked to the distribution of specific products. Most of them concern the retail distribution of sensitive products such as weapons, explosives, diamonds, animals, tobacco or alcohol¹⁶¹. Some of these authorisation schemes are governed directly or indirectly by other EU legislation¹⁶².

In some cases, authorisation schemes for specific products have been abolished/replaced by less restrictive measures because they were found to be unjustified or disproportionate. For instance, Portugal has indicated that it will abolish the authorisation for the sale of tickets for public events or shows and Slovakia has replaced authorisations for the sale of weapons and explosives by notifications. Iceland, Liechtenstein and the United Kingdom have indicated that they have abolished discriminatory requirements which some of the reported authorisation schemes contained. In addition, such authorisation schemes/procedures have often been clarified, simplified and streamlined — such as the authorisation scheme for the resale of used goods in Norway. Other authorisations for the sale of specific products that are generally not considered sensitive have been maintained. For example, Italy still has an authorisation scheme for newspaper shops, reportedly relating to the protection of consumers and of the urban environment.¹⁶³

➤ Article 15 requirements

Several Member States have reported imposing restrictions on retail/wholesale sales in particular geographical areas, based on the population of that area or the minimum distances between outlets, or simply limiting the number of providers that can exercise their activity in that area.

In a number of cases such requirements have been abolished — or are in the process of being abolished — because they were considered unjustified or disproportionate. In particular, minimum distance requirements between petrol stations existed and have been abolished in Italy (at least in some regions) and in Spain (at least in one region). Greece has informed the Commission of its plans to abolish them. Portugal has reported that it will amend quantitative and territorial restrictions on the sale of tickets for shows and public entertainment events.

¹⁶¹ The reported authorisation schemes covered by this section affect the sales activity as such and not the placing of a product on the market. Member States have reported authorisation schemes for the sale of products such as weapons, explosives or fireworks and have justified them on grounds of public order and public security. Authorisation schemes for setting up petrol stations have been justified by Member States on grounds such as public safety, protection of the environment and of the urban environment. Member States have invoked crime prevention in order to justify authorisation schemes for the sale of diamonds or antiques. Authorisation requirements for selling animals have been justified by Member States on animal welfare grounds. Authorisation schemes for distributing phytopharmaceutical products, tobacco or alcohol have been justified by Member States on the grounds of protecting public health, the environment, consumers and animal health, and the need to combat fraud and counterfeiting.

¹⁶² For example, the authorisation schemes provided for in Regulation (EC) no 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs and in Regulation (EC) 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin. Another example of an authorisation scheme governed by other EU legislation is the authorisation for the wholesale of medicinal products for human use, required by Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use.

¹⁶³ An authorisation requirement for the sale of newspapers is laid down in national legislation: see Italian Legislative Decree 170 of 24 April 2001. Some Italian regions have also notified similar authorisation schemes.

Other requirements have been maintained. For instance, minimum distances between two establishments are imposed on night shops in Belgium (Flanders) with the declared aim of limiting the nuisance such shops are considered to cause for the neighbourhood where they are located. For similar reasons, and on public health grounds, local authorities in Ireland can limit the number of shops selling alcohol for consumption off-premises.

In Italy, some regional legislation limits the number of new large-scale retail outlets that can open in a particular region in a given period of time. The legislation limits the total surface area of new sales outlets that can be authorised every year. The aim seems to be to avoid an excessive concentration of large establishments such as supermarkets.

Member States have also notified requirements that determine the geographical location where certain sales can take place. The rules either prohibit the provision of a service in certain areas or allow certain activities to be carried out only in certain places. By contrast, Greece has said that it intends to amend the requirement that traders of certain works of art can only be located in cities where there are public services for protecting cultural heritage.

As regards legal form requirements, Lithuania has indicated that it is abolishing the requirement that the provider of certain services (trade in petroleum products, trade in explosives) be a legal person.

France has maintained a shareholding requirement (for the wholesale distribution of veterinary medicines). Undertakings providing this service need to be owned by a veterinarian or a pharmacist or by a company managed by one of these professionals.

As regards obligations to provide services jointly, Spain has said that it no longer requires petrol stations to be set up in large commercial establishments. A number of regions in Italy have abolished the obligation on petrol stations to sell 'non-oil' products as well as petrol.

➤ *Restrictions on multidisciplinary activities*

Italy has notified restrictions on the joint exercise of wholesale and retail activities. Greece has reported that it obliges traders of antiques to exercise that activity exclusively. The Greek authorities have justified this on grounds of the protection of cultural goods. Estonia has also reported a restriction on the joint exercise of the sale of weapons and the provision of security or private detective services. Romania has reported a restriction on the joint exercise of private detective services and trade in general.

6.1.1.2. Requirements applicable to cross-border service providers

A significant number of requirements applicable to cross-border service providers have been reported by Member States, the majority of which seem to concern the sale of specific products or services.

Establishment requirements for the sale of certain types of alcohol in Lithuania, for the sale of alcoholic drinks in Luxembourg and for the organisation of auctions of movable cultural property in Lithuania were discriminatory and have been or are being abolished. At the same time, certain establishment requirements have been maintained in Lithuania for services such as the wholesale of alcoholic products and tobacco products. Lithuania has invoked reasons of public policy. An establishment requirement for the sale of cars has also been reported by Iceland as being necessary for the protection of public policy and public security.

As a result of implementing the Services Directive, some authorisation schemes for cross-border service providers have been removed because they were considered unjustified or disproportionate. These include authorisation for distance sales in general in Spain, for

itinerant sales and for auctioneering in Germany. Portugal has said it will remove the requirement for an authorisation to sell tickets for public performances.

Some authorisation schemes linked to the distribution of specific products and applicable to cross-border service activities have been maintained. They include authorisations for the sale of weapons and explosives in Sweden, Iceland and Norway; trade in pyrotechnical products and precious metals in Lithuania; retail of alcoholic products in Lithuania, the United Kingdom and Norway; retail of tobacco products in Lithuania; sale of food supplements in Cyprus; wholesale of veterinary medicines in Greece; sale of specific plants in Lithuania and plant products in Slovenia; trade in plant protection products in Poland; sale of animal by-products in the United Kingdom; trade in animals in the Netherlands, the United Kingdom and Norway; sale of sex-related products in the United Kingdom.

Notifications have been reported for retail activities in general in one region in Spain, for the sale of food and beverages in public transport in one region in Italy, for the sale of used goods in Sweden, the sale of propane and butane gases in Hungary, for the rental, repair and sale of medical aid in Hungary and for the wholesale of medicines in Slovenia. Spain has also reported a notification obligation imposed on established and cross-border franchisors.

Insurance obligations have been reported for the distribution of plant health products in France

Finally, as regards other requirements applied to cross-border services, it has been reported that the requirements limiting the use of certain marketing methods (such as the use of vouchers and prize competitions) in Denmark and Sweden no longer apply to cross-border retailers providing services in those countries. Sweden has also reported that existing rules on distance selling no longer apply to cross-border service providers.

6.1.2. Ambulant sales

This section covers a wide variety of off-premises sales such as sales in local markets (indoor and outdoor), sales in public areas and street selling.

It can generally be concluded that the regulation of local markets and sales in public areas seeks to ensure a fair distribution of the limited space in which services can be provided, whereas the regulation of random street selling seeks to achieve effective supervision of service providers who generally have no fixed establishment. In addition, some Member States appear to take account of social protection objectives when regulating access to ambulant trade. Finally, it seems that in some Member States ambulant sales can only take place in spaces designed for that purpose, and that random street selling is not allowed.

6.1.2.1. Requirements applying to establishment

➤ *Authorisation schemes*

Italy seems to be the only Member State that requires a professional qualification for the provision of ambulant trade services.

A number of Member States (Belgium, Finland, Germany, Greece, Hungary, Italy, Lithuania, Latvia, Malta, Portugal, Spain and the United Kingdom) have reported authorisation schemes for sales in markets. Germany, France, the Netherlands and Portugal have reported authorisation schemes for street selling. These Member States justify such schemes on the grounds of public health, public safety, the protection of the environment (including the urban environment), the protection of consumers, fairness of trade transactions and fraud

prevention. In some cases, some of the criteria contained in these authorisation schemes have been justified by Member States on grounds of social policy objectives.

As a result of implementing the Services Directive, several Member States including Greece, Italy, Latvia, Spain and the United Kingdom have modified or are modifying authorisation schemes governing ambulant sales to make them compatible with the Services Directive. Portugal has declared its intention of doing so. Germany abolished an authorisation scheme for cross-border provision of services of itinerant sales. Spain and Italy have amended their authorisation procedures regulating access to stalls in local markets to ensure a fair and competitive selection process and have limited the duration of the authorisations in order to allow access to the market. Latvia has simplified the authorisation procedure for street sales and for trade at fairs and mobile shops. In addition, the United Kingdom has indicated that discriminatory criteria have been eliminated and Greece has said that they will be. Portugal has reported that residence requirements will be abolished.

➤ *Article 15 requirements*

A number of different restrictions affecting ambulant trade have been reported by a limited number of Member States.

As regards quantitative and territorial restrictions, Greece has reported that local authorities can limit the number of ambulant sellers that can be authorised to sell goods outside commercial premises in a given municipality, and that ‘outdoor trade’ establishments must be at least 100 m (or in certain cases 50 m) apart. At the same time, Greece has reported that it will no longer prohibit ambulant traders from providing services in towns with more than 20 000 inhabitants.

Greece has reported a ban on having more than one authorisation to operate a stall in a local markets as justified by the objective to combat unemployment.

As regards legal form requirements, Italy has recently abolished the requirement that ambulant sales and market sales be carried out by an individual entrepreneur or a partnership (and not by limited companies or cooperatives). In Portugal and in Greece, however, it seems that there is still a ban on legal persons carrying out ambulant or mobile sales. The Greek authorities have invoked social protection objectives as a justification for maintaining this requirement.

6.1.2.2. Requirements applicable to cross-border service providers

A considerable number of authorisation schemes have been reported as being also applicable to cross-border service providers in the area of ambulant trade. There are, for example, authorisation requirements for markets in Belgium, Greece, Italy and Spain; for ambulant trade in Belgium, Cyprus, Greece and Portugal; for commerce in public areas in Italy, Ireland and Lithuania. To justify these authorisations, Member States generally invoked ‘public policy’ and ‘public health’.

The implementation of the Services Directive has resulted in Germany abolishing its authorisation scheme for itinerant cross-border sales activities because it was considered unjustified or disproportionate. Sweden has also reported that existing rules on occasional sales no longer apply to cross-border service providers. Portugal has reported that it intends to eliminate the authorisation scheme applicable to cross-border pedlars and marketplace salespersons.

6.1.3. Other types of sales

Finally, a small number of requirements affecting other types of sales, such as doorstep selling,¹⁶⁴ have been notified.

Italy has abolished an authorisation scheme for doorstep selling, that was laid down in national legislation because it was considered unjustified or disproportionate. It has been replaced by a declaration obligation. However, some Italian regions still seem to apply authorisation schemes to these activities. Malta has also abolished an authorisation for doorstep selling. One region in Spain has reported an insurance obligation for door-to-door sales.

Spain has abolished the authorisation scheme that was previously required for sales through vending machines. Italy has also abolished authorisation schemes which applied to sales via vending machines, mail orders and teleshopping. These schemes have been replaced, in national law, by declaration requirements. However, in some regions of Italy, such authorisation schemes are apparently still in force. Austria no longer bans the sale of products via vending machines in a given area around public buildings and public transport.

CONCLUSION:

Very few Member States subject the exercise of retail activities in general to an authorisation.

In contrast, several Member States have to authorisation schemes for large and medium-sized physical retail establishments (the definition of which varies considerably). These schemes are in addition to the requirements for permits relating to the premises. Member States have sought to justify such authorisation schemes on the grounds of environmental protection (including the urban environment), town and country planning, consumer and/or worker protection and social policy objectives. Member States that do not require a specific authorisation for large and medium-sized retail establishments appear to pursue the same objectives through town and country planning rules. In addition, all Member States impose authorisation schemes for the distribution of certain sensitive products.

An important number of changes have been made in the retail sector as a result of implementing the Services Directive, because some of the existing requirements were considered discriminatory, unjustified or disproportionate. Some authorisation schemes have been abolished and many have been modified. For example, economic needs tests have been abolished, thresholds for the application of authorisation schemes have been raised, criteria have been clarified and procedures have been accelerated and simplified.

During the mutual evaluation process, discussion between Member States focussed on the advantages and disadvantages of the different approaches chosen (general planning rules versus specific authorisation schemes for large and medium-sized establishments). Some Member States pointed out that it is important to ensure that authorisation schemes do not seek to protect the same public interests that have already been protected through town and country planning rules and permits. Member States stressed that the remaining authorisation regimes should be further simplified.

For those cases in which these objectives of general interest are protected through planning rules, some Member States also stressed the importance of ensuring that planning rules truly

¹⁶⁴ At EU level, rules protecting consumers against unfair commercial practices when a contract is not signed on the trader's business premises. have been harmonised by the Council Directive of 20 December 1985 protecting the consumer in respect of contracts negotiated away from business premises (85/577/EEC).

meet the objectives which they claim to serve, that they are not going beyond what is necessary to attain these objectives and that they are adopted and applied in an objective and transparent manner.

6.2. Services in the tourism sector

The tourism sector encompasses a wide range of activities. During the process of mutual evaluation, the following areas were discussed: travel agencies and tour operators; tourist guides; the provision of short-stay accommodation (such as hotels or camping grounds); other tourism-related activities such as car rental. Given its links to the tourism sector, the serving of food and drinks (by restaurants, event caterers and bars) was also covered.

The level of regulation in the tourism sector seems to vary considerably between the Member States. Some of the activities in this sector are regulated professions in a number of Member States (for example, tourist guides and travel agents).

6.2.1. Services of travel agencies (including tour operators)

During the mutual evaluation, discussions covered wholesalers (such as tour operators) and retailers offering different tourism services such as organised trips, transport tickets, package travel and booking or reservation services.

6.2.1.1. Requirements applying to establishment

➤ *Authorisation schemes*

Travel agents seem to be a regulated profession in Austria, Belgium, Hungary, Italy, Slovakia and Slovenia. In addition, travel agent managers are a regulated profession in Cyprus and tour operators are a regulated profession in the Czech Republic and Slovenia. A large number of Member States reported an authorisation scheme for travel agencies.¹⁶⁵ The Czech Republic has an authorisation scheme for tour operators only. In Austria, and at least some regions in Italy, the appointment of the director or manager responsible for the travel agency seems to require an additional authorisation (or, in some cases, a declaration). These authorisation schemes are generally deemed justified by Member States on grounds of consumer protection.

In other Member States, by contrast, travel agencies are subject to prior declarations and not to authorisation schemes. This is the case, for example in the Czech Republic, and, as a result of implementing the Directive in Slovakia and in certain Spanish and Italian regions.

➤ *Article 15 requirements*

Before the Services Directive was implemented, travel agencies were to some extent subject to quantitative restrictions, legal form and shareholding requirements. However, a good number of these restrictions have been/are being abolished because Member States considered them unnecessary or disproportionate. Quantitative and territorial restrictions: Italy has abolished (in two regions at least) quantitative restrictions limiting the number of travel agencies that can provide services in a given area.

Legal form requirements: Lithuania and Spain, where operators had to be constituted as a legal person or as a commercial company respectively, have reported that limitations in the choice of legal form for travel agencies are being abolished (Lithuania) and have been

¹⁶⁵ Austria, Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Greece, Hungary, Iceland, Ireland, several regions in Italy, Lithuania, Malta, Poland, Portugal, Romania, Slovenia and one region in Spain.

abolished (in Spain). Portuguese law continues to require that travel agents be constituted as a legal person, thereby preventing natural persons from setting up travel agencies, although Portugal has reported that this requirement will soon be eliminated.

Shareholding requirements: Belgium and Spain have reported that minimum capital requirements applying to travel agencies have been removed. Portugal has reported that it is considering abolishing the minimum capital requirement of €100 000 for travel agencies. In Ireland, minimum capital requirements of €25 000 and €38 000 are imposed on travel agencies and tour operators respectively.

Reserve of activity: Belgium has reported that it is abolishing the requirement that the manager of a travel agency must have previously done an internship in the same sector of activity. In contrast, Malta has reported that specific training or a certain degree of experience is required either of the manager (if the provider is constituted as a company) or of the provider (if he is a natural person).

➤ *Restrictions on multidisciplinary activities*

Restrictions on multidisciplinary activities seem to be very rare in the tourism field. After the implementation of the Services Directive, even fewer of these restrictions remain. Belgium and Spain have reported that they have abolished an obligation for travel agents to exercise their activity on an exclusive basis. Portugal has indicated that owners, directors and managers of travel agencies are not allowed to exercise any other profession involving tourist information activities while carrying out their managerial duties. However, Portugal has reported that this requirement is currently being reviewed to make it less stringent.

6.2.1.2. Requirements applying to cross-border services

In a number of cases the application of requirements to travel agencies providing cross-border services has been removed or is being removed as it was not considered justified or proportionate. However, some Member States have reported that travel agencies providing cross-border services are still subject to a number of requirements.

Obligation to have an establishment: In one region in Belgium and in Spain, the obligation to have premises within the country has been abolished. Slovenia has abolished the establishment obligation and such requirement has been notified as being abolished by Lithuania. Obligation to obtain an authorisation: Iceland, Ireland and Poland have indicated that travel agencies providing cross-border services are still obliged to obtain an authorisation before starting to provide cross-border services. Slovenia has abolished the authorisation scheme that applied to cross-border travel agencies. One region in Belgium has replaced the existing authorisation scheme by a declaration and Portugal has reported its intention to do so. Estonia and Hungary require registration or notification for cross-border services providers and Greece has announced that it is planning to introduce such a requirement

Obligation to take out insurance and/or a financial guarantee: Lithuania, Portugal, Slovenia and certain regions in Spain have reported that cross-border providers are obliged to obtain insurance cover and/or a financial guarantee pursuant to their own regulation in this matter. The Czech Republic requires insurance cover for cross-border tour operators. To justify such a restriction, some Member States have referred to the Package Travel Directive, which

requires Member States to oblige travel agents to provide sufficient evidence of security for refunding money paid to them and for repatriating travellers if the firm goes bust¹⁶⁶.

6.2.2. Services of tourist guides and similar services

There was much discussion among Member States about the activities of tourist guides, mountain and cave guides and skiing or diving instructors. A professional qualification is required for carrying out these activities in at least some Member States.

6.2.2.1. Requirements applying to establishment

➤ *Authorisation schemes*

Tourist guides seem to be a regulated profession in ten Member States, (France, Greece, Hungary, Italy, Lithuania, Malta, Poland, Portugal, Slovenia and Spain). Mountain/climbing guides seem to be a regulated profession in five Member States, (Austria, the Czech Republic, one region in Germany, Italy and Slovenia), and cave guides seem to be a regulated profession in Austria. Ski instructors seem to be a regulated profession in Austria, Germany and Italy.

Authorisation schemes for tourist guides have been reported by the Czech Republic, Italy, Malta, Portugal, Romania, Slovenia, Slovakia and Spain.

➤ *Article 15 requirements*

Member States have notified a limited number of Article 15 requirements for these activities, mostly for ski schools or skiing instructors. A good number of such requirements have been abolished or amended as Member States found them unjustified or disproportionate. However, some requirements have been maintained in certain Member States as they were considered necessary to ensure the quality of the service and protect the recipients.

Quantitative and territorial restrictions: Some Italian regions have abolished requirements limiting the number of ski schools established within the same municipality, while others seem to have maintained them. Some Austrian regions have abolished requirements that forbid schools to take pupils out of a specific territorial area where the ski school is established, while others have maintained them.

Bans on having more than one establishment: Some Italian and Austrian regions have abolished requirements prohibiting ski instructors from providing their services in more than one ski school and, in parallel, prohibiting ski schools from setting up in more than one region. Nevertheless, these requirements seem to remain in other regions.

Legal form requirements: Austrian legislation lays down provisions obliging ski schools and mountain guides to provide their services as natural persons, thereby preventing legal persons from carrying out these activities.

Tariffs: In Italy, minimum and/or maximum tariffs have been abolished by a number of regions as regards tourist and mountain guides. (In other cases, they have been maintained). Cyprus has reported minimum tariffs imposed on tourist guides.

¹⁶⁶ Article 7 of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours — OJ L158 of 23/06/1990 — p. 59.

Ski instructors' services in Italy may be subject to different tariffs (fixed, minimum, maximum) depending on the region concerned. Some Italian regions say they have abolished (or are abolishing) minimum and/or maximum tariffs.

Joint services: Austria has abolished the obligation for ski schools to cover a wide range of different skiing activities.

Minimum number of employees: In one region in Spain, providers organising diving activities must employ a minimum number of professionals, including a doctor and a certain number of divers. Similarly, Maltese law lays down the obligation to have a manager with a certain degree of education and training to manage and organise activities while the diving instructor is under water.

➤ *Restrictions on multidisciplinary activities*

As in the case of travel agents, there are not many restrictions on multidisciplinary activities. Portuguese legislation does not seem to allow tourist guides to exercise any other profession involving tourist information activities while performing their duties, although Portugal reports that this requirement is being revised. A similar restriction has been reported by Italy, where tourist guides cannot engage in other commercial services aimed at their direct clients.

6.2.2.2. Requirements applying to cross-border services

In a number of cases, requirements no longer apply to cross-border service providers because this was considered unjustified or disproportionate. Still, some Member States have reported restrictions on tourist guides and other providers of cross-border services. Reasons of public security and environmental protection have been invoked to justify these restrictions.

Obligation to have an establishment: Austria has reported an establishment requirement for tourist guides.

Obligation to obtain an authorisation: Austria still has authorisation schemes for cave and mountain guides who provide cross-border services. Malta previously required an authorisation for cross-border tourist guides, but now requires only a prior declaration. In Greece, tourist guides still need an authorisation.

Ski instructors providing cross-border services require a prior authorisation in several Italian and Austrian regions. In at least one Italian region, cross-border ski instructors for services lasting more than 15 days in a ski season may only come with their own clients. Austria and Italy say these requirements are justified on grounds of public security. In Italy and Malta, providers of diving services need to obtain an authorisation.

Application of specific contractual arrangements: Greece has stated that it will abolish the obligation for tourist guides to provide their services as employees.

Obligation to possess an identity document: At least one Spanish region has abolished such an obligation previously imposed on tourist guides, whereas Austria and Greece have reported that cave, climbing and tourist guides must carry an ID card providing evidence of their professional capacity. In Austria this requirement also applies to ski instructors.

6.2.3. Accommodation (including hotels, hostels, apartments, camping etc.)

6.2.3.1. Requirements applying to establishment

➤ *Authorisation schemes*

Many Member States have reported authorisation schemes for tourist accommodation,¹⁶⁷ and there is a general tendency to keep these schemes in place. A considerable number of these schemes seem to be aimed at verifying that the facilities meet various conditions or standards relating, for example, to health and safety, the environment and the quality and maintenance of equipment. In other cases, the authorities carry out prior inspections in order to classify the tourist establishment in a particular category.

Spain (most regions), Italy (some regions) and Slovakia have replaced some authorisation schemes by declarations /notifications.

➤ *Article 15 requirements*

A limited number of Article 15 requirements have been reported in this sector.

Quantitative and territorial restrictions: Italy, Lithuania and one region in Spain have reported specific rules as to the where rural accommodation can be located.

Legal form requirements: Belgium has abolished the obligation that the service provider be constituted as a company. In at least one Italian region, youth hostels may be run only by legal persons who are non-profit. (This obligation has been reported as abolished in another region).

Tariffs: Italy has reported tariffs applying to rural accommodation ('agritourism').

➤ *Restrictions on multidisciplinary activities*

There seem to be very few restrictions on multidisciplinary activities in the accommodation services sector.

In Portugal, owners or managers of hotels are not allowed to exercise any other profession involving tourist information activities when they perform managerial duties, but the authorities say that they will amend this requirement. The authorities in one region in Spain report that they no longer prohibit rural establishments from providing accommodation as well as running a restaurant.

6.2.4. Car rental services

6.2.4.1. Requirements applying to establishment

➤ *Authorisation schemes*

Cyprus, Greece, Iceland, Malta and Portugal have reported that undertakings wishing to set up a car or motorbike rental business are obliged to obtain an authorisation. The Greek authorisation scheme contains requirements obliging the operator to provide a bank guarantee and to have a certain level of education.

¹⁶⁷ Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Greece, Spain, France, Hungary, Ireland, Iceland, Italy, Lithuania, Luxembourg, Malta, Portugal, Romania, Sweden and the United Kingdom.

➤ *Article 15 requirements*

Cyprus has reported that quantitative restrictions applicable to car rental services are in the process of being abolished.

6.2.4.2. Requirements applying to cross-border services

Obligation to have an establishment: In Iceland, car rental businesses must be run from a 'stable infrastructure'. Iceland has justified this obligation on grounds of public security.

Obligation to obtain an authorisation: Portugal has reported that it intends to abolish an authorisation applicable to car rental operators providing cross-border services.

6.2.5. Food and beverage (including catering services and bars)

6.2.5.1. Requirements applying to establishment

➤ *Authorisation schemes*

Many Member States require prior authorisation for setting up bars, restaurants and catering establishments. Bulgaria, Cyprus, France, Finland, Italy, Malta, the Netherlands, Portugal, Norway and Iceland have notified such schemes, whereas Slovakia has established notification obligations.

Most authorisation schemes are reportedly aimed at checking compliance with rules on hygiene (Belgium), safety (Belgium, the United Kingdom) or food conditions (the United Kingdom). In other cases, operators running restaurants, bars or other establishments serving alcoholic beverages must obtain a specific licence (Greece, Luxembourg, the Netherlands and Iceland).

Belgium, and the Netherlands have reported authorisation schemes for operating terraces and food stands in public places. Italy abolished a specific authorisation scheme for catering services in work places, means of transport, schools, hospitals, etc. (The authorisation has been replaced by a declaration).

➤ *Article 15 requirements*

A number of Member States have reported Article 15 requirements, mostly for establishments serving products that could pose public health hazards or generate some sort of nuisance to the public.

Quantitative and territorial restrictions: Austria has reported quantitative restrictions on the use of outside terraces for restaurants and bars. In Spain, establishments which provide food and drinks on the beach must be a certain minimum distance apart.

In Italy, national and regional law no longer require the local authorities to limit the number of authorisations for new restaurants and bars on the basis of the population living in a given area. (Nevertheless, some regions indicated they are maintaining these restrictions).

France and Ireland have reported that they restrict the number of establishments distributing alcoholic beverages, whereas Luxembourg has announced that it will abolish this restriction. Finally, Portugal has reported a territorial restriction prohibiting the sale of alcoholic beverages near primary and secondary schools.

Minimum or maximum tariffs: Hungary has abolished a maximum tariff for service fees imposed on restaurateurs.

6.2.5.2. Requirements applying to cross-border services

In some Member States certain requirements apply to cross-border providers of food and beverages, notably catering services.

Obligation to have an establishment: Luxembourg has indicated it will abolish the obligation for operators to have an establishment if they intend to serve alcohol through catering services.

Obligation to obtain an authorisation: In Portugal, catering firms wishing to provide their services at more than ten events per year must obtain an authorisation for the premises where the food is served, if those premises are public accessible and not already licensed as a restaurant or bar. Portugal cites public health reasons to justify this restriction. In Italy, authorisations imposed on catering providers offering their services at fairs, festivals and similar public events have been reported, at least by some regions, as applicable also to cross-border providers. Italy has invoked grounds of public health and public security to justify this restriction.

In Iceland, Lithuania, Norway, the Netherlands and the United Kingdom, operators intending to provide catering services on a temporary basis must obtain a licence to serve alcoholic beverages. Reasons such as public health, public security and the protection of the environment have been invoked in order to justify this requirement.

Obligation to make a declaration: In Italy, some regions notified prior declaration imposed on caterers who provide their services on means of transport and at the consumer's home as applicable also to cross-border service providers.

Obligation to take out insurance: In Portugal, operators wishing to provide catering services on a temporary basis are obliged to take out insurance. This obligation has been justified on grounds of public health and protection of the environment.

CONCLUSION:

The level of regulation in the tourism sector seems to vary considerably between the Member States.

The implementation of the Services Directive has resulted in a considerable number of legislative amendments, the most significant ones being those affecting travel agencies and tourist guides. Many Member States have abolished requirements that they considered unjustified or disproportionate. Nevertheless, difficulties for service providers to exploit the internal market potential of this sector seem to remain. This seems to be the case, in particular, as regards the cross-border services provisions of travel agencies/travel agents and tourist guides.

The discussion on the regulation of this sector was very lively, in particular as regards the situation of cross-border service providers. Many Member States questioned the justification of certain requirements. The discussion has shown that the significant cross-border potential of this sector has yet to be exploited.

As regards travel agencies, the question of the relationship with the Package Travel Directive was intensively discussed, in particular as regards insurance or guarantee requirements for cross-border service providers. It seems that the obligations laid down by the Package Travel

Directive may have led certain Member States to consider themselves justified in imposing requirements such as prior authorisation on cross-border travel agents. However, other Member States argued that the provision of cross-border services should in principle not be subject to any requirements by the Member State where the service is being provided, especially in view of the Package Travel Directive. Member States highlighted that it would be important to ensure that the insurance/guarantee obligation to which travel agencies are subject in their Member State of establishment also covers the provision of services across borders and that the insurance market is well able to cater for the insurance needs of travel agents who wish to exploit the potential of the internal market.

As shown by the discussion amongst Member States, tourist guides wishing to provide cross-border services seem to encounter constant difficulties in many countries. Some of these difficulties may be due to a misapplication of national legislation, but others seem to stem directly from requirements that have been maintained in certain Member States. Maintaining these requirements restricts cross-border service provision just as much as imposing an establishment requirement or an authorisation scheme. Similar difficulties are encountered by other providers of services in the tourism sector.

6.3. Services in the construction sector

The construction sector encompasses a wide range of service activities. Construction includes not only the actual building but also the planning and surveillance of construction work, the services of craftsmen (such as plumbers and electricians) and other services such as those provided by architects or construction engineers. Other important services in the construction sector include installation, maintenance and inspection.

Some of these services, e.g. architects, are regulated professions in all or almost all Member States, whereas others (e.g. certain crafts) are regulated in only a few Member States.

Member States have reported a very uneven number of authorisation schemes and other requirements affecting services in the construction sector. Indeed, the level of regulation, the regulatory tools used and the construction activities regulated seem to vary widely from one country to another.

There are two main regulatory approaches in this sector. In a minority of Member States, the focus is essentially or exclusively on the activity or its result, which is (in general) carefully controlled by the competent authorities. They issue building permits or project-related authorisations and they carry out inspections. However, in most Member States the authorities also regulate the competence of the professionals and companies involved in providing the service. In these countries, the checks carried out by the competent authorities seem to be fewer or less intensive than in those countries which do not regulate (or regulate less strictly) the competence of the providers.

6.3.1. Requirements applying to establishment

6.3.1.1. Authorisation schemes

Member States have notified a large number of authorisation schemes covering major parts of the construction sector. However, as indicated before, there are considerable differences between Member States.

Authorisation schemes imposed on services providers in the construction sector fall into three broad categories: (i) authorisation affecting the construction sector in general; (ii) authorisation for specific activities in the construction sector; and (iii) authorisation required in specific situations (notably for hazardous activities and activities presenting a danger to the environment). Justifications for authorisation schemes in the construction sector are generally based on public safety and the protection of consumers but also to some extent, for specific activities, on the protection of the environment.

As a result of the implementation of the Services Directive, a number of authorisation schemes that were previously imposed on service providers in the field of construction have been abolished or have been made less stringent because they have been found unjustified and/or disproportionate. Authorisation schemes have notably been abolished in Spain and Sweden. In Spain, national authorisation is no longer required for gas installers and companies installing gas facilities, for companies installing high voltage lines, for high pressure equipment installers or for companies installing lifting equipment. At regional level authorisation is no longer required for heating systems installers and electrical equipment installers. In Sweden, it is no longer necessary for the inspection of lifts and other motor-driven installations in construction work to be carried out by bodies whose competence has been confirmed through accreditation. Portugal and Latvia have both indicated that they are changing the cross-cutting authorisation schemes for several construction service providers.

Nevertheless, a large number of authorisations applicable to service activities in the construction sector are still in force in many Member States.

➤ *Authorisation schemes affecting the construction sector in general*

Some Member States seem to apply authorisation schemes for all (or almost all) construction services. This is the case in those Member States, such as Luxembourg and Liechtenstein, which apply cross-cutting authorisation schemes to all or a large variety of services (beyond the construction sector). Where such schemes exist, they of course affect construction services as well.

Other Member States seem to impose a cross-cutting authorisation regime on all or most of the construction service providers. A scheme of this kind appears to be in force in Bulgaria, where all construction service providers have to be authorised and registered before they begin operating. Similar schemes seem to exist in Latvia and Portugal but are being modified. In Spain, a company must be authorised and registered before it can be a construction subcontractor or deal with subcontractors.

➤ *Authorisation schemes for specific activities in the construction sector*

The specific activities in the construction sector which are subject to an authorisation scheme are many and diverse, and the situation varies considerably from country to country.

Member States report a significant number of authorisation schemes for professionals whose job it is to supervise and inspect construction works and control building quality and safety. These include the people who supervise the work while it is being carried out, those who inspect the completed work and those who carry out administrative supervision. For instance, building inspectors and foremen of works (construction supervisors) must be authorised in Hungary, as must chartered inspectors in the Czech Republic and in Denmark, surveyors and civil and environmental engineers in Italy, and building inspectors in France. Construction engineers are also subject to an authorisation requirement in the Czech Republic and Slovakia. Consulting engineers and test engineers are subject to authorisation, at regional level, in Germany. Mechanical and electrical engineering service providers need to be authorised in Malta. Similar requirements exist in other Member States.

The profession of architect is in principle a regulated profession in all Member States.¹⁶⁸ Authorisations for architects were notified by the Czech Republic, France, Hungary, Latvia, Malta and Slovakia (both for architects and landscape architects). Hungary has indicated that architectural, engineering and urban planning activities can only be exercised by authorised professionals. In Hungary, an authorised planning inspector must be involved in approving plans for buildings for use by the public, by the national defence forces or for national economic purposes.

It is clear that a large number of authorisation schemes also exist in areas traditionally referred to as crafts (plumber, mason, tiler, carpenter, etc.), which are regulated professions in some Member States. Some authorisation schemes have been reported and more may well exist. The Czech Republic has notified authorisation requirements for service providers dealing with the construction and alteration of buildings, roofing and carpentry, painting, insulation, plumbing and heating, electrical work, bricklaying, flooring and woodworking, stone

¹⁶⁸ See title III of the Directive 2005/36 on the recognition of professional qualifications. In some Member State the effect of the professional qualification is limited to make sure that only qualified architects can call themselves architects. In others, in addition to that, the professional qualification is linked to a reserve of activity in favour of qualified architects.

processing and specialised technical work. Austria requires an authorisation for appointing a manager or branch manager in certain professions, notably master builders, electrical engineers and master carpenters. An authorisation is also required in Austria for engineers who test heating systems and in Portugal for gas equipment installers and gas network installers. In Spain, at regional level, authorisation procedures have been reported for heating and air conditioning installers, gas equipment installers and electrical equipment installers. In Denmark, technicians who check ventilation and air conditioning systems must be accredited, and mechanical and electrical engineering service providers need to be authorised. At regional level, an authorisation scheme was notified in Italy for chimney sweeps and noise emission technicians. In Finland, electrical works must be supervised by an authorised professional. In Lithuania, welders' qualifications must be certified. In Hungary, natural persons in charge of controlling gas-fitters and professionals who repair gas-burning equipment must be authorised.

A number of authorisation schemes have also been reported for elevator maintenance and installation services. For example, in Finland, lift works must be supervised by an authorised professional. In Austria, at regional level, lift inspectors must be authorised. In Hungary, natural persons responsible for inspecting elevators and escalators must be authorised.

In the construction sector there are a number of certification (or similar) services (e.g. the certification of energy performance¹⁶⁹ and certification of construction products¹⁷⁰). These too are often subject to authorisation schemes. However, only a few such schemes have been notified. In Austria, at regional level, authorisations can be required for service providers who certify building activities. Those who carry out the technical certification of construction products must be authorised in Slovakia. The same is true in Germany, at regional level, for bodies in charge of certification procedures. Energy efficiency certification service providers are subject to an authorisation scheme in the Czech Republic and Slovakia, but are subject only to a notification requirement in Hungary. In the United Kingdom, in Scotland, it was reported that service providers issuing energy performance certificates must be licensed.

➤ *Authorisation schemes for particular activities or situations*

In some cases, authorisation schemes concern construction activities in particular locations or specifically sensitive or dangerous activities, e.g. those which present a specific danger to the environment. It is clear that such rules exist in many Member States (though not all of them seem to have been reported).

For example, Austria has notified authorisation schemes for activities presenting a particular danger to the environment. Austria also notified an authorisation required for certain activities that affect running water, natural springs or ground waters. The United Kingdom has notified authorisations for services in coastal areas or near rivers and specific licences required for handling waste, asbestos and dangerous chemicals. The United Kingdom also reported that authorisations are required for drainage activities, for construction works within the marine environment and for activities involving placing materials in the sea or on public highways. The Netherlands have notified environmental authorisation schemes and authorisation schemes for dangerous activities (such as drilling, excavating works or the use of explosives

¹⁶⁹ Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings. OJ L 1, 4.1.2003.

¹⁷⁰ Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products, modified by Directive 93/68/EEC of 22 July 1993 and Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003 OJ L 284, 31.10.2003.

for construction activities) and for activities in protected natural monuments. France has notified authorisation obligations for people working on gas equipment, in asbestos decontamination activities or checking the safety of water works.

Specific rules applying to the conservation of historic and artistic heritage or ‘listed’ historical buildings have been notified by some Member States. For instance, the restoration of cultural monuments must be authorised in Austria, in the Czech Republic, in Latvia and in Slovakia. Authorisation requirements for construction activities involving archaeological excavations were notified by France, the Netherlands and Spain. In Malta, the profession of conservator/restorer (for the protection of cultural heritage) requires a specific authorisation. Nature protection experts must be authorised and registered in Hungary.

Special rules may also be imposed for large-scale construction projects. For instance, Lithuania reported that a certificate must be obtained for construction works of exceptional significance.

6.3.1.2. Article 15 requirements

The service activities which are subject to Article 15 requirements, and the type of requirement imposed, vary from one Member State to another. Fixed tariff requirements appear to be relatively frequent in the construction sector, mostly for the services of architects and inspection activities. Justifying this, Member States often referred to the need to protect consumers and public security, and (for minimum tariffs) the objective of ensuring fair competition.

A number of requirements previously imposed on construction service providers have been modified or abolished as they have been found unjustified and/or disproportionate. For instance, Lithuania has abolished a legal form requirement imposed on service providers exploiting energy installations. Cyprus has announced that its legislation is being modified to allow legal persons, in addition to natural persons, to provide engineering services. Luxembourg indicated that it is repealing a shareholding requirement that craftsmen should own at least 50% of the shares of a craft company. In Malta, fixed tariffs for Periti (architects and civil engineers) have been abolished. In Germany, regional authorities say they have made less stringent the legal form requirement for test engineers and have also reduced or abolished the requirement that test engineers should have only one establishment. In Spain, an obligation for pressure equipment installation and repair providers to have a minimum number of employees has been abolished.

A good number of Article 15 requirements nevertheless still seem to be in force. As indicated previously, some Member States impose certain Article 15 requirements on regulated professions in general (for instance restrictions relating to legal form or to capital ownership). Such requirements would also affect a number of service providers in the construction sector.

Austria has reported territorial restrictions imposed on chimney sweeps.

As to legal form requirements, Austria has indicated that chimney sweep activities must be provided by natural persons or registered partnerships, and one of the partners must be a natural person and personally liable. Lithuania imposes a legal form requirement on service providers wishing to engage in construction work of exceptional significance. In Italy, architects’ activities can only be carried out by individuals or in the form of a partnership (*‘società di persone’*) or an association between professionals. Legal form requirements for architects seem to be also imposed in Austria, Bulgaria, Cyprus, the Czech Republic, France, Germany, Malta and Romania. In Italy, at regional level, craft companies (*‘società artigiane’*) cannot take the form of limited companies (*‘società per azioni’*).

When it comes to shareholding requirements, in Belgium, the profession of architect can be exercised by a legal person only if at least 60% of the company shares are owned directly or indirectly by architects registered on the records of the Order of Architects. The remaining shares cannot be held by persons exercising a profession that may conflict with the profession of architect. In France, more than 50% of the company's shares and voting rights must be held by architects or by firms providing architectural services. In Germany, at regional level, the majority of the capital and the voting rights have to be held by architects. Shareholding rules are also imposed on architects in Austria, Bulgaria, the Czech Republic, Italy, Luxembourg, Malta, Slovakia and Spain. In Italy, at least 51% of the capital of a craft enterprise (*'impresa artigiana'*) must be held by qualified crafts persons.

Fixed tariff requirements appear to be quite frequently in force in the construction sector and have been reported by ten different Member States. In Bulgaria, Germany and Greece, minimum tariffs are imposed on architects for various types of work. Minimum tariffs have also been reported in some regions of Germany for experts in the field of construction, fire prevention experts and test engineers. In Spain, coastal construction or excavation activities seem to be subject to minimum and maximum tariffs. Fixed maximum tariffs are also imposed on chimney sweeps in Finland, Germany and, at regional level, in Austria and Italy. In Denmark, authorised building surveyors, boiler and heating system inspectors and authorised energy consultants are under an obligation to comply with maximum tariffs.

Requirements regarding the minimum number of employees are imposed in Germany, at regional level, on certification bodies in the construction sector. In Cyprus they apply to electrical installers and in Spain, at regional level, to test laboratories for construction works. In Portugal, the obligation to have a minimum number of certain specific employees applies to the technical inspection of lifts, skip hoists and moving walkways, the technical installation of gas networks and the fitting and/or repair of gas appliances. Bulgaria also requires a minimum number of employees for service providers in the construction sector.

Austria reports banning chimney sweeps from having more than one establishment.

Austria also requires chimney sweeps to supply other specific services jointly with their chimney-sweeping service.

6.3.1.3. Restrictions on multidisciplinary activities

Many restrictions on multidisciplinary activities have been reported for architects and, to a lesser extent, for inspection and supervision activities.

For example, in Belgium, a legal person exercising the profession of architect can only provide services that arise from the exercise of that profession. Bulgaria prohibits anyone from carrying out building work on a project while at the same time being the architect for that project. France restricts the freedom of an architect to provide other services, either jointly or in partnership¹⁷¹. In Luxembourg, the activities of an architect or a landscape architect are considered incompatible with commercial or craft activities or with the exercise of any other activity that might compromise their professional independence. Italy restricts the possibility of architects, cultural and environmental heritage experts and landscape architects to provide another service, either jointly or in partnership. The Czech Republic also appears to impose limitations on the multidisciplinary activities of architects. Germany reportedly prohibits anyone working on a construction project from carrying out both expert assessments and planning activities for that project. In Malta, *Periti* partnerships can only have as their objective the practice of that profession.

¹⁷¹ To associate with or be employed by professionals in the construction sector.

Limitations on multidisciplinary activities also exist in other professions. For example, such restrictions have been reported for elevator and escalator inspection activities in Austria (at regional level), France and Portugal, where lift inspectors are not allowed to be economically dependent on firms that build or maintain lifts, and must avoid any situation that could compromise their independence. France also says it bans the exercise of any activity that could compromise the independence of building inspectors. Germany has notified such limitations for structural inspectors/structural inspection engineers, who are prohibited from serving as experts or engineers on projects which they were involved in planning or executing. Italy notified limitations for civil and environmental engineers: they can carry out collective exercises only if professional responsibility remains individually attached to each member of group.. In Norway, restrictions are imposed on the provision (jointly or in partnership) of services related to supervision of electrical systems, and of other services related to the installation and operation of electrical systems. Limitations on multidisciplinary activities have also been notified by Portugal for inspectors of gas networks and inspectors of petrol fuel installations. In contrast, Cyprus has reported that the obligation for building contractors to carry out only building work is being replaced by an obligation that this be their main activity.

6.3.2. Requirements applying to cross-border services

As a result of the implementation of the Services Directive, some requirements that were previously imposed on cross-border service providers in the field of construction have been abolished or have been (or will be) made less stringent because they have been found discriminatory, disproportionate or unjustified. For instance, establishment requirements have been/are being abolished in Spain, at regional level, for industrial safety inspectors and in Germany, at regional level, for test engineers. Germany has also amended its legislation on engineers and architects to make it clear that fixed, minimum or maximum tariffs are not applicable to cross-border services. In Spain, the obligation to obtain an authorisation for installing low-voltage and high-voltage lines has been abolished, while several other authorisation schemes are being modified (e.g. for lift installers, boiler repairers, gas installers and electrical installation inspectors). In Cyprus, the authorisation/“special permit” imposed on natural and legal persons for the provision of cross-border services has been reported as being abolished. Estonia has replaced by a declaration the authorisation previously applicable to cross border providers of services related to electrical safety, machinery safety, pressure equipment safety, fuel gas safety, lifts and cableway installations safety with a declaration A large number of requirements applying to cross-border services have nevertheless been notified. In many cases, Member States seem to apply the same requirements to cross-border services as they apply to established operators. However, there are considerable differences between the Member States. In some countries it is not entirely clear how certain construction activities are regulated and monitored for cross-border service providers¹⁷². Reasons generally given for imposing requirements on cross-border service providers are public security and the protection of the environment.

6.3.2.1. Obligation to have an establishment

Germany, at regional level, obliges imposes an establishment obligation to test engineers..

¹⁷² For instance, Latvia only notified establishment requirements in the construction sector.

6.3.2.2. Obligation to obtain an authorisation

A large number of authorisation schemes applying to cross-border services have been notified. But, as indicated above, the situation varies considerably from country to country.

For instance, the general authorisation scheme for construction activities in Portugal is also imposed on incoming cross-border services providers, but is reportedly being simplified¹⁷³. In contrast, the cross cutting authorisation scheme applied to construction services in Latvia has not been reported as applicable to cross-border service providers. The general authorisation scheme for construction activities in Bulgaria seems to be imposed only on service providers established in Bulgaria¹⁷⁴.

In Lithuania, service providers established in other Member States wishing to carry out design, construction and management activities for construction works of exceptional significance are subject to a specific authorisation procedure. In Liechtenstein, ‘coordinators’ for planning or executing large scale construction projects need an additional authorisation.

In Lithuania, authorisation is needed for managing technical activities such as the design documentation for building works, specialised work relating to building, or technical supervision of building works. In France, building inspectors, certification providers for asbestos decontamination works and lift inspectors need an authorisation. In Denmark, an authorisation is needed by chimney sweeps, by companies carrying out work on electrical installations and by plumbing companies (working on water, heating and sanitary installations). In Germany, authorisation procedures are imposed, at regional level, on test engineers, bodies in charge of building certification procedures, construction experts¹⁷⁵ and experts in energy-saving. In Malta, stone masons who design and erect a building must be authorised. In Greece, an authorisation scheme for architects from other Member States providing cross- border services has been reported.

A large number of authorisation schemes for sensitive or dangerous activities or construction activities at particular locations have been notified as applying to cross-border services. The Netherlands have notified environmental authorisation schemes, authorisation schemes for dangerous activities, drilling activities, water management and water abstraction, earth removal, excavating works, waste disposal (breaking up building and demolition waste) and the use of explosives for construction activities. France has notified that authorisations are needed by service providers working on gas equipment, in asbestos decontamination activities or checking the safety of water works. In the United Kingdom, service providers who handle waste, asbestos, and dangerous chemicals need a specific licence. The United Kingdom also says that authorisations are required for drainage activities, for construction work within the marine environment and for works that involve depositing materials at sea or on public highways. In Germany, at regional level, environmental experts and bodies investigating soil protection must be authorised, as must experts who carry out safety inspections and audit safety-related documents. Authorisation requirements for construction activities involving archaeological excavations were notified by France, the Netherlands and Spain. Authorisation schemes were also notified by the Netherlands for activities in protected natural monuments.

¹⁷³ Portugal indicated that temporary cross-border providers will have to make a declaration including proof of having the minimum human resources (not necessarily their own employees) to carry out the specific type the construction and proofs of good repute and insurance.

¹⁷⁴ Cross border providers are subject to a notification obligation.

¹⁷⁵ For stability and solidity of constructions, metal and wood construction, structural fire protection, geotechnical engineering, sound and heat insulation.

6.3.2.3. Declarations/notifications

Relatively few declarations or notification procedures have been notified by Member States for activities in the construction sector. Some of those reported may relate to professional qualifications.

In Belgium, any service provider wishing to exercise a commercial, craft or professional activity (including activities in the construction sector) as part of the free movement of services must give prior notification. This is also the case for craftsmen in Luxembourg. In Germany, at regional level, notification schemes have been reported for structural inspectors / structural inspection engineers, for experts preparing building documents¹⁷⁶, for consulting engineers or environmental experts and bodies investigating soil protection. In Hungary, a notification is required from construction service providers in order to prove they have an appropriate professional qualification. Estonia reported requiring a notification from persons handling explosives.

6.3.2.4. Obligation to take out insurance

Member States have reported that they require providers to provide insurance or a financial guarantee affecting various service activities.. Several more such requirements may exist but have not been notified.

Slovenia has notified an obligation to have insurance for supervising building works. In France, all service providers in the construction sector (except for repair and maintenance activities) need a ten-year insurance policy in the case of new buildings. In Latvia, a building permit cannot be issued unless the builder has indemnity insurance. Liability insurance is required for certain construction services in Slovakia and Slovenia. In Germany, at regional level, laboratories testing pipelines, environmental experts and bodies investigating soil protection are all obliged to prove that they have liability insurance. In Portugal, technicians signing construction projects, bodies installing gas networks and gas appliances, technicians supervising or inspecting construction works, and bodies inspecting gas appliances, lifts and petrol fuel installations are all obliged to have a valid professional liability guarantee (equivalent to the professional liability insurance required for established technicians who perform the same tasks).

6.3.2.5. Requirements affecting the use of equipment

In Germany, at regional level, requirements affecting the use of equipment have been reported for environmental experts and bodies investigating soil protection. Austria too has requirements affecting the use of equipment for inspecting heating facilities and for checking the safety of lifts. The Netherlands also notified requirements affecting the use of equipment (e.g. for scaffolding, ladders, piling, conveyors and other material) for certain construction activities.

CONCLUSION:

Very different situations seem to exist in different Member States as regards the level of regulation, the type of regulatory tools in force and the categories of construction activities regulated. There are two main regulatory options that can be identified.. A minority of countries seem to focus essentially or exclusively on controlling the activity and checking its

¹⁷⁶ The laws generally impose (only) a notification requirement if the qualification is equivalent. Otherwise a registration or authorisation is required.

outcome. The majority of Member States not only require building permits and carry out inspections but also regulate the competence of the professionals and companies involved.

As a result of implementing the Services Directive, a number of important changes have been made in the rules applicable to the construction sector. In some Member States, authorisation schemes are being made less stringent and other requirements, including tariffs, or legal form requirements, have also been abolished, amended or made non-applicable to cross-border service providers.

Nevertheless, the construction sector is still heavily regulated. To justify their requirements, Member States have generally invoked the need to prevent serious damage to the health or safety of the service recipient or to protect consumers and (to a lesser extent) the environment. Most requirements are authorisation schemes. In some cases, cross-cutting authorisation schemes affect the whole construction sector. In other cases, authorisations are for specific activities, such as supervision and inspection, or activities presenting a danger to the environment. Member States also report a large number of tariffs, legal form requirements, shareholding requirements and restrictions on multidisciplinary activities, in particular for architects, building surveyors, test engineers, etc. A significant number of requirements, notably authorisations, also seem to be imposed on cross-border services.

The discussion showed that the construction sector, which has great potential for cross-border activities, is seen as highly regulated. Several requirements, such as fixed tariffs or minimum numbers of employees, were called into question. Doubts were raised as regards the application of requirements such as cross-cutting authorisation schemes to cross-border services. Discussion also showed that service providers have difficulty obtaining reasonably-priced insurance cover for cross-border services.

6.4. Real estate services

Real estate covers a variety of different service activities, including acting as intermediary in the selling, buying and renting of property. It also embraces the evaluation and management of real estate, and activities relating to land surveying, and the demarcation of real-estate properties.

This field of activity is highly regulated in some Member States. For example, real-estate agents are a regulated profession in several countries. In other Member States it is hardly regulated at all. The most regulated activities in this sector relate to land surveying.

6.4.1. Requirements applying to establishment

6.4.1.1. Authorisation schemes

Real-estate agents seem to be a regulated profession in 12 Member States.¹⁷⁷ Lithuania has indicated that the requirement for property assessment service providers to hold a qualification certificate is in the process of being made less stringent.

Authorisation schemes applying to real-estate and property management services have been reported by Denmark, Finland, France, Germany, Slovakia and Sweden. In Romania, real-estate service providers need to register with the National Office for Trade Registry. In

¹⁷⁷ Austria, Belgium, Cyprus, Denmark, France, Iceland, Norway, Poland, Portugal, Slovakia, Slovenia and Sweden.

Greece an obligation to register is imposed both on established and cross-border service providers. In addition, an obligation to be certified has been reported in France for professionals making diagnostic examinations¹⁷⁸ of real-estate properties. In Latvia, professionals offering real-estate evaluation services must be certified. Such authorisation schemes for real-estate activities were reported as justified mainly in order to protect consumers, the recipients of services and their financial security.

Land surveyors seem to be a regulated profession in the Czech Republic, Denmark, France, Ireland, Italy, Liechtenstein, Slovakia, Slovenia and the United Kingdom. Authorisation schemes have been reported for surveyors and cartographers in Denmark, France, Hungary, Latvia and Slovakia. In Estonia, providers wishing to engage in land readjustment work and the valuation of land must obtain a licence. These authorisation schemes have generally been reported by Member States as justified for reasons of public policy, the protection of consumers and the protection of recipients of services, but also to some extent to combat fraud.

6.4.1.2. Article 15 requirements

Most of the requirements reported are legal form requirements, shareholding requirements and tariffs and they have mostly been notified for land surveying activities. Member States have indicated that legal form and shareholding requirements are usually imposed to guarantee the independence and impartiality of professionals and to prevent conflicts of interest, whereas tariffs are often deemed to be justified in order to protect consumers and the recipients of services.

A number of the existing requirements were found unjustified and disproportionate and thus abolished or modified. For instance, in Denmark, a requirement for real-estate service providers to take a specific legal form has reportedly been abolished. Belgium has indicated that it would abolish a requirement that real-estate agent activities be exercised only by natural persons. France has amended its legislation on land surveying activities. Previously, land surveyors were obliged to hold at least 75% of their company's capital: the new law reduces this figure to 51%.

A number of requirements have nevertheless been maintained. Some Member States still have legal form requirements. In Denmark, for example, land surveying activities may only be provided by a natural person, a grouping of several land inspectors, a public limited liability company or a private limited company. In France, land surveyors can provide services as a natural person or as a legal person in certain forms¹⁷⁹. Legal form requirements for land surveyors also seem to be in force in Austria, Italy, Lithuania and Portugal.

Shareholding requirements are imposed on land surveyors in Austria, Denmark, France, Germany, Italy, Luxembourg, and Romania. Norway imposes specific ownership rules on real-estate agents.

As regards fixed tariffs, Austria has a federal regulation that imposes maximum tariffs on real-estate activities. In Sweden, a statutory maximum tariff is imposed on letting agents. Maximum tariffs are also imposed in Germany, at national level, on rental agency activities. For real-estate activities, the objective of protecting the consumer/recipient of services is the overriding reason of general interest most commonly given to justify the maximum tariffs. However, the objective of combating potential fraud has also been reported. In Romania,

¹⁷⁸ Inspecting for lead, asbestos and termites, and assessing gas, electricity and energy performance.

¹⁷⁹ In the form of '*Sociétés civiles professionnelles ou interprofessionnelles*', '*Sociétés d'exercice libéral*' and '*Sociétés anonymes ou sociétés à responsabilité limitée*'.

maximum tariffs are imposed on surveying activities. For land surveyors, maximum tariffs are also in force in Italy while minimum tariffs are imposed in Bulgaria and fixed tariffs are imposed by Germany.

6.4.1.3. Restrictions on multidisciplinary activities

Cyprus reported to have abolished a restriction obliging real-estate agents to exercise this activity exclusively. In Portugal, an obligation for real-estate agents to exercise their activity exclusively is reportedly being replaced by specific rules on incompatibility.

Remaining restrictions on multidisciplinary activities have been notified both for real-estate agents and (land) surveyors. They can in any case only be imposed if these professions are regulated professions in the Member State concerned.

Limitations on multidisciplinary activities apply to real-estate agents in Norway, which prohibits them from offering real-estate and other services, jointly or in partnership, if providing such other services would affect the agent's independence. In Sweden, real-estate agents may engage in other activities if it is proved that these activities are not likely to discredit them as real-estate agents.

Regarding land surveying activities, in Slovakia, geodesists and cartographers are obliged to exercise their activity exclusively. A similar limitation to just one activity is also imposed on land surveyors in Denmark. France has notified limitations for real-estate expertise activities, prohibiting service providers from exercising any activity that could compromise their independence. Restrictions on multidisciplinary activities are also imposed on land surveyors in Belgium, Germany, Italy and Luxembourg.

6.4.2. Requirements applying to cross-border services

A certain number of requirements have been modified (or are reportedly being modified) as they were found unjustified and disproportionate.

For real-estate activities, an obligation to have a financial guarantee for professionals wishing to exercise real-estate activities in France has been modified in order to impose it only on certain types of activity. Slovenia has reportedly abolished the establishment requirement for land surveying activities. In Lithuania, an obligation for companies engaging in property assessment services to be registered is reportedly being abolished for cross-border services. Cyprus says it has abolished a requirement that real estate agents from other Member States operating in Cyprus must work together with a licensed real estate agent established in Cyprus. It has also abolished a requirement that real-estate agents established in other Member States must pass an examination set by the Real Estate Registration Board.

Nevertheless a considerable number of requirements have been maintained, generally on grounds of public policy and environmental protection.

As regards authorisation schemes, Greece reported an obligation for real-estate activities to be registered. An obligation to be certified has been reported in France for professionals making real-estate diagnostic tests (for lead, asbestos, termites, gas, electricity and energy performance). An authorisation imposed on a specific category of land surveyors for the cross-border provision of services has been reported by the Czech Republic. Romania also imposes an authorisation on land surveyors who provide cross-border services.

In France, a notification including proof of legal establishment and absence of prohibition to exercise in another Member State is required from professionals wishing to carry out real-estate activities as part of the free movement of services.

As regards insurance/financial guarantee requirements, Spain, at regional level, has notified a requirement to have a financial guarantee for real-estate activities. France, Portugal and Slovenia oblige real-estate agents and real-estate property managers providing services across borders to give proof of insurance and/or a financial guarantee. This also applies to service providers who wish to set up their business in those countries. The Member States concerned have justified this on grounds of public policy (France and Portugal) and public security (Slovenia). Portugal also requires real-estate valuers to provide a valid financial guarantee if the real-estate property in question is located in Portugal. Insurance obligations are also imposed in France on land surveyors and on professionals who check the quality of real-estate properties.

In Sweden, a statutory maximum tariff is imposed on professional housing agency services (letting agents) established in the country or taking advantage of the free movement of services.

CONCLUSION:

Land surveying activities seem to be the most regulated activities in this sector. Real-estate activities are also regulated in many Member States. To justify regulating these activities, Member States usually refer to the need to protect consumers and/or recipients of services.

Many of these rules (on establishment and on cross-border services) have been changed during implementation of the Services Directive, in particular for real-estate services. Nevertheless, during the discussions, questions were raised about the level of regulation and whether it is necessary and proportional, especially as regards cross-border services. It was pointed out that a good number of requirements imposed on cross-border services have been maintained and that the justifications given often appear no different from those given for establishment cases. In particular, doubts were raised regarding insurance and financial guarantee obligations imposed on cross-border service providers, since these obligations may in many cases hinder the service provision. The proportionality and necessity of such requirements has been questioned.

6.5. Business services

Business services cover a wide range of different service activities used by businesses (B2B) in the context of their operations. It is a large and heterogeneous sector. The following services were covered by the process of mutual evaluation: employment agencies, advertising agencies, exhibitions and trade fairs and debt collection services. In addition, given the importance of these services for the business sector as a whole, a number of professional services were also discussed, such as services provided by tax advisers, insolvency practitioners, patent/trademark agents as well as interpreters and translators. Services provided by lawyers and accountants, although highly relevant to business, were not examined in this context as they are to a large extent dealt with in the section of this document on legal form, shareholding requirements and limits on multidisciplinary activities.

In general, Member States considered business services to be lightly regulated. Nevertheless, some services, for instance employment agents and debt collectors, are regulated in many Member States, as are the tax advisers, patent agents and insolvency administrators.

6.5.1. Services provided by employment agencies (including agents for specific professions, information for job seekers, etc.)

Employment services cover a range of services including placement consultancy services, recruitment services and labour market data gathering. Employment agencies provide services to both employers and potential employees. They often also provide services of temporary work agencies. However, the Member States did not review or discuss the requirements applicable to this specific activity as they are not covered by the Services Directive.¹⁸⁰

6.5.1.1. Requirements applying to establishment

➤ *Authorisation schemes*

Most Member States seem to require employment agencies to be authorised.¹⁸¹ Furthermore, in Austria, the Czech Republic, Poland and Slovakia, employment agents are a regulated profession. Some Member States (Belgium (Flanders) and Slovakia) have separate authorisation schemes for entities providing guidance and counselling to jobseekers. Poland has reported that, although it has only one authorisation scheme, applicants have to indicate the type of service¹⁸² that they intend to deliver. Belgium and France seem to have separate authorisation schemes for employment intermediation services for athletes, models, and artists.

Some Member States do not impose authorisation schemes for providers of employment services. In Belgium (Wallonia), Hungary, Lithuania and Slovakia, employment agencies are subject to a notification/declaration requirement. Other Member States, such as Estonia, do not have specific rules applicable to employment agencies.

¹⁸⁰ See Article 2(2)(e) of the Services Directive.

¹⁸¹ Belgium, Bulgaria, Cyprus, the Czech Republic, Finland, France, Greece, Ireland, Italy, Latvia, Liechtenstein, Malta, Poland, Portugal, Romania, Slovenia, Slovakia and Spain.

¹⁸² Job placement services in Poland, job placement services abroad with foreign employers, vocational counselling services, personal advisory services, temporary work agency services.

Member States usually justify their authorisation schemes by public policy and social policy objectives, the need to protect jobseekers and to ensure a high quality of services. Some Member States also identified perceived risks for jobseekers in terms of lack of information, especially when the jobs offered are abroad.

Generally, the Member States that require authorisation set conditions for the management or staff providing this service, generally considered to be necessary to ensure professional competence or good repute (Belgium, Cyprus, France, Liechtenstein and Portugal). In some instances, Member States (in particular Bulgaria, Czech Republic, Greece, Romania, Portugal) also impose requirements on the level of education needed, which varies greatly from high school to specialised master degrees and from no previous experience to five years in the field. Another specific condition for obtaining authorisation concerns the premises and/or equipment used by the service provider, which is required in Belgium, Greece, Liechtenstein, Portugal and Slovenia. Italy and Slovenia require proof of financial resources as a condition for obtaining authorisation.

As a result of implementing the Services Directive, some Member States have made certain amendments because the requirements were found to be unjustified or disproportionate. For example, Belgium reported that the Brussels Region plans to abolish the current authorisation scheme. Slovakia replaced the authorisation scheme by a declaration. Latvia has indicated that it is considering amending its existing authorisation scheme, maintaining it only for agencies offering recruitment abroad, as they were identified as posing greater risks for jobseekers.

➤ *Article 15 requirements*

In general, only a few Article 15 type requirements were reported. Those reported mostly concerned tariffs, legal form and shareholding requirements.

Belgium, Greece and France reported maximum tariffs. The requirements were typically justified as protection of jobseekers, the specific needs of the category of employees protected (athletes, models, artists) and as considered necessary to prevent fraud. Ireland communicated its intention to remove fixed tariffs imposed on employment agencies.

Belgium, Italy, Liechtenstein and Spain reported legal form requirements applicable to employment agencies. Some of the justifications put forward by the Member States cited the protection of jobseekers, principles of equality of opportunity, access to employment and non-discrimination.

Italy reported a minimum capital requirement (of up to €600 000, depending on the specific activity carried out), justified as needed to ensure the seriousness of the provider, and as means to protect the recipients of the service.

➤ *Restrictions on multidisciplinary activities*

Only a few restrictions on multidisciplinary activities were reported. Of course, under Article 25, such restrictions can only be justified, if compliant with the conditions laid down in this article and if applied to regulated professions (or to certification and similar services).

Belgium reported that employment agencies must provide their services exclusively. France reported a list of services deemed incompatible with sports agents (such as managing sport associations or federations). The same applied to agents of artists, who are not allowed to provide certain services (such as managing theatres, producing films or manufacturing musical instruments).

6.5.1.2. Requirements applying to cross-border services

A considerable number of requirements applicable to cross-border service provision were reported for employment agencies under Article 16. Member States typically cited as justifications public policy and indicated more specifically that these requirements are necessary to prevent illegal work, human trafficking, prostitution and fraud, and to ensure compliance with jobseekers' rights.

Belgium (Flanders) and Slovenia reported an establishment requirement for career guidance centres. Ireland reported its intention to scrap this requirement for employment agencies established in other Member States.

Authorisations are required by several Member States for the cross-border provision of employment services: Belgium, Bulgaria, Cyprus and Ireland.¹⁸³ However, some Member States reported abolishing, or their intention to abolish, current authorisations for cross-border provision of employment services because they were found to be unjustified or disproportionate. France has abolished the authorisation scheme for employment agencies and intends to replace it by a declaration for sport agents. Portugal intends to replace its authorisation for employment agencies by prior notification.

Declaration requirements were reported by France (prior declaration for modelling agencies), Liechtenstein, Lithuania and Malta.

Malta also reported an obligation to indicate an address in Malta 'from which the activity will be carried out'.

In some cases, Member States referred to other requirements, such as information and disclosure obligations as well as limitations to the possibility of charging jobseekers a fee (only allowed for recruitment in the entertainment sector in the United Kingdom) or other conditions (good repute of the provider, its partners and managers and the obligation that jobs are advertised in Portuguese in Portugal).

Portugal and France reported an obligation to take out insurance/provide a guarantee for modelling agencies. However, France is nevertheless abolishing the insurance requirement for sport agents. To justify these requirements, Member States cited public policy and indicated, more specifically, the need to protect employees (France) and the need to ensure the repatriation of workers from abroad (Portugal).

6.5.2. Advertising

Advertising agencies usually provide a wide range of services to their clients related to the promotion of goods, services or corporate image (e.g. designing and running advertising campaigns, developing a brand image, media planning and buying). Broadly speaking, this area seems to be generally lightly regulated and few Member States reported requirements applicable specifically to the services provided by advertising agencies as such.

However, it is clear that there are a number of requirements, which do not directly regulate advertising agencies but which nevertheless affect the provision of these services by laying down rules on certain advertising modalities or other forms of commercial communication.

¹⁸³ It seems that it is not necessary to obtain a licence in Ireland if the employment agency is regulated under the law of another Member State and that regulation is the same or similar to the regulation in Ireland.

For instance, several Member States reported authorisation schemes related to the use of outdoor facilities (for example historical buildings) or public space for advertising purposes. Others reported authorisation schemes applicable to specific means of advertising such as aerial advertising, distribution of flyers for commercial purposes, the physical infrastructure in which advertising is placed and parking advertising vehicles. Many of these schemes also apply to cross-border service providers. To justify the requirements, Member States cited reasons of public security (aerial advertising, vehicles) and the protection of the environment.

Other requirements related to commercial communications, e.g. restrictions to the use of certain forms of commercial communication or the content of the communication or the language used, which exist in many areas, may also affect the services provided by advertising agencies. Only a few such restrictions were reported under Article 16, which should indicate that Member States do not apply commercial communication requirements to cross-border providers. Denmark expressly indicated that it excludes cross-border providers from the ban on using vouchers and promotional competitions as marketing tools.

6.5.3. Organisation of exhibitions and trade fairs

Exhibitions and trade fairs are large to medium-sized events where entrepreneurs from a specific field of activity present, promote, and/or sell their products/services to potential distributors, business partners, wholesalers, retailers or consumers. The organisation of such events is subject to different types of requirements: requirements applicable to the activity of the organiser of the specific exhibition and trade fair; requirements applicable to the organisation of exhibitions and trade fairs in general and requirements applicable to certain types of exhibition and trade fairs.

Requirements applicable to the activity of organising exhibitions/fairs seem rather rare. In this category, Greece reported that the activity of trade fair organiser is subject to a good repute requirement, an exclusivity requirement (although Greece reported its intention to abolish it) and specific financial guarantees. Italy (at least one region) reported a legal form requirement for organisers of trade fairs.

By contrast, many requirements apply to the organisation of exhibitions/fairs in general, particularly concerning the use of premises. Several Member States reported such prior authorisation schemes, usually issued by regional or local authorities: Bulgaria, France, Greece, Hungary, Italy, Lithuania, Netherlands, Poland, Portugal and Spain.

Finally, Member States have reported several requirements specific to the type of product/service promoted or presented in the fair/exhibition. Specific authorisation requirements exist, for example in Greece for book fairs, in Hungary for firearms fairs, in Spain and Norway for animal fairs or public display of animals in general.

6.5.4. Debt collection services

Debt collection means the activity of pursuing payment on debts owed by individuals and businesses. In principle, it covers judicial and non-judicial recovery of debt. A debt collection agency usually operates as an agent of creditors and collects debts for an agreed price or a percentage of the total amount owed. Debt collection should be distinguished from ‘factoring’ where claims are actually purchased and then pursued on behalf of the new owner of the claim. Factoring is a financial service and thus is not covered by the Directive.

Based on information available, it seems that debt collection is a regulated profession only in Norway and Austria. In other countries, this activity may be fully or partly (e.g. as regards the judicial recovery of debt) reserved to regulated professions, e.g. lawyers. For instance, in Portugal, all debt collection services are reserved to lawyers and ‘*solicitadores*’.

Only a limited number of requirements were reported to apply to debt collection services. Hardly any seem to concern the judicial recovery of debts. A number of Member States reported authorisation schemes applicable to debt collection services: Austria, Belgium, Denmark, Finland, Germany, Iceland, Italy, Norway, Sweden and the United Kingdom.

Belgium reported a legal form requirement laying down that recovery of debt may only be exercised by a natural person or by a company with the legal form of ‘*sociétés commerciales*’ but it would appear that this is in the process of being amended.

Austria reported a maximum tariff requirement.

Some Member States reported an authorisation scheme for the cross-border provision of debt collection services: Belgium, Denmark, Iceland, Italy and the United Kingdom. Norway has, however, abolished its authorisation and registration requirement for cross-border services. Belgium reported the obligation to have professional insurance when the service provider collects consumer debts, while Iceland and Norway reported a general insurance obligation. Austria reported that maximum tariffs apply to cross-border services and established providers alike.

Most Member States cited objectives like the prevention of fraud, the protection of debtors and creditors and efficient supervision as justification. For cross-border services, Member States mainly cited public security and public policy.

6.5.5. Tax advisers

Tax advisers are often highly regulated. In many cases, this activity is considered to be a separate regulated profession (for example in Belgium, Czech Republic, Germany, Greece, Hungary and Poland). In other countries, providing tax advice is reserved to other regulated professions, such as accountants or lawyers (for example in France or Italy). In some Member States, however, it does not seem to be a regulated profession, for example in Denmark, the Netherlands or Slovenia.

6.5.5.1. Requirements applying to establishment

➤ *Authorisation schemes*

The provision of tax advice is a regulated profession in 10 Member States.¹⁸⁴ Authorisations for tax advisers have been reported by the Czech Republic, Greece, Hungary, Italy, Poland and Slovakia. In addition, in the Member States that reserve tax advice to other regulated professions, the authorisations for these professions also apply.

➤ *Article 15 requirements*

Some Article 15 requirements for tax advisers (legal form and shareholding requirements) were notified by a number of Member States. In the Member States where tax advice services

¹⁸⁴ Austria, Belgium, Czech Republic, Germany, Greece, Hungary, Ireland, Poland, Slovakia and United Kingdom (only for ‘chartered’ tax advisers).

are provided by lawyers/accountants, the requirements applicable to these professions also apply to tax advice services. In some Member States where such requirements are applied to regulated professions in general, they may also apply to tax advisers.

For instance, Belgium, Poland and Slovakia reported legal form requirements. Nevertheless, Poland reported abolishing a ban on carrying out the profession of tax advisor in the form of a limited joint-stock partnership, therefore making the legal form requirement less restrictive.

Shareholding requirements for legal persons providing tax consultancy services were reported by Belgium (a complex list of different cases), Poland (majority of voting rights to belong to tax advisers and the rest to other specific regulated professionals) and Slovakia (75% of voting rights or the capital must be held by tax advisers).

Member States typically justified these legal form and shareholding requirements as necessary to ensure the independence of service providers. In some cases, they are deemed necessary to ensure the reliability or solvency of the service provider. Some Member States also cited the need to ensure that only providers with the requisite skills and qualifications provide these services.

➤ *Restrictions on multidisciplinary activities*

Belgium, Italy, Poland and Germany reported incompatibilities in the provision of tax advice and justified them by the need to prevent conflicts of interest and guarantee the impartiality and independence of professionals. In some cases, there is a general incompatibility with any other activity. In others, incompatibilities relate to certain specific activities. In Member States with general incompatibilities applicable to regulated professions (such as a general prohibition of joint exercise), such incompatibilities also apply to tax advisers. And, of course, since these services are reserved to other regulated professions, rules applicable to them may also have an impact on tax advice services. Poland reported that the Act implementing the Services Directive has allowed advocates, legal advisors and tax advisers to cooperate within one multidisciplinary partnership.

6.5.5.2. Requirements applying to cross-border services

Hardly any requirements were reported for the cross-border provision of services. Only Greece reported an authorisation requirement and justified it for reasons of public security. Of course, as for all regulated professions in those Member States where the activity is reserved to a regulated profession, service providers may be subject to an annual declaration in line with the Professional Qualifications Directive. Other requirements may not have been reported.

6.5.6. Insolvency practitioners

Insolvency practitioners are taken to mean those who provide advice on and who are appointed in formal insolvency procedures. These procedures can be either personal (bankruptcies, sequestrations, individual voluntary arrangements, etc.) or specific to companies and partnerships (liquidations, company and partnership voluntary arrangements, administrations and administrative receiverships, etc.). In general, they are appointed by the shareholders, unsecured creditors or by court order to manage the winding up of a firm by selling off its assets. Another commonly used term is ‘liquidator’.

In some Member States, insolvency practitioners are a separate regulated profession. In other Member States, these services may again be reserved to other regulated professions, such as lawyers.

6.5.6.1. Requirements applying to establishment

➤ *Authorisation schemes*

Insolvency practitioners seem to be a regulated profession in France, the Netherlands, Poland and the United Kingdom. Authorisation schemes for insolvency practitioners were reported by the Czech Republic, Germany, Hungary, Latvia, Lithuania, Romania, Slovenia and the United Kingdom. In Portugal, only insolvency practitioners appointed by court order are regulated professionals (considered by Portugal as exercising public authority).

The United Kingdom reported abolishing the ban preventing insolvency practitioners authorised in Northern Ireland from acting in Great Britain.

➤ *Article 15 requirements*

Few requirements were reported under Article 15 specific to insolvency practitioners. Those that were mostly concerned legal form and shareholding requirements. However, more requirements may well apply to insolvency services where Member States reserve these services to other regulated professions. Moreover, in cases in which Member States apply certain restrictions to regulated professions in general, these restrictions may also apply to insolvency practitioners. As justification, Member States mostly cited protection of recipients/creditors and proper administration of justice.

Quantitative restrictions were reported only by Hungary, where a public tender is organised every seven years based on the needs established by the Government.

Legal form requirements were reported to apply in the Czech Republic (natural persons, unlimited liability partnerships or foreign companies providing the same liability guarantees), Hungary (limited liability companies), Germany (only natural persons) and Romania (only natural persons, associated offices or civil partnerships).

Shareholding requirements were reported by the Czech Republic (an insolvency practitioner can only practice in one unlimited liability partnership or foreign company providing the same liability guarantees) and Romania (the capital must be held by insolvency practitioners, who can practice only in one partnership, with a minimum capital of € 10000). The justifications put forward by Member States were the need to guarantee the independence and impartiality of professionals or to ensure the service is provided directly by qualified professionals. The minimum capital requirement was deemed to enhance the liability, solvency or personal responsibility of the service provider.

Tariffs were reported by Germany and Hungary.

Requirements imposing a minimum number of employees were reported by Hungary and Lithuania. In Hungary, at least two employees or partners belonging to certain categories of professionals, such as lawyers, economists, auditors, etc., are required to provide insolvency practitioner services. In Lithuania, a new law requires that at least two persons are available with the qualification of corporate restructuring administrator/corporate receivership (be they employees or bound by some other contractual arrangement). Again, Member States justified this as necessary to ensure that the service is directly provided by qualified professionals.

➤ *Restrictions on multidisciplinary activities*

Very few Member States reported multidisciplinary restrictions on insolvency practitioners. Hungary reported incompatibilities with certain activities and Romania reported an exclusivity requirement. However, similarly to requirements notified under Article 15, in cases where services of insolvency practitioners are reserved to a (different) regulated profession, the requirements applicable to these regulated professions will apply. Moreover, in Member States where general incompatibilities apply to regulated professions, they may also apply to insolvency practitioners.

6.5.6.2. Requirements applying to cross-border services

Very few requirements were reported for insolvency practitioners providing cross-border services. However, since these services are often provided by regulated professions, providers are often required to submit an annual declaration. In addition, requirements applying to other regulated professions may also apply to insolvency-related services.

In respect of cross-border services, authorisation requirements were reported by Lithuania (only for natural persons, legal persons, by contrast, are subject to an establishment requirement), Slovakia and the United Kingdom. They were deemed to be necessary for reasons of public policy. More specifically, Member States pointed to the need to ensure the protection of all parties affected by insolvency: individuals and businesses, creditors, employees, shareholders, the insolvent party etc., and to ensure proper administration of justice.

The United Kingdom reported the obligation to take out insurance. However, the United Kingdom reported amending the legislation, to recognise professional liability insurance cover or guarantees obtained in another Member State.

6.5.7. Patent/trademark agents

Patent or trademark agents typically assist and represent clients in securing proper protection of their industrial property rights and advise on the impact of rights of others on their client's business. They usually draft the required applications, follow them through the various stages on behalf of the applicant, provide advice on the use of the rights and so forth. In this field, the terms 'agent' and 'attorney' are sometimes used alternatively, but there may be some differences in competences, especially in respect of in-court representation.

Patent agents and trademark agents are regulated professionals in many Member States. In others, these services are provided by other professionals, for example lawyers. In some countries, they are not considered to be a regulated profession.

6.5.7.1. Requirements applying to establishment

➤ *Authorisation schemes*

Patent/trademark agents seem to be a regulated profession in 16 Member States.¹⁸⁵ Authorisation schemes were reported by the Czech Republic, Estonia, France, Germany, Hungary, Ireland, Liechtenstein, Lithuania, Luxembourg, the Netherlands (where lawyers can

¹⁸⁵ Austria, Belgium, the Czech Republic, Finland, France, Germany, Hungary, Ireland, Italy, Liechtenstein, Luxembourg, the Netherlands, Poland, Portugal, Slovakia and the United Kingdom.

also act as patent agents), Portugal, Slovakia and Spain. In some cases, authorisation schemes apply to agents of industrial property rights in general, while some Member States reported different schemes, depending on the type of industrial property rights. These were generally deemed to be necessary to ensure the protection of the recipient and the quality of services.

➤ *Article 15 requirements*

Very few Member States reported Article 15 requirements specific to patents or trademark agents. However, where Member States apply restrictions to regulated professions in general, these restrictions may also apply to patent or trademark agents. Furthermore, if these services are restricted to other regulated professions, e.g. lawyers, the regulation applicable to that profession will also apply.

Shareholding requirements: Germany reported that shares must be held by patent agents only or the majority must belong to patent agents and the rest to specific regulated professions (lawyers, tax advisers, auditors, and accountants) and cited as a justification the need to ensure the independence and impartiality of providers. Liechtenstein reported an obligation that the majority of the capital be held by Liechtenstein or EEA citizens and that the executive manager be a patent agent. This was again justified by the need to ensure the independence of the patent agent and the proper functioning of the legal system. Similar requirements may well exist in other Member States.

Slovenia reported the requirement setting a minimum number of employees, justified by public policy and protection of the recipients of services.

➤ *Restrictions on multidisciplinary activities*

As regards patent or trademark agents, only Germany reported restrictions to multidisciplinary activities. Similar restrictions may however exist in other Member States: for example, where incompatibilities apply to regulated professions in general, they may also apply to patent or trademark agents. Equally, when the service is restricted to lawyers, existing restrictions applicable to this profession will also apply.

6.5.7.2. Requirements applying to cross-border services

Very few Member States reported requirements applicable to the cross-border provision of services by patent or trademark agents. However, since these services are often provided by regulated professions, providers are often required to submit an annual declaration. In addition, requirements applicable to other regulated professions may also apply to these services.

Slovenia reported a registration requirement.

Hungary and Liechtenstein reported notification or declaration requirements.

Austria imposes an insurance obligation for patent agents offering cross-border services, while Slovakia requires an indication of a delivery or postal address in the national territory.

Hungary reported a professional ID requirement.

Liechtenstein reported a ban on infrastructure requirement since, by setting up chambers or offices in Liechtenstein, a patent agent is considered to be established in that country, for reasons of public policy.

The Member States gave various reasons justifying these requirements under public policy: protection of recipients, proper functioning of the legal system and allowing authorities to keep reliable statistics.

6.5.8. Translators and interpreters

Translation and interpretation services are used by public authorities, business and citizens and play an essential role, especially in cross-border activities. Sometimes the exact and correct meaning is important enough to require certified translation or interpretation and Member States' regulations contain many instances when this is compulsory.

Translation and interpretation are regulated professions in several Member States. In some cases, only sworn or certified translators and interpreters (the person needs to be sworn in or publicly appointed and services are provided during court proceedings or with public authorities, the police, etc.) constitute regulated professionals.

6.5.8.1. Requirements applying to establishment

➤ *Authorisation schemes*

It appears that translation and interpretation are regulated professions in Denmark, Germany, Greece, Iceland, Poland, Slovakia, Spain and Sweden. In some of these Member States, only sworn or certified translators and interpreters are regulated. Authorisation schemes were reported by Bulgaria, the Czech Republic, Denmark, Germany, Liechtenstein, Netherlands, Poland, Romania, Slovenia and Spain. Slovakia indicated that it has amended its scheme to make authorisation mandatory only for sworn translators and interpreters, the others being subject only to notification. As justification, Member States often cited public policy, public security, the proper administration of justice and protection of the recipients of services.

➤ *Article 15 requirements*

Only a few requirements specific to translators and interpreters were reported by the Member States under Article 15. However, requirements applicable to all regulated professions may also apply to translators and interpreters, if these are regulated professions.

The Czech Republic, Germany, Poland, Romania and Sweden reported that the services of translators and interpreters provided in court or in other official proceedings are subject to fixed fees, usually set by legislation or by courts (these tariffs are however not subject to the Services Directive when they apply to services provided to the State).

6.5.8.2. Requirements applying to cross-border services

Very few Member States reported requirements applicable to the provision of cross-border services by translators and interpreters established in other Member States. As far as they are regulated professions, an annual declaration may be imposed, in line with the Professional Qualification Directive.

Germany (at regional level) has abolished establishment requirements that applied to these services but it has maintained authorisations. Authorisation requirements are also maintained in the Netherlands, Slovakia (only for sworn translators and interpreters) and Slovenia. They have been justified by Member States by public policy. More specifically, Member States

cited the need to ensure the quality of the service and the integrity of translators and interpreters, as their services have a direct influence on decisions taken by public authorities. Denmark reported information requirements for the benefit of recipients and requirements to take out insurance (only applicable to interpreters and translators having the protected title of ‘*translatør*’).

CONCLUSION:

Business services cover a wide range of activities, for instance services of employment agencies, advertising, organisation of exhibitions and trade fairs and debt collection services. but also, when services are provided to other service providers, it also includes many other services provided by more traditional regulated professions, such as tax advisers, insolvency practitioners, patent/trademark agents and interpreters and translators.

Some services are lightly regulated. Others are subject to stricter regulation, for instance employment agents and debt collectors. Quite a few are considered to be a regulated profession (or are reserved to a regulated profession). For certain business activities (e.g. employment agencies, debt collection, translation and interpretation services), the level of regulation differs considerably between the Member States, from no/very light regulation to major restrictions to the freedom of establishment and to provide services.

Implementation of the Services Directive led to certain changes. Nevertheless, the discussion identified some residual difficulties. Some Member States questioned the level of regulation, e.g. for translation and interpretation services. Moreover, specific questions were raised as regards the cross-border provision of business services in general.

6.6. Private education services

The private education sector encompasses a wide range of different activities. During the process of mutual evaluation, the following services were discussed: higher education services, vocational training, adult education, language, dancing, dramatic arts and similar courses, as well as driving courses. This document does not include any information on providers of primary or secondary education, neither does it include information on requirements related to providers of courses that do not have as their objective professional training (except adult education, language, dancing, dramatic arts and similar courses as well as driving courses) or on requirements for short-term (e.g. day or week-long) courses.¹⁸⁶

The provision of higher education services, vocational training and driving courses is regulated in most Member States. The opposite is true for language, dancing, dramatic arts and adult education, which is regulated only in a few Member States. For vocational training and driving schools, there are considerable differences in the level of regulation.

6.6.1. Higher education services

Higher education services include any kind of post-secondary (tertiary) academic education, such as a private university, college etc. offered by service providers.

9 Member States¹⁸⁷ did not report any requirements related to higher education. Some (Denmark, Finland, Poland and Sweden) explained that higher education services (even those offered by private operators) in their Member States are essentially financed by public funds and are thus regarded as non-economic services, which are not covered by the Services Directive. Hungary and Slovenia reported the same but nevertheless reported requirements concerning providers established in other Member States.

6.6.1.1. Requirements applying to establishment

➤ *Authorisation schemes*

Most Member States¹⁸⁸ reported that, to ensure a high quality of education, providers of higher education services are obliged to obtain authorisation for establishing and operating a higher education institution. In a number of Member States (e.g. Latvia, Lithuania, Portugal, Slovakia and Spain), this is coupled with the requirement to obtain accreditation of programmes of study offered by the institution.

In many cases, authorisation schemes do not apply to all higher education institutions, or not in the same way. In fact, the main criterion affecting the degree of regulation in the field of higher education services often seems to be the type of diploma (qualification) issued upon completion of the course:

¹⁸⁶ For example, this document does not include information on providers of sailing, surfing, skiing, horse riding, parachute jumping, aviation or similar courses. Some of these services, namely those that fall in the category of 'leisure activities', are dealt with in the section on tourism.

¹⁸⁷ Belgium, Denmark, Finland, Iceland, Luxembourg, Norway, Poland, Slovakia and Sweden.

¹⁸⁸ Bulgaria, Cyprus, the Czech Republic, Estonia, France, Germany, Greece, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Malta, the Netherlands, Portugal, Romania, Spain and the United Kingdom.

- for higher education institutions which offer State-approved programmes and issue diplomas belonging to the educational system of the Member State in question (or diplomas that are officially recognised as equivalent to national diplomas), an authorisation or accreditation of the school issuing the diplomas and often also of the programmes of study is generally required, whereas

- for higher education institutions which issue diplomas that are not officially recognised or that issue diplomas belonging to the educational system of another Member State (i.e. cases in which a branch of a foreign higher education institution issues diplomas officially recognised in the Member State of its primary establishment), the requirement to obtain authorisation is often made less stringent or dropped altogether.

For example, Spain only regulates the provision of higher education for institutions issuing diplomas which are officially recognised by the State, while access to the activity of all other institutions is only subject to information obligations. Hungary reported that foreign higher education institutions establishing in Hungary must provide evidence that they are recognised as higher education institutions in their country of origin and that diplomas issued by them are officially recognised in their country of origin. Romania reported that branches of foreign universities that issue diplomas belonging to other educational systems do not need authorisation.

By contrast, some Member States (e.g. Latvia, Portugal) seem to require all higher education institutions (regardless of the type of diploma awarded) to be authorised or accredited. The justification given is that all types of higher education should be regulated to ensure that citizens obtain high quality educational services adequately preparing them for the labour market.

➤ *Article 15 requirements*

Very few requirements were reported. Most concern the legal form. Many Member States require higher education institutions to be set up as a legal person.

Regarding the obligation to take a specific legal form, in the Czech Republic, Cyprus and Slovakia, private universities can be operated by legal persons only. In Italy, all higher education institutions must take the form of public law entities. In Estonia, private universities must be public limited companies or private limited companies entered in the commercial register or a foundation or non-profit association entered into the non-profit associations and foundations register. In Liechtenstein, higher education institutions must be either public-law institutions/foundations or legal entities under civil law. Portugal reported that higher education services can only be provided by certain legal persons with a specific corporate purpose. In Romania, higher education services can only be provided by legal persons operating for no profit. Justifications given by Member States for these requirements varied. For example, the Czech Republic and Slovakia cited the nature and complexity of services, Estonia explained that the requirement was necessary to ensure better protection of consumers' (students') rights, especially with regard to insolvency of the service provider. Liechtenstein indicated that higher education institutions operated as one-man companies are not practicable and they must endure beyond the natural life of individuals.

By contrast, Greece reported a legal form requirement for private schools of supportive teaching which can only be provided by natural persons, thus excluding legal persons from providing these services.

Regarding the ban on having more than one establishment, in Greece the same person cannot operate more than one private school of supportive teaching.

Regarding requirements fixing a minimum number of employees, Spain notified a number of requirements concerning staff teaching at higher education institutions issuing diplomas which are officially recognised by the state. For example in one region, universities must ensure that there is at least one academic teacher per 25 students. Spain cited the need to ensure an adequate level of training. Portugal also reported a similar requirement.

6.6.1.2. Requirements applying to cross-border services

Higher education services may be offered across borders, for example, by way of online courses or in the framework of educational franchising or validation agreements. Franchising and validation agreements are concluded between universities or other institutions of higher education which award diplomas, certificates or degrees and educational institutions (or other entities) responsible for running study programmes that lead to the award of these diplomas. ‘Validation’ is a process under which an institution awarding a diploma reviews a programme of study developed by another educational institution (i.e. reviews its content, teaching staff, facilities and resources available, etc.) and, when the outcome of the review is positive, validates (authorises) the programme as leading to the award of its diploma. Under ‘franchising’, in principle (given the many variations of this model), an existing programme of study offered by an institution awarding the diploma is submitted to be run at a partner institution under the supervision of the awarding institution, culminating in a diploma issued by the awarding institution. In both cases, i.e. ‘validation’ and ‘franchising’, the characteristic element is that one educational institution is responsible for the day-to-day running of a study programme and the other awards a diploma at its completion and therefore guarantees the quality of the programme. In case of cross-border educational franchising/validation schemes, the institution issuing the diploma is located in one Member State and the institution running the programme in another.

Not many Member States reported requirements applying to cross-border higher education services. This may be due to the fact that educational franchising/validation schemes are a relatively new development in the area of education services and not all Member States have yet put in place appropriate regulatory framework or that appropriate regulations have not been detected and screened due to the particular characteristics of this type of service provision (cooperation between institution providing services across borders and the institution established in the given Member State).

Regarding the obligation to have an establishment, Lithuania reported that only State higher education institutions, private higher education institutions and branches of foreign higher education institutions established in the Republic of Lithuania can provide study programmes and related activities. Lithuania explained that the requirement to have an establishment was necessary to ensure compliance with public order and national security under national legislation. Greece requires providers of higher education in dance and dramatic arts to be established in Greece. Romania also notified an establishment requirement for higher education institutions.

Italy, Portugal and Slovenia require authorisation for the provision of cross-border services by foreign higher education institutions. Such requirements are typically justified by Member States for reasons of public policy. The Netherlands reported authorisation schemes concerning the organisation of courses in public places (such as lakes, parks, etc.). By contrast, Hungary has amended its scheme for cross-border services of foreign higher

education institutions by replacing the authorisation scheme with a notification requirement. Hungary indicated that the notification obligation must be maintained as the status of being a student of such institutions gives rise to certain rights in Hungary, such as student cards (and related benefits) or student loans.

Some Member States also reported other schemes applicable to cross-border services. For instance, the German Land of Nordrhein-Westfalen reported special schemes under which private universities and art academies may cooperate with institutions from other Member States in the framework of educational franchising (i.e. the diploma is issued by the institution located in another Member State). Under these schemes, universities and academies must submit evidence that the programme taught in Nordrhein-Westfalen is taught in the same manner as in the State in which the institution awarding the diploma is established and that the diploma is accepted in this Member State despite it being conducted in Nordrhein-Westfalen.

Portugal reported a ban on educational franchising, claiming that it would put the fundamental rights to high quality education at risk, even with restrictions linked to the programmes. Regulations on educational franchising also exist in Greece and Cyprus (the latter has recently lifted a ban on cooperation with foreign institutions in the framework of educational franchising).

6.6.2. Vocational training

Services of vocational training include training services that prepare learners for jobs based in manual or practical activities, traditionally non-academic and related to a specific trade, occupation or vocation. These activities seem to be fairly highly regulated in a great number of Member States but considerably less regulated in others.

6.6.2.1. Requirements applying to establishment

➤ *Authorisation schemes*

There appear to be two different types of vocational training courses: those that attest certain professional skills and lead to a diploma and those that do not attest professional skills but lead to the acquisition of certain general skills, such as first aid skills. For the former, Member States typically justify the existence of authorisation schemes by the fact that training leads to officially recognised titles or skills entitling the graduates to perform specific activities. Member States explain that providers of these courses need to be authorised (accredited) to ensure that instructors/teachers have the necessary qualifications, appropriate teaching methods and materials/equipment are used, the programme covers the required minimum content, etc. For the latter type of training course, Member States often indicated that, even though the course does not lead to professional qualifications, the skills that it develops are so vital to society that their teaching must be properly supervised. Examples of such courses include occupational first aid training or cardiopulmonary resuscitation courses.

Many Member States reported a very high number of authorisation schemes for the provision of vocational training. Others, including Cyprus, Greece, Iceland, Liechtenstein, Malta, Norway, Sweden and the United Kingdom, did not report any authorisation schemes.¹⁸⁹

¹⁸⁹ Some of these Member States, however, reported requirements on ‘further education’ or ‘private schools’ which, depending on the educational system, may also cover vocational training. Other

Certain Member States (e.g. Hungary, Romania, Spain) reported different authorisation schemes concerning various kinds of vocational training. Others reported the majority of their authorisation schemes in the same domain e.g. France (medical training) and Poland (agricultural training). Some Member States, such as Spain, only regulate the provision of vocational training if the course leads to a diploma that is officially recognised by the State, while access to the activity of institutions issuing diplomas which are not recognised by the State is subject solely to consumer protection regulations.

The Czech Republic, Estonia, Hungary, Latvia, Lithuania, Luxembourg, Portugal, Romania and some regions in Spain reported more general schemes that cover a higher number of vocational training providers. However, in most cases, there are specific authorisation schemes concerning the provision of particular vocational training such as, for example, training for:

- *technical staff* (e.g. workers in all sectors engaged in manual handling tasks in Ireland; operators of high-risk equipment and facilities in Bulgaria; personnel involved in highly specialised technical work in the Czech Republic; specialists in developing thermal installations projects in Spain; specialists in developing electronic communication networks in Portugal);
- *health professionals (further/additional training)* (e.g. medical and paramedical staff in the Czech Republic; medical professionals in Hungary, France and Germany, sport masseurs and doctors in Italy);
- *lawyers (further/additional training)* (e.g. trainee lawyers and lawyers in the Netherlands);
- *teachers (further/additional training)* (e.g. further education of teachers in the Czech Republic and Romania);
- *transport professionals* (e.g. transport operators and personnel managing or performing roadworthiness testing in Finland; personnel specialised in road transport in Romania);
- *safety specialists* (e.g. security advisors in Slovakia; railway transport safety instructors in Hungary; safety advisors in the transport of dangerous goods in Hungary; industrial safety specialists in Spain; maritime rescue specialists in Denmark; fire security specialists in France; safety advisors in railway transport in Poland);
- *environmental specialists* (e.g. specialists in environmental management and audit in Slovakia, environmental specialists in soil contamination and environmental coordinators in Belgium);
- *cave guides* (e.g. in Hungary and Slovenia);
- *veterinarians (further/additional training)* (e.g. in Germany and Poland);
- *social services professionals* (e.g. social service specialists in Germany);
- *aviation personnel* (e.g. in Poland);
- *employment services specialists* (e.g. in Belgium and Italy);
- *sport professionals* (e.g. in Spain and Portugal);
- *agricultural specialists* (e.g. in Portugal and Austria, integrated production specialists, plant protection products specialists).

Member States reported schemes on ‘adult education’ which may also cover vocational training — these schemes are referred to below.

As a result of implementation of the Services Directive, many authorisation schemes and procedures applicable to vocational training have been or will be simplified and/or accelerated. For example, Spain reported its intention to make a number of changes to simplify authorisation schemes that involve more than one authority.

➤ *Article 15 requirements*

A limited number of Article 15 requirements were reported. Most concern the legal form and often require the provider to be a legal person.

Regarding quantitative/territorial restrictions, France requires that centres providing training courses to certain medical professions are located in cities in which regional hospitals are located to ensure that students have access to technical training at the departments of the hospital.

Regarding the obligation to take a specific legal form, in the Czech Republic, advanced vocational education can be provided only by legal persons. In Estonia, providers of vocational training must be legal persons in order to ensure the protection of consumers' rights, including in the event of insolvency. Romania reported a number of obligations on vocational training providers to be legal persons. By contrast, the Netherlands reported abolishing a legal form requirement for training organisations that train persons for the obligatory 'integration exam'. These services can now also be provided by natural persons.

Regarding the reserve of activity, in Belgium supplementary and further training of entrepreneurs can only be provided by recognised professional and inter-professional organisations of small and medium-sized businesses. These limits were deemed necessary to guarantee the availability and quality of training.

Regarding requirements setting a minimum number of employees, Spain notified a number of requirements concerning the ratio between students and teachers in vocational training institutions issuing officially recognised diplomas to ensure an adequate level of training.

6.6.2.2. Requirements applying to cross-border services

A high number of requirements, in particular authorisation schemes, were reported for cross-border providers of vocational training. Some Member States indicated that a distinction should be made between providers that offer courses leading to a certificate or diploma officially recognised in the host Member State and those that do not. Member States often justified such requirements by the need to ensure a high level of training and cited reasons of public policy or a combination of the four reasons set out in Article 16 of the Services Directive.

Lithuania requires permanent establishment for providers of vocational education services, explaining that it was necessary to ensure the required high level of education. Poland requires permanent establishment for providers of training for safety advisers, explaining that it was needed to ensure the right level of training, identification of providers and to carry out controls.

Many Member States notified authorisation requirements for providers of cross-border vocational training, for example: Ireland (training of workers in all sectors of work engaged in manual handling tasks), Slovenia (training in plant protection medicine and training for lifeguards), Lithuania (vocational training in general); Germany (training of psychotherapists, further training for doctors); Spain (hygiene-sanitary training); Belgium (training for

environmental specialists in soil contamination, environmental coordinators, employment services specialists, entrepreneurs), Romania (training for technical staff), France (training for fire security specialists, health professionals, persons working with asbestos), Poland (training in trading, packaging and application of plant protection products). Portugal imposes authorisation schemes for courses on agriculture, courses for driving instructors and deputy directors of driving schools, courses for electronic communication networks developers, training courses for managers of sport facilities, training courses in health and safety at work. However, the authorisation procedure for a number of these courses in Portugal is in the process of being replaced by declarations. The justification often used by Member States for authorisation concerns the need to ensure a high level of training through prior accreditation of training programmes.

Hungary requires a declaration from organisers of training in connection with the fire protection examination. It explained that the authority needs to be informed about the activities of such providers and be able to monitor them.

6.6.3. Adult education and arts, language, dancing schools

Adult education covers all types of training for adults who have left initial education and training, however far that process went. It includes learning for personal, civic and social purposes (and can therefore encompass arts, language and dancing classes), as well as for employment-related purposes (therefore encompassing vocational training). The concept of arts, language, dancing and similar schools covers any kind of school or training in this area which is not part of a formal education (for example it does not cover higher education in these fields).

Only some Member States reported general schemes concerning adult education covering training in arts, language and dancing, but also, in certain cases cover vocational training. In most Member States, there are no specific requirements for schools offering non-formal training in dramatic arts, dancing or language. However, a number of Member States reported specific schemes applicable to these courses.

6.6.3.1. Requirements applying to establishment

➤ *Authorisation schemes*

Estonia, France, Hungary, Lithuania and Spain reported authorisation schemes concerning adult education. These schemes are often justified by Member States by the fact that providers of adult education services issue officially recognised diplomas, hence the need to ensure an appropriate level of education.

Relatively few Member States, including Austria, the Czech Republic, Estonia, France, Greece, Malta, Slovakia and Spain¹⁹⁰ reported authorisation schemes for non-formal education in dramatic arts, dancing or language. These Member States usually require providers to obtain an authorisation, citing various justifications ranging from ensuring a high level of education, safety of recipients of services, protection of consumers, transparency, tax records and the protection of neighbours of these establishments from emissions.

¹⁹⁰ Spain explained that (except in the regions of the Basque Country and Andalusia) only art schools with programmes resulting in officially recognised art qualifications are subject to authorisation schemes.

The remaining Member States did not report any authorisations in this area. Finland and Sweden indicated that private language schools or private schools in visual arts were regulated to the extent any business activity is regulated and do not require any specific licence.

Malta reported that schools teaching English as a foreign language required an authorisation.

The Czech Republic imposes an authorisation scheme for operating a language school authorised to conduct state language exams and issue official certificates.

Slovakia reported an authorisation scheme for education in arts culminating with an official certificate. To provide such education, one must have completed studies at an art school or have ten years' experience. Similarly, Slovakia reported an authorisation scheme for education in foreign languages culminating with an official certificate, which also requires completed study of languages at university level or certificate of the state language examination, alternatively proof of a ten-year stay in a country that has same the official language as the one to be taught.

Spain reported that, in some regions, an authorisation is required for non-formal music education.

Estonia imposes a registration obligation reported as an authorisation for non-academic schools and their curricula explaining that these requirements are justified by public safety (safety of the children attending the school), public health (health protection of the children attending the school), protection of consumers and users of the service (protection of the rights of the parents and the children), social and cultural policy objectives, protection of users of the service in case of insolvency of the school and the need to ensure a high level of the education.

Greece notified authorisation schemes for language schools, music schools and private dance schools for amateurs. Greece justifies the authorisation schemes by the need to protect recipients of services, fight fraud and unfair competition and ensure transparency and a high level of education.

France requires providers of dance classes to obtain an authorisation.

In Austria, a number of regions also impose authorisation schemes on providers of dance lessons.

➤ *Article 15 requirements*

Very few Article 15 requirements were reported. They would appear to be very exceptional.

Austria abolished a ban on having more than one establishment applicable to dancing schools.

Regarding quantitative/territorial restrictions, in Greece, authorisation to open a private art school can be refused if similar schools already exist in the same district.

Regarding the obligation to take a specific legal form, in Estonia all private schools (and non-academic schools) must take the form of a legal person governed by private law to ensure better protection of consumers' rights, including in the event of insolvency of the provider.

6.6.3.2. Requirements applying to cross-border services

Only a very limited number of requirements were reported in this area. The requirements applicable to cross-border services were typically justified by Member States as necessary to ensure a high level of training, citing reasons of public policy.

Greece reported an obligation to have an establishment in Greece for non-formal training in dancing, explaining that both the facilities and staff's qualifications needed to be checked.

France required providers of adult education and dance classes to obtain an authorisation.

Austria notified a number of authorisations applicable to dancing schools.

A declaration is required in Hungary for providing adult education.

6.6.4. Driving courses

All (or at least almost all) Member States regulate driving lessons. Some apply specific rules, in particular authorisations, to driving instructors as well as to driving schools, whereas other Member States only have rules applicable to driving instructors.

Driving instruction is often considered to be a regulated profession. In some Member States, driving school operators/managers are also considered to be regulated professionals.

6.6.4.1. Requirements applying to establishment

➤ *Authorisation schemes*

Driving instruction seems to be a regulated profession in 17 Member States.¹⁹¹ Authorisation schemes for driving instructors were reported by 24 Member States.¹⁹²

Driving school owners/managers seem to be regulated professionals in four Member States.¹⁹³ Authorisation schemes for driving schools were reported by 21 Member States.¹⁹⁴ Latvia reported that it had abolished its scheme.

Many Member States reported separate authorisation schemes for training non-professional drivers and professional drivers (e.g. taxi drivers, bus drivers, transport vehicles drivers).

To justify such authorisation schemes, Member States generally cited public safety reasons and the need to ensure that services are delivered by qualified driving instructors using approved facilities and, in particular, approved vehicles.

Driving school operators must typically comply with the following (or similar) requirements: employ licensed driving instructors, have specific teaching facilities and in particular specific vehicles, practice areas and theoretical training areas. Sometimes operators must also comply

¹⁹¹ Belgium, Bulgaria, the Czech Republic, Denmark, Finland, France, Greece, Iceland, Malta, the Netherlands, Norway, Poland, Portugal, Slovakia, Spain, Sweden and the United Kingdom.

¹⁹² Austria, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Norway, Poland, Romania, Slovakia, Slovenia, Spain and the United Kingdom.

¹⁹³ Belgium, the Czech Republic, France and Spain.

¹⁹⁴ Austria, Bulgaria, Cyprus, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Lithuania, Luxembourg, Malta, Norway, Poland, Portugal Romania, Slovenia, Spain and Sweden (Sweden explained that the authorisation scheme for driving school operators/managers encompasses the right to manage a driving school as well as the right to provide education and driving training to students).

with specific requirements regarding the course content, duration of training, organisational structure etc. For example, in Portugal, driving schools must have a qualified deputy director. In Cyprus, in order to obtain a licence for opening a driving school, the applicant must comply with conditions concerning age, good repute, experience, facilities and staff.

Finally, certain Member States also reported authorisation schemes for additional training. For example, Sweden notified risk training for learner drivers of passenger cars and motor cycles, training for learner drivers of mopeds, snowmobiles and off-road vehicles (quads) and a scheme providing training to ‘tutors’ who have a right to train learner drivers. Luxembourg reported additional mandatory training for drivers.

➤ *Article 15 requirements*

A certain number of requirements applicable to driving schools were notified. Several, however, have been or are being abolished.

As a result of implementation of the Services Directive, Spain reported that it had abolished a ban on having more than one establishment of driving school operators. Slovenia reported that it had abolished the requirement under which driving schools must employ at least three driving teachers and one expert supervisor and the requirement that all providers (including those providing cross-border services) must have specific learning facilities for road safety teaching in Slovenia.

Finland reported as quantitative/territorial restrictions the fact that a licence to instruct (learner) taxi drivers is restricted to a particular region, i.e. it does not cover Finland in its entirety. A similar situation exists in Poland, where permits for various types of drivers training are valid only in the area in which the issuing authority is competent.¹⁹⁵ Portugal reported a ban on setting up driving schools at a distance of less than 500 m from one another. Portugal explains that the requirement contributes to a wider territorial distribution of training providers but adds that it is currently considering repealing this requirement.

Regarding the obligation to take a specific legal form, some Member States reported rules under which providers of certain driving training must be legal persons: Finland (training for truck drivers/bus drivers, training for taxi drivers) and Estonia (all driving schools). In Malta driving instructors can only offer their services through an authorised driving school. Requirements are typically justified by the need to ensure adequate quality of training.

Luxembourg has maintained a maximum tariff for services provided by driving schools.

6.6.4.2. Requirements applying to cross-border services

A relatively high number of authorisations for the cross-border provision of driving instruction were reported. In addition, some Member States reported an obligation to have established certain infrastructure in their territory. It would seem that, similarly to the situation concerning established operators, the cross-border provision of driving instruction remains strongly regulated.

Regarding the obligation to have an establishment, Norway reported that all driving schools must have a permanent establishment in Norway in order for it to carry out non-notified controls.

¹⁹⁵ Although they were reported under Article 15, these requirements may constitute restrictions falling within the scope of Article 10(4) of the Services Directive (i.e. the rule according to which authorisations should be valid throughout the national territory and not limited to a particular area).

A number of Member States reported that the authorisation schemes for driving instructors (Denmark, Ireland, Malta and the United Kingdom) or driving schools (Bulgaria, Cyprus, Denmark, France, Iceland, Norway, Portugal¹⁹⁶ and Slovenia are also applied for cross-border service providers.

Poland requires all providers of driving school services to have adequate infrastructure within its territory.

CONCLUSION:

The private education sector encompasses a wide range of different activities, including higher education services, vocational training, adult education, language, dancing, dramatic arts courses and driving courses. The provision of higher education services, vocational training and driving courses are relatively strongly regulated in most Member States. The opposite is true for non-formal training in language, dancing and dramatic arts, which is regulated only in a few Member States.

As regards the establishment of branches of higher education institutions, it seems that there are substantial disparities between the regulatory approaches adopted by the Member States. In some cases, the extent of regulation varies depending on the nature of the diploma issued upon completion of the course (i.e. between diplomas that are officially recognised in the Member State in question and those officially recognised in another Member State), while others do not make this distinction.

Implementation of the Services Directive has led to certain changes. In particular, a number of requirements falling under Article 15 of the Services Directive have been made less stringent or abolished.

However, a number of Member States have maintained major restrictions, e.g. establishment requirements, which exclude the cross-border provision of services. The existence of these requirements has been questioned in discussions between Member States. Similarly, a number of Member States have identified residual difficulties regarding cross-border services in the area of educational franchising, vocational training and driving courses.

¹⁹⁶ Portugal reported that authorisation applies only to cross-border service providers who set up (temporary) driving schools in Portugal.

7. STAKEHOLDER CONSULTATION

7.1. Introduction

A public consultation was held as part of the mutual evaluation process. Interested parties were consulted on the results of the review of legislation carried out by Member States during the implementation period (as required by Article 39(2) of the Directive). The objective of this consultation was to get the views of consumers, businesses and other interested parties on the results achieved and on the areas where problems for stakeholders persist.

The public on-line consultation took place between 30 June and 13 September 2010.

Replies came from a wide range of respondents: individual citizens (mostly exercising a regulated profession), trade unions, consumer protection associations, chambers of commerce, individual business, companies and business organisations.

The consultation did not cover all aspects of implementation of the Services Directive but focused, in line with Article 39(2) of the Directive, on national measures covered by the mutual evaluation process. Nevertheless, some replies covered a wider range of issues (from general statements on the functioning of the internal market for services to issues such as the Points of Single Contact). These are not reflected here but all replies are available online, together with a summary, at:

http://ec.europa.eu/internal_market/consultations/2010/services_directive_en.htm

7.2. The results of the consultation in detail

7.2.1. Authorisations (Article 9)

Most of the replies received concerned authorisation schemes. In most cases, respondents considered that the specific authorisations were (still) too burdensome and could be simplified or, in some cases, abolished. Comments also concerned the scope of horizontal/cross-cutting authorisation schemes, which many respondents suggested reducing (to exclude simpler/less dangerous activities).

Examples specifically mentioned in the replies included the general trade licence required in Luxembourg (considered as disproportionate), and authorisation schemes for certain professions, e.g. for certain land surveyors. The construction sector was singled out by a number of respondents, who identified an excess of different authorisations (sometimes for rather simple activities). Other respondents highlighted authorisations required in the tourism sector, in particular for schemes regulating activities in certain sites or areas (considered as excessive or fragmenting the profession), in addition to specific requirements of professional qualifications.

Significant problems of duplication and opaque authorisation procedures were highlighted for retail establishments, sometimes aggravated by economic needs tests and an involvement of competitors in decisions on individual cases. Respondents specifically mentioned the situation in Belgium, Germany (in some *Länder*), Luxembourg and Spain (in some regions).

By contrast, some consumer protection organisations stated in general that eliminating authorisations could be detrimental to consumers.

7.2.2. Requirements covered by Article 15

Several respondents addressed Article 15 requirements, in particular requirements as to the legal form of service providers. In many cases, these were considered as unjustified or disproportionate.

For instance, several respondents raised questions regarding legal form requirements, in particular cross-cutting requirements imposed on all/many regulated professions (France, Italy, Latvia and Spain were mentioned as examples). A number of replies raised problems as regards legal form requirements imposed on veterinarians, in particular in France. Restrictions on accountants, in particular shareholding requirements in France, were also raised as were tariffs, in particular tariffs imposed on lawyers, architects and engineers in Greece. The ban on lawyers having more than one establishment in Greece was also flagged as a major problem for professionals. Several replies addressed the issue of reserve of activities. Examples included the reserve of activity in the case of training in crafts, which in France can only be provided by the Chamber of Crafts, and the reserve of activity in the case of real estate administrators in Spain.

By contrast, several replies to the consultation sent by representatives of regulated professions, in particular professional associations, stated that there were no unjustified or disproportionate requirements in their Member State.

7.2.3. Restrictions on multidisciplinary activities (Article 25)

Few replies addressed restrictions on multidisciplinary activities. However, several respondents raised the issue of restrictions on multidisciplinary activities for land surveyors (in France), tourist guides (in Italy) and veterinarians (in France).

7.2.4. Requirements for cross-border services (Article 16)

A great many replies addressed the requirements imposed on cross-border services. Many identified specific examples of requirements applicable to cross-border provision of services that respondents deemed to be either unjustified on the basis of the four reasons set out in Article 16 or as overly burdensome/disproportionate. In many cases, respondents also described lengthy and burdensome procedures. In several cases, respondents reported problems of duplication of requirements (i.e. where a requirement, such as a training obligation, is imposed both by the Member State of establishment and the Member State in which the service is provided including areas covered by EU instruments. Respondents considered that a multiplication of requirements should be avoided. Some respondents also expressed general concerns over the correct implementation of the Services Directive in this respect.

Requirements specifically mentioned include cross-cutting requirements, such as the LIMOSA system in Belgium and the RUT-register in Denmark.¹⁹⁷ Others concern a wide variety of different requirements applicable to many different services, for instance: prior

¹⁹⁷ LIMOSA is a mandatory declaration applicable to non-Belgian employers and self-employed person which intend to carry out temporary activities in Belgium. This declaration must be submitted electronically and in advance. RUT is a register where non-Danish service providers need to be registered before providing services in Denmark in respect of posted workers but also, according to one of the respondents to the consultation, soon to be applicable to self-employed non-Danish service providers.

authorisation procedures for scaffolding work (described as very stringent and burdensome in Denmark); mandatory safety training in the construction sector (Ireland, Luxembourg, Spain and the UK were mentioned as not taking into account training in other Member States); certification requirements for services provided by electricians, plumbers and heating installers (in Denmark and Sweden), waste management and restrictions to commercial communication for veterinarians. Many respondents addressed insurance obligations (e.g. for real estate services in Spain), travel agents (in general) and insurance in the construction sector (in France).

7.2.5. Relationship between other EU legislation and the Services Directive

A recurring concern raised by many respondents is the relationship between the Services Directive and other EU instruments. Several respondents considered that there is room for improving the application of certain EU instruments by national administrations and considered that the European Commission should provide clarification on the applicable rules in areas also covered by other EU legislation. Other EU instruments that were specifically mentioned include Directive 2005/36/EC on the recognition of professional qualifications; Directive 90/314/EEC on package travel, package holidays and package tours; Directive 2008/98/EC on waste and repealing other directives (Waste Framework Directive) and Regulation (EC) No 1013/2006 on shipments of waste.

ANNEX

THE REGULATORY FRAMEWORK APPLICABLE TO SERVICES IN THE EU

IMPROVEMENTS AFTER THE IMPLEMENTATION OF THE SERVICES DIRECTIVE

The regulatory framework applicable to services in the EU has improved considerably with the implementation of the Services Directive. This improvement is still ongoing as a number of Member States have not yet completed all the changes required to comply with the Directive¹⁹⁸.

In addition to adopting legislation implementing the general principles and provisions of the Directive in a horizontal manner, most Member States have undertaken a thorough examination of the requirements they imposed on service providers wanting to establish in their territory or wanting to provide services there on a temporary basis. Many Member States have abolished or modified requirements that were found to be discriminatory, unjustified or disproportionate. To illustrate the concrete results of this work, this annex presents a number of examples of important changes made as well as some of the sectors that are expected to benefit the most from these changes.

IMPROVEMENTS TO THE LEGAL FRAMEWORK APPLICABLE TO THE ESTABLISHMENT OF SERVICE PROVIDERS

Important progress has been made as regards prior authorisation schemes – one of the most common requirements imposed on service providers.

In those Member States where cross-cutting authorisation schemes are in place (i.e. schemes applied generally to service activities or at least to a high number of different service activities) a number of changes have been introduced to make them less burdensome. For instance, in **Slovakia** all authorisations covered by the Trade Licences Act have been replaced by declarations. **Malta** has replaced a good number of authorisation procedures under its general trading licence by declarations. So has **Hungary**, as regards the general authorisation scheme in the retail sector and the new act on individual entrepreneurs. Similar changes are pending in **Bulgaria** and have been announced by **Cyprus**.

Sector-specific authorisation schemes have been abolished or simplified in a number of key economic sectors.

For instance, in the retail sector there have been significant improvements in particular as regards the conditions for the opening of large and medium-sized retail establishments. "Economic needs tests" (such as the making of the granting of an authorisation subject to proof of the existence of a market demand) in authorisation regimes applicable to retail services have been eliminated in **Belgium, France, Italy and Spain**. **The Netherlands** have introduced in their zoning regulations an explicit prohibition of such practices. **Luxembourg** and **Greece** have announced similar changes to their existing authorisation schemes.

¹⁹⁸ On the basis of the information reported to the Commission by Member States themselves this is notably the case of Cyprus, Greece, Lithuania, Portugal and Slovenia where a high number of planned changes have been reported. Work also seems to be ongoing in countries like Austria, Bulgaria, Ireland, Latvia or Luxembourg.

Furthermore, some Member States like **France, Italy** or **Spain** have raised the thresholds above which retailers need to apply for an authorisation, thus facilitating the establishment of smaller retailers. In addition, the criteria for the granting of authorisations have often been clarified and/or simplified. Authorisation schemes applicable to the retail of specific products have in a number of occasions also been abolished, modified or replaced by declarations. The regulatory framework for other forms of retail such as itinerant sales (e.g. in **Germany, Italy, Latvia, Spain** or the **United Kingdom**) or franchises (e.g. in **Spain**) has also been simplified.

In the field of construction, a high number of authorisation schemes that were previously imposed on service providers have also been abolished or made less stringent. The examples are as varied as services in the construction sector are. For instance, changes in **Sweden** cover activities such as the inspection of lifts and other motor-driven installations and in **Hungary** activities such as energy efficiency certification or design of built-in fire protection installations. Of a more cross-cutting nature are changes such as those in **Latvia** where the obligation imposed on professionals working in construction activities to obtain a "builder's practice certificate" is being replaced by a registration obligation and those in **Bulgaria** where changes have been adopted in order to recognise registrations already made in another Member State. In **Portugal** a horizontal authorisation scheme imposed on several construction service providers has also been reported as in the process of being modified.

Other sector-specific authorisation schemes applying to very different service activities have been abolished or simplified in a number of key economic sectors and in a good number of different Member States. Besides construction and retail, the sectors of tourism and business services seem to have been among the main beneficiaries of this simplification.

Clearly, there has been a trend in a number of Member States to replace authorisations by declarations. **Italy** has established a general principle that all economic activities that previously required an authorisation (save in exceptional cases) can be started upon filing a simple declaration to the competent authorities; in **Hungary** more than 50 authorisation schemes have been replaced by declarations (for various activities ranging from tourist guides, private recruitment agencies to property management); in **Spain**, more than 30 authorisation schemes in the area of industrial services have been replaced by declarations (e.g. companies installing high voltage lines, high pressure equipment or lifting equipment), etc, etc. Administrative simplification efforts have also been directed to eliminate duplication of authorisations.

It is also important to stress that most Member States have by now incorporated in their national legal systems the principle of tacit agreement in the granting of authorisations, their unlimited duration or the recognition of their national validity.

Other changes in legislation affecting the establishment of service providers have been particularly important in the area of the regulated professions. A number of legal form requirements (such as the obligations imposed on providers of certain services to operate as natural persons or under specific legal forms) have been abolished or made less stringent: for example, in **Poland** for the legal professions and tax advisers, in **Germany** for architects and engineers and in **France** for accountants. Other activities benefiting from this type of changes include recovery of debt services in **Belgium**, real estate agents and accountants in **Denmark**, travel agents in **Spain** and itinerant sales in **Italy**. Similar changes are pending in **Portugal, Estonia** or **Lithuania**. Equally burdensome for the regulated professions are capital ownership requirements (such as the obligations to have a specific qualification in order to hold capital, thus limiting the amount of capital that can be held by third parties). These have

been made less stringent in several cases. Important changes, due to their cross cutting nature, have been adopted to raise the amount of capital that can be owned by third parties (i.e. non-professionals) in companies providing professional services for instance in **France** or in **Spain** (in both countries such external participation in capital can now go up to 49%). Other important changes related to shareholding restrictions are pending, for instance in **Luxembourg** for crafts.

Minimum capital requirements (i.e. the obligation to have a minimum amount of capital in order to start an activity) have also been abolished in a number of Member States, notably in the tourism sector, for instance, for travel agencies in **Spain** or **Belgium** (similar changes, covering car rental too, are pending in **Portugal**). Quantitative and territorial restrictions (for instance, requirements fixing the number of providers according to population or through a minimum geographical distance between them) have also been abolished - or are in the process of being abolished – in a number of cases. This has been done as regards activities as varied as the establishment of petrol stations in **Italy** and **Spain**, travel agencies in **Italy** or the services of ski schools in **Austria**. Similar changes have been notified as pending in **Cyprus**, **Greece** and **Portugal**. A similar type of restriction - bans on having more than one establishment - have been abolished in some **Italian** and **Austrian** regions for ski instructors or in **France** for veterinaries, while their abolition is pending in **Greece** for employment agencies.

Important progress has been made as regards compulsory tariffs. In some cases, this has led to a complete abolition of all tariffs such as in the case of **Malta**. In others, changes affect all tariffs for specific types of service activities such as in the case of **Italy** where all legislation providing for compulsory fixed and minimum tariffs as regards liberal professions has been repealed or in the case of **Spain** where professional associations are no longer allowed to set up indicative tariffs (and where compulsory tariffs had already been abolished). Tariffs have also been abolished for specific services such as architect services in **Belgium**, veterinary services in **Romania**, employment agency services in **Ireland**, waste management services in **Belgium**, catering services in **Hungary**, and tourist and mountain guide services in **Italy**. **Germany** has abolished tariffs for some of the services provided by architects. A general reform to eliminate tariffs applicable to several regulated professions is pending in **Greece**.

Finally, obligations to exercise an activity exclusively or restrictions on exercising the activity jointly or in partnership have also been abolished, for instance in **Belgium** and **Spain** for travel agencies, in **Cyprus** for real estate agents and building contractors or in **France** for auctioneers. In some cases they have been significantly lightened such as in the case of **Poland** for advocates, legal advisors, tax advisors and patent agents.

IMPROVEMENTS TO THE LEGAL FRAMEWORK APPLICABLE TO THE CROSS-BORDER PROVISION OF SERVICES

Many Member States have made important changes aiming at lifting unjustified barriers to the provision of cross-border services into their territory. The inclusion of “free movement clauses” in the new horizontal laws or in sector-specific legislation should greatly improve the situation of business and self employed wanting to provide services across borders.

These general clauses have been often accompanied by further modifications in existing legislation. As a result, most of the remaining establishment requirements (i.e. requirements obliging the service provider to be established in the country before it can provide the service) have been abolished. Some of the changes, such as those in the commercial code in **Portugal**,

are particularly relevant because of their cross-cutting nature. Specific establishment requirements have been abolished for services in important sectors such as the construction and maintenance sectors (for instance in **Austria** or **Germany**), the tourism sector (in **Belgium**, **Spain** or **Slovenia**), the business services sector (such as for interpreters and translators in **Germany**) or regarding inspection services (**The Netherlands**). Plans aiming at abolishing establishment requirements remaining in different sectors (such as land surveying activities or property and business assessment services) exist in **Slovenia** and **Lithuania**.

Prior authorisations imposed on those that want to provide cross-border services have also been removed. Again some of these changes are particularly important due to the cross cutting nature of the laws they modified or their large scope. For instance, in the case of the changes to the Foreign Branches Act in **Sweden**, to the obligation to obtain a trade licence in the **Czech Republic**, to the Trading Licence Act in **Malta**, to the National Court Register and the Register of Business Activity in **Poland**, and to the general business registers in **Belgium**. Changes of a similar nature have been adopted in **Bulgaria** and **Slovenia** for crafts, in **Estonia** for construction and related activities, in **Germany** for itinerant sales. **Portugal** has reported that the general authorisation scheme for construction activities is in the process of being modified. In **Cyprus** the special permit imposed on cross-border providers of construction services is being abolished.

In addition, authorisation schemes existing for specific service activities have been removed or made non-applicable for cross-border services (in some cases they have been replaced by notification requirements) in important sectors such as the construction sector, the business services sector, the tourism sector, the education sector or the services of the regulated professions. Services as diverse as building contractors, gas installation services, property developers, engineering consultancies, patent agents, travel agencies, tourist guides, distant sales, auctioneering, real estate agents, recruitment services, driving instructors, car rental, commercial agents or services of foreign higher education institutions or of vocational training can now be provided across the borders in a majority of Member States without being imposed a prior authorisation.

A number of notification requirements imposed on cross-border service providers have also been abolished. Some of these changes are again particularly important due to their cross-cutting nature such as the removal of the horizontal notification scheme for cross-border service providers in the trade law in **Germany**.

Other types of requirements applied to cross-border services have also been abolished. For instance **Denmark** has made requirements limiting the use of certain marketing methods (such as the use of vouchers and prize competitions) not applicable to cross-border retailers providing services in their territory. **Sweden** has reported that the law on contractual terms between traders, the obligation to provide guarantees for trips other than package tours, and certain rules on distant/doorstep selling/off-premises sales do not longer apply to cross border service providers. Tariffs have been abolished in **Germany** for architects and engineers providing services from an establishment in another Member State. An obligation to have a financial guarantee for professionals wanting to exercise real-estate activities in **France** has been modified in order to impose it only on certain types of activities. The **United Kingdom** has abolished the obligation to have an address in its territory that was previously imposed on providers from other Member States wishing to provide cross-border services in this country. Also obligations on the use of equipment or insurance obligations have been modified in a number of areas to, at least, take account of requirements complied with by the service provider in the country of establishment.