

# Services Directive (2006/123/EC) - Implementation in Malta

Ministry of Finance, the Economy  
and Investments

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# Objectives of the Directive

- To facilitate the freedom of establishment (Art. 43. EC) and the freedom to provide services across borders (Art 49 EC) by obliging Member States to remove illicit or (unjustifiable) legal and administrative obstacles.
- Consequently, the directive imposes both legislative and procedural obligations (e.g. the setting up of the electronic point of single contact- PSC) to facilitate the freedom of movement of services and service providers.

# Scope of application



- All services' sectors fall within the scope of the Directive except those that are specifically excluded under Art 2 of the directive.
- Exclusions: Services of general interest (non-economic), financial services, transport services, telecommunication services, healthcare, gambling and betting, temporary work agencies, notaries, areas of taxation, private international law, criminal law, or labour law
- It complements other directives such as the Professional Qualifications Directive concerning regulated professions.

# Main obligations - legal

- All authorisation schemes must be justified by reasons of public interest (removed or replaced by less restrictive means such as ex-post notification).
- When authorisations are retained: they must be proportionate and applied indiscriminately
- Term must be indefinite, unless automatically renewed (subject to continued compliance) or where number of licences is limited.
- Member States cannot require a national licence when the service provider is already established in another Member State and wants to provide services temporarily in Malta



# Main obligations - procedural

- Simplify procedures as much as possible
- Non-duplication of requirements
- Set up point or ‘points of single contact’ through which all procedures and formalities can be completed by an applicant
- It should be possible for an applicant to complete all these formalities via electronic means
- Information on legal and procedural requirements must be made available through e-means
- Assistance to both service provider and consumers

# Other obligations



- MS must remove prohibitions of commercial communications and multi-disciplinary practices on regulated professions unless justified in conformity with relevant Community rules
- Mutual assistance between competent authorities through the Internal Market Information System (IMI)

# Reporting obligation

- As per Art 39 of Directive, by 28 December 2009 Member States are obliged to report to the Commission and other MS on:
  - The retained authorisation schemes and their justification (art. 9 of the directive),
  - For each scheme, the requirements that have been assessed and retained and their justification (art. 15 of the directive),
  - Any retained prohibitions on multi-disciplinary practices (art 25 of the directive)
- Member States will have 6 months to review reports from all MS and then these will be adopted (or not) through Comitology procedure

# SERVICES DIRECTIVE in practice

- The Services Directive aims to facilitate life for businesses providing or using services in the European Union.
- Therefore, most of the provisions effect the Member State's administration and not the Businesses, although some requirements are meant to promote the interests of service recipients – the consumers.



# Application of the Directive

## Establishment of a business

- Cases in which an individual business/ entrepreneur or a company wants to set up a permanent establishment in another Member State or in its own Member State (through a subsidiary or a branch).

For example: a Restaurateur from Malta who wants to establish a similar business in Hungary, or a Spanish retail company which wants to set up a new retail store in its own country



# Application of the Directive

## Cross-border provision of services

- Concerns cases in which a business already established in a Member State wants to supply services across borders, on a temporary and occasional basis in another Member State, without setting up a permanent establishment there.

For example, an English teacher who travels to Spain to give an English (TEFL) course during summer; or an event organiser from Italy who organises an open air festival in Malta.

# Benefits for Business

Business should be able to:

- Easily offer services in other EU countries
- Test new EU markets without having to set up a business there
- Set-up a new business or a branch under simpler and faster procedures
- Obtain information and complete procedures through one single place in each country (the «Points of Single Contact»)
- Gain easy access to a larger range of services (B2B)

# How is setting up and running a business made easier in practice?

- Simpler procedures, less paperwork - EU countries are obliged to simplify procedures applicable to services activities (for example, set clear and short deadlines, eliminate or simplify formal requirements to submit original documents or certified translations), they must abolish unjustified or too burdensome authorisation procedures or replace them by less restrictive means – such as simple declarations.

## «Points of Single Contact»

- in every EU country – a single place where one can obtain information and complete procedures –
  - all procedures will be channelled through Points of Single Contact - accessible via internet, providing clear and exhaustive information for businesses. The Points of Single Contact will allow for the completion of procedures necessary to do business (such as registration in commercial or professional registers, obtaining permits/licenses, submitting notifications etc.) and receive all decisions, permits etc. at a distance by electronic means.

- **Banned requirements** - discriminatory or particularly restrictive requirements have to be removed in all countries. They include for example nationality or residence requirements, “economic needs” tests (requiring businesses to carry out market assessments to «prove» to the authorities that there is a demand for their services), involvement of competitors in the granting of authorisations, obligations to obtain financial guarantees or insurance from operators established in the same country, etc.

# Implementation in Malta

Lead Ministry MFEI:

Through an inter-ministerial group (7 ministries) and the involvement Competent Authorities (20) which started work in Jun 07, legislation was identified, screened and amendments to primary Acts drafted into the Services (Internal Market) Bill

The Commission's Internal Market Information System (IMI) is being coordinated by the Commerce Division which is receiving training as well as providing training for the Competent Authorities

# Electronic Point-of-Single Contact (PSC)

- Tender for the electronic platform and eForms based system is being adjudicated - MITA
- Information component for PSC is being provided by the Competent Authorities) – coordinated my MFEI
- Will be having back office support which will be part of the remit of a Business Support Centre
- Does not restrict applicants from seeking help and information directly from the Competent Authorities

# The Services (Internal Market) Bill

Parts I to VI of the Omnibus Act

Horizontal legislation that transposes the general framework and obligations of the Directive;


- Will take precedence over specific Acts in aspects covered by the Directive;

- Provides a safeguard in case the screening and amendments missed legislative areas;

- Will apply to all service areas falling under the Directive, even in areas where Malta does not regulate and thus ensures compliance with the directive;

- **HOWEVER**, it does not relieve Malta from the obligation to remove/abolish incompatible provisions from national legislation.

# Services (Internal Market) Bill directly implements:



- All the requirements of the Directive concerning authorisation schemes as obligations on Competent Authorities (Art 5 and 6 of the Bill);
- Provisions obliging Competent Authorities to provide information and assistance to applicants, service providers and recipients (through the point of single contact and by e-means) (Art 7 of the Bill)
- Provisions concerning supervision of providers and services and obligations on mutual assistance with other MS (Art 8 of the Bill)
- Rights of recipients – designates the entity responsible for consumer affairs with the monitoring and enforcement of this obligation (Art 9 and 10 of the Bill)

# Amendments to other Primary Acts

(Parts VII to XXII of the Bill)

- The amendments deal only with obligations of the Directive, even when other Primary Acts are subject of other separate reforms currently underway (such as in Transport and Education);
- Though generally a minimalist approach has been adopted (not going beyond the requirements of the Directive) compliance to be achieved in legal implementation will be adequate only when the relevant subsidiary legislation is amended as necessary – process currently underway with individual Ministries

# List of Acts to be amended by the Bill:

## *Trades*

- Code of Organisation and Civil Procedure (Cap.12)
- Commercial Code (Cap.13)
- Traffic Regulation Ordinance (Cap. 65)
- Postal Services Act (Cap. 254)
- Control of Tattooing Act (Cap. 270)
- Doorstep Contracts Act (Cap. 317)
- Education Act (Cap. 327) (Schools)
- Malta Transport Authority Act (Cap. 332)
- Employment and Training Services Act (Cap. 343)
- Malta Travel and Tourism Act (Cap. 409)
- Malta Resources Authority Act (Cap. 423)
- Trading Licences Acts (Cap.441)

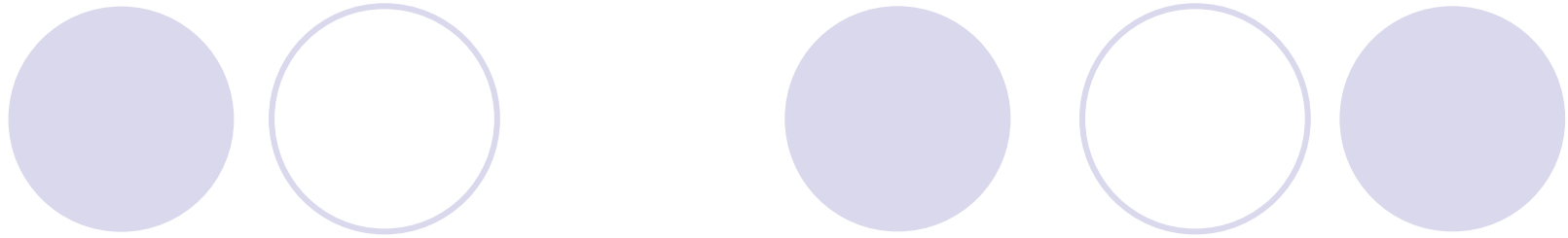
List of Acts to be amended by the Bill:  
*Professions*

- Accountancy Profession Act (Cap. 281)
- Education Act (Cap. 327)(Teachers)
- Cultural Heritage Act (Cap. 445)
- Periti Act (Cap. 390)
- Engineering Profession Act (Cap. 321)
- Veterinary Services Act (Cap 437)



Deadline is 28 December 2009

- Bill to be presented in Parliament after summer recess.
- Competent Authorities and Ministries still drafting subsidiary legislation. Need to finalise as early as possible because of the reporting obligation
- Report to the Commission on the licensing schemes retained, requirements etc.
- Participate along with other MS in the mutual evaluation.
- Get the Point of Single Contact up and running and continue improving the services offered.
- Ensure IMI working properly.



**THANK YOU**

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