

Malta closes EU negotiations on free trade in services

Free trade in Services: What does it mean?

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Basic part of the EU market

Free trade in services goes hand-in-hand with free trade in goods. Services are becoming an increasingly important economic activity. This is also very much the case in Malta where services already dominate the economy.

Free trade in services, or free movement of services is another “freedom” that lies at the basis of the EU. Accepting and applying this principle is therefore very much a pre-condition for those countries, such as Malta, that want to join the EU.

What does free trade in services mean?

By free trade in services we mean that any person or company established in the EU has the right to offer services anywhere within the EU. No restriction is permitted unless this is justified in certain exceptional cases. And there can be no discrimination against a national of one EU country in favour of another simply on the grounds of nationality.

For instance, a bank or an insurance company that are established in one EU country may want to offer their services in another EU country. This is possible and cannot be restricted. The same applies for any other type of services.

What is meant by freedom of establishment?

The right of establishment is another right that is given to all EU citizens. They are entitled to take up and pursue activities as self-employed persons as well as set up and manage other commercial activities such as companies in any EU country. Hence the term “establishment”.

The difference between free movement of services and the right of establishment is usually related to duration. In the first case, services are offered on a one-off or temporary

Malta's Negotiations on Free Movement of Services

Screening of laws	October 1999
Negotiations opened	May 2001
Negotiations provisionally closed	June 2001

Special arrangements	Requested	Obtained
Port Workers	Transitional period to allow for phasing out of inheritance scheme	Withdrawn: No longer necessary



basis by an individual or company that remains based in its own country rather than setting up shop in the country where it offers the service. In the case of freedom of establishment, the individual or company actually moves to another country and establishes itself there on a more permanent basis. Both possibilities are allowed under EU law.

What services does it apply to?

The economic activities that fall within the scope of the meaning of 'services' include all types of services which are rendered as an economic activity, whether of an industrial or commercial character, craftsmen and professionals. To give a few examples, design and marketing services, computer and internet-related services, telecommunications, professional services and consultancy. All these qualify under services. In addition, there are a number of EU laws which specifically regulate free trade in financial services, in particular, banking, insurance, investment services and securities markets.

Implications of free trade in services

In each case, the implications of EU membership will be free trade in services and therefore more competition in the provision of services both for local operators who are in

Malta and for local operators that want to penetrate the EU market. So far, the EU market was not open for Maltese service providers. This will change upon membership and Maltese firms will be able to offer their services abroad. Equally foreign firms will be able to offer their services in Malta.

As with free trade in goods, more competition will present threats and opportunities for local services providers. And it will also present consumers with the benefits of competition, namely, wider choice, better quality and cheaper prices. This has already been experienced in Malta with the introduction of competition in the mobile telephony services sector.

EU rights and national law

When an individual or company offers services or establishes itself abroad, this must be done in accordance with the national laws that apply in that country. This means that the individual or company must respect the laws in that country whether those relating to registration, licences, taxation or social security. Free movement does not mean free for all. It simply means that EU citizens or companies have a right to operate on the same basis as individuals or companies in that country.

Setting up in Malta

Upon membership, just as it would be possible for Maltese individuals and Maltese companies to offer services or establish themselves in other EU countries, so too will it be possible for EU citizens to set up in Malta. Yet, again, setting up in Malta will have to be done in accordance with Maltese national laws.

This right is somewhat of a concern for some Maltese small businesses that fear an influx of foreign businesses once Malta joins the EU that would throw them out of business whether because of their size or because of their numbers. Yet, whereas the right to set up will be there, one must also bear in mind that in most areas, the local community is already well-served by businesses. For instance, the retail trade is already saturated and fierce competition already exists both among the smallest retail shop operators as well as with large super-market-style operators. In this sense, competition is much tougher in Malta than in current EU countries where the market is larger and where the proportion of businesses is lower. Much the same applies with regard to hawkers (monti) where fierce competition already exists locally and any foreign penetration, if it comes about, will hardly add to competition.

Another concern is that foreign operators may operate freely and outside the scope of the law whereas local operators have to shoulder the burden of local bureaucracy and taxes. This concern is supported by a relatively poor record in enforcement with respect to foreign traders that operate in Malta illegally. Again, EU membership will not give a free hand to foreign traders to operate illegally. Nor will it make legal what today is illegal. Stricter enforcement of laws will be required in order to ensure that no foreign traders set up shop in Malta without registering in accordance with the laws on the same lines as local operators.

Trade licences

One of the problems faced by local business operators is the cost of bureaucracy with businesses having to put up with a maze of government controls, permits, licences and having to deal with different government departments in each case. Although, trade licensing is a purely national and not EU matter, Malta is currently taking steps to revise the situation and introduce a new law which should streamline trading licences into a simplified structure. EU membership



does not mean that Malta will have to do away with the licensing system. Quite the contrary, national licensing requirements must be respected by foreign operators that may be interested in setting up shop in Malta.

Nor does EU membership mean that Malta needs to liberalise the licensing of business activities where these are restricted in number. Licensing of pharmacies is a case in point. It is up to national authorities to decide on this and to limit or liberalise licences. However, if new licences are available, then there can be no discrimination between Maltese applicants and EU nationals.

Port workers

One of the issues that came up during negotiations in the area of free trade in services was that of local port workers who still hold a right to pass on their exclusive permit to their descendants, by inheritance. Inheritance rights have no longer been given for around the past decade. The issue concerned those who still had this right and whether they will be able to retain it in view of EU law.

On this point, Malta had originally requested a transitional period to allow for the phasing out of the inheritance scheme applicable to the port workers' pool. This request was subsequently withdrawn when it was agreed that Malta would introduce competitive recruitment for new vacancies while preserving the legitimate expectations of existing port workers. Thus, the scope of the original request could still be attained without the need to negotiate a transitional period.

Free trade in financial services

In order to have a functioning single market in financial services, there was need of some degree of harmonisation in all EU countries with respect to the laws and practices governing, for example, access to banking activity. It would have been unfair if it had been otherwise since it would have meant that banks operating under poor regulatory standards would be able to compete with those who live up to high standards in the interests of consumers.

For this reason, a number of EU laws were adopted on different financial services sectors and a series of standards were introduced for any company to operate in these sectors. These standards are, in the main, intended to protect the legitimate interests of consumers and investors when dealing with financial services companies.

Malta's financial services laws were overhauled in 1994 and now largely reflect EU standards in this field. The same made

be said of Maltese practices in these areas since local companies already operate under very strict regulatory and supervisory conditions.

Banking

In the EU there is the concept of the single licence or single "passport" which allows banks and other credit institutions to set up branches and offer services throughout the Community. Not any bank may set up shop in other Member States. It very much depends on whether it satisfies the necessary conditions in the country in which it was set up, although all EU countries now have common standards relating to important issues such as how much capital it has (there are minimum levels established) and whether it has sound administrative and accounting procedures.

EU law also facilitates ongoing cooperation between national supervisory authorities, that is, those national authorities that regulate and supervise the conduct of banking companies.

The country that issues the banking licence will normally be responsible for supervising a bank even if it is operating in another Member State. Mutual recognition of the standards followed in other EU countries also plays a substantial role. The national supervisory authorities have to be aware and accept the rules and regulations of the countries of origin of the banks operating in their territory. This is known as "home country control". National authorities will still be responsible for day-to-day control over all banks, even foreign ones, operating in their territory. This is where strong coordination with other financial services authorities in other EU countries will be very important.

Banking regulators in Malta

In Malta, there are two supervisory authorities in the area of banking. These are the Central Bank of Malta and the Malta Financial Services Centre (MFSC). Because of the 1994 changes, Maltese banking laws were already very much in line with EU standards and therefore needed no particular negoti-





ation between Malta and the EU. One point that needed clarification related to Malta's offshore banking operations - currently there are four offshore banks - which will be phased into full compliance with EU law in time for membership.

Insurance

The internal market in insurance activities means that insurance undertakings are free to carry out their activities in any EU country of their choice. This gives EU citizens access to the widest possible range of insurance products on offer in the EU, while at the same time guaranteeing them the legal and financial protection when dealing with an insurance company. As with banks, a consumer does not need to worry about the reputability of an insurance company that operates in his or her country because there is a guarantee that, as a minimum, it would be following EU regulatory standards.

EU law also guarantees that an insurance company authorised to operate in any of the Member States can pursue its activities throughout the EU both by setting up permanently in another country or by staying put but offer services abroad.



EU law in the area of insurance covers quite a good number of practices such as margins of solvency, localisation of assets guarantee and minimum guarantee funds, accounting procedures, life and non-life insurance, motor vehicle insurance and more.

Insurance in Malta

In Malta, national laws in the insurance sector are rather recent and already reflect EU laws. Malta's national authority responsible for the insurance sector is the MFSC which has already set for itself a track record for high standards. What remains to be done is, of course, the full application of the single passport which will allow Maltese companies the right to offer services abroad and vice versa. Clearly, this can only happen upon membership.

Investment Services and Securities Markets

Maltese law in this area includes the Investment Services Act, the Malta Stock Exchange Act and their subsidiary legislation. These are mainly in line with the EU legislation.

Personal Data Protection

In today's e-world there is growing concern for the protection of personal data, more so when it comes to cross-border services. The EU has a specific law on the protection of individuals with regard to the processing of personal data while allowing the free movement of such data. This will be incorporated into Maltese law by the end of this year. Moreover, Malta will accede to the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

Information Society Services

EU laws in this area include the legal protection of information society services, computer misuse, electronic signatures, establishing a pan-European network to coordinate and the need to facilitate the exchange of information and certain technical standards. Malta will be adopting EU standards in this area by 2001.

Malta's official negotiating position paper on this area is also available free-of-charge from MIC or from its web site: www.mic.org.mt



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