

**Subject: Report on the Implementation of Directive 2006/123/EC in the EFTA States**

## **1 Introduction**

Directive 2006/123/EC on services in the internal market (“the Directive”)<sup>1</sup>, which entered into force in the EEA/EFTA States on 1 May 2009, is the central piece of legislation on which to build a truly integrated EEA market for services. The aim of the Directive is to codify existing rules regarding intra-EEA trade in services, as they have developed in the case law of the EFTA Court and the Court of Justice of the European Communities. Furthermore, the Directive creates an infrastructure for the exchange of information between the relevant EEA State authorities and service providers. This includes the expansion of the Internal Market Information system (IMI), as well as the setting up of Points of Single Contact, to which cross-border service providers can turn in order to receive relevant information concerning the markets in which they wish to offer their services.

Moreover, the Directive has required a high level of cooperation between all the EEA States in order to ensure its efficient implementation. Until 28 December 2009, the EEA/EFTA States spent significant time and resources in order to screen their domestic legal orders for any requirements that had to be removed and/or reported under the Directive.

During 2010, the EEA/EFTA States have collaborated closely with the EFTA Surveillance Authority (“the Authority”), the EU States and the European Commission in order to complete the mutual evaluation requirements foreseen by the Directive. This process was effectively brought to a close on 15 October 2010 with a seventh and final plenary meeting.

In this report, the Authority aims to summarise and evaluate the implementation work carried out by the EEA/EFTA States. In accordance with the relevant provisions of the Services Directive, the Report was submitted to the EFTA Services Committee, whose advisory opinion was welcomed by the Authority and carefully considered.

## **2 The scope of the Report**

In accordance with Article 39(4) of the Directive, the content of the reports submitted by Iceland, Liechtenstein and Norway will be summarised below. These reports contain the information specified in Article 39(1) and (5) of the Directive. This information includes authorisation schemes as defined in Article 9(2) of the Directive, requirements to be evaluated under Article 15(5) of the Directive, restrictions on the freedom to provide

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<sup>1</sup> Incorporated in the EEA Agreement by Joint Committee Decision 45/2009 of 4 April 2009, as adapted to the EEA Agreement by Annex X.

services under Article 16 of the Directive and multidisciplinary activities under Article 25(3) of the Directive.

This Report first briefly summarises the content and structure of the implementation process under the Services Directive, before the attention is turned to what was reported by each EEA/EFTA State. The emphasis here is on the issues that the Authority considers to be of primary importance. Certain issues that the Authority is aware of but which the relevant State has omitted to report are highlighted.

Following the summary of the reporting, the responses to the public consultation will be accounted for. Finally, the Authority will provide its own summary and conclusions based on the implementation work.

### **3 The implementation process**

During 2010, the EEA/EFTA States worked in close cooperation with the Authority, as well the European Commission and the EU States, in order to ensure effective implementation of the Directive. In particular, the EEA/EFTA States participated on equal terms with the other EU States in the mutual evaluation process, as prescribed by Article 39 of the Directive. All the EEA/EFTA States participated actively in the implementation process.

The mutual evaluation was based on the screening by the EEA States of their domestic legal orders, which was carried out in order to identify authorisation schemes and other trade restrictive practices as outlined in Article 39 of the Directive. Once such practices were identified, the EEA/EFTA States were obliged to either remove them or report them, along with the relevant justifications, to the Authority by means of the IPM database.<sup>2</sup> This process was completed by the EEA/EFTA States by 28 December 2009.

During the first quarter of 2010, all the EEA States were divided into six “clusters”, each consisting of five States. In the clusters, the details of the reported legislation were analysed and discussed in detail by the cluster members. In this process, Iceland and Norway participated in a cluster with Denmark, Germany and Poland. Liechtenstein participated in a cluster together with Belgium, France, Luxembourg and the Netherlands. Each cluster produced a summary report of the notified legislation, arranged by sector.

Following the conclusion of the “cluster-phase” in March 2010, all the EEA States continued to analyse and discuss the results of the screening process in seven plenary sessions, which were chaired by representatives of the European Commission. The “plenary-phase” was concluded in October 2010.

In July 2010, the Authority launched a public consultation of the results of the screening. The public consultation was closed on 20 September 2010. Two responses were received.

## **4 The reporting obligations**

### **4.1 Iceland**

#### *4.1.1 The main changes following the screening process*

Iceland has reported that a number of authorisation schemes have been amended as a consequence of the screening process. In particular this relates to the removal of residence requirements for travel agencies, tour operators, car salesmen and rentals, book keepers,

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<sup>2</sup> [http://ec.europa.eu/yourvoice/ipm/index\\_en.htm](http://ec.europa.eu/yourvoice/ipm/index_en.htm).

rental agencies, and operators of restaurants, accommodation facilities and entertainment. Furthermore, time limits as regards authorisations for electricians have been removed.

Iceland's report consisted of a total of 103 entries. Of these 60 entries concerned authorisation schemes under Article 9 (establishment), 11 related to requirements evaluated under Article 15 and 30 entries were reported under Article 16 (free movement of services). Iceland has reported no restrictions on multidisciplinary activities as defined in Article 25.

#### 4.1.2 Article 9

Iceland has stated that no horizontal authorisation schemes exist, i.e. all the notified schemes are limited to applying in specified service sectors.

Examples of Icelandic authorisation schemes include:

- Licenses for the sale and serving of alcohol
- Licenses for the sale of accommodation
- Licenses to operate camping and trailer sites
- Licences in order to organise temporary events
- Licenses to service cars
- Licences for driving schools
- Various authorisations in the tourism sector
- Various authorisations in the child care sector
- Various authorisations for car rental and the sale of used cars
- Special licences relating to the construction and design

Iceland has not specified which exact justification ground motivates the individual restrictions. Instead all of the 68 notified authorisation schemes are considered to be justified with reference to public security, public safety, public policy and/or public health, often in combination with other justification grounds, such as protection of consumers or protection of the environment. Because the justification grounds have not been sufficiently specified it is often difficult to discern the real motivation behind the notified schemes.

Furthermore, Iceland has not provided specific proportionality assessments in each case, but has instead included a general statement, which holds that the authorisation scheme in question is justified on the grounds of an overriding reason in the public interest and that less restrictive measures would not suffice. It is the view of the Authority that the proportionality of a measure by its very definition needs to be considered on a case-by-case basis. Therefore the Authority finds it questionable whether Iceland has provided adequate assessments of the proportionality of the reported measures.

#### 4.1.3 Article 15

9 of the 11 restrictions notified by Iceland under Article 15 concern the reserve of activity for certain providers based on the specific nature of the activity, i.e. the issues covered by subsection (d) of Article 15. Such restrictions concern, driving school instructors, home child care providers, explosion managers, pest control operators, car salesmen, as well as various professions in the construction sector.

As is the case in relation to Article 9, the justification grounds invoked by Iceland under Article 15 are very broad. Furthermore, the proportionality assessments provided consist of a mere statement to the effect that since the measures aim at achieving a legitimate objective, they are proportionate.

#### 4.1.4 Article 16

All requirements notified under Article 16 of the Directive were also notified under Article 9 of the Directive. Iceland has stated that no requirements exist that are directed only toward cross-border service providers.

As was the case in relation to Articles 9 and 15, the justification grounds invoked by Iceland under Article 16 are very broad. Similarly, the proportionality assessments provided are generally non-specific.

#### 4.1.5 Article 25

Iceland has reported no restrictions on multi-disciplinary activities.

#### 4.1.6 Prohibited requirements

At present, the Authority is not aware of any prohibited requirements as described in Articles 14 and 19 being in force in Iceland.

### 4.2 Liechtenstein

#### 4.2.1 The main changes following the screening process

Liechtenstein has stated that it has, or is in the process of, implementing six main changes to its legislation as a consequence of the screening process. Five of these changes include the removal of residence requirements for lawyers, patent lawyers, trustees, auditors and animal traders.

Liechtenstein's report consisted of a total of 67 entries. Of these, 45 entries concerned authorisation schemes under Article 9 (establishment), 9 related to requirements evaluated under Article 15, 11 concerned restrictions under Article 16 (free movement of services) and 2 related to Article 25 (multi-disciplinary activities).

#### 4.2.2 Article 9

Liechtenstein employs a horizontal authorisation scheme which applies to all service providers who wish to establish themselves in Liechtenstein. This scheme is contained in the Trade Act.<sup>3</sup> Under the provisions, the applicant has to show that he or she has the personal qualifications (EEA citizenship, capability to act, good character and repute) as well as the appropriate business premises. With regard to services that may have implications on public health or safety, the applicant also has to have the appropriate professional qualifications.

According to the Liechtenstein report, the horizontal scheme is necessary in order to protect the recipient of services. The proportionality assessment provided is general and only states that *a posteriori* inspection would take place too late to be effective.

It is the view of the Authority that the scope of the horizontal scheme is so wide that the necessity of the measure may be questioned. Furthermore, the proportionality of a measure by its very definition needs to be considered on a case-by-case basis. Therefore the Authority finds it questionable whether Liechtenstein has provided adequate assessments of the necessity and the proportionality of the reported measure.

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<sup>3</sup> Articles 7 and 8 of Gewerbegesetz vom 22 Juni 2006.

Furthermore, some services activities must be authorised under other legislation than the Trade Act. This includes authorisations for e.g. architects and engineers, working site coordinators, electrical installations, veterinaries, lawyers, patent lawyers, trustees, auditors.

In all the above-mentioned cases, the same short sentence has been supplied as an explanation as to the proportionality of the measures. As stated above, the Authority questions whether this is a satisfactory explanation of the necessity and the proportionality of the measures in question.

#### *4.2.3 Article 15*

Of the nine requirements notified by Liechtenstein, five relate to the shareholding of a company (subsection (c) of the Article), three relate to an obligation for a provider to take a specific legal form (subsection (b) of the Article) and one relates to fixed tariffs. Various general justification grounds have been provided for the restrictions. The proportionality assessments are, as was stated above in relation to Article 16, of a particularly general character.

#### *4.2.4 Article 16*

According to Article 20 of the Trade Act, Liechtenstein maintains a horizontal notification scheme for all providers of cross-border services falling under the Trade Act.

Furthermore, Liechtenstein bans trustees, patent agents and providers of legal services that are providing temporary cross-border services from setting up formal chambers in Liechtenstein, although it does not restrict them from setting up the infrastructure needed to carry out cross-border services.

Finally, Liechtenstein requires an authorisation by cross-border service providers who wish to install low voltage equipment in Liechtenstein.

As in the case discussed previously under Article 16, the justifications and the proportionality assessments in support of the measures under Article 16 are particularly general.

#### *4.2.5 Article 25*

The two notifications under Article 25 relate to the provision of legal services in Liechtenstein. The provisions establish that partners of law firms need to be registered lawyers and that the activities of law firms are limited to providing legal advice, procurement in legal matters and asset management of the law firm.

#### *4.2.6 Prohibited requirements*

At present, the Authority is not aware of any prohibited requirements as described in Articles 14 and 19 being in force in Liechtenstein.

### **4.3 Norway**

#### *4.3.1 The main changes following the screening process*

Norway has stated that four main amendments to its legislation followed from findings during the screening process. First, the requirement that real estate agents must have a specific legal form in order to provide their services was abolished. Second, the obligation for debt collectors to have a Norwegian authorisation and to be registered in Norway was lifted as far as undertakings providing cross-border debt collecting services on a temporary basis in Norway are concerned. Third, the conditions for granting an authorisation for

trade in used goods have been clarified. Finally, time limits were set for the processing of several types of application for authorisations.

Norway's report consisted of a total of 78 entries. Of these, 40 entries concerned authorisation schemes under Article 9 (establishment), 3 related to requirements evaluated under Article 15, 28 concerned restrictions under Article 16 (free movement of services) and 7 related to Article 25 (multi-disciplinary activities).

#### 4.3.2 Article 9

Norway has stated that no horizontal authorisation schemes exist, i.e. all the notified schemes are limited to applying in specified service sectors.

The following authorisation schemes have been considered most significant by Norway:

- Licence to serve and sell food
- Licence to serve and sell alcohol
- Authorisation to assume responsibility and be in charge of building projects
- Authorisation as a real estate agent
- Authorisation as an accountant
- Authorisation as an auditor
- Authorisation to install and supervise electric installations
- Auto repair shops
- Driving schools

In the overwhelming majority of cases, the justifications for the authorisation schemes related to the protection of human and animal health and consumer protection. In view of the Authority, many of the schemes may be justified with reference to such overriding objectives relating to the public interest. However, with regard to some schemes, for example the authorisation scheme for assuming responsibility for construction projects, the Authority has received complaints and is currently assessing the proportionality of the measures. Furthermore, the Authority is aware of authorisation schemes falling under Article 16 that were not notified. These include mandatory authorisations for undertakings offering lift inspection services.

#### 4.3.3 Article 15

The three requirements notified by Norway under Article 15 all relate to restrictions on the shareholding of a company (i.e. subsection c of Article 15.2). The notified requirements consist of *inter alia*:

- Only persons performing substantial professional activity in a law firm may own shares or have a seat on the board of directors in that firm.
- To obtain authorisation for debt collection, it is required that an owner with substantial ownership in the undertaking is considered qualified to ensure that the undertaking is operated in accordance with the relevant laws and regulations.
- In order to operate a real estate agency, it is required that a partner or shareholder with a substantial owner interest in the undertaking is considered qualified to ensure that the undertaking is operated in accordance with laws, regulations and good estate agency practice.

#### 4.3.4 Article 16

All requirements notified under Article 16 of the Directive were also notified under Article 9 of the Directive. Norway has stated that no requirements exist that are directed only toward cross-border service providers. In one instance a requirement was removed as a consequence of the screening under Article 16 of the Directive. This concerned a



requirement that debt collectors hold a Norwegian license. The Authority is aware of at least one issue that was not notified under Article 16 of the Directive. This concerns the requirement for workers on construction sites to be in possession of professional identification cards.

The following requirements falling under Article 16 of the Directive were considered to be of most importance to Norway:

- License to serve and sell food and alcohol
- Authorisation to assume responsibility and be in charge of building projects
- Authorisation to install and supervise electric installations
- Authorisation for trade in used or cast-off goods

Like in the situation concerning restrictions under Article 9 of the Directive, the overwhelming majority of justifications related to the protection of human and animal health and consumer protection. As was stated above, the Authority is currently investigating complaints with regard to the authorisation scheme in the construction sector.

#### *4.3.5 Article 25*

The following requirements were highlighted by Norway as the most important restrictions on multi-disciplinary activities:

- Persons supervising electrical installations or equipment may normally not perform other tasks within the electric power sector than those connected to the function as a local supervisory body.
- Law firms may, in addition to legal practice, only engage in activities that are connected with legal practice.
- The activities of debt collecting undertakings must be limited to either the recovery of pecuniary claims for others or the purchase and recovery of its own pecuniary claims.
- Real estate agencies may not be engaged in activities which are not connected with real estate services and which undermine the integrity and independency of the undertaking.
- External accountants may not engage in other service activities.

All the justifications for restriction under Article 25 of the Directive related to the importance of maintaining the independence and public trust of undertakings in different service sectors where this had been considered particularly important.

#### *4.3.6 Prohibited requirements*

Article 19 of the Directive prohibits all obligations for recipient of services to notify or to obtain authorisations from their competent authorities when making use of cross-border services.

Currently the Authority is investigating two complaints where it is claimed that such notification or authorisation requirements are still being employed in Norway. First, a person established in Norway who rents a car in another EEA State must notify this to the Norwegian authorities. Second, an undertaking that wishes to store accounting information outside of the Nordic countries can only do so after it has received an authorisation from the Norwegian authorities.

## **5 The public consultation**

The Authority held a public consultation on the results of the mutual evaluation process between 8 July and 20 September 2010. Two responses were received.

The Confederation of Norwegian Enterprises (NHO) highlighted in its response that it considers it important that Norway applies the Directive in an “internal market friendly way”. It pointed out that the law implementing the Directive in Norway does not mention the free movement of services, but focuses on the possibilities of restricting the free movement. Furthermore, it stated that the Norwegian Point of Single Contact is not yet fully developed. As regards the screening exercise, NHO stressed the restrictions in the field of debt collection, accounting and auditing, legal services and real estate services. Finally it addressed some issues of administrative nature with regard to the implementation of the Directive in Norway.

The European Consumer Centre pointed out a number of restrictions that have been notified by Norway during the implementation process. These included licensing schemes in the environment and energy sectors and authorisation requirements for providers of food and alcohol, pharmacies, estate agents, schools debt collecting, driving schools and tanning studios.

## **6 Conclusions**

The process of implementing the Services Directive has been intense and has made high demands on the administrations of the EFTA States. In particular the exercise of screening the domestic legal orders involved a large amount of cooperation between different ministries and levels of government. The work carried out in 2010 has required a high level of involvement of the relevant ministries of the EFTA States with their counterparts in the other EEA States, as well as the Authority and the European Commission. This has included a significant amount of meetings and drafting of working documents.

It is the view of the Authority that the screening process has been informative for all parties involved. By requiring all domestic legislation to be scrutinised with a view to identifying measures restrictive on the intra-EEA trade in services has been an important tool for self reflection. The discussions in the clusters and plenaries have made the EEA States consider, and sometimes re-consider, requirements in their own legal orders.

The screening has in general been carried out to satisfaction, but it does appear that some restrictions have not been reported in accordance with the Directive. This may be the case because of difficulties in cooperating internally with all relevant ministries, but also because of different interpretations of the scope of the Directive. Furthermore, the Authority considers that the justifications for restrictions that are being maintained are often lacking specificity. Similarly, the assessments of necessity and proportionality of reported restrictions appear often not to be sufficient.

However, the Authority considers that all the EFTA States have contributed well to the process and that the discussions have been candid and interesting.

Finally, the Authority would like to extend its gratitude to the EFTA States, as well as to the EU States and the European Commission, for their cooperation during the implementation process.