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Towards a better functioning Single Market for Services

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Summary

Since the European Union's inception, creating a well functioning, competitive and integrated market has been at the heart of the Unions project. The four freedoms, free movement of persons, goods, services and capital, which led to the opening of the boarders, have been one of the main forces behind growth in Europe. Today, Europe has become the world's biggest economy and the Single Market is its real growth engine. This thesis examines the field of services within the Single Market. It examines the development of the freedom of establishment as well as the freedom to provide services, guaranteed by the Treaty on the Functioning of the European Union. It strives to give a comprehensive overview of the case law of the Court of Justice of the European Union in this field, how it has interpreted the Treaty provisions and developed concrete rights for the citizens of the Union. Legislation as regards to services within the Union is thoroughly examined, mainly focusing on the Service Directive: what it adds to the law and what it has achieved. Lastly, the state of the Single Market will be examined, it's benefits, challenges and it's shortcomings. This thesis endeavours to answer the question why it is not delivering its full potentials. The main findings to that question is lack of consumer confidence, lack of awareness of the rights citizens derive from European Union law and the need for better implementation and stronger enforcement of Single Market requirements.

Preface

With this thesis, I finish a two-year law study, with a degree in European Business Law. The last two years have honestly been the best in my life. I had the opportunity to move to Lund with my family and I cannot think of a better town to raise a family. The stay in Lund has given me new friendships for which I will always be grateful.

First, I would like to thank my supervisor, Jörgen Hettne, for his good comments and support. Thanks to you, I have this great interest in the Single Market, you are an outstanding teacher.

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Árdís Ethel Hrafnisdóttir

Abbreviations

CEF	Connecting Europe Facility package
CJEU	The Court of Justice of the European Union
EU	European Union
EUR	Euros
GDP	Gross Domestic Production
IMI	Internal Market Information system
IPR	Intellectual property rights
ORRPI	Overriding reasons relating to public interest
PSC	Points of Single Contact
PWD	Posting of Workers Directive
SGEIs	Services of general economic interest
SIMFO	Single Market Forum
SME	Small medium size enterprises
TFEU	Treaty on the functioning of the European Union
UPC	Unified Patent Court

1 Introduction

From the European Union's inception, an internal market without frontiers has been at the heart of the European project. For over 50 years, it has woven strands of solidarity between the men and the women of Europe, whilst opening up new opportunities for growth for more than 21 million European businesses. Today more than ever, the internal market of the Union has become a part of people's everyday life in their professional and private activities and as consumers.¹

The Single Market of the European Union (EU) is the common area between the 27 EU countries where goods, services, capital and persons can circulate freely. It is the core of the cooperation between the 27 Member States. The Single Market ensures that European citizens are free to live, work, study and do business where they want in the EU. The Single European Act came into force in July 1987 and the Single Market was finally put in place on 1 January 1993. With barriers removed and national markets opened, more firms can compete against each other. This means lower prices and wider choice for the consumers. Firms selling in the Single Market now have unrestricted access to nearly 500 million consumers in the European Union.²

Services are the driving force of the European Union economy. Broadly speaking 9 out of 10 new jobs are created in this sector. The freedom of establishment and freedom to provide services, as set out in Articles 49 and 56 of the Treaty on the Functioning of the European Union (TFEU), are therefore essential to the smooth operation of the internal market. Based on these provisions, economic operators can pursue a stable, continuous activity in one or more Member States or offer temporary services in another Member State, without being established there.³

The European Union has achieved significant progress in the area of certain services. In order to create a real internal service market the 'Service Directive' was adopted in 2006. The Service Directive aims to facilitate freedom of establishment for providers in other Member States and the freedom of services between Member States. It also aims to increase the choice offered to recipients and improve the quality of services both for consumers and businesses using these services. However, in order to realise the full potentials of the Directive it is important that all Member States complete all the required legislative changes to implement it. The Single Market for services is not yet delivering its full potential. Services still represent only around one-fifth of total intra EU-trade, a share

¹ "Single Market Act: Twelve levers to boost growth and strengthen confidence: Working together to create new growth" COM(2011) 206 final.

² MEMO/11/239

³ "Towards a better functioning Single Market for services". COM(2011) 20 final

that is modest compared with their presence in the economy. The EU economy urgently needs a more integrated, deepened Single Market for services.⁴

Realising this, the European Commission set out series of concrete solutions to boost growth, competitiveness and social progress in the Single Market Act. It announced a series of actions, including twelve key actions, in order to relaunch the Single Market by the end of 2012. The Commission committed itself to delivering legislative proposals for the twelve key action by the end of 2011. In line with that commitment, it presented proposals for ten of the twelve key actions by the end of 2011. The European Parliament and Council committed to treat the Commissions key actions as priority and agreed that all efforts should be made to ensure agreement on the twelve proposals set out in the Single Market act by the end of 2012.⁵

1.1 Purpose and Delimitations

The main objective of his thesis is to follow the developments of the Single Market, concentrating on the field of services and to examine the development of the Treaty provisions concerning the freedom to provide services. I will examine how the Court of Justice of the European Union (CJEU)⁶ has interpreted these provisions and developed legal rights arising from them with the aim to summarize, for persons providing and receiving services within the Union, what their legal rights and obligations are. Although the Service Directive is a codified case law of the Court, my wish is to give a more detailed explanation as to why the law is as it stands today and to give an overview of the pathway leading to the Service Directive. My purpose is to provide an overview of the state of the Single Market today; examine what has been achieved and what remains to be done. I will try to explain why the Single Market is not delivering as well as it could, and what can and is being done to make the Single Market function even better.

The TFEU ensures the four freedoms. The thesis is, however, limited to the freedom to provide and receive services and the freedom of establishment. Since focus is being kept on the provisions of the TFEU that regard services and an analysis of the Service Directive will be provided it follows that my analysis of the state of the Single Market will focus primarily on the field of services.

1.2 Methodology

The method used in this thesis is a traditional one for legal research, combining a descriptive and analytical study of the legal sources. The primary sources used are EU legislation and case law, as well as Commission communication documents. In addition, both legal doctrine and

⁴ COM(2011) 20 final

⁵ “Delivering the Single Market Act: State of Play” SWD(2012) 21 final.

⁶ Hereafter: the Court.

articles relating to the question formulation under scrutiny have been studied.

1.3 Outline

The thesis is organised as follows. Chapter two deals with the development of the freedom of establishment as set out in Article 49 of the TFEU, through the case law of the Court. Chapter three deals with the freedom to provide services as set out in Article 56 of the TFEU, through the case law of the Court. An overview of the Service Directive is provided for in chapter four and the results achieved by the Directive are provided for in chapter five. Chapter six examines the development of the Single Market. It gives the reader a thorough examination of what has been achieved, what is being done to complete the Single Market and how to achieve a better functioning single market for services. Lastly, chapter seven contains my analysis and conclusion.

2 Freedom of Establishment

The freedom of establishment is one of the fundamental objectives of the European Union. It is contained in Article 49 of the TFEU. Both individuals and companies have the right to take up and pursue activities in other Member States without discrimination. The essence of Article 49 is 'the actual pursuit of an economic activity through a fixed establishment in another Member State for an indefinite period.'⁷ Article 49 TFEU provides:

Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

Freedom of establishment shall include the right to take up and pursue activities as self-employed person and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 54, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital.

The first paragraph requires the abolition of restrictions on freedom of primary and secondary establishment, whereas paragraph two provides for the right to pursue self-employed activities on an equal footing with the nationals of the Member State of establishment.

At first blush, it seems that Article 49 gives rights only to nationals of Member States other than their own and implies that the requirements of the prohibition of discrimination are satisfied if the person, exercising the right of establishment, is treated in the same way as a national. However, Article 49 has a broader reading. In certain circumstances, nationals can rely on Article 49 against their own state⁸ and Article 49 does not merely prohibit unequal treatment but unnecessary obstacles to freedom of establishment.

In this chapter, we will consider restrictions on the freedom of establishment, both for individuals and companies.

⁷ Case C-221/89 R.v. *Secretary of State for Transport, exp. Factortame (Factortame II)* [1991] ECR I-3905, para. 20.

⁸ Case 115/78 *Knooks v. Secretary of State for Economic Affairs* [1979] ECR 399. Para. 24.

2.1 The Freedom of Establishment for Individuals

The second paragraph of Article 49 secures the freedom to take up and pursue activities as self-employed person and to set up and manage undertakings, namely companies and firms. The question then turns to which activities constitute self-employed activities, or furthermore, what the breadth of Article 49 is.

Although the Treaty does not provide for a definition of the concept self-employed, the Court has offered us a definition in the *Jany*⁹ case. The Court explained that unlike workers, the self-employed work outside a relationship of subordination, they bear the risk for the success or failure of their employment and they are paid directly and in full.¹⁰ Alternatively, put in another way by the Court in *Walrave and Koch*,¹¹ the notion self-employed is distinguished from employment by the fact that the activities are performed outside the ties of a contract of employment.¹²

Moreover, the Court provided for examples of what might constitute as a self-employed activity in *Barkoci and Malik*.¹³ It said that a self-employed person could conduct 'activities of an industrial or commercial character, activities of craftsmen, or activities of the profession of a Member State'. The Court emphasized the breadth of Article 49 in *Gebhard*.¹⁴ It said that the concept of establishment within the meaning of the Treaties is a very broad one, allowing a Union national to participate, on a stable and continuous basis, in the economic life of a Member State other than his state of origin and to profit therefrom, so contributing to social and economic penetration within the Union in the sphere of activities as self-employed persons.¹⁵

According to Article 49, the freedom of establishment includes the 'right to take up *and* pursue' activities as a self-employed person. It therefore distinguishes between access - the initial right to take up work as self-employed person, and exercise - the terms and conditions of employment and the facilities necessary to exercise a profession. In *Steinhauser*,¹⁶ the Court confirmed that Article 49 covers not only access to, but also exercise of activities as a self-employed person. The case concerned a German artist who was not allowed to participate in a tendering process for the use of an art and craft boutique in France on the ground that he was not French. The defendant local authority argued that Article 49 applied only to conditions

⁹ Case C-268/99 *Jany and others v. Staatssecretaris van Justitie* [2001] ECR I-8615

¹⁰ Paras. 34 and 70-1.

¹¹ Case 36/74 *Walrave and Koch v. Association Union Cycliste Internationale*, [1974] ECR 1405.

¹² Para. 23.

¹³ Case c-257/99 *R.v. Secretary of State for the Home Department, ex p. Barkoci and Malik* [2001] ECR I-6557. Para. 50. This was in the context of Article 45(3) of the Association Agreement which has the wording 'similar or identical' to Article 49.

¹⁴ Case C-55/94 *Gebhard* [1995] ECR I-4165.

¹⁵ Para. 25.

¹⁶ Case 197/84 *Steinhauser v. City of Biarritz* [1985] ECR 1819.

regulating *access* to a profession and therefore did not apply to this case. The Court disagreed and ruled that Article 49 included the right not only to take up activities as a self-employed person but also to *pursue* those activities in the broadest sense.

Article 49 applies to both primary and secondary establishment. With primary establishment, an individual leaves State A to set up permanent establishment in State B, with secondary establishment an individual maintains an establishment in State A while setting up a professional base in State B.¹⁷ In *Klopp*,¹⁸ a German lawyer was refused admission to the Paris bar on the sole ground that he maintained an office as a lawyer in another Member State. The effect of the French rule was to allow only primary, but not secondary, establishment. This meant that lawyers established in another Member State, had to give up their first place of establishment in order to exercise their rights of establishment, contrary to Article 49. The Court ruled that Article 49 specifically guarantees the freedom to set up more than one place of work in the Union, and there were less restrictive ways, given modern transport and telecommunications, of ensuring that lawyers maintain sufficient contact with their clients and judicial authorities, and obey by the rules of the profession.¹⁹

2.1.1 Equal Treatment

The wording of Article 49 emphasizes the requirement of equal treatment of nationals and non-nationals. That means that Member States are free to regulate access to a profession in its territory, provided that it does not directly or indirectly discriminate on the grounds of nationality.

Directly discriminatory measures breach Article 49 and can only be saved by reference to one of the express derogations to be found in Article 52. An example of direct discrimination is when migrants are treated less favourable than nationals. The Court ruled on the matter in *Reyners*²⁰ where it said that a Belgian rule preventing a qualified Dutch national from practising as a lawyer on the grounds of his nationality breached Article 49.

Indirectly discriminatory measures also breach Article 49 but can be objectively justified or saved by an express derogation. An example of such measures is one that treats the migrant and the national in the same way but in fact disadvantage the migrant. Such measures include the requirement to hold a license or certification to practise a profession and often require the migrants to shoulder the dual burden of having to satisfy the home, and then the host, state authorities of their suitability to practise. The Court has shown to be more lenient towards indirect discriminatory requirements and that they can in principle be justified. In *Gullung*,²¹ the Court said that a French requirement for all lawyers to be registered at the Bar before

¹⁷ Barnard. (2010) P. 298.

¹⁸ Case 107/83 *Ordres des Avocats au Barreau de Paris v. Klopp* [1984] ECR 2971.

¹⁹ Paras. 20-22.

²⁰ Case 2/74 *Reyners v. Belgian State* [1974] ECR 631.

²¹ Case 292/86 *Gullung v. Conseils de l'ordre des avocats du barreau de Colmar* [1988] ECR 111.

practising, could be justified on the ground of ensuring ‘the observance of moral and ethical principles and the disciplinary control of the activity of lawyers’.²²

2.1.2 Market access approach

In some of its earlier case law, the Court appeared to suggest that in the absence of discrimination, rules that restricted the right of establishment would not violate Article 49. However, the Court moved away from the emphasis on unequal treatment and focused more on whether the rule nevertheless hindered market access or constituted a restriction on free movement.

This can be seen in *Gebhard*. The case concerned a German lawyer who set up chambers in Italy using the title *avvocato*, although he had not been admitted as a member of the Milan Bar and although his training, qualifications, and experience had not formally been recognised in Italy. Having established that in the absence of Community rules, Member States may justifiably subject the pursuit of self-employed activities to rules relating to qualifications, titles, etc., the Court continued:

It follows, however, from the Court’s case law that national measures liable to hinder or make less attractive the exercise of fundamental freedoms guaranteed by the Treaty must fulfil four conditions: they must be applied in a non-discriminatory manner; they must be justified by imperative requirements in the general interest; they must be suitable for securing the attainment of the objective which they pursue; and they must not go beyond what is necessary in order to attain it.²³

Since *Gebhard* the emphasis of the case law has generally been on whether the national measure is liable ‘to prohibit, impede or make less attractive’ access to, or exercise of, the right of establishment rather than the elimination of discrimination.²⁴ For example, in *Wouters*²⁵ the Court assumed that a Dutch rule prohibiting multi-disciplinary partnerships between members of the Bar and accountants constituted a restriction on the right of establishment but could be justified by the necessity for a proper practice of the legal profession.

2.1.3 Qualifications

The refusal by a host state to recognize qualifications acquired in other EU states has represented a serious practical obstacle to freedom of establishment.

²² Para. 29.

²³ Para. 37.

²⁴ Bernard. (2010) P. 300.

²⁵ Case C-309/99 *Wouters* [2002] ECR I-1577.

At first the Court gave effect to the non-discrimination principle contained in Article 49. It held that the Member States and legally recognised professional bodies retained the jurisdiction to adopt the necessary measures, provided that they complied with the obligations of cooperation laid down by Article 4(3) TFEU and the principle of non-discrimination.²⁶

In *Thieffry*,²⁷ the Court began to shift its focus from the principle of non-discrimination to one of mutual recognition. The case concerned a Belgian national, who obtained a doctorate in law in Belgium and practised as an advocate in Brussels. He subsequently obtained French university recognition of his qualifications as equivalent to a degree in French law and obtained a French *avocat*'s certificate, having passed the French Bar exams. However, he was refused admission to the Paris Bar on the grounds that he lacked a French degree. The Court held that this requirement constituted an unjustified restriction on the freedom of establishment because Thieffry held a diploma recognized as an equivalent qualification by the competent authority in French, and had passed the French Bar exams.

Thieffry establishes that Member States cannot simply refuse to allow nationals of other Member States to practise their trade or profession on the ground that their qualification is not equivalent to the corresponding national qualification. The treaty provisions of free movement of workers and establishment impose a specific, positive obligation on national authorities and professional bodies to ensure this freedom, even without a specific legislation on the matter.

In *Heylens*,²⁸ the Court ruled that Member States were entitled, in the absence of harmonizing directives, to regulate the knowledge and qualifications necessary to pursue a particular occupation. The case concerned a Belgian football trainer working in France, whose application for recognition of the equivalence of his Belgian diploma was refused by the French ministry of Sport. The Court held that the procedure for the recognition of equivalence must enable the national authorities to assure themselves, on an objective basis, that the foreign diploma certifies that its holder has knowledge and qualifications which are, if not identical, at least equivalent to those certified by the national diploma. The Court furthermore held, that assessment of the equivalence of the foreign diploma must be effected exclusively in the light of the level of knowledge and qualifications which its holder can be assumed to possess in the light of that diploma, having regard to the nature and duration of the studies and practical training which the diploma certifies that he has carried out.²⁹

The importance of the mutual recognition principle was made clear in the seminal case of *Vlassopoulou*.³⁰ The case concerned a Greek national who had obtained a Greek law degree and had practised German law for several years in Germany. She applied for admission to the Bar in Germany but was refused on the grounds that she had not pursued her university studies in Germany, had not sat the two German state exams and had not completed

²⁶ Barnard. (2010) P. 305-6.

²⁷ Case 71/76 *Thieffry* [1977] ECR 765.

²⁸ Case 222/86 *UNECTEF v. Heylens* [1987] ECR 4097.

²⁹ Para. 13.

³⁰ Case C-340/89 *Vlassopoulou* [1991] ECR 2357.

the preparatory stage although she did hold a German doctorate. The Court began by stating that even the non-discriminatory application of national requirement could hinder the exercise of freedom of establishment. It ruled that national requirements concerning qualifications may have the effect of hindering nationals of other Member States in the exercise of their right of establishment guaranteed to them by Article 49. That could be the case if the national rules in question took no account of the knowledge and qualifications already acquired by the person concerned in another Member State. The Court elaborated on the principle of mutual recognition and said that the host state had to take into consideration the qualifications and abilities acquired by the migrant and compare them with those required by the national system, to see whether the applicant had the appropriate skills to join the equivalent profession. If they are found to be equivalent, the State must recognize the qualification, and if they are not so found, the State must assess whether any knowledge or practical training the person may have acquired in the host State is sufficient to make up for what was lacking in the qualification.³¹ The Court added that to ensure that the Member States complied with the obligations inherent in the principle of mutual recognition that the decision-making body had to give reasons for its decisions, which also had to be reviewable by the courts to verify compatibility with Union law.³²

The approach adopted by the Court in *Vlassopoulou* closely reflected the provision of Council Directive 89/48/EEC on the mutual recognition of higher education diplomas³³ which had been adopted around that time, but not in time for it to be applicable in the case of *Vlassopoulou*.³⁴

However, the principles articulated in the *Vlassopoulou* and *Heylens* cases continue to be applicable to situations which are not covered by secondary legislations.

2.1.3.1 The Recognition of Professional Qualification Directive

Initially, the Union adopted two directives in order to tackle the obstacles to the freedom of establishment, which were created by the refusal of a host state to recognize qualifications acquired in other EU states. One establishing the general level of training and the other listing the qualifications and diplomas awarded in the Member States which satisfied the conditions for recognition.³⁵ Although a number of directives were enacted, particularly in the medical professions, process was slow and not a great success. Because of this slow development, an agreement was made to adopt a different approach; the general horizontal approach. Three

³¹ Paras. 15-16.

³² Para. 22.

³³ Now repealed and replaced by Directive 2005/36/EC.

³⁴ Craig, DeBurca. (2008) P. 800.

³⁵ On recognition, see Directive 75/362/EEC [1975] OJ L167/1. On qualification, see Directive 75/363/EEC [1975] OJ L167/14.

Directives were adopted under this approach, but these co-existed rather than replaced the directives which had adopted the sectoral approach.³⁶

The general-system directives did not guarantee automatic recognition, they merely required the host state authorities to consider the migrant's qualifications and, if the qualifications proved to be lacking in terms of duration and content, the host state could impose additional requirements.³⁷

In attempt to reorganise, standardize and rationalize the principles which applied in the directives, the Parliament and the Council adopted a single directive repealing and replacing the earlier directives; Directive 2005/36/EC on the recognition of professional qualifications (RPQ Directive).

The aim of the RPQ Directive is to introduce a more flexible and automatic procedure based on common platforms established by professional associations at European level, stemming from increased co-operation between the public and the private sector.³⁸ The directive applies to all nationals of a Member State wishing to pursue a regulated profession in a Member State other than in which they obtained their professional qualifications, on either self-employed or employed basis.³⁹ The recognition of professional qualifications by the host Member State allows the beneficiary to gain access in that Member State to the same⁴⁰ profession as that for which he is qualified in the home state and to pursue it in the host Member State under the same conditions as its nationals.⁴¹

The directive comprises the three existing systems of recognition. The first is the general system for the recognition of evidence of training. This applies where access to or pursuit of a regulated profession in the host state is contingent upon possession of specific qualifications. The basic principle for such activities is mutual recognition of qualifications.⁴² The general system, applies as a fallback to all the professions not covered by specific rules of recognition and to certain situation where the migrant professional does not meet conditions set out in other recognition schemes.⁴³

The second category concerns activities which require only general commercial or professional knowledge, such as industrial experience.⁴⁴ The third category covers those professionals who were previously regulated by

³⁶ Directive 89/48/EC, on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration [1989] OJ L19/16 as amended; Directive 92/51/EEC on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC [1992] OJ L209/25 as amended; Directive 99/42/EC establishing a mechanism for the recognition of qualifications in respect of the professional activities covered by the Directives on liberalisation and transitional measures and supplementing the general systems for the recognition of qualifications [1999] OJ L201/77.

³⁷ Case C-39/07 *Commission v. Spain (pharmacists)* [2008] ECR I-3435, para. 39.

³⁸ IP/02/393

³⁹ Article 2(1)

⁴⁰ 'the activities covered are comparable' Article 4(2)

⁴¹ Article 4(1)

⁴² Article 13.

⁴³ Article 10.

⁴⁴ Article 16.

sectoral directives, such as nurses, vets and doctors. These require not only evidence of formal qualifications, but also evidence that the applicant has satisfied minimum training conditions which are set out in the Directive.⁴⁵ However, as the Court made clear in *Commission v. Spain (pharmacists)*, the right to recognition of diplomas is guaranteed as an expression of the fundamental right of freedom of establishment,⁴⁶ so any interpretation of the Directive must be read subject to Article 49. If the activity does not fall within the scope of the Directive, then the principles laid down in *Vlassopoulou* and *Gebhard* continue to apply.

2.2 Freedom of Establishment for Companies

The freedom of establishment includes the right to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 54⁴⁷. According to the first paragraph of that article, companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Union shall be treated in the same way as natural persons. Therefore, whilst the prohibition on discrimination in Article 49 forbids discrimination on the grounds of nationality in the case of individuals, it forbids discrimination on the grounds of place of registered office, central administration or principal place of business in the case of companies.

Although this article requires companies to be treated in the same way as nationals for the purpose of the Treaty provisions on freedom of establishment, this is not strictly possible, given the differences between natural and legal persons.

This issue was first addressed in the *Daily Mail*⁴⁸ judgment. The case concerned an investment company, incorporated under English law that decided to transfer its central management and control to the Netherlands to avoid UK tax, while maintaining its legal personality and status as a UK company. Daily mail applied for permission to relocate from the UK Treasury, but moved its office to the Netherlands without waiting for the Treasuries response. Daily Mail sought a declaration that the requirement to obtain permission was unfair under Articles 49 and 54 TFEU. The Court disagreed. It said that the rights natural persons enjoy under the Citizens right Directive⁴⁹ could not be extended to companies. Neither Article 49 nor 54 conferred on companies incorporated in State A the right to transfer, without any restrictions or impediment from State A, their central management, control and administration to State B while at the same time

⁴⁵ Article 24(1)

⁴⁶ Case C-39/07 *Commission v. Spain (pharmacists)* [2008] ECR I-3435, para. 37.

⁴⁷ Article 54(2) provides: 'Companies or firms' means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making.

⁴⁸ Case 81/87 *Daily Mail* [1988] ECR 5483.

⁴⁹ Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. OJ L 158/77.

retaining the status as a company in State A.⁵⁰ On the contrary, the Court ruled that the Member State from which the company wishes to move its registered offices or central place of administration is entitled to subject the company to certain conditions. UK could therefore legitimately require the company, which wished to transfer its central management and control to the Netherlands, first to settle its taxes and even to wind up the company in the UK. This judgement does not mean that companies cannot move their residence but that restrictions can be imposed on emigrating companies by the home state.

Daily mail was confirmed in *Cartesio*.⁵¹ The case concerned a limited partnership seeking to transfer its operational headquarters from Hungary to Italy while remaining registered in Hungary. The Hungarian commercial court said that the transfer was not possible under Hungarian law. It held that a company wishing to transfer its operational headquarters to another Member State had to be wound up in Hungary and then reconstituted under the law of the new Member State. The Court said that where the seat of a company incorporated under the law of one Member is transferred to another Member State, with no changes as regards the law which governs that company, the matter fell outside the scope of Union law because the company no longer satisfied the pre-conditions of being a company formed under national law. National law determines the conditions required for the company to maintain its status as a company incorporated under the law of that Member State. This includes the possibility for that Member State not to permit a company governed by its law to retain that status if the company intends to reorganize itself in another Member State by moving its seat to the territory of the latter, thereby breaking the connecting factor required under the national law of the Member State of incorporation.⁵² However, the Court held that the power of Member States to determine the connecting factor cannot justify the Member State of incorporation preventing that company from converting itself into a company governed by the law of the new Member State, by requiring the company's winding-up or liquidation. The Court said that such a barrier, the winding up or liquidation, to the actual conversion of a company constitutes a restriction on the freedom of establishment of the company concerned which, unless it serves overriding reasons relating to public interests, is prohibited under Article 49.

The question might arise to what extent a company can rely on Article 49 when it seeks to set up various forms of establishment in more than one Member State, which have different systems of corporate regulation. It seems likely that, had the applicants in *Daily Mail* and *Cartesio* wanted to establish a secondary establishment, a branch, agency or subsidiary in the host state they could have relied on Article 49 against the home state to exercise the freedom of establishment in another Member State.

⁵⁰ Para. 24.

⁵¹ Case C-210/06 *Cartesio Oktató és Szolgáltató bt* [2008] ECR I-000.

⁵² Para. 110.

2.2.1 Primary and Secondary Establishment

As previously discussed, Article 49 and 54 contemplate both primary and secondary establishment. The more common of these two is the situation where companies create a secondary establishment in the host state by setting up agencies, branches or subsidiaries. The Court has been active in eliminating obstacle to such establishment. As the Court put it in *Centros*,⁵³ the provisions of the Treaty on freedom of establishment are intended specifically to enable companies, formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Union, to pursue activities in other Member States through an agency, branch or subsidiary.⁵⁴ The case concerned two Danish nationals who registered a company in the United Kingdom. Although it never traded from the UK, it was registered there because the UK authorities impose no minimum share capital requirement for companies, whilst in Denmark there was a requirement of a minimum of 200.000 Danish Kroner. They were refused permission to register a branch in Denmark and challenged this under Article 49. The Danish government argued that there was no violation as they were simply refusing the setting up of a primary establishment and not the setting up of a branch, and that the company was seeking to evade Danish law on minimum capital requirements. The Court ruled that the registrar's refusal to grant the registration request constituted an obstacle to the freedom of establishment. It also said that this was not a case of abuse; they were not fraudulently taking advantage of the provisions of Union law, because they were doing what the Treaties expressly permit, namely incorporating in one Member State and setting up a secondary establishment in another.⁵⁵ *Centros* reaffirms the right of companies to secondary establishment in other states. Whilst a company retains corporate status within its home Member State, other Member States must recognise it as validly incorporated under Article 54 and therefore entitled to the benefits of Article 49.

Centros was followed by the *Überseering*⁵⁶ and *Inspire Art*⁵⁷ rulings that confirmed and extended the *Centros* approach. *Inspire Art* concerned Dutch rules on minimum capital requirements and directors liability, which applied to companies deliberately established in another Member State to avoid the Dutch rules, but carrying on their activities exclusively in Netherlands through a branch. The Court said that the Dutch rules had the effect of unjustifiably impeding the exercise by companies of freedom of establishment.⁵⁸ It added that the reasons why a company was formed in another Member State and the fact that it carried on its activities exclusively in the Netherlands did not deprive the company of the right to invoke the

⁵³ Case C-212/97 *Centros v Erhvervs-og Selskabsstyrelsen* [1999] ECR I-1459.

⁵⁴ Para. 26.

⁵⁵ Para. 27.

⁵⁶ Case C-208/00 *Überseering BV v. Nordic Construction Company Baumanagement GmbH (NCC)* [2002] ECR I-9919.

⁵⁷ Case C-167/01 *Kamer van Koophandel en Fabrieken voor Amsterdam v. Inspired Art Ltd* [2003] ECR I-10155.

⁵⁸ Para. 101.

freedom of establishment guaranteed by the Treaties, save where the abuse was established on a case-by-case basis.⁵⁹

Überseering concerned a company incorporated in the Netherlands under Dutch law, where it had its registered office. It then sought to transfer its centre of administration to Germany, and German shareholders bought its entire share capital. *Überseering* wanted to bring legal proceeding in Germany over business dispute but discovered that it had no standing because in the eyes of German law it did not exist. The German court found that, since *Überseering* had transferred its centre of administration to Germany, as a company incorporated under Dutch law it did not have legal capacity in Germany because it had not been formed according to German law and so could not bring proceedings.⁶⁰ The Court began by distinguishing *Daily Mail* from the facts of *Überseering*. It noted that *Daily Mail* concerned emigration but *Überseering* concerned immigration. The Court said that because *Überseering* was a company validly incorporated under the law of the Netherlands, where the registered office was established, it had no alternative under German law but to reincorporate in Germany if it wished to enforce its rights under a contract before a German court.⁶¹ The Court found this to be a violation of Article 49. Where a company is validly incorporated in one state according to the laws of that state, other states are required to recognise that incorporation, notwithstanding that their own conditions for incorporation may be different.

Underlying this important series of cases on the right of establishment of companies is the familiar mutual-recognition rationale which we have seen in many areas of EU internal law. In the context of Article 49, it implies that a Member State should recognise the legitimacy of a company's incorporation under the laws of another Member State and should not impose unnecessary restrictions on the right of secondary establishment within its territory.⁶²

2.2.2 Equal Treatment

Once a company has established itself or a branch in the host state then it must enjoy the same terms and other benefits available to national companies. Therefore, the Court said in *Commission v. Italy (data processing)*,⁶³ that an Italian law that entitled only companies, in which all or majority of the shares were owned by the state, to conclude agreement for data processing for public authority's essentially favoured Italian companies and therefore breached Article 49.⁶⁴

⁵⁹ Para. 105.

⁶⁰ Para. 9.

⁶¹ Para. 79.

⁶² Craig, DeBurca. (2008) P. 811.

⁶³ Case 3/88 *Commission v. Italy (data processing)* [1989] ECR 4035.

⁶⁴ Para. 9.

In *Commission v. France (tax credits)*,⁶⁵ the Court drew an analogy between the location of the registered office of a company and the place of residence of a natural person.⁶⁶ Relying on Article 54, the Court ruled that discrimination in tax laws against branches or agencies in a Member State, by taxing them on the same basis as companies whose registered office is in that State yet not giving them the same tax advantages as such companies, was an infringement of Article 49. According to the Court, Article 49 expressly leaves traders free to choose the appropriate legal form in which to pursue their activities in another Member State and that freedom of choice must not be limited by discriminatory tax provisions.⁶⁷

Nevertheless, the Court has accepted the distinction based on the location of the registered office of a company or the place of residence of a natural person may, under certain conditions, be justified in an area such as tax.

In *Futura*,⁶⁸ it was permissible for a Member State to impose conditions, as regards the keeping of accounts and the location where losses were incurred on a non-residence company, for the purpose of assessing liability to tax and allowable losses. However, *Futura* also concerned a rule requiring taxpayers to keep their accounts in Luxembourg if they wished to carry forward losses in Luxembourg. The Court said that the rule constituted a restriction on the freedom of establishment contrary to Article 49, but could be justified on the grounds of ensuring the effectiveness of fiscal supervision.⁶⁹ However, the Court said that the rule was not proportionate because, although Luxembourg could legitimately require the non-resident taxpayer to demonstrate its losses clearly and precisely, it could not refuse the tax benefit simply because the company had not kept proper accounts in Luxembourg.

In recent years, there has been a significant amount of important litigation, including the high-profile *Marks & Spencer*⁷⁰ case and a series of other test cases, to clarify the applicability and scope of Article 49 to a range of corporate taxation law directed at cross-border situations. This series of cases have established that while states may, in appropriate circumstances, treat differently residents and non-resident taxpayers, this is always subject to the requirement of demonstrating reasonable and proportionate justification (*Futura*.) In the case of resident taxpayers, home state legislation, which treats income or related losses coming from subsidiaries in another Member States differently and usually less favourably than those coming from the home state breach Article 49 and 54 unless justified (*Marks & Spencer*). In the case of resident taxpayers, home-state legislation, which treats income going to another Member States differently and usually less favourably than if the income had stayed in the home state breach Article 49 and 54 unless justified⁷¹. (*De Lasteyrie du Saillant*).⁷²

⁶⁵ Case 270/83 *Commission v. France* [1986] ECR 273.

⁶⁶ Para. 18.

⁶⁷ Para. 22.

⁶⁸ Case C-250/95 *Futura Participations SA singer v. Administration des Contributions* [1997] ECR I-2471.

⁶⁹ Para. 31.

⁷⁰ Case C-446/03 *Marks & Spencer plc v. Halsey (Her Majesty's Inspector of Taxes)* [2005] ECR I-10837.

⁷¹ Craig, DeBurca. (2008) P. 812.

While the Court has accepted that goals such as preventing tax evasion or preventing companies from benefiting twice from rules governing tax relief may be legitimate objectives, it has continued to apply strict scrutiny to the national laws which claim to be necessitated by such objectives.

What we can gather from the case law on the freedom of establishment for companies is that the Court is very strict on this matter. It has required host states to permit companies, validly incorporated in another Member state, even under very different corporate law regime, to exercise rights of secondary establishment in a host state without imposing undue regulatory restrictions. In other words, any obstacle to the right of establishment in a Member State, whether or not it has a differential impact on nationals and non-nationals, is caught by Article 49 unless it can be justified.

⁷² Case C-9/02, *Hughes de Lasteyrie du Saillant v Ministère de l'Économie, des Finances et de l'Industrie* [2004] ECR I-2409.

3 Freedom to Provide and Receive Services

3.1 The Scope of Article 56

We have seen that the right of establishment entails the pursuit of an economic activity from a fixed base in a Member State for an indefinite period. Freedom to provide services entails the carrying out of an economic activity for a temporary period by a person established in one Member State to a recipient established in another. Articles 56-7 TFEU lay down the principle of freedom to provide services. Article 56 provides:

[R]estrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a State other than that of the person for whom the services are intended.

Article 57 defines services and applies the principle of equal treatment to the service provider. The provisions on the freedom to provide services can be used to challenge rules laid down by both home state and host state, although most cases concern barriers raised by the host state.

Article 56 applies whenever the service provider and service recipient are established in different Member State. The most obvious situation is when the service provider travels to another state to provide the services. In *Van Binsbergen*,⁷³ a Dutch national living in Belgium challenged a Dutch rule that required legal representatives to be established in the Netherlands before they could represent a person in the Dutch courts. The Court found that in principle the Dutch rule breached Article 56.

However, as the Court put it in *Vestergaard*,⁷⁴ Article 56 applies not only where a person providing a service and the recipient are established in different Member States, but also whenever a provider of services offers those services in a Member State other than the one in which he is established, wherever the recipients of those services may be established.⁷⁵

An increasing number of cases concern obstacles to the provision of services created by the home state. The most remarkable decision in this line of case law is *Carpenter*⁷⁶. That case concerned a Filipino national married to a British man, which successfully challenged British immigration rules, which were going to result in her deportation. The Court found that the services that Mr. Carpenter provided, selling advertising space in journals, fell within Article 56. The Court held that Union law has recognized the

⁷³ Case 33/74 *J.H.M. van Binsbergen v. Bestuur van de Bedrijfsvereniging voor de Metaalnijverheid* [1974] ECR 1299.

⁷⁴ Case C-55/98 *Skatteministeriet v Vestergaard* [1999] ECR I-7641.

⁷⁵ Para. 19.

⁷⁶ Case C-60/00 *Carpenter* [2002] ECR I-6279.

importance of ensuring the protection of the family life of nationals of the Member States, in order to eliminate obstacles to the exercise of the fundamental freedoms guaranteed by the Treaty. That freedom could not be fully effective if Mr. Carpenter were to be deterred from exercising it by obstacles raised in his country of origin to the entry and residence of his spouse.⁷⁷

Article 56 also applies where the recipient travels to receive the service. This was established in *Luisi and Carbone*,⁷⁸ where two Italians wanted to go to Germany to receive medical services. Italian law, which obstructed this, breached Article 56. The Court has also said that Articles 56-7 apply where neither the recipient nor the provider of the service travels, but the service itself moves. Services provided over the Internet, telesales and broadcasting are all examples of such situations. In *Alpine Investments*⁷⁹ the Dutch authorities prohibited a Dutch company from telephoning individuals to offer them various financial services, unless they had prior written consent from their clients. The Court ruled that Article 56 covered services which the provider offered by telephone to potential recipients established in other Member State without moving from the Member State in which the service provider was established.⁸⁰ According to the Court, such prohibition by the Dutch authorities deprives the operators concerned of a rapid and direct technique for marketing and for contacting potential clients in other Member States. It can therefore constitute a restriction on the freedom to provide cross-border services.⁸¹

3.1.1 What activities constitute Services?

Having considered who can rely on Article 56, the question arises what constitutes a service. Article 57 gives a few examples, including activities of commercial and industrial character, and activities of craftsmen and activities of the profession. The case law has also given us examples of what might constitute a service, including lotteries,⁸² insurance,⁸³ sporting activities,⁸⁴ medical,⁸⁵ financial,⁸⁶ business and educational activities.⁸⁷ Article 57 provides that services shall be considered services, within the meaning of the Treaties, where they are normally provided for remuneration and provided on a temporary basis. Article 57 therefore has three elements:

⁷⁷ Para. 38-9.

⁷⁸ Joined Cases 286/82 and 26/83 *Luisi and Carbone v. Ministero del Tesoro* [1984] ECR 377.

⁷⁹ Case C-384/93 *Alpine Investments* [1995] ECR I-1141.

⁸⁰ Article 42.

⁸¹ Article 28.

⁸² Case C-275/92 *Schindler* [1994] ECR I-1039.

⁸³ Case C-118/96 *Safir* [1998] ECR I-1897, para. 22.

⁸⁴ Joined Cases C-51/96 and C-191/97 *Deliège* [2000] ECR I-2549.

⁸⁵ See ref. 78 above.

⁸⁶ See ref. 79 above.

⁸⁷ Case C-109/92 *Wirth v. Landeshauptstadt Hannover* [1993] ECR I-6447.

services, remuneration and temporary. As we have already considered the first element, we shall now look at the other two in turn.

3.1.2 Remuneration

Article 56 is concerned with economic activity, and Article 57 provides that services must be normally provided for remuneration. The Court clarified in *Humbel*⁸⁸ that the essential characteristic of remuneration lies in the fact that it constitutes consideration for the service in question, and is normally agreed upon between the provider and the recipient of service. That means that services provided out of charity or without any desire for payment are not covered by Article 56. This point was emphasized in *Jundt*,⁸⁹ which concerned a German lawyer resident in Germany, who taught a 16-hour course at the University of Strasbourg, for which he received a small honorarium. The Court said that he was a service provider under Article 56, even though the activity was carried out on a quasi-honorary basis. It added that for the Treaty provision to apply, the activity must not be provided for nothing although there is no need for the person providing the service to be seeking to make a profit.⁹⁰

Remuneration does not have to be paid by the recipient of service.⁹¹ If an insurance company pays for medical care abroad this is remuneration just as much as the patient had paid it himself, and so falls within Article 56. However, not every payment to the service provider is remuneration. This is the case where the services are provided as part of the welfare state.

3.1.2.1 Services and welfare state

Services provided as a part of welfare state are paid out of public purse but are free at the point of delivery. The absence of remuneration between the provider and the recipient suggests that they fall outside the scope of Articles 56-7. This issue has been highlighted in recent years in a series of cases concerning cross-border access to medical and healthcare services and state education. In *Humbel*, the Court had to consider whether university education was a Treaty service. Universities receive most of their funding from the state, but students pay a small contribution. The Court said that state education did not constitute a service because the state was not seeking to engage in gainful activity but is fulfilling its duties towards its own population in the social, cultural and educational fields, and was paid for by the public. The nature of the activity is not affected by the fact that students make a certain contribution to the operating expense of the system.⁹²

Following the logic of this situation the Court said in *Wirth*⁹³ that private education could constitute a service when it was financed essentially out of

⁸⁸ Case 263/86 *Belgium v. Humbel* [1988] ECR 5365, Para. 17.

⁸⁹ Case C-281/06 *Jundt v Finanzamt Offenburg* [2007] ECR I-12231.

⁹⁰ Paras. 32-3.

⁹¹ Case 352/85 *Bond van Adverteerders and others v. Netherlands* [1988] ECR 2085.

⁹² Paras. 18-9.

⁹³ Case C-109/92 *Wirth v. Landeshauptstadt Hannover* [1993] ECR I-6447.

private funds, for example by students, and where the provider sought to make an economic profit.⁹⁴

Relying on *Humbel*, several Member States argued in *Geraets-Smits and Peerbooms*,⁹⁵ that hospital services did not constitute an economic activity when provided free of charge under a sickness-insurance scheme, and so did not fall under Article 56. The Court disagreed. It said that despite the special nature of hospital services, Union law still applied.⁹⁶ It then held that Article 56 does not require that the service be paid for by those for whom it is performed and that the essential character of remuneration lies in the fact that it constitutes consideration for the service in question.⁹⁷

Geraets-Smits and Peerbooms was followed by the cases of *Müller-Faure and Watts*⁹⁸, which confirmed and extended its reasoning. Both cases concern a national requirement for prior authorisation before travelling to receive medical care in another State. The results of these cases is that healthcare services, however funded, fall within the scope of the Treaty where a patient who has travelled to another state and paid for healthcare there seeks remuneration from their national system. There is no exception from the Treaty rules for state-provided healthcare services. The case law of the Court on healthcare has been codified in the Healthcare Directive.⁹⁹

3.1.3 The Temporary Nature of Services

The key factor distinguishing services from establishment is the duration. The right of establishment entails the pursuit of an economic activity for an indefinite period while the freedom to provide services entails the carrying out of an economic activity for a temporary period. In deciding when a service provider is embedded enough that they become established one has to look at several factors. As the Court held in *Gebhard* the temporary nature of the activity of the service provider in the host Member State has to be determined in the light not only of the duration of the provision of the service but also its regularity, periodical nature or continuity. The Court said in *Schnitzer*¹⁰⁰ that the fact that the activity is temporary does not mean that the service provider may not equip himself with some form of infrastructure, for example an office, in the host Member State insofar as such infrastructure is necessary for the purposes of performing the service in question.¹⁰¹ However, as the Court made clear in *Trojani*¹⁰², if the activity is carried out on a permanent basis, or at least without a foreseeable limit to its duration, the activity will not fall within the service provisions.

⁹⁴ Para. 107.

⁹⁵ Case C-157/99 *Geraets-Smits and Peerbooms* [2001] ECR I-5473

⁹⁶ Para. 54.

⁹⁷ Para. 58.

⁹⁸ Case C-385/99 *Müller-Fauré* [2003] ECR I-4509 and Case C-374/04 *Watts v. Bedford Primary Care Trust* [2006] ECR I-4325.

⁹⁹ Directive 2011/24/EU on the application of patient's rights in cross-border healthcare. L 88/45.

¹⁰⁰ Case C-215/01 *Schnitzer* [2003] ECR I-14847.

¹⁰¹ Para. 28.

¹⁰² Case C-456/02 *Trojani v. CPAS* [2004] ECR I-7573, para. 28.

3.2 Restrictions on the Free movement of Services

The most complex aspect of the case law on services is the definition of a prohibited restriction. Although it has never been in doubt that direct and indirect nationality discrimination is prohibited under the sphere of Article 56, the extent of this prohibition is less clear.

The Court has considered a wide variety of national rules to be restrictions on the freedom to provide services. It has held that authorization requirements constitute restrictions. In *Commission v. Netherlands* the Court held that Dutch law requiring private security firms, detective agencies and their managers to be authorized breached Article 56.¹⁰³ It has also held that translation requirements are restrictions, due to the additional expense and the administrative and financial burden for undertakings established in another Member State.¹⁰⁴ The Court has classified a number of rules regulating gambling as a restriction.¹⁰⁵ Furthermore, the Court has ruled that a law requiring staff to carry an identification card were likely to make the provision of service across frontiers more difficult and so breached Article 56.¹⁰⁶ In addition, the Court has held that advertising restriction also breach Article 56. In *Gourmet*, the Court held that a prohibition on advertising had a particular effect on the cross-border supply of advertising, given the international effect of the advertising market, and therefore constituted a restriction on the freedom to provide services.¹⁰⁷

3.2.1 Equal Treatment

Article 56 prohibits discrimination not only on the grounds of nationality as with other Treaty provisions, but also on the grounds of the place of establishment, a wider concept of discrimination than is found in other freedoms.¹⁰⁸ An example of direct discrimination can be found in *FDC*.¹⁰⁹ The case concerned Spanish law which granted a licence to dub foreign films on the condition that they also distributed a Spanish film at the same time. The Court found the law to breach Article 56 because it gave preferential treatment to the producers of Spanish films over producers

¹⁰³ Case C-189/03 *Commission v. Netherlands* [2004] ECR I-9289, para. 17.

¹⁰⁴ Case C-490/04 *Commission v. Germany (posted workers)* [2007] ECR I-6095, para. 69.

¹⁰⁵ Case C-65/05 *Commission v. Greece* [2006] ECR I-10341, para. 56. See also Case C-6/01 *Anomar v. Estado portugues* [2003] ECR I-8621, para. 66.

¹⁰⁶ Case C-355/98 *Commission v. Belgium (private security firms)* [2000] ECR I-1221, paras 38-9.

¹⁰⁷ Case C-405/98 *Gourmet* [2001] ECR I-1795, para. 39.

¹⁰⁸ Case C-288/89 *Gouda* [1991] ECR I-4007, para 10.

¹⁰⁹ Case C-17/92 *Federación de Distribuidores Cinematográficos v Estado Español et Unión de Productores de Cine y Televisión* [1993] ECR I-2239, para. 15.

established in other Member States, since only Spanish producers had a guarantee that their films would be distributed.

Article 57 provides that service providers, temporarily pursuing their activity in another Member State than their own, should enjoy the same rights as the nationals of that Member State. It prohibits discrimination on the ground of nationality against those wishing to provide and receive services. The difficulty of applying the principle of non-discrimination is the choice of comparator. The comparator is obviously a person providing equivalent services who is established in the host state. The Court recognised this problem and noted in *Säger*¹¹⁰ that a Member State may not make the provision of services in its territory subject to compliance with all the conditions required for establishment and thereby deprive of all practical effectiveness the provisions of the Treaties whose object is to guarantee the freedom to provide services.¹¹¹

Host states cannot require service providers and their staff to comply with all of the host state's rules and standards if they have already satisfied the standards in their home state.¹¹² That would impose a double burden on the service provider and deprive Article 56 of all practical effectiveness.

3.2.2 The Market Access Approach

As with the early case law on establishment, there was a period when the Court said that a national measure which was genuinely non-discriminatory did not breach Article 56. This can be seen in *Debauve*¹¹³, where the Court said that a national ban on transmitting advertisement by cable television did not breach Article 56 if those rules applied without distinction as regards the origin, whether national or foreign, of those advertisement, the nationality of the person providing the services or the place where he is established.¹¹⁴ However, as the Court's case law increasingly considered market access, it recognised that non-discriminatory measures did in principle breach Article 56 if they were liable to prevent or impede access to the market.

Reliance on the market access test was first seen in the early case of *Van Binsbergen*.¹¹⁵ It was confirmed in the seminal decision of *Säger*, which concerned German legislation that reserved activities relating to the maintaining of industrial property rights to patent agents. The Court said that Article 56 requires, *not only* the elimination of all discrimination against a person providing services on the grounds of his nationality, *but also* the abolition of any restriction even if it applies without distinction to national provider of services and to those of other Member States, *when it is liable to prohibit or otherwise impede* the activities of a provider of service established in another Member State where he lawfully provides similar

¹¹⁰ Case C-76/90 *Säger* [1991] ECR I-4221

¹¹¹ Para. 13.

¹¹² Case C-341/05 *Laval* [2007] ECR I-987.

¹¹³ Case 52/79 *Debauve* [1981] ECR 833.

¹¹⁴ Para. 16.

¹¹⁵ Case 33/74 *Van Binbergen* [1974] ECR 1299. Para. 10.

services.¹¹⁶ The rule therefore breached Article 56 unless it could be justified. This ruling of the Court has since been repeated in a number of other cases.¹¹⁷

3.3 Justifying Restrictions on Services

Once a potential restriction on the free movement of services is found to exist, Member States have the option to try to justify the restriction under the Treaty exceptions or under a broad Court developed exceptions. The express derogations for public policy, security and health, contained in Article 52 of the Treaty, are made applicable in the field of service by Article 62. The origins of the justification approach in the services context can be found in the case of *Van Binsbergen*. The Court said that specific requirements imposed on a person providing service cannot be considered incompatible with the Treaty, where such requirement is objectively justified by the need to ensure observance of professional rules of conduct connected with the administration of justice and with respect for professional ethics – and are binding upon any person established in the State in which the service is provided, where the person providing the service would escape from the ambit of those rules being established in another Member State.¹¹⁸

The test for justification initially laid down in *Van Binsbergen* contains several conditions that must be satisfied in order for a restriction to be compatible with Article 56. First, the restriction must be adopted in pursuit of a legitimate public interest, which is compatible with Union aims. Secondly, the restriction must be equally applicable to persons established within the state and must be applied without discrimination. Thirdly, the restriction imposed on the provider of services must be proportionate. They must be appropriate for securing the attainment of the objective which they pursue and must not go beyond what is necessary in order to attain it.¹¹⁹ For example, in *Säger* the Court found that the licensing requirements for those monitoring patents exceeded what was necessary to protect the public interest because the services were straightforward, the service provider gave no advice to the clients and there was no risk to clients if those monitoring the patents failed their tasks. A crucial factor in appraising the proportionality and necessity of any restriction is whether the provider is subject to similar regulation in the Member State in which that person is established.¹²⁰

In *Gouda*¹²¹, the Court listed a number of examples of imperative reasons in the public interest, including consumer protection and worker protection. This list is not exhaustive, in fact the Court has also recognised a number of other public-interest grounds. To name a few examples, the Court has listed

¹¹⁶ Para. 12, emphasis added.

¹¹⁷ Cases C-369 and 376/96 *Arblade* [1999] ECR I-8453, para. 33. See also Case C-165/98 *Mazzoleni and ISA* [2001] ECR I-2189, para. 22.

¹¹⁸ Paras. 12 and 14.

¹¹⁹ Craig, DeBurca. (2008) P. 827-8.

¹²⁰ Case C-272/95 *Guiot and Climatec* [1996] ECR I-1905.

¹²¹ Case C-288/89 *Gouda* [1991] ECR I-4007.

protection of the environment,¹²² road safety,¹²³ prevention of social dumping¹²⁴ or unfair competition¹²⁵, combating illegal employment¹²⁶ and preserving or improving the education system¹²⁷ as legitimate public interest grounds.

The Court has applied these public-interest requirements with a considerable degree of flexibility. In some cases it is prepared to engage in a detailed scrutiny of the justifications advanced by the Member States or in the question of proportionality.¹²⁸ In other cases, it has afforded Member States a considerable margin of appreciation. An example of this can be seen in *Schindler*¹²⁹ where the court accepted without question all the justifications advanced by the UK government about the social ills of gambling.

Considering measures which hinder the provision of services between Member states, the Court said in *Säger* that such restrictions could be justified by imperative reasons relating to public interest, which apply to all persons pursuing an activity of destination, in so far as that interest is not protected by the rules to which the person providing the service is subject in the Member State in which he is established.¹³⁰

The requirement that the host state take account of the measures already imposed by the home state is important because the primary regulator is the home state and the host state can only impose supplementary controls. In this regard, the Court said in *Biologische Producten*¹³¹ that host state could require the product to undergo a fresh examination but had to take into account the results of the tests already carried out by the state of origin. In *Guiot*¹³² the Court held that national law which requires an employer to pay employer's contributions to the social security fund of the host Member State, in addition to the contributions already paid by him to the social security fund in the state he is established, places additional financial burden on the employer and is liable to restrict the freedom to provide services. The public interest relating to the social protection of workers may however, constitute an overriding requirement justifying such a restriction.

¹²² Case C-17/00 *De Coster* [2001] ECR I-9445, paras. 36-7.

¹²³ Case C-55/93 *Criminal proceedings against van Schaik* [1994] ECR I-4837.

¹²⁴ Case C-341/05 *Laval* [2007] ECR I-987, para. 103.

¹²⁵ Case C-60/03 *Wolff & Müller v. Pereira Félix* [2004] ECR I-9553, para. 41.

¹²⁶ Case C-255/04 *Commission v. France* [2006] ECR I-5251, para. 52.

¹²⁷ Case C-40/05 *Lyyski* [2007] ECR I-99, para. 39.

¹²⁸ Case 352/85 *Bond van Adverteerdes and others v. Netherlands* [1988] ECR 2085.

¹²⁹ Case C-275/92 *Schindler* [1994] ECR I-1039.

¹³⁰ Para. 15.

¹³¹ Case 272/80 *Criminal Proceedings against Biologische Producten BV* [1981] ECR 3277, para. 14.

¹³² Case C-272/95 *Guiot and Climatec* [1996] ECR I-1905.

4 The Service Directive

4.1 Introduction

So far, we have focused on the application of the Treaty provisions on service. The Treaty provisions and the case law of the Court on services, was codified in the controversial Directive 2006/123/EC on services in the internal market.¹³³ The aim of the Directive was to open up the market in services, which accounts for over two thirds of Europe's GDP. According to a study by Copenhagen Economics,¹³⁴ the economic benefits of a free market in services would amount to 37 billion Euros, real wages would rise by 0.4 per cent, the price of services would drop by more than 7 per cent and up to 600.000 new jobs would be created through the EU. It also aims to increase the choice offered to recipients and improve the quality of services, both for consumers and businesses using these services.

There were two main drafts for the Directive. The original 'Bolkenstein' draft of 2004 provided for a legal framework that would (1) eliminate the obstacles to the freedom of establishment for service providers; (2) remove the obstacles to temporary service provision between Member States and (3) lay down detailed mutual assistance rules between Member States and require them to establish Points of Single Contact (PSC).¹³⁵ The European Parliament made some amendments to the Bolkenstein draft. It removed the "country of origin" principle, according to which service providers would be subject only to the law of the country in which they were established. To give an example, if an advertising agency based in Poland would offer its services in Italy, it would operate only under Polish rules. Many feared that this could lead to a "race to the bottom", with companies relocating to countries with lower wages, and the weakest consumer or employment and health rules.

The Commission drafted the so-called McCreevy draft in 2006, which reflected the significant changes introduced by the European Parliament. This Directive caused more trouble than had ever been anticipated but, after lots of protest, significant intervention from the European Parliament and much negotiation, the Service Directive was finally adopted on 12 December 2006.¹³⁶

The Service Directive has three aspects. First, it elaborates the scope of the rights to provide and receive services and to establish in another Member State. Second, it regulates the administrative and bureaucratic procedures relevant to services and establishment. Thirdly, it contains coordination provisions allowing and requiring states to exchange the information

¹³³ [2006] O.J. L 376/36.

¹³⁴ Copenhagen Economics, "Economic Assessment of the Barriers to the Internal Market for Services. Final Report" 2005.

¹³⁵ Barnard. (2010) P. 403.

¹³⁶ Barnard. 'Unravelling the Service Directive' (2008) 45 CMLRev. 323.

necessary for an effective regulation of service providers.¹³⁷ We shall now examine the Service Directive and see what it adds to the law.

4.1.1 The Scope of the Directive

According to Article 2(1), the Directive applies to services supplied by providers established in another Member State. Services are defined in accordance with the GATS definition: “Service” means any self-employed economic activity, normally provided for remuneration, as referred to in Article 57 of the Treaties.¹³⁸ In addition to the list of services found in Article 57, the Directive includes manage consultancy, facilities management, advertising, recruitments services, real estate services, legal and fiscal services, car rental, travel agencies, sport centres and tourism services such as those provided by tour guides or amusement parks.¹³⁹

An exclusion of services covered by the Directive can be found in Article 2. It does not apply to financial services, electronic communications services, transport services, temporary work agencies, health care services, gambling, private security, most social services such as social housing or childcare, notaries and bailiffs or audio-visual services. There are also several areas upon which the Directive is said not to affect or concern such as taxation, labour law, fundamental rights, criminal law, the liberalisation of services of general economic interest, cultural or linguistic diversity or private international law.¹⁴⁰

In addition, Article 3(1) provides that if the Directive conflicts with other EU legislation concerning specific service activity, the specific legislation will take precedence. For example, the legislation on posted workers, social security or television broadcasting would prevail.

The Directives limited scope means that services now fall broadly into one of three categories: those governed by the Directive, those governed by specific legislation and those governed by the case law and Article 56 directly.¹⁴¹

4.1.2 Administrative simplification

One of the fundamental difficulties faced, in particularly by SME’s, in accessing service activities and exercising them is the complexity, lengthy and legal uncertainty of administrative procedures. It is therefore necessary to establish principles of administrative simplification.¹⁴²

General formal requirements, such as presentation of original documents, certified copies or certified translation, should not be imposed. To further simplify administrative procedures, it is appropriate to ensure that each

¹³⁷ Chalmers, Davies, Monti. (2010) P. 824.

¹³⁸ Article 4(1).

¹³⁹ 33rd recital.

¹⁴⁰ Articles 1-3.

¹⁴¹ Chalmers, Davies, Monti. (2010) P. 824.

¹⁴² 43rd recital.

provider has a single point through which he can complete all procedures and formalities, referred to PSC.

Member States shall ensure that information for service providers and recipients are easily accessible through the PSC, and provided for in a clear and unambiguous manner.¹⁴³ Member States shall ensure that all procedures and formalities relating to a service activity and to the exercise thereof can be easily completed, at a distance and by electronic means, through the relevant points of single contact and with the relevant competent authorities.¹⁴⁴

4.1.3 Freedom to provide and receive services

The possibility of gaining access to a service activity should not be made subject to authorisation, unless that decision satisfies the criteria of non-discrimination, necessity and proportionality. An authorisation granted to a provider shall be for an indefinite period, unless in case of exceptional circumstances provided for in Article 11. Authorisation procedures and formalities shall be clear, made public in advance and such as to provide the applicants with guarantee that their application will be dealt with objectively and impartially.¹⁴⁵

Member States shall not make access to, or the exercise of a service activity subject to requirements that are either discriminatory, residential or based on nationality. Further prohibited requirements are the prohibition on having an establishment in more than one Member State, restrictions on the freedom to choose between a principal or a secondary establishment and the obligation to have been pre-registered for a given period in their territory.¹⁴⁶

Member States shall ensure that requirements to comply with quantitative or territorial restrictions, fixing a minimum number of employees, fixed tariffs, an obligation to take a specific legal form or a ban on having more than one establishment in the territory, fulfil the criteria of non-discrimination, necessity and proportionality.

The most controversial provision of the Directive is Article 16, which provides that Member States shall respect the right of providers to provide services in a Member State other than that in which they are established. They shall ensure free access to and free exercise of a service activity within its territory. However, the host state shall not be prevented from imposing requirements where they are justified for reasons relating to the public interest and account being taken of the protection already provided in the home state.

Article 16(2) lists seven requirements that can be saved only by the express derogations in Article 17, the case-by-case derogations in Article 18 and a narrow list of public-interest requirements.¹⁴⁷ The narrow list of public-interest requirements can be used to justify not only the seven requirements

¹⁴³ Articles 6-7.

¹⁴⁴ Article 8(1).

¹⁴⁵ Article 13.

¹⁴⁶ Article 14.

¹⁴⁷ Namely public policy, public security, public health and the protection of the environment.

listed in Article 16(2) but also any other requirements which affect access to or exercise of a service activity in another Member State.

No reference is made to the judicially developed overriding reasons relating to public interest (ORRPI) which is used in the chapter on establishment. This supports the long-established idea that the host state has more right to intervene in respect of establishment than it does in respect of services.

4.1.4 Quality of Services

The preamble states that it was necessary to provide in the Directive for certain rules on high quality of services, ensuring in particular information and transparency requirements. Member States should encourage interested parties to draw up codes of conduct aimed at promoting the quality of services. These codes of conduct should include, as appropriate to the specific nature of each profession, rules for commercial communications relating to the regulated professions and rules of professional ethics and conduct of the regulated professions which aim at ensuring independence, impartiality and professional secrecy.¹⁴⁸

Article 22 lists indispensable information which must be provided by the provider, such as name, legal status, form and contact details as well as information about the service.

Member States shall encourage providers to take action at a voluntary basis in order to ensure the quality of service provisions, in particular through certification or assessment of their activities by independent or accredited bodies and drawing up their own quality charter or labels by professional bodies at the Union level.¹⁴⁹

Further confidence building measures can be found in Article 23. Article 23(1) provides that Member States may ensure that providers established in their territory, whose services present a direct and particular risk to the health or safety of the recipient or a third person, subscribe to professional liability insurance appropriate to the nature and extent of the risk, or provide guarantee or similar insurance.

4.1.5 Administrative Cooperation

Administrative cooperation is essential to make the internal market in services function properly. Lack of cooperation between Member States results in proliferation of rules applicable to providers or duplication of controls for cross-border activities, and can also be used by rogue traders to avoid supervision or to circumvent applicable rules on services.

To persuade states to cooperate, the Directive designates which state is responsible in particular situations. This is supported by a clear, legally binding obligation for Member States to cooperate effectively.¹⁵⁰ In practical terms, Member States have to designate one or more liaison points as well as facilitating both operational cooperation and the provision of

¹⁴⁸ 114th recital.

¹⁴⁹ Article 26(1).

¹⁵⁰ Article 29-35.

information by providers established in the home state to the competent authorities in other Member States.¹⁵¹

¹⁵¹ Article 28.

5 The results of the Service Directive

The adoption and subsequent implementation of the Service Directive has been a crucial milestone in improving the functioning of the Single Market for services. It has done so by removing unjustified barriers, simplifying the regulatory framework and helping modernise public administrations. Hundreds of discriminatory, unjustified or disproportionate requirements throughout the EU have been abolished in important service sectors such as retail, construction, tourism and the business sector. This has been achieved by more than 1.000 implementing laws and by Member States setting up specific mechanisms to prevent new barriers from emerging in the future, such as internal notification obligations, guidelines for future legislation or “Single Market tests” in the impact assessment of new requirements. Finally, clauses to facilitate the free movement of services from providers established in another Member State have been introduced in national legislation. However, legislative changes are only one part of the achievements during implementation. A major effort to modernise public administrations has also been made and is still being pursued. That is being done in particular through the setting up of PSC and e-government portals for business now operational in most Member States. There is also development in administrative cooperation through the use of “Internal Market Information” system (IMI).

In order to realise the full potentials of the Directive it is important that all Member States complete all the required legislative changes to implement it. Overall, conservative estimates predict that the implementation of the Service Directive has the potential to bring about economic gains of up to EUR 140 billion, representing up to 1.5 % growth of the EU GDP.¹⁵² Only one Member State has not yet fully transposed the Directive.¹⁵³

5.1 The process of mutual evaluation

A particular powerful tool, the mutual evaluation process, was an innovative exercise foreseen by the Directive itself. It was undertaken by the Member States¹⁵⁴ and the Commission throughout 2010, covering close to 35.000 requirements, and required Member States to carry out a systematic and comprehensive review of their legislation. The Directive gave the Member States the task of assessing a number of legal requirements typically imposed on service providers. The Member States had to review and assess

¹⁵² “Expected economic benefits of the European Service Directive”, Netherlands Bureau for Economic Policy Analysis (CPB), November 2007.

¹⁵³ OECD (2012), *OECD Economic Surveys: European Union 2012*, OECD Publishing. doi: [10.1787/eco_surveys-eur-2012-en](https://doi.org/10.1787/eco_surveys-eur-2012-en)

¹⁵⁴ The three EFTA countries part of the EEA agreement, Iceland, Norway and Lichtenstein, also took part.

these requirements against a certain criteria set out in the Directive to see if they should be maintained, abolished or needed to be modified. The process of mutual evaluation allowed the drawing up of a detailed picture of the state of the Single Market for services.¹⁵⁵

5.1.1 What has been achieved?

The mutual evaluation process has created transparency as to the results of the implementation of the Service Directive by putting in place a structured dialogue between Member States. In fact, contact and exchange of information between Member States have multiplied along the process and have been key to its results. It is the first time that the Commission and Member State carry out together a throughout assessment of national rules affecting service activities. This concerned national rules at all levels as well as rules set out by professional associations with regulatory powers. In that respect, the mutual evaluation has had an unprecedented Single Market effect within Member States, as all levels of national administration were called upon to critically assess their own rules and those existing in other Member States from a Single Market perspective.

Thanks to the active involvement of Member States, this process has also been a valuable tool to identify remaining obstacles for the Single Market and to lay the basis for future policy actions in the service sector.¹⁵⁶

5.1.2 What remains to be done?

The obstacles identified are numerous. A part of the problem is that EU rules adopted over the years to help the functioning of the Single Market for services are not being used to their full extent and are, in some cases, implemented or applied inconsistently. There is sometimes a lack of clarity as to how different EU instruments interact or which rules apply, in particular in the context of cross-border service provision, to the detriment of the ability and willingness of SMEs to operate abroad. To give an example of this, some EU instruments apply in a horizontal manner like the Service Directive but other such as the RPQ Directive regulate issues of central relevance to a large number of service activities.

The most frequently mentioned barrier by the Member States is when Member States reserve certain service activities for certain operators. There are 800 different activities in the EU that are considered to be regulated professions in one or more Member States and are reserved for providers with specific qualification. This can be seen a barrier for the functioning of the Single Market, in particular for cross-border services, notably between Member States where the activity is not regulated and Member State where the activity is regulated. An example of this is if a self-employed

¹⁵⁵ COM(2011) 20 final

¹⁵⁶ COM(2011) 20 final

photographer would be refused permission to photograph a corporate evening happening in another Member State because that Member State reserves this activity to persons with a specific qualification in photography.

The application of legal form or capital ownership requirements to cross-border provisions of services may have particularly restrictive effects such as depriving certain providers of the possibility to offer their services in another Member State merely because of the legal form in which they operate. Requirement relating to capital ownership may result in reduced options for the acquisition of financing and in limitations on available business models. Whilst there may be valid reasons behind these requirements, they nonetheless create barriers to the functioning of the Single Market for services. The justification and/or the proportionality of certain rules was intensely debated during the mutual evaluation

During the mutual evaluation process, an issue relating to insurance obligation was highlighted as creating significant problem for the cross-border provisions of services in sectors such as business services or construction. Insurance obligations are often imposed on service providers by the Member States where the service is provided, disregarding the fact that the provider may already be adequately insured in its place of establishment. In the light of the Service Directive, the justification and proportionality of imposing such obligations need to be assessed in a number of cases. In cases where such requirements can be justified, it seems that there are significant difficulties in obtaining insurance for cross-border services as insurance may be difficult to find on the market or may be subject to highly onerous conditions.

Finally, the mutual evaluation process confirms the need to make the Single Market for services a more concrete reality on the ground. More dialogue and more transparency is needed, to avoid as much as possible the emergence of new barriers. The complexity of a large Union increases the importance of enforcement at national level, ensuring that service providers have effective, fast and affordable means of redress at national level to enforce their Single Market rights.¹⁵⁷

5.1.3 The way forward

The key findings of the mutual evaluation confirm the importance of the Single Market for services and the need to further develop it. The Commission, together with the Member States, will undertake a “performance check” of the Single Market for services. The aim of this will be to assess the situation from the perspective of the users of the Single Market, such as the self-employed person who wants to provide services across borders or the consumer seeking to use the service provided. The performance checks will be aimed at closer scrutiny of the practical

¹⁵⁷ COM(2011) 20 final

functioning of the EU regulatory framework applicable to certain growth sectors such as business services, construction and tourism. It will carry out further assessment on reserved activities, requirements as regards capital ownership and legal form, and insurance obligation, all of which are persistent obstacles to better integration of the markets in services.¹⁵⁸ On the outcome of these various initiatives, the Commission will decide in 2012 on the subsequent steps.

In order to ensure that the freedom to provide services clause in Article 16 of the Service Directive is applied properly and consistently in all Member States, the Commission will closely monitor its application and discuss its findings with the Member States. Going forward, it is essential to enhance transparency to avoid new regulatory barriers. Therefore, there is an immediate need to consolidate the obligation on the Member States, to notify new establishment requirements and requirements affecting the free movement of services, by providing guidance to Member States administrations on how to use it.

Finally, there is a need to ensure that service providers, in particular SMEs, do not give up on testing markets across borders simply because it is made too difficult by regulatory barriers. The SOLVIT network already plays an important role in this respect by providing informal solutions to problems encountered with public authorities. The SOLVIT network has built up an impressive problem solving track record, more than 70% of the cases it has tackled has been resolved at the average time of less than 70 days. It is operated on a daily basis in every Member State, as well as Iceland, Norway and Lichtenstein, located within a national ministry and the staff are specialised in cross-border problems.¹⁵⁹

The results of implementation, even still under completion in one Member State, constitute a major step forward in terms of removing barriers and the simplification of legislation. It is an important step towards a better functioning Single Market for services. The strengthening of the service sector is an important contribution to the better functioning of the Single Market.

¹⁵⁸ COM(2011) 20 final

¹⁵⁹ COM(2011) 20 final

6 Towards a Better Functioning Single Market

The internal market of the EU is a single market which ensures that European citizens are free to live, work, study and do business where they want in the EU. The Single Market ensures free movement of goods, people, services and capital and aims at removing barriers and opening national markets, so that consumers have wider choice and lower prices. However, with 27 Member States and 500 million citizens the task of completing the internal market is not easy.

Since the Single Market was created in 1993 it has been further developed by the consolidation of economic integration, the Euro and solidarity and cohesion policies. However, over these twenty years the world has changed. Globalisation has increased the pace of trade and technological change, which have opened the way for new competitors prepared to challenge us. This has created two challenges for Europe: to work even harder on developing our skills in high-value-added sectors and pursue policies to help European companies, and SMEs in particular, to seize the huge opportunities that are being created by these new areas of growth. Furthermore, Europe itself has changed. It has been reunified, enlarged and deepened. The repercussions of the financial crisis and the economic crisis have been felt in all of our economies and in all sectors. They have made both entrepreneurs and workers vulnerable and reduced the spending power of millions of European consumers.¹⁶⁰

In response to the global financial crisis, the European Union adopted a strategy, Europe 2020, setting itself ambitious goals for smart, sustainable and inclusive growth.¹⁶¹ In order to achieve these objectives the Union and the Member States must carry out urgent structural reforms. Priority must be given to those measures likely to foster growth and employment. The Single Market provides the tools for implementing these reforms and has a key role to play to deliver growth and employment and promote competitiveness. Particular emphasis should be laid on measures which create growth and jobs and bring tangible results to citizens and businesses.¹⁶²

Realising these new challenges, President Barroso asked Mario Monti to submit a report containing options and recommendations for the relaunch of the Single Market. As Monti states in his report, achieving a deep and efficient single market is a key factor determining the EU's overall macroeconomic performance. His report proposes "a new strategy to safeguard the Single Market from the risk of economic nationalism, to

¹⁶⁰ "Towards a Single Market Act – For a highly competitive social market economy", COM(2010) 608 final.

¹⁶¹ "EUROPE 2020 – A strategy for smart, sustainable and inclusive growth" COM (2010) 2020 final.

¹⁶² European Council Conclusion of 24/25 March 2011, EUCO 10/11, paragraph 7.

extend it into new areas key for Europe's growth and to build an adequate degree of consensus around it."¹⁶³ Based on the Monti report the Commission put 50 proposals up for public debate. These were set out in the Communication "Towards a Single Market Act".¹⁶⁴ Furthermore, the Council undertook to examine further the Single Market Act, in order to define as quickly as possible, in partnership with the European Parliament and the Commission, priority objectives to put in place before the end of 2012. In its 6 April 2011 resolutions,¹⁶⁵ the European Parliament set out its priorities for developing a single market for Europe's citizens businesses and growth, in a framework of partnership and governance.¹⁶⁶

6.1 Single Market Act

In April 2011, the Commission launched an action plan, the Single Market Act, to relaunch growth and strengthen confidence in the internal market of the EU. Based on a Europe-wide public debate, European Parliament Resolutions¹⁶⁷ and Council Conclusions,¹⁶⁸ the Commission announced twelve levers to boost growth, jobs and confidence in the Single Market. It announced a series of actions, including twelve key actions. All these measures together will provide a coherent political response to the gaps in the Single Market by presenting a model for sustainable, smart and inclusive growth in the framework of the Europe 2020 Strategy.

These reforms are to contribute to sustainable development, based on a highly competitive social market economy. They should contribute to employment and social process as well as to improving the environment and fighting the climate change. These reforms will complete and reform the Single Market, adapting to the challenges of the 21st century, in particular in the digital economy. They should also encourage innovation and creativity, which contribute to the revival of a strong industrial economy in Europe and the development of a competitive service-based society.¹⁶⁹ These reforms should contribute to inclusive growth by facilitating the creation and development of small and micro-enterprises. Inclusive growth also means paying particular attention to the needs of people with disabilities, so that they can benefit from the Single Market.

¹⁶³ Report by Mario Monti to the President of the European Commission: "A new strategy for the single market" of 9 May 2010, page 7.

¹⁶⁴ COM(2010) 608 final.

¹⁶⁵ European Parliament Resolution of 6 April 2011 on a Single Market for Enterprises and Growth (A7-0071/2011); European Parliament Resolution of 6 April 2011 on a Single Market for Europeans (A7-0072/2011); European Parliament Resolution of 6 April 2011 on Governance and Partnership in the Single Market (A7-0083/2011)

¹⁶⁶ Communication from the Commission: "Single Market Act: Twelve levers to boost growth and strengthen confidence: Working together to create new growth"; COM (2011) 206/4.

¹⁶⁷ COM(2010) 608 final.

¹⁶⁸ Conclusions of the 3057th Competitiveness Council on the Single Market, 10 December 2010.

¹⁶⁹ Article 3(3) of the Treaty on European Union.

Ensuring that the Single Market rules turn into concrete Single Market rights for the citizens and businesses of the Union will require additional efforts. The Single Market Act includes a separate chapter on Single Market governance. It sets out specific proposals as to how to inform citizens and businesses of their Single Market opportunities, how to improve the application of the Single Market rules by authorities in Member States and how to ensure their effective enforcement.¹⁷⁰ At the end of 2012, the Commission will take stock of the progress of the current action plan and will present a programme for the next stage. This priority setting of twelve key actions does not mean that the Commission is giving up on the other 48 actions identified in its Communication “Towards a Single Market Act” that will enable the Single Market to become the platform for growth and job creation. It is only the first step in that direction.

6.1.1 The Twelve Key Action Proposals

6.1.1.1 A Single Market for venture capital

The EU’s 21 million SMEs represent a major asset for sustainable growth and job creation. Difficulty in accessing finance is one of the main obstacles that prevent SMEs from launching new products, strengthening their infrastructure and taking on more employees. Facilitating access to funding for rapidly expanding SMEs is a requirement of the utmost importance because such SMEs, along with innovative SMEs in particular, play a crucial role in the development of an innovative, sustainable economy. Venture capital funds encounter significant difficulties in raising capital abroad and operating across borders because of the multiplicity of national regulatory regimes and tax barriers.

On 7 December 2011, the Commission presented its legislative proposal creating a single market for venture capital. The proposal will ensure that venture capital funds established in a given Member State can raise capital and invest into projects across the EU with no additional obstacles or burden. It lays down uniform rules and quality standards when raising funds and investing across the EU. The regulation will provide all managers of qualifying venture capital funds with a European marketing passport allowing access to eligible investors across the EU. The proposal has been passed to the European Parliament and the Council for negotiation and adoption. It is the objective of the Danish Presidency to engage in a political debate in the Competitiveness Council and to reach an agreement with the European Parliament in May 2012.¹⁷¹

6.1.1.2 A modern system for the recognition of professional qualifications

Too many regulatory barriers still prevent Europeans from working wherever they wish in the Union, whilst many highly skilled jobs remain

¹⁷⁰ SWD(2012) 21 final.

¹⁷¹ SWD(2012) 21 final.

unfilled. Increased mobility of skilled labour will make the European economy become more competitive. The current situation on the labour market, marked by the economic crisis and an ageing population, is characterised by a shortage of labour and the difficulties experienced by employers wishing to recruit staff with appropriate skills. Citizens must have their qualifications and professional experience recognised in all Member states, in order to take up a new job in another Member State quickly.¹⁷²

On 19 December 2011, the Commission presented its proposal for a revised Directive on the recognition of professional qualifications. The Commission proposes the introduction of an electronic European Professional Card, which will be implemented through the existing IMI system. The proposal will modernise the harmonised minimum training requirements for certain professions benefitting from automatic recognition. An alert mechanism to identify health professionals guilty of malpractice is also proposed. Furthermore, it will simplify the access to information on recognition of qualifications by extending the scope of the PSC. With its proposal, the Commission seeks to launch a systematic screening and mutual evaluation exercise for all regulated professions in Member States. The proposal reflects the main policy orientations provided by the European Parliament in its Resolution on the implementation of the Professional Qualifications Directive, adopted on 15 November 2011.¹⁷³ It is the objective of the Danish Presidency to hold a political debate on this proposal at the Competitiveness Council in May 2012.¹⁷⁴

6.1.1.3 Establishing a unitary patent system

Intellectual property is a property right recognised in the Charter of Fundamental Rights.¹⁷⁵ Industries that make intensive use of intellectual property rights (IPR) play a strategic role in the sustainable development of our economies. They lead to innovation, generate significant added value and offer stable and highly qualified employment. The protection of intellectual property rights encourages investment in the development of innovative services and products and ensures fair return on investment. The current situation in the EU is characterised by a multiplication of patents and national litigation systems.¹⁷⁶ This is costly and creates legal uncertainty.

On 13 April 2011, the Commission presented two legislative proposals on unitary patent protection in the EU. The first proposal sets out substantive rules on unitary effect for granted patents. The second proposal contains the applicable translation agreements. In parallel, the Member States held intensive discussions on the creation of a Unified Patent Court (UPC) through an international agreement. The aim of the reformed patent system

¹⁷² COM(2011) 206 final.

¹⁷³ European Parliament Resolution of 14 November 2011 on the implementation of the Professional Qualifications Directive (2005/36/EC) (A7-0373/2011)

¹⁷⁴ SWD(2012) 21 final.

¹⁷⁵ Article 17 of the Charter of Fundamental Rights.

¹⁷⁶ COM(2011) 206 final.

is to reduce the translation and related costs of patents in Europe by up to 80% and provide a stimulus for European innovation and economic growth. The reformed patent system will allow any company or individual to protect their inventions through a single European patent, which will have unitary effect in 25 Member States.¹⁷⁷

6.1.1.4 Consumer empowerment

The Single Market is part of everyday life for consumers whenever they travel, buy goods or services or make payments. In order to relaunch the Single Market, consumers confidence must be strengthened. Increased consumer confidence in cross-border electronic commerce would generate additional economic benefits, estimated at approximately 0.02% of the EU's GDP or around EUR 2.5 billion.¹⁷⁸ Consumers must be confident that the goods they buy are reliable, irrespective of the place of production.¹⁷⁹

On 29 November 2011, the Commission presented a legislative package comprising a proposal for a Directive on alternative dispute resolution for consumer disputes (Directive on consumer ADR) and a proposal for a Regulation on online dispute resolutions for consumer disputes (Regulation on consumer ODR).

The aim of the Directive on consumer ADR is to enable EU consumers and businesses to settle all contractual disputes between them arising from the sale of goods or provision of services in the Single Market out-of-court in a simple, quick and inexpensive way. All ADR entities in the EU will need to respect binding quality principles, including impartiality, transparency, effectiveness and fairness. National competent authorities will monitor the compliance with these principles.

The objective of the Regulation on consumer ODR is to create an EU-wide web-based platform (ODR platform) providing consumers and businesses with a single entry for resolving entirely online the contractual disputes related to cross-border e-commerce transactions. Consumers should find this ODR platform on the businesses web sites, giving them confidence to buy online and across borders. The Danish Council Presidency is conducting an intensive technical discussion at working group level with a view to achieve an agreement by summer 2012.¹⁸⁰

6.1.1.5 Extension of the European standardisation system to services

Standardisation is a primary tool for the free movement of goods whilst ensuring product interoperability, safety and quality. It is increasingly used

¹⁷⁷ SWD(2012) 21 final.

¹⁷⁸ Working Document "Strengthening the powers of consumers in the European Union", adopted on 7 April 2011 (SEC(2011)469) and based on Eurobarometer 342; and Commission services estimate based on data published by the study "Mystery shopping Evaluation of Cross-Border E-Commerce in the EU" by YouGovPsychonomics.

¹⁷⁹ COM(2011) 206 final.

¹⁸⁰ SWD(2012) 21 final.

in the service sector, although mainly at national level. However, service standardisation can hinder the integration of the Single Market, if not developed at a European level. It is therefore necessary to establish a European standardisation system for services in order to avoid the emergence of new barriers and to facilitate the cross-border provision of services.¹⁸¹

On 1 June 2011, the Commission presented its proposal for a revision of the European standardisation system. This proposal aims to make the procedures in which standards are adopted more efficient, effective and inclusive by helping SMEs and societal stakeholders to actively participate in standard-setting procedures. As regards services, the Commission proposes to include service standards within the scope of the Regulation to enable it to issue mandates requesting the development of European services standards. This will make it easier for European-level services standards to be adopted, which in turn will reduce the risk of market fragmentation stemming from diverse national service standards. The proposal has been subject to discussions in the European Parliament and the Competitiveness Council which lead to compromise text, tabled by the Polish Presidency at the end of 2011. It is the objective of the Danish Council Presidency to reach a first reading agreement with the European Parliament by summer 2012.¹⁸²

6.1.1.6 Reinforcing the Single Market's energy and transport backbone

On 19 October 2011, the Commission presented the Connecting Europe Facility (CEF) package. It is a set of proposals for the identification and funding of transport, energy and telecommunication networks, including two sector specific draft Regulations that implement the key action of the Single Market Act under this lever. As a single funding instrument with a proposed budget allocation of about EUR 50 billion, the new CEF will finance projects where the EU added value is the greatest, thus helping to fill in the missing infrastructure links that still hamper the functioning of the European Single Market.

These proposals are under discussions with the Polish Presidency and the Danish Presidency, as well as under examination by the Parliament.

6.1.1.7 The digital Single Market

The development of digital technology is one of the main levers for boosting growth and employment in the EU in various respects. Strengthening confidence in electronic transactions is a necessary condition for the development of a digital Single Market, from which businesses, citizens and public authorities would fully benefit. What is needed in order to do this are trusted electronic services that respect privacy, provide legal certainty, ensure that transactions are secure and recognised by all sectors of

¹⁸¹ COM(2011) 206 final.

¹⁸² SWD(2012) 21 final.

activity. The electronic services must be cheap, easy to use and under the strict control of the transaction parties.¹⁸³

The European Commission intends to present its legislative proposal for pan-European framework for electronic identification, authentication and signature in the second quarter of 2012. The objective of the proposal is to create an appropriate legal framework to ensure that electronic services can be used across borders, with the view of fostering the functioning of the internal market, and more generally boost confidence, trust and user friendliness around them.¹⁸⁴

6.1.1.8 Social entrepreneurship

The internal market is based on a “highly competitive social market economy”, which reflects the trends towards inclusive, socially fairer and environmentally sustainable growth. New business models are being used, in which these societal concerns are taking precedence over the exclusive objective of financial profit. This trend must be reflected in the Single Market and a level playing field must be ensured. Initiatives, which contribute to the fight against social exclusion and introduce more fairness in the economy, should be supported.¹⁸⁵ In order to ensure a level playing field, the Commission presented its proposal for the Regulation on European Social Entrepreneurship Funds on 7 December 2011. The aim of the Regulation is to establish a recognised EU brand for social entrepreneurship funds, which will allow investors to easily find and target them. The Regulation will strengthen the trust in the social business market and aims at creating more transparency in this particular investment market. The new proposal also aims to break down barriers to fundraising across Europe by means of European passport. European Social Entrepreneurship funds will provide new opportunities for professional financial services investors to help fund social businesses, adding to support already available from banks, funds and public authorities. It is the objective of the Danish Presidency to reach an agreement with the European Parliament in May 2012.¹⁸⁶

6.1.1.9 Taxation

EU rules on taxation do not provide a level playing field for end-users within the internal market and do not sufficiently support energy saving or environmentally friendly energy consumption. Today it is important that taxation policy enables consumption to be directed towards a better use of energy resources, with priority being given to clean energy sources.¹⁸⁷

On 13 April 2011, the Commission presented its proposal for a revision of the Energy Tax Directive. The aim of the proposal is to restructure the way energy products are taxed to take into account both their CO₂ emissions and energy content. Such a new system will promote EU renewable energy,

¹⁸³ COM(2011) 206 final.

¹⁸⁴ SWD(2012) 21 final.

¹⁸⁵ COM(2011) 206 final.

¹⁸⁶ SWD(2012) 21 final.

¹⁸⁷ COM(2011) 206 final.

climate change and energy efficiency targets. The proposal encourages the consumption of energy products emitting less CO₂.

In the European Council, a number of discussions among technical experts from Member States have taken place. So far, discussions have not led to a convergence of views on key issues. The Danish Presidency considers the proposal one of its priorities and plans to devote appropriate efforts to finding a suitable compromise with a view to reaching political agreements at the June Economic and Financial Affairs Council.¹⁸⁸

6.1.1.10 Social cohesion

In a social market economy, a more unified European market in services means being able to ensure that businesses are able to provide their services throughout the EU easily, whilst at the same time providing more high quality jobs and an high level of protection for workers and their social rights. Social and territorial cohesion is a prime importance for European integration, which acknowledges that market forces alone cannot provide adequate response to all collective needs. Services of general economic interest (SGEIs) are essential building blocks of the European social model that is both socially inclusive and highly competitive.¹⁸⁹

On 21 Mars 2012, the Commission presented two legislative proposals to improve social cohesion. A proposal for an Enforcement Directive to improve the implementation of the Posting of Workers Directive (PWD)¹⁹⁰ and a proposal for a Regulation on the exercise of the right to take collective action, in the context of the freedom to provide services and of establishment.¹⁹¹ The aim of the Enforcement Directive is to ensure a more uniform application, implementation and enforcement of the PWD. The purpose of the Regulation is to clarify to which extent trade unions may use the right to strike in the case of cross-border operations, without reversing existing CJEU jurisprudence.¹⁹²

6.1.1.11 Business environment

The objective of Single Market policy is to facilitate free movements not only through the abolition of market barriers, but also through the creation of a regulatory environment which minimises administrative burdens. On 25 October 2011, the Commission presented its proposal for a simplification of the two Accounting Directives, on annual and consolidated financial statements. The aim of the proposal is to reduce the administrative burden for small companies by making the preparation of financial statements easier and simpler. The proposal will make company financial information more comparable, clear and easy to understand for users, such as employers, banks, investors and suppliers. The potential savings generated by this

¹⁸⁸ SWD(2012) 21 final.

¹⁸⁹ COM(2011) 206 final.

¹⁹⁰ Directive 96/71/EC. OJ L018.

¹⁹¹ Proposal for Regulation see: COM(2012) 130 final and Proposal for Directive see: COM(2012) 131 final

¹⁹² SWD(2012) 21 final.

proposal amount to EUR 1.5 billion per year for 1.1 million small companies and EUR 5.2 billion per year for 5.9 million micro-enterprises.¹⁹³ The proposal is now in the European Parliament and in the Council for discussion and adoption. The Danish Presidency aims to reach first-reading agreement with the Parliament by summer 2012.

6.1.1.12 Public procurement

Public procurement can be used as a lever for developing a Single Market which is greener, more social and more supportive of innovation. Access to such contracts must be made easier for SMEs and cross-border supplier. Currently, the proportion of public contracts which are awarded to suppliers from other Member States is still quite low, in comparison with the level of import penetration in private procurement.¹⁹⁴

On 20 December 2011, the Commission presented its proposal for the revision of the Public Procurement Directive. The objective of the proposal is to simplify the European legislation on public procurement, by reducing administrative burdens on businesses and to develop and strengthen e-procurement. In addition, SMEs access to public contracts will be improved, by prohibiting disproportionate requirements concerning the financial standing of candidates. The proposal has been passed to the European Parliament and the Council for the adoption period. The Danish Presidency will present the progress made on this file at the Competitiveness Council in May.¹⁹⁵

6.1.2 Strengthened governance of the Single Market

In addition to its twelve levers, the Single Market Act singles out four different conditions to strengthen the governance of the Single Market and to make it more tangible for citizens and businesses. The four conditions are (i) better involvement of the civil society; (ii) working in partnership; (iii) improved information; and (iv) proper transposition and application of EU rules.

In order to involve the civil society in the development and evaluation of Single Market policy the Commission, together with the Parliament and the Polish Presidency of the EU, organised the first Single Market Forum (SIMFO) in Krakow. It gathered European businesses, social partners, journalists, non-governmental organisations, national parliamentarians, European institutions representatives and public authorities at various levels of government. In ensuing the Krakow Declaration, the participants highlighted the importance of close cooperation of Member States to make

¹⁹³ Figures based on an October 2010 study by the Centre for Strategy & Evaluation Services and on a report on the EU project on reference and lower administrative costs which was carried out by Capgemini, Deloitte and Ramboll in February 2009.

¹⁹⁴ COM(2011) 206 final.

¹⁹⁵ SWD(2012) 21 final.

the Single Market more effective and reached conclusions on eight specific policy areas. The European Parliament and the Council welcomed the Krakow Declaration. Its operational conclusions will help reflect on the future of the Single Market and assist the formulation of specific proposals, including its proposal to make the SIMFO a recurrent event.

Active and effective cooperation between Member States is key to better governance of the Single Market. The Internal Market Information system (IMI) offers a powerful tool for cross-border cooperation between competent authorities, with more than 11.000 registered users throughout the EU. The Commission's objective to develop IMI into a comprehensive toolkit for administrative cooperation has received strong support from the European Parliament and stakeholders. In August 2011, the Commission submitted a proposal for a Regulation on the IMI, which aims to give the tool a solid legal basis and facilitate its use within other policy areas. Moreover, the Commission is also proposing to rely on IMI as a partnership tool for the Professional Qualification Directive and the Public Procurement Directive. Discussions in the Council and European Parliament are well underway with a view of final adoption of the Regulation in 2012.

Important progress has been made since the adoption of the Single Market Act in making more administrative procedures available online through the Points of Single Contacts of most Member States, leading to an increase in their use. However, in many cases it continues to be challenging for entrepreneurs from abroad to use the PSC, partly for linguistic but also for technical reasons. To reap the full potentials of the PSCs, access and use of them must be simplified, their quality increased as well as awareness of them.

Together with the Member States, the Commission has further developed the new Your Europe portal, which offers a single gateway for all information and help on Single Market rights, on a cross-sectoral basis. The portal has been entirely redesigned and is available in all EU languages. Major efforts have been made to make Your Europe better known through physical networks such as Europe Direct centres in the Member States.

Evaluation results show that SOLVIT offers real advantages for people, both in economic and social terms. The Commission will shortly present a Communication, designed to unlock SOLVIT's full potential, which identifies sets of concrete actions which aim to reinforce SOLVIT and the many benefits it brings to the Single Market.¹⁹⁶

In improving the application of Single Market rules, the Single Market Act stresses the importance of reducing transposition and compliance deficits to 0.5% - also called for by the Krakow Declaration. However, the results of the latest Internal Market scoreboard are worrying. For the first time since 2007, Member States have jointly missed the 1% transposition deficit and the average deficit was 1.2%.¹⁹⁷

Given their importance for growth, jobs and confidence, particularly determined enforcement efforts should be reserved to the twelve key actions

¹⁹⁶ SWD(2012) 21 final.

¹⁹⁷ http://ec.europa.eu/internal_market/score/docs/score23_en.pdf

of the Single Market Act. The Commission has stressed the need for timely and full transposition of these twelve key actions. It has also stressed the need for Member States to provide documents explaining relations between EU law and national law provisions, such as correlation tables. It is very important for citizens and those enforcing their rights to know precisely which provisions of national law originate from the EU and to be able to check whether the implementation is correct.

The Commission President has called on the European Parliament and the Council to fast track these proposals and adopt them in a single legislative reading before the end of 2012, in time for the 20th anniversary of the Single Market.¹⁹⁸ The Commission will start preparing a second wave of policy proposals to boost growth, employment and confidence in the Single Market.

¹⁹⁸ Speech by President José Manuel Barroso in front of the European Parliament on European renewal – State of the Union Address 2011’, Strasbourg 28 September 2011.

7 Conclusions

The year 2012 is witnessing the 20th anniversary of the Single Market. During those twenty years, a lot of water has gone under the bridge. We have seen remarkable developments in many areas and the completion of the Single Market remains the cornerstone of Europe's project.

However, the Single Market still has its shortcomings as pointed out in the Monti report. The Single Market exists in books, but in practise multiple barriers and regulatory obstacles fragment intra-EU trade and hamper economic initiative and innovation.¹⁹⁹ The full potential of the Single Market has not yet been delivered and in many areas the Single Market is far from being completely in place. In addition, there are missing links which prevent a still fragmented market from acting as a powerful engine for growth and delivering the full benefits to consumers.

The Single Market is less popular than ever, yet it is more needed than ever.²⁰⁰ In the difficult times we are now facing, with the economic crisis and the lack of interest in the Single Market, the strengthening of the Single Market is more important than ever. It is the tool to help us recover from the economic crisis and is key for enhancing economic growth and gain the confidence of Europe's citizens and businesses. No market can function and lead to desired growth without the faith of the consumers so consumer confidence is therefore of paramount importance.²⁰¹ In order to restore confidence, it is important to reach out to consumers as players in the Single Market to enable them to buy, invest, receive care or obtain an education anywhere in Europe. All European consumers must be guaranteed access to products that are safe and reliable, comply with standards and are competitively priced.

Within EU law, there are many directives and regulations safeguarding the rights of the Citizens, which many citizens do not know of. Citizens derive rights and protection from EU law, which in many cases has proven to provide more protection and give more rights than national law. The missing link, for consumers to reap the full potentials of the EU, is more awareness of their rights. In order to promote the Union and gain the confidence of the consumers each Member State should introduce to its nationals the possibilities and the rights that the Union provides them. The Your Europe portal will hopefully become better known and help citizens know their rights and give them practical tips as to moving around the EU. The portal is available in all EU languages and has received exponential increase in visit and a positive feedback.

However, for the internal market to function as intended, it is important that Member States adhere to the EU regulations adopted. There is not much use

¹⁹⁹ Report by Mario Monti referred to above, page 37.

²⁰⁰ Report by Mario Monti referred to above, page 20.

²⁰¹ Jörgen Hettne: „The Single Market Act: Is it Really What the Market Needs? To be found at: http://www.sieps.se/sites/default/files/TGAE_2011_Hettne.pdf (last viewed 13 May 2012)

in having rules on the four freedoms if they are applied incorrectly in practise. The chequered implementation of Single Market policies is a major obstacle to market integration. The first difficulty is to ensure that Directives are timely and accurately transposed into national law. Although EU law has led to a major shift in national regulation overall, in some cases EU law has not been transposed at all as required and implementation deadlines are sometimes ignored.²⁰² The SOLVIT dispute resolution network handles problems with a cross-border element that are due to bad application of EU law by public authorities within the EU Member States. It does more than just solving individual dispute cases as it provides information about areas that do not function well and can hopefully lead to important changes. Expanding SOLVIT and making it better known is therefore an important measure for the Single Market.

The ITC revolution and rapid technological development are yet another missing piece in the Single Market. Some sectors did not exist when the Single Market was initially conceived, such as e-commerce, innovative services and eco-industries. These are the sectors which hold the largest growth and employment dividends for the future and represent the new frontiers of the Single Market. Strengthening confidence in electronic transactions is a necessary condition for the development of a digital Single Market, from which businesses, citizens and public authorities would fully benefit. What is needed in order to do this are trusted electronic services that respect privacy, provide legal certainty, ensure that transactions are secure and recognised by all sectors of activity. The electronic services must be cheap, easy to use and under the strict control of the transaction parties. The gains from a Digital Single Market could be substantial, both in terms of increased productivity of the existing infrastructure and in terms of new large-scale investments.²⁰³ This should be seen as a priority in strengthening the Single Market.

The Service Directive is a crucial milestone in achieving a better functioning Single Market for services. Administration and supervision by national authorities are made simpler and more modern. The rights of consumers and users are strengthened. The estimated growth potential from the implementation of the Service Directive range between 0.6 and 1.5% GDP.²⁰⁴ It is therefore of paramount importance that the remaining Member States fully implement the Service Directive as soon as possible. Furthermore, Member States should ensure that national authorities make effective use of the points of single contacts and the Internal Market Information System, to comply with their cooperation obligations. The points of single contacts should ultimately develop into comprehensive e-

²⁰² OECD (2012), *OECD Economic Surveys: European Union 2012*, OECD Publishing. doi: [10.1787/eco_surveys-eur-2012-en](https://doi.org/10.1787/eco_surveys-eur-2012-en)

²⁰³ OECD (2012), *OECD Economic Surveys: European Union 2012*, OECD Publishing. doi: [10.1787/eco_surveys-eur-2012-en](https://doi.org/10.1787/eco_surveys-eur-2012-en)

²⁰⁴ Report by Mario Monti referred to above, page 53.

government centres which could extend to areas and procedures not covered by the Directive, such as taxation.²⁰⁵

The construction of one big market is at the heart of the European project envisaged by the founding fathers. They understood the importance to come together, trade and work together while organising a richer, more creative, more intelligent, fairer and stronger society in the world. During the past two decades, the creation of the Single Market and the opening of borders have been two of the main driving forces behind growth in Europe.²⁰⁶ However, the Single Market integration is not an irreversible process, and the continued existence of the Single Market should not be taken for granted. The Commission's action plan is therefore celebrated. It is an ambitious plan and is a step in the right direction towards the completion of the Single Market. However, it is important to bear in mind that the Single Market is not an end in itself. If the Single Market is regarded as a complete project, process will stagnate and there is a risk that the European integration process may slow down profoundly. Therefore, it is important to remember that it is a tool for implementing other policies, there is a constant need to improve, update and further develop it. All of the public and private measures, the responses to the challenges concerning growth, social cohesion and employment, security and climate change, will be more likely to succeed if the Single Market works as it should.

As a follow up to the Single Market Act, the Commission will propose a second set of actions to further reduce market fragmentation and eliminate remaining obstacles to the movement of services, innovation and creativity. The "Single Market Act 2" will include new drivers for growth, competitiveness and social progress.²⁰⁷ Therefore, we see that there is both will and determination, on behalf of the Commission to say the least, to constantly improve and nourish the Single Market. The fact that the Single Market has been put into focus again in recent years is very welcome. Meaning that we just might witness a smoothly operating, completed and well functioning Single Market of the European Union. The next few months are crucial in achieving that goal; collective commitment by all players at European level is required. This should include better identification and more rapid adoption of policies that are required to make markets more integrated, as well as better implementation and stronger enforcement of Single Market requirements. Only then will we be moving towards a better functioning Single Market.

²⁰⁵ Report by Mario Monti referred to above, page 54.

²⁰⁶ COM(2010) 608 final

²⁰⁷ http://ec.europa.eu/internal_market/20years/index_en.htm

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