EUROPEAN
COMMISSION

Brussels, 10.1.2017
SWD(2016) 437 final

COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT

Accompanying the document

Proposal for a Directive of the European Parliament and of the Council on the legal and operational framework of the European services e-card introduced by Regulation ....[ESC Regulation]....

{COM(2016) 823 final}
{SWD(2016) 438 final}

Contents

1. Context and background 4

1.1 The Services Directive 5

1.2 Scope of the impact assessment – sectors covered 6

1.3. Scope of the impact assessment – horizontal issues 11

2. Problem definition 11

2.1. What is the problem and how important is it? 11

2.2. Problem drivers 13

2.2.1. Driver 1 – Uncertainty and administrative complexity faced by service providers when going cross-border 15

2.2.2. Driver 2 – Lack of well-structured cooperation mechanisms under the Services Directive 21

2.2.3. Driver 3 - Insurance coverage in cross-border situations 25

2.2.4. Driver 4 – National regulations in key business services with negative spill-over effects to other sectors 26

2.3. How would the problem evolve, all things being equal? 30

3. Need for action at EU level 31

3.1. Legal base for the EU to act 31

3.2. Value-added of action at EU-level 31

4. Objectives 32

4.1. Policy objectives 32

4.2. Consistency with other EU policies and the Charter for fundamental rights 33

5. Policy options 34

5.1. Baseline scenario: No EU policy change 34

5.2. Overview of different policy options 34

5.3. Description of policy options 35

5.3.1. Policy option 1: European services e-card attesting legal establishment 35

5.3.2. Policy option 2A: A European services e-card for a more ambitious administrative simplification 38

5.3.2.1. A European services e-card for temporary cross-border provision 41

5.3.2.2. A European services e-card for secondary establishment 44

5.3.2.3. Technical facilities linked to secondment of staff 47

5.3.3. Policy option 2B: Action to address regulatory obstacles for providers in key business services wanting to set up cross-border branches and agencies 49

5.3.4. Policy option 3: Facilitate access to insurance in a cross-border context 51

5.3.5. Policy option 4: Harmonisation of requirements for key business services 52
5.4. Combinations of policy options ("packages") 54
6. Analysis of impacts 55
6.1. Baseline scenario: No EU policy change 55
6.2. General considerations on the packages to be assessed 55
6.3. Package 1: Policy options 1 and 3.1a 61
6.4. Package 2: Policy options 2A and 3 64
6.5. Package 3: Policy options 2A, 3 and 4 69
6.6. Package 4: Policy options 2A, 2B, 3 and 4. 71
7. Comparison of packages 74
7.1. Comparison in terms of effectiveness, efficiency and coherence 74
7.2. Choice of preferred package 75
7.3. Choice of legal instrument 77
7.4. Subsidiarity and proportionality of the options 78
8. Monitoring and evaluation 78

Annexes

Annex 1: Procedural information (pg. 78)

Annex 2: Stakeholder consultation (pg. 81)

Annex 3: Who is affected and how? (pg. 99)

Annex 4: Evaluation (pg. 101)

Annex 5: Problem definition – additional evidence (pg. 133)

Annex 6: Consistency with other EU policies (pg. 164)

Annex 7: Administrative burden reductions under the different policy options (pg. 166)

Annex 8: Administrative costs for authorities (pg. 196)

Annex 9: Impact of addressing regulatory obstacles in business services (pg. 211)

Annex 10: Choice of legal instrument (pg. 218)

Annex 11: Monitoring and evaluation (pg. 219)

1. Context and background

One of the 10 political priorities put forward by the Juncker Commission is to enable a deeper and fairer Internal Market. This includes improving the functioning of the internal market in services, making it a launch pad for our companies to thrive in the global economy while at the same time ensuring less abuse or circumvention of rules. Furthermore, one of the pillars of the Investment Plan for Europe consists in further reinforcing the Single Market.

Articles 49 and 56 of the TFEU provide for basic fundamental freedoms of establishment and temporary cross-border provision of services across the internal market. Secondary legislation has, over the years, strived to implement these freedoms. This includes the Services Directive[1] which has become a cornerstone to put into practice the fundamental freedoms of the Treaty.

Since its adoption in 2006, the Services Directive underwent a period of implementation in partnership between the Commission and all the Member States. The Commission did not limit its efforts to supporting Member States until the transposition deadline in 2009. It undertook numerous additional efforts, notably on the basis of Communications in 2011 and 2012, to encourage Member States to continue implementing the Directive through national reforms. These efforts have also been supported under the European semester policy according to which the Commission and the Council agreed country specific recommendations.

Since the autumn of 2014, the Commission has been carrying out a range of analyses and stakeholder consultations to analyse the impact of the implementation of the Services Directive. These show that despite some progress, a genuine internal market for services is far from being achieved. Instead, service providers in several important sectors still face a range of obstacles when expanding cross-border. Annex 4 (evaluation) confirms this conclusion based on an in-depth evaluation of the implementation of the Services Directive.

Out of the total identified potential for growth offered by the Services Directive (2.6% of EU GDP increase) only 0.9% has been captured so far – leaving 1.7% of additional GDP growth unexploited.[2] This is a missed opportunity. Remaining obstacles hinder an efficient allocation of resources thereby slowing down the modernisation of the EU economy.

For this reason, the Commission in its Single Market Strategy adopted on 28 October 2015[3] announced three initiatives building on the Services Directive with a particular focus on business services and construction services:

- Legislative initiative introducing a services passport[4];

[1] Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on Services in the Internal Market

[2] European Commission, "Update on the study on the economic impact of the Services Directive", 2015

[3] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "Upgrading the Single Market: more opportunities for people and business", 2015

[4] The term services e-card is used in this impact assessment, in light of discussions with stakeholders on a suitable name for the initiative.

- Legislative action to address regulatory barriers for key business services and, if appropriate, organisational requirements in construction companies;
- If necessary, action on insurance requirements.

1.1 The Services Directive

The Services Directive addresses a range of obstacles to free movement of services by requiring Member States to adopt reforms aimed at removing or reducing them.[5] These include regulatory barriers but also obstacles of administrative nature dissuading in practice service providers to operate cross-border. In addition, the Directive also touches upon quality related aspects of service provision such as standards (excluded from this impact assessment[6]) and insurance requirements.[7] The provisions of the Services Directive most relevant for this impact assessment are shortly described below.

Administrative simplification

The Services Directive requires Member States to reduce administrative burden faced by services providers. Firstly, all procedures and formalities applicable to access a service activity and to the exercise thereof have to be examined by Member States and simplified if necessary (Art 5). Secondly, points of single contact have to be set up, through which service providers should be able to access information as well as complete all procedures and formalities needed for access to and exercise of their service activities (Art 6). Finally, fully functioning and interoperable electronic procedures have to be set up (Art 8). Service providers should be able to complete at a distance all formalities necessary to provide a given service.

Removing barriers to the freedom of establishment

Firstly, Member States are required to review existing authorisation schemes and make them compliant with Articles 9 to 13 of the Services Directive. Secondly, Art 14 of the Directive provides a list of requirements ("blacklist") which Member States are not allowed to impose for access to or exercise of a service activity under any circumstances. Finally, Art 15 of the Directive includes a list of requirements ("grey list") which are only allowed if non-discriminatory, exceptionally justified by a public interest and proportionate. These include, for example, obligations on a service provider to take a specific legal form or requirements which relate to the shareholding structure of a company.

Removing barriers to the freedom to provide (temporary cross-border) services

Articles 16 to 18 deal with requirements Member States may impose on service providers who provide services cross-border on a temporary basis. Member States may not impose their own requirements on incoming service providers except where these requirements are non-discriminatory, justified by reasons of public policy, public security, public health or the protection of the environment and proportionate.

[5] Its provisions regarding establishment also impact purely national situations.
[6] See Single Market Strategy and Communication of 1 June 2016 on European Standards for the 21st century
[7] A more detailed description of the relevant provisions of the Services Directive is provided in annex 4

Professional Indemnity insurance

Article 23 concerns professional liability insurance and guarantees. A Member State may only impose insurance coverage requirements when the services in question present a direct and particular risk to the health and safety of the recipient or a third person, or to the financial security of the recipient. In addition, the Member State where a service provider wants to establish will have to take into account essentially equivalent or comparable insurance or guarantee requirements to which the provider may already be subject to in the Member State of first establishment.

Multidisciplinary activities

Art 25 requires in principle Member States to remove requirements on service providers to exercise a given specific activity exclusively as well as requirements restricting the exercise of different activities jointly or in partnership. Such requirements are only allowed in case of regulated professions as well as for providers of certification, accreditation, technical monitoring, test or trial services in so far as justified in order to ensure their independence and impartiality.

1.2 Scope of the impact assessment – sectors covered

The purpose of this initiative is to make it easier for service providers in a number of services sectors to expand their activities to other Member States. Introducing a European services e-card would require some additional efforts also of Member States' authorities. Therefore, in order to ensure a meaningful and proportionate action there is a need to focus on those services sectors where such an initiative would have most impact.

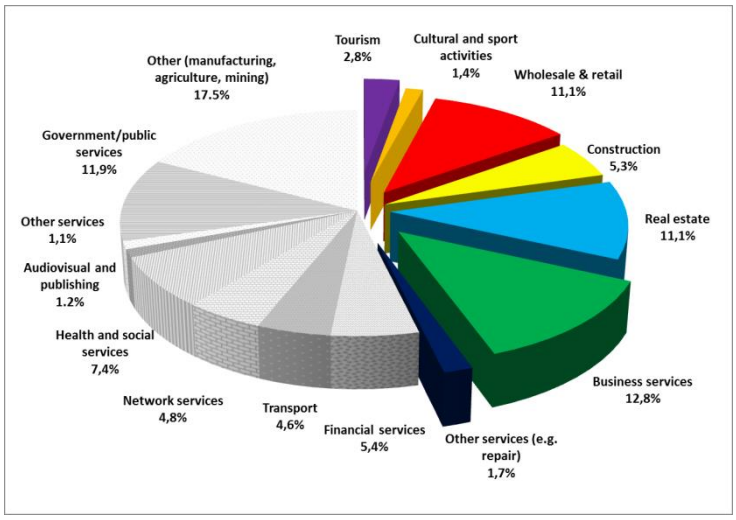
The initial focus of the initiative would be on two specific services sectors: business services and construction. The following criteria were used as a basis for selection of these sectors:

- The sectors are entirely covered by the Services Directive on which this initiative is building;
- An important amount of obstacles to the Single Market still remain in both sectors;
- There is potential for further single market integration;
- The sectors represent an important level of economic activities and economic performance in both sectors shows difficulties.

The sectors are entirely covered by the Services Directive on which this initiative is building

Graph 1 below shows the different services sectors that are covered by the Services Directive (in colour). Accordingly, a number of services sectors are not covered by the Services Directive.

Graph 1 – Sectors covered by the Services Directive



Source: Eurostat, Commission analysis, 2013

Firstly, a group of large sectors such as financial services, transport services, network services (including e.g. telecom services and energy services) and audio-visual services are excluded from the scope of the Services Directive. These sectors have more advanced harmonised rules at EU-level which govern their functioning in detail.[8] For example, the financial services sector has a proper regime in place regarding the functioning of its single market which takes into account specific challenges of the sector (such as the financial stability of banks). For the same reason, the EU has developed sector based policies in the areas of energy, telecommunications and audio-visual services. Additional efforts have been made over recent years to further harmonise these sectors, including introducing/strengthening systems of supervision. Any problems in these sectors related to the single market (or in general competitiveness and growth) are better dealt with in the context of these sector-related policies/instruments.

Secondly, other services sectors that are excluded from the Services Directive include health care, temporary employment agencies and transport. Other policies recognised in the Treaty play a major role in these sectors such as national systems of health care (Art. 168 TFEU), social protection of workers of temporary employment agencies (Art. 153 TFEU) and the common transport policy (Art. 90 TFEU). Also for these sectors, the EU has developed specific policies[9] subject to proper evaluations and possible future initiatives.

Thirdly, a final group of services excluded from the Services Directive concerns sectors such as gambling, social services mandated by a Member State, notaries and private security services. These are not governed by secondary legislation. Internal market integration for the provision of these services is governed directly by Treaty provisions. Regulatory disparity is very high in these sectors given that Member States enjoy a much larger degree of discretion when regulating these sectors at national level.

[8] For this reasons also travel agencies and a very limited number of business services (lawyers and statutory auditors) are excluded

[9] For example, social protection of workers of temporary employment agencies under Directive 2008/104/EC; Patients' Right Directive 2011/24/EU.

Finally, while the initiative focuses on business services at large, three specific business service activities (testing and analysis, lawyers and statutory auditors) are excluded, given that the freedom to provide services in these sectors is mostly excluded from the scope of the Services Directive, governed by sector-specific EU legislation[10] some of which have recently been subject to evaluation. The sector of statutory auditors has furthermore been subject to major changes[11] in the aftermath of the financial crisis. Furthermore, among construction services, natural persons providing services of installation, servicing, maintenance, repair or decommissioning of equipment that contains fluorinated greenhouse gases are also subject to sector-specific EU legislation and are excluded from the scope.[12]

An important amount of obstacles to the Single Market still remain in both sectors

For those sectors covered by the Services Directive an in-depth evaluation of its implementation (see annex 4) shows that it has been only partially effective until today. Whereas in some services sectors (including tourism and real estate) many obstacles have been removed through the implementation of the Services Directive, service providers in key services sectors still face an important number of barriers.[13] This explains also why the Commission has over recent years prioritised regarding the implementation of the Services Directive on certain services sectors including business services, retail and construction.[14]

The Services Directive offers a harmonised framework for making better use of the classical single market freedoms of physically providing services cross-border or setting up an establishment in another Member State. The key issues for exercising these freedoms differ between sectors. Ensuring a proper functioning of the single market in the retail sector requires a different discussion and assessment. Cross-border service provision in the retail sector mostly concerns e-commerce activities, which give rise to a range of issues not covered by the Service Directive. In addition, permanent market entry in the retail sector is controlled by Member States in a very specific way (often through local planning rules which regulate opening up outlets in specific locations). The Single Market Strategy of October 2015 foresees accordingly a separate action for 2017 in order to facilitate retail establishment and reduce operational restriction in the sector. The retail sector will therefore not be covered by this impact assessment.

There is potential for further integration in these sectors

An important number of business services as well as the construction sector are showing low levels of internal market integration. In other words, very few service providers in these sectors provide services cross-border or set up a secondary establishment. This is further discussed in section 2.1 (problem definition).

[10] See for testing and analysis Regulation (EC) 765/2008, on the European system of accreditation and certification. See for lawyers Directives 77/249/EC ("The Lawyers' Directive") and 1998/5/EC ("The Lawyer's Establishment Directive). See for statutory auditors Directive 2006/43/EC.
[11] See Directive 2014/56/EC as well as Regulation 537/2014.
[12] See Regulation (EU) 517/2014, of the European Parliament and of the Council of 16 April 2014 on fluorinated greenhouse gases (OJ L 150, 20.5.2014, p. 195).
[13] European Commission, "Study on the economic impact of the Services Directive", 2012
[14] See for example European Commission, "Work plan for reporting on national reforms in services", 2014

The potential for further integration of the EU business services market is widely recognised.[15] Regarding the construction sector, in their joint letter of 22 November 2016, 10 Member States identified this sector as one of the priority sectors where this initiative can bring about the greatest economic benefit. On the other hand, several stakeholders have highlighted in the public consultation (annex 2) that construction is a local business with limited potential for more cross-border activities. For some construction services, temporary cross-border provision of services by SMEs is indeed complicated, also given the importance of local networks of suppliers. Nevertheless, this is much less a problem for more specialised construction activities (e.g., in the area of energy efficiency). In addition, the limited mobility of construction companies is mostly relevant in the case of mobile entry modes. Several difficulties preventing construction companies to provide temporary cross-border services can be overcome by entering the market in a more permanent way (e.g. through a branch set up for long-term local business development in the host market). For this reason, construction companies going abroad prefer a permanent establishment when the host market is unfamiliar, risky or with intense competition.[16] This was also confirmed by stakeholder contacts in the context of the on-going fitness check for the construction sector.[17] Finally, it should be highlighted that posting of workers in the context of cross-border provision of services is of high importance in construction with 43% of all postings in the EU taking place in construction.[18]

The sectors represent an important level of economic activities and economic performance in both sectors shows difficulties

Firstly, business services and construction represent a major part of our economy. They cover 18% of EU GDP and 20% of total employment, representing 45 million jobs. Together, these two sectors cover about 40% of all activities under the Services Directive. In addition, more than 9 million companies are active in these sectors with 1 million start-ups per year.

Table 1 – Business services and construction

		% of EU value added	Persons employed (million)	Total # companies (million)
Business services	Computer and information services	2.3%	3.6	0.73
	Professional, scientific and technical activities	6.4%	13.4	4.04
	Administrative and support service activities	4.1%	13.6	1.32
Construction services		5.3%	14.4	3.27
Total		**18.2%**	**45.1**	**9.37**

Source: Eurostat, Commission analysis, 2013

[15] See for example World Bank, "EU Regular Economic Report – Growth, jobs and integration: services to the rescue", 2016

[16] Chuan C. (2008), "Entry mode selection for international construction markets: the influence of host country related factors", Construction Management and Economics, Vol. 26, No. 3

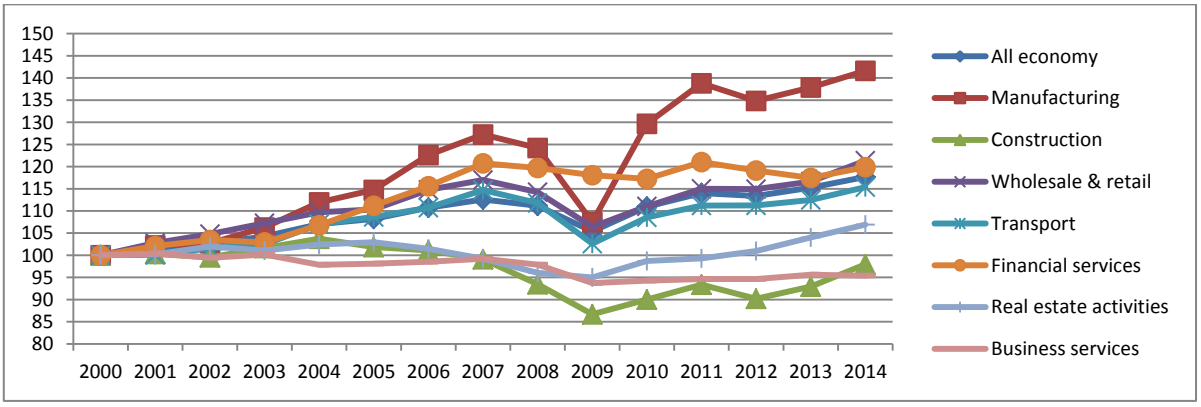
[17] European Commission, "Supporting study for the Fitness Check on the construction sector: EU internal market and energy efficiency legislation", forthcoming

[18] F. De Wispelaere and J. Pacolet, "The impact of intra-EU cross-border services, with special attention to the construction sector", 2016

This initiative aims to reduce obstacles for those service providers that want to go cross-border. A rough estimate on the basis of a number of surveys[19] shows that about 10% of these companies go cross-border or might consider going cross-border in the future. Hence, the initiative would directly address a target group of almost 1 million companies and about 100,000 new potential target companies per year (assuming that 10% of the target group will go cross-border).

Secondly, both sectors face important issues of competitiveness with no or limited productivity growth over the last 15 years (graph 2). Labour productivity levels in business services[20] and construction stand respectively at 95% and 98% of what they were in 2000 (compared to for example 118% for the overall economy, 142% in the manufacturing sector, 120% in the financial services sector and 107% in the real estate sector). This shows that both sectors face important issues of competitiveness which are more problematic than in other large services sectors. These productivity problems – in particular in the area of business services – have negative effects also on industry.

Graph 2 – Labour productivity growth major economic sectors



Source: Eurostat, Commission analysis

There are obviously many drivers to a lagging productivity performance. Nevertheless, it is well-established that increased cross-border competition leads to a better allocation of resources and gives a boost to productivity growth.[21]

Conclusion

In June 2016, Member States agreed in the European Council that this initiative should focus on key services sectors. Based on the above selection criteria, an initial focus on business

[19] For example, Eurobarometer (2016): *Almost three quarters (74%) of the SMEs that do not currently export say they will probably never export, while 9% are considering it for the future, and 3% are trying to export now*. Another example is a 2014 Commission report based on a large survey among EU SMEs showed that 5% of SMEs with 10-249 employees providing construction services are estimated to participate in export activities. In addition, it showed that 27% of SMEs with 10-249 employees in the business services sector participate in export activities.

[20] Given a lack of available data for "Computer and information services", business services in this graph only refers to Professional, scientific and technical activities and Administrative and support service activities.

[21] See for example IMF, "The short-term impact of product market reforms: A cross-country firm-level analysis", 2016.

services and construction seems justified. A further roll-out of the initiative to other services sectors could be envisaged at a later stage.

1.3. Scope of the impact assessment – horizontal issues

This impact assessment will not look into options which would amend any of the following provisions of EU law:

- Directive on Posting of Workers of 1996[22] and the related 2014 Enforcement Directive;
- Regulation 883/2004 on the coordination of social security rules and the Implementing Regulation 987/2009;
- Professional Qualification Directive of 2005 and its subsequent amendment of 2013 introducing the European Professional Card (EPC).

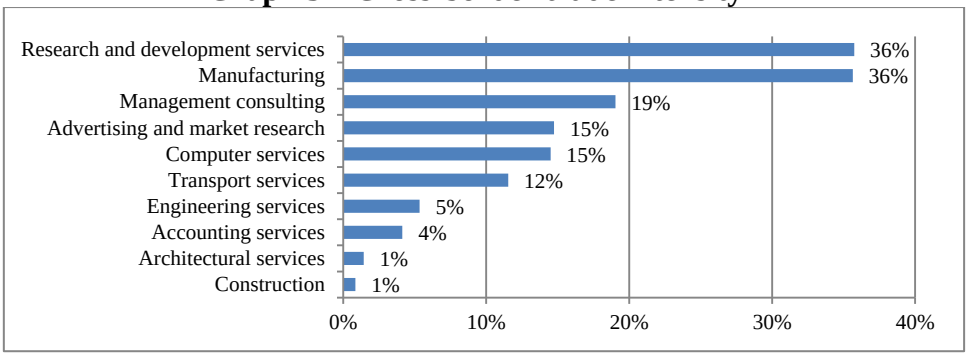
However, the impact assessment will analyse the concrete administrative steps that these provisions require service providers to take when they have access to the market and intend seconding staff to other Member States[23].

2. Problem definition

2.1. What is the problem and how important is it?

As highlighted in section 1.2, an important number of business services as well as the construction sector are continuing to show a lack of internal market integration. Graph 3 shows the levels of EU cross-border trade intensity for a range of services sectors in comparison to the manufacturing sector (goods), where much more trade across borders occurs. However, it is also clear that certain services are more traded across borders than others. This concerns in particular construction services and several business services which show very low levels of cross-border trade.

Graph 3 – Cross-border trade intensity[24]



Source: Eurostat

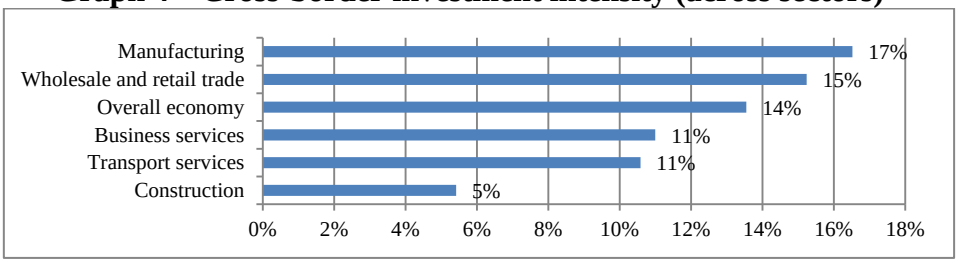
[22] Directive 96/71/EC, which is subject to a proposal for amendment dated 8/3/2016

[23] Affecting the implementation of: Article 9 of the 2014 Enforcement Directive on posting of workers; Article 12 of Regulation 883/2004 and Article 15 of the Implementing Regulation 987/2009 on social security rules; and Article 7 of the Professional Qualifications Directive.

[24] Cross-border trade intensity is measured here as the average of intra-EU imports and exports compared to the total size of the sector; Year: 2014; Source: Eurostat. Manufacturing sector is a lower-end estimation.

These findings are confirmed by looking at the behaviour of individual service providers. Different surveys[25] confirm that export participation of service providers in general is much lower than that of manufacturers and that export participation differs significantly from sector to sector (with construction services and several business services showing the lowest levels of cross-border trade – for additional details see annex 5).

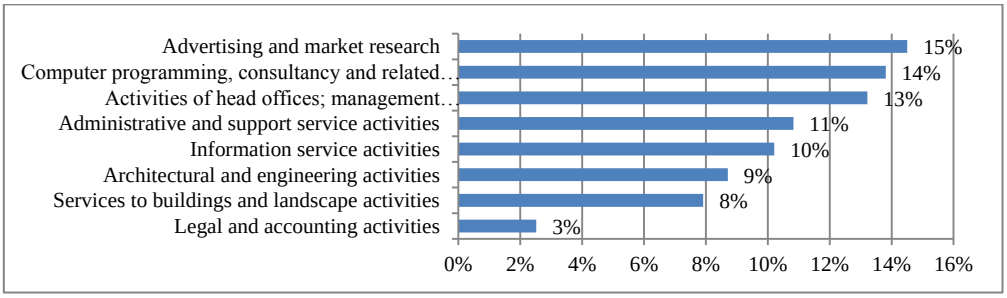
Graph 4 – Cross-border investment intensity (across sectors)[26]



Source: Eurostat

Graph 4 gives an indication of cross-border establishment (investment) intensity for a number of important services sectors, manufacturing and the overall economy. This shows that manufacturing is again more integrated than services with regard to cross-border investment as well. Also here there is a large variety between different services sectors. Graph 5 gives an indication of this variety for a range of different business services. Some business services (such as architects, engineers, accountants and services to buildings) are clearly characterised by much less cross-border investment than others.

Graph 5 – Cross-border investment intensity (business services) [27]



Source: Eurostat

The fact that the single market for services is much less developed than the one for goods is not a new finding. The more important conclusion on the basis of the above data is that there is a large divergence between different services sectors with some sectors (in particular business services and construction) showing only little cross-border trade and investment.

Why is this a problem?

[25] European Competitiveness Report, 2014; BIS, Longitudinal Small Business Survey Year 1 (2015): SME employers, 2016. These also show a positive correlation between cross-border trade and size of companies within the sector – in some sectors cross-border trade is heavily dominated by large firms only.

[26] Cross-border investment intensity is measured here as the proportion of total EU value added which is generated by intra-EU foreign affiliates; Coverage: EU-27; Year: 2012; Source: Eurostat.

[27] Cross-border investment intensity is measured here as the proportion of total EU value added which is generated by intra-EU foreign affiliates; Coverage: EU-27; Year: 2012; Source: Eurostat.

Firstly, lack of internal market integration in business services and construction has a negative impact on the competitiveness of the sectors concerned. Most services sectors have achieved modest productivity growth since 2000. Some services sectors have registered no or even negative productivity growth over the last 15 years, in particular business services and construction. Given the weight of these services sector in the economy of all Member States, this is a cause for concern. Improving the functioning of the single market would facilitate higher productivity growth in these sectors.[28] Secondly, there are wider spill-over effects to other sectors that need to be taken into account. The performance of the services sector is of importance to the economy at large due to its inter-linkages with other sectors in the economy. This is in particular the case for business services which constitute key inputs into the manufacturing sector. Today, 16% of the average value of a good produced in the EU is generated from business services activities.[29] As a result, reforms in business services have positive effects on growth and competitiveness of downstream sectors such as the manufacturing sector.[30] Thirdly, more integrated markets enhance cross-border competition, leading to increased choice for consumers and lower prices.[31]

2.2. Problem drivers

Low cross-border trade and investment in business services and construction can be explained by a number of drivers. During the public consultation in 2016, administrative obstacles were highlighted by more than 60% of stakeholders as clear disincentives for cross-border activities. In addition, more than 65% of stakeholders confirmed that regulatory issues are highly relevant.

At the same time, there are drivers that are not in scope of this initiative which potentially also influence differences in market integration between services sectors. The public consultation showed that many respondents consider other barriers (such as customer relations, languages and tax) as important obstacles to going cross-border. There is no 'silver bullet' to solve all issues. Some of these are inherent to the market (e.g. customer relations, languages) and cannot be directly changed or addressed. On the other hand, the Commission is undertaking initiatives to address several of these issues already now or in the future.[32]

This initiative focuses on complex administrative procedures and regulatory requirements that still persist. The importance of these obstacles (including in the context of other potential obstacles that might exist) has been confirmed by a large range of reports and surveys. This includes the following examples:

[28] See for example European Added Value Unit, "The Cost of Non-Europe in the Single Market for services", 2014; European Commission and European Commission, "Update of the 2012 study on the economic impact of the Services Directive", 2015. See also annex 5.
[29] ECSIP, "Study on the relation between industry and services in terms of productivity and value creation", 2014
[30] See for example IWP, Services Liberalisation in Germany – Overview and the potential of deregulation, 2015.
[31] More intense competition reduces firms' mark-ups – see for example European Commission, "Estimation of service sector mark-ups determined by structural reform Indicators", 2015.
[32] See for example the upcoming proposal for extending the VAT Mini-One-Stop-Shop System

- In extensive contacts with stakeholders (including 9 workshops[33] organised by the Commission with service providers in cross-border regions) these obstacles (administrative complexity and regulatory requirements) were consistently highlighted by service providers as important;
- Eurochambres 2015 research (592 participants)[34] found that 83% of respondents considered complex administrative procedures as the main obstacle when going cross-border (as a reference, 45% considered language as a problem);
- Commission consultation of 2015 (293 replies)[35] showed that authorisations are a major obstacle for cross-border service providers (more important for example than language differences);
- A 2015 Eurobarometer survey (more than 4,000 replies)[36] showed similar results with administrative complexity as one of the most important obstacle for SMEs providing services that go cross-border (again more important than for example languages or identifying business partners abroad);
- Several studies (including by the Commission[37], OECD[38], IMF[39] and the World Bank[40]) have highlighted the positive potential of reducing regulatory barriers (including in business services).

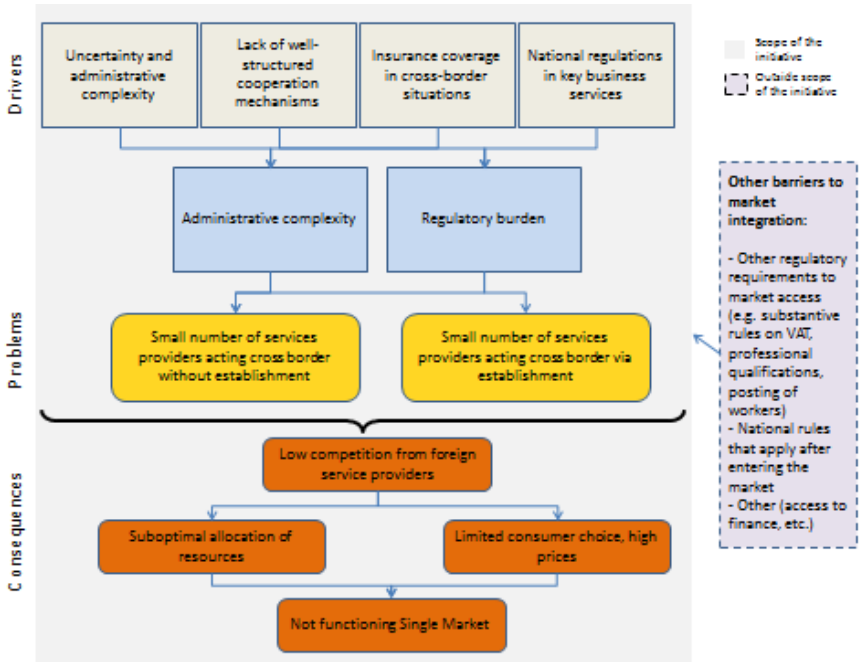
In view of this, the following problem drivers are considered in this impact assessment.

Firstly, there is uncertainty and administrative complexity faced by service providers in the sectors concerned when offering their services cross-border. This is assessed as problem driver 1. Secondly, there is a lack of well-structured cooperation mechanisms under the Services Directive. This is assessed as problem driver 2. Thirdly, smaller undertakings in business services and construction often encounter difficulties when offering their services cross-border to access the required professional indemnity insurance. This is examined as problem driver 3.[41] Finally, national regulations in business services are obstacles to the single market, with negative spill-over effects to other sectors. This will be assessed as problem driver 4.[42]

Accordingly, only few undertakings in the sectors of business services and construction provide temporary services cross-border or set up a secondary establishment in other Member States. Competition on these markets often remains limited, which is liable to lead to an inefficient allocation of resources, limited choice for consumers and higher prices (figure 1).

[33] http://ec.europa.eu/DocsRoom/documents/13841/attachments/1/translations
[34] See http://www.eurochambres.eu/custom/Internal_Market_Survey_Report_FINAL-2015-00319-01.pdf
[35] See http://ec.europa.eu/DocsRoom/documents/13841/attachments/1/translations/en/renditions/native
[36] Eurobarometer 421, "Internationalisation of Small and Medium-sized Enterprises", 2015
[37] For example European Commission, "Study on the economic impact of the Services Directive", 2012
[38] OECD, "Service Regulation and Growth: Evidence from OECD countries", 2010
[39] IMF Working paper, "The short-term impact of product market reforms: A cross-country firm-level analysis", 2016
[40] World Bank, "EU Regular Economic Report: Growth, Jobs and Integration: Services to the rescue", 2016
[41] Given the particular nature of this barrier, it is discussed separately from problem driver 4.
[42] As explained in section 1.2, this problem driver will only be assessed for business services (not for construction).

Figure 1 – Problem tree



2.2.1. Driver 1 – Uncertainty and administrative complexity faced by service providers when going cross-border

1. What is the problem?

Service providers face uncertainty and administrative complexity when trying to establish a permanent presence in another Member State or provide cross-border services on a temporary basis.

On the one hand, it is often difficult to obtain a picture of the full range of applicable requirements and necessary procedures that need to be completed to access another Member State's market. In particular sector-specific information (e.g. how to get a specific license, how to comply with local rules governing employment conditions and qualifications of seconded staff) is not always available. Business is complaining about lack of information.[43]

In addition, national rules are often put in place accounting for purely national situations only. As a result, requirements applicable to service providers originating from other Member States are often unclear. This is notably the case for temporary cross-border service providers. Art. 16 of the Services Directive introduced the principle that host Member States' requirements should apply to temporary cross-border service providers in exceptional circumstances only under reasons of public policy, public health, public security and the protection of the environment. Other overriding reasons of public interest (such as protection of consumers) cannot be invoked. Nevertheless, sector-specific laws in almost all Member States have not been amended to make a clear distinction between requirements applicable to

[43] This is one of the reasons why the Commission has launched an initiative in the form of a Single Digital Gateway addressing information gaps for business and citizens.

companies seeking to establish and those seeking to provide temporary services cross-border. As a result, incoming service providers are forced to invoke Art. 16 of the Services Directive in an attempt to have competent authorities to disregard national law which is devised for establishment situations only. This situation generates major legal **uncertainty** for temporary cross-border providers on the applicable requirements.

On the other hand, even if a service provider is equipped with all relevant information, it needs to organise in practical terms compliance with the applicable rules – providing the necessary information and documents to authorities in another Member State. Even if all information on applicable rules and regulations is clear and readily available, compliance procedures and formalities generate administrative burden, which may be substantial. This is the case in particular for secondary establishment situations where legal certainty is less of a concern but service providers often face high administrative burden.

The public consultation has shown that service providers consider a number of administrative obstacles related to compliance with host Member State rules as important costs. Both for business services and construction, the majority of respondents highlight administrative complexity as being an important challenge for temporary cross-border service provision and secondary establishment.[44] Regarding business services specifically, nearly 3 out of 4 respondents indicated the need for offering electronic procedures when going cross-border while more than half highlighted the need for eliminating re-submissions of the same documents and a closer cooperation amongst competent authorities. For construction services, specifically important obstacles that were highlighted by stakeholders include the need to contact several authorities as well as the length and complexity of procedures.

This administrative compliance burden is composed of several types of issues/obstacles.

Firstly, service providers often need to complete an extensive number of **different procedures** when starting to provide services in another Member State. Each of these procedures involve different national authorities dealing with issues that are sector specific (such as professional chambers) or horizontal issues (e.g. formalities related to social security, tax, registration of a branch, etc.). These authorities (federal, regional or even local) are not required to coordinate amongst themselves. Instead, they leave it to the foreign service provider to take the required steps, which as a result are often repetitive. These issues also point of lack of implementation of the "once-only principle" in the area of e-government to optimize the information exchange between private parties and public authorities.[45]

Secondly, a service provider should be able not only to access online information but also to complete the necessary formalities (in his/her language) from its home Member State in an **electronic way**. In practice however, this remains a major deficiency across many different Member States. Whereas horizontal procedures (such as general registration of economic

[44] A similar result comes out of the consultation on a start-up initiative conducted until July 2016. More than two thirds of the respondents indicated that the time to obtain operational licences and/or permits was an obstacle or a major obstacle to start a company.

[45] The main strategy from the Commission is set up in the Communication "EU eGovernment Action Plan 2016-2020 – Accelerating the digital transformation of government" of April 2016.

activity) can be done fully online in more than half of the Member States, authorities in charge of specific services sectors are currently unable to offer this. As a result, it is often not possible for service providers to complete formalities through electronic procedures when starting to provide services in another Member State.[46] In practice, sector specific procedures often still require a physical visit to an office or sending forms by post, for example to the professional chamber involved. Finally, service providers are very often required to provide information in a foreign language.

Thirdly, for many procedures that service providers face when going cross-border it is unclear by when they will receive a decision (positive or negative) regarding their application for a license or authorisation. National authorities do not announce or commit themselves to decide on applications within a predefined **deadline**. This creates additional complexity and uncertainty for service providers and works as a disincentive to access a foreign market.

Fourthly, applications to enter a foreign market often require the service provider to submit a range of **supporting documents**. Service providers are also often obliged to present supporting evidence to their application in the language of the host Member State and/or in a certified/authenticated form, including certified translations. These obligations on translation and certification of supporting documents often require service providers to purchase costly external services of notaries and translators. These administrative obstacles are also relevant in the context of the ongoing agenda under the e-government action plan.[47] [48]

Administrative costs for service providers

Interviews with service providers going cross-border in the business services sector[49] show that administrative costs involving both internal staff time as well as potential external costs (translators, notaries, legal advice, etc.) can go up to several thousands of euros.

Example 1

A service provider of engineering services established in the UK wanted to set up a secondary establishment in Spain. It reported numerous complicated formalities and costs, including the following:

- The company spent an important amount of time on identification and familiarisation with the Spanish requirements;
- The company also had to collect different supporting documents from home country

[46] Capgemini Consulting and Eurochambres, "The Performance of the Points of Single Contact. An Assessment against the PSC Charter", 2015

[47] Communication "EU eGovernment Action Plan 2016-2020 – Accelerating the digital transformation of government", April 2016

[48] The initiative on a Single Digital Gateway will also envisage actions to make key administrative procedures available online, to ensure they are transactionable (i.e. do not require offline steps such as office visits) also for cross-border users and increase availability in widely used languages. However, those priority procedures are likely to largely concern horizontal business events related to starting up a business activity, registering for VAT or social security and not sector specific ones as for this initiative.

[49] See Ecorys, "Study on the administrative formalities and costs involved in accessing markets cross-border", (forthcoming). Regarding construction services , see Ecorys, "Simplification and mutual recognition in the construction sector under the Services Directive", 2015

authorities as well as collect other data itself (for example on management and shareholders). This involved costs both in the form of internal staff time as well as fees paid to authorities to obtain the required evidence. Documents need to be delivered in person to the Spanish authorities;
- Given the complexity of the procedure the company used external advice services to help understand and comply with the different requirements, leading to further additional costs;
- The company had to look also for external translators to translate supporting documents into Spanish (representing additional costs also in the form of fees to be paid to the translator);
- Finally, authorisation and registration fees had to be paid as well to the Spanish authorities.

In general, these formalities represented a cost for the service provider of up to 5,000 EUR.

Example 2

A German provider of mechanical and electric engineering services that wanted to establish in Austria was forced to incorporate a subsidiary, since branches are currently not allowed. Furthermore several of its staff and managers needed to undergo special training and pass exams in order to acquire specific professional qualifications, as per Austrian Law. This included managers which are not involved in service performance in Austria. These obstacles also lead to significant administrative costs for the service provider, that could go up to 10,000 EUR.

Example 3

A provider of certain construction services that wants to provide services on a temporary basis in Bulgaria needs to complete a prior notification for each construction project. The notification form is available only in Bulgarian. It needs to submit a range of documents (proof of legal establishment in the home Member State, details of envisaged construction project, proof of professional and technical capacity). While simple copies of these documents are accepted, translations must be submitted in original format and certified by a translator registered in BG.

Further examples are included in annex 5.

Finally, service providers going cross-border often experience administrative burden specifically in relation to formalities and procedures regarding **secondment of staff.** For the same employee/worker that is posted abroad, in practice a service provider currently needs to complete three independent formalities/processes involving different authorities in relation to the following:

- Employment conditions under the posting of workers rules where the vast majority of Member States require or will require advance notifications under the 2014 Enforcement Directive;

- Formalities related to proof of professional qualifications, if applicable;
- Social security rules where A1 forms should be issued to provide evidence about social security coverage in the home Member State.

Service providers often consider that seconding staff gives rise to continuous practical difficulties, including burdensome and disparate administrative requirements across Member States. This was confirmed during nine stakeholder workshops between September and November 2014 in the context of the Single Market Forum, as well as through a subsequent stakeholder questionnaire[50]. In addition, Eurochambers reported in September 2015 that 21% of SMEs which were surveyed had extremely significant problems in this area and 31% reported significant problems. A workshop held in July 2016 confirmed that secondment of staff formalities can be challenging to fulfil even between neighboring countries which speak the same language, namely Austria and Germany.[51] Indeed, based on a recent survey[52], administrative aspects including the complexity of notifications came up as a significant barrier to posting workers in business services. This was for instance clearly of higher concern than the motivation of workers to go work in another Member State temporarily.

All in all, Member States have the legitimate need to have in place robust controls combatting undeclared work and fraudulent behaviour (also in relation to the shadow economy[53]), notably in construction. Fraud in relation to posting of workers, social security issues and bogus self-employed should be tackled to ensure compliance with labour and tax regulations, including by enabling regular and effective inspections at the workplace (notably building sites) of posted employees. There are also concerns about letter-box companies that are set up to circumvent rules. However, these needs must be pursued in a proportionate manner, by reconciling them with the free movement under EU law. Overall, a clear and well-coordinated solution may foster acceptance and compliance by service providers. The administrative burden is a key aspect in this regard.

Secondment of staff formalities

Without prejudice to underlying legislation linked to secondment of staff, service providers are faced with considerable administrative "hassle" linked to the various formalities to be fulfilled. As stated above, service providers currently need to fulfil three fully separate formalities linked to the secondment of staff, all involving distinct authorities, supporting procedures and IT systems (where available).

These formalities are particularly burdensome for companies wishing to expand to several Member States: for each one, administrative requirements look different, involving different authorities, disparate ways of submitting information, available language regimes, timelines

[50] Launced in 2014 and to which nearly 300 companies responded by Jan 2015. See http://ec.europa.eu/DocsRoom/documents/13841/attachments/1/translations/en/renditions/native

[51] Workshop on 14 July 201 jointly organised by German and Austrian chambers of commerce.

[52] "Dienstleistungsverkehr im EU-Binnenmarkt - Hürden, Hindernisse und Herausforderungen" (2016), study by *Industrie- und Handelskammern in Bayern (BIHK) based on 449 company interviews*

[53] See for instance Friedrich Schneider, the Shadow Economy and Work in the Shadow, Institute for the Study of Labor, March 2012, Section 2.3.3. Intensity of Regulations

and fees. Stakeholders often report that even finding out about applicable administrative formalities may require significant efforts. For each of the administrative formalities linked to secondment of staff, please see annex 5 for further details on administrative hurdles observed across Member States.

2. What is the impact of this problem driver?

There is a negative impact of administrative burden and complexity on business growth and market dynamics.[54] The public consultation in 2016 confirmed that tackling these types of barriers would have a positive impact in terms of saving costs for service providers (70% of the respondents confirmed this), increasing cross-border provision of services (68%) and choice for consumers (55%).

3. Why has this problem driver not been resolved by existing rules and tools?

The problems highlighted above raise the question why the existing legal framework and related structures and tools have failed to deliver effective solutions for service providers. The Services Directive encompasses several provisions regarding the simplification of administrative procedures by Member States. These include an obligation to examine and, if necessary, simplify procedures and formalities applicable to access services activities. As part of this, Member States should explore less burdensome alternatives and assess whether evidence or documents are needed. Moreover, Member States should ensure that all procedures and formalities linked to accessing a service activity can be easily completed by national electronic means. Such electronic procedures need to cover the full administrative process.

Moreover, the Services Directive obliges Member States to offer points of single contact (PSCs) serving as e-portals for service providers looking for clear and up-to-date information (including about applicable requirements and competent authorities) and wishing to complete formalities. PSCs should provide all necessary e-procedures for the access and exercise of a specific service activity in each sector covered by the Service Directive, thus eliminating the need to contact different competent authorities separately.

So why do service providers continue to face administrative complexity and uncertainty about applicable requirements? One major factor explaining this is that the Services Directive puts forward general rules about administrative simplification. Certain aspects, such as deadlines and steps for completing procedures, are not concretely defined. These are however very important for service providers on the ground. Overall, these general rules and principles do also not allow for effective enforcement activities, given the discretion left to Member States in terms of implementation.

As regards PSCs specifically, major challenges remain with a view to improving their performance across Member States. In the majority of Member States, PSCs display weaknesses in terms of information coverage (including sector relation information in foreign

[54] See for example European Commission, "Business Dynamics and Red Tape Barriers", 2014

language(s)) and e-procedures relevant to providing services on a cross-border basis.[55] Overall, most of the national PSCs are lacking the required resources, which is reflected especially in the lack of information and e-procedures offered for specific sectors (as opposed to general requirements such as business registration or tax formalities). Indeed, the vast amount of sectors to be covered under the Services Directive (46% of EU GDP) makes it complex to deliver the required range of information and different e-procedures in a user friendly manner.

Since 2009, significant efforts have been put into making PSCs work better, including through dedicated working groups with Member States as well as enforcement action. In December 2013, Member States even agreed a Charter to improve the effectiveness of PSCs but without practical success on the ground.[56] In addition, enforcement efforts have again proved insufficient given that the Services Directive only covers general rules on what the PSCs should offer, rather than setting more specific requirements. The upcoming Single Digital Gateway initiative aims to improve the findability, availability and quality of information, advice, assistance, problem-solving and the most relevant e-procedures based on all existing relevant tools (such as Your Europe, SOLVIT, PSCs). This should help tackle some of the challenges with which PSCs and other contact points are confronted. However, such action alone cannot ensure clarity and administrative simplification across all Member States within a reasonably short timeframe, given persisting implementation issues.

Altogether, these problems underline the need for solutions which do not rely on the general administrative simplification provisions of the Services Directive, nor on well-functioning PSCs. These do not provide the necessary clarity and administrative simplification, which can only be reached through introducing specific rules on practical aspects such as procedural steps, timelines and information requirements, underpinned by well-defined responsibilities for Member States. Given that the current shortcomings linked to PSCs are partly or even largely explained by the significant number of sectors and the variety of national sector-specific procedures, a more targeted solution limited to selected key sectors would be less complex and costly to implement by Member States. As regards e-procedures, a common and centrally provided EU-level procedure with a clear workflow, timelines and obligations could also facilitate practical implementation and therefore require less investment by Member States.

2.2.2. Driver 2 – Lack of well-structured cooperation mechanisms under the Services Directive

The Services Directive obliges Member States to assist each other and to exchange information whenever this is necessary to ensure a proper enforcement of applicable rules. Such an explicit obligation is set out under Article 29 of the Services Directive under which the home Member State shall supply information if requested by another Member State. The objective of setting up this system of administrative cooperation was to avoid a proliferation

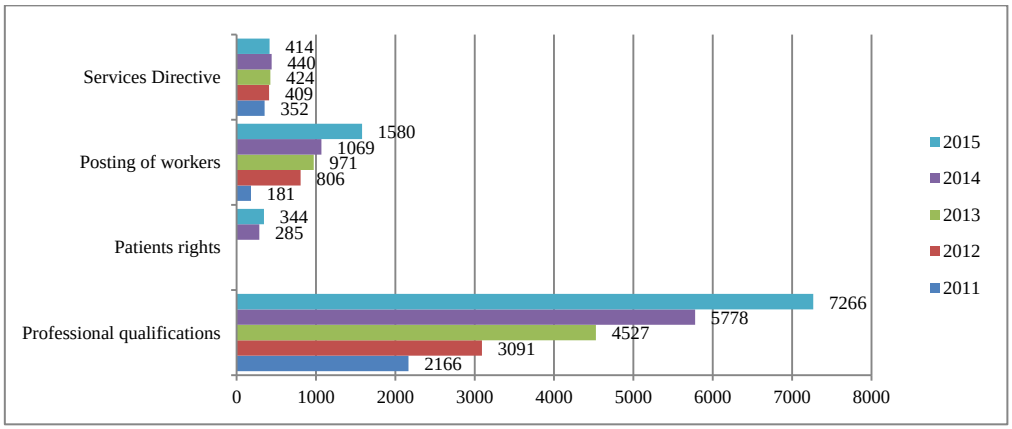
[55] Capgemini Consulting and Eurochambres, "The Performance of the Points of Single Contact. An Assessment against the PSC Charter", 2015
[56] See even conclusions of the Competitiveness Council of 2 December 2013

of rules applicable to providers coming from abroad and a duplication of controls for cross-border activities. Daily cooperation between Member States would also enhance trust regarding service providers coming from other Member States. The Internal Market Information system (IMI) has been put in place to enable an electronic exchange of information between Member States.

1. What is the problem?

Firstly, there has been very little exchange of information between different Member States under the area of the Services Directive. This stands in sharp contrast to the use of IMI by other authorities in the context of other pieces of EU legislation. Exchange of information under the Services Directive has stagnated at the level of around 400 contacts between Member States per year since 2011 (the starting year of IMI use) while it increased nine times during the same period in the area of posting of workers and tripled (at an already very high level) in the area of professional qualifications (graph 6). This shows that there is no problem with the IMI system itself but rather that Member States are not using it to cooperate in the area of the Services Directive.

Graph 6 – IMI number of information exchanges



Source: Commission analysis (Internal market information system statistics[57])

In addition, the use of the IMI system for exchange of information on incoming service providers in the context of the Services Directive is very uneven across Member States. In fact, during 2015 22 Member States requested less than 10 times other Member States to supply information on an incoming service provider (see annex 5). 8 Member States even did not request any information at all. The data is similar for 2014. Even though there is a very large number of authorities registered in IMI under the Services Directive area[58], surveys[59] carried out by the Commission show that these authorities in many cases consider that there is no need to use IMI or even communicate with other Member States. These authorities –often at a local level – might not have the internal capacity for continuous cooperation with other Member States. In addition, they might not be aware of the benefits of administrative cooperation or even the obligations set out in the Services Directive. In general, there is not a

[57] See http://ec.europa.eu/internal_market/imi-net/statistics/2014/06/index_en.htm
[58] Almost 6,000 in 2015
[59] IMI user survey, 2015

lack of willingness by Member States to cooperate but rather a lack of a structured workflow to support such cooperation.

As a result, in cases of secondary establishment Member States often require incoming service providers to show that they comply with requirements very similar to those applied to them in their Member State of primary establishment, disregarding the situation in the home Member State. In addition, temporary cross-border service providers are sometimes asked to comply with authorisations in the country of destination that are not clearly justified under Article 16 of the Services Directive.

The Member States that do use IMI for administrative cooperation in the context of the Services Directive mostly ask questions that are related to the situation of the service provider in its home Member (see annex 5).

In March 2014[60], the Commission highlighted this problem publicly and subsequently reminded Member States of the issue in the expert group on the implementation of the Services Directive. No change has however been seen since. In addition, also the European Court of Auditors in a recent report has highlighted that cooperation in the context of the Services Directive is not working properly.[61]

2. What is the impact of this problem driver?

More day-to-day cooperation between Member States would contribute to enhancing trust in each other's legal and administrative systems. This would be to the benefit of cross-border service providers which face administrative and regulatory obstacles (but also issues of languages for example) when going cross-border.

In addition, a lack of cooperation between Member States also has negative effects for the Member States' authorities themselves as well as for consumers. Currently, information on the cross-border service provider is often only available to the home Member States' authorities. This includes information regarding the good repute of the provider (such as its track record on criminal, administrative and disciplinary sanctions relevant for the activities carried out by a service provider). This information is not always offered to the host Member States' authorities. As a result, it is also not easily available to consumers in the host Member State. This potentially harms confidence with consumers towards foreign service providers.

This shortcoming is clearly emphasized by stakeholders who responded to the public consultation. 55% of respondents active in business services indicated that ensuring close cooperation between the home and host Member State should be addressed; 61% of them active in construction services indicated so as well.

3. Why has this problem driver not been resolved by existing rules and tools?

The Services Directive sets out general rules concerning administrative cooperation between Member States' authorities. These include an obligation for Member States to provide mutual assistance (replying to information requests, carrying out checks and investigations, etc.).

[60] See Commission Staff Working Document (SWD (2014) 131 final, page 6
[61] ECA, Special report No 5/2016, 2016 (see items 55 and 56)

However, as is the case for administrative simplification provisions, the implementation of such general rules relies on the good will and efforts by Member States to make it happen. The Services Directive does not provide sufficient detail to allow for effective enforcement action by the Commission or even by service providers before Courts.

Regarding cooperation and exchange of information in the Internal Market Information (IMI) system specifically, the above section already highlights the limited and uneven use of IMI in the context of the Services Directive. However, this trend does not imply that the IMI system itself is malfunctioning, but rather that Member States are not making use of its potential to cooperate in the area of the Services Directive. The main reason is the absence of a clear framework with procedural steps to follow for exchanging information. On the contrary, the IMI system itself has proved an effective and reliable tool in other areas, for which it is also used much more intensely. The European Professional Card (EPC) procedure for the recognition of professional qualifications is a good example of this, demonstrating that the IMI system can truly facilitate cooperation and enhance mutual trust between Member States through the secured and multilingual communication channel it provides.

European Professional Card (EPC)

The EPC facilitates the recognition of professional qualifications for selected professionals. It is a successful example of a centrally provided EU-level procedure with a clearly defined procedure run within the IMI system. The obligations of Member States in the procedural workflow are set out in detail, thus overcoming the ambiguity of more general rules. It provides a targeted solution underpinned by specific rules on practical issues such as documents, deadlines for treating applications and tacit approval in case host country authorities do not take a final decision within deadline (in such cases, recognition is granted automatically). In this way, the EPC provides an easier, quicker and more transparent way to have qualifications recognised.

Apart from primarily building on pre-translated forms for which high quality is guaranteed across all EU languages, the EPC solution incorporates a machine translation functionality for information and messages provided in free text. This reduces significantly the need for translation or even makes it redundant. The IMI system makes use of the Commission's machine translation service, thus ensuring data protection and privacy within a secure environment. The service, which is continuously developed and has improved in quality over the past years, is also used for notifications concerning the content of national regulations under the Services Directive.

A formal evaluation of the EPC functioning is foreseen for one year after its launch (2017). Nevertheless, the implementation of the EPC can be considered as successful so far. Difficulties are limited and mostly related to late notifications by some Member States of their requirements (for example regarding documents and fees) and some technical improvements to the IMI system. Since the EPC was made available in January 2016, more than 560 EPCs have already been issued (as of 20/10/17). This significant take-up of the EPC reflects a high demand among professionals. The key features of an EPC have also proved operational on the ground: for instance, tacit approval with ensuing automatic recognition

represents up to 15% of the cases. Deadlines for handling applications by Member States have not been an issue in the vast majority of cases, since the IMI provides for an effective monitoring system, including automatic reminders and the involvement of national IMI coordinators in each Member State.

2.2.3. Driver 3 - Insurance coverage in cross-border situations

Professional indemnity insurance as compulsory insurance aims to cover risks related to professional liability of service providers and thus functions as a guarantee towards clients for the quality of services. Nevertheless, such insurance may become an impediment to the proper functioning of the Single Market in services, both as regards secondary establishment in another Member State as well as for temporary cross-border services.

1. What is the problem?

Professional indemnity insurance is in principle easy to obtain in a domestic market, but can be substantially burdensome in situations in which Member States impose an insurance requirement to providers established in other Member States. There are a number of reasons for this.

First, there is a lack of transparency for services providers going abroad. Insurance policies are not always clear regarding whether cross-border activities are covered and, if so, in which specific Member States. This is the case both for mandatory and voluntary insurance covers. This lack of transparency also has a negative effect on consumers, who want a clear confirmation that the service provider has an adequate insurance coverage. In addition, the level of information provided by national authorities on insurance obligations lags behind the expectations and the needs of service providers, in particular SMEs that do not necessarily have the resources to collect the necessary information. InsuranceEurope[62] has therefore already made a call asking for the Points of Single Contact under the Services Directive to offer more information related to national rules on insurance.

Second, host Member States do not take into consideration the insurance coverage previously acquired in other Member States. In those cases in which the Services Directive allows Member States to impose an insurance requirement on cross-border service providers, Art. 23 of the Directive requires the host Member State to consider the existing insurance policy of a foreign service provider, in order to avoid duplication of insurance obligations. This is based on elements such as the insured risk, the insured sum and possible exclusions from the cover. Member States have nevertheless only transposed this rule formally with no practical effect for cross-border service providers on the ground.[63] Member States confirmed in the expert group on the implementation of the Services Directive (in 2014 and 2015) that they did not undertake any concrete steps to make any equivalence assessment work in practice.

[62] Representing 95% of the insurance industry in the EU

[63] See also European Commission, "Staff working document on access to insurance for services provided in another Member State", 2014

Third, there are large differences regarding obligations on professional indemnity insurance between different Member States within the same services sector (see annex 5).[64] To adapt to the local circumstances in host Member States will evidently be more difficult for SMEs and small insurers than for big companies and insurers with large international networks and experience.

2. What is the impact of this problem driver?

It is not possible to quantify the number of cross-border transactions that have been annulled or frustrated because of problems of obtaining adequate coverage for professional indemnity, but it is recurring theme in the contacts that the Commission has with stakeholders:

- A public consultation conducted in 2013 confirmed that many SMEs and professionals continue to find it hard to obtain insurance cover for their activities in other Member States.[65] More than 20% of service providers active cross-border highlighted that they face difficulties in obtaining the necessary insurance cover;
- Insurance requirements as an obstacle to cross-border activities were also highlighted in workshops carried out by the Commission in 2014 and 2015 in the context of the Single Market forum;
- A public consultation in the context of the Green paper on retail financial services[66] confirmed this (2016);
- The 2016 public consultation in the context of this impact assessment showed that 44% of the respondents – mainly the demand side – favour action at EU level to address these issues.

2.2.4. Driver 4 – National regulations in key business services with negative spill-over effects to other sectors

The Services Directive obliged Member States to eliminate from their legal orders or make less stringent a number of requirements for provision of services in their territory. Nevertheless, implementation of the Directive has been only partially successful. Key business services are among the sectors where the largest number of barriers remains across the EU.

1. What is the problem?

Section 1.2 explained why this initiative focuses on business services and construction. Problem drivers 1 to 3 are relevant for these two sectors. This problem driver on the other hand has a more narrow scope on a number of particular business services sectors. The reasons for this are the following.

[64] European Commission, "Single Market Strategy for Europe - Analysis and Evidence", Staff Working Document, 2015. See also Ecorys, "Simplification and mutual recognition in the construction sector under the Services Directive", 2015

[65] European Commission, "Consultation on problems faced by service providers in obtaining insurance cover when providing services in another Member State on a temporary basis", 2013

[66] European Commission, "Green Paper on retail financial services", , of 10 December 2015, COM (2015) 630 final – see responses published on http://ec.europa.eu/finance/consultations/2015/retail-financial-services/index_en.htm. In particular comments made in relation to Question 16 are relevant here.

Firstly regarding construction services, some construction service providers and national construction federations signalled that restrictive regulatory issues were still in place in many Member States. This is also in line with a recent Commission study looking into the regulatory framework of construction markets across the EU.[67] Nevertheless, the social partners in the construction sector and associations at EU level have indicated the need for additional clarifications. They do not support an initiative that would address regulatory obstacles in construction. In this context, national regulations governing access and exercise of construction services as well as their impact require further analysis and discussion with stakeholders. These issues could be treated in an upcoming Action Plan for the construction sector which would follow up to the 2012 Communication on sustainable competitiveness of the construction sector.

Secondly, the business services sector includes a large range of services sectors. On the one hand, there are business services (including management consultancy, computer services, services to buildings, office administrative and support activities) where specific regulatory obstacles to enter the market are inexistent or very rare. On the other hand, there are highly regulated business services where regulatory obstacles are widespread across Member States. This mainly concerns large business services (in scope of the Services Directive) of accounting, architectural and engineering services. These sectors cover about 20% of all business services activities. The focus of this problem driver is therefore on these three business services specifically where regulatory obstacles are widespread and internal market integration remains limited (table 2).

Table 2 – Business services

Business services sector	**Proportion of business services sector[68]**	**Regulatory obstacles covered by the Services Directive**	**Internal market integration[69]**
Computer services	16%	Limited	High
Legal and accounting activities	14%	Widespread	Low
Architectural and engineering activities	12%	Widespread	Low
Management consultancy activities	12%	Limited	High
Services to buildings and landscape activities	7%	Limited	Low
Rental and leasing activities	7%	Some	Medium
Office administrative and support activities	7%	Limited	Medium
Advertising and market research	4%	Limited/Some	High
Information service activities	3%	Limited	Medium
Scientific research and	2%	Limited	High

[67] Ecorys, "Simplification and mutual recognition in the construction sector under the Services Directive", 2015
[68] Eurostat, Structural Business Statistics, 2013 (expressed as % of total value added)
[69] Eurostat, using data on cross-border investment (Structural Business Statistics, when available) and/or trade (Balance of Payments Statistics, when available)

development			
Other	17%	N/A	N/A

Source: Eurostat, Commission analysis

Some of the regulatory obstacles in accounting, architectural and engineering services have been almost completely removed following the introduction of the Services Directive (such as restrictions on advertising or tariffs)[70] or are being addressed by recent infringement action by the Commission.[71] Nevertheless, there are a number of regulatory obstacles in these sectors that are still widespread across many Member States. These include:

- Authorisation requirements for companies;
- Restrictions on legal form, shareholding/voting rights and management structures;
- Limitations on multidisciplinary activities.

Several Member States impose restrictions through authorisation schemes on service providers as regards their legal form, their shareholding structure, the allocation of voting rights, management positions and multidisciplinary activities. These rules are meant to protect the independence of the professionals. Nevertheless, they are potentially serious obstacles for service providers that want to become active cross-border, given that such restrictions might oblige them to change their legal form, shareholding or management structure or even their overall business model. This is de facto a prohibition of entry because a company would be forced to change its corporate structure or even to replace shareholders by others in order to establish in another Member State. Requirements of this type are present in 17 Member States for architectural services, 14 Member States for engineering services and 10 Member States for accounting services. These requirements present very different levels of restrictiveness. They are in place for secondary establishment situations. Regarding temporary provision of services, the regulatory framework in many Member States is unclear as legislation does not refer to this manner of service provision at all (as highlighted in problem driver 1). In exceptional cases, these restrictions are even explicitly imposed on temporary cross-border service providers.

Annex 5 gives more detailed information on the presence of these requirements and of their degree of restrictiveness across Member States for the three business services sectors covered (accountants, architects and engineers), including the most restrictive ones that are currently the object of an infringement procedure.

Some aspects of these barriers could be addressed by enforcing Article 14, 15 and 25 of the Services Directive. Building on the results of the 2012 peer review with Member States, enforcement action against some of the most restrictive requirements of this type has been launched by the Commission and is ongoing. Enforcement may however not be suitable to ensure full regulatory convergence in all Member States.

3. What is the impact of this problem driver?

[70] For more details see an in-depth evaluation of the Services Directive (annex 4)
[71] An additional infringement package of 9 cases was put forward in November 2016.

Regulatory obstacles in business services (and in particular the sectors of accountants, architects and engineers) are leading to less cross-border trade and investment and in general limit productivity growth with negative spill-over effects to other sectors.

First, stakeholder feedback shows that these regulatory obstacles make it difficult to become active cross-border:

- Workshops and surveys held by the Commission throughout the EU in 2014 and 2015[72] showed that 79% of companies have encountered problems with registration and authorisations when providing cross-border services. In addition, stakeholders also indicated that the variation of legal form and shareholding requirements across Member States is a barrier, both to cross-border provision and to establishment;
- The public consultation in 2016 showed that more than 60% of respondents consider regulatory barriers in business services to be an issue of concern. For example, more than 40% consider legal form requirements as an obstacle and about 30% consider shareholding restrictions as a barrier to cross-border activities.

Second, the presence of barriers such as authorisations and restrictions on corporate form and multidisciplinary activities represent market-entry costs for undertakings which increase with the overall level of regulation in the host Member State but also with differences in regulation between Member States. These differences require the service provider to make an additional "investment" for each Member State it enters.[73] As a result, these obstacles limit cross-border activities in several ways. Firstly, they reduce cross-border trade in these sectors.[74] Secondly, also sales through foreign establishment in business services are negatively impacted by obstacles such as legal form requirements and restrictions on multi-disciplinary activities.[75] Finally, they also make entry in the market or scaling up by national players more difficult.

Regulatory obstacles in these sectors have a larger impact on SMEs than on large multinational companies.[76] Currently, these sectors are characterised by micro undertakings focusing only on domestic clients on the one hand and large multinational companies on the other.[77] Only few SMEs providing business services such as accounting, architecture and engineering services are operating in other Member States. This lack of medium sized companies in the business services sector has been identified as the "missing middle" by the 2014 HLG on business services.[78]

On a more macro-economic level, the presence of these regulatory obstacles limits competition and productivity growth in these sectors. Member States with more restrictive regulatory barriers see on average less new companies entering the market hereby limiting

[72] See http://ec.europa.eu/DocsRoom/documents/13841/attachments/1/translations/en/renditions/native
[73] H. Kox, A. Lehour, "Regulatory heterogeneity a obstacles for international services trade", 2005
[74] EFIGE, "The discriminatory effect of domestic regulations on international services trade: evidence from firm-level data", 2012
[75] Swedish Board of Trade, "Possible effects of the Services Directive", 2012
[76] European Commission, "Barriers to trade in business services", 2001; H. Kox, H. K. Nordas, "Services Trade and Domestic Regulation", OECD, 2007
[77] Ecorys, "Study on business-related services", 2012
[78] European Commission, "HLG Business services Final Report", 2014

competition. As a result, these sectors experience a less efficient flow of resources leading to lower levels of allocative efficiency[79].

In addition, a malfunctioning business services sector has a wider effect on users of such services. Regulatory barriers in business services have a negative impact on the value added, productivity growth and exports growth rates of the economic sectors using these services.[80] More restrictive regulation in business services such as accounting, architecture and engineering services lead to larger-than-average profit rates in the sectors concerned. More intensive competition is liable to drive prices down to the benefit of its users.[81]

2.3. How would the problem evolve, all things being equal?

All things being equal the problem and underlying problem drivers described and explained above would remain largely in place.

First, regarding problem drivers 1 and 2 the principles and rules in the Services Directive calling for administrative simplification and administrative cooperation do not allow for enforcement activities. Progress in this regard without a new tailored policy initiative would remain dependent on the good will of Member States. A particular concern is the lack of structured workflows to facilitate cooperation between Member States.

Second, regarding problem driver 3 a general principle of mutual recognition of insurance coverage obtained in another Member State is established but Member States have not put it into practice. Insurers are mostly driven by domestics markets and have no incentive to help SMEs going cross-border with proportionate solutions. Without the introduction of specific rules to address these issues, the situation is likely to continue, making it difficult for cross-border service providers to get the required insurance coverage or forcing them to acquire expensive coverage, not suited to their needs.

Finally, regarding problem driver 4 a few of the restrictive regulatory conditions identified could also be addressed through enhanced and continued enforcement action against Member States. For example, about 40 EU pilot procedures have been launched in relation to compliance with Articles 14, 15, 16 and 25 of the Directive. This includes, for example, enforcement action against unjustified or disproportionate legal form, shareholding, management and multidisciplinary restrictions. Nevertheless, while enforcement may help remove disproportionate restrictions, it would not eliminate all regulatory divergence across Member States. Service providers would thus continue to face diverging access conditions for the foreseeable future.

In addition, the Commission also issued country specific recommendations related to these issues which were not implemented by Member States or only to a limited extent. This work stream will soon be complemented through forthcoming specific recommendations to

[79] Allocative efficiency reflects the extent to which productive factors are allocated towards their most efficient use (based on the market shares of more versus less productive firms) and thereby constitutes a key measurement of the efficiency of a given economic sector.

[80] OECD, "Service regulation and growth", 2010 and IWP, "Services Liberalisation in Germany – Overview and the potential of deregulation", 2015

[81] European Commission, "The Economic Impact of Professional Services Liberalisation", 2014

Member States as regards specific reform needs on the regulation of seven professions, including architects, engineers and accountants. These specific recommendations take account of the whole regulatory framework applicable to the profession in question in each Member State, including legal form, shareholding and multidisciplinary restrictions.

3. Need for action at EU level

3.1. Legal base for the EU to act

Depending on the policy option chosen, this initiative could propose that the Union takes legislative action in accordance with Article 4(2)(a) TFEU in order to facilitate the free movement of services within the single market, further developing and implementing the general principles of right of establishment and freedom to provide cross-border services enshrined in Articles 49 and 56 TFEU, respectively, as well as in the Services Directive. This legislative initiative could be comprised of a Directive, introduced under Articles 50(1) and 53(1) TFEU, for matters dealing with access to services markets, and a Regulation, introduced under Article 114 TFEU, including provisions facilitating administrative formalities.

3.2. Value-added of action at EU-level

There is value added in addressing the problems described at EU level rather than through individual Member States' actions. Many Member States have not specifically tackled the barriers addressed by this initiative. The current situation is characterised by insufficient common trust, as a result of which Member States continue to impose their domestic requirements on service providers with little or no regard to the regulatory framework already imposed on the service provider in other Member States where he/she is established. Potential Member States' solutions for regulatory and administrative simplification would also differ across Member States. EU action would ensure that service providers can benefit from a less divergent approach across Member States when expanding across borders.

Against this background, various political calls have been made by the European Council[82] and the Competitiveness Council[83] to provide targeted solutions to simplifying access to services sectors.

4. Objectives

4.1. Policy objectives

The **general objectives** of this initiative are to enhance market integration in business services and construction and improve productivity growth in both sectors.

[82] See conclusion 19 of the European Council conclusions of 25 October 2013, available at https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/139197.pdf

[83] See conclusion 8 of the Competitiveness Council conclusions of 3 December 2013 on Single Market Policy, available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/intm/139846.pdf. See also See conclusion 18 of the Competitiveness Council conclusions on Single Market Policy of 3 March 2015, available at http://www.consilium.europa.eu/en/meetings/compet/2015/03/st06715_en15_pdf/

Building on the identified problem drivers which identified certain obstacles to the single market in business services and construction, the **specific objectives** of this initiative are to:

- Objective 1: Make it easier and less costly for companies to provide services in other Member States.

Problem drivers 1, 3 and 4 highlighted concrete difficulties that individual service providers potentially face when starting to provide services in another Member State. These are of administrative and regulatory nature (including insurance requirements). This initiative aims to provide practical solutions that make it easier and less costly for a service provider to go cross-border.

- Objective 2: Inject more confidence in the market towards foreign service providers by increasing transparency and available information

A lack of well-structured mechanisms for cooperation between Member States (problem driver 2) and specific issues related to insurance (problem driver 3) create obstacles for service providers to go cross-border. In addition, they also limit information available for consumers and overall transparency on cross-border service providers.

On the one hand, the lack of cooperation between Member States leads to a situation whereby existing information on service providers is not always offered to the host Member State and their consumers in a transparent way. This includes information available to the home Member States' authorities on the track record and good repute of the service provider. In addition, this also includes specific issues on insurance (e.g., information on whether service providers have an adequate insurance coverage). This lack of information and transparency potentially harms confidence in the market towards foreign service providers. This initiative aims to provide practical solutions for this as well.

- Objective 3: Enable increased market dynamics and competition leading to more choice and value added for customers (linked to problem drivers 1 and 4).

Problem drivers 1 and 4 make it difficult for service providers to go cross-border. This not only increases costs for these individual service providers but also leads to more macro-economic effects of subdued competition, with negative effects for consumers. In particular regarding problem driver 4, these effects are not constrained to the single market but also have a negative influence on the domestic market. In view of this, this initiative tries to enable increased market dynamics and competition leading to more choice and value added for customers.

4.2. Consistency with other EU policies and the Charter for fundamental rights

There are a number of forthcoming initiatives of the Commission which are related to the initiative under analysis here. As regards IT platforms, these include the Electronic Exchange of Social Security Information (EESI) system, initiatives on the interconnection of company registers (BRIS) and the extension of the Mini One Stop Shop for VAT. The EESI system brings together more than 15,000 social security institutions through an electronic network as

of 2019. The transmission of A1 documents will happen exclusively through this channel and not through the European Services e-card (IMI). BRIS will be operational as of mid-2017 and offer wider access to company data. VAT MOSS will reduce costs for foreign service providers in the area of VAT formalities as of 2021 onwards.

In addition, a few actions announced in the Single Market Strategy are also related to this initiative.

The Single Digital Gateway (SDG) aims at improving access to online information for all cross-border situations business and citizens are facing in the Single Market. As to business, this concerns information regarding starting and scaling up a business, employment of staff, taxation, selling products and providing services abroad, certification and labelling as well as funding opportunities. The initiative would also cover information relevant for citizens (such as travelling, work and retirement, health care, etc.). In the same vein, the initiative might cover obligations for Member States to put in place and to optimise national online procedures such as tax registration and public procurement.[84] Finally, existing national and European e-government portals (such as points of contact under the Services Directive, the product contact points, European Consumer Centres, YourEurope) would be strengthened and synergies built. The initiative is planned to be presented in spring 2017. Its scope (all business as well as citizens) is much broader compared to the two services sectors dealt with in this impact assessment. It does not foresee an EU-level procedure allowing for case-by-case cooperation between Member States. On the other hand, both initiatives are building a more coordinated e-governance structure at European level and in Member States for all relevant single market areas, including services. They will therefore complement each other in reducing administrative burden for service providers. Whereas the initiative under analysis in this impact assessment aims to simplify sector-specific procedures (e.g. sector-specific licences), the SDG aims to allow service providers better access to information on applicable rules and more straightforward ways to complete horizontal procedures (e.g., registering for VAT).

Under the Single Market Strategy, the Commission also announced guidance on reform needs for regulation of professional services. The Directive on the recognition of professional qualifications (Directive 2005/36/EC) was subject to a major reform in 2013. That reform not only introduced the European Professional Card, it also imposed obligations for Member States to launch a major transparency process and to undertake a mutual evaluation of all regulated professions (also covering areas of business services). In December, the Commission will present the results of the mutual evaluation and whether it sees further need for reforms of regulated professions. The purpose of this guidance is primarily to promote national reforms (through recommendations rather than regulatory means) alongside the country specific recommendations the Commission presents in the framework of the European Semester. Accordingly, it is also complementary to the present impact assessment.

[84] These procedures addressed by the SDG initiative will largely concern horizontal business events like starting up, registering for VAT or social security and not sector specific ones as for this initiative.

Consistency with these initiatives will be ensured by close cooperation with all departments and DGs concerned within the Commission. Regarding the Charter of fundamental rights, several of its provisions will be implemented by this initiative. Further information is provided in annex 6.

5. Policy options

5.1. Baseline scenario: No EU policy change

This option means no new action will be taken at EU level and serves as the benchmark against which the other options will be assessed, as described under section 2.3. This includes continuing the recent active enforcement policy against the most restrictive requirements.

5.2. Overview of different policy options

The policy objectives can be addressed through a combination of different policy options. These options will be described in section 5.3. Potential combinations of the options ("packages") will be outlined in section 5.4. The impact of these packages of options will be described in section 6.

The following policy options will be outlined:

1. A European Services e-card attesting legal establishment;
2A. A European Services e-card for a more ambitious administrative simplification;
2B. Action to address regulatory obstacles for providers in key business services wanting to set up foreign branches and agencies;
3. Actions to facilitate access to insurance in a cross-border context;
4. Harmonisation of requirements for certain business services.

The scope of sectors addressed by the options 1, 2A and 3 is business services and construction. These options focus on administrative simplification. Options 2B and 4 have a more narrow scope, focusing on a limited number of regulatory obstacles in certain business services (accountants, architects and engineers). The reasons for this more narrow scope (regarding options that address regulatory obstacles) have been outlined in problem driver 4.

5.3. Description of policy options

5.3.1. Policy option 1: European services e-card attesting legal establishment

Purpose

The purpose of this option would be to offer an electronic certificate to a service provider to demonstrate in which Member State he/she is established. To this end, he/she would be entitled to obtain a standardised electronic certificate, called a European services e-card. The certificate would attest to legal establishment in a ("home") Member State within the framework of the Services Directive. By doing so, it would also increase trust with regard to the service provider in the host Member State. In addition, if (in compliance with data

protection rules) the fact that a service provider holds a card is made known to service recipients, these service recipients may feel more willing to hire them.

The card would be issued by the home Member State' authorities to the service provider and would be valid throughout the European Union. Any Member State to which the service provider would like to expand operations, temporarily or through a secondary establishment, ("the host member State") would have to accept the certificate as proof of establishment. Accordingly, a host Member State would not (within the framework of the Services Directive) be allowed to contest or require further evidence in relation to the fact that the provider is legally established in the home Member State. A host Member State would continue to impose on service providers those requirements under its national law that apply in line with the Services Directive before he/she/it can start doing business. As a result, Option 1 would not facilitate life for service providers in those situations in which a host Member State requires a prior authorisation before a service activity can commence in its territory.

Voluntary nature

The certificate would be a voluntary tool the service provider can use or not. The home Member State would be required to issue it if a service provider requests so. If a service has not requested such certificate, a host Member State should allow him/her to proof legal establishment by other appropriate means.

Contents

The certificate would include the following information about a service provider:

- Identification, such as name, legal form, registered office (address), business registration number; VAT registration number[85].
- Legal establishment in the home Member State for the provision of the service in question, such as mandatory licences, mandatory chamber membership(s).
- In the case of companies, the corporate structure of the service provider such as legal form, shareholding/voting rights structure, management and (corporate) purpose of the company;
- Information about the good repute of the provider (track record about criminal, administrative and disciplinary sanctions relevant for the activities carried out by a service provider).

Member States would be required to screen and inform the Commission of all the conditions relevant for attesting legal establishment under their legislation in the implementation phase prior to the launch of the initiative. The goal is to offer a uniform certificate containing the information above.

[85] As from 2021, it is expected that following an upcoming proposal for extending VAT MOSS to other electronic commerce providers and service providers[85] market participants offering their services to end consumers on a temporary cross-border basis in another Member State could use the Mini-One-Stop-Shop System (MOSS); use of such system would require a registration with MOSS. An indication that the service provider is registered for the MOSS could be added to the certificate in the future. The system will allow online verification by the host Member State of the validity of the VAT number..

Scope

Such certificate would be offered to service providers in business services[86] and construction[87] which are currently governed by the Services Directive and are not subject to specific EU legislation pertaining to internal market integration. It would be available to both natural persons (self-employed, including those involved in unincorporated partnerships) and legal persons[88] (companies, including incorporated partnerships).

Operational part[89]

1) A service provider can apply for such a certificate online. To this end, an application form would be offered. The form should be the same for all Member States and it should reflect all components relevant for each Member State in relation to the service(s) in question.

2) When an application is made, the home Member State would be required to issue a certificate if the conditions of legal establishment in its jurisdiction are met. All other Member States should accept such a certificate as proof of legal establishment in the home Member State.

3) The entire workflow would be an electronic process using the functionalities of the Internal Market Information System (IMI) and a public interface linked to it, available online[90] to interested service providers.

4) A coordinating authority in the home Member State should be designated as the single interlocutor for the service provider. Such authority would ultimately be responsible for verifying and completing the information provided by the service provider. To this end, it would communicate with the competent authorities in the home Member State (either through IMI or national channels).

5) The home Member State should ask for documents supporting an application for a European services e-card. It may require that such documents are available in its official language. It may not require translation to the language of other (host) Member States. Those documents would remain available to the home Member State only and would not be transmitted to other Member States.

[86] As defined making use of NACE rev. 2 codes (Division 62 and 63 of Section J and Sections M and N) , save for those entirely excluded from the Services Directive (such as notaries, private security services, temporary employment agencies) or only partially given they are mostly governed by sector-specific EU legislation (such as trust services under Regulation (EU) 910/2014, technical testing and analysis under Regulation (EC) 765/2008, lawyers under Council Directive 77/249/EEC and Directive 98/5/EC and statutory auditors under Directive 2006/43/EC), as well as excluding services not habitually regarded as business services, such as veterinary services and renting and leasing of personal and household goods

[87] As defined under NACE rev.2 codes (Section F) including construction of buildings, civil engineering and specialised construction activities, excluding installation of F-gas equipment by natural persons (governed by Regulation (EU) 517/2014).

[88] As defined by Article 54 TFEU and not limited to those listed in Directive 2009/101/EC.

[89] See procedural flowchart in Annex 7 of the Impact Assessment.

[90] A public online interface linked to IMI is available on the YourEurope-Website. This model could be taken as a starting point.

6) In order to reduce the need for supporting documents, information already available to competent authorities of the home Member State[91] would not have to be submitted by the service provider when submitting the application:

- The home MS should use information available to other national authorities to complete the application, unless specific national laws (tax secrecy, data protection) prevent such data processing. This information includes data previously made available by the service provider to the authorities as well as information already available in the administrations themselves if this information is updated;
- Similarly, information available via the Business Registers Interconnection System (BRIS) – to be operational in 2017[92] – and the interconnection of insolvency registers[93] should also be used if technically feasible by coordinating authorities to complete the application or cross-check information.
- If applicable, the service provider can also reuse data already provided under the European Single Procurement Document (ESPD) introduced in April 2016.

7) The coordinating authority in the home Member States can charge fees proportionate to the cost for issuing a certificate.

8) A certificate must be issued within one week[94] of submission of a complete application.

9) The certificate under the name European Services e-card would be accessible in all official languages of the European Union, by making use of multilingual forms. It would be made available via IMI to all other Member States.

10) The certificate would be valid for as long as legal establishment in the home Member State persists. It should be updated by the coordinating authority in the event of information changes (for instance change of corporate structure and registration numbers), either *ex officio* or upon request of the card holder.

11) The certificate would be suspended or revoked by the home Member State if changes to the underlying facts require so, again either *ex officio* or upon request of the card holder:

(i) determination that the holder of the card made use of fraudulent, inaccurate or falsified information while applying for the card;

(ii) sanctions imposing a temporary or permanent ban on provision of services;

(iii) permanent shut down of activities in that Member State, including winding-up and dissolution of a legal person;

[91] This information includes data previously made available by the service provider to the authorities as well as information already available in the administrations themselves.
[92] As of June 2017, BRIS will make available information which limited liability companies are obliged to file with the business registers in accordance with EU law (Directive 2009/101), e.g. name, company registration number, legal form, address of the registered office.
[93] Implementing Acts of Article 25 of Regulation 2015/848 shall be adopted by 26 June 2019.
[94] Provided the conditions for legal establishment are met. Deadlines should be reconsidered in the periodic reviews– see section 8 of the Impact Assessment

(iv) displacement of place of establishment to another Member State or to a third country;

(v) determination that the holder of the card is a worker, rather than a self-employed person;

(vi) cessation of establishment for any other reason.

12) Depending on the technical functionalities of interconnected registers such as BRIS and insolvency registers, updates to the information contained in the certificate may occur automatically. The service provider will in any event be obliged to report to the coordinating authority any relevant event impacting the information contained in the certificate. The service provider would be subject to fines for not doing so. The host Member States which received the European services e-card would also be required to exchange relevant information with the home Member State regarding their own supervision of service providers holding a card and providing services in their territory without any delay.

5.3.2. Policy option 2A: A European services e-card for a more ambitious administrative simplification

Purpose

The purpose of this option 2 would be to build on the certificate presented under option 1 but to be more ambitious. The European Services e-card should not only attest, throughout the Union, to legal establishment of its holder in the home Member State, but also be a tool to support service providers who intend to expand operations in their relations with host Member States. Therefore the underlying procedure prior to the issuance of such a Card would be different compared to option 1. In contrast to option 1, the European services e-card offers additional legal certainty to service providers within a short timeframe about whether they are deemed to comply with any requirements that may apply before they can expand activities to another Member State or not. The European services e-card shall prove this compliance vis a vis authorities and service recipients on the territory of the host Member State. Service providers holding the card will acquire the right to start provision of services in the host Member State, either temporarily or through a secondary establishment. Service recipients will gain enhanced trust in cross-border service providers holding the card and may thus feel more willing to hire their services.

When indicating which requirements are applicable in its territory and which requirements are deemed to be complied with by the card holder, the host Member State must fully respect the provisions of the Services Directive.

Voluntary nature

The European services e-card would be a voluntary tool that service providers can use or not. If a service provider has not requested a card, host Member States would require that the provider shows compliance with those requirements that may apply in line with the Services Directive before he/she/it can start doing business in the same way as they do now.

Scope

There would be no differences in scope compared to option 1. The scope of this option would also be the same for cases of temporary cross-border provision and secondary establishment.

Impact on prior control schemes in the host Member State

More generally, the host Member State would not be allowed to use this initiative for introducing new prior controls that are not in line with EU law on foreign service providers. If national law, including administrative practice, currently imposed such prior controls to start doing business, the future card procedure would replace such controls [95]. In assessing applications for the European services e-card, Member States shall retain the right to invoke overriding reasons of public interests recognised under Directive 2006/123/EC, in particular Article 16 thereof, or other acts of EU law.

In addition, service providers would benefit from the following simplification[96] :

- uncertainty as to which requirements apply when going cross-border (host Member States will be obliged to clarify which requirements apply in their specific situation);
- filling-in disparate forms in foreign languages (applicants would rather fill-in one harmonized form in their own language, to be automatically translated as a multilingual form and partially completed by the home MS);
- producing various *supporting* documents (the declarations in the form, attested by the home MS, will serve as sufficient proof in most cases - exceptionally documents will need to be uploaded, but the administration in the home Member State administration will upload documents in its possession);
- translating, certifying/authenticating documents (documents would be accepted in simple format);
- producing original or certified copies of documents (documents would be accepted in simple copy format);
- non-electronic procedural steps, sometimes requiring the physical presence of the service provider (all card procedural steps will be fully electronic and at a distance)
- relating to foreign and foreign-speaking host MS authorities (card applicants would instead talk to just one coordinating authority, in their home MS, in the language of that home MS).

The holder of a European services e-card would however not been exempted from ex-post controls which may be applicable to service providers to the extent that they are compliant with EU law. Host Member States will, however, not be allowed to replicate controls on issues already addressed by the issuance of a European services e-card. For instance, if a host

[95] Not for services provided under a public contract, already governed in detail under EU or national procurement law and not for services provided pursuant to selection procedures in the context of authorisations limited in number. Such controls shall remain in place since their particular complexity cannot be suitably accommodated by the simple and expeditious procedural workflow of issuing a European Services Card.

[96] See quantitative and qualitative examples of impact of these simplification features in Annex 5 of this impact assessment.

Member State failed to act within the prescribed timelines, it cannot come back on the grounds on which it could have opposed the issuance of a European services e-card, retroactively revoking it, unless it is proved that the information provided to it was erroneous.

Other controls schemes and formalities required when starting doing business under national law governed by other horizontal pieces of legislation rather than the Services Directive, such as recognition of professional qualifications under the Directive on recognition of professional qualifications, registration of legal persons and branches under EU (and national) company law[97] and tax and social security registrations, would however remain applicable. These additional control schemes and formalities should still be complied with, including once the card has been issued and before service provision has started. However, the host Member State would be obliged to accept the information in the certificate of legal establishment in the context of these other control schemes and formalities. This way, the service provider would be required to submit the same information only once. At the same time, this would not prejudice the ability of competent authorities responsible to ask the service provider for other information that is required under national substantive requirements under these other control schemes and formalities.

Furthermore, technical facilities regarding the secondment of staff could also be made available as associated modules to the card. The functionalities of this option for temporary cross-border provision (5.3.2.1) and secondary establishment (5.3.2.2) will be described separately. The possible technical facilities linked to secondment of staff will be described in section 5.3.2.3.

5.3.2.1. A European Services e-card for temporary cross-border provision

A service provider holding a European services e-card issued by the home Member State for temporary cross-border provision would be allowed to start doing business in a given host Member State without further control schemes and formalities falling under the Services Directive. Existing controls that may exceptionally apply to start doing temporary cross-border business would be replaced by the controls prior to issuing the card introducing a streamlined EU-level procedure. This procedure would frame the application of Art. 16 of the Services Directive in order to remove the current uncertainty temporary cross-border providers face. In the few Member States where specific rules for temporary cross-border services have been introduced, current controls in the host Member State would be simpler and faster.

Impact on prior controls and requirements applicable in the host Member State

If a service provider chooses to apply for a European services e-card, he chooses a European workflow in which the home Member State clarifies the legal situation in its home Member State and the host Member State needs to react quickly whether there are reasons to object to

[97] Directives 2009/101/EC and Council Directive 89/666/EEC. The company law initiative to further facilitate the use of digital solutions throughout a company's lifecycle, announced in the Commission Work Programme for 2017, will, among others, address the issue of online company registration.

the service provider starting doing business and judge within a short timeframe whether such refusal is justified within the boundaries of the Services Directive, notably Article 16 thereof. If the host Member State fails to act within prescribed time limits, a European services e-card is issued to the interested service provider by the home Member State and the host Member State can no longer challenge such a card unless it is proved that it was issued on the basis of erroneous information or that the provider no longer meets the necessary conditions. This does not preclude a host Member State from applying requirements and ex-post controls if compatible with Article 16 of the Services Directive.

Contents of a European services e-card for temporary cross-border services

A certificate attesting legal establishment in the home Member State would, naturally, include the same information regarding legal establishment as in option 1.

Operational part[98]

1) The European services e-card would build on the certificate, as described in option 1. When applying, the service provider should, in addition to the service activity in question, also indicate the envisaged host Member State. On the basis of this choice, the card application would be complemented by additional information on legal establishment in the home Member State which may be relevant for the given host Member State to have[99];

2) The procedure unfolds in IMI as described under option 1 (points 2) to 9));

3) The home Member State verifies and completes the certificate attesting legal establishment. The certificate should be subsequently transferred to the coordinating authority of the host Member State;

4) The coordinating authority in the home Member State would remain the single interlocutor for the provider, and would communicate with its counterpart in the host Member State. Each coordinating authority in the home and in the host Member States would communicate with competent authorities in their respective Member States (either through IMI or national channels) in charge of the various pieces of information;

5) In line with Article 16 of the Services Directive, the host Member State may only very exceptionally impose requirements strictly based on reasons related to public security, public order, public health or protection of the environment to be respected by a foreign service provider[100]. Under the card's workflow, the host Member State should clearly provide information on such exceptional requirements to the card's applicant (in the IMI application, which is then machine-translated) within two weeks (extendable by two additional weeks) from receiving the attestation of legal establishment from the home Member State. This way

[98] See procedural flowchart in Annex 7 of the Impact Assessment.

[99] Member States would be required to inform the Commission of such pieces of information in the implementation phase of the initiative.

[100] Inspection of compliance with these requirements shall take place through ex post checks and controls in the host Member State, not through the Card procedure which, as explained, only includes a simple check of entry by the host Member State based on attestation of legal establishment in the home Member State.

the service provider will know which requirements he/she/it has to comply with once provision of services starts in the host Member State[101];

6) Where needed, authorities in the host Member State may ask for clarifications and additional information to carry out that assessment[102]. Such requests would suspend the deadline for reaction by the host Member State. Suspension will cease once the service provider (home Member State) provides answers to these questions. The home Member state should provide clarifications and additional information within a reasonable period in order to avoid lengthy procedures;

7) Under the workflow proposed under point 6, authorities in the host Member State may then, via IMI, refuse that a service provider starts doing business if, considering the specific circumstances of the card's applicant, service provision may not start without seriously endangering public security, public order, public health or protection of the environment (in accordance with Article 16 of the Services Directive). A card would hence not be issued if such refusal is substantiated. The service provider can appeal such refusal by the host Member States before their courts;

8) The coordinating authority of the home Member State issues the card unless the host Member State, **within two weeks**[103] from receiving the completed and verified application form, attesting legal establishment, refuses that the service provider starts doing business. In case there is no action by the host Member State after two weeks, the system will provide an alert after which the host Member State will be allowed two additional weeks for possible refusal. The refusal is, however, only admissible if at least one reason related to public security, public order, public health or protection of the environment has been substantiated and a proportionality assessment has been provided in IMI. Thus, a host Member State cannot simply "block" the issuance of a card but offer a substantiated refusal which a foreign service provider can challenge before national courts in a host Member State. The European services e-card will be issued either by the home Member State or automatically within the IMI system if there is no refusal (during the deadline of two plus two weeks mentioned above) or if a refusal is left entirely without substantiation. Issuing the card in such situations would *lead to more* legal certainty. Currently, many Member States do not distinguish between establishment and temporary cross-border situations, creating great uncertainty as to which controls and requirements apply[104] and forcing service providers to either establish or risk providing services temporarily uncertain of whether they do so legally.

9) The host Member State has accordingly to allow the holder of the card to start doing business, temporarily (without establishing there);

---

[101] Information may be given by referring to relevant national websites, namely the PSC, if this information appears in a complete and updated form (even if it is only available in a language foreign to the applicant). However, the absence of information by the host Member State on its own does not impede the issuance of the card.

[102] They should make use of all available interconnections of national registers (e.g. of business registers (BRIS) or of insolvency registers) before any other means of obtaining or verifying the previously obtained information.

[103] Deadlines should be reconsidered in the periodic reviews– see section 8 of the Impact Assessment.

[104] see section 2.2.1 and Annex 5 of this impact assessment

10) The Card should be updated by the coordinating authority in the home Member State if information changes (for instance change of corporate structure and registration numbers), either *ex officio* or upon request of the Card holder[105].

11) The Card would also be suspended or revoked by the home Member State if changes to the underlying facts require so, again either *ex officio* or upon request of the Card holder, as described in point 11 of option 1. In the event of serious problems with a service provider on the territory of the home Member State, all e-cards would be suspended or revoked.

However, if the card holder breaches requirements in the host Member State the host Member State may request suspension or revocation of the Card by the home Member State, for instance in the event of:

(i) breach of requirements imposed on temporary cross-border provisions the compliance of which is essential to continued legal provision of services in question in the territory of the host Member State;

(ii) sanctions imposing a temporary or permanent ban on provision of services in the host Member State;

(iii) determination that the holder of the card is a worker, rather than a self-employed person, in the host Member State.

In the event of serious problems with a service provider on the territory of the host Member State, e-cards would be suspended or revoked with effect for the host Member State concerned.

12) Depending on the technical functionalities of interconnected registers such as BRIS and insolvency registers, updates to the information contained in the certificate may occur automatically. The service provider will in any event be obliged to report to the coordinating authority any relevant event impacting the information contained in the certificate. Host Member States would also be required to exchange relevant information with the home Member State regarding their own supervision of service providers holding a card and providing services in their territory without any delay, requesting suspension or revocation of the card whenever appropriate.

5.3.2.2. A European services e-card for secondary establishment

The host Member State would issue a European services e-card valid for its territory. A service provider holding such a card would be allowed to set up such a secondary establishment (branch or agency[106]) in the host Member State concerned and would not be

[105] Depending on the technical functionalities of interconnected registers such as BRIS and insolvency registers, updates to the information contained in the certificate may occur automatically.

[106] This option does not address subsidiaries – the card procedure is, at least in a first stage, to be kept simple and focus on barriers with a particular impact on cross-border situations, in the context of the Services Directive. This is generally not the case for barriers impacting the setting up of a subsidiary, given that;
a) a subsidiary is often not a wholly owned subsidiary but can have different shareholders, such as from the host Member State ;

subject to additional control schemes and formalities to start doing business which a Member State may today impose in accordance with the Services Directive. The card would also grant the right to set up additional branches or agencies in the host Member State, in case a specific authorisation is not required for this[107].

Impact on prior controls and requirements of the host Member State

Unlike in cases of temporary cross-border provisions, a host Member State may impose a larger number of requirements on incoming service providers wishing to establish (such as for reasons related to protection of service recipients). Requirements which must, nevertheless, comply with relevant EU Law, notably the Services Directive. The home Member State shall not control requirements applicable under host Member State law. Therefore, the card procedure must allow for a prior check by the host Member State of any requirements which must be checked before provision of services starts (such as requirements on legal form, shareholding/voting rights, management, multidisciplinary restrictions).

Nevertheless a host Member State should be prevented from requiring, as a first step, registration of a branch under company law before assessing the application for a European services card.

Contents of a European services e-card for secondary establishment

The certificate attesting legal establishment in the home Member State would include the same information regarding legal establishment as in option 1. However, since the card, once issued, would also allow the card holder to establish in another Member State, information regarding compliance with the requirements of that host Member State should also be included in the card.

Operational part[108]

1) The European services e-card issued by the host Member State would build on the certificate of legal establishment, as described in option 1[109]. A service provider should apply for the card in the same way as in applying for a card for temporary cross-border provisions. It may be complemented by additional information on legal establishment in the home Member State which is relevant for the host Member State to have[110].

---

b) setting up a subsidiary through incorporation of a company is often controlled in a manner intrinsically linked to company law controls on creating a company;
c) setting up a subsidiary through purchasing a control stake in a previously established company (a common way of setting up a subsidiary) has very specific controls in place under a particular regulatory environment outside of the Services Directive.

[107] In accordance with Article 10(4) of the Services Directive. If a specific authorisation is required for each branch or agency, the service provider will have the choice to either apply for a European services card for each branch or agency or follow the national authorisation scheme.

[108] See procedural flowchart in Annex 7 of the Impact Assessment.

[109] By demonstrating actual establishment in the home Member State, this certificate would operate to prevent circumvention of host Member State rules (through forum shopping). Letter box companies set up in a home Member State will thus not be allowed to hold a card.

[110] Member States would be required to inform the Commission of such pieces of information in the implementation phase of the initiative.

2) At a first stage, the procedure unfolds in IMI via the home Member State authority as described under points 2) through 9) of option 1. The home Member State verifies and completes the certificate attesting legal establishment.

3) Once legal establishment in the home Member State is attested and additional relevant information provided, the completed and verified application form, already attesting legal establishment in the home Member State, would be transferred to a coordinating authority of the host Member State to decide whether to issue a card; Communication between coordinating authorities would take place in a similar fashion as in temporary cross-border situations, for clarification and supplementing purposes;

4) Within four weeks from receiving the application, the coordinating authority of the host Member State should assess such application. In case there is no reaction by the host Member State after four weeks, the system will provide an alert after which the host Member State will be allowed two additional weeks for action. While checking the multilingual information provided regarding the service provider's legal establishment in the home Member State, authorities in the host Member State may ask for additional information with a view to performing mutual recognition. Such requests would suspend the deadline for reaction by the host Member State Suspension will cease once the home Member State provides answers to these questions. The home Member State should react within a reasonable period in order to avoid lengthy procedures;

5) Host Member State authorities may come to the conclusion that overriding reasons of general interest require the applicant to comply with host Member State requirements on top of the ones the applicant complies with in the home Member State. The coordinating authority in the host Member State would then indicate (in the IMI application, subject to machine-translation) which additional requirements should be respected[111];

6) The deadline for the coordinating authority of the host Member State to decide on the application (by either approving it or rejecting it) would be then suspended until compliance with such requirements is demonstrated therein. The service provider can appeal the refusal to issue the card by the host Member States before their courts. If no decision is taken by the coordinating authority of the host Member State after expiration of the deadline of six weeks (four plus two, as described above) upon receiving the application or within one week after receiving proof of compliance, the card is issued automatically, tacitly allowing for the applicant to start doing business.

7) If the coordinating authority of the host Member State informs the applicant of its intention to reject the application, the applicant shall have time to present observations, namely regarding equivalence of host Member State requirements with previously complied requirements in the home Member State. In light of the observations made, the authority shall be able to decide, within one week, whether to issue the card or reject the application. If the

[111] For such requirements imposed on the service provider to allow for business to start, the host Member State should respect the Services Directive, namely its Articles 10, 14, 15, 23 and 25. Information may be given by referring to relevant national websites, namely the PSC, if this information appears in a complete and updated form (even if it is only available in a language foreign to the applicant)

authority does not react within this deadline, the card is issued automatically, tacitly allowing for the applicant to start doing business.

8) The card should be updated by the coordinating authority in the host Member State if information changes (for instance change of corporate structure and registration numbers), either *ex officio* or upon request of the card holder. The home Member State should cooperate in this regard.

9) If changes occur to the underlying facts supporting the card in the home Member State, as described in point 11 of option 1, the coordinating authority there may request its counterpart in the host Member State to suspend or revoke the card.

However, the host Member State may decide to allow the holder of a European services e-card to remain established in its territory, upon revocation of the card[112].

Furthermore, if the card holder breaches requirements in the host Member State its coordinating authority may, *ex officio* or at the request of the card holder, suspend or revoke the card, in the event of:

(i) breach of requirements imposed on secondary establishment the compliance of which is essential to continued legal provision of services in question in the territory of the host Member State;

(ii) sanctions imposing a temporary or permanent ban on provision of services in the host Member State;

(iii) determination that the holder of the card is a worker, rather than a self-employed person, in the host Member State.

5.3.2.3. Technical facilities linked to secondment of staff

Under option 2, the European services e-card and underlying procedure could be complemented by additional technical facilities (set up in separate technical modules) for secondment of staff.

These modules would be linked to obligations set out by the following rules concerning posted workers and professional qualifications:

- Article 9(1)a and, where applicable, Article 9(2)) of the Posting of Workers Enforcement Directive, allowing host Member States to introduce a prior notification for controlling employment conditions[113]; and
- Article 7 of the 2005 Professional Qualifications Directive, providing for a prior declaration on professional qualifications.

[112] In doing so, the host Member State may impose requirements on the service provider, in compliance with EU law.

[113] Only information requirements under Article 9(1)a and where applicable Article 9(2) are covered by this initiative, without prejudice to the obligation to keep and make available certain documents translated in the local language during/after the posting period, such as employment contracts or timesheets as set out by Article 9(1)b of the Enforcement Directive.

Where Member States have set up procedures that allow for the declaration relating to the posting of workers pursuant to Article 9 of Directive 2014/67/EU to be completed by electronic means, the European services e-card shall direct the card holder to the relevant national procedures. Providers who hold a European services e- card may also submit this declaration through an electronic platform connected to IMI where a host Member State has communicated to the Commission that this possibility should apply for the posting of workers in its territory.[114] In these cases, the declarations would be submitted "real time" by service providers directly to the relevant host Member State authority, without any involvement of the home Member State authorities. As such, the service provider would remain fully responsible for making such declarations to the host Member State. While this module would be offered through the same online interface as used for Services e-card applications, declarations would not be part of the application itself. As a self-standing element, declarations would be added, removed or updated on an ongoing basis depending on actual postings after the card has been issued. Information on current posted workers could be linked to an issued card. This way, host Member State authorities would benefit from more information concerning the service provider (including possible sanctions) compared to the existing acquis, under which exchange of information is not comprehensive in relation to different aspects of cross-border service provision. The service provider would fill in details on posted workers in a pre-defined, multilingual form appearing in the home Member State language(s). For this purpose, the host Member State shall provide all the elements required in accordance with point a) of paragraph 1 and paragraph 2 of Article 9 of Directive 2014/67/EU as the basis for a multi-lingual form to be submitted for the declaration of posted workers on its territory. The Commission shall publish this form. In the host Member State, information would appear in the local language(s) thanks to such multilingual forms and in full compliance with the language requirements set out in Article 9(1)(a) of Directive 2014/67/EU. All in all, the advance information to be provided as well as any subsequent controls of posted workers remain unchanged by this initiative.

The transmission of the A1 form[115] however would not be part of this module, as would not be any subsequent exchanges of information in relation to social security aspects, these exchanges between social security institutions will take place through EESSI once available[116]. As a result, the possibilities of the issuing social security institutions to fulfil their obligations to verify that all conditions are met when issuing or treating a request for withdrawal of A1 forms, including the possibility of direct communication with the applicant, will not be affected.

Finally, a third component could be included to allow for prior declarations on professional qualifications of posted staff in accordance with Article 7 of the 2005 Professional Qualifications Directive. It would also be accessible through the same online interface.

[114] Member State would always be able to notify to the Commission that they do no longer wish to apply this possibility.
[115] Used by a service provider for a posted employee or by a self-employed.
[116] EESSI – the Electronic Exchange of Social Security Information is a large scale IT system being developed by the Commission to be finalised mid-2017, after which Member States will have two years to connect their national social security institutions.

To keep the procedure simple, declarations would not be made available for professionals with health and safety implications. Furthermore, once a European Professional Card (EPC) is made available for the professional activity in question, the module for declarations is replaced by a link to a previously issued EPC.[117] All in all, the legal regime introduced by the Professional Qualifications Directive would not be affected.

5.3.3. Policy option 2B: Action to address regulatory obstacles for providers in key business services wanting to set up cross-border branches and agencies

Purpose

This policy option would function as an add-on to policy option 2A.

It aims to address possible cases of disproportionality regarding certain regulatory restrictions. Requirements governing provision of a service have to comply with relevant EU law, notably the Services Directive. However, unlike Article 16 of the Services Directive governing temporary cross-border provision, the Services Directive gives Member States much wider discretion in regulating establishing service providers. This policy option would introduce rules on how the host Member State should apply the principle of proportionality for the set-up of branches or agencies when assessing requirements in the context of the European services e-card procedure for secondary establishment (as outlined in policy option 2A).

However, this option has raised concerns of unequal treatment and risk of circumvention if pursued, as described in points 6.6 and 7.2.

Scope

The scope of sectors covered under this policy option is smaller compared to options 1 and 2A. In line with problem driver 4, this policy option would be offered to selected business services only (architectural, engineering and accounting services) where these regulatory obstacles are widespread across different Member States. The reason for this is that this policy options aim to address regulatory obstacles that companies face when setting up a secondary establishment highlighted in problem driver 4 are widespread across different Member States.

The regulatory obstacles pertain to legal form, shareholding/voting rights, management and multidisciplinary restrictions. According to their nature, these requirements are inapplicable to natural persons. This policy option therefore has a focus on legal persons[118] (companies, including incorporated partnerships) seeking to set up a branch or agency in another Member State[119].

Content

[117] Currently the EPC is only available for a selected number of professions (nurses, pharmacists, physiotherapists, mountain guides and real estate agents). No other proposals for introducing the EPC are pending.
[118] As defined by Article 54 TFEU and not limited to those listed in Directive 2009/101/EC.
[119] Option 4 addresses regulatory restrictions for subsidiaries and domestic companies.

This policy option would introduce rules as to which requirements or options can be requested by the host Member State – in the context of a European services e-card procedure – regarding companies setting up a secondary establishment through branches or agencies.

The stringent requirements pertaining to legal form, shareholding/voting rights, management and multidisciplinary restrictions applicable in some Member States[120] to companies incorporated therein should be adapted[121] to the situation of a branch or agency. Secondary establishment (in the form of a branch or agency) must be available to companies seeking cross-border expansion. To ensure this, this policy option would introduce the following rules:

- Restrictions on multidisciplinary activities should apply to the host Member State's territory only[122];
- Legal form, shareholding/voting rights and management requirements should apply only in so far as they do not entail reincorporation and/or restructuring of the company in its home Member State, where different rules on incorporation and corporate structure apply.

Adaptation of host Member States rules on incorporation and corporate structures devised for internal situations to cross-border situations entails a difference in treatment of foreign branches and agencies. The host Member State would nevertheless remain in charge of supervising such branches or agencies (via professional chambers for instances). It can also impose requirements on the organisation of the relations between such branches/agencies and their parent companies established abroad as regards the above-mentioned requirements (e.g. securing effective separation between the business units in its territory and business units carrying out conflicting activities in other Member States). As in the past, the host Member State will also decide on the need for professional qualifications of the persons concerned.

5.3.4. Policy option 3: Facilitate access to insurance in a cross-border context

Introducing minimum insurance coverage requirements, such as insured sum, duration of the coverage and exclusions from the cover, seem prima facie too far reaching for the problems described. Also discarded is the option of a mandatory single premium covering the entire EU territory (similar to the third party liability insurance in the Motor Insurance Directive 2009/103/EC). Such solutions risk raising regulatory barriers in some Member States and have not gathered ample support from service providers, while encountering strong opposition from the insurance industry[123].

Scope

[120] See Annex 5 of this Impact Assessment

[121] The introduction of specific (positive harmonisation) rules for cross-border agency and branch situations is foreseen under option 4. Such harmonisation will ease the card's procedure under option 2B but it will not render option 2B unnecessary since, as devised, option 4 does not introduce full harmonisation solutions.

[122] It would not be up to the host Member State but up to the service provider to decide which of the conflicting activities it intends to carry out (and which not) in the host Member State; It would be disproportionate for the host Member State to decide which of the conflicting activities could be provided.

[123] See Annex 2 of this Impact Assessment

The options below would apply to business services and construction services as set out in policy options 1 and 2A. They would not only benefit card holders. The options below are not mutually exclusive but they operate as supplements to options 1 and/or 2.

Policy option 3.1: Service provider already has insurance policy in home Member State

Option 3.1a: An (electronic) certificate provided by the insurer would clarify main aspects of mandatory or voluntary coverage such as insured risks, insured sums, exclusions from cover and duration of coverage. In order to foster the acceptance of those certificates, standardisation can be considered. In addition, the certificate attesting to legal establishment prepared and issued under policy options 1 or 2A would contain confirmation about existence of mandatory or voluntary insurance coverage for activities in the home Member State, but also, in case of policy option 2A, for activities on the territory of other Member States of destination. In this case, both information on coverage and an insurance certificate would target primarily situations where insurance is mandatory in either home or host Member States, so as to ease equivalence assessment of coverage acquired across borders.

Option 3.1b: This option would create a right for policy holders to request at any time from their insurers a statement about their claims history ("track record") over a given period (similar to the 5 years statement under Article 16 of the Motor Insurance Directive), in relation to both mandatory or voluntary coverage. This would enable service providers to demonstrate their experience to a new insurer in the host Member State, particularly in cases of mandatory insurance coverage there. In order to foster the acceptance of those statements, standardisation of such statements can be considered (e.g. describing liabilities arising from provision of the services in question which were the object of a claim, as well as the number of claims made under the liability insurance by the insured service provider and the amount of claims paid out).

Policy option 3.2: Service provider needs new insurance in the host Member State

Option 3.2a: Insurers would be obliged to take into account the track record of service providers with the previous insurer in the home Member State on a non-discriminatory basis. They would be required to explain how they assessed it. A service provider would hence be in a better position to negotiate for insurance in the country where the service is provided, particularly where such insurance is mandatory. There is however no obligation foreseen on the part of the insurance company to provide insurance to the service provider. Admissibility of insurance requirements will remain as today governed by the Services Directive. This option could also require a non-discriminatory treatment by professional organisations of members (and, as the case may be, candidate members) in terms of access to collective/group insurance schemes.

Option 3.2b: Improving availability of information on compulsory insurance, e.g. through the existing Points of Single Contact (PSC) under the Services Directive so that they provide information on rules regarding compulsory insurance in the host Member States, could also be the focus of this initiative.

However, the obligation to provide such information is already in place, in general terms, under the Services Directive; new legislation in that regard could undermine the impact of other information obligations of Member States in PSC under the Services Directive. This option (3.2b) is therefore discarded, in favour of other non-legislative initiatives fostering better implementation of the Services Directive in relation to setting-up PSC.

5.3.5. Policy option 4: Harmonisation of requirements for key business services

Purpose

As highlighted by problem driver 4, selected business services (architectural, engineering and accounting services) face particular regulatory obstacles, widespread across different Member States. These regulatory obstacles pertain to legal form, shareholding/voting rights, management and multidisciplinary restrictions.

Policy option 2B proposes to address the problem in a cross-border perspective, for companies seeking to set up a branch or agency in a Member State different from that where they initially incorporated and established.

However, regulatory disparities at the moment of incorporation and primary establishment should also be addressed. Under an harmonisation instrument, more than a third of the Member States would be obliged to amend one or more regulations on legal form, shareholding/voting rights requirements, management restrictions and multidisciplinary activities for domestic service providers as well as foreign service providers setting up a subsidiary (a separate legal entity to be incorporated) in their territory[124].

The purpose of this option would thus be to have more domestic reforms whether a service provider goes cross-border or not, or whether the service provider applies for the Card under policy options 1 and 2A or not.

Scope

The scope of sectors covered under this policy option is the same as under policy option 2B. In line with problem driver 4, it would target selected business services only (architectural, engineering and accounting services) where the regulatory obstacles pertaining to legal form, shareholding/voting rights, management and multidisciplinary restrictions are widespread across different Member States. According to the nature of the restrictions, this options would also be limited to service providers which are legal persons including incorporated partnerships).

This option also covers domestic service providers (in contrast with options 1 to 3).

Harmonisation

[124] Branches and agencies would benefit indirectly: given the reduced regulatory disparity, adaptation of host Member State rules to such cross-border situations would be made easier for administrations and result in less restrictive solutions for service providers.

Rules on legal, shareholding/voting and management structures and multidisciplinary activities could be the subject-matter of partial harmonisation of laws of all Member States in order to reduce regulatory divergence. Amongst others the following elements of harmonisation were considered:

- Private and public limited liability corporate forms listed under the First Company Directive (2009/101/EC) would be declared admissible in all Member States for the provision of the services listed above, without prejudice to other legal forms remaining admissible under national law;
- Shareholding/voting and management structure rules, imposing professional control, for the provision of the services listed above would be made less stringent, by only allowing for a mere majority stake to be in professional hands (a maximum of 51%) or, alternatively, for a majority of the members of the management board and supervisory body to be a professional. Member States with less restrictive regulations would however not be forced to change them;
- Multidisciplinary restrictions would be reduced by declaring incompatibilities between architectural and engineering services and construction services inadmissible.

However, since this option would not introduce full harmonisation, which risks raising regulatory barriers in certain Member States, a certain level of regulatory disparity would persist[125].

These rules would also apply to companies holding a reserved title, in countries where such rules on reservation of specific company titles exist[126], with the possible exception of allowing for requirements regarding multidisciplinary restrictions to continue being governed by the Services Directive only.

It was also considered whether requirements imposed on foreign companies owning a stake in subsidiaries should be limited to checking corporate purpose for the sector in question. In this regard, a more restrictive regime may be allowed regarding subsidiaries wishing to acquire the right to bear a reserved title, given their reduced impact on access to the market in those cases (where the alternative exists to provide the same services without bearing a reserved title).

5.4. Combinations of policy options ("packages")

The different policy options described in section 5.3 can be combined into different packages in order to meet the different policy objectives. The following packages will be assessed:

	Option 1	Option 2A	Option 2B	Option 3	Option 4
Package 1	x			x (3.1a)	

[125] Which the card procedures under option 2, particularly option 2B, are designed to overcome through mutual recognition and proportionality assessment.
[126] See Annex 5 of this Impact Assessment

Package 2		x		x (3.1a-b and 3.2a)	
Package 3		x		x(3.1a-b and 3.2a)	x
Package 4		x	x	x(3.1a-b and 3.2a)	x

These combinations of options were chosen to explore complementarity of options and achieve largest effect in terms of meeting the objectives of this initiative.

Package 1 (including policy options 1 and 3.1a.) would allow the service provider to obtain a certificate regarding legal establishment in the home Member State as well as confirmation about existing insurance coverage for activities also in the home Member State.

Package 2 (including policy options 2A and 3) would allow the service provider to make use of an EU-level procedure to actually gain access to the market of another Member State with more legal certainty and less administrative burden. It is important to note that as regards formalities for the posting of workers this option would not force Member States to change their national procedures. Where Member States have set up procedures that allow for the declaration relating to the posting of workers pursuant to Article 9 of Directive 2014/67/EU to be completed by electronic means, the European services e-card shall direct the card holder to the relevant national procedures. Providers who hold a European services e- card may also submit this declaration through an electronic platform connected to IMI where a host Member State has communicated to the Commission that this possibility should apply for the posting of workers in its territory. In addition, it would address obstacles related to insurance in cross-border situations.

Package 3 (including policy options 2A, 3 and 4) would in addition to package 2 reduce regulatory disparity in a number of key business services through harmonisation of a limited number of regulatory obstacles for foreign and domestic service providers.

Finally, package 4 (including policy options 2A, 2B, 3 and 4) would in addition to package 3 introduce specific solutions to address regulatory disparities in the case of secondary establishment (branches and agencies), exempting foreign service providers from certain requirements while allowing the host Member State to introduce alternative safeguards.

The impact of these four packages will be described in section 6.

6. Analysis of impacts

6.1. Baseline scenario: No EU policy change

The impacts of this policy option have been described in section 2.3.

6.2. General considerations on the packages to be assessed

Before assessing each of the packages separately, this section highlights some general considerations that are relevant across the different packages.

Stakeholder opinions and concerns

The Commission has consulted extensively with stakeholders in preparation of this impact assessment. These exchanges have helped identifying the problem drivers and views of stakeholders on possible ways forward.

Regarding business services, most stakeholders are supportive of actions to reduce administrative and regulatory requirements. At the same time, discussions with a limited number of stakeholders in business services showed certain concerns that actions to reduce regulatory obstacles could undermine the quality of services in these sectors.

Regarding construction services, some stakeholders are supportive of actions to reduce administrative requirements. Nevertheless, a number of construction sector stakeholders (EU associations and trade unions) have highlighted strong concerns at a very early stage that the initiative would lead to reopening the Enforcement Directive on Posting of Workers, increased risks of fraud, undermined controls of health and safety and a disruption of labour market controls.[127] On the issue of fraud, a particular concern raised was that the Services Card would make it possible for companies to establish themselves in another Member State without engaging in any activity (a so-called "letter-box" company) in order to circumvent rules. At the same time, a large group of Member States have highlighted that in their view the construction sector should be included in the Services Card initiative.[128]

On the issue of insurance, most insurers or insurers' associations indicated that any measures taken on professional indemnity insurance should not affect the contractual freedom of insurers.

These stakeholder concerns have been considered as described in table 3 below.

Table 3 – Stakeholder concerns

Stakeholder concerns	How taken into account?
Unwanted changes to rules of posting of workers (including the Posting of Workers Directive)	None of the outlined policy options change in any way the existing rules on secondment of staff. The possible technical facilities linked to secondment of staff under option 2A only simplify formalities for companies related to posting of workers and increases transparency, in full respect of the existing rules. This does not change host Member States' controls on adequate employment conditions on its territory nor does it exempt companies from existing responsibilities.

[127] The European Construction Industry Federation (FIEC) and the European Federation of Building and Woodworkers have expressed strong concerns over the European services e-card, including in two letters sent to the Commission (9 June 2016 and 21 November 2016).
[128] For example in a joint letter by ten Member States of 22 November 2016.

	Option 2A does not force them to change the national implementation of Art. 9 of the 2014 Enforcement Directive. Where national electronic procedures for the submission of the prior declaration of workers are in place, IMI would direct the card holder to them. Option 2A gives in addition an option to Member States to allow providers who hold a European services e-card to submit a declaration relating to posted workers through the electronic platform connected to IMI, also in view of the fact that such electronic procedures do not exist in all Member States,
The European services e-card will increase the risk of fraud by foreign companies	The European services e-card procedure that grants the service provider access to the foreign market (option 2A) involves both home and host Member States up front. The home Member State will not be in charge of controlling requirements to be respected in the host Member State. Safeguards, such as suspension and revocation of issued cards, would also be put in place. Additional information has been included in the card to further build trust towards authorities and consumers (such as a track record on sanctions of the service provider and information on insurance coverage).
Risk of letter-box companies	Only service providers that are legally established in a Member State will be able to receive a Services Card. This requires the actual pursuit of an economic activity at the place of establishment of the provider.[129] A mere letter box does not constitute an establishment and will therefore not be able to receive the Services Card.
Quality of services will be lowered	Policy options addressing regulatory barriers (2B and 4) only (partially) address a number of stringent access requirements. Nevertheless, sufficient safeguards remain in place and host Member States can block entry if justified. In addition, all host Member Sates' rules on operational activities (e.g. codes of conduct) are not affected and all ex-post controls by the host Member States' authorities remain in place.
Standards for health and safety at work will be lowered. Labour market controls will be disrupted	These will not be changed by any of the policy options neither directly or indirectly. Ex-post controls and (on-site) inspections by the host Member State will remain as they are today. For example, the initiative will not replace inspection of building sites or work permits. The e-card will not allow for checking of health standards.
Contractual freedom of insurers	The initiative does not introduce an obligation on insurers to contract insurance nor does it harmonise national requirements on professional indemnity insurance.

Costs for Member States' authorities

[129] See recital 37 of the Services Directive 2006/123/EC

The European Services Card procedure will require certain additional efforts from Member States' authorities. These are described in detail in annex 8. Member States' authorities are at this stage unable to give reliable estimates of potential costs to set up and operate as coordinating authorities in the European Services Card procedure.

In general, the set-up and operating costs for both home and host Member States are nevertheless expected to be limited given the following reasons:

- The system of information exchange in the context of the Services Card would rely on the existing Internal Market Information (IMI) system. This system is developed, managed and funded by the Commission already for years;
- Member States already have the experience of a similar procedure (also using the IMI system) with the European Professional Card. About 5,000 national authorities are already registered with IMI since 2011;
- The workflow would be highly standardised and automatic translation facilities will be offered;
- The European Services Card would also present certain benefits to Member States' authorities. Firstly, it would facilitate the workload of the competent authorities in both the host and the home Member State by replacing conventional paperwork with an electronic workflow. Secondly, formalities will be streamlined under one electronic application instead of several parallel workflows that exist today.

More specifically regarding set-up costs, an analysis has been carried out of other EU systems which have certain (to some extent) similarities with the Services Card (EPC[130], RAPEX[131], SOLVIT[132]). However, for none of these cases data from Member States is available allowing for a reliable estimate of the costs that were incurred by the Member States to set up these systems.

Nevertheless, an analysis done by the Estonian Ministry of Economic Affairs confirms that the set-up costs of the Services Card would remain (very) limited.[133] They assessed that given the availability of the IMI system, the set-up costs would mostly involve setting up a system of cooperation domestically between different competent authorities in the Member State. On the one hand, this requires staff time to prepare/draft agreements of cooperation between owners of different national databases. In addition, external services would be procured to program the necessary IT services (including query services from different databases). Overall, these set-up costs are assessed as limited (less than 25,000 EUR).

Regarding operational costs of the European Services Card, a detailed assessment is carried out in annex 8. This assessment is based on the experience with the EPC. The conclusions are that the yearly operational costs (EU-wide) under policy options 1 and 2A would be as outlined in table 4. The main reasons for the differences in costs between both options are that

[130] European Professional Card
[131] Rapid Alert System for non-food dangerous products
[132] See http://ec.europa.eu/solvit/
[133] Set-up costs for other Member States might however be higher than in Estonia given that their administrations are less digitalised.

(1) there would be fewer tasks for authorities under policy option 1 (2) the number of applications by service providers is expected to be much higher under policy option 2A.

Table 4 – Operating costs for Member States' authorities

	Policy option 1	Policy option 2A
Total cost (EU wide)	195,000-455,000 EUR	825,000-1,925,000 EUR

Source: Commission analysis (see annex 8)

Policy options 2B would only introduce certain rules as to which requirements or options can be requested by the host Member State – in the context of a European services e-card procedure – regarding companies setting up a secondary establishment through branches or agencies. This will not fundamentally change the operating costs of the procedure as defined for option 2A (in the case of secondary establishment). Also options 3 and 4 would not generate additional operating costs for Member States' authorities compared to option 2A.

In addition, a second benchmark/reference regarding operating costs was established on the basis of the costs for national authorities under the SOLVIT system. Although there would be important differences between the European services e-card and the SOLVIT system, the analysis showed similar costs for Member States' authorities as under the EPC analysis (around 2 million EUR, EU-wide).

Voluntary nature of the card – impact on Member States

The European Services e-card procedure is an EU-level procedure. It aims to simplify formalities and compliance with requirements imposed on providers establishing secondarily or providing temporary services across borders. The European services e-card would be a procedure that service providers can use on a voluntary basis. This approach (a voluntary tool for service providers) is also used under other EU level procedures that exist and have proven successful, such as the European Professional Card.

The expectation is that, in Member States where national procedures are currently burdensome and devised for domestic situations only (which is the case in a majority of Member States), service providers will prefer using the European services e-card procedure. However, given the often intense regulatory disparity across Member States, some Member States (a minority) currently have in place already simple procedures (or no formal control procedures at all) for cross-border providers. In these (less common) cases, service providers might prefer using the existing national procedure. This is also the reason why the European services e-card must be voluntary, in order not to raise barriers in these (less frequent) cases.

Two "parallel" processes (European services e-card and national procedures) will therefore exist but the impact will remain limited for Member States. In addition, the European services e-card will also introduce positive effects for Member States. It will reduce the burden of implementation by Member States given that the procedural workflow is pre-set, translation facilities will be offered and electronic capabilities are provided at EU-level. Furthermore, it

renders adaptation of national (disparate) procedures to cross-border situations unnecessary: a new, parallel procedure, is available to address this adaptation need (currently addressed by Member States mostly through case-by-case decisions).

As to the notification obligations under Art. 9 of the Enforcement Directive, where Member States have put in place national electronic procedures the European services e-card will link to those. Member States would also be offered the opportunity to make use of a platform connected to IMI to allow for the electronic submission of prior declarations for workers posted in their territory. It would be up to the Member States to judge costs and benefits in this regard.

Possible differentiated treatment of domestic vs. foreign companies

The European services e-card does not introduce unequal treatment of companies coming from Member State A to provide services in Member State B in relation to companies active domestically in Member State B only. All companies, those from Member State A and Member State B, are equally subject to incorporation and primary establishment requirements under their respective national legislations, and the European services e-card has no impact on these procedures.

Companies applying for a card have already been subjected to, and complied with, incorporation and primary establishment requirements under national legislation of their home Member State. The European services e-card procedure aims at simplifying compliance with requirements for secondary establishment and temporary cross-border provision to which a company active only domestically is not subject. At the same time, option 2B presents specific questions of possible differentiated treatment of foreign service providers over domestic ones. This will be further discussed in section 6.6.

The supporting harmonisation option (option 4) does impact incorporation and primary establishment requirements. But it does so equally throughout all Member States, so again no unequal treatment of companies from Member State A in relation to companies in Member State B derives from this option.

Similarities and differences with the European Professional Card (EPC)

The European services e-card (policy options 1 and 2A) draws certain inspiration from the system of the European Professional Card. There are several similarities between both systems, in particular as regards policy option 2A. At the same time, there are also some important differences.

The main similarities between both systems are:

- They both introduce a voluntary EU-level procedure allowing to complete formalities in an electronic way;
- The home country authorities are the single contact point for applicants assisting them with the application and checking that it is correct and complete. They also communicate with the authorities in the host Member State;

- Both introduce a workflow with clearly defined tasks and deadlines for home and host Member States' authorities to process applications, including a system of tacit approval;
- Both systems are built on cooperation between Member States through the Internal Market Information (IMI) system which offers a secured and multilingual communication channel.

There are nevertheless some important differences between the two systems such as:

- The EPC facilitates the recognition of professional qualifications for selected professionals (natural persons) only, as workers or self-employed. The European Services e-card on the other hand would be available for both natural persons (but only to self-employed) and legal persons (companies, including incorporated partnerships) in a broader range of services sectors (business services and construction);
- Under the European services e-card, competent authorities would also be required to use previously data previously made available by the service provider as well as information already available in the administrations ("once-only").

Overall, the European services e-card is based on the same main simplification principles as under the EPC. Nevertheless, it aims for a larger administrative simplification effect by covering a larger range of services sectors, legal persons in addition to natural persons as well as a broader simplification of several formalities (in particular under policy option 2A).

Impacts assessed

The following sections will provide an overview of the different impacts of the policy packages. None of the policy options would have any considerable impact on the environment or on fundamental rights, which are therefore not assessed.

Where possible, quantitative estimations will be provided of the impacts of reducing administrative burden and/or regulatory obstacles. Nevertheless, there are many different factors which influence the levels of cross-border trade and investment in services (see section 2.2). In view of this, the impacts of the different packages are complicated to assess. The quantifications provided should therefore be considered as indications to understand better the differences in impact between the packages.

6.3. Package 1: Policy options 1 and 3.1a

Impact on the policy objectives
Policy objective 1 (make it easier and less costly for companies to provide services in other Member States) Firstly, policy option 1 would offer the service provider, service recipients and authorities a trustworthy source of information confirming legal establishment in its home Member State. The card can be used in the context of host Member States' controls and formalities

that fall under the scope of the Services Directive. This can simplify the completion of these formalities. Nevertheless, administrative simplification for the service provider would remain limited given that:

- The European services e-card under policy option 1 would not allow the service provider access to the host Member State. It would not simplify procedures in the host Member State. A host Member State would remain free to control compliance with domestic requirements applicable to activities on its territory through its current procedures;
- The host Member State would have to accept the certificate as proof of establishment. This would nevertheless reduce only marginally costs related to translation and supporting documents to be provided in the host Member State. Hence, most problems of administrative complexity highlighted in problem driver 1 (no clear workflow, deadlines, procedures that are not electronic, etc.) and related administrative costs would not be resolved.

Secondly, under this package policy option 3.1a would only provide proof that the service provider has an insurance coverage for activities in its home Member State (not in the host Member State). This would only generate limited effects.

Overall, this package would make it easier for service providers to go cross-border. However, the impact on this policy objective would remain limited given that policy option 1 only leads to a minor reduction of administrative complexity and option 3.1a only clarifies insurance coverage in the home Member State. As a consequence, it is not likely that many service providers would be interested in such a card.

Policy objective 2 (Inject more confidence in the market towards foreign service providers by increasing transparency and available information)

Firstly, the certificate under policy option 1 would attest to legal establishment in a home Member State and include information about the good repute of the provider. This can be used throughout the EU and can increase trust with service recipients. Nevertheless, the certificate only proves compliance with requirements in the home Member State. Meaning, it does in no way attest to compliance with rules of the host Member State. This is an important limitation regarding the value of the certificate for consumers in the host Member State.

Secondly, policy option 3.1a would add confirmation about existence of insurance coverage for activities in the home Member State (not in the host Member State). Again, this would have little effect on building trust and increasing transparency in the host Member State.

Overall, this package would only to a limited extent meet the objectives of providing additional information and transparency regarding (foreign) service providers.

Policy objective 3 (Enable increased market dynamics and competition leading to more choice and value added for customers)

Given the limited reduction of administrative complexity offered by this package, it is not expected that it would significantly change market dynamics or competition levels. In addition, domestic service providers are not addressed by this package (only cross-border ones). Benefits for consumers in terms of more choice and value added would also remain limited.

Economic Impacts

Impact on operating costs and administrative burden for business

An estimation of the potential reduction of administrative burden (based on analysis and a number of interviews with stakeholders – annex 7) shows that this package of policy options would reduce administrative costs for companies going cross-border with **only 5 to 10%**.[134] In particular some administrative burden related to translation and certification costs as well as some costs related to evidence supporting legal establishment in the home Member State will be reduced. Other costs (such as familiarisation with requirements/procedures, completing forms and other to host Member States' procedures, etc.) will not be fundamentally changed compared to the situation today.

In view of these limited effects, it is doubtful whether many service providers would be interested to apply for the European services e-card under this package.

As to insurers, no tangible increase of costs is expected from option 3.1a. Firstly, the 2009 Solvency II Directive already provides for the possibility of Member States to require insurers to be more transparent towards their clients (through a certificate of insurance notably), in a general trend of recent EU legislation to require the provision of more information to insurance service recipients. Secondly, given that the insurers have sold these insurance policies to the service provider they will have provided them also with the terms of the insurance contract. It would only be a limited effort for insurers to transfer the relevant parts of this contractual information into the insurance certificate.

Impact on the Single Market

The scope of this package in terms of service providers that would be allowed to apply for the card is very large. Business services and construction together represent more than 9 million companies in the EU (see section 1.2). These services sectors currently show very low levels of cross-border trade and investment. In other words, few of these companies are currently active in other Member States. Policy action to remove obstacles in these sectors could therefore have a large potential to increase single market integration.

Regarding administrative obstacles, this package of options will introduce simplification effects which will however be limited. Regarding regulatory obstacles, this package will not change anything compared to the situation today. Hence, the impact on the single market as a whole of this package would be limited.

[134] Source: Commission analysis, see annex 7

Impact on competitiveness and SMEs
Given the (slight) decrease in administrative burden, it is expected that there will only be a small increase in SMEs going cross-border. Overall, no large impact expected on competitiveness.
Impact on consumers and households
No large impact expected. In addition, the certificate will only to a very limited extent increase trust and transparency for consumers. It might also raise questions on its actual effects (e.g., does this certificate allow the service provider access to the market of the consumer in the host Member State).
Macroeconomic impact
Negligible for the same reasons as described above.
Impact on Member States
This package would entail certain additional administrative costs for Member States' authorities, which would however remain limited. Regarding policy option 1, set-up costs would remain limited as described in section 6.2. The majority of operating costs would be borne by the home Member States' authorities. An estimation of these costs is provided in annex 8. It estimates that the average administrative costs per application would be 110 EUR for the home Member State and 20 EUR for the host Member State. Depending on the total number of yearly applications (estimated for this option between 1,500 and 3,500) this would represent total EU-wide costs of 195,000 EUR to 455,000 EUR on an annual basis (or about 7,000 to 16,000 EUR on average per Member State). [135] Policy option 3.1a will not fundamentally change the administrative costs for home or host Member States' authorities.
Impact on the Commission
This package would have a minor impact on the EU budget. Costs of policy option 1 would mostly concern technical work to be carried out to modify the IMI system in order to introduce the necessary functionalities/procedures in relation to the certificate. These costs would stay (significantly) below 5 million EUR. Policy option 3.1a would have no additional impact.
Social Impacts

[135] Source: Commission analysis, see annex 7

None. This package will not include any changes on rules or procedures related to minimum conditions of employment or social security.

6.4. Package 2: Policy options 2A and 3

Impact on the policy objectives

Policy objective 1 (make it easier and less costly for companies to provide services in other Member States)

Policy option 2A would simplify a broader range of administrative formalities compared to policy option 1:

- It introduces a fully electronic procedure with a structured workflow including clear and short deadlines;
- It provides clarity to service providers as the European services e-card allows them market access in the host Member State;
- It streamlines several formalities on a simple IT platform at EU-level (in contrast to the national and sometimes regional Points of Single Contact). Instead of contacting several authorities in the host Member State to complete these procedures the service provider would be able to complete them in a more streamlined way. This includes procedures related to secondment of staff which are currently spread out across different authorities in the host Member State;
- It reduces significantly the need for supporting documents (and related costs for translation and certification) and overall administrative burden;
- It puts into practice the once-only principle (Member States should use all information/evidence already at their disposal and service providers should not be asked to submit the same information twice);
- It also allows for positive spill-over effects on other registration formalities in the host Member given that the authorities in the host Member State would have to accept the information contained in the card in the context of these procedures.

This option would therefore reduce significantly the administrative burden faced by service providers today when going cross-border. It would offer an easier procedure at EU-level as an alternative to the often complex national authorisation procedures which are widespread, in particular for cases of secondary establishment.

In addition, policy option 2A will also increase legal certainty in particular for temporary cross-border providers for which requirements are often unclear. This increased legal certainty outweighs potential risks that policy option 2A (in the case of temporary cross-border provision) would lead to an increase of barriers compared to the situation today due to the fact that host Member States will be explicitly allowed to block access to the market. In addition, the European services e-card would in any case be a voluntary tool for service providers. Member States would not be allowed to make it compulsory. This mitigates any risks that in exceptional cases the situation would become less market friendly compared to

today.

Sub-options 3.1a, 3.1b and 3.2a of policy option 3 would apply under this package. Access to professional indemnity insurance is not a minor issue/cost for service providers. The professional indemnity insurance market is a growing market currently worth 8.2 billion EUR in 11 MS and one third country and expected to grow towards 8.9 billion EUR.[136] Option 3.1a would in this package allow service providers to demonstrate whether they have an insurance coverage for activities in other Member States. This would increase transparency for service providers which would reduce their operational costs when going cross-border and offer more incentives to "take the first step". Options 3.1b and 3.2a would primarily aim at making it easier and less costly for service providers to obtain insurance in a host Member State.

Overall, this package would make it easier for service providers to go cross-border (policy objective 1). Its impact would be larger than package 1 given that it addresses a larger range of administrative obstacles to cross-border activities.

Policy objective 2 (Inject more confidence in the market towards foreign service providers by increasing transparency and available information)

Firstly, policy option 2A would also offer a certificate attesting legal establishment in the home Member State including the same information as in policy option 1. In addition, under policy option 2A compliance with the requirements of that host Member State would also be attested through the European services e-card procedure. Its effects on increasing transparency and information for customers regarding the service provider would therefore be much larger compared to package 1.

Secondly, policy option 3.1a would under this package also increase transparency/information regarding insurance coverage of a service provider for activities in the host Member State.

Overall, this package would meet the objectives of providing additional information and transparency regarding foreign service providers. It would also allay concerns/doubts on whether a foreign service provider is allowed to operate abroad. Its positive effects would be stronger compared to package 1.

Policy objective 3 (Enable increased market dynamics and competition leading to more choice and value added for customers)

Given the broader reduction of administrative complexity, this package could increase market dynamics[137] and competition levels. More service providers are expected to use the card under this package. This could increase choice and value added for consumers. Nevertheless, domestic service providers are not addressed by this package (only cross-border ones).

[136] AT, BE, FR, DE, IE, IT, NL, PL, ES, SE, UK and Switzerland as a third country
[137] See for example European Commission, "Business Dynamics and Red Tape Barriers", 2014

Economic Impacts

Impact on operating costs and administrative burden for business

An estimation of the potential reduction of administrative burden (based on analysis and a number of interviews with stakeholders – annex 7) shows that this package of policy options would reduce administrative costs for companies going cross-border with **50 to 75%**.[138] Costs related to a large range of administrative obstacles (translation and certification, costs related to evidence supporting legal establishment in the home Member State, familiarisation with requirements/procedures, completing forms and other host Member States' procedures, etc.) will be significantly reduced. In addition, it also allows for positive spill-over effects on other registration formalities in the host Member given that the authorities in the host Member State would have to use the information contained in the card in the context of these procedures.

As a result, the number of service providers making use of the instrument would therefore be expected to be higher compared to package 1.

As to insurers, no tangible increase in costs is expected. Options 3.1b and 3.2a already reflect a widespread practice amongst insurers in cross-border situations (according to InsuranceEurope) to provide their clients with a report on compensation claims and take into account claims history statements while negotiating coverage and premiums. These elements will therefore not generate significant additional costs for insurers.

Impact on the Single Market

The scope of this package in terms of service providers that would be allowed to apply for the card is the same as under package 1. Business services and construction together represent more than 9 million companies in the EU (see section 1.2). These services sectors currently show very low levels of cross-border trade and investment. In other words, few of these companies are currently active in other Member States. Policy action to remove obstacles in these sectors could therefore have a large potential to increase single market integration.

Similarly to package 1, this package will not address underlying regulatory obstacles compared to the situation today. Regarding administrative obstacles, this package of options will introduce significant simplification effects. Hence, the impact on the single market as a whole of this package would be larger than package 1.

Impact on competitiveness and SMEs

As described above, this package would make it easier for service providers to go cross-border and expand their customer base to other Member States. The administrative simplification effects of this package would in particular benefit SMEs which are currently most affected by heavy administrative burden and the related costs (more than large

[138] Source: Commission analysis, see annex 7

companies), dissuading them from going cross-border.

Consumers and households

Given the important administrative simplification effects introduced by this package, more companies could be expected to go cross-border. Increased levels of companies providing services cross-border can increase choice for consumers as well as lower prices thanks to increased competition by foreign companies.

In addition, this package could have a significant effect on increasing trust with consumers regarding (foreign) service providers. In contrast to package 1, consumers get reassurance that a service provider is controlled and acts in compliance with domestic requirements applicable in the host Member State.

Macroeconomic impact

Given the broader reduction of administrative complexity, this package could increase market dynamics and competition levels. This could increase choice and value added for consumers. Nevertheless, since this package does not present any action to remove or reduce regulatory obstacles (only administrative ones) its overall impact risks to remain limited.

Impact on Member States

This package would entail certain additional administrative costs for Member States' authorities, which would be higher than under package 1 but still remain limited (see annex 8 for detailed calculations).

Set-up costs would remain limited as described in section 6.2. Costs for authorities would be different for temporary cross-border provision (section 5.3.2.1) and secondary establishment (section 5.3.2.2):

- Regarding temporary cross-border provision, the average administrative costs per application would be 130 EUR for the home Member State and 40 EUR for the host Member State;
- Regarding secondary establishment, the average administrative costs per application would be 130 EUR for the home Member State and 250 EUR for the host Member State.

Depending on the total number of yearly applications across the EU (estimated for this option between 1,500 and 3,500 for temporary cross-border provision and the same for secondary establishment) this would represent total costs for Member States' authorities of 825,000-1,925,000 EUR on an annual basis (or about 30,000 to 70,000 EUR on average per Member State). [139]

[139] Source: Commission analysis, see annex 7

Policy option 3 and its different sub-options will not fundamentally change the administrative costs for home or host Member States' authorities.

Impact on the Commission

This package would have an impact on the EU budget. Costs would mostly concern technical work to be carried out to modify the IMI system in order to introduce the necessary functionalities/procedures. The costs would be slightly higher compared to package 1 given the broader scope of formalities covered. They are however expected to stay below 5 million EUR.

Social Impacts

This package would simplify certain procedural aspects related to secondment of staff (including posting formalities) in order to reduce administrative burden. The underlying rules on secondment of staff and related obligations for companies would nevertheless remain unchanged. It will also not force Member States to change their current processes for implementing Art. 9 of the 2014 Enforcement Directive.

6.5. Package 3: Policy options 2A, 3 and 4

Impact on the policy objectives

Policy objective 1 (make it easier and less costly for companies to provide services in other Member States)

The impact of policy options 2A and 3 have been described in packages 1 and 2.

Policy option 4 would harmonise certain regulatory requirements in key business services (accounting, architectural and engineering services). This will not (directly) result in further administrative simplification effects for service providers going cross-border. Nevertheless, a more harmonised regulatory framework would provide more opportunities for service providers to go abroad and reduce regulatory burden for them across the EU.

Policy objective 2 (Inject more confidence in the market towards foreign service providers by increasing transparency and available information)

The impact of policy options 2A and 3 have been described in packages 1 and 2.

Policy option 4 would harmonise certain regulatory requirements. This will not result in further information/transparency for consumers. The impact of this package on policy objective 2 would therefore be largely the same as under package 2 (i.e., it would increase information and transparency for consumers).

Policy objective 3 (Enable increased market dynamics and competition leading to more choice and value added for customers)

In addition to a broad administrative simplification (offered by policy options 2A and 3),

this package would also address a number of regulatory barriers in large business services sectors through partial harmonisation. Furthermore, this regulatory simplification would not be limited to companies going cross-border only but also cover domestic companies. This is a major difference compared to packages 1 and 2 which only cover cross-border service providers. This package is therefore expected to generate a more significant increase in market dynamics and competition levels (more than under package 2). It would increase choice and value added for consumers (in terms of lower prices).

Economic Impacts

Impact on operating costs and administrative burden for business

The impact on operating costs and administrative burden for service providers would be similar as under package 2.

Impact on the Single Market

In addition to the effects described in package 2, this package would include targeted regulatory simplification for a selected number of business services sectors (architects, engineers and accountants – covering about 20% of the business services sector). These services sectors currently show very low levels of cross-border trade and investment. Policy action to remove obstacles in these sectors could therefore have a large potential to increase single market integration.

This package will reduce the restrictiveness of national rules on legal form, shareholding/voting and management structures in those Member States where they are most stringent today. This would allow reducing regulatory disparity across Member States for the business services covered. It would also reduce regulatory burden for domestic providers of these business services, as well as those companies choosing to incorporate a local corporation (as a subsidiary).

Policy action addressing these barriers can lead to increased cross-border activities[140]. In addition, almost half of the respondents to the public consultation consider that these regulatory barriers in business services should be addressed across the board (meaning, for both cross-border and domestic service providers).

Impact on competitiveness and SMEs

As described above, this package would reduce administrative as well as regulatory obstacles for both domestic and cross-border service providers. It would in particular benefit SMEs which are currently most affected by heavy administrative and regulatory burden. This package would (in contrast to packages 1 and 2) also provide additional opportunities for domestic providers to enter the market, benefiting from less restrictive conditions to set up a primary establishment. Overall, it is expected to increase market

[140] See for example Swedish Board of Trade, "Possible effects of the Services Directive", 2012 and European Commission, "Business services – Assessment of Barriers and their Economic Impact", 2015

dynamics (more entry of new firms) for both cross-border and domestic providers. These increased market dynamics have been shown to positively impact on competitiveness/productivity growth. On the other hand, the proposed changes will not overcome barriers such as languages, customer relations or VAT.

Consumers and households

Increased levels of companies being able to provide services cross-border and an increased number of domestic entry rates of new companies have been shown to increase choice for consumers as well as lower prices thanks to increased competition.

Although this option reduces regulatory requirements in a number of business services, sufficient safeguards will still remain in place (e.g. shareholding requirements are only reduced to 51% or requirements for members of a supervisory or management board to have a simple majority). In addition, regulatory requirements will be the same for all service providers (domestic and foreign).

Macroeconomic impact

Annex 9 includes an indicative estimate of the potential macro-economic effects of this package in the three business services where regulatory simplification is pursued. It is important to stress that this estimation takes into account other improvements to the overall regulatory framework which are not the object of the harmonisation exercise. The main conclusions are the following:[141]

- Entry rates in the different sectors could increase by up to 3% for engineering services, 5% for architectural services and 6% for accounting services;
- Prices for consumers (proxied by profit rates) could decrease by up to 8% for architectural services, 9% for engineering services and 11% for accounting services;
- Allocative efficiency levels could increase by 2 percentage points for engineering services, 3 percentage points for architectural services and 4 percentage points for accounting services.

Impact on Member States

The harmonisation action does not require any (direct) costs of Member States. Costs are therefore similar as under package 2.

Impact on the Commission

The harmonisation action does not require any (direct) costs of the Commission. Costs are therefore similar as under package 2.

Social Impacts

[141] Source: Commission analysis, see annex 9

None, similarly to package 2.

6.6. Package 4: Policy options 2A, 2B, 3 and 4.

Impact on the policy objectives

Policy objective 1 (make it easier and less costly for companies to provide services in other Member States)

The impact of policy options 2A, 3 and 4 have been described in packages 1, 2 and 3.

Policy option 2B would target foreign service providers only and enhance their opportunities to set up a secondary establishment (branch or agency) in other Member States. Certain (domestic) rules would not apply to them.

Policy objective 2 (Inject more confidence in the market towards foreign service providers by increasing transparency and available information)

The impact of policy options 2A, 3 and 4 have been described in packages 1, 2 and 3.

Policy option 2B will not result in further information/transparency for consumers. The downside of this option is that there might be concerns (also among consumers) about a divergent level-playing field between domestic and foreign service providers treating in the same Member State foreign branches and agencies differently as compared to domestic players.

Policy objective 3 (Enable increased market dynamics and competition leading to more choice and value added for customers)

In addition to a broad administrative simplification (offered by policy options 2A and 3) and partial harmonisation of a number of regulatory barriers (policy option 4), policy option 2B would present additional solutions to a number of stringent regulatory barriers (legal form, shareholding/voting and management structures) specifically in the case of secondary establishment for a number of selected business services.

This is relevant given that policy option 4 would not in all cases provide solutions for specific problems faced by cross-border service providers in relation to the regulatory barriers outlined in problem driver 4. For example, harmonisation of shareholding requirements to a maximum of 51% would in most cases not impact the ability of service providers coming from Member States where the profession concerned is unregulated to enter a Member State making use of the possibility to keep 51% shareholding requirements. Such providers would in all likelihood have a variety of shareholders comprised of less or no professionals and thus still be barred entry. Policy option 2B would present a possibility for these services providers to set up a secondary establishment, without changing e.g. the ownership structure in the home Member State.

Therefore, in addition to the effects described in package 3, this package would be expected to generate an additional amount of companies setting up a secondary establishment in the

business services covered.

At the same time, option 2B would oblige Member States not to apply certain national rules to incoming branches and agencies. This could be perceived as giving an (unfair) differential treatment to foreign companies over domestic ones.

Economic Impacts

Impact on operating costs and administrative burden for business

The impact on operating costs and administrative burden would be similar as under packages 2 and 3.

Impact on the Single Market

In addition to the effects described in package 3, this package would provide additional opportunities for companies to set up a secondary establishment for a selected number of business services sectors (architects, engineers and accountants – covering about 20% of the business services sector). Nevertheless, option 2B would oblige Member States to disapply certain national rules for incoming branches and agencies. This could be perceived as giving an (unfair) differential treatment to foreign companies over domestic ones.

Impact on competitiveness and SMEs

As described above, this package would reduce further regulatory obstacles for companies that want to set up a secondary establishment. It would in particular benefit SMEs which are currently most affected by heavy administrative and regulatory burden. In general, companies expanding cross-border have been empirically shown to generate positive effects on competitiveness as they show on average higher turnover and employment growth as well as stronger innovation activity.[142] The competition effects are expected to be slightly higher compared to package 3.

Consumers and households

Increased levels of companies being able to provide services cross-border and an increased number of domestic entry rates of new companies have been shown to increase choice for consumers as well as lower prices thanks to increased competition. The downside of policy option 2B would be that it would introduce a differentiated treatment for foreign providers (branches and agencies). This could result in reduced consumer confidence.

Macroeconomic impact

Empirical research has established a link between increased cross-border activities by companies as well as new entry of domestic firms and a better allocation of resources and

[142] See for example European Competitiveness Report, "Drivers of SME internationalisation", 2014

overall productivity growth. The effects are expected to be slightly higher compared to package 3.
Impact on Member States
The administrative costs for Member States' authorities would be similar as under packages 2 and 3.
Impact on the Commission
This package would have an impact on the EU budget. Costs would mostly concern technical work to be carried out to modify the IMI system in order to introduce the necessary functionalities/procedures. These costs would be similar compared to packages 2 and 3.
Social Impacts
None, similarly to package 2.

7. Comparison of packages

7.1. Comparison in terms of effectiveness, efficiency and coherence

On the basis of the above assessment of impacts, the **effectiveness** of the different packages to address the three policy objectives outlined in section 4.1 is assessed as follows. Regarding policy objective 1 (make it easier and less costly for companies to provide services in other Member States), package 1 would generate certain simplification effects which are however more limited compared to the other packages. Packages 3 and 4 would have even stronger effects than package 2 given that they also address regulatory obstacles (in addition to administrative simplification). At the same time, there are concerns that package 4 (policy option 2B) would lead to an (unjustified) differentiated treatment of foreign companies over domestic ones.

Regarding policy objective 2 (inject more confidence in the market towards foreign service providers by increasing transparency and available information), packages 2 to 4 offer more information and transparency to consumers than package 1. Nevertheless, consumers might have concerns about the differentiated treatment of service providers in package 4.

Regarding policy objective 3 (enable increased market dynamics and competition leading to more choice and value added for customers), the packages have an increasing degree of impact (from package 1 with a limited impact to packages 3 and 4 with a strong impact). Nevertheless, package 4 risks having strong opposition from stakeholders.

Table 5 – Overview of impacts (indicative estimations)

	Potential reduction of administrative costs for	**Potential macro-economic impact for key business services**

	services providers	
Package 1	5 to 10% cost reductions	None
Package 2	50 to 75% cost reductions	Limited
Package 3	As package 2	- Increased entry rates by up to 3-6% - Decrease in consumer prices by up to 8-11% - Increased allocative efficiency by up to 2-4 pp
Package 4	As package 2	As package 3 plus a potential increase of secondary establishment intensity.

Source: Commission analysis (annexes 7 and 9)

Regarding **efficiency**, package 1 would entail limited costs for authorities (but also limited benefits in addressing the policy objectives). Package 2 would generate more costs for authorities, but would also generate more benefits in addressing the policy objectives. Packages 3 and 4 would have similar costs as package 2.

Table 6 - Comparison of packages against effectiveness and efficiency criteria

Policy objectives / Policy option	EFFECTIVENESS			EFFICIENCY (cost-effectiveness)
	Policy objective 1	**Policy objective 2**	**Policy objective 3**	
Baseline scenario	0	0	0	*0*
Package 1 (policy options 1 and 3)	+	+	≈	+
Package 2 (policy options 2A and 3)	++	+++	++	++
Package 3 (policy options 2A, 3 and 4)	++	+++	+++	++
Package 4 (policy options 2A, 2B, 3 and 4)	++	+	++	++

Magnitude of impact as compared with the baseline scenario (the baseline is indicated as 0): +++ decisive positive effect ++ strongly positive; + positive; – – strongly negative; – negative; ≈ marginal/neutral; ? uncertain; n.a. not applicable

Table 7 - Comparison of the impact of policy options on stakeholders

Stakeholder / Policy option	**Business services**	**Construction services**	**Clients**	**Public authorities**
Baseline scenario	0	0	0	0
Package 1 (policy options 1 and 3)	+/≈	+/≈	≈	≈
Package 2 (policy options 2A and 3)	++	++	+	+

Package 3 (policy options 2A, 3 and 4)	+++	++	++	+
Package 4 (policy options 2A, 2B, 3 and 4)	++	++	+	+

7.2. Choice of preferred package

Package 2 is the preferred package. It introduces a European services e-card for temporary provision of services and secondary establishment (sections 5.3.2.1 and 5.3.2.2). It also includes the described technical facilities on secondment of staff (section 5.3.2.3) as regards professional qualifications and – upon Member State's request – for the electronic submission of prior declarations for the posting of workers through a platform connected to IMI.

This option shall provide a one-stop shop for providers in the sectors of business services and construction; reduce costs for companies while increasing legal certainty about the requirements applicable to them thus enhancing cross-border trade and investment. It shall also enhance administrative cooperation between Member States authorities within a clear procedural framework with a view to facilitating mutual recognition of requirements met already in the home Member State where applicable. Over time, it is expected that Member States will gain a better knowledge of their respective regulatory frameworks in the sectors covered by the European services e-card that should lead to enhanced mutual trust.

Where Member States have set up procedures that allow for the declaration relating to the posting of workers pursuant to Article 9 of Directive 2014/67/EU to be completed by electronic means, the European services e-card shall direct the card holder to the relevant national procedures. Providers who hold a European services e- card may also submit this declaration through an electronic platform connected to IMI where a host Member State has communicated to the Commission that this possibility should apply for the posting of workers in its territory. The one-stop shop provided by the card shall not include any functionality allowing service providers to request the A1 form (Article 19(2) of Regulation (EC) 987/2009) through the online interface used for the European services e-card application. The latter is not pursued given that debates are ongoing in parallel to this initiative on improved social security coordination between Member States. Therefore, the "one-stop-shop" idea behind the e-card will not encompass any possibilities to apply for A1 forms.

As regards other packages considered, package 1 is therefore not considered as the best option. Its scope is much more reduced than that of package 2 and thus its potential to bring about administrative simplification and to enhance administrative cooperation and legal certainty for providers.

Regarding package 4, there are certain concerns that policy option 2B would lead to an (unjustified) differentiated treatment of foreign companies over domestic ones. This option might also give rise to perceptions of introducing a solution driven by a country of origin approach under which foreign service providers are subject to their home member States legislation only. Equally this option might spur attempts by service providers to circumvent the legislation of more restrictive Member States by establishing minimal operations in other less restrictive Member States to then gain easier access to more restrictive Member States

where they intend to set up their main centre of operations. These risks could lead to a difficult debate about favourable treatment of foreign service providers to the detriment of domestic ones. As a result, stakeholders might not welcome this option despite its aim of trying to ensure proportionality in conditions for foreign branches and agencies. Package 4 is therefore not considered the best option either.

Finally, package 3 addresses a number of regulatory obstacles in business services (through option 4). Nevertheless, it would not make regulatory divergence disappear entirely nor other regulatory restrictions affecting the regulation of the three professions that it covers (architects, accountants and engineers). As a result, a combination of continued enforcement against disproportionate obstacles and the forthcoming specific recommendations on reform needs which shall invite Member States to reassess the full regulation applicable to the three professions as part of the same package appears at present as adequate. The need to address regulatory obstacles in the context of this initiative could be reviewed at a later stage.

7.3. Choice of legal instrument

Further details on the choice of the instruments are set out in Annex 10. In accordance with the Treaties, the initiative would be comprised of a legislative package including a Directive and a Regulation. This will allow to best achieve the outlined policy objectives.

The Directive would set out the legal and operational framework of the European services e-card, regulating inter alia the conditions of eligibility, the competences of the home and the host Member States, the validity of the European services e-card and the conditions for revoking or suspending it. Article 53 of the Treaty only allows for Directives in matters dealing with access to markets in a cross-border dimension.

A Regulation, for its part, could be introduced under Article 114 TFEU to include provisions clarifying the functioning and the workflow between an applying service provider and the authorities in charge. The Regulation would create a European services e-card which as an EU-level procedure does not require transposition but rather implementation (such as designating authorities, deciding on the principle and the amount of fees). This Regulation would not alter any rules on access to foreign markets. It would also not introduce new obligations for Member States as to the implementation of Art. 9 of the 2014 Enforcement Directive. A Regulation is more suitable than a Directive for these procedural matters since the functioning of an EU-level procedure would be compromised by differing transposition rules of a procedure laid out in a Directive.

7.4. Subsidiarity and proportionality of the options

The overall objective of the preferred package is to ensure a better functioning of the single market in business services and construction which is not limited to the territory of one Member State. EU intervention is the only way to establish the envisaged EU level procedure to issue a European services e-card (option 2A). The insurance issues highlighted under policy option 3 have a cross-border dimension and are closely related to the establishment of a certificate under option 2A. The package proposed is proportionate to achieve its objectives. It

entails only a limited increase in terms of administrative burden for Member States and the Commission. This is largely driven by the reliance on the existing IMI structure.

8. Monitoring and evaluation

The Commission would closely follow how the proposal is experienced by service providers and will encourage Member States to promote it. The Commission would also pursue its regular dialogue with Member States' representatives in the existing expert groups as well as with relevant stakeholders in particular to see how to facilitate the transition to the new rules. Workshops and conferences will be organised within the framework of the Single Market Forum in order to discuss all preparatory steps for the introduction of the proposed initiative but also for its promotion once available.

In the mid-to-long-term and the Commission would focus on monitoring the effects of the initiative. Annex 11 presents the main indicators that will be used to monitor progress towards meeting the objectives pursued by this initiative, as well as the possible sources of information. Information could be gathered from IMI, Member States, service providers, chambers of commerce or professionals and customers of services. Where needed, the Commission could send questionnaires to Member States or stakeholders or organise specific surveys. Member States would also be invited to evaluate the functioning of the initiative, involving also where applicable national social partners (in particular as regards the construction sector). An evaluation report could be issued 3 years after the end of the transposition period.

That said, specific aspects which have not been covered by the preferred package should be revised earlier:

- The potential of facilities offered by the Commission in the context of Art. 9 of the 2014 Enforcement Directive should be reviewed as part of the upcoming review of that Directive scheduled for 2019. For this review, the experience of those Member States that may have opted for making use of the possibility to use the electronic platform connected to IMI for the electronic submission of these declarations shall be taken into account.
- The need for addressing regulatory obstacles (option 4) should be evaluated against the follow-up Member State will give to the reform guidance to be published as part of the Services Package (January 2017), to the country specific recommendation in the context of the European Semester and to ongoing infringement procedures.

Annexes

Annex 1: Procedural information (pg. 78)

Annex 2: Stakeholder consultation (pg. 81)

Annex 3: Who is affected and how? (pg. 99)

Annex 4: Evaluation (pg. 101)

Annex 5: Problem definition – additional evidence (pg. 133)

Annex 6: Consistency with other EU policies (pg. 165)

Annex 7: Administrative burden reductions under the different policy options (pg. 167)

Annex 8: Administrative costs for authorities (pg. 197)

Annex 9: Impact of addressing regulatory obstacles in business services (pg. 212)

Annex 10: Choice of legal instrument (pg. 219)

Annex 11: Monitoring and evaluation (pg. 220)

Annex 1: Procedural information

1. Lead DG

DG Internal Market, Industry, Entrepreneurship and SMEs (DG GROW)

2. Agenda planning and Work Programme References

The Agenda Planning Reference is 2016/GROW/041.

The initiative gathers 3 different actions announced in the Single Market Strategy adopted in October 2015:

- Legislative initiative introducing a services passport;
- Legislative action to address regulatory barriers for key business services and, if appropriate, organisational requirements in construction companies;
- If necessary, action on insurance requirements.

3. Inter-Service Steering Group (ISSG)

An Inter-Service Steering Group was set up in 2016. In total, 5 meetings were organised in preparation of this impact assessment: on 3 and 25 February, 22 June, 19 July, 12 September.

The following services were consulted: EAC, CNECT, COMP, ECFIN, EMPL, FISMA, JUST, TAXUD, TRADE. The feedback received from these services has been taken into account in the impact assessment.

4. Consultation of the Regulatory Scrutiny Board

The Impact Assessment Report was examined by the Regulatory Scrutiny Board on 12 October 2016. A negative opinion of the RSB was issued on 14 October 2016. The following recommendations were put forward. They were addressed in a revised version of the Impact Assessment submitted to the Board on 25 October 2016. The recommendations put forward by the RSB in its final positive opinion of 8 November have been addressed in this final version.

RSB recommendations of 14 October 2016	How taken into account?
The report should elaborate on the underlying reasons for the poor performance of the Services Directive, including the functioning of the point of single contacts (PSC) and in particular the internal market information system (IMI).	Further detailed information on the reasons for malfunctioning of the Services Directive (in particular the PSCs and the use of the IMI system) have been provided in sections 2.2.1 and 2.2.2 (problem drivers 1 and 2).
The report needs to establish the prominence of administrative obstacles and regulatory problems over other important barriers (e.g., taxes, languages, regulated professions...).	Additional information regarding the importance of the barriers addressed by the initiative (also in the context of other existing barriers) have been provided throughout section 2.2 (problem drivers).
The rationale for focusing on business and construction services and even more narrowly on three specific professions in the case of	The reasons for focusing on business services and construction have been explained in a new section on scope (1.2). In addition, the

option 4 needs to be better argued.	more narrow focus in options that address regulatory barriers has been justified in more detail in section 2.2.4 (problem driver 4).
The report should provide a better overview of how the options – individually or combined – would provide a comprehensive response to the identified problems. Integrate individual and possibly inter-linked policy options into coherent packages while clarifying the related trade-offs.	Different packages combining options have been designed in section 5.4 (combination of policy options). The impact of these packages is assessed in section 6 (analysis of impacts).
Where the Services Card takes inspiration from the existing European Professional Card (EPC), the report should explain the similarities and differences (e.g., successful functioning of IMI, feasibility of the procedural deadlines and of automatic translation).	The EPC and its relevance for this initiative have been described in detail in sections 2.2.1 and 2.2.2 (problem drivers 1 and 2).
The report should better distinguish between the various stakeholder groups to clarify their views on the policy options. The report should better highlight the negative responses received from some stakeholder groups and provide responses to the criticisms and arguments provided by these groups. The report should also explain how to avoid a possible uneven playing field between companies using the Services Card and companies in the host Member State. The report needs to show that the voluntary nature of the Services Card does not add additional complexity and costs for the public administrations if they have to manage two parallel authorisation processes.	These and other stakeholder concerns have been outlined in section 6.2 (general considerations on the packages to be assessed). This section also explains how stakeholder concerns have been taken into account.
On this basis, the report should aim at identifying a preferred option or, if this is not possible, at discarding unrealistic or ineffective options and narrowing down the range of policy choices to be considered.	A preferred option/package is highlighted in section 7.2 (choice of preferred package).
The report should analyse the likely costs to Member States of setting up and of maintaining the new system.	More details on the possible set-up costs and operating costs for Member States are provided in section 6.2 (general considerations on the packages to be assessed) and annex 8.
As for businesses, the report should clarify the magnitude of expected cost reductions.	The expected costs reductions for companies have been estimated and are highlighted in section 6 (estimation of impacts) and annex 7.
RSB recommendations of 8 November 2016	**How taken into account?**

Clarify the link between the revised specific objectives (in particular objective 2) and the problem drivers	Narrative has been modified to better explain this link
It would be helpful for the report to assess more systematically relevant strengths and weaknesses of the EPC experience, clarifying similarities and differences with the services card initiative.	The EPC and its relevance for this initiative have been described in even further detail in sections 2.2.1 and 2.2.2
Clarify how the combination of this and future initiatives, such as the European Digital Gateway, might help to simplify administrative procedures rather than create more administrative complexity	Narrative on the combination of this initiative with the European Digital Gateway has been added. To avoid administrative complexity, where Member States have put in place electronic procedures for the submission of the prior declaration for posting of workers in their territory when implementing Directive 2014/67/EU, the European services e-card will provide a link to those procedures. Providers who hold a European services e- card may also submit this declaration through an electronic platform connected to IMI where a host Member State has communicated to the Commission that this possibility should apply for the posting of workers in its territory.
Be more explicit on the limited expected impact of reducing administrative and regulatory burdens, in comparison with other factors that are limiting services trade.	In light of this recommendation the proportionality of policy option 4 was reassessed. It appears adequate at this stage to tackle the existing disproportionate regulatory requirements in this field through targeted enforcement action and through specific recommendations on reform needs for Member States that address the regulatory framework for the professions in question in a comprehensive way.

5. Studies to support the Impact Assessment

The Impact assessment is based on existing research/analyses done by the Commission over the last years to assess the implementation of the Services Directive and the functioning of services markets in general.

Annex 2: Stakeholder consultation

1. Introduction

The Commission consulted stakeholders on the proposal to introduce a European services e-card and address regulatory barriers in the construction and business services sectors, and on possible action to address barriers in the insurance sector.

These actions have been announced in the Single Market Strategy of October 2015, as part of an agenda to further develop the Single Market for services.

The aim of this consultation was to seek the views of stakeholders on the effect on the ground of practical difficulties encountered by service providers in a cross-border context, in particular of administrative and regulatory nature. Moreover, the consultation was a means to test different policy options that could be pursued to address them, including their potential impact.

This document summarizes the results gathered through an online public consultation questionnaire, which was running from 3 May and 26 July 2016 for a period of 12 weeks, as well as position papers received over this period.

The last section provides a summary of discussions with stakeholders over the past months, including with Member States in the context of the Experts Group on the implementation of the Services Directive

2. Summary of responses to the European Commission's 2016 public consultation

2.1. Executive summary

179 responses have been received to the online EU Survey questionnaire. In addition, 27 position papers were provided, mostly from organisations and individual Member States.

Overall, stakeholders of all types have contributed, mostly from the business services sectors (accountants, architects, engineers, tax advisors), and to a lesser extent from the construction and the insurance sector: service providers, organisations representing certain sectors such as chambers of professionals, chambers of commerce (some of them considered as public authorities), organisations, Member States, regional development authorities, or individual citizens. An important amount of replies to the online questionnaire have been received from Germany (more than 40% of the total). Those responses are nevertheless as diverse as the rest, in terms of sectors, type of respondents and opinion shared.

Respondents were offered the choice to respond to different sections as that they wanted: questions in general; on business services, with the perspective of service providers or of customers; on construction with also the perspective of service providers or of customers; on insurance, from the perspective of service providers or of insurers; and on the perspective of national authorities. The number of responses collected under each section varied. The total amount of respondents (179) therefore cannot be considered as the reference number for each of the questions.

Based on this method, the following trends have been identified:

- The core of the contributions concerns the aspects related to the policy options of a European services e-card and to a lesser extent those on the experiences of service

providers. This is coherent with the fact that most respondents responding to the question on whether they performed cross-border activities indicated that they only provide services in their home Member State (although more than half did not reply to these questions). Very few have indicated being established in another Member State than where their headquarters is established, and also that they provide temporary cross-border services. Rather than sharing views on how they experience provision of services in a cross-border context, respondents directed their attention towards possible policy options to address existing barriers. In addition, they stressed that they would prefer obtaining more information about the Commission's intention and discussing this further. This echoes the messages received by the Commission over the past months during bilateral meetings with stakeholders. Very few also called for holding another consultation.

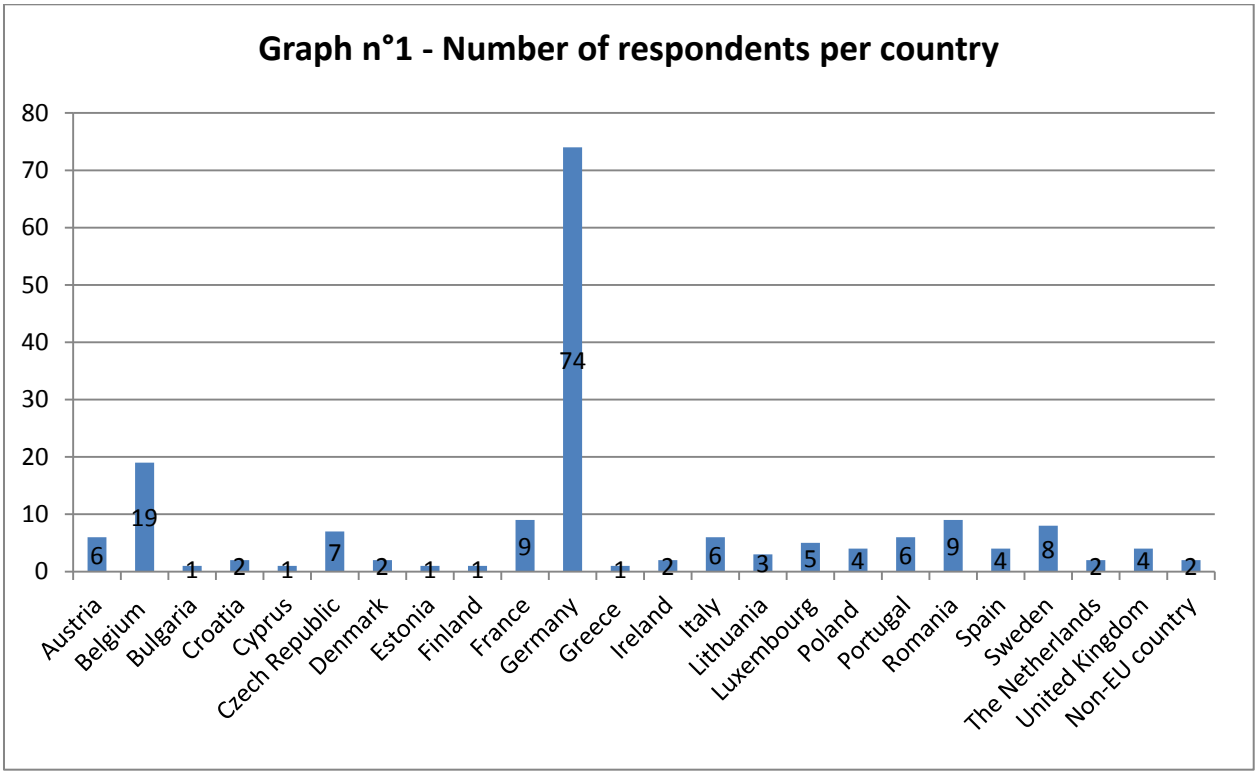
- Apart from the general sections on services sectors and scope of the actions, and apart from very few exceptions, respondents chose to respond to the sections which were the most relevant according to their profile: the sections on business services mostly gathered responses from service providers and organisations representing interests; those on construction services from stakeholders active in the sector; sections on insurance, from stakeholders active in this area; public authorities to the section on public authorities. Very few respondents were customers of services (either business services or construction) therefore very few answers were received on questions on these sections.
- Most respondents supported policy options of a European services e-card providing administrative simplification for service providers wanting to engage in cross-border markets. In addition, a majority of respondents who shared an opinion on the matter indicated that regulatory requirements as currently existing would require an intervention at EU level to make it easier for service providers to access other EU markets.
- When it comes to a breakdown per sectors and category of respondents, the main trends observed in the responses are as follows:
  - A majority of the respondents from the business services sector (in particular in accountancy, architectural, engineering and tax advice), whether being service providers, business organisations or other organisations, expressed support for solutions taken at EU level to address administrative and regulatory barriers.
  - Most of the representatives of the construction sector shared a more reserved position for its sector they represented, although counting for a much smaller share of respondents compared to business services.
  - Respondents from the insurance sector, although also much less numerous in total, showed overall support for an initiative facilitating access to insurance in a cross-border context, but a forthcoming initiative should not put into question contractual freedom for insurers.

2.2. Geographical origin of the respondents

A total of 179 responses have been received to this online public consultation, coming from respondents of 23 different EU Member States (see graph no 1 below with breakdown per country), and one from Switzerland.

27 position papers – mainly by organisation - have been received separately. They provide less detailed information and comments statements than those shared by the respondents to the online questionnaire. These position papers are also taken into account.

5 EU Member States are not represented among the respondents: Hungary, Latvia, Malta, Slovakia and Slovenia.



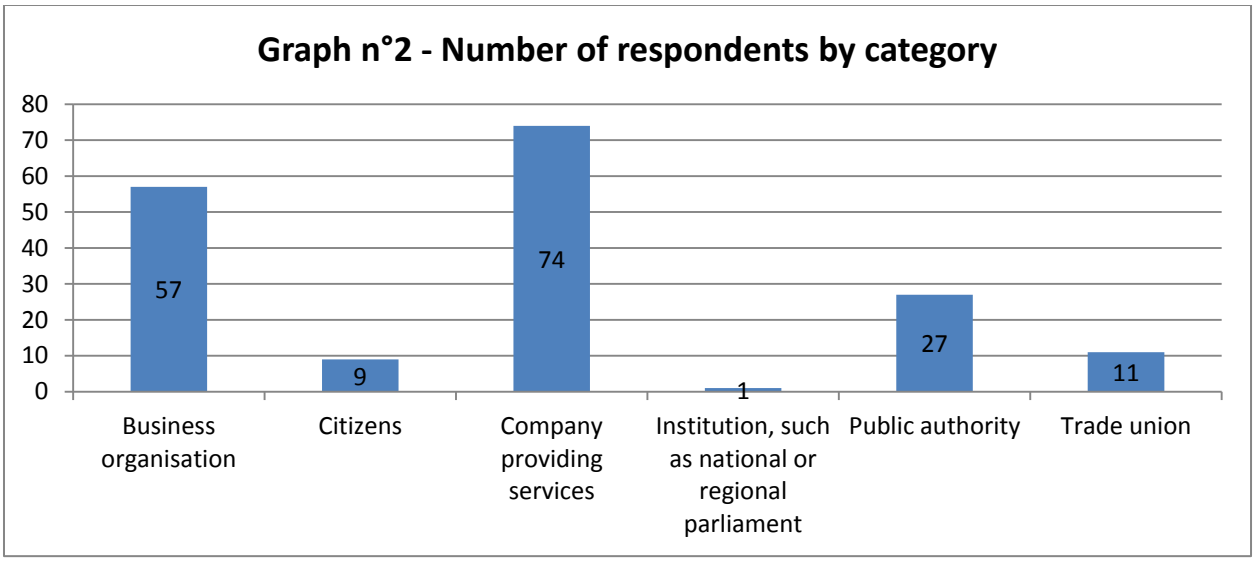
Save for Germany, the graph shows a relatively even repartition of the respondents among most other EU Member States. In addition, among the 19 respondents from Belgium, 5 are organisations representing Belgian stakeholders, the rest being organisations based in Brussels but representing interests at EU-level.

Only a limited share of the respondents (13%) indicated that they have an establishment in Member States other than the place where their main headquarters are located. The Member States where the respondents are established are: Belgium (for 17 of them) but also France (8), Germany (6), the Netherlands (5), Austria, Denmark, Finland, Ireland, Italy, Luxembourg Portugal, Spain and Sweden (4), or the United Kingdom (3). Very few respondents (coming from service providers) indicated that they provide temporary cross-border services in business services (11 respondents) or in construction services (3 respondents).

2.3. Type of respondents and sectors concerned

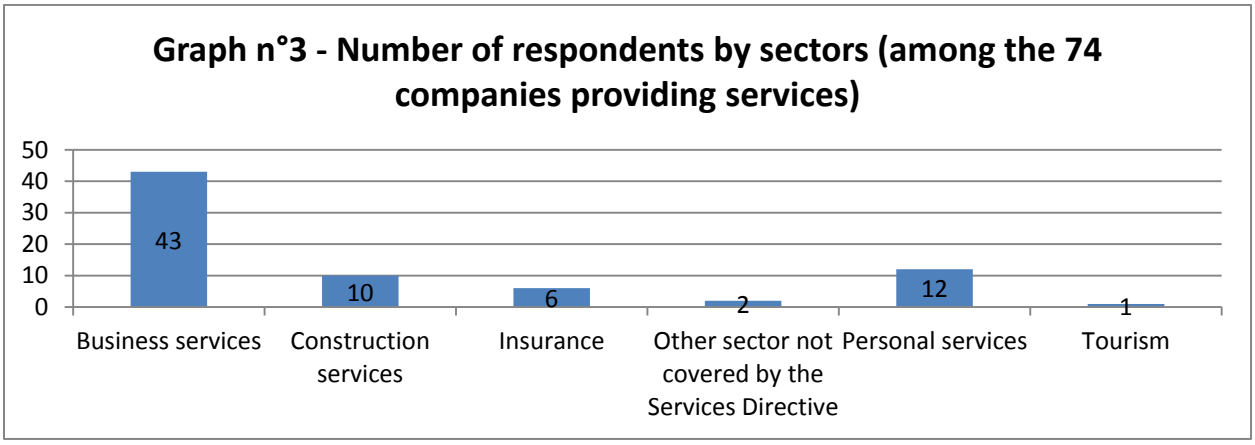
The responses collected originate from several categories (see graph n°2): companies providing services (41%), business organisations such as associations, chambers of commerce or professionals, regional development agencies or Enterprise Europe Network agencies (32%), public authorities (15%), trade unions (6%) and individual citizens (5%).

Out of the category of business organisations, respondents representing sector-specific interests have been identified: in business services, such as tax advice, craft sector, architecture, accountancy, engineering, liberal professions. In addition, organisation representing construction services and insurance were among the respondents.



Companies providing services can be broken down as follows: 18 responses were gathered from small or medium-sized companies (up to 250 employees), 12 from large companies (more than 250 employees), 17 from micro companies (less than 10 employees) and 25 from self-employed professionals.

In addition, respondents of this category were from various sectors (see graph n°3): business services (43), personal services (12), construction services (10), insurance (6), tourism (1) and sectors not covered by the Services Directive (2).



As to business services as such, 18 respondents indicated to offer accounting services, 14 tax advice services, 6 general consultancy services, 3 engineering services and 2 architectural services.

3. Consultations topics

3.1. General remarks

Most respondents did not react to these questions inviting them to share their market experiences. Less than 15% of respondents responded to the questions addressed to customers in the field of business services, and only 10 respondents addressed to customers of construction services. On the other hand, sections concerning policy initiatives to answer the problems identified, and the potential impacts of such policy initiatives, have generated a larger share of responses.

3.2. Questions on services sectors in general (other than business services and construction) [questions 10 to 15 of the online questionnaire]

Respondents to this section of the online questionnaire belong to mostly all categories and all sectors identified.

Only 1 out of 4 respondents replied to the question on whether they carried out cross-border activities or not. Out of those, 73% provided services in their home Member State only.

Respondents considered that the most important matters would be insufficient knowledge of the targeted market (81% of those who replied), cultural differences (74%), and also regulatory issues such as authorisations, registrations, insurance, but also domestic labour and tax law (73%).

As far as administrative barriers were concerned, a majority of respondents considered as genuine obstacle the need to contact more than one authority in the host country (51%) as well as translation requirements (47%).

In addition, half of the respondents shared their views on the objectives of possible actions to address administrative obstacles, and expressed the following preferences: electronic procedures to be provided by authorities (37%), more support (in general terms) to be provided from authorities in the host Member States (32%) and reduce the complexity and length of procedures (22%). Only 3% considered that no action should be undertaken.

On the impact of actions tackling administrative barriers, on average nearly half of the respondents expressed their views and considered that the impact would be positive, especially for saving costs of service providers (70%), increasing cross-border service provision (68%), and increasing choice for consumers (55%).

Examples mentioned included compulsory tax registration (and different tax laws), linguistic issues, knowing which legislation applies to a specific activity abroad (including labour and social law, and as a consequence sanctions and fines), lack of insurance coverage for services provided abroad. Several respondents (service providers, associations and public authorities) stressed that regulatory heterogeneity (different accounting standards, or different taxation legislation, which are country-specific) was much more an impediment than regulatory barriers limiting establishment and provision of service.

3.2.1. Position papers from associations

Associations representing businesses in general were mostly supportive of the European services e-card, including regulatory aspects of the initiative, and called for an ambitious approach. For example, BUSINESSEUROPE presented a position paper, according to which it supports the European services e-card, provided it truly reduces administrative burden for companies, leads to regulatory simplification and offers a clearly defined scope in agreement with the stakeholders directly affected. Similarly, VNO-NCW and MKB-Nederland also expressed support for the European Services e-card, provided that the Commission takes action on addressing regulatory barriers as well as administrative barriers.

On the other hand, some associations representing businesses in general were more critical of the European services e-card initiative, with the following arguments: while UEAPME supported the idea to reduce the administrative burdens for businesses and service recipients in line with the Services Directive, it also voiced concerns that it could facilitate cross-border frauds and disrupt the effectiveness of controls undertaken by labour inspectorates. The

Confederation of Swedish Enterprise on the other hand expressed doubts on whether the European services e-card initiative is an efficient use of resources, supporting rather the development on already existing structures, such as the Points of Single Contact. In addition, several trade unions, notably at European level and from Germany and Austria, underlined that social partners should be more involved in this project and opposed any attempts that the European services e-card could lead to the direct or indirect application of the country of origin principle.

3.3. Questions on business services – perspective of service providers [questions 16 to 46 of the online questionnaire]

Respondents to this section mostly belong to the category of service providers, from various types of business services - mostly architectural, engineering, accountancy and tax advice. Some were also organisations representing these sectors. In total, respondents to this section therefore only accounted to more than half of the total amount of respondents.

3.3.1. *Internal market for business services – Current situation*

74% of those responding to the question on whether they performed cross-border activities indicated that they only provide services in their home Member State. The responses concerns service providers only since other types of respondents indicated that question was not applicable to them. Only 20% indicated that they provide services cross-border without any permanent establishment in the host Member State, and 6% through a permanent presence in another Member State such as a branch, agency or subsidiary).

More than half of the service providers active in the field of the business services have replied to the question on whether they are carrying out activities in other Member States than their home Member State. Out of those, 15% indicated that they are providing cross-border services principally through a permanent establishment in the host Member State.

In addition, 26% of those who replied to the question whether they would like to offer services in other Member States in the future, indicated that they would like to do so either without a permanent establishment (27%). 35% of the respondents to the question prefer focusing on the domestic market or consider that the question is not applicable to them (39%).

Administrative issues are considered by 61% of the respondents, active in business services, as being an important challenge for cross-border service provision.

Difficulties in accessing the necessary information on rules and procedures applicable in another Member State are considered an important administrative obstacle by more than 1 out of 3 respondents who have replied. That said, compliance with requirements in another Member State in the daily administrative practice merit a proper attention. The lack of electronic options to complete procedures in the host Member State is seen as an obstacle by almost 1 out of 3 respondents, as well as the need to contact several authorities separately in the host Member State, identified by nearly 40%. The need to present certified copies is a possible obstacle for around 1 respondent out of 5. Translation is also an obstacle for 1 out of 3 respondents.

Regulatory issues, on the other hand, are a concern for a more important number of respondents (66%), with only 2% seeing these issues as not important at all.

44% of those who replied (service providers from business services) considered that national rules which require service providers to satisfy with specific legal forms as an obstacle, especially for accounting services at large, architectural services and engineering services. Moreover, 36% also see these as an obstacle for the setting up of a branch or agency in the host Member State.

National rules as regards shareholding requirements are also seen as negatively impacting temporary cross-border service provision by nearly 30% of those who replied, but also secondary establishment and setting up of a branch or agency, for 33%.

The fact that certain management positions in the host Member State are reserved to qualified professionals is perceived as a difficulty by more than 26% of those who replied (respondents active in business services). 31% of respondents indicated that it is specifically complicating the setting up of a branch or agency and 11% that it even prevents the expansion of activities . The prohibition of the joint exercise of certain professional activities by companies in the host Member State (multidisciplinary activities) also represents a difficulty for cross-border service provision according to 28% of respondents, with complications in setting up a branch of an agency for 24% . In addition, these requirements are perceived as rendering the entry into the market of the home Member State more difficult for more than 26% of the respondents.

Fewer responses were collected as regards compliance with a national service standard or national conformity assessment scheme. 10% indicated that it could slow down or prevent the expansion of providers established in other Member States.

3.3.2. Need for action

Almost one third of the respondents, active in business services, consider that an EU action is necessary. Similarly, more than 1 out of 4 respondents feel that an EU level intervention is also needed to address regulatory barriers.

As regards **administrative barriers**, as far as the objective of a possible EU action regarding administrative barriers is concerned, nearly 3 out of 4 respondents indicated the need for offering electronic procedures, more than 60% the need for eliminating re-submissions of the same documents, more than 55% the closer cooperation amongst competent authorities, more than a third the need to enhance trust between competent authorities and to accept documents issued in the home Member State, one third the reduction of the complexity and the length of the procedures in the host Member State, nearly 1 out of 4 the need for additional support in the host Member State while addressing translation and certification of the translations (18%) requirements is also important.

Nearly half of the respondents shared an opinion on expected impacts of reducing administrative barriers. Out of those, over one third indicated that it could result in cost savings for service providers that provide services in other Member States. Respondents are divided whether such a measure could lead to an increase of services offers in other Member States (no: 35%, yes: 34%), while 30% think that it will increase the choice for consumers, and also competitiveness of the EU business services sector (47%).

As regards **regulatory barriers**, an important amount of respondents to this section, meaning those active in business services, put the focus on the need to address national requirements about legal forms to reduce obstacles to cross-border service provision.

43% indeed supported the need to address national rules which require service providers to satisfy with specific legal forms; 27%, the requirements that a certain proportion of the shareholders need to be held by qualified professionals and restrictions on the joint exercise of professional activities by companies; 25%, the requirements that a certain proportion of voting rights need to be held by qualified professionals. Only 36% considered that none of these requirements should be addressed.

In accordance with this, most respondents (61%) also supported the need to take action to make sure that the company form of a service provider according to the laws of the Member State of establishment becomes accepted by the Member State of secondary establishment. To a lesser extent (35%), they called for action on business models of service providers that offer multi-disciplinary services to be accepted by other Member States. 26% called for action to make sure that voting rights structure do not have to be changed to provide services in other Member States. 24% called for action to ensure that a shareholder structure should not have to be changed to provide services in other Member States. Finally, 22.5% favoured action to prevent that a management structure has to be changed to provide services in other Member States.

According to the respondents (half of them answering), in case of secondary establishment (branches and agencies), Member States should be allowed to impose safeguards on incoming service providers, such as a local responsible person supervising the service provision (70%), reserve of professional titles (66%), or internal compliance policies (33%). Moreover, 43% of the respondents consider that there is a need to reduce the regulatory burden of rules on legal form, shareholding requirements, management positions and multidisciplinary restrictions for domestic service providers as well. Only 8% of the respondents are of the opinion that this should not happen through EU intervention.

In sum, legal form requirements as well as restrictions on multidisciplinary activities are seen major issues when expanding business cross-border but are also important for domestic situations. Shareholding requirements, notably voting rights, remain also important but require particular safeguards for the host Member State.

3.3.3. Impact

A limited number of respondents consider that reducing **administrative barriers** would increase costs for service providers (18%) and views are balanced concerning a possible increase of costs for public administrations (no: 23%, yes: 21%).

Most respondents who shared an opinion also supported views that the expected impact of facilitating compliance with **regulatory requirements** would be positive for service providers from other Member States and customers of services, while more limited for national administrations.

Nearly one third of respondents thought that the initiative would increase the offer of cross-border services, with positive impact on prices and choice of consumers. One quarter also indicated that it would reduce costs for service providers. Nearly one quarter also indicated that it could positively impact on prices, on the choice for consumers or productivity and competitiveness. No cost increase for service providers is expected, according to more than 58% of the respondents, while an increase for public administrations is considered possible by 38% of them. However, such a measure may create an uneven playing field in the markets concerned according to a slight majority of respondents (51%) 44% consider that it might not change much in practice.

3.3.4. Input from position papers

Stakeholders active in the business services sector were mostly supportive of the European services e-card initiative or parts thereof in their position papers. For example, the Federation of European Accountants was of the position that administrative burdens should be reduced in the accounting services sector and therefore "the introduction of European services e-cards for accountancy firms who want to establish in another Member State with market access rules could contribute to a reduction of bureaucracy".

The Federation of European Accountants also supported addressing certain regulatory restrictions, for example removing multi-disciplinary restrictions and legal form requirements. Likewise, the Institute of Chartered Accountants in England and Wales supported reducing administrative burdens on service providers as well as the removal of restrictions on multi-disciplinary practices.

The Architects' Council of Europe also expressed some support for the initiative, stating that "an electronic procedure to facilitate communication between responsible authorities in Home and Host jurisdictions could be useful, along with the use of multi-lingual standardised forms". At the same time, the Architects' Council of Europe also raised concerns in relation to the European services e-card, such as a risk of duplicating the European Professional Card and the potentially disproportionate cost and effort required for businesses to apply for and update the European services e-card.

3.4. Questions on business services – perspective of customers [questions 47 to 52 of the online questionnaire]

Less than 15% of respondents answered questions on the perspective of customers, making it difficult to draw a representative view. 15 respondents have claimed to use accountancy services, 4 engineering services, 3 architectural services.

Most of those never used business services from providers from other Member States. Nevertheless those who did are generally satisfied with the existing degree of competition. Two thirds considered that there are enough players on the market and they have several alternatives to choose from. 76% are generally satisfied with the quality and price of business services available.

3.5. Questions on construction services – perspective of service providers [questions 53 to 77 of the online questionnaire]

Respondents to this section were service providers active in the construction services sector or representing the sector itself (business organisations or trade unions), representing around 20% of the total amount of respondents to the online questionnaire (34 respondents).

The trends identified under the sections of the online questionnaire dedicated to the construction sector, mostly favourable of the initiative are relatively different from the positions provided by stakeholders via position papers, for most, rather critical of an initiative which would have ambitions of regulatory reforms. FIEC and EFBBW however expressed reservations to the idea of a European services e-card, subject to more information being made available (and more safeguards for the host Member States). A similar line is taken by the European Builders Confederation (EBC).

3.5.1. Internal market for construction services – Current situation

Two thirds of those who replied indicated on one hand that cross-border service provision is not relevant for their business environment. On the other hand, 19% are already providing cross-border services through a permanent secondary establishment. In addition, 37% showed an interest to provide cross-border services either through an establishment (19%), a branch (12%) or a subsidiary (6%), being large, small or micro companies.

Respondents also identified the following as the main barriers for construction service providers to offer their services in another Member State: insufficient knowledge of the targeted market (90%); cultural specificities (83%); regulatory issues, such as authorisations, registrations, insurance, labour law, tax etc. (76%); lack of resources (70%); market driven domestic service standards and conformity assessments schemes (71%); administrative issues, such as duration of procedures, low level of digitalisation, etc. (66%).

On **administrative obstacles**, access to information was identified as an important issue by two thirds of the respondents to this section. In addition, 47% of them indicated the need to contact several authorities as another important problem. 41% judged the length and complexity of the procedures, and more than one third lack of electronic procedures in the host Member State.

On the other hand, the need to present certified or authenticated documents issued in the home Member State in order to complete procedures to provide services in the host Member State is not seen as a particular obstacle, for 41% of the respondents. In addition, opinions were more divided on whether the need to present certified or authenticated documents issued in the host Member State is an obstacle or not (yes: 34%, no: 31%).

Asked about their perceptions of **regulatory barriers** in the construction sector, most respondents who shared an opinion indicated that rules in Member States requiring construction service providers to have a certain technical/professional capacity always available are seen as a serious difficulty.

Similarly, over one third considers that it makes the setting up of an agency or a branch more difficult and slows accordingly down or prevents the expansion of the activities.

Rules in Member States imposing requirements on how a business is structured (e.g. as regards quality management systems) through mandatory certification procedures is perceived as a difficulty by 55% of the respondents, impacting the setting up of an agency or of a branch (43%) and slowing down or preventing the expansion of the activities (28%).

In the same vein, rules in Member States imposing specific organisational requirements (protective and preventive measures) on construction service providers to fulfil health and safety standards is considered a difficulty for cross-border service providers. 46% of those who replied indicated so, although the same proportion estimates that it has no impact on their service provision. Compliance with a **national service standard** or national conformity assessment scheme is considered a difficulty by 48% of those who replied, while standardisation and certification required by the market is perceived an obstacle by 52% of them.

3.5.2. Need for action and potential impact of policy options

A majority of the respondents from the construction sector consider that there is a need for legislative action at EU level both to reduce administrative burden and to introduce an easier regulatory framework for companies wishing to provide services in other Member States (57%).

Responses under this section tend to show different trends than those identified in the previous section on the experience and opinion on the main challenges to cross-border markets in the construction sector.

In case of an EU level action concerning **administrative obstacles**, respondents consider that it should address access to information (for 90% of those who replied), complexity and length of the procedures in the host Member State (for 71%), introduce e-procedures (for 68%), avoid re-submission of documents (for 65%), ensure close cooperation of the home and host Member State competent authorities (61%), allow for acceptance of documents issued in the home Member State (for 48%), enhance trust between competent authorities and get more support from authorities in other Member States (42%), certification of documents (35%) and address translation (19%).

The expected impact of reducing administrative barriers in construction services consists in cost savings for cross-border providers, according to half of the respondents concerned, increased choice for consumers for more than 46% of them, and increase of cross border offers for more than 40% of them. The majority of the respondents agree that there will be no cost increase for service providers (68%) or for pubic administrations (54%).

Respondents also provided feedback on **regulatory requirements** which should be addressed to facilitate the expansion of service providers across borders, in the construction sector. More than 55% of the respondents indicated that requirements on technical and professional capacity conditions should be addressed. A little less than two thirds targeted organisational health and safety requirements, or organisational certification requirements.

Similarly, respondents identified the following actions to be taken: ensure acceptance of technical/professional capacity and harmonise rules in this regard (38% of those who replied), and of certified quality management systems (31% of them); harmonise rules governing organisational certification (for 24%).

In case of secondary establishment, Member States should be allowed to require from foreign providers getting established in their territory a local responsible person to ensure: technical/professional capacity for half of the respondents; quality management for nearly 40% of them; suitable health and safety organisation for more than two thirds. On the contrary, more than two thirds also considered that Member States should not be allowed to pursue such policy objectives but rather harmonise rules governing technical/professional capacity requirements for a construction companies and organisational certification.

Finally, 85% of the respondents consider that there a need to reduce the regulatory burden of rules for domestic service providers. In addition, only less than 4% consider that it should not happen through EU intervention.

Facilitating compliance with **regulatory requirements** for service providers from other Member States could increase competitiveness for 44% of the respondents to these questions, save costs for cross-border service providers according to 43% of them, increase of cross border offers for 42% of them, as well as more choice for 40%.

The majority of respondents agree that there will be no cost increase for service providers (75%) or for public administrations (58%). 50% of the respondents however believe that addressing regulatory requirements could create an uneven playing field in those markets between providers from other Member States and national providers while 35% considers that not much will change in practice.

As far as the impact of harmonising regulatory requirements for all players in the market is concerned, respondents expect cost savings for service providers that provide services in other Member States for 46%, while cost should increase for service providers that provide services in that Member State for 39%. Views are more divided regarding a possible increase of cross-border services (yes: 46%, no: 43%), the increase of choice for customers (yes: 41%, no: 37%), the increase of productivity and competitiveness (same proportion of 38% on both sides) or the practical effects of the measure (yes: 27%, no: 38%). The majority of the respondents agree that there will be no cost increase for service providers (70%) or for pubic administrations (63%).

3.5.3. Input from position papers

Associations of construction companies had however a negative position towards the European services e-card initiative as a whole. For example, the European Federation of Building and Woodworkers and the European Construction Industry Federation sent a letter, in which the associations opposed the European services e-card, stating that "the proposed "European services e-card" would not provide any useful added value whilst at the same time generating additional problems, facilitating cross-border frauds and disrupt the effectiveness of controls undertaken by labour inspectorates".

Similar views were expressed by the European Builders Confederation and Italian and French associations of construction companies (Fédération Française du Bâtiment, Associazione Nazionale Costruttori Edili) in their position papers.

3.6. Questions on construction services – perspective of customers [questions 78 to 82 of the online questionnaire]

Almost 97% of respondents did not reply to these question.

3.7. Questions on insurance – perspective of service providers [questions 83 to 96 of the online questionnaire]

80% or sometimes even more of the respondents did not answer the questions on insurance or indicated that they are not applicable to them, for the reason that respondents to this section only belong to the insurance sector, being service providers or representing interests of insurance providers. Additional views were shared by stakeholders of the Insurance sector via position papers, which are reflected in the following paragraphs.

3.7.1. Internal market for key economic services sectors – Current situation

Respondents engaged in a very limited way into the questions on their experience as providers contracting insurance coverage for cross-border activities.

A majority of those who replied (20 respondents) confirmed that insurance obligations entail a certain degree of administrative burden for service providers. Among the sectors most affected by difficulties related to insurance, the following were mentioned: construction, architectural and engineering services.

3.7.2. Need for action and potential impact of policy options

The majority of respondents to the online questionnaire consider that difficulties should be addressed at national level or be left to the markets, while around one quarter consider that difficulties need to be addressed at EU level or at both EU and national level; as regards the

action to be taken, of those who considered this question relevant, 13 % pleaded for administrative action, 13 % for regulatory action and 18 % for a combination of both.

The majority opted for the use of points of contact in Member States for access to insurance purposes, while around 20% agreed with standardisation of information and another 20% with the creation of electronic comparison tools; the majority agreed with partial or full harmonisation of insurance conditions; nevertheless, the majority considers that the reduction of administrative barriers or of regulatory barriers related to insurance would have little or no impact on the provision of services and related costs.

3.8. Questions on insurance – perspective of insurers [questions 97 to 100 of the online questionnaire]

Most insurers or insurers' associations who answered to the questionnaire indicated that any measures taken on professional indemnity insurance under the European services e-card should not affect the business freedom of insurers in granting cover for certain services or not.

Insurers pointed out to the fact that differences in national liability laws and the ensuing costs, as well as cultural differences justify different insurance products across the Member States. Insurance Europe, supported by several national insurers' associations, suggested that any action should focus on the issue of access to information on applicable insurance obligations at national level, rather than aiming at harmonisation measures at EU level. A better use of the Points of Single Contact (PSCs) under the Services Directive should be made. A national association also suggested creating a European facilitator for access to insurance, without coercive power, but helping service providers in concrete cases.

Most insurers did not answer the specific questions of the consultation but rather provided further explanations. This is the case concerning the track record of the service provider from the home country, this would be already taken into account by insurers to some extent, but there should be no legal obligation to do so. Even if this is not a standard approach so far, insurers also issue track-record documents to clients upon request. Several respondents confirmed that they offer insurance coverage for activities of clients in other Member States, while the remaining respondents indicated that the predefined answers are not applicable: insurers explained that they do not see a lack of insurance offer for coverage of cross-border services; insurers are namely active through the freedom of provision of services for insurance companies, through the freedom of establishment for them or through networks of insurers or insurance brokers, in order to serve their clients on a cross-border basis. Respondents also confirmed that insurance products adapted to the duration of services are available, although there is no uniform practice in this regard.

3.9. Questions to national authorities [questions 101 to 107 of the online questionnaire]

Respondents to this section of the online questionnaire were only public authorities or related organisations providing a public service: administrative bodies at national and regional level, chambers of commerce or of professionals with a public mandate.

A slight majority of the respondents believe that it is to Member States to ensure that procedures are fully electronic (52%). 56% of the respondents are registered in IMI; have used it in the last three years to communicate with authorities from other Member States (for 45% of them) and found it efficient (43% against 23%).

More and easier information exchange between Member States regarding service providers established in one Member State that want to set up a presence in another Member State is welcomed by an overwhelming majority of national authorities, either because it could help the assessment of the application in the host Member State (69%) or because it would increase mutual trust (53%). Such an information exchange should happen through IMI for 87% of the respondents and could include basic information about a service provider (84%), specifics about the type of activity and information about qualifications of professionals, posted workers, health and safety (80%), about the criminal record and economic solvency/soundness of the company (76%) and about compliance with sector-specific requirements in the home Member State (61%).

3.10. General questions on scope of the actions [questions 108 to 111 of the online questionnaire]

Nearly one third of respondents answered this section of the online questionnaire.

21% of them considered that business services should be covered by the initiative and 16% that it should cover construction services. Respondents referred to general construction, engineering and architectural services. Tax advice was mentioned in 23% of responses and accounting services were mentioned in 19% of cases.

34% of respondents said the initiative could cover other services too, such as craftsmanship (7%) or tourism (2%). Only a few respondents (2%) considered any initiative on a passport should only apply to non-regulated professions.

26% of respondents considered that the European Services e-card should not apply to any service. This figure includes those who expressly expressed reservations the application of a European services e-card to their own sector of activity, without commenting on others, as well as those who said that this question should not be answered as long as we don't know what the European services e-card would look like.

4. Meetings with stakeholders over the past months:

The Commission also consulted with stakeholders at numerous occasions, some of which are summarised below.

The Commission carried out nine workshops in key cross-border regions of the EU[143] between September and November 2014 in the context of the **Single Market Forum**, with a final meeting taking place on 26 March 2015 in Riga. The objective of these workshops was to increase understanding of the real barriers to providing services in other Member State faced by businesses, focusing on the sectors of business services, construction, retail and tourism, but also welcoming contributions from other sectors. Over 300 businesses and business organisations participated in the events. The issues raised in the course of these workshop were numerous and diverse: registration and authorisation; recognition of professional qualifications; other regulatory issues; posting of workers and social security; standards and certification; points of Single Contact and access to information; tax (direct taxation and VAT); public procurement; non-regulatory barriers.

The Commission also pursued these discussions in the following cycle of the Single Market Forum, in particular at the closing conference organised together with the Dutch Presidency

[143] Thessaloniki, Frankfurt (Oder), Verona, Vilnius, Ljubljana, Copenhagen, Brussels, Oporto and Paris

on 13 June 2016 in Amsterdam, with a workshop on the Services Passport. The participants came to the following conclusion:

"*Governments should help businesses and entrepreneurs overcome regulatory and administrative barriers when wanting to deliver services in other MS, inter alia by facilitating the required flow of information.*
To that end, the creation of a "Services Passport" (still mentioned in these terms at the time) can help to increase trust and boost trade and investment in services, provided it is an EU-wide instrument, voluntary, digital, comprehensive, applies the once only principle and this way provides real value added for businesses.
The possible "Services Passport" should address administrative and regulatory barriers, in particular insurance, licensing and certification. It should be introduced gradually and cover specifically selected sectors."

The Commission also engaged with stakeholders at other occasions: a meeting with stakeholders from the construction services sector on 1 February 2016; a meeting more oriented on business services on 5 July 2016 and the stakeholder conference on 6 September 2016.

Around 30 stakeholders participated to the meeting of 1 February, mostly EU and national associations as well as trade unions active in the sector, such as: FFB representing the French building companies, ACE representing architects, CEBC active in the building control services, the trade union EFBWW, etc. The purpose of the meeting was to present the early stage discussions on the European services e-card initiative and the results of the Commission study on construction.[144]

A meeting with 40 stakeholders mostly from the business services sector was held on 5 July 2016 in Brussels. The participants represented European associations (including BusinessEurope, Eurochambres, UEAPME, InsuranceEurope, ECFA/FEANI representing engineers, ACE representing architects, FEE representing accountants), national associations (e.g. from DE, FR, NL, DK, CZ, LU) and individual companies (mainly from DE and FR). The objective of this meeting was to engage with stakeholders preparing contributions to the public consultation. Although the feedback from stakeholders was mixed, the majority of stakeholders expressed increasing support for a European Services e-card and had questions on how it could work. The issues that interested stakeholders were, for example, the added value of the European services e-card compared to the Services Directive, the validity period of the European services e-card and the grounds for refusing to issue a European services e-card. Regarding the potential regulatory impact of the European services e-card, stakeholders asked about how the targeted regulatory barriers are chosen and also had questions about a potential negotiation procedure between authorities of different Member States and about what would happen if the authorities do not reach an agreement.

A conference on the European services e-card was held on 6 September 2016 in Brussels, to which more than 170 stakeholders participated, with very diverse profiles from all around the EU: service providers, or associations active in business services (in particular accountancy, architecture, engineering and tax advice), in construction services and in the field of insurance; chambers of commerce and of professionals; representatives of Member States

[144] Simplification and mutual recognition in the construction sector under the Services Directive - *MARKT/2014/087/E*, February 2016.

(experts from national administrations and from permanent representations in Brussels); experts from the European Parliament.

The format of the conference was on purpose defined to:

1. Put forward **"real-life" examples of how service provision is performed in cross-border contexts and what difficulties are encountered**. To this aim, the following stakeholders made presentations on specific issues: Mr Bruno Clicquot de Mentque, Chairman of CERFRANCE, presented the perspective of his company providing accountancy services in France and wanting to develop across borders; Prof. Ralf Niebergall, Vice-president of Bundesarchitektenkammer e.V, presented the perspective of architects and the challenges faced by this sector for cross-border developments; Mr Madis Ehastu, Head of Trade and Services division, Estonian Ministry of Economic Affairs and Communications, presented an advanced mechanism set in place by Estonia to enhance cross-border development of companies and professionals of construction sector in Finland; Mr Martin van der Ende, Senior Consultant Labour and Social Policy, Ecorys, presented the first trends of the study conducted on behalf of the Commission on administrative costs for business services.

2. Engage with stakeholders on possible policy options for a European services e-card (discussions on small tables of 8 persons).
    a. A **first breakout session** was organised to discuss the **options envisaged to address administrative barriers**. At this occasion, stakeholders confirmed the trends identified in the public consultation: a wide majority of stakeholders agreed with the need of EU action to address administrative barriers to cross-border services.
        i. On the **information to be included in the card**, stakeholders agreed that basic information (e.g. name, company type, legal establishment, to which sector it belongs) is necessary, as well as information about VAT number in the home Member State, about professional indemnity insurance coverage in the host Member State, about the history in the country of origin, would be relevant. Most stakeholders also showed interest if information about the workers to be posted also appears in the card, although representatives of the construction sector did not share this opinion. In addition, some stakeholders indicated that information on social security registration would be useful for an authority to judge of a service provider. Respondents found it natural the solutions to build this instrument within IMI.
        ii. On the **potential roles of coordinating authorities in the Home Member State**, stakeholders showed interest for public authorities to ensure that it reuses information that it already has, that it liaises in this way with other relevant authorities, that it ensures that the final information provided is reliable, that it cooperates fully with the Host Member State authority to maximise trust and dialogue in particular respecting deadlines. On the **role of Host Member State** coordinating authority, most stakeholders mentioned the need to keep pre-defined conditions under which it could refuse and revoke a card, require additional information, especially for cases of secondary establishment. A large majority of stakeholders, including national administrations, shared the need to leave it to the Member States to determine which structure would be best suited to accomplish this coordination tasks,

taking the examples of Points of Single Contact if they are sufficiently operational according to the provisions of the Services Directive, or chambers of commerce when they perform public administration service. A large majority of stakeholders also expressed the need to reduce documents as most as possible in the procedure, and supported a solution of automatic translation for the information provided.

iii. Stakeholders shared divergent views on the **issue of fees**, some indicated that it should be reasonable and proportionate to the cost of the procedure, and some others, including national administrations, that did not find justified to ask fees to service providers for such "little" coordination efforts by the Member States.

b. A **second breakout session** was held to discuss options to address **regulatory barriers**. There as well, the trends identified in the feedback to the public consultation were confirmed in the discussions with stakeholders present:

i. Representatives from the **construction sector**, mostly associations and trade unions rather than service providers themselves, recalled that they do not see relevant that their sector is included in the scope of the initiative.

ii. The majority of stakeholders answered that it is not acceptable that a service provider is required to change its **corporate structure at home** to operate in another Member State. Building on this, a majority of stakeholders save from the construction sector, indicated that EU action addressing regulatory requirements would be useful to ensure a level playing field between all service providers, but as long as the public interest is preserved, as well as quality and security.

iii. Stakeholders also shared their views on possible **alternative safeguards which could be defined at EU level to accommodate policy concerns of Member States** (in particular in relation to requirements on legal forms, shareholding, voting rights and multidisciplinary activities). According to most of them, there is not only a need to accommodate concerns of Member States but also of professional bodies. While calling for stronger enforcement of the Services Directive as a first short-term solution, some stakeholders recognized the need to reflect on the issue of proportionality of regulatory requirements, and reflected on solutions tailored to specific sectors. They made it clear, nevertheless, that solutions would need to differ between cases of temporary cross-border provision of services and cases of secondary establishment.

iv. On the issue of **insurance**, stakeholders representing the insurance sector (on the side of the insurance industry and not customers) showed contradiction with the trends identified in the responses to the public consultation, indicating that it would be complicated for the insurance industry to make use of track-records. Stakeholders from the customers' side would however favour an easier solution for them to contract cross-border insurance contracts.

The Commission also held numerous bilateral stakeholder meetings on the European services e-card, mostly with European or national-level associations. Meetings were held with stakeholders from all affected sectors, including:

- the business services sector (e.g. the Architects' Council of Europe (ACE), the Federation of European Accountants (FEE), Confédération Fiscale Européenne (CFE), Conseil Supérieur de l'Ordre des Experts-Comptables (CSOEC), the Institute of Chartered Accountants of England and Wales (ICAEW), Institut der Wirtschaftsprüfer in Deutschland (IDW), Verband Beratender Ingenieure (VBI), the Royal Netherlands Institute of Chartered Accountants (NBA) and the German Association of Liberal Professions (BFB));
- the construction sector (e.g. the European Federation of Building and Woodworkers (EFBWW), the European Construction Industry Federation (FIEC) and the Consortium of European Building Control (CEBC));
- the insurance sector (e.g. InsuranceEurope);
- associations representing businesses in general (e.g. BUSINESSEUROPE and EUROCHAMBRES).

Bilateral meetings were mostly focused on answering stakeholders' questions about how a European services e-card could potentially work. Stakeholders also pointed out possible difficulties in creating a European services e-card at these meetings but also expressed support for the European services e-card.

In parallel, the Commission pursued its regular dialogue with Member States, via bilateral meetings but most particularly in the context of its Experts Group on the implementation of the Services Directive with specific discussions on the European services e-card at these meetings in 2016: 25 January, 15 March, 28 April, 12 July and 20 September. Other meetings will also follow in the coming months.

Annex 3: Who is affected by the initiative and how

The following stakeholders would be affected by the initiative (under the options foreseen):

- **Service providers** wishing to expand their activities to other Member States' markets will benefit from reduced obstacles to offering services across borders. The initiative will increase legal certainty and ensure administrative simplification for service providers. The costs incurred by services providers to complete formalities would decrease. Service providers would be able to deal with a coordinating authority in their home Member State which would, inter alia, enable communications in a familiar language. All of this is particularly important for SMEs who may not have the resources to overcome significant administrative burdens associated with cross-border expansion. The European services e-card is available to providers previously established in a Member State. As a result, subsidiaries of companies from third countries established in the EU would be able to apply for a card as well.[145]

  Overall, the reduction of barriers will promote increased cross-border activity by service providers, who may then explore a broader client base across a wider geographical market and therefore potentially enjoy greater profits. Conversely, some service providers will see an increase in competition from foreign providers, thus putting more pressure on them as far as the quality and price of services are concerned.

- **National authorities** in several sectors, namely in the home Member State will, on average, face some additional administrative burdens following the initiative as compared to the situation today. Namely, the initial responsibility to process applications would lie with the home Member State rather than the host Member State, thus requiring some additional efforts in terms of coordination and verification. The additional burden may however be very limited, depending on how relevant authorities and databases are organised and interacting today. It may also involve professional associations. Moreover, by making it easier for domestic service providers to expand into other markets, Member States' authorities will ultimately benefit from increased export opportunities for their national providers.

  By bundling relevant information about the service provider and certain procedures into a single procedure, authorities in host Member States will benefit from a more complete, centralised overview of incoming service providers than is the case today. This may be useful for advance checking as well as ex post controls and inspections.

  Overall, the initiative will serve to enhance dialogue, administrative cooperation and trust between national authorities in home and host Member States. In this regard, the initiative and the clear procedure it entails (including the supporting IT workflow) can make it

[145] Branches, agencies or offices of such companies should not, in accordance with Article 48 of the Treaty which reserves freedom of establishment and free movement of services to companies and firms constituted in accordance with the laws of a Member State and having their registered office, central administration or principal place of business within the Union.

easier for Member States to process/review applications from outgoing or incoming service providers.

The impact of the initiative on Member States' authorities including associated administrative costs is outlined in further detail in Annex 8.

- For the customers of service providers, notably **industry clients** but also **consumers** in the key services sectors covered, the initiative would bring an increase in choice and as well as lower prices following increased competition between service providers.

- **The Commission** will primarily need to carry out technical work in relation to the IMI system to accommodate the procedure and necessary functionalities underpinning the initiative. Such technical work will require staff resources and will have some impact on the EU budget. However, costs are expected to remain below 5 million EUR given the choice to make use of the already existing IMI system.

  In the medium to longer term, the Commission will monitor how the initiative is implemented by Member States and evaluate its effects. This would form part of the "daily business" of the Commission and would therefore not have any specific budgetary implications.

Annex 4: Evaluation of the Services Directive implementation to remove obstacles to cross-border activities in key services sectors

1. Introduction 105
2. The Services Directive – background 105
2.1 Situation before the Services Directive 105
2.2. Services Directive: objectives and legal framework 108
2.2.1 General objectives 108
2.2.2 Legal framework - relevant provisions of the Services Directive 108
3. Evaluation questions 113
4. Methodology 113
5. Implementation/state of play 114
5.1 Implementation until end-2011 114
5.2 Implementation since 2012 120
5.3 More detailed evidence on remaining obstacles today 121
6. Evaluation of the Services Directive implementation 126
7. Conclusions 133

1. Introduction

The purpose of this brief evaluation is to assess the effectiveness, efficiency, coherence, relevance and EU added value of the Services Directive in removing obstacles to cross-border activities in key services sectors.

The document is structured as follows. First, an overview will be provided regarding the situation before the introduction of the Services Directive as well as the different legal provisions of the Services Directive that are relevant for this evaluation. Second, the main evaluation questions used as a basis for this analysis will be outlined as well as the evidence used. Third, an overview will be provided of the implementation of the relevant provisions of the Services Directive by Member States since the introduction of the Directive until today. Finally, on this basis conclusions will be drawn on the performance of the Services Directive by answering a set of evaluation questions related to the five standard evaluation criteria.

2. The Services Directive – background

2.1 Situation before the Services Directive

At the Lisbon Summit in 2000, EU leaders agreed a strategic goal of making Europe by 2010 "*the most competitive and dynamic knowledge-based economy in the world*". As part of the programme of actions designed to achieve this, the Council concluded that there should be "*by the end of 2000 a strategy for the removal of barriers to services*". The Commission Communication of December 2000[146] set out a two-stage strategy in response to the European Council's request. The first stage involved the identification and analysis of existing barriers to the cross-border provision of services and establishment and was completed by the Commission's report on "The State of the Internal Market for Services"[147]. The second stage, based on that analysis, was to bring forward appropriate solutions to the problems identified. As a result of this process, the Services Directive was adopted in 2006 and had to be implemented by Member States by the end of 2009.

Report on the state of the Internal Market for Services (2002)

The 2002 Commission report "The State of the Internal Market for Services" outlined the barriers which hampered the expansion of service activities across national borders at the time. The report was primarily based on a consultation with interested parties and focused on barriers to cross-border service activities in each stage of the business process. The results showed that service providers faced a range of different obstacles.

First, regarding **temporary cross-border service provision**, a number of barriers were identified including:

- A requirement to be established or to have a local representative in the Member State in which the service is delivered;

[146] COM (2000) 888 of 29.12.2000.
[147] COM (2002) 441 of 31.07.2002.

- Member States subjecting service providers to the same authorisation, registration or declaration procedures, which apply to operators established in their own territory;
- Requirements regarding the internal structure and legal form of the service provider, such as a requirement to have a specific legal form and shareholding and/or management structure;
- Imposition of different conditions governing the exercise of an activity in different Member States.

Secondly, regarding **secondary establishment** in another Member State, some of the barriers identified by the report were:

- Quantitative restrictions imposed on access to service activities, e.g. quotas governing the number of service providers;
- Territorial restrictions, which confined authorisation to engage in service activities to a specific region or locality;
- Nationality or residence requirements for persons related to the service provider, such as shareholders or managers;
- Authorisation and registration procedures, including the failure to take into account requirements already met by a service provider in a Member State in which he is established and the bureaucratic nature of authorisation and registration procedures;
- Restrictions on multi-disciplinary activities;
- Requirements regarding the legal form and internal structure of economic operators, including shareholding requirements and rules on a minimum number of employees.

Third, regarding the **use of inputs necessary for the provision of services**, the report brought out the following barriers, among others:

- Difficulties related to posting of workers to another Member State, such as the burden and complexity of administrative formalities;
- Difficulties related to cross-border use of business services, which may, for example, prevent a company from using providers from other Member States whose services are more attractive in terms of quality or price.

Finally, regarding the **after-sales aspect of services**, the report identified that one of the difficulties concerned liability and professional indemnity insurance of service providers. Professional liability insurance schemes varied markedly between Member States and between service activities and were often legally complex. These disparities were found to cause difficulties in the cross-border provision of services, as Member States have an incentive either to impose their own insurance schemes on service providers from other Member States or to require proof of equivalent insurance coverage in the country of origin, which is difficult if not impossible to provide.

The report showed that often, the above restrictions were not found in the body of the legal texts, but rather in the behaviour of certain administrations or in the **way in which the administrative procedures were perceived or implemented**.

The report also noted the **horizontal nature of the barriers**, as many of them were common to a large number of widely varying sectors of activity. A large number of services encountered the same problem: the Member State of destination treated the service provider as if he were established on its territory, and hence subjected him fully to its legal system, for example by imposing a system of authorisation on the service provider. The report also pointed out that a wide range of cross-border services were affected by a high degree of legal uncertainty as to their legality, since this depended on a case-by-case assessment by the national authorities. In particular, national regulations were often unclear or ambiguous as to whether they might be applicable to providers established in another Member State.

In addition to the above-mentioned barriers, which are of a legal nature, the report also identified several non-legal barriers. One of these was the **lack of regulatory information**, which occurred at all stages of the business process. For example, lack of information on necessary authorisations, qualifications requirements and tax and employment law were brought out as problematic areas in the report. In addition, lack of knowledge of competent authorities, procedures and formalities hindered the cross-border provision of services. Lack of information and transparency were a particular problem in relation to identifying the appropriate competent authorities in another Member State, obtaining all the necessary forms and understanding the procedures. Some respondents complained that on occasion public authorities provided contradictory information and it was suggested that there was little cooperation between government bodies in the various Member States. The lack of availability of necessary forms on-line was also emphasised.

Finally, the report showed that these obstacles to the internal market for services have cost implications for the entire economy. The report specifically mentioned **reduced investment** and **reduced economies of scale and scope** for service providers as the effects of the barriers. For example, reduced economies of scale and scope resulted from the fact that a successful business model could not be exported because several or all of the stages of the business process needed to be changed to comply with differing legal and administrative requirements in other Member States.

The report identified SMEs and the users of services, in particular consumers, as the **principal victims** of the barriers. SMEs were predominant in the services industry, accounting for a far greater proportion of total output than in manufacturing, while at the same time being more severely affected by compliance costs than larger companies. SMEs were also found to be exposed to mergers and acquisitions, as medium-sized firms constrained from expanding abroad but often with significant local knowledge, experience and innovation potential, were attractive targets for larger companies. SMEs in small and peripheral Member States were identified as particularly disadvantaged by the barriers.

The report concluded that **service users**, and in particular consumers, ultimately paid the price for the existence of Internal Market barriers in the services field. It was noted that citizens suffer directly when they are prevented from using services offered by suppliers in other Member States, or when regulatory and administrative fragmentation dissuades companies from offering their services to customers residing in other Member States. The report

maintained that this situation also contributed to the lack of consumer confidence in services from other Member States.

2.2. Services Directive: objectives and legal framework

2.2.1 General objectives

The Services Directive aims to contribute to a genuine Internal Market in services so that businesses and consumers can take full use of the opportunities it presents and benefit from the fundamental freedoms guaranteed in Articles 49 and 56 of the Treaty. The Directive was adopted in 2006 and its transposition deadline was December 2009. By removing unnecessary barriers which hamper both cross-border trade and investment in the services sectors covered, the Directive was expected to significantly stimulate growth. The Directive has a horizontal nature and a broad scope in terms of sectors and requirements covered. A large variety of services sectors are covered (representing more than 45% of GDP in the EU) such as business services, construction, retail and wholesale trade, tourism, etc.[148]

2.2.2 Legal framework - relevant provisions of the Services Directive

The focus of this annex is on the performance of the Services Directive with regard to achieving its objective of removing obstacles for service providers to move across the Single Market. Different provisions of the Directive aim to simplify administrative procedures, remove regulatory obstacles (regarding freedom of establishment as well as freedom to provide temporary cross-border services) and enhance both mutual trust as well as administrative cooperation between Member States.[149] The provisions relevant for this evaluation will be shortly described below. An intervention logic summarising how the Services Directive was expected to work is provided in annex.

Administrative simplification

Regarding simplification of administrative procedures, the Services Directive includes several requirements towards Member States.

First, all procedures and formalities applicable to access a service activity and to the exercise thereof have to be examined and, if necessary, simplified (Art 5(1)). This means assessing whether administrative requirements are necessary or whether some procedures or parts of these procedures can be abolished or replaced by less burdensome alternatives. In addition, this also includes assessing whether all evidence and documents asked are needed. Documents from other Member States generally have to be accepted without requiring the production of the documents in original form or as a certified copy or a certified translation (Art 5(3)).

Second, fully functioning and interoperable electronic procedures have to be set up (Art 8). Service providers should be able to complete electronically and at a distance all procedures

[148] More details on the background and objectives of the Services Directive are available here: http://ec.europa.eu/growth/single-market/services/services-directive/index_en.htm

[149] For a detailed description of the legal framework of the Services Directive, see: Handbook on the implementation of the Services Directive, http://bookshop.europa.eu/en/handbook-on-implementation-of-the-services-directive-pbKM7807096/

and formalities necessary to provide a given service. Electronic means have to be available for the whole administrative process, from the service provider's initial application/submission of documents to the final reply, if required, from the relevant competent authority. For this, points of single contact have to be set up, through which service providers should be able to complete all procedures and formalities needed for access to and exercise of their service activities (Art 6).

These points of single contact are meant to be the single e-portals from the perspective of the service provider, so that he does not need to contact several competent authorities or bodies to collect all relevant information and to complete all necessary steps relating to his service activities. These points of single contact should provide clear and updated information regarding applicable requirements, means of redress and the contact details of competent authorities, which should assist service providers in complying with those requirements. Contact details of associations or organisations providing practical assistance should also be made available in points of single contact (Art. 7).

Freedom of establishment

Articles 9 to 15 of the Services Directive apply to cases of establishment, irrespective of whether a provider seeks to establish in another Member State or in his own Member State. These provisions apply to all requirements specifically relating to the establishment of a provider of a service, whether imposed at national, regional or local level and they also apply to rules enacted by professional bodies.

First, Member States have to review existing authorisation schemes and make them compliant with Articles 9 to 13 of the Directive:

- Authorisation schemes may be maintained only if they are non-discriminatory, justified by an overriding reason relating to the public interest and proportionate (Art 9);
- Decisions on authorisations cannot be taken in an arbitrary manner. The underlying conditions need to comply with the criteria of non-discrimination, necessity and proportionality. In addition, they need to be clear and unambiguous, objective, transparent and accessible, and made public in advance (Art-s 10(1)-10(2));
- Member States, when applying its national requirements, have to take into account the equivalent or essentially comparable requirements which have already been complied with by the service provider (equivalence assessment for mutual recognition). To achieve this, Member States should lay down a clear obligation on the part of the competent authorities to take account of equivalent requirements already complied with in other Member States. (Art 10(3));
- Authorisations are to be generally granted for the whole territory of the Member State (Art 10(4)) and for an unlimited period, except in cases of limited number of available authorisations, which must then be limited in time (Art 11);
- Limitations on the number of available authorisations may be justified by an overriding reason relating to the public interest (Art. 15) but they are the rule if motivated by the scarcity of available natural resources or technical capacity, and in

those cases an impartial and transparent selection procedure must be put in place (Art 12);

- Authorisation procedures should not be dissuasive, nor unduly complicate or delay the provision of the service. Authorisation procedures need to be carried out within reasonable periods of time and be subject to proportionate fees, never exceeding the actual cost of the control procedure. In case an application has not received any response within the set time period, the authorisation should be deemed to have been granted to the provider, except if overriding reasons of public interest impose an express decision; refusals should be duly motivated (Art 13) and means of redress must be made available (Art 10(6));

Second, Art 14 of the Directive provides a list of requirements which Member States cannot impose[150] for access to or exercise of a service activity under any circumstances. Article 14 prohibits for example the following requirements:

- Requirements based directly or indirectly on nationality or the location of the registered office of a company;
- A prohibition on having an establishment in more than one Member State;
- Restrictions on the freedom of a service provider to choose between a principal or a secondary establishment, or between a subsidiary, branch or agency;
- An obligation to obtain a financial guarantee or insurance from an operator established in the same Member State;

Finally, Art 15 of the Directive includes a list of requirements for access to or exercise of a service activity which Member States should not, in principle, impose, and are only allowed if non-discriminatory, exceptionally justified by an overriding reason relating to the public interest and proportionate. These requirements include for example:

- An obligation on a service provider to take a specific legal form;
- Requirements which relate to the shareholding of a company;
- Fixed minimum and/or maximum tariffs with which the provider must comply.

Freedom to provide (temporary cross-border) services

In accordance with the Treaty, the Services Directive clearly distinguishes between the rules applicable to establishment and those applicable to temporary cross-border service provision. Establishment involves the actual pursuit of an economic activity through a fixed establishment for an indefinite period[151]. By contrast, according to the case law of the ECJ, the freedom to provide (temporary cross-border) services is characterised by the absence of a stable and continuous participation in the economic life of the host Member State[152]. While Art-s 9 to 15 concern the establishment of service providers, Art-s 16 to 18 deal with

[150] See, in relation to the impossibility to justify the imposition of such requirements through national Law under any overriding reason of general interest , CJEU preliminary ruling in case C-593/13 (Rina Services), paragraph 37

[151] Judgment of 25 July 1991, Factortame, Case C-221/89, paragraph 20.

[152] Judgment of 13 February 2003, Commission v Italy, Case C-131/01, paragraph 23.

requirements Member States may impose on service providers who provide services cross-border on a temporary basis.

Article 16 provides for the freedom to provide cross-border services without unjustified restrictions. Article 16(1) provides that Member States may not impose their own requirements on incoming service providers except where these requirements are non-discriminatory, justified by reasons of public policy, public security, public health or the protection of the environment and proportionate. In addition, under Article 16(2)(3), certain requirements are in principle not allowed for any temporary cross-border service provision, and absolutely disallowed for temporary services provided at a distance. These requirements include:

- The obligation to have an establishment in the territory where the service is provided;
- The obligation to obtain an authorisation or a registration;
- The ban on setting up an infrastructure;
- Requirements, except for those necessary for health and safety at work, which affect the use of equipment and material which are an integral part of the service provided.

Article 16 applies to all services falling within the scope of application of the Directive, with the exception of those services or matters listed in Art 17.

Although requirements under host Member State's Law are thus, as a rule, inapplicable to providers established elsewhere in the EU, the host Member State may impose certain case-specific measures on the service provider related to the safety of services under Art.s 18 and 35. Such case-by-case derogations of the freedom to provide services are only admissible when safety of the services provided is demonstrably compromised, endangering the protection of the service recipient, and even though measures were requested of the home Member State under administrative cooperation obligations.

Administrative cooperation

Articles 28 to 36 establish the rules for administrative cooperation between Member States' authorities.

Articles 28 and 29 oblige Member States to give each other mutual assistance, in particular to reply to information requests and to carry out, if necessary, factual checks, inspections and investigations. This means that Member States will not be able to refuse to cooperate with each other. The obligation to give mutual assistance is comprehensive and encompasses the obligation to take all possible measures necessary for effective cooperation, for example using all possible means to find information if the information is not already available and indicating if difficulties appear.

In view of the sensitivity of information on good repute, Art 33 provides for specific rules for the exchange of information concerning criminal sanctions and disciplinary and administrative measures. Articles 30 and 31 provide for a division of tasks between the different Member States involved in case of temporary cross-border provisions. Concerning case-by-case derogations for temporary cross-border provisions, Art 35 provides for a specific

procedure for administrative cooperation which furnishes procedural safeguards ensuring that the case-by-case derogation is only used if the substantive criteria laid down in Art 18 are fulfilled. Article 32 lays down a mechanism aiming to ensure that Member States inform all other Member States concerned and the Commission within the shortest possible time if they become aware of acts of a service provider or specific circumstances relating to a service activity which could cause serious damage to the health or safety of persons or to the environment.

Finally, in order to facilitate communication between the competent authorities of different Member States, Art 34(1) requires the Commission to set up an electronic system for the exchange of information between Member States. The Commission has fulfilled this obligation by setting up the Internal Market Information System (IMI).

Other provisions relevant for this evaluation

Article 23 concerns professional liability insurance and guarantees. Article 23(1) lays out the conditions under which a Member State may impose insurance coverage requirements: only when the services in question present a direct and particular risk to the health and safety of the recipient or a third person, or to the financial security of the recipient. Art 23(2) refers specifically to mutual recognition of insurance coverage acquired by service providers who are already established in a Member State and want to establish in another Member State. The Member State where a service provider wants to establish will have to take into account essentially equivalent or comparable insurance or guarantee requirements to which the provider may already be subject to in the Member State of first establishment, and may not require the provider to take out any additional insurance or guarantee if the existing insurance or guarantee already covers the territory of the Member State where the provider wants to establish. Whether an insurance or a guarantee is equivalent or essentially comparable has to be assessed by the competent authorities in the light of its purpose and the cover it provides in terms of insured risk, insured sum or ceiling for the guarantee as well as possible exclusions from the cover. Where the insurance coverage is not fully but only partially comparable, a supplementary arrangement may be required. In any case, Member States have to accept attestations of such insurance cover issued by credit institutions and insurers established in other Member States as sufficient evidence of compliance with the insurance obligation in their territory.

Art 25 means to remove requirements restricting the exercise of different activities jointly or in partnership where such restrictions are unjustified. It requires Member States to remove requirements obliging service providers to exercise a given specific activity exclusively as well as requirements restricting the exercise of different activities jointly or in partnership. However, Art 25 spells out conditions under which such restrictions can be maintained for regulated professions and for certification, accreditation, technical monitoring and testing services. Restrictions on multidisciplinary activities aimed at ensuring the independence and impartiality of the regulated professions can be justified in so far as they are necessary to guarantee compliance with the rules governing professional ethics and conduct, which may vary according to the specific nature of each profession.

3. Evaluation questions

In order to guide the analysis on the performance of the Services Directive, the following evaluation questions have been used:

Effectiveness:

1. How effective have the different provisions of the Services Directive related to freedom to provide services and freedom of establishment been in order to remove regulatory obstacles for service providers that want to go cross border?
2. Has there been a uniform implementation of the Services Directive (regarding the removal of regulatory obstacles) across sectors, Member States and time? What are the factors influencing the implementation of the Services directive?
3. How well have the other provisions of the Services Directive related to administrative simplification and administrative cooperation been put in practice by Member States and how/to what extent do they contribute to reaching the objectives set by the Services Directive?
4. Overall, how effective has the Services Directive been in generating increased GDP growth for the overall EU economy?

Efficiency:

5. To what extent are the costs proportionate to the benefits achieved?

Coherence:

6. Can the Services Directive be considered as (still) coherent with other EU instruments and policies? Is it coherent internally?

Relevance:

7. Can the Services Directive (still) be considered to be relevant?

EU added value:

8. Can the Services Directive be considered as (still) having added value compared to what could be achieved by Member States at national level?

4. Methodology

The Commission as well as external researchers have carried out a range of studies since the introduction of the Services Directive to assess its implementation and impact . In addition, the European Court of Auditors carried out an analysis on the implementation of the Services Directive in 2016.[153]

The Commission also undertook several stakeholder consultations over the past years to investigate the experience and views of service providers regarding remaining obstacles to

[153] Special report No 5/2016, "Has the Commission ensured effective implementation of the Services Directive?"

cross-border service activities. This includes 9 workshops across the EU to hear from stakeholders regarding the barriers they face in the services Single Market (2014/2015) as well as the public consultation that was held in the context of this impact assessment (2016).

This annex presents the critical assessment of the Commission of this available evidence. Section 5 presents an overview of the different analyses and stakeholder consultations carried out regarding the implementation/state of play of the Services Directive. On this basis, section 6 provides replies to the evaluation questions outlined above. It focuses on the sectors which may are being considered for the initiative and does not cover in full detail other sectors which may be subject to other specific initiatives such as retail.

5. Implementation/state of play

A number of studies have been carried out to measure the implementation of the Services Directive implementation. Two periods can be distinguished. First, implementation by Member States over the period since the introduction of the Services Directive until end-2011 led to an important number of reforms across many Member States. Second, reform progress by Member States over the period 2012 to 2015 has been much less intense. Both periods (and supporting evidence) will be discussed separately below. Then, more detailed evidence on the current situation regarding remaining obstacles in key services sectors will be described as well.

5.1 Implementation until end-2011

Several studies/analyses were carried out to understand how Member States have transposed the Services Directive by 2009 and further implemented it until end-2011. These also looked into the economic impact of these reforms.

Mutual evaluation (2010)[154] and report on the implementation of the Services Directive (2012)[155]

The first major exercise to analyse the implementation of the Services Directive was the 2010 mutual evaluation process. This was an evidence-based process of 'peer review' foreseen in Article 39 of the Services Directive to assess the state of the internal market for services after implementation of the Directive. In addition, as a follow-up to the mutual evaluation process the Commission published in 2012 updated information on the implementation of the Services Directive by Member States.

Both reports showed that the transposition of the Services Directive led to an important modernisation of national legislative frameworks for the services sectors covered. Many reforms were adopted in most Member States to abolish barriers or reduce their restrictiveness. At the same time, implementation progress differed significantly across the different provisions of the Services Directive as well as different services sectors.

[154] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52011SC0102
[155] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52012SC0148

Table 1 gives an overview of several important provisions/articles of the Services Directive where (relatively) good implementation progress was reported in the 2010 mutual evaluation and 2012 report on the implementation of the Services Directive.

Table 1 – SD articles with good implementation progress

Services Directive provision	Description
Nationwide validity of authorisation (Art. 10(4))	This provision was implemented by several Member States either through a horizontal law (e.g., IT, ES) or through sector-specific legislation providing for automatic recognition or the possibility of recognition of authorisations obtained in another part of the territory (e.g., AT, DE).
Requirements based on nationality or residence (Art. 14(1))	Member States were active in removing requirements based on nationality or residence which are clear violations of EU law (such obstacles were for example removed in ES, NL, AT, BG, PL, RO, AT, IT and FR).
Requirements on an economic needs test (Art. 14(5))	These requirements were in force in national legislation relating to the retail sector. They were removed in several Member States (such as BE, FR, LU, IT, NL, ES).
Requirements on the direct or indirect involvement of competing operators (Art. 14(6))	Several of these obstacles were removed, mainly in the retail sector (for example in ES and FR).
Requirements to obtain a financial guarantee /insurance in the host Member State (Art. 14(7))	Such obstacles have been removed in sectors such as tourism, business services and construction (for example in EL and PT).
Quantitative and territorial restrictions (Art. 15(2)(a))	As a consequence of the Directive's implementation, several quantitative or territorial restrictions were abolished or amended (for example in EL, IT, ES, PT, LU, AT, FR).
Bans on having more than one establishment (Article 15(2)(e))	Only a limited number of such requirements were reported to have been maintained and only by few Member States. Several bans on having more than one establishment have been abolished as Member States considered them to be disproportionate (e.g., in AT and IT).
Requirements to have a minimum number of employees (Article 15(2)(f))	Following implementation of the Services Directive, a number of these requirements were abolished or made less stringent because they have been found unjustified or disproportionate (e.g., in ES, PT, SI, DE).
Tariffs (Article 15(2)(g))	The mutual evaluation process and 2012 report revealed that they are relatively widely used. The discussion with Member States confirmed that the imposition of tariffs is generally perceived as a severe restriction on service providers, which impedes them from competing on price and/or on quality. A number of Member States however decided to reform or abolish tariffs in certain services sectors (e.g., BE, BG, DE, EL, IE, IT, HU, MT, RO, ES).
Obligations on service providers to supply other	Were shown not to be very common. After the implementation of the Services Directive, even fewer

specific services jointly with their services (Article 15(2)(h))	restrictions remain. Reforms were adopted by a number of Member States in this regard (e.g., IT, ES, FR, AT).

At the same time, the mutual evaluation and the 2012 report also reported that on a number of provisions limited progress had been made. Table 2 gives an overview of such articles where only a limited number of Member States carried out reforms to implement them.

Table 2 – SD articles with limited implementation progress

Services Directive provision	**Description**
Administrative simplification (Art. 7, 8)	The 2012 report on the implementation of the Services Directive highlighted that the establishment of PSCs posed a huge challenge to Member States. A first in-depth analysis[156] was carried out on the functioning and usability of the PSCs. It concluded that most PSCs do not yet comply with the Services Directive in legal and regulatory terms. As a result, the Points of Single Contact had not yet led to a simplification in administration in terms for providing temporary cross-border services or setting up a business. At the same time, there were significant differences highlighted between Member States' Points of Single Contact with regard to the availability and quality of electronic procedures. The gap between the high performing Points of Single Contact and the low performing was considered to be important with major differences across the portals with regard to the strengths and weaknesses of each portal.
Authorisation schemes (Art. 9)	As a result of the implementation of the Services Directive some Member States reduced the scope of authorisation schemes and replaced, for certain services, authorisations by measures such as declarations (such changes were for example introduced in SK, MT, BG, CY, IT, HU, ES, EL). At the same time, numerous authorisation schemes remained in place across many Member States and services sectors.
Mutual recognition – equivalence assessment (Article 10(3)	Transposition of the Services Directive brought the general principle of mutual recognition to home Member States internal law. However, sector-specific rules to implement the principle have remained scarce in legislative terms across practically all Member States, as has administrative implementation.
Legal form requirements (Article 15(2)(b))	These were notified by many Member States for a large variety of different services. Some progress was achieved during the implementation of the Services Directive (e.g., through reforms in BE, DK, PT, PL, IT and FR). However, it was clear that considerable restrictions remain. These concern important parts of the services sector and include services with a significant cross-border growth potential. The discussion during the mutual evaluation confirmed that legal form requirements are stringent

[156] https://ec.europa.eu/growth/single-market/services/services-directive/in-practice/contact/index_en.htm

	obstacles for the internal market, which are particularly burdensome for service providers from other Member States, where different legal forms are made available.
Shareholding requirements (Article 15(2)(c)	As a result of the implementation of the Directive, a number of requirements were amended (e.g., through reforms in LU, ES and FR). In most cases, the percentage of capital that may be held by third parties was raised. Nevertheless, a considerable number of restrictions remain, in particular in the area of the business services. The discussion during the mutual evaluation confirmed that shareholding requirements can be very burdensome on service providers, in particular providers from other Member States, which may need to change their ownership structure in order to be able to exercise an activity in another Member State. The justification of such shareholding rules was questioned by several Member States in the context of the mutual evaluation.
Insurance requirements (Art. 23)	Were highlighted during the mutual evaluation process as an issue creating significant problems for the cross border provision of services in sectors such as business services or construction. Limited reform progress took place.
Restrictions on multidisciplinary activities (Article 25)	Were also shown to differ significantly across Member States. In general however restrictions on multidisciplinary activities exist in many Member States. Following implementation of the Services Directive, only a few Member States abolished or relaxed certain restrictions on multidisciplinary activities as they were found to be unjustified or disproportionate (e.g., CY, FR, PL). Nevertheless, significant restrictions on multidisciplinary activities persisted. The discussion in the context of the mutual evaluation confirmed that such requirements severely restrict innovative business models. Some Member States considered that authorisation schemes and rules of professional ethics are sufficient to ensure independence or impartiality (any violation could be sanctioned by a posteriori control).
Tacit approval (Art. 13(4)	Most Member States introduced the principle of tacit approval in their horizontal legislation implementing the Services Directive. However, in practice it has often had little effect on sector-specific rules or procedures, which still require an express decision from competent authorities.
Freedom to provide (temporary cross-border) services clause (Art. 16)	Several Member State laid down a horizontal general rule that requirements applicable to established providers are, in principle, not imposed on temporary cross-border service providers unless a law specifically provides for their application to cross-border services. A few Member States have relied solely on varying degrees of amendment to existing (sector) legislation. Regarding the horizontal approach, the discussion showed that often there was still a lot of legal uncertainty for service providers as in many Member States sector-specific legislation would generally prevail over the free movement clause introduced by the horizontal law. In practice this means that, unless sector-specific legislation is expressly amended, the free movement clause would not be effective and cross-border service providers would, in principle, have to comply

	with the same requirements as providers wishing to establish.

The mutual evaluation and 2012 report on the implementation of the Services Directive also made clear that there are large differences in implementation progress across different services sectors. In some services sectors, relatively good progress was reported:

- Retail. An important number of changes were made in the retail sector as a result of implementing the Services Directive, because some of the existing requirements were considered discriminatory, unjustified or disproportionate. Some authorisation schemes were abolished and many were modified. For example, some economic needs tests were abolished, thresholds for the application of authorisation schemes were raised, criteria were clarified and procedures were accelerated and simplified.
- Tourism. The implementation of the Services Directive resulted in a considerable number of legislative amendments, the most significant ones being those affecting travel agencies and tourist guides. Many Member States have abolished requirements that they considered unjustified or disproportionate. Nevertheless, difficulties for service providers to exploit the internal market potential of this sector seem to remain. This seems to be the case, in particular, as regards the cross-border services provisions of travel agencies/travel agents and tourist guides.
- Real estate. Many of the rules on establishment and on temporary cross-border services were changed during implementation of the Services Directive.

In other services sectors, little progress was reported:

- Construction. Both the mutual evaluation and the 2012 report showed that very different situations exist in different Member States as regards the level of regulation, the type of regulatory tools in force and the categories of construction activities regulated. Nevertheless, little reform progress was carried out since the introduction of the Services Directive and the construction sector remained heavily regulated. Most requirements are controlled through authorisation schemes. In some cases, cross-cutting authorisation schemes affect the whole construction sector. In other cases, authorisations are for specific activities, such as supervision and inspection, or activities presenting a danger to the environment. Discussion during the mutual evaluation also showed that service providers have difficulty obtaining reasonably priced insurance cover for cross-border services.
- Business services. Both the mutual evaluation and the 2012 report showed that there is a large divergence within the business services sector. Some services are lightly regulated. Others are subject to stricter regulation. Also, for certain business services (mostly regulated professions) the level of regulation differs considerably between the Member States, from no/very light regulation to major restrictions to the freedom of establishment and to provide services. Implementation of the Services Directive led to certain changes but overall a heavy regulatory environment remained across certain services and many Member States.

Public consultation on the mutual evaluation (2010)[157]

In the context of the mutual evaluation, the Commission also carried out a public consultation to obtain feedback from consumers, businesses and any other interested parties as to their assessment of national measures implementing some specific parts of the Services Directive. The following stakeholder feedback was obtained through this consultation:

- A significant number of respondents considered that several Member States did not proceed to a proper proportionality analysis when deciding to maintain certain authorisation schemes. In general, several respondents considered that too many different licences exist, sometimes for rather simple activities (e.g. in the construction sector);
- Respondents considered that several requirements covered by Article 15 of the Directive have been maintained without being justified or proportionate. For example, legal form and shareholding requirements were reflected by a number of replies as being serious obstacles to freedom of establishment;
- Some respondents expressed general concerns over the correct implementation of the Services Directive in respect of cross-border provision of services (Art. 16). Many replies raised specific examples of requirements applicable to cross-border provision of services which are perceived by the respondents as unjustified or disproportionate;
- Insurance obligations were mentioned by several replies as obstacles to cross-border provision of services. The respondents considered that insurance can be very costly or impossible to obtain by service providers from other Member States;
- Some respondents highlighted problems outside the scope of the Services Directive as well. Declarations that cross-border service providers need to submit, were raised by several respondents as being a serious obstacle. In general, professional associations and chambers of commerce mentioned declarations and other formalities required in respect of posting of workers as a difficulty. Comments which were often linked with a call for further administrative simplification in general.

Economic impact of the Services Directive until end-2011 **(2012)**[158]

In 2012, the Commission carried out a study to assess the economic impact of the Services Directive taking into account the way it had been implemented across Member States until the end of 2011. This was a significant step forward compared to previous studies which estimated theoretical impacts of the Directive assuming a homogeneous implementation across countries and sectors (sometimes full elimination of barriers), while the reality showed a considerable heterogeneity in the degree of implementation across countries. The study estimated the economic effects of the reduction or elimination of a number of obstacles across 15 services sectors and all Member States. It concluded that:

- The estimated impact of the actual implementation of the Services Directive from its introduction until end-2011 on GDP is a 0.8% increase at EU level (to materialise over

[157] http://ec.europa.eu/DocsRoom/documents/9975
[158] http://ec.europa.eu/economy_finance/publications/economic_paper/2012/ecp456_en.htm

5 to 10 years), with a dispersion across countries whose GDP impact ranges from below 0.3% to more than 1.5%. In addition, trade and FDI flows in services sectors will increase as a result of barrier reduction (7% for trade and 4% for FDI, both at EU level);

- Additional gains could be reaped, still within the scope of the Directive, if Member States would reduce their remaining sectoral barriers to the average level of sectoral barriers in the EU. Under this not very demanding scenario the EU-level GDP effect would amount to a 1.2% increase in total (i.e. additional 0.4 percentage points of GDP relative to the impact of already achieved barrier reduction);
- A more ambitious effort under which Member States move towards the level of restrictions of the five best countries per sector[159] would bring additional gains of up to 1.8% of GDP (on top of the 0.8%).

Considering this significant untapped growth potential, the Commission, the European Parliament and the Council in 2012 all called for a more ambitious implementation of the Services Directive.

5.2 Implementation since 2012

***Staff working document to the Single Market Strategy (2015)[160] and Economic impact of the Services Directive from 2012 to 2014* (2015)[161]**

In 2015, the Commission carried out an update of the above 2012 study on the economic impact of the Services Directive to estimate how much of the remaining potential for GDP growth (1.8%) has been realised by Member State reforms over the period 2012-2014.

It was found that reform effort across Member States during this period has been uneven, with reforms mainly having taken place in Member States subject to financial assistance programmes or implementing comprehensive national reform programmes. The three Member States where most services barriers have been abolished or partially reduced over the period 2012-2014 are Greece, Italy and Portugal. Beyond those countries, only few Member States have made important reform progress. Several Member States have not undertaken any reforms to abolish or reduce regulatory barriers in the services sectors covered by the Services Directive over the period 2012-2014. This is despite the fact that some of them received Country-Specific Recommendations adopted by the EU Council under the European Semester.[162] In some isolated cases, previously achieved reforms have even been reversed.

The limited reform progress in 2012-2014 can in some cases be explained by the fact that previous reforms already led to lighter regulatory regimes, leaving less scope for further reforms in some cases. This is for example the case in countries such as the UK, Sweden or the Netherlands. In other cases, however, there has been little reform progress despite the fact

[159] This scenario is close to the full elimination of barriers across most sectors.
[160] http://ec.europa.eu/DocsRoom/documents/14012?locale=nl
[161] http://ec.europa.eu/DocsRoom/documents/13327/attachments/1/translations/en/renditions/native
[162] Country-Specific Recommendations covering services reforms have been issued in 2012-2014 to: Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Hungary, Italy, Poland, Slovenia, and Spain.

that important barriers continue to exist. This is notably the case for Member States to whom services reforms have been recommended by the EU Council under the European Semester.

With only limited additional national reform efforts in 2012-2014, the economic effects of these changes are bound to be limited. Only 0.1% out of the 1.8% EU GDP growth potential that the Commission estimated in 2012 is estimated to have been realised over the period 2012-2014. As a result, 1.7% of EU GDP growth potential remains unexploited to date.

Stakeholder workshops and consultation (2014)

In cooperation with the Member States, the Commission in 2014 organised 9 workshops across Europe to hear from stakeholders the barriers they faced in the services Single Market. Over 300 business and business organisations participated in the events. In addition, the Commission conducted two questionnaires on barriers to the Single Market in services. Together 293 answers were submitted by stakeholders, mostly SMEs (81%). The feedback obtained from service providers participating in the survey confirms that many obstacles remain for services providers, for example:

- 79% companies have encountered problems with registration, authorisations and licenses when providing cross-border services (temporarily or through secondary establishment). As such, requirements can be complicated, lengthy and costly to comply with, deterring service providers from going cross-border and forming an obstacle to greater cross-border trade and investment, particularly by SME.
- More than 30 % of companies providing services cross-border which responded to the Commission questionnaire reported that existing rules on the posting of workers constituted a barrier. The problems related to posting of workers were raised principally by companies active in the construction sector, but also frequently by business services companies. Stakeholders reported burdensome administrative requirements for the posted workers related to the necessary paperwork, registration obligations and fees charged in the context of these procedures.
- The requirement to purchase a particular type of insurance created problems for companies. In some cases, multiple insurance policies were required, causing administrative difficulties and high costs. Companies reported difficulties with the fact that different Member States required different types of professional indemnity insurance, and in some cases the required insurance presented a very high cost or was difficult to obtain. Some professionals found it difficult to have their existing insurance recognised by the authorities in other countries;
- The variation of legal form and shareholding requirements across Member States was considered to be a barrier, both to cross-border provision and to establishment.

5.3 More detailed evidence on remaining obstacles today

The above shows that the Services Directive has been successful in removing certain (regulatory) obstacles, mostly during the period 2009 to end-2011. At the same time, there are a number of important sectors (mainly business services and construction) as well as provisions of the Services Directive where implementation has been lacking. Over the last years, the Commission reviewed these sectors and obstacles in a more detailed way.

Business services – Study on the economic impact of barriers in business services (2015)[163] and peer review on legal form and shareholding requirements (2013)[164]

One of the sectors where many obstacles to cross border activities still remain is business services. The Commission carried out an analysis in 2015 to understand the economic impact of remaining obstacles in 4 key business services sectors (accountants, architects, engineers and lawyers). This analysis drew the following conclusions:

- Despite the introduction of the Services Directive, the level of barriers in these 4 sectors still varies greatly between Member States and sectors. Barriers in the least restrictive Member State amount to merely 7% of the barriers in the most restrictive Member State. The differences are of similar magnitude within the sector assessed, with the exception of the legal profession which faces significant barriers in almost all Member States.
- Member States with more restrictive barrier levels have on average a lower number of new service providers entering their markets in each of the four sectors analysed.
- Member States with more restrictive barriers have on average higher profit rates in each of the four business services sectors analysed.
- Member States with higher barrier levels have a less efficient flow of resources to their most productive use, which has a negative impact on overall productivity in these sectors.

In short, the analysis undertaken confirmed that reducing barrier levels in the four services sectors assessed would generate more intensive competition as a result of more firms entering the market. It would also lead to benefits for consumers in terms of lower prices as a result of reduced profit rates. Finally, the analysis confirmed that lower barriers would lead to more performant sectors characterised by a stronger allocative efficiency.

Barriers which have been shown since the start of the Services Directive implementation to be particularly important for business services are legal form or shareholding requirements. In this context Member States took place in a peer review in 2013 specifically to discuss these requirements. A number of conclusions were drawn from this analysis, including:

- A large group of Member States imposes such requirements on service providers. Since the adoption of the Services Directive, limited reforms in this area took place. A few Member States abolished their legal form or shareholding requirements. Some other Member States, while keeping legal form and shareholding requirements, extended the choice of legal forms available to professionals and/or reduced the scope and/or intensity of shareholding requirements, though usually maintaining the obligation for professionals to hold a controlling stake.
- The peer review discussions showed that it is often unclear how precisely legal form and shareholding requirements are necessary to meet the stated public interest objectives. Some Member States impose none of these restrictions, be it that they

[163] http://ec.europa.eu/DocsRoom/documents/13328/attachments/1/translations/en/renditions/native
[164] http://ec.europa.eu/DocsRoom/documents/14964/attachments/1/translations/en/renditions/native

consider that the independence of the professionals is not essential to the performance of that activity or that they ensure independence by other means, like rules of conduct or rules on incompatibility.

- While Member States screened their legislations as part of the 2010 Mutual Evaluation and several relaxed their rules, the peer review showed that they do not seem to have carried out a thorough proportionality assessment of legal form and shareholding requirements.

Construction - Simplification and mutual recognition in the construction sector under the Services Directive (2015)[165]

Another sector where many obstacles to cross border activities still remain is construction services. The Commission carried out an in-depth mapping in 2015 to understand remaining obstacles in this sector. The main objective of this study was to determine whether Member States make full use of the principles of administrative and regulatory simplification, including by way of mutual recognition, as part of their relevant authorisation schemes for construction service providers. This analysis drew the following conclusions:

- There is considerable room for simplification of procedures imposed on cross-border service providers of construction services, in terms of establishment and those offering temporary cross border services.
- Horizontal authorisation schemes (where they exist) have little or no impact in simplifying subsequent building control procedures and operate as barriers to service provision.
- Building permits are also in need of considerable simplification. They apply unevenly to categories of works across Member States. Declarations and self-certifications are generally not used by building permit procedures. Non-site specific issues are often controlled repeatedly for each building project. Alternative procedures and the exemptions available should be expanded upon to cover a greater variety of works.
- A common element for both horizontal authorisation schemes and building permits seems to be the lack of clear mutual recognition principles and procedures. For example, a cross-border service provider is forced to restructure its approach to service provision when going cross-border, even temporarily. Or it must adapt to new requirements, in view of technical and professional capacity requirements, and associated certifications, that are imposed whilst disregarding arrangements previously complied with in a home Member State, often to comply with similar requirements there. Health and safety service structures have to be set up irrespective of home Member State facilities and resources. Technical standards which are not performance based may be more difficult to comply with and may require the advisory inputs of local professionals. Insurance coverage needs to be purchased locally, on top of every other previously acquired across Member States.

165 http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=8657&lang=en&title=Study%3A-Simplification-and-mutual-recognition-in-the-construction-sector-under-the-Services-Directive

- From an administrative burden perspective regarding both horizontal authorisation schemes and building permits, a number of issues have been identified such as: e-procedures are only partially adopted; evidentiary requirements are too stringent, with little room for simple declarations and self-certifications; certified and authenticated copies are still required, and sometimes need to be produced in the host Member State; in some cases, fees are disproportionate to costs; and tacit approval is not a widely adopted practice, even for horizontal authorisation schemes and building permits not controlling zoning aspects.

Insurance – Staff working document on access to insurance for services provided in another Member State (2014)[166] and public consultation on insurance (2013)

Since the introduction of the Services Directive, stakeholders have indicated that access to insurance continues to be an important obstacle to cross-border activities. In this context, the Commission undertook an in-depth analysis of insurance requirements and their consequences in 2014. In addition, in 2013, the Commission services also engaged with stakeholders through a public consultation to better understand whether the market itself offers sufficient solutions to make the Services Directive work in practice in respect of insurance obligations. The following conclusions were drawn from these analyses:

- Many SMEs and professionals continue to find it hard to obtain insurance cover for more than their country of establishment;
- Member States take a very heterogeneous approach as regards insurance obligations and access to insurance for provision of services;
- It seems that Member States have, in many instances, simply carried over the insurance requirements they had in place before the Directive entered into force, without sufficiently assessing them in the light of the conditions set by Article 23(1) of the Services Directive;
- The Services Directive foresees an equivalence rule for insurance policies issued in other Member States (as per Article 23(2) of the Services Directive). Nevertheless, while this rule as such was transposed in national law, in most cases Member States did not offer practical tools for ensuring that such equivalence could work in daily cross-border context. Thus, no approach exists on the comparability and equivalence assessment of insurance cover from other Member States,
- The insurance market focuses on domestic needs and solutions are only available where there are economies of scale for major companies as regards their needs for global insurance cover;
- There is a need for more systematic, comparable and consistent information on the insurance obligations imposed by Member States in the ambit of the Services Directive;
- Insurance policies are not always sufficiently clear as regards potential geographical restrictions of the insurance cover in order to enable service providers to communicate this to their clients.

[166] http://ec.europa.eu/DocsRoom/documents/15037/attachments/1/translations/en/renditions/native

Administrative simplification – The Performance of the Points of Single Contact: an assessment against the PSC Charter (2015)[167]

A recent assessment of the performance of the Points of Single Contact in the 28 EU Member States showed that while some progress was made, performance is still mediocre with considerable room for improvement. In general and across Member States, PSC performance is clearly the weakest when it comes to offering information and e-procedures to cross-border users. The assessment showed that companies that want to go cross-border face important linguistic and technical problems in completing administrative requirements online. Often only rudimentary information is provided in English or other foreign languages and online forms are merely available in local languages. Only the general business registration can be done fully online in more than 50% of the PSCs. For the more specific requirements (including sector specific requirements), greater in number and complexity, the PSCs still often only offer general information about the procedure or no information at all and few or no e-procedures.

Administrative cooperation

The Commission regularly publishes statistics on the number of information exchanges between Member States in the area of the Services Directive.[168] These statistics show the following trends:

- There is currently very little exchange of information between different Member States in the area of the Services Directive. There is, for example, much more exchange of information between Member States in other areas such as posting of workers or professional qualifications. In addition, whereas in the areas of professional qualifications or posting there is a positive evolution over time in the amount of information exchange (indicative of Member States developing more regular contacts) the activity levels regarding the Services Directive remain surprisingly stable;
- In addition, the use of the IMI system for exchange of information on incoming service providers is very uneven across Member States. In fact, during 2015, 22 Member States requested less than 10 times other Member States to supply information on an incoming service provider. 8 Member States even did not request any information at all. A similar picture can be seen for the year 2014.

As a result, the objectives of the system of administrative cooperation as set out in the Services Directive are not being met. There is currently little exchange of information between Member States regarding cross-border service providers. In the long run, more day-to-day cooperation between Member States would contribute to enhancing trust in each other's regulatory and supervision systems. The current lack of information exchange shows that Member States are not interested in knowing the situation of the service provider in its home Member State or other information that can be provided by the competent authority in

[167] http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=8342
[168] http://ec.europa.eu/internal_market/imi-net/statistics/index_en.htm

the home Member State, such as applicable rules there. Exchanges to prepare joint supervisions in a cross-border context have been practically non-existent.

6. Evaluation of the Services Directive functioning

This section will provide answers to the different evaluation questions highlighted in section 3 on the basis of the evidence described above.

Effectiveness

1. How effective have the different provisions of the Services Directive related to freedom to provide services and freedom of establishment been in order to remove regulatory obstacles for service providers that want to go cross border?

The above shows that the Services Directive has so far been only partially able to remove certain regulatory obstacles. Particularly important regulatory obstacles where so far little progress has been achieved are:

- Authorisation schemes (Art. 9): despite a considerable reduction in the number of authorisation and registration requirements following the entry into force of the Services Directive, numerous requirements remain in place across many Member States. Several Member States impose authorisation schemes on companies who wish to open a secondary establishment or to provide temporary cross-border services. These authorisation schemes are often disproportionately burdensome and largely repetitive for companies incorporated elsewhere;
- Restrictions on companies as regards their legal form, their shareholding structure, the allocation of voting rights, management positions and multidisciplinary activities (Art. 15 and 25): these are still present in a large range of Member States, in particular in some business services sectors. Although some of these rules are meant to protect the independence of the professionals, these requirements are serious obstacles for the establishment of service providers from other Member States, because such restrictions might oblige them to change their legal form, structure or business model.
- Insurance requirements (Art. 23): professional indemnity insurance as compulsory insurance aims to cover risks related to professional liability of service providers and thus to function as a guarantee towards clients for the quality of services covered. Nevertheless, such insurance may become an impediment to the proper functioning of the Single Market in services, both as regards secondary establishment and temporary cross-border services. Particular problem remain unaddressed in relation to lack of equivalence assessments by host Member States, lack of transparency regarding insurance coverage and disproportionate costs for service providers going cross-border to obtain the required insurance coverage;
- Mutual recognition (Art. 10(3)): Transposition of the Services Directive brought the general principle of mutual recognition to home Member States internal law. However, sector-specific rules to implement the principle have remained scarce in

legislative terms across practically all Member States, as has administrative implementation;

- Freedom to provide (temporary cross-border) services clause (Art. 16): there is still a lot of legal uncertainty for service providers as to which rules apply when they provide services cross-border on a temporary basis.

The above is also confirmed by a 2016 report of the European Court of Auditors[169] which highlighted that important regulatory obstacles are still in place and overall the implementation of the Services Directive has only been partially effective so far.

2. Has there been a uniform implementation of the Services Directive (regarding the removal of regulatory obstacles) across sectors, Member States and time? What are the factors that are influencing the implementation of the Services directive?

A significant number of reforms took place in the first years of implementation which has resulted in the removal of an important amount of obstacles. This has happened across most Member States. Nevertheless, in the last years reform progress has slowed down. Since 2012, reform effort across Member States has been uneven, with reforms mainly having taken place in Member States subject to financial assistance programmes or implementing comprehensive national reform programmes. Several Member States have not undertaken any or very little reforms to abolish or reduce regulatory barriers in the services sectors covered by the Services Directive over the period 2012-2014.

Significant progress has been achieved in some services sectors (e.g. tourism services). However, there are some key services sectors (such as business services and construction) where a number of important regulatory barriers remain.[170] This has been confirmed also by the public consultation carried out in the context of this impact assessment. Regarding business services, more than 60% of respondents consider regulatory obstacles as still important today. For example, more than 40% consider legal form requirements as an obstacle and about 30% consider shareholding restrictions as a barrier to cross-border activities.

In view of these remaining regulatory obstacles the Commission has been pursuing an active enforcement policy including in the most recent years. For example, about 40 EU pilots have been launched in relation to compliance issues with Art. 14, 15, 16 and 25 of the Directive. This includes, for example, the recent enforcement action against unjustified or disproportionate legal form, shareholding, management and multidisciplinary restrictions. In addition, the Commission also issued over several years country specific recommendations related to these issues. These were however not implemented by Member States or only to a limited extent.

This lack of progress in Member States' reforms to remove or reduce barriers in these sectors can be explained by a number of elements. In general, the current situation is characterised by a lack of common trust, as a result of which Member States continue to impose their domestic

[169] Special report No 5/2016, "Has the Commission ensured effective implementation of the Services Directive?"
[170] These priorities were also highlighted in the 2014 work plan for reporting on national reforms in services markets (http://ec.europa.eu/DocsRoom/documents/15036/attachments/1/translations/en/renditions/native)

requirements on incoming service providers with little or no regard to the regulatory framework already imposed on the service provider in their home country. In addition, business services and construction are typically sectors where there are strong vested interests often defending a status quo of the current rules.

3. How well have the other provisions of the Services Directive related to administrative simplification and administrative cooperation been put in practice by Member States and how/to what extent do they contribute to reaching the objectives set by the Services Directive?

In general, both provisions can only be considered as implemented by Member States to a limited extent. First, implementation progress of the different provisions related to **administrative simplification** has in several cases been limited. Performance of the PSCs in many Member States is still weak as they do not offer adequate solutions for service providers going cross-border. In general, the provisions of the Services Directive related to administrative simplification set general principles but are however not enforceable by the Commission when it comes to achieving administrative simplification in individual cases.

In practice, service providers still face significant administrative burden when going abroad:

- Service providers often need to complete an extensive number of different procedures when going cross-border. The service provider needs to contact these authorities separately often leading to re-submission of the same information.
- To provide services in other territories service providers often have to submit a range of supporting documents. Often these documents are not in the possession of the service provider and need to be requested from different authorities in its home Member States;
- Sector specific procedures can in most cases not be completed electronically. They often still require a physical visit to an office or sending forms by post, for example to the professional chamber involved;
- For many procedures that service providers face when going cross-border it is unclear by when they will receive a decision (positive or negative) regarding their application for an authorisation.

These obstacles of an administrative nature are in practice dissuading service providers from going cross-border. This has been confirmed by the public consultation carried out in the context of this impact assessment. Regarding business services as well as construction services, more than 60% of respondents consider administrative barriers as an important challenge when going cross-border.[171]

[171] For example, regarding business services the lack of electronic options to complete procedures in the host Member State is seen as an obstacle by almost 1 out of 3 respondents, as well as the need to contact several authorities separately in the host Member State, identified by nearly 40%. Translation requirements are seen an obstacle for 1 out of 3 respondents. Regarding construction, almost 60% of respondents indicated the need to contact several authorities as another important problem and more than 40% highlighted the length and complexity of the procedures as problematic.

Second, regarding **administrative cooperation** the Services Directive obliges Member States to assist each other and to exchange information whenever this is necessary to ensure a proper enforcement of applicable rules. In addition, the Internal Market Information (IMI) to allow for such cooperation has been set up and is managed and funded by the Commission. In practice however, Member States are not using these possibilities. They are seemingly not interested in knowing the situation of the service provider in its home Member State or other information that can be provided by the competent authority in the home Member State. Therefore, the objectives of the system of administrative cooperation as set out in the Services Directive are not being met. This despite of the fact that most public authorities replying to the public consultation highlighted that they find the IMI system efficient to use. .

In March 2014[172], the Commission highlighted this problem publicly and subsequently reminded Member States of the issue in the expert group on the implementation of the Services Directive. No change has however been seen since. This issue is also clearly emphasized by stakeholders who responded to the public consultation. 55% of respondents active in business services indicated that ensuring close cooperation between the home and host Member State should be addressed; 61% of them active in construction services indicated so as well.

Limited progress related to the provisions on administrative simplification and administrative cooperation has also been highlighted by the European Court of Auditors.[173]

4. Overall, how effective has the Services Directive been in generating increased GDP growth for the overall EU economy?

Over the first years of implementation, the Services Directive has been shown to generate additional trade, cross-border investment and GDP growth. The estimated impact of the actual implementation of the Services Directive until end-2011 on GDP is a 0.8% increase at EU level. Nevertheless, only 0.1% of additional growth has been captured over the period 2012-2014 due to the slower reform progress by Member States highlighted above.

1.7% of EU GDP growth potential remains unexploited to date. In general, the provisions and sectors where the least amount of progress has been achieved have remained unchanged since end-2011 until today. This conclusion of unexploited potential of the Services Directive is also confirmed by external research carried out by for example the IMF[174] or the EP[175].

Efficiency

5. To what extent are the costs proportionate to the benefits achieved?

The Services Directive does not generate any direct costs for service providers. It does however generate some costs for public authorities. This mostly relates to setting up and managing the points of single contact and to a lesser extent the system of administrative

[172] See Commission Staff Working Document (SWD (2014) 131 final, page 6
[173] Special report No 5/2016, "Has the Commission ensured effective implementation of the Services Directive?"
[174] https://www.imf.org/external/pubs/ft/wp/2014/wp14113.pdf
[175] http://www.europarl.europa.eu/EPRS/EPRS_STUDY_536354_CoNE_Single_Market_II.pdf

cooperation. There are no details available on the costs that Member States have incurred related to these provisions. At the same time, both the PSCs and the system of administrative cooperation are only partially functioning today as highlighted above. Therefore, these provisions can be considered as partially efficient at best.

Coherence

6. Can the Services Directive be considered as (still) coherent with other EU instruments and policies? Is it coherent internally?

To what extent is the intervention coherent with other interventions with similar objectives?

There are other interventions which also aim to enhance free movement of services. The one most closely related to the Services Directive is the 2005 Professional Qualifications Directive[176] (PQD, amended in 2013) which regulates the mutual recognition of professional qualifications.

The PQD applies to all Member State nationals wishing to practise a regulated profession, on either a self-employed or employed basis, in a Member State other than the one in which they obtained their professional qualifications. While the PQD covers the recognition of professional qualifications and other closely linked requirements under national legislation restricting access to a profession, the Services Directive deals with questions other than those relating to professional qualifications (for example professional liability insurance, multidisciplinary activities and administrative simplification, corporate structure requirements, etc.).

The Directives cross-refer one to each other in several instances. Consistency in the definitions is, for example, ensured through specific cross-references to PQD definitions within the Services Directive such as the definition of a regulated profession.

In addition, initiatives have been undertaken to better align both instruments. These include the 2011 evaluation of the 2005 PQD Directive which identified several areas where the coherence and interaction between both Directives could be enhanced. For example, it noted that the obligations for Member States to exchange information had to be reinforced similarly to the alert system existing under the Services Directive. Also, it highlighted that the points of single contact established under the Services Directive should be used for the purposes of the PQD. Such changes have been introduced in the amended PQD Directive, which, for instance, requires Member States to ensure that certain information is available online and regularly updated through the points of single contact and that all requirements, procedures and formalities relating to matters covered by the PQD may be easily completed, remotely and by electronic means.

[176] 2005/36/EC (PQD)

Overall, both Directives can be considered to complement each other whilst covering different aspects of the free movement of professionals. Stakeholders[177] also do not point to major inconsistencies among the objectives of both instruments. The performance checks done by the Commission in 2011 came to a similar conclusion. The obstacles that exist today in relation to the Services Directive and the PQD (affecting free movement of services) are not so much caused by of a lack of coherence between both instruments but rather by an incomplete or incorrect implementation of the existing rules by Member States.

To what extent is the intervention coherent with wider EU policy?

One of the 10 political priorities put forward by the Juncker Commission is to enable a deeper and fairer Internal Market. This includes completing the internal market in services, making it a launch pad for our companies to thrive in the global economy while at the same time ensuring a fair internal market with less abuse or circumvention of rules. Furthermore, one of the pillars of the Investment Plan for Europe consists in further reinforcing the Single Market by creating the optimal framework conditions for investment in Europe.

The Single Market Strategy[178] highlighted the fact that the Single Market needs to be revived and modernised in a way that improves the functioning of the markets for products and services and guarantees appropriate protection for people. It is made up of targeted actions in three key areas: (1) creating opportunities for consumers, professionals and businesses; (2) encouraging and enabling the modernisation and innovation that Europe needs; (3) ensuring practical delivery that benefits consumers and businesses in their daily lives.

A better implementation of the Services Directive would remove remaining obstacles for service providers, creating more opportunities for professionals and business to go abroad. The intervention remains therefore coherent with wider EU policy.

Relevance

7.	Can the Services Directive be considered as (still) relevant?

The original objectives of the different provisions of the Services Directive that are described in section 1.2.2 were to increase cross-border trade and investment in the services sectors covered and overall to stimulate growth in the EU. The main problem drivers to cross-border integration identified during the initial analysis in preparation of the Services Directive included regulatory obstacles, administrative burden faced by service providers and lack of cooperation between national authorities.

First, analysis shows that the reforms undertaken by Member States to implement the Services Directive have indeed made a positive contribution to trade, investment and growth. At the same time there is also evidence showing that a large potential for growth remains to be

[177] See for example evidence obtained in the context of the fitness check for construction services (final report forthcoming)

[178] http://ec.europa.eu/DocsRoom/documents?locale=en&tags=single-market-strategy-2015-communication

exploited (as described above). This is particularly relevant in those services sectors where cross-border trade and cross-border investment have remained low. This is the case in important sectors such as several business services as well as the construction sector. Research has shown that more integrated markets in these sectors would entail important positive effects such as increased competitiveness and benefits for consumers. The objectives to increase cross-border trade and investment and stimulate growth remain therefore relevant today.

Second, the problem drivers to cross-border integration identified during the initial analysis in preparation of the Services Directive (including regulatory obstacles, administrative burden and lack of cooperation between national authorities) have also been addressed only partially by Member States' implementation of the Services Directive. Furthermore, it seems that despite the remaining potential reforms by Member State to implement the Services Directive have slowed down recently. Service providers in several services sectors still complain about administrative complexity as an obstacles when going cross-border. This concerns not only lack of information about applicable rules but also complexity of procedures and formalities, a lack of electronic procedures and unclear deadlines and multiple fees. In addition, although many regulatory obstacles were removed in the first years after the introduction of the Services Directive, service providers still face a number of stringent regulatory obstacles when going cross-border in particular in sectors such as business services and construction (as described above). Finally, provisions on administrative cooperation between Member States are currently hardly implemented by Member States. In the long run, more day-to-day cooperation between Member States would contribute to enhancing trust in each other's legal and administrative systems.

In conclusion, the above evidence shows that the different provisions of the Services Directive still offer potential, in particular in services sectors such as business services and construction, provided measures to ensure a proper and ambitious implementation take place. The original objectives and identified problem drivers remain therefore relevant even though implementation process by Member States has been limited over recent years.

EU Value added

8. Can the Services Directive be considered as (still) having added value compared to what could be achieved by Member States at national level?

The original aim of the Services Directive was to eliminate obstacles to the freedom of establishment for service providers and the free movement of services. The positive changes that took place as a result of the Services Directive were described in the effectiveness assessment above. There is sufficient reason to believe that these changes would not have taken place without action at EU level.

First, the Services Directive addresses issues which have a clear cross-border dimension. EU level action has created legal certainty for service providers going cross-border, who can now rely on the existence of a framework governing rules on cross-border service activities

throughout the Single Market, regardless of the Member States involved. Although Member States continue to impose divergent requirements on service providers from other Member States, this fragmentation would have been more severe without the introduction of the common rules of the Services Directive.

In addition, the situation before the introduction of the Services Directive[179] showed that a large number of economically significant Internal Market barriers to services were not being addressed by Member States. Even though Member States had agreed to remove obstacles to free movement of services[180], little progress was made in practice. In addition, in the absence of agreement on a common and co-ordinated approach at EU level individual action by Member States would have been likely to result in further fragmentation of the legal framework. This was for example also supported by the Competitiveness Council of November 2002, which concluded that it was clear that unilateral action by Member States was unlikely to yield sufficient results by 2010.

In conclusion, action at EU level has been creating clear added value given the cross-border nature of the issues being addressed, the resulting legal certainty for service providers and the ineffectiveness of individual Member States' actions.

The above is also confirmed by stakeholder feedback obtained through the public consultation. In general, stakeholders confirm that policy action aimed at achieving a better implementation of the Services Directive still has important potential. For example, regarding administrative barriers respondents considered that the impact of policy action to better implement the Services Directive would be positive, especially for saving costs of service providers (70%), increasing cross-border service provision (68%) and increasing choice for consumers (55%).

7. Conclusions

On the basis of the analysis presented above, the following conclusions can be drawn in relation to the assessed provisions of the Services Directive.

The provisions of the Services Directive in scope of this evaluation can be considered to have been only **partially effective** until today. First, service providers in key services sectors (such as business services and construction) still face an important number of regulatory barriers (including insurance requirements). This is mainly due to incomplete implementation by Member States and the fact that over the last years reform progress has even slowed down. As a result, the regulatory environment across Member States is still highly divergent in these sectors.[181] Second, service providers still face significant administrative burden and costs when going cross-border.[182] Thirdly, the system of administrative cooperation between

[179] See for example the 2002 Commission report on "The State of the Internal Market for Services"
[180] For example at the 2000 Lisbon European Council
[181] See problem drivers 3 and 4 of the main impact assessment
[182] See problem driver 1 of the main impact assessment

Member States is currently not working in practice.[183] Member States are currently not cooperating when it comes to cross-border service providers. The current situation is characterised by a lack of common trust, as a result of which Member States continue to impose their domestic requirements on service providers established in other Member States with little or no regard to the regulatory framework already imposed on the service provider in their home country.

A limited number of provisions in scope of this evaluation required direct investments by Member States (Points of Single Contact and administrative cooperation). There is no detailed data available on the costs that Member States incurred to implement these provisions. At the same time, performance of the PSCs leaves much room for improvement and very little administrative cooperation between Member States has taken place over the last years. These provisions can therefore be considered as only **partially efficient** at most. The main reason for this conclusion is lacking of implementation by Member States of the requirements to set up fully functioning PSCs and ensure active administrative cooperation regarding cross-border service providers.

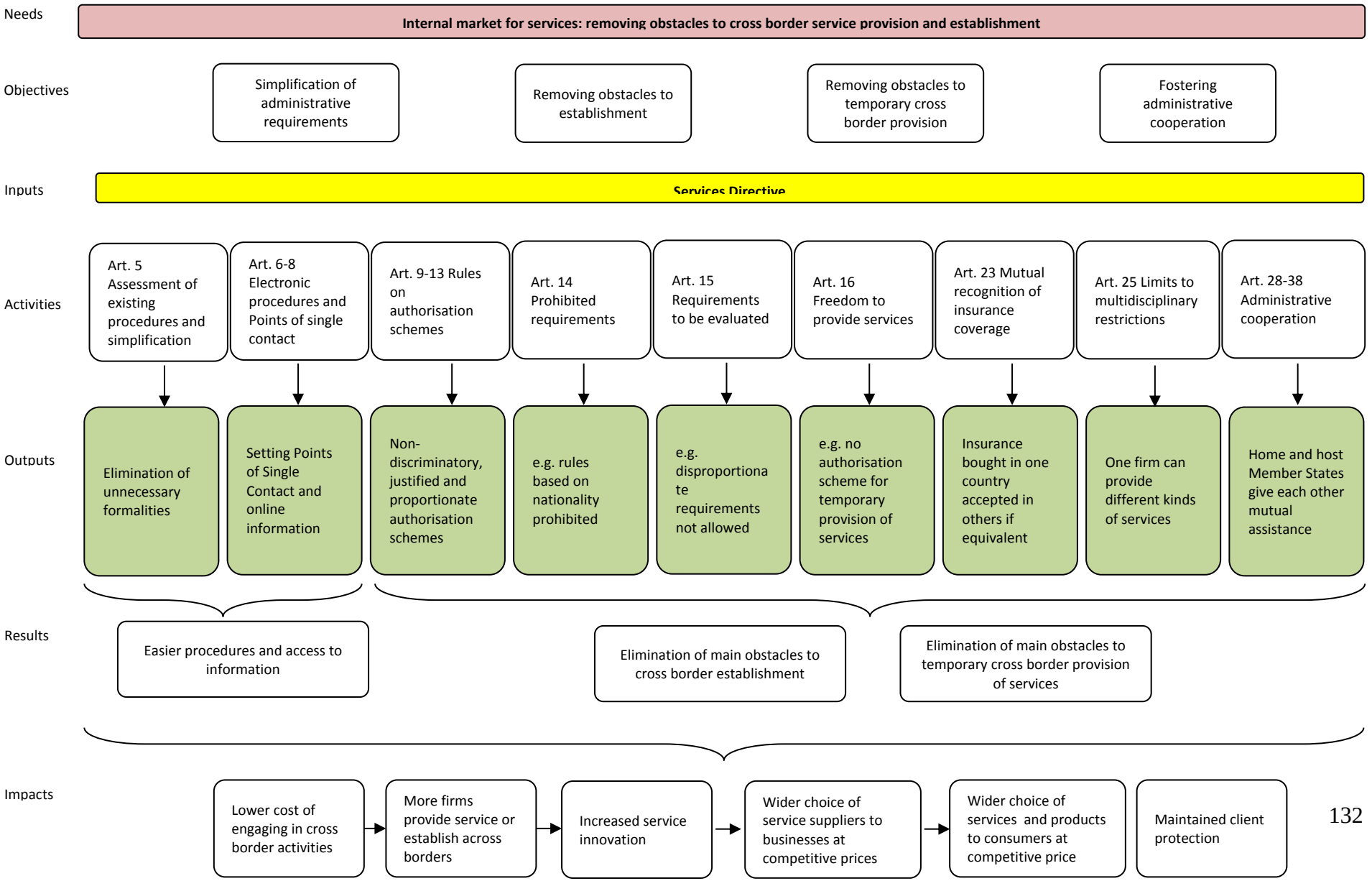
There are **no major coherence issues** with other instruments aimed at improving the single market for services (such as the professional qualifications directive). Internal coherence of Service Directive's provisions presents challenges, but they are surmountable through proper implementation. In addition, the Services Directive remains coherent today with wider EU policy such as the Single Market Strategy.

The provisions discussed still offer important potential, in particular in sectors such as business services and construction. The original objectives and identified problem drivers at the basis of the Services Directive are **still relevant today**.

Finally, the Services Directive has been creating **clear added value** given the cross-border nature of the issues being addressed and the resulting increased legal certainty for service providers.

[183] See problem driver 2 of the main impact assessment

Annex – Services Directive intervention logic



Annex 5: Problem definition

1. Additional evidence on "what is the problem?"

- **Surveys on export participation**

Different surveys have enquired about export participation of EU SMEs. For example, a 2014 Commission report[184] based on a large survey among EU SMEs showed that export participation of service providers in general is much lower than that of manufacturers and that export participation differs significantly across different services sectors. Only 5% of SMEs providing construction services are estimated to participate in export activities, compared to 33% across all sectors (and for example 19% in financial services, 36% in transport, 36% in wholesale trade and 52% in manufacturing). It also shows that 27% of SMEs in the business services participate in export without however making a further distinction between different business services sectors.

National research shows similar results. For example, the 2016 UK Small Business Survey[185] showed that only 2% of UK SMEs providing construction services have sold services outside the UK over the last 12 months, compared to for example 38% in information and communication services and over 40% in manufacturing. On business services the survey shows significant differences between individual business services sectors. For example, export participation in advertising/market research (50%) and computer programming/consultancy (44%) is much higher than export participation in sectors such as architecture/engineering (27%).

- **Choice of expansion channels**

Several business services and the construction sector are currently characterised by levels of cross-border trade and cross-border investment which are significantly below that of other services sectors. This shows that even though service providers in these sectors have different channels available to them for expanding their activities to other Member States none of them are used in practice or only to a limited extent

Historically, it has been assumed that for many services sectors more resource-intensive entry modes such as Foreign Direct Investment are the preferred option for internationalisation given that service provision depends heavily on client interactions and customisation. This is particularly the case for information-intensive services. However, information and communication technology have increasingly made different types of services more tradable across borders. While customer interaction can still be needed at some stages of the service delivery process, it is no longer required for others (such as support or analysis functions). Overall, for many services cross-border expansion is possible today also with less resource-intensive entry modes.[186] As a result, a service provider that wants to expand activities across

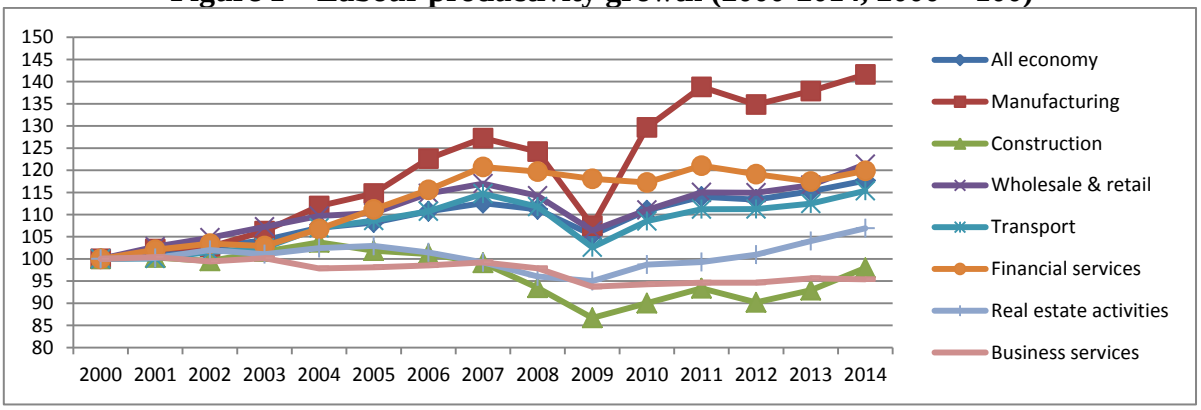
[184] European Competitiveness Report, Drivers of SME internationalisation, 2014
[185] BIS, Longitudinal Small Business Survey Year 1 (2015): SME employers, 2016
[186] D. Ball, V. Lindsay, E. Rose, Rethinking the paradigm of service internationalisation: less resource-intensive market entry modes for information-intensive soft services, 2008

borders in order to increase and diversify its sources of revenue has a choice of different market entry modes ranging from exporting to establishing a permanent presence abroad. It is therefore important to consider both trade and investment as possible channels for cross-border expansion when analysing levels of market integration.

- **Evolution labour productivity in services sectors**

Figure 1 shows the evolution of labour productivity for a number of large sectors of the EU economy since 2000. It is clear that most services sectors have achieved modest but positive productivity growth, even though being outperformed by the manufacturing sector. At the same time, some services sectors have not followed this trend, with no or even negative productivity growth over the last 15 years. This is the case in particular for business services and construction. Given the economic size of both sectors (together they represent about 18% of EU GDP), this is an issue of concern.

Figure 1 – Labour productivity growth (2000-2014, 2000 = 100)



Source: Eurostat

- **Economic potential of further market integration**

There is strong evidence showing that fostering the completion of the single market in services facilitates higher productivity growth. Companies that go cross-border show on average higher turnover and employment growth as well as stronger innovation activity[187]. This benefits both home and host Member States. In addition, more cross-border competition increases pressure on incumbent service providers to innovate and become more productive in order to differentiate themselves from new (foreign) competitors. This includes adapting their services to better respond to the consumer preferences on the market.

In general, the economic potential of a more integrated single market for services to create growth and jobs has been highlighted in several studies and reports by the Commission, other EU institutions, researchers and Member States[188]. A recent Commission study[189] for example showed that a more integrated market for a number of services sectors through a better implementation of the Services Directive would lead to 1.7% EU GDP growth. It is

[187] European Competitiveness Report, Drivers of SME internationalisation, 2014
[188] See for example European Added Value Unit, The Cost of Non-Europe in the Single Market for services, 2014
[189] European Commission, Update of the 2012 study on the economic impact of the Services Directive, 2015

striking that sectors such as business services and construction, where market integration is in general low, are also facing important challenges of competitiveness.

- **Spill-over effects to other sectors**

On the one hand, services industries are customers or users of other sectors' inputs – backward linkages. On the other hand, services industries also serve as suppliers or inputs into the production process of other sectors – forward linkages. Industrial clients are a major source of income for several services sectors. The increasing forward and backward linkages are part of the trend of blurring borders between services and manufacturing. This is in particular the case for business services which constitute key inputs into the manufacturing sector which plays an important "carrier" role given that an important share of the value of manufacturing output produced embodies value added created in services. For example, the business services sector accounts for more than 12% of the value of manufactured exports in the EU[190]. Several studies have also shown positive economic effects of reforms in business services (such as architects, engineers and accountants) on downstream sectors such as the manufacturing sector.[191] In other words, the performance of industrial clients suffers if "their" service providers are not performing well.

This interaction between business services and manufacturing is particularly important in the context of the evolution of both sectors in terms of economic importance and specialisation patterns[192]. Whereas the share of manufacturing in EU GDP declined in the last 20 years, the share of business services strongly increased. However, some Member States (such as Germany, Austria and Czech Republic) have maintained a strong orientation towards manufacturing, whereas others (such as the UK and the Netherlands) have increasingly specialised in service activities. In other words, a specialisation trend has been ongoing with the emergence of manufacturing and business services clusters. This indicates that the share of imported services in manufacturing production is likely to become more important and underlines the need for a proper functioning single market not only for goods but especially also for services.

2. Additional evidence on the identified problem drivers

- **Other problem drivers not in scope of the initiative**

There are several other drivers that are not directly in scope of this initiative which potentially influence differences in market integration between services sectors (although certain synergies could be explored). Firstly, there are a number of regulatory obstacles to cross-border activities that will not be considered in the scope of this impact assessment. This includes for example regulatory disparities arising from different tax regimes, criminal law, competition law, general company law, labour and social security laws or any operational restrictions that service providers face after entering the market (e.g., periodic reporting

[190] OECD, Trade in Value Added
[191] See for example IWP, Services Liberalisation in Germany – Overview and the potential of deregulation, 2015
[192] ECSIP, Study on the relation between industry and services in terms of productivity and value creation, 2014

obligations, rules on consumer safety, tariff and advertising restrictions). For most of these issues, the Commission is already undertaking several initiatives to address them such as in the area of tax/VAT (including in the context of e-commerce such as the VAT MOSS initiative[193]) or different actions on company law that were announced also in the 2015 Single Market Strategy. For others, such as criminal and competition law, impact is focused on particular services sectors (with money laundering, financing of terrorism or human trafficking implications) or particular types of service providers (larger companies with dominant positions in the market and/or expanding cross-border through mergers and acquisitions) which are not the focus of this impact assessment. General company law presents harmonisation challenges which have an impact on companies in all sectors of the economy, going much beyond the services sector. Labour law and social security law are also the object of separate initiatives, as part of the labour mobility package. As for operational restrictions upon entering the market, each of them present particular problems and pursue specific policy objectives, largely detached from market entry barriers. Targeted action addressing these barriers, namely through enforcement action, is already underway.

This initiative may, however, address some of the administrative obstacles raised in the context of regulatory disparity in these other domains. This can certainly be the case for formalities already specifically governed by EU Law in force, such as posting formalities in the context of labour and social security law. Although this initiative does not aim at modifying the formalities stemming from EU law in those areas, there may be positive administrative simplification effects from this initiative on other formalities imposed under other rules of social security law, general company law or even tax law.

Secondly, there are other non-regulatory obstacles that can determine market integration. These include inherent characteristics of the sector. For example, sectors with larger average firm size are more likely to have stronger market integration given that these companies have more capacities to go cross-border in terms of financing, skills and managerial experience. Tradability of services is also often quoted as an important factor that still limits further market integration. Other elements that might play a role include drivers such as consumer preferences. It is important however to put these drivers into perspective. Reducing obstacles to cross-border activities will also give more companies opportunities to grow across the EU hereby changing the sector characteristics over time. Also, even though some services are still more easily traded across borders than others, ICT developments have been reducing this gap. In addition, setting up a local presence (instead of trading across borders) can offer an alternative channel of business expansion for service providers going cross-border. Finally, consumer preferences can play a role but previous studies have already shown that whether the service provider is domestic or not does not play a major role for most consumers when selecting a certain provider.[194]

[193] See http://europa.eu/rapid/press-release_IP-15-5719_en.htm
[194] European Commission, Barriers to trade in business services, 2001

2.1 Additional evidence on problem driver 1

- **Examples of administrative obstacles faced by service providers of business services**

Example 1 – Accounting services in Belgium

An accounting company that wants to set up a secondary establishment in Belgium needs to complete a range of different procedures. One of them concerns the application to become member of the Belgian professional chamber for accountants (Institute of Accounting professionals and Tax Experts) as a legal person. A description of the procedure can be found on the website of the professional chamber. The procedure and the forms are only available in the local languages. The service provider is required to complete an application form, providing a large amount of information including legal form, company name, statutory seat contact data, branch contact data, shareholder data (number of shares, number of voting rights), general business registration number, management data and management mandates/positions of managers in other legal persons. In addition, the service provider needs to include a range of supporting documents (including company statutes, copy of shareholding register and proof of insurance). These documents can be submitted only to the professional chamber by registered (postal) mail. In addition, the chamber can decide afterwards that the company needs to complete its application by submitting additional documents and/or invite representatives of the company for a hearing with the chamber before deciding on the application.

Example 2 – Architectural services in France

A service provider of architectural services that wants to set up a branch in France needs to undergo a range of procedures. One of them concerns the need to be registered with the chamber of architects. In order to obtain this registration, the service provider needs to submit a registration form together with a range of supporting documents (including for example original of the statutes of the company which must include the allocation of shares, signed and initialled by every associate). There is no electronic procedure available and the application needs to be posted by mail. Each document in a foreign language must be accompanied by a dated and certified translation into French (with a stamp of an official or sworn translator) which may not be older than one year. In addition, the service provider needs to pay a registration fee of 480 EUR (afterwards annual fees also need to be paid). The procedure takes up to two months from the date of the acknowledgement of receipt of the application with no tacit approval in the absence of a reply.

Example 3 – Architectural and engineering services in Italy

A service provider of architectural or engineering services is faced with multiple entry controls (before the professional chamber and the company register). These are meant to check legal establishment in the home Member State but also insurance coverage and corporate structure. If the service provider wants to set up a branch or agency, these controls serve to make the company a member of the professional chamber also. However, since

chamber membership does not seem to apply to temporary cross-border providers, it is unclear whether and how exactly do these control schemes apply to temporary cross-border providers.

In any case, an electronic procedure is not available. A range of documents needs to be submitted (on incorporation details, legal establishment in the home Member State and insurance coverage in the host Member State), in certified/authenticated format, accompanied by certified translations performed in Italy. The procedures take from 1 to 4 months to be completed and there is no tacit approval. Also, fees have to be paid.

Example 4 – Architectural and engineering services in Germany

A company providing architectural or engineering services is free to provide services in Germany without undergoing sector-specific controls. However, if the company wants to make use of the reserved titles ("Architekt", "Stadtplaner" or "Beratender Ingenieur") in its corporate name, it must undergo a complex authorisation scheme. This procedure is not available electronically. A range of documents needs to be submitted (on incorporation with specific details on controlling shareholders, managers and corporate purpose, legal establishment in the home Member State and insurance coverage in the host Member State), in certified/authenticated format, accompanied by certified translations. The procedures take 3 months to be completed. Also, fees amount to €500.

Example 5 – Interview with an English engineering company going cross-border to Spain[195]

A service provider of engineering services established in the UK wanted to set up a secondary establishment. It reported numerous complicated formalities and costs, including the following:

- The company spent an important amount of time on identification and familiarisation with the Spanish requirements;
- The company also had to collect different supporting documents from home country authorities as well as collect other data itself (for example on management and shareholders). This involved costs both in the form of internal staff time as well as fees paid to home country authorities to obtain the required evidence. Documents need to be delivered in person to the Spanish authorities;
- Given the complexity of the procedure the company used external advice services to help understand and comply with the different requirements, leading to further additional costs;
- The company had to look also for external translators to translate supporting documents into Spanish (representing additional costs also in the form of fees to be paid to the translator);

[195] In the context of an on-going study by the Commission, interviews with companies going cross-border were carried out.

- Finally, authorisation and registration fees had to be paid as well to the Spanish authorities.

In general, the process can be considered burdensome representing a cost for the service provider of up to 5,000 EUR.

Example 6 – Interview with a German engineering company going to Austria

A German provider of mechanical and electric engineering services that wanted to establish in Austria was forced to incorporate a subsidiary, since branches are currently not allowed. Furthermore several of its staff and managers needed to undergo special training and pass exams in order to acquire specific professional qualifications, as per Austrian Law. This included managers which are not involved in service performance in Austria. These regulatory obstacles also lead to significant administrative costs for the service provider, that could go up to 10,000 EUR and more.

- **Examples of administrative obstacles faced by service providers of construction services**

Table 1 in in appendix gives an overview of the most stringent authorisation requirements across Member States for the provision of construction services, either as a sector in general or in relation to a specific segment. (column "horizontal authorisation/notification schemes").

Example 1 – Construction services in Bulgaria

A provider of certain construction services that wants to set up a secondary establishment in Bulgaria needs to apply for an authorisation with the Bulgarian Construction Chamber. The application form for this authorisation is available only in Bulgarian. The service provider needs to submit an extensive range of documents such as an application form, four types of professional capacity documents, an equipment inventory, copies of insurance documents, a document of good repute, and three types of economic and financial capacity documents. Simple copies of documents are accepted but not simple translations which must be submitted in original format and certified by a translator registered in BG.

In temporary cross-border situations, a prior notification is required for each construction project. The application is available only in Bulgarian. The range of documents to be submitted is more limited than in establishment situations (proof of legal establishment in the home Member State, details of envisaged construction project, proof of professional and technical capacity) but still, while simple copies of documents are accepted, translations must be submitted in original format and certified by a translator registered in BG.

Example 2 – Construction services in Denmark

A provider of certain construction services (such as electrical and gas installations) that wants provide its services in Denmark (either establishing or on a temporary basis) needs to undergo several procedures, including an authorisation specific for legal persons. In the context of this authorisation procedure the company needs to provide evidence that it

operates an approved quality management system. Even if the company has undergone a similar control in its home Member State, it needs to obtain a certification from certification bodies in Denmark. The certification fees related to this are expensive and profit-driven. In addition, the certification scheme has no fixed period for decision and is subject to variation as to a large extent the completion of the procedure rests upon the applicant to introduce appropriate systems to demonstrate to the certification body full compliance with the requirements. As a result, this can delay access to the market considerably for the service provider and deter him from expanding operations cross-border.

- **Secondment of staff formalities**

As far as advance declarations concerning posted workers under the Enforcement Directive (Article 9) are concerned, administrative requirements vary significantly across Member States. For instance, access to the procedure for the prior notification of posted workers is rarely available via the national PSCs (e.g. DE, FR). Where an electronic procedure is available, registration in the relevant system is usually necessary in order to proceed, thus implying a separate registration for each Member State to which workers are posted. Declarations may be accepted in a foreign language(/s), usually English, however this does not necessarily meet the needs of SMEs coming from predominantly "sending" countries (Central-Eastern/Southern Europe), whose language(s) are not covered. For instance, major receiving countries including Belgium, France and Germany do not accept declarations in other languages than English, French or German. Finally, for some Member States, it is not that quick to confirm whether advance notifications are required or not. This is also linked to the ongoing implementation of the Enforcement Directive.

Finally, concerning advance declarations on professional qualifications (where applicable), fully online procedures are only offered in few Member States depending on the profession a hand (no online procedure for example for these sectors e.g. in BE, IE, LV and PT). Depending on Member State, the necessary administrative steps can be rather burdensome (e.g. BE, ES), such as bringing original documents or certified copies to a given building of a national authority and/or involving long timelines, up to several months. Furthermore, there are weaknesses in terms of access to information (and procedures, if any) via PSCs. All of this makes it challenging to get a full picture of procedural steps, document requirements, timelines and fees.

- **Existing research on the impact of administrative burden market dynamics**

A recent Commission study looked into the impact of red tape barriers.[196] It showed that the higher the level of red tape barriers, the lower entry dynamics (i.e. less new companies coming into the market). The study also made an attempt to estimate the potential impact of recent reforms in Portugal, Spain and Italy aimed at reducing administrative burden. This confirmed that these reforms fostered entry dynamics to a significant extent. For example, the study showed that as consequences of the changes in the cost of starting a business birth rates may increase from 6.7% to 7.2% in Italy and in Spain from 7.9% to 9.2%. In general, the

[196] European Commission, Business Dynamics and Red Tape Barriers, 2014

general policy conclusion that can be drawn from this work is that entry rates of companies in the EU have positively and robustly reacted to changes in administrative burden during the period 2004-2011.

2.2 Additional evidence on problem driver 2

- **Statistics on information exchange between Member States**

In addition to administrative cooperation under the Services Directive, the IMI system is also used for administrative cooperation under a number of other areas such as professional qualifications (Directive 2005/36/EC), posting of workers (Directive 96/71/EC) and patients' rights (Directive 2011/24/EU). Looking at statistics of exchange of information through IMI, it is clear that for issues governed by the Services Directive there is very little communication and cooperation between Member States (differently from posting of workers, where exchanges of information are substantial). This becomes especially clear when comparing these statistics to other areas for which IMI is used (figure 2). In addition, whereas in the areas of professional qualifications or posting there is a positive evolution in the amount of information exchange (indicative of Member States developing more regular contacts) the activity levels regarding the Services Directive remain surprisingly stable.

Figure 2 – IMI number of information exchanges

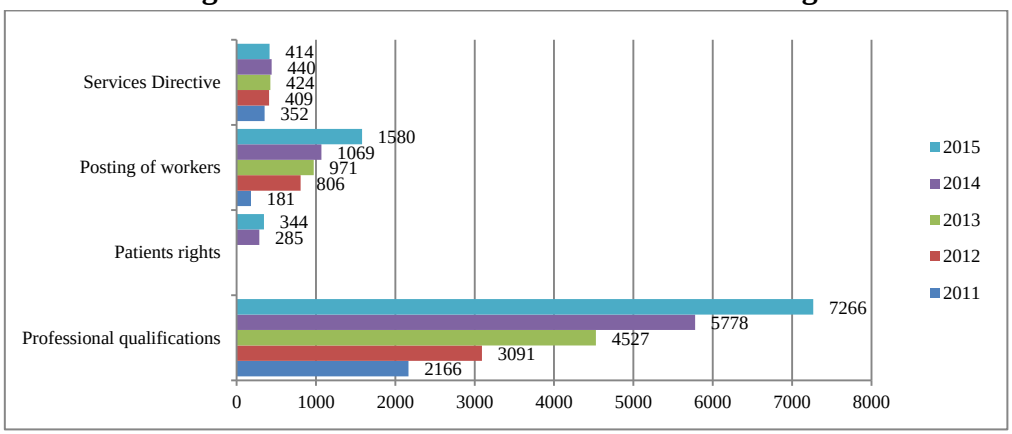
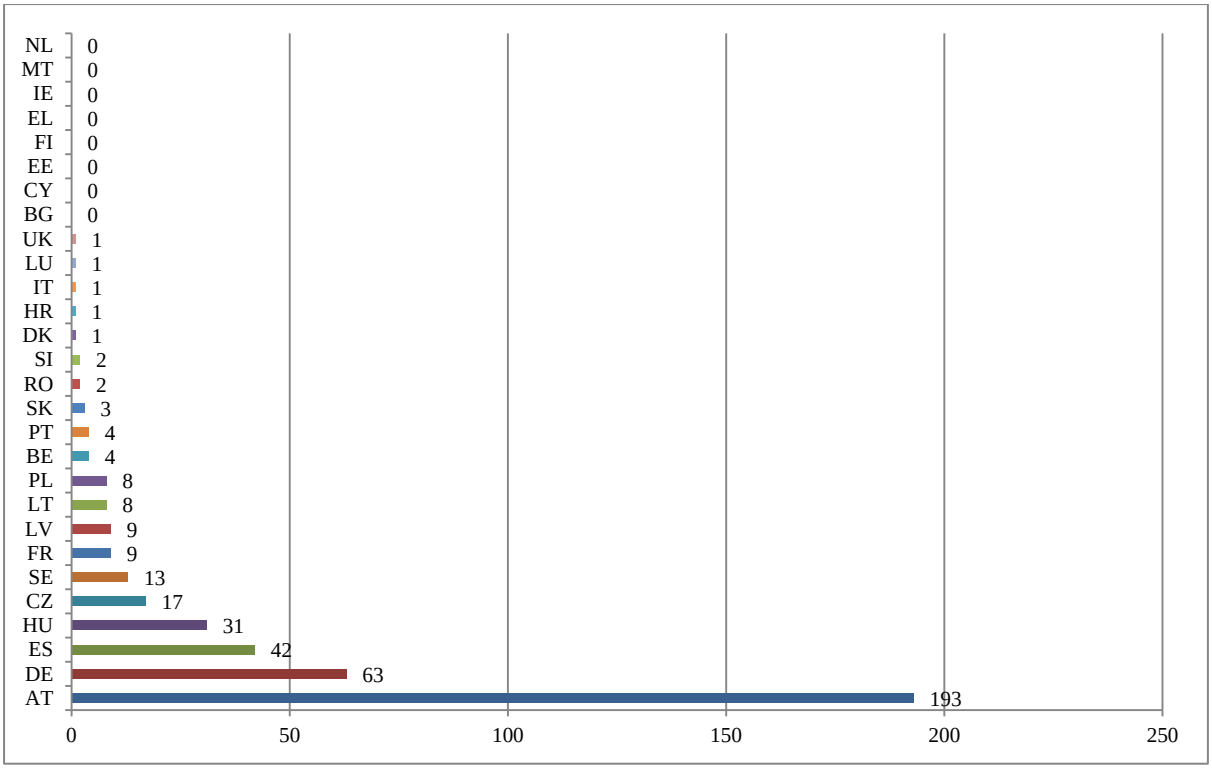


Figure 3 –Member States IMI requests of information under the SD (2015)



In the context of this impact assessment, it is also useful to look into the types of queries Member States have regarding incoming service providers (under the Services Directive).[197] IMI offers standardised questions that Member States can use to ask for information from other Member States. Table 1 gives an overview of the 10 most used questions. These are related to the legal establishment of the service provider in its home Member State as well as information on identification, good repute and solvency.

Table 1 – Top 10 questions Services Directive IMI (2015)

	Question	% of requests
1	Is the service provider entitled to exercise the activity of [XXX] in your Member State?	14,2%
2	Is [XXX] the correct business name of the service provider?	9,5%
3	Is this service provider lawfully established in your Member State?	9,3%
4	On the basis of information in your criminal register, has any (final) criminal sanction which is directly relevant to his/her competence or professional reliability been imposed on [XXX] (only in relation to measures which can no longer be challenged in the courts and which are still active against this person)?	8,8%
5	Does the [XXX] of the service provider correspond to the one that has been registered/is held by public authorities in your Member State?	8,1%

[197] Taking into account however that these IMI statistics, due to the low volume of administrative cooperation, are not fully representative. The statistics of the services requests predominantly reflect the needs and activity of the few competent authorities that actively use IMI for administrative cooperation.

6	Is the service provider: [XXX] registered in a debtors register, has he been declared insolvent/bankrupt in your Member State or has any insolvency/bankruptcy proceeding of the assets of the service provider been instituted (only if this is still active against this service provider, i.e. pending or actual insolvency)?	7,9%
7	Does the service provider, to your knowledge, exercise his activities in a lawful manner?	7,4%
8	Does the service provider effectively carry out/has he effectively carried out the activities of [XXX] from his establishment in your Member State? (Further information about the specific service provision [e.g. name, address of recipient, date when the service has been/will be provided etc.] is given below)	6,6%
9	Does the address: [XXX] of the service provider correspond to the one that has been registered/is held by public authorities in your Member State?	5,7%
10	Does the service provider effectively carry out his activities from his establishment in your Member State?	3,8%
	Other questions	18,8%

2.3 Additional evidence on problem driver 3

- **Identified professional indemnity insurance obligations in business services and construction**

Tables 2, 3 and 4 in appendix show an overview of insurance requirements per Member State for the business services sectors of accountants, architects and engineers. The ELIOS project has reported insurance requirements for construction services across all Member States (although in the UK as a market condition to access financing), as shown in Table 1 in appendix[198].

Some Member States maintain strict insurance requirements for all three **business services**. These are LT, PL, PT, IT and DE (in the latter case for auditors and tax advisors providing accounting services).

Several Member States have strict requirements in place for architects and engineers (SI, LU, HR, CZ, CY and BG). FR and BE have strict requirements in place for accountants and architects. SK has requirements in place for architects and engineers, but these are less restrictive than in other Member States because it has both a clause and a procedure in place to provide for the mutual recognition of insurances obtained in another Member State. SE and EL have no insurance requirements in their regulations.

Regarding **construction services**[199], there is also a large diversity of national liability regimes which in turn results in very diverse insurance coverage obligations across Member States. Accruing to this diversity, the insurance coverage obligations themselves differ across

[198] Available at http://www.elios-ec.eu/sites/default/files/pdf/Eliosspecialreporton27MemberStates.pdf
[199] See also Ecorys, "Simplification and mutual recognition in the construction sector under the Services Directive", 2015

Member States in terms of geographical, temporal coverage, insured risks in particular, insured sum and exclusions from the cover. Although policy objectives are to a large extent similar, each Member State chooses each or even all types of liability and their respective mandatory insurance coverage conditions in particular terms, differently from all other Member States, in order to secure the quality and safety of construction services and thus the protection of service recipients, third parties and society in general.

- **Implementation of Art. 23 by Member States**

Regarding business services, in those Member States where insurance is mandatory, there is usually a mutual recognition clause in place, based on Article 23 of the Services Directive. In most cases, however, there is no clear procedure or guidelines for the assessment of equivalence of insurance policies issued in other Member States. In AT (accountants), BE (architects), FR (accountants & architects), LT (accountants, architects & engineers) and PL (accountants) no explicit equivalence rule has even been provided for.

For construction services, there is also an absence of specific mutual recognition procedures for assessing equivalence between coverages obtained in different Member States. As a result, stakeholders have confirmed that coverage obtained in a home Member State is largely disregarded when accessing a host Member State market. A whole new coverage, in accordance with host Member State requirements, needs to be obtained.

This assessment for construction services drew some of the data from another initiative in the construction sector - the ELIOS project[200]. Its aim was to facilitate access to insurance across borders by building contractors, especially the self-employed and small firms, in both secondary establishment and temporary cross-border services cases. The project team included leading general insurers as well as construction insurance specialists. The project had two phases: ELIOS I, completed in 2010, and ELIOS II, completed in 2015. Nevertheless, no concrete measures seem to have been taken so far as a follow up to the report. ELIOS suggested establishing a system of equivalence of insurance issued in different Member States but it also anticipates the limitations of such a solution if the regulatory diversity of national legislations[201] is not concurrently addressed. ELIOS also recommended the setting up a mediator (European Facilitator for access to construction insurance), aimed to assist cross-border construction service providers in collecting information and directing them to recognised insurance organisations.

2.4 Additional evidence on problem driver 4

- **Authorisation procedures – secondary establishment**

Despite a considerable reduction in the number of authorisation and registration requirements following the entry into force of the Services Directive, numerous requirements remain in place across many Member States. A mutual evaluation exercise undertaken in 2010 and 2011 concluded that overall there were around 4400 authorisation schemes and 225

[200] http://www.elios-ec.eu/
[201] For an overview of national liability and insurance systems in 27 EU Member States, see page 81 of the final report of ELIOS I (2010): http://www.elios-ec.eu/sites/default/files/pdf/Eliosfinalreportfullversion.pdf

multidisciplinary requirements in place across the EU and confirmed high regulatory activity on these issues.[202]

Tables 2, 3 and 4 in appendix give an overview of authorisation requirements across Member States for the business services sectors of accountants, architects and engineers (column "control schemes"). Authorisation schemes are required of accountancy firms in Austria, Belgium, France, Italy, Luxembourg, Portugal and Romania and of architectural firms and engineering firms in Austria, Belgium (only architectural firms), Bulgaria, Croatia, Cyprus, Czech Republic, France (only architectural firms), Germany, Italy, Luxembourg, Portugal, Slovakia, Slovenia and Spain, although in Germany and Portugal companies not bearing a reserved title are not subject to these requirements.

In some countries, such as Austria, Belgium, Cyprus, Germany, Luxembourg, Italy and Portugal an authorisation is even meant to award chamber membership to the company. In addition, not all fees related to chamber membership are calculated in compliance with Articles 13 of the Services Directive. For instance, in Italy, fees are reportedly calculated based on corporate turn-over, not on the costs incurred by the administration.

In the context of these authorisations, Member States often require information and documents of service providers instead of resorting to administrative cooperation, as explained above.

Much simpler authorisation schemes are put in place in some countries to control compliance with different, simpler conditions: an authorisation scheme controls compliance with involvement of professionals by architectural and engineering in the Netherlands in order for the professional title to be used in the corporate name. Insurance requirements are controlled in the same fashion in Lithuania.

Finally some Member States control those same sorts of conditions through mere prior notifications, meaning a company may start provision of services immediately upon submission of a declaration properly filled-in (examples include Greece and Latvia). This is a much less burdensome approach.

- **Authorisation procedures – temporary cross-border provision**

Regarding temporary provision of cross-border services, authorisation schemes are virtually impossible to justify under the Services Directive, given that prior legal establishment in a home Member State is a pre-condition to go cross-border but particularly given the limited link of the provider with the host Member State's jurisdiction. Article 16(2)(b) of the Services Directive lists such requirements as inadmissible, as a matter of principle. Any justification of such requirements, as indeed of any other, including prior notifications, must take place under overriding reasons of public policy, public health, public safety, protection of the

[202] Communication from the Commission to European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Towards a better functioning Single Market for services – building on the results of the mutual evaluation process of the Services Directive, 27.1.2011, COM(2011) 20 final.

environment and none other, and of course requirements must always be non-discriminatory (Article 16(1)(3) of the Services Directive).

As explained above, only few Member States have put in place specific rules for companies providing temporary cross-border professional services of this nature: for accountancy firms Belgium, France and Romania require a prior notification (see tables in appendix, column "control schemes"). For architectural and engineering services, Croatia, Cyprus and Luxembourg also require a prior notification, as does Belgium for architectural services. However, the underlying conditions which have to be proven by such declaration in advance are often unclear, as we mention below.

Much more unclear is the situation in those countries heavily regulating the sector but having no particular rules for temporary cross-border provision. For example, accountancy firms in Austria, Italy and Luxembourg as well as architectural firms and engineering firms in Austria, Bulgaria, France (only architectural firms), Italy, Slovakia and Slovenia do not specify clearly whether controls imposed on their professionals (natural persons) performing the services suffice when it is the company who provides the service. Portugal is clear in stating that controlling an incoming professional working for a company temporarily providing services in its territory is enough.

In Germany and Spain, certain requirements apply for the temporary provision of services through the so-called "professional" companies.

- **Restrictions on corporate form and shareholding/voting and management structures**

Several Member States impose restrictions on companies who want to open a secondary establishment as regards their legal form, their shareholding structure, the allocation of voting rights, management positions and multidisciplinary activities:

- Legal form restrictions allow for the provision of certain services by partnerships and sometimes by limited liability companies only. Other company types, including public limited liability companies, are not allowed in certain countries. A range of Member States imposes such requirements, thus not allowing for the recognition of companies incorporated under the laws of other Member States.
- Requirements for shareholding and voting rights to be held by qualified professionals are even more widespread. They often bar legal persons from holding shares and sometimes go beyond imposing a simple majority. In other cases, professionals (natural persons) owning shares or voting rights even need to be qualified in those respective countries or have undergone professional qualification recognition there.
- Requirements imposing management positions to be held by professionals are also common, requiring sometimes one manager to be a professional but more often that a majority or even all managers be professionals. Such requirements are also present in a range of different Member States.

Regarding secondary establishment, Article 14 of the Services Directive clearly forbids discriminatory requirements regarding legal form, shareholding/voting and management

positions. It also forces Member States to allow for a free choice between subsidiaries, branches and agencies. Article 15 of the Services Directive, in turn, requires Member States to assess and justify the existence of (other) requirements on legal form, shareholding/voting or management, on the basis of the principles on non-discrimination, necessity (i.e. justified by an overriding reason of public interest) and proportionality.

Tables 2, 3 and 4 in appendix give an overview of requirements on corporate form and shareholding/voting and management structures across Member States for the business services sectors of accountants, architects and engineers.

Requirements limiting the legal form of companies providing architectural or engineering services are still present for example in Austria, Belgium (for architectural services only), Cyprus and Czech Republic. Other countries such as Germany impose particular legal forms on companies, but only if they wish to bear a reserved title[203].

Shareholding and voting rights requirements are present in a large number of countries. For example, regarding accountancy firms these requirements are present in countries such as Belgium, France, Italy, Luxembourg and Romania. Regarding architectural or engineering firms, examples include Austria, Belgium (only architectural services), Bulgaria, Cyprus, Czech Republic, France (only architectural services), Italy, Slovakia and Slovenia. In some cases (including Austria, Bulgaria, Cyprus, Czech Republic, France, Romania, Slovakia and Slovenia), professionals (natural persons) owning shares or voting rights even need to be qualified in those respective countries or have undergone professional qualification recognition there. Other countries such as Germany impose shareholding and voting rights requirements on companies, but only if they wish to bear a reserved title. Sometimes legal persons are even barred from owning a (majority) stake in shares.

Countries such as Austria, Luxembourg and Cyprus also require managers of the company to be qualified in those respective countries. Non-discriminatory management requirements, i.e. a pre-determined number of managers required to be qualified as professionals anywhere in the EU are also present, for example in Portugal (for all three professions, although only to be able to use a reserved title), Belgium (for accountancy and architectural services) and France (for accountancy services).

Regarding temporary cross-border provision of services, the situation in these countries is often unclear. In those Member States imposing a mere notification in advance for temporary cross-border services, as mentioned above, it is perhaps fair to assume that such stringent requirements are not applicable. In the remaining Member States, legislation does not refer to this manner of service provision at all.

Portuguese and German legislation are clear in stating that these requirements apply only to those wishing to bear their respectively reserved titles, but Croat and Spanish legislation are not. In any case, as mentioned above, acquisition of a reserved title is much more important

[203] A "reserved title" of a company is a particular designation, or part thereof, which use is subject under Law to compliance with pre-defined requirements, barred from use by any other company not fulfilling those same requirements.

for establishment situations, since companies do not change their home Member State corporate name in the context of temporary provisions.

- **Restrictions on multidisciplinary activities**

Multidisciplinary restrictions forbidding joint exercise of certain professional activities may also prevent companies from other Member States from opening a secondary establishment or providing temporary cross-border services. Tables 2, 3 and 4 in appendix give an overview of multidisciplinary restrictions for architects, engineers and accountants across the Member States.

This type of restriction may occur whenever a company wishes to expand its activities to a Member State where two (or more) activities are deemed incompatible but their joint exercise is allowed in the home Member State: accountancy in Belgium is not allowed to be jointly provided with services such as insurance, broking, banking, crafts or trade. Legal services are banned for accountancy firms in Portugal, as is tax advice in Poland. Construction activities are banned for architectural and engineering services in Bulgaria.

Certainly some of these restrictions may be justifiable, in proportionate terms, for independence or impartiality reasons, as allowed by Article 25 of the Services Directive. But such rules should not dictate a total ban on cross-border expansion for companies, provided they comply with multidisciplinary restrictions regarding their operations in the territory where the restriction is in force, while keeping their corporate purpose in the home.

It is nevertheless far more stringent a restriction by which any other activity whatsoever is banned to providers of professional services. This is the case for accountancy in Luxembourg and Portugal (if a reserved title is used) and for architectural or engineering services in Austria, Belgium (architectural services only), Croatia (if a reserved title is used), Cyprus, Germany (if a reserved title is used), Greece and Luxembourg. In these cases, any company involved in any other activity in another Member State is banned from expanding its activities into the aforementioned Member States. Total bans such as these are not justifiable under Article 25 of the Services Directive, certainly in situations where access to a reserved title is not in question.

Appendix – Overview of requirements for construction and selected business services[204][205]

Table 1 – Construction services[206]

Type of restriction / Member State	*Horizontal[207] authorisation/ notification schemes (access to whole market and/or segments)*	*Insurance*
AT	Authorisation (whole market)	Yes
BE	Authorisation (whole market + separate authorisations for demolition with asbestos, certain drilling and alarm installation)	Yes - Work performance (completion) + Latent defects
BG	Authorisation (whole market) (estab) Notification (whole market) (temp)	Yes - Work performance + latent defects
HR	Authorisation, (whole market)	Yes
CY	Authorisation + Notification (whole market)	Yes
CZ		Yes
DK	Authorisation (Electrical, gas, sewerage)	Yes - Latent defects
DE		Yes - Work performance + latent defects

[204] Highlight colour indicates ongoing infringement procedure
[205] (estab) – requirement applicable to establishment situations; (estab with title) – requirement applicable to establishment situations in which the company/firm chooses to bear a reserved title, although bearing this title is not required to become legally established; (temp) – requirement applicable to temporary cross-border provision of services
[206] Partial information only – further collection of data ongoing
[207] As opposed to authorisation or notification schemes for on-site performance of services (e.g. building permits)

EE	Notifications (separate notifications for separate segments: Notification scheme is implemented on most construction services. Though, there is no universal notice providing access to all segments. Service providers must submit a notification concerning each specific segment before engaging in that segment.)	Yes
EL	Authorisation (design and supervision staff – whole market)	Yes
FI		Yes - Work performance (insolvency) + latent defects
FR		Yes - Work performance + latent defects + statutory liability (equipment)
HU	Notification, (whole market)	Yes
IE	Authorisation (whole market)	Yes - Work performance (insolvency) + latent defects
IT	Certificate undeclared work (exemption less than 3 months)	Yes - Work performance (insolvency) + latent defects
NL		Yes - Work performance (insolvency) + latent defects
LV	Authorisation, (specific segments: building construction, building water and sewerage, etc)	Yes - Latent defects
LT	Authorisation (for more complex building works) or Notification (for other works) (specific segments: building water and sewerage, gas or electrical installations, installing certain equipment to be incorporated in the building, once completed, such as air conditioning, lifts, etc.) Horizontal authorisation scheme is applicable to service providers only for building works in the most demanding class.)	Yes - Latent defects
LU	Authorisation (whole market)	Yes
MT		Yes
PL		Yes - Work performance + Latent defects
PT	Authorisations (whole market + separate for specific segments of telecom, gas, acclimatisation, lifts installation) (estab) Notifications (whole market + separate for specific segments of telecom, gas, acclimatisation, lifts installation) (temp)	Yes - Work performance + Latent defects (to be implemented)

RO		Yes
SK	Notification (whole market)	Yes
SI		Yes - Work performance + Latent defects (solidity)
SE		Yes - Work performance (completion) + Latent defects
ES	Authorisation (whole market) (exemption for less than 8 days)	Yes - Work performance + Latent defects
UK		Yes - Work performance (fraud and completion) + Latent defects (de facto, for financing purposes)

Table 2 - Architectural services

Type of restriction / Member State	*Registration and other control schemes for legal persons*	*Legal form*	*Shareholding and/or voting rights in professional hands*[208]	*Management in professional hands*[212]	*Multi Disciplinary restrictions for legal persons*	*Professional indemnity Insurance of legal persons*
AT	Chamber membership (estab)	Only legal form of types of companies available in AT are allowed + limited choice of AT legal forms (estab)	50% + 1 share must be owned by professionals qualified as per AT Law + no legal persons allowed as shareholders (estab)	Majority of managers must be professionals qualified as per AT Law + only shareholders can be managers (estab)	Only civil engineering services allowed	---------
BE	Chamber membership (estab with title) Authorisation (estab) Yearly notification (temp)	Only legal form of types of companies available in BE are allowed + limited choice of BE legal forms (estab with title) (estab)	60% shares (estab with title) or 50% + 1 shares (estab) must be owned by professionals qualified or companies established anywhere in the EU	100% of managers must be professionals qualified anywhere in the EU (estab)	Exclusivity (estab)	Yes
BG	Authorisation (estab)	----------	50% + 1 share must be owned by professionals qualified as per BG Law or companies established anywhere in the EU under majority control by professionals (estab)	----------	Several	Yes
HR	Chamber membership (estab with title)	----------	100% shares must be owned by professionals	100% of managers must be professionals	Only engineering services allowed	Yes

[208] The reference "qualified as per a Member State's Law" includes recognition of professional qualification procedures, put in place while transposing the Professional Qualifications Directive in the Member State in question but, in these cases, made to apply to situations not covered by that Directive.

	Authorisation (estab) Yearly notification (temp)		qualified (also as engineers) as per HR Law + no legal persons allowed as shareholders (estab with title)	qualified (also as engineers) as per HR Law (estab with title)	(estab with title)	
CY	Chamber membership (estab) Prior notification (temp)	Only legal form of types of companies available in CY are allowed + limited choice of CY legal forms (estab)	100% shares must be owned by professionals qualified (also as engineers) as per CY Law + no legal persons allowed as shareholders (estab)	100% of managers must be professionals qualified (also as engineers) as per CY Law (estab)	Only engineering services allowed (estab)	Yes (estab)
CZ	Authorisation (estab)	Only legal form of types of companies available in CZ are allowed + limited choice of CZ legal forms (estab)	100% shares or 50% + 1 share (depending on company type) must be owned by professionals qualified as per CZ Law + no legal persons allowed as shareholders (estab)	100% or majority of managers (depending on company type) must be professionals qualified as per CZ Law (estab)	Only engineering services allowed (estab)	Yes
DK	----------	----------	----------	----------	----------	----------
EE	----------	----------	----------	----------	----------	----------
FI	----------	----------	----------	----------	----------	----------
FR	Chamber membership (estab)	No tradesmen's forms of types of companies are allowed (estab)	50% shares must be owned by professionals qualified or companies established as per FR Law (estab)	50% of managers must be professionals qualified as per FR Law (estab)	----------	Yes
DE	Authorisation (estab with title)	Only legal form of types of companies available in DE are allowed + limited choice of DE legal forms (estab with title)	100% shares (50% of related professionals) must be owned by professionals qualified anywhere in the EU + no legal persons allowed as shareholders (estab with title)	50% of managers must be professionals qualified anywhere in the EU (estab with title)	Only related professional activities (estab with title)	Yes

EL	Notification within 6 months (estab)	----------	----------	----------	Only related professional activities	----------
HU	----------	----------	----------	----------	----------	----------
IE	Authorisation	----------	----------	1 executive manager must be a professional qualified anywhere in the EU	----------	Yes
IT	Chamber membership, Notification to company register (estab)	----------	2/3 of voting rights must be held by professionals qualified anywhere in the EU + no legal persons allowed as shareholders (estab)	----------	----------	Yes
LV	Prior notification (estab)	----------	----------	----------	----------	Yes
LT	Authorisation (estab)	----------	----------	----------	----------	Yes
LU	Chamber membership (estab) Prior notification (temp)	No companies with bearer or endorseable shares are allowed (estab)	----------	100% of managers must be professionals qualified as per LU Law (estab)	Only engineering services allowed (estab)	Yes
MT	----------	----------	----------	----------	----------	Yes
NL	Authorisation (estab with title)	----------	----------	----------	----------	----------
PL	----------	----------	----------	----------	----------	Yes
PT	Chamber membership (estab with title) Notification to chamber (estab)	----------	50% + 1 share must be owned by professionals qualified anywhere in the EU or companies	1 executive manager must be a professional qualified anywhere in the EU (estab with title)	Exclusivity (estab with title)	Yes (temp only if no insurance at home)

			established anywhere in the EU under majority control by professionals (estab with title)			
RO	----------	----------	----------	----------	----------	----------
SK	Authorisation	----------	50% + 1 share must be owned by professionals qualified as per SK Law + no legal persons allowed as shareholders (estab)	----------	----------	Yes
SI	Authorisation	----------	50% + 1 share must be owned by professionals qualified as per SI Law + no legal persons allowed as shareholders (estab)	----------	----------	Yes
ES	Authorisation	----------	50% + 1 share must be owned by professionals qualified anywhere in the EU or companies established anywhere in the EU (estab with title)	----------	----------	Yes (in many regions – in all ES for estab with title)
SE	----------	----------	----------	----------	----------	----------
UK	----------	----------	Controlling stake must be owned by a professional established in the UK (estab with title)	1 executive manager must be a professional established in the UK (estab with title)	----------	Yes (estab with title)

Table 3 - Civil, mechanical and electrical engineering services

Type of restriction / Member State (and specific service sector)	*Registration and other control schemes for legal persons*	*Legal form*	*Shareholding and/or voting rights in professional hands*[209]	*Management in professional hands*[213]	*Multi Disciplinary restrictions for legal persons*	*Professional indemnity Insurance of legal persons*
AT[210]	Chamber membership (estab)	Only legal form of types of companies available in AT are allowed + limited choice of AT legal forms (estab)	50% + 1 share must be owned by professionals qualified as per AT Law + no legal persons allowed as shareholders (estab)	Majority of managers must be professionals qualified as per AT Law + only shareholders can be managers (estab)	Only architectural services allowed	----------
BE	----------	----------	----------	----------	----------	----------
BG (civil engineering only)	Authorisation (estab)	----------	50% + 1 share must be owned by professionals qualified as per BG Law or companies established anywhere in the EU under majority control by professionals (estab)	----------	Several	Yes
HR[211]	Chamber membership	----------	75% shares must be owned by professionals	----------	Only architectural services allowed	Yes

[209] The reference "qualified as per a Member State's Law" includes recognition of professional qualification procedures, put in place while transposing the Professional Qualifications Directive in the Member State in question.
[210] The ongoing infringement procedure refers to civil engineering services only
[211] Information for mechanical and electrical engineering services not available

	(estab with title) Authorisation (estab) Yearly notification (temp)		qualified (also as professionals in construction) as per HR Law + no legal persons allowed as shareholders (estab)		(estab with title)	
CY	Chamber membership (estab) Prior notification (temp)	Only legal form of types of companies available in CY are allowed + limited choice of CY legal forms (estab)	100% shares must be owned by professionals qualified (also as architects) as per CY Law + no legal persons allowed as shareholders (estab)	100% of managers must be professionals qualified (also as architects) as per CY Law (estab)	Only architectural services allowed (estab)	Yes (estab)
CZ (civil engineering only)	Authorisation (estab)	Only legal form of types of companies available in CZ are allowed + limited choice of CZ legal forms (estab)	100% shares or 50% + 1 share (depending on company type) must be owned by professionals qualified as per CZ Law + no legal persons allowed as shareholders (estab)	100% or majority of managers (depending on company type) must be professionals qualified as per CZ Law (estab)	Only architectural services allowed (estab)	Yes
DK	----------	----------	----------	----------	----------	----------
EE	----------	----------	----------	----------	----------	----------
FI	----------	----------	----------	----------	----------	----------
FR	----------	----------	----------	----------	----------	----------
DE	Authorisation (estab with title)	Only legal form of types of companies available in DE are allowed + limited choice of DE legal forms (estab with title)	100% shares (50% of related professionals) must be owned by professionals qualified anywhere in the EU + no legal persons allowed as shareholders (estab with title)	50% of managers must be professionals qualified anywhere in the EU (estab with title)	Only related professional activities (estab with title)	Yes
EL	Notification within 6 months (estab)	----------	----------	----------	Only related professional activities	----------

HU	----------	----------	----------	----------	----------	----------
IE	----------	----------	----------	----------	----------	----------
IT	Chamber membership, Notification to company register (estab)	----------	2/3 of voting rights must be held by professionals qualified anywhere in the EU + no legal persons allowed as shareholders (estab)	----------	----------	Yes
LV[215]	Prior notification (estab)	----------	----------	----------	----------	Yes
LT[215]	Authorisation (estab)	----------	----------	----------	----------	Yes
LU	Chamber membership (estab) Prior notification (temp)	No companies with bearer or endorseable shares are allowed (estab)	----------	100% of managers must be professionals qualified as per LU Law (estab)	Only architectural services allowed (estab)	Yes
MT	----------	----------	----------	----------	----------	Yes
NL	Authorisation (estab with title)	----------	----------	----------	----------	----------
PL	----------	----------	----------	----------	----------	Yes
PT	Chamber membership (estab with title) Notification to chamber (estab)	----------	50% + 1 share must be owned by professionals qualified anywhere in the EU or companies established anywhere in the EU under majority control by professionals (estab with title)	1 executive manager must be a professional qualified anywhere in the EU (estab with title)	Exclusivity (estab with title)	Yes (temp only if no insurance at home)

RO	----------	----------	----------	----------	----------	----------
SK (civil engineering only)	Authorisation	----------	50% + 1 share must be owned by professionals qualified as per SK Law + no legal persons allowed as shareholders (estab)	----------	----------	Yes
SI[215]	Authorisation	----------	50% + 1 share must be owned by professionals qualified as per SI Law + no legal persons allowed as shareholders (estab)	----------	----------	Yes
ES	Authorisation	----------	50% + 1 share must be owned by professionals qualified anywhere in the EU or companies established anywhere in the EU (estab with title)	----------	----------	Yes (in many regions – in all ES for estab with title)
SE	----------	----------	----------	----------	----------	----------
UK (civil and mechanical engineering only)	----------	Only partnerships are allowed (estab with title)	100% shares must be owned by professionals established in the UK + no legal persons allowed (estab with title)	100% managers must be professionals established in the UK + only shareholders can be managers (estab with title)	----------	----------

Table 4 - Accountancy services

Type of restriction / Member State	*Registration and other control schemes for legal persons*	*Legal form*	*Shareholding and/or voting rights in professional hands*[212]	*Management in professional hands*[216]	*Multi Disciplinary restrictions for legal persons*	*Professional indemnity Insurance of legal persons*
AT	Chamber membership (estab)	---------	---------	1 manager must be a professional qualified as per AT Law (estab)	---------	Yes (purchased in AT)
BE	Chamber membership (estab) Yearly notification (temp)	---------	50% + 1 shares must be owned by professionals qualified or companies established anywhere in the EU (estab)	Majority of managers must be professionals qualified anywhere in the EU (estab)	Several	Yes
BG	---------	---------	---------	---------	---------	---------
HR	---------	---------	---------	---------	---------	---------
CY	---------	---------	---------	---------	---------	---------
CZ	---------	---------	---------	---------	---------	---------
DK	---------	---------	---------	---------	---------	---------
EE	---------	---------	---------	---------	---------	---------
FI	---------	---------	---------	---------	---------	---------
FR	Chamber membership (subsidiaries only) Yearly notification (temp)	No tradesmen's forms of types of companies are allowed (estab)	2/3 of voting rights must be held by professionals qualified or companies established anywhere in the EU (estab)	100% of managers must be professionals qualified anywhere in the EU + only shareholders can be managers (estab)	Some tradesmen's activities	Yes (estab)

[212] The reference "qualified as per a Member State's Law" includes recognition of professional qualification procedures, put in place while transposing the Professional Qualifications Directive in the Member State in question but, in these cases, made to apply to situations not covered by that Directive.

DE	---	---	---	---	---	---
EL	---	---	---	---	---	---
HU	---	---	---	---	---	---
IE	---	---	50% of voting rights must be held by professionals qualified anywhere in the EU + no legal persons allowed as shareholders (estab with title)	50% of managers must be professionals qualified anywhere in the EU (estab with title)	---	Yes (estab with title)
IT	Chamber membership, Notification to company register (estab)	---	2/3 of voting rights must be held by professionals qualified anywhere in the EU + no legal persons allowed as shareholders (estab)	---	---	Yes
LV	---	---	---	---	---	---
LT	Company register (estab)	---	---	---	---	Yes
LU	Chamber membership (estab)	---	50% + 1 voting rights must be held by professionals qualified as per LU Law + no legal persons allowed as shareholders (estab)	Majority of managers must be professionals qualified as per LU Law (estab)	Exclusivity (estab with title)	---
MT	---	---	---	---	---	---
NL	---	---	---	---	---	---
PL	---	---	---	---	Tax advice not allowed	Yes
PT	Chamber membership (estab with title) Notification to chamber (estab)	---	50% + 1 share must be owned by professionals qualified anywhere in the EU or companies established anywhere in	1 executive manager must be a professional qualified anywhere in the EU (estab with title)	Exclusivity (estab with title) Legal services not allowed	Yes (temp only if no insurance at home)

			the EU under majority control by professionals (estab with title)			
RO	Authorisation (estab) Notification (temp)	----------	50% + 1 share must be owned by professionals qualified as per RO Law + no legal persons allowed as shareholders (estab)	Majority of managers must be professionals qualified as per RO Law (estab)	----------	Yes (estab)
SK	----------	----------	----------	----------	----------	----------
SI	----------	----------	----------	----------	----------	----------
ES	----------	----------	----------	----------	----------	----------
SE	----------	----------	----------	----------	----------	----------
UK	----------	----------	50% of voting rights must be held by professionals established in the UK + other shares must be owned by professionals providing services in the UK + no legal persons allowed as shareholders (estab with title)	----------	50% of income must derive from public practice accountancy services (estab with title)	----------

Annex 6: Consistency with other EU policies and with the Charter for fundamental rights

There are a number of forthcoming initiatives of the Commission which are related to the initiatives under analysis here. Consistency with these initiatives is ensured in the following way:

- This initiative aims to implement the once-only principle, currently the object of pilot projects run by DG CONNECT;
- Simplification of formalities regarding documents would follow closely the solutions to be introduced under the forthcoming Regulation on the promotion of the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union;
- Potential action to simplify formalities for declaration of posted workers shall be without prejudice to the Electronic Exchange of Social Security Information system (EESSI) to be introduced under Social Security legislation for a variety of social security formalities, including transmission of A1 forms to host Member States which will make use of EESSI;
- Declarations in advance regarding temporary cross-border provisions as an associated procedure to the European services e-card procedure will be made redundant as European Professional Card procedures are introduced under the amended Professional Qualifications Directive, since there is no need for two EU-level e-procedural solutions. Currently, the EPC procedure is only available for applicants in a selected number of professions (nurses, pharmacists, physiotherapists, mountain guides and real estate agents). No other proposals for introducing the EPC are pending;
- The information available via the interconnection of company registers (BRIS), currently ongoing under Directive 2009/101/EC, and of insolvency registers under Regulation (EU) 2015/848 shall also be used for completing the European services e-card application and for cross-border checks of information Notifications on applicable requirements under the Services Directive and the forthcoming Directive laying down a notification procedure for authorisations and requirements applicable to services will be taken under consideration during the implementation phase of the card's procedure and afterwards, in order to update the forms and IT functionalities.
- The removal of existing disproportionate regulatory obstacles for certain regulated professional services (assessed for option 4 of this initiative) through targeted enforcement action and through the specific recommendations on reform needs for Member States as regards the regulation of seven professions (including engineers, architects and accountants) seems adequate at this stage. This guidance will address the justification and proportionality of rules regulating the profession as a whole, including the requirements mentioned in problem driver 4. Its conclusions would contribute to and frame the proportionality assessment that Member States will perform in the context of the services card procedure under option 2A;

- This initiative will include and integrate information elements regarding service providers registered under the soon to be expanded Mini One Stop Shop for VAT (VAT-MOSS) initiative.

Regarding the Charter of fundamental rights, several of its provision will be implemented by this initiative:

- Protection of personal data shall be ensured in line with Article 8 of the Charter;
- The main objective of this initiative is to facilitate the rights of establishment and the right to provide services in any Member State, as prescribed by Article 15(2) of the Charter, ensuring no discrimination, even indirect, is in place on grounds of nationality (further implementing Article 21(2) of the Charter);
- The EU-level procedure is envisaged to put in place an impartial, fair and reasonably speedy procedure, also in regards to Commission participation, as required by Article 41 of the Charter;
- Prohibition of abuse of rights, namely of the freedom to provide service, shall be duly considered, as prescribed by Article 54 of the Charter.

Annex 7: Administrative burden reductions under the different policy options

The purpose of this annex is to provide further details on how the policy options outlined in section 5 of the impact assessment would reduce administrative burden for service providers going cross-border on a temporary basis or to set up a secondary establishment.

This is done through a number of examples explaining the formalities and procedural steps that service providers need to undergo today[213] in order to enter a specific services market in a given Member State. On the basis of these descriptions of the current situation, the simplification impact of the different policy options will be highlighted.

Firstly, this annex will highlight a number of costs currently faced by service providers when going cross-border on the basis of interviews with service providers. On this basis, a rough estimation of the potential reduction of administrative burden for companies under options 1 and 2A is made.

Secondly, this annex will present further qualitative examples of how the options would simplify current formalities and procedures.

1. Quantified impact of administrative burden reduction on the basis of interviews with service providers

This section is based on the above mentioned study on the administrative formalities and costs involved in accessing business services markets cross-border (forthcoming). On the basis of more than 50 interviews with cross-border service providers, the study shows that costs for service providers related to administrative formalities can go up to several thousands of EUR.

In general, service providers report numerous formalities and costs when going cross-border. For the purpose of estimating the potential impact of the different policy options in reducing these costs, we will consider a few administrative formalities that were raised by service providers in several interviews:

- Service providers often need to spend an important amount of time on the identification and familiarisation with the requirements in the host Member State. This becomes particularly burdensome in situations with more complicated procedures for which there is no easily understandable information available. This is the case specifically in Member States and sectors with different procedures across regions;
- They highlighted in several interviews that they are required to collect supporting documents from authorities in the home Member State as proof to complete formalities in the host Member State;

[213] The information provided in this Annex is based on the findings of two studies by Ecorys: "Simplification and mutual recognition in the construction sector under the Services Directive" (2015) and "Study on the administrative formalities and costs involved in accessing markets cross-border", (forthcoming)

- There is often also a need to collect internal company data when completing formalities in the host Member State. This includes collecting data/information on the shareholders and managers of the company which in some cases requires a great level of detail (including for example information on positions that partners hold in other firms);
- They often are required to translate information and documents in the language of the host Member State. In many cases, these documents/translations also need to be certified. This can represent important costs for service providers in the form of external translators and certification procedures;
- Service providers are sometimes still required to submit documents in person to authorities in the host Member State;
- In most cases, service providers need to complete forms of the host member State. These forms can be numerous and complicated;
- Finally, authorisation and registration fees need to be paid in many Member States.

This overview does not include a large range of other formalities reported by service providers. These include for example arranging additional insurance coverage, making the necessary arrangement to adapt to host Member States' rules on legal form and shareholding structures, etc. In some cases, managers of the company even need to undergo an examination in the host Member State and/or acquire certain language skills. Costs can therefore run up considerably. This explains why service providers report costs of administrative formalities when going cross-border of up to 10,000 EUR and more.

Service providers reported a large diversity of situations in the interviews. In some Member States and sectors, formalities seem to be relatively easy to understand and complete. In other Member States complexity for service providers is very high. Table 1 below gives an indicative overview for the selected formalities described above of the range of time/costs that were highlighted by service providers in the interviews. For example, regarding hours spent on "familiarisation with requirements/procedures" some service providers reported that very few efforts were needed (0.5 hours), whereas others reported that important efforts were required (up to 20 hours). For the sake of this estimation, we identify a "medium" scenario which reflects an average level of complexity reported by several service providers.

To calculate costs, we take as a reference the average hourly labour cost across the EU as reported under Eurostat statistics for the NACE section M ("Professional, scientific and technical activities"). This shows an average labour cost of 35 EUR/hour across the EU. At the same time, service providers in interviews have reported in the majority of cases higher labour costs for these formalities mainly due to the fact that mostly senior professionals and managers are involved in them. We therefore take into account 40 EUR/hour as a basis for calculating costs.

Table 1 – Example of costs of selection of administrative formalities

Administrative obstacle	Time spent by staff of the	Medium scenario	Costs

	service provider or costs		
Familiarisation with requirements/procedures/etc.	0.5 to 20 hours	5 hours	200 EUR
Collect supporting documents from authorities in the home Member State	0.5 to 12 hours	3 hours	120 EUR
Collect internal company information to complete formalities of the host Member State	0.5 to 40 hours	10 hours	400 EUR
Submit documents in person to the host Member State	5 to 30 hours	12 hours	480 EUR
Complete forms of the host Member State	0.5 to 40 hours	9 hours	360 EUR
Fees to home and host MS authorities	Up to 1000 EUR and more	N/A	400 EUR
Costs of external translators	Up to 1000 EUR and more	N/A	700 EUR
Costs of certification	Up to 500 EUR and more	N/A	500 EUR
Total			**3,160 EUR**

Under policy option 1 (table 2), the host Member State would have to accept the certificate as proof of legal establishment in the home Member State. This would reduce somewhat costs related to:

- Translation and certification given the use of multilingual forms but only as regards information regarding legal establishment in the home Member State (estimated as 5 to 10% cost reduction);
- The collection of supporting documents in the home Member State would be significantly simplified (estimated as 75% to 100% cost reduction) given that the home Member State would use all information already at its disposal ("once-only").

Nevertheless, the service provider would not get access to the host Member State market through the card procedure. The host Member State would remain free to control compliance with domestic requirements applicable to activities on its territory through its current procedures. As a result, overall costs would be reduced with only about 5 to 10%.

Table 2 – Impact of option 1

Administrative obstacle	**Cost**	**Estimated impact on costs under policy option 1**	**Explanation**
Familiarisation with requirements/procedures/etc.	200 EUR	None	Complexity of procedure in the host Member State

			would not be affected by this option.
Collect supporting documents from authorities in the home Member State	120 EUR	- 75% to 100% (-90 to 120 EUR)	Option 1 would require the home Member State to use all information at its disposal. This would reduce significantly these costs.
Collect internal company information to complete formalities of the host Member State	400 EUR	None	Complexity of procedure in the host Member State would not be affected by this option.
Submit documents in person to the host Member State	480 EUR	None	Complexity of procedure in the host Member State would not be affected by this option.
Complete forms of the host Member State	360 EUR	None	Complexity of procedure in the host Member State would not be affected by this option.
Fees to home and host MS authorities	400 EUR	None	This would not be changed.
Costs of external translators	700 EUR	- 5% to 10% (-35 to 70 EUR)	This would be reduced but only as regards information regarding legal establishment in the home Member State.
Costs of certification	500 EUR	- 5% to 10% (-25 to 50 EUR)	This would be reduced but only as regards information regarding legal establishment in the home Member State.
Overall	3,160 EUR	**Reduction of costs with about 5% to 10% (-150 to -240 EUR)**	

Under policy 2A (table 3), more significant simplification effects would be achieved. It introduces a fully electronic procedure with a structured workflow including clear and short deadlines. The service provider will be able to use this EU-level procedure to gain access to the host Member State. The service provider will also be actively supported by the home Member State. It reduces significantly the need for supporting documents (and related costs for translation and certification) and overall administrative burden:

- Costs of familiarisation with requirements/procedures/etc. will be significantly reduced as the option would replace the national procedure with a simplified EU-level procedure (estimated as 25% to 50% cost reduction);

- The impact on costs related to collecting supporting documents from authorities in the home Member State will be similar to option 1;
- Costs related translation, certification, submitting documents in person would be completely removed (a conservative estimate of 75% to 100% cost reduction is used);
- Costs related to collecting internal company information and completing forms will be significantly simplified (estimated as 25% to 50% cost reduction).

Overall, costs would be reduced with about 50% to 75%.

Table 3 – Impact of option 2A

Administrative obstacle	Cost	Estimated impact on costs under policy option 2A	Explanation
Familiarisation with requirements/procedures/etc.	200 EUR	- 25% to 50% (-50 to 100 EUR)	This option would replace the national procedure with a simplified EU-level procedure. This would reduce costs of familiarisation significantly.
Collect supporting documents from authorities in the home Member State	120 EUR	- 75% to 100% (-90 to 120 EUR)	Similar to option 1.
Collect internal company information to complete formalities of the host Member State	400 EUR	- 25% to 50% (-100 to 200 EUR)	This option would replace the national procedure with a simplified EU-level procedure.
Submit documents in person to the host Member State	480 EUR	- 75% to 100% (-360 to 480 EUR)	These costs would be removed.
Complete forms of the host Member State	360 EUR	- 25% to 50% (-90 to 180 EUR)	This option would replace the national procedure with a simplified EU-level procedure.
Fees to home and host MS authorities	400 EUR	None	This would not be changed.
Costs of external translators	700 EUR	- 75% to 100% (-525 to 700 EUR)	These costs would be removed.
Costs of certification	500 EUR	- 75% to 100% (-375 to 500 EUR)	These costs would be removed.
Overall	3,160 EUR	**Reduction of costs with about 50% to 75% (-1,590 to -2,280 EUR)**	

Conclusions

The actual cost reductions related to reduced administrative burden will depend on the situations today which are significantly different from one Member State to the other.

However, on the basis of the indicative examples above it can be estimated that the impact of policy option 1 (about 5-10% cost reduction) will be much smaller compared to policy option 2 (about 50-75% cost reduction).

2. Further qualitative examples

2.1. Formalities for temporary cross-border provision of services

Example 1- Accounting services in Belgium (see table 1 in appendix)

Current situation

Currently, companies that want to provide accounting services on a temporary basis in Belgium need to undergo a number of formalities. These formalities generate administrative complexity for them. First, they need to send a prior notification (with a waiting period) to the professional chamber of accountants each year. This procedure is not electronic and it requires the company to download the necessary forms and send them (by email or in paper format) to the chamber. The waiting period can take up to 1 month and there is no tacit approval if the competent authority fails to act. The form needs to be filled out in Dutch or French, leading to translation costs for most companies. In addition, a range of supporting evidence needs to be submitted (including proof of incorporation, legal establishment and insurance coverage). The Belgian Point of Single Contact only provides limited information to service providers on the details of this procedure (more detailed information needs to be obtained from the chamber).

Second, the company also needs to complete a number of formalities related to the secondment of staff:

- A declaration in advance regarding the professional qualifications of the posted professionals. Also this declaration cannot be done through electronic means and requires information to be provided in Dutch or French;
- A separate prior notification to a different authority regarding employment conditions under the posting of workers rules;

Situation under the different policy options

The different policy options (in this case notably options 1, 2A and 3) outlined in section 5 would simplify many of the above formalities. Table 1 in appendix shows the simplification effects generated by the different options (ranging from "+", a slight simplification to "++++", a major simplification).

Under option 1, the company would obtain a certificate issued by the home Member State demonstrating legal establishment. This would make it easier for the company to complete host Member States' controls and formalities that fall under the scope of the Services Directive (in this case, the prior notification to the professional chamber). For example, translation costs would be avoided through the multilingual forms used by the service

provider to apply for the certificate. No supporting documents would be required as attachments to the certificate.

Under option 2A, the simplification effects would be larger:

- If a service provider requests for a certificate as foreseen, he/she could obtain it within 5 weeks at most under a system of tacit approval.
- Once a certificate is granted, it should be valid for the lifetime of the service provider in every Member State the service expressed an interest (updated by the service provider himself or *ex officio* through administrative cooperation of Member States). When it comes to secondment of staff and the necessary declarations (such as about qualifications, allowing for a control of employment conditions) to be sent to the host Member State, this could be swiftly organised through a separate module on the basis of the certificate already issued to the company concerned.[214] Thus, procedures related to secondment of staff, which are currently spread out across different authorities in the host Member State, would now be centralised under the same IT application.

Under option 3, some specific simplification effects regarding compliance with the insurance requirements imposed would be achieved. For example, this option will introduce a standardised certificate proving insurance coverage in a cross-border context (reducing burden on service providers and authorities).

Example 2 – Architectural and engineering services in Spain (see table 2 in appendix)

Current situation

Currently, companies that want to provide architectural or engineering services on a temporary basis in Spain need to undergo a number of formalities. First, they need to undergo an authorisation procedure (checking legal establishment and insurance in the home Member State) before being able to provide services. The Spanish Point of Single Contact does not offer service provider with a full picture of this procedure and its related requirements. There is also no electronic procedure available to complete the formalities. In fact, the application needs to be delivered in person or by post. The deadline for the authorities to process the application is one month with a possible extension to two months. If the authority in charge fails to act within these deadlines, an authorisation always requires an express decision (i.e., no tacit approval applies). Supporting documents need to be submitted in a certified copy format (showing proof of incorporation, legal establishment and insurance). Finally, all information needs to be provided in Spanish including the supporting documents. Translations of supporting documents need to be done by a translator certified in Spain.

[214] Providers who hold a European services card would be able to submit a declaration relating to the workers that they intend to post through the electronic platform connected to IMI. This alternative would only apply if a host Member State has communicated to the Commission that this possibility should be available for the posting of workers in its territory.

The procedures on secondment of staff are similar to the ones described in example 1, with the additional complexity that supporting documents regarding professional qualifications need to be presented in a certified copy format together with a certified translation.

Situation under the different policy options

Under option 1, the certificate demonstrating legal establishment would again facilitate certain formalities as described in example 1. For example, the required supporting documents sent to the host Member State (proof of incorporation, legal establishment and insurance) would in principle no longer be needed as they would be covered by the certificate issued by the home Member State.

Under option 2A, there would again be stronger simplification effects. First, the authorisation procedure would be replaced by a prior notification in line with Art. 16 of the Services Directive, checking prior establishment in the home Member State. An electronic EU level procedure would be put in place with shorter deadlines. Supporting documents would be avoided as well as translation costs (given the multilingual forms to be used by the service provider). The simplification effects related to secondment of staff would be similar to example 1. In addition, supporting documents related to the declaration in advance for professional qualifications would be accepted in simple copy format. They would not have to be translated given the use of descriptions per category of documents and machine-translated fields.

Under option 3, some specific simplification effects regarding compliance with the insurance requirements would be achieved. For example, this option will introduce a standardised certificate proving insurance coverage in a cross-border context (reducing burden on service providers and authorities).

Example 3 – Construction services in Bulgaria (see table 3 in appendix)

Current situation

Currently, companies that want to provide construction services on a temporary basis in Bulgaria need to undergo a repetition of the same formalities for each construction project.

A prior notification, with an application form available only in Bulgarian, needs to be accompanied by several documents demonstrating legal establishment in the home Member State (proof of legal establishment in the home Member State, proof of professional and technical capacity) and with other documents detailing the envisaged construction project (copy of building permit, if available, copy of contract to build).

The Bulgarian Point of Single Contact does not offer service provider with a full picture of this procedure and its related requirements. There is also no electronic procedure available to complete the formalities. In fact, the application needs to be delivered in person or by post.

Supporting documents, although acceptable in simple format, need to be accompanied by translations in original format and certified by a translator registered in Bulgaria.

The procedures on secondment of staff are similar to the ones described in example 1, with the additional complexity that supporting documents regarding professional qualifications need to be accompanied by translations in original format and certified by a translator registered in Bulgaria.

Situation under the different policy options

Under option 1, the certificate demonstrating legal establishment would again facilitate certain formalities as described in example 1. For example, the required supporting documents sent to the host Member State (proof of incorporation and legal establishment) would in principle no longer be needed as they would be covered by the certificate issued by the home Member State.

Under option 2A, there would again be stronger simplification effects. Supporting documents would be avoided as well as translation costs (given the multilingual forms to be used by the service provider). The simplification effects related to secondment of staff would be similar to example 2. In addition, supporting documents related to the declaration in advance for professional qualifications would not have to be translated given the use of descriptions per category of documents and machine-translated fields.

Under option 3, some specific simplification effects regarding compliance with the insurance requirements (under the building permit procedure) would be achieved. For example, this option will introduce a standardised certificate proving insurance coverage in a cross-border context (reducing burden on service providers and authorities).

2.2 Formalities for secondary establishment (branches and agencies)

Example 4 – Accounting services in Austria (see table 4 in appendix)

Current situation

Today, companies providing accounting services that want to set up a secondary establishment in Austria need to complete a range of formalities.

This includes an authorisation process to obtain a recognition that the company is allowed to provide accounting services in Austria. In the context of this authorisation procedure, an application form needs to be submitted to the Wirtschaftskammer Österreich. In addition, a number of supporting documents need to be provided, including proof of legal establishment and proof of the required insurance coverage. The service provider also needs to submit supporting documents on controlling shareholders and managers. This includes for example an identity proof (birth certificate, marriage and divorce certificates, certificate of name change if applicable), a driving licence, a proof of professional qualification which authorises to the provision of accountancy services, statements of previous employers, social security

extracts and certificates of the relevant authority in the home Member State regarding the existence of a "special trustworthiness". There is no electronic procedure to complete all these formalities. The procedure takes up to 3 months with no tacit approval. All information needs to be translated into German through a translator who should be certified in Austria.

In addition, the service provider needs to comply with separate procedures to second staff (intra-corporate transfers) as well as horizontal procedures (such as tax and social security registrations). These involve separate authorities with no synergies between the different procedures.

Situation under the different policy options

Under option 1, the certificate demonstrating legal establishment would facilitate certain formalities as described in example 1. For example, the required supporting documents to accompany the application (proof of incorporation, legal establishment and insurance) would in principle no longer be needed as they would be covered by the certificate.

Under option 2A, there would again be stronger simplification effects. The authorisation procedure would be much simpler for the service provider to complete, also given the rules governing the procedural workflow for performing mutual recognition. An electronic EU level procedure would be put in place with shorter deadlines. Instead of waiting three months, the service provider would be able to start providing services after 5 to 9 weeks at most, given the shorter deadlines foreseen in this initiative (taking advantage of the streamlining effect of having an e-procedure at EU level, in which few documents and no translation is required and communication between Member States is embedded in the procedural workflow). Supporting documents would be avoided as well as translation costs (given the multilingual application form to be used). The simplification effects related to secondment of staff would be similar to the examples above. There would also be simplification effects (synergies) related to other horizontal procedures (such as tax and social security) where the authorities would use the information already contained in the certificate.

Under option 3, some specific simplification effects regarding insurance would be achieved similar to example 1.

Additional examples on architectural and engineering

Additional examples on the simplification effects obtained under the different policy options in the case of secondary establishment for **architectural and engineering** are provided in appendix (see tables 5 and 6 in appendix). These effects are mostly similar to the ones described in example 4.

Example 5 – Construction services in Portugal (see table 7 in appendix)

Current situation

Currently, companies that want to establish in Portugal to provide construction services need to be authorised.

Application for this authorisation needs to be accompanied by several documents demonstrating legal establishment in the home Member State, proof of professional and technical capacity (pool of qualified professionals available) and proof of economic/financial capacity (corporate turn-over of past years) and/or insurance covering Portuguese territory.

The Portuguese Point of Single Contact does not offer service providers with a full picture of this procedure and its related requirements. There is also no fully electronic procedure available to complete the formalities.

Supporting documents, although acceptable in simple format, need to be accompanied by translations.

The procedures on secondment of staff are similar to the ones described in example 4.

Situation under the different policy options

Under option 1, the certificate demonstrating legal establishment would again facilitate certain formalities as described in example 4. For example, the required supporting documents sent to the host Member State (proof of incorporation and legal establishment) would in principle no longer be needed as they would be covered by the certificate issued by the home Member State.

Under option 2A, there would again be stronger simplification effects, meaning a much simpler and fully electronic procedure, as described in example 4. The simplification effects related to secondment of staff would be similar to example 4 as well.

Under option 3, again as under example 4, some specific simplification effects regarding compliance with the insurance requirements would be achieved. For example, this option will introduce a standardised certificate proving insurance coverage in a cross-border context (reducing burden on service providers and authorities).

Appendix

1. Formalities for temporary cross-border provision of services

Table 1 – Accounting services in Belgium

Formalities and procedural steps today	Option 1	Simplification effect	Option 2A	Simplification effect	Option 3	Simplification effect
Prior Notification with waiting period	(no change)		**Prior Notification with waiting period**	≈	(no change)	
Partial information available on PSC	Procedure set at EU-level (for proof of establishment)	+	Procedure set at EU-level	+++	Procedure set at EU-level (for proof of insurance)	++
Forms downloadable + email	Electronic procedure (for proof of establishment)	+	Electronic procedure	+++	Electronic procedure (for proof of insurance)	++
1 month duration	1 week (for proof of establishment)	+	3/5 weeks at most	+	n.a.	
Payment of fees to the host MS required (€150)	Payment of proportionate fees to the home MS required (for proof of establishment). No fees in host MS.	-	Payment of proportionate fees to the home MS required	+	n.a.	
No tacit approval	n.a.		Tacit approval	+++	n.a.	
1 year validity	Unlimited validity in time (for proof of establishment)	+	Unlimited validity in time	+++	Unlimited validity in time (for proof of insurance)	++
Application filled-in by applicant in French or Dutch	Application filled-in by home MS in multilingual forms (for proof of	+	Application filled-in by home MS in multilingual forms	+++	n.a.	

before host MS	establishment)					
Documentation to be supplied on: - incorporation; - legal establishment; - insurance in host MS	No documentation required (for proof of establishment)	+	Certificate issued by home MS replaces all required documents	++++	Standardised certificate on insurance coverage attached	++
Documents in simple copy format		+	No documentation required	+++	Certificate on insurance coverage in simple copy format	+
Simple translation of documents in any MS		+		+++	No translation (multilingual certificate)	+
Declaration in advance for posted professionals	(no change)		(no change)		(no change)	
Forms downloadable + email	n.a.		Electronic procedure	++	Electronic procedure (for proof of insurance)	+
Declaration filled-in by applicant in French or Dutch before host MS	n.a.		Declaration filled-in by applicant in multilingual forms	++	Declaration filled-in by applicant in multilingual forms	+
Documents in original format	n.a.		Documents in simple copy format	+++	Certificate on insurance coverage in simple copy format	++
Simple translation of documents in any MS	n.a.		No translation (description per categories of documents and in machine-translated fields)	++	No translation (multilingual certificate)	+

Prior notification for posted workers (if Member State opted for making use of possibility to use IMI)	(no change)		(no change)		(no change)	
Declaration filled-in by applicant in English, German, French or Dutch	n.a.		Declaration filled-in by applicant in multilingual forms	+	n.a.	
Other horizontal procedures (e.g. tax and social security registration)	(no change)		(no change)		(no change)	
Applications filled-in by applicant in French or Dutch before host MS	n.a.		Application partially filled-in by host MS (making use of certificate issued by home MS)	+	n.a.	

Table 2 – Architectural and engineering services in Spain

ES – Architects and Engineers						
Formalities and procedural steps today	**Option 1**	**Simplification effect**	**Option 2A**	**Simplification effect**	**Option 3**	**Simplification effect**
Authorisation	(no change)		**Prior Notification (with waiting period)**	+++	(no change)	

Partial information available on PSC	Procedure set at EU-level (for proof of establishment)	+	Procedure set at EU-level	+++	Procedure set at EU-level (for proof of insurance)	++
No electronic procedure (forms downloadable)	Electronic procedure (for proof of establishment)	+	Electronic procedure	+++	Electronic procedure (for proof of insurance)	++
1 - 2 months duration	1 week (for proof of establishment)	+	3/5 weeks at most	++	n.a.	
Payment of fees to the host MS required	Payment of proportionate fees to the home MS required (for proof of establishment). No fees in host MS.	-	Payment of proportionate fees to the home MS required	+	n.a.	
No tacit approval	n.a.		Tacit approval	+++	n.a.	
Application filled-in by applicant in Spanish before host MS	Application filled-in by home MS in multilingual forms (for proof of establishment)	+	Application filled-in by home MS in multilingual forms	+++	n.a.	
Documentation to be supplied on: - incorporation; - legal establishment; - insurance in home MS	No documentation required (for proof of establishment)	+	Certificate issued by home MS replaces all required documents	++++	Standardised certificate on insurance coverage attached	++
Documents in certified copy format issued in host MS (copies of certified/authenticated documents issued in home MS)		+	No documentation required	++++	Certificate on insurance coverage in simple copy format	++

Certified translation of documents in host MS		+		++++	No translation (multilingual certificate)	++
Declaration in advance for posted professionals	(no change)		(no change)		(no change)	
No electronic procedure (forms downloadable)	n.a.		Electronic procedure	++	Electronic procedure (for proof of insurance)	+
Declaration filled-in by applicant in Spanish before host MS	n.a.		Declaration filled-in by applicant in multilingual forms	++	Declaration filled-in by applicant in multilingual forms	+
Documents in certified copy format issued in host MS (copies of certified/authenticated documents issued in home MS)	n.a.		Documents in simple copy format	+++	Certificate on insurance coverage in simple copy format	++
Certified translation of documents in host MS	n.a.		No translation (description per categories of documents and in machine-translated fields)	+++	No translation (multilingual certificate)	++
Prior notification for posted workers (if Member State opted for making use of possibility to use IMI)	(no change)		(no change)		(no change)	
Declaration filled-in by	n.a.		Declaration filled-in by applicant in	+	n.a.	

applicant in Spanish			multilingual forms			
Other horizontal procedures (e.g. tax and social security registration)	(no change)		(no change)		(no change)	
Applications filled-in by applicant in Spanish before host MS	n.a.		Application partially filled-in by host MS (making use of certificate issued by home MS)	+	n.a.	

Table 3 – Construction services in Bulgaria

BG - Construction						
Formalities and procedural steps today	**Option 1**	**Simplification effect**	**Option 2A**	**Simplification effect**	**Option 3**	**Simplification effect**
Multiple prior notification (one per building project)	(no change)		**Prior Notification with waiting period**	++	(no change)	
Partial information available on PSC	Procedure set at EU-level (for proof of establishment)	+	Procedure set at EU-level	+++	Procedure set at EU-level (for proof of insurance)	++
No electronic procedure (forms downloadable)	Electronic procedure (for proof of establishment)	+	Electronic procedure	+++	Electronic procedure (for proof of insurance)	++

No reaction required	1 week (for proof of establishment)	-	3/5 weeks at most	--	n.a.	
No fees	Payment of proportionate fees to the home MS required (for proof of establishment). No fees in host MS.	-	Payment of proportionate fees to the home MS required	-	n.a.	
No reaction required	n.a.		Tacit approval	-	n.a.	
Validity limited to one building project	Unlimited validity in time (for proof of establishment)	+	Unlimited validity in time	+++	Unlimited validity in time (for proof of insurance)	++
Application filled-in by applicant in Bulgarian before host MS	Application filled-in by home MS in multilingual forms (for proof of establishment)	+	Application filled-in by home MS in multilingual forms	+++	n.a.	
Documentation to be supplied on: - incorporation; - legal establishment; (+ insurance in host MS in the context of the building permit)	No documentation required (for proof of establishment)	+	Certificate issued by home MS replaces all required documents	++++	Standardised certificate on insurance coverage attached	++
Documents in simple copy format		+	No documentation required	+++	Certificate on insurance coverage in simple copy format	+
Certified translation by translator registered in BG		+		+++	No translation (multilingual certificate)	+

Declaration in advance for posted professionals	(no change)		(no change)		(no change)	
Forms downloadable + email	n.a.		Electronic procedure	++	Electronic procedure (for proof of insurance)	+
Declaration filled-in by applicant in Bulgarian before host MS	n.a.		Declaration filled-in by applicant in multilingual forms	++	Declaration filled-in by applicant in multilingual forms	+
Certified translation by translator registered in BG	n.a.		No translation (description per categories of documents and in machine-translated fields)	++	No translation (multilingual certificate)	+
Prior notification for posted workers (if Member State opted for making use of possibility to use IMI)	(no change)		(no change)		(no change)	
Declaration filled-in by applicant in Bulgarian	n.a.		Declaration filled-in by applicant in multilingual forms	+	n.a.	
Other horizontal procedures (e.g. tax and social security registration)	(no change)		(no change)		(no change)	
Applications filled-in by	n.a.		Application partially filled-in by host	+	n.a.	

applicant in Bulgarian before host MS			MS (making use of certificate issued by home MS)			

- Formalities for secondary establishment (branches and agencies)

Table 4 – Accounting services in Austria

AT – Accountants						
Formalities and procedural steps today	**Option 1**	**Simplification effect**	**Option 2A**	**Simplification effect**	**Option 3**	**Simplification effect**
Authorisation (incl management conditions)	(no change)		**Authorisation (under a procedural framework for assessment of mutual recognition)**	++	(no change)	
Some information available on PSC	Procedure set at EU-level (for proof of establishment)	+	Procedure set at EU-level	+++	Procedure set at EU-level (for proof of insurance)	++
Forms downloadable + email	Electronic procedure (for proof of establishment)	+	Electronic procedure	+++	Electronic procedure (for proof of insurance)	++
1 – 3 months duration	1 week (for proof of establishment)	+	5/9 weeks at most	+	n.a.	
Payment of fees to the host MS required (around €150)	Payment of proportionate fees to the home MS required (for proof of establishment)	-	Payment of proportionate fees to the home and host MS required	≈	n.a.	
No tacit approval	n.a.		Tacit approval	+++	n.a.	

Application filled-in by applicant in German before host MS	Application filled-in by home MS in multilingual forms (for proof of establishment)	+	Application filled-in by home MS in multilingual forms	+++	n.a.	
Documentation to be supplied on: - incorporation; - information on controlling shareholders and managers; - legal establishment; - insurance in host MS	No documentation required (for proof of establishment)	+	Certificate issued by home MS replaces all required documents	++++	Standardised certificate on insurance coverage attached	++
Documents in simple copy format of certified/authenticated documents in home MS		+	No documentation required	+++	Certificate on insurance coverage in simple copy format	+
Certified translation of documents in any MS		+		+++	No translation (multilingual certificate)	+
Declaration in advance for posted professionals	(no change)		(no change)		(no change)	
Forms downloadable + email	n.a.		Electronic procedure	++	Electronic procedure (for proof of insurance)	+
Declaration filled-in by applicant in German before host MS	n.a.		Declaration filled-in by applicant in multilingual forms	++	Declaration filled-in by applicant in multilingual forms	+

Documents in simple copy format of certified/authenticated documents in home MS	n.a.		Documents in simple copy format	+++	Certificate on insurance coverage in simple copy format	++
Certified translation of documents in any MS	n.a.		No translation (description per categories of documents and in machine-translated fields)	++	No translation (multilingual certificate)	+
Prior notification for posted workers (if Member State opted for making use of possibility to use IMI)	(no change)		(no change)		(no change)	
Declaration filled-in by applicant in 9 languages separately for each worker	n.a.		Declaration filled-in by applicant in multilingual forms	++	n.a.	
Other horizontal procedures (e.g. tax and social security registration)	(no change)		(no change)		(no change)	
Applications filled-in by applicant in German before host MS	n.a.		Application partially filled-in by host MS (making use of certificate)	+	n.a.	

Table 5 – Architectural/engineering services in Italy

IT – Architects and Engineers

Formalities and procedural steps today	Option 1	Simplification effect	Option 2A	Simplification effect	Option 3	Simplification effect
Authorisation (incl voting rights and shareholding conditions)	(no change)		**Authorisation (under a procedural framework for assessment of mutual recognition)**	++	(no change)	
No information available on PSC	Procedure set at EU-level (for proof of establishment)	+	Procedure set at EU-level	+++	Procedure set at EU-level (for proof of insurance)	++
No electronic procedure	Electronic procedure (for proof of establishment)	+	Electronic procedure	+++	Electronic procedure (for proof of insurance)	++
1 – 4 months duration	1 week (for proof of establishment)	+	5/9 weeks at most	++	n.a.	
Payment of fees to the host MS required	Payment of proportionate fees to the home MS required (for proof of establishment)	-	Payment of proportionate fees to the home and host MS required	≈	n.a.	
No tacit approval	n.a.		Tacit approval	+++	n.a.	
Application filled-in by applicant in Italian before host MS	Application filled-in by home MS in multilingual forms (for proof of establishment)	+	Application filled-in by home MS in multilingual forms	+++	n.a.	
Documentation to be supplied on: - incorporation; - legal establishment; - insurance in host MS	No documentation required (for	+	Certificate issued by home MS replaces all required documents	++++	Standardised certificate on insurance coverage attached	++

Documents in certified/authenticated format in home MS	proof of establishment)	+	No documentation required	+++	Certificate on insurance coverage in simple copy format	+
Certified translation of documents in host MS		+		+++	No translation (multilingual certificate)	+
Declaration in advance for posted professionals	(no change)		(no change)		(no change)	
No electronic procedure	n.a.		Electronic procedure	++	Electronic procedure (for proof of insurance)	+
Declaration filled-in by applicant in Italian before host MS	n.a.		Declaration filled-in by applicant in multilingual forms	++	Declaration filled-in by applicant in multilingual forms	+
Documents in certified/authenticated format in home MS	n.a.		Documents in simple copy format	+++	Certificate on insurance coverage in simple copy format	++
Certified translation of documents in host MS	n.a.		No translation (description per categories of documents and in machine-translated fields)	++	No translation (multilingual certificate)	+
Prior notification for posted workers (if Member State opted for making use of possibility to use IMI)	(no change)		(no change)		(no change)	

Declaration filled-in by applicant in Italian	n.a.		Declaration filled-in by applicant in multilingual forms	+	n.a.	
Other horizontal procedures (e.g. tax and social security registration)	(no change)		(no change)		(no change)	
Applications filled-in by applicant in Italian before host MS	n.a.		Application partially filled-in by host MS (making use of certificate)	+	n.a.	

Table 6 – Architectural/engineering services in Germany

DE – Architects and Engineers						
Formalities and procedural steps today	**Option 1**	**Simplification effect**	**Option 2A**	**Simplification effect**	**Option 3**	**Simplification effect**
Authorisation to carry reserved title (incl legal form, shareholding, management and multidisciplinary conditions)	(no change)		**Authorisation to carry reserved title (under a procedural framework for assessment of mutual recognition)**	++	(no change)	
No information available on PSC	Procedure set at EU-level (for proof of establishment)	+	Procedure set at EU-level	+++	Procedure set at EU-level (for proof of insurance)	++
No electronic procedure	Electronic procedure (for proof of	+	Electronic procedure	+++	Electronic procedure (for	++

(forms downloadable)	establishment)				proof of insurance)	
3 months	1 week (for proof of establishment)	+	5/9 weeks at most	++	n.a.	
Payment of fees to the host MS required (around €500)	Payment of proportionate fees to the home MS required (for proof of establishment)	-	Payment of proportionate fees to the home and host MS required	≈	n.a.	
Application filled-in by applicant in German before host MS	Application filled-in by home MS in multilingual forms (for proof of establishment)	+	Application filled-in by home MS in multilingual forms	+++	n.a.	
Documentation to be supplied on: - incorporation; - information on controlling shareholders, managers and corporate purpose; - legal establishment; - insurance in host MS	No documentation required (for proof of establishment)	+	Certificate issued by home MS replaces all required documents	++++	Standardised certificate on insurance coverage attached	++
Certified/authenticated documents in home MS		+	No documentation required	+++	Certificate on insurance coverage in simple copy format	+
Certified translation of documents in any MS		+		+++	No translation (multilingual certificate)	+
Declaration in advance for posted professionals	(no change)		(no change)		(no change)	

No electronic procedure (forms downloadable)	n.a.		Electronic procedure	++	Electronic procedure (for proof of insurance)	+
Declaration filled-in by applicant in German before host MS	n.a.		Declaration filled-in by applicant in multilingual forms	++	Declaration filled-in by applicant in multilingual forms	+
Certified/authenticated documents in home MS	n.a.		Documents in simple copy format	+++	Certificate on insurance coverage in simple copy format	++
Certified translation of documents in any MS	n.a.		No translation (description per categories of documents and in machine-translated fields)	++	No translation (multilingual certificate)	+
Prior notification for posted workers (if Member State opted for making use of possibility to use IMI)	(no change)		(no change)		(no change)	
Declaration filled-in by applicant in German or English	n.a.		Declaration filled-in by applicant in multilingual forms	+	n.a.	
Other horizontal procedures (e.g. tax and social security registration)	(no change)		(no change)		(no change)	
Applications filled-in by applicant in German before host	n.a.		Application partially filled-in by host MS (making use of certificate)	+	n.a.	

MS						

Table 7 – Construction services in Portugal

PT - Construction						
Formalities and procedural steps today	**Option 1**	**Simplification effect**	**Option 2A**	**Simplification effect**	**Option 3**	**Simplification effect**
Authorisation	(no change)		**Authorisation (under a procedural framework for assessment of mutual recognition)**	++	(no change)	
Partial information available on PSC	Procedure set at EU-level (for proof of establishment)	+	Procedure set at EU-level	+++	Procedure set at EU-level (for proof of insurance)	++
Some electronic steps	(Fully) Electronic procedure (for proof of establishment)	+	(Fully) Electronic procedure	++	(Fully) Electronic procedure (for proof of insurance)	++
20 days	1 week (for proof of establishment)	-	5/9 weeks at most	-	n.a.	
Fees based on corporate turn-over	Payment of proportionate fees to the home MS required (for proof of establishment). No fees in host MS.	-	Payment of proportionate fees to the home and host MS required	++	n.a.	
Tacit approval	n.a.		Tacit approval	=	n.a.	

Validity limited to a certain period	Unlimited validity in time (for proof of establishment)	+	Unlimited validity in time	+++	Unlimited validity in time (for proof of insurance)	++
Application filled-in by applicant in Portuguese before host MS	Application filled-in by home MS in multilingual forms (for proof of establishment)	+	Application filled-in by home MS in multilingual forms	+++	n.a.	
Documentation to be supplied on: - incorporation; - legal establishment; - professional and technical capacity; - insurance in host MS and/or proof of economic/financial capacity	No documentation required (for proof of establishment)	+	Certificate issued by home MS replaces all required documents	++++	Standardised certificate on insurance coverage attached	++
Documents in simple copy format		+	No documentation required	+++	Certificate on insurance coverage in simple copy format	+
Translation required		+		+++	No translation (multilingual certificate)	+
Declaration in advance for posted professionals	(no change)		(no change)		(no change)	
Forms downloadable + email	n.a.		Electronic procedure	++	Electronic procedure (for proof of insurance)	+
Declaration filled-in by	n.a.		Declaration filled-in by applicant in	++	Declaration filled-in by	+

applicant in Portuguese before host MS			multilingual forms		applicant in multilingual forms	
Translation required	n.a.		No translation (description per categories of documents and in machine-translated fields)	++	No translation (multilingual certificate)	+
Prior notification for posted workers (if Member State opted for making use of possibility to use IMI)	(no change)		(no change)		(no change)	
Declaration filled-in by applicant in Portuguese	n.a.		Declaration filled-in by applicant in multilingual forms	+	n.a.	
Other horizontal procedures (e.g. tax and social security registration)	(no change)		(no change)		(no change)	

Annex 8 – Administrative costs for authorities

An important question in the context of this impact assessment is the potential impact of the different policy options on administrative costs for home and host Member States' authorities. This annex – which complements section 6 of the impact assessment (analysis of impacts) – will look into this by providing additional details on the following questions:

- What will be the main simplification principles on which the services card would be built to ensure costs for Member States' authorities remain limited?
- What does this mean in terms of potential costs for Member States' administrations under the different policy options outlined in section 5?

Main simplification advantages of the European services e-card

In general, processing the proposed services card would imply a shift in costs and administrative burden from the host to the home Member State compared to the situation today. Meaning, the home Member State would have to take up certain new responsibilities to support service providers that want to expand abroad.

Nevertheless, the set-up and maintenance costs of the system for home and host Member States will be limited because of the following reasons:

- The existing Internal Market Information (IMI) system – set up, managed and funded by the Commission – would serve as the back office;
- Member States authorities are already familiar with a similar procedure (for example regarding the European Professional Card);
- The structured workflow in IMI (offering full legal protection to the processing of data of individual service providers) will facilitate the workload of authorities by replacing conventional paper work by the use of electronic procedures. This will contribute to a reduction in cost and time necessary for the treatment of a request;
- The envisaged procedure would build as much as possible on standardisation. Potential communication between home and host Member States would be done through standardised, multilingual questions hereby avoiding the need for translation.

Estimation of potential costs for Member States' authorities

This section will give some indications of the administrative costs that could be expected for Member States' authorities in their role of coordinating authority to manage procedures related to the issuance of the European services e-card.

First, the results of a discussion with Member States on potential administrative costs for authorities will be summarised. Secondly, the potential set-up costs for Member States are discussed. Thirdly, the operating costs for Member States will be assessed on the basis of benchmarking with the European Professional Card. Finally, additional points of references

for the operating costs are highlighted on the basis of analysis of the SOLVIT system and a concrete Member State example (Estonia).

1. Opinion of Member States on future administrative costs

During the expert group meeting on the Services Directive of 12 July 2016, the Commission discussed with representatives from all Member States on the roles and responsibilities of authorities under the European services e-card and the potential costs that this would entail for the national administrations. The main conclusions from that meeting were the following:

- IMI should serve as a basis for communication/cooperation between different coordinating authorities. There is no need to launch any new structures. This also reflects previous discussions between Member States within the Competitiveness Council in February 2016[215];
- Member States highlighted that the coordinating authority could be different depending on whether it is appointed/acting as home or host Member State authority. In some cases, it may be necessary to have a coordinating authority at regional level;
- Several Member States pointed out that it is impossible to ascertain administrative costs as long as the competences of such authorities and procedural workflows have not been clearly agreed with Member States.

In conclusion, Member States' authorities are at this stage unable to give reliable estimates on the potential costs to set up and operate as coordinating authorities under the European services e-card. This is in line with previous policy actions by the Commission such as the European Professional Card where Member States were also unable to provide reliable cost estimates of administrative costs during the preparatory phase of the initiative.[216]

2. Set-up costs for Member States' authorities

For the set-up costs, an analysis was carried out of a range of different existing systems which are (to some extent) comparable to the European services e-card:

- The European Professional Card;
- The SOLVIT network of national centres (requests for information and disputes regarding the implementation of EU law by other Member States);
- The RAPEX system (used for the rapid exchange of information between national authorities and the European Commission on dangerous products found on the market).

[215] See conclusions of the Competitiveness Council under http://data.consilium.europa.eu/doc/document/ST-6622-2016-INIT/en/pdf:. Point 12 thereof reads as follows: : *STRESSES that the Passport should build on existing structures and instruments, have a voluntary nature for service providers, use electronic means to the widest extent possible and does not lead to additional administrative burdens for public administrations*

[216] See European Commission, SWD Accompanying the document "Commission's Implementing Regulation (EU) No 2015/983 on the procedure for issuance of the European Professional Card and the alert mechanism, 2015

However, for none of these cases data is available allowing for a possible estimate of the costs that were incurred by the Member States to set up these systems.

An estimation carried out by the Estonian Ministry of Economic Affairs confirms that the set-up costs of the European services e-card would remain limited. They assessed that given the availability of the IMI system, the set-up costs would involve setting up a system of cooperation between different competent authorities in the Member State. This requires staff time and some IT costs, which are however assessed as limited (less than 25,000 EUR).

3. Operating costs for Member States' authorities based on EPC experience

The European Professional Card (EPC) is an electronic procedure that professionals going cross-border can use to have their professional qualifications recognised in another EU country. It was introduced on the basis of an implementing act[217] and started to operate in January 2016. For the moment, the EPC procedure is only available for applicants in a selected number of professions (nurses, pharmacists, physiotherapists, mountain guides and real estate agents).

Methodology

Given that Member States' authorities are at this stage not able to provide reliable estimates on operating costs, it is very difficult to assess them departing from a baseline scenario. Therefore, the costs for Member States' authorities of the different policy options outlined in the impact assessment (section 5) will be estimated on the basis of the experience with the EPC.

The EPC is chosen as a basis for the estimation given that it is comparable to the initiative under assessment. As with the proposed European services e-card, the home country authorities assist the applicant with their EPC application and check that it is correct and complete. They also certify the authenticity and validity of supporting documents.[218] At the same time, there are also important differences between the European services e-card (under the different policy options) and the EPC, which will be highlighted. For example, the number of authorities and requirements involved in the European services e-card would in general be higher than the one(s) involved in the EPC. This implies amongst others additional costs of coordination within each Member State (which will vary depending on its regional and administrative structure).

The estimation will focus on policy options 1 and 2A outlined in section 5 of the impact assessment. A differentiation will be made under policy option 2A regarding temporary cross-border provision and secondary establishment. Options 2B, 3 and 4 do not entail significant additional costs for authorities.

[217] Commission Implementing Regulation 2015/983 of 24/6/2015, OJ L 159, 25.6.2015

[218] Limited however to documents required and listed up under the Professional Qualifications Directive, in particular Articles 7 (2) and 50 in conjunction with Annex VII).

The estimation of the administrative costs on the basis of the EPC experience will be done in the following way:

1. Calculate the average fees charged under EPC separately by the home and by the host Member States;
2. Estimate the total number of EPC applications based on the figures already available for the first half of 2016;
3. Compare the workflows under EPC to the workflows under the policy options to be assessed (1 and 2A) in terms of administrative tasks involved. On the basis of this comparison, establish coefficients in percentage terms of whether the European services e-card workflow will be more or less burdensome;
4. Estimate the expected number of applications under each of the policy options (1 and 2A). To mitigate the uncertainty in this regard, a range of expected number of applications (minimum, maximum) under the different policy options will be used;
5. On the basis of average fees established in step 1 and coefficients established in step 3, calculate the expected average costs per application for home and host Member State under each policy option;
6. On the basis of the expected applications (step 4) and average cost per application (step 5), calculate the expected operating costs incurred by the Member States under each policy option.
7. Perform a robustness check of the estimations by comparing the results to an analysis using the maximum fees charged under the EPC.

There are some important limitations regarding this methodology that should be highlighted:

- The actual costs incurred by authorities under the EPC system are not known. The estimations will therefore be done on the basis of the fees that Member States charge to users (see below). While these fees should reflect the cost of the procedure, one cannot discard that they fees might not (in all cases) be a fully accurate estimate for the actual costs incurred by authorities;
- An estimation will be done of the expected number of applications to be received under the different policy options. These are however uncertain and hence difficult to estimate. To mitigate this, a range of expected number of applications (minimum, maximum) under the different policy options will be used;
- The estimation will be based on EU averages. However, there might be strong differences regarding operating costs between Member States. For example, (host) Member States with high levels of regulation could require more activities/costs under policy option 2A. Also, Member States with regional authorities (rather than one centralised national authority) might also have higher costs overall.

Step 1: Fees charged by Member States under the EPC

Both home and host Member States are allowed to charge fees to professionals applying for the EPC. These fees have been notified by several Member States to the Commission[219]. They differ across Member States and within a given Member State across professions. In addition, they can also differ in the same Member State and profession depending on the role of the coordinating authority (home or host Member State).

The tables below show the averages of fees per profession charged by home and host Member States (in the cases of establishment and temporary cross-border provision). These averages have been calculated in the following way[220]:

- Member States which have not notified any fees or which do not charge fees are excluded[221];
- In case Member States notified a fee range (i.e., a minimum and maximum fee which they can charge to professionals), the average of this range has been taken into account;
- A simple average per Member State has been taken into account for those Member States which charge different fees in different regions.

Average home Member State fees – establishment (EUR)

Mountain guide	72
Pharmacist	86
Physiotherapist	77
Nurse responsible for general care	87
Real estate agent	112
Average	**87**

Average home Member State fees – temporary cross-border provision (EUR)

Mountain guide	50
Pharmacist	120
Physiotherapist	72
Nurse responsible for general care	91
Real estate agent	102
Average	**87**

Average host Member State fees – establishment (EUR)

Mountain guide	138
Pharmacist	198
Physiotherapist	158
Nurse responsible for general care	134

[219] They are available on this website: http://europa.eu/youreurope/citizens/work/professional-qualifications/european-professional-card/index_en.htm. Some Member States have not yet notified their fees. These fees are not part of the EU framework regulating the introduction of the EPC.
[220] Fees notified to the Commission in national currency have been converted to EUR.
[221] Across the 5 professions, 26 Member States have notified fees.

Real estate agent	196
Average	**165**

Average host Member State fees – temporary cross-border provision (EUR)[222]

Mountain guide	143
Pharmacist	227
Physiotherapist	166
Nurse responsible for general care	129
Average	**166**

This shows that fees charged differ significantly on whether the Member State acts as home or host Member State. Nevertheless, they do not differ significantly between cases of secondary establishment or temporary cross-border provision of services by the professionals concerned.

For the purpose of estimating potential costs for authorities to operate the procedures for issuing the certificate proposed under this impact assessment, we consider as a starting point that these EPC fees are a proxy of the actual costs faced by authorities to complete the required EPC procedures. We therefore consider the costs per EPC application for home Member States to be 87 EUR and 165 EUR for host Member States. It is not excluded that the actual costs will be different in cases of temporary cross-border provision versus secondary establishment. However, this distinction is not made given that the EPC fees do not differ considerably in both situations and due to lack of alternative information.

Step 2: Number of EPC applications

The EPC has started its operations in January 2016. About 1250 applications have been submitted by professionals over the first 6 months of the year. One can therefore expect about 2500 EPC applications per year. At the same time, many of the applications (more than 27%) have been withdrawn by the professionals before reaching their final stage. The reasons are change of interests but also the need for provision of documents and translations of such documents.

Step 3: Estimation of administrative costs for national authorities to operate the card

On the basis of the above, estimations can be made on the potential costs for Member States' authorities to operate the proposed certificate. These estimations however need to take into account the differences between the different policy options of the European services e-card which have been outlined in section 5 of the impact assessment as these policy options require more or less work of home and host Member State's authorities compared to the EPC.

Policy option 1 will require more work from home Member States' authorities compared to the EPC for the following reasons:

[222] No fees have so far been notified for real estate agents.

- The home Member State' authorities issue a certificate/card to the service provider demonstrating legal establishment in the home Member State. This task is fairly similar to the EPC dimension of attesting legal establishment in the home Member State. However, it will require more work compared to the EPC given that its scope is larger (including legal persons);
- A coordinating authority in the home Member State would be the single interlocutor for the service provider and would ensure information flows between relevant authorities. This will require more coordination efforts between national and regional authorities compared to the EPC given the larger number of competent authorities included, also because legal persons are now included;
- Under the proposed certificate, the competent authority in the home Member State would also be required to use information previously made available to other national authorities unless specific national laws (tax secrecy, data protection) prevents such data processing – this is a new task and cost in contrast to the EPC, however some cost savings would come from the interconnection of business registers as from mid-2017.

At the same time, policy option 1 will require significantly less work from host Member States' authorities compared to the EPC. In fact, the only activity required by the host Member State would be to notify relevant sanctions in relation to the service provider (after the issuance of such certificate). This is overall a much lower effort compared to the activities required by the host Member State under the EPC, which have no equivalent in policy option 1.

The differences between policy option 1 and the EPC are summarised in the table below.

MS	**European services e-card tasks (option 1)**	**Compared work/cost**	**EPC tasks (temporary cross-border)**	**MS**
Home MS	Attestation of legal establishment for natural and legal persons	>>	Attestation of legal establishment for professionals	Home MS
	Coordination with relevant authorities for all relevant issues for legal establishment of both natural and legal persons	>>	Coordination with relevant authorities for professional qualification of professionals and closely related issues	
	Obtain/make use of information previously available to all authorities in all levels of government	>	n.a.	
Host MS	n.a.	<<	Verification of the EPC declarations submitted by the home MS	Host MS
	n.a.	<	Request for additional information such as	

			information on legal establishment	
	n.a.	<<	Compensation measures for professions with health and safety implications	

Policy option 2A (temporary cross-border provision) will require more work from home Member States' authorities compared to option 1 (and therefore also compared to the EPC). For example, regarding supporting documents, the home Member State would be required to provide summary information to the host Member State through IMI (in order to avoid translation as much as possible).

Policy option 2A (temporary cross-border provision) will also require some additional work from host Member States' authorities compared to option 1 but still less than under the EPC given that:

- They will be required to make available details on which domestic law the incoming service provider has to respect. In addition, the host Member State will have to consider whether a specific entry control scheme is exceptionally required (in which case it objects to issuing the card). This is however still significantly less effort compared to the activities of the host Member State under the EPC, where it controls on legal establishment in the home Member State (which, under the European services e-card, is entirely transferred to the home Member State);
- Moreover, under the EPC there are more complex declarations on professional qualifications, requiring a sort of compensation measures imposed by the host Member State.

The differences between policy option 2A and the EPC are summarised in the table below.

MS	**European services e-card tasks (option 2A - temporary cross-border provision)**	**Compared work/cost**	**EPC tasks (temporary cross-border)**	**MS**
Home MS	Attestation of legal establishment for natural and legal persons	>>	Attestation of legal establishment for professionals	Home MS
	Coordination with relevant authorities for all relevant issues for legal establishment of both natural and legal persons	>>	Coordination with relevant authorities for professional qualification of professionals and closely related issues	
	Obtain/make use of information previously available to all authorities in	>	n.a.	

	all levels of government			
	Describe supporting documents	>>	n.a.	
Host MS	Provide information on applicable requirements. In exceptional cases object to issuance of the card.	<	Verification of the EPC declarations submitted by the home MS	Host MS
	Request for additional information such as information on legal establishment	≈	Request for additional information such as information on legal establishment	
	n.a.	<<	Compensation measures for professions with health and safety implications	

Policy option 2A (secondary establishment) will require essentially the same work from home Member States' authorities as under option 2A.

This option will however require significantly more work for the host Member State compared to option 2A (temporary cross-border provision) given the assessment of compliance with entry conditions on a case-by-case basis under this option. Even comparing to the EPC, option 2A (secondary establishment) would be more heavy for the host Member State given that this assessment would be intrinsically more complex than devising compensation measures under the EPC given the wider spectrum of possibilities at play (the compensation measures can only include either internships, undergoing examinations or both).

Policy option 3 and its different sub-options will not fundamentally change the administrative costs for home or host Member States' authorities compared to what has been described above.

Policy option 4 will also not entail any direct administrative costs for authorities.

The table below summarizes the information above showing how the different policy options compare to the functioning of the EPC and to each other. It indicates in particular where more or less efforts would be required by home and host Member States' authorities.

	Policy option 1	**Policy option 2A (temporary cross-border provision)**	**Policy option 2A (secondary establishment)**
Efforts required by home Member State	More compared to EPC	Significantly more compared to EPC (and option 1)	Similar to option 2A (temporary cross-border provision)
Efforts required	Significantly less	Less compared to EPC (but	More compared to EPC

by host Member State	compared to EPC. No costs prior to issuing a certificate	more than option 1)	(and significantly more than options 1 and 2A temporary cross-border provision)

On the basis of the above comparison of the efforts required by authorities under the different policy options in comparison to the EPC, an estimation has been can be made on the operating costs that the different policy options under this initiative would entail.

First, we will estimate the cost per card application on the basis of the above EPC fees, taking into account whether the activities for home and host Member States' authorities – under the different policy options – are considered more or less intensive compared to the EPC. The following assumptions are used on the basis of the comparisons with the EPC presented above:

	Policy option 1	**Policy option 2A (temporary cross-border provision)**	**Policy option 2A (secondary establishment)**
Costs for home Member States compared to the EPC	+ 25%	+ 50%	+ 50%
Costs for host Member States compared to the EPC	- 90%	- 75%	+ 50%

On the basis of the above estimated costs per EPC application (87 EUR for home Member State and 165 EUR for host Member State), this means the following in terms of cost per card application (rounded estimations):

	Policy option 1	**Policy option 2A (temporary cross-border provision)**	**Policy option 2A (secondary establishment)**
Cost for home Member States per application	~110 EUR	~130 EUR	~130 EUR
Costs for host Member States per application	~20 EUR	~40 EUR	~250 EUR

Step 4: Estimation of the number of applications under each policy option

For the purpose of this estimation we consider that the number of applications per year will be the following:

- For option 1: Similar to the EPC (about 2,500 per year). Although the scope of sectors covered by the certificate under this impact assessment is broader than that of the

scope of the EPC, the number of applications per sector might be lower given that the European services e-card under this option would present only limited benefits for service providers. It is however not excluded that the applications will grow over time. Overall, it is difficult to estimate the exact number of applications that will be received by Member States. We therefore consider a range of 1,500 to 3,500 per year for the purpose of this exercise;

- For option 2A (temporary cross-border provision and secondary establishment): More than the EPC. The scope of this option in terms of sectors covered is the same is in option 1. Nevertheless, a larger number of applications would be expected. First, this option also covers formalities related to posting of workers. The number of posted workers in the EU has increased by almost 45% between 2010 and 2014[223] and is expected to grow even further. Second, the usefulness of the European services e-card for service providers is larger given that the information contained in it would also be used when a service provider needs an authorisation or registration in a host Member State outside the scope of the Services Directive. Finally, this European services e-card would allow the service provider to actually gain access to the market in the host Member State. For the purpose of this estimation, we consider that the number of applications would be double compared to option 1 (3,000 to 7,000 per year). In addition, the assumption is taken that half of these applications would be for temporary cross-border provision and the other half for secondary establishment.

Steps 5-6: Calculation of the total operating costs for Member States' authorities

On this basis, the total operating cost for Member States' authorities per year can be estimated as follows for the different policy options:

	Policy option 1	**Policy option 2A (temporary cross-border provision)**	**Policy option 2A (secondary establishment)**
Total cost for home Member State	165,000-385,000 EUR	195,000-455,000 EUR	195,000-455,000 EUR
Total cost for host Member State per application	30,000-70,0000 EUR	60,000-140,000 EUR	375,000-875,000 EUR
Total cost (EU wide)	195,000-455,000 EUR	825,000-1,925,000 EUR	
Total cost / 28	6,964-16,250 EUR	29,464-68,750 EUR	

Hence, total administrative costs at EU level for authorities under option 1 would range from 195,000 to 455,000 EUR. Under option 2A they would range from 825,000 to 1,925,000 EUR.

[223] In 2014 there were 1.9 million postings in the EU, up from 1.3 million in 2010 and 1.7 million in 2013.

Step 7: Robustness check of estimations: comparison with the analysis using maximum fees charged by Member States under the EPC

The purpose of this section is to assess the robustness of the above estimations of costs for Member States' authorities.

The above estimations took into account the overall average of the average fees charged by Member States under each of the professions of the EPC (87 EUR for home Member States and 165 for host Member States). This is likely the most representative way to calculate what the average cost is for authorities to operate the EPC procedures. Nevertheless, these fees might not (in all cases) be a fully accurate estimate for the actual costs incurred by authorities.

An alternative would be to take into account the maximum fees charged by Member States under each of the professions of the EPC. Meaning, an average is calculated on the basis of those Member States that charge the highest fees per profession. It is very likely that this calculation presents an over-estimate of the actual average costs for authorities. Nevertheless, it is presented here as a reference and a potential maximum cost for authorities to operate the European services e-card.

On the basis of this approach, the (maximum) cost per EPC application is about 190 EUR for home Member States and about 425 EUR for host Member States. This would mean the following in terms of cost per card application (rounded estimations):

	Policy option 1	**Policy option 2A (temporary cross-border provision)**	**Policy option 2A (secondary establishment)**
Cost for home Member States per application	~240 EUR	~285 EUR	~285 EUR
Costs for host Member States per application	~45 EUR	~105 EUR	~640 EUR

On this basis, the total administrative cost for Member States' authorities per year can be estimated as follows for the different policy options (leaving the assumptions on number of applications unchanged):

	Policy option 1	**Policy option 2A (temporary cross-border provision)**	**Policy option 2A (secondary establishment)**
Total cost for home Member State	360,000-840,000 EUR	427,500-997,500 EUR	427,500-997,500 EUR
Total cost for host Member State per	67,500-157,500 EUR	157,500-367,500 EUR	960,000-2,240,000 EUR

application			
Total cost (EU wide)	427,500-997,500 EUR	1,972,500-4,602,500 EUR	
Total cost / 28	15,268-35,625 EUR	70,446-164,375 EUR	

These costs are obviously higher than the ones estimated using average fees. At the same time, under none of the scenarios total costs would exceed 5 million EUR for the whole EU or 200,000 EUR on average per Member State.

4. Operating costs for Member States' authorities – SOLVIT benchmark

The SOLVIT system is used in order to estimate an alternative benchmark for the operating costs of Member States' authorities. This is done on the basis of the number of staff in terms of FTEs working in each national SOLVIT centre[224]. Each centre simultaneously functions as a host and as a lead centre, therefore these staff figures correspond to both stages of the procedure. On the basis of the staff numbers for each national centre and using the total hourly average labour cost in each Member State[225][226], an estimation is made of the total operational costs of the SOLVIT network to the Member States' authorities.

Member State	**FTEs for SOLVIT national centre**	**Average hourly labour cost (EUR)**	**Average annual labour cost per FTE**	**Estimated annual cost of the centre**
Austria	3.4	€32.40	€57,218	€194,543
Belgium	2.8	€39.10	€69,051	€193,342
Bulgaria	1.6	€4.08	€7,205	€11,528
Croatia	1.5	€9.58	€16,918	€25,377
Cyprus	2.5	€15.62	€27,585	€68,962
Czech Republic	2	€9.88	€17,448	€34,896
Denmark	0.7	€41.31	€72,953	€51,067
Estonia	0.5	€10.35	€18,278	€9,139
Finland	0.6	€32.96	€58,207	€34,924
France	2.3	€35.08	€61,951	€142,488
Germany	2.8	€32.19	€56,848	€159,173
Greece	2.1	€14.49	€25,589	€53,738
Hungary	2	€7.52	€13,280	€26,561
Ireland	1.3	€30.00	€52,980	€68,874

[224] See SOLVIT service website http://ec.europa.eu/internal_market/scoreboard/performance_by_governance_tool/solvit/index_en.htm

[225] Data taken from Eurostat, see http://ec.europa.eu/eurostat/statistics-explained/index.php/Wages_and_labour_costs

[226] Assuming also 1,766 working hours per year. Based on data taken from OECD website, see http://stats.oecd.org/Index.aspx?DataSetCode=ANHRS

Italy	3.3	€28.09	€49,607	€163,703
Latvia	0.3	€7.06	€12,468	€3,740
Lithuania	1.7	€6.83	€12,062	€20,505
Luxembourg	1	€36.18	€63,894	€63,894
Malta	1	€13.02	€22,993	€22,993
Netherlands	3	€34.08	€60,185	€180,556
Poland	3.3	€8.62	€15,223	€50,236
Portugal	3	€13.21	€23,329	€69,987
Romania	1.8	€5.00	€8,830	€15,894
Slovakia	2.5	€10.05	€17,748	€44,371
Slovenia	1	€15.76	€27,832	€27,832
Spain	3.2	€21.21	€37,457	€119,862
Sweden	4	€37.37	€65,995	€263,982
United Kingdom	1.2	€25.72	€45,422	€54,506
TOTAL				**€2,176,673**

The total operational costs equal about 2 million EUR. Although there would be important differences between the European services e-card and the SOLVIT system, this analysis provides another useful reference which shows similar costs for Member States' authorities as under the EPC analysis above (around 2 million EUR, EU-wide).

5. Operating costs for Member States' authorities – Case study on a potential European services e-card carried out by the Estonian Ministry of Economic Affairs

In the context of the stakeholder conference organised carried out by the Commission in September 2016, the Estonian Ministry of Economic Affairs carried out a simulation of how they could introduce and operate a European services e-card, similar to policy option 1.

The conclusion of this simulation and further discussions with the Commission was that it would imply very limited costs for Estonian authorities:

- There would be some initial set-up costs, which would however remain limited;
- In case there is a full automatic connection between different databases, it would not take the home Member State authority longer than 5-10 minutes to process an application for a European services e-card. This would represent only minor costs;
- In case certain information needs to be gathered by the authorities from electronic sources, it would take longer to process an application (around 1,5 hours per application). On average, costs for the home Member State would be around 12 EUR per application (1,5 hours/160 hours in an average working month *1200 euros average);
- In the extreme case where authorities need to gather information physically from different sources, it would take even longer to process an application (around 10

hours). This would represent about 75 EUR per application (10 hours /160 hours in an average working month *1200 euros average).

Meaning, under the Estonian example costs for the home Member State would be limited to 75 EUR in the worst case scenario. This shows that – even if Estonia is relatively advanced in E-government solutions compared to other Member States – the estimate used under the analysis done on the basis of the EPC fees has probably not underestimated the cost for home member States' authorities under option 1 (assessed at around 110 EUR).

Annex 9: Impact of addressing regulatory obstacles in the selected business services (accountants, architects and engineers)

Packages 3 and 4 would reduce administrative complexity and address a number of regulatory obstacles in the business services sectors of accountants, architects and engineers. It would simplify the following obstacles to cross-border activities in these sectors:

- Authorisations (including compulsory chamber membership requirements);
- Insurance requirements;
- Restrictions on corporate form;
- Shareholding/voting rights requirements;
- Requirements on management structures;
- Restrictions on multidisciplinary activities.

The purpose of this annex is to provide indications of the impact that these packages would have with regard to addressing these obstacles. This is done on the basis of the 2015 Commission study on the economic impact of barriers in business services[227] which looked into the impact of a range of regulatory obstacles in the sectors of accounting, architecture, engineering and legal services (the latter not covered by the initiative under analysis). The large majority of the obstacles covered by this study – on which basis economic effects were analysed – would be simplified/addressed through packages 3 and 4 (namely authorisation requirements for companies including compulsory chamber membership requirements, insurance requirements, restrictions on corporate form, shareholding/voting and management structures & multidisciplinary activities).[228] Furthermore, some of the other requirements covered by the study which are not addressed by packages 3 and 4 (tariffs and restrictions on advertising) were found to be no longer widespread across Member States thus having little impact.

Overall therefore, the results of this study are therefore indicative of potential economic effects of packages 3 and 4 as outlined in section 5 of the impact assessment.

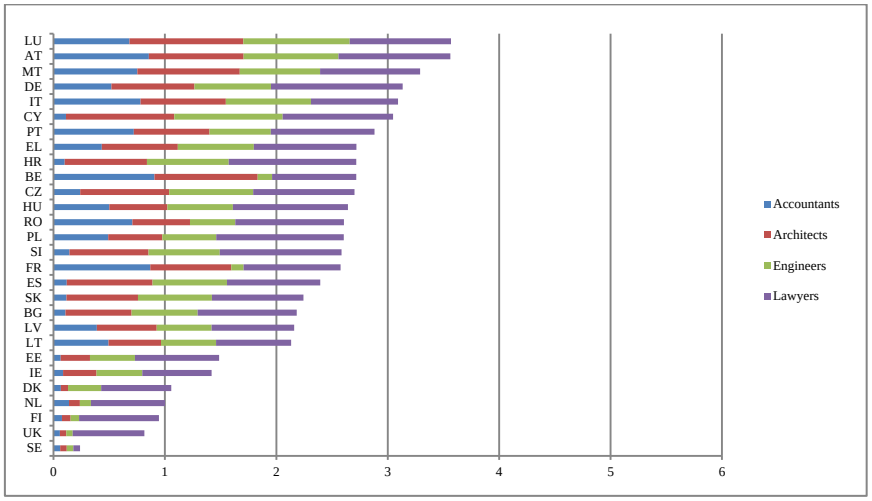
Regulatory obstacles

The study confirmed that there is a large divergence in the levels of regulatory barriers for the four business services sectors analysed between different Member States. Figure 1 shows the overall results of the assessment, taking into account the results of the barriers assessed cumulatively. High (low) scores indicate higher (lower) restrictiveness.

[227] European Commission, "Business services – Assessment of Barriers and their Economic Impact", 2015

[228] Other requirements covered by the study are reserves of activity, tariffs and restrictions on advertising. Tariffs and restrictions on advertising were in addition found to be no longer widespread.

Figure 1 – Overall restrictiveness scores per Member State



Barriers in the least restrictive Member State amount to merely 7% of the barriers in the most restrictive Member State.

Impact on competition

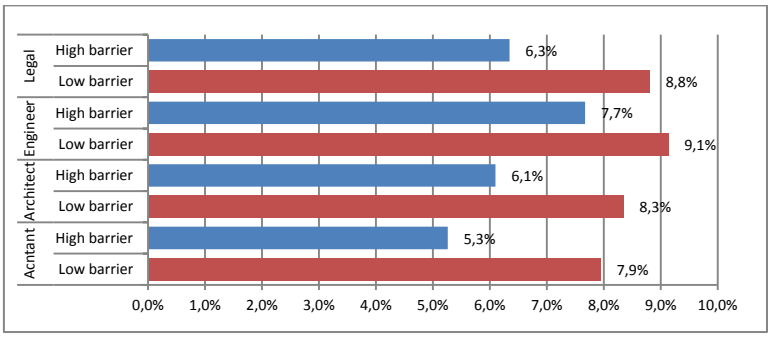
The study also analysed the impact of these regulatory barriers on the levels of competition in the sectors concerned. Figure 2 shows the share of companies newly establishing in a market (relative to all firms in a market, 'birth rate') for Member States with more restrictive versus those with less restrictive barrier levels[229]. It illustrates that Member States with more restrictive barrier levels have on average a lower number of new service providers entering their markets in each of the four business services sectors analysed.

As a result, competition is lower in these Member States and market dynamics are constrained. Indeed, figure 3 shows that the Member States with more restrictive barrier levels have on average also a lower combined share of companies entering and exiting the market ('churn rate') in each of the four sectors analysed[230].

[229] The graph compares the (simple) average of birth rates (average 2010-2012) for the 10 most versus the 10 least restrictive Member States in each sector. EL and HR are excluded from the analysis given no or low data availability.

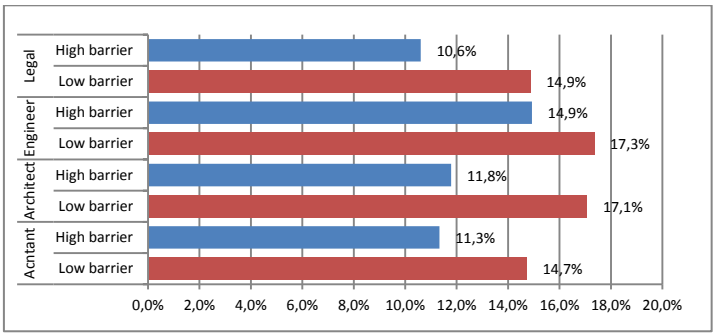
[230] The graph compares the (simple) average of churn rates (average 2009-2011) for the 10 most versus the 10 least restrictive Member States in each sector. EL and HR are excluded from the analysis given no or low data availability. One outlier has been removed from the analysis (RO – legal).

Figure 2 - Average birth rates for high vs. low restrictive Member States



Source: Eurostat, Commission assessment, 2015

Figure 3 - Average churn rates for high vs. low restrictive Member States



Source: Eurostat, Commission assessment, 2015

High market birth and churn rates are associated with high levels of competition as more productive companies replace less productive ones, increasing the overall competitiveness of a sector.

A quantification of the relationship between barrier levels and birth rates can be assessed through a regression analysis[231]. To this end, the study uses an econometric model is created with birth rate as a dependent variable and barrier level as an explanatory variable. Average firm size in a sector is used as a control variable to approximate the possible impact on birth rates caused by the presence of additional possible entry barriers created by large incumbents. Two sets of dummies (fixed effects for sectors and for countries) also enter the equation.

Table 1 – Results of regression analysis barrier levels – birth rates

Barrier level	−0.658*** (0.003)
Average firm size	−0.103 (0.395)
R^2	0.976
Adjusted R^2	0.966
F	91.1 (0.000)

[231] The regression analysis covers the four business services sectors analysed and 28 Member States. Average of 2010-2012 birth rates per Member State and sector were used.

The results of this regression analysis (Table 1) confirm a negative and statistically significant[232] relation between barrier levels and birth rates. In other words, Member States can increase the number of new service providers entering into their markets by reducing barrier levels.

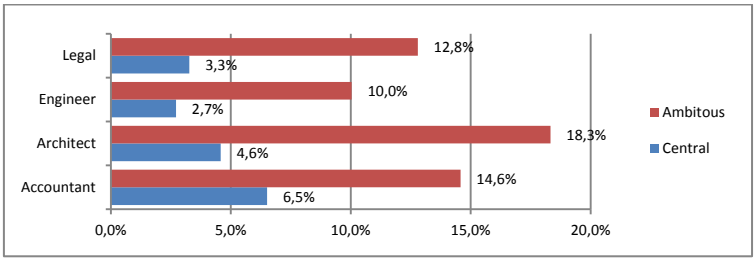
On this basis, the potential impact of reducing barrier levels on birth rates is estimated. Two alternative "reform" scenarios are considered:

- A "central scenario" in which barrier levels are assumed to be reduced to the *average* level across all EU Member States in a given sector;
- An "ambitious scenario" in which barrier levels are assumed to be reduced to the average of the "*top 5*" EU Member States, where the "top 5" represents the five countries with the lowest barriers in a given sector.

The ambitious scenario would likely overestimate the potential impact of packages 3 and 4. The central scenario is therefore used as a benchmark for the potential economic effects generated through policy packages 3 and 4.

The results of these two scenarios for each of the four business services sectors analysed are shown in figure 4. Under the central scenario relative births intensity could increase by 2.7% to 6.5%[233] (EU weighted average), depending on the sector concerned. Under the ambitious scenario birth rates could increase by 10.0% to 18.3%[234] (EU weighted average).

Figure 4 – Estimated relative impact of reduced barriers on births intensity



Source: Eurostat, Commission assessment, 2015

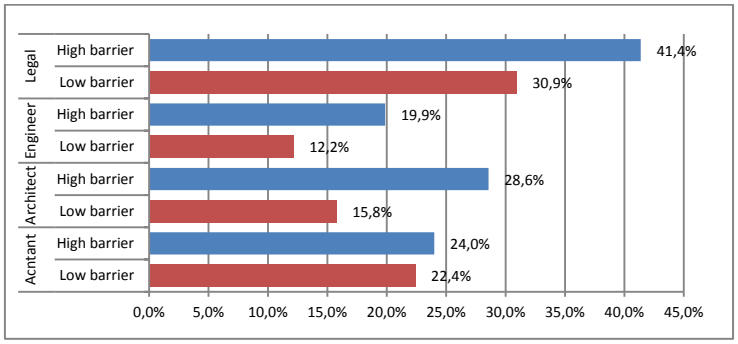
Impact on profitability

The study also looked into the impact of the regulatory barriers on sector profit rates. Figure 5 shows average profit rates[235] for Member States with more restrictive versus less restrictive barrier levels[236]. It shows that Member States with more restrictive barriers have on average higher profit rates in each of the four business services sectors analysed. This is also

[232] Weighted OLS regression (with the size of a sector in each country, in terms of employment, as a weight) with two-dimensional fixed effects (country dummies and sector dummies, included but not reported in the table) based on 102 observations. The *p*-values are in the parentheses. The barrier level is statistically significant (at *p*-value well below 1%) and the model has a large explanatory power (high *R*-squared and *F*-statistic).
[233] This corresponds to the increase of the birth rate by between 0.24 percentage point and 0.43 percentage point. The impact in per cent is calculated as a relative increase in the birth rate.
[234] The corresponding increase of the birth rate: between 0.88 percentage point and 1.41 percentage point.
[235] Approximated by gross operating surplus/turnover
[236] The graph compares the (simple) average profit rates (average 2010-2012) for the 10 most versus the 10 least restrictive Member States in each sector. Some data is missing for CZ.

indicative of the fact that consumers in those Member States are paying higher prices for these services than consumers in Member States with lower barriers.

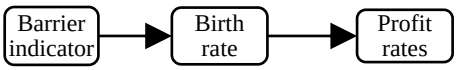
Figure 5 – Average profit rates for high vs. low restrictive Member States



Source: Eurostat, Commission assessment, 2015

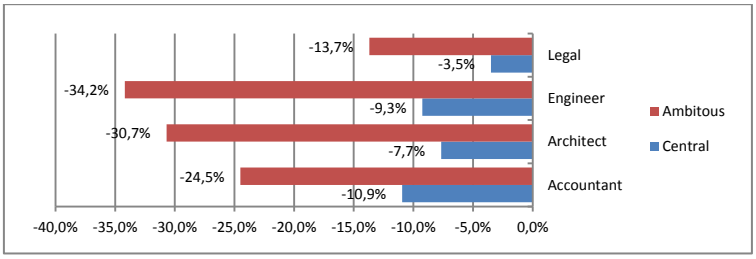
Combining the results of the above econometric analysis on the link between barrier levels and birth rates with a recent Commission study quantifying the impact of birth rates on profit rates in the four sectors analysed,[237] the relationship between barrier levels and profit rates is estimated. The underlying reasoning for this is that changes in barrier levels affect business dynamics and, through it, the profit rates of the sector.

Graph 1 – Link barrier levels and profit rates



This two-step approach (illustrated in graph 1) allows us to estimate the potential impact of reducing barrier levels on profit rates. For this, two alternative reform scenarios are again considered, the central scenario and the ambitious scenario illustrated above. In the central scenario, profitability in the sectors analysed could be reduced by 3.5% to 10.9%[238] (EU weighted average) depending on the sector concerned. In a more ambitious scenario, they could decrease by 13.7% to 34.2%[239] (EU weighted average).

Figure 6 – Estimated relative impact of reduced barriers on profitability



[237] Canton E., Ciriaci D., and Solera I., 'The Economic Impact of Professional Services Liberalisation', *European Economy, Economic Papers 533*, 2014

[238] This corresponds to the decrease of the profit rate by between 1.6 percentage point and 3.0 percentage points. The impact in per cent is calculated as a relative decrease in the profit rate.

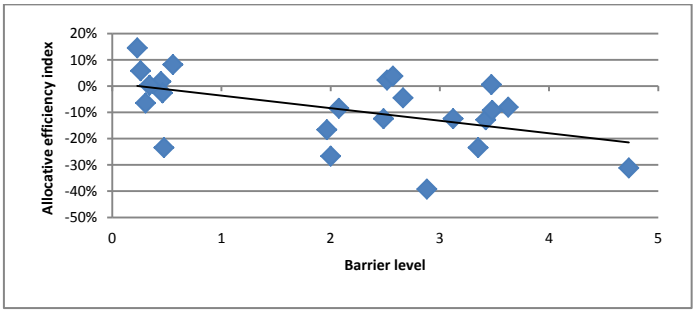
[239] The corresponding decrease of the profit rate: between 6.1 percentage points and 6.2 percentage points.

Source: Eurostat, Commission assessment, 2015

Impact on productivity / efficient resource allocation

Finally, the study looked into the impact of the regulatory barriers on the levels of allocative efficiency. Allocative efficiency reflects the extent to which productive factors are allocated towards their most efficient use (based on the market shares of more versus less productive firms) and thereby constitutes a key measurement of the productivity and competitiveness of a given economic sector. The four sectors assessed are characterised by low and even negative levels of allocative efficiency in most Member States.

Figure 7 – Relation allocative efficiency index and barrier levels

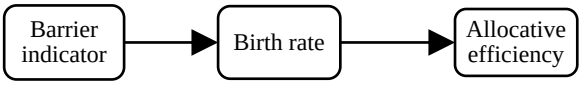


Source: Eurostat, Commission assessment, 2015

Figure 7 shows the relationship between the allocative efficiency index[240] and barrier levels[241]. This indicates that Member States with higher barrier levels have a less efficient flow of resources to their most productive use, which has a negative impact on overall productivity in these sectors.

Again combining the results the econometric analysis on the link between barrier levels and birth rates with the above-mentioned recent Commission study also quantifying the impact of birth rates on allocative efficiency in the four business services sectors analysed, the relationship between barrier levels and allocative efficiency is estimated. The underlying reasoning for this is that changes in barrier levels affect business dynamics and, through it, the allocative efficiency of the sector (see graph 2 below).

Graph 2 – Link barrier levels and allocative efficiency

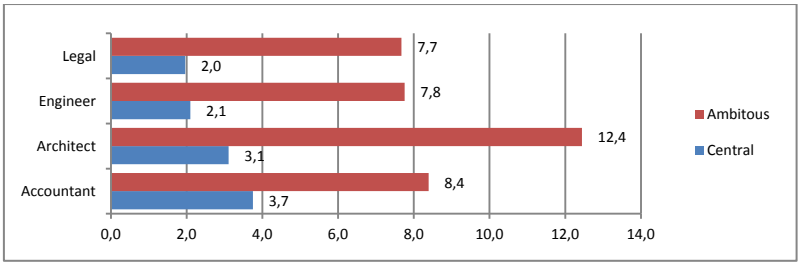


[240] This index is calculated on the basis of labour productivity and market shares statistics, capturing the extent to which more productive firms have higher market shares. The potential increases are expressed in percentage points given that in several cases this index has a negative value. For additional details on the Allocative Efficiency index see European Commission, 'Product Market Review 2013: financing the real economy', 2013

[241] The graph shows average allocative efficiency (AE) indices for the accounting and legal sector and for those Member States where this data is available. There is no disaggregated data available on AE for the architect and engineer sectors.

This two-step approach allows estimating the potential impact of reducing barrier levels on allocative efficiency, again using the same two alternative "reform" scenarios as above (graph 2). In the "central scenario" the allocative efficiency index in the sectors analysed could be increased by 2.0 to 3.7 percentage points (EU weighted average) depending on the sector concerned. In a more ambitious scenario, they could increase by 7.7 to 12.4 percentage points.

Figure 8 – Estimated impact of reduced barriers on allocative efficiency (percentage points)



Source: Eurostat, Commission assessment, 2015

Conclusion

The study confirms that reducing barrier levels in the four services sectors assessed would generate more intensive competition as a result of more firms entering the market. It would also lead to benefits for consumers in terms of lower prices as a result of reduced profit rates. Finally, the study confirmed that lower barriers would lead to more performant sectors characterised by a stronger allocative efficiency.

Packages 3 and 4 (see section 5 of the impact assessment) would address the majority of the regulatory obstacles covered by this study in the sectors of accountants, architects and engineers. The "central scenario" developed above can therefore be considered as a benchmark of the potential economic effects that can be captured through these packages. Hence, these packages can be expected to generate positive impacts that are in line with the results described – increased levels of competition, less larger-than-average profitability and stronger levels of allocative efficiency.

99% of companies active in these sectors are SMEs. The described results and potential benefits are therefore highly relevant for them.

Finally, the results of this study should be seen also in the context of other research[242] which analysed the impact of regulatory barriers in the sectors of accountants, architects and engineers. Also these studies showed that addressing the regulatory barriers would have positive effects on market dynamics and overall competiveness.

[242] See for example Canton E., Ciriaci D., and Solera I., 'The Economic Impact of Professional Services Liberalisation', *European Economy*, *Economic Papers 533*, 2014; Swedish Board of Trade, "Possible effects of the Services Directive", 2012

Annex 10: Choice of legal instrument

A non-binding instrument is not appropriate to introduce an EU-level procedure as envisaged by policy options 2 and 3, since Commission services would need a specific legal basis to implement such a procedure. Member States, on their part, would need the legal certainty of clearly laid-out (and binding) rules on roles and steps their authorities should undertake while running the procedure.

Some of the objectives of this EU-level procedure could be achieved by a set of implementing measures of the Services Directive. Article 5(2) of the Services Directive empowers the Commission to introduce harmonised forms equivalent to certificates, attestations and other documents required of service providers. However, such possibility would be limited to the scope of the Services Directive, failing to address a wider range of business needs for administrative simplification.

Regarding the expanded use of administrative cooperation, a voluntary agreement between Member States could be promoted by the Commission to use the current capabilities of IMI. However, without a clearly defined procedural workflow the benefits of a more intense cooperation would be less focused and less effective in easing access of service providers to foreign markets.

In accordance with the Treaties, the initiative should thus be comprised of a legislative package, including a Directive and a Regulation. The Directive sets out the legal and operational framework of the European services e-card, regulating inter alia the conditions of eligibility, the competences of the home and the host Member States, the validity of the European services e-card and the conditions for revoking or suspending it. The Regulation sets up tools which are available for service providers throughout the EU. In addition, it facilitates the solution of issues related to insurance coverage of a service provider active cross border.

Annex 11: Monitoring and evaluation

The Commission would – in the short term – put in place a system building on the Internal Market Information System to offer the facilities required to put the described procedures/certificate in place. This would take place in close cooperation with the competent authorities in the Member States. The Commission would also monitor how the proposal is put in place in Member States in order to ensure a consistent approach across the EU.

In the mid-to-long-term and the Commission would focus on monitoring the effects of the initiative. The table below presents the main indicators that will be used to monitor progress towards meeting the objectives pursued by this initiative, as well as the possible sources of information.

Specific objectives	**Operational objectives**	**Indicator**	**Source of data**	**Baseline**
Make it easier and less costly for companies to provide services in other Member States	Reduce administrative complexity for service providers going cross border	Cost of commencing cross-border provision of services and set up a secondary establishment Experience of service providers on ease of cross-border service provision	Studies Surveys Other stakeholder contacts Experience of Member States that may choose to make use of IMI for posting of workers	Costs for service providers up to 10,000 EUR Administrative and regulatory obstacles raised by service providers in surveys
Enable more confidence in the market towards foreign service providers by increasing transparency and available information	Increased cooperation by MS by providing a clear procedure and workflow	Statistics on the usage of the European services e-card procedures via IMI	Member States' exchanges through IMI	414 in 2015
Enable increased market dynamics and competition leading to more choice and value added for consumers	Reduce regulatory barriers to provide services	Level of regulatory barriers in Member States	Commission periodic barrier assessment	High divergence in regulatory obstacles and low market dynamics in several business services