



The Internal Market

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Selected Problems of Contemporary EU Law

Brno, 25 April 2012

Contents

- The Freedom of Establishment (FoE)
- The Free Movement of Services (FMS)
- Selected Cases

Single Market Act: Services

- Services are the driving force behind job creation in Europe: while EU growth averaged 2.1% per year from 1998 to 2008, the services sector grew by an average of 2.8% per year. Employment in the sector grew by 2% per year, compared with 1% for the economy as a whole. To make the most of this asset, the Commission proposes to revise the legislation on the European **standardisation** system to extend it to services and make standardisation procedures more effective, efficient and inclusive.

Fundamental Freedoms

- Free Movement of Persons art 45 et seqq TFEU
- Free Movement of Services art 56 et seq TFEU

Free Movement of Persons

EU citizens can move freely between MS to travel, to reside, to work (temporarily or permanently), to study or retire in another MS.

No discrimination against EU citizens from other MS!

Freedom of Establishment Art 49 TFEU

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

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

Freedom of Establishment Art 49 TFEU

- enables an economic operator (whether a person or a company) to carry on an economic activity in a stable and continuous way in one or more Member States.

Freedom of Establishment

- self-employed
- economic
- activity
- cross-border character
- fix establishment/content
- permanent

Freedom to Provide Services Art 56

Within the framework of the provisions set out below, **restrictions** on freedom to provide services within the Union shall be **prohibited** in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may extend the provisions of the Chapter to nationals of a third country who provide services and who are established within the Union.

Freedom to Provide Services Art 56

- enables an economic operator providing services in one Member State to offer services on a temporary basis in another Member State, without having to be established.

Freedom to Provide Services

- self-employed
- economic
- activity
- cross-border character
- timely limited
- **subsidiary**: not covered by FMG, FMC, FMP

Services Directive 2006/123/EC

requires the Member States to **simplify procedures and formalities** that service providers need to comply with. In particular, it requires Member States to remove unjustified and disproportionate burdens and to substantially facilitate:

- **the establishment of a business**, i.e. cases in which a natural or legal person wants to set up a permanent establishment in a Member State, and
- **the cross-border provision of services**, i.e. cases in which a business wants to supply services across borders in another Member State, without setting up an establishment there.
- Pursuant to the Directive Member States are obliged to set up one-stop-shop, through which service providers can obtain all relevant information and deal with all administrative formalities without the need to contact several authorities. The “points of single contact” have to be accessible at a distance and by electronic means.

Services Directive 2006/123/EC

- **strengthens the rights of recipients of services**, which can be both consumers and businesses. For instance, it prohibits discriminatory conditions based on the nationality or residence of the service recipient, such as discriminatory tariffs. It also lays down a set of measures to promote a high quality of services and to enhance information and transparency relating to service providers and their services.
- obliges the **Member States to cooperate with each other** in order to ensure efficient supervision of providers and their services.

Fundamental Freedoms

Direct applicability

Principle of non-discrimination

open – discriminatory administrative practise, hidden, indirect

General Prohibition of any restriction

Limits

general interest (consumer protection, rules of profession(al conduct), efficiency of the tax system, employee's protection, cultural grounds – media plurality, ..)

public, order, health, security

Selected cases

- Free Movement of Services
- Gebhard C- 55/94
- Safir C-118/96
- Vestergaard C-55/98
- Scarpio C-290/04
- Engelmann C-64/08
- COM vs B C-397/10

- Freedom of Establishment
- Hartlauer C-169/07
- To Me Group Adv. Media C-500/06

„*Gebhard*“ formula

National measures liable to hinder or make less attractive the exercise of fundamental freedoms guaranteed by the Treaty must fulfil four conditions:

- they must be applied in a **non-discriminatory** manner;
- they must be justified by imperative requirements in the **general interest**;
- they must be **suitable** for securing the attainment of the objective which they pursue; and
- they must not go beyond what is **necessary** in order to attain it.

Gebhard

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C-55/94

FoE # 25, 28 – FoS # 26 et seq (incl infrastructure)

Conditions for self-employed activities

37 measure liable to hinder/make less attractive
the exercise of FF

Safir

C-118/96

Different tax regimes for capital life insurance policies depending on whether they are taken out with companies established in S

Threshold effect: Reduction or exemption of tax # 31

- > difference in assessment thereof by authorities # 29

Obstacles to provide services # 25

Less restrictive system?

Vestergaard

C-55/98

Professional training in a tourist spot abroad

Refusal to accept costs incurred as deductible
operating costs # 2¹

Different tax depending on place where the service
is provided – justification? # 23

Scarpio

C-290/04

Services # 5 activities of

Income from cultural artistic performances

Different tax system depending on where the service provider is located # 29

Retention of tax at source - Effective collection of income tax # 34, 39

#42 precludes national tax legislation which takes into account gross income when taxing non-resident whereas residents are taxed on their net income

Engelmann

C-64/08

German citizen operated gaming establishments

A national monopoly – concessions # 44 – legal form of public ltd comp – seat on territory <-> FoE

Justification? # 40

transparacy ## 50 et seq 53, 56

COM vs B

C-397/10

Business of providing labour – sole object – barrier

Specific legal form – restriction

Minimum share capital - restriction

Hartlauer

C-169/07

Restriction to FF

Justification?

Administrative authorisation scheme: non-discriminatory?

To Me Group Adv. Media

C-500/06

Dermaestetica operating cosmetic surgery

Contract with To Me Grp: adv. Campaign for cosmetic medical treatment services

Italian legislation prohibits nation wide broadcasting – but slots in local stations

Justification of ban on advertising of medical services?

35 – public health # 38 – inconsistency -> unjustified restriction

Concluding remarks

- Obligation of the MS
- Violation of EU law