

# The Implementation of the EU Services Directive

Ulrich Stelkens · Wolfgang Weiß  
Michael Mirschberger  
Editors

# The Implementation of the EU Services Directive

Transposition, Problems and Strategies

T · M · C · A S S E R P R E S S

 Springer

Ulrich Stelkens  
German Research Institute for Public  
Administration Speyer  
German University of Administrative  
Sciences Speyer  
Freiherr-vom-Stein-Straße 2  
67324 Speyer  
Germany

Michael Mirschberger  
German Research Institute for Public  
Administration Speyer  
Freiherr-vom-Stein-Straße 2  
67324 Speyer  
Germany

Wolfgang Weiß  
German Research Institute for Public  
Administration Speyer  
German University of Administrative  
Sciences Speyer  
Freiherr-vom-Stein-Straße 2  
67324 Speyer  
Germany

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# Preface

The Services Directive is one of the most recent cornerstones in the realisation of the internal market and has attracted a lot of attention both from the general public and from economic and legal experts, in part due to the considerable share services contribute to the GDP of the Member States. The Services Directive was one of the subjects of the 2008 FIDE congress. After quite a long period of deliberation and legislation and heated debates, including between and within European institutions, it was finally adopted in 2006 and was to be transposed into domestic law by the end of 2009. This book presented here is an attempt to take stock of the impact the Services Directive had on the national administrative regulations of the Member States now that the transposition period is over and the Member States have for the most part transposed the exigencies of the directive into their domestic rules.

This volume on the legal implementation of the Services Directive is the result of the collective endeavour of the participants of a Europe-wide legal research project conducted by the editors under the umbrella of the German Research Institute for Public Administration Speyer (Deutsches Forschungsinstitut für Öffentliche Verwaltung Speyer; [<http://www.foev-speyer.de/EU-DLR>]). It will first of all explain and analyse in detail the different steps taken by each individual Member State in the implementation process of the directive, thus not only providing information about the changes in national law adopted by the Member States (which is good to have for anyone interested in doing business within the EU), but also allowing for a comparison of the different implementation strategies applied by the Member States. Beyond that, it will allow certain basic conclusions to be drawn from this comparison as regards the heterogeneity or homogeneity of implementation concepts and the varying impact that the Services Directive has had on national services regulations, in particular the relevant administrative rules. One can observe, for example, that some Member States used the transposition to implement far reaching alterations of domestic administrative law and intensely modernise the citizen-state/public administration relationship, whereas others made reforms only where absolutely demanded by the Services Directive. The Services Directive shows how European legislation touches even

those fields of legislation originally nationally dominated, such as the law of national administration. The volume will also illustrate, by taking the Services Directive as an example, which basic problems arise when European law interferes with established domestic administrative structures and national legislative/dogmatic concepts and traditions in administrative law as well as how deep the impact of the European legislation can be in different administrative traditions in Europe. Thus, this implementation study hopes to raise the awareness of European institutions regarding the specific conditions and problems in the different national transposition contexts, all the more so since EU law after the Lisbon Treaty is often seen as demanding greater respect for fundamental national structures and different legal traditions (allegedly derived from Art. 4 (2) TEU). Analysing and comparing the national transpositions of the EU Member States also allow verifying whether the expectations of the European Commission for cooperation between the Member States in their implementation endeavours and for the development of common examples of best practice have finally been met. If so, this implementation study could form a starting point for further research with regard to the question of which administrative tradition and conception could drive European institutions in their legislative processes, at least as regards the Services Directive.

The aforementioned project started in August/September 2009 with the establishment of the expert network and ended in September 2010. Most reports, therefore, reflect the national situation regarding the implementation process around July 2010 in the respective Member State, though some have been updated since then. The research project was inspired by the difficulties in the transposition process in Germany and by the approach finally adopted by German legislators, which saw the transposition used to initiate ground breaking reforms of core administrative laws in Germany, driven by an awareness of the need for modernisation that went well beyond the requirements of the directive. In order to ensure a common research focus and that the same questions were addressed the participants were provided with a detailed questionnaire to guide their enquiry. This questionnaire and the associated explanations are included as an annex to the general comparative report.

Initially the volume intended to gather the national reports on the implementation results of the Services Directive in all 27 EU Member States and then draw comparative conclusions on the research questions alluded to above. However, during the project period there were some changes as regards the participation of legal experts from some countries. In the end, the only Member State of the European Union that is unfortunately missing in this volume is Greece. Due to the current crises in Greece there are several problems in its public administration/sector, hence our participants could not provide a final version of the implementation of the Services Directive for this publication. This is very disappointing for us, but we still can provide an overview of the other 26 Member States. The volume profits not only from the expertise of each contributor about his/her national jurisdiction but also from an intensive exchange of views and common analysis of the similarities and differences in the implementation processes which

took place at a symposium in Speyer in April 2010. This symposium was kindly supported by the Fritz Thyssen Foundation (<http://www.fritz-thyssen-stiftung.de>), for which we would like to extend our thanks once again.

We finally would like to thank all the participants for their willingness to take part in this research and to redraft their reports several times due to new developments in the implementation process. Furthermore, we thank the German Research Institute for Public Administration Speyer for their contribution to the funding of the research. Moreover, we thank Hanna Schröder, LL.M. and Olivia Seifert, Ass. Jur., for their excellent help at the symposium. Furthermore, we would like to thank Marion Pfundstein for her valuable support at the symposium and during the whole book project.

July 2011

The Editors

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