

Ready, Steady, Service!

Report on transposition of the Services Directive

November 2008



WHO ARE WE?

BUSINESSEUROPE's members are 40 central industrial and employers' federations from 34 countries, working together to achieve growth and competitiveness in Europe.

BUSINESSEUROPE, the Confederation of European Business, represents more than 20 million small, medium and large companies.

METHODOLOGY

This report has been prepared on the basis of the responses to a questionnaire submitted by BUSINESSEUROPE's member federations by October 2008. The facts provided may be subject to change as national transposition continues.

It covers EU Member States, excluding Romania and Latvia, plus Iceland and Norway. Replies have been weighted by the gross value added by the service sectors (excluding public administration and defence) of each country. The necessary decisions under the European Economic Area (EU-27 plus Iceland, Liechtenstein and Norway) for transposition of the directive into the Agreement had not yet been decided when this report was being drafted.

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FOREWORD



Today in Europe, the services sector is the largest of the European economy accounting for around 70% of both European GDP and employment, and almost 96% of new jobs.

However, unlike the goods market, services face numerous regulatory and administrative barriers. This means that many companies, especially SMEs, simply cannot afford to offer cross-border services.

The Services Directive is an important step but its objectives will only be achieved if national governments transpose it ambitiously and ensure proper enforcement. Eliminating obstacles to trade in services, simplifying existing legislation and creating efficient and fully fledged points of single contact are of utmost importance for companies.

We are already more than halfway to the transposition deadline and we see disparate progress among Member States. Some are progressing at an alarmingly slow pace. Member States need to get a move on with services!

Ernest-Antoine Seillière
President
BUSINESSEUROPE



The Single Market has been an engine of growth and jobs in the EU. In modern economies growth is driven by the services sector which creates most new jobs.

The Services Directive mainly touches on a broad range of issues in order to realise the untapped potential of the services sector. It provides a great opportunity to simplify and modernise legislation, to enhance cooperation and mutual assistance between Member States, to make e-government a reality and to reduce administrative burden, especially for start-ups and SMEs.

Member States' firm commitment is key to achieving the full potential of the Directive. Active involvement of those who will benefit from the Directive - businesses as well as recipients and consumers - is of paramount importance.

The European Commission is making great efforts to assist Member States so they are able to meet the implementation deadline of 28 December 2009.

Charlie McCreevy
EU Commissioner
Internal Market and Services



SCREENING AND SIMPLIFICATION OF NATIONAL LEGISLATION

Member States have to review and simplify existing rules and procedures relating to the services covered by the directive.

This means for instance that Member States have to identify and report on service authorisation requirements at all levels (national, regional, local) and remove unjustified restrictions on establishment and free movement of services.

Existing requirements may be kept only if they are non-discriminatory, proportionate and justified by an overriding reason of public interest.

FACTS

- All countries have started the screening process but progress is often slow and fragmented. Sluggish progress is reported in Ireland and Slovakia. Countries like Belgium, Czech Republic, Hungary, Luxembourg, Netherlands, Romania or the United Kingdom, have completed or are about to complete the screening.
- Member federations from 12 countries, representing over 44% of the services sector, are satisfied or very satisfied with their government's screening (Chart 1). But there is a general lack of information from national authorities on the details of screening, in particular as regards reduction of administrative burden, changes to existing rules and the screening in other Member States.
- The screening process is considered highly complex and normally involves various ministries and local and regional authorities. It is further complicated in countries with a more decentralised or federal political structure such as Austria, Belgium, Germany or Spain.
- Federations from 17 countries representing 54% of the services sector expect less administrative burden as a result of the screening. But federations in Belgium, Cyprus, Estonia, Greece, Norway, Slovakia, Sweden and the United Kingdom do not envisage significant simplification or substantial changes to their national rules on services (Chart 2).

Chart 1

Assessment of national screening

Source: BUSINESSEUROPE

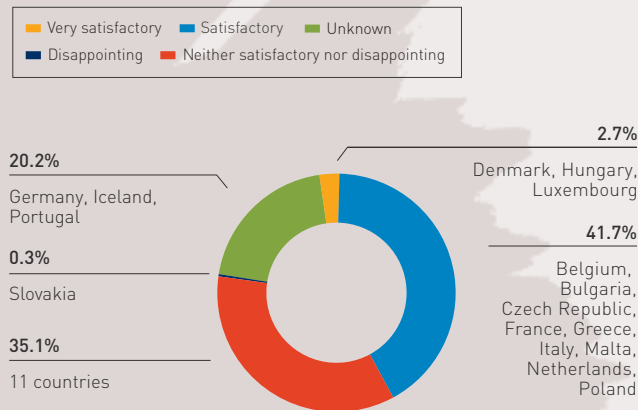
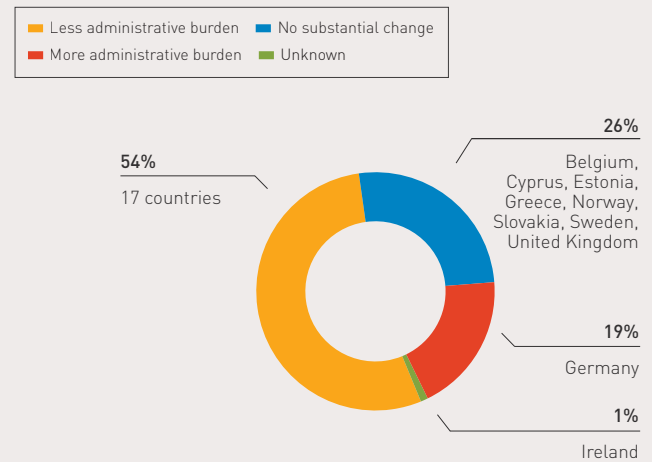


Chart 2

Expected results of national screening

Source: BUSINESSEUROPE



RECOMMENDATIONS

- 1** National and local authorities should speed up the screening process. They should make sure that all relevant requirements and authorisation schemes are simplified and kept only if properly justified.
- 2** National authorities should ensure effective coordination and that screening is conducted uniformly by the relevant national and regional administrations. Guidelines, standardised procedures and forms to collect information and carry out the screening should be used.
- 3** The screening should apply to all services covered by the directive and if appropriate, extension to other sectors could be considered. An impact assessment should be carried out analysing the regulatory simplification and economic consequences of the screening process.
- 4** Service providers should be fully involved in the screening in a systematic and structured way. Information about the content of the screening and amendments to the existing national rules should be made public.



POINT(S) OF SINGLE CONTACT

Member States have to set up a single contact to supply relevant information and to allow for completion of formalities concerning establishment and freedom to provide services.

Member States are free to decide to whom they want to attribute the tasks of the point(s) of single contact. They have to ensure that the point(s) of single contact are available for use by domestic and foreign providers and recipients at the latest by the end of the implementation period.

For service providers, it will mean that they do not need to contact several competent authorities or bodies to obtain the necessary information and complete the formalities. This should bring down bureaucracy and reduce time and costs.

The point(s) of single contact should give service providers a clear overview of all steps they need to take and supply them with procedural assistance and feedback on ongoing procedures. This will particularly benefit SMEs and start-ups but also service recipients.

FACTS

- There are various models of point of single contact under consideration. Some countries plan to use existing structures and others envisage creating new ones. Options include trade associations, chambers of commerce, business or citizen assistance platforms and agencies in specific ministries.
- Most countries will use a combination of electronic and physical points of single contact. Only five countries (Denmark, Netherlands, Norway, Sweden and United Kingdom) plan to create purely electronic point(s) of single contact (Chart 3).
- Ten countries representing 29% of the services market envisage several points of single contact among which one central point would carry out coordination tasks vis-à-vis the regional points. In Estonia, Italy and Slovakia little progress is reported on setting up the point(s) of single contact.
- In most countries, representing 86% of the services market, the points of single contact will serve both to provide information and assistance and complete formalities as envisaged in the directive. In Ireland, they would carry out only information tasks (Chart 4).

Chart 3

Type of point(s) of single contact

Source: BUSINESSEUROPE

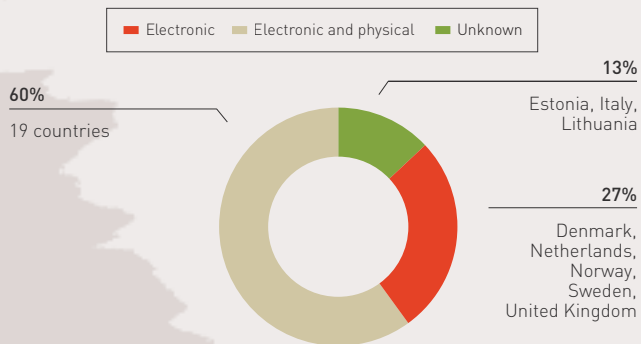
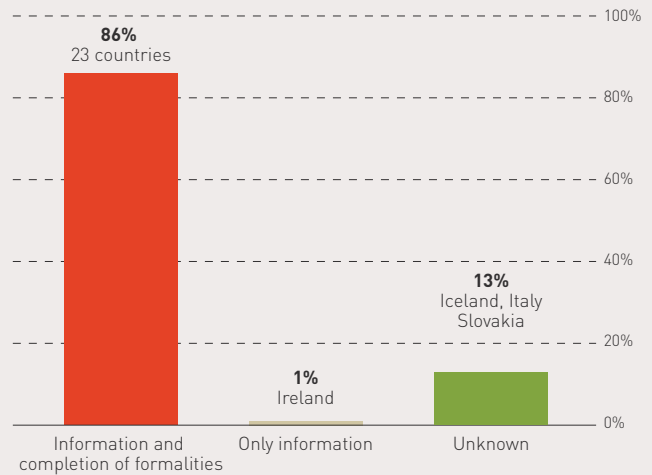


Chart 4

Tasks of the point(s) of single contact

Source: BUSINESSEUROPE



RECOMMENDATIONS

- 1** Irrespective of the number of points of single contact, it is indispensable that the point(s) of single contact fulfil the two tasks set out in the directive: provision of information and completion of formalities.
- 2** Service providers and recipients must be able to access the point(s) of single contact and use their services at a distance including by electronic means. Information should be easily available and contain the contacts details of the national points of single contact and those from other countries.
- 3** The case of several points of single contact, the mandate, tasks and responsibilities of the central and the regional points should be clearly established and made public. Effective coordination among national points of single contact and those from other Member States should be ensured.
- 4** Points of single contact should be adequately financed and staffed to fulfil their tasks, particularly as regards information technology equipment and specific training of their personnel.



ELECTRONIC PROCEDURES AND INTEROPERABILITY

Member States must make it possible to complete all formalities and procedures at a distance, by electronic means in a user-friendly way. Smooth operation and compatibility of electronic procedures should be possible not only at national level including local and regional levels but also in the cross-border context.

In this regard, development of e-government, cross-border and national interoperability of electronic tools and procedures such as electronic signatures and the use of foreign languages play a paramount role for the facilitation of establishment and the provision of services both domestically and across the EU.

FACTS

- All countries plan to use some form of e-procedures to allow communication with the point(s) of single contact at distance. However, federations from 14 countries representing around 45% of the services market believe that their governments' efforts on e-procedures are insufficient (Chart 5).
- Implementation of e-procedures will vary from country to country and may include the use of e-signatures and e-certificates as authentication tools. Other modes like email, fax or phone assistance lines will be provided to allow contact at distance.
- A great number of federations have serious concerns about the difficulties and complexity of ensuring interoperability of e-procedures at both national and EU level. This is due to the disparity of approaches to those electronic tools and their compatibility and mutual recognition among countries, in particular as regards authentication instruments.
- More than half of the countries surveyed envisage the use of foreign languages to facilitate contacts with their point(s) of single contact by providers established in another Member State. English will be the most used foreign language. Fifteen countries plan to use English at least for part of the relevant information and completion of formalities (Chart 6).

Chart 5

Governments' efforts on e-procedures

Source: BUSINESSEUROPE

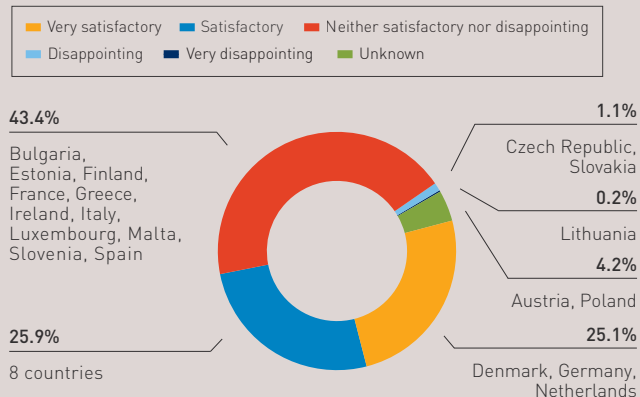
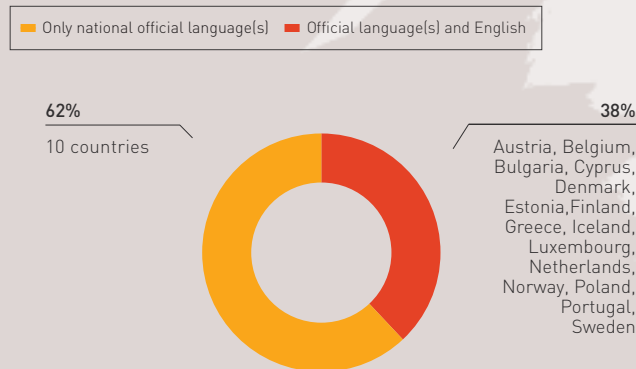


Chart 6

Languages in the point(s) of single contact

Source: BUSINESSEUROPE



RECOMMENDATIONS

- 1** In order to facilitate the use of the point(s) of single contact by providers from other Member States, English should be used in addition to national official languages. The use of languages of neighbouring countries and/or of those countries with which there are significant commercial relations should be also encouraged.
- 2** The staff in the point(s) of single contact should be properly trained to operate information technology tools, the relevant software and to deal with queries via email, fax or telephone also from foreign providers. An assistance phone service or a call centre should be available.
- 3** To ensure interoperability both domestically and across frontiers, guidelines should be developed as well as promotion of best practices and exchange of know-how among countries.
- 4** A common user-friendly and pragmatic approach to e-identification and authentication systems, security of transactions and language technologies is of particular importance for the interoperability of national systems.
- 5** EU and national policies on e-governance and, in particular, the EU Interoperability Framework should include the Services Directive as one of the priority projects.

FREEDOM TO PROVIDE SERVICES

Removing obstacles to the cross-border provision of services and ensuring legal certainty is at the heart of the directive. Article 16 of the directive obliges Member States to respect the right of service providers to offer services in a Member State other than that in which they are established. This provision is essential to avoid unjustified restrictions and fight protectionism.

Member States will be able to impose national requirements on incoming foreign service providers only if they are non-discriminatory, necessary to protect public policy, public security, public health or the environment, and if they are proportionate. Service providers can therefore be certain that they do not need to comply with the legislation of the host Member State unless its application is justified for the above reasons.

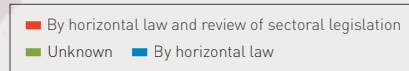
According to article 395 of the directive, Member States will have to provide by 28 December 2009 a report to the Commission on the national requirements applicable to service providers established in another Member State together with their justifications. This provision will help service providers to know which are the legal obligations they have to comply with when they offer services beyond their national frontiers.

FACTS

- The great majority of countries, with the exception of Slovenia, intend to transpose the provisions on freedom to provide services through a combination of new horizontal legislation with amendments to the relevant existing laws that regulate specific sectors (Chart 7).
- Most of the federations believe that the combined approach (horizontal legislation plus sectoral amendments) is the best way to ensure good transposition of these provisions and provide legal certainty for the cross-border provision of services.
- Many federations believe that too much room for interpretation is left to Member States to implement these provisions. This will necessitate an intense role by the European Court of Justice with the likely lengthy procedures involved.
- All federations consider that the reporting obligations set out in article 395 are important or very important for legal certainty and the development of intra-Community trade in services (Chart 8).

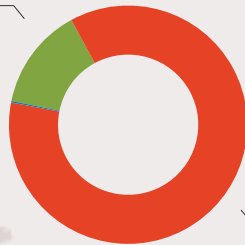
Chart 7

Transposition of freedom to provide services
Source: BUSINESSEUROPE



13,9%
Estonia, Ireland, Italy

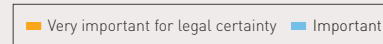
0,2%
Slovenia



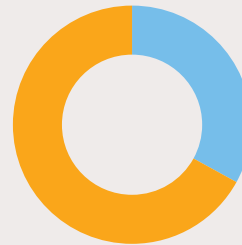
85,9%
22 countries

Chart 8

Notification of national requirements on foreign providers
Source: BUSINESSEUROPE



67%
21 countries



33%
Denmark,
Germany,
Iceland,
Portugal,
Spain,
Sweden

RECOMMENDATIONS

- 1** Member States should abolish all requirements to the cross-border provision of services unless they are justified on the grounds specified in article 16. These grounds must be interpreted strictly taking into account existing case law by the European Court of Justice. A best practice guide could be developed on implementation of article 16 on the basis of the mutual evaluation foreseen in article 39.5.
- 2** Member States bear important information duties, namely to report to the Commission on national requirements restricting the freedom to provide services as set out in article 16. Standardised information procedures should be developed and this information should be easily accessible to the public to ensure transparency and legal certainty.
- 3** The Commission should establish a public register (e.g. a website) with all this information, particularly on how Member States have transposed article 16 and national requirements that Member States must notify according to article 39.
- 4** The Commission should clarify the consequences for failure by a Member State to notify. It should be made clear that companies providing cross-border services are acting in accordance with the law if they comply with the notified requirements.



BETTER REGULATION AND STAKEHOLDER INVOLVEMENT

Improving the way legislation is elaborated and enforced is vital for competitiveness and confidence in the Single Market. Legislation should be simple, clear and cost-effective, and aim at reducing administrative burdens so that compliance costs are minimised. This is equally important at both EU and national level.

It includes meeting transposition deadlines, impact assessment, consultation of representative stakeholders and use of adequate and accurate information and data to support policy proposals.

FACTS

- Most federations are involved in the national transposition process with the exception of those from Estonia, Norway, Slovakia and Slovenia. The type of stakeholder consultation varies from well organised official processes to informal, unstructured ad hoc stakeholder consultation.
- The dialogue between the government and the private sector is generally satisfactory. However, governments in Greece, Norway, Portugal, Slovakia and Slovenia are reported to fail in ensuring adequate dialogue with the private sector (Chart 9).
- Most federations consider the stakeholder consultation on transposition a one-way process. They also complain about the lack of information on how the input from stakeholders is taken into account and on the technical details about the process.
- Federations of 17 countries representing 65% of the services market expect their governments to meet the transposition deadline. In 9 countries accounting for 33% of the services market there is a risk of partial delays namely in implementation of electronic procedures, point(s) of single contact and cooperation amongst public authorities (Chart 10).
- The screening process, the interoperability of e-procedures and the elaboration of national transposition laws are ranked as the most challenging responsibilities of the national governments.
- With the exception of Norway and Sweden, most federations believe that the transposition of the directive will improve legal certainty. Apart from Slovakia and the United Kingdom, they also believe it will reduce bureaucracy. Federations from Germany and Slovakia think that the transposition may create some additional burdens for companies.

Chart 9

Quality of dialogue with private sector

Source: BUSINESSEUROPE

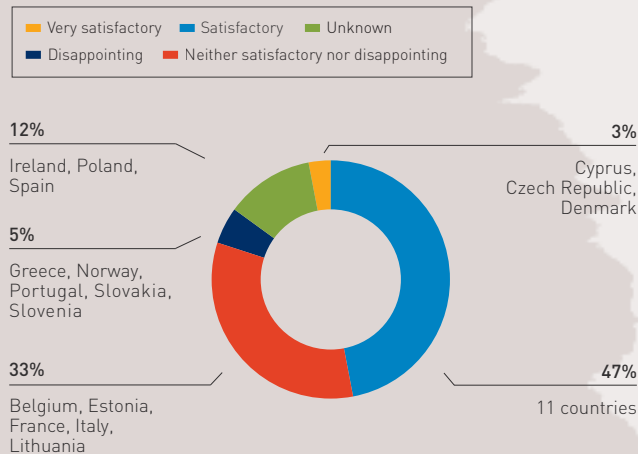
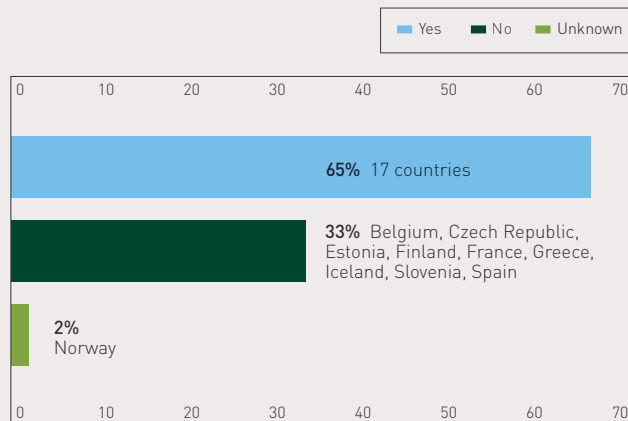


Chart 10

Will your government meet the transposition deadline?

Source: BUSINESSEUROPE



RECOMMENDATIONS

- 1** Consultation of representative stakeholders should be organised at an early stage in a systematic and structured way. This can take the form of expert working groups, workshops, online consultations or seminars.
- 2** Regular information about the progress and decisions taken concerning national transposition should be made public. This could appear in periodic briefings posted in a dedicated website as for instance in the Netherlands or the United Kingdom.
- 3** Each Member State should publish also in foreign languages and preferably in English, an easy-to-understand detailed guide explaining how the directive is transposed into the national legal order.
- 4** A communication strategy targeting service providers, particularly SMEs, should be launched by governments at the relevant level and in cooperation with representative stakeholders to explain the benefits, rights and obligations created by the directive.



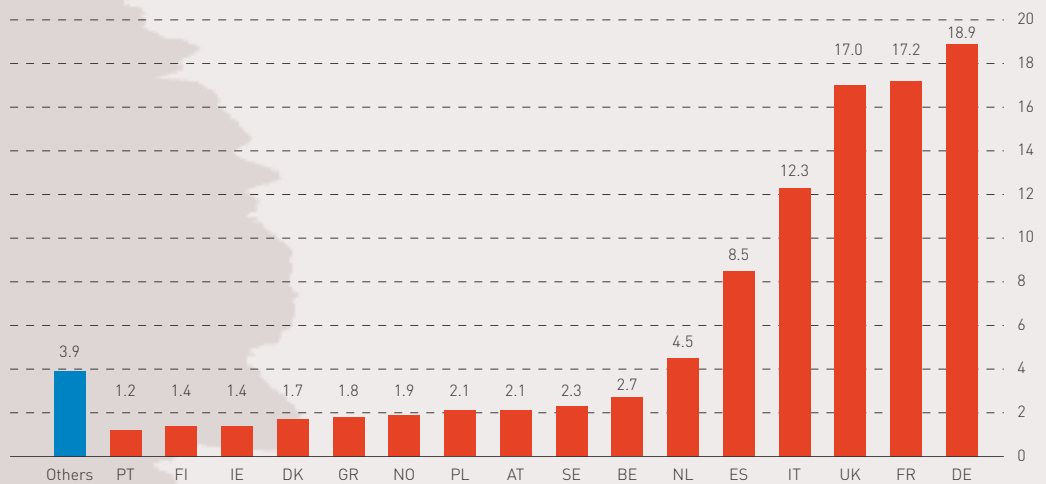
PRIORITIES FOR ACTION

- 1** National governments, including those of the European Economic Area, should ensure stronger political support and increase their efforts to accomplish a high quality legislative and administrative transposition of the directive by 28 December 2009.
- 2** Member States should continue to build on efforts undertaken to ensure uniform transposition. The ongoing meetings of national experts and the use of the European Commission's handbook on implementation are welcomed. However, consultation of representative stakeholders, including the leading national business federations, must be strengthened.
- 3** National screenings should be speeded up, seeking simplification and modernisation of existing rules. It should cover all relevant sectors and involve stakeholders fully. Effective coordination and assistance between national authorities responsible for the transposition process must be ensured.
- 4** The point(s) of single contact must be adequately equipped and staffed to fulfil, also at distance, the two tasks set out in the directive: provision of the relevant information and completion of formalities.
- 5** The use of electronic procedures and their interoperability must be fully developed as well as instruments that facilitate the use of the point(s) of single contact by providers from other Member States. The use of foreign languages, particularly English, should be promoted.
- 6** An EU-wide public registry or website should be created with all information including impact assessments on national transposition of the Services Directive. It should be available in all EU languages and updated regularly.
- 7** National governments with the assistance of the Commission should organise a wide communication campaign targeting citizens and companies, particularly SMEs, to explain the advantages and opportunities created by the directive.

Chart 11

Share of European services sector in EU-27, Iceland and Norway (as % of value-added)

Source: Eurostat, BUSINESSEUROPE



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MEMBERS ARE 40 LEADING
NATIONAL BUSINESS FEDERATIONS
IN 34 EUROPEAN COUNTRIES

					
Austria	Belgium	Bulgaria	Croatia	Cyprus	Czech Republic
					
Denmark	Denmark	Estonia	Finland	France	Germany
					
Germany	Greece	Hungary	Iceland	Iceland	Ireland
					
Italy	Latvia	Lithuania	Luxembourg	Malta	Montenegro
					
Norway	Poland	Portugal	Portugal	Rep. of San Marino	Romania
					
Slovak Republic	Slovenia	Spain	Sweden	Switzerland	Switzerland
					
The Netherlands	Turkey	Turkey	United Kingdom		