

# User guide



**The Internal Market Information System  
(IMI) and the Services Directive**

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Luxembourg: Publications Office of the European Union, 2009

ISBN 978-92-79-10455-8

doi: 10.2780/34249

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*Printed in Belgium*

Printed on white chlorine-free paper

# **User guide**

**The Internal Market Information System  
(IMI) and the Services Directive**

## **Disclaimer**

This user guide is not binding on the European Commission as an institution. It is meant to give practical guidance to competent authorities in all Member States on the use of the IMI system for the purposes of administrative cooperation under the Services Directive. This user guide is not complete in the description of provisions of the Services Directive and it does not go into technical details concerning the IMI system.

For more detailed information on the Services Directive or on the IMI system, see additional materials referred to throughout the guide, in particular the 'Handbook on implementation of the Services Directive' <sup>(1)</sup> and the general 'IMI User Handbook' <sup>(2)</sup>, should be consulted.

<sup>(1)</sup> Available in all languages ([http://ec.europa.eu/internal\\_market/services/services-dir/proposal\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/proposal_en.htm)).

<sup>(2)</sup> Available in all languages ([http://ec.europa.eu/internal\\_market/imi-net/important\\_documents\\_en.html](http://ec.europa.eu/internal_market/imi-net/important_documents_en.html)).

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# INTRODUCTION

The objective of this user guide is to give practical assistance to competent authorities in Member States when they use the 'Internal Market Information system' (IMI) to exchange information on providers of services and their activities <sup>(3)</sup>. This type of administrative cooperation between competent authorities is required by the Services Directive <sup>(4)</sup>.

The Services Directive facilitates the free movement of services throughout the EU by removing administrative and legislative barriers to service activities. At the same time, it ensures adequate supervision of service providers through administrative cooperation between Member States. To this end, it obliges Member States to assist each other and to exchange information, by electronic means, whenever this is necessary.

For the electronic exchange of information, the 'Internal Market Information system' (IMI) will be used. The 'IMI application for the Services Directive' has been developed by the Commission in close partnership with EU Member States. It helps its users to easily identify competent authorities in other Member States and facilitates communication with them, in particular through pre-translated questions and answers.

The cooperation between different Member States will in principle take place directly between competent authorities. They can be national, regional or local bodies that have a supervisory or regulatory role in their Member State in respect of service activities. This means that they are responsible for regulating, approving, inspecting or supervising businesses (companies or individuals) engaged in the service sector, including when their role is the supervision of the application of general rules such as environmental or safety standards.

If you work in such a competent authority, you may have to use IMI, for instance, when a service provider from another Member State wants to establish or wants to provide services in your area (depending on the case, you may need to deal with documents issued in other Member States or you may need to supervise a service provider which is not established in your country). In such cases, you will be able to request information from the competent authorities in the other Member State and should obtain a reply from them as quickly as possible. In other cases, it will be the competent authorities from other Member States which may need information about service providers established in your area and you will be the one receiving a request for information and having to reply to it.

This user guide describes appropriate ways of cooperating with competent authorities of other Member States and draws attention to issues that are key to making mutual assistance under the Services Directive work in practice. The guide endeavours to facilitate your everyday use of the 'IMI application for the Services Directive'. It focuses on the 'normal', day-to-day exchange of information between competent authorities and tries to explain the different obligations, scenarios and functions of administrative cooperation. It is structured as follows:

- Part 1 describes the **main objectives of the Services Directive** and the most important provisions you need to be aware of when cooperating with competent authorities of other Member States. It gives a short overview of these key provisions and explains their **impact on your daily work**;

<sup>(3)</sup> The term 'Member States', in this guide, is used to refer to the 27 EU Member States and the three EFTA countries participating in the European Economic Area (EEA), i.e. Norway, Iceland and Liechtenstein.

<sup>(4)</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on Services in the Internal Market, OJ L376 of 27.12.2006, p. 36. The Services Directive has to be implemented by all EU Member States by 28 December 2009.

- Part 2 addresses the main scenarios under which the need for **administrative cooperation** may arise and gives an overview of the situations when you are most likely to use it;
- Part 3 provides a short introduction to the **IMI system**;
- Part 4 offers a **simple step-by-step guide to the practical use of the IMI application for the Services Directive**. It aims at linking the concepts and legal obligations contained in the Directive with the practical day-to-day use of the system.

# 1. THE SERVICES DIRECTIVE: SHORT OVERVIEW OF MAIN PROVISIONS OF INTEREST FROM THE ANGLE OF ADMINISTRATIVE COOPERATION

## 1.1. The free movement of services and the Services Directive: general context

Services are by far the largest sector of the European economy. They account on average for around 70 % of GDP and of total employment in EU Member States. Even more strikingly, in recent years, new jobs have essentially been created in services. But due to numerous administrative and legal barriers, which often lead to duplication of controls and unjustified complexity, the internal market for services has not functioned well to date.

The objective of the Services Directive is to release the untapped potential of services as the engine for economic growth and job creation. It sets out an ambitious programme of administrative and regulatory simplification that aims at ensuring that both providers and recipients of services can benefit more easily from two of the fundamental freedoms enshrined in the European Community Treaty – the freedom to provide services and the freedom of establishment:

- the **freedom to provide services** across borders gives the right to service providers (whether individuals or companies) established in one Member State to carry out an economic activity across borders in another Member State without being established there. In a similar manner, it gives the right to recipients of services, which can be businesses or consumers, to freely receive services from providers established in another Member State;
- the **freedom of establishment** enables, amongst others, service providers (whether individuals or companies) to carry out an economic activity in a stable and continuous way in one or more Member States (i.e. to establish there).

The simplification measures foreseen by the Directive should significantly facilitate life for businesses, consumers and administrations. It will particularly facilitate the provision of services across the European internal market for small and medium-sized enterprises (SMEs). Wider choices and more transparency will benefit consumers, while public administrations will have a simpler regulatory framework to apply and will be able to rely on modern communication tools.

## 1.2. What is the scope of application of the Services Directive?

The Services Directive covers a wide range of economic activities in the services sector. It does not cover, however, economic activities that are not services such as manufacturing.

Activities in the area of services are many and varied. Unless explicitly excluded, the Directive applies to them all. In practice, this means that as a competent authority, depending on your specific responsibilities, you may have to deal with only one of the service sectors covered by the Directive (if, for example, you are the authority supervising construction services) or you may have to deal with many of these sectors (if, for instance, you are the authority responsible for a general trade register).

Without being exhaustive, **examples of the services covered** by the Services Directive are:

- distributive trades (including retail and wholesale of goods and services, from big retailers like supermarkets to small shops);
- the activities of most of the regulated professions (such as legal and fiscal advisers, architects, engineers, accountants, surveyors);





- construction services and crafts (such as building or demolition services but also services such as those of plumbers, painters, electricians, tilers, carpenters);
- business-related services (such as office maintenance, management consultancy, the organisation of events, recovery of debts, advertising and recruitment services);
- services in the field of tourism (such as services of travel agencies and tourist guides);
- leisure services (such as services provided by sports centres and amusement parks);
- services in the area of installation and maintenance of equipment;
- information services (such as Web portals, news agency activities, publishing, computer programming activities);
- accommodation and food services (such as hotels, restaurants, bars, catering services);
- services in the area of training and education (such as languages or driving schools);
- real estate services;
- household support services (such as cleaning services, private nannies or gardening services).

The Directive **does not apply to services which are explicitly excluded** from its scope of application. This includes some **large service sectors, namely**: all financial services (such as banking services, including lending, services of credit institutions, insurances, securities, investment funds); telecommunications services (such as telephone services and Internet connection services); transport services; health-care services (defined as medical and pharmaceutical services for human health which are reserved for regulated health professions but not other services such as those of veterinaries or those not reserved to a regulated profession); gambling activities (such as lotteries, casinos, sport betting).

There are also some more **specific service activities** which are excluded: temporary work agencies services, private security services (i.e. manned surveillance of property or protection of persons on the premises) and television and radio services.

If you are dealing with the area of **social services** (from social housing to various support services for persons in need) you should know that the obligations in the Directive (including the obligation of administrative cooperation) do not apply when such services are provided by the State directly (at national, regional or local level) or by a private provider that has been specifically mandated to do so by the State. Neither does the Directive apply when such services are provided by charities. In all other instances, when services are provided by private operators, they are covered by the Directive (for example, private nurseries or private retirement homes).

Finally, services provided by notaries and bailiffs (appointed by an official act of government) are also excluded from the scope of the Services Directive <sup>(5)</sup>.

<sup>(5)</sup> For more details on the scope of application, please refer to Chapter 2 of the 'Handbook on implementation of the Services Directive'

### 1.3. How does the Services Directive simplify administrative procedures?

The Services Directive requires Member States to **simplify administrative procedures and formalities** for businesses. In particular, Member States **will have to reduce the burden** on service providers in terms of **the type of evidence and number of documents** requested from them. For example, rules by which a service provider is required to produce a full dossier should be simplified if certain information/documents are already in the administration's possession. The same principle applies to requirements concerning **the form of a document**. Unless justified, certified copies or translations should no longer be required. Also, **documents from other Member States** should be accepted if they serve an equivalent purpose or if it is clear from their content that the requirement in question has been satisfied. In practice, this means that, when you are entitled to demand that the service provider fulfils some national requirement, you have to take into account documents issued by another Member State which prove that an equivalent requirement has already been fulfilled in their country of origin.

Ensuring that administrative procedures are sufficiently simple requires a thorough process of assessment of and, when necessary, changes in existing rules, procedures and formal requirements. As a competent authority, for each individual case you will need to comply with these simplification principles in your day-to-day dealings with service providers. You will need to ensure, for instance, that documents from other Member States are taken into consideration, when relevant, and that duplications are avoided.

#### *Accepting equivalent documents – example*

If you require periodical tests for machinery, you will need to accept, as evidence, the certificates or attestations containing the results of such tests performed in another Member State.

In the same manner, normally you should not require the submitting of a certificate of nationality, or of residence, where other official identification documents (for example a passport or an identity card) already prove this information.

### 1.4. How does the Services Directive facilitate the cross-border provision of services?

The Services Directive facilitates the activity of service providers who want to supply their services across borders to other Member States without setting up an establishment there (for example in case of specific contracts, projects, or customers). Such would be the case of an architect from France who crosses the border to design a house in Germany, or an event organiser from Finland who runs an open-air festival in Estonia.

In this respect, the Services Directive lays down the principle of '**freedom to provide services**', which means that Member States should, in general, not impose their own national requirements on incoming service providers, which are already legitimately established in another Member State and therefore are already subject to the rules applied there <sup>(6)</sup>.

National requirements can still be imposed under certain limited circumstances defined in the Directive if the following three conditions are fulfilled:

- the requirements are non-discriminatory (i.e. they do not provide, directly or indirectly, for different treatment of domestic providers and of providers from other Member States);
- they are justified for reasons of public policy, public security, public health or the protection of the environment;
- they are necessary and proportionate (i.e. the requirement is suitable for securing the attainment of the objective pursued and there are no less restrictive means that could achieve the same objective).

<sup>(6)</sup> For more details, please refer to Chapter 7 of the 'Handbook on implementation of the Services Directive'.

In addition, you should also be aware of the fact that the Services Directive provides for **additional derogations from this 'freedom to provide services' principle**.

In practice, when dealing with a service provider established in another Member State, you will need to determine whether you can impose your national requirements or not. In some Member States this situation will have been regulated unequivocally in the legislation you normally apply. Other Member States will have chosen to regulate this situation in general terms in a horizontal law. In this case, you may need to assess, yourself, for each requirement – and depending on the specific case – whether or not you can apply it. In either case, in order to ensure supervision, you may need the assistance of the competent authority supervising the service provider in his Member State of establishment, e.g. if you want to ascertain that the service provider is established in the other Member State and that he is providing his services lawfully <sup>(7)</sup>.

### **1.5. How does the Services Directive facilitate establishment of a business?**

The Services Directive considerably facilitates the establishment of a business in a Member State. This concerns cases in which an individual or a company intends to set up an establishment in another country (whether a completely new entity or a subsidiary or branch of an already existing legal entity from another Member State). The Directive also benefits providers who want to establish in their own Member State, as they will also take advantage of simplified rules and procedures. In particular, Member States will have to abolish unjustified authorisations while remaining procedures will need to be simplified. Moreover, a number of legal requirements will have to be abolished or changed. These obligations have to be implemented by changes in the regulatory framework of each Member State by the implementation deadline of the Directive (i.e. by the end of 2009) so that they will in principle be incorporated in the laws and regulations that you apply.

In this context, administrative cooperation may become necessary, for instance, when a service provider from another Member State comes to establish in your Member State (e.g. a Greek national who wants to open an advertising agency in Belgium, or a German retail company that wants to set up a business in Latvia). In such cases, you may, for instance, need the assistance of the competent authority from the Member State of establishment of the provider in respect of documents that have been issued there <sup>(8)</sup>.

<sup>(7)</sup> For more details, please refer to Chapter 2.2.1 below.

<sup>(8)</sup> For more details, please refer to Chapter 2.2.1 below.

# 2. ADMINISTRATIVE COOPERATION UNDER THE SERVICES DIRECTIVE

## 2.1. General principles

Administrative cooperation between Member States is essential to make the internal market in services work properly. The current lack of regular communication between Member States' administrations has resulted in a proliferation of rules applicable to providers and a duplication of controls for cross-border activities. Lack of communication can also be used by rogue traders to avoid supervision or to circumvent applicable rules on services. This is one of the main reasons why the free movement of services has not functioned well so far.

In the absence of cooperation between administrations it is virtually impossible for competent authorities to get first-hand information that can be essential to ensure proper supervision of service activities, for example:

- whether a service provider is lawfully established in another Member State (e.g. whether a company is lawfully incorporated there);
- whether a service provider is entitled or authorised to exercise a given activity (e.g. whether a provider has a valid authorisation or a registration in his Member State of establishment);
- whether a document has really been issued by a competent authority from another Member State (such as a certification for the use of machinery);
- whether a submitted document is still valid.

Administrative cooperation allows competent authorities to get accurate information by communicating directly with their counterparts in other Member States. At the same time, it helps to ensure that supervision does not lead to a duplication of controls or to additional, unjustified obstacles for service providers. In the long run, day-to-day cooperation will contribute to enhancing trust in other Member States' legal and administrative systems and should become standard practice.

### *Additional obstacle for service providers – example*

A service provider may already be subject to environmental auditing in his Member State of establishment with regard to the environmental soundness of his operations and working methods. These auditing results have to be taken into account in case of cross-border provision of services to ensure that the application of requirements in the host Member State does not duplicate that.

### 2.1.1. A general obligation to cooperate

To ensure that administrative cooperation is carried out effectively, the Services Directive establishes a legal obligation for Member States to give each other mutual assistance in a fast and efficient manner. This means that you are able to request information from competent authorities in other Member States and should be certain that you will get a reply shortly. But you will also have to provide information to competent authorities from other Member States that need specific information on service providers within your area of competence. The exchange of information will be done using IMI <sup>(9)</sup>.

<sup>(9)</sup> For more details, please refer to Chapter 3 below.

### 2.1.2. *An obligation to use all necessary means*

The obligation to cooperate is comprehensive and encompasses the **obligation to take all possible measures necessary for effective cooperation.**

The Services Directive does not specify the methods that must be used or the measures to be taken to achieve that result. **It is up to the competent authority of the Member State that receives a request to decide, in each individual case, on the most appropriate way to collect the requested information.** In so doing, the competent authorities shall act to the extent permitted by the powers vested in them in their Member State.

In practice, when you receive from a competent authority in another Member State a request for information concerning a service provider, you have an obligation to assist, even when the information requested is not readily available to you. It is up to you to decide on the most appropriate ways of getting the information within the realms of your authority's competence. You may need to consult the records or databases of your authority, to contact other authorities in your Member State or to carry out factual checks, for example, by contacting the provider, by doing on-site inspections at the service providers' premises, or by other means.

#### *Fulfilling your obligations of mutual assistance – example*

A competent authority receives a request for information enquiring about persons authorised to act for a service provider. In the case that it does not already have the information, it will need to get the information, e.g. by checking in a register or by asking the service provider.

#### *What if... you cannot identify the service provider in question or you cannot retrieve the relevant information?*

In general, there will be no difficulty to identify the service provider about who you have received a request. This is because, within IMI, certain key data which are generally sufficient to identify the provider, such as the name and the address of the service provider, have to be inserted before a request can be sent.

Also, in most cases, provided you are competent for a certain service provider or the specific area a request relates to, you will be able to find the information that has been requested using your authority's realm of competence. If you are not competent to reply to a request, you will be able to forward it to the authority that is dealing with the issue at stake or to your IMI coordinator.

If difficulties occur, e.g. you cannot identify the service provider, or you cannot quickly get the information, e.g. because the information is not immediately available to you and you need to contact other competent authorities, you need to inform the requesting authority quickly and try to find a mutually satisfactory solution. In case of disagreement, you should get in touch with your IMI coordinator.

You should also contact your IMI coordinator when you do not receive a reply to a request you sent to a competent authority in another Member State.

### 2.1.3. *All requests need to be specific and duly motivated*

Requests for assistance need to be specific, e.g. need to clearly indicate what kind of information is required. In many cases, requests which are sent within IMI will be specific because, in order to reduce language barriers, requests will generally rely on pre-formulated questions. Requests may, however, also use free text in which case you will need to pay more attention that the request is specific. Otherwise, you risk that the receiving competent authority provides more information than you need (if the question is too general or too wide) which creates unnecessary work and may not meet data protection requirements. If the request is unclear, you may also risk that the receiving competent authority will not be able to provide the information you need.

Requests for assistance also have to be duly motivated by the Member State that sends the request. This means that you must give reasons why the information is necessary to ensure proper supervision of the service provider concerned. The motivation must be related to a particular service provider and cannot simply be related to a general concern. In the IMI system each time you send a request for assistance you will be required to give a specific motivation for your request. This will help the receiving authority understand why you are asking for its assistance and what it is exactly that you need.

The motivation requirement also implies that administrative cooperation should not be used in a systematic way to do background checks on service providers, i.e. you should not send requests every time you are dealing with a service provider from another Member State. You should only do so if you really have a justified doubt, for example if you have indications that a service provider is not entitled or authorised to trade or if you need to assess whether you can apply your national requirements.

#### ***Motivation for a request concerning documents***

Requests should not be sent to check the authenticity of documents issued in another Member State if there are no reasons to suspect them as being incomplete or false. Such requests should be sent if you have reasons to doubt, for example:

- the accuracy of the information supplied by the service provider,
- the authenticity and validity of the service providers' submitted documents.

#### ***Motivation for a request concerning lawful establishment***

In cases of cross-border service provision, i.e. if providers established in another Member State travel to your country to provide services, you should not systematically send requests for information to the corresponding Member States of establishment to ask whether the providers are indeed lawfully established there.

Again, you should only send such a request if you have reasoned doubts as to whether a specific provider is indeed established in another Member State; for example, because of complaints by recipients or because of contradictory information resulting from the content of documents used by the service provider, such as contradictory information regarding the legal form in the supposed Member State of establishment or regarding the persons mandated to represent the provider.

## **2.2. The main scenarios of administrative cooperation**

The obligation to cooperate with authorities from other Member States relates to the substantive provisions of the Services Directive and covers two main situations:

- **cases of provision of services**, in which a service provider legally established in Member State A is providing services in Member State B, without setting up an establishment in the Member State B (for example a company established in Member State A which is providing consulting services in relation to one of its client's construction projects in Member State B);
- **cases of establishment**, in which a service provider wants to establish in a Member State to pursue economic activities there or where a provider is already lawfully established in a Member State and wants to open a second establishment (for example a veterinarian from Member State A who decides to open a second practice in Member State B or a company which opens a subsidiary in another Member State).



This distinction is important because it may affect whether or not you will be able to apply your national requirements and will also affect the information you may need from competent authorities from another Member State.



You need to remember that not all companies or individuals who are providing services in your territory are necessarily established there. This has to be determined for each individual case.

Normally there should be no doubt about whether a company or an individual is established in your Member State, e.g. if he is lawfully registered/established according to the requirements for establishment in your country. Similarly, if a service provider from another Member State only provides services into your territory occasionally, the service provider should normally be considered as relying on the freedom to provide services. In case of doubts, these will have to be carefully assessed on the basis of criteria developed by the European Court of Justice; in particular **duration, periodicity, regularity** or **continuity**.

The **duration** of the service can constitute an indicator, but you cannot automatically conclude that if a service is provided in your country over an extended period of time this means that the service provider is established in your country. From the practical point of view some services can take a long time but still remain temporary. Thus, in some cases duration cannot be the only indicator. You should also be aware that you cannot set general time limits after which you would automatically consider the service provider to be established.

#### *Distinction free provision of services/establishment – duration – example*

Architect A from another Member State wins an international project competition to design the new opera house in your capital. She is exercising her right to free provision of services.

Architect B decides to open a secondary office in your country, to employ local staff and to serve local clients from that office. He is exercising his right to establishment.

Duration would not be a sufficient indicator of establishment as architect A's project might take a couple of years to be accomplished and to this end she might spend a lot of time on your territory. However, as her activity is temporary in nature (she will not exercise her activities beyond completion of the project) it remains a cross-border provision of services. In an opposite sense, architect B's office might prove to be a failure and it might be closed down only a few months after it was opened but, despite the limited duration of the economic activities, it is clear this was a case of establishment.

Other indicators to consider are the **regularity, periodicity and continuity** of the provision of services. You will need to make an assessment based on the type of service the company/individual is providing and the specific circumstances of the case. Again, you cannot automatically conclude that, for instance, if a service provider is regularly in your country this means that he is established there (for example, a consultant established in another Member State who provides services to one client in your Member State once a month should not automatically be considered established in your Member State by the simple fact of his regular and periodical presence there).

The use of an **infrastructure can also be an indicator but, again, it is not sufficient to determine the establishment**. A provider has the right to use an infrastructure in the host Member State for the cross-border provision of a service so this element, on its own, is not decisive to determine establishment (for instance a circus from Member State A cannot be considered established if they participate during the summer months in events in Member State B by using their own infrastructure; or a construction company from Member State A using an office during the completion of a large project in Member State B) <sup>(10)</sup>.

<sup>(10)</sup> For more information on the distinction between establishment and cross-border provision of services, please refer to Chapter 7.1.1 of the 'Handbook on the implementation of the Services Directive'.

### 2.2.1. Administrative cooperation in cases of cross-border provision of services

Administrative cooperation will be particularly important in cases of cross-border service provision, i.e. the situation in which a service provider who is established in Member State A provides services across borders into Member State B without setting up a permanent establishment.

#### ***Cross-border provision of services – examples***

- (a) A veterinarian established in Member State A who travels across the border to Member State B to make home consultations.
- (b) An architect established in Member State A who designs a holiday house in Member State B.
- (c) A tourist guide established in Member State A who accompanies a travel group visiting Member State B.

On the basis of the Services Directive's provisions on the freedom to provide services, the Member State where the cross-border service is being provided can apply its own requirement to a service provider established in another Member State **only** if the requirement in question either:

#### ■ **fulfils the conditions set out in Article 16 of the Services Directive:**

- the requirement is non-discriminatory >> the requirement does not provide, directly or indirectly, for different treatment of domestic providers and of providers from other Member States (for example, imposing a licence system only to providers from other Member States would be discriminatory);
- the requirement is justified for reasons of public policy, public security, public health or the protection of the environment; AND
- the requirement is necessary and proportionate >> it is suitable for securing the attainment of the objective pursued and there are not less restrictive means that could achieve the same objective (for example, when the public interest objective of environment protection requires that, in certain service sectors, providers follow training courses, you should consider whether this objective is not already attained by similar training courses which the service provider is subject to in the Member State of establishment).

#### ■ **or if it is covered by an additional derogation from the 'freedom to provide services' principle, as listed in Article 17 of the Services Directive.**

The most important ones you need to keep in mind are the derogations for requirements related to national social security (such as pensions, unemployment or maternity benefits), to recognition of professional qualifications (i.e. recognition of certificates, diplomas or professional experience obtained in another Member State) <sup>(11)</sup> and also for requirements reserving an activity to a particular regulated profession. In these cases the Member State where the service is provided may impose its own national requirements on service providers from other Member States (if this is compatible with the EC Treaty).

<sup>(11)</sup> For the recognition of professional qualifications, IMI offers a separate administrative cooperation module, based on the provisions of the revised Professional Qualifications Directive (2005/36/EC, OJ L 255, 30.9.2005). For more details, please refer to Chapter 3 below.





### 2.2.1.1. *Situation A* – Requests for assistance in relation to a service provider established in another Member State

When a service provider from another Member State engages in cross-border activities in your country, you may need different types of information depending on the situation at hand.

1. *In case of doubts you may need **information confirming that the service provider is actually providing cross-border services** (in legal terms: to ensure that the provider is established in the other Member State and can rely on the freedom to provide services clause of the Services Directive). You may, for instance, require information as to whether the provider is lawfully established in another Member State and whether he carries out his activities from this establishment.*

#### **Request concerning lawful establishment in another Member State – example**

As authority in Member State A you become aware of the activities of an event organiser who claims to be established in Member State B. However, you find no indication of an address of that event organiser in Member State B. To be able to verify if this is a case of cross-border provision of services, you decide to contact the authorities of Member State B to determine if indeed the event organiser is established and carries out activities in Member State B.

2. *The **type of information** you may need in cross-border situations **will depend on whether you can apply your requirements in a given case**. Two situations can be distinguished.*

*(a) In situations where you may not impose your requirements on service providers established in another Member State (i.e. if the requirement does not satisfy the criteria set out in Article 16 and is not covered by the derogations in Article 17), you may require information from the competent authority of the Member State of establishment of the provider when substantiated doubts arise as to whether the provider is lawfully providing cross-border services from his establishment in the other Member State. For example, you may need information on whether the service provider is indeed entitled to provide a specific type of service in his Member State of establishment and whether he provides them in a lawful manner.*

#### **Cross-border service provision, questions to the Member State of establishment – example**

An architect from Member State A is providing temporary services to a client in Member State B. As an authority in Member State B you discover that this architect is exercising his profession in a company providing both architecture and construction services. In your Member State the joint exercise of these activities is considered incompatible and you have doubts as to whether this is allowed in Member State A, and, if so, how possible conflicts of interests are taken care of there.

You then contact the competent authority in Member State A to find out whether this service provider is exercising his activities in a lawful manner and how the competent authority in Member State A can prevent possible conflicts of interest or incompatibilities on the basis of its legislation.

*(b) In situations where you can impose your own requirements on incoming service providers, in accordance with Articles 16 and 17 of the Services Directive and the EC Treaty, you may require the service provider to supply you with information and, as far as necessary, to submit documents. As in establishment cases (see below), requests addressed to the Member State of establishment will often concern documents.*

### ***Cross-border service provision, questions to the Member State of establishment – example***

A company established in Member State A is providing its services at a large public event taking place in Member State B. Doing so it uses its specific sound equipment. As competent authority of Member State B, you have substantiated doubts about the technical soundness of the equipment used and the noise levels it creates. You contact the competent authority in Member State A to check whether the certification documents submitted by the service provider in respect of this equipment are valid.

#### ***2.2.1.2. Situation B – Requests for assistance in relation to a service provider established in your Member State who is also providing services in other Member States***

As competent authority of the Member State where the provider is established, you will normally hold and/or have access to information about their object of activity, legal form, legal representatives, etc. However, you may also need information about the activities of the service provider in another Member State in order to be able to supervise compliance. Such a situation could, for instance, arise after a recipient or a competitor from another Member State has filed a complaint about the provider and/or if your competent authority has been asked by an authority of another Member State to ensure compliance with your regulations.

### ***Cross-border service provision, questions to the Member State where the service is provided – example***

As competent authority of Member State A you have the obligation to check, for safety reasons, the compliance with periodical technical inspection of certain equipment. You receive information that a company established in your country might be providing services in Member State B by using equipment which, according to your records, has missed a periodical technical inspection. You contact the competent authority of Member State B and enquire about this.

It should be clear that in these circumstances, your competent authority will not carry out checks in the territory of the other Member State but will request the necessary information from the competent authority of the Member State where the service is being provided.

#### ***2.2.2. Administrative cooperation in establishment cases***

A service provider from one Member State (a national or a company incorporated there) wants to establish itself in another Member State. Two situations that qualify as establishment can be distinguished – primary and secondary establishment. For example:

- a graduate of veterinary studies from Member State A opens a practice in Member State B; this is her primary establishment;
- a consulting firm from Member State A decides to open a branch in Member State B; this is a secondary establishment.

As competent authority of the Member State of establishment you will ensure compliance with your own legislation (for example with requirements to register in the commercial register or with a professional body, with obligations to obtain an authorisation where justified, etc.). In order to assess whether a service provider fulfils these requirements, you may require him to supply information and, as the case may be, to submit certain documents (for instance to file an application, to provide documents proving that he has taken out necessary liability insurance, etc.).



In certain cases, you may also request assistance from competent authorities of the Member State where the provider comes from, e.g. in order to ascertain (in cases of doubt) whether a document is authentic or still valid. This is particularly important to make sure that procedures and formalities remain as simple as possible for the service provider.

#### **Example**

As a competent authority of the Member State where the service provider wants to open a subsidiary, you might need to request information from the competent authorities of the Member State of first establishment to assess the veracity of information provided in respect of persons authorised to represent the service provider in respect of setting up a subsidiary.

## 3. THE INTERNAL MARKET INFORMATION SYSTEM – MAKING ADMINISTRATIVE COOPERATION EASIER

### **3.1. What is IMI?**

The Internal Market Information system (IMI) is an electronic tool designed to support day-to-day administrative cooperation between public administrations in the internal market.

IMI is a single system designed to be able to support administrative cooperation in relation to many pieces of internal market legislation. At the present stage, IMI is used for administrative cooperation in the following areas:

- on an operational basis for cooperation on the mutual recognition of professional qualifications for 11 professions, as foreseen by the Professional Qualifications Directive;
- on a pilot basis for cooperation foreseen by the Services Directive; the pilot will last until the end of 2009 by which time administrative cooperation for the Services Directive must also work on an operational basis.

The advantage of having a single system is that an authority only needs to deal with one system and to be registered in the system once. Depending on its area of competence, it may have access to one or more of the legislative areas supported in IMI.

### **3.2. How does IMI work?**

IMI makes the electronic exchange of information between competent authorities possible by enabling them to easily find the relevant interlocutor in other Member States and to communicate with each other in a fast and efficient way.

It enables users in competent authorities to overcome important practical barriers to communication, the most important ones being differences in administrative and working cultures, different languages, and a lack of clearly identified partners in other Member States.

IMI offers several features that will considerably reduce the workload of users in competent authorities and facilitate communication, such as:

- a directory of contact details and search criteria (including address details and information on competence) about relevant competent authorities throughout the EU;
- multilingual search facility for competent authorities;
- a list of predefined questions and answers (based on each specific piece of legislation) available in all official EU languages to help authorities communicate with each other;
- additional language support, including access to the European Commission online machine translation tool;
- a transparent set of procedures on how to deal with requests, agreed by all Member States;
- the possibility to exchange electronic documents and certificates;
- a request management tool to monitor progress and identify potential problems with specific information requests (including automatic e-mail alerts whenever an authority has to take any action in relation to a request);
- problem-solving mechanisms in case of disagreements between competent authorities.

#### *Overcoming the language barrier – the 'art of the possible'*

To facilitate communication between authorities across Europe, IMI works with **predefined and pre-translated questions and answers**. They are available in all official EU languages. A user in an Italian authority can select a series of questions in Italian and send the request to Hungary. The Hungarian user will see the questions in Hungarian and select a pre-translated reply. Then the request is sent back to the Italian authority, where the user will see the replies in Italian.

For more complex cases, however, it may still be necessary for an authority to provide further details in **free text**. To minimise the language barrier in such cases, IMI offers two levels of support:

- it indicates the languages understood by the users in the competent authority to which the request is addressed;
- it provides online machine translation for specific language pairs to provide a rough translation of the comments entered.

As a user of IMI, you should try whenever possible to use a language understood by the authority that you are contacting. **Make sure to write as clearly as possible and use short sentences**. This will improve the quality of the machine translation. Remember machine translation can only offer a rough idea of the translated text; for legal purposes it may still be necessary to seek an official translation, depending on the context.

### **3.3. Who are the actors involved in IMI?**

#### 1. Competent authorities

The main actors involved in IMI are the competent authorities of the Member States who will exchange information requests through the system.

These authorities may be part of the government administration, such as ministries, governmental agencies or municipalities but they may also be professional organisations or other relevant bodies. They may be operating at national, regional or local level.



Each Member State decides which competent authorities should become actors in IMI. Some may decide to register all relevant authorities, others will initially only register a limited number. New authorities can be registered in the system at any point in time.

A competent authority registered in the IMI system can:

- use the IMI competent authorities database to search for a competent authority in any of the Member States;
- send a request for information to a competent authority in any of the Member States, selecting from a series of pre-translated questions which relate to legislation in the area it is registered for;
- respond to requests for information received from competent authorities in other Member States.

As a competent authority you will be able to use IMI whenever you have a justified doubt and you need to obtain information in relation to a service provider from another Member State. You will also be asked to reply to questions received via the system from other Member States.

## 2. IMI coordinators

IMI also involves a number of IMI coordinators who play an important role in the set up and ongoing operation of the system. Their responsibilities combine an administrative role, a support function and a content-related coordination function. In addition, IMI coordinators may also act as competent authorities and may as such send and receive information requests.

An IMI coordinator can carry out the same functions as a competent authority and additionally it can:

- register and authenticate competent authorities in the IMI system;
- authorise a competent authority's access to a distinct legislative area in IMI;
- in case of disagreement, intervene in the exchange of information between two competent authorities in order to ensure a satisfactory response;
- monitor progress of requests and ensure they are responded to in a timely manner;
- assist users in other Member States with the identification of the appropriate competent authority to contact on a particular topic (including forwarding requests).

There is one national IMI coordinator (NIMIC) per Member State. Member States can decide additionally to register delegated IMI coordinators to carry out these coordination responsibilities for one or more particular legislative area(s) or for part of the administration.

The Services Directive obliges Member States to designate 'liaison points' for the purposes of administrative cooperation. The role of the liaison points is to intervene in case problems in relation to administrative cooperation and the Services Directive arise. In practical terms, the role of liaison points will be played in the system by IMI coordinators.

## 3. European Commission

The European Commission hosts and maintains the IMI system in its data centre in Luxembourg. It is responsible for the translations in the system and provides the IMI question sets based on provisions of internal market legislation. It also offers a central help desk for IMI coordinators.

### 3.4. How do you access IMI?

IMI is a secure Internet application, accessible via the dedicated IMI website ([http://ec.europa.eu/internal\\_market/imi-net/](http://ec.europa.eu/internal_market/imi-net/)).

It is a closed network: you can only access it if you are a registered user within a competent authority authenticated by an IMI coordinator. If you think that your authority should have access to the IMI services application, please contact your national IMI coordinator (NIMIC) for assistance. You can find their contact details on the IMI website.

## 4. STEP-BY-STEP GUIDE: HOW TO USE IMI FOR THE SERVICES DIRECTIVE

### 4.1. Getting started

Some preparation is necessary before an authority can start using IMI to exchange information with other Member States.

Firstly, you should make sure that all information held about your authority in the IMI system is precise and up-to-date. This concerns not only your contact details but also more information on your authority's general competence and the type of work it does in relation to the provision of services.

IMI can be an extremely useful tool. It can potentially bring together thousands of competent authorities across Europe but, for it to be effective, it is necessary to help you identify the right authority to contact when you have doubts about a service provider. For this reason, **each authority should make sure that the information available about itself is of good quality.**

Secondly, you need to decide how to best set up your authority to make the use of IMI as efficient as possible. Who in your authority needs access to IMI to send or respond to requests? Who should take care of keeping information about your authority updated and of registering new users? If you decide to register many users, perhaps you need to nominate one that can act as a postbox and distribute requests to colleagues within the authority (in IMI this is called 'allocation').

If your authority has only just been registered and you are the first user, then you need to make sure to take these steps. If your authority has already used IMI to exchange information on professional qualifications, you may need to speak to the other IMI users in your authority to agree who should be responsible for taking the above mentioned steps. Check out the IMI User Handbook for more detailed guidance <sup>(12)</sup>.

### 4.2. How do you send a request for information to an authority in another Member State?

#### 4.2.1. STEP 1 – Choosing the legislative area 'Services Directive'

The first step you have to take is to indicate the legislative area under which your request falls. IMI covers two areas: the Professional Qualifications Directive and the Services Directive.

<sup>(12)</sup> The IMI User Handbook is available on the IMI website ([http://ec.europa.eu/internal\\_market/imi-net/](http://ec.europa.eu/internal_market/imi-net/)).



Some authorities will have access to both legislative areas supported in IMI. For instance, it is possible that a national Council of Architects has competence both in relation to the recognition of professional qualifications for architects and the application of other rules that apply to the provision of services by architects (e.g. respect of insurance obligations, compliance with limitations to multidisciplinary activities). In some cases, the authority may decide to divide responsibility for each legislative area between different users within the authority. In other cases, it is possible that you will have access to both the Services and the Professional Qualifications modules within IMI.

If this is the case, you will first have to select 'Services Directive', in order to send a request relating to Services. If you only have access to the 'Services Directive' application within IMI, then this is not necessary – the system will automatically select the relevant option for you.

**Before creating a request in IMI, you should always make sure that the service activity to which your request relates falls within the scope of application of the Services Directive** <sup>(13)</sup>.

#### *Choosing legislative area – example*

In Member State A, the Council of Architects would need to verify the authenticity of a diploma obtained in Member State B. As a user of the IMI system, you would send a request to the relevant authority in Member State B using the Professional Qualification module. The same authority also has substantiated doubts in respect of an architect providing temporary services from neighbouring Member State B. You would enter the IMI system and would use the Services Directive module in order to contact the competent authority in Member State B and to find out if the architect is lawfully established there.

#### *4.2.2. STEP 2 – Finding the right competent authority in another member state*

IMI makes it possible to identify competent authorities in another Member State without prior knowledge of its administrative structure. IMI acts as an information directory of relevant competent authorities dealing with services. A combination of search criteria will make it possible for you to identify the right authority to contact (provided they are registered in the system). These include:

- the **country and even the specific city/town** you are looking for;
- the **name** of the authority;
- a **free-text search** in your own language.

Once registered in the IMI system, each authority is asked to indicate the services activities for which they are responsible. A second list is available so that authorities can provide information on the type of tasks they are competent for (e.g. environment, authorisations, health and safety) and the level of government they represent (national, regional, local).

Each authority will also provide a short understandable informal title (for example, 'Construction Authority of ...') and a free-text description of its competence. Both are translated into all official EU languages.

Once you have selected an authority from the list, you will be able to see more details about it, such as its area of competence and the languages understood by its users. If you see that this is not the correct authority, you can go back to the search list and choose another one <sup>(14)</sup>.

#### *Searching for a Competent Authority – example*

If you are looking for the competent Italian authority supervising driving schools, you will choose the country (Italy), then the authority type (competent authority), then you can introduce free text, such as 'driving school' or 'driving' in your own language.

<sup>(13)</sup> See Chapter 2.1 above. For further explanations on the scope of the Services Directive, see Chapter 2.1 of the 'Handbook on the Implementation of the Services Directive'.

<sup>(14)</sup> For more details about the Search function, please refer to Part 2, Chapter 8 – Searching for a competent authority and viewing request – in the 'IMI User Handbook'.

### *What if... you cannot find any authority?*

The type of activity you are looking for, as reflected by your choice of keywords, may not be covered by the Services Directive.

#### ***Why you may not find a competent authority – example***

If you introduced the word 'transport' and no authority was identified the reason is probably that the Services Directive does not apply to transport services.

There may not be an exact match with the list of pre-translated keywords available in the system.

#### ***Search alternatives – examples***

Try to use a synonym if you do not get satisfactory results.

Search for 'licence' if you do not get results for 'authorisation'; search for 'catering' if you get no result for 'food delivery', etc.

Try using wider keyword categories as the competent authority might be responsible for supervision of several general service activities.

Search for 'crafts' if you do not get results for 'painting'; search for 'tourism' if you do not get results for 'tour operators', etc.

If you cannot find the relevant competent authority, you have the option to send your request to one of the IMI coordinators in the other Member State, who will then forward it to the right authority within its Member State.

### *4.2.3. STEP 3 – Select the right question set*

Once you have chosen the authority you want to contact, you have to select the 'question set' you want to use. To get a quick overview of the pre-translated questions available in the different question sets (without having to fill in any details yet), you can choose the 'preview' function. Alternatively, it is also possible to search by keywords and the system will tell you which 'question set' contains the question(s) with the keywords that you are interested in.

To support information exchanges under the Services Directive, IMI offers a series of predefined and pre-translated questions that are grouped into four different sets:

- requests concerning cross-border service provision of a company/partnership;
- requests concerning cross-border service provision of an individual service provider;
- requests concerning permanent establishment of a company/partnership;
- requests concerning permanent establishment of an individual service provider.

The choice of question set is determined by a combination of the **type of scenario** and the **type of service provider** you are dealing with. Determining the type of service provider that you are dealing with should be quite straightforward. You will usually have the name and some additional details that should help you decide whether it is an individual or a company/ partnership.





The second distinction – the choice whether a request relates to ‘cross-border service provision’ or to ‘establishment’ – may be more difficult to make. In general terms, a situation of cross-border provision of services is characterised by the absence of a stable and continuous participation of the service provider in the economic life of the country where it is providing services <sup>(15)</sup>.

#### 4.2.4. STEP 4 – Enter indicative date for reply

You are requested to select a due date, indicating to the responding authority by when you will need the reply. Please bear in mind that this date is not binding and it is purely indicative. The responding authority in the other Member State can either accept your suggested deadline or it can indicate an alternative due date, by which it intends to reply.

The Services Directive sets out an obligation to reply within the shortest possible period of time but it does not define specific time periods. When receiving a request, you will need to ensure that best efforts are made so that you can reply within the indicated time.

If you experience any problems with delayed answers which impede you from fulfilling your legal obligations in taking a decision in relation to a service provider, you should consult your IMI coordinator.

#### 4.2.5. STEP 5 – Enter details about the service provider

Next, you need to enter the ‘request details’, i.e. the essential information on the service provider (such as the name, contact details and the type of service activity concerned). This information is indispensable for the competent authority in the other Member State to which you send the request, as it will help it to identify the provider concerned.

Please bear in mind that the more details you provide, the easier it will be for the responding authority to identify the provider and to supply you with the required information.

You will also be asked to indicate the reasons for your request.

#### >> **Compulsory fields**

You will notice that certain fields are marked with an asterisk. These are compulsory: the system will not allow you to go on unless they are filled in. In general, it is important that you provide all information that is available to you concerning the provider and his services. This will allow the other authority to identify the provider and it will considerably speed up the information flow.

<sup>(15)</sup> For more details, please refer to Chapter 2.2 above.

## >> **Optional fields**

Certain fields allow you to provide additional information, whenever it is available.

### *Filling in additional fields where the information is available – example*

You are sending a request on a company/partnership. When entering the details on the service provider, IMI will ask you whether or not you have the company's registration number. If you indicate that this information is 'available', then the system will ask you to fill in one or more of the following fields:

- tax identification number
- commercial/company register
- professional registration number
- other registration number.

## >> **Drop-down lists**

Several pre-translated drop-down lists have been introduced in the system in order to assist you in the description of the case at hand. They are intended to standardise the request forms as much as possible and include, for example, the list of Member States, types of service activity (see below) and types of companies.

### *Using a drop-down list – example*

You are sending a request on a company/partnership. One of the optional fields is the information on the legal form of the service provider. A predefined drop-down list is available. It includes the most common existing legal forms in all Member States.

To use it, you need to enter the text box. You can search the list by writing either the country codes or the first characters of the legal form you need. The system will then show you the available options.

If you cannot find the legal form you are searching for in the list, you can choose 'other' and then you can write free text indicating the correct legal form.

## >> **Address information**

When introducing the address of the service provider, please make sure you indicate the one that would be the most useful one for the responding authority in identifying the service provider.

It is possible to indicate more than one address: for example, you may have both the office address in the service provider's Member State of establishment (for example their official headquarters) and another address in your own Member State.

## >> **Service activity**

Under this category you are asked to select the service activity to which your request relates. To facilitate the selection, the system contains a list of activities that has been translated in all EU languages.



You can choose the activity that relates to your case either by scrolling through the list or by typing a keyword. In the example below, the service provider offers catering services.

The screenshot shows a web form with several fields. The 'Service activity' field is highlighted with a red circle. A dropdown menu is open below it, showing a list of service codes and their descriptions. The code '55200000-2' is selected, which corresponds to 'Catering services'.

Code	Description
48500000-3	Communication and multimedia software package.
50300000-8	Repair, maintenance and associated services related to personal computers, office equipment, telecommunications and audio-visual equipment.
50400000-9	Repair and maintenance services of medical and precision equipment.
51100000-3	Installation services of electrical and mechanical equipment.
51300000-5	Installation services of communications equipment.
51400000-6	Installation services of medical and surgical equipment.
55200000-2	Camping sites and other non-hotel accommodation.
55300000-5	Canteens and catering services.
63100000-0	Carriage handling and storage services.
64000000-6	Dental and telecommunications services.

## >> Member State of establishment of the provider

Under this category, you will need to indicate in which Member State the services provider is, to your knowledge, established. If your request concerns 'cross-border service provision', you need to specify whether:

- the service provider is established in another Member State; **OR**
- whether the service provider is established in your Member State.

This is important because the Member State where the service provider is established and the Member State where he offers his services have a shared responsibility. This is clearly defined in the Services Directive <sup>(16)</sup>. IMI reflects this by:

- different types of pre-translated motivation requirements, adapted according to the scenario of cooperation;
- different types of questions/issues that are normally relevant under each scenario <sup>(17)</sup>.

## >> Motivation

According to the Services Directive, a request can only be sent if it is duly motivated. You can only use IMI to contact other authorities when the case you are dealing with falls within the scope of the Services Directive and you have a justified doubt <sup>(18)</sup>.

In IMI, you will have to clearly indicate your reasons for sending the request, prior to being able to continue with the request creation. For this purpose, a combination of pre-translated standard phrases and a free-text field are available. Remember to use a language understood by the authority you are contacting, whenever possible.

### *Motivation – example*

A service provider from Member State B wants to set up a secondary establishment in your country. The information submitted by the service provider seems to indicate different addresses of the parent company. You send a request to Member State B to clarify this. In the motivation you explain that you need this information because it is necessary for the registration of the subsidiary in your country.

<sup>(16)</sup> See also Chapter 2.2.1.

<sup>(17)</sup> See Chapter 4.2.6.

<sup>(18)</sup> See Chapter 2.1.3 above.

### *Avoid systematic use of the system*



Please bear in mind that the motivation requirement also implies that administrative cooperation should not be used in a systematic way to do background checks on service providers. You should also avoid sending a request if you can easily retrieve the information in the available registers of the Member States concerned. An overview of the main registers will be available in IMI.

#### *4.2.6. STEP 6 – Question selection*

Based on the options selected in the previous step, you will have access to a set of pre-translated questions concerning the service provider. The type of questions contained in each set depends on whether you are dealing with a case of establishment or cross-border service provision. It will also differ slightly depending on whether it is an individual service provider or a company/partnership (see Table 1 below). For temporary service provision, an additional distinction is made based on whether you are an authority in the service provider's country of establishment or in the Member State where the service is being provided.

In each question set, the list of questions is displayed according to 'categories' of questions. By clicking on the name of a category, the list of questions contained in it will be displayed.

It is also possible to search for questions by using keywords. For example, if you enter the key word 'insurance' all questions containing this word will be displayed and you will be able to select the question(s) that you need to ask. It is possible to choose more than one question.

Besides the displayed pre-translated questions, you also have the possibility to add free-text comments relating to any question you have chosen. This allows you to specify exactly what information you require from the responding authority. If possible, make sure to use a language understood by the other authority (this is displayed on all relevant screens). If you add any free-text comment, you will also have to specify which language you used. This is necessary in order to be able to use the online machine translation within IMI.

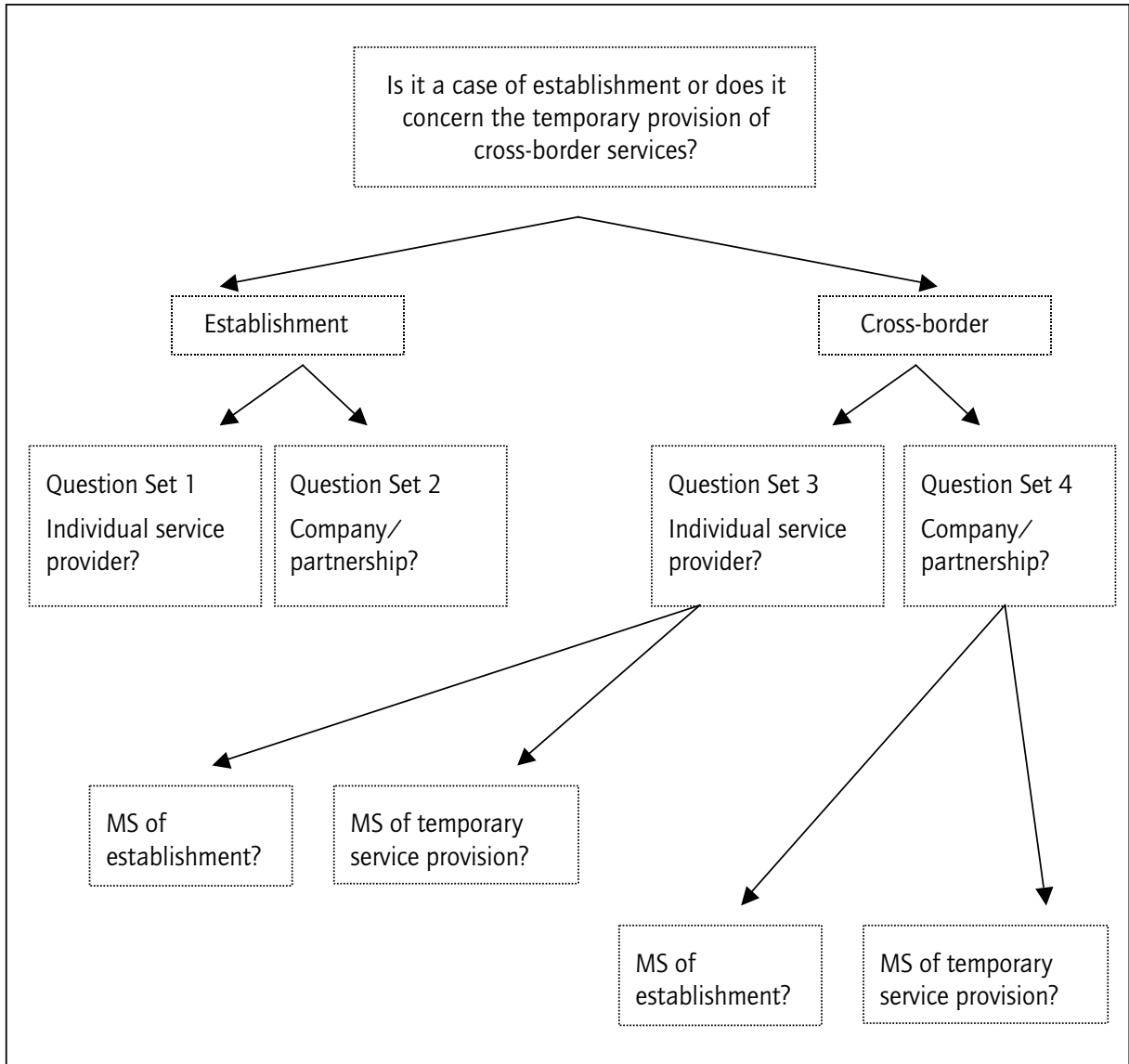
You can select more than one question within the same information request. **However, please bear in mind that you should only ask those questions which are necessary for you to ensure proper supervision of the particular service provider.**



You need to select the questions by ticking the corresponding box. Even if you have introduced data in one of the question fields, the question will not be saved nor included in the final version of the request unless you have ticked the corresponding box!



**Table 1: Overview of question sets for Services Directive**



**>> Available questions in relation to establishment cases**

The questions that you can choose from if you are dealing with a case of permanent establishment are based on the legal provisions contained in the Services Directive. The questions may differ slightly, depending on whether you are dealing with an individual service provider or with a company/partnership.

They are divided into a number of different subcategories:

- questions about the service provider in general – e.g. incorporation, legal form, business name, etc.;
- questions about the representation of the service provider, if it is a company/partnership (persons authorised to act on behalf of the service provider) – e.g. names of representatives, powers of representatives;
- questions about the good repute of the service provider – e.g. administrative/disciplinary or criminal sanctions;
- questions concerning the solvency of the service provider;

- questions on the service provider's insurance/financial guarantees;
- questions related to certification;
- questions on the work equipment used by the service provider;
- questions on the supporting documents presented by the service provider.

#### **Questions in establishment cases – example**

A company that wants to establish a subsidiary in your Member State has given you contradictory information concerning the legal form of the parent company established in Member State B.

You decide to contact the competent authority in Member State B to verify if the company is incorporated in that Member State, whether the documents provided are the ones available to the competent authority in that Member State and under which legal form the company is incorporated there.

#### **>> Available questions in relation to the provision of cross-border services**

The questions that you can choose from if you are dealing with a case of cross-border provision of services are derived from the legal provisions contained in the Services Directive.

The questions may differ slightly, depending on whether you are dealing with an individual service provider or with a company/partnership. In the case of service provision, an additional distinction is made between requests sent by the Member State where the service is provided and requests sent by the Member State of establishment.

##### 1. Requests sent by the Member State where the service is being provided

If a service provider established in another Member State offers his services in your Member State, it is not possible for you to impose your own legal requirements on him, unless certain specific circumstances apply <sup>(19)</sup>.

Instead, you may need to contact the Member State where the service provider is established in order to check whether he is really in compliance with the rules applicable there. To do so, you will have to contact the relevant authority in that Member State. The questions that IMI offers to you under these circumstances are divided into the following main categories:

- questions to identify the service provider and to assess whether it is a case of cross-border service provision – e.g. if the provider is established in another Member State, if the business name is correct;
- questions to ascertain compliance of the service provider with requirements of his Member State of establishment – e.g. if he exercises certain activities in a legal way, questions about the technical equipment used;
- questions which may be required to ascertain compliance of the service provider with applicable requirements of the Member State where the service is provided – e.g. questions on representatives of the provider, his good repute, the equipment used.

<sup>(19)</sup> See Chapter 2.2.1.

### ***Questions sent by the Member State where the service is provided – examples***

#### ***Example (a)***

A service provider is providing cross-border services in your country as a real estate agent and, following complaints by competitors, you have doubts as to whether the provider is really entitled to provide such services. You may need to check this with the Member State where the provider is established.

#### ***Example (b)***

A service provider is providing cross-border services in your country and, following complaints by competitors, you have doubts as to whether the provider is really established in another Member State. You may request the Member State where the provider claims to be established whether this really is the case.

## 2. Requests sent by the Member State of establishment

There may also be cases where you as a competent authority in the service provider's Member State of establishment will need to contact authorities in other Member States where the service provider is active. Typically, you would need to verify whether the service provider does comply with your legislation when providing services abroad.

You are not required to carry out the actual checks in the territory of the other Member State yourself. Instead, you will be able to request the required information from the competent authority of the Member State where the service is being provided.

In such cases, the latter competent authority will often need to carry out factual checks on site in order to be able to provide you with the requested information. The questions that IMI offers to you under these circumstances are the following:

- questions on whether the service provider offers specific services in the other Member State;
- questions about whether the service provider engages in certain multidisciplinary activities;
- questions on whether the service provider uses a certain machine/equipment when providing his services in the other Member State.

### ***Questions sent by the Member State of establishment – example***

A recipient of the service or a competitor from Member State B has filed a complaint stating that the provider established in your Member State exercises cross-border activities in Member State B in breach of specific professional rules, such as restrictions on multidisciplinary activities. In order to ascertain that this is the case you decide to contact the relevant competent authority in Member State B.

#### ***4.2.7. STEP 7 – Request overview***

At this stage your request is automatically saved as a draft in the system. A request number is assigned – this will help you identify it later. You will also be able to see an overview of all the information you have already entered in relation to the request.

There are some additional steps you can take before sending the request.

## >> **Possibility to attach files and to ask questions about them**

You can attach different files to your request; for example, a scanned copy of a certificate. This may be needed to give the responding authority the information to answer your questions properly.

Once you have chosen to '**add an attachment**', it is possible to choose structured questions or to add free-text comments in relation to the attachments on a separate screen. The available questions may differ, depending on the question set you have chosen.

### *Available questions about attachments – examples*

- Whether the attached document corresponds to a document issued by an authority in the Member State where the request is sent.
- Whether the content of the attached document is accurate.
- Whether the attached document is valid on a given date

## >> **Adding general comments, creating a report and managing translations**

In addition to the free-text comments you can add to each question you selected, you also have the possibility to add comments to the request as a whole in a language of your choice. Here too the system will ask you to indicate which language you have used. Two other functionalities are available:

- managing (and saving) the translations of all free-text contained in your request;

### *Managing translations in IMI*

It is possible in IMI to save translations of both free-text comments and attachments. You can either use the online machine translation for available languages (which can be edited) or you can choose to insert your own translations (if, for instance, the comments are in a language not supported by machine translation). The translations are saved and become part of the request, visible to other users within your authority, provided that they have access to the request.

Imagine, for instance, that a request arrives in IMI from another Member State, including free-text comments, and one of your colleagues speaks the language of the other Member State. This colleague can then insert a translation of the comments and save them in IMI.

- generating and printing a number of different reports in relation to your request.

### *Generating reports in IMI*

IMI offers you the possibility to generate and print different reports that you may need for your own filing system. The available reports include:

- a full report with all data contained in the request (including the personal details of the service provider);
- a full report without the personal data of the service provider;
- a report for the service provider, should he ask you to see the information that is being exchanged about him;
- a consent form for the service provider.



## >> **Sending a request, returning to 'edit mode' or deleting the request**

You still have the possibility at this stage to **edit** details of the request by going back to the previous forms and changing the information introduced. If you no longer need to send the request, you can **delete** it.

When you have made sure that you have entered all the relevant information and selected the questions you need to ask, you can **send the request** to the authority in the other Member State that you have identified.

Once you have sent a request, you can follow its progress in IMI.

### **4.3. Replying to a request for information that your authority has received**

#### *4.3.1. STEP 1 – Checking for new requests*

When a request has been addressed to your authority, you will be notified by an **automatic e-mail**. By clicking on the link in the email, you will automatically be directed to the IMI system. Once you have logged in, you will be able to see an overview of the request.

In addition to the e-mail alert that is sent to your authority whenever a new request is received <sup>(20)</sup>, IMI offers you a number of request lists to track any requests in the system in which your authority is involved.

The most important list is the **action list**. It contains all requests where you, as a user must take an action. Whenever your authority receives a new request, it appears in your action list.

In the list, you can see an overview of the request, including:

- the name of the requesting authority;
- the legislative area the request refers to ('services');
- the question set used (for example, 'establishment cases');
- the status of the request (for example, 'request sent awaiting acceptance');
- the date when the request was sent.

#### *4.3.2. STEP 2 – Accepting a new request*

Once you open a new request, you will be able to see the necessary information for you to decide whether you are the competent authority to deal with the request. This includes certain details of the service provider as well as the questions contained in the request. On this basis you can either:

- 'accept' the request, if you are competent for the issues or service activities dealt with in the request;
- 'forward' the request to the relevant competent authority in your Member State, if you do not deal with the issues addressed in the request;
- 'forward the request to the relevant IMI coordinator', if you are unsure which authority in your Member State is most suitable to deal with the request.

<sup>(20)</sup> The automatic e-mail is sent to all request handlers in your authority as well as to the general authority e-mail address. If your authority uses the 'allocation procedure', the e-mail will be sent to the allocator, with the general authority e-mail in copy.

## >> **No display of personal data before accepting a request**

Until you accept responsibility for the request, you will not be able to see any data which would allow you to identify the service provider. As personal data may be included in the attachments, you will also not be able to open the attached files. You will however see all questions and comments contained in the request.

## >> **Indicative date for reply**

The requesting authority would have indicated a due date by which it expects a reply to its requests. You have the possibility to accept this deadline or to indicate an alternative date by which you expect to be able to obtain the required information.



Please bear in mind that, under the Services Directive, there is an obligation to make best efforts in order to reply to requests as soon as possible.

## >> **Translation of free-text comments**

It is possible that the requesting authority included free-text comments in the request in a language that you do not understand. Depending on the language used, you will be able to generate a machine translation of these comments, even before accepting a request.

Bear in mind, however, that these translations only appear on your screen on a temporary basis. Once you have accepted the request, you can use the translation tool in IMI to generate machine translation, to add your own translations and to save both of these as an integral part of the request.

## >> **Forwarding a request**

If your authority is not competent to reply to the request, you will be able to forward it to the relevant authority in your Member State by using the Search criteria in the IMI system. If you are unsure about whom to forward it to, you have the option to forward it to an **IMI coordinator**. You can only forward a request before you accept it.

Whenever you forward a request, you will be asked to give a justification. Once forwarded, an automatic e-mail is sent to the requesting authority and to the authority that you have forwarded the request to.

## >> **Accepting a request**

Once you have decided to **accept** a request, the requesting authority will be informed of this by automatic e-mail. The e-mail will also tell the authority whether or not you agreed to the indicative deadline.

### 4.3.3. *STEP 3 – Gathering the required information*

Some of the information required by the requesting authority might be readily available in your own authority's files. In other cases, it might be more complicated to provide answers to the questions raised.

You may, for instance, have to consult certain databases to which you have access. In other cases, you will have to contact the service provider directly. It may also be necessary to carry out on-site visits or inspections.



It is equally possible that you will have to consult other authorities within your own Member State.



The guiding principle for you should be the obligation to provide assistance to the authority in the other Member State – it is much easier for you to identify all competent authorities concerned by the request in your own country than for your counterpart abroad to do so!

#### 4.3.4. STEP 4 – Answering the questions

Several predefined answers are provided in the system from which you can choose in order to answer a question in IMI. In addition, you have the possibility to provide further information through free-text comments.

If you use free-text, remember whenever possible to use a language understood by the requesting authority.

##### *Answering questions – example*

You received a request which contains the question 'Could you please confirm whether the service provider [name] provides services of [drop down list/activities] in your Member State and provide all relevant information so that we can, if appropriate, take necessary actions/measures?'

You can choose to answer 'Yes, the service provider is effectively providing these services in our Member State' and then provide additional details such as the activity according to their by-laws or the authorisations issued for that particular service activity.

In some cases, you will be asked to provide specific information or justifications in relation to an answer you have given. For example, if you answer a question on insolvency by stating that the service provider has been subject to insolvency proceedings, you will be required to specify under which national law provisions he was declared insolvent.

##### *Indicating national legislation*



When indicating legislation in support of your answer, please do not limit yourself to mentioning the law number and article but provide at least the essential substantial details of that particular legal text in order to allow the requesting competent authority to understand your answer.

#### 4.3.5. STEP 5 – Sending the reply

##### >> **Send partial reply**

In cases when you have obtained the answer to some of the questions but not to all of them, you have the option to send a partial reply. You should indicate why the rest of the questions have not been answered and inform the requesting authority when you will be able to provide the rest of the answers by using the **Comments** box.

##### >> **Send full reply**

The system will not allow you to send a full reply unless you have answered all the questions related to the request. Make sure to also answer all questions related to the attachments.

Once you have sent a full reply you cannot modify your answers.

##### >> **Attachments**

As for the sending of a request, it is also possible to attach one or more files in the reply to a request you have received. This may be necessary in order to answer a request satisfactorily.

## >> **Adding general comments, creating a report, and managing translations**

In addition to the free-text comments you can add to each predefined answer, you also have the possibility to add comments to the request as a whole in a language of your choice. Here too the system will ask you to indicate which language you have used.

Two other functionalities are available:

- managing (and saving) the translations of all free-text contained in your request;
- generating and printing a number of different reports in relation to your request.





European Commission

**User guide – The Internal Market Information System (IMI) and the Services Directives**

Luxembourg: Publications Office of the European Union

2009 – 37 pp. – 21 x 29.7 cm

ISBN 978-92-79-10455-8

doi: 10.2780/34249

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<b>DE</b>	<b>Binnenmarkt-Informationssystem</b>
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<b>EN</b>	<b>Internal market information system</b>
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<b>LV</b>	<b>Iekšējā tirgus informācijas sistēma</b>
<b>MT</b>	<b>Sistema ta' informazzjoni dwar is-suq intern</b>
<b>NL</b>	<b>Informatiesysteem interne markt</b>
<b>PL</b>	<b>System wymiany informacji na rynku wewnętrznym</b>
<b>PT</b>	<b>Sistema de informação do mercado interno</b>
<b>RO</b>	<b>Sistemul de informare al pieței interne</b>
<b>SK</b>	<b>Informačný systém vnútorného trhu</b>
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<b>SV</b>	<b>Informationssystemet för den inre marknaden</b>

