

21 October 2011

Screening Report Iceland

Chapter 3 – Right of Establishment and Freedom to Provide Services

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Explanatory meeting: n.a.

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I. CHAPTER CONTENT

Member States must ensure that the right of establishment of EU nationals and legal persons in any Member State and the freedom to provide cross-border services as laid down in Articles 49 and 56 of the Treaty on the Functioning of the European Union (TFEU) is not hampered by national legislation, subject to the exceptions set out in the Treaty. The case law of the General Court of Justice regarding Articles 49 and 56 is part of the *acquis* and needs to be respected. This requires a continuous examination of the Member State's current and future legal order with the aim of identifying legal or administrative obstacles on national, regional or local level not compatible with the EU law. The *acquis* under this chapter is of a horizontal nature: it covers a large variety of fields and professions, and involves many public and/or semi-public institutions and bodies.

The chapter can be divided into three areas, namely the **mutual recognition of professional qualifications** (Directive 2005/36/EC), the **right of establishment and the freedom to provide services**, as regards the freedom of establishment and the freedom to provide cross-border services (Articles 49 and 56 TFEU and Directive 2006/123/EC, the "Services Directive"), and **postal services**, which consists of a sector-specific regulatory framework ensuring the provision of universal postal services and the establishment of an internal postal market.

The mutual recognition of professional qualifications

Directive 2005/36/EC on the recognition of professional qualifications, which is covered by the EEA agreement, sets the rules concerning the recognition of diplomas and other qualifications between Member States to facilitate access to regulated professions for European citizens who wish to exercise their profession in a Member State other than that in which they gained their qualifications. For certain regulated professions, a common minimum training curriculum must be followed in order to have the qualification automatically recognised in an EU Member State (this is covered by Chapter III of Title III of Directive 2005/36/EC). There are, furthermore, several additional Directives governing the exercise by lawyers and commercial agents of their profession in Member States other than that in which they obtained their qualifications, as well as the recognition of professional qualifications for activities related to the use, trade and distribution of toxic products. In terms of administrative capacity, a national contact point is needed to receive enquiries and applications for recognition and ensure administrative cooperation with authorities in other Member States.

The right of establishment and the freedom to provide services

The Services Directive contains provisions which aim to make it easier for service providers to establish themselves in other Member States, as well as to provide cross-border services into the territories of Member States other than their State of establishment.

The implementation of the Services Directive requires Member States to take a combination of legislative and non-legislative, i.e. organisational or practical, measures.

The Directive is a horizontal instrument which covers a broad range of different services and which is likely to affect a significant number of national laws and regulations. For this reason, and as far as implementing legislation is concerned, a mix of specific and horizontal legislative measures is required, which is likely to include the amendment of existing laws, as well as the adoption of new specific legislation and of a horizontal "framework" implementation law. The provisions of the Directive are, to a large extent, based upon the case law of the European Court of Justice relating to the freedom of establishment and the

free movement of services and it complements existing Community instruments, which remain fully applicable.

Member States are obliged by the Directive to set up a Point of Single Contact (PSC), where service providers can obtain electronically information and complete requirements governing access to and exercise of service activities. In addition, authorities need to form part of an electronic information system between administrative authorities (Internal Market Information System or IMI- Services Directive application) which allows for cooperation in the supervision of services activities and efficient information exchange between EU Member States.

Postal services

The three Postal Directives: the First (framework) Postal Directive 97/67/EC amended by the Second Postal Directive 2002/39/EC, and the Third Postal Directive 2008/6/EC ensure the provision of a universal postal service, the establishment of an internal market for postal services, and a high quality postal service for end users. In terms of administrative capacity, the establishment of an independent National Regulatory Authority (NRA) in this field is crucial for the proper implementation of the EU legislation.

The entire *acquis* in this chapter is covered by the EEA Agreement with the exception of the Third Postal Directive 2008/6/EC, where the decision of the EEA Joint Committee on this issue is yet to be taken. The right of establishment is covered by the EEA Agreement. Articles 49 and 56 of the TFEU correspond to Articles 31 and 36 of the EEA Agreement. The EEA Joint Committee Decision 45/2009 regulates the incorporation of Directive 2006/123/EC on services in the internal market into the EEA Agreement. The EU's First Postal Directive 97/67/EC and the Second Postal Directive 2002/39/EC were incorporated into the EEA Agreement by decisions of the EEA Joint Committee.

II. COUNTRY ALIGNMENT AND IMPLEMENTATION CAPACITY

This part summarizes the information provided by Iceland and the discussion at the screening meeting held on 9 December 2010. Iceland indicated that it can accept the *acquis* regarding right of establishment and freedom to provide services and it does not expect any difficulties to implement the *acquis* by the time of accession.

II. a. Mutual recognition of professional qualifications

Alignment of Legislation - EU Directive 2005/36/EC

Iceland stated that the EU Directive 2005/36/EC on the mutual recognition of professional qualifications (MRPQ) is fully transposed by Icelandic Act 26/2010 on Recognition of Professional Qualifications, as well as Regulation 879/2010 which stipulates more detailed provisions of the recognition regime, e.g. levels of education.

Currently, there are 176 regulated professions in Iceland. Iceland states that all of these professions are covered by the MRPQ legislation. However, references to mutual recognition are explicit in legislation covering only some of the 176 professions.

a) Professions in the health sector

The Ministry of Health is responsible for 32 regulated health professions. Professions dealing with animal health and veterinary matters fall under the responsibility of the Ministry of Fisheries and Agriculture. The health professions have been regulated by 14

laws and by government regulations, issued on the basis of the Act 24/1985 on Professional Designation and Specific Certifications for Healthcare Personnel.

Iceland stated that Regulation 244/1994 has been repealed by the Regulation 461/2011 on recognition of qualifications of health personnel. It includes provisions on automatic recognition of professional qualifications for the six professions in the health sector for which the minimum training requirements have been harmonised at EU level, i.e. doctors, nurses responsible for general care, midwives, dentists, pharmacists and veterinary surgeons.

b) Architects

The provisions of the Directive relating to the automatic recognition of professional qualifications of architects are transposed through the Regulation 461/2011. The training requirements for architects are governed by Act no. 8/1996.

c) Professions in the areas of trade, craft and industry

The provisions of Directive 2005/36/EC relating to the recognition of professional qualifications in the areas of trade, craft and industry have been transposed by the Regulation on recognition of qualifications for working in regulated trades in Iceland and in particular Article 6.

d) General system

Provisions on the general system for the recognition of professional qualifications, as set out in Directive 2005/36/EC have been transposed by the Icelandic Act 26/2010, Regulation 879/2010, and Regulation 461/2011. Iceland states, that the provisions of this legislation are in line with the Directive.

e) Temporary provision of service

Both Act 26/2010 and Regulation 879/2010 transpose the provisions of Directive 2005/36/EC relating to the temporary or occasional provision of services by professionals. However, the Icelandic Regulation on the recognition of professional qualifications of health care professionals from other EEA Member States contains requirements relating to the temporary or occasional provision of service by health professionals which are not foreseen in the Directive. In particular, Article 20 of the Regulation provides that the prior declaration provided by the professional should include information on the duration of the service.

Alignment of Legislation – Specific Sectoral Legislation

Professions governed by specific sectoral Directives:

- **Lawyers:**

Two pieces of EU legislation govern this field: Directive 77/249/EEC aims to facilitate the effective exercise by lawyers of the freedom to provide services under his or her home professional title, while Directive 98/5/EC seeks to facilitate the practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained.

This legislation is transposed by the Icelandic Act 77/1998 on Professional Lawyers with subsequent amendments, as well as Regulations 896/2004 and 900/2004. Act on Professional Lawyers sets out the right of lawyers from other EEA countries to practice law in Iceland, while Regulation 896/2004 regulates the services of EEA lawyers practicing with a professional title from their home country, including provisions for full

integration into the profession with the right to use the Icelandic professional title following three years of effective and regular practice in Iceland under the home title. Regulation 900/2004 lays down conditions for EEA lawyers obtaining permission to practice before the district courts in Iceland: the lawyer must fulfil the general conditions set out in Art. 6(1)(1-3) of the Act on Professional Lawyers, possess knowledge of the general principles of Icelandic law and legal system and must have sufficient knowledge of the Icelandic language to be able to present a case before a court

- Commercial agents:

The piece of EU legislation governing this field is Directive 86/653/EEC, which aims to harmonise legislation governing the relationship between commercial agents and principals, so as to facilitate contracts within the internal market.

Iceland has transposed this Directive with Act 103/1992 on the Activities of Commercial Agents.

- Professional use of toxic products

Two pieces of EU legislation govern this field: Directive 74/556/EEC laying down detailed provisions concerning transitional measures relating to activities, trade in and distribution of toxic products and activities entailing the professional use of such products including activities of intermediaries, and Directive 74/557/EEC on the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons and of intermediaries engaging in the trade and distribution of toxic products.

Iceland has transposed this legislation through Act 52/1988 on Toxic and Hazardous Chemical Substances, Regulation 50/1984 on the Use of Toxic and Hazardous Chemical Substances in Agriculture and Gardening, and Regulation 236/1990 on Classification, Labelling and the Use of Toxic and Dangerous Substances and Preparations Containing Such Substances.

Implementation and administrative capacity

Iceland states that its administrative capacity is sufficient in this field. The average duration for processing an application for the recognition of a professional qualification is 6 to 8 weeks.

The Icelandic Ministry for Education, Science and Culture, which is the competent authority for regulated professions outside of the health sector, is registered in the Internal Market Information System (IMI).

II.b. The right of establishment and the freedom to provide services

Alignment of Legislation

Iceland notified the implementation of the Services Directive to the EFTA Surveillance Authority on 4 July 2011. Iceland notified, in particular, the adoption of a horizontal law (Act 76/2011 on services in the internal market of the European Economic Area) implementing the Services Directive. Together with the horizontal law, other implementing provisions of secondary legislation were notified: Regulation 665/2011 on administrative cooperation of national authorities in the EEA-area in relation to services in the internal market of the European Economic Area, Regulation 666/2011 on notifications to the EFTA Surveillance Authority in relation to services in the internal market of the European Economic Area,

Regulation 667/2011 on general exemptions from the freedom to provide services in Iceland and Regulation 668/2011 on documents that are exempt from requirements regarding submission of documents in relation to service provision in the internal market of the European Economic Area.

According to information provided by the Icelandic authorities to the Commission, legislation amending various pieces of sector-specific legislation was adopted at the same time as the horizontal law. These changes would relate in particular to the removal of residence/establishment requirements for travel agencies, tour operators, car salesmen, car rentals, recognised book keepers, rental agencies, licences regarding restaurants, accommodation facilities and entertainment, and licences regarding firearms. They would also comprise the removal of time limits regarding authorisation for electricians and simplification of procedures regarding authorisations for car salesmen. The Commission services have not received translation of these sector-specific amendments though.

At the time of the incorporation of the Services Directive into the EEA, Iceland stated that the Directive does not affect inter alia terms and conditions of employment, the relations between the social partners, the right to negotiate and conclude collective agreements, and fundamental rights such as the right to strike and to take industrial action. The Services Directive affects neither labour law nor tripartite cooperation between labour, employers and the government.

Iceland emphasised that there is no contradiction between the Services Directive and national actions plans and appropriate measures aimed at protecting domestic and posted workers' rights and maintaining high standards in the workplace.

Moreover, national authorities should keep their competence to decide which services shall be provided by the public sector, how they should be organised and financed and which specific obligations they should be subject to.

A point of single contact (PSC herein forth) was launched with the adoption of the horizontal law (Act 76/2011) implementing the Services Directive (<http://psc.island.is/en/information/contact/>). The PSC creates a link between the service provider and the authorities granting the relevant authorisations. The relevant forms and information are available both in Icelandic and English. The service provider is able to identify himself with an Icelandic identification number, or in cases where a service provider does not have such a number, the PSC provides them with a password. All relevant schemes are to be completed electronically, through a system that allows for the uploading of documents.

Iceland has implemented rules on administrative cooperation through Regulation 665/2011 on administrative cooperation of national authorities in the EEA-area in relation to services in the internal market of the European Economic Area. The Ministry of Economic Affairs is in charge of monitoring the IMI and will forward any requests to the relevant authorities. Other Icelandic authorities will have access to the IMI system based on their experience and need.

As regards services falling outside the scope of the Services Directive, certain administrative requirements imposed on cross-border temporary employment agencies are currently the object of an infringement proceeding initiated by the EFTA Surveillance Authority for a breach of Article 36 of the EEA Agreement.

Finally, it is worth noting here that Iceland does not allow access to ports nor access to services for fishing vessels flying the flag of a state with which Iceland has not negotiated an agreement on straddling fish stocks or to IUU (Illegal, Unreported and Unregulated fishing) listed vessels. Under the EEA Agreement, Iceland benefits from a derogation restricting the

establishment of non-nationals and nationals who do not have legal domicile in Iceland in the sectors of fisheries and fish processing (for detail on this see chapter 13 *Fisheries*).

Implementation and administrative capacity

Iceland states it has sufficient administrative capacity in this field.

II.c. Postal services

Alignment of Legislation

According to Iceland its legislation is fully aligned with the EU's First and Second Postal Services Directives. The EU's First Postal Directive 97/67/EC is transposed by the Icelandic Postal Services Act No 19/2002 and the Second Postal Directive 2002/39/EC is transposed by Amending Act 136/2002. Furthermore, several other legal acts regulate this field in Iceland, namely the Post and Telecommunication Administration Act 81/2003, Regulation 315/2005 on accounting and financial separation of postal operators, Regulation 364/2003 of Universal Service and the execution of postal services and Rules 504/2003 on location, setup and security standards for public postal services also regulate this field.

The Third Postal Directive 2008/6/EC has not yet been incorporated into the EEA Agreement. Iceland requested a derogation from the EFTA Surveillance Authority to postpone for two years the transposition of this Directive invoking exceptional circumstances such as its small population, its geographical conditions (rural and island) and the cost of service in rural areas. This would mean that the referred directive would be implemented by Iceland by end of 2012 at the latest.

The EEA Joint Committee (JC) will decide on Iceland's request following a decision, yet to be taken, on including this Directive in the EEA Agreement.

Notwithstanding the EEA JC decision, Iceland stated its intention to adjust some regulatory issues, such as the scope of the universal service obligation, the scope of the authorisation procedure, the financing of the national regulatory authority and the compensation of net costs of the universal service obligation.

Implementation and administrative capacity

Iceland assesses that its national regulatory authority (NRA), the Post and Telecom Administration, is fully independent and has sufficient capacity. The NRA is in charge of overseeing the implementation of postal policies and legislation and is monitoring the market.

This NRA is composed of four divisions:

- the Legal Division with five staff-members,
- the analytical division with five staff members,
- the technical division with six staff-members, and
- the administration with seven staff-members.

There is a possibility of staff increases if required.

Iceland states that with the existence of this independent authority the separation of managerial and regulatory tasks is ensured. The Ministry of Communication does not interfere in the day to day operations and decisions of the NRA.

Iceland reported the existence of an appeal committee on post and telecommunications decisions, which processes appeals in an effective and timely manner. The Ministry of Communication appoints its members from external experts.

III. ASSESSMENT OF THE DEGREE OF ALIGNMENT AND IMPLEMENTING CAPACITY

Overall, Iceland has reached a good level of alignment and applies a substantial part of the *acquis* in the fields covered by this chapter, due to its EEA membership. New EU legislation, relevant to this chapter, has been regularly incorporated into the EEA Agreement.

Further alignment with the *acquis* is expected to take place by the time of accession.

Iceland has fully transposed the *acquis* regarding mutual recognition of professional qualifications. However, adjustments will need to be made to ensure full compliance with the *acquis*, in particular with regards to the regime for temporary provision of service under Directive 2005/36/EC.

As regards establishment and cross-border services, Iceland still needs to align sector-specific legislation in areas falling outside the scope of the Services Directive (temporary employment agencies) to the Treaty freedoms by the date of accession.

In addition, restrictions for foreigners will need to be brought in line with the principles of the EU Treaty (Title IV) regarding the right of establishment and to provide services for fishing vessels flying the flag of a Member State (see chapter 13 *Fisheries*).

Finally, Iceland will need to align with the Third Postal Services Directive by the date of accession, notwithstanding its request for postponement of its transposition within the framework of the EEA Agreement.

The Commission will need to monitor Iceland's alignment with the existing and updated *acquis*. Overall, administrative capacity in this area is sufficient.

III.a. Mutual recognition of professional qualifications

Iceland has fully transposed the *acquis* regarding mutual recognition of professional qualifications. However, adjustments will need to be made to ensure full compliance with the *acquis*, in particular with regards to the regime for temporary provision of service under Directive 2005/36/EC.

As regards Iceland's administrative capacity, Iceland possesses sufficient resources to cope with requests for professional recognition. Its contact point ensures a proper link between society and competent authorities.

III.b The right of establishment and the freedom to provide services

The right of establishment is covered by the EEA Agreement. In this area, the main provisions of the Services Directive 2006/123/EC have been implemented into the Icelandic legal order. The Icelandic authorities have also reported sector-specific amendments dealing with the removal of residence/establishment requirements for travel agencies, tour operators, car salesmen, car rentals, recognised book keepers, rental agencies, licences regarding restaurants, accommodation facilities and entertainment, licences regarding firearms and time limits as regards authorisation for electricians and simplification of procedures for car salesmen.

Work on a point of single contact (PSC) has advanced and the PSC appears to be ready for its functioning. It has information available for service providers (to be gradually expanded and improved) and allows for the completion of certain procedures electronically

It is important to note that Iceland has taken part (as an EEA State) in the Services Directive Expert Group Meetings since 2008 and in the mutual evaluation process.

The IMI system is currently in use in Iceland and will be gradually rolled out to cover more Icelandic authorities

Iceland's administrative capacity is sufficient to deal with the effective implementation of the Service Directive.

Certain difficulties seem to remain in areas falling outside the scope of the Services Directive. For example, the Act on temporary employment agencies No. 139/2005 imposes certain administrative requirements on undertakings intending to provide cross-border services as temporary employment agencies in Iceland which could infringe Article 56 TFUE. An infringement proceeding was opened by the EFTA Surveillance Authority for a breach of Article 36 of the EEA Agreement for this reason and is still ongoing.

Finally; the issue of access to ports and access to services for fishing vessels flying the flag of a state with which Iceland has not negotiated an agreement on straddling fish stocks will be dealt with in chapter 13 *Fisheries*.

III.c. Postal services

Iceland has transposed a substantial part of the *acquis* in this area. The Icelandic legislation transposing the first two Postal Directives is complete, with some minor substantive issues that will need to be further clarified.

These outstanding issues concern the scope of the universal service obligation, the scope of the authorisation procedure, the financing of the national regulatory authority, and the compensation of net costs of the universal service obligation.

Currently in Iceland all postal service providers must pay into the compensation fund, foreseen as a financing possibility by the Postal Directive. However, according to the Postal Directive, postal services outside the scope of the universal postal services do not compete in the same relevant market and are not regarded as interchangeable with universal services: to this end, postal operators providing services outside the scope of universal services should not be required to pay any financial compensation for unfair financial burden of universal service obligation, if any.

Iceland has yet to transpose the Third Postal Directive 2008/6/EC. However, the work at the national level has already begun and Iceland stated that the Third Postal Directive will be transposed by the end of 2012 at the latest.

As regards Iceland's administrative system for postal services, it has sufficient capacity to implement the *acquis*. Furthermore, the possibility of future staff increases is provided for. The separation of the National Regulatory Authority (the Post and Telecom Administration), from the Ministry of Communications ensures the independence of the former body and is thereby compliant with the *acquis*. The existence of an appeal committee on post and telecommunications decisions guarantees their appropriate review.