

MODEL OF FREE MOVEMENT OF GOODS AND SERVICES IN THE EU

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Abstract

A single regional market provides plenty of advantages to its members. The European Union (EU) has created a legal framework to remove frontiers between its members, so companies originating from one country can freely operate in any other EU member state without meeting additional administrative requirements. The practical efficiency of the created framework to a significant extent depends on national governments. Based on the qualitative analysis of the EU legal acts, the author proposes a model of implementation of the principle of free movement of goods and services. In the paper the system of relevant activities and the corresponding tasks is presented as a matrix for elimination of obstacles to sell goods or provide services in the common EU market.

Keywords: business, European Union, freedom, internal market.

JEL Classification: F23, F43, O43.

Introduction

The creation of the internal market is one of the European Union's (EU) important achievements, which contributes significantly to the simplification of commercial affairs between the member states. The opened borders to domestic markets of 500 million consumers and the possibility to operate on the same set of rules throughout the Community without discrimination of national considerations create excellent opportunities for business expansion, being particularly beneficial for companies originating from small countries (European Commission, 2010).

Nevertheless, open borders mean not only attractive opportunities for businesses in other countries, but also new competitors coming to a domestic market. For this sake, the gains from common market enlarging fall disproportionately on small countries, and much depends on activities performed by governments. So, for example, statistics show that the majority of Latvian businesses still prefer to limit their activities to 2.3 million domestic customers, sharing them with foreign investors, who have stepped in the Latvian market within the EU expansion, and not taking advantage of existing possibilities in the EU (O.Baranovs *et al.*, 2011). The Latvian as well as other national governments of the EU internal market cannot keep the local market intact by applying protectionism measures, which is against EU principles. The only way for entrepreneurs to hold back the external pressing is to be active and spread operation throughout the other countries.

Investigations and public inquiry have identified that the main reason for Latvian companies' reluctance to expand abroad is a fear of facing trade barriers and little confidence in opportunities provided by the EU single market (O.Bogdanova, 2011).

Much what was done by the European Community to ensure the free movement of goods and services. However, in order to achieve the desirable result the adopted regulations should be applied at national levels in a proper way.

The present article touches on the issue of the correct implementation of the existing EU level solutions for free movement of goods and services.

To work out the paper the author has applied analytical and graphical methods, such as comparative method, factor determination method, specifications method, qualitative analysis and others.

For the data analysis official data from the twelve line ministries of the Republic of Latvia and other governmentally supported bodies were used. Latvian and EU level legal acts related to the commercial activity in the services sector and commercial transactions with goods were studied. Good practice of other EU member states regarding the organization of B2G communication was also scrutinised.

Description of model of free movement of goods and services

To strengthen the internal market, in the EU various instruments were created encouraging one of the basic pillars of integration – free movement of goods and services. Many relevant business requirements aiming at protection of public health, public policy, public security, etc. have been raised from national to the

EU level, replacing national legal acts by the EU regulations and directives. The best effect for the creation of the truly common market could be reached only if the implementation of integration instruments is harmonized in all the member states. It is also highly important to ensure that each particular instrument supplements another achieving together the synergy effect.

To effectively use the benefits of the EU its member states should not only technically transpose the EU measures into the national legislation, but clearly understand the system of the instruments at the regional (EU) and at the national level, as well as coherently see the link with the correspondent tasks.

Based on the analysis of the EU functional principles and the priorities set by the Treaty on the Functioning of the European Union, the author proposes a model of correlation between the principle of free movement of goods and services in the EU on the one hand, and the positive impact of the principle on each particular member state, on the other hand (European Commission, 2010; European Communities, 2010).

Figure 1 demonstrates a generic development model of an EU member state based on the appropriate application of the principle of free movement of goods and services.

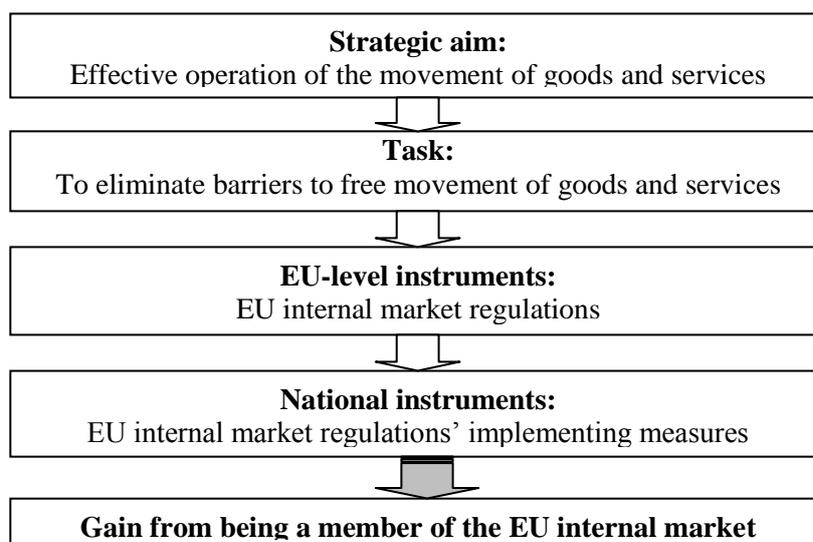


Figure 1. Generic model of free movement of goods and services

Figure 1 shows that the strategic aim of an EU member state is an effective functioning of free movement of goods and services. Only if the mentioned principle successfully functions in practice can a member state fully enjoy the potential provided by the EU.

The main task for ensuring the principle is to eliminate existing and potential barriers to the free movement of goods and services.

In the context of the model the author has defined the three categories of measures fostering free movement of goods and services:

- preventive measures;
- reactive measures;
- corrective measures.

Figure 2 shows the system of the mentioned above measures coping with administrative barriers when selling goods or providing services in the EU.

The aim of preventative measures is not to allow regulatory barriers to free movement of goods and services when a draft legal act is under its elaboration, critically assessing the proposed requirements before their adoption. Governments should strictly follow the principle of proportionality, necessity, and non-discriminatory introducing any requirement to entrepreneurship.

The aim of reactive measures is to ensure an effective communication process between public authorities and businesses, providing exhaustive information on existing administrative requirements, as well as ensuring opportunities to get the necessary licenses, registrations and other authorizations as simple and fast as possible. According to EU law, member states shall also recognize the authorizations granted in other EU member states.

The aim of corrective measures is to eliminate market imperfections appearing from imperfect application of reactive measures, or preventing non-compliance of a regulation with principles of Treaty on

the Functioning of the European Union.

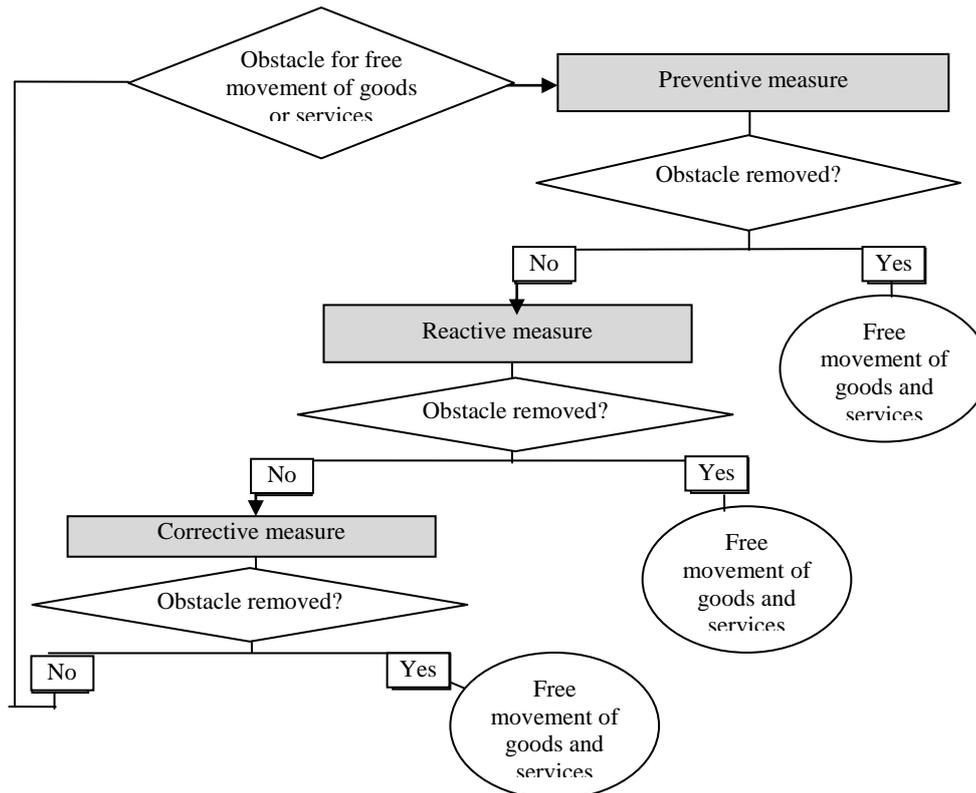


Figure 2. System of the EU internal market encouragement measures

Figure 2 demonstrates that in the event that a preventative measure does not manage to fulfill its aim – to block an obstacle for free the movement of goods and services, a reactive measure should help companies to easily deal with corresponding requirements. In case the reactive measure fails to ensure simple access to a certain business activity, the failure of the market should be cured by corrective measures involving court or out-of-court dispute resolution mechanisms.

The desirable result of the implementation of the described above model is the minimum number of administrative requirements which are justified by reasonable grounds, which are clear and can be easily fulfilled also by electronic means and at a distance. In case of bottlenecks, a problem is to be considered individually and solved in the shortest possible time.

Approbation of the model for free movement of goods and services

As a result of thorough analysis of the existing EU regulations the matrix for realization of free movement of goods and services has been created (European Communities, 1993, 1998, 2000, 2006; European Commission, 2001; European Communities, 2004, 2010). The matrix consists of the list of actions for elimination business obstacles, as well as the list of harmonized EU legal instruments for bringing the actions into effect (see Table 1). The matrix does not contain specific regulations, setting requirements to narrow fields of economics (such as medicine, transportation, notary, etc.) due to their nature and particular interpretation.

In Table1 the EU legal instruments are allocated according to their aims under preventive, reactive or corrective measures. Due to the considerable difference in regulations for services and goods, in Tab.1 the EU law characteristics for the two mentioned spheres are provided separately.

To implement the **preventive measures**, an EU member state should, first of all, notify draft national technical legal acts to the European Commission and the other EU member states. Within the three month period all the stakeholders can submit their comments and objections for the proposed national regulation. At the same time, each member state can also comment on drafts notified by other EU member states. The described procedure for the services sector is defined by Article 39 of Directive 2006/123/EC on services in

the internal market (European Communities, 2006).

Table 1. Matrix for realization of free movement of goods and services in the EU

| | Action | EU legal instruments | |
|---------------------|---|---|---|
| | | Services (a) | Goods (b) |
| Preventive measures | 1.Notification of draft national technical legal acts | Dir.2006/123/EC (Art.39) | Dir.98/34/EC (Art. 8 - 9), Dir.98/48/EC, Reg. 315/93, Reg.852/2004, Reg.853/2004, Reg.854/2004, Reg.1924/2006, Reg.1925/2006, Dir.94/62/EK |
| | 2.Assessment of other EU member states' draft national technical legal acts | | |
| Reactive measures | 3.Recognition of documents issued by other EU member state | Dir.2006/123/EC (Art.16) | Reg. 764/2008 (Art. 5 - 6) |
| | 4.Cooperation of public authorities from different EU member states | Dir.2006/123/EC (Art. 34) | Reg. 764/2008 (Art. 11) |
| | 5.Short-term obstacles warning system | - | Reg.2679/2008 |
| | 6.Information availability on existing requirements | Dir.2006/123/EC (Art. 6-7) | Reg. 764/2008 (Art. 9 -10) |
| | 7.Electronic procedures | Dir.2006/123/EC (Art. 8) | - |
| Corrective measures | 8.Out-of -court dispute resolution mechanism | COM(2001)0702; Council conclusions on SOLVIT network creation | COM(2001)0702; Council conclusions on SOLVIT network creation |

As it is demonstrated in Table 1, preventive measures for the free movement of goods are defined by Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998 amending Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations (European Communities, 1998). The notification procedure for barriers to free movement of goods is considered also in the following specific regulations:

Council Regulation (EEC) No 315/93 of 8 February 1993 laying down Community procedures for contaminants in food (European Communities, 1993);

Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs (European Communities, 2004);

Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin (European Communities, 2004);

Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organization of official controls on products of animal origin intended for human consumption (European Communities, 2004);

Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (European Communities, 2006);

Regulation (EC) No 1925/2006 of the European Parliament and of the Council of 20 December 2006 on the addition of vitamins and minerals and of certain other substances to foods (European Communities, 2006);

European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (European Communities, 1994);

Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labeling, presentation and advertising of foodstuffs (European Communities, 2000).

To ensure the functioning of **reactive measures** the following five actions should be taken .Firstly, the EU member states shall recognize the documents (certificates, diplomas, authorizations, etc.) issued by another member state. The requirement for the services sphere is legally set in the Article 16 of Directive 2006/123/EC, claiming that public authorities shall not restrict the right of companies to provide services in a

member state other than in which they are established, requiring to receive authorization, register or choose a certain legal form for operation, prohibit to perform multidisciplinary activities or other way hinder commercial activity of a services provider (European Communities, 2006).

As for the free movement of goods, Article 5-6 of Regulation 764/2008 defines that the EU member states shall recognize certificates, measurement or test notifications and other documents which are necessary to legally launch a product to the market (European Communities, 2008).

Secondly, there should be effective administrative cooperation between the EU member states. The requirement to communicate between the competent authorities using a modern electronic system created by the European Commission (Internal Market Information System) is set in the Article 34 of Directive 2006/123/EC. For example, if a competent authority of one country has concerns about a document issued by a competent authority of another country, it is possible to use the system to verify the authenticity of the document (European Communities, 2006).

Article 11 of Regulation 764/2008 defines the obligation for the EU member states to create a Product Contact Point (PCP) network to exchange information between the national PCP and / or competent authorities (European Communities, 2008).

Thirdly, it is highly important for governments to create a mechanism to rapidly react to possible unplanned obstacles hampering the free movement of goods and services and informing stakeholders (particularly businesses) of these. Unfortunately, the services sector does not have such a mechanism in its regulation. However, Regulation 2679/2008 defines the obligation to the EU member states to notify all the other EU member states on existing or planned short-term barriers to the free movement of goods (European Communities, 2008).

Fourthly, Article 6-7 of Directive 2006/123/EC defines the necessity to create Points of Single Contacts, where companies can get exhaustive information on all the existing formalities and procedures necessary to fulfill to exercise services provision (European Communities, 2006). At the same time, Article 9-10 of Regulation 764/2008 sets to EU member states obligation to create PCP, ensuring that companies can receive information on technical or other requirements to introduce a product in the market (European Communities, 2008).

Fifthly, Article 8 of Directive 2006/123/EC contains the requirement to national governments to ensure that all the procedures and formalities necessary for starting services provision is possible to fulfill electronically (European Communities, 2006). Currently, there is no requirement to ensure electronic procedures for administrative processes in goods' sector.

Corrective measures consider resolving problems with the free movement of goods or services. As a resolution of a case in the European Court of Justice may last even for several years, it is highly important to ensure an alternative dispute resolution mechanism. A specially created SOLVIT network (eng.: Solve it!) solves those cases where a competent authority of a country incorrectly applies the EU law. One of the advantages of the SOLVIT network is the short time of problem solving. The network is based by the official Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions - Effective Problem Solving in the Internal Market (COM/2001/0702) (European Commission, 2001). SOLVIT operation in each member state is approved by 01.03.2001 Internal Market, Consumer Affairs and Tourism Council conclusions.

The mentioned above legal instruments are adopted at the EU level. However the feedback from their implementation depends on each particular EU member state. Regulations and directives define the obligatory minimum requirements, but the EU member states choose the mechanisms for their transposition into the national systems. Currently the quality of transposition of the mentioned requirements differs significantly from country to country. Unfortunately, sometimes the EU member states implement the requirements just formally, and do not ensure that the aim of a certain requirement is achieved in practice. The European Commission checks the performance of the instruments and supervises the implementation of requirements. Nevertheless, the main attention of the European Commission is still focused on the prevention of protectionism and discrimination in a local market. However the quality of the instruments, such as, points of single contact for companies, remains under the consideration of national governments. Each member state should individually take care of the potential benefits to businesses from the EU implemented measures. The described above model and the matrix of its practical implementation provides a useful assistance to the EU member states to apply the entire system of the free movement of goods and services into their national legislation.

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