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Free Movement of Services



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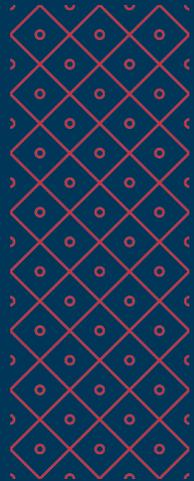


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Content

1. Introduction
2. Services x establishment
3. Removing obstacles



Chapter 1

Introduction



Definition of services

- Art. 56 – 62 TFEU
- Art. 15(2), 16 ChFR
- Definition in Art. 57 TFEU – “services“ = economic activities normally provided for remuneration
- Those activities include especially:
 - a) Activities of industrial character
 - b) Activities of commercial character
 - c) Activities of craftsmen
 - d) Activities of the professions



Freedom of movement of services

= the provider of a service established in a member state may temporarily pursue his/her activity in another member state, under the same conditions as are imposed by that member state on its own nationals (Art. 57 *in fine* TFEU)

- ✓ The provider of a service **is established in a different member state than the recipient** = requirement of a cross-border (EU) element
- ✓ A provider and a recipient of a service may be both natural and legal persons
- ✓ Temporality, irregularity, no continuity – the may difference between freedom of services and freedom of establishment



Broad concept of FMS

- 1) A provider established in a MS provides a service in another MS
e.g. attorney-at-law is providing legal service in another member state = **passive FMS**

- 2) A recipient receives a service in another MS
e.g. a patient is undergoing surgery in another MS = **active FMS**

- 3) Service itself moves between MS
e.g. television Broadcasting, on-line courses, social media providers

- 4) Both a provider and a recipient move to another MS
e.g. a tour with a travel agency



Direct effect of Art. 56, 57 TFEU

- *C-33/74 Van Binsbergen*

Mr Kortmann, a Dutch national and a legal adviser to Mr van Binsbergen, transferred his place of residence from the Netherlands to Belgium during the proceedings. He was informed that he was no longer entitled to act as Mr van Binsbergen's representative. Only persons residing in the Netherlands could have acted as legal representatives or advisers.

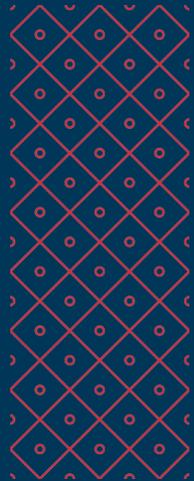
= prohibition of discrimination based on nationality



Equal Treatment

- Prohibition of discrimination (either direct or indirect) based on nationality - concerns providers as well as recipients of services
- *C-186/87 Cowan*

Mr Cowan, a British citizen, was violently assaulted when exiting a metro station during a brief stay in Paris. He applied for compensation under French legislation. His application was refused.



Chapter 2

Services x Establishment



Freedom of movement of services vs. establishment

- The same:
 - a) Economic activities for remuneration
 - b) The same list of exemptions under TFEU
 - c) Certain provisions of freedom of establishment apply also to free movement of services
- Difference - ! Establishment is permanent vs. Provision of services is temporary !
- Needs to be assessed case by case



Freedom of movement of services vs. establishment

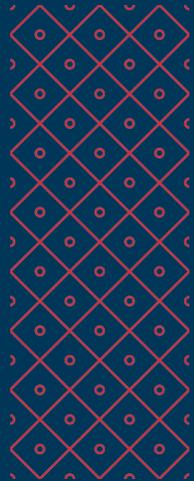
- *C-55/94 Gebhard*

Mr Gebhard, a German national, authorised to practise as a “Rechtsanwalt” in Germany, pursued a professional activity in Italy since 1978 on a permanent basis whilst using the title “avvocato.” The Milan Bar Council opened disciplinary proceedings against him.



What freedom is this?

- Czech neurologist moves to Germany, he gets married and runs his own doctor's practice (as a self-employed person).
- Czech neurologist helps his colleague in Slovakia to run his doctor's practice (as a self-employed person) twice a year during the holiday.
- Czech neurologist moves to Germany and he starts working at hospital on the basis of an employment contract.



Chapter 3

Removing Obstacles



Removing Obstacles of FMS in the MS

- CJEU case-law = avoiding unjustified double burden

CJEU case-law aims to avoid unjustified double regulation: host Member States cannot impose additional requirements on service providers who are already duly regulated in their home state – unless justified by overriding reasons of public interest and applied proportionately.

Example:

A Polish architect is legally established in Poland and wants to offer architectural services in Austria.

-  Already licensed and qualified in Poland
-  Austria requires re-registration and extra exams, even though qualifications are equivalent
-  CJEU case-law: This is an unjustified double burden, unless Austria can show it's necessary and proportionate (e.g. for public safety)
-  Result: Austria must recognize the Polish qualification or justify any additional requirements.



Removing Obstacles of FMS in the MS

- Directive 2006/123 on services in the internal market – “smooth administration“
- Elimination of strict administration rules
- Points of Single Contact
- Electronic communication with officials

Example

- A Spanish tour guide wants to offer guided tours in Italy.
-  Before the Directive:
Had to travel to Italy, visit multiple offices, submit paper documents, wait weeks for approval.
-  After the Directive:
Can now submit everything online through a Single Contact Point, and Italian authorities must reply quickly and transparently.
-  Goal: Faster, simpler, more transparent process for cross-border service providers.



Removing Obstacles of FMS in the MS

- Directive 2005/36 on the Recognition of Professional Qualifications – mutual recognition approach
- Member States must recognise professional qualifications from other countries if they are equivalent or sufficiently similar

Example

A Bulgarian nurse wants to work in France.

-  Qualified and licensed in Bulgaria
- **FR** France must recognize the qualification, unless there are substantial differences
-  If there are gaps → France can require:
 -  Adaptation period (supervised practice), or
 -  Aptitude test
-  Based on Directive 2005/36:
 -  Encourages cross-border professional mobility
 -  Ensures patient safety / consumer protection via checks when needed



Exemptions

- 1) Art. 62 + 51 TFEU = exercise of official authority
- 2) Art. 62 + 52 TFEU = a) public policy; b) public security; c) public health
- 3) Overriding reasons in the public interest = CJEU case law
 - *C-137/09 Josemans* – combating drug tourism



Literature

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