



Services Directive: Assessment of Implementation Measures in Member States

National Report for Malta

**Part One: Analysis of the
implementation of the
freedom to provide
services clause**

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National Report Part One
Analysis of the implementation of the freedom to provide services clause laid down in Article 16 of the Services Directive

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ABBREVIATIONS

LN	Legal Notice
OPC	Outside Promotional Contact
PSC	Point of Single Contact
Services Act	Services (Internal Market) Act, Act XXIII of 2009
Services Directive	Directive 2006/123/EC on services in the internal market
TFEU	Treaty on the Functioning of the European Union

1. Legal analysis

1.1 Overview of national measures implementing Article 16 of the Services Directive

The Maltese Services (Internal Market) Act (Services Act) establishes general provisions facilitating the exercise of freedom of establishment for service providers and the free movement of services in the internal market and implements Directive 2006/123/EC (the Services Directive). It is a framework law of horizontal application, transposing key elements of the Services Directive.

The Services Act entered into force on 29 December 2009 through Act XXIII of 2009 (the omnibus law). Besides transposing certain provisions of the Directive horizontally, it also amends several other laws: the Code of Organization and Civil Procedure, Commercial Code, Traffic (Regulation) Ordinance, Postal Services Act, Accountancy Profession Act, Doorstep Contracts Act, Engineering Profession Act, Education Act, Malta Transport Authority Act, Employment and Training Services Act, *Periti* Act, Malta Travel and Tourism Services Act, Malta Resources Authority Act, Veterinary Services Act, Trading Licences Act and Cultural Heritage Act.

In addition to the amendments made to primary legislation (Acts of Parliament) by means of Act XXIII of 2009, several amendments to sector-specific secondary legislation were made by means of secondary legislation (that is, delegated legislation consisting of regulations issued by a competent authority). For example, the Employment Agencies (Amendment) Regulations, 2010 (Legal Notice 540 of 2010) amend the Employment Agencies Regulations (Legal Notice 127 of 1995).

The Maltese implementing measures cover the same scope as the Services Directive and have been notified to the European Commission.

Article 6 of the Services Act is entitled ‘freedom to provide services by providers already established in Member States’ and gives effect to the requirements of the freedom to provide services clause found in Article 16 of the Directive. Malta thus reproduced Article 16 of the Services Directive in the horizontal Services Act. At the same time, Article 16 is also implemented through sector-specific legislation.

The authorities responsible for monitoring and regulating service activities depend on the service sector in question. Articles 4 to 8 of the Services Act stipulate the general functions of competent authorities regulating access to, and the exercise of, service activities, their authorisation function and conditions, their role in relation to incoming service providers, their role in the provision of information and assistance to applicants, providers and recipients and their supervisory functions.

To date, no guidelines related to the implementation of the Services Directive seem to have been adopted at national level.

1.2 Summary of correctness and completeness of implementing measures (Articles 16(1) and (2))

Malta transposed Articles 16(1) and (2) of the Directive through Articles 6(1) and (2) of the horizontal Services Act. The following summary is based on the Table of Concordance completed in Annex I.

The national law protects the freedom to provide services by providers already established in other Member States. Maltese law does not specifically define cross-border service provider/provision. However, Article 2 of the Act defines ‘provider’ as any natural person who is a national of a Member

State, or any legal person as referred to in Article 48 of the Treaty¹ and established in a Member State who offers or provides a service; ‘service’ is defined as any self-employed activity performed for an economic consideration as referred to in Article 50 of the Treaty² and ‘Member State where the service is provided’ means the Member State where the service is supplied by a provider established in another Member State. These definitions are in line with the Directive’s definitions and it is concluded that the Maltese understanding of cross-border service provider is the same as the Directive’s.

Article 6(1) of the Services Act uses very similar wording to Article 16(1) of the Directive and states that incoming service providers cannot be prevented from providing services by the imposition of requirements which are discriminatory, unnecessary or disproportionate. However, an important inconsistency was noted with respect to the concept of ‘proportionality’ (Article 16(1)(c)) under Maltese law. Article 6(1)(c) of the Services Act simply states that a requirement lacks proportionality if it goes beyond what is necessary to pursue the objective and fails to state that the requirement must also be ‘suitable for attaining the objective pursued’. This could result in a less stringent understanding of proportionality under Maltese law than required by the Directive.

Article 6(2) of the Services Act mirrors Article 16(2) of the Directive. The chapeau of Article 6(2) states that the prohibition placed on competent authorities from subjecting incoming service providers to any of the listed requirements, is ‘without prejudice to’ Article 6(1). Therefore, a listed requirement may be imposed if the conditions of non-discrimination, necessity (that is, justified by reasons of public policy, public security, public health or the protection of the environment) and proportionality are satisfied. The justifying reasons allowed under Maltese law are the same as those allowed by the Directive.

In line with Article 16(2) several amendments were made to sector-specific legislation in order to remove requirements that are not compatible with the freedom to provide services clause. For instance, in order to implement Article 16(2)(a), Malta has removed establishment requirements and in order to implement Article 16(2)(b), authorisation schemes have been removed for cross-border service providers such as tourist guides, employment agencies and sellers of time-shares. These are generally replaced by less onerous notification requirements. For example, the Public Auction (Amendment) Regulations (LN 237/2010) introduce a new Article 16(6) to the principal regulations.³ Persons already licensed or otherwise legally established to carry on auctioning activities in another Member State, are not required to apply for a licence to carry out such activities in Malta on a non-permanent basis but only to notify the regulatory authority as provided in the Trading Licences Act. They must still comply with Regulations 3 to 15 which cover all the other requirements relating to auctioneering services except for the licensing requirements.⁴ Similarly, the amendments made to the Doorstep Contracts Act by means of the omnibus law abolish the requirement for a licence to act as an itinerant seller and the penalty for acting as an itinerant seller without a licence. They also introduce a new Article 6A on the information that every licensed door-to-door seller has to provide to the consumer free of charge and of his own initiative and a new Article 6B on additional information that the door-to-door seller must provide at the consumer’s request.

Some sector-specific authorisation schemes that continue to apply to cross-border service activities are referred to in Section 1.3 and will be analysed further in Part Two of this Report.

1.3 The right of Member States to impose certain requirements (Article 16(3))

Sector-specific legislation recognises the right of cross-border service providers legally established in other Member States to provide services in Malta on a temporary and occasional basis and in

¹ Article 54 TFEU.

² Article 57 TFEU.

³ Public Auction Regulations (LN 69/1991).

⁴ E.g. within one month from the auction the auctioneer must pay to the lot seller the proceeds from the sale.

compliance with the Services Act. As stated above, some sector-specific authorisation schemes continue to apply in Malta. These are allowed by Article 16(3) of the Directive if they may be justified by reasons of public policy, public security, public health or environmental protection and satisfy the conditions of non-discrimination, necessity and proportionality. This is recognised in sector-specific legislation. For example, the new Article 39 of the Malta Resources Authority Act and the new Article 35 of the Malta Transport Authority Act allow service providers lawfully established and providing services in another Member State to provide services in Malta. The competent authorities are expressly prohibited from imposing discriminatory, unnecessary or disproportionate requirements but can impose requirements on the provision of a particular service activity, where these are justified for reasons relating to public policy, public security, public health or the protection of the environment. This is consistent with Article 16 of the Directive.

The new Article 11 of the Trading Licences Act also refers to these justifying reasons. Persons licensed or otherwise legally established to carry on a commercial activity in another Member State must not be prevented from carrying out commercial activity in Malta on a non-permanent and occasional basis, through the imposition of discriminatory, unnecessary or disproportionate requirements. The regulatory authority may however impose such requirements with regard to the provision of a particular service activity, where these are justified for reasons relating to public policy, public security, public health or the protection of the environment. To establish whether a service provider is exercising his freedom to provide services within the meaning of Article 6 of the Services Act, and Article 49 of the Treaty,⁵ or is an establishment case, the competent authority must assess and decide each case on its individual merits and in conformity with EU law and Court of Justice case-law.

The Recreational Diving Services Regulations (LN 357/2010) require the Malta Tourism Authority to recognise the right of a recreational diving service to provide temporary and occasional services in Malta provided that, for reasons of public safety, applicable safety and operational requirements and procedures established in Regulations 12 to 24 are complied with. These provisions deal with safety information, diving logs, risk assessment, emergency procedures and similar matters. It should be noted that, in accordance with the Services Act, the competent authority should not duplicate requirements or controls which are equivalent or essentially comparable as regards their purpose to those which a provider may already be subject to in the Member State of establishment.

- Authorisation schemes

According to Regulation 7A of the Motor Vehicles Roadworthiness Test Regulations (LN 126/1998) as amended by LN 90/2010,⁶ no person shall keep or operate a vehicle roadworthiness testing station in Malta without an authorisation. Similarly, according to Regulation 63 of the Motor Vehicles (Driving Licences) Regulations (LN 191/2002) as amended by LN 89/2010⁷ no person shall keep and operate a motoring school without an authorisation. Where an operator already established in another Member State applies for authorisation for a new establishment in Malta or to operate one or more motoring schools in Malta, the operator will not be required to undergo requirements and controls that are equivalent or essentially comparable as regards their purpose to which he is already subject in another Member State (Regulation 8B of LN 126/1998 and Regulation 63B of LN 191/2002).

Regulation 4 of the Control of the Establishment and Operation of Societies for the Collective Administration of Copyright Regulations (LN 425/2003) as amended by LN 80/2010,⁸ requires a collecting society to be authorised by the Copyright Board in order to operate in Malta. The Board examines the competencies of the collecting society and the agreements it has with its clients to determine whether the service can be provided and the interests of the recipients safeguarded. The

⁵ Article 56 TFEU.

⁶ Motor Vehicles Roadworthiness Test (Amendment) Regulations, 2010.

⁷ Motor Vehicles (Driving Licences) (Amendment) Regulations, 2010.

⁸ Control of the Establishment and Operation of Societies for the Collective Administration of Copyright (Amendment) Regulations, 2010.

competent authority must cooperate with the designated entity responsible for information and assistance to recipients under the Services Act to ensure that general information on the requirements applicable in other Member States is easily accessible to providers and recipients (Regulation 9(4)).

Under Articles 95 and 96 of the Code of Police Laws,⁹ in order to provide services as a stone mason a licence must be obtained from the Ministry for Resources and Rural Affairs. This licence is issued once the applicant is confirmed as having the necessary expertise and knowledge of building practices including those related to the use of Maltese stone. An applicant can obtain a copy of the syllabus as well as the rules under which an exam will establish whether he has the necessary requisites. The applicant must submit an application form to the competent authority, including proof of identity, certificate of citizenship of Malta or of a Member State otherwise permitted to work in Malta under any law, and a police conduct certificate or equivalent together with the application fee. The same requirements and procedures that apply to Maltese nationals, apply to cross-border service providers.

According to Regulation 3(1) of the Catering Establishment Regulations (LN 175/2004), no person shall operate or allow the operation of any catering establishment unless he shall have previously applied for and obtained an appropriate licence issued by the Authority. The amendments to these regulations by means of the Catering Establishment (Amendment) Regulations (LN 290/2010) did not modify this in any way. It would seem that the requirement remains applicable even to cross-border service providers.

The Electrical Installations Regulations (LN 225/2010) regulate electrical installation works services and establish an authorisation scheme. Regulation 1(3) specifies that the purpose of the regulations is to safeguard the public interest and public safety. Any requirements contained therein including those relating to authorisations and to services are made for overriding reasons relating to the public interest. Persons established in other Member States may carry out electrical installation works in Malta on a temporary and occasional basis if they fulfil the conditions and provide similar information as may be required for the regulated professions under Directive 2005/36/EC.

- Notification requirements

The notification requirements found in sector-specific legislation often need to be fulfilled prior to the commencement of the cross-border service provision. These often cover considerable amounts of documentation and in effect, might be almost as burdensome as authorisation schemes. Regulation 12 of the Timeshare and Timeshare-like Products Promotion (Licensing of OPC Representatives) Regulations (LN 287/2010)¹⁰ requires the Malta Tourism Authority to respect the right of marketing companies and OPC (Outside Promotional Contact) representatives lawfully established and providing services in another Member State to provide services in Malta on a temporary and occasional basis in accordance with the Services Act. The proviso to Regulation 12(1) states that ‘due to the complexity and inherent economic risks associated with these activities that may be detrimental to consumers of timeshare and timeshare-like products, and in order to effectively implement Community and national law’ the marketing company, before commencing to provide services in Malta, must submit to the Authority a number of documents and information, such as, legal status and Member State of establishment of the marketing company. Where the information requirements have already been fulfilled in the Member State of establishment, this must be indicated and the Authority can reserve the right to verify such information in accordance with the Services Act.

On the other hand, by virtue of the Employment Agencies (Amendment) Regulations amending Regulation 3 on the conditions for conducting employment agencies or business, the information requirement must be fulfilled within five working days from commencing such cross-border service activity. Still, notifications forwarded to the Director of Industrial and Employment Relations must

⁹ To be repealed and substituted by new legislation (Building (Regulation) Act and Stone Mason Regulations).

¹⁰ Revoke the Timeshare and Timeshare-like Products Promotion (Licensing of OPC Representatives) Regulations (LN 299/2004).

include several details: the name and registered address of the employment agency (has to be in a Member State); the name, address and number of a personal identification document of a contact person authorised by the employment agency or business to carry out its functions in Malta and proof that the person is legally established in another Member State; and the address of the place in Malta where the activity is proposed to be carried out.

The Tourist Guides Regulations¹¹ define ‘temporary service provider’ as any person, other than a licence holder, seeking to act or provide services as a tourist guide on a temporary and occasional basis in Malta.¹² Under Regulation 7, temporary providers of tourist guiding services in Malta must fulfil certain requirements including legal establishment in a Member State for the purposes of providing tourist guiding services. Before commencing the service activity, the provider must submit a written declaration and other documentation, such as, the name and details of the national or regional register in which he is enrolled, his registration number or equivalent means of identification, evidence of his nationality, an attestation from the relevant competent authority in the Member State of establishment that he is legally established in that Member State and is not prohibited from providing such services and evidence of the formal qualification. The Authority will enter the name and title of the provider in the register of persons who are licensed, or otherwise legally allowed to act as tourist guides. It must be noted that tourist guides fall within the regulated professions under Maltese law and therefore benefit from the derogation from Article 16 of the Services Directive. Consequently, the notification scheme under the regulations does not run counter to the Services Directive.

1.4 Hierarchical status of the implementing measures

The general hierarchy of norms in the Maltese legal system is as follows: the Constitution of Malta is the supreme law of the land. No law can be inconsistent with the Constitution. Similarly, by virtue of the European Convention Act, no law can be inconsistent with the rights and freedoms set out in the European Convention on Human Rights. The European Union Act provides, *inter alia*, for Malta’s accession to the EU. From 1 May 2004, the Treaty of Accession and all acts adopted by the EU became binding on Malta. Any domestic law that is incompatible with Malta’s Treaty obligations is, to the extent of its incompatibility, without effect.

Primary legislation in the form of Acts of Parliament prevails over secondary or subsidiary legislation in the form of Legal Notices. The national measures implementing the Services Directive consist of both primary and secondary legislation. The omnibus law, Act XXIII of 2009, amends various Acts of Parliament. Legal Notices issued under these Acts amend other instruments of secondary legislation. In the case of inconsistency between primary and secondary legislation, primary legislation would apply.

The provisions of the Services Act, as the framework implementation law, prevail over those of any conflicting law relating to the provision of services. It is the *lex specialis* establishing the freedom to provide services horizontally. In fact, the amendments introduced in other legal Acts by means of the omnibus law often cross-refer to the Services Act and require that relevant provisions are applied ‘in terms of’, ‘in accordance with’, or ‘without prejudice to’, the Services Act. Sector-specific subsidiary legislation also cross-refers to the Services Act. For example, the Motor Vehicles Roadworthiness Test (Amendment) Regulations (LN 90/2010) and the Motor Vehicles (Driving Licences) (Amendment) Regulations (LN 89/2010) state specifically that their scope is to implement the Services Directive and Services Act. This implies that in case of any conflict, the provisions of the Services Act would apply.

¹¹ Revoke the Tourist Guide Service Regulations (LN 132/2002).

¹² The competent authority assesses whether services are being provided on a temporary and occasional basis on a case-by-case basis taking into account all relevant circumstances, including frequency, regularity, and continuity, in conformity with EU law.

Reference may be made to other examples found in legislative amendments and enactments made in the process of implementing the Services Directive in both primary and secondary legislation in different service sectors:

- Regulated professions/certification/accreditation

The Accountancy Profession Act was amended to include in the functions of the Accountancy Board the carrying out of all things necessary to meet the obligations arising from the Services Act, and to fulfil the powers, functions and responsibilities attributed to a competent authority under the Services Act and in accordance with its provisions. The Board must also do what is necessary to meet the obligations arising from the Mutual Recognition of Qualifications Act. The amendments also introduced a new Article 21 requiring compliance with the Services Act: a warrant holder, practising certificate holder or firm must, if requested by the Board, demonstrate compliance with the obligations imposed on it by the Services Act.

Regulation 1(2) of the Chamber of Architects (Amendment) Regulations (LN 116/2010) specifies that the scope of the regulations is to implement the rules of the Services Directive. The amending regulations add a new Regulation 4A to the principal regulations¹³ stating that the Chamber of Architects is responsible for meeting the obligations attributed to the competent authority in terms of the Services Act.

The temporary provision of services provisions in the Engineering Profession Act, *Periti* Act,¹⁴ Cultural Heritage Act, Electrical Installations Regulations and Veterinary Services Act apply without prejudice to the Mutual Recognition of Qualifications Act. The latter is the parent Act under which the Recognition of Professional Qualifications Regulations (LN 422/2007) transposing Directive 2005/36/EC into Maltese law, were issued.

- Education

Article 23 of the Employment and Training Services Act was amended to specify that the term 'relevant authorisation' must be read and construed in terms of the Services Act and that necessary requirements on holders of these authorisations may only be imposed in terms of the Services Act.

- Tourism

The Tourism Operations (General) (Amendment) Regulations (LN 289/2010) substitute Regulation 5 of the principal regulations¹⁵ to state that without prejudice to the competent authority's obligations in terms of the Services Act, the operator of a tourism operation must obtain any other permit, licence or authorisation required under any other law. Similarly, amendments are made to Regulation 14(1) on distance selling, to state that the obligations of a licensee of a tourism operation when concluding a contract for services performed through distance selling are without prejudice to any other applicable law, including laws concerning distance selling, consumer rights and the Services Act.

The Timeshare and Timeshare-like Products Promotion (Licensing of OPC Representatives) Regulations require the Malta Tourism Authority to respect the right of marketing companies and OPC representatives lawfully established and providing services in another Member State to provide services in Malta on a temporary and occasional basis in accordance with the Services Act.

¹³ Chamber of Architects Regulations (Government Notice 202 of 1920).

¹⁴ The generic title of *perit* means the profession assuming responsibility for the design and, or, construction of building works, and includes works in architecture and civil and structural engineering.

¹⁵ Tourism Operations (General) Regulations (LN 128/2002).

The Recreational Diving Services Regulations state that the Malta Tourism Authority must recognise the right of recreational diving services providers legally established in another Member State to provide such services in Malta, on a temporary and occasional basis, in terms of the Services Act.

- Other

The new Article 16B of the Traffic (Regulation) Ordinance states that nothing in the Ordinance must be construed as limiting, restricting or otherwise affecting the application of any law, regulation or other rule made in pursuance of the Services Act.

According to the new Article 35 of the Malta Transport Authority Act, where service activities fall within the scope of application of the Services Act, the Authority shall respect the right of providers lawfully established and providing services in another Member State to provide services in Malta.

By virtue of the Employment Agencies (Amendment) Regulations (LN 540/2010) the term 'lawfully established' must be read and construed in terms of the Services Act and the Director of Industrial and Employment Relations may impose any necessary requirements on providers in terms of the Services Act. Providers must comply with these requirements.

2. Practical implementation

2.1 The application of the measures by national authorities and courts

It was not possible to identify any relevant case-law. This is understandable given the novelty of the implementing measures. Likewise, although sectoral legislation grants the competent authorities the power to adopt guidelines, it was not possible to identify any.

However, several activities were organized in the period leading up to the adoption of measures implementing the Services Directive. In particular, the Malta Business Bureau is quite active in this field. For example, on 19 November 2009, it organised a business seminar to analyse the implications and discuss the ongoing process linked to the then imminent transposition of the Services Directive.¹⁶

In the context of practical implementation, it is also worth mentioning the two instruments of subsidiary legislation issued under the Services Act so far:

- The Designation of Various Entities Regulations (LN 495/2010) were promulgated by the Minister responsible for the economy in consultation with the Minister responsible for consumer affairs and the Malta Standards Authority. According to Regulation 6, the Malta Enterprise is the designated entity for the administrative and institutional set up of the Point of Single Contact (PSC), including its coordination with the competent authorities and other bodies established under other laws in fulfilment of the functions assigned to it by the Services Act.

Although Malta has made good progress with setting up the electronic PSC, this process is not yet complete. It currently provides information about the procedures, links to the competent authority, an application form and a submission user guide. Malta is currently implementing the e-forms platform which will provide the electronic means. The PSC is physically centralised as part of the business support centre run by the Malta Enterprise and will be accessible through a web portal which will include the necessary information. It will then redirect to the relevant competent authority once an application is to be submitted. The current version of the PSC on the electronic government portal offers adequate information on the authorisations required for specific service activities and also for cross-border service provision. For example, in the construction service sector, details are found with respect to electrical installations (Wireman Licence A & B) and stone masons (Mason's Licence) including links to information on the specific activity covered under the headings and the applicable licensing process.¹⁷ It is planned to improve the information content once the PSC – business support centre is fully operational. The PSC and the completion of formalities and forms will be available in both Maltese and English.¹⁸

- The Establishment of Sanctions and Penalties Regulations (LN 496/2010) lay down the procedure and penalties to be followed by the Director for Consumer Affairs with respect to providers who discriminate against recipients or potential recipients of a service or fail to comply with the obligation to make certain information available to recipients under the Services Act.

¹⁶ Malta Business Bureau, Annual Report 2009:

<http://www.mbb.org.mt/Articles/Article.aspx?Section=policies&ArticleId=1181&Article=Annual+Report+2009>.

¹⁷ See <http://www.gov.mt/pagecluster.asp?i=262&l=2>

¹⁸ Services Directive implementation survey: The Chambers' Perspective on the Points of Single Contact (Eurochambres, Policy Survey, January 2011): http://www.mee.government.bg/doc_pdf/SD_survey.pdf

2.2 Gaps and deficiencies in implementation

Save with regards to stone masonry it was not possible to identify sector-specific laws that still need to be modified in order to implement Article 16 of the Services Directive. Currently, Articles 95 and 96 of the Code of Police Laws require stone masons to obtain an authorisation from the Director of Public Works in order to provide services in Malta. However, Malta has reported that new regulations will be issued with respect to the services of stone masons, in order to comply with the Services Directive.¹⁹

Other authorisation or licensing requirements that are in place in some service sectors as analysed in Part Two of this Report seem to meet the conditions of Articles 16(1) and (3) of the Directive.

Competent authorities are prohibited from imposing requirements on incoming service providers when these cannot be justified on grounds of public policy, public security, public health or environmental protection. Moreover, the adoption of the framework Services Act, which reproduces the Article 16 principles almost verbatim, provides a safeguard in ensuring that any sector-specific gaps or deficiencies would be remedied through the application of the Services Act which has higher normative value in ensuring the free movement of services.

¹⁹ A new Building (Regulation) Act and new Stone Mason Regulations.

3. Conclusions

Malta implemented the Services Directive through the Services (Internal Market) Act (Services Act). It is a framework law of horizontal application, reproducing key elements of the Services Directive and amending several other laws.

Article 6 of the Services Act gives effect to the freedom to provide services clause found in Article 16 of the Directive using very similar wording to the Directive. As regards the transposition of Article 16(1), an important inconsistency was noted: Maltese law states that a requirement lacks proportionality if it goes beyond what is necessary to pursue the objective but fails to state that, in order to meet the 'proportionality' condition, the requirement must also be suitable for attaining the objective pursued.

In line with Article 16(2), several amendments were made to sector-specific legislation in order to remove requirements that are incompatible with the freedom to provide services. Malta has therefore removed establishment requirements and replaced certain authorisation requirements with less onerous notification requirements. Some authorisation schemes have nevertheless been maintained and justified in line with Article 16(3) of the Directive. For example, authorisation schemes were identified in the tourism, private education, and construction and certification service sectors.

Competent authorities are prohibited from imposing requirements on incoming service providers when these cannot be justified on grounds of public policy, public security, public health or environmental protection. By reproducing the Article 16 principles almost verbatim, the framework Services Act, provides a safeguard against sector-specific gaps or deficiencies. The provisions of the Services Act, as the framework implementation law, prevail over those of any conflicting law relating to the provision of services. Sector-specific legislation often cross-refers to the Services Act and expressly requires compliance with its provisions.

With respect to practical implementation it was not possible to identify any relevant national case-law or competent authority guidelines. However, the Designation of Various Entities Regulations and the Establishment of Sanctions and Penalties Regulations, both issued under the Services Act, are relevant to the implementation of the national requirements.

The only sector-specific law identified which has not yet been modified relates to the authorisation requirement for stone masons. This is expected to be repealed in the near future in order to comply with the Services Directive.

ANNEX I Table of concordance (Articles 16(1) and 16(2))

Articles 16(1) and 16(2)	National provision (legal ref. & art.)	Text of national provision (in language of Member State)	Compliance assessment	Comments/Problems
Article 16(1)				
Member States shall not make access to or exercise of a service activity in their territory subject to compliance with any requirements which do not respect the following principles: (a) non-discrimination: the requirement may be neither directly nor indirectly discriminatory with regard to nationality or, in the case of legal persons, with regard to the Member State in which they are established;	Services Act Article 6(1)(a)	With the exclusion of service activities and matters included under the First Schedule, a competent authority shall respect the right of a provider that is lawfully established and providing services in another Member State to provide services in Malta, and may not prevent him from providing such service activity by imposing requirements which are discriminatory, unnecessary or disproportionate. For the purposes of this sub-article: (a) a requirement is discriminatory if it necessitates the fulfilment of obligations which relate to the nationality of the applicant, including the place of establishment of a legal person;	Yes	Article 6(1) of the Act prohibits the imposition of requirements which are discriminatory, unnecessary or disproportionate on incoming service providers. The First Schedule of the Act deals with matters excluded from the application of Article 6(1) copying into Maltese law Article 17 of the Directive on additional derogations from the freedom to provide services. The national law follows a different structure to that of the Directive. Rather than defining what is understood by non-discrimination it states when a requirement is discriminatory. The national law does not refer to direct and indirect discrimination however it is considered that both forms would be covered and that despite the different construction the same meaning is achieved.
(b) necessity: the requirement must be justified for reasons of public policy, public security, public health or the protection of the environment;	Services Act Article 6(1)(b)	(b) a requirement is unnecessary if it is not justified by reasons of public policy, public security, public health or the protection of the environment;	Yes	The national law follows a different structure to that of the Directive. Rather than defining what is understood by necessity, it states when a requirement is unnecessary using similar wording to the Directive. The meaning is not affected.
(c) proportionality: the requirement must be suitable for attaining the objective pursued, and must not go beyond what is necessary to attain that objective.	Services Act Article 6(1)(c)	(c) a requirement lacks proportionality if it goes beyond what is necessary to pursue the objective.	No	The national law follows a different structure to that of the Directive. Rather than defining what is understood by proportionality, it states when a requirement lacks proportionality. However, the Maltese provision is not considered to be complete. It simply states that a requirement lacks proportionality if it goes beyond what is necessary to pursue the objective and fails to state that the requirement must also be 'suitable for attaining the objective pursued'.
Article 16(2)				
Member States may not restrict the freedom to provide services in the case of a provider established in another Member State by imposing any of the following requirements: (a) an obligation on the provider to have an	Services Act Article 6(2)(a)	Without prejudice to sub-article (1), a competent authority may not subject a provider established in another Member State who wishes to provide services in Malta, to any of the following requirements: (a) an obligation on the provider to have an establishment	Yes	Article 6(2) of the Services Act is without prejudice to Article 6(1) – such requirements could therefore be imposed if the conditions of non-discrimination, necessity and proportionality are satisfied. The national law bans the imposition of an obligation on

establishment in their territory;		in Malta;		incoming service providers to have an establishment in Malta.
(b) an obligation on the provider to obtain an authorization from their competent authorities including entry in a register or registration with a professional body or association in their territory, except where provided for in this Directive or other instruments of Community law;	Services Act Article 6(2)(b)	(b) an obligation on the provider to obtain an authorisation from the competent authority including entry in a register or registration with a professional body or association in Malta except where provided for in this Act and other instruments of Community law;	Yes	Malta has correctly transposed the prohibition using wording that closely mirrors that of the Directive. The reference to the Directive is correctly transposed as a reference to the Act. The national provision correctly refers to Malta.
(c) a ban on the provider setting up a certain form or type of infrastructure in their territory, including an office or chambers, which the provider needs in order to supply the services in question;	Services Act Article 6(2)(c)	(c) a ban on the provider setting up a certain form or type of infrastructure in Malta, including an office or chambers, which the provider needs in order to supply the services in question;	Yes	Malta has correctly transposed this prohibition using the same wording as the Directive and appropriately referring to Malta.
(d) the application of specific contractual arrangements between the provider and the recipient which prevent or restrict service provision by the self-employed;	Services Act Article 6(2)(d)	(d) the application of specific contractual arrangements between the provider and the recipient which prevent or restrict service provision by the self-employed;	Yes	Malta has literally transposed this prohibition.
(e) an obligation on the provider to possess an identity document issued by its competent authorities specific to the exercise of a service activity;	Services Act Article 6(2)(e)	(e) an obligation on the provider to possess an identity document issued by the relevant Maltese authorities for the exercise of a service activity;	Yes	Malta has correctly transposed the prohibition using wording that closely mirrors that of the Directive. The reference to competent authorities is correctly transposed as a reference to the relevant Maltese authorities.
(f) requirements, except for those necessary for health and safety at work, which affect the use of equipment and material which are an integral part of the service provided;	Services Act Article 6(2)(f)	(f) requirements which affect the use of equipment and material which are an integral part of the service provided, unless necessary for the purpose of health and safety at work;	Yes	Malta has correctly transposed this prohibition including the exception with respect to health and safety at work.
(g) restrictions on the freedom to provide the services referred to in Article 19.	Services Act Article 6(2)(g)	(g) restriction on the freedom to provide services as contemplated under article 9(b) in relation to the right of recipients;	Yes	Malta has transposed the ban on restrictions on the freedom to provide financial assistance services to recipients. Article 9(b) of the Act transposes Article 19(b) of the Directive.

ANNEX II List of national legislation

The Laws of Malta may be accessed through the website of the Ministry of Justice and Home Affairs <http://mjha.gov.mt/>

Acts of Parliament

- Services (Internal Market) Act, Chapter 500 of the Revised Laws of Malta
- Authority for Transport in Malta Act, Chapter 449 of the Revised Laws of Malta
- Mutual Recognition of Qualifications Act, Chapter 451 of the Revised Laws of Malta
- Cultural Heritage Act, Chapter 445 of the Revised Laws of Malta
- Trading Licences Act, Chapter 441 of the Revised Laws of Malta
- Veterinary Services Act, Chapter 437 of the Revised Laws of Malta
- Malta Resources Authority Act, Chapter 423 of the Revised Laws of Malta
- Malta Travel and Tourism Services Act, Chapter 409 of the Revised Laws of Malta
- Periti Act, Chapter 390 of the Revised Laws of Malta
- Employment and Training Services Act, Chapter 343 of the Revised Laws of Malta
- Auctioneers Act, Chapter 342 of the Revised Laws of Malta
- Malta Transport Authority Act, Chapter 332 of the Revised Laws of Malta
- Education Act, Chapter 327 of the Revised Laws of Malta
- Engineering Profession Act, Chapter 321 of the Revised Laws of Malta
- Doorstep Contracts Act, Chapter 317 of the Revised Laws of Malta
- Accountancy Profession Act, Chapter 281 of the Revised Laws of Malta
- Postal Services Act, Chapter 254 of the Revised Laws of Malta
- Traffic (Regulation) Ordinance, Chapter 65 of the Revised Laws of Malta
- Commercial Code, Chapter 13 of the Revised Laws of Malta
- Code of Organization and Civil Procedure, Chapter 12 of the Revised Laws of Malta
- Code of Police Laws, Chapter 10 of the Revised Laws of Malta

Legal Notices

- Employment Agencies (Amendment) Regulations, 2010, Legal Notice 540 of 2010

- Establishment of Sanctions and Penalties Regulations, 2010, Legal Notice 496 of 2010
- Designation of Various Entities Regulations, 2010, Legal Notice 495 of 2010
- Recreational Diving Services Regulations, 2010, Legal Notice 357 of 2010
- Catering Establishments (Amendment) Regulations, 2010, Legal Notice 290 of 2010
- Tourism Operations (General) (Amendment) Regulations, 2010, Legal Notice 289 of 2010
- Tourist Guides Regulations, 2010, Legal Notice 288 of 2010
- Timeshare and Timeshare-like Products Promotion (Licensing of OPC Representatives) Regulations, 2010, Legal Notice 287 of 2010
- Bunkering (Authorisation) Regulations, 2010, Legal Notice 270 of 2010
- Public Auction (Amendment) Regulations, 2010, Legal Notice 237 of 2010
- Electrical Installations Regulations, 2010, Legal Notice 225 of 2010
- Chamber of Architects (Amendment) Regulations, 2010, Legal Notice 116 of 2010
- Indemnity Insurance (Amendment) Regulations, 2010, Legal Notice 115 of 2010
- Accounting Profession (Provision of Accountancy Services on a Temporary and Occasional Basis) Regulations, 2010, Legal Notice 112 of 2010
- Architects and Civil Engineering Professionals Warrant (Amendment) Regulations, 2010, Legal Notice 106 of 2010
- Application for the Issue of a Warrant (Amendment) Regulations, 2010, Legal Notice 101 of 2010
- Motor Vehicles Roadworthiness Test (Amendment) Regulations, 2010, Legal Notice 90 of 2010
- Motor Vehicles (Driving Licences) (Amendment) Regulations, 2010, Legal Notice 89 of 2010
- Vehicle Hire Services Regulations, 2010, Legal Notice 88 of 2010
- Control of the Establishment and Operation of Societies for the Collective Administration of Copyright (Amendment) Regulations, 2010, Legal Notice 80 of 2010
- Liquefied Petroleum Gas Market (Amendment) Regulations, 2010, Legal Notice 37 of 2010
- Fees (Evening Tuition Courses) (Amendment) Regulations, 2009, Legal Notice 374 of 2009
- Fees (Tuition) (Amendment) Regulations, 2009, Legal Notice 373 of 2009
- National Minimum Conditions (Schools Teaching English as a Foreign Language)(Amendment) Regulations, 2009, Legal Notice 372 of 2009

- Fees (International School of English)(Amendment) Regulations, 2009, Legal Notice 371 of 2009
- University Fees (Amendment) Regulations, 2009, Legal Notice 370 of 2009
- University Fees Regulations, 2009, Legal Notice 258 of 2009
- Liquefied Petroleum Gas Market Regulations, 2008, Legal Notice 249 of 2008
- Recognition of Professional Qualifications Regulations, 2007, Legal Notice 422 of 2007
- Catering Establishments Regulations, 2004, Legal Notice 175 of 2004
- Control of the Establishment and Operation of Societies for the Collective Administration of Copyright Regulations, 2003, Legal Notice 425 of 2003
- Motor Vehicles (Driving Licences) Regulations, 2002, Legal Notice 191 of 2002
- Tourism Operations (General) Regulations, 2002, Legal Notice 128 of 2002
- Architects and Civil Engineering Professionals Warrant Regulations, 2000, Legal Notice 210 of 2000
- Indemnity Insurance Regulations, 1998, Legal Notice 251 of 1998
- Motor Vehicles Roadworthiness Test Regulations, 1998, Legal Notice 126 of 1998
- National Minimum Conditions (Schools Teaching English as a Foreign Language) Regulations, 1996, Legal Notice 60 of 1996
- Employment Agencies Regulations, 1995, Legal Notice 127 of 1995
- Fees (Evening Tuition Courses) Regulations, 1993, Legal Notice 116 of 1993
- Fees (International School of English) Regulations, 1993, Legal Notice 87 of 1993
- Public Auction Regulations, 1991, Legal Notice 69 of 1991
- Application for the Issue of a Warrant Regulations, 1990, Legal Notice 131 of 1990
- Fees (Tuition) Regulations, 1975, Legal Notice 81 of 1975
- Chamber of Architects Regulations, Government Notice 202 of 1920

ANNEX III Sources of information

- Commission Staff Working Paper on the process of mutual evaluation of the Services Directive, accompanying document to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions ‘Towards a better functioning Single Market for services – building on the results of the mutual evaluation process of the Services Directive’: http://ec.europa.eu/internal_market/services/docs/services-dir/implementation/20110127_SWP_en.pdf
- Implementation of the Services Directive-Workshop Report: <http://www.europarl.europa.eu/document/activities/cont/201004/20100407ATT72276/20100407ATT72276EN.pdf>
- Malta Business Bureau, Annual Report 2009: <http://www.mbb.org.mt/Articles/Article.aspx?Section=policies&ArticleId=1181&Article=Annual+Report+2009>.
- Services Directive implementation survey: The Chambers’ Perspective on the Points of Single Contact (Eurochambres, Policy Survey, January 2011): http://www.mee.government.bg/doc_pdf/SD_survey.pdf

Websites:

- Department of Information – Malta: <http://doi.gov.mt/>
- E-government portal: <http://www.gov.mt>
- Malta Enterprise: <http://www.maltaenterprise.com/>
- Malta Business Bureau: <http://www.mbb.org.mt/>
- Ministry of Finance, the Economy and Investment: <http://finance.gov.mt/>