

BASIC STANDARDS OF QUALITY OF ECONOMIC ACTIVITY OF ENTREPRENEURS IN THE EUROPEAN UNION IN THE PROVISIONS OF THE SERVICES DIRECTIVE

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Abstract

The article is dedicated to regulation of taking up and pursuing economic activity on the territory of the internal market of the European Union, introduced in the provisions of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market. The Services Directive sets forth the basic principles for entrepreneurs from European Union Member States to carry out cross-border activity under the freedom of establishment and the freedom to provide services. In the judgment in Joined Cases C-360/15 and C-31/16 — College van Burgemeester en Wethouders van de gemeente Amersfoort v X BV (C-360/15), Visser Vastgoed Beleggingen BV v Raad van de gemeente Appingedam (C-31/16) the CJEU ruled that the provisions of the Services Directive related the exercise of freedom of establishment by service providers also apply in purely internal situations. The article focuses on presenting the regulations of the Services Directive concerning the quality standards of business activity conducted in the European Union, as well as defining the entrepreneurs to whom these standards apply.

Keywords: economic activity; freedom of establishment; freedom to provide services; quality of services; service provider

JEL classification: K20, K33

I. INTRODUCTION

Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376, 27.12.2006, hereinafter referred to as the Services Directive or Directive 2006/123), referred to as the “Services Directive” or the “Bolkestein Directive” after the name of its drafter (Barnard, 2008: p. 323, pp. 326-330; Křepelka, 2012: p. 139-141; Paszyński, 2006: p. 40; Pokryszka, 2012: p. 181; Snell, 2019: pp. 1119-1120) is one of the secondary legislation of the European Union of fundamental importance for the regulation of the taking up and pursuit of economic activity within the internal market. The adoption of the Services Directive was to lead primarily to elimination of barriers to the exercise by entrepreneurs of the freedom of establishment and the free movement of services in the territories of the European Union Member States, which impeded the exercise of economic freedoms despite the regulations of the Treaty on the Functioning of the European Union and the case law of the Court of Justice of the EU in this regard (Kawka, 2015: p. 171; Treaty on the Functioning of the European Union, consolidated version Official Journal C 326, 26.10.2012, hereinafter referred to as TFEU).

The great importance of the Services Directive for the regulation of economic activity in the EU internal market also stems from the fact that its scope of application covers many spheres of activity which, in Recital 33 of the Services Directive, are listed only by way of example, indicating that they include both services provided to other businesses and services provided to consumers and that the activity may be carried out where the provider and the recipient of the service are not separated by a long distance, as well as in situations where the travel of the provider to the recipient of the service is necessary and in the context of provision of services at a distance, including via the Internet (Barnard, 2008: pp. 333-334; Kawka, 2015: pp. 163-164; Kożuch 2013a: p.287; Strzelbicki, 2007: p. 71, pp. 74-75; Pokryszka, 2019: p. 253). The Services Directive thus introduces a general legal framework for doing business and practicing professions in a very wide range of sectors (Barnard, 2008: pp. 333-334; Strzelbicki, 2007: p. 71, pp. 74-75; Pokryszka, 2019: p. 253; Recital 7 of the Services Directive; see also: Kawka, 2015: p. 171).

On the other hand, it should be noted that a very wide range of services are excluded from the scope of application of the Services Directive including, in particular, non-economic services of general interest, financial services, healthcare services, as well as audiovisual and radio broadcasting services (Article 2(2) and 2(3) of the Services Directive; Barnard, 2008: pp. 340-344; Kawka, 2015: pp. 160-162; Kożuch, 2013a: pp. 289-290; Strzelbicki, 2007: p. 74; Pokryszka, 2019: pp. 254-255). Due to numerous exclusions from the scope of application

of the Directive and the removal from its final text of the provisions introducing the principle of control over the provider of cross-border services exercised by its country of origin, the Services Directive did not meet expectations of being a landmark legal act for the liberalisation of services in the internal market of the European Union (Dudzik, 2012: p. 395; Skrzydło-Tefelska, 2012: pp. 933-934; Snell, 2019: pp. 1119-1120).

More than ten years after its entry into force, the importance of the Services Directive in eliminating barriers to taking up and pursuing economic activity was once again underlined by the Court of Justice of the European Union (hereinafter referred to as the CJEU) in its judgment in Joined Cases C-360/15 and C-31/16 (Joined Cases C-360/15 and C-31/16 — College van Burgemeester en Wethouders van de gemeente Amersfoort v X BV (C-360/15), Visser Vastgoed Beleggingen BV v Raad van de gemeente Appingedam (C-31/16), Judgment of the Court (Grand Chamber) of 30 January 2018, ECLI identifier: ECLI:EU:C:2018:44), in which the CJEU emphasized that the provisions of that Directive setting out the rules for the exercise of freedom of establishment by service providers also apply in purely internal situations (Snell, 2019: pp. 1122-1123, p. 1130, 1135; joined cases C-360/15 and C-31/16 Visser, paras. 98-110).

The purpose of this article is to present the Services Directive regulations concerning the quality of services provided. The article focuses on indicating the basic obligations that the provisions of the Services Directive impose on Member States in order to guarantee appropriate standards of quality of business activity conducted by entrepreneurs and on identifying the entrepreneurs to whom these standards apply.

II. APPLICATION OF THE SERVICES DIRECTIVE TO CROSS-BORDER ECONOMIC ACTIVITY AND PROVISION OF SERVICES IN THE INTERNAL MARKET OF THE EUROPEAN UNION

In the light of the EU law, entrepreneurs from Member States may take up and pursue economic activity in the internal market of the European Union using two fundamental freedoms of this market - freedom of establishment, regulated in Articles 49-55 TFEU, and freedom to provide services, regulated in Articles 56-62 TFEU (Cieślinski, 2009: p. 307; Etel, 2011: p. 21; Etel, 2012: pp. 99-100).

Both freedoms of the internal market - the freedom of establishment and the freedom to provide services - are intended to enable the cross-border exercise of economic activity, but each of them provides a basis for conducting activity in the territory of another Member State in a different form (Cieślinski, 2009: p. 308; Etel, 2011: p. 21; Etel, 2012: p. 100, 127).

The fundamental differences between the exercise of the freedom of establishment and the freedom to provide services were pointed out by the CJEU in its judgment in Case C-55/94 Gebhard (Case C- 55/94 Reinhard Gebhard v Consiglio dell'Ordine degli Avvocati e Procuratori di Milano Judgment of the Court of 30 November 1995, ECLI identifier: ECLI:EU:C:1995:411). The element which makes it possible to distinguish an activity carried out under the freedom of establishment from an activity carried out under the freedom to provide services, is the permanent or temporary nature of that activity. Freedom of establishment allows an entrepreneur to carry out a business activity in the host country on a permanent and continuous basis, which involves participation in the economic life of that country. In turn, the service provider who exercises the freedom to provide services only temporarily stays in the territory of another Member State. Assessment of the transient nature of the activity should be made not only based on the duration of the service provision, but also taking into account the regularity of such activity, its periodicity and continuity (Szwarc-Kuczer, 2012: pp. 858-859; Case C-55/94 Gebhard, paras. 25 - 27; see also: Ahlt & Szpunar, 2011: p. 246; Etel, 2012: pp. 127-128; Etel, 2020: pp. 26-27; Kożuch 2013b: p. 243; Pokryszka, 2019: pp. 249-251; Recital 77 of the Services Directive).

The scope of application of the Services Directive is determined by Article 2(1), under which the Directive applies to services provided by service providers established in a Member State. In the provisions of Article 1(1) of the Services Directive, the EU legislator emphasized that it introduces general provisions to facilitate the exercise of the freedom of establishment and the freedom to provide services (Strzelbicki, 2007: p. 71).

It is therefore important to note that the Services Directive sets forth basic standards and seeks to simplify administrative procedures for taking up and pursuing economic activity in the territory of EU Member States on the basis of the two fundamental freedoms of the internal market - freedom of establishment and freedom to provide services (Cieślinski, 2009: pp. 318-320; Damasiewicz, 2011; Strzelbicki, 2007: p. 71; Kożuch 2013a: p. 279; Pokryszka, 2009: p. 386; Pokryszka. 2012: p. 181; Pokryszka, 2019: p. 251). Application of the Services Directive to activities carried out both under the freedom of establishment and the freedom to provide services, is also highlighted by the definition of service provider introduced in the provisions of Article 4(2) of the Directive (Cieślinski, 2009: p. 320; Strzelbicki, 2007: p. 72; Pokryszka, 2009: p. 387). According to this provision, any natural person who is a national of a Member State, or any legal person as referred to in Article 54 of the Treaty and established in a Member State, who offers or provides a service, shall be deemed to be a service provider within the meaning of the Services Directive. In Recital 36 of the Services Directive the EU legislator indicated that the concept of a service provider should cover both natural persons who are nationals of the Member States, and legal persons who are established in the territories of the Member States and who pursue such an activity both under the freedom of establishment and the free provision of services. It is important that the concept of a service

provider, in the light of the provisions of the Services Directive, should not be limited only to entrepreneurs providing cross-border services, but must also cover situations in which an entrepreneur establishes himself in a Member State in order to develop his service activities there (Barnard 2008: p. 351; Cieślinski, 2009: p. 320; Etel, 2012: pp. 126-127; Pokryszka, 2009: p. 387). Thus, analyzing the scope of application of the Services Directive, it should be pointed out that the notion of service is given a specific meaning by the Directive, which includes activities performed both under the freedom of establishment and the freedom to provide services (Cieślinski, 2009: p. 320; Etel, 2012: p. 127; Pokryszka, 2009: p. 387). Applicability of the Directive to activities exercised under both freedoms of the internal market is also emphasized by Recitals 5 and 6, which indicate that the introduction of EU legislation is necessary to enable service providers to carry out service activities within the internal market both by establishing themselves in a Member State and by providing a service without having to be permanently established in the territory of that State. In doing so, service providers should be guaranteed a choice between the two freedoms so that they can pursue the development strategy they have adopted in each Member State (Cieślinski, 2009: p. 318; Etel, 2020: p. 30; Pokryszka, 2009: p. 387; Snell, 2019: p. 1125).

III. JUDGMENT OF THE CJEU IN JOINED CASES C-360/15 AND C-31/16 VISSER AND ITS CONSEQUENCES FOR DETERMINATION OF THE SCOPE OF THE SERVICES DIRECTIVE

The Services Directive is among those pieces of legislation that have been highly controversial already at the legislative stage (Barnard, 2008: pp. 323-325; Kawka, 2015: p. 228; Paszyński, 2006: pp. 40-42; Snell, 2019: pp. 1119-1120). One of the most contentious issues was the introduction of the country-of-origin principle, which was abandoned in the final text of the Directive and replaced by the principle of freedom to provide services introduced in the provisions of Article 16 of the Services Directive (Barnard, 2008: pp. 360-362; Kawka, 2015: p. 229; Strzelbicki, 2007: p. 86). Doubts have also arisen over the applicability of the Services Directive, particularly the provisions of its Chapter III on the freedom of establishment, in domestic relations (Barnard, 2008: p. 351; Strzelbicki, 2007: pp. 71-72).

This problem had already been discussed during negotiations on the final text of the Directive. A proposal made at that time, i.e. that the Directive should apply only to cross-border activities, was rejected by the Internal Market and Consumer Protection Committee of the European Parliament (Barnard, 2008: p. 351; Snell, 2019: p. 1122). This move seemed to confirm the applicability of the Directive's freedom of establishment provisions to entrepreneurs doing business in their home Member State, but it did not completely eliminate the doubts that arose in this regard (Barnard, 2008: p. 351). Some authors have stressed that it is clear from the wording of Article 2(1) of the Directive that it applies to the exercise of service activities in purely internal situations (Barnard, 2008: p. 351; Strzelbicki, 2007: pp. 71-72, 75-76, p. 92; see also: Dudzik, 2012: pp. 395-396). The European Commission's Handbook on the implementation of the Services Directive highlights that the provisions of Chapter III of the Services Directive should apply not only to a business activity carried out in another Member State, but also to entrepreneurs established in their own Member State (Podręcznik wdrażania dyrektywy o usługach, 2007: p.25). On the other hand, it has been emphasized that the provisions of the Services Directive regulate the possibility of cross-border provision of services, and that concept should be interpreted in the light of the CJEU case law relating to the freedom of establishment and the freedom to provide services, which follows from the provisions of Article 1 of the Directive and leads to the conclusion that it applies only in situations involving a cross-border element (Křepelka, 2012: p. 141; see also : Barnard, 2008: p. 351). In these circumstances, it seemed necessary for the CJEU to resolve these doubts (Barnard, 2008: p. 352).

It is worth noting that the CJEU had grounds to address the question of the applicability of the Services Directive in domestic relations, when it ruled in Joined Cases C-340/14 and C-341/14 *Trijber* (Snell, 2019: p. 1130; Joined Cases C-340/14 and C-341/14 - R.L. *Trijber, trading as Amstelboats v College van burgemeester en wethouders van Amsterdam* (C-340/14), *J. Harmsen v Burgemeester van Amsterdam* (C-341/14), Judgment of the Court (Third Chamber) of 1 October 2015, ECLI identifier: ECLI:EU:C:2015:641). In ruling on that case, however, the Court held that the situations presented in the question referred for a preliminary ruling were not purely internal and therefore there was no need, in the Court's view, to address the question of application of the Services Directive in purely internal situations (Joined Cases C-340/14 and C-341/14, *Trijber*, para 42; see also: Snell, 2019: p.1130). In contrast, what was significant for resolving the issue of application of the Services Directive in internal relations, was the Court's judgment in Joined Cases C-360/15 and C-31/16 *Visser* (Snell 2019: p. 1120; Joined Cases C-360/15 and C-31/16 — *College van Burgemeester en Wethouders van de gemeente Amersfoort v X BV* (C-360/15), *Visser Vastgoed Beleggingen BV v Raad van de gemeente Appingedam* (C-31/16), Judgment of the Court (Grand Chamber) of 30 January 2018, ECLI identifier: ECLI:EU:C:2018:44). One of the questions, referred for a preliminary ruling, posed to the Court by the Council of State in this case, was whether the provisions of Chapter III of Directive 2006/123 on the freedom of establishment for service providers, apply to purely internal situations or whether, in analyzing this issue, the Court's case law on the applicability of the TFEU provisions on the freedom of establishment and the free movement of services to purely internal situations should be taken into account (Joined Cases C-360/15 and C-31/16 *Visser*, para 52).

In its judgment issued in Joined Cases C-360/15 and C-31/16 Visser, the Court dispelled those doubts unequivocally by stating that the scope of Directive 2006/123 may go beyond the matters strictly covered by the Treaty rules governing the freedom of establishment and the freedom to provide services (Joined Cases C-360/15 and C-31/16 Visser, para 107; Snell, 2019: p. 1125, pp. 1134-1135). The Court clarified its position regarding the provisions of Chapter III of Directive 2006/123 on the freedom of establishment for service providers, indicating that those provisions must be applied when all the relevant elements of the factual circumstances are linked to a single Member State (Joined Cases C-360/15 and C-31/16 Visser, para 110; Snell, 2019: p. 1122). In the reasoning of the judgment, the Court noted that the primary objective of the Services Directive, as indicated in Article 1, is to remove obstacles to the exercise of the freedom of establishment and the freedom to provide services (Joined Cases C-360/15 and C-31/16 Visser, para 104, see also: Snell, 2019: p. 1125). However, the Court emphasized that the full liberalization of the internal market requires not only the removal of the obstacles which entrepreneurs face when carrying out cross-border activities, but also those linked to the establishment in their own Member State, as in both cases such obstacles are likely to hinder them from providing services to recipients throughout the European Union (Joined Cases C-360/15 and C-31/16 Visser, para 105). The Court noted that the provisions of Chapter III of the Services Directive on the freedom of establishment for service providers which indicate the conditions for application by Member States of authorization schemes which determine the access to and exercise of economic activity in their territory (Article 9(1)) and which specify the prohibited requirements (Article 14) and the requirements to be evaluated (Article 15(1)), do not indicate that the existence of a cross-border element is a condition that has to be met in order to apply them (Joined Cases C-360/15 and C-31/16 Visser para, 99; Snell, 2019: p. 1122; see also : Barnard, 2008: p. 351; Podręcznik wdrażania dyrektywy o usługach, 2007: p.25).

However, it seems that the most convincing arguments concerning the applicability of the Services Directive in internal relations were stated by the CJEU based on interpretation of the basic concepts that define the scope of the Directive. The CJEU relied on an analysis of the provision of Article 2(1) of the Services Directive which indicates that the Directive applies to “services supplied by providers established in a Member State”. The Court held that, in the light of Article 2(1), the provisions of that Directive apply both to cross-border activities and to activities carried out by a service provider in the territory of its own Member State (Joined Cases C-360/15 and C-31/16 Visser, para 100; see also: Barnard, 2008: p. 351; Podręcznik wdrażania dyrektywy o usługach, 2007: p.25). In this context, the Court also interpreted the concepts of “service provider” and “establishment” which define the scope of application of the Services Directive. The CJEU stressed that these concepts, as defined in Articles 4(2) and 4(5) respectively of that Directive, do not contain any reference to a cross-border element. In turn, the reference in those definitions to Articles 49 and 54 of the TFEU must be regarded merely as an indication that the concepts of “natural person” and “economic activity” are to be interpreted in the light of the provisions of the TFEU indicated in those definitions (Joined Cases C-360/15 and C-31/16 Visser, para 101). While summing up its considerations, the CJEU stressed that interpretation of the provisions of Chapter III of the Services Directive on the freedom of establishment for service providers, so that the provisions of that chapter apply to service providers who become established in another Member State as well as to service providers who become established in their own Member State, is in line with the objectives of the Services Directive (Joined Cases C-360/15 and C-31/16 Visser, para 103; Snell, 2019: p.1122, p. 1125).

IV. BASIC SERVICE QUALITY STANDARDS IN THE LIGHT OF THE PROVISIONS OF THE SERVICES DIRECTIVE

By regulating the basic rules of taking up and pursuing an economic activity and providing services in the territory of the internal market of the European Union, as well as the obligations of the Member States related to their implementation, the Services Directive also defines minimum quality standards of services, which the service providers should be obliged to guarantee. Given the fact that the Services Directive determines basic issues concerning the taking up and pursuit of an economic activity and, due to its horizontal nature, is applicable to a very broad range of services (Barnard, 2008: pp. 333-334, p.376; Skoczny, 2004: p. 31), one would expect that the provisions defining the quality standards of service provision would form a key part of the Directive and would indicate exactly how these standards should be achieved (Barnard, 2008: p. 376). However, such a detailed regulation was not introduced in the Services Directive, if only because it would not have been feasible in a piece of legislation that applies to more than 80 sectors of economic activity (Barnard, 2008: p. 376).

An essential part of the Service Directive's regulations on the quality standards of service provision concerns the obligations to provide service recipients with full and comprehensive information about the service provider and the services it offers (Barnard, 2008: p. 376; see also: Strzelbicki, 2007: p. 90). Pursuit of an economic activity and provision of services in the Member States of the European Union requires the service providers to fulfill a number of obligations concerning information to be provided to the persons who use or intend to use their services.

The EU legislator imposes an obligation on Member States to ensure that the information that is essential from the perspective of service recipients, be provided to them by service providers on their own initiative

(Barnard, 2008: p. 376; Kożuch 2013a: p. 298; Podręcznik wdrażania dyrektywy o usługach, 2007: pp. 49-50; see also: Article 22(1) and (4) of Directive 2006/123). In the light of the provisions of Directive 2006/123, such information includes, in particular, name of the service provider and information concerning its legal status and form. The service provider should provide service recipients with information regarding its business address and details that will give service recipients the ability to contact the provider quickly, including electronically. If the service provider acts on the basis of an entry into a register, it is obliged to provide the recipient of the service with information about the name of the register and the number under which it is registered. The entrepreneurs who carry out activities subject to an authorization scheme should provide the service recipient with details of the relevant authorities granting authorizations or the points of single contact. When a service provider carries out an activity that is subject to VAT, they are required to inform the service recipient of their tax identification number. Entrepreneurs engaged in regulated professions are required to indicate the professional body to which they belong, as well as the professional title which has been granted to them, and the Member State in which that title has been granted. Service providers must also comply with requirements to provide information to service recipients related to their general conditions and clauses. That information should also include contractual clauses concerning the law applicable to the contract and/or the competent courts, where the entrepreneur applies such clauses. The recipient should also be informed of the service provider's use of after-sales guarantees, which are not mandatory under current legislation, and information about the professional liability insurance and professional guarantees by which the service provider is covered. The provisions of Directive 2006/123 also introduce the requirement to indicate to the service recipient the main characteristics of the service, in particular its price, where this has been pre-determined by the entrepreneur (Article 22(1) of Directive 2006/123; see also: Barnard, 2008: p. 376; Kożuch 2013a: pp. 297-298).

In the light of Directive 2006/123, service providers are also required to provide certain additional information when recipients of their services request it. It includes, first of all, information on the price of the service. The service provider is required to provide the price of the service at the request of the service recipient when the price has not been determined in advance by the service provider, or the method of calculating the price when it is not possible to provide an exact price, so that the service recipient can verify it. The service provider is also required to provide the recipient, upon request, with information on the rules applicable to their regulated profession, their multidisciplinary activities and companies directly linked to the service in question, the codes of conduct to which the service provider is subject and information on the possibility of having recourse to a non-judicial means of dispute settlement (Article 22(3) of Directive 2006/123; see also: Barnard, 2008: p. 376; Kożuch 2013a: p. 298; Podręcznik wdrażania dyrektywy o usługach, 2007: p. 50).

The EU legislator has given Member States the option to leave it to service providers to choose the form in which they will make the information, indicated in the provisions of Article 22(1) of the Services Directive, accessible to service recipients (Barnard, 2008: p. 376; Kożuch, 2013a: p. 298; Podręcznik wdrażania Dyrektywy o usługach, 2007: p. 49). However, the service provider is obliged to provide the legally required information to the service recipients at least in the forms indicated in the provisions of Directive 2006/123 (Kożuch, 2013a: p. 298). Service providers may provide such information to the recipients in any form and on their own initiative. They may ensure that the information required by law is easily accessible to service recipients at the place where the service is provided or where the contract is concluded. This information may be accessible in electronic form at an address specified by the provider and may be included in the provider's information documents for presentation of their activities (Kożuch, 2013a: p. 298; Podręcznik wdrażania dyrektywy o usługach, 2007: p. 49; Article 22(2) of Directive 2006/123). It should be emphasized that the service provider should not only provide this information to the service recipient in a clear and unambiguous form, but, above all, in a timely manner. This implies an obligation to provide the necessary information to the service recipient prior to conclusion of the contract in writing or, if the contract is not concluded in such a form, prior to commencement of service provision. It is worth noting that these requirements apply both to information which the provider must make accessible on his own initiative and to information which he is obliged to indicate to the recipient at the recipient's request (Article 22(4) of Directive 2006/123; Kożuch, 2013a: p. 297).

The requirements imposed on Member States by the provisions of Directive 2006/123 in connection with the need to ensure appropriate standards for economic activities carried out in their territory, are obviously not limited to the need to ensure that service providers comply with information obligations. The provisions of the Services Directive also allow Member States to make it compulsory for service providers, whose activities could present a risk to the health or safety of recipients of services or to their financial security, to subscribe to professional liability insurance or to provide guarantees or similar safeguards which are equivalent or comparable as regards their purpose (Article 23 of Directive 2006/123; Barnard, 2008: p. 377).

It should be emphasized that the provisions of the Services Directive defining the standards of quality of services provided, do not focus only on indicating the obligations imposed on service providers in this regard. The high quality of services provided within the European Union is also determined by the rights that the Directive grants to service providers and which Member States are obliged to respect.

First of all, Member States are required to abolish provisions introducing total bans on commercial

communications by providers practicing regulated professions. In doing so, Member States should ensure that the commercial communications which service providers provide, are in conformity with professional rules and European Union law and are made in a manner consonant with the specific nature of each profession (Article 24 of Directive 2006/123; see also: Barnard, 2008: pp. 377-378).

The service quality standards introduced by the provisions of the Services Directive introduce the obligation for Member States to ensure that service providers can carry out multidisciplinary activities, i.e. activities in different areas at the same time, on their own or together with other service providers (Strzelbicki, 2007: p. 90, Article 25(1) of Directive 2006/123; see also: Barnard, 2008: p. 378).

As part of ensuring the service quality standards required by the Services Directive, Member States should also take steps to facilitate the resolution of disputes relating to the activities of service providers. In the light of the Services Directive, Member States should ensure that service providers provide recipients with contact details to enable them to send a complaint or a request for information about the service provided. They are also required to guarantee that service providers respond to such complaints as soon as possible and endeavor to find a satisfactory solution (Article 27(1) and (2) of Directive 2006/123; Barnard, 2008: p. 377). The issue of dispute resolution regulated by the Services Directive also includes provisions concerning the possibility of using alternative dispute resolution methods. The Services Directive imposes on Member States the obligation to ensure that service providers who are subject to a code of conduct or belong to a trade association or professional body which provides for the possibility of settling a dispute out of court, inform the service recipient about that fact and display this information on the documents in which they present their services, together with an indication of how recipients can obtain detailed information on the use of alternative dispute resolution methods (Article 27(4) of Directive 2006/123).

The provisions of the Services Directive relating to the quality of services and setting their basic standards, focus on the obligations of entrepreneurs to ensure that service recipients have timely access to clearly formulated information about their business activities carried out. In the light of the Services Directive, Member States are responsible for ensuring that these standards be met by service providers (Barnard, 2008: p. 376-377). The purpose of the Services Directive in this regard is primarily to create the possibility of doing business and providing cross-border services on the basis of mutual trust of the Member States of the European Union in the quality of activities performed by entrepreneurs coming from other Member States (Barnard, 2008: p. 376; Strzelbicki, 2007: p. 90).

V. SCOPE OF APPLICATION OF THE SERVICES DIRECTIVE PROVISIONS RELATED TO QUALITY OF SERVICES

When analyzing the scope of application of the Services Directive in the context of the obligations imposed on Member States to ensure meeting the required service quality standards indicated in the provisions of Chapter V, attention must be paid to the interpretation of Article 2(1) of the Directive and the concept of service provider adopted by the CJEU in the judgment in Joined Cases C-360/15 and C-31/16 Visser.

The provisions of Chapter V of the Services Directive setting out the required quality standards for the activities performed, concern the "service providers" within the meaning of the Directive (Długosz, 2019: p. 281). The concept of service provider must be interpreted in the light of the definition introduced in Article 4(2) and the provisions defining the scope of application of the Services Directive. The Services Directive covers the activities performed under both the freedom of establishment and the freedom to provide services (Barnard, 2008: pp. 350-351, 359-371; Cieśliński, 2009: p. 318; Damasiewicz, 2011; Kozuch 2013a: pp. 292-297; Strzelbicki, 2007: p. 71; Pokryszka, 2009: pp. 386-387; Pokryszka 2012: p. 181; Pokryszka, 2019: pp. 251-252). The concept of a service provider, as defined in the provisions of Article 4(2) of that Directive, refers not only to the operators that provide cross-border services under the freedom to provide services, but also to the entrepreneurs who are established in a Member State on a permanent basis, thus exercising the freedom of establishment (Barnard, 2008: pp. 350-351; Cieśliński, 2009: p. 320; Damasiewicz, 2011; Długosz, 2019: p. 281; Strzelbicki, 2007: pp. 71-72; Pokryszka, 2009: p. 386-387; Pokryszka, 2019: pp. 272-273).

In defining the circle of service providers subject to the requirements necessary to ensure adequate standards of quality of services provided, one must also take into account the position expressed by the CJEU in the judgment in Joined Cases C-360/15 and C-31/16 Visser. In the opinion of the CJEU, the definition of a service provider does not contain a cross-border element (Joined Cases C-360/15 and C-31/16 Visser, para 101), and therefore applies both to entrepreneurs who are established in their own Member State and those who intend to establish such an activity in the territory of another Member State (Joined Cases C-360/15 and C-31/16 Visser, paras 100, 103; Snell, 2019 : p. 1122; see also : Barnard, 2008: p. 351).

In the judgment in Joined Cases C-360/15 and C-31/16 Visser, the CJEU analyzed the scope of application of the Services Directive and the concept of a service provider in the context of application of the provisions of Chapter III of the Directive regulating the fundamental principles of taking up and pursuing business activity by service providers in the territories of the Member States (Joined Cases C-360/15 and C-31/16 Visser, paras. 98-110). The CJEU stressed that the provisions of that chapter, including in particular the regulations of Article 9(1)

which deals with to authorization schemes, Article 14(1) which deals with prohibited requirements, and Article 15(1) which indicates the requirements to be evaluated, do not contain any condition that would indicate the need for a cross-border element (Joined Cases C-360/15 and C-31/16 Visser, para 99; Snell, 2019: p. 1122; see also : Barnard, 2008: p. 351). According to the CJEU, this was an intentional attempt to introduce grounds for applying the provisions of Chapter III of the Services Directive not only in the case of cross-border establishment, but also in situations where the service provider performs its activities within the territory of its own state. The CJEU noted that where the applicability of the provisions of the Services Directive is determined by the cross-border element, this condition is indicated directly in its provisions, as is the case of Chapter IV of the Services Directive, the provisions of which regulate the basic principles of the free movement of services, and the EU legislator has made it clear that they define the rights of service providers who provide services in a Member State other than that in the territory of which they have a permanent establishment (Joined Cases C-360/15 and C-31/16 Visser, paras. 101-102; Snell, 2019: p. 1122; see also: Barnard, 2008: p. 351).

Having regard to the position expressed by the CJEU in the judgment in Joined Cases C-360/15 and C-31/16 Visser that the provisions of Chapter III of the Services Directive concerning freedom of establishment for providers apply in purely internal situations (Joined Cases C-360/15 and C-31/16 Visser, paras. 108, 110; Snell, 2019: p. 1122, 1130), it should be noted that, in the provisions of Chapter V of the Services Directive which defines standards for the quality of services provided, as like in Chapter III, the EU legislator did not include any reservation indicating that these standards were to apply only in the situation of cross-border provision of services or conducting business in another Member State under the freedom of establishment. The obligations relating to the communication of information to service recipients set out in Article 22 of the Services Directive, the requirements to take out professional liability insurance regulated in Article 23 of the Services Directive, the right to exercise a multidisciplinary activity set forth in Article 25 of the Services Directive, and the obligations to supply recipients with information to ensure the smooth settlement of disputes set out in Article 27 of the Services Directive, all concern the “providers” within the meaning of that Directive (Długosz, 2019: p. 281). The EU legislator emphasized that, because of the need to guarantee high quality of services, the provisions of the Directive setting forth basic standards for their provision, should apply both to entrepreneurs engaging in cross-border provision of services and to those who are established in the territory of a Member State (Barnard, 2008: pp. 376-377; Recital 97 of the Services Directive).

In the light of the provisions of the Services Directive setting out the scope of its application and defining the concept of a service provider, as well as the judgment of the CJEU in Joined Cases C-360/15 and C-31/16 Visser, it should be held that the provisions of that Directive relating to the quality of services, apply to entrepreneurs carrying out cross-border economic activity both under the freedom of establishment and the freedom to provide services (Barnard, 2008: pp. 350-351, pp.376-377; Etel, 2012: pp.126-127; Cieśliński, 2009: p.320; Damasiewicz, 2011; Długosz, 2019: p. 281; Strzelbicki, 2007: pp. 71-72; Pokryszka, 2009: pp. 386-387; Pokryszka, 2019: pp. 272-273), as well as to entrepreneurs who carry out their activity within the territory of their own State (Barnard, 2008: pp. 376-377; see also : Snell, 2019: p. 1122, p.1135).

VI. CONCLUSIONS

Already at the stage of legislative work, the Services Directive had been seen as a piece of legislation that should be a milestone on the path towards full liberalization of the services market in the European Union (Barnard, 2008: pp. 325-327; Skrzydło-Tefelska, 2012: p. 933; Snell, 2019: pp. 1119-1120). However, the adoption of compromise solutions in the final text of the Directive, related primarily to abandonment of the country of origin principle and its replacement with the regulation of Article 16 introducing the obligation of Member States to respect the freedom to provide services reduced the significance of this piece of legislation in the opinion of many representatives of the legal doctrine (Skrzydło-Tefelska, 2012: pp. 933-934; Snell, 2019: pp. 1119-1120). However, in the light of the CJEU's judgment in Joined Cases C-360/15 and C -31/16 Visser, it is no longer possible to depreciate the importance of the Services Directive as a piece of legislation that has an extremely significant impact on the rules of conducting business and providing services in the European Union (Snell, 2019: p. 1120, 1125, pp. 1134-1135). In ruling that the provisions of the Services Directive on the exercise of the freedom of establishment by service providers also apply in purely internal situations, the Court emphasized that the scope of application of that Directive goes beyond the cross-border operation of a business normally covered by the TFEU provisions governing the freedom of establishment and the freedom to provide services (Snell, 2019: p.1120, p. 1125; pp. 1134-1135; see also: Strzelbicki, 2007: pp. 75-76, p. 92). As a consequence of that ruling, it should be considered that the provisions of the Services Directive set forth the basic standards for taking up and pursuing economic activity in the Member States, and may represent the next step in the construction of a “genuine economic union” which goes beyond the internal market based on economic freedoms, but also has a significant impact on the rules of doing business in the EU countries (Snell, 2019: pp. 1134-1135; see also : Barnard, 2008: 351; Dudzik, 2012: pp. 395-396; Strzelbicki, 2007: pp. 75-76, 92; Pokryszka, 2012: pp. 181-182).

In terms of quality-of-service standards, the provisions of the Services Directive set out the basic

requirements to be respected by the entrepreneurs established and providing services in the Member States focusing, in particular, on obligations relating to the provision of relevant information to recipients about entrepreneurs and their activities (Barnard, 2008: pp. 376-377). However, the basic standards of service quality introduced in the provisions of the Services Directive are not limited to information requirements, but also include regulations of great importance for guaranteeing the security of trading which allow Member States to impose on entrepreneurs the obligation to take out professional liability insurance. By setting out the basic requirements relating to the quality of services, the provisions of the Services Directive also indicate the minimum standards for the rights which the Member States should guarantee to entrepreneurs which include the exercise of multidisciplinary activities by providers and the provision of commercial communications by the regulated professions. The activities indicated in Articles 2(2) and 2(3) of the Services Directive are excluded from its scope of application, but it is worth emphasising that the provisions of Chapter V of the Services Directive lay down basic standards for the quality of conducting business and providing services in the European Union in many other areas of activity that are important for the development of the internal market and European economic integration.

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