

Does the Free Movement of Services in the EU Apply to One-off Services Provided Without a Business License?

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Abstract: *In the European Union, the Treaty on the Functioning of the EU (TFEU) prohibits restrictions on the freedom to provide services in the EU in relation to nationals of Member States who are established in a Member State other than that of the recipient of the services. Services are considered to be activities provided by entrepreneurs for remuneration, unless they are covered by the provisions on the free movement of goods, capital, and persons. At the same time, the Directive of the European Parliament and of the Council of 12 December 2006 on services in the internal market applies. This Directive lays down general provisions facilitating the exercise of the freedom of establishment for service providers and the free movement of services, while maintaining a high level of quality of services. However, does the free movement of services also apply to one-off services (activities) provided by an entrepreneur from one Member State outside the scope of their business license in another Member State? If so, can the host Member State impose any restrictions on them? The purpose of this paper is to answer the above question.*

Keywords: *Directive on services in the internal market, free movement of services, Treaty on the Functioning of the EU (TFEU).*

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1. INTRODUCTION

The internal market of the European Union (EU) constitutes an area without internal frontiers, within which the free movement of goods, persons, services, and capital is ensured (Article 26(2) TFEU). The free movement of services thus represents one of the fundamental freedoms within the EU. However, the nature of services is complementary to the other three components of the internal market: a service is an economic category that is neither a good, nor business or employment activity by a specific person, nor capital—although it is, to a greater or lesser extent, related to all three of these economic phenomena. Nevertheless, it possesses an autonomous character.

The legal framework governing the free movement of services within the EU is enshrined in the Treaty on the Functioning of the European Union (TFEU), the Services Directive adopted on its basis¹, as well as in a range of other specific legislative acts (most commonly directives) regulating certain particular categories of services. This legal framework is further developed through the case law of the Court of Justice of the European Union (CJEU). In this paper, we analyse this complex network of sources of EU primary and secondary law, together with the CJEU's jurisprudence and, to some extent, the national legislation of the Czech Republic, Slovakia, Germany, and Austria, with the aim of addressing a fundamental question: Do one-off remunerated services—which may be provided in the home Member State even without a business authorisation (for instance, a one-time granting of a loan or credit, the brokerage of the purchase or sale of a specific property, the provision of financial leasing to a subsidiary established in another Member State, or, for example, the occasional or one-time guiding of a tourist group in a neighbouring Member State)—also benefit from the free movement of services? And if so, may the host Member State impose restrictions on such a service, or refuse to recognise its legal effects?

We approached this question systematically. First, we examined the concept of a “service” in EU law and attempted to define it. Subsequently, we analysed the sources of EU law and the case law of the CJEU to determine whether the relevant issue had ever been the subject of legislative action or of the CJEU's interpretative or application-related decisions, thereby establishing an informational basis for addressing the first question. We then analysed the applicable legal framework in terms of restrictions and obstacles to the free movement of services, so as to provide an answer to the second question posed.

This paper adopts a doctrinal and analytical legal research methodology based on the systematic interpretation of primary and secondary sources of EU law. The investigation is based *ex ante* on the relevant provisions of the TFEU and the Services Directive, supplemented *mutatis mutandis* by the interpretative

¹ 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.

practice of the CJEU. This framework allows the authors to assess the legal nature and scope of the free movement of services, particularly with regard to one-off cross-border activities carried out outside the provider's business license.

The methodological structure unfolds in three successive stages. First, the concept of a “service” in EU law is delineated within its systematic relationship to the other fundamental freedoms of the internal market, highlighting its autonomous economic and remunerative character. Second, the corpus of relevant CJEU case law is examined to ascertain whether one-off or non-continuous services have been subjected to judicial interpretation and, if so, how they are situated within the existing legal taxonomy of EU freedoms. Third, the study analyses the limits of Member States’ regulatory competence, focusing on restrictions permissible under the principles of non-discrimination, necessity, and proportionality as enshrined in Article 16 of the Services Directive.

The doctrinal analysis is further enriched by comparative elements, particularly through reference to Slovak, Czech, Austrian, and German legislation to illustrate the interplay between national and EU law in defining and regulating one-off services. The comparative method is complemented by analytical synthesis (identifying commonalities and divergences), inductive reasoning (drawing general lessons from the national specificities) and deductive application (mapping the models against the EU legal framework for “services” and “entrepreneurial activity”).

This integrated doctrinal–comparative approach forms the epistemic basis for the conclusions reached concerning the applicability of the freedom to provide services to singular, non-continuous economic activities within the European Union’s internal market.

2. DEFINITION OF THE TERM “SERVICE” IN EU LAW

2.1. The Delimitation of the Free Movement of Services in Relation to Other Fundamental Freedoms within the Internal Market

According to Article 57 TFEU, *for the purposes of the Treaties, services are considered to be performances normally provided for remuneration, unless they are governed by the provisions on the free movement of goods, capital, or persons.* Services, as an object of free movement within the EU internal market, therefore function as a kind of “catch-all category,” into which certain activities or performances are included only if they cannot be classified under the free movement of goods, persons (whether self-employed or employed), or capital.

The freedom to provide services is closely related to the freedom of establishment, which forms part of the free movement of persons; however, the distinction lies in the temporal dimension. While the provision of services is characterized by transience or temporariness, the freedom of establishment is marked

by a certain permanence.² This was clearly articulated by the CJEU in the *Gebhard* judgment³. Thus, 'the freedom to provide services' is characterised by the absence of a stable and continuous participation in the economic life of the host Member State, being of a more temporary nature.⁴ Furthermore, the CJEU has clarified the differences between them, based on the assumption that if a service provider is legally established in one Member State, they should be able to provide services in another Member State, without facing subject to the same controls twice.⁵ According to the last sentence of Article 57 TFEU it applies that *without prejudice to the provisions of the Chapter relating to the right of establishment, the person providing a service may, in order to do so, temporarily pursue his activity in the Member State where the service is provided, under the same conditions as are imposed by the state on its own nationals.*

The freedom to provide services is also closely related to the free movement of workers. The CJEU clarified the distinction between the two in the *Rush Portuguesa*⁶ judgement, according to which, in the case of the temporary movement of workers sent to another Member State to perform work as part of the provision of services by their employer, these workers return to their country of origin upon completion of the work, without ever gaining access to the labour market of the host Member State. Therefore, the posting of employees to another Member State constitutes the free movement of services, not the free movement of workers. Nevertheless, through its interpretative activity, the CJEU has made it clear that the posting of workers is not limited to cross-border provision of services but is closely linked to the corresponding freedom of movement of persons.⁷

In explaining the distinction between the free movement of goods and the free movement of services in the EU, the substantive difference between a good and a service comes to the forefront. Typically, a service is an intangible performance, although it does not need to be completely separate from a tangible sub-

² TICHÝ, Luboš, ARNOLD, Rainer, ZEMÁNEK, Jiří., KRÁL, Richard, DUMBROVSKÝ, Tomáš. *Evropské právo*. 5. vyd. Praha: C. H. Beck, 2014, p. 382.

³ Judgement of the Court of Justice 30 November 1995, Case C-55/94 *Reinhard Gebhard v. Consiglio dell'Ordine degli Avvocati e Procuratori di Milano*, para. 25. and 27.

⁴ O'LEARY, Siofra, SÁNCHEZ, Sara Iglesias. Free Movement of Persons and Services. In: CRAIG, Paul, DE BÚRCA, Gráinne (eds.). *The Evolution of EU Law*. Oxford: Oxford University Press, 2021, p. 534.

⁵ KAINER, Friedemann. *Free Movement of Services and Freedom of Establishment*. Luxembourg: European Union, 2019. p. 11 [online]. Available from: [https://www.europarl.europa.eu/RegData/etudes/STUD/2019/638394/IPOL_STU\(2019\)638394_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2019/638394/IPOL_STU(2019)638394_EN.pdf) [accessed on 2025-09-21].

⁶ Judgment of the Court of 27 March 1990 in case C-113/89, *Rush Portuguesa Lda v. Office national d'immigration*, para. 15.

⁷ SPISAROVA, Simona. Aktuální otázky přeshraničního zaměstnávání v Německu. In: ŠVARC, Z. (ed.) *Právo v podnikání vybraných členských států Evropské Unie – sborník příspěvků k VIII. ročníku mezinárodní vědecké konference*, 1st ed. Praha: TROAS, 2016, p. 120.

strate. For example, the CJEU considered the distribution of lottery tickets to constitute a service in *Schindler*⁸, the distribution and dubbing of films in *Fedicine*⁹, retail sale of products in *X and Visser*¹⁰, short-term rental of real estate to occasional clients in the joined cases *Cali Apartments and HX*¹¹, and prostitution in *Jany*¹². By contrast, the Court regarded waste as a good in *Commission v. Belgium*¹³ and printed matter in *Commission v. France*¹⁴, both of which fall within the scope of the free movement of goods.

Finally, it is necessary to distinguish between the free movement of services and the free movement of capital. Here, the interpretation is guided by the text of the TFEU itself. According to Article 58(2) TFEU, *the liberalization of banking and insurance services in connection with the free movement of capital is to be carried out in accordance with the liberalization of capital movements*. Beyond banking and insurance services, this category also includes other financial services provided by regulated entities, such as investment services, payment services, financial intermediation, pension savings, and more recently, the management and acquisition of credit claims, as well as services related to crypto-assets. Looking ahead, the EU aims to establish a digital European Capital Markets Union.¹⁵ These services operate on a cross-border basis under the so-called *single licence*¹⁶, whereby the intention to provide financial services in a host Member State is first notified to the home supervisory authority, which then communicates this information to the supervisory authority in the host Member State.

⁸ Judgement of the Court of 24 March 1994 in case C-275/92, *Her Majesty's Customs and Excise v. Gerhart Schindler, Jörg Schindler*, para.37.

⁹ Judgement of the Court of 4 May 1993 in case C-17/92, *Federación de Distribuidores Cinematográficos (Fedicine) v. The Spanish State*, para. 11.

¹⁰ Judgment of the Court of 30 January 2018 in the joined cases C-360/15 and C-31/16: *College van Burgemeester en Wethouders van de gemeente Amersfoort v. X BV (C-360/15) and Visser Vastgoed Beleggingen BV v. Raad van de gemeente Appingedam (C-31/16)*, para. 90.

¹¹ Judgement of the Court of 22 September 2020 in joined Cases C-724/18 and C-727/18, *Cali Apartments SCI (C-724/18), HX (C-727/18) v. Procureur général près la cour d'appel de Paris, Ville de Paris*, para. 45.

¹² Judgment of the Court of 20 November 2001 in case C-268/99 *Aldona Malgorzata Jany and Others v. Staatssecretaris van Justitie*, para. 34.

¹³ Judgement of the Court of 9 July 1992 in case C-2/90, *Commission of the European Communities v. Kingdom of Belgium*, para. 28.

¹⁴ Judgement of the Court of 7 May 1985 in case 18/84 *Commission of the European Communities v. French Republic*, para. 12.

¹⁵ BUSCH, Danny. The future of EU financial law. In. *Capital Markets Law Journal*, 2022, vol. 17, No. 1, p. 70 *et seq.*

¹⁶ In financial services, the so-called single license principle applies. For further details, see, for example, SLEZÁKOVÁ, Andrea; ŠIMONOVÁ, Jana; JEDINÁK, Peter. *Zákon o finančnom sprostredkovaní a finančnom poradenstve – komentár*. 1st ed. Bratislava: Wolters Kluwer SR, 2020, p. 90.

2.2. Defining Characteristics of a Service in EU Law

According to Article 57 TFEU *services shall be considered ‘services’ within the meaning of the Treaties where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to the freedom of movement for goods, capital and persons.* ‘Services’ shall in particular include activities of industrial and commercial character, activities of craftsman and of the professions.¹⁷

According to the Services Directive for the internal market, a service is defined as *any independent economic activity normally provided for remuneration, within the meaning of Article 50 of the Treaty* (now Article 57 TFEU). A distinct category of services is represented by services in the shared (collaborative) economy, which are also subject to the regime of free movement of services.¹⁸

A service is normally provided for remuneration. The CJEU has ruled that the freedom of free movement of services does not extend to the gratuitous provision of information without an economic motive (case *Unborn Children*¹⁹) or to educational courses financed from public funds (cases *Wirth*²⁰, or *Humbel and Edel*²¹). Remuneration does not need to be monetary (e.g. *Steymann*²²) and does not need to be paid by the recipient of the service; it may also be provided by a third party (e.g. *Bond van Averteerders*²³).

The Services Directive for the internal market, in its preamble, sets out interpretative rules for certain key concepts. The services covered by this Directive include services for businesses (e.g., business or human resources consulting, certification and testing, facility management, advertising, or services of commercial agents), services for both businesses and consumers (e.g., legal and tax advice, real estate services, construction-related services, architectural services, distribution services, vehicle rental, or travel agency services), as well as services provided exclusively to consumers (e.g., tourism services including

¹⁷ See also BACHŇÁKOVÁ RÓZENFELDOVÁ, Laura. *Právne vzťahy v kolaboratívnom hospodárstve*. 1st ed. Bratislava: C. H. Beck, 2022, pp. 14–16.

¹⁸ For details see: HATZOPOULOS, Vassilis, ROMA, Sofia. Caring for sharing? The collaborative economy under EU law. In. *Common Market Law Review*, 2017, 54, No. 1, pp. 81 et seq.

¹⁹ Judgement of the Court of 4 October 1991 in case C-159/90, *The Society for the Protection of Unborn Children Ireland Ltd and Stephen Grogan and others*, para. 26.

²⁰ Judgment of the Court of 7 December 1993 in case C-109/92 *Stephan Max Wirth v. Landeshauptstadt Hannover*, para. 19.

²¹ Judgment of the Court of 27 September 1988 in case C-263/86, *Belgian State v. René Humbel and Marie-Thérèse Edel*, paras. 17-20.

²² Judgment of the Court of 5 October 1988 in case C-196/87 *Udo Steymann v. Staatssecretaris van Justitie*, para. 12.

²³ Judgment of the Court of 26 April 1988 in case C-352/85 *Bond van Averteerders and others v. The Netherlands State*, para 16.

guiding, leisure services, domestic assistance, etc.), and encompass services provided both in person and at a distance (recital 33 of the Directive). However, the Directive excludes activities performed gratuitously by the state or on behalf of the state in connection with its obligations in the social, cultural, educational, and judicial spheres, as these do not constitute economic activity; payment of a fee by the recipient, such as tuition or enrolment fees by students to contribute in some way to operational costs, does not in itself constitute remuneration (recital 34 of the Directive). Non-profit amateur sports activities aimed at fulfilling social and recreational objectives are also not considered services, as they do not constitute economic activity (recital 35 of the Directive).

Article 2(2) of the Directive defines its negative scope. Hence, the Directive does not apply e.g. to non-economic services of general interest and to services covered by their own specific legal regimes. Examples include financial services, healthcare services or social services.²⁴

2.3. One-Off Services

As explained further above, in the context of EU law, the freedom of establishment differs from the freedom to provide services in that the former is characterized by a permanent presence in the host Member State, whereas the latter is marked by temporariness. But how does this apply to one-off services, which are moreover not provided on the basis of an entrepreneurial authorization in the service provider's home Member State?

For example, in the Slovak Republic, entrepreneurship is defined as *a continuous activity carried out independently by an entrepreneur in their own name and at their own risk, with the aim of generating profit or achieving a measurable positive social impact, in the case of economic activity conducted by a registered social enterprise under a specific regulation* (Article 2(1) of the Commercial Code). Continuity is understood as long-term, repeated, or permanent activity and does not include one-off actions. The criterion of continuity is also fulfilled by planned seasonal activity, which the entrepreneur temporarily suspends and subsequently resumes. It is essential that the entrepreneur's intention is to perform the activity repeatedly. The requirement of continuity excludes from entrepreneurship any activity that is performed randomly, exceptionally, or occasionally.²⁵ One-off activities carried out for remuneration, since they do not meet the continuity requirement, cannot be regarded as entrepreneurship and therefore

²⁴ For the case law of the CJEU concerning issues related to the Services Directive for the internal market, see, for example, GRMELOVÁ, Nicole. Implementace evropské směrnice o službách na vnitřním trhu v České republice. In: ŠVARC, Zdeněk (ed.) *Aktuální problémy práva v podnikatelském prostředí ČR a EU – sborník příspěvků z mezinárodní vědecké konference – 2. díl*. 1st ed. Prague: TROAS, 2014, pp. 121–123.

²⁵ OVEČKOVA, Olga, CSACH, Kristián. *Obchodné právo I. Všeobecná časť a súťažné právo*. Bratislava: Wolters Kluwer SR, 2019, p. 112.

do not require an entrepreneurial authorization. At the same time, such activities are not prohibited by law, meaning they may be performed on a one-off basis. This is in accordance with Article 2(3) of the Constitution of the Slovak Republic, which provides that *everyone may do what is not prohibited by law, and no one may be compelled to do what the law does not require*, reflecting one of the fundamental principles of a substantive rule-of-law state.²⁶ Of course, this does not affect the obligation to tax even one-off income as so-called other income (Article 8(1) of Act No. 595/2003 Coll. on Income Tax, as amended).

A very similar concept of entrepreneurship applies in the Czech Republic. According to Article 420(1) of the new Civil Code (Act No. 89/2012 Coll., Civil Code), *anyone who independently carries out a gainful activity on their own account and responsibility, in a trade or similar manner, with the intention of doing so continuously for the purpose of generating profit, is considered an entrepreneur with respect to that activity*. Thus, the activity must be of a permanent or repeated nature, not a one-off act²⁷; however, this character does not need to be fully realized—what suffices is the existence of a demonstrable intention to carry out the activity over the long term. Compared to Slovak law, the Czech definition is more subjective in nature.

In Austrian law, entrepreneurial activity (*unternehmerische Tätigkeit*) is defined primarily through its continuity and regularity. According to Article 1(2) of the Austrian Commercial Code (*Unternehmensgesetzbuch – UGB*), an enterprise (*Unternehmen*) is *any organisation of independent economic activity that is conducted on a continuing basis, even if not directed at profit*. The permanent and systematic nature of the activity, rather than its size or profitability, constitutes the essential criterion of entrepreneurship. The Trade, Commerce and Industry Regulation Act (*Gewerbeordnung, GewO 1994*) reinforces this by defining a trade (*Gewerbe*) as an activity carried out independently, regularly, and with the intention of achieving an economic benefit [Art. 1(2) GewO]. Sporadic or purely occasional actions therefore do not meet the threshold of entrepreneurial activity. Austrian jurisprudence has consistently upheld this interpretation: the Supreme Court stated that “for the definition of an entrepreneur under the Consumer Protection Act (*Konsumentenschutzgesetz – KSchG*), no minimum degree of commercial activity is required, but rather the regularity and methodical character of the activity exercised (*Regelmäßigkeit und Methodik der ausgeübten Tätigkeit*) are decisive.”²⁸ Likewise, the Court confirmed that the existence of a „durable organisation of independent economic activity” (*auf Dauer angelegte Organisation selbstständiger wirtschaftlicher Tätigkeit*) can be inferred even

²⁶ DRGONEC, Ján. *Ústava Slovenskej republiky. Komentár*. 3rd ed. Šamorín: Heuréka, 2012, p. 212.

²⁷ For example, Judgment of the Supreme Administrative Court of the Czech Republic of 8 June 2017, Case No. 1 As 50/2017-32.

²⁸ Oberster Gerichtshof (Austria), Judgment of 21 October 2010, 5 Ob 155/10w, published in *RIS-Justiz*, Document No. JJT_20101021_OGH0002_0050OB00155_10W0000_000.

from the establishment of a dedicated company vehicle created to perform that activity.²⁹ Austrian legal scholarship reflects this jurisprudence – the authors Schopper and Strasser emphasise that entrepreneurship in Austrian law presupposes a continuing, self-reliant market activity rather than an isolated transaction.³⁰

In German law, the concept of entrepreneurial activity (*unternehmerisches Handeln*) is defined by its durable and systematic character rather than by any minimum scale or profit threshold. Under Article 14(1) of the German Civil Code (*Bürgerliches Gesetzbuch* – BGB), an entrepreneur (*Unternehmer*) is a natural or legal person or partnership having legal capacity who, when entering into a legal transaction, acts in the exercise of his or her commercial or independent professional activity. German jurisprudence interprets this provision functionally: entrepreneurial activity presupposes “a planned, lasting and market-oriented engagement in economic life” (*dauerhafte, planmäßige und am Markt ausgerichtete Tätigkeit*). The German Federal Court of Justice (*Bundesgerichtshof* – BGH) has repeatedly emphasised that permanence and regularity are decisive. It held that a person acts entrepreneurially “when the transaction forms part of a planned and continuous business activity” (*wenn das Geschäft Teil einer planmäßigen und auf Dauer angelegten unternehmerischen Tätigkeit ist*).³¹ Similarly, in a different decision, BGH reaffirmed that even preparatory or ancillary transactions qualify as entrepreneurial if they are integrated into a continuing commercial plan.³² German doctrine aligns closely with this jurisprudence – the authors Palandt and Grüneberg explain that entrepreneurial activity requires a certain *duration, organisation and external market orientation*³³, while other commentators of BGB stress that the regular, not merely occasional, pursuit of economic activity distinguishes entrepreneurship from private conduct.³⁴

Comparatively, both Austrian and German law make the permanent or regular character of the activity the decisive element of entrepreneurship. Austria codifies this explicitly in Art. 1 UGB and Art 1 GewO 1994, while Germany derives it interpretatively from Art. 14 BGB and consistent BGH jurisprudence.

²⁹ Oberster Gerichtshof (Austria), Judgment of 16 February 2012, 6 Ob 203/11p, published in *Sammlung Zivilrechtlicher Entscheidungen* (SZ) 2012/17.

³⁰ SCHOPPER, Andreas, STRASSER, Bernhard. *Unternehmensrecht I: Grundlagen, Unternehmens- und Firmenrecht, Unternehmensübergang, Unternehmenspublizität, Unternehmensvertreter, Unternehmensrechtliche Sondervorschriften des ABGB*, 4. vollständig überarbeitete Auflage, Wien: MANZ Verlag, 2022, p. 41 *et seq.*

³¹ Bundesgerichtshof, Judgment of 29 March 2006 – VIII ZR 173/05, In: *Neue Juristische Wochenschrift* (NJW) 2006 (1), 2250–2251.

³² Bundesgerichtshof, Judgment of 7 April 2016 – VIII ZR 32/16, *NJW* 2016, 2257–2258.

³³ PALANDT, Otto, GRÜNEBERG, Christian (eds.) *Bürgerliches Gesetzbuch: BGB*. 83rd ed. München: C. H. Beck, 2024, p. 215.

³⁴ SCHULZE, Reiner, SÄCKER, Franz Jürgen, RIXECKER, Roland, OETKER, Hartmut. (eds.) *Münchener Kommentar zum BGB*, 9th ed., München: C. H. Beck, 2022, p. 236.

In both systems, isolated or one-off remunerated acts, however economically relevant, lack the permanence required to constitute entrepreneurial activity in the legal sense.

The CJEU has addressed the question of whether a one-off service falls within the scope of the free movement of services only once in its history. Specifically, this arose in Case *X*³⁵, which primarily concerned tax issues. The Court proceeded from the assumption that even the playing of a football match by a club for remuneration on only two occasions (with a two-year interval) in another Member State must be understood as a service subject to the freedom to provide services. The Court concluded that the obligation of the recipient of such a service, established in one Member State, to withhold tax on the remuneration paid to the service provider established in another Member State constitutes a restriction on the freedom to provide services (unless the same requirement applies to a service recipient established in the same Member State as the service provider).

Since neither the TFEU, nor the Services Directive for the internal market, nor the CJEU case law contains any specific regulation excluding one-off services from the general regime applicable to services, it is not possible to reach any other legal conclusion than that services provided on a one-off basis and without an entrepreneurial authorization, provided they meet the general defining characteristics of services (i.e., economic nature, remuneration, and not falling under the regime of the freedom of establishment, the free movement of persons, or the free movement of goods), must, for the purposes of EU law, be considered services.

3. FREE MOVEMENT OF SERVICES IN THE EU

3.1. Characteristics of the Free Movement of Services in the EU

According to Article 56 of the TFEU, restrictions on the freedom to provide services within the Union are prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended. From this provision it follows implicitly that the freedom to provide services encompasses two aspects:

- prohibition of restrictions on the part of the service provider, and
- prohibition of restrictions on the part of the recipient of the service.

The first case is referred to as active free movement of services, and the second as passive free movement of services. Active free movement of services means that a provider established in one Member State may offer their service in

³⁵ Judgment of the Court of Justice of 18 October 2012 in Case C-498/10 *X NV v. Staatssecretaris van Financiën*, para. 20 and 34.

any other Member State; however, establishment in an EU Member State is required.³⁶ In the *Soysal*³⁷ case, the CJEU, based on the Association Agreement between the European Economic Community (EEC) and Turkey, extended this right by granting Turkish nationals the right to enter the territory of a Member State visa-free, where their employer was to provide services through them. However, in the *SN* case³⁸, concerning the so-called derived right of residence for Ukrainian nationals working for a Slovak employer in the Netherlands, the Court did not see a reason to grant this right automatically. Similarly, applying the same association agreement with Turkey, the CJEU denied passive free movement of services in favour of a Turkish national in the *Demirkan* case³⁹. Thus, regarding active free movement of services, the situation remains unclear⁴⁰ whereas passive free movement of services is dependent on establishment in a Member State.

However, through its interpretative authority, the CJEU has extended the freedom to provide services beyond active and passive free movement of services also to include:

- related activities, and
- equivalent (or comparable) activities.⁴¹

Related (ancillary) activities are those services where only the service itself, and not the persons involved, crosses national borders. The CJEU defined such activities in the *Sacchi*⁴² judgement, where it recognised the transmission of television signals as a service. Equivalent (or comparable) activities refer to situations in which both the provider and the recipient of the service are nationals of the same Member State, while only the service itself crosses borders. In *Commission v. France*⁴³ tourist guide services were considered such an example.

However, certain areas remain outside the full scope of the freedom to provide services or are only partially covered by it — for instance, mediation

³⁶ TICHÝ, Luboš, ARNOLD, Rainer, ZEMÁNEK, Jiří., KRÁL, Richard, DUMBROVSKÝ, Tomáš. *Evropské právo*. 5. vyd. Praha: C. H. Beck, 2014, p. 385.

³⁷ Judgment of the Court of Justice of 19 February 2009 in Case C-228/06, *Mehmet Soysal and Ibrahim Savatli v. Federal Republic of Germany*, with the participation of the Bundesagentur für Arbeit.

³⁸ Judgment of the Court of Justice of 20 June 2024 in Case C-540/22, *SN et al. v. Staatssecretaris van Justitie en Veiligheid*, para. 55.

³⁹ Judgment of the Court of Justice of 24 September 2013 in Case C-221/11, *Leyla Ecem Demirkan v. Federal Republic of Germany*.

⁴⁰ See also: PEERS, Steve. Free Movement of Services and Non-EU Citizen Staff – a U-turn from the CJEU? Comments on Case C-540/22, SN, ECLI:EU:C:2024:530. In. *European Journal of Migration and Law*, 2024, 26, No. 4, pp. 535–538.

⁴¹ TICHÝ, Luboš, ARNOLD, Rainer, ZEMÁNEK, Jiří., KRÁL, Richard, DUMBROVSKÝ, Tomáš. *Evropské právo*. 5. vyd. Praha: C. H. Beck, 2014, p. 383.

⁴² Judgment of the Court of 30 April 1974 in case C-155/73 *Giuseppe Sacchi*, operative part, at point 1.

⁴³ Judgment of the Court of 26 February 1991 in case C-154/89 *Commission of the European Communities v French Republic*.

services⁴⁴ or the dissemination of digital content⁴⁵.

3.2. Restrictions on the Freedom to Provide Services

According to Article 56 TFEU, *restrictions on the freedom to provide services within the Union are prohibited in respect of nationals of Member States who are established in a Member State other than that of the recipient of the services.*

The prohibited restrictions are specified in Article 16(2) (concerning service providers) and Article 19 (concerning service recipients) of the Services Directive. For instance, no Member State may impose on a provider established in another Member State an obligation to have an establishment or permanent presence within its territory or an obligation to obtain a licence, register in a register, or enrol with a professional body or association within its territory (except in specific cases).

Similarly, no Member State may impose on service recipients requirements that restrict the use of a service supplied by a provider established in another Member State, in particular:

- a) an obligation to obtain authorisation from the competent authority or to make a declaration to the competent authorities,
- b) discriminatory restrictions on the granting of financial assistance.

Prohibited restrictions are forbidden under any circumstances. However, there are other restrictions that may be permissible under certain conditions. Member States may impose such restrictions on the provision of services only if they comply with the conditions of non-discrimination, necessity, and proportionality (Article 16(1) of the Directive).

The non-discrimination condition means that a requirement imposed by a Member State must not be directly or indirectly discriminatory on the basis of nationality or the Member State of establishment. The necessity condition requires that the measure be justified by reasons of public policy, public security, public health, or the protection of the environment. Finally, the proportionality condition means that the requirement must be appropriate for achieving the intended objectives and must not exceed what is necessary to attain those objectives.

Certain services constitute an exception to the general rule of free movement of services and are subject to a specific regime, allowing for additional deviations. These services are exhaustively defined in Article 17 of the Services

⁴⁴ RADANOVA, Yuliya, TVARONAVIČIENĖ, Agne. Free movement of mediators across the European Union: a new frontier yet to be accomplished? In. *Access to Justice in Eastern Europe*, 2024, No. 1, pp. 83-106.

⁴⁵ MYLLY, Ulla-Maija, HERRERO, Mónica. Free Movement of Audiovisual Content for Benefit of European Consumers of Culture. In. *International Review of Intellectual Property and Competition Law*, 2022, 53, No. 7, pp. 1038 – 1070.

Directive for the internal market.

There is extensive CJEU case law on the practical application of prohibited restrictions and other conditions, to which reference is made here.⁴⁶ A detailed discussion of this case law will not be undertaken, as the analysis of the free movement of services is not the primary objective of this article.

Regarding the future development of the free movement of services, reference is also made to the most recent opinions on this issue.⁴⁷

4. CONCLUSION

Even a one-off activity carried out on a cross-border basis between entities from different EU Member States, provided it is performed for remuneration, meets the defining characteristics of a service under Article 57 TFEU and Article 4(1) of the Services Directive for the internal market. The provision of a service is a very broad category, essentially encompassing any phenomenon in the market as part of economic life. Therefore, a one-off service falls within the regime of free movement of services under Article 56 TFEU and the Services Directive.

It is not within the competence of the authorities of the host Member State to assess whether an entity from the home Member State of the EU is authorized to provide a one-off service from that Member State in accordance with its entrepreneurial authorization, or to make the permissibility of providing that service in its territory conditional upon such authorization or its acquisition. Doing so could be considered a prohibited restriction under Article 16(2)(b) of the Services Directive.

Accordingly:

1. The provision of such a one-off service in the territory of the host Member State cannot be prevented.
2. The provision of such a one-off service in the territory of the host Member State cannot be denied legal effect.

Of course, depending on the character and nature of the one-off service, the host Member State may apply certain so-called additional restrictions to it or its provider, but only in compliance with the conditions of non-discrimination, necessity, and proportionality.

⁴⁶ For details see e. g. TICHÝ, Luboš, ARNOLD, Rainer, ZEMÁNEK, Jiří., KRÁL, Richard, DUMBROVSKÝ, Tomáš. *Evropské právo. 5. vyd.* Praha: C. H. Beck, 2014, pp. 387-389, O'LEARY, Síofra, SÁNCHEZ, Sara Iglesias. Free Movement of Persons and Services. In: CRAIG, Paul, DE BÚRCA, Gráinne (eds.). *The Evolution of EU Law*. Oxford: Oxford University Press, 2021, pp. 535-538.

⁴⁷ VAN LEEUWEN, Barend. Repositioning Free Movement of Services: A Substantive Perspective on the Structure and Dynamics of the Internal Market. In: *Common Market Law Review*, 2025, 62, No. 3, pp. 705-746.

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