



Public Private Partnerships to Deal with Water Infrastructure Challenges *in Sudan*

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ABSTRACT. The European Union places great emphasis on removing obstacles within its internal market, which is considered a fundamental pillar of European economic integration. By way of legal acts, the conditions for the functioning freedoms of the internal market are harmonized in all EU Member States. In our study, we focus on freedom to provide services, in order to clarify the system and conditions for providing cross-border services and to identify concrete entities providing this kind of services in Slovakia. The subject of the study is the provision of services by foreign entities in the territory of the Slovak Republic, who have already obtained authorization to perform the services on the territory of their Member State of establishment in accordance with 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 December 2006, pp. 36–68). At the same time, the study also focuses on the system of taxation of cross-border services. Based on facts and data obtained from the Register of Cross-border Services, we have identified areas of providing cross-border services in Slovakia. In our study, we have applied the methods of comparative analysis, legal research, the study of literature, and the decisions of the EU Court of Justice. The study also includes clarification of the concept of cross-border provision of services.

INTRODUCTION

The internal market comprises a wide range of policies, both the four freedoms of movement, as well as the sectoral policies that have the role of ensuring the functioning of fundamental freedoms (for example, the free movement of workers can be hindered if the regulations on health or social protection differ from one state to another (Chalmers et al. 2014).

Digitization, the Internet, and innovations help in the development of services that are provided across borders. According to data published by EUROSTAT in 2018, the United Kingdom recorded the highest share (15.1%) of the exports of services by the 28 EU Member States; note these figures for individual Member States are based on world trade flows, in other words, the sum of intra- and extra-EU trade. Germany (13.7%) and France (11.7%) were the only other EU Member States to record double-digit shares. In relation to the size of their respective economies, Ireland (8.3%) and the Netherlands (7.4%) accounted for relatively large shares of the total (Eurostat 2021).

Services represent a special category because services can also be provided across borders. Services are not unified as to their character as goods; they are individualized, and they are developed thanks to new technologies. By introducing liberalisation measures, the European Union promotes the development of cross-border services. The common rules and the system within the EU Member States in this area contribute to the proper functioning of the common market. By removing obstacles for the proper system that is also aimed at the protection of social rights, the conditions for providers of cross-border services were created in Slovakia. Through adoption of Law No. 136/2010 Coll. on Services in the Internal Market, the legal conditions for foreign providers of cross-border services operating at the territory of Slovakia were created (National Council of the Slovak Republic 2010). In principle, the adoption of this law opened the market for the service providers established in the EU Member States.

In this study, we try to make clear the concept of cross-border provision of services. We will focus on the freedom to provide services within the EU in order to clarify the system and conditions for the provision of cross-border services and to identify specific entities providing this type of service in Slovakia. We will identify the areas of provision of cross-border services in Slovakia. The subject of the study is the issue of the provision of services by foreign entities on the territory of the Slovak Republic that have obtained authorization to provide services on the territory of the Member State in accordance with Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (European Parliament and Council 2006). The study also deals with the system of taxation of cross-border services.

MATERIALS AND METHODS

The purpose of this study is to clarify the system and significance of cross-border provision of services within the framework of European economic area and to discover answers to these questions. We have focused on cross-border services provided in accordance with article 56 of the Treaty on the Functioning of the European Union (TFEU) (European Union 2016) and Directive 2006/123/EC, which was transposed by Law No. 136/2010 on Services in the Internal Market into the Slovak legislation.

Q1: What are the decisive factors for cross-border provision of services?

Q2: What types of cross-border services are provided in Slovakia further to Law No. 455/1991 Coll. on Trade Licensing, as amended (Federal Assembly of the Czech and Slovak Federative Republic 1991b), Law No. 513/1991 Coll. Commercial Code, as amended (Federal Assembly of the Czech and Slovak Federative Republic 1991a), Law No. 422/2015 Coll. on Recognition of Education Documents and on Recognition of Professional qualifications, as amended (National Council of the Slovak Republic 2015)?

Q3: How is the cross-border provision of services taxed in accordance with Law No. 595/2003 Coll. on Income Tax, as amended (National Council of the Slovak Republic 2003)?

The research is based on analysis of the current legal regulation and its implementation in Slovakia. The literature review of this study also includes, in addition to the opinions of several authors, the relevant case law of the Court of Justice of the European Union. The comparative method is used for comparison of the content legal instruments laying down conditions for provision of services.

The logic and legal methods are applied in order to clarify the implementation of legal acts in Slovakia.

In the first part of this study, we have analysed the applicable legal regulation as well as the opinions of various authors on the cross-border provision of services; at the same time we have clarified the universal characteristics. The basic characteristics of provided services within the World Trade Organisation are also included in this part. In the second part, we introduce our findings related to the posed questions. Based on the facts, we clarify the functioning of the temporary provision of cross-border services by foreign persons in Slovakia, who have obtained the authorisation on the territory of their state of origin where they are established. In the discussion section, we clarify the notion of cross-border services within the European economic area on the basis of legal regulation and practical experience.

We used several sources for elaborating the topic, mainly legal provisions, judgements of the Court of Justice of the EU, data from the register of cross-border providers of services, and data from the Statistical Office of the Slovak Republic. At the same time, we used information from scientific literature and sources.

LEGAL FRAMEWORK

The European Union offers to the Member States and their regions various tools to support economic, social, and territorial cohesion (financial, legal, and political). Economic, social, and territorial cohesion is one of the areas of shared competence of the European Union and Member States. This means that both the European Union and the Member States have retained their law-making and regulatory power (Malatinec and Kyjovsky 2019; Postnikova 2013).

Matúšová (2014) states that “continuous process of globalization encourages intensive development of trade, global communication networks and technologies. The globalization processes have intensively connected the world and they lay the foundations of global civilization”. A part of this process is also the provision of services beyond the borders of other states. The freedom of establishment and the freedom to provide services guarantee mobility of businesses (Birzu 2017). The freedom to provide services to entrepreneurs from one Member State in the territory of another EU Member State is one of the fundamental rights of free movement set out in Article 26 TFEU. In the EU, services constitute the single most dynamic economic activity, accounting for about 75% of GDP and employment (European Commission 2021a). The universal legal framework is set out in the EU primary law: Articles 26 (internal market), 49 to 55 (establishment), and 56 to 62 (services) of the TFEU. In addition to the EU primary law, of significant importance is the Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market. The aim of the Directive is to establish an open single market with services within the EU and to ensure the quality of services provided to consumers, as well as to contribute to administrative and regulatory simplification and modernisation. According to Syerov et al. (2020), the directive does not apply to financial, telecommunication, and health care services. Besides primary and secondary EU law, there are numerous decisions of the Court of Justice of the EU related to freedom to provide services. The European Services Directive has posed an important challenge to trade unions: the so-called ‘country of origin principle’ implies that workers are supposed to be employed in line with the standards of the sending and not the receiving country (Seeliger 2020).

Article 56 TFEU precludes the application of any national rules which have the effect of making the provision of services between Member States more difficult than the provision of services purely within a Member State. In accordance with the court’s case-law.

Article 56 TFEU requires the abolition of any restriction on the freedom to provide services imposed on the grounds that the person providing a service is established in a Member State other than that in which the service is provided according to C-553/16 and C-625/17 (European Court of Justice 2018a, 2018b).

The freedom to provide services conferred by Article 56 TFEU on Member

State nationals also includes ‘passive’ freedom to provide services, namely the freedom for recipients of services to go to another Member State in order to receive a service there, without being hindered by restrictions—judgements in Case C-342/15 (European Court of Justice 2017).

In this context, we have to take in account the fact that there is a difference between the freedom to establish an undertaking or branch a foreign undertaking within the meaning of Article 49 TFEU and the freedom to provide services under Article 56 TFEU. In this connection, the Court of Justice of the EU dealt with the issue of distinguishing the right of establishment and the free movement of services in several cases brought before it. The decision in the *Schnitzer* case (Case C-215/01, para 28 and 29) is well known, where the Court of Justice held that the temporary nature of the activity of the person providing the service in the host Member State has to be determined in the light not only of the duration of the provision of the service but also of its regularity, periodical nature, or continuity (European Court of Justice 2003). The universal criteria with respect to the freedom of establishment are that the national of one Member State can permanently and continuously take part in the economic life of another Member State and have the financial benefit from this activity (Case C-55/94, para 25) (European Court of Justice 1995b).

If an economic operator has their seat in the Member State, where the service is offered, he falls within the scope of freedom of establishment, as defined in Article 49 TFEU. If the economic operator does not have their seat in the Member State, they are a cross-border provider of services, to whom the freedom to provide services applies (European Court of Justice 2003).

Legal Basis Of The Freedom Of Establishment And The Freedom To Provide Services

According to Seepold and Madrid (2022), freedom of establishment means that a natural or legal person has the right to establish a company or firm irrespective of its legal form in the territory of another Member State in accordance with the requirements of that Member State (Art. 49 TFEU-permanent activity).

In the case-law of the Court EC (Case C-221/89, para 20 to 22), the definition of establishment, within the meaning of those articles of the Treaty, involves the actual pursuit of an economic activity through a fixed establishment in another Member State for an indefinite period, and registration of a vessel cannot be separated from the exercise of the freedom of establishment where the vessel serves as a vehicle for the pursuit of an economic activity that includes fixed establishment in the state of registration (European Court of Justice 1991a).

According to Peráček (2022), Law No. 513/1991 Coll. Commercial Code, as amended, regulates the business activities of foreign entities in Slovakia in Articles 21 to 26.

Dukeov et al. (2021) stated that, freedom to provide services means that a person has the right to provide services on a temporary basis in a Member State other than that in which he has his seat (state of origin), and under the same conditions as nationals of that Member State (where services are directed) on the basis of authorisation/license granted in the Member State of origin (i.e., Member State where it is established). It is the temporary provision of services in the territory of the EU Member State by the person from another Member State. Article 56 TFEU guarantees rights of entry, residence, and free movement in the state in which the service is provided. The question of temporality is the subject of the Judgment of the Court of 30 November 1995, Case C-55/94 (European Court of Justice 1995b). The temporary nature of the provision of services, envisaged in the third paragraph of Article 60 of the EC Treaty, is to be determined in light of its duration, regularity, periodicity, and continuity (Amato and Velicogna 2022).

In the case of a foreign business, the provision of services is based on the business authorization of the host state, while the cross-border service provider is authorised to provide services in the host state only on the basis of a business authorisation granted to him by the competent authorities of the home state.

In case of freedom to provide services, the status of the person directly performing the service in another Member State has to be taken into account. Current legal practice recognizes two categories of provision of services abroad:

- a) self-employed persons;
- b) posted workers.

The universal principle in providing services is the prohibition of discrimination on the basis of nationality. This principle opens the door to subjects from other EU Member States to providing services in the territory of other Member States in accordance with requirements of the receiving country (Art.18 TFEU). It covers both direct and indirect discrimination (European Court of Justice 1991b, 1996). Consequently, the freedom to provide services, as with other freedoms of the EU internal market, implies the prohibition of discriminative regulations of EU Member States on the grounds of nationality. The essence of freedom to provide services is that Member States cannot create legal or factual barriers which would represent discrimination or unequal treatment among service providers within the EU. The removal of restrictions on the provision of services in the area will, in principle, unleash significant economic potential and thus significantly support new innovative types of service (Romanova et al. 2021).

In addition to the EU legal regulation, the EU Member States are also bound by the General Agreement on Trade in Services (GATS) World Trade Organisation (entered into force in 1995). The objective of the GATS was to create a system of international rules for trade in services and to facilitate the progressive liberalisation of the services market European Commission (2021c).

The GATS agreement covers all kinds of services in all sectors and, as were most multilateral trade agreements, was intended to open up the market (liberalization). However, the GATS agreement is only a framework, where content and the obligations of members, in general, depends on the commitment made by the member for multilateral trade negotiations (Drager 2004; World Trade Organisation 1995).

Universal Principles Wto-To Provide Services

Most-Favoured-Nation Treatment

With respect to any measure covered by this Agreement, each member shall accord immediately and unconditionally to the services and service suppliers of any other member with treatment no less favourable than to that it accords to similar services and service suppliers of any other country (Art. 2 agreement). In principle, the doctrine of MFN applies to all services and all sectors, even when the country has not made a commitment to provide access for foreign companies in the sector. Limited exceptions are allowed (Bakhouya 2017).

Transparency

Each Member shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Agreement. International agreements pertaining to or affecting trade in services to which a Member is a signatory shall also be published (Art. 3 the General Agreement on Trade in Services).

National Treatment

The principle states that each member country treats the services of another member country no less favourably than its own national products, under the conditions and limits mentioned in the Schedules of Specific Commitments. Countries cannot operate discriminatory measures benefiting domestic services or service suppliers (European Commission 2021b).

The right to provide services in the territory of the Slovak Republic is enshrined in the Law on Services, which transposed the EU Directive on Services. According to Mucha and Mocarnikova (2018), the Slovak legal regulation stipulates conditions for the provision of services in the territory of the Slovak Republic, regardless of the manner and form of their provision. This legal regulation at the same time provides for cross-border provision of services by natural and legal persons with their nationality or seat in one of the EU Member States, or are registered therein and they were established in accordance with legislation of the home state. Within the meaning of this legal regulation, the

cooperation between national authorities with competence over the provision of services of the Member States is improved.

LITERATURE REVIEW OF THE TERM “FREEDOM TO PROVIDE SERVICES”

Service as an economic activity is the result of the activity that has value for the customer as it satisfies his needs for the reward. Typical features of services are their non-storability, inseparability, and variability (Dusek 2018).

Developments in information technology have opened new markets for trade in cross-border services. Services are a major part of the internal market of the EU and global economy. The international trade community reacted to services that have always been traded.

The Treaty on the Functioning of the EU in Article 57 defines the notion of services as services 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. Article 57 TFEU (former Article 50 TEC) gives the definition and adds that activities, especially activities of an industrial character, activities of a commercial character, activities of craftsmen, and activities of professions, fall within the subject matter (Remien 2012). There are several cases related to these problems. Judgment of the Court of Justice of the EU of 10 May 1995 C-384/93, para 57 (1) states that on a proper construction, Article 59 of the EEC Treaty covers services which the provider offers by telephone to potential recipients established in other Member States and provides without moving from the Member State in which he is established (European Court of Justice 1995a).

According to Miller (2016) the term “enterprise services” is used to denote services performed by businesses, whether corporate or non-corporate. Cross-border services may be delivered in many forms. It is sometimes necessary for natural persons to cross physical borders in order to deliver or consume the service.

Cuyvers (2017) is of the opinion that services are defined in the Treaty as all economic activities that are normally provided for remuneration and that are not covered by the other freedoms.

Bodiroga Vukobrat and Horak (2013) claim that the freedom to provide services provision obliges the Member States to respect the right of the service provider to provide services in a Member State other than the one where the service provider is established, and to secure him the right to provide services on the entire territory of that Member State. Dausen (2002) submits that: the freedom to provide services relates to (the same as free movement of goods) cross-border movement of product. The basic feature of this freedom represents its cross-border element.

Kainer (2019) suggests that: “the liberalisation of cross-border trade in services requires common rules, such as standards for licences and diplomas,

mutual recognition and their conditions. Legislation aiming at eliminating barriers to cross-border trade and establishment should focus on further effectuating the principle of mutual recognition and reducing administrative costs”.

The freedom of services can be exercised in different ways. In the case of the active or positive freedom of services, the service provider crosses the border in order to provide his services in another Member State; in the case of the passive or negative freedom of services, the recipient of the services receives them in another Member State; in the case of services through correspondence, neither service provider nor service recipient cross the border but only the actual service itself (Sararu 2016).

Based on the above, the following systemic features of compliance can be identified. It is a gainful activity where:

- a) the service provided is temporary;
- b) the service is provided for a fee;
- c) the service is regulated.

In principle, it is a time-limited provision of services (by a natural or legal person) from the home state in the territory of another Member State, while the tax policy is regulated by the legal acts of the EU.

According to recital 2 of Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System: “the freedom to provide services includes the right of undertakings to provide services in another Member State, to which they may post their own workers temporarily in order to provide those services there. It is necessary for the purpose of the posting of workers to distinguish this freedom from the free movement of workers, which gives every citizen the right to move freely to another Member State to work and reside there for that purpose and protects them against discrimination as regards employment, remuneration and other conditions of work and employment in comparison to nationals of that Member State” (European Parliament and Council 2014).

RESULTS

Q1: Provision Of Cross-Border Services In Slovakia

Through the accession of the Slovak Republic to the European Union in accordance with Accession Agreement 2004, in accordance with Article 7 paragraph 2 of the Constitution of the Slovak Republic, the domestic legal system has been significantly changed and EU law takes precedence (Funta and Králiková 2022). Legal provisions are harmonised with the secondary legal acts

of the EU. According to Muraviov et al. (2020), the process of the ‘Europeanization’ of national legislation reflects largely the legal policy of the EU. We agree with this opinion, because the process of European economic integration influences almost all policies in Slovakia. The current legislation, mainly the Law on Services, allows under certain conditions: to provide cross-border services in the territory of the Slovak Republic to foreign natural and legal persons from other EU Member States, and to provide cross-border services to Slovak natural and legal persons in the territory of other EU Member States. It is thus the right of cross-border service providers to provide services in the territory of the Slovak Republic, provided that requirements for the provision of the services applicable in the Member State of establishment are met.

There is no universal definition of “temporary” or “occasional” in the context of cross-border services provision, and thus it is necessary to proceed on a case-by-case basis. The factors to be taken into consideration are the periodicity of duration, regularity or frequency, and permanency or continuity of providing the service in the host state (Kern et al. 2021).

The special feature and advantage of providing cross-border services is that it is not necessary to undertake and comply with the whole range of procedures in order to obtain necessary authorisations and business licences, without the need to establish the undertaking or its branch in another state. It includes a time-limited provision of services in the territory of the Slovak Republic by a person from other Member States.

Cross-border provision of services is related to a broader spectrum of services. Examples of these services are: mining activity, tourism, culture and sport, services in the energy sector, legal services and consultancy, craft trades, social services, certain construction services, education services, restaurant services, etc.

The services of advocates and auditors can be provided on a cross-border basis in the territory of the Slovak Republic only under the conditions specified in special legal provisions and Law No. 586/2003 Coll. on Advocacy, as amended, and Law No. 540/2007 Coll. on Auditors, Audit and Oversight of the Audit Performance, as amended.

Based on the facts and the mentioned legal regulations, the following are examples of cross-border provision of services:

- a tourist guide established in Slovakia accompanies tourists in Austria as a part of a tourist trip;
- a Slovak entrepreneur who is licensed to do business in the field of construction will receive a contract for the construction of a residential house in the territory of Germany;
- a Slovak entrepreneur will receive a contract for washing windows in Denmark;
- an Austrian catering company provides services to a Slovak company organising a “Business days” event in Bratislava.

Q2: What Types Of Cross-Border Services Are Provided In Slovakia To The Law On Trade Licensing, The Commercial Code And Law On Recognition Of Education Documents, And On Recognition Of Professional Qualifications?

The legal system of the European Union and other international organisations contribute to the proper functioning of the EU internal market. The European Union strives to create closer relationships among Member States and to provide conditions for economic and social cohesion. In the case of a foreign company, the provision of service is based on the business authorisation of the host state, while the cross-border service provider is authorised to provide services in the host state only on the basis of a business authorisation granted by the competent authorities of the home state.

Table 1. Overview of cross-border services provided in Slovak Republic.

Member States of the EU	Subject of Service
Czech Republic Legal persons: 15	Chimney testing Installation, reconstruction, and maintenance of dedicated technical electrical equipment Construction and reconstruction of buildings Installation, reconstruction, and maintenance of dedicated technical electrical equipment Repair of dedicated technical equipment—electrical manufacture, installation, repair of electrical machinery and apparatus, electronic and telecommunications equipment Assembly, repair of electrical equipment
Poland Natural persons: 37	Mountain guiding Constructions and reconstructions
Germany Legal persons: 5	Installation, reconstruction, and maintenance of dedicated technical pressure equipment Tinsmith activities Masonry Installation, reconstruction, and maintenance of dedicated technical electrical equipment
Austria Natural persons: 4	Catering activities Sales, renting, and purchase of real estate Massage services Tourist guiding
Czech Republic Natural persons: 8	Tourist guiding Language lecturing—English language Specialised activities in the area of physical culture, except for mountain guiding
Austria Legal persons: 4	Mining activities Roofing Locksmith activities
Hungary Natural persons: 2	Sales, renting, and purchase of real estate

Source: Ministry of Interior of the Slovak Republic (2021).

Due to the influence of the EU law, suitable conditions for the provision of cross-border services are created in the territory of the Slovak Republic. Legal obstacles to the freedom of movement and provision of services were removed during the process of accession of the Slovak Republic to the EU. The directives have been transposed to the national legal system with a high degree of compatibility. This fact is borne out in practice, as there are several providers of cross-border services in Slovakia. The Ministry of Interior of the Slovak Republic keeps the Central database of cross-border service providers in the Slovak Republic. The database contains concrete data on service providers from the EU Member States. We have chosen concrete natural and legal persons providing this kind of services from the database. Table 1 provides the overview of the states,

number of entities, and the objectives of service provided by authorised entities—natural and legal persons in the territory of the Slovak Republic. Data are processed as of 31 December 2021.

It follows from these facts that both natural and legal persons can come from neighbouring states. The biggest number comes from the Czech Republic, whose activities and services are focused on industry. The second biggest group providing cross-border services are natural persons from Poland. In particular, they provide mountain guiding services. The positive effect of the cross-border services provided is not noticeable on the economy. Article 56 TFEU applies to the foreign providers of cross-border services in the territory of Slovakia, i.e., they enjoy the freedom to provide services in the territory of all Member States of the EU (Handrlica 2019).

The service providers can perform their activities on a temporary basis in Slovakia under the same conditions as applied to Slovak service providers. Cross-border service providers are already established in another EU Member State or perform their activity in other EU Member State on the basis of authorisation granted by the competent authority of that state. Measures aimed at the simplification of cross-border provision of services have been introduced in Slovakia, thus contributing to the employment growth and to increased level of competitiveness. The consumers benefit from these services by enlarging the scale and segment of services.

As a concrete example of cross-border services, we have chosen the service of surveyors or cartographers. Foreign persons performing the activity of surveyor or cartographer are entitled to perform the activity of the certified surveyor or cartographer within the territory of the Slovak Republic temporarily and in a manner prescribed by the law, when they are properly registered within the Register of Authorised Surveyors and Cartographers. Among the legal requirements necessary to provide these services on cross-border basis are:

- a) integrity of the person;
- b) proof of citizenship of one of the EU Member States;
- c) authorisation to perform the activity of surveyor or cartographer in the Member State;
- d) proof of university education in the field of geodesy or cartography issued by a university of the EU Member State;
- e) proof of insurance in case of damage caused in relation to the activity of authorised surveyor or cartographer, valid within the whole territory of the Slovak Republic;
- f) proof of professional experience (Ministry of Interior of the Slovak Republic 2022).

Upon the fulfilment of all these requirements, the person can be registered within the Register of Authorised Surveyors and Cartographers and thus obtain a seal and certificate in order to perform this activity in Slovakia. On the basis of

the registration, nationals of other EU Member States can also perform the activities of surveyor and cartographer.

Slovak Nationals Providing Services Abroad

It was not possible to obtain concrete data about Slovak natural or legal persons providing services abroad from national databases, nor from national authorities. The Statistical Office of the Slovak Republic publishes data about nationals who work abroad. We have found from the database that the number of cross-border workers from Slovakia in Austria in the year 2018 reached 48,000, which was the fourth biggest number of workers crossing the border within the EU in 2018. The biggest number represented women doing social work in the form of temporary service, which was regularly repeated. The biggest number of cross-border workers represented Polish nationals travelling to work to Germany (125,000 persons). In this context, the cross-border provision of services represents an exercise of the freedom to provide services. Cross-border provision of services is determined by several conditions (Statistical Office of the Slovak Republic 2021). There is a difference between a posted worker who has been posted by his/her employer and a person who performs a certain type of work temporarily and at regular intervals. Due to the obligations arising from the membership of the Slovak Republic in the European Union, the EU directives are fully transposed into Slovak legislation. Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services has been transposed into Law No. 351/2015 Coll. on Cross-border Cooperation with Respect of Posting of Workers. At the same time, the Labour Code has been amended.

Q3: How Is The Cross-Border Provision Of Services Taxed According To The Law On Income Tax?

Part of our study is also to clarify the issue of the taxation of cross-border services (Q3). As regards the system of providing cross-border services from the point of view of taxes, the existence of a permanent establishment located in our territory is decisive for the purposes of administrative taxation of income arising from the provision of services in the territory of the Slovak Republic. In the Table 2 the taxation of income from cross-border business activities is illustrated.

Non-Residents Slovakia	Residents of SR
Provision of services by non-residents of the Slovak Republic in the territory of the Slovak Republic—the taxation of income and the existence of a permanent establishment is examined according to Slovak national legislation and to the agreement to avoid double taxation (if such an agreement is concluded with the respective state). According to the Law on Income Tax, the income from non-residents of the Slovak Republic for services provided by them in the territory of the Slovak Republic is taxable in our territory, if they are provided by permanent establishment located in the territory of the Slovak Republic.	Provision of services by residents of the Slovak Republic abroad—the taxation of the income and the existence of a permanent establishment is examined according to national legislation of the state, in relation to which the resident of the Slovak Republic provides services, as well as according to the agreement to avoid double taxation (if such agreement is concluded with the respective state). If the entity obtains income for performing the activities in the territory of another EU Member State with the Slovak licence/authorisation, in most cases it submits a tax return in Slovakia, because of the duty to submit tax return and pay taxes also outside the territory of the Slovak Republic (taxation of worldwide income).

Source: Article 16 para. 1 lit. a) of the Law No. 595/2003 Coll. on Income Tax.

In matters related to value added tax, the universal rule is to determine the place of delivery of the service according to article 15, according to the position of the customer, i.e., whether the customer is a taxable person (entrepreneur) established in the Member State concerned or a non-taxable person (entity not conducting business). The decisive factor is where the service was actually delivered. The tax thus belongs to the state in which the place of delivery of the service is located.

Services Trade Restrictiveness Index (OECD)

One example may be to have a closer look at the global context, where the Service Trade Restrictiveness Index was published recently (on 31 January 2022) by the OECD, analysing the degree of restrictions of trade with services in 22 sectors in 55 countries in the world. The analysis suggests the rise of liberalisation in the year 2021 through limiting the trade barriers from previous years. More intensive liberalisation took place mainly in the area of aviation, the commercial banking sector, and IT services. Another liberalisation could bring further reduction of costs in the trade with services by 6–16%, as the OECD report suggests. Slovakia is above the OECD average in terms of the liberalisation of trade in services, as it is ranked in 15th place (OECD 2022).

DISCUSSION

The deepening process of European economic integration also has a positive effect on the provision of cross-border services. With the adoption of the Directive on Services in the Internal Market, the European Union has introduced softening conditions for the provision of services in other countries and removal of barriers to access to business for domestic and foreign entrepreneurs from its Member States and thus simplified access to the administration of services. The liberalisation of cross-border trade in services requires common rules, such as standards for licences and diplomas, mutual recognition, and their conditions.

The result of our study is that cross-border services are services provided in the territories of other Member States provided that same conditions as applied to

domestic paid service providers are met. In this context, the provision of Article 50 TFEU, which explicitly defines service as economic activity, has to be respected. In principle, it represents the business activity of a natural or legal person in the area of providing services. In Slovakia, the economic activity is performed in accordance with the Law on trade Licensing and the Commercial Code. The characteristic feature of cross-border service provided within the European economic area is that it is provided temporarily and upon conditions stipulated by the national legal regulations. The cross-border service provider performs the activities both at the territory of the state of establishment, where the authorisation was obtained, and in another Member State as well. In other words, the cross-border service provider is established in the territory of one Member State while he or she provides the services in the territory of other Member State on a temporary basis. The institute of notification obligation on cross-border service provision is also applied in these cross-border services that rank among regulated craft or licensed craft business in Slovakia.

CONCLUSIONS

In this study, we have clearly identified the conditions for the cross-border provision of services by natural or legal persons and we have concluded that this is a temporary and irregular provision of services by natural or legal persons in the territories of other states who already have an established company or establishment in the territory of another state. It is, in principle, the professional exercise of an authorised service by a service provider, having the licence to provide services issued in his/her Member State, on a temporary basis, in any other Member State, under the same conditions as domestic service providers of that Member State.

With regard to the public character of the register of cross-border service providers, we have identified concrete types of services provided by natural and legal persons in the territory of the Slovak Republic. The most common type of cross-border service provided is mountain guide activities provided by natural persons from Poland. The third research question was aimed at the taxation system, where the decisive factor is the place where the natural or legal person is registered (i.e., resident and non-resident). With the assistance of legal provisions, scientific literature, and registers of cross-border service providers, we have clarified the system of providing cross-border services in Slovakia, while there still remains space for other authors to analyse this issue in a broader context.

Conflicts of Interest:

The authors declare no conflict of interest.

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