

# CROSS-BORDER SERVICES OF SWORN INTERPRETERS IN MEMBER STATES UNDER THE SERVICES DIRECTIVE 2006/123/EC

## Abstract

In the EU Member States (MS), sworn interpreters are court interpreters who are authorized and trained to provide spoken interpretation services for courts and other administrative bodies. However, in some MS sworn interpreters are authorized to perform both spoken and written translations, which qualifies them to translate court rulings, notarial acts, certificates, and other official documents. Documents issued by sworn interpreters are, according to EU Regulation 2016/1191, accepted in all MS. In contrast, spoken services performed by sworn interpreters, are not universally accepted in all MS. For instance, a sworn interpreter from Austria is permitted to provide interpreting services in a court in Germany. However, a sworn interpreter from Germany is not permitted to provide interpreting services in a court in Austria. Consequently, in cross-border proceedings, the current regulation described above creates a barrier for sworn interpreters who wish to provide cross-border services to clients within the internal market. Therefore, this paper examines the Services Directive 2006/123/EC which aims to remove barriers to services in the internal market. The aim of the paper is to determine whether MS that do not permit sworn interpreters from other MS to provide interpreting services on their territory, are infringing the Services Directive 2006/123/EC.

**Keywords:** sworn interpreters, interpretation services, barriers to services in the internal market, Directive 2006/123/EC.

NEVEN MARĐETKO \*  
DIJANA VUKOVIĆ \*\*

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\* Neven Marđetko, Prevoditeljski ured  
Marđetko, Republika Hrvatska,  
neven@mardetko.com

\*\* Dijana Vuković, Sveučilište Sjever,  
Republika Hrvatska,  
dvukovic@unin.hr

## **Introduction**

Sworn interpreters might face restrictions in some Member States (MS) with respect to their services, which raises the question in regard to professional mobility and the functioning of the internal market supported by the Services Directive 2006/123/EC. Sworn interpreters are authorized language professionals who provide legally valid spoken and written services in judicial settings and in administrative procedures, i.e. they translate statements of suspects in court trials or they create legally valid, certified translations of official documents for official purposes. Gouadec (2007, p. 36) defines a certified translation as “a document which was translated into another language that is still accepted as a legal document after translation”. Moreover, they provide accurate, neutral, and legally reliable communication between languages to public bodies, legal institutions, and private clients. However, sworn interpreters are not state employees, they operate as private businesses who can provide their complete set of services after being listed in a national register of a MS. Although being private operators, sworn interpreters cannot provide the full range of services on the entire internal market of the European Union since their official status, which they received in one MS may not be accepted in another MS. Consequently, the freedom to provide services in all MS is considerably limited in this profession. The aim of this paper is to determine whether MS that restrict access to foreign sworn interpreters on their territory, are infringing EU law designed by the Services Directive 2006/123/EC.

### **1. The profession of sworn interpreters in MS**

Today, in the European Union, each MS authorizes its own sworn interpreters. According to the International Standard Organization, ISO 18441, pp. 3-4, there are interpreters for different fields, i.e. for community interpreting, conference interpreting, healthcare interpreting, or legal interpreting among others. Community interpreters or public service interpreters provide access to services available to the community that would otherwise be inaccessible. Conference interpreters provide services in multilingual meetings where political, scientific, and other issues are discussed. Healthcare interpreters or medical interpreters provide services in healthcare institutions where patients or their family members have difficulties to understand health care professionals or administrators. In contrast to healthcare interpreters, legal interpreters interpret and translate in judiciary settings. According to ISO 20228, pp. 2-4, legal interpreters provide services between two parties in communicative settings related to the law. Legal interpreters provide spoken services for administrative bodies, i.e. they translate in court trials, in police stations, or in notaries offices. Moreover, in most MS, they provide not only interpretation services but also written translation services. They translate court rulings, notarial acts, birth certificates, and other official documents, affixing their official stamp and signature to their translation. According to EU Regulation 2016/1191, Article 6, paragraph 2, a certified translation shall be accepted in all MS.

MS have different names for legal interpreters. For instance, according to the Austrian national association ÖVGD, in Austria legal interpreters are addressed as “sworn

and court certified interpreters”, moreover according to the Croatian national Judiciary Act, legal interpreters in Croatia are defined as “permanent court interpreters“, and according to the German Federal Interpreters and Translators Database (Dolmetscher- und Übersetzerdatenbank), they may be called “generally sworn, publicly appointed, or officially authorized interpreters and translators“. In Germany the specific title depends on the federal state in which a legal interpreter was authorized, since each German federal state has its own Judiciary Act which defines the exact title of a legal interpreter and translator. For the purpose of terminological consistency, in this paper we will use the term “sworn interpreters“ for the mentioned profession.

### **1.1 Sworn interpreters are sworn translators in some MS**

Sworn interpreters are “authorized” by the competent state authorities to perform legally valid interpreting (spoken) services. ISO defines the word “interpreting” as, to render spoken or signed information from a source language to a target language in spoken or signed form, conveying both the register and meaning of the source language content (ISO 20228, 2019, p. 1). In particular, they are empowered to provide services for legal and natural individuals, and for state institutions. Consequently, sworn interpreters offer their services in court trials, in police stations during hearings, or in offices of public notaries. However, in some MS, such as Austria or Croatia, sworn interpreters are entitled, in addition to providing interpreting (spoken) services, to offer translation services in “written” form as well. According to the international standard ISO 20771, “translation” is defined as a set of processes to render source language content into target language content in written form (ISO 20771, 2020, p. 1). Consequently, in some MS sworn interpreters may translate court rulings, notarial acts, birth certificates, and other official documents, in addition to “spoken” services. The performed translation has legal power, which is why written translations of sworn interpreters must be accepted in the whole territory by the authorities of the MS which appointed them (Official Journal of the European Union, Regulation 2016/1191, 2016).

### **1.2 Sworn interpreters and national registers**

In November 1950, the European Convention on Human Rights and Fundamental Freedoms was adopted, and its provisions grant the right to language assistance in criminal proceedings. Precisely Article 5 and Article 6 of the Convention state that everyone who is arrested must be informed immediately in detail about the reasons for her/his arrest and of any charge against her/him, in a language which the suspect understands. Moreover, if the suspect, does not understand the nature and cause of the accusation due to a language barrier, then the arrested person has the right to free assistance of a sworn interpreter. The described right represents a minimum standard which has to be granted to an arrested individual in every country that signed the aforementioned Convention. In total, 47 countries signed the Convention (European Convention on Human Rights, 1950).

In 2010, the Council of the EU passed the Directive 2010/64/EU which grants the same right to language assistance as the European Convention on Human Rights and

Fundamental Freedoms. Consequently, each MS has to grant free assistance of a sworn interpreter if the suspect cannot understand or speak the language used in court. In addition to the right to interpretation and translation in criminal proceedings, the mentioned directive states in Article 4 that the cost of interpretation and translation provided, regardless of the outcome of the proceedings, shall be paid by the MS. Moreover, Article 5, paragraph 2 states, that the MS are obliged to establish a register of independent interpreters and translators that should be accessible to the legal counsel and relevant authorities. In the end, the MS must undertake concrete measures to ensure that the interpretation and translation provided meets quality standards according to Articles 2 and 3. Article 2, paragraph 8, and Article 3, paragraph 9 of the mentioned directive state that the MS shall provide an interpretation standard which must ensure quality interpretation sufficient to safeguard the fairness of the proceedings, ensuring thus that the suspect or accused individual understands the case against her/him, and that they are able to exercise their right of defense. According to Article 5, paragraph 2, every MS shall implement an official register or registers of independent sworn interpreters, who shall be available to legal counsel and relevant authorities, by October 27, 2013. Consequently, according to Directive 210/64/EU, sworn interpreters in the MS are organized in national registers. Each MS has to establish its own national register or registers of sworn interpreters. In addition, according to Article 5, paragraph 2, it is up to the MS to define relevant educational criteria that sworn interpreters must meet in order to be listed in the national register or registers of sworn interpreters. Consequently, there is no harmonized standard for the education of sworn interpreters in the EU. (Official Journal of the European Union, Directive 2010/64/EU, 2010).

## **2. Directive 2006/123/EC on services in the internal market**

According to the introduction of Directive 2006/123/EC, which sets out the objectives, reasons, and background of the directive, the aim of the document was to develop closer links among the MS and to ensure economic and social progress of the MS. In particular, it was important to eliminate barriers which prevented the development of services on the internal market in order to support the integration of EU citizens, and to promote equal and sustainable economic and social progress of the EU. Consequently, the aforementioned Directive regulates barriers to trade in services, reduces administrative burden for service providers, strengthens the rights of consumers and businesses, and facilitates cooperation among Member States. This Directive in particular offers advantages to business and consumers who want to enjoy services in different MS. On the one hand businesses particularly benefit from easier establishment of their company in another MS, as well as from simplified provisions, procedures, and formalities for cross-border services. On the other hand, customers benefit from reinforced service consumer rights, improved quality services, upgraded information and transparency of service providers. Moreover, Member States must remove barriers for beneficiaries who receive services from providers established in another MS, i.e. certain authorizations that are valid in one Member State, must be valid through the entire internal market. In addition, MS are

obliged to eliminate discriminatory measures based on nationality or place of residence. In particular, MS are not allowed to restrict services to their territory by imposing an authorization that must be granted by local authorities, such as entry in a register, before other EU national can provide services there. Moreover, MS must make general information and support on legal requirements available to consumer, i.e. consumer protection rules. By removing the described restrictions on the internal market, it was expected to increase the global competitiveness of the EU service providers, offer more transparency and information content to EU citizens, and in general contribute to a wider choice of better-quality services at competitive prices (Official Journal of the European Union, Directive 2006/123/EC, 2006).

### **2.1 Definitions of services, provider, and recipient**

According to Article 4, paragraph 1, of Directive 2006/123/EC, a “service” is defined as a self-employed remunerated economic activity, as described in Article 50 of the Treaty Establishing the European Community (TEC).

According to Article 50, in order to be qualified as a service, services have to involve:

- activities of an industrial or commercial character;
- activities of craftsmen;
- activities of the professions.

Moreover, the provision states that an individual from another Member State has the right to offer her/his services on the territory of another Member State under the same conditions as nationals. To clarify, individuals from other EU Member States must be able to provide their services throughout the internal market without barriers.

### **2.2 Exclusions from the Services Directive**

However, it should be noted that there are exclusions from the Services Directive, set out in Article 2, para 2(a) to 2(l). Services which do not fall under the scope of the Services Directive are:

a) non-economic services of public interest	b) financial services
c) services and networks of e-communication	d) transport services
e) services of temporary work agencies	f) healthcare services
g) audiovisual services	h) gambling activities
i) activities which are connected with the exercise of official authority in regard to § 51 Treaty on the Functioning of the European Union (TFEU)	j) social services i.e. social housing, childcare, family and persons support
k) private security services	l) notaries and bailiffs services

In addition to the aforementioned exclusions, according to Article 2, paragraph 3, taxation rules do not fall under the scope of the Services Directive as well.

### **2.3 Exclusions which affect cross-border services of sworn interpreters**

Sworn interpreters are in some MS “public service officials”, while in other MS, they are “authorized persons” who perform a public service, and consequently they are not public service officials. According to the Cambridge Dictionary an “official” is defined as “a person who holds a position of authority” (Cambridge Dictionary, 2025). The legal

dictionary Justia, defines officials as “a person who is designated with a duty or role, frequently within a government organization” and “having full and formal authorization or approval” (Justia, 2025).

In Austria, according to ÖVGD, sworn interpreters are referred to as “sworn and court-certified interpreters“ (allgemein beeidete und gerichtlich zertifizierte Dolmetscher) and under the national Judicial Interpreters Act (Sachverständigen- und Dolmetschergesetz), they are generally regarded as public service officials (Amts Dolmetscherin / Amtsdolmetscher) when performing their duties. The general oath and certification are administered by a judicial administration procedure (Justizverwaltungsverfahren), which applies strict selection criteria. Sworn interpreters work in Austria within the framework of official duties, and the provided interpreter services can be of crucial importance for the proceedings. Moreover, sworn interpreters share responsibility for a fair trial since they have to provide a neutral, honest, and discrete interpretation service. In the end, in Austria sworn interpreters can be held accountable and consequently be prosecuted in the event of breaches of duty due to intentional abuse of office or incorrect interpretation (Sachverständigen- und Dolmetschergesetz, 2023).

In contrast, according to the paper “Dolmetscher und Übersetzer als Amtsträger und förmlich Verpflichtete”, written by Mr. Cebulla and published in the German Federal Association of Interpreters and Translators, in Germany the public appointment (öffentliche Bestellung) confers special credibility on the sworn interpreter and guarantees the clients their reliability and professional competence. Furthermore, Cebulla who is a lawyer and legal translator in Germany, states in his paper that according to the German law, a public service official is someone who holds a civil servant status (Beamter) or who is a judge. However, according to the Bavarian State Ministry of Justice and the Ministry of Justice of North Rhine-Westphalia, the public appointment (öffentliche Bestellung) is not sufficient to provide sworn interpreter with the status of a public service official. In addition, like in many other MS, the German state has refrained from establishing a single sworn interpreter authority that would consist of civil servants. Instead, they developed freelance sworn interpreters (freiberufliche Sprachmittler) who are publicly appointed, and who are occasionally “formally obliged” (förmlich Verpflichtet) to provide their services under the German Obligations Act (Verpflichtungsgesetz). Consequently, in Germany, sworn interpreters are not public service officials, like they are in Austria. (M. Cebulla, 2006).

As described in the aforementioned paragraphs, in some MS sworn interpreters are public service officials, therefore exclusions “a” and “i” § 2, paragraph 2, of the Services Directive are relevant for this profession in regard to cross-border services.

### *2.3.1 Exclusion “a”: Non-economic services of public interest*

The European Commission (EC) defines “services of public interest” as services which are classified by the MS as being of public interest, and which are therefore subject to public service obligations. The EC divided “services of public interest” into the following three groups, services of general economic interest, non-economic services, and services of public economic interest. **Services of public economic interest** are services

which must be paid by the consumer, i.e. transport, energy, communications, or postal services. These services are regulated by EU directives and regulations. **Social services of public interest** are services provided to sensitive groups which are granted on the basis of solidarity and equal admittance, i.e. social security schemes, social housing, and employment services. **Non-economic services of public interest** are not subject to EU legislation, the internal market, or competition rules. Those include education, health services, safety and security services such as the police, fire, and emergency rescue services, environmental protection, cultural services, social welfare services, broadcasting, and judicial and legal aid services. In order to provide equal access, fairness, and social cohesion, these services are regulated by national law in the MS and thus fall outside the scope of the Services Directive (European Commission, Services of General Interest, 2011).

### *2.3.2 Exclusion “i”: Activities which are related to the exercise of official authority pursuant to § 51 TFEU*

Services mentioned in the aforementioned paragraph under exclusions “a”, are similar to services that fall under exclusion “i”. Some services related to the exercise of “official authority” include state-funded public education system, banking services, investments funds, police work, customs, or **judiciary services**. Article 51 of the Treaty on the Functioning of the European Union (TFEU), states that actions which are linked to official authority in the MS, are excluded from freedom of establishment and provision of services. However, the exclusions must be justified by the MS, and they can only cover activities which involve the exercise of authority. In addition, a whole profession can only be excluded if all job duties of the profession are classified as the exercise of authority (TFEU, 2009).

To sum up, exceptions from the Services Directive exist to protect the public interest of the MS, in certain areas of the Member States territory and consequently, national law of the MS applies rather than the provisions of the Services Directive (European Parliament, Fact Sheets on the European Union, 2019).

## **Conclusion in regard to cross-border services of sworn interpreters**

The aforementioned Services Directive was developed to help services providers established in one MS offer their services across borders and without restrictions, throughout the internal market. As stated above, sworn interpreters are allowed to provide their services within the territory of a MS only if they are registered in the national register of that MS. According to Directive 2010/64/EU, all MS should have installed national registers of sworn interpreters by 2013. In order to be listed in the national register of sworn interpreters, certain admission criteria had to be fulfilled, as established by the national authorities. Some MS like Germany, even allow foreign sworn interpreters who are listed in the national register of another MS, to be temporarily listed upon request, in the German national register of sworn interpreters and translators. To be listed in the German national register, candidates are obliged to provide evidence of being listed in the

national register of their home MS. Once evidence has been provided, German authorities will, based on the Services Directive and the fact that a sworn interpreter is not a public official (*Amtsträger*), list the foreign sworn interpreter in the German national register of sworn interpreters. Consequently, the foreign sworn interpreter is now allowed to provide her / his services in two MS, in Germany and in her / his home MS.

In contrast, other MS such as Austria, do not allow sworn interpreters from foreign MS to be listed in the Austrian national register of sworn interpreters simply because they are sworn interpreters in their home MS. Unlike in Germany, foreign sworn interpreters in Austria have to pass a lengthy and time-consuming examination, before they are permitted to be listed in the Austrian register of sworn interpreters. As stated in the aforementioned paragraphs, a sworn interpreter in Austria has a status of a “public service official” (*AmtsdoImetscher*), which allows Austrian officials to classify sworn interpreter services, as services of “public interest”. Consequently, according to the Services Directive, exclusions stated in Article 2, paragraph 2(a) and 2(i) apply to sworn interpreters from other MS who would like to work in Austria. Austrian officials are permitted to require foreign sworn interpreters to undergo additional training in order to provide services in the judicial settings in Austria.

However, it has to be emphasized, that not all job duties of a sworn interpreter, are connected to “public interest” of a MS. Sworn interpreters who interpret proceedings, hearings, or judgements, undoubtedly perform job duties of public interest. In contrast, if a sworn interpreter interprets a private business meeting, a sales contract, or a marriage ceremony in a church, these services are not connected to public interest, and provisions of the Services Directive therefore apply. Accordingly, a sworn interpreter from a foreign MS, is not allowed, without additional training, to provide translation services in a court in Austria. However, she / he is allowed to provide translation services that are not connected to Austrian public interest, such as interpreting a business meeting, on the basis of the Services Directive 2006/123/EU.

In general, as discussed in the aforementioned paragraphs, sworn interpreters are may offer their services without barriers in those MS, that do not classify sworn interpreting as services of general interest on their territory, i.e. Germany. In contrast, in those MS that classify sworn interpreters as public service officials, such as Austria, sworn interpreters are, on the basis of the Services Directive permitted to provide only those services which are not connected to the public interest in that particular MS, such as translating a sales contract or interpreting a business meeting. In the end, it must be stated that those Member States that do not allow foreign sworn interpreters to provide services on their territory are not infringing EU law, since exclusions are permitted under Directive 2006/123/EC. Consequently, sworn interpreters who are authorized in one MS, may not offer the complete set of services across the entire internal market as, according to Directive 2006/123/EC, other MS are permitted to impose exclusions depending on how the profession is regulated in the host MS.

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## **PREKOGRANIČNE USLUGE SUDSKIH TUMAČA U DRŽAVAMA ČLANICAMA PREMA DIREKTIVI O USLUGAMA 2006/123/EZ**

### **Sažetak**

U državama članicama Europske unije sudski tumači ovlašteni su i educirani za pružanje usluga usmenoga prevođenja za sudove i druga upravna tijela. Međutim, u nekim državama članicama sudski tumači ovlašteni su pružati i usluge pismenoga prevođenja, što ih kvalificira za prevođenje sudskih odluka, javnobilježničkih isprava, potvrda i drugih službenih dokumenata. Dokumenti koje izdaju sudski tumači, u skladu s Uredbom (EU) 2016/1191, prihvaćeni su u svim državama članicama. Nasuprot tomu, usluge usmenoga prevođenja koje pružaju sudski tumači nisu univerzalno prihvaćene u svim državama članicama. Primjerice, sudski tumač iz Austrije smije pružati usluge usmenoga prevođenja pred sudom u Njemačkoj, dok sudski tumač iz Njemačke ne smije pružati takve usluge pred sudom u Austriji. Posljedično, u prekograničnim postupcima trenutno važeće uređenje stvara prepreke za sudske tumače koji žele pružati prekogranične usluge klijentima na unutarnjem tržištu. Stoga ovaj rad analizira Direktivu o uslugama 2006/123/EZ, čiji je cilj ukloniti prepreke slobodnom pružanju usluga na unutarnjem tržištu. Cilj je rada utvrditi krše li države članice, koje ne dopuštaju sudskim tumačima iz drugih država članica pružanje usluga usmenoga prevođenja na svom teritoriju, odredbe Direktive 2006/123/EZ.

**Ključne riječi:** sudski tumači, usluge usmenog prevođenja, prepreke slobodnom pružanju usluga na unutarnjem tržištu, Direktiva 2006/123/EZ.