



SITPRO

Simplifying International Trade

The EU Services Directive and its Implementation in the UK

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Introduction and Scope

The EU Services Directive seeks to give fresh impetus to the aims of the Treaty of Europe by breaking down the remaining barriers to make it easier for service providers to set up in another Member State, provide services across border or by travelling on a temporary basis to another Member State. In particular it requires Member States to:

- Abolish restrictive legislation and practices that hinder service providers from setting up in other Member States or providing services across national borders;
- Set up points of single contact through which providers will be able to find the information and complete the formalities necessary to do business in each State;
- Facilitate greater co-operation between regulatory and authorisation bodies across the EU thereby reducing the burdens on business;
- Engender consumer confidence in cross-border service provision through access to information and ensuring the quality of services.

In the UK, services are very important to the economy accounting in total for 70% of GDP. In 2007, total exports of services (excluding financial services) were over £100 billion while imports were around £93 billion. In the same period UK services turnover totalled some £1800 billion. By comparison with the UK, the EU is a huge market comprising some 500 million people. Europe already accounts for around half of all UK exports (and imports) of services. UK service suppliers (and their customers, both individuals or businesses) should therefore take a keen interest in the increased facilitation of 'trade' that the Services Directive will offer when it comes into force.

Each EU Member State is required to transpose the Directive into its national laws by 27 December 2009 and in due course it will be instructive for SITPRO to compare the way in which transposition has been achieved, Member State by Member State, and make recommendations. The Directive is being implemented in the UK by the Department for Business, Enterprise and Regulatory Reform (BERR). The result of its public consultation on the implementation can be found at <http://www.berr.gov.uk/files/file46592.pdf>. BERR estimated as part of its

economic impact analysis that implementation would add £4-6 billion to the economy and create in excess of 80,000 jobs, and that there would be particular benefits for small and medium sized companies who would find access to the market easier in future.

An interesting and perhaps unintended consequence of the Directive will be that service suppliers in third countries also stand to gain in particular from the provision of information through the "points of single contact". Moreover, work permits will not generally be required for non-EU staff to provide temporary cross border services in the EU as long as a business is established in one Member State and its non-EU staff have permits to work in the member state of establishment. In addition the increased facilitation may encourage inward investment in the most efficiently supervised Member States as a springboard into the rest of the EU. The Directive and its implementation therefore have a global interest.

Exclusions

The Directive does not apply to all service sectors. However this does not mean that the supply of the excluded services is banned, just that different rules consistent with the Treaty and any specific EU sector legislation apply.

The exclusions are:

- Non-economic services of general interest;
- Financial services;
- Electronic communications services and networks;
- Transport services;
- Temporary work agencies;
- Healthcare services whether they are public or private;
- Audiovisual services;
- Gambling;
- Activities connected with the exercise of official authority;
- Social services;
- Private security services; and
- Services provided by notaries and bailiffs.

Importantly, the Directive does not impact on the protection afforded consumers in Member States or other rules of private international law.

Service providers who are active in the regulated professions will continue to benefit from the facilitation provided under the Directive on the Recognition of Professional Qualifications (2005/36).¹ This means that as a general rule such service providers will be able to provide cross border services under the terms of that directive, but will also benefit from the points of single contact.

A more detailed list of exemptions can be found in the Directive itself.²



¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:255:0022:0142:EN:PDF>

² http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_376/l_37620061227en00360068.pdf

Points of Single Contact

Member States must make it easy for suppliers to find information about the rules relating to the supply of a service in their territories

Service providers often find it difficult to identify the requirements that they need to meet in another Member State in order to do business there. To address this each Member State must enable service suppliers to find all the relevant information and complete electronically at a distance all procedures and formalities necessary to provide their services in that Member State through portals established specifically for that purpose.

These points of single contact will cover all declarations, notifications or applications needed for authorisation from the competent authorities (i.e. regulators or authorising/registering bodies), including applications for inclusion in a register, a roll or a database, or for registration with a professional body or association.

They will include the following in particular:

- **Requirements for establishment**, in particular those concerning the procedures and formalities to be completed in order to perform service activities and access services;
- Contact details for the relevant **competent authorities**;
- Information on accessing **public registers** and **databases** on providers and services;
- Arrangements for the **settlement of disputes** between the competent authorities and the provider or the recipient, between a provider and a consumer and as between providers;
- **Contact details** of associations and organizations, other than the competent authorities, where providers and consumers can obtain practical assistance.

Tax laws are not covered by the Directive but it will be important that any provider looking to establish in the UK or any other Member States can obtain information about the rules that apply.

Member States must make sure that the information provided is in **plain language** and that it includes simple step by step guides. All requests for information or assistance must be responded to accurately and as quickly as possible.

Member States and the Commission must **promote the points of single contact** and make the information available in other Community languages. BERR has said that initially at least the UK point of single contact will be in English only. Many other Member States are considering including their information in English as well as their national languages.

The UK point of single contact is expected to be all electronic accessed through the businesslink.gov web site. Other Member States' points of single contact may be only partially electronic. It has been argued that the European Commission should group links to all Member States' electronic points of single contact via its Europa web site so that they are all easily accessible.

While it is unlikely that the UK will make a charge for accessing basic information it is still considering the issue of charging for specialist support services. The Directive requires that any charging that is imposed should only be on a cost recovery basis.

If any document is required to certify that a service provider meets a particular regulatory requirement, any such document issued by any Member State must be accepted. However, non-certificated translations may be requested.

Freedom of Establishment for Service Providers

Any business established in one Member State is able to establish in any other Member State regardless of the Services Directive. However, for the services covered by the Directive, are set out the rules that Member States must adopt where controls requiring specific authorisations to establish are applied.

Member States may not restrict the access to a service or the exercise of a service on grounds of:

- **Nationality** or compliance with any **residency requirements**;
- Being established in more than one Member State, or being entered in the registers of or enrolled with **professional bodies or associations** in more than one Member State;
- The **form of establishment** - principal or secondary, agency, branch or subsidiary;
- **Reciprocity** of establishment;
- **Economic needs tests** (the need for prior proof of existence of market demand) and economic planning objectives;
- The existence of **market competition**;
- An obligation or requirement to participate in **financial guarantees** or take out insurance specifically from providers established in the Member State concerned;
- **Pre-registration** or a requirement to have previously exercised the activity in the Member State concerned for a given period of time.

Where Member States make access to or the exercise of a service the subject of a specific **authorisation** such requirements must be justified by an overriding reason relating to the public interest which cannot be addressed by means of any less restrictive measure.

The criteria for decisions must be:

- **Objective** and non discriminatory;
- Be **justified** by the public interest;
- **Published**, transparent and accessible.

The conditions for granting an authorisation must **not duplicate** those requirements which the provider is subject to and has already satisfied in another or in the same Member State.

If the criteria have been met, authorisations must be granted and will normally **apply nationally** and extend to the setting up of **agencies, subsidiaries, branches or offices**.

Competent authorities may refuse or withdraw any authorisation. Such decisions must be fully reasoned and be open to challenge.

Application for an authorisation to provide services

Application procedures and formalities must:

- Be **clear** and made **public** in advance;
- Be **objective** and **impartial**;
- Be **easily accessible** and not be overly complicated so as to dissuade applications or delay the provision of the service;
- Provide applicants with a **guarantee** that their application will be processed within a published maximum **timescale** following submission of a fully documented application.
- Single **extensions** to the timescales may be possible where they are justified by the complexity of the issue and where they are notified to the applicant before the end of the original period.

All applications for an authorisation must be acknowledged by the competent authority as soon as possible specifying:

- The **period** of time within which the application will be considered;
- The available means of **redress**;
- A statement that in the absence of a response within the due time that the authorisation will be deemed to have been granted.

In the case of an incomplete application or a rejected authorisation, the applicant must be informed as quickly as possible.

Where a response has not been provided within the original (or extended) period of time the authorisation will generally be deemed to have been granted.

Duration of authorisation to provide services

Authorisations will **not be time limited** unless:

- The authorisation is automatically renewable or subject to the continued fulfilment of requirements;
- The number of authorisations is limited for public interest reasons (see below);
or
- A limited authorisation period can be justified by reasons of public interest.

Member States may specify the period of time (**mobilisation period**) in which it is necessary for a provider to commence activity after receiving an authorisation.

Limits on the number of authorisations to provide services

Where limits exist, the selection process must guarantee **impartiality and transparency**.

If the number of authorisations is limited, they will be **time limited**. They will not be automatically renewed and a person whose authorisation has just expired will not be favoured in any subsequent selection process.

Free Movement of Services

Technological advances have made it possible to supply a range of services to customers in a number of Member States from a single base. In addition a provider in one Member State may temporarily move to another Member State where its customer is located in order to deliver a service at the customer's premises. The Directive reiterates these Treaty rights.

Freedom to provide services

The Directive requires that Member States ensure **free access** to and **free exercise** of service activities in their territories even where the provider is established in another Member State.

In particular, Member States may not restrict the **freedom to provide services** in the case of a provider established in another Member State by imposing any of the following requirements:

- An obligation on the provider to have an **establishment** in their territory;
- An obligation on the provider to obtain an **authorisation** from the competent authorities including entry in a register or to register with a professional body or association in their territory;
- A **ban on** the provider basing itself in their territory, including setting up an office, which the provider needs in order to supply the services in question;
- The application of **specific contractual arrangements** between the provider and the recipient which prevent or restrict service provision by the self-employed;
- An obligation on the provider to possess an **identity document** issued by their competent authorities to be able to provide a specific service;
- Requirements, except for those necessary for **health and safety at work**, which affect the use of equipment and material which are an integral part of the service provided;
- Any restriction on a person or a business **on the use of a service** supplied by a provider established in another Member State.

Restrictions can only be placed on provider if:

- They are **non-discriminatory** with regard to nationality, or in the case of a company with regard to the Member State in which it is established;
- They are **justified** for reasons of public policy, public security, public health or the protection of the environment;
- Don't go beyond what is **necessary** to achieve the relevant public policy objective.



Quality of Services

One of the major impediments to opening up the EU services market has been consumers' concerns over the quality and safety of the services supplied by providers in other Member States and how to deal with problems should they exist. This has been addressed by the Directive through the information provisions for consumers and the following section on Supervision.

Assistance for consumers of services

Member States must make sure that the users of services can obtain clear and up to date information on the provision of services wherever they live within the EU. This must be **easily accessible** by electronic means and should include:

- General information about the requirements applicable in other Member States relating to **access to, and exercise of, service activities**, in particular on consumer protection;
- General information on how to proceed in case of a **dispute** with a particular provider;
- The **contact details** of associations or organisations from which providers or recipients can obtain practical assistance.

Requests for information and assistance must be satisfied **as soon as possible**.

In the UK this information will be provided through an on-line consumer facing portal separate to the UK point of single contact.

Provision of information by service providers

Service providers are obliged to provide certain information to their customers. Some of this must be provided as a matter of course:

- Name, legal status and form, the address at which he is established and **contact details** including electronic;
- Place of **registration** in a trade or similar public register, the name of the

register and the registration number, or other means of identification in that register;

- Where the activity is subject to an **authorisation** scheme, the particulars of the relevant competent authority or the single point of contact;
- **VAT number**, where the provider exercises an activity which is subject to VAT and he is registered;
- In the case of **regulated professions**, the professional body or other institution with which the provider is registered, the professional title and the Member State in which that title has been granted;
- The general **terms of business**, if any, used by the provider;
- The **applicable law** under which contracts are let and/or the competent courts;
- The existence of an after-sales **guarantee**, if any, other than which is imposed by law;
- The **price** of the service, where a price is pre-determined by the provider for a given type of service;
- The main **features** of the service, if not already apparent;
- Details of any **professional liability insurance** and guarantees held, their geographic coverage and the name and contact details of the insurer or guarantor.

Other information must be provided on request:

- The **price** of the service, or if an exact price cannot be given, the way of calculating it so that it can be checked by the recipient, or a sufficiently detailed estimate;
- Where relevant, a reference to the **profession rules** applicable and how to access them;
- Where the provider's business is **multi-disciplinary** and offers a number of inter-related service activities and partnerships which are directly linked to the service in question, information on the measures taken to avoid conflicts of interest. Such information must also be included in any document which describes the services offered;
- Any **codes of conduct** to which the provider is subject and the address at which these codes may be consulted, including by electronic means, and the languages in which they are available;

- Details of and information for the use of any schemes for recourse to non-judicial means of **dispute settlement**.

All such information should be clear and be available in good time before conclusion of a contract or, if there is no written contract, before the service is provided. It should be **easily accessible** electronically by the customer at the place where the service is provided or the contract concluded and appear in any literature provided to the customer which sets out a **detailed description** of the services offered.

These information requirements are in addition to requirements already provided for in Community law and do not prevent Member States from imposing additional information requirements to providers established in their territory.

Professional liability insurance and guarantees

The Directive provides that Member States may insist that providers whose services present a direct and particular risk to the health or safety or financial security of any person (terms that have not yet been fully defined) subscribe to professional liability insurance appropriate to the nature of the risk or provide a guarantee equivalent to the insurance. In the UK **no new general obligation** will be imposed on business. However where other Member States have, or implement, a general requirement then UK service providers will need to take out professional liability insurance to be able to operate in those Member States to the extent that they are not already covered.

Where a provider already has professional liability insurance or an equivalent or comparable guarantee they need not take out additional cover. However if the existing cover only partially satisfies a Member State's requirements where the provider seeks to deliver a service, the provider will be required to obtain supplementary cover or guarantees to address the gap.

Settlement of disputes

In case of any disputes service providers must:

- Supply information about where **complaints** should be addressed, or where a request for information should be sent, in particular a postal address, telephone number and e-mail address or fax number;
- Respond to complaints in the shortest possible time and use their **best efforts** to find satisfactory solutions.

Policy on the Quality of Services

Member States will encourage service providers to take voluntary action in order to ensure the quality of the services they provide through eg:

- **Certification or assessment** of their activities by independent or accredited bodies;
- Drawing up their own **quality charter** or participation in quality charters or labels drawn up by professional bodies at Community level.



Supervision

The Member State of establishment is generally responsible for the supervision of its service providers. The Directive requires that in addition Member States mutually assist each other and establish measures for effective cooperation with one another.

Information on the good repute of providers

Member States must, at the request of a competent authority in another Member State, supply information (copying to the provider) on disciplinary or administrative actions or criminal sanctions and decisions concerning insolvency or bankruptcy involving fraud, which are directly relevant to the provider's competence or professional reliability.

Where information has been obtained in one Member State on behalf of another Member State, the requesting authority will consider the information in the same way as it would consider the equivalent domestic information, having due regard to its admissibility, in deciding what action to take.

Safety of services

A Member State can only take measures relating to the safety of a service provided by a supplier established in another Member State if:

- The Member State of establishment has not taken any measure or has taken **measures which are insufficient**;
- The measure that is being taken has not been subject to **Community harmonization**;
- The measure would result in a **higher level of protection** than would be provided by the Member State of establishment;
- The measures do not go **beyond what is necessary** to ensure the safety of consumers.

Where a Member State identifies a problem relating to the safety of a service provided in its territory, it will notify all Member States and the European

Commission of the circumstances and ask the Member State of establishment to take measures.

On receipt of such a request the Member State of establishment must:

- verify whether the provider is **operating lawfully**;
- verify the **facts** underlying the request;
- take **measures** or explain the reasons why no measures have been taken.

If no measures are taken or the measures adopted are considered inadequate, the requesting Member State may take its own measures notifying the Commission and the Member State of establishment. Subject to its consideration of the measure, the European Commission may ask the Member State concerned to refrain from taking the proposed measure or to put an end to the measure as a matter of urgency.

Temporary movements

When a provider moves temporarily to another Member State to supply a service:


The Member State of establishment must:

- Continue to ensure that the service supplier is **compliant** with its supervisory requirements through enforcement at the place of establishment of the provider;
- Take supervisory or enforcement **measures** in its territory even if the service has been provided or caused damage in another Member State.

The Member State where the service is provided must:

- Take **responsibility** for the supervision of the activity of the provider in its territory;
- Ensure that while on its territory the provider **complies** with its requirements for the access to and exercise of a service activity;
- Carry out the **checks, inspections and investigations** necessary for it to supervise the service provided.

The competent authorities of the Member State where the service is provided must:

- **Co-operate** with the Member State of establishment and participate in the supervision of the provider;
 - At the request of the Member State of establishment carry out any **checks, inspections and investigations** necessary to ensure effective supervision by the Member State of establishment. They may also carry out such checks etc at their own initiative so long as these are proportionate, non-discriminatory and not motivated by the fact that the provider is established in another Member State.
- 

Multidisciplinary Activities

Member States must not introduce exclusivity over the supply of specific services to certain providers or restrict the exercise jointly or in partnership of different activities.

However, Member States must exercise control over:

- The regulated professions in order to guarantee compliance with the rules governing **professional ethics and conduct** necessary to ensure their **independence and impartiality**;
- Providers of certification, accreditation, technical monitoring, test or trial services in order to ensure their independence and impartiality.

Where multidisciplinary activities between the providers laid down are authorised, Member States will make sure that:

- There are no **conflicts of interest**;
- They are **independent and impartial**;
- The rules governing **ethics and conduct** are compatible.



Commercial Communications by the Regulated Professions

Member States must not place restrictions on advertising by the regulated professions.

They will however ensure that such advertising complies with professional rules (which must be non-discriminatory), in conformity with Community law.



Screening of Existing Rules

Member States are required to consider their existing legislation concerning access to and the exercise of services to see if they impose restricted practices.

Where such provisions exist Member States must **verify** that the requirements are non discriminatory according to nationality (or in the case of companies the location of the registered office) and that they are justified by the public interest.

Member States must **notify** the European Commission of any requirements that they intend to maintain and those that have been abolished or made less stringent.



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SITPRO

Simplifying International Trade

1st Floor
Kingsgate House
66-74 Victoria Street
London
SW1E 6SW

Telephone: +44 (0)20 7215 8150

Fax: +44 (0)20 7215 4242

Email: info@sitpro.org.uk

Website: www.sitpro.org.uk

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