

Proposed Directive on Services in the Internal Market: Government response to the public consultation

Over the summer, the DTI consulted publicly on the proposed Directive on Services in the Internal Market. The public consultation was launched on 29 March and the launch event was followed by presentations to stakeholder groups and five regional events. A total of 116 responses were received and a summary of these responses has been published on the DTI website at

<http://www.dti.gov.uk/ccp/topics2/servicesdirective.htm>

These responses, along with the views of other government departments, have now been analysed and taken into account by the Government in developing the lines that the UK will take in the detailed negotiations on this Proposal, which will begin in earnest in 2005.

The proposed Directive aims to open up the European market for services, by cutting red tape and removing barriers to cross-border services provision. The UK strongly supports the aims of this Proposal, both in opening the Internal Market and in contributing to better regulation. We believe that it will deliver significant benefits for businesses, consumers and employees here in the UK and across Europe. We are committed to the country of origin principle as critical to delivering liberalisation, though regard it as vitally important that nothing in the proposed Directive compromises our standards of health and safety or the protection of workers, consumers, the environment and animals.

The DTI will continue to keep stakeholders informed of, and engaged with, the progress of negotiations, through regular updates and meetings.

UK negotiating line

During the negotiations, we will seek to achieve the following main objectives:

- Strongly support the market opening objectives of the proposed Directive, in particular through:
 - simplification and better regulation: and
 - support for the country of origin principle;
- Ensure that the proposed Directive does not cover taxation, publicly funded health services and occupational pensions;

- Ensure that the proposed Directive does not impinge upon UK criminal law and policy or on immigration and social security policy;
- Clarify the relationship with sector-specific legislation;
- Uphold UK standards on health and safety in all circumstances;
- Maintain high standards of protection for workers, consumers, the environment and animals;
- Ensure that the proposed Directive does not affect sensitive policy areas where regulation is principally not for economic motives; and
- Negotiate an acceptable outcome as regards Private International Law.

We recognise that considerable work will be needed to develop workable practical solutions in many areas, including single points of contact and the mutual assistance procedures governing the supervision of providers of temporary services (particularly in cases of urgency).

Further details will be found on our web page:

<http://www.dti.gov.uk/ccp/topics2/servicesdirective.htm>

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In order to meet UK objectives, we will be seeking amendments and clarifications to the text of the proposed Directive. In order to retain flexibility during negotiations on the proposed Directive and ensure the best possible outcome from these negotiations, we may need to reconsider or add to the following indicative list of **suggested** amendments. In particular, further amendments may be necessary in order to provide an acceptable solution in the areas of criminal law and Private International Law.

UK negotiating line: suggested article-by-article amendments

Art. 2 Scope

Complete exclusions to cover taxation and publicly funded healthcare services, and clarification of the definitions carving out financial services and transport to ensure that they are comprehensive.

Clarification of the scope of the proposed Directive with regards to social security matters.

Art. 3 Relationship with other provisions of Community law

Clarification of the relationship between this Proposal and other EC legislation to ensure that other EC legislation will prevail in the event of conflict or uncertainty between the proposed Services Directive and other Community instruments.

Art. 4 Definitions

Clarification and elaboration of terms, including 'overriding reason relating to the public interest' and 'establishment'.

Art. 6 Single points of contact

Clarification to ensure that provisions for single points of contact are realistic, workable and cost-effective.

Art. 7 Right to information

Clarification that these requirements will not require the publishing of sensitive security or defence information.

Art. 8 Procedures by electronic means

8(2) Clarification that originals/certified copies permitted under **Art. 5(2)** are not covered by **Art. 8**, and that physical examination may be required of the character of a provider (for example, in relation to the sale of alcohol), as well as his capability.

Art. 9 Authorisation schemes

9(3) Clarification that this disapplication covers both:

- (i) schemes that are implicitly permitted, or that are reasonable in circumstances where Member States are permitted by Community instruments to adopt measures the form of which are unspecified, as well as those that are explicitly permitted by other Community instruments; and
- (ii) the Directive on the Recognition of Professional Qualifications.

The inclusion of a new paragraph **9(4)**, based on the text in **Recital 35**, disapplying Chapters 2 and 3 of the proposed Directive to activities that are not open to competition.

Art. 10 Conditions for the granting of authorisation

10(1) Amendments to permit the proper exercise of discretion in authorisations that depend on balancing a complex set of factors, including risk.

10(3) Amendments to ensure that these prohibitions may be derogated from in appropriate circumstances.

10(4) Clarification that this provision does not cut across the powers of devolved administrations, regional or local authorities or competent authorities in their regions or territories.

Art. 11 Duration of authorisation

11(1)c Clarification that limited authorisations are allowed for one-off events.

Art. 12 Selection from among several candidates

12(1) A broadening of the permitted reasons for a limitation on the number of authorisations, to cover other situations where appropriate.

Art. 13 Authorisation procedures

13(2) Clarification that, since the definitions in **Art. 4** make clear that authorisation schemes cover both access to a service activity and exercise thereof, charges levied on applications may be proportionate to the costs of ongoing regulation by the competent authorities, not just to the unit cost of authorisation of access.

13(4) A widening of the exemption from tacit authorisation so that it may be permitted in appropriate circumstances. In such cases, tacit authorisation should be replaced by an obligation that competent authorities must as soon as possible provide reasons for the delay and an indication of when resolution can be expected.

Art. 14 Prohibited requirements

14(5) Amendments to ensure that this Article does not undermine schemes that are not primarily economic in nature.

14(6) Clarification that competent authorities can consult bodies that include competitors if they judge this necessary for the proper exercise of their authority, provided such consultation does not determine the granting of authorisation or any other decision.

14(7) Clarification that this prohibition refers solely to the place of establishment of the provider of the financial guarantee having to be in the host Member State, not to having guarantees or insurance per se.

Art. 15 Requirements to be evaluated

15(6) An amendment to bring the provisions here in line with notification requirements for goods and information society services as laid out in Directive 98/34/EC.

Art. 17 General derogations from the country of origin principle

Clarification that where a derogation under **Art. 17** applies it will also disapply **Arts. 20, 22 and 34-36**.

17(16) Clarification (in **Recital 42**) that a prohibition where the activity is entirely prohibited in certain circumstances but not in others, and in those other circumstances where it is permitted is not reserved to certain providers, is a general prohibition for the purposes of the Directive.

17(17) Amendments to widen the permitted derogations in order to protect vulnerable groups or sensitive services, but without widening the scope of the provision beyond what is necessary or relaxing conditions to an extent that would harm UK business interests.

17(20) – (23) Amendments and clarifications to ensure an acceptable outcome with regards to Private International Law.

Art. 18 Transitional derogations from the country of origin principle

Clarification that where a derogation under **Art. 18** applies it will also disapply **Arts. 20, 22 and 34-36**.

Art. 19 Case-by-case derogations from the country of origin principle

19(1)a Inclusion of animal health as a justifiable reason alongside public health.

19(1)c Deletion of 'notably aspects related to the protection of minors' from this clause, since while this is a serious and valid reason, to single it out from the many others could adversely affect their validity.

19(2) The disapplication of **19(2)a,b and c** in cases of urgency covered under **Art. 37(6)**.

Art. 21 Non-discrimination

Clarification that this article does not compromise local authority powers to provide local services only to local residents.

Clarification that the accompanying **Recitals 49 and 50** are not in conflict with competition law on differential pricing.

Art. 23 Assumption of health care costs

Deletion of this Article in its entirety, as a consequence of the exclusion of publicly funded healthcare from the scope of the Directive at **Art. 2**.

Art. 24 Specific provisions on the posting of workers

24(1) An amendment to reflect the fact that there are other ways of implementing Directive 96/71/EC (Posted Workers Directive) than carrying out 'checks, inspections and investigations'.

Clarification that **Art. 24(1)** does not apply where an authorisation or registration or equivalent requirement may be required under **Art. 17(17)**.

24(2) Amendments to ensure clear and reasonable documentation and information obligations.

Insertion of a reference to the Posted Workers Directive in order to provide legal certainty that this provision refers to the employment and working conditions applied to the posted worker.

Art. 25 Posting of third country nationals

25(2) Amendments to ensure compatibility with current UK immigration controls, by bringing this article into line with the Schengen agreement.

Art. 26 Information on providers and their services

Clarifications to ensure that information obligations are clear and fair.

Art. 27 Professional insurance and guarantees

Amendments to this article to ensure that its scope is narrower and that Member States retain a key role in determining the providers to whom it applies. Provisions need to be clear and workable (capable of being met by the insurance industry) and take proper account of wider risks than simply those to the recipient.

Art. 29 Commercial communications by the regulated professions

Clarification of terms.

Art. 30 Multidisciplinary activities

30(1) Inclusion of an 'overriding reason relating to the public interest' as a third reason allowing requirements to be imposed on providers in relation to certain specific activities.

Art. 32 Settlement of disputes

Clarification of terms to ensure that obligations are fair and reasonable.

32(4) Inclusion of an amendment in line with the qualifying phrase at **Art. 27(3)** to allow Member States to require supplementary guarantees in the event of only partial equivalence.

Art. 33 Information on the good repute of providers

Clarification of obligations and terms.

33(3) Amendments to ensure full compliance with data protection laws for all persons.

Art. 34 Effectiveness of supervision

Inclusion of a qualification to the effect that **Art. 34** is derogated from where **Arts. 17, 18, or 19** apply.

Art. 35 Mutual assistance

Inclusion of a qualification to the effect that **Art. 35** is derogated from where **Arts. 17, 18 or 19** apply.

35(3) Clarification of the obligations and requirements laid out in these provisions.

Art. 36 Mutual assistance in the event of the temporary movement of the provider

Inclusion of a qualification to the effect that **Art. 36** is derogated from where **Arts. 17, 18 or 19** apply.

Art. 37 Mutual assistance in the event of case-by-case derogations from the country of origin principle

37(1) Clarification of the scope of court proceedings covered by this provision.

37(6) An amendment to ensure that cases of urgency are not hampered by bureaucracy, by adding derogations from **Art. 37(2)** and **Art. 19(2)a, b and c** in the case that **Art. 37(6)** applies.

37(6) Clarification that, in such cases of urgency, the Member State of origin can be notified after measures have been taken.

Arts. 38-45

Technical text clarifications.

End

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Consumer & Competition Policy Directorate
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