



The Services in the internal market directive¹ - next steps
EPSU briefing note
(as discussed by NCC meeting 18 April 2007)

1. Introduction

On 15 November, 2006 the European Parliament voted in favour of the Services directive and agreement, ending almost three years of debate and political manoeuvring. The directive aims to facilitate the provision of cross-border services by removing obstacles to the free movement of services in the internal market.

Trade union pressure played a big part in achieving improvements to the original Commission's proposal. The "country of origin principle" was dropped and the directive covers fewer services than as proposed in the original text. Crucially healthcare, and (to a lesser extent) social services, is excluded. There is also a broader list of reasons allowing Member States to restrict the freedom of a service provider from another Member State to provide services on their territory. The text also now says that the directive does not affect labour law in the Member States.

The EPSU Secretariat and affiliates invested many resources throughout 2005 and 2006 in efforts to improve the draft directive. It was a regular feature on our agendas, and we provided a considerable EPSU presence in the different trade union manifestations and other events organised during the year. Unfortunately, the final result did not include a general exclusion of public services from the directive.

Member States have a maximum of three years to implement the provisions of the major directive, i.e., until December 2009. EPSU will continue to work on the directive and to support affiliates in ensuring as favourable a transposition into national law as possible. We also continue campaigning for a EU directive on public service principles, some of which are, in any case, relevant to commercial services (accountability, universality, equality, affordability, accessibility, etc.).

Please note that President Barroso when presenting on 21 February 2007 his vision for the single market of the 21st Century highlighted the need for, amongst others:

- *a well regulated Europe*: the dismantling of barriers went hand in hand with the establishment of new rules
- *a sustainable Europe*: recognising the social and environmental aspects of the single market are key conditions for gaining public confidence and they are both investments in Europe's future quality of life²

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006L0123:EN:NOT>

² See also ETUC comments on follow-up of Communication "guidance on the posting of workers in the framework of the provision of services" (Com 2006 159)

Indeed the recent Communication on the future of the Internal Market³ states “*While the initial focus of the single market exercise was on removing the main cross-border obstacles facing businesses, the single market of the 21st century should evolve to make markets work better and deliver even more tangible benefits for European citizens, entrepreneurs, workers and consumers alike in an enlarged EU.*”

2. What is the Services directive supposed to achieve?

It is worth recalling the directive is supposed to increase trade in services by removing “barriers” to trade and competition (most States 70% employment + 56% GDP). EC arguments in support of the directive were:

- Services 56% GDP, but only 20% trade (although the Commission has not said what it should be)
- Internal Market from 1992-2002 increased GDP by 1.8% / 2.5m jobs; Commission claimed that directive would lead to 500,000 new jobs and an increase in wages.
- EC 2002 study identified many “barriers” to trade (although it neither quantified or “judged” identified these), which need to be removed in order to boost growth and jobs.
- OECD study (EDWP no 432 2005) claimed EU 15 GDP could rise by 2.8% if reduction in domestic regulation. EC (and MEPs) also cited studies by Netherlands Bureau for Economic Policy Analysis and Copenhagen Economics showing gains to be made through deregulation (although Copenhagen Study showed no barriers in IT sector and relatively few in retail sector).

We should monitor the implementation of the directive also in relation to these claims. We should also look at the compliance with EU equality legislation at the workplace as well as two other directives banning discrimination on the grounds of gender and race/ethnic origin in the supply of and access to services (and goods).

There may be also a need to assess how on the directive impacts on other EU and national legislation, to ensure coherence in policy objectives (which is a intrinsic part of good governance).

3. Which part of the directive should we be most concerned with?

Below is a first summary of the objectives of the different Articles of the directive, with EPSU comments on potential problems and/or on issue that affiliates can press for during the transposition phase.

Purpose (Article 1)

There is no recognition in the directive of the fact that, “*high and consistent standards encourage competition based on innovation and productivity rather than by cost-cutting and poor quality provision*” (TUC paper). There is only a reference in Article 1 to “*maintaining a high quality of*

³ See Communication “Single Market for Citizens, Interim report to the 2007 Spring European Council “COM(2007) 60 final http://ec.europa.eu/internal_market/strategy/docs/com_2007_0060_en.pdf

services". We should stress however that this reference means that the directive should not lead to any social dumping.

Scope (Article 2)

2(a) excludes "*non-economic services of general interest*". This should be defined as widely as possible. Unfortunately, public services are not excluded as such from the directive and there is no reference to public service principles (solidarity, affordability, equal access, continuity..).

There is also ambiguity about the exclusion of services of general economic interest (SGEI). These are excluded completely from Article 16 (freedom to provide services) and partly from Article 15 (requirements).

The exclusion of social services is not clear. For example, recital 33 says that, "*to the extent that they are not excluded from the scope of application of the directive, household support services, such as help for the elderly*" are covered.

In all these cases we should argue for broad exclusions.

We should also point out the contradiction in the relationship between Article 1 (3) on freedom to define SGEI (Services of General Economic Interest) and Article 17 (1) that classifies water as SGEI.

2 (f) excludes "*healthcare services...*" This should be as wide as possible. To check, relationship with recital 10?

2 (i) excludes activities connected to "*exercise of judicial authority*". Anything here?

2 (j) excludes "*social services...*". See EPSU note arguing for broad exclusion. Also, one can argue that water is a basic social service (as Commissioner Dimas has said).

Relationship with other provisions of community law (Article 3)

Implementation of 3(1) needs to make clear that higher national standards, adopted when implementing minimum rules' directives, are allowed.

Definitions (Article 4)

4(1) definition of "*service*"?

4(7) definition of "*rules*" laid down in collective agreements needs to be broad.

4(8) definition of "*overriding reason of public interest*" should stress that it needs open interpretation.

Administrative simplification (Chapter II, articles 5-8)

On this, our general line to the Commission and Members of Parliament was not to confuse legitimate claims to administrative simplification with questioning the relevance of requirements which are necessary to properly monitor and enforce labour law and develop quality public services.

Simplification of procedures (Article 5)

5 (1) – how to judge when procedures and formalities to access or exercise service activity “*are not sufficiently simple*”?

5 (2) – what process to establish harmonised forms?

Article 5 (3) – impact of ban on certified translation?

Single Contact Points (Article 6)

Member States can have more than 1 contact point (see recital 48) but what does this mean in practice? If more than one, would they have to offer the same service? Resource implications? Single contact points in member states often face a common funding problem and are often financed by local authorities.

What are the employment and training considerations, in view of the restructuring process that setting up single contact points entails?

If Single Contact Points charge fees does this count as “*service*” within meaning of the directive ? (Recital 49)

Responsibility for coordinating contact points is with the Commission. Again, in practical terms what does this mean?

Right to information (article 7)

7 (1a) - should include information on employment rights etc

7 (1e) - should include information on social partners

7 (2) - general query over requirement for “plain and intelligible” language

7 (3) - general query about electronic means being “kept up to date”. Resource implications?

Electronic procedures (Article 8)

8 (2) - important that Member States can check integrity of service provider (necessary in many authorisation schemes).

Freedom of establishment for providers (chapter III, articles 9-15)

During the debate on the services we tried to gain a clearer picture on authorisation schemes and requirements for establishing a service. Member states will now have to present a report to the Commission on these by 28 December 2009

Authorisations Schemes (Article 9)

Note - these Articles apply to all SGEI! - ie. postal sector; electricity, gas, water and waste (a list is found under 17)

The three conditions set out in Article 9 (1) are cumulative. 9 (1c) will be difficult to meet?

Conditions for granting authorisations (Article 10)

10 (3) – how to judge whether requirements are compatible? Who has burden of proof (is this “country of origin” in a different form?)

Authorisation procedure (Article 13)

Article 13 (4) - time limits for authorisations; again how will this work in practice.

Prohibited requirements (Article 14)

Interpretation of 14(7) on ban on obligation to participate in financial guarantee scheme?

Requirements to be evaluated (Article 15)

15 (3) - what if requirements are justified even if discriminatory etc? (also for 15 (6)?)

15 (4) - how will screening requirement in relation to SGEI work in practice?

Free movement of services (chapter IV, articles 16-21)

Freedom to provide services (Articles 16 and 17)

16 (3) is less “open” in terms of type of reasons that can justify restrictions on temporary service providers (and some missing” grounds, e.g. consumer protection, animal welfare). How will it apply in practice?

17 (1) - excludes SGEI “*provided in another Member State*” for Article 16. What happens in case of an SGEI not being provided in another member state, e.g. elderly care?

Is list in Article 16 absolute?

Policy on quality of services (Article 26)

This Article says that “*Member States shall, in cooperation with the Commission, take accompanying measures to encourage providers to take action on a voluntary basis in order to ensure the quality of service provision....etc*” Unfortunately there is no reference to the role of the EU social dialogue committees (as proposed by EPSU) in this process. Nonetheless we should keep in mind that social dialogue could play a role in supporting EU standards. For example, the EU & EEA agreed a Declaration⁴ on 19 April 2007 to pursue structured co-operation on cross-border electronic health services across Europe. Among other things, the Declaration urges Member States to work on common standards on the field together with the eHealth industry and other stakeholders. This article is complemented by Article 37, which calls for Codes of Conduct.

⁴ http://www.bmg.bund.de/cln_040/nn_1030662/DE/Themenschwerpunkte/Internationales/EU-Ratspraesidentschaft/Konferenzen/Assoziiertes-Programm/ehealth-deklaration,templateId=raw,property=publicationFile.pdf/ehealth-deklaration.pdf

Administrative cooperation (mutual assistance), chapter VI (articles 28-36)

We have always said that the provisions on free movement of services require a much higher degree of administrative cooperation between Member States than exists now and introduce substantial changes in the way administrations operate. This is an aspect that could be a relevant topic for the sectoral social dialogue both in local and regional government and national and European administration.

On several occasions, together with the ETUC, we also said that improving administrative cooperation (which EPSU supports) requires administrative capacity which means investing in training, human resources – including labour inspectors-, translations, and of course EU standards.

The articles in this chapter try to clarify which member state should be responsible for conducting checks and inspections on services providers in case of unlawful practices.

In case of temporary provision of services, the member state where the service is provided is responsible for the supervision of the activity of the provider. In case of non-temporary provision, the responsibility goes to the member state of establishment. It is difficult to preempt what this will mean in practice.

Article 28 provides for the setting up of one or more liaison points at national level. Will there be automatic linkages with labour inspectorates?

Mutual evaluation (Articles 39, 40.)

It is important that trade unions are (at least) consulted by Member States on the reports on authorisations etc that will be submitted by Member States to the Commission. There is no mention of this in the directive.

Similarly, trade unions should be consulted on the observations made by the Commission as well as on the work of the Committee, set up to assist the Commission in this process.

3. What can affiliates do?

We ask affiliates to influence the transposition process of the directive at national level.

It is clear that there are at least three major areas for EPSU affiliates to follow:

- Screening, which requires Member States to review all laws and practices and removing unjustified barriers to trade
- Constructing the Point of Single Contact(s), through which service providers can complete all necessary formalities in order to access markets
- Preparing for communication and cooperation between Member States, known as Mutual assistance.

The lack of willingness to address real problems⁵ in each of these areas before the directive was adopted means that ambiguous text remains. This however, gives us also an opportunity to influence the interpretation of the directive in these areas.

As a first step, we can inform each other of the situation in different countries and see if we can compile a checklist in relation to the key concerns. There are also close links between the Services directive and the GATS (General Agreement on Trade in Services) whose rationale and terminology are quite similar.

We also invite you to let us know the following:

1. In your government, which ministry (ies) is (are) charged with the transposition of the directive into national law?
2. Is there a timetable for the transposition process? (We heard for instance that the Swedish authorities intend to implement the directive as rapidly as possible.)
3. Are you informed and consulted on the implementation of the directive or on parts of it?

In the discussion in the NCC meeting on 18 April, there were different views expressed about the need to monitor the transposition of the directive and its impact. Also, the process is still at an early stage and (as we noted previously) one of the difficulties in assessing the directive is that it creates a dynamic whose consequences are difficult to predict. For example, what type of requirements and authorisations will be found by the new screening processes to be not in conformity with the directive? Clearly, at the very least trade unions should have the opportunity to be informed and consulted on these issues.

At the meeting on 18 April we heard that there are differences in the extent to which trade unions / social partners are informed about the transposition process, and indeed differences between Member States regarding the transposition process itself.

We think that there would certainly be an "added-value" in sharing experiences on the transposition⁶ within EPSU.

This will also help EPSU monitor the implementation of the directive and prepare for its eventual review. We remind you that Member States must submit their "mutual evaluation" reports covering authorisations schemes and requirements by 2009 (article 29) and that the Commission will review the directive in 2011, focusing in particular on the scope of the directive and Article 16 (article 41).

As a first step, we ask you to please fill in and return the attached table.

The EPSU NEA and LRG Committees will take stock of the responses in their autumn meetings. Thank you for your cooperation.

⁵ Charlie McCreevy before EP final vote on 16 November 2006 said, "*there are no minor or technical amendments at this stage*".