

9.1 EU Services Directive

January 2006

GANGMASTERS LICENSING AUTHORITY BOARD MEETING 11 JANUARY 2006

BACKGROUND NOTE ON THE EU SERVICES DIRECTIVE

1. The Services Directive is a proposal from the Commission that aims to complete the Internal Market, which currently exists only for goods, by opening up trade in Services. Intra-EU trade in services, is made difficult by regulatory and other barriers that impinge on business's ability to market, sell and provide services in other Member States. The Services Directive is intended to tackle these barriers to trade in services within Europe.

2. The proposed Directive covers a wide range of different services, including:

- **Business Services** such as: management consultancy; advertising; certification and testing; facilities management; including office maintenance and security; recruitment services; and the services of commercial agents.
- **Services provided both to businesses and to consumers** e.g. legal advice, fiscal advice, real estate services such as estate agents and letting agents; construction architects; distributive trades; the organisation of trade fairs; car rental; and security services.
- **Consumer services** e.g.. tourism, including tour operators and tour guides, leisure services, sports centres; amusement parks; plumbers; and electricians.

The **Directive does not include** transport services (with the exception of the transport of cash and the transport of mortal remains); electronic communications (covered by the 2002 EC regulatory package); tax (with the exception of discriminatory tax provisions) and financial services.

3. The proposed directive includes derogations from the country of origin principle: for gas and electricity services; water distribution and waste water services, postal services; recognition of professional qualifications; employment law; and the Posting of Workers Directive (along with a number of other derogations)

4. The Commission presented its initial proposals in January 2004. Member States have completed a detailed analysis of the text in Council Working Group. The first reading in the European Parliament is currently scheduled for February 2006 but may slip further.

Key proposals

5. The proposed Directive contains four main strands:

- **Simplification of Administrative procedures**, obliging Member States to examine their systems of regulation and authorisation to ensure that they are compatible with the principles of the Internal Market.
- A **Country of Origin Principle** under which temporary or remote cross border service provision is carried out on the basis of the law of the

provider's country of origin (country in which the services provider is established), with derogations for key host state regulations.

- **Mutual assistance** between regulatory bodies in different Member States to make the country of origin principle workable; the Directive creates obligations for regulators and competent authorities to co-operate cross-border to monitor their service providers overseas.
- **Limited harmonisation** of rules, including rights for recipients of services (consumers and other businesses), guarantees, information requirements and on removal of prohibitions on multidisciplinary activities, and on commercial communications by the regulated professions.

6. The proposed administrative simplification programme would:

- establish single points of contact where services providers can complete all formalities;
- require Member States to ensure that a service provider seeking to set up a business gets easy access to information on all relevant legal and administrative requirements;
- oblige Member States to screen and abolish discriminatory requirements on service providers (e.g. those based on nationality), and assess non-discriminatory requirements and either abolish or justify these (e.g. quantitative restrictions); and
- ensure that remaining authorisations procedures are based on non-economic general interest reasons, are proportionate and non-discriminatory for all services providers.

The current target date for completing this process is 2008, but as negotiations are ongoing this date could change.

Country-of-Origin

7. The country-of-origin principle is intended to deliver the free movement of services by facilitating the provision of services across borders, including where providers themselves travel temporarily across borders. This principle will provide legal certainty to SMEs who represent more than 90% of services providers but who are often deterred from trading in other Member States because they have to search for and comply with different rules and regulations, in addition to those of their own Member State, each time they provide a service. This provision will also help those firms wanting to 'test the market' before they establish in another Member State. SMEs in particular need to be confident of their market before committing to the cost of establishment, which is too high to be undertaken on a speculative basis.

8. The Country of Origin Principle will apply in the case of remote or temporary cross-border service provision by a provider established in another Member state. For example, it would apply where staff from an advertising firm established in one Member State travel to another Member States to provide a service and then return home. The country of origin principle will not apply to all areas of regulation: there are some important derogations to the rule (see below). If the advertising firm

establishes in the Member States in which it is providing a service then the country of origin principle will not apply and it will have to comply with all the relevant rules and regulations in each Member State it is established in.

9. Proposed derogations from the country of origin principle include:

- **Specific requirements**, which are indispensable in order to maintain public policy, public safety, and public health. Such requirements, which would have to be respected by service providers from other Member States, would for example relate to the safety of buildings and construction sites.
- Services which are **prohibited** in Member States on grounds relating to public policy, public security and public health. This would, for example, prevent the provision in a Member State of medical treatments prohibited there by providers established in another Member State where such services are allowed.
- **The Posting of Workers Directive:** So matters covered by existing legislation on posting of workers (e.g. minimum wages, working time, minimum rest periods, minimum paid leave, health and safety standards, equality of treatment between men and women etc) will not be overruled by the Services Directive. This means that the law of the country in which the worker is posted (country of destination) will continue to apply.
- Provisions of the Directive on the **Recognition of Professional Qualifications**, which deals with the fitness to practice as a professional (This Directive is currently being considered by the European Parliament. This means that where a professional practitioner (doctor, architect, etc) temporarily provides a service, Member States may require prior declarations and pro forma registration with professional bodies on its territory in accordance with MRPQ.
- **Postal Services, electricity, gas and waste water services.**
- **Consumer Contracts.** This means that Member States may require national rules to be respected by operators from another Member State.

10. To support the country of origin principle Member States will be required to co-operate more closely in supervising their temporary service providers abroad and enforcing national rules, thereby providing more effective protection of consumers and avoiding duplication of controls on service providers.

11. To help ensure that the country of origin principle does not have an adverse effect on consumers, the Directive aims to harmonise areas relating to the information which service providers must make available to recipients of services, including consumers, e.g. contractual clauses, and information that must be supplied to recipients on request, e.g. details of after-sales guarantees, professional indemnity insurance.

Issues for Gangmaster Licensing

12. The gangmasters licensing arrangements would be defined as an authorisation scheme under Article 9 of the proposed directive. Authorisation schemes must:

- not discriminate against the service provider in question
- be objectively justified by an overriding reason relating to public interest

In addition an authorisation scheme is only permitted where the objective cannot be attained by means of a less restrictive measure. Authorisation schemes must meet criteria set out in the proposed directive and authorisations cannot be time limited unless a time limit can be objectively justified in the public interest, or the number of available authorisations is limited, or the authorisation is being automatically renewed.

13. As drafted the directive would apply the Country of Origin Principle to the provision of services by labour providers. The Services Directive could therefore impact on the provisions in the Gangmasters (Licensing) Act 2004 which apply licensing to gangmasters operating from outside the UK. If the Directive remains in its current form the Act may need to be amended to remove this provision. **The UK is aware of this and is seeking to negotiate amendments to the proposed Directive that widen the derogations from the Country of Origin Principle to cover the UK Gangmaster licensing .**