

Services Directive I

General

European Union law gives businesses established in one European Union country the freedom to provide services in or provide services to recipients in another European Union country. Numerous directives and laws which have been introduced by the European Union over the last 40 years in order to harmonise laws and standards in relation to many different types of goods and services. The objective is to facilitate the freedom to trade and provide services.

The Services Directive 2006 is a general law which is designed to streamline, fast track and give fuller effect to the right to provide freedom of services. Its purpose is to help service providers to benefit from the freedom to provide services across borders from one European Union country to the other or to establish themselves in other Member States.

The Service Directive applies to most service sectors. It covers all self-employed activity including for example professional services, business related services, retail and wholesale services, travel, transport leisure information services, training and educational services, renting and leasing services.

A very limited range of services are excluded from the Services Directive. These include non-economic services of general interest such as education. A number of other exclusions are implied because there is other specific legislations which already cover them. For example, financial services are excluded because they are dealt with by specific existing European legislation.

Electronic communications and services are dealt with by existing e-commerce legislation. Transport services, service of temporary work agencies and healthcare services, audio broadcasting services, gambling activity, social services and governmental activities are excluded. Private security services, services provided by notaries and bailiffs and taxation services are also excluded.

General Requirements of the Directives

The Services Directive requires Member States in the European Union to:

- simplify administrative procedures;
- set out a single point of contact with service providers;
- make information on national requirements and procedures used available to service providers and recipients and
- provide for the possibility to complete procedures at a distance and by electronic means.

The Directive applies to rules and procedures which the service provider needs to comply with, either to establish i.e. set up in the Member State or to provide services across borders into a Member State. Member States are required to examine the procedures and formalities applicable to the provision of services and consider whether these are sufficiently simple. Where these are not sufficiently simple, they must be simplified.

Where European Union states require qualification certificates before a service can be provided, they must accept an equivalent certificate from another Member State. It is not generally permissible to require translations or certified copies. The European Commission may introduce harmonised forms to replace national certificates. This should eliminate delays and procedures which might discourage service providers.

Single Points of Contact

EU Member States are obliged to ensure service providers can complete all procedures, documents and applications through a single point of contact (PSC). The so called PSC must provide information on how to do business and how to complete the necessary procedures within the host state. PSCs are likely to take the

form of an electronic portal to which service providers can have access to almost all administrative formalities and procedures.

The information to be provided includes:-

- requirements service providers have to comply with if they wish to provide a particular service in a Member State;
- contact details in the relevant authorities. The means of and connections for access and public rights.
- database on providers of services;
- registers and databases on regulated professions;
- the means of redress generally available in the event of a dispute;
- contact details which can provide practical assistance to service providers.

PSCs must reply as quickly as possible to any request for information. Member States are to require regulatory bodies or recipients to give assistance at the request of service providers on the way the requirements for service providers are applied and interpreted.

States' Obligations

In the United Kingdom the Department for Business Enterprise and Regulatory Reform (BERR) issued a consultation document in implementing the Services Directive in the United Kingdom in 2007. It is proposed to build the UK PSC into the existing "Business link" .co.uk.

Member States have until 27th December 2009 to implement the directive. It will be necessary to review and where necessary, amend legislation which does not comply with the directive. They must establish a single PSC and implement the mutual assistance provisions.

In the United Kingdom the Government has issued its consultation and implementation of the Directive. It intends to publish its consultation shortly.

By December 2009, Member States must report the European Commission on the requirements they intend to keep, explaining how these requirements comply with the criteria of non-discrimination, public interest and proportionality. They must also report on the requirements that have been abolished or made less stringent. The BERR in the UK is conducting a review of legislation at present on the above criteria.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances. This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.