

European Union Rights

EU Treaties

European Union law gives Irish residents and Irish businesses very valuable rights in relation to trading with the United Kingdom and the other countries of the European Union (EU) and the European Economic Area (EEA) (which is the EU plus Iceland, Norway, Switzerland).

The original European Union Treaties granted rights to trade with and to provide services and to establish businesses in other EU states. Over time, these general rights have been given real substance and teeth by detailed rules, which give individuals and businesses the ability to avail of these rights. EU law now gives powerful rights to businesses which give real effect to the right to set up in, export or provide services to or in other EU states

Right to Export and Provide Services

EU law grants the right and freedom to Irish businesses to export goods and provide services to other European states. The EU is a single unit for the purposes of customs laws. There is a single common European customs code and tariff that only applies when goods are exported or imported into the EU. Goods within the European Union are in free circulation and no taxes or similar measure can be imposed on their movement between member states.

The key tax on the supply of goods and services, VAT, is an EU based tax. EU rules prescribe common standards and principles for VAT law so that they operate uniformly across the EU. See our separate guide on taxation, and in particular VAT. VAT is organised in such a way as to facilitate the easy exportation of goods and services both within the EU and outside of it.

The European Union Treaty lays down the freedom for a person or company established in one member state to provide services to a recipient in another member state. This right has been given greater effect over time by the provision of common standards in a range of areas. The completion of the process has been accelerated by the EU Services Directive.

Services cover the whole range of service providers from professional services to trade, tourism, education, health, financial services etc.. The right to provide services includes the right to enter the other European Union state, including bringing a workforce for the purpose of providing the service. Member states must not discriminate on the grounds of nationality against those wishing to provide or receive services.

Right to establish in another EU state

A key right under European Union (EU) law is the right of a business established in one EU state to establish itself in another state. A business from outside the EU established in Ireland is entitled, on the basis of being established in Ireland, to also establish itself in the United Kingdom or any other EU member state. The right includes the right for an individual to take up a business as a self employed person in an other EU state.

The rights of establishment applies to both individuals and companies. There is a right to set up and manage a company or firm in another member state. Restrictions on setting up agencies, branches and subsidiaries are prohibited.

EU rules contemplate both primary and secondary establishments. A primary establishment can be set up by incorporating a company in the other member state or by setting up directly either as an individual. Another possibility is that the company sets up a secondary establishment such as a branch or agency or subsidiary in the host member state.

The host member state must accord equal treatment to the company or person exercising this so called 'right of establishment'. This must cover the full social and tax advantages which the host state accords to businesses or self-employed person. Once a company has established itself either directly or as a branch, it must enjoy the same benefits and advantages available to national companies and bodies. Obstacles, restrictions or hindrances on the enjoyment of freedom of the establishment must be removed.

Harmonisation of Laws

In order to give full effect to the freedoms to sell and provide goods and services throughout the European Union, numerous laws have been passed at European Community level, harmonising standards for products and providing common recognition schemes for qualifications.

There are specific EU regulations in many areas of service provision. For example, there are directives facilitating the practice of certain professions on a permanent basis in another member state, other than where the qualification was obtained.

Financial services are an area in which common rules on services have provided enormous benefit for Ireland. In the areas of finance, banking and insurance, there is very comprehensive harmonisation legislation across the EU which makes the laws almost entirely uniform. Mutual funds based in Ireland have been able to freely market their services throughout the EU.

The general principle in the financial services area is that banks, insurance companies, intermediaries etc. can provide services into other EU member states on the basis of being regulated from a standards point of view in their home state and by complying with doing business type rules or consumer protection rules of the host state.

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.

© Paul McMahon Lavelle Coleman 2009