

## European and External Affairs Committee

**Date:** 9 December 2004

**Time:** 09.00am

**Venue:** Committee Rooms 3 and 4, National Assembly for Wales, Cardiff Bay

**Title:** The EU Services Directive

### Purpose

1. The Committee has requested a paper introducing the EU draft directive for services in the internal market.

### Summary / Recommendations

2. The Committee is invited to comment on the draft legislation and the document below.

### Background

3. The draft directive forms part of the process of economic reform launched by the Lisbon European Council. Its objective is to establish a genuine internal market for services in order to exploit the considerable potential for economic growth and job creation afforded by the services sector (which accounts for around 70% of EU GDP). The proposal covers a wide variety of economic service activities with some exceptions, such as financial services and transport. However, the Commission argues that the directive will neither force member states to privatise state monopolies nor to liberalise activities in non-liberalised sectors.
4. The proposal aims to eliminate obstacles which have hampered the proper functioning of the internal market for services. It provides a legal framework that eliminates the obstacles to (a) the freedom of establishment for service providers and (b) the free movement of services between the Member States.
5. With regard to obstacles to (a) the freedom of establishment, the proposal provides for:
  - administrative simplification, in particular the setting up of single points of contact where service providers can complete the administrative procedures relevant to their activities. This service should be available electronically;
  - uniform principles which national authorisation schemes applicable to service activities must respect;
  - the prohibition of certain particularly restrictive legal requirements that hinder the provision of

- services - in particular, by non-domestic providers - in certain member states;
  - an obligation to assess the compatibility of certain other legal requirements.
6. With regard to obstacles to (b) the free movement of services, the proposal provides for:
- the application of the country of origin principle, according to which a service provider is subject only to the law of the country in which he is established. This principle is accompanied by derogations which are either general, or temporary, or which may be applied on a case-by-case basis;
  - the right of recipients to use services from other member states.
  - a mechanism to provide assistance to recipients who use a service provided by an operator established in another Member State;
  - uniform principles with regard to the posting of workers in the context of the provision of services.
7. In addition, the draft directive proposes a number of measures aimed at establishing mutual trust between member states: a prerequisite for removing obstacles to the creation of an internal market for services. It provides for:
- provision of mutual assistance between national authorities with a view to the effective supervision of service activities on the basis of a clear division of responsibilities between the member states;
  - measures for promoting the quality of services, such as voluntary certification of activities, quality charters, codes of conduct or co-operation between the chambers of commerce and crafts;
  - harmonisation of legislation with regard to service providers' obligations concerning provision of information, professional insurance, settlement of disputes and exchange of information on the quality of the services.

## **Cross Cutting Themes**

8. The Commission has proposed that certain healthcare provisions should fall within the scope of the services directive. Accordingly, article 23 of the draft directive sets out the Commission's proposals for harmonised access to non-hospital healthcare services in the EU. The distinction between hospital and non-hospital healthcare is an important one. Hospital healthcare is already subject to EU legislation in the form of Council regulation 1408/71. This latter regulation makes social-security funded healthcare treatment in another member state subject to prior authorisation. This means, where a comparable service to that sought abroad could be provided by the NHS within a reasonable period of time, authorisation to obtain treatment abroad can be denied. The question of what constitutes 'a reasonable period of time' is left to member states, albeit under the watchful eye of the European Court.
9. The Commission believes that recent judgements of the Court mean that member states must now remove all prior authorisation schemes for non-hospital healthcare services. Article 23 of the

draft services directive sets the mechanism whereby patients are entitled to seek reimbursable non-hospital healthcare services anywhere in the EU, provided the cost of the treatment would have been assumed by the social security system of their own territory. Member states are forbidden to operate prior authorisation schemes for such treatment.

10. The Commission argues that harmonising access to non-hospital services would neither impact negatively on the financial balance of domestic social security systems nor undermine the proper planning of hospital infrastructures. The provisions will not encourage 'patient tourism', says the Commission, as patients will only be able to recoup the costs of having had the treatment under within their own healthcare system, or the actual cost of the having had the service abroad, whichever is the lower. Nor will patients be able to claim back incidental expenditure such as travel and accommodation.
11. Article 23 is extremely contentious. The definition of 'hospital care' is vague. Furthermore, services which require hospitalisation, and conversely services which do not (these latter thus falling under the scope of the services directive) vary from member state to member state. Many member states are viscerally opposed to the inclusion of article 23 in the services directive (including the UK). These opponents argue that the draft provisions would undermine the proper planning of healthcare services, lead to a haemorrhage of public funds and create a two-tier health system where those that can afford to, travel for treatment. They also argue that the Commission, quite inappropriately, is using internal market legislation to pursue healthcare harmonisation.

## **Handling and Policy Objectives**

12. The directive is subject to the EU co-decision procedure, with the EU Competitiveness Council and the European Parliament acting as co-legislators. Agreement is not expected before the end of 2005. The Assembly Government is regularly consulted by the DTI (the lead department) at both official and political levels and its initial views have been factored into the draft UK negotiating position.
13. While the UK strongly supports the draft directive's competitiveness objectives - in particular the drive for simplification and better regulation, and, in principle, the application of the country of origin principle to the provision of services - it is also aware of the fact that the current draft of the directive poses significant challenges. The UK will want to ensure that the directive does not cover taxation, publicly-funded health services and occupational pensions. The UK will also want to ensure that application of the country of origin principle undermines neither UK standards of protection for workers, consumers and the environment, nor UK standards of health and safety. Furthermore, the UK is determined to ensure that the directive does not affect sensitive policy areas where regulation is principally not for economic motives. The Assembly Government shares these views.

Rt Hon Rhodri Morgan AM  
First Minister