

Overview

- I: Freedom of establishment
 - EC Treaty provisions
 - ECJ case-law
- II: Freedom to provide services
 - EC Treaty provisions
 - ECJ case law
- III: Proposal for a Services Directive
 - Content
 - Process

I: Freedom of establishment

European Commission 
Internal Market & Services DG

EC Treaty provisions

- "restrictions on the freedom of establishment.... shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries....."
-right of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings." (a.43 TEC)

ECJ case-law

- Cross-border character of the EC Treaty
- Scope: granted both to natural persons who are nationals of a MS and to legal persons based in the EU.
- Permanent activity: criteria adapted to each case.
- Exceptions: exercise of official authority, special regimes for foreign nationals on grounds of public policy, public security or public health.

II: Freedom to provide services

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EC Treaty provisions

- “...restrictions on freedom to provide servicesshall be prohibited in respect of nationals of MSs who are established in a MS other than that of the person for whom the services are intended.” **(a.49 TEC)**
- "Services shall be considered to be ‘services’ within the meaning of this Treaty where they are normally provided for remuneration; insofar as they are not governed by the provisions relating to the freedom of movement of goods, capital and persons.
- ‘Services’ shall in particular include:
 - (a) activities of an industrial character;
 - (b) activities of a commercial character;
 - (c) activities of craftsmen;
 - (d) activities of the professions.” **(a.50 TEC)**

ECJ case-law

- All national legislation applicable to nationals of a MS and usually applied to the permanent activities of persons established therein, cannot be applied in their entirety to the temporary activities of persons established in other MSs.
- **Prohibited measures**: - elimination of all discrimination on the grounds of nationality against providers of services established in another MS; and
- abolition of any restriction, even if it applies without distinction to national providers of services and to those of other MSs, which is liable to prohibit, impede or otherwise render less advantageous the activities of a provider of services established in another MS where he lawfully provides similar services.

Exceptions

- Must be interpreted restrictively
 - applied in a non-discriminatory manner
 - justified by overriding reasons of general interest
 - suitable for securing the objective
 - proportionate

III: Proposal for a Services Directive

European Commission 
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Services Strategy

- Services report (following COM Communication of Dec 2000) listed the many Internal Market barriers that remain in the field of services.
- Need to make the Internal Market for services work

Services Directive - Establishment

- Cut red tape
- Disciplines for authorisation schemes
- Administrative simplification: single points of contact, electronic procedures
- Prohibition of major restrictions
- Screening and mutual evaluation between MSs of other requirements

Services Directive - Cross-border provision of services

- Application of the country of origin principle
- Some general and case-by-case derogations
- Rights of recipients in using services - no discrimination
- Member States must provide recipients with information
- Streamlined arrangements for posting of workers

Services Directive – Limited harmonisation

- Information obligations on service providers (e.g. name, address, qualifications, insurance, authorisation....)
- Reinforced mutual assistance between MSs
- Measures promoting service quality (liability insurance, redress, European codes of conduct)

Clarification (1)

Directive would **not**:

- Open up closed sectors to competition or remove monopolies
- Change status of Services of General Interest
- Reduce protection of workers
- Reduce protection of consumers

Clarification (2)

Directive would:

- Apply case law of ECJ
- Increase competitiveness of services
- Introduce new methods of making the Internal Market work
 - Improve enforcement (incl. of workers' conditions)
 - Improve consumer confidence

Process

- Priority for Luxembourg and UK Presidency
- Discussions in the Competitiveness Council
- European Parliament opinion in Autumn 2005