National Assembly for Wales

European and External Affairs Committee

Proposal for a Directive of the European Parliament and of the Council on Services in the Internal Market

April 2005

Membership of Committee

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Proposal for a Directive of the European Parliament and of the Council on Services in the Internal Market

Introduction

1. The proposed Directive on Services in the Internal Market was published by the European Commission on 5 March 2004. Its objective is to eliminate obstacles to the freedom of establishment for service providers and the free movement of services between EU Member States. It seeks to do this by giving both providers and recipients of services the legal certainty they need in order to exercise these fundamental freedoms enshrined in the Treaty.

2. The attention of the Committee was drawn to the Directive at the end of 2004 when concerns were expressed to it about the impact it would have on health service provision and providers. In the time it had available, the Committee decided to undertake a limited examination of the Directive. It invited evidence from the British Medical Association (BMA) Wales, Community Pharmacy Wales (CPW), the Confederation of British Industry (CBI) Wales and the Wales TUC. The Committee subsequently received a paper from the Alliance of UK Health and Social Care Regulators on Europe (AURE) which had recently raised concerns about the Directive with the European Commission and MEPs.

3. At its meeting on 24 February 2005 the Committee receive oral evidence from BMA Wales, Community Pharmacy and Wales and CBI Wales. Following this the Committee invited the DTI to discuss the UK Government position with it.

Background

4. The origins of the Directive are in the process of economic reform launched by the Lisbon European Council in March 2000. This set an objective of making the EU the most competitive and dynamic knowledge-based economy in the world by 2010. The Council also concluded that it had not been possible to exploit the considerable potential for economic growth and job creation in the services sector because of the many obstacles hampering its development.

5. The Directive states that services account for some 70% of EU GDP and employment. However, since many services must by necessity be provided on a local basis the scope for them to feature in trade is less. It is estimated that they account for some 20% of EU trade. This clearly constitutes a substantial part of the EU economy and it is in keeping with the EU Treaty, that barriers to these should be eliminated wherever possible.

'Country of Origin' principle

6. A particular concern put to the Committee relates to the 'country of origin' principle whereby a service provider from one EU country may not be prevented from providing a service in another country providing it adheres to the laws of their own country (the 'country of origin') rather than those of the country where the service is to be provided.

7. The fear was expressed that in relation to certain services, and particularly those in the health sector, one consequence might be a reduction in the quality of service provided to patients as a result of:

- a lowering of professional standards;
- a lowering of health and safety levels or other operating standards; and in particular; and
- within hospitals and rest homes prevent the UK maintaining its minimum standards for personnel numbers.

Evidence put to the Committee

8. The views put to the Committee generally supported the principle of opening up the service sector market to competition but there was a deeply felt concern that this would work only if it were accompanied by appropriate safeguards to ensure standards were maintained in the health sector.

9. The BMA, TUC and AURE argued that health services should be excluded from the Directive's scope because of the 'personal' nature of these services and the importance of health care being provided on an integrated basis. As presented, they considered the Directive would not work because of the close links in the UK between public and privates sector provision of health services.

10. Community Pharmacy Wales said that the 'Country of Origin' principle would remove Control of Entry regulations which relate to pharmacy availability in Welsh communities and on which the pharmacy profession and the Welsh Assembly Government had recently expressed strong views. They considered patients should not have to research which national legislation was applicable to their provider and what protection was granted by law. They considered the supervision of a service by the Member State of origin would require undue expense and resources.

11. Community Pharmacy Wales also said the Directive was contrary to the direction of policy on community pharmacy for the communities of Wales that had been developed in recent years by the Welsh Assembly Government in partnership with the profession. The new contract for community pharmacy in Wales was currently being implemented through a series of complex draft Amendment Regulations, specifically for Wales, and was going through the public process of scrutiny and debate in the National Assembly. The Services Directive would mean

that the new contract in Wales may not be applicable for all community pharmacists working in Wales.

12. Representatives from the CBI and the EC Office in Cardiff argued that many of the fears about a lowering of standards were unfounded because at present all Member States worked to agreed minimum standards which were accepted and applied across the EU. In addition, when EU countries had in the past encountered such disparities in standards the result was always a levelling upwards rather than down.

13. The UK government and Welsh Assembly Government also wish to see publicly-funded health care services excluded, ie:

- Services provided by a publicly-funded healthcare system;
- The functions by which publicly-funded healthcare systems arrange to commission healthcare services;
- Healthcare services provided by independent service providers under contract or arrangement with publicly-funded healthcare systems.

14. These exclusions relate only to direct service provision, and would not mean that providers of non-care services (such as accountancy services) to health and social care service providers were excluded from the Directive.

15. The UK government is also seeking to ensure that the Directive does not cover taxation and occupational pensions.

Conclusions

16. The Committee welcomes the Directive on Services in the Internal Market which it believes will help to improve the provision of services within the EU and, by removing many of the existing barriers, open up markets within the sector. This will lead to substantial economic benefits throughout the EU.

17. Nonetheless it shares the concerns expressed about the difficulties that the Directive in its current form could present to services in the health sector. It notes particularly the development of close working relationships between the public and private sectors in relation to pharmacy services and shares the concern that this important and innovative type of development might be inhibited, to the disadvantage of the public, if the Directive does not include appropriate safeguards. Similar concerns relate to the provisions of social services which would also be affected by the Directive as currently drafted.

18. The Committee notes and shares concerns that the timetable for the Directive is too ambitious and sees considerable merit in the suggestion that the Country of Origin principle should be applied on a sectoral basis according to a timescale that allows for proper discussion and agreement on harmonisation measures.

19. The Committee noted that many of the concerns relating to the Country of Origin principle in respect of the skills of in-coming providers are resolved in the context of the existing EC instruments which deal with the mutual recognition of

qualifications in different countries. The Committee notes that the Commission's proposal includes a derogation from the country of origin principle in relation to the proposed consolidating Directive on the Recognition of Professional Qualifications.

20. The Committee also shares the concerns raised by various organisations, mainly in the area of health care provision, about the practicality of the Commission's proposal that the Member State of the country of origin should supervise the provision of the service in other Member States. This seems particularly challenging in the area of health care services where there is a danger it might risk the safety of patients.

21. The Committee noted that the provisions of the Directive would not override local employment regulations such as minimum wage levels and other standards.

22. Subject to these points, the Committee supports the views on the Directive expressed by the Welsh Assembly Government and the Department of Trade and Industry.

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