

## **All parties should make the best of the services compromise**

By Philippe de Buck

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From Mr Philippe de Buck.

Sir, It is recognised by everyone, as well as Arlene McCarthy in her letter September 21), that the proposed services directive as it now stands is the result of a political compromise.

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It has diminished the potency of the Commission's initial proposal to open the market for services in the European Union.

Unice and its members have provided multiple examples of concrete barriers to the internal market that are also provided in the Commission's reports preceding this proposal. The case for a strong directive was fully made.

Our main concern is about the way the "freedom to provide services" principle and its derogations will be interpreted and implemented.

It will necessitate abundant case law in order to get a clear picture and legal certainty for companies. Therefore we have doubts that companies and consumers will very soon enjoy the benefits of a true single market for services.

In spite of these difficulties, Unice considers that there are benefits to be expected from this new legislation mainly for establishment, regulatory simplification and administrative co-operation. That is why Uniceurges all interested parties to make the best of it.

For Unice and its members, as Ernest-Antoine Seillière, president, clearly mentioned in the FT debate on September 12, the internal market is our first priority. We have explained this at length in our response to the Commission's consultation and will repeat it again at our next Unice Day on October 17. Ms McCarthy is more than welcome to attend.

Philippe de Buck,

Secretary General,

Unice,

Brussels, Belgium

(On behalf of Philippe de Buck, UNICE Secretary General) sent on 27 September 2006

Dear Mrs McCarthy,

We have seen your letter published in the Financial Times on 21 September making reference to UNICE President's recent comments on the latest text on the services directive. As you may have seen, we sent a response letter to the FT that was published on Monday 25 September trying to clarify our stance relating to this proposal.

We acknowledge that you do not share our degree of criticism about the practical effects and the time needed for the directive to produce benefits for companies and consumers.

What struck us in your letter were your comments about UNICE's work in the discussion about the renewal and the improvement of the internal market. The internal market is one of the most important assets and projects the EU has generated for companies and consumers and its well-functioning and reinforcement is therefore the number one priority for UNICE and its members.

We continue to work thoroughly on internal market issues and in particular in the ongoing debate on its review. In doing so, UNICE also often provides practical data on problems and barriers that companies face in the internal market.

In this regard, we would like to forward to you for information the following documents:

1. UNICE's [response to the Commission's consultation on the review of the internal market](#).
2. UNICE's report "[It's the Internal Market, stupid!](#)" A company survey on trade barriers in the European Union
3. List of examples of barriers in the field of services that we used during the debate on the services directive.

We hope that the above documents will provide you with enough information about European business views and difficulties in the internal market and on our proposals for the way forward.

We also invite you to attend the UNICE Day on 17 October where participants will have the opportunity to hear first-hand information about how companies care about Europe and in particular the internal market. All information about this event is available at: <http://212.3.246.118/content/default.asp?PagelId=401>

UNICE will continue to be an active player in this debate and looks forward to new developments in the Commission's thinking about this.

I hope we can have the opportunity to discuss these issues further in the near future.

Yours sincerely,

Philippe de Buck  
Secretary General

31 January 2006

## **Examples of obstacles (excluding cases of posting of workers)**

### **1. Advertising, direct marketing and mail order**

- **A national law (FR) provides that premiums offered on a given product or service cannot exceed 7%** of the value of the item. This prevents foreign operators from advertising in this country by direct mailing making use of the same technique of promotions used in other countries.
- In another Member State (BE), **law prohibits “buy one-get one free” promotions**. Leaflets advertising these offers, which are perfectly legal in other countries, are illegal in this State.
- In a country (DE), national courts have held that advertising life-long guarantees for certain products is unfair competition. A foreign (UK) mail order company has thus been prevented by operating in this State on the basis of its promotional offers.

### **2. Construction sector**

- For example, a national law (BE) requires that **cranes used in construction site must be inspected every three months by the local “contrôle technique”**. Companies established in other Member States carrying out a temporary cross-border provision of services, and whose machinery has already been inspected in the country of origin, cannot operate without having those inspected again in the country where the service is provided.
- According to national rules in another Member State (PT), **building permits cannot be granted to companies which are not registered** in this country. This prevents non registered cross-border operators from providing construction services in this State. Thus, foreign companies wishing to obtain a building permit are forced to hire **a Portuguese engineer with Portuguese certification**.
- In another case, two member states (HU and PL) require that a customer can hire a foreign company only if he provides evidence that he **could not find an appropriate national contractor for construction works**.
- According to national law (IT), all electrical plans for electrical supply in buildings need to be **approved by the Italian electrical authority prior to the beginning of the electrical installation work**. Apparently, this authority only approves plans drawn up by Italian companies.

- In a Member State (BE), foreign companies who **are not registered have to pay an obligatory percentage of the invoice to the tax and the social security administrations** in order to provide services. Even contractors without personnel who want to avoid the obligatory deduction for social security must register.

### 3. Tourism services

- According to the law of another State (AT), tour operators are allowed to guide tourists in Austrian cities only if they hold a permit issued upon succeeding an exam for tourist guides.
- Similarly, a Member State's law (AT) on **mountain guides** authorises **only guides resident** in this State to provide services there.
- According to the law of another State (GR), **diving teachers have to demonstrate that they speak the national language even if they only give lessons to group of foreign tourists.**
- Regulations adopted at a regional level in another country (ES) oblige **owners of apartments to use a single and predetermined (for the whole apartment building) real estate agency** in order to be able to rent their apartment to tourists.
- A travel agency wishing to organise hunting trips in a Member State (PL) **must be registered in the country.**

### 4. Regulated professions

- In one Member State (FR), **rules on commercial communications by accountants prevent members of this profession from engaging in any form of advertising in relation to their activity.** This prevents accountants from other Member States to promote their services in this country.
- As regards **patent agents**, the law in two Member States (DE, AT) allows **cross-border provision of services only if non-national agents elect domicile with an approval agent or lawyer established in these countries.** This causes supplementary costs and also places patent agents in a delicate situation, as they are obliged to have professional links with a fellow agent; i.e. with a local competitor with whom there may be conflict of interest. This can act as disincentive to providing cross-border services in this sector.
- In another country (FR), **certified translations can only be provided by a translator established in the national territory and registered in lists which are kept at a local level.** This renders cross-border services by sworn translators established in other countries impossible.

- In another case, in a Member State (ES), a commercial agent based and registered in his country of origin is only allowed to provide services if he enrolls in the **Spanish Commercial Agents College**.

#### **5. Services relating to real estate properties**

- In a Member State (CY), only registered estate agents can lawfully provide services and **only natural persons** who meet certain criteria **can obtain registration**. Non-registered operators face criminal prosecution. This excludes companies and other legal persons lawfully operating in other countries from offering services in this State. Besides, registration is only possible after passing **an exam to be taken in the local language**.
- In a Member State (PT), law **prohibits real estate agents from exercising other kinds of activities**, such as property management. This prevents cross-border activities by agents established in other countries where such multidisciplinary activities are allowed.

#### **6. Organisation of and participation in trade fairs and expositions**

- The law of a Member State (SI) obliges **operators that want to participate in a trade fair in this country to use the national language in all their promotional material** (catalogues, films, etc), even if their products and services are for an international clientele. This imposes additional costs on cross-border services providers, and acts as a distinctive for small companies.
- In a country (PT) **trade fair organisers are subject to authorisations granted at a local level** and the granting of the authorisation is based on an economic test taking into account local interests subject to the agreement of local trade associations.
- A foreign operator in a Member State (BE) was prevented from participating in food trade fairs because of **national rules of the country where the service was provided according to which licences to exhibit can only be granted to service providers active on a permanent basis in this country**.

#### **7. Retail/distribution services**

- According to a recent national law (GR), an itinerant salesman **is not able to acquire a temporary work permit for a period of less than one year**. Some non-residents had difficulties to obtain this authorisation during the Olympics Games due to long delays.

- In another State (FR), an itinerant salesman must **be registered with the Chamber of Commerce** in order to acquire an authorisation to provide services and **to have a stable residence there** for 6 months. Similarly another national law (BE) requires a prior authorisation.
- In one Member State (FR), **a foreign craftsperson has to register with the Chamber of Commerce** in order to operate a market stall during the summer months.

#### **8. Aerial services such as aerial photography and aerial filming**

- National regulations in a number of Member States (FR, IT, BE) authorise **only operators established in their territory** to provide services which involve the use of airplanes (aerial photography, filming of sporting events such as cycling races, etc). Such laws totally exclude operators based in other member States from the cross-border provision of services.

#### **9. Installation, maintenance, and repair of appliances**

- According to a national regulation (BE), foreign companies marketing alarm systems on the territory **may not install and maintain them for their clients, because the regulations in place reserves these activities to private security firms**. The operators of the sector would then have to apply for a specific authorisation as a private security firm. Otherwise, foreign companies have to hold analogous authorisation in their Member State of establishment which is unlikely for companies not engaging in “classical, security activities”.
- Another national regulation (DK) requires fire-extinguishers to be re-filled exclusively by **using recharges and manuals provided by the firm that originally sold the product**. This excludes independent operators established in other Member States from providing cross-border services.

#### **10. Services in the pneumatic and hydraulic sector**

- In a Member State (ES), foreign subcontractors recognized in their country of origin **cannot export products or services relating to pneumatic and hydraulic sector if they are not registered**.