

The Department of Trade and Industry is seeking the views of UK business, consumers and regulators on European proposals to cut red tape in order to improve access to the European Internal Market for the service sector, a main driver of economic growth and employment in the UK.

In response to European Union leaders' demand that the Internal Market - the world's largest free trade zone – should exist in practice, as well as in theory, for service providers and users, the European Commission is proposing legislation requiring all Member States (rising to 25 with the accession of the 10 new Member States on 1 May this year) to get rid of needless, and sometimes unlawful, red tape.

The Government strongly supports the aim of these proposals. By making it easier and less costly for service providers, such as consultants, electricians and retailers to reach new consumers, business will be able to seize opportunities and redirect resources away from form filling towards innovation and job creation. In turn, greater competition among service providers will result in more choice, better quality and lower prices for consumers, many of which are other service firms or manufacturers. Untying the hands of service providers, thereby giving a new dynamism to the country's largest economic sector, stands to benefit the UK as a whole.

The Government believes these proposals have great potential, if carefully negotiated and implemented. In depth analysis to help us do this we would like to hear from those likely to be affected by them – service providers, both large and small; service recipients, both businesses and consumers; trade unions; regulators; non-government organisations; interest and lobby groups.

Issued:

**Respond
by:**

**Enquiries
to:**

Heinz Kessel
Assistant Director
Bay 209, Kingsgate House
66-74 Victoria Street
London, SW1E 6SW

Telephone: 020 7215 4433
heinz.kessel@dti.gsi.gov.uk

Kam Roopra
Policy Advisor
Bay 209, Kingsgate House
66-74 Victoria Street
London, SW1E 6SW

Telephone: 020 7215 4483
kamaljit.roopra@dti.gsi.gov.uk

CONTENTS	Page
Foreword from the Secretary of State	
Foreword from the Secretary of State (Welsh)	
Section A	
Executive Summary	1
Consultation Questions	5
How to respond	13
Additional questions	14
Confidentiality	14
Help with questions	14
Section B	
The Proposals	16
Chapter One: General Provisions	16
Chapter Two: Freedom & Establishment	19
Chapter Three: Free movement of services	28
Chapter Four: Quality of services	37
Chapter Five: Supervision	39
Chapter Six: Convergence Programme	41
Chapter Seven: Final Provisions	43
Section C	
Partial Regulatory Impact Assessment	46
Title of proposal	46
Purpose and intended effect of measure	46
Objective - and an outline of the Directive's proposals	46
Background - why is action needed?	49
Barriers to cross-border establishment and movement of services across borders	51
Risk assessment - what are the risks associated with not taking action?	57
Options	58
Benefits	67
Costs	71
Consultation with small business: the Small Firms' Impact Test	76
Competition Assessment	76
Enforcement and Sanctions	80
Monitoring and Review	82
Consultation	84
Summary and Recommendation	85
Declaration	90
Annex C1	
Scope of the Directive	91
Annex C2	
References to other European Community legislation	94
Annex C3	
Statistics: Services in the UK Economy	100
Annex C4	
Consultation within Government	121

Annex C5	Public Consultation - organisations and individuals who will receive the Consultation Document directly.	121
Section D		
D1	What happens next?	127
D2	Glossary of Terms	128
Annexes		
1.	Code of Practice on Consultations	

Comments or complaints

Foreword from the Secretary of State





A **Executive Summary**

- A.1 80 percent of the UK workforce is in service industries, which together with the fact that we all use services daily at home and at work, means that the proposals we are consulting on in this document will affect everyone.
- A.2 A service is any activity through which a provider participates in the economy irrespective of his legal status, aims, or the field of action concerned. The Directive covers:
- Services provided to consumers, to businesses or to both;
 - Services provided by an operator who has travelled to the Member State of the recipient, services provided at a distance (e.g. via Internet), services provided in the country of origin following travel by the recipient, or services provided in another Member State to which both the provider and the recipient have travelled (e.g. tourist guides); and
 - Services for which a fee is charged which are free to the final recipient.
- A.3 While trade in goods has grown rapidly since the Internal Market was established in 1993. The same is not true for services. The service sector accounts for 54 per cent of EU economic output and 68 per cent of employment, but only around 20 per cent of trade in the Internal Market. Providers and recipients of services face obstacles deriving from national bureaucracy (some of which contravenes Internal Market rules) as well as confusion over which legal jurisdiction applies when providing services in another Member State. For a small business, the cost, and delays involved in complying with red tape and ironing out legal issues is off-putting. For big business, the time and money spent overcoming the problems could be better used in other ways.
- A.4 European leaders recognised this at their summit in 2000 in Lisbon and decided that making the Internal Market a reality for services as well as for goods by 2010 should be a priority.
- A.5 The proposals focus on three areas: the elimination of obstacles to the freedom of establishment; the abolition of the barriers to the free movement of services; and establishing mutual trust between Member States, which is necessary for tackling these obstacles.
- A.6 In order to eliminate the obstacles to the freedom of establishment, the proposed directive provide for:
- administrative simplification measures, particularly involving the establishment of "**single points of contact**", at which service providers can complete the administrative procedures necessary

for access to and the exercise of their activities, and the obligation to make it possible to complete these procedures **by electronic means**;

- certain principles which **authorisation schemes** applicable to service activities must respect, in particular relating to the conditions and procedures for the granting of an authorisation;
- **the prohibition of certain particularly restrictive legal requirements** that may still be in force in certain Member States; and
- the obligation to **assess the compatibility of certain other legal requirements** with the conditions laid down in the Directive, particularly as regards proportionality.

A.7 The Proposal also aims to abolish the barriers to the free movement of services. It provides for:

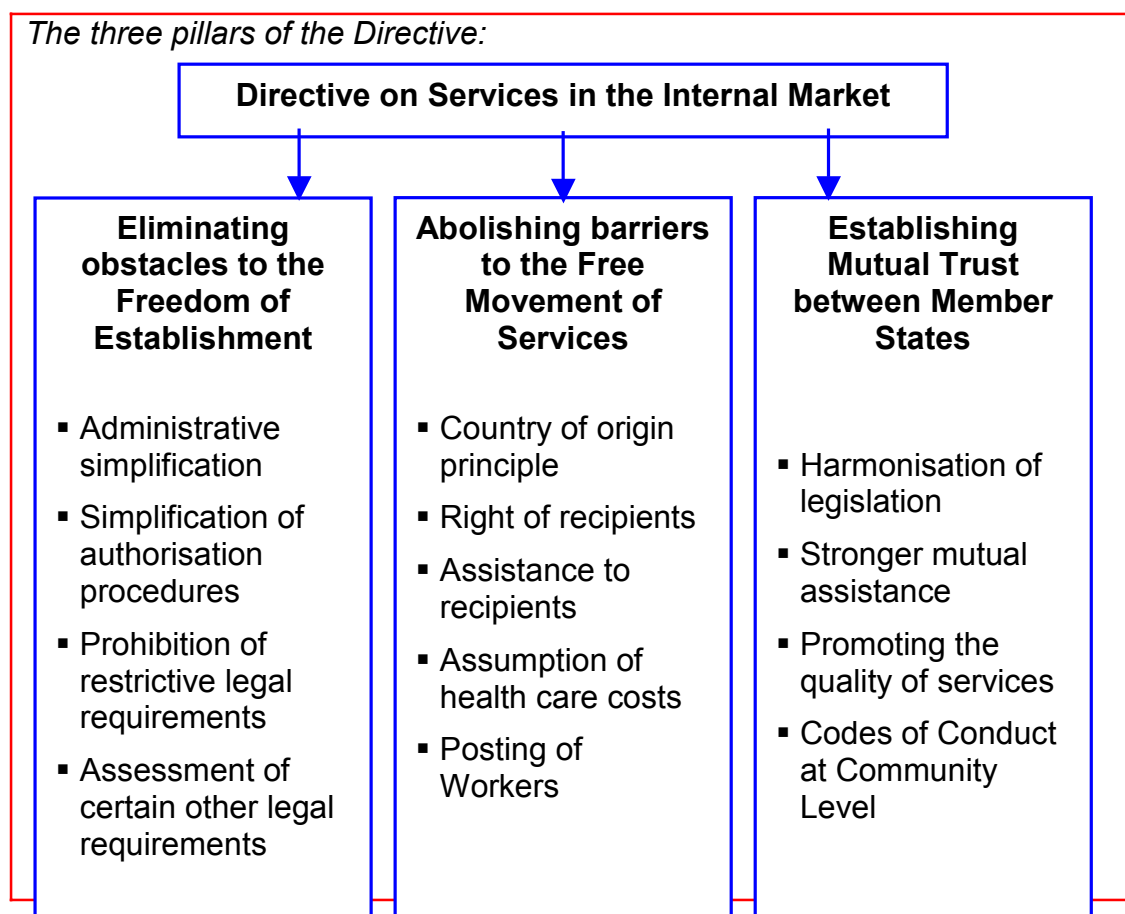
- the application of the **country of origin principle**. A service provider will be subject only to the law of the country in which he is established and Member States may not restrict services from a provider established in another Member State. This principle is accompanied by derogations (exemptions) which are either general, temporary, or which may be applied on a case-by-case basis;
- the **right of recipients to use services** from other Member States without being hindered by restrictive measures imposed by their country or by discriminatory behaviour on the part of public authorities or private operators. In the case of patients, the proposal clarifies the circumstances in which a Member State is obliged to make reimbursement of the cost of health care provided in another Member State;
- a **mechanism to provide assistance to recipients** who use a service provided by an operator established in another Member State;
- in the case of **posting of workers** in the context of the provision of services, the allocation of tasks between the Member State of origin and the Member State of destination and the supervision procedures applicable.

A.8 With a view to establishing the mutual trust between Member States necessary for eliminating these obstacles, the proposal provides for:

- **harmonisation** of legislation in order to guarantee equivalent protection, such as consumer protection, particularly the service

provider's obligations concerning information, professional insurance, after-sales guarantees, multidisciplinary activities, settlement of disputes, and exchange of information on the quality of the service provider;

- **stronger mutual assistance between national authorities** to ensure effective supervision of service activities. There will be clear roles of Member States and obligations to cooperate;
- **measures for promoting the quality of services**, such as voluntary certification of activities, quality charters or cooperation between chambers of commerce and of crafts;
- encouraging **codes of conduct** drawn up at Community level by European level groups, including in particular detailed rules concerning commercial communications by the regulated professions.



A.9 The directive must be agreed by a qualified majority of Member States in the Council and by a majority of the European Parliament in order to become law. The European Commission would like the proposals to be adopted by Member States by the end of 2005, and to come into effect by the end of 2007.

Consultation Questions

How to complete the consultation response form

- A.10 The questions appear in two sections of this document:
- the Proposals, which looks at the Directive in detail; and
 - the **Partial Regulatory Impact Assessment**.
- A.11 Please do not be deterred by the number of questions. **You will not have to answer all of these**. However, of course, replies to any of the questions would be most welcome. The questions are divided into four categories for ease of reference:

General Questions.

- ▲ Questions for **businesses** They are marked with a triangle.
 - Questions for **regulators or those responsible for a regulated area**. They are marked with a circle.
 - Questions for **recipients of services** (business recipients and consumers). They are marked with a square.
- A.12 In addition to feedback on the proposals we would welcome information about barriers, which are not addressed in the proposals. When responding to the consultations please provide evidence to support your arguments wherever possible.
- A.13 Because of the potential benefits of this Directive, we are particularly interested to hear the views of small and medium sized enterprises (SMEs).
- A.14 To assist with your response, this Consultation Document is accompanied by two separate documents:
- a consultation response form to complete and return and,
 - a copy of the Directive.
- A.15 **Summary of questions**

*Summary of questions on the Proposals
(These are divided into categories, as set out above)*

General Questions

- Q.1** To what extent do you think the objectives, as set out in Article 1, will be achieved?

- Q.2** Do you think that the scope of the Directive, as given in Article 2 is sufficient?
- If not, what changes would you like to see?
- Q.3** Do you think that the exclusions from this Directive given in Article 2(2) are sufficient?
- If not, what changes or additions would you like to see?
- Q.4** Do you think the definitions given in Article 4, in particular those for “service”, “requirement”, “coordinated field” and “authorisation scheme”, are adequate in the context of the sector in which you operate?
- If not, what changes would you like to see?
- Q.5** Do you think that the Directive takes adequate account of other Community law, both in Article 3 and other Articles, for example, Articles 17 and 19.3?
- Q.6** Have you experienced any difficulties in completing administrative procedures and formalities in order to set up a subsidiary company in another Member State?
- If so, please give examples.
 - Do you think the measures to simplify these procedures, as stated in Article 5, are sufficient and adequate?
 - If not, what changes or additions would you like to see?
- Q.7** In relation to the rule prohibiting a host Member State from requiring further documentation in Article 5(2), do you think the exception ‘*where a requirement is objectively justified by an overriding reason relating to the public interest*’ is too narrow or too wide?
- If so, how might it be improved?
- Q.9** Do you think there is a need for single points of contact (article 6)?
- Q.15** Do you think the conditions permitting Member States to retain the authorisation schemes, as set out in Article 9(1)(a) to (c). are sufficient?
- Q.16** Do the conditions applied to authorisations of limited number or of limited duration in Articles 11 and 12 pose problems for regulators or indeed applicants?
- If so, please give your reasons and provide suggestions on how such problems could be mitigated.

- Q.17** Do you think the provisions of Article 13 would pose problems for UK authorisation schemes, in particular, concerning the costs of the authorisation process incurred by the parties referred to in paragraph 2.
- If so, please give your reasons and ways any such problems could be mitigated.
- Q.18** Do you think the tacit consent provision in Article 13(4) would pose problems for any UK regulatory schemes?
- If so, please give your reasons and ways any such problems could be mitigated.
- Q.22** Do you see any problems arising from the notification procedure set out in Article 15(6)?
- Q.23** How well do you think the country of origin principle will work in practice (Articles 16 – 19)?
- Q.25** Do you think the derogations given in Articles 17 – 19 are appropriate and sufficient?
- What changes or additions would you like to see (for example, should there be derogation for healthcare services)?
- Q.29** Do you think the ‘non-discrimination’ requirement in Article 21 is sufficient and adequate?
- If not what changes or additions would you like to see?
 - Is Article 21(2) problematic in relation to differential pricing or are such prices based on “objective criteria”?
- Q.30** Do you think the provisions on the posting of workers, as set out in Articles 24 and 25, are sufficient and adequate?
- If not what changes or additions would you like to see?
- Q.32** How easily do you think can the provisions under Articles 24 and 25 be implemented?
- for the service provider, the posted worker and public bodies charged with policing the regime?
- Q.33** How well do you think the quality of services provisions in Articles 26 to 33 provide for consumer protection?
- What additions or changes would you like to see?
- Q.34** What are your views on the information provision requirements in Articles 26 – 30?

- Q.39** How easy will it be to draw up European level codes of conduct (Article 39) in the sector in which you operate?
- Please give reasons for your answer.
 - Who should be involved in the drawing up of the codes?
- Q.40** Do you think the areas considered for additional harmonisation in Article 40 are sufficient and adequate?
- If not, what changes or new additions would you like to see?
- Q.41** Assuming the Directive is adopted as per the planned schedule, is the timetable for implementation achievable?
- Q.47** Are there any other risks associated with not taking action?
- Q.48** Are there any other options which would achieve the objective
- Q.54** Which proposals in the Directive will you derive *most* benefit from?
- What is the likely scale of the associated benefits?
 - Will they be significant?
- Q.55** Are there any potentially useful measures which are missing from the Directive?
- Q.59** Are there any sectors, groups or types of firm, for example Small and Medium Sized Enterprises that will gain more or less in terms of the potential benefits that could result from the Directive?
- Q.60** Will any particular country or region in the UK gain more or less in terms of the potential benefits that could result from the Directive?
- Q.61** How significant are the risks that the anticipated benefits will not be realised? What is the nature of these risks?
- Q.62** How significant are the risks of taking action under Option 2?
- Q.63** Are there any other risks associated with Option 2?
- Q.64** Which parts of the Directive should be:
- retained?
 - deleted?
 - improved?
 - added?
- Q.72** Are there any sectors, groups or types of firm that will lose more or less in terms of the potential costs that could result from the Directive?

- Q.73** Will any particular country or region in the UK lose more or less in terms of the potential costs that could result from the Directive?
- Q.76** What will be the likely impact of the Directive on competition?
- Q.77** Are there likely to be any impacts on competition other than those described?
- Q.78** Do you foresee any likely problems with enforcement and sanctions other than those discussed?

Questions for businesses

- ▲ **Q.8** If you are a business have you experienced any problems in getting information on establishing a subsidiary company in another Member State?
- ▲ **Q.12** If you are a business, do you anticipate any costs for your business as a result of the simplification process (Articles 5 - 8)?
- Please provide details of the type or amount of cost.
- ▲ **Q.13** If you are a business, will the provisions regarding simplification of authorisation schemes and conditions concerning limited duration and limited numbers of authorisations (Articles 9 - 13) impact on your practices?
- If so, how will it change your business practices?
 - What changes or additions would you like to see?
- ▲ **Q.19** If you are a business, will the elimination and evaluation of barriers listed in Articles 14 and 15 impact on your business?
- If so, how will it change the way you work?
 - What changes or additions would you like to see?
 - Are there other barriers not identified that have caused your business problems? If so, please provide details.
- ▲ **Q.24** If you are a business, will the country of origin principle (Articles 16 – 19) encourage you to provide a service in another member state?
- Please give reasons for your answer.
 - If not, why would it not?
- ▲ **Q.27** If you are a business, how well do you think the country of origin principle (Articles 16 – 19) will work in the context of the sector in which you operate?
- What changes or additions, if any, would you like to see?
- ▲ **Q.31** If you are a business, how well do you think Articles 24 and 25 will work in the context of the sector in which you operate?
- Would they provide significant advantages over the present position?

- ▲ **Q.35** If you are a business, how well do you think Articles 26 - 30 will work in the context of the sector in which you operate?
 - What would be the estimated cost to your business?
- ▲ **Q.42** What are the most *common* barriers you or your business face in trading services across borders in the EU? How much do they cost you?
- ▲ **Q.43** What are the most *significant* barriers you or your business face in trading services across borders in the EU? How much do they cost you?
- ▲ **Q.44** What are the most *common* barriers you or your business face in establishing in other Member States? How much do they cost you?
- ▲ **Q.45** What are the most *significant* barriers you or your business face in establishing in other Member States? How much do they cost you?
- ▲ **Q.46** Will the Directive proposals address the barriers you face?
- ▲ **Q.49** Will you or your business benefit from the Directive?
 - If so, how?
- ▲ **Q.50** Can you or your business benefit from the Directive proposals, *even if* you do not plan to start or continue exporting?
- ▲ **Q.51** Will you consider starting trading (exporting or importing) services with the EU if the proposals are implemented?
- ▲ **Q.52** Will you expand your current trade with the EU if the proposals are implemented?
- ▲ **Q.53** What is the likely scale of the benefits?
 - Will they be significant?
- ▲ **Q.65** Are there implementation or compliance costs for your business which are likely to arise from the Directive proposals?
- ▲ **Q.66** What is the likely scale of these costs? Will they be significant?
- ▲ **Q.67** Which are likely to be the most burdensome proposals?
 - What is the likely scale of the associated costs?
 - Will they be significant?
- ▲ **Q.74** Will the Directive have different implications for the costs of different sized businesses?

- ▲ **Q.75** Are there particular derogations which will have a significant impact on your business?

Questions for Regulators or those responsible for a regulated area

- **Q.10** If you are a regulator, do you think the simplification obligation (Articles 5 - 8) would have serious consequences for the regulation of the sector for which you are responsible?
 - If so, please provide details of such consequences and how they may be mitigated.
- **Q.11** If you are a regulator, do you think that the simplification process (Articles 5 - 8) can be achieved in the existing legislative framework?
 - Do you think that it can be achieved within existing infrastructure and resources?
 - If not, what would need to be done, and what would the estimated costs of this be.
- **Q.14** If you are a regulator, do you think that the provisions governing authorisation schemes (Articles 9 - 13) can be implemented under the existing legislative framework?
 - Do you think that it can be achieved with existing infrastructure and resources?
 - If not, what would need to be done, and what would the estimated costs of this be?
- **Q.20** If you are a regulator, will Articles 14 and 15 significantly impact on the regulation of the area for which you are responsible?
 - If yes, how?
 - What are the estimated costs?
 - What changes or additions would you like to see?
 - How could any problems identified be mitigated?
 - Are all of the restrictions listed in the correct Articles (14 – prohibited - and 15 – subject to evaluation -)?
- **Q.21** If you are a regulator or responsible for policy in such an area, will the restriction in Article 15(5) on the introduction of new regulatory schemes be a problem for you?
 - If so, please provide details of the problems it may cause and how those problems may be mitigated.
- **Q.26** If you are a regulator, to what extent will the requirement in Article 16(3) on Member States to supervise UK service providers who provide their services in other Member States have an impact in your area?
 - Will it be possible to take on this function with existing infrastructure and resources?

- **Q.37** If you are a regulator, how easy will you find it to provide assistance and to co-operate with a regulator in another Member State (Articles 34 – 38)?
- **Q.68** Are these assessments of costs for Government and regulators reasonable?
- **Q.69** What will be the likely cost of setting up a “single point of contact”?
- **Q.70** What other likely costs can you foresee?
 - Will they be significant?
 - Can they be quantified?
- **Q.79** Are the proposed arrangements for monitoring adequate?
- **Q.80** What will be the likely costs of monitoring for your sector?

Question for recipients of services

- **Q.28** Do you think this section (Articles 20 – 23) sufficiently deals with the rights of service recipients?
 - If not, what changes or new additions would you like to see?
- **Q.36** Do you think the powers of monitoring and supervision (Articles 34 – 38) will provide adequate consumer protection?
 - If not, what changes or new additions would you like to see?
- **Q.56** What are the most *common* barriers you face when purchasing services from EU service providers? How much do they cost you?
- **Q.57** What are the most *significant* barriers you face when purchasing services from EU service providers? How much do they cost you?
- **Q.58** Will you be more or less likely to purchase services from the EU if the proposals are implemented?
- **Q.71** Are there any other potential costs to service recipients arising from this Directive?

How to respond

- A.18 When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.
- A.19 The deadline for responses to the consultation is xxx. If you want to participate in this consultation, please complete the enclosed Consultation Response form. An electronic version is also

available at www.dti.gov.uk/XXXX

A.20 Your response can be submitted by letter, fax or email to:

Kam Roopra (Senior Policy Advisor)
EU Services Directive Policy Team
Department of Trade and Industry
Bay 209, Kingsgate House
66-74 Victoria Street
London, SW1E 6SW

Tel: 020 7215 4483

Fax: 020 7215 4720

Email: servicesconsultation@dti.gsi.gov.uk

A.21 A list of those organisations and individuals consulted is in Annexes C4 and C5. We would welcome suggestions of others who may wish to be involved in this consultation process.

Additional copies

A.22 Further printed copies of this document are available from:
DTI Publications Orderline Tel: 0870 1502 5000
ADMAIL Publications Fax: 0870 1502 333
London SW1W 8YT Minicom: 0870 1502 100
www.dti.gov.uk/publications

A.23 An electronic version is at: www.dti.gov.uk/consultation/

Confidentiality

A.24 Your response may be made public by the DTI. If you do not want all or part of your response or name made public, **please state this clearly** in the Consultation response form. Any confidentiality disclaimer that may be generated by your organisation's IT system or included as a general statement in your fax cover sheet will be taken to apply only to information in your response for which confidentiality has been explicitly requested in your response.

A.25 We will handle any personal data you provide appropriately in accordance with the Data Protection Act 1998.

Help with queries

A.26 Questions about the policy issues raised in the document can be addressed to:

Heinz Kessel (Assistant Director)
EU Services Directive Policy Team

Dept. of Trade & Industry
Bay 209, Kingsgate House
66-74 Victoria Street
London, SW1E 6SW

Tel: 020 7215 4433
Fax: 020 7215 4720
Email: heinz.kessel@dti.gsi.gov.uk

A.27 If you have comments or complaints about the way this consultation has been conducted, these should be sent to:

Philip Martin
Consultation Co-ordinator
Department of Trade and Industry
Room 723
1 Victoria Street
London SW1H 0ET

Tel: 020 7215 6206
Email: Philip.martin@dti.gsi.gov.uk

A copy of the Code of Practice on Consultation is in Annex X.

SECTION B – The Proposals

Chapter One – General Provisions (Articles 1 – 4)

B.1 The **objective**¹ of the Directive is to establish a legal framework, which will make it easier for service providers to become established in other Member States, and to facilitate the free movement of services across the EU. This will offer service providers and recipients the legal certainty they require to exercise these two fundamental freedoms enshrined in the Treaty.

B.2 The scope of the Directive is extremely broad, it applies to services supplied by providers established in a Member State. Service is defined as “any self-employed economic activity, as referred to in Article 50 of the [EC] Treaty, consisting of the provision of a service for consideration.” (Article 4(1)) The reference to the EC Treaty means that the case law of the European Court of Justice concerning services will be fully relevant to the interpretation of that expression in the Directive. The definition refers to *economic* activity which is provided *for consideration* and thereby excludes non-economic services.² The use of the expression “self-employed” is not intended to mean that the Directive only applies to services provided by self-employed persons. It is intended to refer to the relationship between the employer and the person or business for whom the employee performs the service in question, rather than the relationship between the employer and employee.

B.3 A service is any activity through which a provider participates in the economy irrespective of his legal status, aims, or the field of action concerned. Thus the following are covered:

- Services provided to consumers, to businesses or to both;
- Services provided by an operator who has travelled to the Member State of the recipient, services provided at a distance (e.g. via Internet), services provided in the country of origin following travel by the recipient, or services provided in another Member State to which both the provider and the recipient have travelled (e.g. tourist guides); and
- Services for which a fee is charged which are free to the final recipient.

● _____

¹ Article 1

² More detail concerning the scope of the Directive is provided in Annexe C1. Project

Which services are covered by the Proposals?

The proposed Directive applies to a large variety of services within the EU including, but not limited to:

- Professional services such as consulting, architecture, engineering or legal advice; business services such as management consulting, certification and testing, maintenance, facilities management and security services, advertising services, employment agencies or commercial agents;
- Services which are provided to both business and consumers, such as legal or fiscal advice, architectural services, real estate agents, construction services, distributive trades, travel agents, charity shops, organisation of trade fairs and exhibitions and car rental;
- Services provided to consumers such as tourist guides, entertainment-related services (including audio-visual services, sports centres and amusement parks), health services and personal domestic services, such as assistance for old people.

B.4 The Directive **does not include** (Article 2(2)):

- services provided directly by public authorities not for remuneration, in fulfilment of their social, cultural, educational or legal obligations;
- certain services where specific initiatives are already in place to complete the Internal Market, these include:
 - I. taxation, however Articles 14 and 16 of the Directive apply to taxation measures unless those measures are covered by an EC measure on taxation harmonisation;
 - II. financial services as these are already covered by the Financial Services Action Plan, which is currently being implemented;
 - III. electronic communications services and networks as far they are already covered in the 'telecommunications package' adopted in 2002³;
 - IV. transport services to the extent that they are already regulated by other Community instruments based on Article 71 and 80(2) of the EC Treaty; and
 - V. activities covered by Article 45 of the EC Treaty⁴, which expressly states that the chapter on the freedom of establishment and the free movement of services do not apply to those activities which are connected, even occasionally, with the exercise of official authority.⁵

B.5 Article 3 deals with the relationship to other Community Law. The Directive is intended to be complementary to other EC directives and regulations.

- Q.1** To what extent do you think the objectives, as set out in Article 1, will be achieved?
- Please give reasons for your answers.
- Q.2** Do you think that the scope of the Directive, as given in Article 2 is sufficient?
- If not, what changes would you like to see?
- Q.3** Do you think that the exclusions from this Directive given

● _____
³ Directives 2002/19/EC, 2002/20/EC, 2002/21/EC, 2002/22/EC and 2002/58/EC

⁴ Treaty of the European Union

⁵ It should be remembered that the European Court of Justice has construed this language narrowly, see for example the case of Reyners C-2/74

in Article 2(2) are sufficient?

- If not, what changes or additions would you like to see?

Q.4 Do you think the definitions given in Article 4, in particular those for “service”, “requirement”, “coordinated field” and “authorisation scheme”, are adequate in the context of the sector in which you operate?

- If not, what changes would you like to see?

Q.5 Do you think that the Directive takes adequate account of other Community law, both in Article 3 and other Articles, for example, Articles 17 and 19.3?

Chapter Two – Freedom of Establishment for Service Providers (Articles 5 – 15)

B.7 Establishment of a service in another Member State is where a service provider participates in the economic life there on a stable and continuous basis.

For example:

A parent company is established in the UK providing services to domestic consumers according to UK law concerning its service activities. However, it has also established a subsidiary company in Italy. This subsidiary provides services to Italian consumers and is governed by Italian law concerning its service activities. Customers dealing with the parent company will seek redress from it in the UK and, if appropriate, would approach the relevant UK regulator; customers dealing with the subsidiary will seek redress from it in Italy and, if appropriate, would approach the relevant Italian regulator.

B.8 Although the EC Treaty guarantees the right of service providers to establish themselves in other Member States,⁶ in practice they are still faced with numerous obstacles. These obstacles can be divided into three broad categories: prohibitions, dissuasive barriers, and barriers caused by compliance costs.

• _____
⁶ Article 43

- B.9 **Prohibitive barriers:** legal requirements that prevent service providers outright from establishing in other Member States. These include:
- *nationality requirements:* e.g. where a Member State insists that the shareholders, management or staff have to be nationals;
 - *residential requirements:* e.g. a Member State requires that a percentage of the management board must be residents in their territory; and
 - *single-establishment requirements:* e.g. a service provider wishing to become established in a Member State is directly or indirectly obliged to give up an establishment in another Member State.
- B.10 **Dissuasive barriers:** legal and administrative barriers which prevent service providers from establishing in another Member State, even where it is technically possible for them to do so. These include:
- *Registration requirements:* e.g. a service provider is obliged to register with an administrative authority, a professional body or trade association in order to establish in a particular Member State; and
 - *Administrative requirements & burdens:* e.g. a service provider is required to supply notifications and declarations or documentation in a particular format.
- B.11 **Compliance costs:** even where service providers are not prohibited or dissuaded from market entry by barriers such as those above, they may incur considerable costs in complying with additional non-domestic legal and administrative requirements. These may come in the form of significant legal costs, where extensive legal advice is required to identify national requirements and for procedures and formalities to be fulfilled.
- B.12 Beyond compliance matters additional costs resulting from different languages or cultural differences in commercial or consumption habits may also arise.

Chapter II of the Directive seeks to tackle these barriers by committing Member States to simplifying existing procedures and removing a large number of unnecessary barriers by means of administrative simplification (Section 1: Articles 5-8), simplification of authorisation procedures (Section 2: Articles 9-13), and prohibition or assessment of certain particularly restrictive legal requirements (Section 3: Articles 14-15).

Section 1 – Administrative Simplification (Articles 5 – 8)

- B.13 This section requires Member States to simplify administrative procedures, which enable service providers to set up on their territory. Under Article 5, where a host Member State requires a provider or recipient to provide documentation showing a requirement has been met, that host Member State must accept an equivalent document from another Member State or one which shows the requirement has been met.
- B.14 Unless EC law so provides or where it is objectively justified by an overriding reason relating to the public (Article 5(2)), a host Member State cannot insist on having an original, a certified copy or a certified translation of such a document.
- B.15 Under Article 6, Member States are required to set up ‘single points of contact’ (by 31 December 2008) to enable business to complete all formalities and applications for authorisation at one point. This means that if a service provider wants to establish in another Member State, he can complete all procedures and paperwork through one and the same body – he will not be obliged to visit a number of different bodies, organisations or offices. Article 7 makes clear that single points of contact are not themselves regulatory bodies; their role is facilitative.
- B.16 The concept of ‘single points of contact’ does not involve each Member State setting up a single, physical, centralised agency for its entire territory. As such the single points of contact in each Member State will vary depending on the internal organisation of the Member State and in particular the regional or local competencies or activities concerned.
- B.17 In addition, Member States are required to provide all relevant information on legal and administrative requirements linked to service activities (Article 7), and introduce electronic means for the fulfilment of procedures and formalities by 31 December 2008 (Article 8).

- Q.6** Have you experienced any difficulties in completing administrative procedures and formalities in order to set up a subsidiary company in another Member State?
- If so, please give examples.
 - Do you think the measures to simplify these procedures, as stated in Article 5, are sufficient and adequate?
 - If not, what changes or additions would you like to see?

- Q.7** In relation to the rule prohibiting a host Member State from

requiring further documentation in Article 5(2), do you think the exception '*where a requirement is objectively justified by an overriding reason relating to the public interest*' is too narrow or too wide?

- If so, how might it be improved?

- ▲ **Q.8** If you are a business have you experienced any problems in getting information on establishing a subsidiary company in another Member State?
 - If so, please provide details
- Q.9** Do you think there is a need for single points of contact (article 6)?
 - Please give reasons for your answer.
- **Q.10** If you are a regulator, do you think the simplification obligation (Articles 5 - 8) would have serious consequences for the regulation of the sector for which you are responsible?
 - If so, please provide details of such consequences and how they may be mitigated.
- **Q.11** If you are a regulator, do you think that the simplification process (Articles 5 - 8) can be achieved in the existing legislative framework?
 - Do you think that it can be achieved within existing infrastructure and resources?
 - If not, what would need to be done, and what would the estimated costs of this be.
- ▲ **Q.12** If you are a business, do you anticipate any costs for your business as a result of the simplification process (Articles 5 - 8)?
 - Please provide details of the type or amount of cost.

Section 2 – Authorisations (Articles 9 – 13)

- B.18 This section would oblige Member States to screen and remove unnecessary authorisation procedures and make remaining procedures more transparent and predictable by basing them exclusively on objective criteria known in advance.
- B.19 Article 9 places an obligation on Member States to ensure that authorisations for access to, and exercise of, service activities are not required, unless they are non-discriminatory, objectively justified by an overriding reason relating to the public interest and if the objective cannot be achieved by a less restrictive measure.

- B.20 In addition, Member States are required among other things to:
- Base authorisation schemes on objective and transparent criteria (Article 10(1) and (2));
 - Ensure authorisation is granted as soon it has been established that the conditions for authorisation are met(Article 10(5)); and
 - Provide a fully reasoned explanation of refusals or withdrawals of authorisations, which should be open to challenge before the courts (Article 10(6)).
- B.21 Article 11 sets out the rules concerning authorisations which are limited in duration. In general authorisations should not be time limited, unless that authorisation is automatically renewed, the number of authorisations is limited or such a limitation can be objectively justified by an overriding reason relating to the public interest.
- B.22 Article 12 sets out rules concerning situations where limited numbers of authorisations are available because of scarcity of natural resources or technical capacity. In these circumstances Member States must provide authorisation schemes which guarantee impartiality and transparency. Such authorisation must be for an appropriately limited period, not open to automatic renewal and must not confer an advantage on the incumbent (or anyone with links to them) on renewal.
- B.23 Article 13 sets out the detail of how authorisation schemes should work procedurally. Applications will have to be processed as soon as possible and within a reasonable period published in advance. Article 13(4) provides for tacit consent where the authorising body does not reply to the applicant within the published deadline.

- ▲ **Q.13** If you are a business, will the provisions regarding simplification of authorisation schemes and conditions concerning limited duration and limited numbers of authorisations (Articles 9 - 13) impact on your business practices?
- If so, how will it change them?
 - What changes or additions would you like to see?
- **Q.14** If you are a regulator, do you think that the provisions governing authorisation schemes (Articles 9 - 13) can be implemented under the existing legislative framework?
- Do you think that it can be achieved with existing infrastructure and resources?
 - If not, what would need to be done, and what would the estimated costs of this be?

- Q.15** Do you think the conditions permitting Member States to retain the authorisation schemes, as set out in Article 9(1)(a) to (c). are sufficient?
- Please give reasons for your answer.
- Q.16** Do the conditions applied to authorisations of limited number or of limited duration in Articles 11 and 12 pose problems for regulators or indeed applicants?
- If so, please give your reasons and provide suggestions on how such problems could be mitigated.
- Q.17** Do you think the provisions of Article 13 would pose problems for UK authorisation schemes, in particular, concerning the costs of the authorisation process incurred by the parties referred to in paragraph 2.
- If so, please give your reasons and ways any such problems could be mitigated.
- Q.18** Do you think the tacit consent provision in Article 13(4) would pose problems for any UK regulatory schemes?
- If so, please give your reasons and ways any such problems could be mitigated.

**Section 3 – Requirements that are prohibited or subject to evaluation
(Articles 14 – 15)**

- B.24 These provide for the elimination and evaluation of a large number of unnecessary barriers, which prevent or discourage operators from one Member States from setting up in another.
- B.25 Prohibited requirements are listed in Article 14, in the so-called Black List. This Article lists barriers to the establishment of service providers that have been specifically identified by the Commission, and reflects the case law of the European Court of Justice.

BLACK LIST
Article 14

Requirements **which must be eliminated** by the deadline for transposition (scheduled for end-2007):

- Discriminatory requirements (including, nationality, place of registered office);
- Ban on having an establishment in more than one Member State or restriction on choice as to where principal establishment is to be located;
- Conditions of reciprocity between home Member State of service provider and host Member State where he intends to establish;
- Requirement to carry out an economic test;
- Involvement of competing operators in authorisation or supervision procedure;
- Obligation to provide a financial guarantee or to take out insurance with a provider from the host Member State; and
- Obligation to be entered in the registers of the host Member State, or to have exercised activity, for a given period.

- B.26 The prohibition of these requirements means that during the period from the adoption of the Directive to the deadline for transposition, Member States will have to examine whether these exist in the legal system and, if so, to eliminate them.
- B.27 Article 15 sets out the so-called Grey List that requires Member States to examine (again during the transposition stage) a number of specified requirements that have major restrictive effects on the freedom of establishment, but which may be justified in certain cases depending on the precise content of the rules in question and the circumstances in which they apply.
- B.28 This differs from Article 14 in that, whilst Member States will have to examine whether requirements of this kind exist in their legal systems they will not automatically have to eliminate them (as required in Article 14). Instead, Member States will first have to verify whether any such requirements meet the conditions laid down in paragraph 3 of the Article and eliminate them or adjust them as the case may be **only** where these conditions are not met, or cannot be justified.

- B.29 By virtue of Article 15 (5) from the coming into force of the Directive, Member States must not introduce requirements falling within those listed in Article 15(2), unless they are in accordance with the conditions in Article 15(3) and arise from new circumstances. Member States will have to report the introduction of any such requirements to the Commission, together with their reasons. The Commission will communicate this information to other Member States. Within 3 months of the notification the Commission may adopt a decision requiring abolition or restraining the adoption of such requirements.

GREY LIST

(Article 15)

Requirements imposed by Member States **which, if the Member State wishes to retain them, must comply (or be adjusted to comply) with the conditions in Article 15(3), failing which they must be removed** at the end of the transposition period (presently scheduled for 2007):

- Quantitative or territorial restrictions;
- Requirements of businesses' legal form;
- Requirements relating to shareholding
- Reserving right to service activity to particular providers, other than due to qualification or EC Law;
- Ban on more than one establishment on territory;
- Requirements which stipulate a minimum number of employees;
- Fixed minimum or maximum tariffs;
- Prohibitions or obligation on underselling and sales
- Requirements that provider must allow access to other providers services; and
- Requirements that provider must provide other services jointly with his service.

- ▲ **Q.19** If you are a business, will the elimination and evaluation of barriers listed in Articles 14 and 15 impact on your business?
- If so, how will it change the way you work?
 - What changes or additions would you like to see?
 - Are there other barriers not identified that have caused your business problems? If so, please provide details.
- **Q.20** If you are a regulator, will Articles 14 and 15 significantly impact on the regulation of the area for which you are responsible?
- If yes, how?
 - What are the estimated costs?
 - What changes or additions would you like to see?
 - How could any problems identified be mitigated?

- Are all of the restrictions listed in the correct Articles (14 – prohibited - and 15 – subject to evaluation -)?
- **Q.21** If you are a regulator or responsible for policy in such an area, will the restriction in Article 15(5) on the introduction of new regulatory schemes be a problem for you?
 - If so, please provide details of the problems it may cause and how those problems may be mitigated.
- Q.22** Do you see any problems arising from the notification procedure set out in Article 15(6)?
 - If so, please provide details for your answer.

Chapter Three – Free Movement of Services (Articles 16 – 25)

B.30 The freedom to provide services, as defined in the EC Treaty and case law and as set out in the Directive, provides that the activities in question have a temporary nature, which is determined by the duration, regularity, periodicity and continuity of their provision. The freedom to provide services is covered in Chapter Three.

B.31 Together with the free movement of goods, capital and workers and the freedom of establishment the free movement of services is a fundamental freedom provided for by the EC Treaty (Article 49). However, as with the freedom of establishment for service providers, there have been problems here too – prohibitions and dissuasive barriers are stopping service operators from providing service across borders.

Examples of barriers to the free movement of services include:

- B.32 **Prohibitive barriers:** legal requirements that prevent service operators outright from providing services or legal requirements that prevent users outright from consuming services from other Member States. These include:
- A requirement to be established in the Member State in question before they can provide a service;
 - A requirement for specific contractual requirements between the provider and recipient which prevent or restrict the supply of a service by self-employed service providers.

- B.33 **Dissuasive barriers:** legal and administrative barriers, which prevent service operators from providing a service in another Member State, or which render the consumption of cross-border services more costly or less attractive. These include:
- A requirement to obtain prior authorisation in various forms (such as having to obtain a permit or licence);
 - An obligation on the service provider to possess an identity document issued by the relevant host state competent authority.
- B.34 **Imperfect information:** the lack of information to users concerning availability and quality of service provision, which stops them from using services from another Member State.
- B.35 The provisions in this Chapter aim to eradicate some of these barriers and ensure effective implementation of the free movement of services so that recipients and providers can benefit from and supply services throughout the Community regardless of frontiers.

Section 1 – Country of Origin and Derogations (Articles 16 – 19)

- B.36 In order to make it easier for operators to provide a service in another Member State, this section sets out the country of origin principle. Article 4(4) defines the Member State of origin as *“the Member State on whose territory the provider of the service concerned is established”*. Under this principle, a service provider lawfully established in one Member State will be able to provide its service in another Member State (without becoming established there) on the basis of the rules and regulations (concerning access to and pursuit of its service activity) of its home Member State. Accordingly, within what the Directive refers to as the “co-ordinated field” (defined in Article 4(9)), the ‘host’ Member State will not be able to insist that such service providers comply with their national law, as regards access to and exercise of their service activity (Article 16(1) and (2)).

For example:

A parent company established in the UK (country of origin) provides services to domestic consumers according to UK rules. However, it also provides services across borders to consumers in Belgium, without being established there. It does so on the basis of, for example, competition and consumer protection rules that exist in UK. Customers in both the UK and Belgium must seek redress in the case of problems from the UK company and, if appropriate in the circumstances, could approach the relevant regulator in the UK.

- B.37 The Directive also provides that a competent authority of the Member State where the provider is established supervises all of his service activities (Article 16(3)), even when he is providing a service in another Member State. The objective is to ensure the effectiveness and continuity of supervision of the provider and to provide protection for recipients in the home Member State of the provider and in other Member States where the provider is active.

For example:

The competent authority in the UK will supervise a UK travel agent that is providing services in Finland. If the travel agent also provides services in Germany and France, the UK competent authority will be responsible for supervising its activities in those Member States, thereby enabling the UK competent authority to hold all information relevant to the supervision of that company's service activities.

- B.38 The country of origin principle does not apply to all cases. Article 17, in particular, lists a number of exceptions to the application of the principle. These include areas where existing Community legislation will determine what the host state may do as regards service providers from other Member States. For example, a service provider that posts a worker to another Member State to carry out a service would have to respect the working conditions specified in Article 3 of Directive 96/71 in that country (Article 17(5)).
- B.39 The derogations set out in Article 18 will apply for a transitional period of up to 1 January 2010, and are intended to allow some time for additional harmonisation in certain areas. For example, gambling is currently exempt from the country of origin principle, but this will no longer apply once this field has been harmonised.⁷ Therefore service providers in this sector, until that time, will have to comply the law in the Member State in which the service is provided.
- B.40 Moreover, measures against a given provider may also be adopted in certain cases and under certain procedural and substantive conditions. In particular these derogations may only be applied for reasons relating to the safety of services, exercise of health professions or protection of public policy (Article 19(1)).

⁷ Article 40 of the Directive proposes that one year after the adoption of the Directive, the Commission should assess whether it should present a proposal for harmonised EU-wide rules on gambling services, on cash in transit, and judicial recovery of debts.

General Derogations (Article 17)	Temporary Derogations (Article 18)	Case-by-case Derogations (Article 19)
List of areas where the country of origin principle will not apply. In these areas the service providers will have to comply, as the case may be, with the rules set out in the relevant piece of EC legislation or with the rules of the Member State in which they are providing that service.	List of areas where the country of origin principle does not apply until they have been harmonised. Therefore a service provider will have to follow the rules of the Member State in which it is providing a service until the area has been harmonised.	There is no list of specific derogations here. However, in exceptional circumstances, the host Member State may take measures, in respect of a service provider from another Member State, that concern the safety of services, the exercise of a health profession or the protection of public policy.

Q.23	How well do you think the country of origin principle will work in practice (Articles 16 – 19)? <ul style="list-style-type: none"> ▪ Please give reasons for your answer
▲ Q.24	If you are a business, will the country of origin principle (Articles 16 – 19) encourage you to provide a service in another member state? <ul style="list-style-type: none"> ▪ Please give reasons for your answer. ▪ If not, why would it not?
Q.25	Do you think the derogations given in Articles 17 – 19 are appropriate and sufficient? <ul style="list-style-type: none"> ▪ What changes or additions would you like to see (for example, should there be derogation for healthcare services?)? ▪
● Q.26	If you are a regulator, to what extent will the requirement in Article 16(3) on Member States to supervise UK service providers who provide their services in other Member States have an impact in your area? <ul style="list-style-type: none"> ▪ Will it be possible to take on this function with existing infrastructure and resources? ▪ Please give reasons for your answer.

Section 2 – Rights of Recipients (Articles 20-23)

- B.41 In accordance with the EC Treaty,⁸ this section seeks to tackle various types of obstacles faced by recipients who wish to benefit from cross-border services, but are required to comply with additional formalities and procedures or are refused services simply on the grounds that they are nationals of a particular Member State or are resident in a particular country. For example, a requirement that free-to-air broadcasting service be encrypted to prevent reception outside the Member State of establishment, or where nationals or residents of one Member State are prevented from benefiting from preferential tariffs and prices in another Member State.
- B.42 In order to remove these barriers the Directive specifies that Member States:
- may not impose restrictions on recipients on the use of services provided by operators established in a different Member State (Article 20); and
 - generally shall ensure that recipients are not subject to discriminatory requirements based on nationality or place of residence (Article 21(1)).
- B.43 Article 21(2) prohibits service providers from refusing access to their service, or subjecting access to less favourable conditions based on the recipient's nationality or place of residence.
- B.44 The ban on discriminatory requirements does not affect the possibility of providing different tariffs and conditions to different consumers if they are directly justified by objective reasons, for example, additional costs arising from the distance or technical characteristics of the provision, different market conditions, or the extra risks linked to rules differing from those of the Member State of origin.
- B.45 The proposals also seek to guarantee specific assistance for a recipient in his own Member State. Under the proposals a recipient of a service can receive information on legislation in other Member States, the means of redress, and associations or organisations offering practical assistance (Article 22).

● _____
⁸ Under the Treaty, as interpreted by the European Court of Justice, the principle of non-discrimination in the Internal Market means that access by recipients, particularly consumers, to services offered to the public should not be denied or rendered more difficult simply because of the formal criterion of the recipient's nationality or place of residence.

- B.46 In addition Article 23 seeks to clarify the rights of patients seeking treatment in other Member States by setting out the conditions under which national social security systems must reimburse the costs of medical care received in other Member States.
- B.47 Where non-hospital care, which would be provided under their social security system (i.e. in the UK under the NHS), is obtained in another Member State, the Directive provides that patients must be reimbursed by their home Member State, to the extent and at the tariff that the services concerned would normally be reimbursed if administered in the home Member State (Article 23(1) and (3)). The Directive also provides that the patient is not required to obtain prior authorisation from his home Member State for non-hospital care he wishes to receive in another Member State.
- B.48 Where hospital care is sought in another Member State, prior authorisation may be required, but must be granted if the care concerned would normally be reimbursed in the home Member State but cannot be delivered there within a time limit which is medically acceptable, taking into account the patient's current state of health and the probable course of the illness.

- ▲ **Q.27** If you are a business, how well do you think the country of origin principle (Articles 16 – 19) will work in the context of the sector in which you operate?
- What changes or additions, if any, would you like to see?
- **Q.28** Do you think this section (Articles 20 – 23) sufficiently deals with the rights of service recipients?
- If not, what changes or new additions would you like to see?
- Q.29** Do you think the 'non-discrimination' requirement in Article 21 is sufficient and adequate?
- If not what changes or additions would you like to see?
 - Is Article 21(2) problematic in relation to differential pricing or are such prices based on "objective criteria"?

Section Three – Posting of Workers (Articles 24 – 25)

- B.49 This section aims to reduce the administrative burdens on service providers posting workers to other Member States by:
- Preventing the Member State to which the worker has been posted from requesting prior authorisations or requiring the making of declarations in relation to workers who are temporally posted⁹ or requiring service providers to have representation in that Member State or to hold employment documents there; and
 - Placing an obligation on the Member State of origin to ensure that the service provider takes all measures necessary to be able to communicate to its competent authorities and to those of the Member State of posting information about the worker up to 2 years after the end of the posting.
 - Article 24(2) also obliges the Member State of origin to cooperate with the Member State of posting to ensure compliance with Directive 96/71 (which sets out the terms and conditions of employment which apply to such workers), where the Member State of origin is aware of facts indicating possible irregularities.

For example:

If a UK company sends an employee, with UK citizenship, to Belgium to repair a lift on a ten day posting, the Belgian authorities would be prohibited from asking them to complete a series of administrative formalities, e.g. submission to the labour inspectorate of data on the employee, or obligations to keep documentation in French or Flemish. Instead the UK will have to ensure that all essential information is kept by the service provider and made available to its competent authorities and to the Belgian authorities, should they require it.

- B.50 In such circumstances, service providers posting workers will still have to respect employment law in the Member State where the work is being performed; by virtue of a derogation from the member state of origin principle, so that Directive 96/71 continues to apply.
- B.51 The Member States of posting is '*the Member State in whose territory a provider posts a worker in order to provide services there*' Article 4(11)).
- B.52 The free movement of services also includes the rights of an EU service provider to post workers even if those workers are not EU citizens, but are third country nationals resident in the Member State of the provider in accordance with that State's national rules and lawfully employed there.

● _____
⁹ with the exception of the construction industry until 31/12/2008 (Article 24(1))

- B.53 The Directive seeks to prohibit 'host' Member States from imposing formalities, such as temporary work permits, on such workers. (Article 25(1)).
- B.54 Equally the Member State of the service provider is under an obligation to ensure that the posted worker from the third country fulfils the conditions for residence and lawful employment laid down in its legislation.

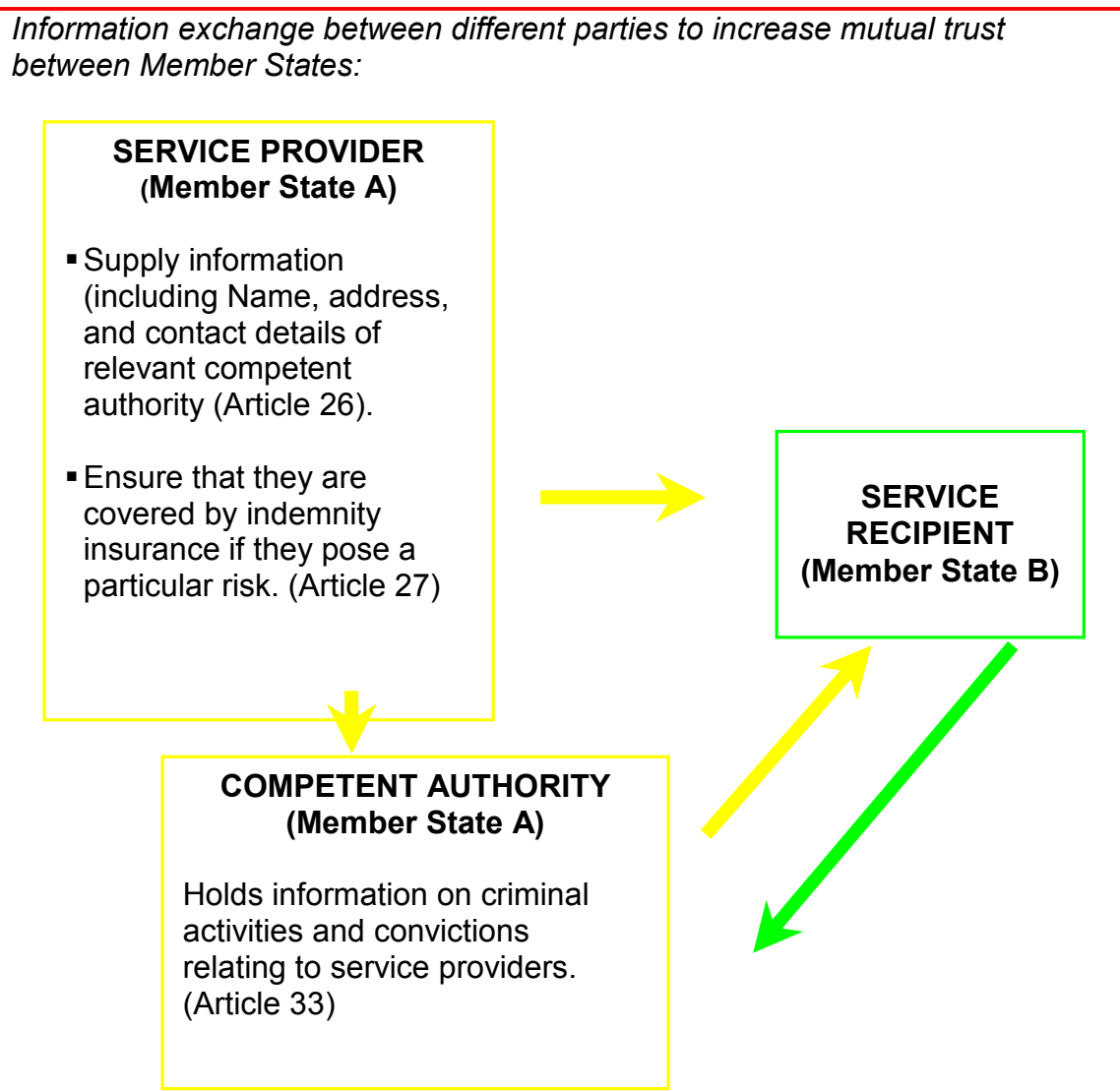
Q.30 Do you think the provisions on the posting of workers, as set out in Articles 24 and 25, are sufficient and adequate?
▪ If not what changes or additions would you like to see?

▲ **Q.31** If you are a business, how well do you think Articles 24 and 25 will work in the context of the sector in which you operate?
▪ Would they provide significant advantages over the present position?
▪ Please give reasons for your answers.

Q.32 How easily do you think can the provisions under Articles 24 and 25 be implemented?
▪ for the service provider, the posted worker and public bodies charged with policing the regime?
▪ Please give reasons for your answer.

Chapter Four – Quality of Services (Articles 26 – 33)

- B.55 This Chapter aims to enhance trust and confidence in cross-border services by committing Member States to providing greater transparency to recipients of services (both consumers and business recipients) and by ensuring that national authorities exchange information based on mutual assistance and co-operation. The approach here, together with that proposed under Chapter V on supervision of service providers, seeks to support the country of origin principle by increasing consumer confidence that services provided from elsewhere in the EU are adequately supervised in the service provider's home country.
- B.56 The Directive would, for instance, require the service provider's Member States, to ensure that;
- service providers established on their territory provide basic information to their clients, such as their name, address, contact details, relevant registrations, and contact details for any relevant regulatory authority (Article 26 (1)); and
 - on the request of the client, providers supply information about their service, its price and any warranties (Article 26(3)).
- B.57 The Directive also requires that the information is supplied in a clear and unambiguous way and before any contract is concluded or, where there is no written contract, before the service is provided.
- B.58 Moreover, this section aims to strengthen the protection of recipients by requiring Member States to ensure that service providers whose services carry a particular risk to the health or safety of the recipient or a particular financial risk to them obtain appropriate professional indemnity insurance (Article 27).
- B.59 Where a service provider has such professional insurance and wishes to establish in another Member State, that Member State cannot require other insurance to the extent that the home Member State insurance is equivalent or essentially comparable to that required in the host state (Article 27(3)).



B.60 The Directive requires Member States to remove any total prohibition on commercial communications by members of regulated professions, for example, an advertising ban in relation to lawyers, which exist in certain Member States. The Directive also requires that, in the interest of recipients, such commercial communications, respect professional rules aiming to ensure among other matters relating to the independence of the profession and professional secrecy (Article 29). The Directive also provides for the development of European codes of conduct with regard to commercial communications by regulated professions (Article 39(1)).

B.61 Member States must ensure that professionals are not prevented from going into business together with other professions. However, Member States may prohibit such multidisciplinary partnerships for regulated professions (where objectively justified on the basis of the particular profession) and in relation to certification and testing service providers (as far as justified on the basis of independence and impartiality).

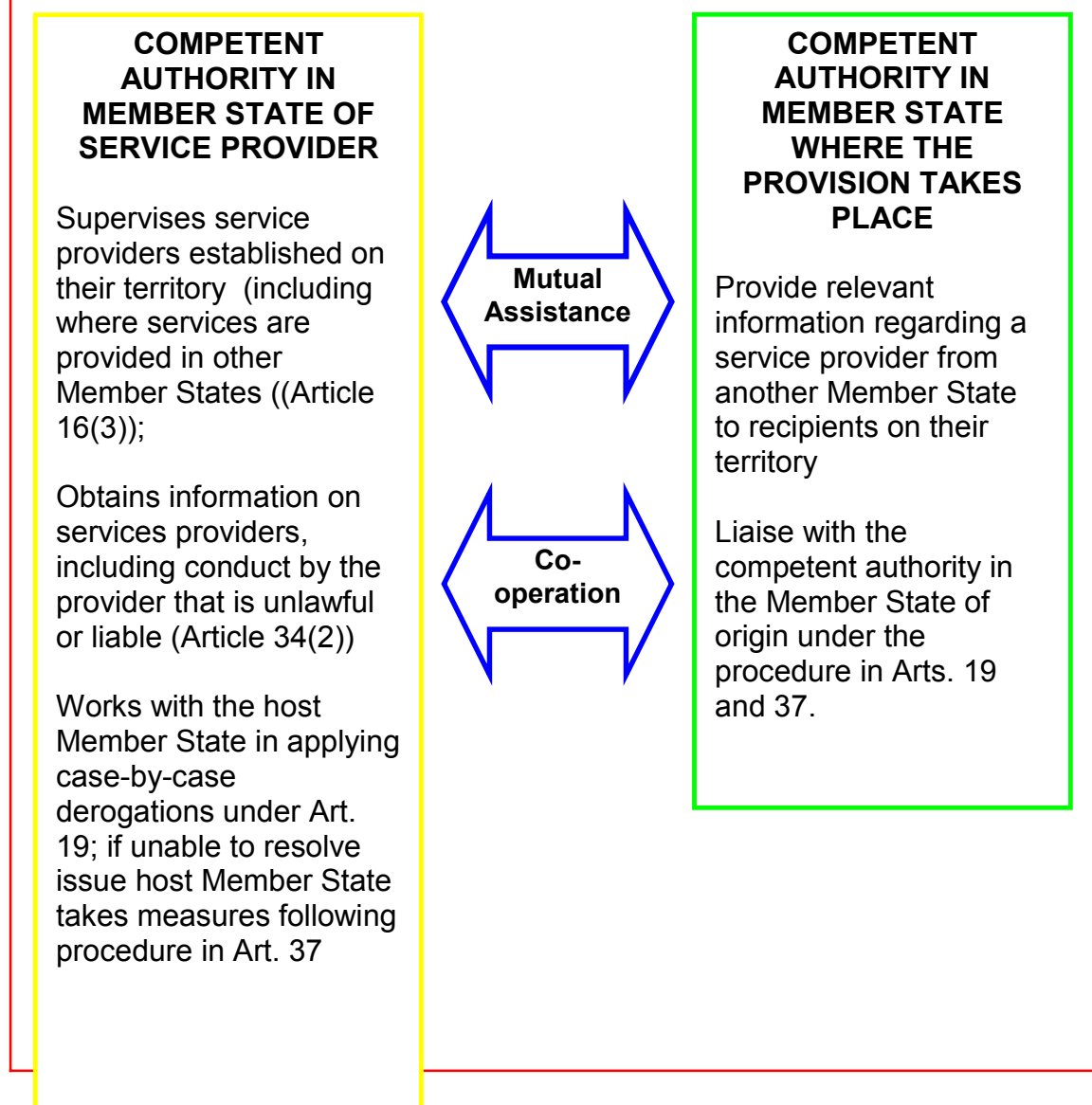
- B.62 The Directive also seeks to encourage the use of certification and voluntary labels. Under Article 31 Member States and the Commission will take measures to encourage professional bodies to cooperate at EC level to promote the quality of services.
- B.63 Article 32 seeks to facilitate cross-border settlement of disputes. Article 33 obliges Member States, at the request of the competent authorities of another Member State, to provide information on service providers relating to criminal convictions, penalties, administrative or disciplinary measures and insolvency and bankruptcy involving fraud.

- Q.33** How well do you think the quality of services provisions in Articles 26 to 33 provide for consumer protection?
- What additions or changes would you like to see?
- Q.34** What are your views on the information provision requirements in Articles 26 – 30?
- ▲ **Q.35** If you are a business, how well do you think Articles 26 - 30 will work in the context of the sector in which you operate?
- What would be the estimated cost to your business?

Chapter Five – Supervision (Articles 34 – 38)

- B.64 This Chapter provides for administrative cooperation between Member States, removing the current duplicative requirements and controls and ensuring that national authorities work directly together by sharing of information and providing mutual assistance.
- B.65 This Section requires Member States to ensure that the powers of monitoring and supervision over service providers and their activities are also exercised where the service is provided in another Member State (Article 34). It also provides that Member States provide each other with mutual assistance, in relation to Article 16 (country of origin principle), and share information on providers, particularly if they learn of conduct by a provider that is unlawful or liable to cause serious injury (Article 35).
-

Information exchange between competent authorities in Member States:



B.66 Article 36 applies to a situation where a service provider moves to another Member State to carry out a service activity temporarily; in those circumstances the Directive allows the competent authorities in the 'host' Member State to carry out inspections of service providers in their territory. Such inspections may take place in the host Member State, provided they are only to establish the facts, are not discriminatory and are objectively justified by an overriding reason relating to the public interest, or are undertaken at the request of the home Member State, in which case the host state can act to the extent of its own powers.

- **Q.36** Do you think the powers of monitoring and supervision (Articles 34 – 38) will provide adequate consumer protection?
 - If not, what changes or new additions would you like to see?

- **Q.37** If you are a regulator, how easy will you find it to provide assistance and to co-operate with a regulator in another Member State (Articles 34 – 38)?
 - Please give reasons for your answer.

Chapter Six – Convergence Programme (Articles 39 – 44)

B.67 This chapter aims to set up a framework for a process of further convergence of national rules. This comprises of three key elements: encouragement of codes of conduct at Community level; supplementary harmonisation measures to be introduced by the European Commission; and a process of mutual evaluation.

Further convergence of national rules		
Codes of Conduct (Article 39)	Additional Harmonisation (Article 40)	Mutual Evaluation (Article 41)
<p>Member States, in collaboration with the European Commission, to take measures to encourage the drawing up of codes of conduct at a Community level.</p>	<p>One year after adoption of this Directive, the Commission is to assess the possibility of presenting harmonising proposals on:</p> <ul style="list-style-type: none"> ▪ Cash-in-transit services ▪ Gambling; and ▪ Judicial recovery of debts 	<p>Member States to submit a report (currently by 2007) to the Commission on</p> <ul style="list-style-type: none"> ▪ Authorisation systems¹⁰; ▪ Requirements to be evaluated¹¹; and ▪ Multidisciplinary activities.¹²

B.68 The report referred to in Article 41 will be sent to all of the other Member States for peer review. By the end of 2008, the Commission will present a summary report and, where appropriate, propose accompanying legislative proposals.

- ▲ **Q.38** If you are a business, how well do you think these rules (Articles 34 – 38) will work in the context of the sector in

● _____
¹⁰ Article 9(2)
¹¹ Article 15(4)
¹² Article 30(4)

which you operate?

- Please give reasons for your answer

Q.39 How easy will it be to draw up European level codes of conduct (Article 39) in the sector in which you operate?

- Please give reasons for your answer.
- Who should be involved in the drawing up of the codes?

Q.40 Do you think the areas considered for additional harmonisation in Article 40 are sufficient and adequate?

- If not, what changes or new additions would you like to see?

Chapter Seven – Final Provisions (Articles 45 –48)

B.69 Member States must transpose the Directive within two years of agreement.

SECTION C

PARTIAL REGULATORY IMPACT ASSESSMENT

Contents		Page
	Title of proposal	46
	Purpose and intended effect of measure	46
	Objective - and an outline of the Directive's proposals	46
	Background - why is action needed?	49
	Barriers to cross-border establishment and movement of services across borders	51
	Risk assessment - what are the risks associated with not taking action?	57
	Options	58
	Benefits	59
	Costs	71
	Consultation with small business: the Small Firms' Impact Test	75
	Competition Assessment	75
	Enforcement and Sanctions	78
	Monitoring and Review	81
	Consultation	82
	Summary and Recommendation	83
	Declaration	88
Annex C1	Scope of the Directive	89
Annex C2	References to other European Community legislation	91
Annex C3	Statistics: Services in the UK Economy	97
Annex C4	Consultation within Government	117
Annex C5	Public Consultation - organisations and individuals who will receive the Consultation Document directly.	123

SECTION C

PARTIAL REGULATORY IMPACT ASSESSMENT

Title of proposal

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

[SEC 2004(21)]
Brussels, 13.01.2004
COM (2004) 2 final
2004/0001(COD)

Purpose and intended effect of measure

Objective - and an outline of the Directive's proposals

- C.1 The objective of the Directive is to eliminate obstacles to the freedom of establishment for service providers and the free movement of services between EU Member States, by giving both providers and recipients of services the legal certainty they need in order to exercise these fundamental freedoms enshrined in the EC Treaty. The proposal covers all economic service activities except those for which specific exclusions or derogations are provided, the exclusions are set out in Article 2(2) and cover parts of the following fields: financial services; electronic communications; and transport; (the latter two areas only to the extent that they are covered by certain European Community legislation), and only applies to providers *established* in a Member State.¹³ The full scope of the Directive is discussed in Annex C1.
- C.2 In order to eliminate the obstacles to the freedom of establishment, the proposal provides for:
- administrative simplification, particularly involving the establishment of “**single points of contact**”, at which service providers can complete the administrative procedures necessary to their activities, and the obligation to make it possible to complete these procedures **by electronic means** (Articles 5-8);
 - certain principles (e.g. objectively justifiable, proportionate) which **authorisation schemes** applicable to service activities must respect, in particular relating to the conditions and procedures for granting authorisation (Articles 9-13);
 - **the prohibition of certain particularly restrictive legal requirements** (e.g. nationality or economic need) which may be in force in Member States (Article 14);

¹³ Article 2 of the proposed Directive defines it as applying to “services supplied by providers established in a Member State”. Article 4 defines a service as “any self-employed activity, as provided for by Article 50 of the Treaty, consisting of the provision of a service against consideration.”

- the obligation to **assess the compatibility of certain specified national legal requirements** with the conditions laid down in the Directive (Article 15).

C.3 In order to eliminate obstacles to the free movement of services, the proposal provides for:

- the application of mutual recognition based on the **country of origin principle**, according to which a service provider is subject only to the requirements for access to and exercise of its service activity of the country in which it 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 (Articles 16-19);
- the **right of recipients to use services** from other Member States, without being hindered by restrictive measures imposed by their country or by discriminatory behaviour on the part of public authorities or private operators (Articles 20-21). The proposal sets out (since this is a controversial area) the circumstances in which a Member State may make reimbursement of the cost of health care provided in another Member State (Article 23);
- a **mechanism to provide assistance to recipients** who use a service provided by an operator established in another Member State, by providing that Member States must supply information about, for example, their consumer protection law (Article 22) and by providing, among other things, that service providers give recipients information relating to them and their service (Articles 26-28);
- in the case of the temporary **posting of workers**, the allocation of tasks between the Member State of establishment of the service provider and the Member State of destination, and the supervision procedures applicable (Article 24-25).

C.4 With a view to establishing the mutual trust between Member States necessary for eliminating these obstacles, the proposal provides for:

- **harmonisation** of legislation, particularly as regards the service providers' obligations concerning the provision of information, professional insurance, and as regards Member State rules covering multi-disciplinary activities and exchange of information on the quality of the service provider, and settlement of disputes, (Articles 26-33);
- **stronger mutual assistance between national authorities** with a view to effective supervision of service activities. This is to be achieved by a clear distribution of the roles of the home and host Member States and by stronger obligations to cooperate (Articles 34-37);
- **measures for promoting the quality of services**, such as voluntary certification of activities, quality charters or

- cooperation between the chambers of commerce and of crafts (Articles 26-33);
- encouraging **codes of conduct** drawn up by interested parties at Community level on certain questions, including in particular commercial communications by the regulated professions, rules of professional conduct and rules concerning estate agents (Article 39).
- C.5 The proposal is based on a dynamic approach involving phased implementation of some of its provisions, a commitment to additional harmonisation on certain specific matters (cash-in-transit services, gambling services, and judicial recovery of debts – Article 40), the guarantee that it will evolve and that any need for new initiatives can be identified. Moreover, according to the recitals, this proposal is intended to be without prejudice to any legislative or other Community initiatives in the field of consumer protection.
- C.6 The Commission has taken the view that the rules in the Directive should complement other European Community law that covers services. Article 3 states: “Application of this Directive shall not prevent the application of provisions of other Community instruments as regards the services governed by those provisions”. That provision, however, does not give an indication as to how conflicts between provisions of the Directive with other parts of European Community law are to be dealt with. Annex C2 includes a table explaining the meaning of references to other European Community law in the Directive. The most substantial coordination of the Directive with other European Community law is to be found in the derogations from the country of origin principle. These provisions are set out in Article 17. As well as existing European Community law, the DTI will have to co-ordinate the negotiation of this Directive with other internal market measures currently being negotiated, such as the Unfair Commercial Practices Directive.
- C.7 For most parts of the proposal, implementation is required within two years from its scheduled date for adoption in 2005 (i.e. 2007 as currently scheduled). This would be a major task for such a wide ranging Directive and it is part of the consultation process to understand whether such a deadline would be achievable.
- C.8 Perhaps the largest component regarding implementation of the Directive is set out in Article 15 which requires Member States to assess requirements imposed on access to, and exercise of, service activities and to make a report to the Commission on the results of that assessment under Article 41. The report must be completed by the final date for implementation of the Directive (2007 as currently scheduled) and must specify which requirements the Member States plan to retain and their
-

justifications, and also those that have been abolished by that date. Further initiatives could result from the conclusions of the Report. Member States must also report under Article 9(2) on authorisation systems, and under Article 30 on multidisciplinary activities.

Q.41 Assuming the Directive is adopted as per the planned schedule, is the timetable for implementation achievable?

Background – why is action needed?

- C.9 The background to the proposed Directive is the political process launched by the European Council in 2000. The March 2000 Lisbon Council adopted a programme of economic reform aimed at making the EU “the most competitive and dynamic knowledge-based economy in the world by 2010.” The EU Heads of State and Government invited the Commission to devise a strategy aimed at eliminating the obstacles to the free movement of services, and “An Internal Market Strategy for Services” was launched in December 2000.
- C.10 In July 2002 the Commission presented its report on “The State of the Internal Market for Services”¹⁴ which drew up an inventory of a large number of barriers which are preventing or slowing down the development of services trade between Member States. In particular it drew attention to those services provided by small and medium sized enterprises which are predominant in the services industry. The report concluded that, a decade after the envisaged completion of the Internal Market, and despite substantial progress on the completion of the Internal Market for goods, the fragmentation of the Internal Market for services is still having a negative impact on the European economy and preventing the achievement of the Lisbon goals.
- C.11 Why is action needed?
Action is needed to move towards achievement of the Lisbon goals, and to reap potentially substantial benefits for the European economy from increased intra-EU trade in services.
- C.12 Services are the largest sector in the UK and European economies in terms of wealth generation. Services account for over 70% of Gross Value Added (GVA¹⁵) in the UK economy,

¹⁴ COM (2002) 441 of 31.07.2002 “Report from the Commission to the Council and the European Parliament on The State of the Internal Market for Services” presented under the first stage of the Internal Market Strategy for Services.

¹⁵ Gross Value Added (GVA) measures the contribution to the economy of each individual producer, industry or sector in the United Kingdom. GVA + taxes on products - subsidies on products = GDP (Gross domestic product)

but are traded proportionately much less than goods. In 2002 the service sector accounted for 71% of GVA in the UK economy (48% from market services, 23% from non-market services compared to 17% from manufacturing), but only 32% of total exports and 23% of total imports. See Annex C3 for statistics describing the importance of services to the UK economy.

- C.13 This anomaly is to some extent explained by the nature of services which, unlike goods, are traded by various different *modes*:
- (i) services are supplied cross-border, usually by electronic means, with the service provider and recipient remaining in their respective countries;
 - (ii) service recipients travel across borders to consume services;
 - (iii) service providers establish a commercial presence in a foreign market to supply services to recipients in that market;
 - (iv) service providers travel across borders, or post personnel in a foreign market temporarily, in order to supply services to recipients in that market.

Barriers faced by service providers and recipients are of a non-tariff nature. These can be more difficult to identify and remove than tariff barriers. And since physical proximity or direct personal contact between service provider and recipient is often necessary for the trade to take place, and given the intangible nature of services, the barriers are potentially more significant and more difficult to remove than non-tariff barriers on goods:

- it is more difficult to assess the quality of services than that of goods, making regulation of inputs, e.g. professional standards, more common and complex, and which are therefore more likely to represent a barrier to trade than product standards;
- recipients of services may be less willing to travel, more reliant on personal recommendation or contacts, and therefore less willing to buy a service direct from a provider in another Member State;
- whereas goods are often standardised, services tend to be more tailored to particular service recipients, which may be more difficult to achieve for providers operating across borders.

- C.14 Without action specifically targeted at removing the remaining barriers, services are likely to continue to be traded at a level far below their potential. The UK and EU Member State economies will miss out on significant potential benefits of increased trade in services including: more specialisation and competition, leading to a more efficient allocation of resources; potentially

more investment and innovation; more choice and lower prices for service recipients. More competition in the EU internal market might make service providers better able to compete in global markets. There will also be positive knock-on effects for other sectors of the economy, as some service recipients are other businesses. In particular business services, are key to the development and success of start-ups and growing firms.

C.15 Barriers to cross-border establishment and to movement of services across borders

C.16 There are still significant *legal* and *non-legal* barriers to intra-EU services trade.

C.17 The *legal* barriers identified by the Commission relate both to the establishment of service providers in other EU Member States and to the cross-border provision of services. They include barriers to the use of inputs necessary for the provision of services, the promotion, distribution and sale of services, and after-sales service provision.

C.18 The *non-legal* barriers identified are the lack of information concerning availability and quality of service provision, and cultural and language barriers. The proposed Directive mainly addresses the legal aspects, but it does also seek to tackle the lack of provision of information to service recipients and to improve consumer confidence. The proposals take the form of encouraging measures on the quality of services, e.g. voluntary certification, quality charters and Community-wide codes of conduct.

C.19 In January 2004, the Commission published its Extended Impact Assessment of the proposal for a Directive on Services in the Internal Market.¹⁶ It incorporates evidence gathered from a wide-ranging consultation conducted by the Commission, which started in December 2000. The different types of barriers to intra-EU services trade identified, and the likely direct impacts on service providers and users, are highlighted in the Sections below. They are largely drawn from the Commission's Extended Impact Assessment, and so may not be directly relevant to the experience of UK firms and service recipients, but should help to illustrate the types of barrier the Directive addresses.

C.20 Barriers affecting establishment in another Member State
The barriers affecting cross-border establishment fall into four

● _____
¹⁶ See 'Extended Impact Assessment of Proposal for a Directive on Services in the Internal Market', *Commission Staff Working Paper*, COM(2004)2final, 13.01.2004
http://europa.eu.int/comm/internal_market/en/services/services/docs/2004-impact-assessment_en.pdf

categories:

- (i) Prohibitive
- (ii) Dissuasive
- (iii) Compliance
- (iv) Natural

C.21 (i) Prohibitive - legal requirements that prevent service providers *outright* from establishing in other Member States.

These include:

- nationality requirements in respect of service providers, shareholders, management and staff;
- quantitative restrictions (e.g. quotas) governing the number of non-domestic service providers, in terms of population or geographical distance;
- requirements to have one single establishment or the principal establishment in the Member State concerned.

For example, a medical laboratory wanting to establish subsidiaries in another Member State was prevented from doing so because of a legal requirement in that Member State which prohibited laboratories from having more than one establishment.

C.22 ii) Dissuasive - legal and administrative requirements that prevent firms from establishing in other Member States, even though it is legally possible to do so.

These include:

- administrative burdens, such as authorisation and licensing procedures, notifications and declarations, and the number and format of documents to be provided;
- the lack of single points of contact and central information points;

which all lead to long delays and lost business opportunities.

For example, in some Member States, companies had to produce documents such as certificates of nationality or residence, certificates of solvency or reliability, or other documents concerning their activities to obtain necessary authorisations. If such documents did not exist in the service provider's home country, lengthy negotiations were necessary before the relevant authorities accepted equivalent documents.

C.23 iii) Compliance – even in cases where firms do establish in other Member States, complying to additional non-domestic legal and administrative requirements increases their costs, and so renders their services relatively less efficient and less

competitive than those of domestic providers.

These include:

- administrative burdens;
- necessary changes to a service provider's business model;
- costs of legal advice on national requirements;

For example one services trade association calculated that the direct costs of gaining requisite advice on legal and regulatory requirements in order to establish a presence in a single EU Member State was between 80,000 and 160,000 Euros.

C.24

- the need to conduct "economic needs tests" for the purposes of national requirements or detailed market studies, which show that the entry of a firm into the market will not destabilise local competition.

For example, one company indicated that the costs of undertaking a market study, hiring external consultants and using internal co-ordinating staff ranged from 165,000 to 475,000 Euros per test, depending on the complexity of the tests in each Member State. The total cost to the company of preparing reports for "economic needs" tests, for 22 applications across the EU, amounted to 5.9 million Euros.

C.25

iv) 'Natural' – language, and cultural differences in consumption and commercial preferences are additional to the barriers mentioned above. They are present at each stage of the business process, but multiply throughout the chain and disproportionately burden Small and Medium sized Enterprises (SMEs). The Directive does not address these issues directly.

Firms wishing to establish in foreign markets tend to be affected by a number of different types of barriers simultaneously.

C.26

Barriers affecting cross-border services provision

C.27

(i) Prohibitive - legal requirements that prevent service providers *outright* from providing services in other Member States.

These include:

- requirements for a service provider to establish in the Member State concerned *before* it can provide services there;
 - bans on setting up temporary offices by service providers not established in the Member State concerned;
 - prohibition on the supply of a service by self-employed providers, or by providers who are not publicly appointed.
-

For example, in one Member State, tourist guides were obliged to work as employees of travel agencies and were prohibited from offering their services as a self-employed provider. This excluded self-employed tourist guides from other Member States from offering their services there.

- C.28 (ii) Dissuasive - legal and administrative requirements that prevent firms from providing services in other Member States, even though it is legally possible to do so.

Evidence collected from SMEs and SME support organisations suggests that many SMEs decide not to pursue an expansion into another member State after initial inquiries about administrative requirements and procedures because they feel they do not have the necessary resources to deal with the current level of complexity. Such agencies reported that micro-enterprises (less than 9 employees) were easily dissuaded from engaging in cross-border activities.

- C.29 (iii) Compliance – even in cases where firms do provide services in other Member States, adhering to additional non-domestic legal and administrative requirements increases their costs, and so renders their services relatively less efficient and less competitive than those of domestic providers.

These include:

- administrative burdens;
- necessary changes to a service provider's business model, such as, including additional guarantees or deposits and insurance because those already provided in the Member State of establishment are not valid or recognised;
- costs of legal advice, which concern information about different national requirements applicable where the service is provided as well as to determine which Member State's rules apply;

For example, a technical engineering company estimated that it had to spend approximately 3 per cent of its annual turnover on research into differing legal requirements potentially applicable to their service in two other Member States where it wanted to supply services.

- requirements surrounding the posting of workers, including the costs of searching for information about the applicable minimum working conditions in the Member

State where the service is provided and the administrative formalities that have to be fulfilled.

For example, a multinational company reported that it spent 8,700 Euros per year on administrative and legal support for the intra-EU posting of each of its 700 intra-EU employees, giving rise to a total annual cost of 6 million Euros.

- C.30 (iv) 'Natural' – barriers due to language, and cultural differences in consumption and commercial preferences are additional to the barriers mentioned above. They are present at each stage of the business process, but multiply throughout the chain and disproportionately burden SMEs. The Directive does not address these issues directly.

Firms tend to be affected by a number of different types of barriers simultaneously.

Barriers affecting cross-border use of services

- C.30 (i) Prohibitive - legal requirements that prevent users *outright* from consuming services from other Member States.

For example, free-to-air broadcasting services are encrypted to prevent reception outside the Member State where the broadcaster is established.

- C.31 (ii) Dissuasive - legal and administrative requirements that render the consumption of cross-border services more costly or less attractive.

These include:

- not being allowed to benefit from promotional offers in a Member State;
- not being able to benefit from tax deductions in the case of services from other Member States.

For example, in some Member States, professional or language training can be deducted from income tax only if training is carried out in the same Member State. In other Member States, employees are entitled by law to grants from their employers only in the case of language training received in their own Member State.

- C.32 (iii) Lack of information to users concerning availability and quality of service provision reduces cross-border consumption of services.

The proposed Directive mainly addresses the legal and

administrative aspects, but it does also seek to tackle the lack of provision of information to service recipients and to improve consumer confidence in the form of encouraging measures on the quality of services, e.g. voluntary certification, quality charters and Community-wide codes of conduct.

C.33 Initial feedback to DTI from stakeholders on the nature of the barriers broadly supports the Commission's findings. It is hoped that the consultation will identify more UK-specific examples.

- ▲ **Q.42** What are the most *common* barriers you or your business face in trading services across borders in the EU? How much do they cost you?
- ▲ **Q.43** What are the most *significant* barriers you or your business face in trading services across borders in the EU? How much do they cost you?
- ▲ **Q.44** What are the most *common* barriers you or your business face in establishing in other Member States? How much do they cost you?
- ▲ **Q.45** What are the most *significant* barriers you or your business face in establishing in other Member States? How much do they cost you?
- ▲ **Q.46** Will the Directive proposals address the barriers you face?

Risk assessment

What are the risks associated with *not* taking action?

C.34 Not taking action to reduce the barriers to services trade could mean forgoing a potentially significant increase in trade in services between the UK and EU, thereby losing out on significant benefits to the UK economy. See paragraphs C.45 to C.58 in the Benefits section.

C.35 The Directive covers 60-70% of the service sector, which is equivalent to 43-50% of the UK economy, or £405bn to £470bn of Gross Value Added¹⁷. UK trade in services is currently only 32% of total exports and 23% of total imports. The potential increase in trade and benefits flowing from liberalisation could be on a large scale.

● _____
¹⁷ Gross Value Added (GVA) measures the contribution to the economy of each individual producer, industry or sector in the United Kingdom. GVA + taxes on products - subsidies on products = GDP (Gross domestic product)

- C.36 Without action specifically targeted at removing the remaining barriers, services are likely to continue to be traded at a level far below their potential. The UK and EU Member State economies could miss out on significant potential benefits of increased trade (including increased establishment across borders – mode (iii) see paragraph C.13) in services including: more specialisation and competition, leading to a more efficient allocation of resources; potentially more investment and innovation; more choice and lower prices for service recipients. More competition in the EU internal market might make EU service providers better able to compete in global markets. There will also be positive knock-on effects for other sectors of the economy, as some service recipients are other businesses. In particular business services, are key to the development and success of start-ups and growing firms.

Q.47 Are there any other risks associated with not taking action?

Options

- C.37 Option 1: status quo, i.e. reject the proposed Directive.
- The UK would continue to support and promote existing measures designed to assist the completion of the internal market, such as the SOLVIT network. SOLVIT is a European Commission initiative by which nationals and businesses of Member States may seek to have particular instances of alleged breaches of Internal Market rules resolved by means of a structured dialogue between their own Member State and that in which the breach is alleged to have occurred (each Member State having within its Government one or more persons responsible for SOLVIT). The SOLVIT system is not a judicial process and binds neither party, but the Commission is able to access all of the information entered into it. This sometimes results in the Commission taking action against a Member State.
- C.38 Option 2: support and adopt the proposed Directive substantially in its current form.
- C.39 Option 3: qualified support for the Directive, with the basis for support and required amendments to be determined through the consultation, and further consideration and analysis. Adopt the revised Directive.
- C.40 Alternative Options were considered
We considered other options for reform but none were identified that would bring about a substantial advance on the status quo and which would therefore be a viable alternative for achieving
-

the stated objective of the Directive. For example, the SOLVIT network could be enhanced by increasing resources in Member States, and increasing publicity about the network. But SOLVIT is designed to be used on a case-by-case basis, and the results of the SOLVIT process do not bind either party. So whilst activity could be enhanced, the scope for developing an alternative to the Directive is limited. Even if legislation were enacted to make the results of the process binding, which would have practical difficulties, changes made would be prospective in effect only, the problem having already occurred, and therefore it is not considered to be a viable alternative to the Directive.

An alternative legislative approach was also considered - a sector-by-sector (as opposed to horizontal) approach. However, given the number and variety of sectors covered by the Directive, this would take much longer and would be potentially more difficult to negotiate. Whilst it may be possible to make progress in some sectors, it would not appear to be a viable alternative to making the substantial and wide-ranging progress towards the stated objective of the Directive.

Q.48 Are there any other options which would achieve the objective?

Benefits

- C.41 Option 1: status quo, i.e. reject the proposed Directive:
zero additional benefits
- C.42 The “status quo” option means no change to the status quo position, as described in paragraphs C.9 to C14 (Background), which is that there are still significant barriers to trade in services. The current level of trade in services is therefore likely to be substantially lower between the UK and EU than that which would potentially occur if the barriers were removed.
- C.43 The “status quo” option does not meet the Directive’s objective of eliminating the obstacles to the freedom of establishment and the free movement of services between the EU Member States, giving both the providers and recipients of services the legal certainty they need in order to exercise these fundamental freedoms enshrined in the Treaty.
- C.44 Option 2: support and adopt the proposed Directive substantially in its current form:
significant potential benefits
- C.45 Theory
The proposed Directive should lower compliance costs for firms regarding both establishment and cross-border service provision.

It should reduce legal and administration costs in relation to establishment in another Member State and by virtue of the country of origin principle, firms operating cross border will no longer need to modify their business models merely to take account of different legal systems.

- C.46 The lowering of barriers to services trade and cross-border establishment should lead to increased trade and competition. If firms trade more, they gain access to a larger market which may allow them to specialise in those services which they are relatively better at providing, and also potentially expand production and take advantage of economies of scale. More trade also means greater competition in service markets. These effects should lead to a more efficient allocation of expenditure and resources, and greater productivity - more is produced for a given level of resources.
- C.47 If firms use the savings made from the reduction of barriers to invest more in their business, and more trade also stimulates innovation, transfer of technology and best practice, both within and between Member States, there could be further benefits. A more efficient service sector also has knock-on benefits for other sectors of the economy. Other firms in other sectors, for example manufacturing firms who are also customers of other service providers, will benefit from lower prices and improved services. This is important as some services, particularly business services, can be key to the development and success of start-ups and growing firms. These dynamic effects (known as accumulation effects) have the potential to raise the productive capacity of the UK and EU economy and hence lead to higher productivity and GDP growth. More competition in the EU internal market might make EU service providers better able to compete in global markets. Whilst accumulation effects of trade liberalisation are more uncertain than the allocation effects and difficult to quantify, they are potentially very significant.
- C.48 Increased trade and competition should mean more choice and lower prices for recipients of services, both businesses and private individuals. Assistance to recipients who use a service provided by an operator in another Member State should be improved, for example, providers will be obliged to provide information relating to them and their service. This should help recipients avoid disputes and get service of the desired quality. This will also be relevant to post-sales service for goods.
- C.49 Whilst the lowering of barriers to services trade will mainly benefit UK firms trading with other Member States, and vice-versa, the proposals may also reduce the costs of UK firms providing services to the UK market, regardless of whether they export services or not. The significance of this extra effect is likely to

vary by sector, depending on the nature of barriers to trade and whether they also represent costs to domestic businesses. The barriers to trade in services are often discriminatory as regards foreign firms, i.e. more difficult for foreign firms to overcome than for domestic firms, or which only apply to foreign firms. However, non-exporting UK services firms may, for example, benefit from the use of “single points of contact” or administrative simplification measures.

C.50 Empirical evidence

The nature of services trade makes it difficult both to measure services trade and to model the actual and potential impact of trade liberalisation:

- the trade statistics do not fully capture all modes of services trade;
- compared to goods, where customs data provides a fairly clear picture, there is also incomplete data on the frequency and magnitude of the barriers to services trade;
- services are also often linked to manufacturing – manufacturers often offer services tied to their products e.g. financial services or after-sales service, and manufacturers also consume services;
- services are also offered and traded by sectors other than just those classified, for statistical purposes, as service sector firms. For example, a computer manufacturer might also export computer support services.

The impact of lowering non-tariff barriers such as those faced by service providers is also less clear than for tariff barriers as non-legal - for example, cultural or language - barriers may remain. The need in some cases for physical contact between service providers and recipients may also still render the cost of trading across borders prohibitive.

C.51 As discussed by the Commission in their Extended Impact Assessment¹⁸, given the complexity of linkages between service activities and manufacturing operations and the lack of information on the cost of regulatory and other non-tariff barriers, no suitable model to estimate the effects of the liberalisation proposed by the Directive currently exists. Even if one were developed, the services trade data is not sufficiently detailed to enable a reasonable estimate to be made.¹⁹

C.52 There are, however, numerous estimates of the benefits of reducing *global* barriers to services trade, developed to support

¹⁸“ Extended Impact Assessment of Proposal for a Directive on Services in the Internal Market” Commission Staff Working Paper COM(2004)2 Final 13.01.2004

¹⁹ The forthcoming (March 2004) report of the “Allsopp Review of the statistical requirement for monetary and wider economic policy making”, commissioned by HM Treasury, is likely to cover the issues around improving statistics about the service sector.

the negotiations on liberalising world services trade in successive rounds of WTO²⁰ talks, which illustrate the extent to which trade in services is currently restricted and the scale of the potential benefits.

- C.53 Hufbauer & Warren (1999)²¹ estimate the external barriers to services trade for selected industries and countries at the end of the Uruguay Round. According to their results, the EU's external barriers to services trade are twice those of the USA and Japan in wholesale and retail distribution and are relatively much higher in transport, storage and communications²².
- C.54 A study by the Australian Productivity Commission (2000) estimates that *the world as a whole* would be more than US\$130 billion better off if all post-Uruguay barriers to trade in services were eliminated.²³ The lion's share of this benefit would go to developing countries, because economies with higher initial levels of protection tend to gain the most (as a percentage of GDP), but the study also predicts substantial benefits to developed economies.
- C.55 A literature review by the OECD²⁴ outlines the main models, assumptions and results of thirteen empirical studies analysing the impact of liberalising *global* services trade. The benefits of removing the barriers are shown to outweigh the costs under all modelling assumptions. The estimates of the EU's share of the benefits range from 0.1 to 1.9 per cent of EU GDP or €8.8bn to €167.7bn in terms of 2001 EU GDP.
- C.56 The Commission's research into the impact of ten years of the Single Market Programme (SMP)²⁵ reports that in 2002, EU GDP was 1.8 percentage points or €165bn higher than it would have otherwise been due to the operation of the Internal Market, and that 2.5 million jobs had been created since 1992 by the moves towards a single market. These estimates include some estimates of the gains from liberalisation of services markets and indicate that they should therefore be regarded as lower bound estimates. A better functioning internal market in *services* could generate further gains. The services sector accounts for 71% of the wealth generated by the UK economy, of which the Directive

²⁰ World Trade Organisation.

²¹ Hufbauer, G. and Warren, T. (1999) 'The Globalization of Services: What has happened? What are the implications?', Institute for International Economics Working Paper, 99/12 <http://www.iie.com/publications/wp/1999/99-12.pdf>

²² See Hufbauer, G. and Warren, T. (1999), *ibid*, p.10, Table 5.

²³ Dee, P and Hanslow, (2000), K. *Multilateral Liberalisation of Services Trade*, Productivity Staff Research Paper, Canberra, Australia, p.vii.

²⁴ OECD (2001) 'Quantification of Costs to National Welfare from Barriers to Services Trade: A Literature Review, OECD Working Paper', TD/TC/WP(2000)24/Final

²⁵ The Internal Market – Ten Years without Frontiers, European Commission, 2003 http://europa.eu.int/comm/internal_market/10years/docs/workingdoc/workingdoc_en.pdf

covers 60-70% or £405bn-£470bn of Gross Value Added²⁶. And yet, services are only 32% of exports and 23% of imports. There appears to be significant untapped potential for growth in UK services trade.

- C.57 In the Commission's ex-ante analysis of the impact of the Single Market Programme, Cecchini et al (1988)²⁷ attempt to estimate the cost of barriers to services trade in the financial, business, surface and air transport, and telecommunication sectors. Whilst most of these sectors (except business services) are outside the scope of this particular Directive, the estimates of the cost of these barriers to services trade - 0.09 per cent of GDP for air transport to 0.67 per cent for financial services – give an idea of the scale of the potential benefits which might be available in other service markets. The Cecchini report acknowledges that the methodology necessarily relies upon a number of assumptions which, along with the difficulties in separating the impact of Community liberalisation measures from other domestic and international influences, impacts substantially on the reliability and accuracy of the results.
- C.58 Despite the lack of data, and the number and uncertainty of assumptions upon which the analyses (of global services trade liberalisation and estimates of the potential benefits of the Internal Market Programme, ex-ante and ex-post) are based, the studies all indicate that the scale of the potential benefits could be very large. The estimates are subject to wide margins of error but illustrate the possible large scale of the benefits that the liberalisation of the EU Internal Market for services could bring about. Even if the benefits are at the lower end of expectations they are likely to be non-trivial and could be worth £billions to the UK. However, given the inherent uncertainties in this area, we recommend that this policy is reviewed in three years, in line with this Government's commitment to review all major regulations within three years.
- C.59 How will the objective be achieved?
The objective of eliminating the obstacles to the freedom of establishment and the free movement of services between the EU Member States will be achieved by the proposed measures as described in paragraphs C.2 to C.4 (Purpose and intended effect of measure). Our initial assessment is that the key proposals, in terms of bringing benefits to the UK and EU economies, are:
- the country of origin principle, which should highlight differences in levels of regulation between Member States and

²⁶ Gross Value Added (GVA) measures the contribution to the economy of each individual producer, industry or sector in the United Kingdom. $GVA + \text{taxes on products} - \text{subsidies on products} = \text{GDP}$ (Gross domestic product)

²⁷ See *The Economics of 1992*, European Economy Number 35, 1988.

- put pressure on them not to over-regulate; and
- the obligation to simplify access to, and exercise of, service activities for businesses established in a Member State, which should also avoid over-regulation.

C.60 Which sectors will be affected?

The proposed Directive would apply, with a few exclusions, to most services within the EU, a “service” being any service activity usually provided in return for payment - this includes, for example, the provision of healthcare services under a social security scheme; it need not be the actual recipient of the service who pays. The Commission lists those sectors as including, but not limited to:

- business services such as management consulting, certification and testing, maintenance, facilities management and security, advertising and employment agencies, and commercial agents;
- services provided to both businesses and private individuals such as legal or fiscal advice, architects, recruitment services including temporary employment agencies, real estate agents, construction, distributive trades, travel agents, organisers of exhibitions and trade fairs, and car rental; and
- services provided to private individuals such as tourist guides, entertainment related services (including audio-visual services, sports centres, and amusement parks) health services or household support services.

C.61 Since the definition of “service” in Article 4 concerns economic activity, and requires there to be consideration (payment) for the service, the proposed Directive does not apply to non-economic activities. Further detail on the scope of the Directive in this regard is provided in Annex C1.

The other main exclusions are:

- financial services (those services covered by the European Commission Financial Services Action Plan);
- electronic communications services and networks in so far as the matters covered by the five Directives in the 2002 “telecommunications” package;
- taxation, but Articles 14 and 16 apply to taxation measures unless those measures are covered by a European Community measure on taxation harmonisation;
- land, air, rail, inland waterway, and sea transport, to the extent that they are regulated by other Community instruments based on Articles 71 or (80)2 of the Treaty;
- derogations are set out in Article 17 (general) and 18 (transitional) from the country of origin principle, perhaps the most important of which means that services provided by qualified professionals are excluded from the scope of that principle in the Directive, where they are to be covered by the

proposed consolidating Directive on the Mutual Recognition of Professional Qualifications.

The Directive covers 60-70% of the UK service sector, which is equivalent to 43-50% of the UK economy, or £405bn to £470bn of Gross Value Added²⁸ in 2002.

Further details of the derogations applying to service sectors are set out in Annex C1.

- C.62 We hope that the consultation will reveal more about the most common and significant types of barriers that UK firms and service recipients face in trading with other Member States, and also, perhaps, the barriers that foreign firms and service recipients may face in providing or accessing services in the UK.

- ▲ Q.49 Will you or your business benefit from the Directive?
 - If so, how?
- ▲ Q.50 Can you or your business benefit from the Directive proposals, *even if* you do not plan to start or continue exporting?
- ▲ Q.51 Will you consider starting trading (exporting or importing) services with the EU if the proposals are implemented?
- ▲ Q.52 Will you expand your current trade with the EU if the proposals are implemented?
- ▲ Q.53 What is the likely scale of the benefits?
 - Will the benefits be significant?
- Q.54 Which proposals in the Directive will you derive *most* benefit from?
 - What is the likely scale of the associated benefits?
 - Will they be significant?
- Q.55 Are there any potentially useful measures which are missing from the Directive?
- Q.57 What are the most *common* barriers you face when purchasing services from EU service providers? How much do they cost you?
- Q.59 What are the most *significant* barriers you face when purchasing services from EU service providers? How much do they cost you?

²⁸ Gross Value Added (GVA) measures the contribution to the economy of each individual producer, industry or sector in the United Kingdom. GVA + taxes on products - subsidies on products = GDP (Gross domestic product)

- **Q.60** Will you be more or less likely to purchase services from the EU if the proposals are implemented?

C.63 Issues of equity and fairness – distribution of the benefits

There is no evidence to suggest that the benefits of the Directive will fall on any particular sector, firm, group or individual, more than on any other. Service providers and recipients (both businesses and private individuals) stand to benefit. However, the regional distribution may vary somewhat and small and medium sized businesses may gain more.

Small and medium-sized businesses, which are predominant in the service sectors, may have been put off trading across borders in the past by the costs of barriers to trade. Such costs would have been more easily borne by larger enterprises and thus their exercise of the EC Treaty freedoms would have been more viable. Small and medium- sized enterprises may therefore gain more than larger firms from the proposed Directive. Larger firms should also gain substantially however as their costs of trading services overseas will be lowered.

As services are more important for employment in London and the South East of England than elsewhere in the UK, a slightly larger proportion of the benefits might be expected to go to London and the South East. This conclusion holds even if financial, transport, and communication services are not considered (as they are not covered by this Directive).

The consultation may help to determine whether or not there are any disproportionate impacts on particular economic actors or regions.

Q.61 Are there any sectors, groups or types of firm, for example Small and Medium-Sized Enterprises, that will gain more or less in terms of the potential benefits that could result from the Directive?

Q.62 Will any particular country or region in the UK gain more or less in terms of the potential benefits that could result from the Directive?

C.64 Employment impacts

In 2002, the service sector accounted for 80 per cent of total UK employee jobs and has played an increasingly important employment-generating role. Between 1985 and 2003, services accounted for approximately 5.2 million new jobs in the UK (with

high-tech service industries²⁹ accounting for almost 57% of net service sector job creation). 1.5 million jobs were lost in manufacturing over the same period. This is largely a result of increasing demand for services at the national level, since Internal Market barriers to services have suppressed cross-border demand and competition³⁰.

- C.65 Given that services are relatively labour-intensive, the lowering of barriers to services trade is likely to lead to significant new employment opportunities for UK citizens: in the UK and other Member States; in both UK and foreign providers, expanding in home markets or establishing in other Member State markets. In the short-term, however, the redistribution of trade and investment flows may aggravate problems of adjustment. Job losses may be incurred in service firms that suffer from low productivity levels and are vulnerable to foreign competition. On the other hand, employment should increase in innovative and dynamic firms, which are able to benefit and grow from the removal of burdensome legal and administrative requirements. Moreover, increased competition will restrict uncompetitive firms in the UK from passing on their relatively high costs to service recipients in the form of higher prices. Higher prices fuel inflationary pressures, which can adversely impact on GDP growth and employment for the UK economy as a whole.
- C.66 According to the Commission's Extended Impact Assessment, increased opportunities for posting of workers are unlikely to give rise to net decreases in levels of employment in host Member States, such as the UK. Existing Community *acquis* prevents social dumping (i.e. minimum wages and working conditions in host Member States being undercut). Moreover, the posting of skilled workers may increase transfer of know-how into local markets, which may have positive knock-on effects on productivity and investment levels, which in turn will aid job creation.
- C.67 Risk assessment
There is a risk that, even if the Directive is adopted largely in its current form, the anticipated benefits will not be realised:
- “natural” barriers in the form of language or cultural barriers may still impede trade to a certain extent;
 - consequently, small and medium sized enterprises, which are thought to be the main beneficiaries of the potential benefits of the Directive, may still not have the resources or inclination to trade across borders;
 - liberalisation may reinforce pressures for consolidation and

²⁹ High-tech services are classified as computer and related services (NACE 72), R&D (NACE 73), other business-related services (NACE 74), education services (NACE 80) and health and social services (NACE 85).

³⁰ Source: ONS Labour Market Trends.

merger, as firms seek to take advantage of economies of scale, which may therefore somewhat diminish the anticipated increase in competition in service sectors;

- the country of origin principle set out in Article 16 will need to be accepted and that will require a high degree of mutual trust between Member States. If this fails to happen, or is not perceived to have happened, service recipients may lack confidence such that cross-border trade does not increase.

There are also concerns that, in the worst case scenario, the differences in Member States regulatory landscape could lead to a race between them to reduce regulatory standards in order to try and attract investment from foreign service providers.

However, service providers often find that, whether establishing in a Member State (and therefore being subject to their rules and standards) or not, the best way to win business is to provide service recipients with services to a standard with which they are comfortable and familiar rather than the lowest possible. Greater competition will give service recipients more choice on quality *and* price. These factors should therefore discourage a “race-to-the-bottom” in regulatory standards.

Lastly, the country of origin principle set out in Article 16 of the Directive could prove to be a major stumbling block in the negotiation of the Directive.

C.68 There are also some risks in taking action to reduce barriers:

- the horizontal nature of the proposed Directive makes it difficult to assess every individual proposed change for every individual sector, as a result of the proposed Directive, and it is therefore very difficult to identify every single impact – cost or benefit;
- as discussed above, any uncertainty created by the removal of regulatory barriers, could have a negative impact on consumer confidence and therefore cross-border trade;
- there is a risk that the implementation will not reflect and respect existing structures i.e. might add to the regulatory burden and become regulatory rather than deregulatory in nature.

The latter two would be unintended consequences of the Directive.

Q.63 How significant are the risks that the anticipated benefits will not be realised? What is the nature of these risks?

Q.64 How significant are the risks of taking action under Option 2?

Q.65 Are there any other risks associated with Option 2?

C.69 Option 3: qualified support for the Directive, with the basis for support and required amendments to be determined through the consultation, and further consideration and analysis. Adopt the revised Directive:
Significant potential benefits

C.70 The benefits will depend to a large extent on the outcome of negotiations. They may be higher or lower than under Option 2. Broadly, if the measures proposed under the Directive were modified or added to at the end of the negotiation process, in ways which improve the effectiveness of the proposals in achieving the objective, without losing the overall breadth or ambition of the Directive, the potential benefits are likely to be higher under Option 3 than under Option 2. If the measures proposed under the Directive are substantially reduced or diluted at the end of the negotiation process, the potential benefits are likely to be less under Option 3 than Option 2.

The *net* benefits position is discussed in paragraphs C.113 to C.119 Summary and Recommendation.

The consultation should inform the UK's negotiating stance.

Q.66 Which parts of the Directive should be:

- retained?
- deleted?
- improved?
- added?

C.71 Issues of equity and fairness – distribution of the benefits
The issues are the same as for Option 2. Small and medium-sized businesses and London and the South East may gain more of the benefits. The outcome of the consultation should bring to light any further instances where the benefits or costs of the Directive fall on any particular sector, firm, group, or individual, or on any particular region more than on any other.

C.72 Risk assessment
The risks are similar to those described under Option 2. However, the risk that the objective of the Directive is not achieved could be higher, as there is a greater risk that the Directive will be diluted during the process of negotiation to such an extent that it will no longer achieve the objective. The outcome will also be partly dependent on the willingness of UK stakeholders to make representations at the EU level and the content of these representations.

However, the risks of undesirable consequences are more likely to be mitigated if the negotiations are successful in keeping what we believe to be the most useful and dropping the least useful or uncertain of the measures.

Costs

- C.73 The costs of the proposed Directive may be divided into:
- implementation costs – associated with familiarisation with the requirements for Government, regulators, service providers and recipients; implementation of the administrative requirements for Government or regulators; and screening the current legislation for prohibited requirements and those for mutual evaluation; and
 - policy costs, or compliance costs, associated with the changes necessary to day-to-day operation of service providers, Government and other relevant bodies resulting from the changes proposed in the Directive;
 - monitoring costs – the costs to Government and regulators of monitoring compliance and the impact – success or otherwise – of the Directive.
- C.74 Option 1: zero costs
The “status quo” option means no change to the current position, as described in paragraphs C.9 to C.14 (Background), which is that there are still significant barriers to trade in services. There will therefore be no additional costs for service providers and recipients, Government or regulators.
- C.75 Option 2: Service providers: low costs
Service recipients: no significant additional costs
Government and regulators: moderate costs
- C.76 Service providers
Implementation costs
Eliminating obstacles to the freedom of establishment should not give rise to any implementation costs for service providers. Firms should simply become aware of administrative simplifications if they decide to establish in another Member State. Similarly, eliminating obstacles to the free movement of services should not give rise to significant implementation costs for service providers.
- C.77 Policy/compliance costs
Most of the proposed measures provide for removing red tape and lowering the costs of trading or establishing across borders for firms, and therefore the additional costs are expected to be low. However, the burdens regarding provision of information to
-

service recipients and regulators are expected to be slightly higher under the Directive and may impose costs directly on service providers. For example, there are requirements to provide information in Articles 26, 27(2) and (3) (information concerning professional indemnity insurance), 28 (information concerning after-sale guarantees) and 30(3) (information concerning conflicts of interest for multidisciplinary activities). These are all items which businesses might be expected to hold details of anyway, or supply as a matter of course such as those in Article 26 concerning contact details, registration number etc., and therefore the additional costs of compliance to service providers should be relatively low.

There is concern that, in some instances, the Directive may replace codes of practice or self-regulation with more legalistic structures, which imply higher costs for service providers. These seem unlikely to be significant but we welcome views on this.

It is hoped that more specific costs to particular businesses and sectors can be identified through the consultation process.

- ▲ **Q.67** Are there implementation or compliance costs for your business which are likely to arise from the Directive proposals?
- ▲ **Q.68** What is the likely scale of these costs? Will they be significant?
- ▲ **Q.69** Which are likely to be the most burdensome proposals?
 - What is the likely scale of the associated costs?
 - Will they be significant?

C.78 Government and regulators
Implementation costs

The implementation costs on Government and regulators are likely to be more significant than those for service providers. There will therefore be a considerable burden for Government in terms of familiarisation with the requirements of the Directive and in setting up mechanisms to ensure compliance. These include ensuring that administrative simplification measures are taken ensuring that single points of contact are set up. In some cases Government is likely to impose obligations on regulators to do these things.

Typical costs for regulators are likely to be for investment in new technology required to set up or monitor access to electronic procedures for service providers. There could also be considerable costs in facilitating information exchange and mutual assistance between regulators in the UK with those from other Member States, and would include costs of translating documents into the appropriate language. The Directive would

also impose the obligation for regulators of UK established service providers to supervise the provision of services in other EU Member States by such providers – this could be a significant cost.

Perhaps the most burdensome requirement is the screening of current legislation for prohibited requirements, i.e. those which are not justified or proportionate, and the elimination of those barriers. Also, the identification of the need for new initiatives, and those requirements, which should be assessed through mutual evaluation. This burden is likely to fall on both Government and regulators, working together to ensure compliance.

There will also be costs of monitoring the Directive. These might include:

- the costs of monitoring compliance by service providers (and regulators); and
- the costs of monitoring the impact and success or otherwise of the Directive in meeting its objectives (these activities are discussed in more detail in paragraphs C.103 to C.109 (Monitoring and review)).

C.79 Policy/compliance costs

The impact on Government and regulators in terms of policy and compliance costs due to the proposals in the Directive are likely to be low. The major costs are for implementation and monitoring.

- **Q.70** Are the assessments of costs for Government and regulators reasonable?
- **Q.71** What will be the likely cost of setting up a “single point of contact”?
- **Q.72** What other likely costs can you foresee?
 - Will they be significant?
 - Can they be quantified?

C.80 Service recipients – business customers and private individuals
Implementation costs

There are no costs of implementation which fall on service recipients directly. Service providers may pass on part of the additional costs they face, but this possibility should be mitigated by the fact that more competition should mean more choice and lower prices for service recipients – see paragraphs C.9 to C.14 (Benefits).

C.81 Policy/compliance costs

Again, there should be no direct costs to service recipients.

However, there is a risk that a certain degree of uncertainty could be created by the application of the country of origin principle – if service recipients perceive that if foreign regulators do not provide adequate redress for complaints and if service recipients are less sure of the regulatory framework under which services are provided, this could result either in less trade across borders or extra costs of obtaining information prior to purchase, and therefore to less trade across borders.

■ **Q.73** Are there any other potential costs to service recipients arising from this Directive?

C.82 Equity and fairness – distribution of the costs

The costs of the Directive in terms of implementation fall mainly on Government or regulators, and may be the most significant costs associated with the Directive.

Costs are not expected to fall on any particular type of size of business more than any other.

Q.74 Are there any sectors, groups or types of firm that will lose more or less in terms of the potential costs that could result from the Directive?

Q.75 Will any particular country or region in the UK lose more or less in terms of the potential costs that could result from the Directive?

C.83 Option 3: Service providers: low costs

Service recipients: no significant additional costs

Government and regulators: moderate costs

Option 3 will have similar costs to those described under Option 2, but the UK's objective in the negotiations would be to remove or reduce the number of proposals which imply a net cost to the UK.

The *net* benefits position (net of costs) is discussed in paragraphs C.113 to C.119 Summary and Recommendation.

Consultation with small business : the Small Firms' Impact Test

C.84 As discussed in paragraphs C.41 to C.58 (Benefits), small and medium-sized businesses are potentially likely to benefit more than larger firms from the Directive. Small firms dominate the services sector (in 2002, 99.1% of businesses in the UK service

sector were small and medium-sized compared to 96.5% for manufacturing) and this pattern is likely to hold across the sectors covered by the Directive. Small and medium sized firms are disproportionately affected by the barriers to cross-border trade and establishment, which would represent a higher proportion of their costs than those for a larger firm. After initial feedback from the Small Business Service and small business organisations, our assessment for Stage 1 of the test (an initial sounding on the range of options) is that the Directive should be beneficial for small firms. Stage 2 of the test (the least burdensome way of implementing any proposals finally agreed) will be informed by the consultation and a more detailed assessment will be offered in the final RIA.

Competition Assessment

C.85 Option 1: status quo, i.e. reject the proposed Directive: *no impact on competition*

The “status quo” option means that we will continue to rely on existing means for completing the Internal Market for services, for example, by the use of the SOLVIT system and through case law of the ECJ³¹. Progressing the reduction of the costs of operating or trading across borders, and simplifying the market structures in which firms operate, will remain slow.

C.86 Option 2: support and adopt the proposed Directive substantially in its current form: *significant potential benefits to competition.*

Markets affected

Given the scope and complexity of the Directive, as well as the ubiquitous and inter-related nature of services across various sectors, the impact on competition for each and every market is difficult to determine. For example, since the Directive covers business-to-business services, the proposals will also have knock-on effects on manufacturing firms using those services.

Since firms classified for statistical purposes as being in the manufacturing sector also provide services, business-to-business or direct to service recipients, the scope of the Directive will be much wider than the “service sectors” described. Those service sectors range from relatively concentrated (retail services) i.e. dominated by a few operators, to relatively unconcentrated (business services). However, the service sector overall tends to have higher proportions of small businesses than the

• _____
³¹ European Court of Justice

manufacturing sector and is perhaps therefore relatively less concentrated overall. The Directive will affect a wide range of activities across many different sectors and markets. See Annex C1 for the likely scope of the Directive.

C.87 **Impact on competition for markets affected**

Will there be substantially different effects on different sizes of firms?

Most of the proposed measures provide for removing red tape and reducing the costs of trading or establishing across borders. The proposals are therefore expected to result in relatively low additional costs for UK firms (as discussed in paragraphs C.73 to C.83 (Costs)). This is independent of their size or the markets in which they operate. The costs are expected to arise from obligations to provide information to service recipients and regulators.

The benefits may be more significant for small and medium-sized enterprises. As previously discussed, whilst the lowering of barriers to services trade will mainly benefit UK businesses exporting to or importing from other Member States, the proposals could also reduce the cost to UK firms of providing services to the UK market, regardless of whether they export services or not.

The Directive should simplify authorisation and regulatory schemes, reduce red tape, and therefore reduce costs of all EU firms providing services in the UK – providing a level playing field for existing firms, reducing the costs of trading and establishing across borders, and lowering barriers to entry for new firms.

Given the horizontal nature of the Directive, and the principle of proportionality underpinning the measures, it appears unlikely that the cost structures of different types of businesses, whether operating within the UK market or across other EU Member State markets, will be disproportionately affected.

The consultation should throw light on whether this assumption holds. Moreover, the consultation will consider whether particular derogations lead to a disproportionate effect on any particular firm or sector.

C.88 **Do the proposals penalise new entrant firms?**

It is anticipated that any additional costs associated with implementing the Directive should largely be outweighed by the lowering of barriers to services trade. Firms' costs should be reduced whether operating in their home markets or other EU markets. Reducing the costs of UK firms to enter foreign markets, as well as for EU firms to enter our domestic markets, should also potentially increase competition. The Directive

should make it easier for potential new entrants to access markets for services in the UK and in other EU Member States.

C.89 Do the proposals impact on the forces for merger and acquisition?

The existence of barriers to cross-border trade and establishment could increase the incentive for firms to grow by merger and acquisition, in order to minimise the costs of cross-border trading. The lowering of barriers to services trade could therefore reduce the forces for merger and acquisition and therefore improve the level of competition in the markets for services. On the other hand, as previously discussed, liberalisation may increase pressures for consolidation and merger, as firms seek to take advantage of economies of scale, and may therefore subtract from the anticipated increase in competition in service sectors. However, if growth of this nature allows UK firms to compete more effectively with firms from other EU Member States in UK and foreign markets, it could still be a positive development as far as competition is concerned.

C.90 To conclude, successful adoption and implementation of the Directive should result in significant potential benefits to competition in a wide range of markets. Potentially negative aspects of the proposal (e.g. some small additional costs to service providers in complying with some measures in the Directive) will largely be outweighed by pro-competitive aspects, such as the lowering of the costs of trading and establishing across borders, the lowering of barriers to entry (thereby increasing the potential or actual level of competition in both UK and foreign markets) and potential changes to the structure of the markets concerned (e.g. increasing the size of the geographic market firms are able to access).

Overall competition, in the UK or other Member State markets, should not therefore be adversely affected, but rather positively affected, as a result of the Directive. More competition in the EU internal market might make EU service providers better able to compete in global markets. We welcome views from stakeholders on this conclusion.

- | | |
|--------|---|
| ▲ Q.76 | Will the Directive have different implications for the costs of different sized businesses? |
| ▲ Q.77 | Are there particular derogations which will have a significant impact on your business? |
| Q.78 | What will be the likely impact of the Directive on competition? |
| Q.79 | Are there likely to be any impacts on competition other than those |

described?

- C.91 Option 3: qualified support for the Directive, with the basis for support and required amendments to be determined through the consultation, and further consideration and analysis. Adopt the revised Directive: *significant potential benefits to competition*. Again, the precise impact on competition will depend to a large extent on the outcome of negotiations but the arguments applied in Option 2 should hold for Option 3. The adoption of a revised Directive should be a positive development for competition. The scale of the impact on competition overall could be potentially affected by which parts of the Directive are retained or rejected, and by any changes to the scope of the Directive. The UK will attempt to ensure that the outcome of the negotiations is pro-competition.

The consultation should inform the UK's negotiating stance as to which parts of the Directive we think should be deleted or improved, or which additions should be made.

Enforcement and sanctions

- C.92 The general intention of the proposed Directive is deregulatory – it is aimed at lowering the barriers to the single European market in services, both regarding the freedom of establishment of service providers in the Member States and the free movement of services between Member States. The key challenges in the implementation of this Directive will be to review the regulatory framework of the UK with a view to ensuring that any such barriers do not continue to exist here, unless they can be justified under the terms of the Directive. Much of the work to achieve this will be within Government and with those bodies that have regulatory functions.
- C.93 It follows that much of the enforcement of this Directive will require ensuring that Government and other regulatory bodies apply rules in relation to the establishment of service providers, which accord with the principles laid out in the Directive, and that they abide by the mutual recognition rules as regards other Member States' service providers.
- C.94 Enforcement will in principle be achieved by imposing statutory duties on bodies responsible for the various regulatory regimes and rules dealing with access to and exercise of service activities that are covered by the Directive. This approach to enforcement will apply to the bulk of the Directive. It could be that where Government does not itself deal with an activity which is regulated, consideration will have to be given to the need for sanctions should the relevant body fail to comply with the

Directive.

- C.95 Beyond matters requiring implementation primarily through legislative means, there is the requirement to set up “single points of contact” set out in Articles 6 to 8. The role of “single points of contact” is to facilitate access to services markets for service providers, by providing a single point of contact for all the procedures and formalities needed to access and operate in the market, including applications for authorisation from the competent authorities.
- C.96 However, there will also be provisions which will require more than the imposition of statutory duties on regulatory bodies. The proposed Directive will impose obligations on service providers, for example, in the areas of provision of information, the requirement for certain categories of provider to have professional indemnity insurance, and in relation to complaint handling.
- C.97 Member States currently operate their own services consumer protection regimes, with differing levels of consumer protection around Europe. The proposed Directive poses a challenge to this by requiring greater access to service recipients across the Community by service providers from all Member States, as a result of the simplification of establishment rules and of the principle of country of origin rule for services delivered by providers established in other Member States.
- C.98 For the Directive to be acceptable to Member States there will have to be mutual trust between them on issues such as relative levels of consumer protection. One way in which the proposed Directive seeks to achieve that trust is by including obligations on service providers to give significant amounts of information to customers before and at the time that any contract is made. For the proper enforcement of these obligations it will be necessary that national measures provide for sanctions in the event of non-compliance.
- C.99 There are requirements to provide information in Articles 26, 27(2) and (3) (information concerning professional indemnity insurance), 28 (information concerning after-sale guarantees) and 30(3) (information concerning conflicts of interest for multidisciplinary activities) which require, among other things, the service provider to give their contact details, company registration number if appropriate, VAT number, their governing regulatory body (if the provider is a member of a regulated profession), and, at the request of the customer, other service-related information. In the implementation of the Directive, the UK will be under an obligation to ensure that these requirements on service providers are adequately and effectively implemented and that breach of

the provisions of the Directive is subject to sanctions which are effective and dissuasive, whilst not being disproportionate to the breach.

- C.100 The options available to Government for the types of sanctions which could be introduced in relation to the breach of such provisions range from providing remedies to customers of service providers (for example a cause of action for breach of statutory duty), to administrative fines, and finally to criminal penalties. Also given the broad extent of the measure which will apply to the vast majority of contracts for the supply of services, the ability of Government itself to ensure compliance in relation to such an immense field may be limited.
- C.101 Article 27 of the proposed Directive also requires Member States to ensure that certain categories of service providers have appropriate professional indemnity insurance. A legal obligation will have to be placed on providers to achieve this and sanctions for non-compliance will be necessary. The UK Government will need to consider if it will be appropriate here to use civil or even criminal penalties where the lack of professional indemnity insurance could have serious consequences for service recipients who require protection.
- C.102 Article 32 of the proposed Directive requires providers to respond to complaints by service recipients as soon as possible and to make best efforts to find appropriate solutions. Again this is of importance in relation to consumer protection concerns of Member States and the Government will need to consider the appropriate sanction for failure to comply.

<p>Q.80 Do you foresee any likely problems with enforcement and sanctions other than those discussed?</p>
--

Monitoring and review

- C.103 Part of the implementation of the Directive will be to put in place arrangements for Government to collect information on compliance from both Government and non-Government regulatory bodies. It may also be advisable to set up a mechanism to find out the experience of service recipients in the UK in accessing services from other Member State providers and of service recipients in other Member States in accessing services from UK providers.
- C.104 The levels of UK services trade and investment (both with other EU Member States and the rest of the world) can be monitored using UK trade and investment statistics issued by the Office of National Statistics. They should give a good indication of

whether the Directive has increased the UK's trade in services with the EU.

- C.105 Monitoring of prices for services in the UK and other EU Member States will also give an indication of whether the Directive has delivered more competition in UK services markets. Increased trade and competition should mean more choice and lower prices for recipients of services, both businesses and private individuals.
- C.106 Monitoring is built into the Directive itself in so far as there are requirements for reporting and mutual evaluation. The proposal prohibits certain requirements concerning access to and the exercise of a service activity (Article 14) and, during the transposition period, requires Member States to examine systematically whether they exist in its legal system and, if so, eliminate them. There is also a list of other requirements to be evaluated, and Member States must review their regulatory systems in the light of the conditions laid down in the Directive. Requirements must be non-discriminatory, objectively justified by an over-riding reason relating to the general interest and satisfy the principle of proportionality. Member States must report on this evaluation by the end of the transposition period (currently scheduled for 2007). Each report will be submitted to other Member States and the Commission will consult interested parties. This "peer review" process will enable exchange between Member States of best practice in the modernising of the regulation of services. The Commission will then produce a synthesis report with proposals, where appropriate, for future initiatives.
- C.107 All of these forms of monitoring could feed into any review by the Commission of the success of the Directive: progress on the completion of the Internal Market for services. It could also be useful as an input to the Internal Market Scoreboard.
- C.108 Given the high degree of uncertainty associated with the exact magnitude of the costs and benefits of the proposals, DTI will undertake a review of the Directive three years after implementation. This is in line with the Government's commitment to systematic post-implementation reviews of major pieces of legislation.
- C.109 There is also an obligation imposed on the Commission, following the completion of reporting procedures referred to above, to report every three years on the application of the Directive. This would be accompanied, where appropriate, by proposals for amendments to the Directive.

● **Q.81** Are the proposed arrangements for monitoring adequate?

- **Q.82** What will be the likely costs of monitoring for your sector?

Consultation

- C.110 Within Government
A large number of Government Departments and Agencies will be consulted by DTI: see Annex C4.
- C.111 Public Consultation
The consultation will be completely open and the consultation document will be available both electronically (on the DTI website <http://www.dti.gov.uk/ewt/servgen.htm>) and in hard copy.
- C.112 A large number of groups or organisations will receive the consultation document directly – see Annex C5.

Summary and Recommendation

C.113 Objective

The objective of the Directive is to eliminate obstacles to the freedom of establishment for service providers and the free movement of services between EU Member States, by giving both providers and recipients of services the legal certainty they need in order to exercise these fundamental freedoms enshrined in the Treaty.

C.114 Coverage

The proposal covers all economic service activities except those for which specific exclusions or derogations are provided. These exclusions cover parts of the following fields: financial services; electronic communications; and transport; (the latter two areas only to the extent that they are covered by certain European Community legislation). The Directive only applies to providers *established* in a Member State.

C.115 Directive proposals

The proposals in the Directive include:

- administrative simplification including the establishment of “single points of contact”;
- the application of mutual recognition on the country of origin principle, making a service provider subject only to the requirements for access to and exercise of its service activity of the country in which it is established;
- stronger mutual assistance between national authorities with a view to effective supervision of service activities; and
- removal of specified prohibited requirements.

Member States must also assess requirements imposed on access to, and exercise of, service activities and report to the Commission on the results, specifying which requirements Member States plan to retain and their justifications for doing so. The proposed rules in the Directive are intended to complement other European Community law that covers services.

C.116 Why is action needed?

Services account for over 70% of Gross Value-added³² in the UK economy but are traded proportionately much less than goods: in 2002 only 32% of exports and 23% of imports were services.

A decade after the envisaged completion of the Single Market, there are still significant barriers to trade in services in the EU. Without action specifically targeted at removing non-tariff barriers, services are likely to continue to be traded at a level far below their potential. The UK and EU Member State economies could miss out on significant potential benefits of increased trade in services including:

- more specialisation and competition, leading to a more efficient allocation of resources;
- potentially more investment and innovation;
- more choice and lower prices for recipients of services, both businesses and private individuals.

More competition in the EU internal market might make EU service providers better able to compete in global markets, and there will be positive knock-on effects for other sectors of the economy as services, in particular business services, are key to the development and success of start-ups and growing firms.

● _____
³² Gross Value Added (GVA) measures the contribution to the economy of each individual producer, industry or sector in the United Kingdom.
GVA + taxes on products - subsidies on products=Gross Domestic Product

Impact Assessment

	Benefits	Costs
Option 1 Status quo	<i>Zero additional benefits</i>	<i>Zero additional costs</i>
Option 2 Support and adopt the proposed Directive substantially in its current form	<p><i>Significant potential benefits:</i> Increased trade and competition, leading to more efficient production, potentially more investment and innovation, higher productivity, and more choice and lower prices for service recipients.</p> <p>Through more competition in the EU Internal Market, EU service providers might be better able to compete in global markets. Positive knock-on effects for other sectors as services, in particular business services, are key to the development and success of start-ups and growing firms.</p> <p>Even if the benefits for the UK are at the lower end of expectations, they are likely to be non-trivial, and, subject to the risks described overleaf, could be worth £billions to the UK.</p>	<p><i>Service providers: low costs</i> Most of the proposed measures provide for removing red tape and lowering the costs of trading across borders, and therefore additional costs for service providers are expected to be low.</p> <p><i>Service recipients: no significant additional costs</i></p> <p><i>Government and regulators: moderate costs</i> Costs of implementation, falling on Government and regulators, are expected to be the most significant additional costs and they include setting up mechanisms to ensure compliance, ensuring administrative simplification measures are taken, and screening current legislation for prohibited requirements.</p>
Option 3 Qualified support for the Directive, with the basis for support and required amendments to be determined. Adopt the revised Directive.	<p><i>Significant potential benefits:</i> As for Option 2, but potentially higher net benefits through negotiation.</p>	<p><i>Costs as for Option 2, but there is potential, in negotiation, to remove or reduce the number of proposals which impose a net cost on the UK.</i></p>

C.117 Risk assessment

As discussed above, if no action is taken the UK could miss out on significant potential benefits flowing from increased trade in services.

Even if action is taken, and the Directive is adopted, under Option 2 or Option 3, there are risks that the anticipated benefits may not be realised:

- “natural” barriers in the form of language or cultural barriers may still impede trade to a certain extent;
- consequently, small and medium-sized enterprises which are thought to be the main beneficiaries of the potential benefits of the Directive, may still not have the resources or inclination to trade across borders;
- the country of origin principle set out in Article 16 will need to be accepted and that will require a high degree of mutual trust between Member States. If this fails to happen, or is not perceived to have happened, service recipients may lack confidence and cross-border trade may not increase.

There are also concerns that, in the worst case scenario, the differences in Member States regulatory landscape could lead to a race between them to reduce regulatory standards in order to try and attract investment from foreign service providers. However, service providers often find that, whether establishing in a Member State (and therefore being subject to their rules and standards) or not, the best way to win business is to provide service recipients with services to a standard with which they are comfortable and familiar rather than the lowest possible. Greater competition will give service recipients more choice on quality *and* price. These factors should discourage a “race-to-the-bottom” in regulatory standards.

Lastly, there is a risk that the country of origin principle set out in Article 16 of the Directive could prove to be a major stumbling block in the negotiation of the Directive.

There are also some risks in taking action to reduce barriers, the most significant being:

- the horizontal nature of the Directive makes it difficult to assess every individual proposed change for every individual sector, and it is therefore very difficult to identify every impact – cost or benefit.

C.118 Equity and fairness

In general, the benefits and costs are not expected to fall on any particular sector, firm, group or individual more than on any other – service providers or recipients. However, since small and medium sized firms dominate the service sector, and may have found barriers disproportionately high in the past, smaller firms

may benefit more than large firms from the Directive. Also, since services are more important for employment in the South East and London, these areas may gain slightly more from the Directive than other regions of the UK.

C.119 **Recommendation**

Given the complexity of linkages between services and manufacturing operations, the lack of information on the cost of regulatory and other non-tariff barriers, and that the services trade statistics are not sufficiently detailed, it is difficult to quantify the benefits of the Directive proposals. However, even if the benefits for the UK are at the lower end of expectations, they are likely to be non-trivial and could be worth £billions to the UK. There are risks: it is more difficult to predict the impact of removing non-tariff barriers; “natural” barriers such as language and cultural preference may remain; small enterprises may still not have the resources or inclination to trade across borders and the cooperation between regulators in Member States must give service recipients the confidence to use foreign service providers. The costs are expected to be relatively much less significant and of a lower order of magnitude. Subject to the risks described above, and that the benefits are indeed significant, the benefits are expected to exceed the costs. However, given the inherent uncertainties in this area, we recommend that this policy is reviewed in three years, in line with this Government’s commitment to review all major regulations within three years.

Most of the proposals provide for removing red tape and lowering the costs of trading in services or establishing across borders, and therefore the additional costs to service providers are expected to be low. The more significant costs are expected to fall on Government and regulators for actions such as taking administrative simplification measures, screening current legislation for prohibited requirements and ensuring compliance with the Directive. Service recipients are expected to benefit from more choice and lower prices. The consultation responses may provide further details on the costs and benefits of particular aspects of the Directive proposals.

Option 3: qualified support for the Directive³³, is the preferred option at this stage because we expect this will yield the highest *net benefits* to the UK. It offers the potential to reduce or remove the proposals which impose a net cost on the UK.

Declaration

• _____
³³ with the basis for support and required amendments to be determined through the consultation, and further consideration and analysis

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

.....

Patricia Hewitt
Secretary of State for Trade and Industry

Contact:
Heinz Kessel
Europe and World Trade Directorate
Department of Trade and Industry
Bay 209, 227 Kingsgate House
66-74 Victoria Street
London SW1E 6SW

heinz.kessel@dti.gsi.gov.uk

Annex C1

Scope of the Directive

- AC1 The scope of the proposed Directive is mainly determined by Articles 2 (scope and exclusions), 4 (definitions of “service” etc.), 17 (general derogations from country of origin principle) and 18 (transitional derogations).
- AC1.1 The definition of “service” is the key provision – it says “service” means any self employed economic activity, as provided for by Article 50 of the Treaty, consisting in the provision of a service for consideration.” The use of the expression “self-employed” is not intended to mean the Directive only applies to services provided by self-employed persons, it is rather that the activities covered do not include those provided as part of an employment relationship between employer and employee.
- AC1.2 Non-market services
- AC1.3 Section D5 (Costs) of this document sets out the exclusions from the Directive. The definition of services itself excludes non-market services, by its reference to “economic activity” and by the reference to “the provision of a service for consideration”.
- AC1.4 The definition of services is intended not to include those services provided by the State for no consideration as part of its social, cultural, education and judicial functions where there is no element of remuneration. That definition follows the case-law of the ECJ, in particular, in Humbel (Case C-263/86), where the Court decided that courses provided under the national education system of a Member State were not provided for remuneration. It follows therefore that in the education field, private educational services seem to be included within the scope of the Directive.
- AC1.5 Examples of other types of state service that would not fall with in the Directive would be public museums, public libraries and the emergency services.
- AC1.6 Given the difficulty of deciding whether remuneration exists in relation to services provided by the State, it will be necessary to consider each service activity individually.
- AC1.7 The Directive includes provisions concerning health care services and the rights of recipients of health care. However, the application of single market rules to healthcare remains an area of some difficulty and the Commission has promised to publish a Communication in the next few months concerning how it intends to deal with healthcare falling within European Community competence.

- AC1.8 Services within the Directive's definition of services
- AC1.9 The Directive is intended to cover the whole of the internal market for services, subject to the exclusion of those areas mentioned in Section D5 (Costs) of this document. Those exclusions exclude the relevant service activity from the scope of the Directive entirely.
- AC1.10 The Directive applies both to service providers that wish to establish in another Member State and those that wish to provide services cross border without establishing in another Member State. Those establishing in another Member State will be subject to the requirements of that Member State and the Directive will seek to benefit them by, amongst other things, simplifying the authorisation schemes of Member States. The Directive seeks to benefit service providers supplying cross border by including the country of origin principle (Article 16). The Directive also includes derogations for specific services from the application of that principle. That principle means that a service provider's *home* Member State will be responsible for the supervision of its activities at home and in the rest of the EU and that generally *host* Member States may not supervise service providers from other Member States. However, Articles 17 and 18 set out derogations from that principle, the following derogations affect specific service sectors, allowing *host* Member States to supervise the relevant service activities (often under the terms of other European Community instruments):-
- postal services,
 - water, gas and electricity distribution services,
 - lawyers' freedom to provide services,
 - professional qualifications (mutual recognition of qualifications is dealt in a separate measure)
 - services which require the services of a notary, and
 - statutory audit.
- AC1.11 In relation to provision of waste services and healthcare (authorisation of reimbursement to service providers), the derogations would allow host Member States to retain their authorisation systems. Member States would also be entitled to require registration of vehicles leased in another Member State.

Annex C2 References to other European Commission legislation

Article	Reference to	Meaning of reference
Article 2(2)(a)	financial services as defined in Article 2(b) of Directive 2002/65	"financial services" means any service of a banking, credit, insurance, personal pension, investment or payment nature. The definition leaves some doubt as to whether certain services are included within the scope of the Directive, for example, occupational pensions, reinsurance services, etc.
Article 2(2)(b)	Directive 2002/19 (access directive)	The Services Directive (SD) does not apply to the Directive dealing with "access to, and interconnection of, electronic communications networks and associated facilities". N.B. there is no exclusion here or below for the E-commerce Directive (2000/31).
Article 2(2)(b)	Directive 2002/20 (authorisation directive)	SD does not apply to the Directive dealing with "the authorisation of electronic communications networks and services".
Article 2(2)(b)	Directive 2002/21 (framework directive)	SD does not apply to the Directive dealing with the "common regulatory framework for electronic communications networks and services".
Article 2(2)(b)	Directive 2002/22 (universal service)	SD does not apply to the Directive dealing with "universal service and users' rights relating to electronic communications networks and services".
Article 2(2)(b)	Directive 2002/58 (privacy and electronic communications)	SD does not apply to the Directive dealing with "the processing of personal data and the protection of privacy in the electronic communications sector."
Article 2(2)(c)	Article 71 of the EC Treaty	The reference means the SD does not apply to matters covered by secondary legislation under this legal base which covers transport

		by rail, road and inland waterway – of which there are over 100 measures.
Article 2(2)(c)	Article 80(2) of the EC treaty	The reference does the same as the one above, but in relation to sea and air transport.
Article 2(3)	Community instruments on fiscal harmonisation	The Directive only partly carves out tax matters, since the restrictions referred to in Articles 14 and 16 will apply to tax, unless the restrictions are covered by such Community instruments.
Article 3 2 nd sub-paragraph	“other Community instruments”	Reference means the rules in the SD can apply alongside existing rules in Community instruments which apply to services - this provision does not make clear what is to happen in the case of a conflict.
Article 5(3)	proposed Directive on Recognition of Professional Qualifications – Article 46	Article 5(2) does not apply in the situation where the directive referred to applies: Art.46 refers to documents in Annex VII e.g. proof of nationality
Article 5(3)	proposed Directive public contracts – Article 45(3)	The recognition of documents rules in Article 5(2) does not apply where Article 45(3) of this proposed directive applies – i.e. need for contractor to show has not been convicted, made bankrupt, etc.
Article 9(3)	Community instruments which impose authorisations systems	Articles 9 to 13 inclusive which concern “authorisations” do not apply to systems imposed or permitted by European Community law.
Article 17(1)	Postal services as defined in Article 2(1) of Directive 97/67 (development of postal services internal market)	Means “services involving the clearance, sorting, transport and delivery of postal items”. A postal item is “an item addressed in final form in which it is to be carried by the universal service provider.”
Article 17(2)	Electricity distribution	means “the transport of electricity

	services as defined in Article 2(5) of Directive 2003/54 (common rules for electricity internal market)	on high voltage, medium voltage and low voltage distribution systems with a view to its delivery to customers, but not including supply.”
Article 17(3)	Gas distribution services as defined in Article 2(5) of Directive 2003/55 (common rules for natural gas internal market)	means “the transport of natural gas through local or regional pipeline networks with a view to its delivery to customers, but not including supply.”
Article 17(5)	Matters covered by Directive 96/71 (posting of workers)	The reference means that the mutual recognition rule in Article 16 does not apply to the posting of workers circumstances set out in Article 1 of the Directive. The Directive sets out rules (Arts. 3 – 6) concerning employment terms and conditions, information sharing, enforcement measures and jurisdiction. Member States must ensure that the specified terms and conditions are guaranteed to posted workers (but also includes exceptions and exemptions) – e.g. maximum work periods, minimum rest periods, minimum paid holidays, etc.
Article 17(6)	Matters covered by Directive 95/46 (data protection)	The mutual recognition rule in Article 16 does not apply to the data protection rules in the DP Directive.
Article 17(7)	Matters covered by Directive 77/249 (exercise of freedom to provide services for lawyers)	The mutual recognition rule in Article 16 does not apply to lawyers – who are covered by much less mutual rules under Directive 77/249 which require observance of local professional rules as well as home state rules.
Article 17(8)	Article [] of the proposed recognition of professional qualifications Directive	<i>There is no indication here (e.g. by Art. no. or subject) of which Article of the proposed Directive is referred to.</i>

Article 17(9)	Provisions of Regulation 1408/71 (application of social security schemes for workers and their families) determining applicable law	Appears to refer to Title II of the Regulation – the general rule (Art. 13) is that a worker covered by the Regulation is subject to the social security law of the Member State in which he is employed even if he resides elsewhere.
Article 17(10)	Provisions of proposed Directive on freedom of movement of EU citizens and their families.	The member state of origin rule in Article 16 would not deal with administrative formalities concerning moving to other Member States. This would be dealt with under the provisions of the new Directive which is intended to amend the present Regulation 1612/68.
Article 17(12)	Articles 3 and 4 of Regulation 259/93 (waste control and supervision)	The mutual recognition rule in Article 16 does not apply to the movement of waste between Member States or into/out of the EU – the notification and control scheme for which is provided in Articles 3 and 4 of the Waste Regulation.
Article 17(13)	Directive 87/54 – (protection of topography of semiconductors)	The mutual recognition rule in Article 16 does not apply to rights covered by this Directive.
Article 17(13)	Directive 96/9 – (protection of database rights)	The mutual recognition rule in Article 16 does not apply to rights covered by this Directive.
Article 17(13)	Reference to “industrial property rights”	The mutual recognition rule in Article 16 appears not to apply to industrial property rights generally.

Art.19(3)	Articles 19(1) and (2) are without prejudice to Community instruments which guarantee freedom to provide services or allow derogations from such as to which (1) Directive 1999/93 on framework for electronic signatures, Directive 98/84 on legal protection of conditional access services. (2) Directive 89/552 on pursuit of television broadcasting activities and Directive 2000/31 the E-commerce Directive.	The examples in the first category prohibit all derogations from the free circulation of services. The examples in the second category are of Directives which allow for certain derogations. In case of both categories the effect would be for the type of provisions referred to, to take precedence over Article 19 of the Service Directive.
Article 24(1)	Employment and working conditions laid down in Directive 96/71 (posting of workers)	The Directive applies to posting of workers in the EU, but Directive 96/71 is still to be complied with. The Article referred to sets out conditions of employment which Member States must ensure that undertakings guarantee to posted workers (but also includes exceptions and exemptions) – e.g. maximum work periods, minimum rest periods, minimum paid holidays, etc. Home MS is to assist Host MS in ensuring compliance.
Article 42(2)	Article 3 of the Decision 1999/468 (comitology)	The reference means the advisory committee procedure will be used wherever this paragraph is referred to in the SD – this procedure is the lightest of touches and although MS experts populate the committee – the Commission is obliged only to “take the utmost account” of the committee’s opinion and to inform it of the way that has been done, i.e. it does not have to amend its proposal.

Annex to MISC/04/13

Article 44	Annex to Directive 98/27 (consumer protection injunctions)	The additional wording added to the Injunctions Directive would mean that a breach of the SD could lead to regulatory bodies or Secretary of State-approved consumer bodies (see Stop Now Orders Regulations - SI 1422/2001) obtaining an injunction to prevent unlawful activity by a service provider.
------------	--	--

Annex C3 Statistics: Services in the UK Economy

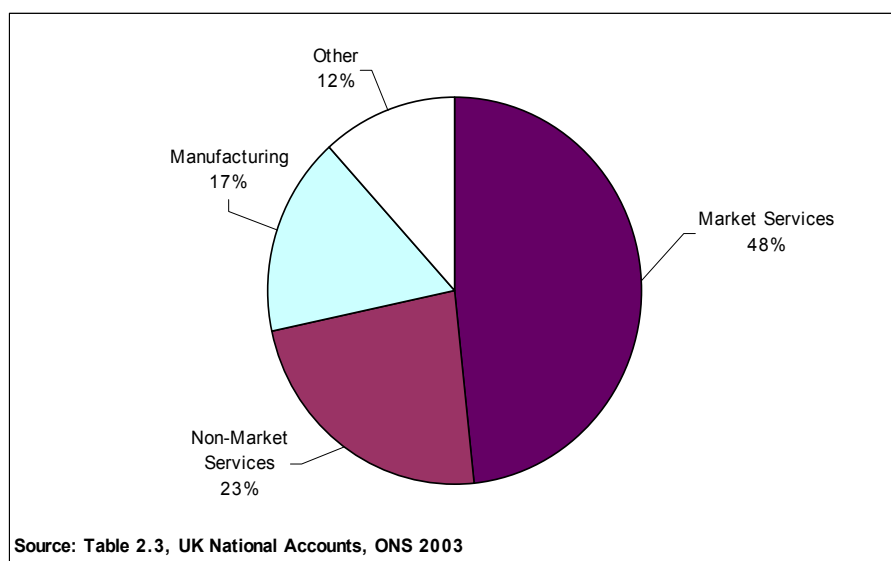
1 Overview

1.1 In common with most European countries, the UK economy is dominated by the service sector.

1.2 GVA

In 2002, the service sector contributed 71 per cent (or £664bn) to total UK Gross Value Added (GVA)³⁴, over three times that of the manufacturing sector, which contributed less than 20 per cent. Within the service sector, GVA from 'market services' was more than double that from 'non-market services'³⁵ (see Chart 1 below).

1.3 *Chart 1: Proportion of Total GVA by Sector in 2002*



1.4 However, over a quarter of market services GVA was generated by financial services (fully excluded from the Directive) and transport and communications services (largely excluded from the Directive). Similarly, a significant proportion of non-market services GVA, between 40 and 50 per cent³⁶, was generated by activities that are not covered by

³⁴ Gross domestic product (GDP) is defined as Gross Value Added (GVA) at current basic prices, where GVA is equal to the difference between the value of output and the value of inputs used to produce it plus subsidies less taxes (such as VAT).

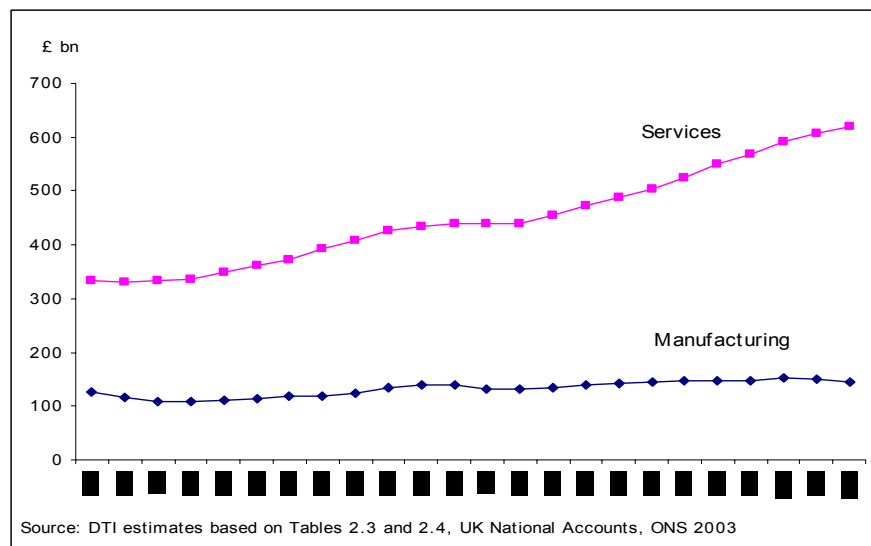
³⁵ For the purposes of this exercise and to permit comparisons over time, 'Market Services' has been taken to include sections G to K of the Standard Industrial Classification (SIC) and 'Non-Market Services' sections L to Q. A description of the UK SIC of Economic Activities can be found at http://www.statistics.gov.uk/methods_quality/sic/contents.asp

³⁶ Based on DTI estimates.

the Directive, since it automatically excludes ‘non-economic’ activities and services provided by the State for no consideration as part of its social and legal obligations where there is no element of financial remuneration.³⁷ Still, 60-70% of the UK service sector is covered by the Directive, or 43-50% of the economy - £400bn - £460bn of GVA.

1.5 Services have been increasing in importance to the UK economy over many years and now account for the bulk of UK GVA economic growth. Between 1979 and 2002, services GVA increased in constant price terms by over 85 per cent, from around £332bn to £621bn. Manufacturing GVA, by comparison, grew by just over 15 per cent over the same period from £126bn to £145bn (see Chart 2).

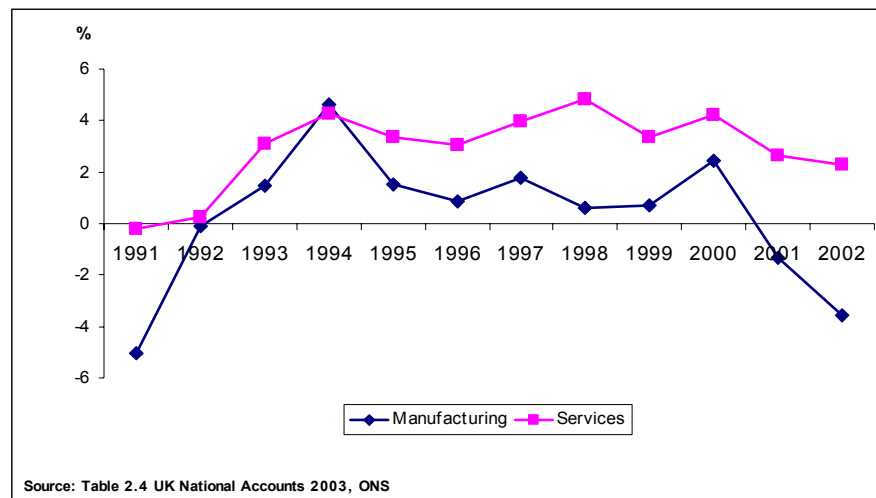
1.6 *Chart 2: GVA in the Manufacturing and Service Sectors between 1979 and 2002 (at constant prices)*



1.7 Chart 3 depicts the year-on-year growth rates of GVA in the manufacturing and service sectors. Since the early 1990s, the level of GVA growth in the service sector has been consistently higher than that in manufacturing, reaching a peak of 4.8 per cent in 1998. Although it has since declined to 2.3 per cent in 2002, it far outstrips manufacturing growth, which has been negative since 2001.

³⁷ See Annex D1 for details of the full scope of the Directive.

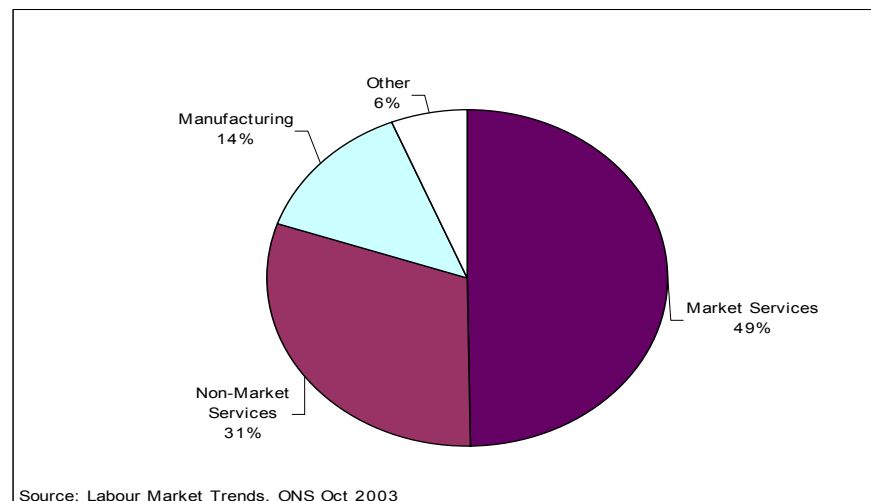
1.8 *Chart 3: GVA Growth rates in the Manufacturing and Service Sectors between 1991 and 2002 (at constant prices)*



1.9 Employment

The service sector is also important for UK employment, accounting for over 80 per cent (or 20.7 million) of total UK employee jobs in 2003.³⁸ By contrast, the manufacturing sector accounted for less than 14 per cent (see Chart 4 below).

1.10 *Chart 4: Proportion of Total UK Employee Jobs by Sector in 2003*



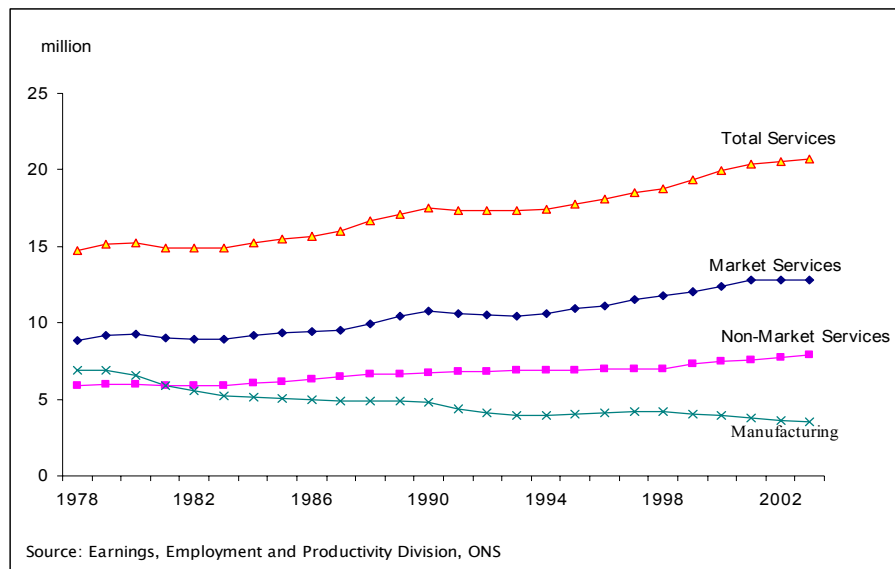
1.11 The year-on-year growth of employment in the service sector continues to outpace that in manufacturing. Between 1978 and 2003, employee jobs in the service sector increased by approximately 41 per cent, from 14.7 million to 20.7 million. Manufacturing jobs, in sharp contrast, fell by nearly 50 per

³⁸ Of the 29.7 million jobs in the UK Workforce in 2003, 25.8 million were 'employee jobs'. The remainder consists of the self-employed and those in H.M. Forces and on Government Schemes, which are excluded for the purposes of our analysis.

cent over the same period, from around 6.9 million to 3.5 million (see Chart 5 below).

1.12

Chart 5: Number of UK Employee Jobs in Manufacturing and Services between 1978 and 2003



2

Firm Demographics

2.1

The Small Business Service (SBS) estimates that there were 3.8 million business enterprises in the whole of the UK economy at the start of 2002 (see Table 1). Of these, 99.8 per cent were Small and Medium sized Enterprises (SMEs), where SMEs are defined for statistical purposes as being those with less than 250 employees.³⁹

³⁹ There is no single definition of Small and Medium Enterprises (SMEs). For statistical purposes, the definition used by the Small Business Service (SBS) within the DTI is (also see <http://www.sbs.gov.uk/>):

- micro firm = 0 - 9 employees;
- small firm = 0 - 49 employees (includes micro);
- medium firm = 50 - 249 employees;
- large firm = over 250 employees.

2.2

Table 1: Number of enterprises in the UK by size of enterprise and sector, 2002

	All Enterprises	Small (0-49)	Medium (50-249)	Large (> 250)	SMES (0-249)
All industries ¹	3,798,000	3,764,000	27000	7000	3,791,000
Market Services ²	1,845,000	1,829,000	13000	3000	1,842,000
Manufacturing	298000	288000	8000	2000	296000
Other ¹	1,654,000	1,647,000	6000	1000	1,653,000

Notes: 1 Excludes section L (Public administration and defence).

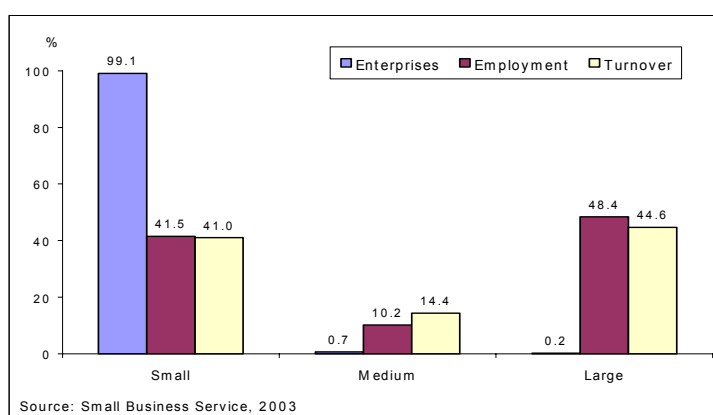
2 Excludes section J (Financial Intermediation) where turnover is not available on a Source: Small Business Service, August 2003

2.3

However, the share of enterprises, employment and turnover by size of enterprise differs across sectors⁴⁰ (see charts 6a and 6b below). The market services sector as a whole is relatively fragmented, with small enterprises (99.1 per cent of total enterprises in the market services sector) accounting for over 41 per cent of market services employment and turnover in 2002. In the manufacturing sector, medium and large firms, although still small in absolute numbers, account for relatively higher proportions of total sectoral employment and turnover.

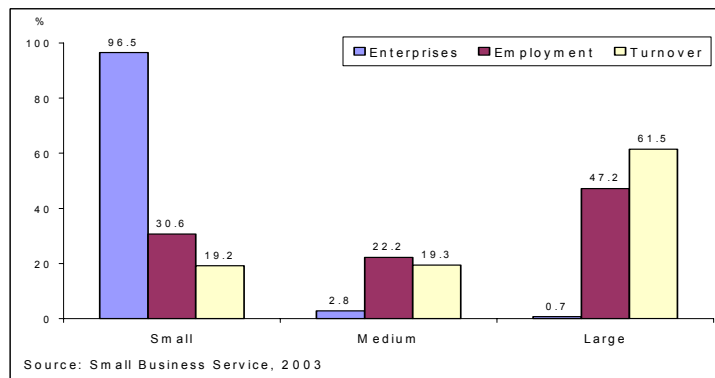
2.4

Chart 6a: Share of enterprises, employment and turnover in Market Services by size of enterprise in 2002



⁴⁰ Comparisons are made between enterprises in market services and manufacturing only, because statistics on enterprises in public administration and defence (section L of the UK SIC 2003), which account for a large proportion of non-market services, are not covered by the SBS.

2.5 Chart 6b: Share of enterprises, employment and turnover in Manufacturing by size of enterprise in 2002

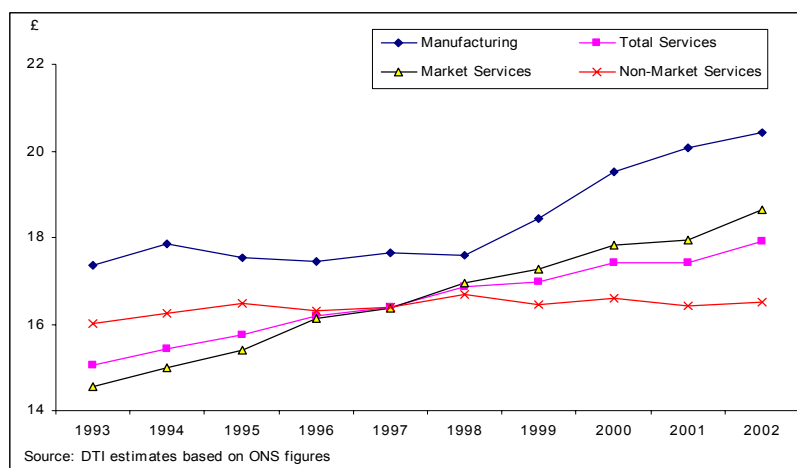


3 Labour Productivity

3.1 Labour productivity, (measured as constant price GVA per hour worked)⁴¹ in the service sector has been consistently lower than in the manufacturing sector since 1993 (see Chart 7).

3.2 This phenomenon can, however, be partly explained by the relatively sharp decline in employment in the manufacturing sector over the past two decades (see section 2), which has increased average GVA per employee. Manufacturing also tends to be more capital-intensive than services.

3.3 Chart 7: Estimated Labour Productivity by Sector between 1993 and 2002 (at constant prices)



3.4 Nonetheless, there are marked variations in labour productivity within the service sector. Labour productivity in

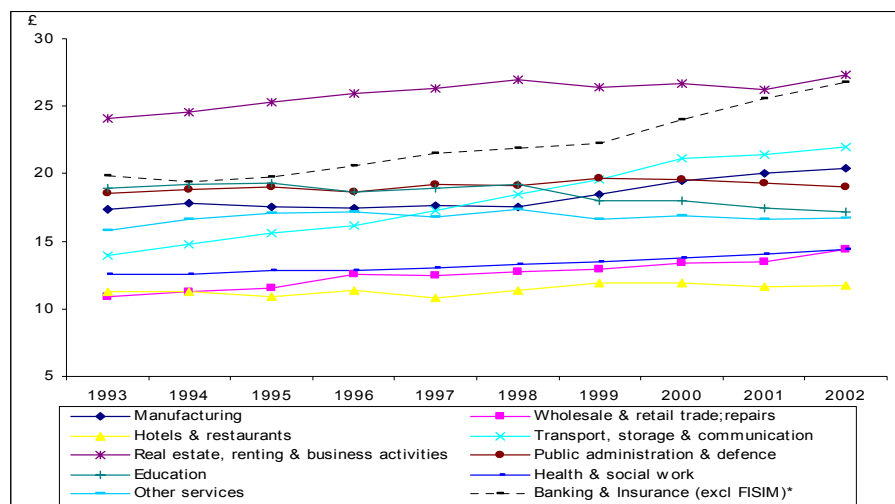
⁴¹ Includes 'employee jobs' and the 'self-employed'.

non-market services has remained relatively constant at around £16.50 per hour worked over the 1993 to 2002 period. Labour productivity in market services has increased rapidly since 1993, and has outstripped GVA per hour worked in non-market services since 1997. This gap appears to be increasing over time (see chart 7).

3.5 However, non-market services are very difficult to measure, because they typically do not involve financial remuneration. Therefore, it is often not possible to assign to their output a value that reflects a market assessment of the utility of the service being supplied. Productivity growth rates for non-market services may therefore be underestimated.

3.6 Disaggregating further (see chart 8), the highest rate of labour productivity in 2002 was in the real estate sector, which has remained relatively constant since 1993 at around £25 per hour worked. Hotel and restaurants has exhibited the lowest rate of labour productivity since 1993, at less than £12 per hour worked. Transport and communications has experienced the highest growth rate in labour productivity, increasing by over 58 per cent, from around £14 per hour worked in 1993 to £22 per hour worked in 2002. However, the Directive does not cover the majority of activities within this service industry.

3.7 *Chart 8: Estimated Labour Productivity by Standard Industrial Classification between 1993 and 2002 (at constant prices)*

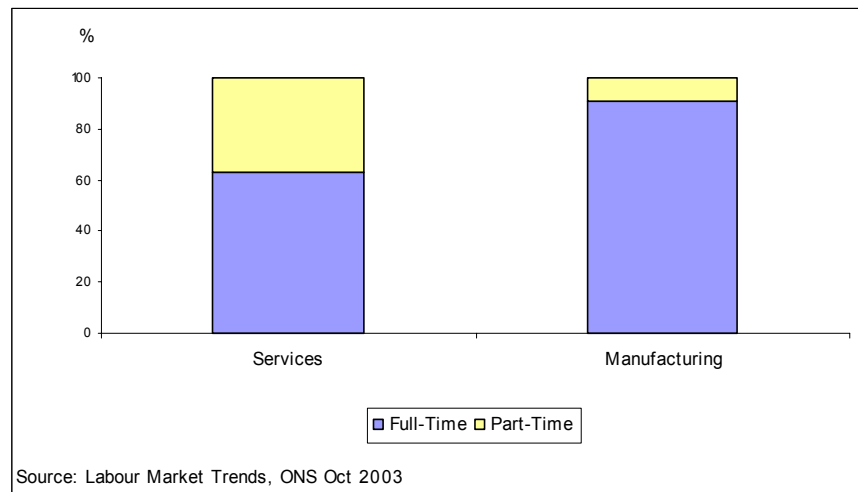


Source: DTL estimates based on ONS figures

4 Employment by Type and Gender

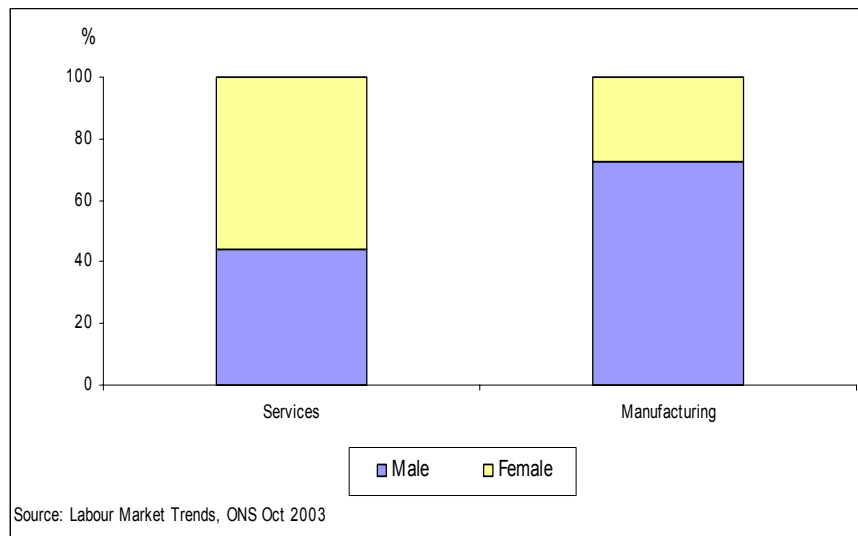
4.1 In 2003, part-time employment accounted for more than a third of total service sector employment, compared to less than a tenth of total manufacturing sector employment (see Chart 9).

4.2 *Chart 9: Employee Jobs in the Services and Manufacturing Sector by Type of Employment in 2003*



4.3 More than half of all employees in the service sector are female, compared to less than a third in the manufacturing sector (see Chart 10).

4.4 *Chart 10: Employee Jobs in the Services and Manufacturing Sector by Gender in 2003*



5 Regional dimension

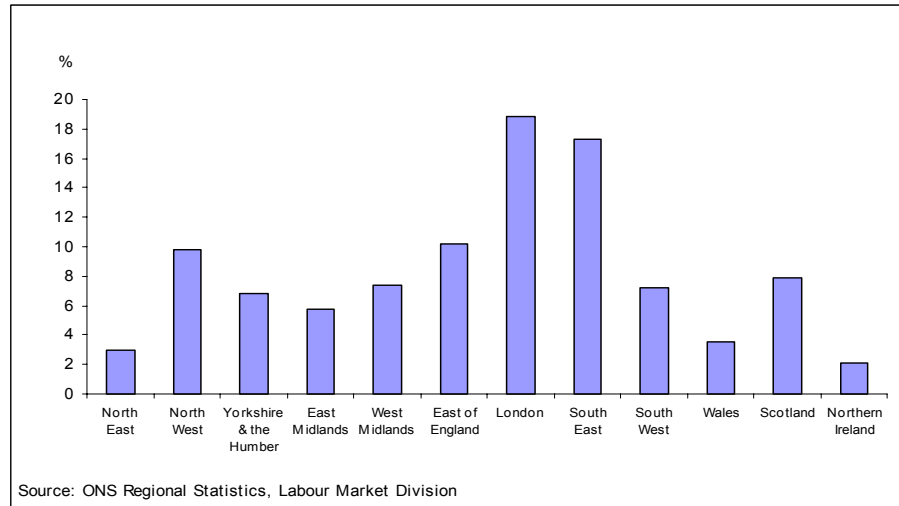
5.1 The service sector is a vital component of all the economies of the regions in the UK, but variations between them are significant.

5.2 In the latest years for which regional GVA and employment data are available (i.e. 2000 for GVA, 2003 for employment), around a third of total service sector GVA and employment in the UK was generated in London and the South East. By contrast, the North East and Northern Ireland combined

accounted for just 6 per cent of UK service sector GVA and employee jobs (see Charts 11 and 12 below).

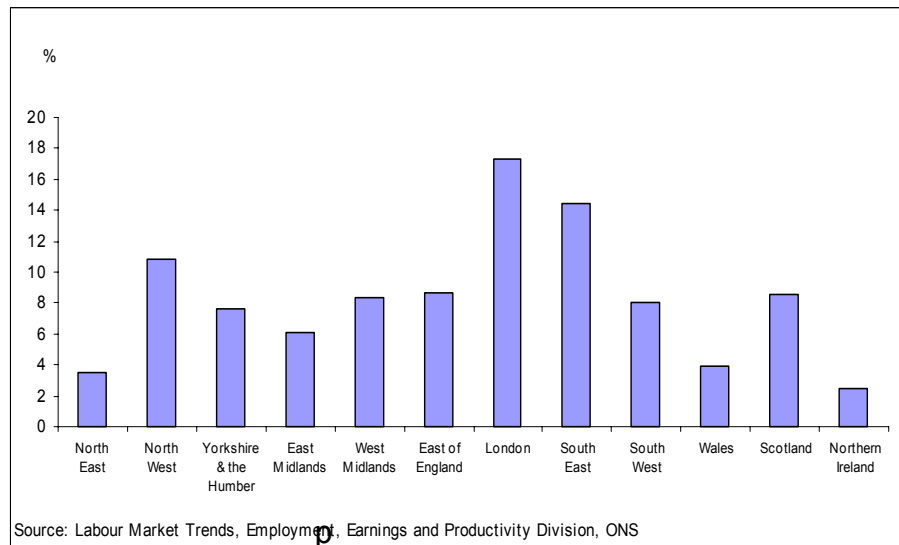
5.3

Chart 11: Proportion of Total UK Service Sector GVA Generated by Government Office Region in 2000



5.4

Chart 12: Proportion of Total UK Service Sector Employees by Government Office Region in 2003



5.5

and the South East is generated by financial, and transport and communication services (which are nearly fully excluded from the Directive⁴²) compared to only 12 to 15 percent in Northern Ireland and the North East. Financial, and transport and communication services also account for a relatively greater proportion of services jobs in the South East and London (12 and 17.5 per cent respectively) compared to Northern Ireland and the North East (less than 10 per cent in each).

5.6

Yet even if financial, and transport and communication services are not included, services are more important for

⁴² See Annex C1.

employment in London and the South East of England than elsewhere in the economy. Therefore, a slightly larger proportion of benefits might be expected to go to London and the South East.

6 Sectoral Breakdown

6.1 GVA and Employment

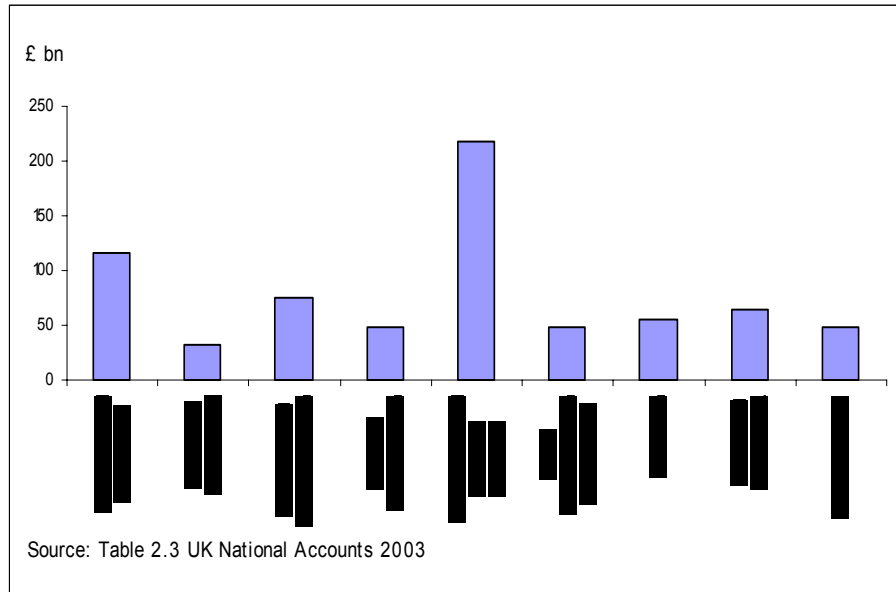
Service sector industries vary in their importance for the UK economy (see Charts 13 and 14 below).

6.2 Real estate, renting and business activities (section K of the UK SIC 2003) are particularly important, contributing about 31 per cent (or £219bn) to total UK services GVA and generating nearly 4 million jobs. The wholesale and retail trade sector (section G), although contributing relatively less in terms of GVA than real estate, renting and business activities (about 16 per cent or £116bn), employs the most people out of all the service sector industries – nearly 4.5 million.

6.3 Non-market service sector industries, such as public administration and defence, and health and social work are important to the UK economy as service sector employers.

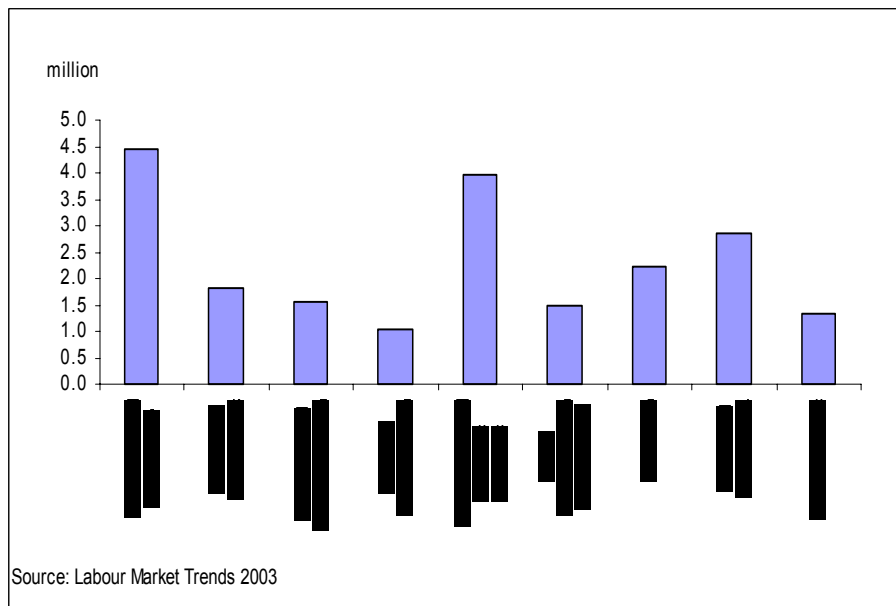
6.4

Chart 13: Proportion of Total Service Sector GVA by Standard Industrial Classification (G to O) in the Service Sector in 2002



6.5

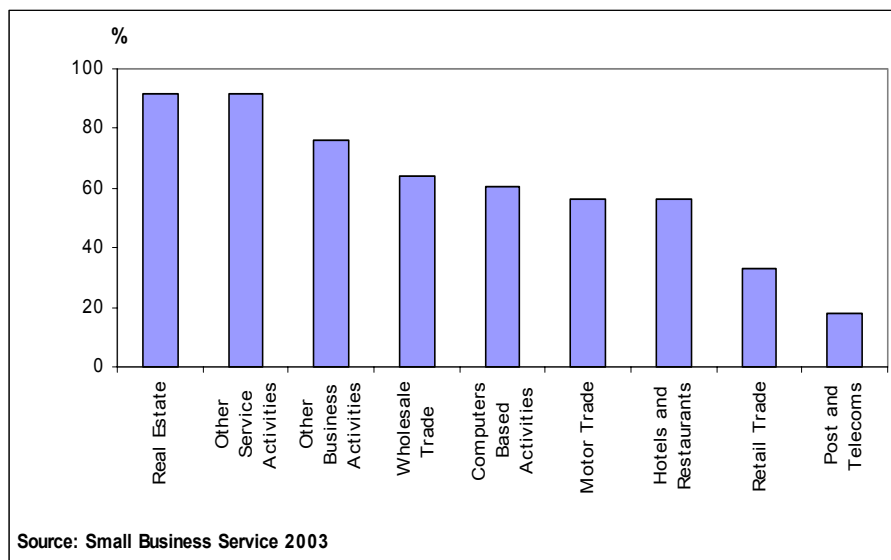
Chart 14: Total UK Employees by Standard Industrial Classification (G to O) in the Service Sector in 2003



6.6 Market Concentration

The majority of service sectors are highly fragmented, with SMEs accounting for the majority of sectoral turnover (see Chart 15).⁴³

6.7 *Chart 15: Percentage of Turnover Earned by Firms In the Service Sector with less than 250 Employees in 2002*



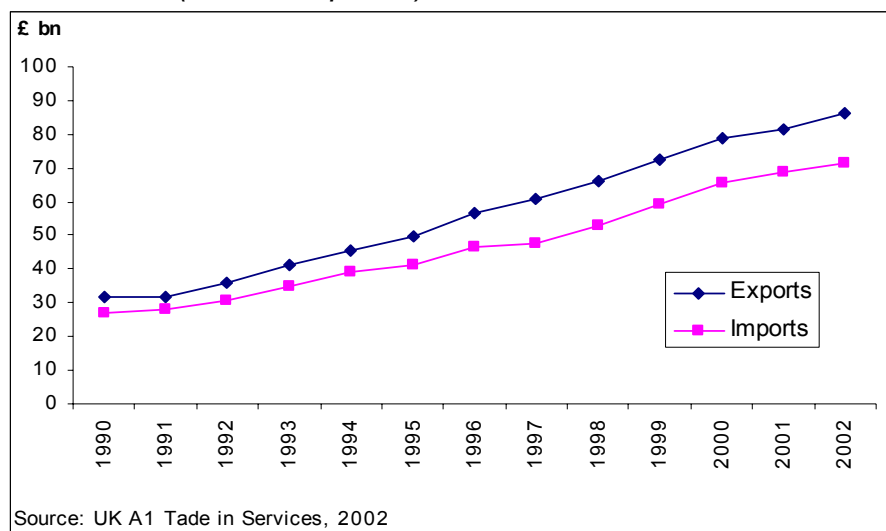
6.8 The Real Estate and Wholesale Distribution sectors are two of the least concentrated sectors. Post and telecommunications (only partly covered by the Directive) and Retail Trade are the most heavily concentrated sectors with large firms (more than 250 employees) accounting for the bulk of sectoral turnover.

7 **UK Trade in Services**

7.1 In 2002, the UK was a net beneficiary of the increasing value of international trade in services – our service exports were £15bn greater than our service imports (see Chart 16), and we were the world's second largest exporter of services after the US (accounting for 8 per cent of world trade worth £ 86.8bn).

⁴³ Based on Industry Divisions rather than UK SIC 2003, since some data are disclosive.

7.2 *Chart 16: Service Sector Exports and Imports for the UK 1990-2002 (in current prices)*



7.3 Growth in the value of UK trade in services has been strong. Total UK exports and imports of services more than doubled between 1990 and 2002, outstripping growth in both exports and imports of goods (see Table 2 below).

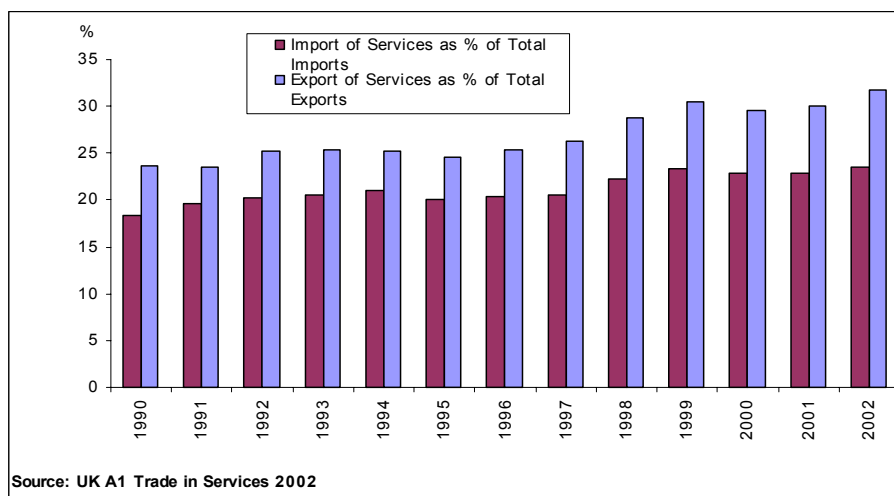
7.4 *Table 2: Percentage Change in Value of Exports and Imports of Services and Goods, 1990-2002*

	1990	2002	% change
Exports of Services	£31.6 bn	£86.8 bn	175
Imports of Services	£27.2 bn	£71.6 bn	163
Exports of Goods	£102.3 bn	£186.5 bn	82
Imports of Goods	121.0 bn	£233.1 bn	93

Source: UK A1 Trade in Services

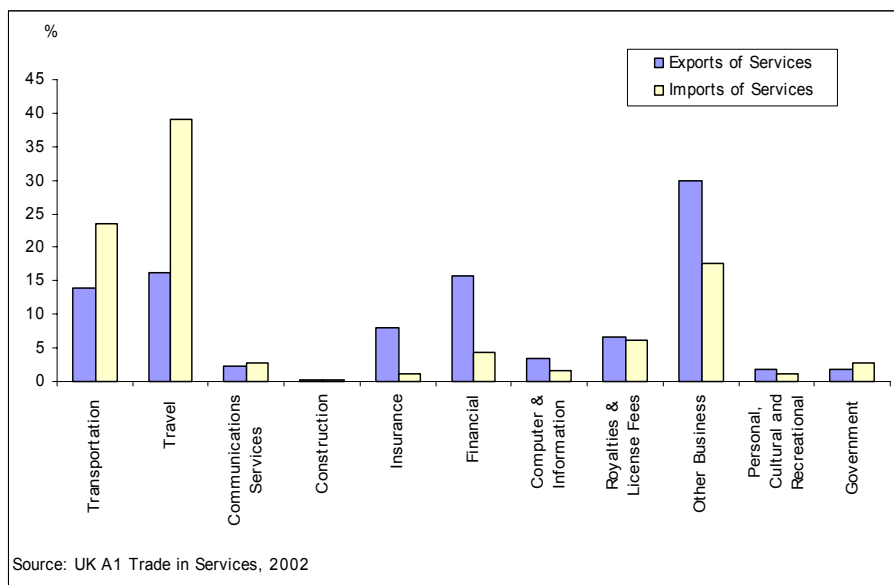
7.5 However, although services trade has grown in absolute terms, it has remained relatively stable as a share of total trade (Chart 17). Services still only account for just over 23 per cent of total imports, and this share, although improving, has changed relatively little since 1990. Service exports have fared slightly better, accounting for 32 per cent of total exports in 2002, compared to less than 24 per cent in 1990.

7.6 *Chart 17: Value of Service Imports and Exports as a Proportion of Total Imports and Exports between 1990 and 2002*



7.7 Moreover, growth in services trade differs across broad service product⁴⁴. Notable areas of export growth have been in financial services and “other business” service activities (including legal services, engineering and R&D), which together accounted for over 45 per cent of all exports of services, or nearly £40bn in 2002 (see Chart 18).

7.8 *Chart 18: Proportion of Total Service Imports and Exports by Service Product in 2002*



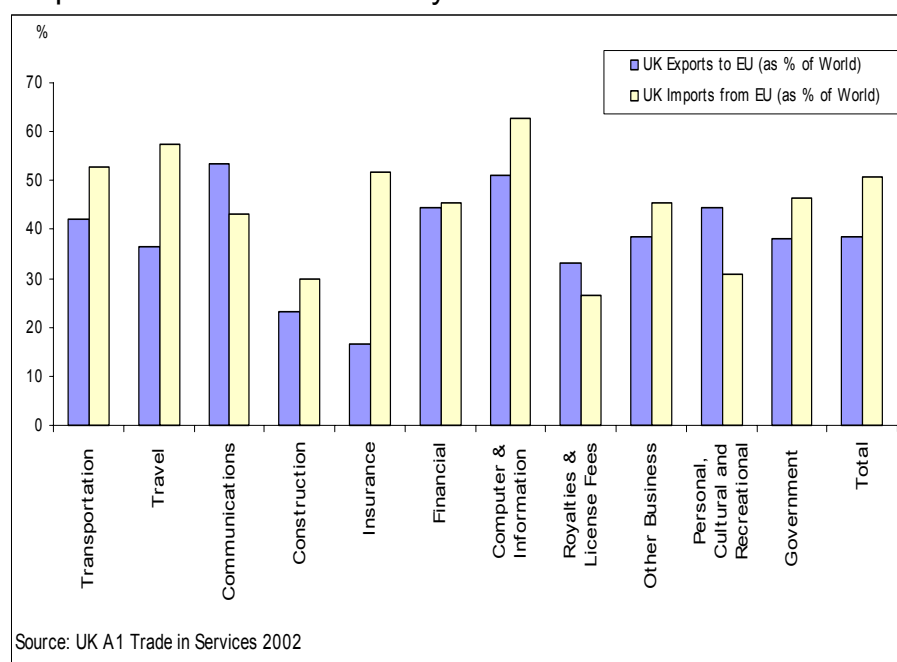
⁴⁴ Data on services trade is normally presented by the ‘service product’ rather than by the industry producing the service (as with SIC codes). Services are categorised into 11 broad service products.

7.9 UK Trade in Services with the EU

The EU is an important trading partner in services for the UK. In 2002, UK services imports from the EU accounted for 51 per cent of total UK services imports - an increase of over 4 percentage points since 1992. UK services exports to the EU as a proportion of total services exports has remained roughly constant over the past decade – fluctuating between 37 and 40 per cent.

7.10 The highest proportions of total UK services exports to the EU are in Communication (largely excluded from the Directive), Financial (excluded from the Directive), and Computer and Information services. The highest proportions of total services imports from the EU are in Computer and Information, Travel, and Transportation (largely excluded from the Directive) services (see Chart 19).

7.11 Chart 19: Proportion of Total UK Services Exports and Imports to and from the EU by Service Product in 2002



8 Foreign Direct Investment

8.1 As well as service providers and recipients travelling across borders to trade with each other, some service firms find it more profitable to establish a commercial presence in a foreign market. Foreign direct investment (FDI) statistics are therefore another indicator of the extent of UK trade in services. FDI is a financial measure that can reflect investments in new establishments, as well as mergers and acquisitions.

8.2 Flows data reflect the position on financial cross-border flows in a particular year, whereas stocks data reflect the position on the value of historic and the current year's investments, at year-end, and are therefore a less volatile indicator of activity and trends. The stocks data give a more complete picture in that they also include investments by foreign-owned firms, which are financed locally, and would therefore not show up in the FDI flows data.

8.3 Outward Investment

The UK's total outward FDI stocks at the end of 2002 were £ 572bn, a decrease of 5 per cent on £ 600bn at the end of 2001. Of this, investment in the EU constituted £ 325bn or 57 per cent of the total and the US £118bn or 21 per cent of the total.

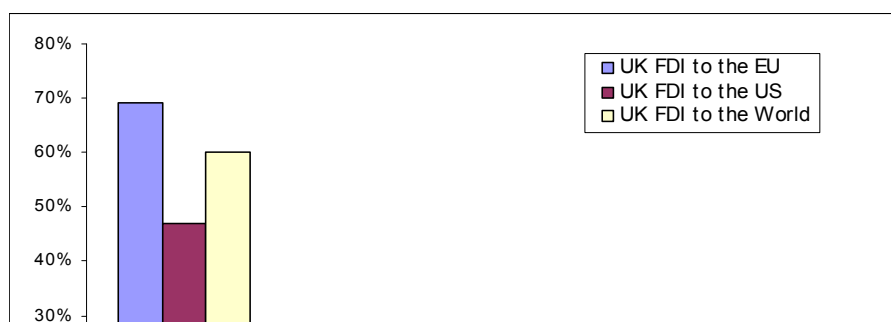
8.4 Services account for 60 per cent of the UK's outward FDI stocks. A larger proportion of UK outward FDI stocks going to the EU are in the service sector (69 per cent) compared to those going to the US (47 per cent). The EU and the US have similar proportions of their FDI from the UK in manufacturing at 27 per cent.

8.5 Table 3: UK outward FDI stocks, end 2002

	EU	US	£ billion World
Resources	13.2	19.4	48.2
Manufacturing	89.1	31.8	166.3
Construction & Utilities	-2.2	11.3	13.1
Retail/ w wholesale trade & repairs	16.3	9.5	40.8
Hotels & restaurants	9.8	4.4	16.7
Transport & communications	132.6	5.4	145.5
Financial services	46.1	22.4	92.3
Real estate & business services	14.1	13.5	36.6
Other services	6.2	0.2	12.4
Total services	225.2	55.4	344.2
Total outward FDI Stocks	325.2	118.0	571.7
Services as a % of total outward FDI stocks	69%	47%	60%

Source: DTI estimates based on ONS MA4 database

8.6 Chart 20: UK outward FDI stocks, end 2002, by sector - EU, US, World



- 8.7 The trends in outward FDI stocks since 1995 have been broadly for the proportion in the service sector to increase and for the proportion in the manufacturing sector to decrease. UK World outward stocks in services increased from just under 40 per cent to 60 per cent between 1995 and 2002, and manufacturing fell from 45 per cent to 30 per cent. The comparable figures for the EU and the US are increases in services from just under 40 per cent to 70 per cent and 35 per cent to over 45 per cent respectively. The proportion of manufacturing outward FDI stocks to both the EU and US fell from around 50 per cent to under 30 per cent.
- 8.8 FDI flows are more volatile than stocks. Total UK FDI outflows in 2002 were £23bn, with the largest sector being services. Services was also the largest sector for FDI outflows into the EU. The EU received the largest share of UK outflows at £27bn compared to a negative net outflow to the US of -£5bn.

8.9 *Table 4: UK outward FDI flows, 2002*

	EU	US	£ billion World
Resources plus Manufacturing	8.3	-8.6	-1.2
Construction & Utilities	0.1	-0.7	-2.0
Retail/w wholesale trade and repairs	3.9	0.7	5.9
Hotels & restaurants	3.7	1.1	5.0
Transport & communications	5.1	-0.3	5.0
Financial services	4.2	1.0	7.6
Real estate and business services	1.6	1.9	4.7
Other services	0.1	0.2	-1.6
Total services	18.6	4.6	26.7
Total outward FDI flows	27.1	-4.8	23.5
Services as a % of total outward FDI flows	69%	na	114%

Source: DTI estimates based on ONS MA4

Note: Table 3 combines the resources and manufacturing sectors because of confidentiality.

8.10 Inward investment

Net foreign direct investment into the UK at the end of 2002 was £353bn, an increase of 1 per cent on £349bn at the end of 2001. The EU with £165bn contributed 47 per cent of the total, compared to 37 per cent for the US.

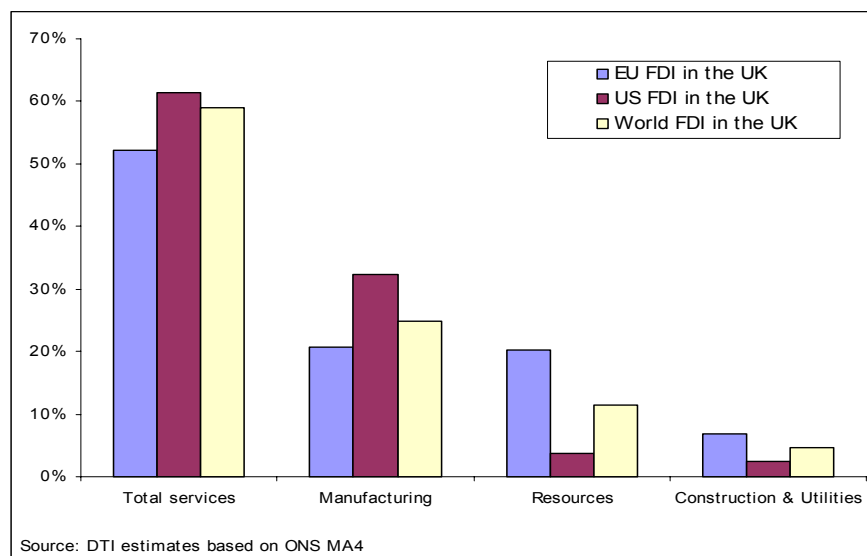
8.11 *Table 5: UK inward FDI stocks, end 2002*

	EU	US	£ billion World
Resources	33.3	5.0	40.7
Manufacturing	34.1	42.4	87.5
Construction & Utilities	11.4	3.1	16.2
Retail/ wholesale trade & repairs	24.1	9.6	38.9
Hotels & restaurants	1.4	1.4	3.1
Transport & communications	20.3	11.6	36.2
Financial services	16.9	45.8	83.3
Real estate & business services	20.9	9.1	39.6
Other services	2.4	2.9	6.9
Total services	86.1	80.5	208.1
Total inward FDI Stocks	165.0	131.0	352.6
Services as a % of total inward FDI stocks	52%	61%	59%

Source: DTI estimates based on ONS MA4

- 8.12 **Services account for 59 per cent of the UK's inward FDI stocks. A larger proportion of UK inward FDI stocks coming from the US are in the service sector (61 per cent) compared to the EU (52 per cent). The US also has a larger share of FDI coming in manufacturing (32 per cent) compared to that from the EU (21 per cent).**

- 8.13 *Chart 21: UK inward FDI stocks, end 2002, by sector - EU, US, World*



- 8.14 The trends in inward FDI stocks since 1995 have also been broadly for the proportion in the service sector to increase and for the proportion in the manufacturing sector to decrease but the movements have been less pronounced. UK World outward stocks of service increased from 44 per cent to 59 per cent between 1995 and 2002, and manufacturing fell from 31 per cent to 25 per cent. The comparable figures for the EU and the US are increases in services from 48 per cent to 52 per cent and 32 per cent to 61 per cent respectively. The proportion of manufacturing inward FDI stocks to the EU fell from 25 per cent to 21 per cent but the US remained broadly stable at just around a third.

- 8.15 FDI flows are more volatile than stocks. Total FDI inflows into the UK in 2002 were £19bn. £19bn came from EU countries while the US had a negative net inflow of -£3bn. Services represented the largest component of total world inflows. Construction and utilities was the largest component of inflows from the EU. Financial services was the largest positive component of inflows from the US.

- 8.16 **Table 6: UK inward FDI flows, 2002**

	EU	US	£ billion World
Resources and Manufacturing	4.3	-3.5	0.6
Construction & Utilities	10.2	-1.9	8.6
Retail/wholesale trade & repairs	1.4	0.8	2.1
Hotels & restaurants	-0.1	-0.1	-0.5
Transport & communications	1.0	-1.7	-0.5
Financial services	0.2	4.4	5.8
Real estate & business services	1.9	-1.3	2.4
Other services	0.0	0.2	0.0
Total services	4.5	2.4	9.3
Total inward FDI flows	19.0	-3.0	18.5
Services as a % of total inward FDI flows	23%	na	50%

Source: DTI estimates based on ONS MA4

Note: Table 6 combines the resources and manufacturing sectors because of confidentiality.

Annex C4 Public Consultation

- Organisations and Individuals who will be consulted directly

Annex to MISC/04/13

Cabinet Office	General Chiropractic Council
Department for Constitutional Affairs	General Dental Council
Department for Culture, Media and Sport	General Medical Council
HM Customs and Excise	General Optical Council
Ministry of Defence	General Social Care Council
Office of the Deputy Prime Minister	Health Development Agency
Department for Education and Skills	Health Professionals Council
Department for Environment, Food and Rural Affairs	Her Majesty's Land Registry
Office of Fair Trading	Human Fertilisation and Embryology Authority
Food Standards Agency	National Biological Standards Board
Foreign and Commonwealth Office	National Care Standards Commission
Department of Health	National Institute of Clinical Excellence
Home Office	Health and Safety Commission
Department for International Development	Health and Safety Executive
Northern Ireland Devolved Administration	HM Inspectorate of Education (Scotland)
Northern Ireland Dept. of Enterprise, Trade and Employment	The Housing Corporation – RSLs
Scottish Executive	Information Commissioner's Office
Department for Transport	Insolvency Service
HM Treasury	Land Registry Direct
UK Permanent Representation to the European Union	Licensed Cab Driver (London)
Welsh Assembly	Martine and Coastguard Agency
Department of Work and Pensions	Meat and Livestock Commission
Adult Learning Inspectorate	Medicines and Healthcare Regulatory Agency
Adventure Activity Licensing Board	Northern Ireland Authority for Energy Regulation
Advertising Standards Authority	Nursing and Midwifery Council
British National Space Centre	Office of Communications
Charity Commission	Office of Gas and Electricity Markets
Central Council for Nursing, Midwifery and Health Visiting	Office for Standards in Education
Coal Authority	Office of Fair Trading
Commission for Racial Equality	Occupational Pensions Regulatory Authority
Communities Scotland – RSLs	Office of Fair Access
Competition Commission	Office of the Independent Adjudicator
Disability Rights Commission	Office of the Rail Regulator
Driver and Vehicle Licensing Agency	Office of the Regulator for NHS Foundation Trusts
Drinking Water Inspectorate	Office of Water Services
Driving Standards Agency	Patent Office
Environment Agency	Planning Inspectorate
Environment Agency - Wales	Postal Services Commission
Environment and Heritage Service – Northern Ireland	Qualifications and Curriculum Authority
Equal Opportunities Commission	Scottish Environmental Protection Agency
Financial Ombudsman Service	Scottish Agricultural Science Agency
Financial Services Authority	Scottish Fisheries Protection Agency
Food Standards Agency	Standards Board for England
Forestry Commission	Strategic Rail Authority
Local Government Association	Traffic Commissioners
London Development Agency	Vehicle and Operator Services Agency
North West Development Agency	Vehicle Certification Agency
ONE North East	Veterinary Laboratories Agency
South East of England Development Agency	Veterinary Medicines Directorate
South West of England Regional Development Agency	Youth Social Justice Boards
	East Midlands Development Agency
	East of England Development Agency
	Local Authorities Coordinators of Regulatory Services (LACORS)
	Yorkshire Forward

Annex to MISC/04/13

Advertising Association (Adassoc)
Alliance of Electronic Business
Association for Chartered Certified Accountants (ACCA)
Association for Conferences and Events
Association of British Insurers
Association of British Travel Agents (ABBA)
Association of Convenience Stores
Association of Exhibition Organisers (AEO)
British Air Transport Association
British Bankers Association (BBA)
British Industrial Truck Association
British Institute of Inn Keeping
British Jewellery and Giftware Federation
British Market Research Association (BMRA)
British Ports Association
British Retail Consortium (BRC)
British Service Providers Association
British Toy & Hobby Association
British Vehicle Rental and Leasing Association
Chartered Institute of Marketing
Confederation of British Industry (CBI)
Corporation of London
Cosmetic, Toiletry & Perfumery Association
English Tourism Council
Hotel and Catering International Management Association
Institute of Directors (IOD)
ISBA -The Voice of British Advertisers
Kerr Recruitment
Kingfisher C/O BRC
Management Consultancies Association
Motor Schools Association of Great Britain Ltd
National Association of Bank and Insurance Customers
National Association of Estate Agents
Society of Motor Manufacturers and Traders Ltd SMMT
British Apparel & Textile Confederation
British Airport Services and Equipment Association
Institute of Chartered Secretaries & Administrators (ICSA)
National Hairdressers Federation
Petrol Retailers Association
Radio, Electrical & Television Retailers Association
Retail Motor Industry Federation
Royal Institute of British Architects
Scottish Motor Trade Association Ltd
Shop & Display Equipment Association
Association of Train Operating Companies
Confederation of Passenger Transport UK
SITPRO
Wine Standards Board
National Consumers Council (NCC)
Trade Union Council (TUC)
British Retail Consortium (BRC)
Association of Plumbing and Heating Contractors
Electrical Contractors Association, The
Association of Interior Specialists
Lifting Equipment Engineers Association
Motor Vehicle Repairers Association
Automotive Distribution Federation
Motor Cycle Industry Association Ltd
British Motorcyclists' Federation
Provision Trade Federation
British Leather Confederation
British Metals Federation
Society of Maritime Industries
British Contract Furnishing Association
Federation of Wholesale Distributors
Agricultural Industries Confederation
Horticultural Trades Association
Tobacco Manufacturers' Association
British Meat Federation, The
Dairy Industry Federation (England and Wales)
Scottish Dairy Association
Dairy Council for Northern Ireland
British Hardware & Housewares Manufacturers Association Ltd
British Footwear Association
Electrical Distributors Association
Association of the British Pharmaceutical Industry
Photo Marketing Association International
British Metals Recycling Association
British Compressed Gases Association.
British Chemical Distributors & Traders Association Ltd
Manufacturing Technologies Association
Mining Association of the United Kingdom
Software Industry Federation
Personal Computer Association, The
Agricultural Engineers Association
British Confectioners Association
British Hardware Federation Group
British Association of Toy Retailers (BATR)
Philatelic Traders Society Ltd.
Federation of Ophthalmic & Dispensing Opticians
British Antique Dealers Association, The
International Hotel and Restaurant Association
British Holiday & Home Parks Association

Annex to MISC/04/13

National Taxi Association
Independent Coach Travel
Freight Transport Association
British Association of Removers
The Pipeline Industries Guild
British Marine Federation
British Airport Operators Association
UK Industrial Space Committee
ICHCA International Limited
United Kingdom Warehouse Association
Cold Storage & Distribution Federation
Guild of Registered Tourist Guides
Association of International Courier & Express Services
Federation of Communication Services
Finance & Leasing Association
Pensions Management Institute
Life Insurance Association Ltd
European Real Estate Association
Hire Association Europe
British Interactive Media Association
British Video Association
Entertainment & Leisure Software Publishers Associations (ELSPA)
Association for Information Management (ASLIB)
Association of Independent Research & Technology Organisations
BioIndustry Association
Social Research Association
Anti - Counterfeiting Group. Intellectual Property rights protection
Anti Copying In Design Limited
International Bar Association
International Law Association, The
Institute of Legal Executives, The
Chartered Institute of Taxation
Association of Chartered Certified Accountants
Public Relations Consultants Association Ltd
Chartered Institute of Management Accountants
British Association of Landscape Industries
Association of Consulting Engineers, The
Federation of Engineering Design Company Ltd
Test Industry Suppliers Association
Recruitment & Employment Confederation
British Security Industry Association Ltd.
Association of British Investigators
Association for Road Traffic Safety & Management
Association of British Oil Industries
Association of Electricity Producers
Association of Franchised Distributors of Electronic Components in the UK
Association of Independent Business
Association of Independent Mobile Electronics and Security Federation
British Imaging and Photographic Association Ltd
Packaging & Industrial Films Association
Association of University Teachers
Chartered Institute of Personnel and Development
British Association for Open Learning
UKingdom Public Health Association, The
Consumer Credit Trade Association
Construction Plant Hire Association
Directory & Database Publishers Association
Call Centre Association
Independent Healthcare Associations
Community Practitioners and Health Visitors Association
British Dental Association
British Veterinary Hospitals Association
Association of Independent Care Advisers, The
Moving Image Society
British Film Institute, The
Producers Alliance for Cinema & Television
British Universities Film and Video Council
Commercial Radio Companies Association
Society of Authors, The
Association of British Theatre Technicians
British Association of Leisure Parks, Piers and Attractions Ltd
National Dance Teachers Association, The
Newspaper Society
Newspaper Publishers Association Ltd
Museums Association
Institute of Historic Building Conservation, The
Federation of Zoological Gardens of Great Britain and Ireland
Race Horse Owners Trade Association
Betting Office Licensees Association Ltd
National Entertainment Agents Council
Equity
Association of Suppliers to the British Clothing Industry
Hairdressing Employers Association
Funeral Standards Council
Fitness Industry Association
Professional Association of Nursery Nurses, The
Consumers Association: Which
Advisory Partnership (The)
Alliance of Independent Retailers & Business
ASAP Communications LTD.
Associated British Ports
Association for Payment & Clearing Services
Chelgate Ltd.

Annex to MISC/04/13

Chemi-Kal Ltd.
Classic Cleaners
Cleaning & Hygiene Suppliers Association Ltd
Cleaning & Support Services Association
Company Law Limited
Intellect
Computing Suppliers Federation
Corporation of Finance Brokers Limited
Association of Independent Tour Operators, The
Association of Leading Visitor Attractions
Association of Licensed Multiple Retailers, The
Association of UK Oil Independents
Automatic Vending Association
Booksellers Association of the UK & Ireland Ltd
BOSS Federation Ltd.
Bovince Limited
Brewers & Licensed Retailers Association
BRINDEX, c/o Enterprise Oil
British Association of Record Dealers
British Casino Association
British Chemical Engineering Contractors Association
British Cheque Cashers Association (BCCA)
British Equestrian Trade Association
British Exhibition Contractors Association (BECA)
British Franchise Association
British Frozen Food Federation
British Fur Trade Association
British Furniture Manufacturers
British Hospitality Association
British Incoming Tour Operators Association
European Tour Operators Association
British Insurance Brokers Association
British International Freight Association
British Jewellers' Association
British Luggage & Leather Goods Association
British Nuclear Industry Forum
British Shops and Stores Association Ltd.
British Tour1st Authority
British Tourism Partnership
Broadcast Advertising Clearance Centre
Building Societies Association
Business & Application Software Developers Association (BASDA)
Black Country Chamber of Commerce
Business Services Association (BSA)
Camping & Outdoor Leisure Association
Cash Point Machines Plc.
Chamber of Shipping
Highland Energy Ltd.
Construction Confederation
House Builders Federation
Institute of Chartered Accountants of England & Wales (ICAEW)
Hutchison Ports (UK) Ltd.
Construction Federation
Creative Media Matrix Ltd
Credit Card Research Group
Credit Services Association
CSME
Day Lewis House
Design Business Association
Direct Mail Services Standards Board
Direct Marketing Association
Direct Selling Association
Electricity Association
Energy Industries Council
Engineering Construction Industries Association
Engineering Employers Federation
English Association of Self-Catering Operators
Environmental Industries Commission
Environmental Services Association
Equifax Ltd.
European Federation of Producers and Applicators of Special1st Products for Structures
Exhibition Venues Association
Experian Ltd.
Facilities Management Association
Faculty of Advocates European Committee (The)
Federation of Bakers
Federation of Multiple DIY Retailers
Federation of Small Businesses (FSB)
Finance Industry Standards Association
Florists Telephone Delivery Association
Fork Truck Association
Forum of Private Businesses (FPB)
Framestore
Gallopig Cat
Garage Equipment Association
General Consumer Council for Northern Ireland
General Council of the Bar, The
Go-Ahead Group
Governing Bodies Association
Grain and Feed Trade Association, The
National Association of Master Bakers
National Caravan Council Ltd
National Consumer Credit Federation, The
National Federation for Retail Newsagents
National Federation of Consumer Groups
National Federation of Enterprise Agencies
National Federation of Fish Fryers
National Market Traders Federation
National Tyre Distributors Association

Annex to MISC/04/13

NL Communications
Northern Ireland Textiles and Apparel Association, The
Northern Offshore Federation
Office of the Banking Ombudsman, The
Offshore Contractors Association
Independent Footwear Retailers Association
Institute of Consumer Affairs
Institute of Credit Management
Institute of Direct Marketing
Institute of Insurance Brokers
Institute of Management, The
Institute of Management Consultancy (IMC)
Institute of Practitioners in Advertising (IPA)
Institute of Public Relations (IPR)
Institute of Trading Standards
Institute of Waste Management
Inter Forum
Interactive Advertising Bureau
International Association of Drilling Contractors
International Consumer Policy Bureau
International Financial Services Ltd
International Marine Contractors Association
International Swaps and Derivatives Association (ISDA)
International Transport Society for the United Kingdom, The
Investment Management Association
Lancashire Textile Manufacturers' Association
Law Centres Foundation
Law Commission
Law Reform Committee
Law Society, The
Law Society of Northern Ireland, The
Law Society of Scotland, The
Lift and Escalator Industry Association, The
LLoyd's
Logica
London Investment Banking Association
Macdonald Wynne Davies (c/o IPR)
Mail Order Traders' Association
Market & Opinion Research International Ltd.
Market Research Society (MRS)
Massive Ltd.
Mayday Group
MJ Carter Associates
ModuSpec Engineering (UK) Ltd.
Music Industries Association
Association of Independent Music
One Stop Shopping Centre
Personal Investment Authority
PGS Production Ltd.
Polymer Laboratories Limited
Ports & Terminal Group
Price Water House Coopers
Professional Conference & Project Management
Radio Advertising Bureau, The
Radio Advertising Clearance Centre
Radio Authority
Railway Forum, The
Railway Industry Association
Restaurant Association
Riverside Water Technologies Ltd.
Road Haulage Association Ltd
RS Group of Companies
Safety Assessment Federation Limited
Scottish Advisory Committee on Telecommunications
Scottish Consumer Council
Scottish Grocers Federation
Sheriffs Association
Skin, Hide & Leather Traders Association Ltd
Society of Public Teachers at Law
Sports Industries Federation, The
St John's Innovation Centre Ltd.
Textile Services Association Ltd
British Textile Machinery Association
International Transport Society for the United Kingdom, The
Law Society, The
Association of University Teachers
Union of Independent Companies, The
Timber Trade Federation
Trade Association Forum
Asian Business Federation
ABI Associates Limited
Asian Ambassadors Club
Asian Business Association (London Chamber of Commerce and Industry)
Asian Trades Link

SECTION D

D1 What happens next?

- D.1 The consultation runs until XX, XXXX, 2004, after which the responses will be analysed by officials at the Department of Trade and Industry. These responses will help inform the government's negotiating priorities as well as helping to identify practical implementation issues to be addressed.
- D.2 Decisions taken in the light of the consultation will be publicised along with a summary of the responses received.
- Stakeholders will be able to follow developments on this directive following the consultation, on the DTI website at:
www.dti.gov.uk/ewt/servgen.htm
- D.3 As negotiations on the directive progress, it may be necessary to hold a further consultation. This may be done via a similarly wide exercise or using a more targeted approach.

Glossary of Terms

Acquis: Short for *acquis communautaire*, this term describes the law of the EC, which has developed over the years, existing in the EC Treaty, in Community legislation and in the case law of the Community courts.

Competent Authority: usually a body designated by a Member states as its regulatory or responsible body

Country of Origin Principle: The principle whereby a service provider lawfully established in one Member State will be able to provide its service in another Member State (without becoming established there) on the basis of the rules and regulations (concerning access to and pursuit of its service activity) of its home Member State.

Derogation: Exemption.

Directive: A binding instrument of Community law, addressed to Member States, to be implemented by them into their domestic law.

Freedom of Establishment: The freedom of a service provider to set up in another Member State on a permanent basis.

Home Member State (Member State of Origin): The Member State in which a service provider is primarily established / the point of origin of a service.

Host Member State: The Member State where a service is actually being provided, although the provider is primarily established elsewhere.

SOLVIT Network: A network of centres across the EU that aims to resolve problems encountered by citizens and businesses in relation to the application of Internal Market rules.

Transposition: The Member State's requirement to set out obligations in the Directive into domestic law.

Also see Article 4 'Definitions' for definition of terms used in the Directive.

