



Unite response to the Department for Business, Enterprise & Regulatory Reform consultation on implementing the EU Services Directive

This response is submitted by Unite the Union. Unite is the UK's largest trade union with 2 million members across the private and public sectors. The union's members work in a range of industries including manufacturing, financial services, print, media, construction, transport and local government, education, health and not for profit sectors.

Executive Summary

- Unite comments below take account of the BERR 'screening team' not yet finding any legislation that is required to substantially change due to the implementation of the Services Directive.
- Unite fully support the exclusion of labour law from the scope of the Directive, but also believe the Point of Single Contact should carry information for workers about their rights and inform potential Service Providers they must be fully compliant with UK labour and health and safety law.
- Unite believe trade unions and employees should be fully involved and consulted with about the implementation of the Services Directive, at every level.

General Comments on the implementation of the Services Directive

1. Unite welcomes the opportunity to submit comments on the implementation of the EU Services Directive. The implementation of the Directive will be an ongoing process; Unite and other trade unions should be fully involved and consulted, alongside other stakeholders, at each level as implementation of the Directive progresses.
2. Unite fully supported the exclusion of labour law from the scope of the Services Directive and the stipulation that the Directive does not "*affect the*

right to negotiate, conclude and enforce collective agreements"¹. After some worrying initial hesitation on this point from the BERR Implementation Team at the 14th November 2007 seminar, Unite was pleased to receive confirmation² that the Implementation Team were clear in their understanding that the Directive does not affect collective agreements.

3. Unite comments below take account of the BERR Implementation Team informing stakeholders that 'screening' has not revealed any areas of law to date that are considered to be within scope and significantly impacted upon by the Directive and require legislative or regulatory alteration. Unite understands that following screening any laws falling within scope are to be identified on the BERR website. Unite further understands that any believed to affect the trade unions or their members would be drawn to the trade unions' attention. At the time of writing Unite is not aware of any such matters.

Points of Single Contact

Other potential users of the PSC

4. At the seminar on the EU Services Directive on June 11th 2007 at the (then) DTI it was suggested the PSC website would include "workers being directed to the right place". The published BERR consultation document does not mention including information for workers that may access the PSC. Unite believes there should be information made available for workers on the PSC website - this should include informing people they have a right to join a trade union, to trade union representation and there may be a trade union recognised in their workplace. It has been suggested to BERR³ that an appropriate source of information to include on the PSC website are the details of the ACAS helpline and a link to the ACAS website. Unite also believes it would be appropriate for the PSC website to carry links to trade union websites.

Necessary Information for Service Providers

5. It is crucial that any workplace or service provider in the UK has the necessary knowledge to be compliant with Labour law and Health and Safety law. Unite therefore fully supports the proposal that the PSC includes this information, even though the laws themselves are outside of the scope of the Directive. Unite believes this information should be comprehensive and encourage Services Providers to follow best practice, rather than provide a minimalist 'tick box' approach to simply ensure providers just technically meet the statutory requirements.

Administrative Co-operation

6. As a general comment, Unite believes there is a valuable role for umbrella organisations such as the European Trade Union Congress to play at a pan-

¹ EU Services Directive (Directive 2006/123/EC), Article 1(7).

² Email from Pat Sellers to Unite, dated 27th November 2007.

³ At the meeting for the trade unions with BERR representatives at the TUC on 12th December 2007.

European level as the Directive is implemented - particularly in the area of administrative co-operation between competent authorities.

Workload in competent authorities

7. Though BERR may not be expecting a spike in activity for competent authorities due to an influx of service providers after the 2009 implementation date⁴ there may well be an increased churn of service providers who establish temporarily in the UK to provide services. This will place additional pressure on regulatory bodies such as the Health and Safety Executive who are already unable to carry out the necessary number of inspections and ensure businesses and organisations are complying with labour law and Health and Safety standards. Due to funding and staffing cuts there has been a fall by 25% in the number of inspections carried out in the past 4 years and prosecutions have fallen by 49%. It is unsurprising in this climate that last year saw the highest number of workplace fatalities in 5 years. The TUC estimate that currently “[a] Field Operations Directorate inspected employer is likely to get a visit, on average once every 10.8 years.”⁵ The current proposals by the Department for Work and Pensions to cut the HSE funding by 5% in real terms each year from 2008-9 to 2010-11 are extremely concerning and dangerous. It will lead to a further fall in inspections and enforcement of all established businesses and makes it highly unlikely any health and safety checks would be conducted on temporary established businesses.
8. Unite believes BERR should guide organisations to fully involve employees and their representative trade unions in developing the systems and processes the Services Directive may require, for example, administrative co-operation between competent authorities to occur. Staff have a great deal of valuable knowledge and experience and the default presumption of a Service Provider that they have the freedom to proceed if they receive no response to their application means it is important processes are as effective as possible and that employees are properly supported and resourced.

Internal Market Information (IMI) System

9. While the development and use of the IMI is innovative, care must be taken in its implementation that complexities and nuances that may often accompany regulations are not lost or misunderstood in communications between competent authorities. Employees and their trade unions within competent authorities should be fully consulted over its roll out.

Ensuring the Quality of Services

10. Unite’s understanding is that where a service is provided in the UK to pursue a complaint and receive redress against the provider it will be UK regulatory codes of conduct and legal system that apply unless the service contract

⁴ Comments made by BERR representatives at the meeting for trade unions at the TUC on 12th December 2007.

⁵ Memorandum by the Trades Union Congress to the House of Commons Work and Pensions Select Committee Inquiry into the work of the Health and Safety Commission and the Health and Safety Executive, January 2008.

specifies otherwise. Unite believes this is a potential loophole that service providers will be able to exploit and should therefore be closed when the Government introduces the legislation to bring the Services Directive into force in the UK.

11. Unite believes the UK Government should implement the EU Directive on Recognition of Professional Qualifications (tourist guiding) - Directive 2005/36/EC. This would entail recognising equivalent cross-border qualifications and would go some way towards meeting the need for clear but light-touch regulation and monitoring of the tourist guide profession. Formal recognition by government of European Committee for Standardisation (CEN) job definitions for all tour manager and tourist guide engagements would reinforce this. However, to achieve effective enforcement Unite believes a system of licensing for tourist guides would be required. Unite does not believe this would constitute unjustifiable barriers that are discriminatory, disproportionate or unnecessary under the EU Services Directive.
12. The Services Directive should not be used as an excuse for inaction and a driving down of standards in the industry through:
 - a. deskilling by using unqualified or unregulated guiding;
 - b. undermining the work that has been done by Blue Badge guides to protect British social, environmental and cultural heritage;
 - c. providing a poorer quality service for consumers; and
 - d. undermining pay and conditions in the sector.

Screening the UK's Rules of Service Provision

13. As outlined above, Unites' understanding at the time of writing is that currently no changes to legislation have been identified through the screening process. If they are then Unites' belief is that the issue will be brought to the attention of relevant stakeholders. Unite believe any proposed legislative changes should be fully consulted on, in line with the Whitehall guidance on conducting consultations.

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