



STRONGER TOGETHER

CONGRESS

Irish Congress of Trade Unions

19th October 2009.

Mr. Michael Clarke
Internal Market Unit
Department of Enterprise, Trade and Employment
Kildare Street
Dublin 1.

Re: Consultation Document on the Transposition of Directive 2006/123/EC on Services in the Internal Market into Irish Law.

Dear Michael,

Congress has given careful consideration to the contents of the consultation paper published by your Department concerning the transposition into Irish Law of the European Union Directive on Services in the Internal Market.

Congress notes that your Department has opted for transposition of the Directive by way of Statutory Instrument. You will recall that when the Directive was initiated by the European Commission it contained a number of very controversial proposals. The proposed legislation was so controversial that its passage through the European legislative process was followed with great interest by unions, employers, politicians and media commentators. Given this it is curious that your Department has chosen to use regulations to transpose the Directive and thus avoid Oireachtas scrutiny of probably the most controversial Directive to be transposed into Irish Law since we joined the EU.

1) The Impact of the Draft Regulations on Domestic Labour Law and its Enforcement.

While the draft regulations do refer to the requirement in the Directive that domestic labour law **not** be undermined by its transposition we believe that this principle needs to be better articulated and be unambiguous. To this end it is desirable that a new section be included in the draft regulations which would cover the conditions attaching to the employment of workers by service providers operating in Ireland.

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Such a section should provide that any worker employed by a service provider operating under this regulation be entitled to the same statutory employment rights as any other worker in the State. In particular the section should make reference to the right to the rates pay and other conditions of employment in sectors covered by Registered Employment Agreements and Employment Regulation Orders.

We are also concerned that the draft regulations may make it difficult in some circumstances to enforce domestic labour law. The draft regulations provide that in some instances service providers will not have to be established in the State. In such circumstances where they are employing workers it will be difficult to guarantee that domestic labour law is being complied with. For instance any employer is required under the Organisation of Working Time Act to keep records of working time and have them available for inspection by an officer of the National Employment Rights Authority. If there is no requirement on a service provider to be established here how are such obligations to be met? It would seem to us that if a service provider is to employ workers in Ireland delivering services under this draft regulation then there must be a requirement on them to be established.

2) Public Services and the Scope of the Directive

There is a need for further clarity on the scope of the draft regulation particularly in respect of its impact on the provisions of public services. This arises because of the use of terms in the draft regulation that are not commonly understood or for which a legal definition exists in Ireland. It is clear from the Directive that “services of general interest” (SGI) are excluded from the scope of the Directive however some “services of general economic interest” (SGEI) may fall within its scope. There are in our view two possible ways of providing clarity. The first is to attempt to define the terms SGI and SGEI so that they can be understood in an Irish context or alternatively an annex to the SI could be developed which would list the “public services” which fall outside the scope of the draft regulation and those which fall within its scope.

3) The Role of the Single Point of Contact

The draft regulations refer to the establishment of a single point of contact. The purpose of the single point of contact is to provide information to intended service providers on how they may commence providing services in Ireland. We understand that the initial single point of contact will be in the Department of Enterprise Trade and Employment however additional sector specific points of contact may be established. It is the view of Congress that the role of the single point of contact should be broadened to ensure that potential service providers are given information concerning their obligations to employees.

It is also our view that the website of the Single Point of Contact should have links to the websites of organisations who can be of further assistance to service providers and their employees. In that regard we would suggest that a link to the Congress website should be available. We are also of the view that if additional points of contact are to be established as a matter of policy they will be established in public sector bodies.

4) Legislative Screening

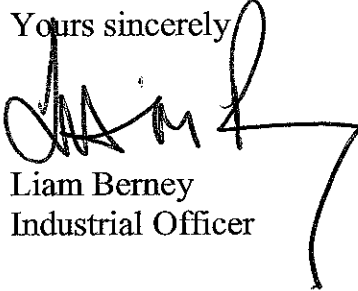
Members States in transposing the Directive are required to screen existing national legislation to ensure that it does not conflict with the freedom to provide services. We understand that a number of Government Departments are in the process of screening legislation and that the process is ongoing. We would suggest that as soon as is practicable the Department of Enterprise, Trade and Employment would publish the outcome of the screening process including any changes that are required to be made to existing national legislation.

5) Monitoring the Impact of the Services Directive

Assuming that the legislation will be transposed into Irish Law by the end of 2009 we would suggest that in early 2010 the Department establish a group to monitor the implementation of the Services Directive in Ireland. This group should include a representative of Congress.

We trust that the Department will give careful consideration to the points made in this letter.

Yours sincerely



Liam Berney
Industrial Officer