



**68-71 Newman Street**  
**London. W1T 3AH**  
Telephone: 020 7637 2444  
Telefax: 020 7637 0713

**The Association of British Travel Agents Ltd**  
*Registered in England No.551311 London*

Robert Howe  
Senior Policy Advisor  
Services Directive Policy Team  
Bay 212, Kingsgate House  
66-74 Victoria Street  
London  
SW1E 6SW

29 June 2004

Our Ref: SEB/KSC/21772

Dear Mr Howe,

### **EU Directive on Services in the Internal Market**

We are grateful for the opportunity to comment on the proposals for a new Directive in the area of the provision of services.

ABTA members are travel agents and tour operators who sell all forms of travel and tourism services which lend themselves well to cross-border sales.

ABTA generally welcomes the principles laid down in the proposed Directive and believes that they are a necessary and welcome move towards the establishment of the internal market. ABTA does, however, have some concerns about the implementation of the proposals as currently stated and about the vagueness of some of the language used in the draft which could increase the possibility of inconsistencies in the implementation.

With regard to the specific questions posed in the consultation document we would respond as follows:

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

ABTA believes that the basic objectives as set out in Article 1 can be achieved and that the general provisions of the proposal will contribute significantly to this. ABTA believes that the Directive, as presently formulated, is essential to the establishment of a single market in services.

**2. Do you think that the scope of the Directive as given in Article 2 is sufficient?**

ABTA believes that the broad scope of the Directive is appropriate at this stage.

**3. Do you think that the exclusions from this Directive given in Article 2(2) are sufficient?**

Yes.

**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?**

Yes.

**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)?**

Yes.

**6. Have you experienced any difficulties in completing administrative procedures and formalities in order to set up a subsidiary company in another Member State?**

ABTA is aware of a number of its members who have contemplated establishing themselves in other Member States but who have been unable to obtain adequate advice and information about the formalities required and the necessary procedures that must be followed.

Such difficulties are particularly acute for SMEs who cannot devote the necessary resources to carry out such research.

ABTA believes that the requirements to simplify these formalities as set out in Article 5 1 are too vague. The text should be revised to provide greater clarity as to what is expected of Member States and the outcome that is to be achieved. Interpretation of the requirement by individual Member States is likely to be inconsistent without specific guidance at Directive level.

**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?**

The present wording is too vague which would cause Member States to interpret the exception in different ways leading to an inconsistent approach being taken across Member States.

**9. Do you think there is a need for single points of contact (Article 6)?**

ABTA believes that such a system would be a significant step forward in achieving the aims of the Directive and would be of benefit to all service providers seeking to establish new businesses.

ABTA would wish to see a detailed consultation exercise undertaken on UK implementation of this requirement to ensure that the single point of contact system was effective and provided real guidance and assistance.

**16. 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?**

ABTA believes that the thrust of the conditions is correct but is, again, concerned that the vagueness of the current text will lead to inconsistent implementation across different Member States which might lead to discrimination by individual Member States against service providers from other Member States.

**18. Do you think that 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?**

No.

**19. Do you think the tacit consent provision in Article 13(4) would pose problems for any UK regulatory schemes?**

Article 9 1 (b) prohibits authorisation schemes except where they can be justified by an overriding reason relating to the public interest. The tacit consent provisions are stated, in Article 13 4 to be capable of being overridden where there are overriding reasons relating to the public interest.

ABTA is concerned that this ambiguity of text will lead to inconsistent implementation by individual Member States.

Further, ABTA does not consider that authorisation in matters that are, by the definition contained in Article 9 1, of overriding public interest, should be deemed to be granted simply by non-adherence to set time periods.

The issue of delays in the authorisation process should be dealt with by other means.

**23. Do you see any problems arising from the notification procedure set out in Article 15(6)?**

ABTA is concerned that this procedure might result in businesses being subjected to new laws and regulations with resulting costs and burdens being placed on them only to have such laws and regulations removed at the insistence of the Commission some 3 months later.

This procedure will lead to uncertainty and an unwillingness to take steps necessary to comply with new laws and regulations until the Commission has made a decision on the validity of the laws and regulations. This could be detrimental where the provision was necessary to respond to a situation of national concern or emergency.

**24. How well do you think the Country of Origin Principle will work in practice (Articles 16-19)?**

ABTA believes that the country of origin principle is necessary for the proper implementation of the proposals under this Directive.

ABTA has concerns however about implementation of the principle across Member States, particularly in the field of consumer financial protection for travel services.

At present UK consumers enjoy a high level of consumer financial protection when purchasing travel services by virtue of existing national legislation and voluntary systems. ABTA is concerned that the country of origin principle has the potential for UK consumers to be offered services by businesses established in other Member States where the level of such protection is lower or non-existent.

Having become used to the high level of protection provided by UK service providers UK consumers are unlikely to identify the lack of protection where those services are provided by providers from other Member States.

Implementation of the country of origin principle generally, and in particular in the field of consumer protection, must be monitored to ensure its open and transparent operation by each and every Member State. We are concerned that there is potential for implementation of the principle to be inconsistent across Member States.

**26. Do you think the derogations given in Articles 17-19 are appropriate and sufficient?**

Yes.

ABTA is concerned to ensure the protection of consumers in the UK when purchasing travel services. ABTA is concerned that, under the country of origin principle, service providers in other Member States will be able to offer travel services without providing UK consumers with the level of protection that they currently enjoy.

However, ABTA does not believe that this problem should be dealt with by way of a general derogation as that would defeat the general purpose of the Directive in the supply of travel services.

ABTA believes that this issue should be dealt with under the provisions of Articles 19 and 37.

**28. Are the provisions in Article 19 sufficient to ensure health and safety protection of service providers in other Member States?**

Yes

**31. Do you think the ‘non-discrimination’ requirement in Article 21 is sufficient and adequate? Is Article 21(2) problematic in relation to differential pricing or are such prices based on “objective criteria”?**

By asking the question it is clear that the text is not adequately specific. The intention behind the provision and the meaning of “objective criteria” should be more clearly spelt out.

**32. Do you think the provisions on the posting of workers, as set out in Articles 24 and 25 and 25, are sufficient and adequate?**

Yes

**35. How easily do you think the provisions under Articles 24 and 25 can be implemented:**

We believe that this should be relatively straightforward.

**36. Do you agree that the use of certification and voluntary marks improves the quality of services and should be encouraged?**

ABTA is generally in favour of schemes which promote quality of service provision and which are clearly identifiable to consumers.

ABTA would be concerned however if there was a proliferation of such schemes across Member States which would only lead to greater confusion for consumers and a general reduction in confidence in such schemes where individual schemes were found to be wanting in the level of quality that they promote.

**38. What are your views on the information provision requirements in Articles 26-30?**

ABTA believes that the information provisions are reasonable.

ABTA has concerns about the scope of Article 27 where it refers to “particular financial risk to the recipient”. ABTA would wish to see further clarification of the intention behind this provision.

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

Whilst it would be relatively easy to draw up the content of a code of conduct for the travel agency and tour operator sector due to the similarity of trading methods throughout Member States and due to the existing level of co-operation within the sector, ABTA has concerns about the level of implementation and enforcement of such a code across Member States.

In drawing up such a code, there should be collaboration between organisations currently involved in the implementation of sector specific codes. These are likely to be the trade bodies in each Member State.

Existing regulatory regimes such as that operated by the Office of Fair Trading should be harnessed into the process to avoid duplication of current and historic work.

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

Yes.

**49. Are there any other risks associated with not taking action?**

If no action is taken in this area, service providers within Member States will not be able to take full advantage of the internal market, restricting growth and consumer choice.

**50. Are there any other options which would achieve the objective?**

No.

**56. Which proposals in the Directive would you derive most benefit from?**

The greatest benefit to ABTA members is likely to be the reduction and simplification of administrative requirements necessary for them to be able to provide services in other Member States.

It is difficult to quantify the significance and scale of the benefits but we would anticipate steady growth in the numbers of UK service providers expanding their business into other Member States.

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

We believe that it is SMEs that have most to gain from the proposals. Large service providers will see benefits for their existing multi-national operations but we believe that more and more SMEs will take their first steps towards greater use of the internal market as a result of the proposals.

**61. 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?**

The nature of the business of ABTA members is such that they operate from all over the UK and we do not believe that any particular region will benefit more from the proposals.

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

ABTA's concern, as indicated above, is that there will be inconsistent implementation of the Directive between Member States. This could result in some Member States retaining existing discriminatory authorisation and licensing procedures or not recognising the country of origin principle in legitimate cases.

**63. How significant are the risks of taking action under Option 2?**

Giving unqualified support to the proposal at present may weaken the UK's negotiating position if other Member States come forward with objections to the current draft or proposals for additions or alterations of the current proposals.

**64. Are there any other risks associated with Option 2?**

No.

**65. Which parts of the Directive should be retained, deleted, improved or added?**

ABTA believes that the proposal should, largely, be adopted as drafted but with the improvements and clarifications referred to above.

**75. What will be the likely impact of the Directive on competition?**

We anticipate that the proposals would have a positive impact on competition by allowing easier access to markets for both suppliers and consumers.

**77. Do you foresee any likely problems with enforcement and sanctions other than those discussed?**

ABTA's main concern about enforcement and sanctions in the proposal is the likelihood of inconsistencies of approach between Member States. This would lead to a situation where service providers established in the UK faced competition from service providers established in other Member States who were able to take advantage of the proper implementation by the UK of the country of origin principle whilst facing continuing barriers to access the markets in other Member States.

Once again, we thank you for the opportunity to comment on these proposals and would be happy to elaborate on any of the matters raised above if you would consider this helpful.

Yours sincerely,