

Cross-border provision of services

Arts 56 to 62 TFEU

The Services Directive 2006/123

Article 56 1st paragraph

Within the framework of the provisions set out below, restrictions on freedom to provide services within the EU shall be prohibited in respect of nationals of Member States who are established in a State of the EU other than that of the person for whom the services are intended.

Article 56 2nd paragraph

The Council may, acting by a qualified majority on a proposal from the Commission, extend the provisions of the Chapter to nationals of a third country who provide services and who are established within the EU.

Direct effect of Article 56

◆ *Van Binsbergen* 33/74

◆ *Cowan v Le Tresor* 186/87

◆ *Rush Portuguesa* 113/98

Meaning of services-Article 57 TFEU

Services shall be considered to be 'services' within the meaning of this Treaty where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons.

Examples

"Services" shall in particular include:

- ◆ (a) activities of an industrial character;
- ◆ (b) activities of a commercial character;
- ◆ (c) activities of craftsmen;
- ◆ (d) activities of the professions.

Relevant case law

◆ *Schindler* C-275/92

◆ *SPUC v Grogan* C-159/90

Matters decided by CJEU

- ◆ Remuneration need not come from the recipient
- ◆ Service provided must have a profit motive
- ◆ Medical services
- ◆ Education services
- ◆ Financial services

Article 57 3rd paragraph

Without prejudice to the provisions of the chapter relating to the right of establishment, the person providing a service may, in order to do so, temporarily pursue his activity in the State where the service is provided, under the same conditions as are imposed by that State on its own nationals.

What rights are conferred on service providers/receivers?

- ◆ *Gourmet* C-405/98
- ◆ *Carpenter* C-60/00

- ◆ *Luisi & Carbonne* 286/82

Sufficient that service itself moves/does not come from recipient/profit motive

◆ *Alpine Investments* C-384/93

◆ *Bond van Adverteerders* 352/85

◆ *Belgium State v Humbel* 263/86

Medical services

- ◆ *Luisi & Carbonne* 286/82 & 26/83
- ◆ *SPUC v Grogan* C-159/90
- ◆ *Geraets-Smits & Peerbooms* C-157/99
- ◆ *Vanbraeckel v ANMC* C-368/98
- ◆ *IKA v Vasileios Ioannides* C-326/00

Exclusions & reservations – Article 58

- ◆ Transport services - excluded
- ◆ Banking services – free movement of capital

Article 59 TFEU – legislative competence

In order to achieve the liberalisation of a specific service, the Council shall, on a proposal from the Commission and after consulting the Economic and Social Committee and the European Parliament, issue directives acting by a qualified majority. **NB Directive 2006/123 “The Services Directive”**

Article 61 TFEU MS obligation

As long as restrictions on freedom to provide services have not been abolished, each Member State shall apply such restrictions without distinction on grounds of nationality or residence to all persons providing services within the meaning of the first paragraph of Article 56 TFEU.

Article 62 TFEU



The provisions of Articles 51 to 54 TFEU shall apply to the matters covered by this chapter.

The Services Directive 2006/123

- ◆ Excludes third country nationals as providers but not as recipients
- ◆ Exclusions: health care and pharmaceutical services
- ◆ Arts 2(2) and 2(3): egs SGIs; financial services; etc etc

Country of origin principle

- ◆ Art 16..... Principle replaced by 'freedom to provide services'

MSs shall respect the right of providers to provide services in a MS other than that in which they are established

The MS in which the service is provided shall ensure free access to and free exercise of a service activity within its territory

Governing principles

◆ Non-discrimination

◆ Necessity

◆ proportionality

Exceptions to the freedoms

- ◆ Art 45(3) TFEU + Art 52 + Art 62 TFEU
- ◆ 2nd legislation
 - No limitations for economic reasons
 - Only invoked on basis of personal conduct
- ◆ Public service proviso – Art 45(4) TFEU re workers

Secondary legislation

- ◆ Art 2(2)(i) of the CRD – Dr 2004/38
- ◆ Art 27(1): no limitations for economic ends
- ◆ Art 27(2): only on the basis of personal conduct

Relevant case law

- ◆ Personal conduct: *Van Duyn* 41/74
- ◆ Criminal convictions: *Bouchereau* 30/77; *Bonsignore* 67/74 – Art 27(2)
- ◆ Procedural rights when exceptions invoked - Art 31

Re Public service proviso

◆ Art 45(4) re workers

- Narrow interpretation
- 'official authority' – *Reyners* 2/74; *Sotgiu* 152/73 exception only re access to post; once in post no discrimination