

PRESS RELEASE

9 March 2005



CIC asks for amendments to EU Directive on Services

The Construction Industry Council gave evidence to the House of Lords Inquiry into the proposal for an EU Directive on Services in the Internal Market on Monday 7th March¹

Whilst welcoming the aims of the Directive², CIC has serious concerns regarding the application of the current proposals to the construction industry, in particular the application of the country of origin principle.

Under the country of origin principle, service providers – for example construction consultants – would be subject only to the law of their home country, not the host country, when working in another member state (without being established there). This means that, for example, a Spanish consultant working on a project in England, would be subject to the law of Spain not England.

CIC has argued that this will be impracticable in the context of the construction industry, and to some extent this is recognised in the draft Directive. But the proposed derogation from the general principle³ is not sufficiently clear, and does not go far enough. This refers to 'requirements ... with which compliance is indispensable for reasons of public policy or public security or for the protection of public health or the environment'. This is apparently intended to exempt requirements relating to health and safety and planning, but it fails to recognise that design work, advice given and construction on site are part of a seamless process.

In addition, the visiting service provider's liability would be governed by the law of their home member state. A client might be surprised to find that their consultant was not liable to the extent they expected. It would be open for the parties to contract on the basis that the host country's rules apply – but in practice (knowing how many cases reach the courts where it is not at all clear whether there is a concluded contract and on what terms) CIC questions whether this is a sufficient safeguard for third parties.

The CIC argues that, whilst not wanting any amendments to take away from the intention to enable consultants to work freely across borders, the draft Directive must be amended if it is not to cause chaos in the industry.

Ends

Further information

Frances Paterson, Chair of CIC's Liability Panel is available for further comments. Please contact the Press Office at CIC for details on 020 7399 7407 or email press@cic.org.uk

Notes to the editor

1. The CIC delegation which gave evidence to the House of Lords Inquiry comprised Frances Paterson (chairman of the Liability Panel of the CIC), Adrian Joyce (Senior Advisor to the Architects Council of Europe) and Gillian Birkby, legal advisor to the CIC and construction partner at Fladgate Fielder.
2. The aim of the EU Directive on Services is to eliminate the barriers to the free movement of services by removing national regulations which act as obstacles to cross border establishment and the provision of services.
3. The proposed derogation from the general principle of the EU Directive on Services is (Article 17(17)).
4. CIC is the representative forum for the professional bodies, research organisations and specialist trade associations in the construction industry. It provides a single voice for professionals in all sectors of the built environment through its collective membership of 500,000 individual professionals and 25,000 firms of construction consultants.