Service Directive

ESTA position paper on Articles 18 and 40 on Cash-in-Transit

The European Security Transport Association (ESTA) welcomes the Directive on Services as a crucial step towards achieving the internal market for services by clarifying the rules and procedures for the right of establishment of subsidiaries in Member States. ESTA particularly calls for high standards for the provision of services and believes that the directive will help the promotion of quality.

At this stage, ESTA would like to focus its comments on the issue of cash-in-transit (CIT), which is dealt with specifically in Articles 18 and 40. Indeed, the very peculiar nature of this activity means that it must be treated differently from other service activities and that exclusion from the principle of country of origin is necessary. This paper explains the reasons why the principle cannot apply to this activity. It also provides some elements to understand the key facts of this industry which will need to be taken into consideration in any forthcoming EU initiative.

The proposal

Article 18 provides for derogations from the country of origin principle for three specific services, of which CIT is one. This derogation will remain in place until the Commission proposes a specific harmonisation instrument for CIT or, failing that, until 2010 at the latest. Article 40 provides that the Commission shall assess the possibility of presenting a proposal on CIT within a year after the adoption of the Services Directive.

ESTA strongly supports the Commission proposal to treat CIT differently, as this service activity has very little in common with the typical service activities which the Directive will concern (e.g. management consultancy, certification and testing, audiovisual sector, etc.) and is a matter of public security.

Key facts from industry

Companies providing CIT services employ around 100,000 people across Europe, their businesses have a turnover of €4 billion and more than 99% of their activities take place at national level.

Additionally:

- CIT has a very different profile in each Member State and, follows very different rules and philosophies. In some countries, CIT takes place using armoured vehicles and armed crews, while in others, lighter, more discrete vehicles may be used with unarmed crews but with technical devices to prevent theft by making notes unusable.
- the conditions under which CIT services are provided are determined domestically, either by Member States' rules or by customer contracts.

- CIT does not raise any particular difficulty with regards to the internal market, because there is little customer demand for cross border movements and the large majority of cross-border trade is based on point-to-point services with very little cabotage (i.e. stopping off to service other points on route). A substantial part of point-to-point services is provided for Member States' central banks.

The country of origin principle

It follows from the above that the country of origin principle:

- would be harmful, as this document will explain below, and the derogation provided by the Commission is therefore fully justified.

  There should be no "automatic" switch to country-of-origin by the mere virtue of the expiry of a deadline. Instead, as is the case for another activity excluded under Article 18 (gambling activities), the derogation should be permanent.

- could increase risk if standards are reduced

  CIT deals with a very particular commodity – namely cash – and therefore raises serious safety issues. There is no uniform pattern for such risks over the EU and even within Member States, as the risks vary from one region to the next, or from one city to the next. The way CIT has to be delivered to clients has to take into consideration the risks where the service is provided, which may be different from the risks in the country of origin, whose rules would prevail in case of cross-border provision of services

  For this reason, the country of origin principle is not compatible with CIT activities.

  Standards of operation at a Member State level should reflect the regional and local risk and be in the interests of public safety and security. If the country of origin principle is applied to CIT, public safety and security could be put at risk by organisations operating at lower standards set by their home country.

In this case, public policy concerns justify a permanent derogation for CIT from the country of origin principle.

Difference in Member States rules applying to CIT

A recent Commission/CoESS study "Analysis framework for a comparative study of CIT" has shown that operating standards differ across Europe. For example, in Spain the service providers use fully armoured vehicles with a three-man crew who are armed and where possible have a police escort. Whereas in the UK, one man,

unarmed crews are often used, in soft skinned vehicles (not armoured) with some electronic safety systems on board, with no police escorts.

Harmonisation, even if limited to minimal harmonisation, of several aspects of CIT services, would be very difficult to achieve as it will touch on very sensitive issues for Member States, with some borderline issues between the First and the Third Pillar. This concerns, *inter alia*, the rules concerning weapons (permits and type of weapons) and the profile of the crew (notably with regards to people with criminal records), where Member States would be reluctant to accept harmonisation.

In view of the above, it is likely that in an enlarged European Union, consensus on minimal harmonisation would be difficult to achieve, and so no specific legislation would be in place before the end of the derogation. The difficulty of reaching a consensus within the Council on CIT should not be underestimated, while the outcome of such legislation will deliver rather little in terms of internal market objectives. In the absence of any major difficulty in the current operation of the market cross-border, the need for a CIT-specific harmonisation instrument should be thoroughly questioned.

Despite the incompatibility of the country of origin principle with CIT which is described above, under the current text of the proposal, country of origin would apply in any event after 2010 whether or not any harmonisation instrument has been agreed.

ESTA stresses that in most countries, no obstacle to establishment exists so that each market will remain open and competitive. Freedom to provide services already exists for point-to-point services in different Member States.

Conclusion

ESTA believes in standards in our industry, but these should be set by the Member States for their own markets at the appropriate level to address the risk.

CIT is primarily a domestic activity with limited cross-border business mostly restricted to point-to-point services. It is domestic due to institutional reasons linked to the organisation of the national payment systems and the national markets work efficiently in a competitive manner. The specific treatment of CIT in the draft services directive reflects:

- There is little customer demand for cross border movements
- Only harmonisation to the highest level would resolve the issues of public safety and security and this would be difficult to achieve across Member States (due to the Third Pillar); and in most markets it would significantly increase costs (by up to 25%) for the industry and its customers
- The fact that risk cannot be harmonised
- That therefore there is no way standards of operation can be harmonised
- That there is no “one size fits all” solution which would allow EU wide rules which would be suitable for all the risks anywhere and anytime.

ESTA therefore considers that the derogation in Article 18 referring to CIT should not be limited in time but permanent, and that there should be no harmonisation instrument. ESTA calls on the co-legislators to amend accordingly Articles 18 and 40 of the proposal.