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To:
cc:
Subject:

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Consultation on Directive 2006

Teach Laighean,

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A chara,

Further to your request for submissions and comments on the Consultation Paper produced by the Department of Enterprise, Trade and Employment on Directive 2006/123/EC of The European Parliament and of The Council of 12 December 2006 on services in the internal market, I include the views of Sinn Féin with respect to the Directive and the proposals in the consultation document.

The Directive 2006/123/EC was passed to member states for transposition into national law with a deadline of December 2009. The matter of gravest concern currently with relation to this directive is that the Department of Enterprise, Trade and Employment in their consultation document have proposed to transpose the Directive by way of a Statutory Instrument thus creating the possibility that the Houses of the Oireachtas will have no opportunity to discuss the proposed legislative provisions.

Sinn Féin would be vehemently opposed to transposing this directive through a statutory instrument given the scope and breadth of the directive itself and the high degree of clarification and definition needed. In the consultation document it is advised that "as a result of the screening process, a number of existing pieces of legislation and other rules are being changed to bring them into line with the Directive ". Not only does Directive 2006/123/EC serve to bring in a new legal framework for service provision, setting out general rules, it will be amending and changing existing national law. Changes to existing legislation and rules should be achieved through primary legislation and should be tabled to come before the Oireachtas. There is no mandate for transposition of the Directive by Statutory Instrument, which changes national law "by administrative means or by both administrative means and Regulations".

Conversely, there are some obvious problems with transposing the Directive through Statutory instrument, the most obvious of which relates to the Scope of the Directive. There is a need for further clarity on the scope of the legislation particularly in respect of public services. The need for further clarity arises because of the use of terms in the Directive for which no legal definition exists, and which would be open to interpretation through case law. For example, there is a need to attempt to define the terms "services of general interest" and "services of general economic interest" or alternatively provision needs to be made in an annex so that the public services that are within the remit of the legislation are listed, as would those excluded.

Transposition by Statutory Instrument will cause further problems in terms of the judiciary and the potential weight of case law that will arise accordingly. Similarly, given the fact that national law will have to be amended, altered or deleted to facilitate the directive, there is need for primary legislation before the Houses of the Oireachtas. Therefore, I would strongly urge you to put the Directive on the legislative programme for Government so that it may be transposed through primary legislation before the Houses of the Oireachtas.

If there is need for further clarification or if further consultation is necessary, do not hesitate to get in contact,

Is mise,

Arthur Morgan TD
Sinn Féin Spokesperson on Enterprise, Trade and Employment
Member of the Joint Oireachtas Committee on Enterprise, Trade and Employment