

Mutual Recognition and Mutual Evaluation in the EU Services Directive: lessons for an Australia-EU FTA?

Anne McNaughton
Senior Lecturer, ANU College of Law
Australian National University

Mutual Recognition

- Underpins the internal market of the EU
- In its strongest form, it articulates the 'Country-of-origin Principle' (CoOP)
- However, that which is mutually recognized must always be defined

Mutual Recognition: Goods v Services

- Regulatory environment for goods is more settled and more harmonized than it is for services
- Efforts to include in EU Services Directive principle of mutual recognition on the basis of 'country of origin' or 'home state regulation' failed (original Art.16)

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From 'Country of Origin' to 'Freedom to Provide Services'

- 'Member States shall ensure that providers are subject only to the national provisions of their Member state of origin which fall within the coordinated field' (Art 16(1), original text)
- Member States shall respect the right of providers to provide services in a Member State other than that in which they are established (Art 16(1), final text)

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Authorisation Schemes (Art 9)

- Authorisation Schemes only permitted if:
 - non-discriminatory
 - justified by an ‘overriding reason relating to the public interest’ (ORRPI) (defined in Art. 5 and referred to in recital 40)
 - proportionate to the end to be achieved
 - based on criteria that are non-discriminatory; justified by an ORRPI; proportionate; clear and unambiguous; objective; publicized in advance; transparent and accessible.

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Mutual Evaluation: Article 39 EU Services Directive (2006/123/EC)

Member States *shall* report to the Commission on:

- authorisation schemes (Art. 9(2))
- requirements to be evaluated (Art. 15(5))
- multidisciplinary activities (Art. 25(3))

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Mutual Evaluation: Article 39 EU Services Directive (2006/123/EC)

- Commission *shall* forward reports to the Member States who *shall* submit their observations on each of the reports
- Commission *shall*
 - consult interested parties on those reports;
 - present reports and observations to Committee assisting the Commission (Art.40)
 - present a summary to the European Parliament together with any proposals for initiatives

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Mutual Evaluation: Article 39 EU Services Directive (2006/123/EC)

- Evaluation process requires Member States to reflect on:
 - existing schemes;
 - comments from other Member States;
 - observations from Commission and Committee

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Mutual Evaluation and Performance Checks

- Initial review by Member States of each others' regulatory frameworks during the implementation phase of the Services Directive
- Following the end of the transition period (28 December, 2009) Member States and Commission have continued reviewing relevant national measures notified by Member States
- 'Performance Checks' announced in 2011

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Mutual Recognition and Mutual Evaluation

- Mutual recognition in the EU context: a matter of (EU) internal law and governance not conventional public international law
- Mutual recognition in the context of an MRA: a matter of external, international law.

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