

CONFERENCE:  
EVALUATING APPLICATION OF THE DIRECTIVE ON THE POSTING OF WORKERS  
WITHIN THE FRAMEWORK OF THE PROVISION OF SERVICES

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**THE SCOPE OF PROVISION OF SERVICES IN EUROPE:**

**SOME PARADOXES AND PARTICULARITIES IN THE TRADE IN SERVICES**

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This article presents an economist's view of the scope of the provision of services, from the trade in services standpoint. It is an opportunity for a rapid overview of the available knowledge concerning the trade of services within the European Union (EU). It leads to an attempt to clarify a number of paradoxes that make it harder to understand the trade in services and naturally to examine possible ways of measuring it. Insofar as is possible, it attempts to clarify certain areas of the debate concerning posting of workers, while answering a series of fundamental questions. Quite apart from achieving a clearer understanding of the position of both service and posting of workers in the trade in services, the interest of such an approach is also to shed light on public policies.

A frequently expressed opinion concerning services, is that the internal market is in part defective in this area. Statistics would also appear to confirm this viewpoint:

- On average, in the EU of 25, the service sectors export less than 6% of their production, as opposed to 40% for the manufacturing sectors.
- While in the EU of 25, services accounts for an average of 72% of GDP and 68% of employment, the trade in services barely reaches 20% of the balance of normal transactions.
- Finally, the trade in services within the EU is only 30% higher than the external trade, as compared to a 110% difference for goods.

These data generally lead us to consider that the services sector is lagging behind the manufacturing sector in terms of economic integration into the EU. This sentiment was expressed in a relatively recent publication from Eurostat: "EU integration has been much stronger for trade in goods than for trade in services" (Hussain and Faes-Cannito 2008 p.6).

It must however be pointed out that the particularities inherent in services tend to imply difficulties with interpretation. The article will show that the reality is both more subtle and more complex. In fact the commonly adopted approach is to use the same reasoning usually applied to the production of and trade in goods to services without taking any precautions, which is probably wrong.

Whatever the case, the purpose of the Posting of Workers Directive (1996) and above all the Services Directive (2006) is precisely to provide a European framework for the "trade" of services in order to encourage it. The notion of trade as used here refers to two concepts: "provision of services" as legally defined in the EU treaties, and "trade in services" as defined economically. These two notions and how they interact must be explained.

This process will be organised into a series of steps, consisting first of all in defining services and the trade in services. In so doing, emphasis will be placed on the divergence that exists between the legal viewpoint of the EU treaties and the economic viewpoint. It will then be necessary to analyse the information provided by the balance of payments in order to attempt to identify a service and posting of workers in the trade in services. The article will then examine the main form adopted by the internationalisation of the service activities. Finally, the analysis will show how the commercial principles used in the trade of goods can pose problems when applied to services.

## **1. FROM SERVICE TO SERVICE ACTIVITIES: TERMS THAT HELP SPREAD CONFUSION**

The word service can refer to widely differing realities. The simple fact of using the singular or the plural form already significantly alters its meaning. First of all, we must therefore clearly define the meaning of the word service, from the viewpoint of the European treaties and then from the economic viewpoint.

- As defined by the European treaties (Art. 57 ex 50 TCE), "services shall be considered as such 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. 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"

Over and above the fact that it concerns an economic activity (service provided for remuneration), article 57 seems relatively confused. Quite incautiously, the term service(s) changes meanings in mid-stream. In all probability, the first sentence refers to a service as a product (as opposed to goods), whereas the second refers to service activities as an economic sector<sup>1</sup>. The term "services" in article 57 thus designates both services provided and activities.

Over and above these drafting problems, the drawback of the article is that it apparently equates two different domains. On the one hand, the service is seen in

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<sup>1</sup> Article 4(1) of the Services Directive (2006 Directive) corrects this semantic confusion.

terms of free movement. In this respect, unlike its common meaning, it necessarily designates a cross-border service. On the other hand, the service is seen in terms of an activity. This refers to national service sectors. The article therefore implies that the trade in (cross-border) services is necessarily a result of (national) service activities. This is further compounded by an odd factor: the fact that service activities cover activities of an industrial character is somewhat surprising.

In short, drafted without precaution, the article leads to confusion and thus raises questions<sup>2</sup>.

- In the economic sense, to identify services, one must rely on the work done by the United National Statistics Division (UNSTATS) and the IMF.

First of all, we must define a service. A service is a non-storable and intangible output, it is a flow, the purpose of which is to change the condition of the person or thing to which it applies. Its production takes place at the initiative of the client, generally through contact, or contact with the goods into which it is incorporated (Hill 1977). The latest revision of the System of National Accounts manual (box n°1) stresses the fact that the service is an intangible product over which ownership rights cannot be established (UNO 2009, Hill 1999).

#### **Box n°1: services in the System of National Accounts (SNA) 2008**

##### **SNA 2008 manual § 6.17**

*“Services are the result of a production activity that changes the conditions of the consuming units, or facilitates the exchange of products or financial assets. These types of service may be described as change-effecting services and margin services respectively. Change-effecting services are outputs produced to order and typically consist of changes in the conditions of the consuming units realized by the activities of producers at the demand of the consumers. Change-effecting services are not separate entities over which ownership rights can be established. They cannot be traded separately from their production. By the time their production is completed, they must have been provided to the consumers.”*

##### **SNA 2008 manual § 6.21**

*“Margin services result when one institutional unit facilitates the change of ownership of goods, knowledge-capturing products, some services or financial assets between two other institutional units. Margin services are provided by wholesalers and retailers and by many types of financial institutions. Margin services resemble change-effecting services in that they are not separate entities over which ownership rights can be established. They cannot be traded separately from their production. By the time their production is completed they must have been provided to the consumers.”*

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<sup>2</sup> The previous comments are supplemented by the fact that in the European texts, a service is defined by the activity, while the provider is defined by the service. “(...) "provider", any natural person who is a national of a Member State, or any legal person as referred to in Article 48 of the Treaty and established in a Member State, who offers or provides a service" (2006 Directive, art.4(2)). The impression is that the definition goes round in circles.

For the economist, there are thus two clearly distinct viewpoints, which unfortunately use homonyms: that of the national accounts and that of the balance of payments. The first deals with activity sectors, the second with international trade. In the first case, services represent sectors as listed in the activity nomenclatures, in the second case, the services are "service-products" which cross borders, as listed in the balance. The two nomenclatures: activity and balance do not give exactly the same list of "services". Finally, one must point out that in the case of goods, it is impossible to confuse goods and industries.

The European texts run roughshod over these subtleties and tend to confuse the two viewpoints, as if service activities were also service-products.

## **2. FROM PROVISION OF SERVICES TO TRADE IN SERVICES**

Owing to their in-contact production mode, it is hard for service activities to access trade in the traditional sense of the term. Hill (1999) thus underlines the fact that the characteristics of services are a major constraint for trade, as either the clients or the providers have to travel. For a long time and somewhat excessively, economic thinking even considered service activities to be excluded from international trade (Fiebele 1995). However, since the 1990's and the negotiations on the General Agreement on Trade in Services (GATS, 1994), considerable efforts have been made to encourage the trade in services and clarify the understanding of this subject.

The General Agreement on Trade in Services (GATS) proposed a broader notion of trade and defined four methods for movement of services (graph n°1). Studying them gives a clearer idea of the particularities of movement of services.

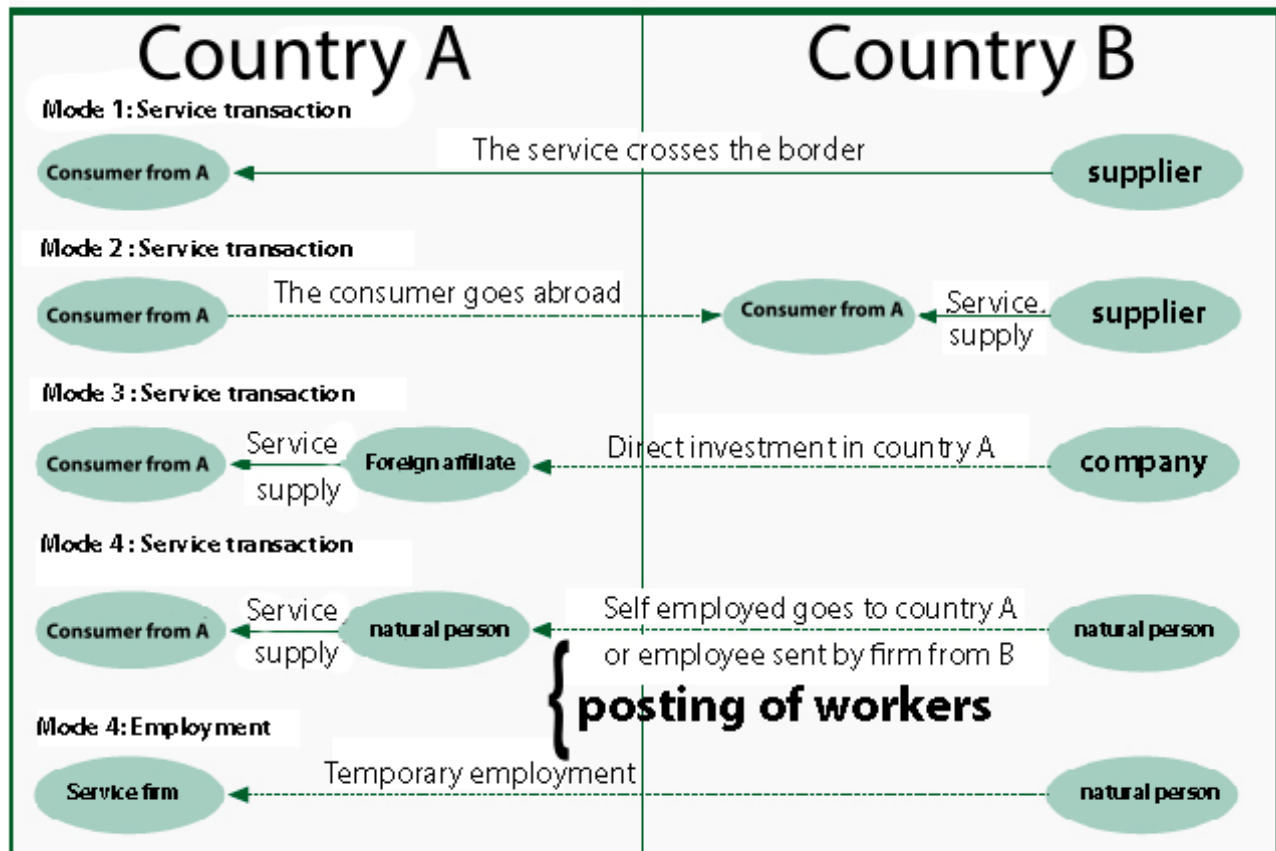
Mode 1 corresponds to trade as traditionally defined. A provider provides a service from a distance (for example telecommunication services).

Mode 2 corresponds to foreign travel by the receiver of the service (a tourist consumes nights in a hotel abroad).

Mode 3 corresponds to the provider establishing a presence abroad, for example by setting up a subsidiary to provide the service in-situ (foreign direct investment, FDI).

Mode 4 corresponds to physical travel by the service provider to provide the service as part of a temporary assignment abroad. This can concern independent workers or salaried employees.

Graph n°1.  
The four modes of trade in services as defined by the GATS



NB: as defined by the GATS, this concerns a temporary assignment, only within a service company).

The provision of services as defined by the EU covers modes 1 and 4, posting of workers concerns mode 4 restricted solely to posting of employees.

### 3. WHAT INFORMATION IS PROVIDED BY THE BALANCE OF PAYMENTS?

- The provision of service and posting in the balance

The balance in principle measures the different categories of "service-products" which cross the border, independently of their sectors of origin.

In practice, it measures movements corresponding to a list of headings (Table no.1) which combines several construction principles. It in fact comprises sectorial headings and service-product headings.

Table no.1  
Services in the balance of payments (version 5)

1.2.1	Transport (sea, air, others)
1.2.2	Travel
1.2.3	Communication services
1.2.4	Construction services
1.2.5	Insurance services
1.2.6	Financial services
1.2.7	Computer and information services
1.2.8	Royalties and license fees
1.2.9	Other business services
	1.2.91    International trade
	1.2.92    Other commercial services
	1.2.93    Rental
	1.2.94    Miscellaneous business services
1.2.10	Personal, cultural and recreational services
	1.2.10.1    Audiovisual and related services
	1.2.10.2    Other personal services
1.2.11	<i>Government services</i>

NB. The freedom to provide services (as defined in the 2006 Directive) does not apply to all the headings and some of them are subject to particular requirements (transport, insurance, financial services, audiovisual services, etc.) or are excluded (government services).

- Several items of the services account are not concerned by the cross-border service: travel is part of mode 2 (individuals travelling to benefit from the services). Construction services comprise construction strictly speaking (including materials). The heading therefore extends considerably beyond simply remote services.
- The balance makes no distinction between purchase of temporary or permanent rights (royalties and licence fees; computer services; audiovisual, cultural and recreational services). This does not allow an exact definition of what is precisely covered by the provision of services.
- The balance identifies certain elements relating to manpower movements outside the services heading. It thus measures employees paid abroad (for example in the case of trans-border workers in the income heading), unilateral transfers (for example those sent by immigrant workers to their families, in the current transfers heading), but not posting as such. A true measurement of posting of workers (mode 4) should on the one hand only take account of employees effectively posted temporarily, and on the other, express the value of the associated services, which is not necessarily equivalent to the salaries of the personnel concerned.

Therefore, it would seem impossible to evaluate the service precisely and even less so the posting of workers, by means of the main instrument for measuring trade. Some national administrations propose statistical data which identify the number of employees posted (for example Statec 2006 for Luxembourg), but this does not give the value of the services concerned.

In any case and paradoxically, a measurement of trade with regard to the provision of services would give lower figures than the standard trade in services. The lesser economic importance of posting remains unknown.

- Which sectors export services?

As has already been underlined, the balance measures trade independently of the original economic sectors, because it deals with service-products which cross the border. Although for goods there is generally a strong link between the sector and the type of products exported, this link is more tenuous for services. The way the balance is presented, which would seem to make direct reference to activities, can therefore be misleading. For example, services for businesses do not all come from business service companies.

Table no.2  
The weight of service companies in routine transactions in France

	Service companies /total trade as a % for each input		Value of each input compared with the total transactions as a %: (exp + imp)/2
	Imports	Exports	
<b>Total of routine transactions</b> <b>*</b>	<b>6.12</b>	<b>8.75</b>	<b>100.00</b>
<b>Goods</b>	<b>36.45</b>	<b>37.90</b>	<b>63.44</b>
<b>Services</b>	<b>14.39</b>	<b>34.23</b>	<b>16.00</b>
-Transport	1.98	1.26	3.77
- Travel	7.01	56.79	5.28
- Communication services	99.94	99.46	0.40
- Construction "services"	31.12	49.09	0.37
- Insurance services	1.84	2.72	0.40
- Financial services	3.65	3.90	0.26
- Computer and information services	37.58	86.25	0.22
- Royalties and licence fees	20.57	15.84	0.57
- Other business services	19.41	23.74	4.19
- Personal, cultural and recreational serv.	77.77	71.40	0.37
- Government services	0.74	1.43	0.16

Source: Special treatment of the Balance of payments, Banque de France. Source INSEE (2005) p.35, 2003 data.

\* all routine transactions including inputs other than goods and services, which explains why the two added together do not come to 100%.

Analysis: service companies generate 6.12 % of imports in the total routine transactions.

As we have seen, the standpoint of the Treaties, and indeed that of the Services Directive (or of the GATS) compares the sectorial viewpoint (sectorial origin of trade), with the type of "service-product" traded. It therefore concerns itself with the services



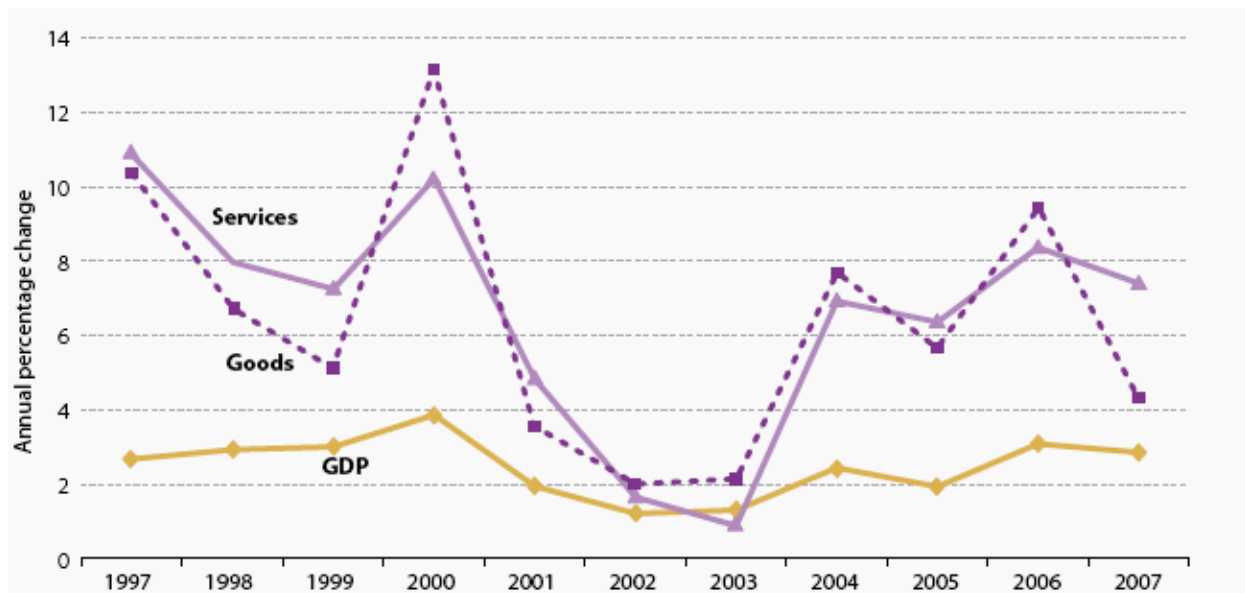
offered by service companies. There are however grounds for presuming that there is a difference between the two viewpoints. In France, for example, service companies only originate 34% of the service exports (table no.2). The trade in services only accounts for 16% of routine transactions whereas trade in goods accounts for more than 63%. These figures are representative of the standard 1 to 4 ratio identified in the international statistics. The manufacturing industries represent about 65.8% of the service exports (table no.1) (also see Nivlet 1993 p.2). This means that service companies only come a distant second for cross-border trade in services. In some cases however, they play a significant role, for example in telecommunications, communication and IT services, recreational, personal and cultural services. It must however be stressed that these inputs only represent a relatively limited share of the international trade in services. Moreover, if one looks at the three types of services which generate a substantial share of the trade in services, one can see that for two of them, the manufacturing industries dominate the trade (services to businesses and transport). The case of the third (travel) is particularly worth mentioning, because in reality 55% of the flows recorded were conventionally ascribed to hotels and restaurants. For the time being, we do not know how the travellers spend their money. This type of data is not common because it constitutes a particular utilisation of the balance.

Paradoxically, the trade in services identified by the balance are not mainly from service companies.

- The trade in services measured is linked to the trade in goods

The trade in services is a companion to trade in goods. Thus Ceglowski (2006), based on a sample of 28 OECD countries (in 1999-2000), finds a strong correlation between the trade in services and that in goods (0.908). She stresses the fact that increasing the trade in goods should promote the trade in services and therefore stressed the importance of regional trade agreements for the trade in goods. Within the more restrictive EU framework, graph no.2 confirms this close correlation over the latest available ten-year period.

Graph no.2  
EU GDP and exports of goods and services, 1997-2007  
(at 2000 prices and exchange rates, annual variation rate)



Source: Eurostat 2009

This very close link between trade in goods and services is explained by two main factors:

Some of the services traded are directly (for example merchanting), or indirectly (royalty fees and licences), linked to the trade in goods.

Other services are also linked to goods-related operations and are thus carried out by industrial companies or their subsidiaries. Some are even internal to multinational industrial corporations. This is particularly the case for financial transactions.

A recent study by Nefussi and Schweltnus (2007) even underlines a correlation in France between foreign direct investment in industry and in the business services sector.

All in all, except for certain service sectors which use the New Information and Communication Technologies, due to the fact that production needs to be carried out in contact with the client, access to cross-border trade remains difficult for traditional service companies.

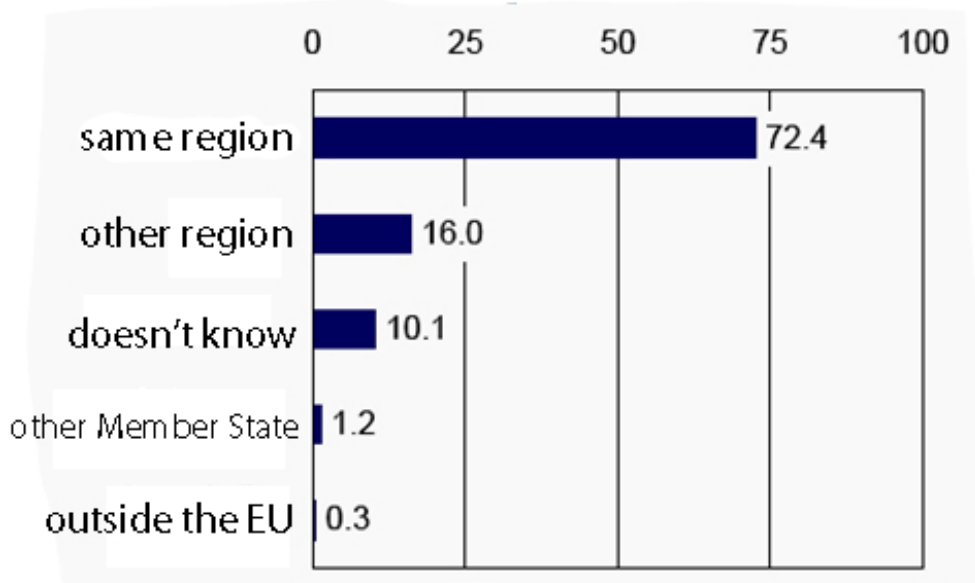
#### **4. INTERNATIONALISATION OF SERVICE COMPANIES IS MAINLY CARRIED OUT THROUGH DIRECT INVESTMENTS**

The above observations do not mean that service activities are inconsistent with internationalisation and European integration, but that in order to trade, service companies usually have to relocate.

As has been underlined, there are two ways for them to relocate: either to send workers (posting), or to establish themselves locally. The importance of the local particularities of demand (Wölfl 2005), the need to produce in-situ while maintaining robust customer relations, tends to sustain specific markets. Thus, for nine EU

countries, 88% of the services provided by outside providers come from the same country and for more than 70% from the same region (graph no.3). Businesses therefore have to establish themselves there.

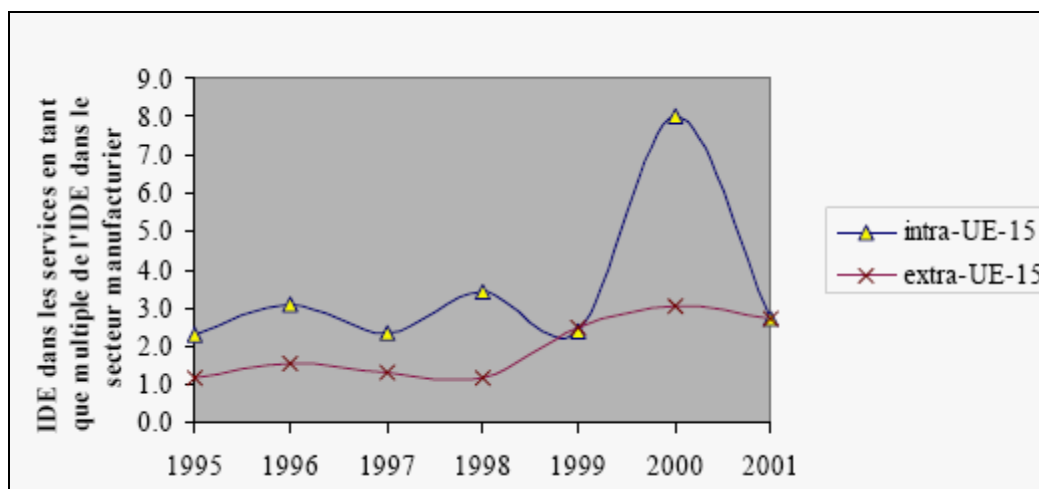
Graph no.3  
Main outside provider of services according to geographical origin in 2003 (as a % of the total responses) (1)



(1) Simple average based on nine countries for which data are available: DK, DE, EL, LV, LT, PL, SI, FI, SE ; Source: Eurostat, SBS, Alajääskö. P (2006)

Finally, establishment, as defined by the treaties, or mode 3 as defined in the GATS, are predominant<sup>3</sup>. In France, the service sector originates or receives about 60% of foreign direct investments. With regard to the EU, FDI in services is two to eight times higher than in industry (graph no.4)

Graph no.4  
Foreign Direct Investment (FDI) in services occupies a significantly higher share than in industry



<sup>3</sup> This is even more marked when services are taken into account (excluding travel and construction).

Source : COM 2005  
*FDI in services as a multiple of FDI in industry*

It must also be underlined that Foreign Direct Investments (FDI) in services within the EU are far higher than FDI outside the EU (table no.3). This phenomenon, which illustrates the effect of European integration, is also more marked for FDI than for trade in services. For the last five available years (2004 to 2008), the average FDI outgoing flows are therefore 1.26 times more oriented towards the EU than for the trade in services, and even 2.09 times more when it comes to incoming flows<sup>4</sup>.

Table no.3  
 Share of FDI flow in service inside and outside the EU as a %

Years	Foreign Direct Investment Flows			
	Incoming		Outgoing	
	Intra-EU	Extra-EU	Intra-EU	Extra-EU
2004	61.5	38.5	76.1	23.9
2005	64.2	35.8	78.1	21.9
2006	62.4	37.6	71.7	28.3
2007	57.1	42.9	62.2	37.8
2008	55.1	44.9	65.0	35.0

Source: Hussain and Istatkov (2009)

In the light of these data, we can assume that establishment partly replaces cross-border trade, which is less practicable in certain service activities, or possibly even posting of workers for a provision of services.

These comments lead to a further paradox: inside the EU, the relative weakness of the trade in services, combined with the importance of FDI for services, could in fact be more a sign of strong integration, as opposed to the pessimistic view mentioned in the introduction.

## 5. TRADE VERSUS ESTABLISHMENT: A DISTINCTION THAT IS HARD TO PROVE IN PRACTICE

As establishment tends to replace trade for service activities, it is important to briefly recall the basics of the distinction between provision of service and establishment. This question is dealt with in detail in Frédérique Berrod's presentation, so this section will be brief and above all focused on a comparison of the legal and economic viewpoints. In both cases, the duration of the presence is the key factor.

- Provision of service / establishment in the EU

<sup>4</sup> (FDI flows inside-outside the EU) / (trade in service flows inside-outside the EU). Calculations by the author based on the Hussain and Istatkov data (2009).

Like the treaties, the Directive considers that establishment is the "actual pursuit of an economic activity(...) for an indefinite period and through a stable infrastructure". In theory, a cross-border service can thus be easily distinguished from establishment, according to the duration and infrastructure criteria. However, in practice, this separation is not as easily determined as one might imagine. This is in particular underlined by the Commission, relying on jurisprudence from the European Court of Justice: "(...) there can be no general time limits set in order to distinguish between establishment and service provision. Neither is the fact that the provider uses a certain infrastructure decisive, since a provider of services may use an infrastructure in the host Member State for the cross-border provision of services without being established there. In *Schnitzer* the ECJ explained that even an activity carried out over several years in another Member State can, depending on the circumstances of the case, be considered to be service provision (...), as can recurrent service provisions over an extended period – such as consulting or counselling activities" (Com 2007, p. 51).

Therefore, from the practical standpoint, and even if the additional "frequency and continuity" criteria can be invoked, there is no clear and final distinction between provision of service and establishment in the EU. It could be considered that this ambiguity tends to give greater scope to the provision of services.

- Posting / Investment

From the economic viewpoint, the distinction between temporary service / indeterminate establishment, in other words, between Modes 4 and 3 as defined in the GATS, follows the duration criteria inspired by those of the balance of payments.

Establishment (Mode 3) here corresponds to an investment, a financial transaction resulting in a stakeholding of at least 10% in the share capital, in order to acquire a long-term interest.

This investment is recorded in the financial account, as distinct from the trading account. In practice, the annual time-frame for the balance establishes the long-term interest owing to the fact that the financial transaction exceeds one year. This could legitimately appear to be a minimalist criterion. Another consequence is that a temporary assignment lasting several years will be considered as a succession of several annual assignments. This has no consequence on the measurement of the total volume of trade, but does not enable the duration of average value of the assignments concerned to be measured.

The balance of payments viewpoint is a statistical one. It has no legal or practical consequences for businesses or for the transactions concerned. The duration of the stay mentioned in the undertakings of the WTO member countries, for the purposes of Mode 4 (posting of workers), varies between a few weeks and three to five years, depending on the country, sector and profession concerned (OECD 2004). For the GATS, when practical issues are also involved, it is also difficult to set a simple limit for the temporary nature of a posting.

Finally, two conclusions can be drawn from this rapidly drafted picture. On the one hand, if the distinction between temporary posting and establishment for an indeterminate period appears obvious in theory, it is far less so in practice. This is due to the fact that a service may require a long duration and significant infrastructures even if it is only temporary,. On the other hand, once again the statistics of the balance

of payments appear to be relatively unsuitable for measuring the value of the transactions, which corresponds to each of the two EU categories.

## 6. WHAT COMMERCIAL PRINCIPLES SHOULD BE APPLIED TO THE PROVISION OF SERVICES?

One final particularity of the exchange of services is worth examining and concerns the principles of trade that can be applied to the provision of services.

- The traditional international economic principle, applicable to trade and derived from free trade, is that of non-discrimination, also called national treatment. A country then grants businesses from a third-party country with which it has signed an agreement the same conditions as its own nationals. This approach can be found in the EU treaties:

Article 57 (ex 50) specifies: "*the person providing a service may, in order to do so, temporarily pursue his activity in the Member State where the service is provided, under the same conditions as are imposed by that State on its own nationals*".

The European treaties thus refer to national treatment which in fact means equal treatment. This means that a service company from another member State must be treated in the same way as a business established locally.

In the single market, integration is more advanced than simple national treatment. The commercial approach in force is based on the principle of Mutual Recognition, in particular derived from the Cassis de Dijon ruling of the European Court of Justice (20/02/1979). This principle considers that a product legally manufactured in a member country must be accepted in the other countries. It is based on a presumption of equivalence of the protective standards within the EU (Pelkmans 2007). In theory it applies to all types of "products" but was originally conceived for goods. It is a powerful means of bypassing the variety of national technical manufacturing standards (for example the NF standard in France, or DIN in Germany). As the principle of Mutual Recognition could lead to a deterioration in quality for the consumer, in particular when production is relocated to countries in which industrial regulations are less restrictive, it is frequently associated with common minimal safety requirements. It also takes second place to aspects of general interest, in particular related to protection of safety, health, the environment, or for tax reasons.

- How should Mutual Recognition (MR) be applied to the provision of services?  
Several cases must be envisaged:

With regard to Mode 1, trade is the exchange of goods and services are provided remotely. Application of the MR principle can then be applied to services in the same way as for goods. Services produced legally in one Member State must be accepted in all the other Member States. Within the EU there are two examples that correspond to this situation, e-commerce and TV broadcasting. These two services are the subject of Directives which organise their intra-European trade (Directive 2000/31/EC on e-commerce and Directive 89/552/EC, referred to as the TV Without Frontiers Directive), and provision is also made for minimum or protective rules. This case raises no difficulties specific to services.

In the case of Mode 4, the provision of services however raises particular issues because the service providers must travel to the host country. Two aspects are worth

examining, on the one hand the rules concerning labour and on the other, those concerning the actual activity:

– With regard to labour, a further distinction must be made between the two Mode 4 variants. When dealing with independent workers: the problems arising here mainly concern recognition of the qualifications and diplomas required to carry out the activity concerned (Bizet 2008, SGAE 2010). When dealing with employees, the problems concern working conditions. The objective of the posting of workers Directive is precisely to set minimum rules applicable to this situation. This paper will not go into any great detail on these subjects which are covered by various presentations at the symposium.

– The other aspect attracts less interest and yet it is just as important. This concerns what might be called "economic" regulations: in other words, regulations which organise and control the shape that the provision of services can assume locally. In this respect, the Services Directive calls for general application of ECJ case law: between Member States, any differences in regulations which are not justified by imperative requirements in the general interest, may be interpreted as an obstacle to free movement<sup>5</sup>. In other words, apart from major reasons of general interest, an external service provider is entitled to provide its service in a host country in the same way as it is provided in its country of origin. This is what a first version of the Services Directive called the Country of Origin Principle (COP) and the final version calls "free movement of services". As mentioned by Davies (2007, p. 8): "the presumption is that service providers are exempt, above the law of the territory where they operate, and the rebuttal of this presumption is hard".

This approach leads to competition between national "economic" regulations and to a risk of reverse discrimination for local businesses which cannot produce in accordance with the economic rules of the countries of origin of their local competitors (Bizet 2008, Broussolle 2010).

Therefore, the problem of equal treatment is reversed. It becomes: a local business must be able to provide services in accordance with the rules applicable to an external service provider.

In order to avoid this reverse discrimination, the host countries may have to adapt their "economic" regulations, aligning themselves with certain aspects of the regulations of the countries of origin. Signs of this process can be found in the Caixa Bank case (ECJ 2004). This Spanish bank established in France wanted to offer interest-bearing current accounts in breach of national legislation, which was refused. The dispute was brought before the ECJ, which considered that the freedom of establishment had been violated. Subsequently, in order to avoid prejudicing French banks, France changed its regulations, legalising interest-bearing current accounts (Official Gazette of 16 March 2005). This example leads us to consider two aspects. On the one hand, confirmation that competition between two economic legislations leads the host country to align itself with an aspect of the economic legislation of the country of origin. On the other, the fact that an equivalent of the country of origin principle (or freedom of movement if one

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<sup>5</sup> For example, the Kraus ruling of 31 March 1993 states: "national measures liable to hinder or make less attractive the exercise of fundamental freedoms guaranteed by the Treaty must fulfil four conditions: they must be applied in a non-discriminatory manner; they must be justified by imperative requirements in the general interest; they must be suitable for securing the attainment of the objective which they pursue; and they must not go beyond what is necessary in order to attain it;" (COM 2007, p. 52).

prefers), was applied, even though the ECJ was aiming to preserve the freedom of establishment. The mechanism of competition between economic regulations therefore applies irrespectively to the case of cross-border service provision and to establishment, which puts the service/establishment distinction into some kind of perspective. Other signs of this process can be found in the summary transposition report France sent to Brussels on 20/01/2010 (SGAE 2010). The competition phenomenon mentioned is not totally specific to services, but it is less immediate and less marked for trade in goods.

## **CONCLUSION**

To conclude this article, four points are worth recalling.

- From a general viewpoint, it can be seen that trade in services is governed by specific processes. These particularities should lead to changes in the usual attitudes and practices, which are generally based on the trade in goods. These adaptations should even take account of the differences specific to the variety of service sectors. There would therefore appear to be nothing shocking in the separate Directives organising movements between service sectors in the EU.
- The relative weakness of commercial flows observed, which was the starting point of this article, is not in itself worrying. The trade in services is necessarily smaller than that of goods. The increase in the trade in services entails direct and other investments (franchises for example). European economic integration of services is already well-advanced, but it follows a particular path, which also takes account of the frequently local nature of the demand.
- The usual statistical instruments are unable to give a precise assessment of the value of cross-border provision of services, and even less so the scale and scope of posting of workers. They can even sometimes be misleading, as they imply that the trade in services is primarily due to service companies, which is not the case. In fact, its very structure means that the standard balance of payments is unsuited to a detailed evaluation of the scale of trade by service companies. It cannot therefore be used to make a valid assessment of the commercial advance or lag by the service sector in relation to industry.
- Finally, the trade in services can prove to be more intrusive for economic and social models than the trade in goods (Sauvé and Stern 2000). This latter aspect is certainly that which will be the most widely and the best illustrated by the other presentations.

In all, it would appear that even more so than for the trade in goods, a study of the trade in services underlines the residual heterogeneity of the EU and certainly calls for greater harmonisation.

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