

AMENDMENT 374

by André Brie, Kartika Tamara Liotard and Sahra Wagenknecht, on behalf of the GUE/NGL Group

Report

A6-0409/2005

Evelyne Gebhardt

Services in the internal market

Proposal for a directive (COM(2004)0002 – C5-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendment by Parliament

Amendment 374
Recital 5

(5) Those barriers cannot be removed solely by relying on direct application of Articles 43 and 49 of the Treaty, since, on the one hand, addressing them on a case-by-case basis through infringement procedures against the Member States concerned would, especially following enlargement, be extremely complicated for national and Community institutions, and, on the other hand, the lifting of many barriers requires prior coordination of national legal schemes, including the setting up of administrative cooperation. As the European Parliament and the Council have recognised, a Community legislative instrument makes it possible to achieve a genuine internal market for services.

(5) The fact that the European Union must ensure a high level of social, consumer, health and environmental protection means that there must be prior upwards harmonisation of core standards at the European level. Member States should ensure that service providers are subject to the laws, regulations and collective agreements of the Member States applying higher social standards to access to, and the exercise of, a service activity.

Or. en

Justification

As the Brussels European Council has stated in March 2005, the development of an internal market for services must comply with the European Social Model. To achieve this, a proper regulation of the internal market for services as regards social, health, environmental and consumer protection matters is necessary. This requires a mix of European harmonisation and coordination of national legal schemes.

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Proposal for a directive (COM(2004)0002 – C5-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendment by Parliament

Amendment 375
Recital 19

(19) Where an operator travels to another Member State to exercise a service activity there, a distinction should be made between situations covered by the freedom of establishment and those covered, due to the temporary nature of the activities concerned, by the free movement of services. ***The Court of Justice has consistently held that the temporary nature of the activities in question must be determined in the light not only of the duration of the provision of the service, but also of its regularity, periodical nature or continuity. In any case, the fact that the activity is temporary does not mean that the service provider may not equip himself with some forms of infrastructure in the host Member State, such as an office, chambers or consulting rooms, in so far as such infrastructure is necessary for the purposes of providing the service in question.***

(19) Where an operator travels to another Member State to exercise a service activity there, a distinction should be made between situations covered by the freedom of establishment and those covered, due to the temporary nature of the activities concerned, by the free movement of services. ***(deletion)*** The temporary nature of the activities in question must be determined in the light not only of the duration of the provision of the service, but also of its regularity, periodical nature or continuity. ***A service ceases to be temporary when a service provider equips himself for a period of more than six months with some forms of infrastructure in the host Member State, such as an office, chambers or consulting rooms, or if he continuously or intermittently uses the infrastructure of others because*** such infrastructure is necessary for the purposes of providing the service in question.

Or. en

Justification

As the Commission points out: 'According to the definition provided in the proposed

Directive, establishment ... means the creation of any fixed infrastructure such as a permanent office or permanent premises ... It is irrelevant ... whether the service provider is the owner of this infrastructure, the tenant or just the user.' The amendment provides for a clear definition of the temporary character of the freedom to provide services and clarifies the difference between the former and the freedom of establishment.

AMENDMENT 376

by André Brie, Kartika Tamara Liotard and Sahra Wagenknecht, on behalf of the GUE/NGL Group

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Services in the internal market

Proposal for a directive (COM(2004)0002 – C5-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendment by Parliament

Amendment 376
Recital 40

(40) It is necessary to provide that the rule that the law of the country of origin is to apply may be departed from only in the areas covered by derogations, general or transitional. Those derogations are necessary in order to take into account the level of integration of the internal market or certain Community instruments relating to services pursuant to which a provider is subject to the application of a law other than that of the Member State of origin. Moreover, by way of exception, measures against a given provider may also be adopted in certain individual cases and under certain strict procedural and substantive conditions. In order to ensure the legal certainty which is essential in order to encourage SMEs to provide their services in other Member States, those derogations should be limited to what is strictly necessary. In particular, derogation should be possible only for reasons related to the safety of services, exercise of a health profession or matters of public policy, such as the protection of minors, and to the extent that national provisions in this field have not been harmonised. In addition, any restriction of the freedom to provide

deleted

services should be permitted, by way of exception, only if it is consistent with fundamental rights which, as the Court of Justice has consistently held, form an integral part of the general principles of law enshrined in the Community legal order.

Or. en

Justification

The country of origin principle needs to be dropped altogether and therefore there is no need for exceptions to its application. Furthermore, the criteria for exceptions proposed by this recital are too restrictive.

AMENDMENT 377

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Services in the internal market

Proposal for a directive (COM(2004)0002 – C5-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendment by Parliament

Amendment 377

Recital 6 a (new)

(6a) It is equally important that this Directive fully respects the level of social protection provided for in Article 2 of the Treaty, and Community initiatives based on Article 137 of the Treaty, with a view to achieving the objectives of Article 136 of the Treaty concerning the promotion of employment and improved living and working conditions. In view of the fact that the Treaty provides specific legal bases for matters of labour law and social security law, it is necessary to ensure that this Directive is not interpreted as applying to or affecting labour law, i.e. any legal or contractual provision concerning employment conditions, working conditions including health and safety at work, and the relationships between employers and workers. In particular, it is necessary to ensure that this Directive fully respects the right to negotiate, conclude, extend and enforce collective agreements, and the right to strike and to take industrial action in accordance with the rules governing industrial relations systems in Member States.

Or. en

Justification

The amended part of this recital confirms and explains the exclusion of all aspects of labour law from this Directive.

8.2.2006

A6-0409/378

AMENDMENT 378

by André Brie, Kartika Tamara Liotard and Sahra Wagenknecht, on behalf of the GUE/NGL Group

Report

A6-0409/2005

Evelyne Gebhardt

Services in the internal market

Proposal for a directive (COM(2004)0002 – C5-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendment by Parliament

Amendment 378
Recital 13 a (new)

(13a) This Directive should not in any way affect matters covered by Directive 96/71/EC on the posting of workers, or terms and conditions of employment, which, pursuant to that Directive, apply to workers posted to provide a service in the territory of another Member State.

Or. en

AMENDMENT 379

by André Brie, Kartika Tamara Liotard and Sahra Wagenknecht, on behalf of the GUE/NGL Group

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Services in the internal market

Proposal for a directive (COM(2004)0002 – C5-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendment by Parliament

Amendment 379
Recital 73 a (new)

(73a) This Directive should not be interpreted as affecting in any way the exercise of fundamental rights as recognised in Member States and/or in the EU Charter of Fundamental Rights, including the right or freedom to strike. Those rights may also include the right to take other action covered by the specific industrial relations systems in Member States.

Or. en

Justification

This recital reflects current EC law for the free movement of goods (EC Reg. 2679/98, the so-called Monti regulation), while adding a reference to the EU Charter of Fundamental Rights that did not exist yet when the Monti regulation came about.

The amendment does not add any new legal obligations in relation to the Charter, but only defines fundamental rights as those recognized at national level and those that are mentioned in the Charter.

A separate and clear Article in the Directive is justified by the fact that coherence between the various Community instruments is required, and that fundamental rights should be equally safeguarded in the internal market for goods as well as services.

AMENDMENT 380

by André Brie, Kartika Tamara Liotard and Sahra Wagenknecht, on behalf of the GUE/NGL Group

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Services in the internal market

Proposal for a directive (COM(2004)0002 – C5-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendment by Parliament

Amendment 380
Article 1

This Directive establishes general provisions facilitating exercise of the freedom of establishment for service providers and the free movement of services.

This Directive establishes general provisions facilitating exercise of the freedom of establishment for service providers and the free movement of services.

In so doing it seeks to contribute to the fulfilment of the tasks specified in Article 2 of the Treaty, including the sustainable development of economic activities leading to a high level of employment and of social protection and respecting the need for a high level of protection and improvement of the quality of the environment.

This Directive shall not apply to or affect national or Community labour law, i.e. any legal or contractual provision concerning employment conditions, working conditions including health and safety at work, and the relationships between employers and workers. In particular, it shall fully respect the right to negotiate, conclude, extend and enforce collective agreements, and the right to strike and to take industrial action in accordance with the rules governing industrial relations in Member States. Nor shall it affect social security legislation in the Member States.

This Directive shall not affect the achieved levels of wage agreements.

This Directive shall not affect national social protection schemes or the coordination of those schemes as regulated by other Community legislation. This Directive shall not apply to or indirectly affect public services and services of general interest, be they of an economic, social, cultural or other nature, as defined by the Member States. This Directive does not cover the privatisation of public entities providing services, the abolition of monopolies providing services or aids granted by Member States which are covered by common rules on competition.

Or. en

Justification

It is important that in stating the objectives of what is primarily a measure to ensure the free movement of services, the Directive includes a reminder of the broader goals of the European Community, goals which cannot be subordinated one to another, for example by prejudicing environmental, public health or social protection through the introduction of liberalising measures which in some circumstances may be disproportionate.

AMENDMENT 381

by André Brie, Kartika Tamara Liotard and Sahra Wagenknecht, on behalf of the GUE/NGL Group

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Services in the internal market

Proposal for a directive (COM(2004)0002 – C5-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendment by Parliament

Amendment 381
Article 3, paragraph 2

Application of this Directive shall not prevent the application of provisions of other Community instruments as regards the services governed by those provisions.

This Directive shall be without prejudice to the provisions of private international law, i.e. any rules on the determination of the law applicable to contractual and non-contractual obligations, including in the form of agreements, especially as contained in the 1980 Rome Convention on the law applicable to contractual obligations, and the planned Regulation of the European Parliament and of the Council on the law applicable to non-contractual obligations (Rome I and Rome II).

Or. en

Justification

The proposed amendments make the text more precise and appropriate in the framework of a legal text like this Directive.

AMENDMENT 382

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Services in the internal market

Proposal for a directive (COM(2004)0002 – C5-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendment by Parliament

Amendment 382
Article 2 a (new)

Article 2a

This Directive may not be interpreted as affecting in any way the exercise of fundamental rights as recognised in Member States and/or in the EU Charter of Fundamental Rights, including the right or freedom to strike. Those rights may also include the right to take other action covered by the specific industrial relations systems in Member States.

Or. en

Justification

This article reflects current EC law for the free movement of goods (EC Reg. 2679/98, the so-called Monti regulation), while adding a reference to the EU Charter of Fundamental Rights that did not exist yet when the Monti regulation came about.

The amendment does not add any new legal obligations in relation to the Charter, but only defines fundamental rights as those recognized at national level and those that are mentioned in the Charter.

A separate and clear Article in the Directive is justified by the fact that coherence between the various Community instruments is required, and that fundamental rights should be equally safeguarded in the internal market for goods as well as services.

AMENDMENT 383

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Services in the internal market

Proposal for a directive (COM(2004)0002 – C5-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendment by Parliament

Amendment 383

Recital 1

(1) The European Union is seeking to forge ever closer links between the States and peoples of Europe and to ensure economic and social progress. In accordance with Article 14(2) of the Treaty, the internal market comprises an area without internal frontiers in which the free movement of services and the freedom of establishment are ensured. The elimination of obstacles to the development of service activities between Member States is essential in order to strengthen the integration of the peoples of Europe and to promote balanced and sustainable economic and social progress.

(1) The European Union is seeking to forge ever closer links between the States and peoples of Europe and to ensure economic and social progress. In accordance with Article 14(2) of the Treaty, the internal market comprises an area without internal frontiers in which the free movement of services and the freedom of establishment are ensured. The elimination of obstacles to the development of service activities between Member States is essential in order to strengthen the integration of the peoples of Europe and to promote balanced and sustainable economic and social progress. ***In eliminating such barriers, it is essential to ensure that the development of service activities contributes to the fulfilment of the tasks laid down in Article 2 of the Treaty, in particular the task of promoting "throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable and non-inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement***

of the quality of the environment, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States".

Or. en

Justification

It is important that trade liberalisation not be seen as an end in itself, or as a benefit to be pursued at the cost of other fundamental tasks of the Union.

AMENDMENT 384

by André Brie, Kartika Tamara Liotard and Sahra Wagenknecht, on behalf of the GUE/NGL Group

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Services in the internal market

Proposal for a directive (COM(2004)0002 – C5-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendment by Parliament

Amendment 384
Recital 6

(6) This Directive establishes a general legal framework which benefits a wide variety of services while taking into account the distinctive features of each type of activity or profession and its system of regulation. That framework is based on a dynamic and selective approach consisting in the removal, as a matter of priority, of barriers which may be dismantled quickly and, for the others, the launching of a process of evaluation, consultation and complementary harmonisation of specific issues, which will make possible the progressive and coordinated modernisation of national regulatory systems for service activities which is vital in order to achieve a genuine internal market for services by 2010. Provision should be made for a balanced mix of measures involving targeted harmonisation, administrative cooperation, the country of *origin* principle and encouragement of the development of codes of conduct on certain issues. That coordination of national legislative regimes should ensure a high degree of Community legal integration and a high level of protection of general interest objectives, especially of consumer protection, which is

(6) This Directive establishes a general legal framework which benefits a wide variety of services while taking into account the distinctive features of each type of activity or profession and its system of regulation. That framework is based on a dynamic and selective approach consisting in the removal, as a matter of priority, of barriers which may be dismantled quickly and, for the others, the launching of a process of evaluation, consultation and complementary harmonisation of specific issues, which will make possible the progressive and coordinated modernisation of national regulatory systems for service activities which is vital in order to achieve a genuine internal market for services by 2010. Provision should be made for a balanced mix of measures involving targeted harmonisation, administrative cooperation, the country of *destination* principle and encouragement of the development of codes of conduct on certain issues. That coordination of national legislative regimes should ensure a high degree of Community legal integration and a high level of protection of general interest objectives, especially of consumer protection, which is

vital in order to establish mutual trust
between Member States.

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Or. en

Justification

The point of the single internal market is to prevent discrimination between, in this case, service providers established in any part of the Community. The right of Member States to impose conditions on service providers, provided they are non-discriminatory and do not in any other way conflict with obligations derived from the Treaty, is an essential aspect of subsidiarity.

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Services in the internal market

Proposal for a directive (COM(2004)0002 – C5-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendment by Parliament

Amendment 385

Recital 15

(15) As the Court of Justice has consistently held with regard to Articles 49 et seq of the Treaty, the concept of service covers any economic activity normally provided for remuneration, without the service having to be paid for by those benefiting from it and regardless of the financing arrangements for the remuneration received in return, by way of consideration. Any service whereby a provider participates in the economy, irrespective of his legal status or aims, or the field of action concerned, thus constitutes a service.

(15) As the Court of Justice has consistently held with regard to Articles 49 et seq of the Treaty, the concept of service covers any economic activity normally provided for remuneration, without the service having to be paid for by those benefiting from it and regardless of the financing arrangements for the remuneration received in return, by way of consideration. Any service whereby a provider participates in the economy, irrespective of his legal status or aims, or the field of action concerned, thus constitutes a service. ***This Directive recognises that not all such services are of equal value or importance, and that in the case of services which are vital to the well-being and health of human beings and their environment, priorities and principles may apply which are different from those considered appropriate for services which are less essential.***

Or. en

Justification

In the case of many services, it is the primary task of legislators in a market economy to

ensure fair competition. In the single European market, this involves also protecting the right of enterprises to establish themselves or to trade in a Member State other than their country of origin. However, in the case of certain services, particularly those dealing with health care, public health, social security, or activities which may involve environmental hazards, legislators' responsibility to the service provider becomes very much secondary to their responsibility to the citizen, the consumer, and the future of the planet.