

AMENDMENT 386

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 386
Recital 24

(24) With the aim of administrative simplification, general formal requirements, such as a certified translation, must not be imposed, except where objectively justified by an overriding reason relating to the public interest, such as the protection of workers. It is also necessary to ensure that an authorisation normally permits access to, or exercise of, a service activity throughout the national territory, unless a new authorisation for each establishment, for example for each new hypermarket, is objectively justified by an overriding reason relating to the public interest, such as protection of the urban environment.

(24) With the aim of administrative simplification, general formal requirements, such as a certified translation, must not be imposed, except where objectively justified by an overriding reason relating to the public interest, such as the protection of workers, **public health or the environment**. It is also necessary to ensure that an authorisation normally permits access to, or exercise of, a service activity throughout the national territory, unless a new authorisation for each establishment, for example for each new hypermarket, is objectively justified by an overriding reason relating to the public interest, such as protection of the urban environment.

Or. en

Justification

Public health and the protection of the environment should be mentioned along with workers' health. These three together form arguably the major considerations which must be weighed in the balance in the Community's attempts to create conditions of fair competition in a single market. The example at the end is arbitrary and unnecessary, and could be interpreted restrictively.

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Text proposed by the Commission

Amendment by Parliament

Amendment 387
Recital 27

(27) The possibility of gaining access to a service activity may be made subject to authorisation by the competent authorities **only if** that decision satisfies the criteria of non-discrimination, necessity and proportionality. **That means, in particular, that authorisation schemes should be permissible only where an a posteriori inspection would not be effective because of the impossibility of ascertaining the defects of the services concerned a posteriori, due account being taken of the risks and dangers which could arise in the absence of a prior inspection. However, the provision to that effect made by this** Directive cannot be relied upon in order to justify authorisation schemes which are prohibited by other Community instruments such as Directive 1999/93/EC of the European Parliament and the Council of 13 December 1999 on a Community framework for electronic signatures, or Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market ('Directive on electronic commerce'). The results of the

(27) The possibility of gaining access to a service activity may be made subject to authorisation by the competent authorities **provided** that decision satisfies the criteria of non-discrimination, necessity and proportionality. **This** Directive cannot be relied upon in order to justify authorisation schemes which are prohibited by other Community instruments such as Directive 1999/93/EC of the European Parliament and the Council of 13 December 1999 on a Community framework for electronic signatures, or Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market ('Directive on electronic commerce'). The results of the process of mutual evaluation will make it possible to determine, at Community level, the types of activity for which authorisation schemes should be eliminated.

process of mutual evaluation will make it possible to determine, at Community level, the types of activity for which authorisation schemes should be eliminated.

Or. en

Justification

Provided the national provisions of the Member State in which a service is to be offered are in keeping with the Treaty, it is reasonable to allow a Member State to impose conditions on economic activities conducted on its territory. The point of the single internal market is to prevent discrimination between, in this case, service providers established in any part of the Community. Member States have a right to impose conditions on service providers, provided these conditions are non-discriminatory and do not in any other way conflict with obligations derived from the Treaty.

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Text proposed by the Commission

Amendment by Parliament

Amendment 388
Recital 29

(29) The overriding reasons relating to the public interest to which reference is made in certain harmonisation provisions of this Directive **are** those recognised by the Court of Justice in relation to Articles 43 and 49 of the Treaty, notably the protection of consumers, recipients of services, workers and the urban environment.

(29) The overriding reasons relating to the public interest to which reference is made in certain harmonisation provisions of this Directive **include** those recognised by the Court of Justice in relation to Articles 43 and 49 of the Treaty, notably the protection of consumers, recipients of services, workers and the urban environment, **as well as economic services which the responsible Member State or the Community subjects to specific public service obligations by virtue of a general interest criterion, those services which may involve environmental hazards, educational or health care services and residential care services for persons who, through age-related or other infirmity, or because they are children, are incapable of leading fully independent lives.**

Or. en

Justification

The Commission's definition of essential services is much too narrow.

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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 389
Recital 68

(68) This Directive is without prejudice to any legislative or other initiatives in the field of consumer protection.

(68) This Directive is without prejudice to any legislative or other initiatives **by Member States or the EU** in the field of consumer protection, **environmental protection, public health, workers' health and safety**.

Or. en

Justification

As in the case of consumer protection, it is of overriding importance that the furtherance of the single market for services not be pursued at the expense of these considerations.

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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 390

Article 2, paragraph 2, point (c a) (new)

(ca) services of general economic interest which the responsible Member State or the Community subjects to specific public service obligations;

Or. en

Justification

Article III-6 of the Constitutional Treaty states that "...the Union and the Member States... shall take care that such services operate on the basis of principles and conditions, in particular economic and financial, which enable them to fulfil their missions. European laws shall define these principles and conditions without prejudice to the competence of Member States, in compliance with the Constitution, to provide, to commission and to fund such services." Failure to exclude services of general interest from the provisions of this Directive would constitute such a prejudice.

9.2.2006

A6-0409/391

AMENDMENT 391

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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 391

Article 2, paragraph 2, point (c b) (new)

(cb) services which may involve environmental hazards or risks potentially prejudicial to public health, and which therefore require careful execution and close supervision.

Or. en

Justification

The authorities of another Member State cannot reasonably be expected to provide effective supervision of service providers where the service in question is provided in another Member State, and where the economic interests of the Member State in which the service provider is established may be affected. Where public health is involved, a Member State should not be expected to abdicate its responsibilities in this way.

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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 392

Article 9, paragraph 1, point (b)

(b) the need for an authorisation scheme is objectively justified by an overriding reason relating to the public interest;

(b) the need for an authorisation scheme is objectively justified by an overriding reason relating to the public interest. ***Such an overriding reason may include, but shall not be limited to, considerations of public health, the health and safety of employees or self-employed persons, protection of the environment, the preservation of the cultural heritage and the furtherance of any public policy goal which is not in conflict with the Treaty;***

Or. en

Justification

The proposed wording of is too vague and general, leaving too much to the discretion of courts. By including a non-exhaustive list, the Directive will give guidance without becoming more restrictive.

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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 393
Article 9, paragraph 1, point (c)

(c) the objective pursued cannot be attained by means of a less restrictive measure, *in particular because an a posteriori inspection would take place too late to be genuinely effective.*

(c) the objective pursued cannot be attained by means of a less restrictive measure *(deletion).*

Or. en

Justification

The proposed wording is too restrictive. Reasons other than that given may indicate that a less restrictive measure would not be effective.

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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 394
Article 13, paragraph 3

3. Authorisation procedures and formalities shall provide interested parties with a guarantee that their applications will be processed as quickly as possible and, in any event, within a reasonable period which is fixed and published in advance.

3. Authorisation procedures and formalities shall provide interested parties with a guarantee that their applications will be processed as quickly as possible and, in any event, within a reasonable period which is fixed and published in advance. ***The period allowed between application for and the grant or refusal of authorisation shall be sufficient for effective consultation of all parties who may be affected by the decision, taking into account any implications for public health, the health and safety of employees or self-employed persons, protection of the environment, the preservation of the cultural heritage and the furtherance of any public policy goal which is not in conflict with the Treaty.***

Or. en

Justification

Citizens, either as interested individuals or organised as civil society, have a right to make their views known to the authorities in cases where the authorisation or non-authorisation of the provision of a service may have implications for public or occupational health, the protection of the environment or the cultural heritage or the furtherance of other legitimate policy goals.

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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 395
Article 14, point 5

(5) the case-by-case application of an economic test making the granting of authorisation subject to proof of the existence of an economic need or market demand, or an assessment of the potential or current economic effects of the activity, or an assessment of the appropriateness of the activity in relation to the economic planning objectives set by the competent authority;

deleted

Or. en

Justification

Effectively forbidding Member States and their public authorities from establishing and pursuing economic planning objectives in the public interest, as would this paragraph of Article 14, is neither justified nor required by the Treaty. Abuse of such activities in order to impose conditions which are in reality discriminatory or otherwise in conflict with the Treaty is already effectively prevented by the Treaty. The prohibition stipulated in this paragraph is therefore disproportionate.

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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 396
Article 17, point 4 a (new)

(4a) essential economic and social services which the responsible Member State or the Community subjects to specific public service obligations by virtue of a general interest criterion; those services which may involve environmental hazards, including but not limited to those forming the whole or part of a project requiring an environmental impact assessment under Council Directive 85/337/EEC as amended by Council Directive 97/11/EC, or the Strategic Assessment (Kiev) Protocol; educational or health care services and residential care services for persons who, through age-related or other infirmity, or because they are children, are incapable of leading fully independent lives.

Or. en

Justification

It is reasonable to allow Member States to subject such services to greater control than would be appropriate in the case of services which cannot be so defined, and thus to exempt them from the Country of Origin Principle. The application of the principle in such cases would undermine the right of Member States to act on behalf of such vital public interests. They are already required by the Treaty to refrain, whether in pursuit of the public interest or for any

other reason, to discriminate against enterprises established in other Member States. This measure is therefore disproportionate.

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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 397
Article 19, paragraph 1

1. By way of derogation from Article 16, **and in exceptional circumstances only**, a Member State may, in respect of a provider established in another Member State, take measures relating to any of the following:

- (a) the safety of services, including aspects related to public health;
- (b) the exercise of a health profession;
- (c) the protection of public policy, notably aspects related to the protection of minors.

1. By way of derogation from Article 16, **where necessary to protect the public interest**, a Member State may, in respect of a provider established in another Member State, take measures relating to any of the following:

- (a) the safety of services, including **but not limited to** aspects related to public health, **the environment, the interests of vulnerable groups or the protection of the cultural heritage**;
- (b) the exercise of a health profession;
- (c) the protection of public policy, notably **but not limited to** aspects related to the protection of minors.

Or. en

Justification

Member States should have the right to take measures in these areas whenever the public interest is affected, and not only in “exceptional circumstances”. It is a primary function of government to take such measures and utterly disproportionate to deprive them of this right, a right which they can of course exercise only by taking measures allowed by the Treaty. It is a

primary function of government to take such measures and utterly disproportionate to deprive them of this right, a right which they can of course exercise only by taking measures allowed by the Treaty.