

EUROPEAN ECONOMIC AREA
JOINT PARLIAMENTARY COMMITTEE

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WORKING DOCUMENT

ON

THE SERVICES DIRECTIVE

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THE SERVICES DIRECTIVE

SUMMARY

- The proposed directive seeks to improve the basis for economic growth and employment in the EU and is part of the economic reforms launched by the Lisbon Strategy.
- The aim is to achieve a genuine Internal Market in services by removing legal and administrative barriers to the development of service activities.
- The proposed directive has been controversial but after two years of heated debate a new version of the draft is now deemed acceptable by both the majority of MEPs and Member States as well as the Commission.

The Commission adopted its proposal on 13 January 2004. It was formally transmitted to the European Parliament and to the Council on 6 February 2004. The Committee of the Regions gave its opinion on 29 September 2004 and the European Economic and Social Committee gave its opinion on 9 February 2005.

The European Parliament adopted the amended draft at its first reading on 16 February 2006. The solutions put forward by the MEPs were backed by the Commission and a revised proposal has been presented to the European Parliament on 4 April 2006. The new proposal is now in the hands of the Council of Ministers, which aims at reaching a common position by the end of June 2006.

1. BACKGROUND

The proposal for a Directive on Services in the Internal Market is part of the wide-ranging process of economic reform launched by the Lisbon European Council in March 2000, with a view to making the EU the most competitive and dynamic knowledge-based economy in the world by 2010. Considering that services generate almost 70% of GNP and jobs in the Union and offer considerable potential for growth and job creation, there was general agreement that here lays the key to attain the Lisbon objectives. The EU Heads of State and Government therefore invited the Commission and the Member States to devise a strategy aimed at eliminating the obstacles to the free movement of services. The need to take action in this field was also highlighted at the Stockholm and Barcelona Summits in 2001 and 2002.

In response to the Council's call, the Commission set out an Internal Market Strategy for Services in December 2000. The aim of this strategy, which received the full support of both the Member States and the European Parliament, is to enable services to move across national borders within the European Union just as easily as within a single Member State. It was followed up in July 2002 by the Commission Report on the State of the Internal Market for Services, which marked the completion of the first phase in the strategy and provided as exhaustive a list as possible of barriers that exist in the internal market for services, their common features and their estimated economic impact.

Having identified the obstacles in its 2002 report¹, the Commission proceeded to the second stage of the strategy, involving the development of appropriate solutions, and in particular, of a horizontal legal instrument. Drafted under the energetic leadership of then Internal Market Commissioner Frits Bolkestein, hence the "Bolkestein directive", the proposal for a directive was presented by the Commission in January 2004. Its declared aim is to facilitate the

¹ COM (2002) 441 final

exercise of the freedom of establishment for service providers in the Member States and the free movement of services between Member States. To this end, the proposal strives to eliminate remaining legal obstacles to the achievement of a genuine internal market in services, and to guarantee service providers and recipients the legal certainty they need in order to exercise in practice these two fundamental freedoms enshrined in the Treaty.

The Proposal for a Directive on Services is an incredibly ambitious proposal in terms of what it seeks to achieve within one all encompassing directive. It is almost the equivalent of having sought to roll the whole Internal Market programme for goods in the run up to 1992 into one directive. According to the Commission, the completion of the Internal Market in Services could potentially deliver an immense boost to the EU economy, creating jobs, benefiting consumers and help achieve the Lisbon goals.

According to the Copenhagen Economics study², the total consumption in the EU would increase by 0.6 % or €37 billion. The price of services would significantly fall. 600 000 jobs could be created across the EU. Trade in services is expected to intensify, in particular the regulated sector (legal, accounting, business and management consultancy). Consumers would experience lower prices, more services varieties, and increased employment. Businesses would have the benefits of expanded markets, increased productivity and higher value added. On average, the directive would reduce barriers to trade by more than 50%. The positive employment effects, from increased demand, would outweigh negative employment effects arising from increased productivity.

The question is: **can one reconcile internal market and social justice?** It is feared that, given the lack of uniformity of standards in Europe, quality of services could decline (social, fiscal dumping, impact on environmental regulation etc.). In particular, the country of origin principle is very unpopular in those member states with the most regulated economies, as they see it as a danger to social welfare (fear of the Polish plumber).

2. THE COMMISSION'S AMENDED PROPOSAL 2006

The amended proposal provides for:

2.1 Administrative simplification:

- simplification of procedure, in particular introduction of a **single point of contact** for service providers in all states to take care of administrative formalities including possibility of completing these procedures by electronic means (Article 6, 7 and 8)

2.2 Freedom of establishment for service providers

- conditions and procedures for the granting of **authorisations**. In particular, licensing conditions must not be discriminatory but proportionate, justified and transparent. (Articles 9 to 13);

- prohibition of restrictive legal requirements (e.g.: nationality requirement, economic needs tests) (Article 14);

- obligation to assess the compatibility of other legal requirement particularly as regards proportionality: e.g. quantitative or territorial restrictions etc (Article 15).

² Source: Copenhagen Economics study, November 2004. Survey of 275 000 European enterprises. Is the only study analysing economic impact. Critics points out that this study did not take into account possible economic fluctuations and carried no analysis of environmental and social impact.

2.3 Free movement of services:

► **Freedom to provide services**

Article 16 has been heavily amended by the Commission following the European Parliament report at first reading. In the initial Commission's proposal, the country of origin principle meant that a service provider operating in a different member state needed only to meet the legal requirements of his country of establishment.

Too controversial, article 16 has been replaced by a new provision called 'freedom to provide services'. The Member State of destination shall ensure free access to and free exercise of a service activity in its territory but it may impose requirements on the service provider. These requirements shall be non discriminatory, justified for reasons of public policy, public security, public health or the protection of the environment. Finally, they must not go beyond what is necessary to attain this objective.

This wording is very close to the one used by the Court of Justice in great number of cases. The Member State of destination will also continue to apply rules on employment conditions, including those laid down in collective agreements.

A review clause foresees that the Commission will submit a report on the application of this article within five years after the entry into force of the Directive. In particular, the Commission shall consider the need to carry further harmonisation measures regarding the service activities covered by the Directive.

(Article 16) Several derogations:

- Additional derogations from the freedom to provide services (Article 17):
 - services already covered by **sectoral instruments**³;
 - **posted workers directive** pursuant to which provisions on working conditions in the host country are complied with.
 - provisions regarding contractual and non contractual obligations determined pursuant to the rules of private international law
- Case-by-case derogations (in exceptional circumstances only) (Article 19):
 - measures relating to safety of services. These measures must comply with mutual assistance procedure laid down in Article 37. In particular, they must be notified to the Commission.

► **Right of recipients (Articles 20 to 22):**

- to use services from other MS without being hindered by restrictive/discriminatory measures on the part of public authorities or private operators (Articles 20-21);
- to have access to relevant information about the service provider, possibly through the setting up of '**single point of contact**' (Article 22);

³ postal services, electricity, gas, water, treatment of waste, processing of data, lawyers, professional qualifications, social security schemes, short stay visa in the case of third country nationals, supervision and control of shipments of waste, copyrights/industrial property rights, statutory audit, registration of vehicles

2.4 Mutual trust between MS

► Quality of services (Articles 26 to 32)

- consumers to get good information on services;
- appropriate insurance and guarantees for certain activities which present risks to recipient;
- lifts disproportionate bans: on advertising by the regulated professions, on multidisciplinary activities;
- encourages quality charters or cooperation between chambers of commerce and crafts;
- establishment of a framework for dispute settlement.

► Administrative cooperation (Articles 33 to 38)

- obligation of exchange of information and mutual assistance between MS;
- At request of the Member State of establishment the competent authorities of the Member State where the service is provided shall carry out any checks, inspections and investigations necessary for effective supervision.

► Convergence programme (Articles 39 to 44)

- encouraging codes of conduct drawn by interested parties at Community level;
- Commission to assess relevance of Community instruments on judicial recovery of debts and security services.
- Commission to present every three years a report on the application of the Directive, in particular with regard to the scope and article 16.

3. THE CHANGES BY THE EUROPEAN PARLIAMENT

- Firstly, it replaced the rule according to which service providers would be subject to the law of the country in which they are established, when temporarily providing a service in another Member State, by that of the “free provision of services”. This eliminated the automatism of the original proposal, giving greater room for manoeuvre to the destination country.

- Secondly, the MEPs reduced the number of areas to which the directive applies, notably excluding health and social services, which are no longer covered by the directive. Services of general interest also remain excluded, as do financial services, transport and port services, audiovisual services, services provided by temporary work agencies, gambling and security services.

- Thirdly, it is now clearly indicated that the directive will be applied without prejudice to labour law and social law. Any reference to the temporary assignment of workers in a Member State other than that in which the company providing the services is established has been removed.

4. RELEVANCE TO THE EEA EFTA STATES

The EU Directive of Services in the Internal Market is of great relevance and importance to the EEA EFTA States as they are partners in the Internal Market through the EEA Agreement.

New focus on the Internal Market is necessary in order to reap the full benefits of one big European market. As with regard to the Lisbon Strategy, the proposal for a Directive on Services in the Internal Market represents a major instrument in the efforts to strengthen European competitiveness and to achieve an optimal internal market. By participating in the

Internal Market the EEA EFTA States are affected by and involved in the development of this proposal.

The EEA EFTA States have agreed upon the importance of a well functioning Internal Market as a precondition for the success of the EU strategy for growth and jobs. They have also emphasised the refining of the instruments that enable free movement of goods, services, capital and persons and that the proposal for a directive on services is a constructive initiative to this end. (Letter from PM Bondevik to PM Juncker 9/3-05)

The EEA JPC has earlier been occupied on this matter when it in Brussels, 23 November 2004, adopted a resolution on The Internal Market Strategy 2003-2006 and the EEA in which it was stated that "*The Joint Parliamentary Committee of the European Economic Area calls on the EEA Countries to continue efforts to free trade in services, and to find solutions that guarantee acceptable levels of worker and consumer protection and worker remuneration*".

The matter was also discussed at the EEA JPC meeting in Reykjavik on 25-26 April 2005 and at the EEA JPC meeting in Brussels on 22-23 November 2005.

5. PROCEDURE

Faced with the criticism quoted above from the very outset, the European Commission proceeded, all through 2004, to provide a series of clarifications and explanations, aimed both at the general public and more specifically at the members of the European Parliament's Committee on the Internal Market and Consumer Protection (IMCO). IMCO is the European Parliament Committee responsible, with the lead on the dossier together with the Employment and Social Affairs committee. IMCO has been conducting several debates, such as a public hearing on 11 November 2004, supplemented by separate hearings both in the EPP-DE (9 December 2004) and in the PES Group (15 February 2005), and has also appointed a special ad hoc working party within IMCO.

On 25 May 2005, the appointed EP Rapporteur and member of IMCO, Ms Evelyne Gebhardt (PES), presented a draft report on the Commission proposal. The draft report welcomed the simplification of administrative procedures especially the establishment of a single point of contact, but criticised the two controversial parts of the proposal, namely the scope and the country of origin principle. The Rapporteur called for a clearer definition of services applicable under the directive, the exclusion of health services and services of general interest and that the country of origin principle is replaced by the principle of mutual recognition. The mutual recognition principle, which is based on the concept of 'equivalence' means the conditions laid down in the legislation of the country of destination cannot duplicate equivalent conditions that have already been satisfied in the country of origin.

On 4-5 October 2005 IMCO adopted the draft report and on 16 January 2006 the European Parliament adopted the report with further amendments. The solutions put forward by the MEPs were backed by both the Commission and the Council, and on 24 March Commissioner Charlie McCreevy agreed to follow the Parliament's line in the amended version of the proposed text. Two days later the Austrian Presidency of Council also stated it was in favour of the version adopted by the MEPs. The amended text has now been submitted to the EU Council of Ministers. It will then be up to the Member States to decide the fate of the proposal. If, in line with expectations, the Council endorses the current text without any major changes, the Parliament could come to a decision in the autumn after the second reading, and an agreement between the two institutions could therefore be seen towards the end of the year. If on the other hand, the Council retreats from the position recommended by the parliament, conciliation between the two institutions will clearly be very difficult.