

EUROPEAN PARLIAMENT

2004



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Committee on Budgetary Control

2004/0001(COD)

26.5.2005

OPINION

of the Committee on Budgetary Control

for the Committee on the Internal Market and Consumer Protection

on the proposal for a directive of the European Parliament and of the Council
on services in the internal market
(COM(2004)0002 – C5-0069/2004 – 2004/0001(COD))

Draftsman: Christopher Heaton-Harris

PA_Leg

SHORT JUSTIFICATION

It is possible that the provisions of the proposed services directive could harm Member States' ability to manage their own domestic tax systems, and fight tax avoidance and fraud. This could have a detrimental impact on own resources and the Community's financial interests.

Concerns about a possible reduction in the Member States' ability to manage their own domestic tax systems have prompted this committee to seek the opinion of the legal committee on the legal base of the proposed directive in the field of taxation. Draft article 2(3) states that the directive applies to tax restrictions not covered by a Community instrument on tax harmonisation. The legal base of the directive as proposed would thus allow the application of qualified majority voting in these areas of taxation. This is unacceptable. Any measures on taxation, including the taxation of service providers, must be decided on by unanimity, in line with articles 93 and 94 of the Treaty.

However even if unanimity in the field of taxation is (re)established, the directive as it stands could still have detrimental consequences for the Community's financial interests. For example, it could be difficult to ensure compliance with indirect tax regimes if businesses are not established and no longer required to register with the tax authorities in the Member States in which they provide services. This would increase opportunities for tax avoidance and tax fraud, leading to a possible loss of own resources. Weakening of the establishment rules could also lead to greater manipulation of VAT grouping rules, which allow VAT-free trading between businesses within a group, again increasing the scope for tax avoidance and a possible loss of own resources.

Member States are already required to ensure that their tax systems are compatible with Community law. So there is no need to extend the scope of this directive to taxation. Your draftsman therefore feels that taxation should be removed completely from the scope of this directive.

AMENDMENTS

The Committee on Budgetary Control calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission

Amendments by Parliament

Amendment 1
Recital 11

In view of the fact that the Treaty provides specific legal bases for taxation matters and

In view of the fact that the Treaty provides specific legal bases for taxation matters and

for the Community instruments already adopted in that field, it is necessary to exclude the field of taxation from the scope of this Directive, *with the exception, however, of the provisions concerning prohibited requirements and the free movement of services. Harmonisation in the field of taxation has been achieved notably through Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment, Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States, Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States and Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States. The present Directive does not aim to introduce specific new rules or systems in the field of taxation. Its sole objective is to remove restrictions, certain of which are fiscal in nature, and in particular those which are discriminatory, on freedom of establishment and the free movement of services, in accordance with the case-law of the Court of Justice of the European Communities, hereinafter “the Court of Justice”, with respect to Articles 43 and 49 of the Treaty. The field of value added tax (VAT) is the subject of harmonisation at Community level, in accordance with which service providers carrying out cross-border activities may be subject to obligations other than those of the country in which they are established. It is nevertheless desirable to establish a system of “one-stop shops” for service providers, in order to enable all their obligations to be fulfilled by means of a single electronic portal to the*

for the Community instruments already adopted in that field, it is necessary to exclude the field of taxation from the scope of this Directive.

tax authorities in their home Member State.

Justification

Taxation should be completely excluded from the scope of this directive.

Amendment 2
Article 2, paragraph 3

3. This directive does not apply in the field of taxation, ***with the exception of Articles 14 and 16 to the extent that the restrictions identified therein are not covered by a Community instrument on tax harmonisation.***

3. This directive does not apply in the field of taxation.

Justification

Taxation should be completely excluded from the scope of this directive.

Amendment 3
Article 20

Member States may not impose on a recipient requirements which restrict the use of a service supplied by a provider established in another Member State, in particular the following requirements:

(a) an obligation to obtain authorisation from or to make a declaration to their competent authorities;

(b) limits ***on tax deductibility or*** on the grant of financial assistance by reason of the fact that the provider is established in another Member State or by reason of the location of the place at which the service is provided;

(c) requirements which subject the recipient to discriminatory or disproportionate taxes on the equipment necessary to receive a service at a distance from another Member State.

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(a) an obligation to obtain authorisation from or to make a declaration to their competent authorities;

(b) limits on the grant of financial assistance by reason of the fact that the provider is established in another Member State or by reason of the location of the place at which the service is provided.

PROCEDURE

Title	Proposal for a directive of the European Parliament and of the Council on services in the internal market
References	COM(2004)0002-C5-0069/2004-2004/0001(COD)
Committee responsible	IMCO
Committee asked for its opinion Date announced in plenary	CONT 16.9.2004
Enhanced cooperation	No
Draftsman Date appointed	Christopher Heaton-Harris 18.1.2005
Discussed in committee	15.3.2005 20.4.2005
Date amendments adopted	23.5.2005
Result of final vote	for: 10 against: 0 abstentions: 1
Members present for the final vote	Herbert Bösch, Petr Duchoň, Szabolcs Fazakas, Ona Juknevičienė, Nils Lundgren, Jan Mulder, José Javier Pomés Ruiz, Margarita Starkevičiūtė, Jeffrey Titford
Substitutes present for the final vote	Christopher Heaton-Harris, Ashley Mote