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2004



2009

Committee on Culture and Education

2004/0001(COD)

22.4.2005

OPINION

of the Committee on Culture and Education

for the Committee on the Internal Market and Consumer Protection

on the proposal for a European Parliament and Council directive on services in
the internal market

(COM(2004)0002 – C5-0069/2004 – 2004/0001(COD))

Draftswoman: Marie-Hélène Descamps

PA_Leg

SHORT JUSTIFICATION

The proposal for a directive on services in the internal market forms part of the economic reform process launched by the Lisbon European Council with a view to making Europe the most competitive and dynamic knowledge-based economy in the world by 2010.

The aim of this Directive is to achieve a genuine internal market in services. It provides for the establishment of a legal framework eliminating obstacles to the freedom of establishment of service providers and to the freedom of movement of services between Member States.

While one can only applaud the principle underlying such a text, and in particular the objective of administrative simplification with the introduction of a one-stop shop for service providers, it needs to be remembered that the European Union is more than a market, more than a geographical expression, it is a history and a culture, and culture is not an item of merchandise.

Accordingly the specific nature of certain services, particularly cultural and audiovisual services, which have both economic and cultural aspects, needs to be taken into account. They are the bearers of identities and values, and as such cannot be treated as consumer goods or commercial services like any other.

It must not be forgotten that responsibility for the cultural sphere lies with the Member States, and the European Union has only a complementary competence. The subsidiarity principle is thus the underlying theme of all Community action in this sector.

Clearly, a proposal covering sectors as divergent as games of chance and audiovisual services is bound to pose problems not only for legislators and public opinion, but also for the various professions involved.

In any case, the various hearings of experts and professionals have raised more questions on the application of the Directive than they have answered, and this has given rise to a widespread feeling of unease.

It therefore needs to be made clear that the proposal for a directive does not apply either in the field of national education or to aid granted by the Member States to culture or sport.

Cultural diversity and media pluralism are among the constituent elements of the European model recognised by the Union. To include cultural and audiovisual services within the scope of the Directive would endanger the commitment of the EU and the Member States to promoting this diversity. These services help to mould public opinion and forge the cultural identities of the Member States, thus justifying the retention of national support structures.

Audiovisual services are in any case covered by a sectoral approach at EU level in the form of the TV without Frontiers Directive (Directive 89/552, as amended by Directive 97/36/EC).

The TV without Frontiers Directive already reflects the objectives set out in the Services Directive, in that it guarantees the freedom to provide TV services in the internal market, giving precedence to the law of the Member State of origin at the expense of the law of the

country of destination. In this Directive the country of origin principle applies only to certain co-ordinated areas by a number of important compensatory measures (such as the right of Member States to set production and broadcasting quotas).

Of course, the TV without Frontiers Directive does not cover or coordinate everything. Nevertheless, priority clearly needs to be given to a sectoral approach, which is most in line with the expectations of professionals in the audiovisual sector. The review of the TV without Frontiers Directive and of the Satellite/Cable Intellectual Property Directive provides an opportunity to see whether there are any remaining obstacles to the development of the internal market in the audiovisual sector.

The current version of the Services Directive does not reflect the requirements of cultural specificity, and does not sufficiently respect the competence of the Member States in an area where the Union is supposed only to have a complementary competence.

In the light of all these questions and uncertainties, audiovisual services, particularly TV broadcasting services, radio services, cinema services and press services, should be excluded from the scope of this Directive. Applying this proposal to such services would imply the use of purely economic criteria, whereby the requirements of the market take precedence over the principles of media pluralism and cultural diversity which the EU is currently defending in the negotiations on the draft International Convention on Cultural Diversity in UNESCO.

This objective is also mentioned and acknowledged in the Treaty establishing a Constitution for Europe.

AMENDMENTS

The Committee on Culture and Education 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 Commission¹

Amendments by Parliament

Amendment 1
Recital (1 a) (new)

(1a) In view of the specific circumstances relating to the audiovisual sector, the latter should be excluded from the scope of this Directive; sector-specific rules exist in the form of Directive 89/552/EEC¹. In view of

¹ OJ C ... /Not yet published in OJ.

the closely-related subject matter, radio services and information society services, which are covered by Directives 95/46/EC² and 97/66/EC³, should also come under this exclusion. These services should, in a revision of Directive 89/552/EEC, be included in the scope thereof.

¹ Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities (OJ L 298, 17.10.1989, p. 23), amended by Directive 97/36/EC of the European Parliament and of the Council (OJ L 202, 30.7.1997, p. 60).

² Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p.31).

³ Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector (OJ L 24, 30.1.1998, p.1).

Amendment 2
Recital (3)

(3) *Since* services constitute the engine of economic growth and account for 70% of GDP and employment in the majority of Member States, *this* fragmentation of the internal market has a negative impact on the entire European economy, in particular on the competitiveness of SMEs, and prevents consumers from gaining access to a greater variety of competitively priced services. The European Parliament and the Council have emphasised that the removal of legal barriers to the establishment of a genuine internal market is a matter of priority for achieving the goal set by the Lisbon European Council of making the European Union the most competitive and dynamic knowledge-based economy in the world by 2010. Removing

(3) *While* services constitute the engine of economic growth and account for 70% of GDP and employment in the majority of Member States, *the culture, education and media sectors represent an important part of the European social model in terms of the creation of wealth and jobs, and their specific features should be safeguarded.*

The fragmentation of the internal market has a negative impact on the entire European economy, in particular on the competitiveness of SMEs, and prevents consumers from gaining access to a greater variety of competitively priced services. *The challenge is not only to obtain competitive prices, but to ensure that these prices*

those barriers is essential in order to revive the European economy, particularly in terms of employment and investment.

reflect high-quality European standards. Otherwise, economic dumping will lead to socio-economic dumping.

The European Parliament and the Council have emphasised that the removal of legal barriers to the establishment of a genuine internal market is a matter of priority for achieving the goal set by the Lisbon European Council of making the European Union the most competitive and dynamic knowledge-based economy in the world by 2010. Removing those barriers is essential in order to revive the European economy, particularly in terms of employment and investment.

Justification

The importance of cultural, educational and media services needs to be emphasised.

Amendment 3 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

(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. ***In that sense, cultural services and products are not merchandise or consumer goods like any other, and must therefore be made subject to special conditions in the light of their dual nature as economic and cultural goods; these conditions must take account of the fact that the market cannot be the measure of all things and of the need, in particular, to ensure the freedom of expression and information. The general legal framework established by this Directive*** 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

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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Justification

In its resolution of 14 January 2004 on preserving and promoting cultural diversity, the European Parliament has recently stressed this specific feature of cultural services.

Amendment 4 Recital (6 a) (new)

(6a) This Directive has no effect on the European Community's position in negotiations on trade in services within international organisations, in particular within the GATS framework.

Justification

Even with the audiovisual sector excluded from the scope of the Directive, the latter should not lead to any change in the EU's negotiating position in the current GATS negotiations, in particular as regards the definition of the audiovisual sector.

Amendment 5 Recital (7 a) (new)

(7a) This Directive shall not apply to aid granted by Member States inter alia to the cinema, to the theatre, to the press and to

amateur sports.

Justification

Narrows down and clarifies the scope of the Directive.

Amendment 6

Recital (12 a) (new)

(12a) Audiovisual services, whatever their mode of transmission, in particular television broadcasting services as defined in Council Directive 89/552/EEC of 3 October 1989¹ on television without frontiers, as amended by Directive 97/36/EC, radio services, cinema services and press services, should also be excluded from the scope of this Directive. These services play a vital role in the formation of European cultural identities and public opinion, and if cultural diversity and pluralism are to be preserved and promoted there is a need for specific measures, which must be able to take account of specific regional and national situations. Furthermore, the Community is required to take cultural aspects into account in its action under the provisions of the Treaty establishing the European Community, in particular in order to respect and promote the diversity of its cultures. In accordance with the subsidiarity principle and the rules of Community law, particularly the competition rules, support given to audiovisual services must take account of considerations of a cultural and social nature, which render the application of the provisions of this Directive inadequate.

¹ OJ L 298, 17.10.1989, p. 23. Directive amended by European Parliament and Council Directive 97/36/EC (OJ L 202, 30.7.1997, p. 60).

Justification

Amendment coordinating with the amendment to Article 2, which aims to exclude audiovisual

and press services from the scope of this Directive.

Amendment 7
Recital (12 a) (new)

(12a) Gambling activities which involve wagering a stake, including lotteries and betting transactions, should also be excluded from the scope of this Directive.

Justification

This amendment is in the interests of consistency with the amendment proposed to Article 2, which aims to exclude gambling activities which involve wagering a stake, including lotteries and betting transactions, from the scope of the Directive. The delicate area of games of chance calls for a regulatory policy and social policy approach, which would not be ensured under the Services Directive. Moreover, surplus profits from games of chance are first and foremost channelled to sport.

Amendment 8
Recital (13)

(13) There is already a considerable body of Community law on service activities, especially the regulated professions, postal services, **television broadcasting**, information society services and services relating to travel, holidays and package tours. Service activities are also covered by other instruments which do not deal with a specific category of services, such as those relating to consumer protection. This Directive builds on, and thus complements, the Community *acquis*. Where a service activity is already covered by one or more Community instruments, this Directive and those instruments will all apply, the requirements laid down by one adding to those laid down by the others. Accordingly, appropriate provisions should be laid down, including provision for derogations, in order to prevent incompatibilities and to ensure **consistency as between all those Community instruments**.

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them or amending their scope or the level of Community harmonisation.

Justification

Since television broadcasting is already the subject of a body of Community law, it is necessary in this area to give priority to the sectoral approach. It is also important to clarify that this Directive does not affect either the existing directives and regulations or any amendments which may be made to them in future.

Amendment 9
Recital (13 a) (new)

(13a) This Directive is consistent with and does not affect any of the provisions of Directive 89/552/EEC, in particular its definition of when a broadcaster is deemed to be established in a Member State, which continues to apply in full. Moreover, this Directive does not pre-empt the possible future revision of Directive 89/552/EEC.

Justification

The relationship of the provisions laid down in this Directive to current Community law should be clarified so as to make it plain that inter alia in the area of freedom of establishment Directive 89/552/EEC lays down the relevant provisions relating to freedom of establishment and that the Services Directive does not apply supplementarily.

Amendment 10
Recital (14)

(14) The concept of service covers a wide variety of ever-changing activities, including business services such as management consultancy, certification and testing; facilities management, including office maintenance and security; advertising; recruitment services, including employment agencies; and the services of commercial agents. That concept also covers services provided both to businesses and to consumers, such as legal or fiscal advice; real estate services such as estate agencies; construction, including the services of

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architects; transport; distributive trades; the organisation of trade fairs; car rental; travel agencies; and security services. It also covers consumer services, such as those in the field of tourism, including tour guides; **audiovisual services**; leisure services, **sports centres** and amusement parks; health and health care services; and household support services, such as help for the elderly. Those activities may involve services requiring the proximity of provider and recipient, services requiring travel by the recipient or the provider and services which may be provided at a distance, including via the Internet.

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Justification

There is a need to clarify what the European Commission means by ‘sports centres’, and at any rate to exclude those fields of sport in which associations pursue objectives in the general interest, thereby playing a social and educational role in society, as is also set out in Article III-282 of the Treaty establishing a European Constitution: ‘The Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function.’

Amendment 11 Recital (16)

(16) The characteristic of remuneration is absent in the case of activities performed, for no consideration, by the State in fulfilment of its social, cultural, educational and legal obligations. These activities are not covered by the definition in Article 50 of the Treaty and do not therefore fall within the scope of this Directive.

(16) The characteristic of remuneration is absent in the case of activities performed, for no consideration, by the State in fulfilment of its social, cultural, educational and legal obligations, **such as courses provided under the national education system, whether at public or private educational establishments**. These activities are not covered by the definition in Article 50 of the Treaty and do not therefore fall within the scope of this Directive.

Justification

The Court of Justice has held that courses provided under the national educational system do not constitute services. It added that ‘the nature of that activity is not affected by the fact that pupils or their parents must sometimes pay teaching or enrolment fees in order to make a certain contribution to the operating expenses of the system’ (Humbel and Wirth cases

Amendment 12

Recital (28)

(28) In cases where the number of authorisations available for an activity is limited because of scarcity of natural resources or technical capacity, as may be the position, for example, with regard to ***the award of analogue radio frequencies*** or the exploitation of hydro-electric plant, a procedure for selection from among several potential candidates must be adopted, with the aim of developing through open competition the quality and conditions for supply of services available to users. Such a procedure must provide guarantees of transparency and impartiality and the authorisation thus granted must not have an excessive duration, or be subject to automatic renewal, or confer any advantage on the successful provider. In particular, the duration of the authorisation granted must be fixed in such a way that it does not restrict or limit free competition beyond what is necessary to enable the provider to recoup the cost of investment and to make a fair return on the capital invested. Cases where the number of authorisations is limited for reasons other than scarcity of natural resources or technical capacity remain in any case subject to the other provisions of this Directive relating to authorisation schemes.

(28) In cases where the number of authorisations available for an activity is limited because of scarcity of natural resources or technical capacity, as may be the position, for example, with regard to the exploitation of hydro-electric plant, a procedure for selection from among several potential candidates must be adopted, with the aim of developing through open competition the quality and conditions for supply of services available to users. Such a procedure must provide guarantees of transparency and impartiality and the authorisation thus granted must not have an excessive duration, or be subject to automatic renewal, or confer any advantage on the successful provider. In particular, the duration of the authorisation granted must be fixed in such a way that it does not restrict or limit free competition beyond what is necessary to enable the provider to recoup the cost of investment and to make a fair return on the capital invested. Cases where the number of authorisations is limited for reasons other than scarcity of natural resources or technical capacity remain in any case subject to the other provisions of this Directive relating to authorisation schemes.

Justification

Amendment coordinating with the amendment to Article 2, which seeks to exclude audiovisual services from the scope of the Directive.

Amendment 13

Recital (34)

(34) The restrictions to be examined include

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national rules which, on grounds other than those relating to professional qualifications, reserve access to activities such as games of chance to particular providers. ***Similarly, among the requirements to be examined are ‘must carry’ rules applicable to cable operators which, by imposing an obligation on an intermediary service provider to give access to certain services delivered by specific service providers, affect his freedom of choice, access to programmes and the choice of the recipients.***

national rules which, on grounds other than those relating to professional qualifications, reserve access to activities such as games of chance to particular providers.

Justification

The ‘must carry’ rules are already the subject of Directive 2002/22/EC (Universal Services Directive). In so far as these rules serve to protect cultural diversity or media pluralism, they should not be covered by this Directive.

Amendment 14
Recital (43 a) (new)

(43a) The country of origin principle should not be applied in the field of university education, since this would strip the country in which the instruction was given of all control over this, in a field that remains the competence of the Member States.

Justification

There is a need to guarantee the quality of university education and that the host country has the possibility of checking whether or not the service provider is complying with the laws of its country of origin, since the latter will have little incentive to conduct those checks and experience obvious difficulties in doing so.

Amendment 15
Recital (47)

(47) It is necessary to allow Member States the possibility, exceptionally and on a case-by-case basis, of taking measures which derogate from the country of origin principle in respect of a provider established in

(47) It is necessary to allow Member States the possibility, exceptionally and on a case-by-case basis, of taking measures which derogate from the country of origin principle in respect of a provider established in

another Member State, for certain reasons such as the safety of services. It should be possible to take such measures only in the absence of harmonisation at Community level. Moreover, that possibility should not permit restrictive measures to be taken in areas in which other Directives prohibit all derogation from the free movement of services, such as Directive 1999/93/EC or Directive 98/84/EC of the European Parliament and the Council of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access. Nor should that possibility permit the extension or limitation of derogations provided for in other Directives, such as ***Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities*** or Directive 2000/31/EC.

another Member State, for certain reasons such as the safety of services. It should be possible to take such measures only in the absence of harmonisation at Community level. Moreover, that possibility should not permit restrictive measures to be taken in areas in which other Directives prohibit all derogation from the free movement of services, such as Directive 1999/93/EC or Directive 98/84/EC of the European Parliament and the Council of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access. Nor should that possibility permit the extension or limitation of derogations provided for in other Directives, such as Directive 2000/31/EC.

Justification

There is no reason to curb on principle any sectoral development by reference to a general principle which does not take account of the specific characteristics of audiovisual services.

Amendment 16 Recital (72)

(72) This Directive respects fundamental rights and observes the principles which are recognised notably in the Charter of Fundamental Rights of the European Union and, in particular, in Articles 8, 15, 21 and 47 thereof.

(72) This Directive respects fundamental rights and observes the principles which are recognised notably in the Charter of Fundamental Rights of the European Union and, in particular, in Articles 8, 15, 21, **22** and 47 thereof.

Justification

Article 22 of the Charter of Fundamental Rights of the European Union states that ‘the Union shall respect cultural, religious and linguistic diversity’.

Amendment 17
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.

This Directive concerns neither the liberalisation of services of general economic interest which are reserved to bodies governed by public or private law, nor the privatisation of public bodies which provide services.

This Directive concerns neither the abolition of service monopolies nor aid granted by the Member States, which come under the common rules on competition.

Justification

Declaratory clarification of the scope of the provisions.

Amendment 18
Article 1, subparagraph (1 a) (new)

(1a) This Directive shall not affect measures taken at Community or national level in compliance with Community law in order to promote cultural and linguistic diversity, ensure the defence of pluralism and guarantee freedom of the press.

Justification

This amendment is necessary in order to respect the competences of the Member States in matters of cultural and audiovisual policy. It also guarantees coherence with the similar provisions of Article 1(6) of Directive 2000/31/EC (E-commerce Directive) and Article 1(3) of Directive 2002/21/EC (Electronic Communications Networks and Services Framework Directive).

Amendment 19
Article 2, paragraph 2, point (b a) (new)

(ba) audiovisual services, whatever their mode of production, distribution and transmission, including radio broadcasting, cinema services, cultural services, the services of intellectual property rights collecting societies and written and electronic press publishing and distribution services;

Justification

Audiovisual services are already the subject of a specific EU-level approach in the form of the TV without Frontiers Directive. The Services Directive could have serious consequences for national rules, particularly for obligations regarding content, rules governing the ownership and concentration of the media, requirements concerning the award of licences, ‘must carry’ rules and rules on media chronology. Making audiovisual and cultural services subject to the general rules of the Directive in this way would be contrary to the subsidiarity principle and the positions being defended at the current UNESCO negotiations. Electronic means of distribution are growing in importance for the press.

Amendment 20
Article 2, paragraph 2, point (b a) (new)

(ba) Gambling activities which involve wagering a stake, including lotteries and betting transactions;

Justification

The delicate area of games of chance calls for a regulatory policy and social policy approach, which would not be ensured under the Services Directive. Moreover, surplus profits from games of chance are first and foremost channelled into sports.

Amendment 21
Article 3, subparagraph 2

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

Application of this Directive shall ***be without prejudice to*** the application of provisions of other Community instruments as regards the services governed by those provisions. ***In the event of conflict with***

sectoral Community instruments, the latter shall prevail.

Justification

The wording 'shall not prevent' used by the Commission is not strong enough to ensure the priority over this Directive of other important Community instruments such as the TV without Frontiers Directive or the Professional Qualifications Directive. It is preferable to specify that sectoral Community instruments shall prevail in the event of a conflict.

Amendment 22

Article 17, point (7 a) (new)

(7a) higher education;

Justification

When applying the country of origin principle, a host country for a university would have no control over the university courses provided within its own borders in a field of national competence. In addition, the rights of students should be protected. Once registered it would be extremely difficult for them to change 'service provider' if that service was of poor quality.

Amendment 23

Article 18, paragraph 1, point (b)

(b) gambling activities which involve wagering a stake with pecuniary value in games of chance, including lotteries and betting transactions; *deleted*

Justification

Under the amendment proposed to Article 2, gambling activities which involve wagering a stake, including lotteries and betting transactions, are to be excluded from the scope of the Directive. The reference in Article 18 accordingly lapses.

Amendment 24

Article 40, paragraph 1, point (b)

(b) gambling activities which involve wagering a stake with pecuniary value in games of chance, including lotteries and betting transactions, in the light of a report by the Commission and a wide consultation

of interested parties;

Justification

Under the amendment proposed to Article 2, gambling activities which involve wagering a stake, including lotteries and betting transactions, are to be excluded from the scope of the Directive. The reference in Article 40(1)(b) accordingly lapses.

PROCEDURE

| | | | |
|---|---|----------|-----------|
| Title | Proposal for a directive of the European Parliament and of the Council on services in the internal market | | |
| Procedure number | COM(2004)0002 – C5-0069/2004 – 2004/0001(COD) | | |
| Committee responsible | IMCO | | |
| Committee asked for its opinion Date announced in plenary | CULT 12.2.2004 | | |
| Enhanced cooperation | | | |
| Draftswoman Date appointed | Marie-Hélène Descamps 27.10.2004 | | |
| Discussed in committee | 25.11.2004 | 1.2.2005 | 14.3.2005 |
| Date amendments adopted | 21.4.2005 | | |
| Result of final vote | for: 29 against: 2 abstentions: 1 | | |
| Members present for the final vote | María Badía i Cutchet, Christopher Beazley, Giovanni Berlinguer, Guy Bono, Marie-Hélène Descamps, Jolanta Dičkutė, Věra Flasarová, Milan Gaľa, Claire Gibault, Vasco Graça Moura, Lissy Gröner, Luis Francisco Herrero-Tejedor, Ruth Hieronymi, Manolis Mavrommatis, Marianne Mikko, Zdzisław Zbigniew Podkański, Miguel Portas, Christa Prets, Karin Resetarits, Nikolaos Sifunakis, Helga Trüpel, Henri Weber, Thomas Wise, Tomáš Zatloukal | | |
| Substitutes present for the final vote | Ivo Belet, Michael Cramer, Ignasi Guardans Cambó, András Gyürk, Małgorzata Handzlik, Gyula Hegyi, Nina Škottová, Witold Tomczak | | |
| Substitutes under Rule 178(2) present for the final vote | | | |