

**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 govern the temporary provision of services and the permanent establishment of service providers in other member states.
- The key concept is the country of origin principle: a service provider operating in a different Member State needs only to meet the legal requirements of his country of establishment (= his country of origin).
- controversial areas: scope (services of general economic interest, health care, gambling, audiovisual), compatibility with private international law

The European Parliament's timetable:

Adoption in the Committee on Internal Market and Consumer Protection: 21-23 November 2005

Plenary: January 2006

## 1. BACKGROUND

- The proposed directive follows a 2002 report on the state of the internal market for services<sup>1</sup> which listed barriers that continue to inhibit services. The report emphasised that recipients of service, and particularly **consumers, are principal victims of the dysfunctioning of the internal market**: difficult access to certain services, higher price, lack of confidence to buy in other member states.

Services account for 62.4% of GDP and 120 million jobs in EU 25 (47% GDP in UK) but only 20% of trade within the EU. Services, in particular SMEs, are harder hit by barriers than goods (importance of know how, qualifications, intangible nature etc.) Examples of barriers: residence requirement, licensing requirement, differences in contract law, divergences in professional liability and insurance. New barriers also arise from behaviour of administrations, including the use of discretionary powers and non transparent/heavy procedures. Member states lack the necessary confidence in quality of each other legal regimes and are reluctant to adapt their own to facilitate cross border activities.

- The objective of the directive is to provide a legal framework that will eliminate the obstacles to the freedom of establishment for service providers and the free movement of services between the Member States. It is part of the Lisbon Strategy to make the EU the most competitive and dynamic knowledge based economy in the world.

According to the Copenhagen Economics study<sup>2</sup>, the total **consumption in the EU will increase by 0.6 % or €37 billion. The price of services will 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 will experience lower prices, more services varieties, higher wages and increased employment.

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<sup>1</sup> COM (2002) 441 final

<sup>2</sup> 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.

Businesses will have the benefits of expanded markets, increased productivity and higher value added.

On average, the directive will **reduce barriers to trade by more than 50%**. The positive employment effects, from increased demand, will outweigh negative employment effects arising from increased productivity.

\*\*\*\*\* ECONOMIC ASSESSMENT: CASE STUDY \*\*\*\*\*

### Once directive is effectively implemented by EU 25

Regulated professions: legal, accounting, business and management consultancy.

	EU 25	UK	FRANCE
<b>Cost of services</b>	- 7.2 %	- 8 %	- 5.6 %
<b>Market size</b>	+1.1 %	+2.2 %	+ 0.9 %
<b>Cross Border Trade</b>	+ 9.4 %	+ 12.2 % (!)	+ 4.1 %
<b>Value added</b>	+7.4 %	+7.5 %	+ 4.4%
<b>Employment</b>	+ 2.5 %	+ 5.4 %	0 %

Distributive trade: wholesale trade, retail trade

	EU 25	UK	FRANCE
<b>Cost of services</b>	- 2.2 %	- 2.9 %	- 1.7 %
<b>Market size</b>	+0.6 %	+0.6 %	+ 0.5 %
<b>Cross Border Trade</b>	+ 3.2 %	+ 5.4 %	+ 2.5 %
<b>Value added</b>	+2.5 %	+2.9 %	+ 2.1 %
<b>Employment</b>	+ 1.9 %	+ 2 %	+ 1.4 %

### Once different barriers for domestic and foreign firms have *de facto* disappeared

Regulated professions

	EU 25	UK	FRANCE
<b>Cost of services</b>	- 8.2 %	- 8.4%	- 6.5 %
<b>Market size</b>	+1.2 %	+2.3 %	+0.9%
<b>Cross Border Trade</b>	+8.5%	+12.9%	+ 3.8%
<b>Value added</b>	+8.6%	+7.8%	+5.1 %
<b>Employment</b>	+3%	+ 5.8%	+ 0.4 %

Distributive trade

	EU 25	UK	FRANCE
<b>Cost of services</b>	- 2.5 %	-3.1 %	- 1.8%
<b>Market size</b>	+0.6 %	+0.7 %	+ 0.5%
<b>Cross Border Trade</b>	+3.1%	+5.2%	+2.5%
<b>Value added</b>	+2.8 %	+3.2%	+2.2 %
<b>Employment</b>	+2 %	+ 2.1%	+1.4 %

Note: some MS will clearly benefit more than others, in particular those with the less regulated economies.

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- 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)  
The proposed directive took an horizontal approach: virtually all sectors, where there is no pre existing harmonisation, would be covered. Could the directive limit pending European legislation?

## **2. THE COMMISSION'S PROPOSAL**

### **2.1 Freedom of establishment:**

The proposed directive provides for:

- administrative simplification measures, 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)
- 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)

### **2.2 Free movement of services:**

#### **► Country of origin principle**

A service provider operating in a different member state needs only to meet the legal requirements of his country of establishment (= his country of origin). **(Article 16) Several derogations:**

- Permanent Derogations to country of origin principle (Article 17):
  - services already covered by **sectoral instruments**<sup>3</sup>
  - services covered by a total prohibition for reasons of **public policy, public security, protection of public health or environment**
  - others: reimbursement of hospital care, acts requiring by law the involvement of a notary, registration of vehicles leased in another member state, contractual freedom over applicable law, B2C contracts, non contractual liability of a provider in the case of an accident involving a person .
- **posted workers directive** pursuant to which provisions on working conditions in the host country are complied with.

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

- Transitional derogations (Article 18):
  - cash in transit services, judicial recovery of debts (until 2010), **gambling** (until an EU harmonisation instrument is adopted).
  - Commission to assess possibility of Community instrument on cash in transit, gambling, judicial recovery of debts (Article 40)
- Case-by-case derogations (in exceptional circumstances only) (Article 19):
  - measures relating to safety of services, exercise of a health profession, protection of public policy, notably protection of minors.  
These measures must comply with number of safeguards laid down in article 19 and 37 (mutual assistance with country of origin regarding exchange of information, notification to the Commission for check on compatibility)

► **Right of recipients (Articles 20 to 23):**

- 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)
- Article 23 clarifies circumstances in which MS may make reimbursement of the cost of health care provided in another MS subject to authorisation

► **Posting of workers (Articles 24, 25)**

- the MS of posting shall carry out the checks to ensure compliance with directive on posted workers;
- the MS of posting cannot: require prior authorisations and declarations, to have a representative and to hold/ keep employment documents in accordance with the conditions applicable in its territory.
- the MS of origin shall assist the MS of posting to carry out the checks by ensuring that the provider takes all measures to communicate essential information and by communicating specific facts indicating possible irregularities.
- provision on the posting of third country nationals.

### 2.3 Mutual trust between MS

► **Quality of services (Articles 26 to 33)**

- 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

► **Supervision (Articles 34 to 38)**

- obligation of exchange of information and mutual assistance between MS
- in event of temporary movement of the provider, checks, inspections and investigations carried out by the country of origin at the request of the country of destination.

► **Convergence programme (Articles 39 to 44)**

- encouraging codes of conduct drawn by interested parties at Community level on certain questions, including advertising by the regulated professions
- Commission to assess relevance of Community instruments on services covered by derogations from art 16, codes of conduct, consumer protection and cross border contracts.

### **3. CONTROVERSIAL AREAS**

#### **3.1 Scope**

##### **► Services of general (economic) interest**

(services of general interest = purely social, purely local)

(services of general economic interest = of a commercial nature with a strong financial purpose)

**One view is** to exclude services of general interest and services of general economic interest from the scope of the directive. Examples of what would be covered by exclusion: transport, energy and communications.

##### **► Health Services**

- Liberalising services would undermine national welfare and healthcare systems. The directive should not prevent MS from controlling **public costs** relating to health services, e.g by deciding to what extent private operators may provide services funded by the social security system.

- On the other hand, cross-border medical treatment improves consumers' choice and could contribute to significantly reduce waiting lists.

##### **► Audiovisual**

- Culture and audiovisual should be excluded from the scope of the directive. Information and cultural goods should not be considered as merchandise: audiovisual, television and broadcasting in particular, is a public service: operators must comply with certain controls and requirements to guarantee good quality. Threatens pluralism: will reinforce existing unbalanced conditions in favour of larger employers, which have a better economic capacity to operate in different countries. Could lead to greater media concentration.

- On the other hand, liberalisation would improve consumers' choice.

##### **► Gambling**

- In some MS (e.g. Nordic), taxes on winnings constitute an important source of revenue in national welfare systems. A more liberal gambling market could also lead to aggravated social problems.

- Yet is the occasion to get rid of monopolies. Nanny Europe?

NB: in the Commission's proposal, gambling is included in the scope of the directive but there is a derogation from the country of origin principle, until the Commission comes up with a separate proposal.

#### **3.2 Country of origin principle**

- In the absence of minimum level of harmonisation at EU level, on one side there is a fear of social/fiscal dumping, undesirable competition would kill public services. The EU would be giving up on further harmonisation. One amendment aims at replacing country of origin principle by mutual recognition principle, based on the concept of equivalence: a service provider legally established in one MS can provide services in another MS without hindrance. The provider still has to comply with requirements of the country of destination.

- The other side is in favour of country of origin principle. Addresses issue of low growth and unemployment. Needs clarifications regarding derogations mainly, working conditions, issues of public health, safety and security, introduce transitional derogations for sensitive sectors

such as temporary employment agencies and legal advice professions (3 to 6 years phasing in concept) , relationship with other Community instruments (e.g: private international law)

### **3.3 Relationship with other provisions of Community law**

The country of origin principle is not a viable rule of private international law. (e.g: what happens when two foreign providers enter into litigation in a third country?)

Seems to be a cross party agreement: in case of conflict with Community rules such as Rome I and Rome II, the latter should prevail.