Obligations of Cross-Border Service Providers

2006/2049(INI) - 27/09/2007 - Text adopted by Parliament, single reading

The European Parliament adopted with 526 votes in favour, 38 against and 13 abstentions a resolution based on the own-initiative report drafted by Lasse **LEHTINEN** (PES, FI) on the obligations of cross-border service providers. The report cited the fact that European consumer confidence in cross-border consumption is low, as evidenced by the fact that only 6 % of consumers made an online cross-border purchase in 2006. Existing legislation does not, as a rule, address the substantive obligations of service providers, nor does it provide specific remedies for the consumer, in contrast to measures that have been adopted concerning the free movement of goods.

Internal market for services: Parliament was convinced that a more uniform system of obligations for service providers is needed as the market in services becomes increasingly cross-border. The Services Directive, to be transposed into national law in all Member States by 28 December 2009, should have a considerable impact on the cross-border provision of services, but the Directive does not address the substantive obligations of service providers. Parliament believed that clarifying the legal system of obligations of service providers in the EU will bring more competition as well as greater choice for consumers and at the same time should not create unjustified obstacles to the free movement of services in the internal market. It regretted that the present mix of legislative instruments between rules on conflict of law and internal market instruments and the failure clearly to determine their interaction mean that neither the consumer nor the service provider is always able to know with clarity which legal regime is applicable to each aspect of their activities.

However, it expressed reservations pending full implementation of the Services Directive, as regards far-reaching new horizontal tools for the completion of the internal market for services. There are several pending legislative initiatives aimed at ensuring legal certainty as regards the rights and especially the obligations of cross-border service providers, namely the proposal for a regulation on the law applicable to contractual obligations (Rome I) Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations (Rome II) and the Green Paper on the Review of the Consumer Acquis. Parliament was convinced that the establishment of an internal market for services, the legal framework for which is based on the fundamental freedoms of establishment and to provide services, as set out in the EC Treaty and as defined in the Services Directive, depends on the relevant measures being clear from both a legal and a practical perspective.

Public and private service providers : the Commission should bear in mind that, when it comes to the obligations of services providers, no difference should be made between public and private service providers, which should both be equally subject to the application of the directives on consumer protection. Parliament called on the Commission to :

- monitor thoroughly the transposition and implementation of existing and forthcoming horizontal and sectoral legislation relating to the liability of cross-border service providers;
- examine measures, such as the introduction of standards at EU level, for promoting the safety of services and for guaranteeing consumers' rights in the field of cross-border services provided by Member States;
- further to develop, resource and promote the work of the ECC-Net and of FIN-NET and, in the event that alternative dispute resolution systems remain unavailable in key service sectors in Members States, to consider at least a recommendation on that subject;
- continue active consideration of the introduction of a legal instrument at Community level to facilitate collective action by consumers on a cross-border basis so as to allow greater access to legal redress.

Parliament recognised that liability regimes for service providers exist, albeit to varying degrees, in all Member States, but believed that there needs to be some convergence, especially in key cross-border sectors. There is a need also for greater co-operation between national regulatory bodies and professional organisations, where appropriate.

Request for a proposal for a horizontal instrument on the obligations of service providers : the Commission was asked, whilst continuing work on a sectoral basis in key areas, to submit, within 12 months, a work programme for an appropriate assessment of the impact of existing and forthcoming legislation in the internal market on the obligations of cross-border service providers and of the need for a possible broad horizontal instrument to align the rules on cross-border service provision in order to provide a high level of consumer protection. Such an assessment should examine a possible broad instrument which should at least contain basic general rules requiring adequate information on pricing, contract terms and remedies in the case of defective or delayed services.

Furthermore, the Commission needs to define clearly the interaction between private international law instruments and internal market instruments with a view to leaving no doubt as to when home or host country legislation or regulation applies and so, as far as possible, to leave no gaps in the liability regime applicable to service providers. The Commission should take into account the impact of any initiative on SMEs.

Lastly, Parliament asked all those Commission Directorates-General involved in legislation for the service sector to participate in the continuing work on the Common Frame of Reference with a view to including sections on service contracts, especially in those areas where there is already, or there is likely to be, cross-border activity, such as, by way of example only, financial services and the health sector.