Services in the internal market. Services Directive

2004/0001(COD) - 16/02/2006 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution on the services directive by 391 votes to 213 with 34 abstentions, but made many amendments to the Commission's proposal. The rapporteur was Evelyne **GEBHARDT (PES, DE).** A compromise was reached before plenary, between the PES and the EPP-ED which overturned the approach proposed by the Commission. The Greens and GUE-NGL group voted against the compromise agreement. However, the ALDE group, apart from the German and Lithuanian delegations, supported it. The principal amendments relate to the following topics:

Country-of-origin principle: under the Commission's proposal, this had required service providers to be subject to the laws of their home country. Parliament deleted this principle in favour of an article on 'freedom to provide services'. It requires the Member States to respect the right of the service provider to supply services and to guarantee the provider "free access to and free exercise of a service activity within its territory". This guarantee is underpinned by a ban on a number of obstacles to the free movement of services. For example, in general it will no longer be possible to require a service provider to open an office in the country where it is temporarily providing a service nor to prevent it from setting up "certain infrastructure" in that country. The provider must not be forced to register with a professional body nor be banned from using his normal equipment at work. In addition, Member States must not apply "contractual arrangements between the provider and the recipient which prevent or restrict service provision by the self-employed".

The freedom to provide services is qualified by a clause stating that a Member State to which the service provider moves is not prevented from imposing requirements with regard to the provision of a service activity, where they are justified for reasons of public policy, public security, environmental protection and public health. Nor do they prevent Member States from applying, in conformity with Community law, their rules on employment conditions, including those laid down in collective agreements.

Member States must not make access to or exercise of a service activity in their territory subject to compliance with any requirements which do not respect the following principles:

- non-discrimination (i.ethe requirement may be neither directly nor indirectly discriminatory with regard to nationality or, in the case of legal persons, with regard to the Member State in which they are established),

- necessity (i.e. the requirement must be justified for reasons of public policy or public security or the protection of the health and the environment) and

- proportionality (i.ethe requirements must be suitable for securing the attainment of the objective pursued, and must not go beyond what is necessary to attain that objective).

The Commission must produce a report on the prospect of harmonisation of national legislation on the provision of services five years after the directive enters into force.

Scope of the Directive: The Directive now covers fewer services than the original text.

- 'Services of general interest' are not included in the scope of the directive. Parliament stated that such services are provided and defined by the Member States under their obligations to protect the public interest. 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.

- Parliament voted to exclude both public and private healthcare from the directive. Industries covered by legislation specific to their sector are also excluded, e.g. financial services, electronic communications services and networks, and transport. Other areas excluded are legal services, audiovisual services, gambling and lotteries, and professions and activities linked to the exercise of public authority (e.g. notaries) and tax services. Parliament has also excluded from the scope of the directive temporary work agencies and services with a social welfare objective (e.g. social housing, childcare) and non-profit-making amateur sporting activities

- Services of general economic interest, by contrast, are covered, but the Directive does not deal with the liberalisation of services of general economic interest reserved to public or private entities, nor does it deal with the privatisation of public entities providing services. Furthermore, the Directive does not affect the freedom of Member States to define, in conformity with Community law, what they consider to be services of general economic interest, how those services should be organised and financed and what specific obligations they should be subject to. It should noted that "services of general economic interest" has been defined by Parliament as services which are qualified as such by the Member State and which are subject to specific public service obligations which have been assigned to the service provider by the Member State concerned to meet certain public interest objectives.

- The Directive includes within its scope services of general economic interest such as postal services, water supply, electricity, and waste treatment. Business services such as management consultancy, certification and testing, facilities management (including office maintenance and security), advertising, recruitment services and the services of commercial agents.

- The Directive also covers services provided both to businesses and to consumers, including real estate services such as estate agencies, construction (including the services of architects), distributive trades, the organisation of trade fairs, car rental, and travel agencies. Consumer services such as tourism, leisure services, sports centres and amusement parks are also included.

Labour law: Parliament clarified that the Directive will not alter workers' social rights nor will it change existing labour law. The Directive does not affect terms and conditions of employment which, pursuant to Directive 96/71/EC, apply to workers posted to provide a service in the territory of another Member State. In such cases, Directive 96/71/EC stipulates that service providers have to comply with terms and conditions of employment in a listed number of areas applicable in the Member State where the service is provided. These are: maximum work periods and minimum rest periods, minimum paid annual holidays, minimum rates of pay, including overtime rates, the conditions of hiring out of workers, in particular the supply of workers by temporary employment undertakings, health, safety and hygiene at work, protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth and of children and young people and equality of treatment between men and women and other provisions on non-discrimination. This concerns not only terms and conditions of employment which are laid down by law but also those laid down in collective agreements or arbitration awards within the meaning of Directive 96/71/EC. Moreover, the Directive does not prevent Member States from applying terms and conditions of employment on matters other than those listed in Directive 96/71/EC on the grounds of public policy provisions. Parliament deleted those articles which curbed a member state’s ability to carry out labour inspections on workers posted to its territory. The Member State of destination is responsible for supervising service providers in its territory.

Relationship to other legislation: Where there is already legislation in individual sectors e.g. financial services, the sector-based rules will take precedence over this general Directive. Private international law, such as the Rome I and Rome II Regulations, will prevail over this Directive if there is conflict between the two. Parliament stated that contractual relations between the service provider and the client as well as between employer and employee will not be subject to this Directive. Furthermore, the contractual agreement prevails insofar as it contains provisions on quality standards.

Right of establishment: Parliamentary amendments allow Member States to authorise firms to establish themselves if there is a proven economic need or demand for their service. Member States are also permitted to require companies register there before they can provide their services.

Finally, it should be noted that the right of establishment may be restricted if there are overriding reasons relating to the public interest. Parliament has defined the term "overriding reasons relating to the public interest" as covering, inter alia, the following grounds: the protection of public policy, public security, public safety, public health, preserving the financial equilibrium of the social security system, including maintaining balanced medical care available to all, the protection of consumers, recipients of services, workers, fairness of trade transactions, combating fraud, the protection of the environment including the urban environment, the health of animals, intellectual property, the conservation of the national historic and artistic heritage or social policy objectives and cultural policy objectives.