

Services in the internal market. Services Directive

2004/0001(COD) - 04/04/2006 - Modified legislative proposal

The European Commission has presented its modified proposal on the “Services in the Internal Market Directive”, taking account of Parliamentary amendments adopted at first reading.

The modified proposal, in summary and in chronological order, makes the following adjustments to its initial proposal:

Subject matter, Scope, Relationship with other provisions of Community law and Definitions (Articles 1-4)

“Services of general interest” and “Services of general economic interest”: the Commission accepts Parliamentary amendments specifying that “Services of general interest” will not fall under the scope of the Directive. “Services of economic interest” will, however, given that they are of an economic nature. In accordance with Parliamentary amendments, the Commission’s modified proposal accepts that the Directive’s provisions shall not provide for the liberalisation or privatisation of public entities responsible for providing such services. Further, Member States will be given the freedom to define, in conformity with Community law, their definition of a “service of general economic interest”, how those services should be organised and financed, (in compliance with state aid rules), and what specific obligations they should be subject to.

Healthcare services: the European Commission has accepted Parliamentary amendments excluding both private and public healthcare services from the Directive. At the same time, it has confirmed its commitment to come forward with a specific initiative on health services at a later stage.

Provisions on social services: the Commission accepts the exclusion of the provision of social services from the Directive’s scope. For the sake of clarity, and in order to avoid a divergence in Member States’ interpretation of the Directive, the Commission has redrafted the definition in a new recital.

Other sectoral exclusions and the full exclusion of taxation: the following service industries will be exempted from the Directive’s scope: temporary work agencies, security services, audiovisual services, gambling activities and professions connected with the exercise of official authority. On the basis that they are covered elsewhere in EU legislation, the provision of financial services, electronic communication services and transport services are also excluded. Similarly tax has been excluded from the provisions applying to this Directive. The Commission has not, however, accepted a Parliamentary amendment proposing the exclusion of legal services.

Labour law, cultural pluralism, linguistic provisions: amendments proposing that labour law be exempted from the Directive have been accepted by the Commission. Similarly, under the modified proposal, criminal law will be excluded from the Directive’s provisions. On the question of cultural and linguistic diversity and media pluralism the Commission has accepted parliamentary amendments in their entirety.

Relationship to other legislation: in the event of a conflict with other Community instruments relating to the exercise of a services activity, the provisions of the specific Community legislation shall prevail. The Directive is without prejudice to private international law, in particular private international law governing contractual and non-contractual obligations.

Definitions: on the matter of “definitions” the Commission has accepted most Parliamentary amendments subject to some redrafting. Those amendments, not accepted relate to the definition of a “worker”,

“competent authorities”, and “provider”. Significantly, the Commission has not accepted an amendment, which would delete the exemplificative list of services covered by the Directive. The recital referring to this list has, therefore, been reinserted subject, again, to minor modifications in light of the Directive’s revised scope.

Administrative simplification (Articles 5-8)

Simplification of procedures: for the sake of legal clarity the European Commission accepts, Parliamentary amendments transforming the Chapter on the right of establishment for service providers. In doing so, a distinctive new Chapter on “Administrative Simplification” has been endorsed. Provisions include, inter alia, the removal of overly burdensome elements which hinder the freedom of establishment as well as the simplification of procedures applicable to accessing and exercising a service activity.

Points of single contact: Parliamentary proposals for a “single electronic contact” are not accepted. Nor, have amendments requiring the Commission to co-ordinate points of single contact through the establishment of a “European point of single contact” and the completion of all procedures at these points. The Directive has, however, been modified in order to allow for the creation of points of single contact that are without prejudice to the allocation of functions and powers among authorities within national systems. Further a new time-table for the establishment of the points of single contact has been agreed.

Right to information: the Commission, in line with the work of the Council, accepts Parliamentary modifications under this heading. It has added that issues such as liability for incorrect or misleading information are for the Member States to determine.

Procedures by electronic means: the Commission stands by its original proposal that the completion of formalities be done electronically – even if original documentation is required. It has, on the other hand, accepted a revised time-table for the implementation of this provision. The Commission clarifies that the obligation to provide for procedures by electronic means does not prevent Member States from offering alternative means of application, additional too electronic applications.

Freedom of establishment for providers: Articles 9-15

Authorisation schemes: accepted in their entirety are those amendments stating that authorisation schemes concern neither decisions by authorities to set up a public or private entity nor the conclusion of contracts.

Conditions for the granting of authorisations: the Commission has accepted amendments referring to the possibility that certain authorisations may be revoked when the conditions for granting them are no longer met. The Commission also accepts that Member States may take a number of public interest issues into account when applying their selection criteria.

Authorisation procedures: on the matter of “tacit authorisation”, the Commission has decided to stick to its original proposal whereby, in the absence of a response within a set time-frame, the authorisation shall be deemed to be granted. A rewording of the recital seeks to clarify this issue.

Prohibited requirements: the Commission has accepted, in their entirety, most of the amendments relating to prohibited requirements. For the sake of clarity and consistency the Commission has modified some of the text.

Requirements to be evaluated: again the Commission has accepted most Parliamentary amendments relating to the requirements of evaluations, bar the deletion of the “notification obligations”, which the Commission believes, would seriously water down the evaluation process.

Freedom to provide services and derogations: Articles 16-19

Freedom to provide services: to recall, European Parliamentary amendments replaced the initially proposed “Country of origin” heading with the heading “Freedom to provide services”. This amendment:

- allows service providers to offer their services in a Member State other than the one in which they are established.
- Member States, in whose territory the service is being provided, must guarantee free access to and free exercise of the service activity within its territory.
- Member States, where the service is provided, can not apply their own national requirements to service providers established in another Member State – unless these are justified on grounds of public policy, public security, public health or the protection of the environment. National requirements must be non-discriminatory, necessary and proportionate.
- Member States, acting in conformity with Community law will not be prevented from applying national employment conditions to service providers.

The Commission has accepted this amendment subject to minor drafting adjustments. In addition, the Commission has added further explanatory recitals, one referring to the jurisprudence of the ECJ on the right of Member States to take measures in order to prevent service providers from abusively taking advantage of the Internal Market principles. A further recital has been added which allows service providers to take equipment, integral to the provision of their service, when working in another Member State.

Additional derogations from the freedom to provide services: the Commission has modified its initial proposal so that Article 17 has been renamed as well as stipulating that the Directive’s provisions shall not apply to “Services of General Interest”. Specifically this refers to activities such as postal services, electricity, gas and water distribution, water services and the treatment of waste. The Commission has also clarified, in a recital, that the derogation for postal services covers both activities reserved to the universal service provider and other postal services. On the other hand, the Commission has not included amendments referring to the activities of lawyers and notaries given that it has not accepted a general exclusion of the activities of lawyers or of notaries. Proposed derogations referring to the judicial recovery of debts have, however, been accepted.

Posting of workers (Articles 24-25)

The Commission has accepted the deletion of provisions relating to the removal of administrative obstacles and concerning Member State co-operation vis-à-vis the posting of workers and the posting of third country nationals within the context of this Directive.

Quality of services (Articles 26-32)

Under this heading the Commission has accepted that service providers must be obliged to offer recipients information on their legal status. The Commission has maintained provisions relating to after-sales guarantees. Similarly, the Commission has decided not to incorporate Parliamentary amendments which would have excluded multidisciplinary activities from the mutual evaluation process. According to the Commission, the obligation to evaluate and report on restrictions on multidisciplinary activities is an essential measure for facilitating access to and exercise of service activities.

Administrative co-operation (Articles 34-38)

The Commission has accepted most of the amendments relating to administrative co-operation. It recognises the need to set out, clearly, the tasks and obligations of the Member State of establishment and the Member State where the service is provided. Concerning the proposed “Alert Mechanism” whereby a Member State immediately informs the Commission of any circumstances that could cause serious damage to the health or safety of persons, the Commission has decided to include this in its modified proposal. The alert system serves a different purpose to the mutual assistance system. Similarly, the Commission has accepted amendments referring to information on the good repute of providers.

Convergence programme and final provisions (Articles 39-48)

The Commission has incorporated amendments, both in the Directive’s recitals as well as in the body of the text, which set out the drawing up of a “code of conduct”. Professional bodies, organisations and associations will be responsible for preparing the codes of conduct. They must be complementary to Member States’ legal requirements. Under the heading of “Additional harmonisation”, the Commission specifies that an assessment concerning harmonisation for security services and the transport of cash and valuables, will be made one year after the date of the Directive’s implementation.

Lastly, the Commission has opted for a two year deadline for the transposition of the Directive, as opposed to the three-year deadline, proposed by Parliament.

For further information concerning the financial implications of this measure, please refer to the financial statement.