

Services in the internal market. Services Directive

2004/0001(COD) - 24/07/2006 - Council position

The Common Position reflects, to a large extent, the views of the European Parliament at first reading. The Council notes that the Commission's amended proposal had already incorporated many Parliamentary amendments, which the Council, in turn, has also seen fit to incorporate into its Common Position. A certain number of new provisions have been added to the Common Position – all of which have been accepted by the Commission. The new provisions are considered essential for the proper implementation of the Directive's provisions.

In summary, the Council's Common Position is as follows:

1. General Provisions

Specific areas of law: A new recital has been added in order to clarify a number of general rules that are independent from the access to, or the exercise of, service activity. A number of minor drafting changes have been made in a bid to make the Article's content more explicit and unambiguous. For the rest the Common Position reflects the position taken by the European Parliament.

Scope of application: The Council has clarified the Directive's scope. It has, by and large, accepted most Parliamentary amendments on this matter. In addition, the Council has inserted the word "non-economic" in order to clarify the term "services of general interest". On the matter of transport services and port services, the Common Position confirms the exclusion of all transport services – including port services, which again reflects amendments adopted by Parliament at first reading. On the matter of social services, the Council has added a new sentence, which stresses that the Directive will not affect the principle of "universal service". Further, the Council has decided not to accept an amendment excluding legal services since Article 3 specifically states that in cases of conflict sectoral legislation will prevail over this more general service Directive. On a final point, the Common Position confirms the exclusion of: temporary work agencies, health services, gambling activities, private security services and taxation.

Relationship between the Directive and other provisions of Community law: The Council has decided to follow the Parliament's approach to this Article and confirm that, in the event of a conflict with other sectoral Community instruments, the relevant sectoral provision will prevail over and above the provisions set out in this Directive. The Council has also laid emphasis on the fact that the Directive will not affect rules on private international law. In addition this Directive will not affect national legislation offering consumer protection.

Definitions: Most amendments concerning definitions have been incorporated into the Common Position. Amendments changing the definition of the following terms have not, however, been incorporated: service, public service obligation, worker, competent authorities and provider. Nor has the Council deleted the list of services covered by the Directive, as was proposed by Parliament. Thus, the full list of services has been reinstated in one of the recitals.

2 Administrative Simplification

Simplification of procedures: The Common Position has added the provision that future European forms will be developed in accordance with the comitology procedure. It also stresses Member States' obligation to simplify their procedures and formalities.

Points of single contact: The Council has not been able to take on board amendments which would require *pro forma* registration at the points of single contact since this is considered an unnecessary administrative burden – and contrary to the subsidiarity principle. At the same time it makes clear that “points of single contact” may play a more limited “intermediary” role between the service provider and the competent authorities.

Procedures by electronic means: The Common Position stresses the importance of providing information in an electronic format. Electronic procedures are an essential measure of administrative simplification. Given that electronic means can provide proof of authenticity, the Council considers that electronic means can deliver “original documentation”.

3. Freedom of establishment for providers

In a new element, the Council has decided to include a provision whereby Member States may require additional insurance and financial guarantees from service providers – regardless of whether or not such a requirement exists in the State of establishment. A further addition includes a new measure, whereby authorisations are deemed to have been granted in the absence of a response from the competent authorities. Member States will, however, be allowed to extend the deadline for the reply when this is justified by the complexity of the issue and provided that the applicant is duly informed of the extension and the reasons thereof. The Common Position also includes rules on “tacit rejection” which can be used by a Member State in cases of overriding reasons relating to the public interest. In introducing these measures the Council believes that it has struck the right balance between the needs of the economic operator on the one hand and the needs of the Member State on the other.

Changes have also been made to the evaluation process regarding “services of general interest” (SGEI) and the obligation to notify them. These modifications make it clear that the evaluation process should not obstruct the performance of tasks assigned to services of general economic interest. The Council has done this in a bid to address Parliamentary concerns that the evaluation process should not effect the evaluation of SGEI.

4. Freedom to provide services and related derogations

The Council’s Common Position fully reflects that of the Parliament. A new recital has been added in a bid to clarify the application of Member States’ rules on employment conditions. For the rest, and subject to minor redrafting, the Council’s Common Position has taken on board most Parliamentary amendments concerning the freedom to provide services.

5. Rights of recipients of services

The Council has incorporated most Parliamentary amendments on this matter into its Common Position.

6. Posting of workers and third country nationals:

The Common Position follows the approach taken by Parliament and has accordingly deleted Articles 24 and 25.

7. Quality of Services:

The Council has incorporated most amendments on this matter into its Common Position and confirms that professional liability insurance is not mandatory.

Administrative co-operation

The Common Position reflects the views of Parliament.

Convergence programme and final provisions

The Council has introduced a new provision whereby Member States must provide the Commission with information regarding national measures related to this Directive. The Commission, in turn, will be responsible for sharing this information with the other EU Member States. The Council believes that this new measure will act as a useful monitoring tool as well preventing the build-up of national obstacles. Provisions on personal data and the setting up of a Regulatory Committee have also been included. Lastly, the Council has taken a similar stance to that of the Parliament regarding the deadline for implementation. The Council, therefore, has extended the implementation period from 2 to 3 years.