

Erhvervsudvalget (2. samling)
ERU alm. del - Bilag 95
Offentligt

Folketinget – Erhvervsudvalget
udvalgssekretariatet
Christiansborg, den 20. april 2005

Til

udvalgets medlemmer og stedfortrædere.

Gebhardts markante betænkning (*) om servicedirektivforslaget blev udvalgsbehandlet i Bruxelles 19. april 2005

Erhvervsudvalget har ligesom Arbejdsmarkedsudvalget og Europaudvalget interesseret sig for EU-Kommissionens servicedirektivforslag, KOM(2004)0002 fremsat 13. januar 2004. Generelt følger Folketinget fortrinsvis EU-sager via EU-Ministerrådets behandling af disse. Desværre er Ministerrådets udvalgsbehandling bag lukkede døre, hvorfor der ofte kan være god grund til at følge Europa-Parlamentets udvalgsbehandling og plenumbehandling – ikke mindst som i denne sag hvor Rådet og Parlamentet lovgiver i fællesskab.

Udvalgsbehandlingen tirsdag 19. april viste stor spredning i synspunkter

MEP Evelyne Gebhardts har skrevet udvalgsbetænkningen (del 1) vedr. servicedirektivforslaget for EP's udvalg om det indre marked og forbrugerforhold, det såkaldte IMCO-udvalg. Gebhardt er tysk socialdemokrat, og dermed medlem af Parlamentets næststørste partigruppe, socialisterne. Som rapporteur har Gebhardt samarbejdet med beskæftigelsesudvalgets MEP Anne van Lancker, der har været rådgivende ordfører. Betænkningen er udarbejdet i et såkaldt forstærket samarbejde mellem de to EP-udvalg.

Betænkningens 17 markante ændringsforslag er i princippet forslagsstillers egne ændringsforslag, men der er ikke tvivl om, at de dækker brede socialistiske synspunkter om fastholdelse af den bestående europæiske sociale model.

(*) Gebhardts betænkning (del 1) er vedlagt som bilag 1

fundsmæssigt meget store servicesektor. Dette vil også i sidste ende give basis for lavere (forbruger)priser.

Man kan sige, at effektivisering af markederne betyder en lettere adgang til markederne, og det medfører samtidigt, at mindre effektive virksomheder bliver skubbet ud af markederne. Ejere og ansatte i delsektorer og virksomheder på nationale markeder, der bliver åbnet for stærk konkurrence udefra, er naturligvis bekymrede. Derimod er delsektorer og virksomheder i lande, der ser et stort potentiale i en åbning af markederne i de andre 24 medlemslande, positive. Folketingets EU-konsulent vil udarbejde et deltaljeret notat om Kommissionens forslag til servicedirektiv. Af hovedpunkter kan bl.a. nævnes

Gebhardt: Oprindelseslands-princippet ønskes fjernet

Et af Gebhardts 17 ændringsforslag til Kommissionens servicedirektiv foreslog ændring af det meget omtalte oprindelseslandsprincip (at en serviceudbyder følger reglerne i det land, hvor han kommer fra) til et anvendelseslandsprincip (en serviceudbyder følger reglerne i de lande, hvor han opererer) suppleret med en bilateral mulighed for gensidige aftaler.

Gebhardt: Offentlig undervisning, sundhed/hospitalsbehandling og social sikkerhed mv. foreslås fjernet fra direktivet

I den offentlige debat om direktivet, har der været udtrykt megen bekymring for servicedirektivets oprindelige udformning, der inddrog en meget lang række servicesektorer, herunder bl.a. en række offentlige tjenesteydelsesområder som sundhed og uddannelse mv. Mange var bekymret for, om dette kunne underminere de nationale standarder for offentlige ydelser på disse områder. Betænkningen foreslår indskrænkning af servicedirektivet på en række traditionelt offentlige serviceområder. Efter Gebhardts opfattelse skal direktivet især vedrøre kommercielle sektorer.

Gebhardt: Den finansielle sektor ønskes ikke medtaget

Rapporteur Gebhardt finder ikke, at servicedirektivet skal dække sektorer, hvor der allerede er fælleskabslovgivning, f.eks. den finansielle sektor.

Bilag 1

EUROPEAN PARLIAMENT

2004



2009

Committee on the Internal Market and Consumer Protection

PROVISIONAL
2004/0001(COD)
Par 1

8.4.2005

*****I**

DRAFT REPORT PART I

on the proposal for a directive of the European Parliament and of the Council
on services in the internal market
(COM(2004)0002 – C5-0069/2004 – 2004/0001(COD))

Committee on the Internal Market and Consumer Protection

Rapporteur: Evelyne Gebhardt

Draftsman (*) : Anne Van Lancker, Committee on Employment and Social
Affairs

(*) Enhanced cooperation between committees – Rule 47 of the Rules of
Procedure

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council on services in the internal market

(COM(2004)0002 – C5-0069/2004 – 2004/0001(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2004)0002)¹,
 - having regard to Article 251(2) and Articles 47(2), 55, 71 and 80(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0069/2004),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinions of the Committee on Budgets and the Committee on Economic and Monetary Affairs (A6-0000/2005),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1
Article 1

This Directive establishes general provisions facilitating exercise of the freedom of establishment for service providers and the free movement of services.

This Directive establishes general provisions facilitating exercise of the freedom of establishment for service providers and the free movement of services *while maintaining a high quality of services.*

This Directive shall have no effects whatsoever on labour law – including collective agreements and other legislation applicable to employment –

¹ Not yet published in OJ.

nor on social insurance legislation in the Member States.

Justification

Serves to clarify the scope of the directive.

The reference to maintaining a high quality of services reflects the social aspect of the objectives of the Lisbon Agenda and is consistent with the objectives of the EU set out in Articles 136 and 137 of the EC Treaty.

The directive should not clash with labour law or other related regulations such as collective agreements.

Amendment 2 Article 2

1. This Directive shall apply to services supplied by providers established in a Member State.

1. ***Within the framework set out in Article 1, this Directive shall apply to services supplied by providers established in a Member State.***

1a. This Directive shall not apply to services of general interest performed by Member States in fulfilment of their general interest obligations to services nor in the performance of which the Member States or the Community impose particular requirements on the service provider regarding the proper performance of general interest tasks, and in respect of which the following criteria apply:

- security of supply;***
- general accessibility;***
- universal coverage;***
- continuity;***
- affordability;***
- legal certainty;***
- sustainability;***
- territorial and social cohesion;***
- education and cultural diversity.***

1b. This Directive shall not apply to services guaranteed or funded in whole or in part by a Member State or by regional or local authorities with a view to securing or maintaining public interest objectives;

1c. This Directive shall not apply to services which, while being commercial in nature, pursue a general interest objective and are thus subject to specific public-sector funding requirements, in particular:

a) health and social security, and other social and welfare services;

b) educational and cultural services;

c) audiovisual services.

1d. This Directive shall not apply to occupations and activities which are permanently or temporarily connected with the exercise of official authority.

2. This Directive shall not apply to the following activities:

(a) financial services as defined in Article 2(b) of Directive 2002/65/EC;

(b) electronic communications services and networks, and associated facilities and services, with respect to matters covered by Directives 2002/19/EC¹, 2002/20/EC², 2002/21/EC³, 2002/22/EC⁴ and 2002/58/EC⁵ of the European Parliament and of the Council;

(c) transport services to the extent that they are governed by other Community instruments the legal basis of which is Article 71 or Article 80(2) of the

2. In addition, this Directive shall not apply to categories of services covered by sector-specific directives:

¹ OJ L 108, 24.4.2002, p. 7.
² OJ L 108, 24.4.2002, p. 21.
³ OJ L 108, 24.4.2002, p. 33.
⁴ OJ L 108, 24.4.2002, p. 51.
⁵ OJ L 201, 31.7.2002, p. 37.

Treaty.

3. This Directive does not apply to the field of taxation, with the exception of Articles 14 *and 16 to the extent that the restrictions identified therein are not covered by a Community instrument on tax harmonisation.*

3. This Directive does not apply to the field of taxation, with the exception of *the non-discrimination provisions of Articles 14 and 20;*

3a. This Directive shall not apply to gambling activities which involve wagering a stake with pecuniary value in games of chance, including lotteries and betting transactions, nor shall it cover access to activities for the judicial or extra-judicial recovery of debts;

Amendment 3
Article 3

Member States shall apply the provisions of this Directive in compliance with the rules of the Treaty on the right of establishment and the free movement of services.

Member States shall apply the provisions of this Directive in compliance with the rules of the Treaty on the right of establishment and the free movement of services.

Application of this Directive *shall not prevent* the application of provisions of other Community instruments as regards the services governed by those provisions.

Application of this Directive *shall in no way affect* the application of provisions of other Community instruments as regards the services governed by those provisions.

This directive shall not affect the application of Community legislative or other initiatives in the field of consumer protection, labour law and law relating to reparation of loss and damage

Amendment 4
Article 4, paragraph 10

(10) *“hospital care” means medical care which can be provided only within a medical infrastructure and which normally requires the accommodation*

deleted

therein of the person receiving the care, the name, organisation and financing of that infrastructure being irrelevant for the purposes of classifying such care as hospital care;

Amendment 5
Article 16

Country of origin principle

(1) Member States shall ensure that providers are subject only to the national provisions of their Member State of origin which fall within the coordinated field.

Paragraph 1 shall cover national provisions relating to access to and the exercise of a service activity, in particular those requirements governing the behaviour of the provider, the quality or content of the service, advertising, contracts and the provider's liability.

(2) The Member State of origin shall be responsible for supervising the provider and the services provided by him,

Mutual recognition principle

1. An economic operator who performs a service in a Member State in accordance with the law of that Member State may offer the same service without hindrance in another Member State.

1a. The mutual recognition principle shall not apply to legal or contractual provisions of the country of destination in the field of consumer protection, environmental protection or labour law, notably remuneration, working conditions and measures relating to health and safety at work. In addition, the mutual recognition principle shall not apply to law relating to reparation of loss and damage.

1b. The mutual recognition principle shall apply to business services as listed in Annex 1 A and to such of the services listed in Annex 1 B as are performed both in commercial transactions and for the consumer.

(2) The country of destination shall be responsible for supervising the provider and the services provided by him, in close cooperation with the service provider's

including services provided by him in another Member State.

Member State of origin, as provided in Article 35.

2a. The country of destination may object to the performance of a service by a provider who is established in another Member State in accordance with the law of that Member State, if

- such objection is founded on reasons of general interest, particularly of social policy, consumer protection, environmental protection, public security, public health or public order;

- the rules under which such objection is brought are proportionate, generally applicable and business-related in nature, and

- the interest in question is not already protected by provisions applicable to the service provider in his country of origin.

(3) Member States may not, for reasons falling within the coordinated field, restrict the freedom to provide services in the case of a provider established in another Member State, in particular, by imposing any of the following requirements:

(a) an obligation on the provider to have an establishment in their territory;

(b) an obligation on the provider to make a declaration or notification to, or to obtain an authorisation from, their competent authorities, including entry in a register or registration with a professional body or association in their territory;

(c) an obligation on the provider to have an address or representative in their territory or to have an address for service at the address of a person authorised in that territory;

(d) a ban on the provider setting up a certain infrastructure in their territory,

including an office or chambers, which the provider needs to supply the services in question;

(e) an obligation on the provider to comply with requirements, relating to the exercise of a service activity, applicable in their territory;

(f) the application of specific contractual arrangements between the provider and the recipient which prevent or restrict service provision by the self-employed;

(g) an obligation on the provider to possess an identity document issued by its competent authorities specific to the exercise of a service activity;

(h) requirements which affect the use of equipment which is an integral part of the service provided;

(i) restrictions on the freedom to provide the services referred to in Article 20, the first subparagraph of Article 23(1) or Article 25(1).

Amendment 6
Article 16 a (new)

Article 16a

Exchange of information on Member States' measures relating to derogations from the freedom to provide services within the Community

1. Where a Member State takes measures pursuant to Article 16(2a) which conflict with the mutual recognition principle set out in Article 16(1a), it shall inform the Commission and the Member State of origin of its intention, stating reasons why it considers the measures to fulfil the conditions of Article 16(2a).

2. The measures may not be taken until fifteen working days after the date of notification provided for in paragraph 1

3. Without prejudice to the possibility for the requesting Member State to take the measures in question upon expiry of the period specified in paragraph 2, the Commission shall, within the shortest possible period of time, examine the compatibility with Community law of the measures notified.

Where the Commission concludes that the measure is incompatible with Community law, it may ask the Member State concerned to refrain from taking the proposed measures or to put an end to the measures in question as a matter of urgency.

4. In the case of urgency, a Member State which intends to take a measure may derogate from paragraphs 1 and 2. In such cases, the measures shall be notified within the shortest possible period of time to the Commission and the Member State of origin, stating the reasons for which the Member State considers that there is urgency.

Justification

(Parts of this text are taken from Article 37)

Amendment 7
Article 16 b (new)

Article 16b

Additional harmonisation

1. The Commission shall propose minimum standards of harmonisation for the following areas:

a. service sectors which are excluded from the scope of this Directive pursuant to Article 2(1c) a;

b. service sectors to which the mutual recognition principle applies in accordance with Article 16, as listed in Annexes IA and IB;

c. rules governing cash transport operations and the transport of deceased persons;

d. the areas referred to in Article 39 in which it has not been possible to draw up codes of conduct before the expiry of the time limits for transposition, or in which the code of conduct has not been able to guarantee the smooth functioning of the internal market;

e. matters raised in connection with the mutual evaluation referred to in Article 41.

Amendment 8
Article 16 c (new)

Article 16c

Application of the Country of Origin Principle

This Directive shall not affect the application of the country of origin principle in existing directives, such as the TV Without Frontiers Directive (89/552/EEC)¹ or the e-Commerce Directive (2000/31/EC)².

¹ *Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities*

² *Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.*

Amendment 9

General derogations from the country of origin principle

Country of destination Principle

Article 16 shall not apply to the following:

(1) postal services within the meaning of point (1) of Article 2 of Directive 97/67/EC of the European Parliament and the Council;¹

Services for consumers as listed in Annex I C must be consistent with the laws and administrative provisions of the country of destination.

At any event, Article 17 shall always apply to the areas covered by Article 16(1a), and in particular to:

(2) electricity distribution services within the meaning of point (5) of Article 2 of Directive 2003/54/EC of the European Parliament and of the Council;²

(3) gas distribution services within the meaning of point (5) of Article 2 of Directive 2003/55/EC of the European Parliament and of the Council;³

(4) water distribution services;

(5) matters covered by Directive 96/71/EC;

- matters covered by Directive 96/71/EC concerning the posting of workers in the framework of the provision of services;

(6) matters covered by Directive 95/46/EC of the European Parliament and of the Council;⁴

- matters covered by Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data;⁴

(7) matters covered by Council Directive 77/249/EEC;⁵

(8) the provisions of Article [...] of Directive .../.../EC on the recognition of professional qualifications;

(9) the provisions of Regulation (EEC) No 1408/71 determining the applicable legislation;

(10) the provisions of Directive .../.../EC of the European Parliament and the

- the provisions of Directive .../.../EC of the European Parliament and the Council [on

Council [on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC], that lay down the administrative formalities that beneficiaries must undertake before the competent authorities of the host Member States;

(11) in the case of the posting of third country nationals, the requirement for a short stay visa imposed by the Member State of posting, subject to the conditions set out in Article 25(2);

(12) the authorisation regime provided for in Articles 3 and 4 of Council Regulation (EEC) No 259/93;⁶

(13) copyright, neighbouring rights, rights covered by Council Directive 87/54/EEC⁷ and by Directive 96/9/EC⁸ of the European Parliament and of the Council as well as industrial property rights;

(14) *acts requiring by law the involvement of a notary;*

(15) statutory audit;

(16) *services which, in the Member State to which the provider moves temporarily in order to provide his service, are covered by a total prohibition which is justified by reasons relating to public policy, public security or public health;*

(17) *specific requirements of the Member State to which the provider moves, that are directly linked to the particular characteristics of the place where the service is provided and with which compliance is indispensable for reasons of public policy or public security or for the*

the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC], that lay down the administrative formalities that beneficiaries must undertake before the competent authorities of the host Member States;

- in the case of the posting of third country nationals, the requirement for a short stay visa imposed by the Member State of posting, subject to the conditions set out in Article 25(2);

- the authorisation regime provided for in Articles 3 and 4 of Council Regulation (EEC) No 259/93 *on the supervision and control of shipments of waste within, into and out of the European Community;*⁶

- copyright, neighbouring rights, rights, *societies for the collection of such rights, and rights* covered by Council Directive 87/54/EEC⁷ and by Directive 96/9/EC⁸ of the European Parliament and of the Council as well as industrial property rights;

- statutory audit;

protection of public health or the environment;

(18) the authorisation system applicable to the reimbursement of hospital care;

(19) the registration of vehicles leased in another Member State;

(20) the freedom of parties to choose the law applicable to their contract;

(21) contracts for the provision of services concluded by consumers to the extent that the provisions governing them are not completely harmonised at Community level;

(22) the formal validity of contracts creating or transferring rights in immovable property, where contracts are subject, under the law of the Member State in which the property is located, to imperative formal requirements;

(23) the non-contractual liability of a provider in the case of an accident involving a person and occurring as a consequence of the service provider's activities in the Member State to which he has moved temporarily.

- the registration of vehicles leased in another Member State;

- the freedom of parties to choose the law applicable to their contract;

- the manner in which cash transport operations and the transport of deceased persons are carried out.

1 OJ L 15, 21.1.1998, p. 14.

2 OJ L 176, 15.7.2003, p. 37.

3 OJ L 176, 15.7.2003, p. 57.

4 OJ L 281, 28.11.1995, p. 1.

5 OJ L 78, 26.3.1997, p. 17.

6 OJ L 30, 6.2.1993, p. 1.

7 OJ L 24, 27.1.1987, p. 36.

8 OJ L 77, 27.3.1996, p. 20.

4 OJ L 281, 28.11.1995, p. 1.

6 OJ L 30, 6.2.1993, p. 1.

7 OJ L 24, 27.1.1987, p. 36.

8 OJ L 77, 27.3.1996, p. 20.

Amendment 10
Article 18

***Transitional derogations from the country
of origin principle***

deleted

***1. Article 16 shall not apply for a
transitional period to the following:***

- (a) the way in which cash-in-transit
services are exercised;***
- (b) gambling activities which involve
wagering a stake with pecuniary
value in games of chance,
including lotteries and betting
transactions;***
- (c) access to the activity of judicial
recovery of debts.***

***2. The derogations referred to in
points (a) and (c) of paragraph 1 of this
Article shall not apply after the date of
application of the harmonisation
instruments referred to in Article 40(1) or
in any case after 1 January 2010.***

***3. The derogation referred to in point
(b) of paragraph 1 of this Article shall not
apply after the date of application of the
harmonisation instrument referred to in
Article 40(1)(b).***

**Amendment 11
Article 19**

***Case-by-case derogations from the
country of origin principle***

deleted

***1. By way of derogation from
Article 16, and in exceptional
circumstances only, a Member
State may, in respect of a
provider established in another
Member State, take measures
relating to any of the following:***

- (a) the safety of services, including***

aspects related to public health;

(b) the exercise of a health profession;

(c) the protection of public policy, notably aspects related to the protection of minors.

2. The measures provided for in paragraph 1 may be taken only if the mutual assistance procedure laid down in Article 37 is complied with and all the following conditions are fulfilled:

(a) the national provisions in accordance with which the measure is taken have not been subject to Community harmonisation in the fields referred to in paragraph 1;

(b) the measures provide for a higher level of protection of the recipient than would be the case in a measure taken by the Member State of origin in accordance with its national provisions;

(c) the Member State of origin has not taken any measures or has taken measures which are insufficient as compared with those referred to in Article 37(2);

(d) the measures are proportionate.

3. Paragraphs 1 and 2 shall be without prejudice to provisions, laid down in Community instruments, which guarantee the freedom to provide services or which allow derogations therefrom.

Amendment 12
Article 23

1. Member States may not make assumption of the costs of non-hospital care in another Member State subject to the granting of an authorisation, where the cost of that care, if it had been provided in their territory, would have been assumed by their social security system.

The conditions and formalities to which the receipt of non-hospital care in their territory is made subject by Member States, such as the requirement that a general practitioner be consulted prior to consultation of a specialist, or the terms and conditions relating to the assumption of the costs of certain types of dental care, may be imposed on a patient who has received non-hospital care in another Member State.

2. Member States shall ensure that authorisation for assumption by their social security system of the cost of hospital care provided in another Member State is not refused where the treatment in question is among the benefits provided for by the legislation of the Member State of affiliation and where such treatment cannot be given to the patient within a time frame which is medically acceptable in the light of the patient's current state of health and the probable course of the illness.

3. Member States shall ensure that the level of assumption by their social security system of the costs of health care provided in another Member State is not lower than that provided for by their social security system in respect of similar health care provided in their territory.

4. Member States shall ensure that their authorisation systems for the assumption of the costs of health care provided in another Member State are in

conformity with Articles 9, 10, 11 and 13.

Amendment 13
Article 24

Specific provisions on the posting of workers *deleted*

1. Where a provider posts a worker to another Member State in order to provide a service, the Member State of posting shall carry out in its territory the checks, inspections and investigations necessary to ensure compliance with the employment and working conditions applicable under Directive 96/71/EC and shall take, in accordance with Community law, measures in respect of a service provider who fails to comply with those conditions.

However, the Member State of posting may not make the provider or the posted worker subject to any of the following obligations, as regards the matters referred to in point (5) of Article 17:

- (a) to obtain authorisation from, or to be registered with, its own competent authorities, or to satisfy any other equivalent requirement;*
- (b) to make a declaration, other than declarations relating to an activity referred to in the Annex to Directive 96/71/EC which may be maintained until 31 December 2008;*
- (c) to have a representative in its territory;*
- (d) to hold and keep employment documents in its territory or in accordance with the conditions applicable in its territory.*

2. In the circumstances referred to in

of this Article shall apply without prejudice to proceedings before the courts.

2. The Member State referred to in paragraph 1 shall ask the Member State of origin to take measures with regard to the service provider, supplying all relevant information on the service in question and the circumstances of the case.

The Member State of origin shall check, within the shortest possible period of time, whether the provider is operating lawfully and verify the facts underlying the request. It shall inform the requesting Member State within the shortest possible period of time of the measures taken or envisaged or, as the case may be, the reasons why it has not taken any measures.

3. Following communication by the Member State of origin as provided for in the second subparagraph of paragraph 2, the requesting Member State shall notify the Commission and the Member State of origin of its intention to take measures, stating the following:

(a) the reasons why it believes the measures taken or envisaged by the Member State of origin are inadequate;

(b) the reasons why it believes the measures it intends to take fulfil the conditions laid down in Article 19.

4. The measures may not be taken until fifteen working days after the date of notification provided for in paragraph 3.

5. Without prejudice to the possibility for the requesting Member State to take the measures in question upon expiry of the period specified in paragraph 4, the Commission shall, within the shortest possible period of time, examine the compatibility with Community law of the

measures notified.

Where the Commission concludes that the measure is incompatible with Community law, it shall adopt a decision asking the Member State concerned to refrain from taking the proposed measures or to put an end to the measures in question as a matter of urgency.

6. In the case of urgency, a Member State which intends to take a measure may derogate from paragraphs 3 and 4. In such cases, the measures shall be notified within the shortest possible period of time to the Commission and the Member State of origin, stating the reasons for which the Member State considers that there is urgency.

Justification

Parts of this text are reinstated as Article 16a (new).

Amendment 15
Article 40

Additional harmonisation

deleted

1. The Commission shall assess, by [one year after the entry into force of this Directive] at the latest, the possibility of presenting proposals for harmonisation instruments on the following subjects:

(a) the detailed rules for the exercise of cash-in-transit services;

(b) gambling activities which involve wagering a stake with pecuniary value in games of chance, including lotteries and betting transactions, in the light of a report by the Commission and a wide consultation of interested parties;

(c) access to the activity of judicial recovery of debts.

2. In order to ensure the proper functioning of the internal market for services, the Commission shall assess the need to take additional initiatives or to present proposals for legislative instruments, particularly in relation to the following:

(a) matters which, having been the subject of case-by-case derogations, have indicated the need for harmonisation at Community level;

(b) matters covered by Article 39 for which it has not been possible to finalise codes of conduct before the date of transposition or for which such codes are insufficient to ensure the proper functioning of the internal market;

(c) matters identified through the mutual evaluation procedure laid down in Article 41;

(d) consumer protection and cross-border contracts.

**Amendment 16
Article 42, paragraph 3 a (new)**

3a. The Committee shall examine, on a proposal from the Commission or at the request of a Member State, questions relating to any amendment to the Annexes to this Directive.

The Commission shall notify the European Parliament without delay of any amendment to the Annexes to this Directive.

**Amendment 17
Annex I A (new) Services within the meaning of Article 16, paragraph (1b)**

1.	<u>BUSINESS SERVICES</u>	<u>Section B</u>
B.	<u>Computer and Related Services</u>	84
C.	<u>Research and Development Services</u>	85
D.	<u>Real Estate Services</u>	82
E.	<u>Rental/Leasing Services without Operators</u>	83
F.	<u>Other Business Services</u>	
a.	Advertising services	871
b.	Market research and public opinion polling services	864
c.	Management consulting services	865
d.	Services related to management consulting	866
e.	Technical testing and analysis services	8676
f.	Services incidental to agriculture, hunting and forestry	881
g.	Services incidental to fishing	882
h.	Services incidental to mining	883+5115
i.	Services incidental to manufacturing	884+885
		(except for 88442)
j.	Services incidental to energy distribution	887
k.	Placement and supply services of personnel	872
l.	Investigation and security	873
m.	Related scientific and technical consulting services	8675
n.	Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment)	633+ 8861-8866
o.	Building - cleaning services	874
p.	Photographic services	875
q.	Packaging services	876
r.	Printing, publishing services	88442
s.	Convention services	87909*
t.	Other	8790

Amendment 18
Annex I B (new) Services within the meaning of Article 16, paragraph (1b)

Annex I B

3.	<u>CONSTRUCTION AND RELATED ENGINEERING SERVICES</u>	
A.	<u>General construction work for buildings</u>	512
B.	<u>General construction work for civil engineering</u>	513
C.	<u>Installation and assembly work</u>	514+516
D.	<u>Building completion and finishing work</u>	517
E.	<u>Other</u>	511+515+518
4.	<u>DISTRIBUTION SERVICES</u>	
A.	<u>Commission agents' services</u>	621
B.	<u>Wholesale trade services</u>	622
C.	<u>Retailing services</u>	631+632 6111+6113+6121
D.	<u>Franchising</u>	8929
E.	<u>Other</u>	

Amendment 19
Annex I C (new) Services within the meaning of Article 17, paragraph 1

Annex I C

6.	<u>ENVIRONMENTAL SERVICES</u>	
A.	<u>Sewage services</u>	9401
B.	<u>Refuse disposal services</u>	9402
C.	<u>Sanitation and similar services</u>	9403
D.	<u>Other</u>	
9	<u>TOURISM AND TRAVEL RELATED SERVICES</u>	
A.	<u>Hotels and restaurants (including catering)</u>	641-643
B.	<u>Travel agencies and tour operators services</u>	7471
C.	<u>Tourist guides services</u>	7472
D.	<u>Other</u>	
10	<u>RECREATIONAL, CULTURAL AND SPORTING SERVICES</u>	
D.	<u>Sporting and other recreational services</u>	

EXPLANATORY STATEMENT

I. Introduction

On 1 November 2004 for Committee on the Internal Market and Consumer Protection held a public hearing on the proposal for a directive of the European Parliament and the Council on services in the internal market. While all those present agreed that the internal market in services needed to be opened up further, opinions diverged widely as to what instruments should be used. Most participants, including your rapporteur, argued against unnecessary protectionism. However, they supported high standards of quality and protection, particularly in social, environmental and consumer protection matters, in order to guarantee fair competition.

It was clear from the hearing that this proposal goes far beyond its stated aim and in its present form leaves many questions unanswered and gives rise to legal uncertainty,

On 21 December 2004 your rapporteur submitted a working document which identified the following problem areas: scope, country of origin principle, supervision, and compatibility with the *acquis communautaire*. Your rapporteur is convinced that thorough-going changes are needed in these areas if a broad consensus is to be achieved.

In order to guarantee a higher level of transparency and co-operation, an ad hoc working party was set up, which represented a new departure in the European Parliament's working methods. Under the chairmanship of your rapporteur, regular meetings took place between members of the Committee on the Internal Market and Consumer Protection, shadow rapporteurs, draftsmen of opinions, and shadow draftsmen from the committees asked for their opinion. These meetings gave an opportunity to debate more intensively further details from other areas of the proposal, which owing to time constraints had not been able to be discussed at the regular committee meetings. The Council, the Commission and the Economic and Social Committee also took the opportunity of putting forward their opinions in the working party. Your rapporteur's report back to the committee was made public, so that there could be no suggestion of a procedure behind closed doors.

At a plenary sitting of the European Parliament Commissioner McCreevy stated unequivocally that the Commission would not be submitting a new proposal. He also said that it was the wish of the Commission to comply strictly with the codecision procedure and to respect the privileges of the European Parliament.

The present document is a further good example of co-operation and transparency in the European Parliament. It sets out an initial series of amendments to the most controversial parts of the Commission proposal, namely its scope and the country of origin principle. This document will comprehensively serve to simplify and deepen the debate in the committee, and consider proposed solutions to both of these controversial topics.

The second part of the draft report will be submitted shortly and will complement the present document with amendments to any remaining provisions of the Commission proposal which require amendment. For reasons of consistency, that report will then also incorporate the

necessary amendments and considerations in accordance with the amendments in the present text.

II. Central aspects of the review of the directive

1. Scope of the directive

The scope of the directive must be clear and unambiguous in the interests of legal certainty. Many service providers are unclear as to whether the services they provide are covered by the directive or not. It is also necessary to have a clear dividing line between services which are covered by this directive and services of general interest, which should be dealt with in a separate framework directive. It is also essential in the interests of legal certainty to draw a clear dividing line between services covered by this directive and those which are or will be covered by sector-specific directives – such as regulated professions, which will be covered by the directive on the recognition of professional qualifications (COM(2002)0119).

a) Definition of "service"

In general terms, the distinction between services covered by the directive and services of general interest presents a major problem. In opening up the services market, it is crucial that the existing body of legislation on services of general interest, which represent the key to the European social model, be maintained. A clear and unambiguous definition of the scope of the directive is therefore absolutely essential.

The Commission has undertaken to submit by the end of 2005 a report on the feasibility and necessity of a framework law on services of general interest¹. Until there exists a clear Community framework for these services – which is in fact provided for under Article III-6 of the draft Constitution – it makes sense to exclude them from the scope of the draft directive.

There have been frequent proposals seeking to draw the necessary distinction by means of an inclusive or exclusive list of individual sectors. Your rapporteur does not regard this as feasible. Merely listing the services which currently do or do not lie within the scope of the directive is the wrong approach, and is an inappropriate instrument for dealing with an innovative sector such as services.

Unfortunately it is equally impossible to formulate a clear European definition of services of general interest. The power of definition lies with the Member States. While the Treaty recognises the value for the EU of services of general economic interest, it declines on the grounds of subsidiarity to provide a definition of such services. (Articles 16 and 86(2) ECT).

Your rapporteur therefore considers it appropriate to apply on the one hand the criteria which characterise services falling within the scope of this directive (those which are commercial, i.e. services for consideration, which meet the existing criterion of profitability); and on the other hand the criteria which define services of general interest, and thus justify exclusion from the scope of this directive. The present report seeks to define more closely the criterion

¹ Cf. Commission communication of 12 May 2004, COM(2004)374.

already mentioned by the Commission in the White Paper on services of general interest, namely the public service obligation and the public interest.¹

b) Exclusion from the scope of the directive

Health services must be excluded from the scope of this directive, since there would otherwise be a blatant contradiction with the division of competences pursuant to the subsidiarity principle as laid down in Article 152 (5) of the EEC Treaty.

Given that the draft directive overlaps with rules in the area of labour legislation, such as the Posted Workers Directive, it needs to be made clear that the directive does not affect labour law in general, including regional or national collective agreements, nor other laws applicable to employment. An amendment to this effect should be incorporated in Article 1, since the statement in recital 58 that the directive “does not aim to address issues of labour law as such” is not sufficient.

2. Consistency of the draft directive with existing and forthcoming Community legislation and with rules of international private law

Since the Services Directive in its present form proposes a horizontal approach to a large number of services of the most disparate kinds, many activities are inevitably affected by its scope, even when they are already the subject of sector-specific measures. The hearing of experts on 11 November 2004, and a number of conferences, have shown that it is far from clear what relationship exists between the proposal on the one hand and existing international and European legislation, and proposed EU legislation, on the other, including the European Posted Workers Directive, the Rome I Convention and the Rome II draft regulation, the proposal for a directive on the recognition of professional qualifications, and Directive 2004/18/EC on the award of public works contracts. (For details, see working document of 21 December 2004)

3. Introduction of the country of origin principle:

A central point of the proposed directive is the introduction of the so-called country of origin principle (Article 16), under which service providers are subject only to the national provisions of their Member State of origin. The Member State of origin is responsible for supervising service providers and the services that they provide, even if the beneficiary of the services receives them in another Member State. Exceptions to the country of origin principle are principally allowed where there are already sectoral harmonisation measures at Community level.

In this connection it should be noted that the ‘country of origin principle’, which the Commission does not question or discuss at any point in its draft explanatory note, is actually not an autonomous principle, but one of many of the Court of Justice’s judgments in the area

¹ Cf. Commission communication of 12 May 2004, COM(2004)374, Annex I: “The term «*services of general economic interest*» is used in Articles 16 and 86(2) of the Treaty. It is not defined in the Treaty or in secondary legislation. However, in Community practice there is broad agreement that the term refers to services of an economic nature which the Member States or the Community subject to specific public service obligations by virtue of a general interest criterion.”

of the internal market. It was developed for the field of free movement of goods¹ and later extended, with limitations, to particular services², once it had become clear that the Community was not making the expected progress in implementing the basic freedoms enshrined in the Treaty. There is no specific mention of the country of origin principle in the Treaties, and it is not a legal principle that supersedes the Treaties and must be observed in Community legislation. Therefore the title of Article 16 of the draft directive is also misleading.

During the European Parliament hearing, further objections were made against the widespread application of the 'country of origin' principle being generally enshrined in a directive on services; these objections are set out in detail in the working document of 21 December 2004.

¹ Initially Cassis de Dijon judgment in Case 120/78, ECR 1979, 649 (664 point 14)

² Judgments of 26.2.1991 in Case C-154/89 (Commission v. France); 9.8.1994 in Case C-43/93 (Vander Elst).