



EUROPEAN PARLIAMENT

**DIRECTORATE-GENERAL FOR EXTERNAL POLICIES OF THE UNION
DIRECTORATE B
- POLICY DEPARTMENT -**

BACKGROUND NOTE

on

THE SERVICES DIRECTIVE

Abstract:

The present note provides a summary of the Services Directive's controversial history and an outline of the current state of play as the text enters its second reading in the European Parliament.. It then presents an overview of the issues still under debate, and sets the expected timetable in relation to that of the 27th meeting of the EEA Joint Parliamentary Committee.,

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1. Background

Presented in January 2004, the proposal for a directive on Services in the Internal Market¹ purported to remove the remaining obstacles to a genuinely free movement of services within the Internal Market. Given that 70% of jobs in the EU are generated by the services sector, the need for freeing its growth potential had been emphasised by the European Council at its meetings in Lisbon 2000, Stockholm 2001 and Barcelona 2002.

The ambitious text submitted by then Internal Market Commissioner Frits Bolkestein was immediately perceived as "ultra-liberal" and provoked strong controversy in all member States. This influenced the roughly simultaneous debate on the Constitutional Treaty, and certainly affected the outcome of the referenda on the latter in France and the Netherlands during the Spring of 2005.

The ensuing lengthy discussion of the draft directive essentially centred around the 'country of origin' principle and the scope of the proposal, particularly regarding health care services, the legal professions and services of general interest. For a time, it carried the very real risk of an outright rejection of the text by Parliament, before an agreement was found with the Commission over a raft of amendments that amounted to a substantial re-writing of the proposal. Nor was the debate limited to parliamentary bodies: Mass protests throughout Europe accompanied it from the start, and culminated in a violent demonstration of some 25.000 people in front of the European Parliament in Strasbourg in February 2006, even as that institution was voting to delete or dilute the controversial provisions.

Based on the report² of MEP Evelyne Gebhardt, the political compromise was adopted as Parliament's position for first reading on 16 February 2006³. It did away with the 'country of origin' principle set out in Article 16 of the proposal, replacing it with the concept of 'free provision of services', affording the host country a larger role. With regard to the scope of the directive, originally intended to be nearly all-encompassing, the EP position clearly excluded health care and social services, as well as services of general interest and a range of specific

¹ COM (2004) 0002

² A6-0409/2005

³ P6_TC1-COD(2004)0001

sectors: financial services, transport and port services, audiovisual services, temporary work agencies, gambling, and security services. Finally, it specified that the directive would not prejudice in any way the labour and social law of the Member States.

These amendments were welcomed not only throughout the EU, but also by the EEA EFTA states, led by Norway, who had made their observations and reservations known throughout the process¹. The preservation of established labour law and practice in particular had been a major preoccupation, combined with fears about the risk of social dumping. This was addressed in the EP text, as was the concern over health service standards and services of general interest. Given particular cultural and social traditions, the exclusion of gambling services on the one hand, and of audiovisual services on the other, was also strongly supported by Norway in particular.

2. Current status

Recognising that there was little alternative to the version adopted by a large majority of Parliament², the Commission proceeded to respect this difficult compromise and stood by its commitment not to seek a reintroduction of the 'country of origin' principle. It also followed Parliament's line on most other issues, especially with regard to the directive's scope where it adopted a sector-specific approach, announcing separate legislation for health care and social services. In that sense, the amended Commission proposal³ presented on 24 March 2006 probably no longer warrants the "Bolkestein" label that some still insist on attaching to it.

Council in turn refrained from unravelling the sensitive *quid pro quo* that had been achieved in Parliament, and on 29 May reached a political agreement as a basis for a balanced Common Position that stuck close to the Parliament's line - and represents an equally fragile compromise. With the official announcement of this Common Position¹ in Plenary on 7 September, the procedure for this crucial piece of legislation for the Internal Market has now reached the stage of its second reading in the European Parliament.

¹ Cf. inter alia the Comments by the Norwegian Government of 2 February 2006

² Amended proposal adopted by 391 votes to 213, with 34 abstentions.

³ COM(2006)0160

3. Main items still under debate

In her draft recommendation for second reading¹, presented to the Internal Market Committee on 13 September, Mrs. Gebhardt acknowledges the fragility of the political compromise achieved by Council in response to the European Parliament's stance. Nevertheless, she notes that on several points, the Common Position deviates slightly from the amended Commission proposal. More generally, she feels that a proper second reading is required in the interest of clarity and legal certainty, in order to secure the support of all stakeholders in this undertaking.

The Rapporteur therefore proceeds to table eleven amendments (noting that these would need to be matched by amendments to the recitals) which she qualifies as "essentially technical". These aim at clarifying further certain aspects of the crucial issues of labour law, social services, consumer protection, administrative co-operation, and the review clause. Furthermore, she also highlights the considerable volume of "red tape" likely to be generated by the mutual evaluation procedures provided for in the Council text for Member State authorities at all levels, without however submitting any amendments to these provisions crucial to the Council compromise.

More specifically,

- an amendment to Article 1 (AM 1) seeks to ensure that the exclusion of labour law from the scope of the directive also extends to national practices governing labour issues which do not rank as laws, as is current in the Scandinavian countries;
- an amendment to Article 3 (AM 5) strives to strengthen consumer protection, by specifying that Member States remain free to uphold or introduce more stringent consumer protection measures within the framework of Community law;
- an amendment to article 39 (AM 10) strikes out a reporting clause introduced by Council, under which "the Commission shall ... provide analysis *and orientations* on the application " of some provisions - a phrase that was seen as infringing the Court of Justice's monopoly on the interpretation of Community law, as well as the shared legislative powers of Parliament and Council.

¹ 10003/2006

During the first round of debate in committee, the Rapporteur's suggestions were broadly welcomed by the left of the house, but more or less harshly criticised by speakers of the centre-right, who warned against re-opening the debate on principles. This was echoed by the Council Presidency and the Commission, whose representatives both contended that after two years of sometimes acrimonious debate, "there are no technical issues" in this matter anymore. While voicing its satisfaction over the small number of amendments, the Presidency also noted that almost every one of those submitted targeted a "no-go area" of the Council position, leaving it "no room for any manoeuvre".

4. Prospective timetable

Despite the remaining points of contention mentioned above, there appears to be a general consensus and active willingness on all sides not only to reach a conclusion at second reading, thus avoiding a conciliation procedure that would probably spell the end of the project, but to do so before the end of the year. The second reading should therefore proceed in a much calmer atmosphere than the first.

In that perspective, the Rapporteur hopes to hold a final discussion of her report and any amendments in the Committee on Internal Market and Consumer Protection on 9 or 10 October, i.e. more or less simultaneously with the EEA JPC meeting in Brussels. However, quite apart from the political sensitivity of re-opening the debate, the deadline for amendments at committee stage will already have closed by then, so any input on the issue from the JPC meeting could only be raised in plenary later.

The vote in committee on 23 October in Strasbourg, followed by a vote in Plenary in November. Provided agreement over the final version is reached beforehand and maintained throughout, adoption in Council could therefore take place during December, before the end of the Finnish Presidency.

¹ PE 376.648

