

14 June 2005

THE SECRETARY GENERAL

Dear Member of the European Parliament,

In view of the forthcoming discussions in the EP Employment and Social Affairs Committee on the proposed directive on services in the internal market, UNICE would like to express its serious concerns regarding the draft opinion on the services directive prepared by draftswoman Ms Anne Van Lancker.

European employers strongly oppose the approach taken in this draft opinion.

Services activities play a key role for economic growth and employment in Europe. Unfortunately, more than 10 years after the deadline for completion of the internal market for services and despite the fact that freedom of establishment and freedom to provide cross-border services are enshrined in the EU treaty, obstacles to these fundamental freedoms continue to restrict our economic growth and employment potential. Tackling these obstacles is key to bridge the well known delivery gap in growth and employment and to reinvigorate the European economy.

UNICE believes that the draftswoman's proposal will not achieve the objectives pursued in particular removal of obstacles to cross-border trade in services and creation of a well-functioning internal market for services and could even lead to further restrictions.

UNICE is particularly concerned about the following points:

Ms Van Lancker's draft opinion provides for a very limited application of the country of origin principle which would apply only to matters already harmonised at EU level or by the proposed directive itself.

In addition, the draftswoman suggests exclusions from the scope of the directive for a substantial number of service sectors which are not justified. Furthermore, she grants unlimited discretion to Member States to exclude services from the scope of the directive based on very wide interpretation of universal or public service obligations.

All these far-reaching exclusions and the very limited application of the country of origin principle reduce dramatically the added value of the directive. In fact, it could even bring more obstacles to the provision of services in the internal market.

Regarding the core fields of competence of the EMPL Committee, the draftsman excludes all labour law matters as well as all collective agreements from the application of the country of origin principle. This could amount to a revision of the posting of workers directive through the back door and result in absurd situations. An employer posting a worker even for very short periods, such as a few days, would have to apply all the labour law and collective agreements from the host country. This would make cross-border provision of services virtually impossible.


UNICE believes that the right approach is to ensure that the proposed directive on services is without prejudice to the matters covered by directive 96/71/EC on posting of workers. The posting of workers directive provide adequate protection for posted workers by obliging Member States to ensure that, whatever the law applicable to the employment relationship, companies posting workers in a host country guarantee to those posted workers a certain number of terms and conditions of employment laid down in the host Member State legislation which are relevant for the situations of temporary posting. Moreover, it must be clear that the host Member State is responsible for carrying 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 for taking, in accordance with Community law, measures in respect of a service provider who fails to comply with those conditions. In addition, it must be ensured that the competent authorities of the country of origin are fully cooperating with those of the host country in providing documents required by the host country.

Finally, regarding the exclusion of social insurance legislation, the right approach is to ensure that the directive is without prejudice to the matters covered by regulation 1408/71 on coordination of social security systems.

To conclude, UNICE believes that Ms Van Lancker's proposals would alter the essence of the directive to create a well-functioning internal market for services. Members of the European Parliament should not underestimate the negative consequences of such proposals and should be aware that great opportunities to contribute to Europe's economic growth and employment potential would be missed.

We hope that you will take into account our concerns on this important matter and remain at your disposal should you wish to discuss further.

Yours sincerely,


Philippe de Buck