

Addressees: Members of the Internal Market and
Consumer Protection Committee of the European
Parliament

cc: Leaders of the Political Groups;
Employment and Social Affairs Committee

7 September 2005

THE SECRETARY GENERAL

Dear Member of the European Parliament,

In view of the forthcoming vote in the EP Internal Market and Consumer Protection Committee on the proposed directive on services in the internal market, UNICE would like to reiterate its position concerning central parts of the directive and its support for the Commission's horizontal approach for creation of a genuine internal market for services in Europe.

UNICE strongly believes that the enlarged Europe needs to unleash the growth and job creation potential of the services market to be able to sustain its demanding social and labour standards and the challenges that globalisation, high unemployment and ageing population entail for our society. As recent studies have shown¹, modernisation and reinvigoration of the EU sluggish economy must have as a central pillar a market where service providers can establish and provide services freely across frontiers.

UNICE urges Members of the above Committee to make sure that the directive produces added-value for all and ensures the following so that it can 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:

On the horizontal approach of the directive: UNICE believes that the Commission's cross-service approach is the most appropriate way to ensure a well-functioning internal market in services and to guarantee two fundamental freedoms enshrined in the EC Treaty: freedom of establishment for service providers and free movement of services. Sectoral harmonisation in the field of services is unrealistic, unworkable and would most likely necessitate a lengthy timeframe.

European business also supports article 15 of the draft directive which provides for identification and evaluation of national regulations that serve as barriers to cross-border establishment and service provision; comparing existing rules with the

¹ OECD Economic Survey of the Euro Area 2005, Chapter 4 "Integrating services markets", 12 July 2005 and Copenhagen Economics Economic Assessment of the barriers to the internal market for services, January 2005.

requirements of the directive will contribute to more consistency and to modernisation of national administrations.

On the scope of the directive: UNICE favours a broad scope and considers that exclusions from the scope must be clearly justified. UNICE does not support the automatic and blanket exclusion of services or categories of services already regulated at Community level. It prefers the Commission's proposal which provides that the directive will not apply to matters relating to a service or service category already covered by existing Community legislation but it will apply to aspects which are not covered by the existing legislation (so-called gap-filling effect). The proposed directive then completes and complements the provisions of such sector legislation for the matters not covered therein. This should be made clear in the directive.

On the relationship with existing legislation: it is essential that the draft directive provides clearly what its link is with existing legislation particularly regarding private international law. In this regard, UNICE is of the view that the country-of-origin principle provides far better legal security to economic operators than instruments of Private International Law (Rome Convention on law applicable to contractual obligations, and the proposal for a Rome II Community regulation on law applicable to non-contractual matters such as unfair competition).

If Rome I and Rome II were to prevail over the draft services directive, one would have to depend on the interpretation of judges to have a clear and definite answer on the law to be applied. This may lead to different results and legal uncertainty.

On the general application of the country-of-origin principle: the Commission's proposal based on a broad application of the country-of-origin principle with some adjustments and clarification should be enough to attain the objectives pursued. UNICE believes that the internal market principle as proposed by the EPP group can be the basis for a compromise. However, for the reasons set out above, UNICE does not support exemption of Private International Law from application of this principle.

On posting of workers: UNICE is fully in favour of administrative simplification also in the areas covered by the posting of workers directive but recognises that the host country has to be aware of the presence of posted workers for directive 96/71 to be implemented in practice. This simplification should not create legal uncertainty or transfer the administrative burden to the company using the services of the employer of the posted worker.

UNICE therefore agrees that clarification of article 24 is necessary in order not to undermine the practical implementation of directive 96/71 on posted workers.

On enforcement, control and supervision: the success of the directive and its effectiveness rely to a great extent on the coexistence of a clear system of mutual assistance and division of responsibilities for control and supervision between national authorities. Cooperation between the country of origin and country of destination's authorities should be ensured and an efficient balance of responsibilities between both countries' authorities clearly determined in the directive. This should be articulated so that the control and main competence for supervision, including sanctions, resides with the authorities of the country of origin, and authorities of the host Member State are competent to establish the facts of the case and therefore to carry out some investigation activities but not to impose sanctions. It is also essential that this does not

result in an increased burden on service providers and that the Member State of destination will not be able to use its control mechanisms to restrict incoming services unnecessarily.

On information requirements and professional insurance requirements:

Amendments to the draft directive should not place additional burdens on the service provider and respect his ability, since he is best placed to know how to meet the needs and expectations of his customers. Information requirements often add to the regulatory burden of the provider without necessarily serving the recipient's need for transparency.

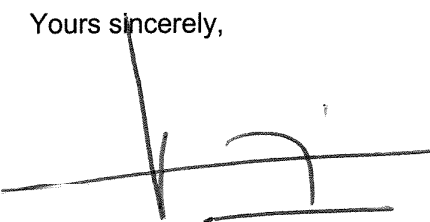
The information a recipient requires from the provider is not the same in every case. Apart from information relating to health and safety concerns, it should best be left to the market to decide what information is provided and should not be stipulated by law. Unnecessary bureaucracy will increase costs on providers and will undermine provision of services. Where existing legal and voluntary instruments are insufficient to ensure that providers supply the information foreseen in this provision and a need for further action can indeed be identified, Member States should give maximum discretion to providers as to the choice of means of information.

Also, in UNICE's view, there is no need to impose additional professional insurance requirements. In the business-to-business area, contracts generally provide for liability insurance of the provider. Otherwise, legal provisions at national level apply which provide for such insurance. In any case, any potential new insurance scheme must remain optional.

We urge you to take into account the above comments when you decide your vote so that the directive is able to benefit not only service recipients, who will have a greater choice, better information and higher quality, but also providers who will operate within a clear legal environment on a level-playing field free from unjustified discrimination and hidden protectionism.

We remain at your disposal should you wish to discuss this further.

Yours sincerely,

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Philippe de Buck