

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

16 November 2005

THE SECRETARY GENERAL

Dear Member of the European Parliament,

Further to the UNICE letter of 7 September and in view of the November vote in the Internal Market and Consumer Protection Committee on the proposed directive on services in the internal market, UNICE would like to stress the need for progress in creation of a genuine internal market for services in Europe and highlight key European business messages on the issues to be decided upon in the Committee.

In a context where the challenges of globalisation and the mediocre economic situation of the EU are of concern to our society, we strongly believe that a competitive market for services will improve prospects with more jobs and enhanced growth. UNICE therefore supports the broad thrust of the Commission's proposal.

UNICE appreciates the efforts made to bring together the positions of the various political groups in this important debate. Yet it remains preoccupied about the misconceptions that still entangle the discussions and the stance taken by the rapporteur Evelyne Gebhardt in her draft report. As already voiced in the UNICE comments of 12 July (attached here for ease of reference), Mrs Gebhardt's draft report will not help to create a well-functioning internal market for services.

In order to help you to make a fully informed decision, UNICE would like to comment on the package of six compromise amendments and some of the consolidated amendments tabled on 18 October for the November vote.

1. On the subject-matter of the directive (article 1): UNICE believes that the compromise amendment clarifies the aim of the directive.

It is important to state clearly that the draft directive is without prejudice to existing rules governing matters already covered in other Community legislation. The directive is not intended to regulate or set rules on such matters but simply sets out the legal framework within which the various national rules governing those areas must be applied in case of provision of services across frontiers.

2. On the scope of the directive (article 2): UNICE does not support the compromise amendment and does not agree with the list of exclusions. UNICE favours a broad scope covering as many service sectors as possible. Regarding the specific proposals for exclusions from the scope, UNICE has the following concerns:

- Services of general interest (SGI): UNICE would not oppose changes to the proposed directive in order to make this exclusion clearer.
- Services of general economic interest (SGEI): UNICE opposes a general exclusion of these services and believes that they should be covered by the services directive insofar as they are open to competition. In addition, the definition of these services should continue to be left to the discretion of Member States in conformity with the EC Treaty. By contrast, these services could be the object of a derogation from article 16 as indicated in point 4 below.
- Health services: UNICE would not support a general exclusion as it would be too far-reaching and not fully justified. However, UNICE could support a partial derogation from the provisions of article 16 for health services.
- Services provided by temporary employment agencies: UNICE is strongly opposed to this exclusion and believes that all the necessary safeguards are provided in the directive on posting of workers which specifies that the legislation of the host country applies to temporary agency workers sent on assignment in another Member State.
- Legal services/ Audiovisual services: UNICE would oppose a general exclusion as it is too general and unclear what services would be covered.

By contrast, UNICE would largely support the consolidated amendment on the scope of the directive presented by EPP/ALDE/UEN.

3. On the relationship with other provisions of Community law (article 3): UNICE opposes paragraph 2 of the compromise amendment which makes Private International Law, namely Rome I and Rome II on law applicable to contractual obligations and non-contractual matters, prevail over the directive.

The directive's provisions on applicable law in article 16 provides far better legal certainty than instruments of Private International Law (Rome I and Rome II) which intend to provide guidance to solve cases of conflicts of law. However, UNICE could support a derogation from article 16 for certain matters covered by Rome I (see comments in point 4 below).

4. On the principles applicable to the free provision of services (article 16): UNICE is strongly opposed to the compromise amendment which proposes systematically to apply the legislation of the country of establishment of the service provider for access to a service and the legislation of the country where the service is provided to exercise of the service. UNICE is also concerned about the sectoral harmonisation plan proposed in combination with the above system. It is unrealistic, unworkable and would most likely necessitate a lengthy and complex legislative schedule.

Such a systematic distinction between access and exercise is not workable. Furthermore, it would allow Member States to impose more restrictions on cross-border

provision of services than under the current legal situation. The amendment artificially distinguishes between access to and exercise of a service activity. A distinction of this kind has never been used in the jurisprudence of the European Court of Justice or in secondary Community instruments which consistently cite these terms together.

By contrast, UNICE strongly supports the consolidated amendment tabled by EPP/ALDE/UEN which combines application, for both access to and exercise of a service, of the legislation of the country where the service provider is established as a general rule with application of the rules of the country where the service is provided insofar as they seek to protect public policy, public order or health and the environment from particular risks at the place where the service is provided.

Regarding derogations from article 16, UNICE does not support a block exemption for Private International Law. However, UNICE could support a derogation from article 16 for labour law aspects covered by article 6 on individual employment contracts of the Rome Convention on law applicable to contractual obligations.

As far SGEI are concerned, UNICE does not agree on a general derogation from article 16 for this category of services. By contrast, UNICE could agree that only those SGEI clearly singled out in the relevant consolidated amendment by EPP/ALDE/UEN could be included in the list of derogations from article 16. In addition, they could be removed from article 15 on requirements to be evaluated by Member States as suggested in the relevant consolidated amendment by EPP/ALDE/UEN.

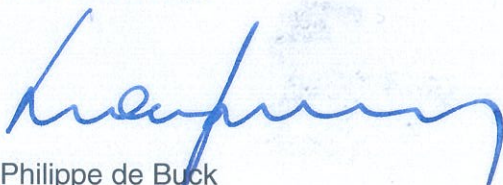
5. On Administrative Cooperation (articles 34 to 37): UNICE considers that the proposed compromise amendment is a step in the right direction insofar as it seeks to clarify the division of responsibilities for control and supervision between national authorities.

6. On Report (article 43): The compromise amendment delimits too prescriptively the content of the implementation report to be elaborated by the Commission as well as already setting out political guidelines regarding the revision of the directive and the harmonisation measures that should accompany both the report and the proposal for a revised directive. UNICE does not support the compromise amendment and prefers the consolidated amendment proposed by EPP/ALDE/UEN.

UNICE strongly encourages Members of IMCO to take active part in the decisive vote in November and to consider the above comments so as to ensure that the directive contributes to a more integrated EU and reinvigoration of Europe's economy so much needed in an increasingly challenging globalised environment.

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

Yours sincerely,



Philippe de Buck

Encl. UNICE comments of 12 July 2005 on draft report by Evelyne Gebhardt