

To: All Members of the European
Parliament

27 January 2006

Dear Member of the European Parliament,

Further to the important step for creation of the EU market for services taken by the Committee on Internal Market and Consumer Protection (IMCO) on 22 November, it is now time for the plenary of the Parliament to vote on this important proposal.

UNICE appreciates the efforts deployed by IMCO to reach agreement on several issues. A great number of the adopted compromise amendments strike a fair balance and reflect the Committee's firm pledge to provide the directive with adequate means to genuinely facilitate provision of cross-border services and freedom of establishment throughout the EU without impairing the social fabric of Member States.

However, UNICE is still concerned about additional weakening of the draft directive in the plenary vote, particularly regarding further limitations to the scope of the directive and restrictions on application of the fundamental principle of freedom to provide services.

Concerning labour law, the services directive should be without prejudice to the matters covered by directive 96/71/EC on posting of workers and the relevant aspects of the Rome Convention on law applicable to contractual obligations. In this regard, the amendments on labour law proposed by the Employment Committee raise serious concerns.

Ahead of the plenary vote, European business urges MEPs to endorse the main thrust of the compromises reached by IMCO, in particular the amendments that

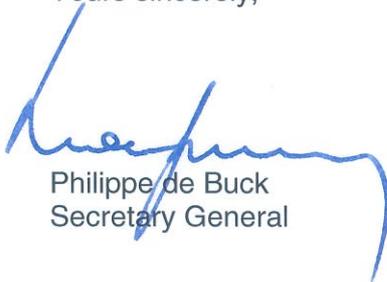
- ensure that the legislation of the **country of establishment** of the service provider remains the main pillar and that derogations are fully justified and strictly necessary (**articles 16 and 17**);
- respect the **horizontal character** of the proposal and **its broad scope (articles 1-3)**; it is important that services of general economic interest remain within the scope of the directive while services of general interest as defined by Member States are clearly excluded;

- ensure that the directive sets out a balanced and clear distribution of the **control and supervision competences** of the authorities of the country of establishment and those of the country where the service is provided. Also public cooperation between competent authorities must be strengthened (**articles 34-38**).

UNICE would also like to draw your attention to some key points which are of paramount importance for European enterprises which are developed in the note annexed to this letter.

We hope you will take into account the above-mentioned recommendations when you take your decision for the vote and remain at your disposal should you wish to discuss this further.

Yours sincerely,



Philippe de Buck
Secretary General



Ernest-Antoine Seillière
President

Encl. 1

ANNEX TO UNICE LETTER OF 27 JANUARY 2006 TO ALL THE MEMBERS OF THE EUROPEAN PARLIAMENT ON THE SERVICES DIRECTIVE

1. Subject-matter of the directive (article 1):

UNICE believes that the IMCO amendment clarifies the aim of the directive and should be supported.

It states 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. The directive could also have, by default, some relevance to national rules governing those areas.

2. Scope of the directive (article 2):

UNICE favours a broad scope covering as many service sectors as possible. Nevertheless and in order to facilitate a compromise and provided that the scope is not reduced further, UNICE could support the IMCO amendment despite the fact that it reduces the directive's scope significantly.

In particular, UNICE considers essential that services of general economic interest and temporary employment agencies remain within the scope as proposed by IMCO and is in favour of the exclusion of services of general interest.

However, UNICE also believes that the proposed total exclusion of health services goes too far and should be narrowed down so that the scope of the directive also covers private health services.

3. Principles applicable to free provision of services (article 16):

UNICE supports the amendment adopted by IMCO which offers a balanced solution and addresses the different concerns. The adopted amendment guarantees at the same time adequate legal certainty to providers and recipients as to the applicable law and allows Member States into which the service provider moves to provide a service to enforce specific requirements with regard to the exercise of a service activity that are indispensable for reasons of public policy or public security or for the protection of the health or the environment in order to prevent particular risks at the place where the service is provided.

4. Labour law and particularly administrative simplification in cases of posting of workers (articles 24 and 25):

The link of the directive with labour law and in particular with the directive on posting of workers is of particular importance.

Concerning labour law and as stated above in point 1, UNICE supports the adopted compromise amendment which provides that the directive is without prejudice to matters already regulated in other Community acts, this also includes labour law matters covered by other EU laws. 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 cross-border provision of services.

UNICE then does not support the blanket exclusion from the scope of the directive of labour law issues as suggested in an amendment by the Employment Committee on recital 6 d (new).

For the sake of legal certainty, UNICE prefers a clear reference to the specific rules concerned by this exclusion. We therefore support the directive being without prejudice to the matters covered by directive 96/71/EC on posting of workers and by regulation 1408/71 on coordination of social security systems and for labour law aspects covered by article 6 on individual employment contracts of the Rome Convention on law applicable to contractual obligations (see also point 7).

Regarding the administrative simplification in cases of posting of workers, UNICE does not support the sheer deletion of articles 24 and 25 as proposed by the Employment Committee and is of the opinion that the directive's provisions on these matters should respect the following:

- the Member State of destination must remain the responsible to carry out the checks, inspections and investigations necessary to ensure compliance with Directive 96/71/EC;
- the Member State of destination may not oblige a provider from another Member State or workers he employs in order to provide a service to have a representative established in its territory;
- the possibility for the Member State of destination to require declarations or authorisations¹ for clearly limited sensitive sectors should not be totally excluded, provided they are proportionate and not discriminatory. These sectors shall be identified by Member States and notified to the Commission.

Other elements that UNICE considers important for the forthcoming vote are:

¹ The Polish Confederation of Private Employers Lewiatan and the Confederation of Swedish Enterprise firmly believe that to allow authorisations in the case of posted workers, over and above the requirements laid down in the Posting of Workers Directive, would in effect promote barriers and greatly reduce the effects of the Directive. They therefore do not support the possibility for Member States to require authorisations.

5. Administrative simplification (article 5)

UNICE would ask for rejection of the proposed addition of “the provisions of this Chapter (Establishment) shall apply to cross-border activities only”. The practical implementation of this provision poses serious concerns. This would lead to reverse discrimination to the detriment of domestic providers.

Service providers established in a Member State who would like to establish somewhere else in the territory of that Member State would not benefit from the advantages that this chapter would bring for establishment abroad including the services that the single points of contact would provide. It would also considerably reduce pressure on Member States to streamline their administrations.

6. Authorisation schemes (article 9):

UNICE regrets that the IMCO amendment deletes the obligation for Member States to include in a report identification of and justification for their authorisation schemes which is of paramount importance for the sake of transparency and in order to avoid the use of authorisation schemes which may be discriminatory, disproportionate or too restrictive.

UNICE would ask for rejection of this amendment so that the obligation for Member States on the report envisaged in article 41 of the proposal remains.

7. Derogations from article 16 (article 17):

UNICE does not support the derogation for Private International Law as proposed by IMCO.

The directive's principles governing free provision of services in article 16 provide more legal certainty than instruments of Private International Law (Rome I and Rome II, on the applicable law for contractual and non-contractual obligations) which intend to provide guidance to solve cases of conflicts of law.

If Rome I and Rome II were to prevail over the draft directive, service providers and recipients would have, on certain cases, 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.

UNICE then prefers that, if the contracting parties have not chosen the applicable law, the principles of article 16 of the directive apply. 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 (see also point 4).

8. Professional insurance and guarantees (article 27)

The amendment adopted in IMCO would allow Member States to impose an obligation on service providers to submit prior written declarations informing the competent authorities of the host state.

UNICE does not understand the purpose of this amendment and asks for its rejection. This formality will increase the burden on the service provider and bureaucracy unnecessarily and eventually would deter provision of cross-border services.

If the aim is to provide information about professional insurance, UNICE considers that this is already addressed in article 26 as amended by IMCO which provides that providers must make available certain information, including on professional liability insurance, to the recipient, the European single point of contact and to the single points of contact in the host Member State.

9. Administrative Cooperation (ex articles 34 to 37):

UNICE believes that IMCO amendments are a step in the right direction insofar as they seek to reinforce the responsibilities of the competent authorities of the country of destination and clarify the division of powers between national authorities as well as their cooperation, which is key for the good functioning of the directive.

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