

Addressees: All Members of the
European Parliament

10 February 2006

THE SECRETARY GENERAL

Dear Member of the European Parliament,

Further to the UNICE letter of 27 January and in view of the plenary vote by the European Parliament on 16 February on the draft directive on services in the internal market, UNICE would like to express its opposition to the compromise amendments prepared between the EPP and PES ahead of the vote.

UNICE is deeply preoccupied about their consequences for cross-border provision of services in Europe. The proposed further weakening of the directive, going beyond the compromise approved by IMCO on 22 November, means virtually emptying the cross-border chapter of the directive of its added value.

In particular, UNICE strongly recommends rejection of the followings amendments:

1. Amendment 293 on **freedom to provide services (article 16.3)**: UNICE strongly opposes paragraph 3 of this amendment as this would open the door for new restrictions on services trade and will create an enormous legal uncertainty as to the law to be respected. This is unacceptable for companies and would run counter the very objective of facilitation of freedom to provide services.

UNICE supports the amendment approved by IMCO that strikes a fair balance between the need to facilitate the functioning of the Internal Market for services and the possibility for Member States to protect policy objectives when this is justified. It combines application of the legislation of the service provider's country of establishment with application of the rules of the country of destination of the service provided and insofar as they seek to protect specific objectives of public policy, public security, protection of health or the environment from particular risks at the place where the service is provided.

2. Amendment 297 on **subject-matter of the directive: labour law (article 1)**:

UNICE is against the proposed exclusion of labour law, including collective agreements and industrial action from the scope of the directive.

We agree that this directive is not intended to regulate such matters but to set out the principles of the legal framework applicable to cross-border provision of services, taking into account existing Community legislation.

We believe 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 regulation on social security systems and relevant aspects of the Rome Convention on law applicable to contractual obligations. This should be done in article 17 through a derogation for those laws from Art. 16.

3. Amendments 298 and 299 on industrial action [article 1 and recital 7d (new)]:

UNICE is concerned about the overemphasis on the right to take industrial action. The national competence to define the conditions governing the right to strike and take industrial action is not threatened by the directive. However, the exercise of this right, as for any other right, cannot be unlimited. It is also subject to the limits that the fundamental freedoms enshrined in the EC Treaty. Adopting the proposed amendment would mean giving a blessing to actions against companies aimed at preventing them from exercising their freedom to provide services guaranteed article 49 of the EC Treaty.

4. Amendments 300-303 on scope: temporary work and security services (article 2 and recitals):

UNICE does not agree with the exclusion of temporary work agencies and security services from the scope of the directive.

Temporary work agencies play an important role for a smooth functioning of our labour market, and imposition of the host country rules temporary posted workers provided by these agencies is already foreseen by the posting of workers directive.

5. Amendment 306 on scope: transport services (article 2):

UNICE does not support this broad and unclear exclusion. This would mean that all transport services regardless of whether or not they are covered by Community legislation would be out of the scope. The text of the amendment should read:

c) transport services to the extent that they are governed by the other Community instruments the legal basis of which is article 71 or Article 80 (2) of the Treaty.

ca) (new) port services, urban transports, taxis and ambulances.

6. Amendment 307 on consumer protection (recital):

UNICE does not agree with the recital proposed. It is unclear and misleading. It would imply that all national consumer legislation would be excluded from the scope of the directive and therefore from article 16.

As stated above, UNICE agrees that the services directive is not intended to regulate such matters but to set out the principles of the legal framework applicable

to cross-border provision of services taking also into account existing Community legislation.

The proposed recital would mean that Member States would be allowed at their discretion to impose any national restrictions based on consumer legislation to incoming services. This is also confirmed by amendment 5 which we firmly oppose.

This would be fatal for providers especially SMEs that would be forced to know in advance all the restrictions and obligations on consumer protection relevant to his service that a given country may impose. This would render the cross-border provision of services for those companies virtually unaffordable and would increase unnecessarily the power of Member States to impose restrictions.

UNICE strongly encourages Members of the Parliament to take active part in the decisive vote on 16 February and to deliver a text that can really remove obstacles to freedom of establishment and cross-border provision of services in Europe. Adopting a directive that allows for new restrictions could not only damage business prospects but would also weaken a fundamental freedom of European citizens: freedom to move.

We hope you can support our views and remain at your disposal should you wish to discuss this further.

Yours sincerely,



Philippe de Buck