

3 October 2006

Assessment of the second reading amendments¹ by Evelyne Gebhardt on the services directive

Amendment 1 to Recital 30 on relationship with other Community law

The amendment deletes recital 30 which clarifies the relationship between the directive and other Community instruments. This recital corresponds to article 3 as modified by the Parliament and accepted by the Commission and the Council. Clarification in this respect is necessary for legal certainty about the scope of the directive and the way possible conflicts with other Community law should be addressed. This amendment should therefore be rejected.

Amendments 2, 12 and 14 to Art. 1(6) and (7) on Labour law

This amendment modifies substantially the Council's text and increases legal uncertainty as to the hierarchy between national law and Community law and the respect by national laws of Community law. It goes beyond what has been voted in the first reading in the EP by introducing an additional reference to "rules connected to relations between social partners in the Member States". The Council's text offers more legal clarity and provides clearly that national laws and practices must respect Community law. This should be maintained.

Amendment 3 to Art. 2 par. 2, point (a) on Services of General Interest

The amendment deletes "non-economic" from the notion of service of general interest. This adds legal uncertainty. It is indisputably agreed by the three institutions that services of general interest are excluded from the scope of the Directive. The term "non-economic" was added in order to provide more legal certainty and is in line with Recital 17 which provides that the exclusion of "services of general interest" only covers services which are not of an economic nature while services of general economic interest fall within the scope of the directive although the "freedom to provide services" principle does not apply to them.

Amendments 4 and 17 to Art. 2 par. 2, point (j) on Social Services

The amendment adds further criteria for definition of social services. It does not provide the legal certainty necessary. The wording is very unclear, potentially very wide and open to divergent interpretation. The Council text is more precise and does not preclude other measures aimed at clarifying this concept.

¹ Full text of the amendments are available at:
http://www.europarl.europa.eu/comparl/imco/services_directive/default_en.htm

Amendment 5 to article 3 on Consumer Protection Law

The amendment undermines and contradicts the hard-fought compromise in article 16 found by the EP and accepted by the Council. It is likely to unravel the entire compromise.

The agreement on this matter concluded in first reading refers to the consumer protection offered by private international law (PIL) which takes precedence over the directive. The effect of this provision is that consumers will be protected by the consumer protection laws in their country which are applicable according to rules of international private law.

The amendment suggested by the rapporteur to Article 3 paragraph 3 disconnects the reference to consumer protection legislation from PIL and would imply that all national consumer legislation would take precedence over the directive and derogate from article 16. This would in practice have the same effect as additionally including “consumer protection” in Article 16(1) and (3) as a reason on which Member States might rely in order to restrict service providers from other Member States.

The proposed amendment would mean that Member States would be allowed at their discretion to impose any national restrictions based on consumer legislation to establishment of providers and provision of services. This would be fatal for providers, especially SMEs, that would be faced with the uncertainty about and eventually the need to comply with the restrictions and obligations on consumer protection relevant to their service that a given country may decide to impose.

Amendments 6-9 to Articles 28-36 on Administrative Cooperation

The proposed amendments alter the balance agreed by the Council and the compromise voted in the first reading which sets out the distribution of supervisory tasks between the Member State where the service provider is established and the Member State where the service is provided and the provisions on the freedom to provide services in Articles 16 and 17. The amendments would raise difficult legal and practical issues and may result in unnecessary burden on providers via multiplication of enforcement powers.

These provisions have been negotiated at length and agreed by the Member States which are the primarily responsible for their implementation and are best placed to ensure their well functioning. In addition, they reflect the provisions agreed in article 16 regarding the legal framework for freedom to provide services and are fully in line with the EP’s amendments on administrative cooperation voted in first reading. The link and coherence between these provisions is key to the directive and its objectives.

Amendments 10 to Art. 39.5 on Mutual Evaluation

The amendment asks for deletion of the Commission’s annual report on the application of article 16(1) and (3) of the directive. This goes against the Council’s compromise on

this article which was instrumental in allowing for an agreement by all Member States on article 16.

It was considered necessary for the sake of transparency and democratic legitimacy, to ensure that the information on national rules applicable pursuant to article 16 provided by Member States to the Commission is made public. The Commission is best placed to make this information available and is free to accompany it with some analysis or recommendations. The latter is a normal practice and does not interfere with the competences of other EU bodies, be they legislative or judicial. This annual report is of paramount importance for providers that must abide by those rules.

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