

1.2. Directive on Services in the Internal Market

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CODECISION PROCEDURE: ADOPTION AT PARLIAMENT'S SECOND READING

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The legislative procedure on the draft Directive on Services in the Internal Market proved to be one of the most controversial issues that has faced the EU institutions in recent times and gave rise to heated public debate in many Member States. It became emblematic of fundamental questions facing the European economy and the European model of society. The Commission's original proposal gave rise to numerous concerns, in particular, the issues of "*social dumping*" or the "*race to the bottom*" and the protection of consumer rights.

Although the freedom of establishment and the freedom to provide services have been enshrined in the Treaties since 1958, a number of administrative obstacles still prevented or rendered difficult the free provision of services across borders. The purpose of this Directive is thus to remove these barriers to the free movement of services provided for in the Treaty.

As regards the procedure, the Services Directive generated an unprecedented number of amendments (1602 at committee level during Parliament's first reading). In addition, the complexity of the procedure forced the Committee to innovate by creating a Working group and a 'High-Level Group' which authored the key compromise text.

The final text adopted by the Council and Parliament is a reflection of the hard-fought compromises secured by Parliament at first reading in February 2006 and the Council common position adopted in July.

The compromise adopted by Parliament in February 2006 covered the following main issues:

- Removal of the country of origin principle
- removal of the provisions specifically relating to the posting of workers. Parliament also made it clear that the labour legislation of Member States, including aspects governed by collective agreements, would not be affected in any way by the Services Directive. It was also established that, in addition to labour legislation, the directive would neither affect criminal law nor private international law or cultural diversity and media pluralism.

- extension of the list of excluded services. In addition to financial services, telecommunications and transport services, which were not covered by the initial proposal, Parliament excluded those services provided by temporary work agencies, healthcare services, audiovisual services, gambling activities, activities connected with the exercise of official authority, social services, private security services, and taxation. It was also clearly established that services of general interest such as public education, public administration and the police were to remain outside the scope of the Directive.

The agreement reached by Council in its common position clarified the following issues:

- As regards the scope, Council also excluded those services provided by notaries and bailiffs who are appointed by an official act of government.
- In connection with social services, the Council confined the exclusion to social services relating to social housing, childcare and support of families and persons in need.
- The Council deleted the reference to the Charter of Fundamental Rights of the EU in Article 1 of the directive (retained in the recitals).
- As regards the issue of administrative cooperation, Council established that the Member State of establishment is responsible for supervising service providers and their activities, even where the service is provided in another State, in cases in which its national legislation applies. The Member State in which the service is provided is responsible for supervising the service provider's activities on its territory, where its national requirements apply in accordance with Articles 16 and 17 of the Directive.
- Council included a new procedure for mutual evaluation of national requirements covered by Article 16. The Commission will provide analyses and orientations on the application of these provisions (Article 39(5)).

With a view to clarifying some concerns on Council's common position, which had arisen during the discussions in Committee, the Commission made a statement during the debate in Plenary regarding the following points: the screening of national requirements and the analyses and orientations on the application of Article 16; the need to consider further harmonisation; the impact of the directive on labour law, on criminal law and its impact on social services.

Parliament adopted at its second reading three technical amendments to the comitology provisions, with a view to aligning the services directives to the new Council decision on comitology. Both Council and Commission accepted those three technical amendments.

The final text of the Directive was signed during a public ceremony on 12 December 2006. Member States will have until 2010 to transpose this directive into national law.

