

CONTRA: UNICE

In a context dominated by a disproportionate political debate often prompted by misconceptions and the misleading new labelling of the proposal as a social directive, the Members of the European Parliament agreed to amend the services directive dramatically, reducing considerably its scope, diminishing the level of legal certainty and opening the way for red tape.

This directive is key to the Lisbon objectives and it is expected to deliver practical positive effects for growth and employment in Europe in the form of about 600.000 new jobs and an increase of 30 to 60 percent in commercial services trade in the EU.

To that end, the objective of the proposal is to achieve a genuine Internal Market in services by removing legal and administrative barriers to the development of service activities between Member States, whether they occur when service providers from one Member State wish to establish themselves in another Member State or when service providers wish to provide a service from their Member State of establishment in another Member State.

Accordingly, the Parliamentary amendments must then be examined by the Commission with utmost care. Only those amendments that provide legal certainty and truly facilitate the exercise of two fundamental freedoms (freedom of establishment and freedom to provide services) enshrined in the EC Treaty should be accepted.

UNICE is particularly concerned about the amendments that:

- Reduce the scope of the directive further

UNICE supports a broad scope and exclusions should be clearly justified and defined. UNICE is firmly opposed to the exclusion of temporary work

agencies. Temporary work agencies are well regulated and legitimate services industry playing an important role for a smooth functioning of the labour market, and should benefit from the advantages of the directive's provisions.

- Weaken administrative simplification and promote red tape

Simplification of administrative procedures and elimination of red tape are essential for facilitation of the two freedoms of establishment and provision of services. Amendments which reduce the simplification effect of the directive should not be endorsed.

- Increase legal uncertainty and risk of multiple interpretations

Legal certainty and uniform interpretation of the directive are decisive for the well-functioning of the services market. UNICE is seriously concerned about the interpretation of the new wording of article 16 which is the cornerstone article for freedom to provide services, and asks the Commission to revise it. Also, there is a need for clarification about the use of the concept of "overriding reasons of public interest" and the relationship of the directive with other areas of law such as criminal law and consumer policy.

- Deal with exclusion of labour law and industrial relations aspects

The interpretation of the amendments dealing with exclusion of labour law and industrial action raise serious concerns. They are open to misinterpretation which may go against the aims of the directive.

The services directive is not intended to regulate such matters but simply to set out the principles of the legal framework applicable to cross-border provision of services taking also into account existing Community legislation and case law.

UNICE supports the principle of neutrality of the directive vis-à-vis these matters and asks for reformulation of the relevant amendments.

Notwithstanding the highly political and emotional debate on this proposal, this directive should not be amended with the aim of addressing ideological and political questions which are outside of the scope of the directive, priority should be given to providing practical solutions to the problems entangling the services market.

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