



**COUNCIL OF  
THE EUROPEAN UNION**



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## **SERVICES IN THE INTERNAL MARKET: Council adopts its common position**

The Council, following its agreement on 29 May 2006, adopted<sup>1</sup> its common position on a draft directive on services in the internal market (*10003/06 + ADD 1*). The common position, which in substance is closely in line with the first reading opinion of the European Parliament<sup>2</sup> and the Commission's amended proposal<sup>3</sup>, will now be sent to the European Parliament for a second reading opinion under the codecision procedure.

This proposal is aimed at improving the basis for economic growth and employment in the EU, achieving a genuine internal market in services by removing legal and administrative barriers to the development of service activities, strengthening the rights of consumers as users of services and establishing legally-binding obligations for effective administrative co-operation between Member States.

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- <sup>1</sup> The Belgian and Lithuanian delegations abstained.  
<sup>2</sup> 6275/06  
<sup>3</sup> 8413/06

# **P R E S S**

The key features of the Council's common position are:

### **Scope of application and services excluded**

The Council decided to slightly modify the Commission's amended proposal in order to clarify the exact scope of application and the services which are excluded of the directive such as social services and healthcare services.

The common position also clarifies, in line with the European Parliament's opinion, that the directive does not affect Member States labour law nor the social security legislation which they apply in accordance with national law while respecting Community law. The Council also makes clearer the relationship between this directive and Member States criminal law as well as other Community legislative acts. The directive will not apply to the field of taxation.

The services covered by this directive concern a wide variety of activities, including:

- business services (management consultancy, certification and testing, advertising, recruitment services and other),
- services provided both to businesses and to consumers (among other: legal or fiscal advice; real estate services; construction; distributive trades; the organisation of trade fairs; car rental; travel agencies) and
- consumer services (in the field of tourism, including tour guides; leisure services, sports centres and amusement parks).

The text also contains a list of services to which the directive will not apply. Those are:

- non-economic services of general interest,
- financial services,
- electronic communications services and networks, and associated facilities and services,
- transport services and transport related services falling within the scope of title V of the EC Treaty, including port services,

- services provided by temporary work agencies,
- healthcare services as defined in the common position,
- audiovisual services, including cinematographic services, whatever their mode of production, distribution and transmission, and radio broadcasting,
- gambling activities which involve wagering a stake with pecuniary value in games of chance, including lotteries, gambling in casinos and betting transactions,
- activities which are connected with the exercise of official authority as set out in Article 45 of the Treaty,
- social services as defined in the common position,
- services provided by notaries and bailiffs appointed by an official act of government.

Services of general economic interest (SGEI) as such are covered by the directive. However, SGEI are excluded from provisions on freedom to provide services whereas provisions on freedom of establishment will apply to them. Member States are free to organise and finance them in conformity with Community law, in particular State Aid rules.

### **Freedom of establishment in other Member States**

Provisions on the freedom of establishment are targeted at administrative simplification in order to facilitate access to service activities. These provisions concern, among other things, points of single contact, the right to information, electronic procedures and the establishment of a framework for authorisation schemes.

In particular, the common position provides for an evaluation of certain non-discriminatory national requirements which could severely restrict or even prevent access to an activity or its exercise under the freedom of establishment. This evaluation process is limited to the compatibility of these requirements with criteria on the freedom of establishment already established by the Court of Justice. At the same time, the mutual evaluation process provided for does not affect the freedom of Member States to set in their legislation a high level of protection of public interests, in particular social policy objectives.

- **Freedom to provide services**

When the economic operator is not established in the Member State where the service is provided, its activities are covered by the free movement of services. In this context, it is recalled that the Commission's amended proposal like the European Parliament's opinion did not include the so called country-of-origin principle by which a provider may be subject only to the law of the Member State in which he/she is established.

The current text of article 16 is aimed at ensuring that recipients and providers can benefit from and supply services throughout the Community and the text clarifies to which extent requirements of the Member States where the service is provided can be imposed. The freedom to provide services does not prevent the Member State where the service is provided from imposing, in compliance with the principles of non-discrimination, necessity and proportionality, its specific requirements for reasons of public policy or public security or for the protection of public health or the environment. Nor will that Member States be prevented from applying, in conformity with Community law, its rules on employment conditions, including those laid down in collective agreements.

The Council decided to introduce a new provision to meet concerns by a large number of delegations that provides for a monitoring process allowing other Member States and economic operators to gain knowledge of national requirements imposed on service providers. Such requirements must meet the criteria of non discrimination, necessity and proportionality and be justified by reasons of public policy, public security, public health or protection of the environment.

- **Administrative cooperation**

The Council agreed on rules for Member States to cooperate. Member States will give each other mutual assistance, and must put in place measures for effective cooperation in order to ensure the supervision of providers and the services they provide.

Information requests and requests to carry out any checks, inspections and investigations must be duly motivated, in particular by specifying the reason for the request. Information exchanged will be used only in respect of the matter for which it was requested.

- **Review clause**

The Commission will within five years of the date of entry into force, and every three years thereafter, present to the European Parliament and to the Council a comprehensive report on application of this Directive. The report will address in particular the application of Article 16 on freedom to provide services. It will also consider the need for additional measures for matters excluded from the scope of the Directive and will be accompanied, where appropriate, by proposals for amendment of the Directive with a view to completing the Internal Market for services.

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