EUROPEAN COMMISSION

Internal Market DG

Deputy Director General

Brussels,
MARKT E1/MF/yb D(2004) 15147 5803

Dear Mr Whitehead,

Commissioner Bolkestein has asked me to send you some additional information on the Services Directive following his appearance at your Committee on 14 September, and further to his letter of 4 October. Accordingly, please find attached the following documents:

- a summary description of the directive

- two lists of examples (both a summary and a more detailed one) of problems which would be solved by the directive

- an updated version of "Frequently Asked Questions" (which will shortly replace the version which is currently on the DG Markt website)

As with the attachments to Mr Bolkestein's letter, we would be most grateful if your secretariat would circulate this information to the Members of your Committee and to the Chairs of the other relevant EP Committees for distribution to their respective members.

I hope that this is helpful and of course we remain at your disposal for any further information.

Yours sincerely,

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DIRECTIVE ON SERVICES IN THE INTERNAL MARKET

WHAT ACTIVITIES ARE COVERED?

- ***A wide variety of economic service activities such as***: *business services* (such as accountancy, management consultancy, advertising agencies, employment agencies); *services provided both to businesses and to consumers* (such as legal or fiscal advice, real estate services, construction, distributive trades, car rental, travel agencies, and security services); *consumer services* (such as health care services, household support services, audio-visual services, leisure services).
- ***Not covered:*** non economic services (such as national education) or services explicitly excluded (transport and financial services).

WHAT DOES THE DIRECTIVE DO?

Facilitates establishment (e.g. when a service provider wishes to establish in a MS).	**Facilitates cross border provision of services** (e.g. when a service provider established in one MS temporarily moves to another MS)	**Enhances quality of services**	**Establishes a system of administrative cooperation between MS**	**Strengthens rights of users of services**
The proposal provides for: - ***administrative simplification***; e.g. ***"single points of contact"***, at which service providers can complete administrative procedures and the possibility to complete them ***by electronic means;*** - screening of ***authorisation schemes*** which should be rendered non discriminatory, transparent, and predictable; - ***the removal of certain listed restrictions*** clearly incompatible with the freedom of establishment, which may still exist in certain MS (e.g. discrimination on the basis of nationality, or economic needs tests); - ***screening of a further set of restrictions*** in order to assess their compatibility with the freedom of establishment.	The proposal provides for: - the application of the ***country of origin principle (CoO)***, according to which a service provider who wishes to provide services into another MS will have to comply only with the law of the country in which he is established. MS may not restrict in-coming cross-border services from a provider established in another MS; - a system of ***derogations*** from this principle (e.g. for consumer contracts, professional qualifications; gambling); - specific rules concerning the ***posting of workers*** i.e. (i) a derogation from the CoO which ensures that in line with the Posting of Workers Directive working conditions of the MS where the worker is posted are respected; (ii) the removal of certain administrative requirements which are particularly burdensome for SMEs (e.g. prior declaration)	The proposal provides for : - ***targeted harmonisation*** concerning in particular information to be given to consumers, professional indemnity insurance, multidisciplinary activities, and settlement of disputes; - ***promotion of quality enhancing measures***, such as voluntary certification, quality charters; - promotion of ***codes of conduct*** to be drawn up by interested parties at Community level concerning in particular commercial communications (advertising) by the regulated professions.	The proposal provides for : - obligations of ***mutual assistance*** between national authorities, including exchange of information - ***an early warning system*** concerning rogue service providers likely to create serious risks to the health or safety of persons - ***repartition of supervisory tasks*** between MS in case of cross border activities; - enhanced cooperation in case of ***posting of workers;*** - cooperation ***between the chambers of commerce and of crafts.***	The proposal provides for: - the ***right of recipients to use services*** from other MS without discrimination by public authorities or private operators. - clarification of ***patients' rights*** to reimbursement of the cost of health care received in another MS on the basis of criteria established by the Court of Justice; - a ***mechanism to provide assistance to recipients*** who use a service provided by an operator established in another MS;

WHAT IS THE ENVISAGED TIMEFRAME FOR THE GRADUAL IMPLEMENTATION OF THE DIRECTIVE?

2004	2005	2006	2007	31 December 2008	1 January 2010
Proposal by Commission	- Adoption by EP and Council - *Screening* : launch at national level of the screening of rules and regulations (authorisation schemes and other restrictions).	Possible Commission proposals for additional harmonisation on specific issues listed in the Directive such as cash-in-transit.	- deadline for transposition except for single points of contact and electronic procedures; - *Screening*: . report to be presented by each MS of its own results; . within 6 months, observations from other MS and interested parties on the reports.	- deadline for transposition of single points of contact, and electronic procedures; - *Screening*: summary report by the Commission, if appropriate accompanied by additional initiatives.	End of transitional derogations from the principle of country of origin for certain activities such as cash-in-transit.

EU business and citizens say:	The Commission proposes:

FREEDOM OF ESTABLISHMENT

EU business and citizens say:	The Commission proposes:
"The formalities and procedures that service providers wanting to establish have to comply with are too complex and administered by too many different authorities"	Service providers should be able to obtain information and complete formalities through a single point of contact in any Member State. This should also function on-line.
"There are too many authorisation procedures and they are lengthy, opaque and unpredictable"	Authorisation regimes must be screened and where appropriate removed. Procedures must be non-discriminatory, objective and transparent and subject to criteria and deadlines known in advance.
"Some national restrictions are clearly discriminatory or disproportionate"	Some restrictions, such as discrimination based on nationality and "economic needs tests", should be prohibited.
"There are too many other restrictions on establishment"	Certain restrictions affecting establishment, such as quantitative or territorial limits, should be subject to mutual evaluation by the Commission, Member States and stakeholders, and where appropriate removed.

FREEDOM TO PROVIDE SERVICES

EU business and citizens say:	The Commission proposes:
"To provide services in another Member State on a temporary or occasional basis, we have to comply with formalities and rules there which add another layer of regulation and complexity to those in our home Member State"	The country of origin principle should ensure that service providers who operate legally in one Member State could operate temporarily or occasionally in another Member State without meeting further requirements. There are a number of derogations from this principle, e.g. to protect workers and consumers and public health and safety. There are also safeguards for use in exceptional circumstances.
"Service providers posting workers temporarily to other Member States face too many bureaucratic hurdles"	Certain burdensome administrative requirements such as prior declaration should be removed and replaced with reinforced administrative co-operation between Member States.
"Service providers employing Third Country Nationals in the EU find it difficult to post them temporarily to another Member State"	Certain administrative requirements, such as work permits, should be removed.
"Service providers are subject to duplication of requirements because Member States' administrations lack confidence in each other"	Member States must implement administrative co-operation to ensure that service providers are properly and effectively supervised across the Internal Market, while avoiding duplication of control.

EU business and citizens say:	The Commission proposes:

CONSUMER RIGHTS

"Patients experience serious problems in obtaining reimbursement for healthcare paid for in another Member State"	The conditions under which patients are entitled to reimbursement should be clarified on the basis of existing ECJ jurisprudence. Patients should not be faced with over-complex rules, or suffer from delay.
"Consumers suffer from discrimination when they travel or use services from another MS such as higher museum entry prices for non-nationals"	Rights of recipients should be clearly set out and any discrimination removed.
"Consumers lack confidence in cross-border services"	Measures to improve the quality of services should include: better information to consumers; mandatory professional liability insurance for certain service providers; encouragement of quality charters and codes of conduct which would apply across the EU.

Practical Examples of How the Services Directive Will Make a Difference: The Situation Before and After

BEFORE	AFTER	Reference
		Chapter II (Freedom of establishment for service providers)
There are many instances of service providers, in particular small-to-medium-sized enterprises ("SMEs)", reporting that they lost contracts because of long delays involved in getting the necessary authorisations or in fulfilling other administrative formalities, and that eventually they decided to give up. Such delays have occurred, in particular, where Member State authorities requested documents which did not exist in the Member State where the company came from, resulting in lengthy negotiations with no guarantee that the relevant authorities would accept equivalent documents. For example, in some Member States, service providers have had to produce specific documents such as certificates of nationality or residence (ID cards or passports not being deemed sufficient), certificates of solvency, tax compliance or general reliability in a particular format. Companies also complain about costs and delays resulting from systematic requests for certified copies or certified translations.	**Service providers will benefit** because Member States will be required to accept any document from another Member State which serves an equivalent purpose or from which it is clear that a particular requirement has been satisfied. In addition, Member State authorities will no longer be able to systematically require that a document from another Member State be produced in its original form, as a certified copy or as a certified translation.	Article 5 (Simplification of procedures)
Service providers frequently face a complex process in order to establish themselves in other Member States. One of the principal difficulties experienced is that there are numerous different authorities, sometimes operating at national, regional and local level, with different procedures, different forms etc. For example, one service provider, exasperated by the laborious process of trying to gain the necessary authorisations from a plethora of different authorities, eventually gave up, saying "I am not a hunter and collector of licences".	**Service providers will benefit** as they will be able to complete all necessary procedures and formalities required for the access to and exercise of service activities through single points of contact. Service providers will no longer have to deal with a plethora of different authorities.	Article 6 (Single points of contact)
Service providers currently face considerable difficulty and costs associated with finding out what legal and administrative formalities	**Service providers will benefit** as Member States will be required to ensure that the relevant information will be made easily accessible to	Article 7 (Right to Information)

need to be carried out, and what procedures and formalities have to be fulfilled, in order to provide services in other Member States. For example, one services trade association calculated that the direct costs of gaining the requisite advice on legal and regulatory requirements in order to establish a presence in a single EU Member State stood at between €80,000 and €160,000.	service providers and recipients via the single points of contact. Information will also be available from the single points of contact concerning the contact details of relevant public authorities and other associations or organisations providing practical assistance.	
Whilst, in the context of e-governance, there have been moves in some Member States towards allowing service providers to complete some procedures and formalities "on-line", it is still not possible for most formalities to be fulfilled by electronic means. Service providers, in particular those that are based a considerable distance away from the Member State in which they want to create a new establishment, have to spend time, and incur considerable costs, associated with having to make visits in person, sometimes several times, to the relevant authorities in order to complete necessary formalities.	By 2008, Member States will have to provide service providers with the possibility to complete all necessary formalities for the setting up a business, with the relevant authorities, on-line and at a distance. **This will simplify the procedure for service providers** and obviate the time and costs associated with repeated visits.	Article 8 (Procedures by electronic means)
In some Member States, service providers wanting to establish there complain that too many economic activities are subject to individual authorisations and licences, resulting in complications and delays before a new business can be set up. Whilst authorisation schemes can be necessary in particular areas (such as health) they may be disproportionate in relation to other activities that, in other Member States, are freely accessible, because there are no specific risks associated with them.	Member States will have to subject authorisation schemes for the creation of establishments to a screening process, in order to examine whether they are proportionate in the light of the jurisprudence of the ECJ and whether they cannot be replaced by less restrictive means such as simple notifications. This should result in **benefits for service providers** and allow easier access to markets.	Article 9 (Authorisation schemes)
Service providers also complain that competent authorities often have a high degree of discretionary authority and the criteria used in deciding whether or not to grant an authorisation are frequently unclear. This can result in lengthy, time-consuming and costly negotiations with authorities. For example, a company reported that in one Member State each application for an authorisation took six months to negotiate and cost on average in internal staff and external legal fees €65,000. Foregone profits were estimated to amount to many millions of euros, and the company had to post a permanent expansion team for the negotiation with public authorities in the Member State in question. Discretionary power also often works to the detriment of companies	**Service providers will benefit** from legal security as the criteria for the granting of an authorisation will have to be clear, transparent, objective and non-discriminatory. The outcome of applications will be predictable. Arbitrary handling by authorities and lengthy negotiations which are dissuasive for companies will be avoided.	Article 10 (Conditions for the granting of an authorisation)

from other Member States and results in hidden discrimination. Furthermore, in some Member States operators complain that competent authorities frequently make up new conditions and requirements that are not specified by law. For instance, in one Member State a limited company from another Member State where it had already been operating for many years was deemed by an authority to have insufficient share capital to carry out its business. It was then required that, before allowing the company to operate, a personal guarantee for future debts be provided from the shareholders and the shareholders' spouses. The company in question decided in the end to give up its plans to operate in the Member State in question.		
Service providers also complain about the duration of authorisation procedures, which in addition is often not predictable. Operators may have to wait many months, in some cases years, before they have obtained all of the necessary licences and permits. Another problem encountered by service providers is that it is not clear what the legal implications of silence from the authorities is. Often, it varies between different competent authorities at national local or regional level whether silence means refusal or granting of an authorisation, or whether it has no meaning at all.	**Service providers will benefit** as Member State authorities will have to reduce the length of authorisation procedures, fix reasonable deadlines which are known in advance and have to be respected. Service providers will also benefit from better legal security since the absence of a response within the period specified will be deemed as a granting of the authorisation, except where otherwise specified and justified by law.	Article 13 (Authorisation procedures)
There are a number of restrictions to the establishment of new businesses which on the basis of jurisprudence of the ECJ, are not justifiable. For example, in certain cases, Member States require service providers to meet an "economic needs test" in order to obtain permission to operate. In order to be successful, applicants must pay for detailed market studies to show that their entry onto the market will not destabilise local competition. These are burdensome, costly and leave room for discretionary, unpredictable and discriminatory decisions. One company indicated that the costs of undertaking a market study, hiring external consultants and using internal co-ordinating staff, ranged from €165,000 per test to €475,000 depending on the complexity of the tests in each Member State. The total cost the company of preparing reports for "economic needs" tests, for 22 applications across the EU, amounted to €5.9m.	Member States will be prohibited from applying "economic needs tests". **Service providers will benefit** from considerable cost savings and a higher degree of certainty when filing applications for authorisation for the setting up of a business in another Member State. **Service providers will benefit** since they will be able to use financial	Article 14 (Prohibited requirements)

Another example is that service providers such as travel agencies, real estate agencies or employment agencies who have to provide financial guarantees to obtain a licence, are frequently requested to provide the guarantee from financial institutions established in the country concerned. Contrary to the clear case law of the ECJ, financial guarantees provided by institutions in the home country of the company are not accepted, which gives rise to unnecessary complications and delays.	guarantees established by institutions in their country of primary establishment with whom they usually work which will avoid unnecessary complications.	
There are further restrictions on freedom of establishment for service providers in Member States, such as quantitative restrictions, e.g. limits on access to a service activity fixed according to population; or according to geographical distance between outlets. This may be justified in relation to some activities (such as health professions where there is a need to ensure equal supply of services throughout the national territory) but not for others where there is no such reason. In some Member States, there are fixed minimum tariffs for particular service activities. These prevent service providers operating in a cost-efficient way from using lower prices as a competitive tool to enter other Member States' markets. It may be that such restrictions are justified in certain cases such as for health services, in order to e.g. maintain the financial equilibrium of the health system, whereas for other activities it is difficult to see such a justification.	The relevant requirements will have to be screened to examine whether they are justified and proportionate in the light of the jurisprudence of the ECJ. Unnecessary restrictions will have to be removed. **Service providers will benefit** from more opportunities for investment.	Article 15 (Requirements to be evaluated)
		Chapter III (Free movement of services)
Every time service providers cross a border, they can be subject to a multiplication of national laws and requirements, which apply in addition to the requirements that they are already subject to in their Member State of establishment. This creates legal uncertainty, results in considerable legal research costs and is often dissuasive for SMEs. A notable example of this was given by an electronic hardware and services company which spent €100,000 on external legal advice to establish what were the applicable rules in only 5 Member States. As a result, providing a service temporarily in another Member State can be extremely costly and time consuming in terms of researching	The Services Directive would apply the Country of Origin principle combined with derogations (e.g. consumer contracts, protection of workers, health). For areas not covered by derogations – in particular many business-to-business activities - a service provider would be subject only to the rules and regulations of the Member State of establishment without being subject to other Member States' rules each time it crosses a border. This would considerably increase legal certainty. Simply by checking where the derogations apply, a service provider could easily find out whether and for which aspects of his activities he would have to comply with national rules. This would significantly reduce legal research and compliance costs, and	Article 16 (Country of origin principle)

the legal requirements applicable to their activities. For example, a technical engineering company estimated that it had to spend approximately 3% of its annual turnover on research into the differing legal requirements potentially applicable to their service in two other Member States where it wanted to supply services.	encourage SMEs to operate across borders.	
In addition particular problems arise for example in the following cases:	In these cases, the application of the country of origin principle **will benefit service providers** as:	Article 16(3)
Some Member States still require service providers to be established on their territory in order to provide particular types of service activities (which according to the ECJ is the very negation of the freedom to provide services).	Member States will no longer be able to restrict service providers from other Member States from providing their services by requiring them to have a permanent presence within their territory.	
Some Member States require service providers based in another Member State to obtain an authorisation in order to provide services into their territory. Service providers are frequently dissuaded by the number of legal and administrative requirements and the plethora of documents they have to produce even before services are provided, resulting in delays and complications. These are in particular dissuasive if they are only planning to provide services for a very limited period of time.	Member States will no longer be able to require service providers to make declarations or notifications to, or obtain an authorisation from, their competent authorities, including entry in a register or registration with a professional body or association in their territory (except for areas covered by derogations such as professional qualifications)	
Some Member States systematically require service providers based in another Member State to comply with all national requirements relating to the exercise of a service such as advertising and marketing restrictions.	Member States will no longer be able to oblige service providers to comply with requirements relating to the exercise of a service activity, applicable in their territory (except for areas covered by derogations).	
Consumers are sometimes subject in their own Member State to measures which prevent them from using services from other Member States or make the use of such services less attractive, thus reducing consumer choice. For example, in several Member States, consumers are entitled to claim deduction from income tax for professional or language training if it has been provided in the same Member State. However, this tax deduction is not available where such training is provided in other Member States. In other Member States, employees are entitled by	Member States will be prohibited from imposing discriminatory requirements on consumers of services which restrict their use of a service provided in another Member State. **Consumers will benefit** as, for instance, it will no longer be possible for Member States to place limits on tax deductibility, by reason of the fact that the provider of a service, for instance language or vocational training, is established in another Member State, or to impose discriminatory taxes affecting the use of cross-border services.	Article 20 (Prohibited Restrictions)

law to grants from their employers only in the case of language training in their own Member State. In other cases, discriminatory or disproportionate taxes render the use of cross-border services less attractive such as discriminatory taxes on the use of satellite dishes which prevent consumers from receiving certain broadcasting services from other Member States.		
Consumers travelling to, or receiving services in, other Member States, often find that they have no access to a service or that that access is made subject to discriminatory conditions. Areas where such barriers occur include tourism, sport and leisure activities, retail distribution, telecommunication services, professional training and health services. Cases where cross-border services are rendered more costly or less attractive occur include nationals or residents of other Member States being prevented from benefiting from preferential tariffs or promotional offers in a Member State.For instance, in some Member States, EU citizens have been charged different access fees to museums based on nationality or different fees for participation in sports events, such as marathons, based on their Member State of residence.	**Consumers will benefit** because economic operators will no longer be able to subject them to discriminatory requirements based on either nationality or place of residence without objective reasons for this, e.g. geographical distance or different legal requirements.	Article 21 (Non-discrimination)
Consumers have complained that it is often difficult for them to obtain, in the Member State where they reside, information on the requirements in other Member States relating to access to and exercise of service activities, in particular consumer protection provisions; the means of redress in the event of a dispute between a provider and a recipient; and the contact details of associations or organisations which provide practical assistance.	**Consumers will benefit** as this information will be available to them from bodies such as Euroguichets, the contact points of EEJ-Net, consumer associations or Euro Info Centres in their own country.	Article 22 (Assistance for recipients)
Consumers frequently face the problem of Member States' social security systems refusing to reimburse costs of medical treatment received in other Member States, which is reflected in numerous complaints to the Commission and cases brought before the European Court of Justice. In particular, a number of Member States have still not abolished prior authorisation schemes for the reimbursement of costs for non-hospital care, which they are required to do according to	**Consumers will benefit** as the Directive clarifies the conditions under which patients may obtain reimbursement for the cost of non-hospital medical care obtained in another Member State in cases where the cost of that care, if it had been provided in the patient's own country, would have been assumed by his/her own social security system. Member States would be required to implement well-established jurisprudence of the European Court of Justice in their national systems and abolish	Article 23 (Assumption of health care costs)

well-established jurisprudence of the ECJ. This often results in citizens either being dissuaded from receiving medical treatment in other Member States. Finally, procedures for authorisations are lengthy with requests for reimbursement dealt with arbitrarily. For example, two twins from one Member State received dental care in another Member State to receive treatment for which they would have received reimbursement had it been in their own Member State. As two different officials dealt with the two applications for reimbursement, only one of the twins was granted reimbursement.	prior authorisation schemes for reimbursement for non-hospital care. Legal insecurity, delays and complications for consumers would be removed.	
Service providers often incur high costs as a result of administrative requirements surrounding the posting of workers necessary to provide a service in other Member States. These requirements are not provided for under the Posting of Workers Directive but imposed unilaterally by some Member States, such as: the requirement to obtain prior authorisations and make declarations to the host Member State, the obligation to ship all labour documents normally held at the place of the company to the place of posting and keep them there, and the obligation to designate a permanent representative established in the host Member State. There is also a serious problem of lack of cooperation between Member State authorities. For instance, institutions in charge of certain areas of labour law in one Member State have reported that in order to find out whether a company carrying out services in its territory was genuinely established in another Member State (rather than just a "letter box" firm), they had to hire private detectives because there was no cooperation forthcoming from the Member State where the company was allegedly established.	**Service providers will benefit** from the abolition of a the requirement to obtain prior authorisations and declarations from the host Member State, the obligation to ship all labour documents normally held at the place of the company to the place of posting and keep them there, and the obligation to designate a representative established in the host Member State. This will reduce burdens and costs for companies, especially SMEs. Companies will however, at the request of authorities in the host Member State, for instance if there is an inspection at a building site, have to cooperate with those authorities and provide them with all relevant information. In addition, authorities in the Member State of establishment will have to assist the authorities in the host Member State. They will have to make sure that the operators provide requested information to authorities in the host Member State. They will also at the request of the latter have to carry out investigations to check for example whether a company is really established where it says it is or is just a letterbox firm. **The protection of workers will benefit** from a legally enforceable right of labour authorities to obtain assistance from Member States and in particular information as to whether companies allegedly established on its territory genuinely are.	Article 24 (Posting of Workers)
Companies employing and posting workers from third countries, which is common for example in the IT and high-tech sectors due to skills shortages in the EU, are facing restrictions, some of which have already been ruled out by the ECJ, such as requirements to hold work permits. These can result in long delays and considerable costs and, in many cases, in lost business opportunities. For example, an EU professional services firm seeking to post a consultant from a third	**Service providers will benefit** as, where they post workers who are third country nationals to another Member State in order to provide a service there, the Member State of posting will no longer be able to require the service provider or the worker posted to undergo burdensome administrative requirements such as work permits, without however affecting those immigration controls which are still allowed between Member States. By the same token, the Member State of	Article 25 (Posting of third country nationals)

country to work on a short term project in two EU Member States, obtaining the required work permit took almost 7 weeks for the first and 10 weeks for the second Member State. In addition, the work permit was only valid for a single entry. Furthermore, the application for the work permit for the second Member State could not be handled in the first Member State, so the consultant had to return home to complete the formalities, which in turn meant that he had to reapply for the work permit in the first Member State; As a result of this complexity the applications were withdrawn and the consultant taken off the project.	origin will be required to ensure that service providers post only workers who are resident and lawfully employed within their territory.	
		Chapter IV (Quality of Services)
Consumers often lack trust in cross-border services, arising from the fact that they are unable to make informed choices both about the service provider themselves and the quality of the service that they are providing. Whilst there are information requirements for specific activities such as e-commerce or distance selling, there are no information requirements in many other areas where the user travels to the country of the provider, which can dissuade consumers from using such services.	Service providers would have to make key information to recipients easily available (e.g. via the internet or in brochures) about themselves and their services, so that consumers are clear who they are dealing with and what services are being offered and under what conditions and prices. In this way, **consumers will benefit** from being able to make better informed decisions when using services from other Member States.	Article 26 (Information on providers and their services)
Service providers are subject to divergent requirements concerning professional indemnity insurance in different Member States. In the case of cross-border activities, it is often not clear to what extent such activities are covered. This leads to a lack of trust and confidence in cross-border services by consumers and a lack of a level playing field among service providers. Consumers also lack information about, and confidence in, the insurance held by service providers.	Under the Directive, obligations of insurance would apply for a certain number of activities throughout the EU. Insurance would have to cover cross-border activities also. **Consumers will benefit** from increased confidence about service providers, because they will know in which situations insurance is required, and will have information available about this. **Service providers will benefit** because there will be a level playing field.	Article 27 (Professional insurance and guarantees)
It is often unclear to consumers and business clients alike whether or not service providers offer an after-sales guarantee and what the conditions of such a guarantee are.	**Consumers will benefit** because service providers will be obliged to supply them, at their request, with information on the existence or otherwise of an after-sales guarantee, on its content and on the other essential information such as its period of validity and territorial cover. This information, together with a detailed description of the services provided, will be required to appear in any information document supplied by service providers.	Article 28 (After Sales Guarantees)

Some Member States have total bans on commercial communications by the regulated professions. This negatively affects cross-border service provision because it is extremely difficult for service providers from other Member States to offer services without making their services known. The lack of a level playing field is also a problem for domestic service providers.	**Service providers will benefit** from the removal of these bans, while at the same time, in the interest of recipients of services, such commercial communications must respect professional rules aiming to ensure the independence and impartiality of the profession and professional secrecy. In addition, the Directive will stimulate professional associations to draw up rules at European level which will create a level playing field across Europe and therefore **better serve the interests of service providers and consumers.**	Article 29 (Commercial Communications by the regulated professions)
It is difficult for consumers to compare the different features of service activities in other Member States because of lack of comparative information. One example of this is the lack of clarity about the system of awarding stars to hotels.	**Consumers will benefit** from the provision of improved information on the significance of labels and quality marks and the criteria for applying them. Member States will also be obliged to encourage the development of independent assessments in relation to the quality and defects of service provision, and in particular the development at EU level of comparative trials or testing, and communication of the results.	Article 31 (Policy on quality of services)
Consumers are frequently dissatisfied that complaints about a service that they have been provided are not resolved. Consumers complain that they do not know to whom to address complaints; that letters, phonecalls or e-mails are not answered and that they do not know what means of redress are available.	**Consumers will benefit** because Member States will be required to ensure that service providers supply a postal address, fax number or e-mail address to which all recipients, including those resident in another Member State, can send a complaint or a request for information on the service provided. They will also be required to take measures to ensure that service providers respond to complaints in the shortest possible time and make best efforts to find appropriate solutions.	Article 32 (Settlement of Disputes)
		Chapter V (Supervision)
Member State public authorities currently lack information about each other's ways of regulating and supervising service providers. This results in a general lack of trust and confidence in each other which hampers their ability to work together effectively. Member States are currently under no clear obligation to cooperate and to assist each other in the supervision of cross-border activities. Member State authorities also tend to turn a blind eye when service providers based in their territory cause harm in other Member States' territories.	Member State **public authorities will benefit** from enhanced trust and confidence in each other through a newly established system of administrative co-operation, information exchange and assistance. This will ensure that Member State authorities co-operate in the supervision of service providers so that **consumers or the public interests** concerned are properly and effectively protected in the case of cross-border activities. In particular, Member States, at each other's request, will have to carry out checks and investigations to verify where service providers are effectively established on the basis of a common definition of establishment provided in the Directive. This will prevent companies from creating letterbox firms in other Member States in order to circumvent the legislation of the Member State in which they are effectively operating.	Articles 34-38

06.10.2004

PROPOSED DIRECTIVE ON SERVICES IN THE INTERNAL MARKET

FREQUENTLY ASKED QUESTIONS AND ANSWERS[1]

I. OBJECTIVE AND SCOPE

II. APPROACH

III. EXPECTED BENEFITS

IV. CONTENT OF THE PROPOSED DIRECTIVE

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[1] NOTE: This list of frequently asked questions is still in the process of being updated. A new version will shortly be published on the DG Markt website.

V. FREEDOM OF ESTABLISHMENT

5.1 How would the proposed Directive help service providers to establish in other Member States?

5.2 What does the mutual evaluation process mean?

VI. FREEDOM TO PROVIDE CROSS-BORDER SERVICES

6.1 How would the proposed Directive facilitate the provision of services in other Member States?

6.2 When does the country of origin principle apply?

6.3 What does the country of origin principle mean?

6.4 What is meant by restrictions on incoming cross-border services?

6.5 What are the derogations from the country of origin principle?

6.6 Does the country of origin Principle lower the level of protection guaranteed by Member States' legislation?

VII. POSTING OF WORKERS

7.1 Why does the proposed Directive cover posting of workers?

7.2 What is new in the Services proposal compared to the existing Community rules on posting of workers?

7.3 Does the proposed Directive create a risk of social dumping?

7.4 Will the proposed Directive weaken member states' ability to supervise service providers effectively?

7.5 Will the proposed Directive weaken the protection of temporary workers?

7.6 Does the proposed Directive have any impact on income tax or social security contributions in the case of posted workers?

VIII. HEALTH SERVICES

8.1 Why and to what extent does the proposed Directive cover health services?

8.2 What do the rules on establishment mean for Member States Health Services?

8.3 Will the application of the country of origin principle undermine the protection of public health?

8.4 What are the implications of the rules on reimbursement of the cost of medical treatment obtained in another Member State?

I. OBJECTIVE AND SCOPE

1.1 WHAT IS THE OBJECTIVE OF THE PROPOSED DIRECTIVE?

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. Those barriers may occur both when service providers from one Member State wish to establish themselves in another Member State (i.e. set up a permanent presence there) or when service providers wish to provide a service from their Member State of origin into another Member State, for example by moving to the other Member State on a temporary basis. The proposed Directive would guarantee service providers more legal certainty if they want to exercise two fundamental freedoms (freedom of establishment and freedom to provide services) enshrined in the EC Treaty.

It is important to note that the removal of barriers covers only those areas which are already open to competition. The proposal does not require the liberalisation or privatisation of services which are currently provided at national, regional or local level by the public sector or public entities.

1.2 WHICH SERVICES ARE COVERED BY THE PROPOSED DIRECTIVE?

The proposed Directive **covers a wide range of different services** provided to consumers and to businesses. Examples of the services covered are: **business services** such as management consultancy, certification and testing, facilities management (including office maintenance and security), advertising, recruitment services, and the services of commercial agents; **services provided both to businesses and to consumers** including legal or fiscal advice, real estate services such as estate agencies, construction (including the services of architects), distributive trades, the organisation of trade fairs, car rental, travel agencies, and security services; and finally **consumer services** including health care services, household support services, such as help for the elderly, tourism, audio-visual services, leisure services, sports centres and amusement parks.

It covers **different types of service provision** including:

- where the provider establishes in another Member State;
- where the provider moves temporarily to the country where the customer is located;
- where the provider provides services at a distance from his country of establishment, for example over the internet, by phone, or through direct marketing
- where the provider provides services in his home Member State to a customer who has travelled from another Member State (such as hotels, theme parks or other tourist attractions, as well as health services).

The proposal **does not cover** those services, such as public administration or public education, which are of a **non-economic nature,** i.e. provided by the State in fulfilment of its public mission without any economic consideration. Furthermore, it **does not cover financial services or transport.** Finally, electronic communications networks and services are covered only insofar as they are not dealt with by the 2002 regulatory package on electronic communication services[2].

1.3 What proportion of the EU economy do the services covered represent?

The Commission estimates that the services covered account for some 50% of EU GDP and for some 60% of employment in the Union, though an exact figure is hard to determine because of the weakness of existing services statistics (e.g. many services are provided by manufacturers of goods but are not recorded as service activity).

1.4 To what extent are transport services excluded from the proposal?

All **transport services** which are within the scope of common transport policy, **including urban transport and port services, are intended to be excluded** from the scope of application of the proposed Directive. The proposal aims to cover only two transport services, namely cash-in-transit (i.e. transport of cash by security companies) and transport of deceased persons. In both cases, problems have been identified which are not specific to transport policy. In the case of the transport of deceased persons in particular, there are an increasing number of complaints from citizens who have suffered from difficulties concerning the repatriation of a deceased member of the family. These problems would be addressed within the framework of the Directive.

1.5 Does the Directive cover services of general interest?

The proposal **covers** all services that correspond to **an economic activity** within the meaning of the EU Treaty as clarified by well-established jurisprudence of the Court of Justice[3]. It **does not** cover **"non-economic" services,** such as public administration or public education, which are provided by the state or public entities in fulfilment of their duties towards their population and without any economic consideration. It does, however, cover services of general interest if they are of an **economic nature** – so-called services of general **economic** interest which, pursuant to the case law of the European Court of Justice, are services within the meaning of

2 http://europa.eu.int/information_society/topics/telecoms/regulatory/new_rf/index_en.htm

3 As the Court of Justice has consistently held with regard to Articles 49 et seq of the Treaty, the concept of service covers any economic activity normally provided for remuneration, without the service having to be paid for by those benefiting from it and regardless of the financing arrangements for the remuneration received in return, by way of consideration. Any service whereby a provider participates in the economy, irrespective of his legal status or aims, or the field of action concerned, thus constitutes a service.

the Internal Market principles provided in the EU Treaty. This includes health and social services (see point VIII on health services), and also postal services, electricity, gas or water supply (see point 1.7). The proposed Directive does not cover transport services (see point 1.4), nor does it cover electronic communications networks and services insofar as they are dealt with by the 2002 regulatory package on electronic communication services, given that there is a specific policy in these fields (see point 1.2).

1.6 DOES THE PROPOSED DIRECTIVE AFFECT THE WAY MEMBER STATES ORGANISE AND FINANCE SERVICES OF GENERAL ECONOMIC INTEREST?

The proposal **does not affect** the freedom of the Member States to define what they consider to be services of general economic interest and how to they should be organised or financed. The proposal does **not require Member States to privatise** those activities that are considered services of general economic interest, nor to open them up to competition. Nor **does the proposal require the abolition of monopolies.** It is important to note that subsidies and financial grants aimed at maintaining the quality and affordability of certain services, in particular health and social services, or grants aimed at ensuring cultural and social diversity or media pluralism are dealt with under the EU state aids rules, which are outside the scope of application of the proposed Directive. Accordingly, the proposed Directive is without prejudice to any Community initiative concerning the application of state aid rules to certain services.

It is also important to note that for those services of general economic interest which are covered by the proposed Services Directive, the proposal **does not prejudge** the work on or the outcome of **specific Community initiatives**, in particular the follow-up to the White Paper, which may result in new initiatives relating to services of general interest.

1.7 HOW DOES THE PROPOSED DIRECTIVE COVER POSTAL SERVICES, ELECTRICITY, GAS AND WATER SUPPLY?

With respect to **gas and electricity supply** and those **postal services which have been opened up to competition** (such as express delivery), the proposed Directive would facilitate the establishment of operators from other Member States. By contrast, for services of general economic interest which **are not open to competition** in some Member States – for example, **water supply or basic postal services** – the Directive **does not require Member States to open them** up to competition.

Furthermore, even for those services which are open to competition, the proposed Directive would not result in further deregulation. It does not affect Member States' ability to maintain appropriate regulations concerning the quality, availability and performance of such services and ensuring consumer and user rights. In particular, it does not apply the country of origin principle in these sectors. Member States would, for example, be able to continue to impose price regulation or obligations in relation to security of supply on all suppliers of gas, electricity or water on their territory.

II. APPROACH

2.1 WHAT IS NEW ABOUT THE APPROACH THE COMMISSION HAS TAKEN IN THIS PROPOSAL?

There are **seven factors** which distinguish the approach taken in the proposal.

First, it takes a **comprehensive approach**, with a set of general provisions applying to a large variety of services, rather than proceeding with detailed sector specific harmonisation. Such sector-specific harmonisation would require a whole series of new proposals which would be very difficult and lengthy to negotiate and could possibly also lead to burdens for service providers in terms of new regulatory compliance costs.

Second, it would give service businesses the **large-scale administrative simplification** they asked for in responding to the wide consultation that the Commission undertook prior to making this proposal. The consultation demonstrated that administrative complexity and duplication was dissuading many service providers, especially SMEs, from launching cross-border operations.

Third, the proposed Directive would for the first time require Member States to undertake a systematic screening and adaptation of their legal and administrative framework with a view to removing all obstacles to cross-border activities which have already been outlawed by the European Court of Justice. It would oblige the Member States to fully enforce the Court's case law and enshrine it in their own law. It would thus abolish a number of discriminatory or disproportionate restrictions, instead of the Commission pursuing a case-by-case approach and launching a whole raft of infringement procedures which would not provide for the same legal security for operators.

Fourth, it relies on a **"co-operative and consultative" process** involving Member States, Commission and stakeholders to remove further restrictions, as appropriate. Rather than laying down prescriptive and detailed rules at EU level, the proposal requires each Member State to screen within a fixed period of time its authorisation schemes and number of specific restrictions listed in the proposal such as quantitative and territorial restrictions. The results of this screening would be presented in reports that would be made public and examined by the other Member States, the Commission and would form the basis for consultation with stakeholders. This approach would spread best practice and experience of better regulation among Member States and should result in a modern flexible and investment-friendly regulatory framework throughout Europe while at the same time maintaining a high level of protection of public policy objectives.

Fifth, the proposed Directive would kick off a large scale **information exchange** between all parties. Businesses would have access to clearer and simpler information from single points of contact which would reduce legal search costs. Service users and consumers would have better information about the services that they can benefit from in other Member States and about the terms and conditions applying to such services.

Sixth, the proposed Directive would increase mutual trust and confidence and create a **partnership between Member States** through an obligation to co-operate with each other. The proposal would set down the respective roles of Member State of

origin and host Member State in supervising cross-border service activities. This would avoid a duplication of controls on service providers each time they cross a border, while at the same time increasing the level of protection of consumers and workers.

Finally, the proposal sets out clearly for the first time **the Internal Market rights of recipients of services**. In particular, relying on existing case law, the proposal aims to remove all the hidden discrimination and restrictions that many EU citizens face, for instance when they travel as consumers, tourists or patients to other Member States to use services there. Recipients would also benefit from assistance in case of complaints.

2.2 WHY DOES THE PROPOSAL DEAL WITH SUCH A BROAD RANGE OF SERVICES THROUGH ONE INSTRUMENT?

This is because many of the barriers, that the Commission has identified in its report on the State of the Internal Market for Services[4], are common to various service activities and can be addressed in a horizontal way. Moreover, a sector-specific approach would mean that the Commission would need to propose, and the EP and the Council adopt, a whole series of sectoral Directives, which would be much too burdensome and time-consuming to negotiate and implement and too late for the services sector to fulfil its potential as a motor for growth and competitiveness within the Lisbon timetable. Such a "horizontal" approach furthermore avoids inconsistencies between separate regulatory initiatives and is also less likely than a sectoral approach to give rise to unnecessarily detailed and prescriptive rules.

2.3 WHAT WOULD THE PROPOSED DIRECTIVE ACHIEVE THAT COULD NOT BE ACHIEVED BY DIRECT APPLICATION OF THE TREATY AND INFRINGEMENT PROCEDURES?

This proposal aims to guarantee in practice the freedom of establishment and freedom to provide services across borders which the EC Treaty already guarantees in theory. Although the Treaty can be enforced by means of infringement proceedings launched by the Commission on a case by case basis, the range and scale of the problems identified cannot be addressed by infringements alone.

First, infringements pinpoint very specific cases of misapplication of EU law and therefore cannot be used to tackle barriers in a systematic way. For example, a Member State might comply with a Court judgement, but it does not normally screen the rest of its legislation to see if a similar barrier exists in other fields. Moreover, other Member States not directly concerned by a judgement tend not to take any action as a result of judgements given against one Member State.

Second, infringement proceedings are slow, costly and resource-intensive. A solution or, if it proves necessary, a Court judgement, might not be reached for several years.

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4 Report on the State of the Internal Market for services, July 2002. The full text of the Commission's report is available at: http://www.europa.eu.int/comm/internal_market/en/services/services/index.htm

However, while infringement procedures are not alone sufficient to meet the strategic objective of creating a well-functioning Internal Market for services, they are an essential part of the Commission's role as guardian of the Treaties, and will still be necessary in particular cases in order to ensure that the Internal Market rights of citizens and business are respected.

III. EXPECTED BENEFITS

3.1 WHAT ARE THE EXPECTED BENEFITS TO THE EU ECONOMY?

The aim of the proposed Directive is to improve **economic growth and employment** in the EU. As services are the bulk of the EU economy, competitive services markets are essential for growth. At present, a large range of Internal Market barriers (listed in the Commission's report on the State of the Internal Market for Services[5]) prevent many service companies, especially SMEs, from growing across national borders and fully benefiting from the Internal Market. This also undermines the global competitiveness not only of EU service providers, but also of the manufacturing sector which increasingly relies on high quality services[6].

Analysis of the effects of Internal Market programmes indicate that **EU GDP in 2002** was **1.8 percentage points, or €164.5 billion, higher** thanks to a better functioning Internal Market, and that about **2.5 million jobs** which had been created in the EU since 1992 were the result of the opening up of frontiers between Member States. However, the majority of the benefits have been achieved as a result of the free movement of goods and opening up the network industries – such as energy and telecommunications – to competition. The creation of a well-functioning Internal Market for a broad range of different services could result in gains on an equivalent scale. This is backed up by work in the OECD which suggests that reforming the regulation of services markets can bring significant economic benefits[7]. The Netherlands Bureau for Economic Policy Analysis, which has made its own assessment of the potential impact of the Directive, estimates that it could lead to an increase for both commercial service trade and the stock of foreign direct investment of about 15% to 35%[8].

3.2 WHAT ARE THE EXPECTED BENEFITS FOR EUROPEAN CITIZENS?

The economic growth and employment that the proposed Directive will help create will increase prosperity for everyone. In addition, the proposed Directive would give citizens access to a **wider range of services**. At the moment there is plenty of consumer demand for cross-border services, but there are considerable legal and administrative difficulties when service providers attempt to supply them.

The proposal implements the principle of **non-discrimination:** it would not be possible to refuse to provide a service to consumers or to apply less favourable conditions just because they were from another Member State. This would for example prevent EU citizens being charged different access fees to museums based

5 Report on the State of the Internal Market for services, July 2002. The full text of the Commission's report is available at: http://www.europa.eu.int/comm/internal_market/en/services/services/index.htm

6 For further detail on the economic implications of Internal Market barriers, see the Extended Impact Assessment accompanying the proposal for a Services Directive: Commission Staff Working Paper, SEC(2004) 21, Brussels 13.1.2004.

7 See section 7 of the Extended Impact Assessment op cit.

8 http://www.cpb.nl/eng/news/2004_39.html

on nationality or different fees for participation in sports events, such as marathons, based on their Member State of residence.

The proposal would also guarantee to European citizens more efficient and effective supervision of service providers throughout the EU and help protect them against rogue traders. The proposal would require Member State authorities to supervise their service providers' activities even when supplying customers in other Member States. This supervision would be carried out through a system of co-operation and mutual assistance between Member State authorities which would be established by the Directive and which would also facilitate the resolution of disputes.

The proposal includes a range of measures designed to **reinforce consumer confidence** in using services across borders by providing **better information**. Consumers would have the right to obtain information on legal obligations which service providers must comply with and on how to obtain redress in the event of a dispute. Service providers would have to make information about themselves and their services easily available (e.g. via the internet), so that consumers are clear who they are dealing with and what services are being offered and under what terms and conditions. In this way, recipients of services could make better informed decisions when using services from other Member States.

For services giving rise to particular risks to the health, safety or financial well-being of consumers, service providers would be obliged to hold appropriate **professional indemnity insurance** and to provide their customers with all relevant information concerning the insurance.

Under the proposal, service providers would be encouraged to take action to promote the **quality of services**, for example by setting up independent certification, quality charters and codes of conduct at European level.

Finally, EU citizens would benefit directly from provisions of the Directive clarifying their right to receive **reimbursement for cost of healthcare received in another Member State** (see also point VIII). The Commission has received a large number of complaints from citizens on this issue and a number of cases have been brought before the European Court of Justice. The Directive clarifies the conditions under which EU citizens may obtain reimbursement on the basis of the existing case law of the European Court of Justice. However, the proposal fully respects and does not affect Member States' responsibility for the organisation of their own health care systems.

IV. CONTENT OF THE PROPOSED DIRECTIVE

4.1 WHAT ARE THE MAIN FEATURES OF THE PROPOSED DIRECTIVE?

Simplification of administrative procedures, including an obligation on Member States to ensure that a service provider seeking to set up a business gets easy access to information on all relevant legal and administrative requirements and can complete formalities and procedures through single points of contact instead of having to deal with a variety of different authorities. The proposal also requires Member States to ensure that by 2008 service providers have the option of completing all necessary administrative formalities for setting up a business on-line. (Articles 5-8).

Modernisation of authorisation and licensing regimes for service providers wanting to establish a new business. Member States will have to examine whether authorisation and licensing schemes can be replaced by simpler measures such as notifications. If it is essential to maintain some authorisation schemes, they must respect principles such as non-discrimination, objectivity and transparency. In addition, authorisation procedures will have to be streamlined, criteria for obtaining an authorisation will have to be known in advance and deadlines for replies will have to be made public and respected. (Articles 9-13).

Prohibition of a set of listed requirements restricting establishment, such as discrimination on the basis of the nationality or place of residence of shareholders and managerial personnel, or prohibitions on having establishments in several Member States. Similar restrictions have already been found by the European Court of Justice to be unacceptable (Article 14).

Evaluation of a further set of listed requirements such as quantitative restrictions, or mandatory minimum or maximum prices. For these, the proposal foresees a process of evaluation by Member States and the Commission and consultation with stakeholders with a view to examining, according to criteria developed by the ECJ, in which areas such restrictions are justified and where they should be removed. (Article 15).

Application of the country of origin principle. For services provided without an establishment in another Member State, the proposed Directive applies the country of origin principle, albeit with a number of derogations. This means that service providers should in principle be able to provide their service into another Member State on the basis of compliance with administrative and legal requirements in the country where they are established. They would not be made subject to additional requirements such as authorisations or declarations each time they crossed a border. However, there are a significant number of derogations from the country of origin principle, for example to protect public health (through a number of derogations) or consumers (through a derogation for consumer contracts), or to protect workers (through a derogation for the Posting of Workers Directive). In these cases, a service provider would have to comply with the rules and regulations in the country where the service is provided. There are also safeguards (or case-by-case derogations) for use in exceptional circumstances (Articles 16-19).

Strengthening of rights of recipients of services, for instance by enshrining the right of non-discrimination (Articles 20, 21), which would, for example, prevent EU citizens being charged different entry fees to museums on the basis of their nationality. In line with well-established case law of the European Court of Justice, the right of patients to **reimbursement of costs of healthcare** obtained in another Member State is clarified in the proposed Directive in order to provide better legal certainty both for patients and Member States' social security systems (Article 23).

Facilitation of posting of workers through the removal of certain disproportionate administrative requirements. At the same time, the proposal seeks to strengthen the protection of workers through mandatory administrative co-operation aiming to ensure a better application of the Posting of Workers Directive (Article 24). That Directive stipulates, among other things, that minimum wage rates and health and safety regulations in the host country must be respected, thus preventing "social dumping".

Equally, the posting between Member States, in the context of the provision of a service, of **third country nationals** already legally resident and employed by a European company in the EU would be facilitated in administrative terms (Article 25).

Harmonisation of certain requirements relating to the protection of consumers. These include obligations to provide better information to consumers; mandatory professional liability insurance for service providers providing services which create particular risks for the health, safety or financial security of consumers; replacement of total bans on commercial communications (e.g. advertising) for the professions by obligations to comply with professional rules ensuring the independence and integrity of the professions; for multi-disciplinary practices, rules guaranteeing the independence and impartiality of professional practitioners (Articles 26-30).

Encouragement of voluntary quality-enhancing measures. Rather than laying down very detailed and prescriptive rules, the proposed Directive encourages the development of measures aimed at improving the quality of services, both in the interest of consumers and in order to increase the competitiveness of European services. In particular, the proposed Directive recognises the role of deontological rules of the regulated professions, which could be developed at European level by relevant professional bodies. (Articles 31, 39)

Establishment of administrative co-operation aimed at enhancing trust and confidence between Member States. This co-operation will improve efficiency of supervision in case of cross-border activities and ensure that the public interest and citizens are properly and effectively protected while at the same time avoiding duplication of controls on service providers. (Articles 34-38).

4.2 WHAT IS THE DIVIDING LINE BETWEEN PROVIDING SERVICES TEMPORARILY IN A MEMBER STATE AND ESTABLISHING A PLACE OF BUSINESS TO DO SO PERMANENTLY?

Where an operator moves to another Member State to provide services there, a distinction must be made between situations covered by the freedom of establishment and those covered by the free movement of services.

According to the definition provided in the proposed Directive, **establishment** in another Member State means the creation of any fixed infrastructure such as a permanent office or permanent premises (e.g. a medical practice, a laboratory, a hospital, an agency, or the office of a consulting or engineering firm) through which the economic activity is actually pursued (Article 4.5). It is irrelevant **where the registered office or the headquarters of the company are.** It is also irrelevant whether the service is the owner of this infrastructure, the tenant or just the user. For any service provided via a fixed infrastructure and operated permanently by the provider in a Member State, the service provider is subject to all the rules and regulations of that Member State.

On the other hand, free movement of services concerns cases where a service provider established in a Member State moves temporarily into another Member State without having any fixed and permanent infrastructure there for the provision of his service. This includes cases where a service provider does not dispose of any infrastructure in another Member State and operates entirely from his home base, but also where a temporary infrastructure is created for the duration of a particular service. Whether service provision is temporary has to be determined not only on the basis of the duration of the service but also according to its regularity, periodicity and continuity in conformity with well-established case law of the European Court Justice.

4.3 What is the relationship between the proposed Directive and existing EU legislation?

The proposed Directive is complementary to other EU instruments. Generally, where a service activity is already covered by existing or future Community instruments, the proposed Directive will apply in addition to their specific provisions. In cases where there are questions of compatibility between the services proposal and other EU instruments, the proposal provides for derogations or appropriate clauses describing the relationship between the proposed Directive and other relevant EU instruments in order to ensure consistency and legal certainty.

4.4 What is the relationship between the proposed Directive on services and the proposed Directive on the recognition of professional qualifications?

The proposed Services Directive will not affect the proposed Directive on the recognition of professional qualifications. The Services proposal complements the proposed Directive on the recognition of professional qualifications, given that it deals with questions other than those dealt with by this Directive such as professional indemnity insurance, commercial communications and multidisciplinary activities.

For example, if a service provider who is carrying out a regulated profession wants to establish himself in another Member State, he needs to get his qualifications recognised. The process of mutual recognition of qualifications is already harmonised at EU level. The Services proposal does not affect this. However, for other questions not dealt with in the Directive on professional qualifications, e.g. the possibility to fulfil all formalities by electronic means, the Services proposal would apply.

Similarly, concerning temporary cross-border service provision, none of the measures applicable in the Member State of destination under the Directive on professional qualifications will be affected by the country of origin principle in the Services Directive. This is by virtue of the derogation from the country of origin principle in Art. 17 (8)[9]. However, if the Member State of destination imposes further requirements not linked to qualifications, such as advertising restrictions (and therefore, again, outside the scope of the proposal on professional qualifications), the free movement of services provisions of the Services proposal would apply.

9 Following the political agreement on the proposal on professional qualifications, and in the light of the European Parliament's second reading of it, it will be necessary to amend Art. 17.8 to make the derogation cover all provisions relating to the freedom to provide services.

V. FREEDOM OF ESTABLISHMENT

5.1 How would the proposed Directive help service providers to establish in other Member States?

The proposed Directive would commit Member States to reduce red tape by **simplifying administrative procedures** and formalities. Member States would need to set up electronic procedures and make available to service providers **single points of contact** dealing with authorisations and other formalities. **Authorisation procedures** would be screened and, where unjustified, removed; remaining authorisation schemes would be made more transparent and predictable by basing them exclusively on objective criteria known in advance. The proposed Directive would also require Member States' authorities not to ask for an excessive **number of documents** and require those authorities to respond as quickly as possible to applications and enquiries

Member States would also have to abolish a number of restrictions on establishment, such as nationality requirements or "economic needs tests"[10]. A different list of restrictions, such as requirements limiting the number of outlets per head of population or fixed tariffs, would undergo a **transparent process of mutual evaluation.** The first step of this process would involve the production of country reports by Member States; the second step, at EU level would involve peer review on the basis of these reports and consultation with stakeholders. This should spread best practice of better regulation among Member States and is intended to result in a modernisation of the regulatory framework throughout Europe while at the same time safeguarding the protection of public policy objectives.

5.2 What does the mutual evaluation process mean?

The proposed Directive provides for a mutual evaluation process between member States, Commission and interested parties. This is intended to result in modernisation and reform of the regulatory schemes governing services and to identify any need for additional action at Community level.

The evaluation concerns authorisation schemes (Art. 9.1), specific requirements such as quantitative or territorial restrictions restricting the establishment of operators (Art. 15) and requirements restricting multidisciplinary activities (Art. 30).

This procedure consists of several phases:

– during the transposition period, Member States will first have to conduct a "screening" of their legislation in order to ascertain whether above mentioned requirements exist in their legal systems. Second, they will have to evaluate these requirements in the light of the conditions resulting from case law of the European Court of Justice and specified in the proposal and eliminate or modify them if these conditions are not met.

10 The requirement to pass an "economic needs test" means that new businesses can only enter markets if, in the opinion of the regulator, there is demand unsatisfied by existing operators.

– at the latest by the end of the transposition period, Member States must draw up a report on the results of their screening (Art. 9.2, 15.4 and 30.4). Each report will be submitted to all other Member States and interested parties. Member States will then have six months in which to submit their observations on these reports. During the same period the Commission will consult interested parties. This "peer review" procedure will enable exchange of best practice how to modernise regulation of services.

– at the latest by 31 December 2008, the Commission will draw up a summary report, accompanied where appropriate by proposals for further initiatives.

The mutual evaluation process is not a general evaluation of regulations or the way certain activities are organised in Member States. It is limited to an examination of whether the criteria established by the European Court of Justice are met according to which requirements must be non-discriminatory, justified by a general interest objective, suitable for the objective pursued and proportionate (i.e. not going beyond what is necessary to attain that objective). The evaluation process therefore does not prevent Member States from setting public policy objectives with the aim of ensuring a high level of protection, for instance of public health, consumers or workers.

The mutual evaluation process provides for a co-operative and flexible approach. It fully involves Member States, who will have the opportunity to analyse their legislation and bring it in conformity with EU law, as well as consultation of stakeholders. Instead of imposing a one-size-fits-all approach at EU level, it recognises that certain restrictions can be justifiable for certain sectors, but not for others. It will help spread information about regulatory experience and best practice among Member States.

VI. FREEDOM TO PROVIDE CROSS-BORDER SERVICES

6.1 How would the proposed Directive facilitate the provision of services in other Member States?

For operators providing cross-border services into another Member State without establishing there permanently, the proposed Directive would apply the **country of origin principle,** according to which they would be required to respect only the rules and regulations of their country of establishment without being subject to other Member States' rules each time they crossed a border. This principle is subject to a number of important derogations listed in the proposed Directive.

In order to underpin the country of origin principle and to enhance trust and confidence in cross-border services, the proposed Directive would provide for some **key, harmonised, EU-wide quality requirements** covering professional indemnity insurance for service providers, the information they must provide to regulators and customers and commercial communications by regulated professions.

The proposal also provides for **administrative cooperation between Member States,** removing the current duplicative requirements and controls and ensuring that national authorities work directly together (i.e. sharing of information and mutual assistance).

6.2 When does the country of origin principle apply?

It is important to note that the **country of origin principle applies only in the case of cross-border provision of services without establishment** in the Member State of destination of the service; for example, a management consultant who travels to another Member State in order to advise a client and then returns home.

For services provided via an establishment in another Member State, the country of origin principle **does not apply** and they have to comply with all the relevant rules and regulations in that Member State. **Establishment** in another Member State means the creation of any fixed infrastructure such as a permanent office or permanent premises e.g. a medical practice, a laboratory, a hospital, an agency, the office of a consulting or engineering firm) through which the economic activity is pursued (Art. 4(5)). It is irrelevant **where the registered office or the headquarters of the company are.** It is also irrelevant whether the service is the owner of this infrastructure, the tenant or just the user. For any service provided via a fixed infrastructure and operated permanently by the provider in a Member State, the service provider is entirely subject to the rules and regulations of that Member State.

The country of origin principle applies only to services which are provided into another Member State without using any fixed and permanent infrastructure there for the provision of his service. This includes cases where a service provider does not dispose of any infrastructure in another Member State and operates entirely from his home base, but also where a temporary infrastructure is created for the duration of a particular service. Whether service provision is temporary has to be determined not only on the basis of the duration of the service but also according to its regularity, periodicity and continuity.

6.3 WHAT DOES THE COUNTRY OF ORIGIN PRINCIPLE MEAN?

The country of origin principle means that when a service provider wants to provide his services into another Member State without a permanent presence there, he has, in principle, to comply only with the administrative and legal requirements of his country of establishment. This means that Member States may not restrict incoming cross-border services from a provider established in another Member States by applying its own administrative and legal regime in addition to the requirements the service provider is already subject to in his Member State of establishment. For example, if a service provider has an authorisation in his Member State of establishment, he does not need to have a new authorisation in another Member State. However, this principle is **subject to a limited number of important derogations** in the proposed Directive (see below).

In the case of cross-border service provision, i.e. service provision in a Member State without a permanent presence there, the country of origin principle, when it applies, will ensure legal certainty for business, in particular SMEs. This is because it ensures that service providers will not have to search for and comply with different rules and regulations, in addition to those of their own Member State, each time they cross a border.

6.4 WHAT IS MEANT BY RESTRICTIONS ON INCOMING CROSS-BORDER SERVICES?

In areas where the country of origin principle applies, it is also necessary to ensure that Member States do not restrict incoming cross-border services from a provider established in another Member States by applying legal and administrative requirements which are divergent from, or add to, those already complied with in the Member State of establishment.

The concept of a 'restriction' includes any measure which is liable to prohibit, impede, render more costly or onerous or otherwise render less advantageous service provision between Member States. Restrictions may result from discriminatory measures, where the service provider faces restrictions on the grounds of nationality or residence but also from non-discriminatory measures, which national authorities apply to their own service providers as well as to those from other Member States.

They may include, for example, administrative formalities such as requirements to register or make declarations or the need to provide certain documents before companies can provide services or "post" workers. In other cases, restrictions arise because "host" Member States require companies to fulfil requirements - such as for deposits and guarantees, professional insurance or quality controls - which they have already fulfilled in their Member State of origin. In many cases restrictions result just from the application of national rules which are divergent from those in the Member State where the service provider is established which means that companies have to alter their marketing technique, their contracts or their way of providing a service each time they cross a border which results in complications, delays and compliance costs.

6.5 WHAT ARE THE DEROGATIONS FROM THE COUNTRY OF ORIGIN PRINCIPLE?

The country of origin principle is subject to a number of important derogations. Some derogations are necessary in order to take into account a different approach in certain existing Community instruments according to which the service provider is subject to the law of the country of destination of the service. Other derogations cover services of particular sensitivity because of the need to protect consumers, public health or public security and where the current divergence of Member States' legislation does not allow the application of the country of origin principle.

Derogations concern in particular:

- **the posting of workers Directive** (96/71/EC). This means that all matters covered by the posting of workers Directive (minimum wages, working time and minimum rest periods, minimum paid leave, protection of temporary workers, health, hygiene and safety standards, protection of young people and pregnant women, equality of treatment between men and women and other provisions on non-discrimination including with respect to disabled people) are excluded from the application of the country of origin principle. This concerns not only those working conditions stipulated in law but also those laid down by collective agreements. As a result the minimum working conditions applicable in the country where the worker is posted would have to be respected and that compliance with those conditions will be controlled by the authorities in the country where the worker is posted (Art. 17(5)). (See point VII).

- those provisions of the proposed Directive on **professional qualifications** which deal with the freedom to provide services, subject to the outcome of the second reading in the European Parliament and the Council on this proposal. This means that where a professional practitioner temporarily provides his service, Member States may require prior declarations and pro forma registration with professional bodies on its territory. With respect to health professions, Member States will also be entitled to check the professional qualifications (to the extent that they are not already harmonised at Community level) just as they would on their own health professionals. (Art. 17(8))

- **postal services, electricity, gas and water supply** (Art. 17(1)-(4)). This means that Member States can impose national rules and regulations concerning the quality, accessibility or affordability of the service including price regulations even in case of services provided by a company established in another Member State.

- **specific requirements** applicable in the Member States where the service is provided, which are inextricably linked to the particular characteristics of the place where the service is provided and which are necessary in order to maintain **public policy, public safety, public health or the protection of environment**. Such requirements, which would have to be respected by service providers from other Member States, would for example relate to the organisation of public events or the safety of buildings (Art. 17(17)).

- services which are subject to a **general prohibition** in Member States, relating to public policy, public security or public health. This means that for example Member States could prevent the provision of certain medical treatments by providers

established in another Member State where such services were allowed. (Art. 17(16))

- **consumer contracts.** This means that, pending complete harmonisation of rules on consumer contracts, Member States may require national rules to be respected by operators from other Member States. (Art. 17(21))

In addition, derogations from the country of origin principle can be applied in individual cases against individual service providers creating a particular risk. Member States may take measures relating to, for example, the safety of services, including aspects related to public health, or the exercise of a health profession on a case-by-case basis against a provider established in another Member State. Such measures are subject to a Community procedure involving notification to the Member State of establishment of the service provider and the Commission, as well as the application of a proportionality test (Art. 19).

6.6 Does the country of origin Principle lower the level of protection guaranteed by Member States' legislation?

The proposed Directive **takes a well-balanced approach.** First, the Services proposal builds on existing EU law including consumer protection rules such as the misleading advertising directive or the proposed unfair commercial practices directive and the proposed sales promotions regulation. Second, it does not propose the country of origin principle in isolation, but combines it with different types of derogations, harmonisation and administrative co-operation between Member States.

Derogations from the country of origin principle cover particularly sensitive areas and concern, for example, the applicable working conditions in the case of posting of workers, consumer contracts, public health and the safety of building sites (see point 6.5). This means that the Member State where the service is provided will retain the right to apply its national laws to incoming service providers. It goes without saying that this will require transparent and easily available information about the national rules so that service providers are able to comply with them.

Harmonisation of national laws across all Member States is proposed for certain areas. These include requirements relating to the information which service providers must make available both to consumers and to competent authorities, advertising by the regulated professions and professional indemnity insurance. The proposal furthermore provides for a framework of voluntary quality-enhancing measures such as quality charters and codes of conduct at EU level.

Administrative co-operation means that Member States must co-operate more closely to ensure proper supervision of service providers and enforcement of national rules. It sets out clearly the supervisory responsibilities of the Member State of establishment and the Member State where the service is temporarily provided. It would on the one hand prevent Member States from turning a blind eye to activities of their service providers which may harm consumers in another Member States. On the other hand, it would avoid duplication of controls on service providers if

authorities in the Member States where the service is provided could to a large extent rely on control by the Member State of establishment. The fight against rogue traders and illegal labour would become much more efficient thanks to exchange of information and mutual assistance between Member States.

VII. POSTING OF WORKERS

7.1 WHY DOES THE PROPOSED DIRECTIVE COVER THE POSTING OF WORKERS?

The cross-border provision of services often means that the service provider has to move his employees temporarily to the Member State where the service is provided. However, a number of administrative and legal obstacles hamper such posting of workers which render cross-border services provision more costly or even, for SMEs, impossible to carry out. These obstacles are the subject of many complaints and have been identified as a major Internal Market obstacle in the Commission's report on the State of the Internal Market for Services. At the same time these administrative requirements are not effective in preventing the use of illegal labour. The Services proposal, therefore, seeks to reduce administrative burdens for companies, while at the same time strengthening control through reinforced co-operation between Member States.

7.2 WHAT IS NEW IN THE SERVICES PROPOSAL COMPARED TO THE EXISTING COMMUNITY RULES ON POSTING OF WORKERS?

The proposal aims to reinforce the application of the Posting of Workers Directive according to which minimum working conditions of the country where a worker is posted have to be respected. In comparison with the Posting of Workers Directive, there are three new elements:

Firstly, the proposed Services Directive imposes a **clear legal obligation** on the **host Member State** (i.e. Member State where the workers are posted) to ensure not only that its working conditions – including minimum wages - are applied to all workers posted to its territory, but also to carry out effective supervision (including checks and controls on the spot if necessary).

Secondly, the proposal would oblige **the Member State of establishment of the service provider to assist the authorities of the host Member State in the supervision** of the service provider when it operates temporarily in the host Member State. These **obligations to cooperate between Member States** would make supervision more efficient and ensure that violations of the host Member State's laws can be dealt with more effectively. At the request of the host Member State, the authorities in the country of establishment will have to carry out checks and controls or impose sanctions on companies who do not co-operate with the authorities of the host Member State. This is needed because the authorities in the host Member State often cannot check facts and circumstances at the place of establishment of the company or they are not capable of verifying whether a company is really and legally established in another Member State (or whether it just maintains a letter box firm there). Therefore, they need the assistance of the authorities in the Member State where the company is established. This is particularly important in cases where the posting has come to an end but investigations have not been completed.

Thirdly, the Directive **abolishes a limited number of administrative requirements** which are especially burdensome and disproportionate, particularly for SMEs i.e. prior authorisations and declarations to the host Member State, the obligation to ship all labour documents normally held at the place of the company to the place of

posting and keep them there, and the obligation to designate a permanent representative established in the host Member State.

7.3 Does the proposed Directive create a risk of social dumping?

Existing community legislation, namely the Posting of Workers Directive (96/71/EC) prevents social dumping. The Posting of Workers Directive which continues to apply in full provides that **posted workers, including temporary workers, are subject to the working conditions of the Member State where the worker is posted i.e. the host Member State.** These working conditions cover minimum wages, working time and minimum rest periods, minimum paid leave, the protection of temporary workers, health, hygiene and safety standards, protection of young people and pregnant women, equality of treatment between men and women and other provisions on non-discrimination including with respect to disabled people. **All these matters covered by the Posting of Workers Directive are excluded from the country of origin principle.**

This means that a company **cannot pay** wages to posted workers **lower than the minimum wages** in the host Member State (thus an Irish company posting workers to Belgium would need to pay Belgian minimum wages). It also means that companies from another Member State **must abide by the health and safety rules in the host country**, e.g. regarding the way the workplace must be organised, requirements as to protective gear for workers, and so on. This concerns not only minimum working conditions laid down by law but also those laid down by **collective agreements.** Therefore, the Services proposal **does not increase the risk of "social dumping".**

Finally, companies cannot use this proposed Directive to establish letter-box firms in Member States with lower wages and social security contributions and provide services from there into other Member States. The proposal will allow more effective control of the real place of establishment of companies. According to the proposal, the place of establishment will not be determined on the basis of a formal criteria such as the location of the registered office, but on the basis where a company has its infrastructure from which it in reality pursues its economic activity.

7.4 Will the proposed Directive weaken Member States' ability to supervise service providers effectively?

The proposal provides **that the host Member State is responsible for ensuring the application of its working conditions to posted workers.** The host Member State has every right to carry out controls on the spot, for example on construction sites, to demand information from the company which has posted workers and to enforce its laws regarding working conditions.

Although the proposed Directive aims at eliminating some administrative requirements (i.e. prior authorisation, designation of a permanent representative in the host MS etc.), such administrative requirements are not the most efficient means to exercise control and only some Member States actually have those requirements. There are many other effective enforcement and control possibilities, such as controls on the spot, for instance on building sites, enforcement prompted by

complaints by workers or competitors, or easy access to justice for posted workers (including arbitration or mediation procedures). Moreover, the proposed Directive establishes a system of mutual assistance between the authorities of the country of origin and the host country. The authorities in the host country can ask for the assistance of the country of origin if they have any problems in getting information and relevant documents from companies even after the termination of the posting. This will strengthen control and supervision.

7.5 Will the proposed Directive weaken the protection of temporary workers?

The protection of temporary workers is equally covered by the Posting of Workers Directive, which provides that the host Member State's legislation regarding the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings, applies. Temporary workers who are hired out by a temporary employment agency in one Member State to a user company in another Member State thus are protected by the legislation of the host Member State. If in a host Member State there are restrictions on the use of temporary workers or particular conditions, for instance regarding the maximum length of employment of a temporary worker, those rules continue to apply.

As is the case for posted workers in general, enforcement and control of protection of temporary workers can be ensured by many means. These include on-the-spot controls, enforcement prompted by complaints by interim workers or competitors, allowing interim workers to complain directly to the host Member State's labour authorities, or easy access to justice for interim workers. In addition, the Member State of origin will be responsible for ensuring that employment agencies established on its territory fully co-operate with the host Member State's authorities and provide them with all necessary information.

7.6 Does the proposed Directive have any impact on income tax or social security contributions in the case of posting of workers?

The proposed Directive **does not cover** the question of income tax or social security contributions. Taxation of workers lies within the competence of Member States. Bilateral agreements exist between most of the Member States in order to avoid double taxation. These agreements set out the rules according to which taxes must be paid either in the country of residence of the worker or in the country of posting. Normally, for posting up to 180 days income taxes are paid in the country of residence of the worker. In case of posting beyond 180 days income tax has to be paid in the country where the worker is posted. The issue of affiliation to a social security system is dealt with by a Community regulation on the coordination of national social security systems (Regulation 1408/71/EEC). The general rule is that for posting up to one year, the posted worker remains affiliated to the social security system of his country of residence and he and/or his employer will continue to pay contributions into that system. For posting longer than one year the general rule is that the workers has to be affiliated to the social security in the country where he is posted although there are possible exceptions.

VIII. HEALTH SERVICES

8.1 WHY AND TO WHAT EXTENT DOES THE PROPOSED DIRECTIVE COVER HEALTH SERVICES?

The proposed Directive seeks to remove, on the basis of the case law of the European Court of Justice, unjustifiable and in particular discriminatory restrictions on the freedom of establishment and the freedom to provide services for a variety of activities including health services. It does not aim to harmonise Member States' regulation or modes of delivery of health or social services. Nor does it call into question the competence of Member States to decide how these services should be organised and financed. One effect of the proposed Directive would be the clarification of the right of patients to receive, under certain conditions and within certain limits, reimbursement of costs for non-hospital care received in another Member State without having obtained a prior authorisation from their national social security system. The proposed Directive would, furthermore, provide for the information and transparency obligations for health care service providers. Finally, provisions on administrative co-operation concerning the supervision of such providers in case of cross-border activities, would also apply to health services. This would increase information for patients and enhance their protection throughout Europe, in particular where they travel to the country of establishment of the provider.

8.2 HOW DO THE RULES ON ESTABLISHMENT AFFECT MEMBER STATES HEALTH SERVICES?

Health services are services under the EU Treaty and should, like other services, benefit from an Internal Market framework. The proposed Directive's provisions aiming to facilitate the freedom of establishment therefore also apply to health services.

However, it is important to keep in mind that the proposal does not require the liberalisation or privatisation of services which are currently provided at national, regional or local level by the public sector or public entities and that it facilitates the freedom of establishment only in those areas where private operators are permitted (see also point 1.6). For example, the proposal would not require Member States to allow private hospitals to operate where they are not allowed now. Where private hospitals are permitted, the relevant authorisation schemes would have to respect the disciplines set out in the proposed Directive e.g. they would have to be non-discriminatory, objective and transparent. The proposed Directive **does not in any way interfere with the way Member States organise and finance their health and social systems.** It is left to Member States to decide to what extent and under what conditions private operators such as private hospitals receive funding from the public budget or the social security system.

The proposed Directive submits certain national requirements **affecting establishment** of private operators, including in the health sector, to **the mutual evaluation process** to be carried out by Member States, the Commission and stakeholders. This evaluation concerns certain requirements specified in the proposal, such as quantitative restrictions. It requires Member States to assess their own rules and regulations in order to examine whether they discriminate against operators from other Member States or go further than necessary to protect, for example, consumers or public health. However, it is obvious that in the area of health and social services these types of requirements are justified as long as they are

objective and transparent and do not discriminate against operators from other Member States.

It is important to note that this evaluation process only serves to detect restrictions on the establishment of new operators which are clearly discriminatory or disproportionate in the light of the case law of the European Court of Justice. It **does not aim to** evaluate the functioning of services of general economic interest such as health and social services or whether these services should be opened up to competition.

8.3 Will the application of the country of origin principle undermine the protection of public health?

In practice, cross-border services which are subject to the country of origin principle, are first of all rare in the health and social sectors. The provision of these services normally requires a fixed infrastructure, such as a hospital, a home for the elderly, or a doctor's practice, which would be considered as an establishment within the meaning of the proposed Directive (see also point 4.2). As a result, in all these cases services are subject to the law of the country where they are provided.

Where there is a cross-border supply of services – for example where a doctor travels to treat patients in another Member State - the Directive would not result in weakening but rather in strengthening the protection of public health because of the **combination** of the country of origin principle with **derogations, harmonisation and administrative co-operation.**

First, the proposed Directive would provide for a **derogation** from the country of origin principle for all questions relating to professional qualifications which are covered by the proposal for a Directive on the **recognition of professional qualifications**. According to this proposal, host Member States will be entitled to check professional qualifications (to the extent that they are not already harmonised at EU level) just as they would on their own health professionals.

Furthermore, the proposed Services Directive contains a number of other derogations from the country of origin principle which allow Member States to restrict incoming services from other Member States for reasons relating to public health. Member States can for instance prohibit certain treatments and services, or require service providers from other Member States to comply with health and safety standards linked to the characteristics of the place where the service is provided. At the same time, the Directive improves the protection of recipients of services including patients by imposing information and transparency requirements on service providers, obliging certain professions causing a particular risk for the health and safety of consumers to take out appropriate indemnity insurance and by obliging Member States to provide recipients, including patients, with information and assistance.

Finally, the proposal provides for administrative co-operation between Member States including information exchange through a legally binding obligation for mutual assistance which will strengthen supervision of service providers and improve prevention of risks for recipients of health services.

8.4 What are the implications of the rules on reimbursement of the cost of medical treatment obtained in another Member State?

The proposal does not introduce new rights for patients. It merely clarifies the conditions under which patients can exercise their rights recognised by well-established case law of the European Court of Justice. In that respect, the proposed Directive is **complementary to Community Regulation 1408/71** on the coordination of social security systems, which already deals with many aspects of the reimbursement for medical treatment obtained in another Member State.

It has to be recalled that under the case law of the European Court of Justice the freedom to provide and receive services includes the right of patients to receive **non-hospital care** such as dental care, specialist advice or ambulant medical treatment in another Member State and to obtain – within certain limits – reimbursement from his own health system without that Member States can impose prior authorisations for the reimbursement. By contrast, with respect to hospital care the Court has recognised that the need for planification in the hospital sector justifies that the Member States maintain prior authorisation schemes.

The conditions under which such an authorisation has to be granted and the level of assumption of costs are governed by the – recently revised – Regulation 1408/71. **Regulation 1408/71** provides that patients who have been granted an authorisation by their national social security system can access medical treatment and in particular **hospital care** in another Member State under the same terms and conditions as nationals of that Member State and that the costs will be assumed by their own national social security system according to the tariffs and level of cover applicable in the Member State where the treatment is received (even if these costs are higher than in the Member State of affiliation of the patient). Furthermore, Regulation 1408/71 provides that an authorisation may not be refused if the treatment cannot be provided within a medically justifiable timeframe (due to a system of waiting lists).

By contrast, **Article 23** of the proposed directive is essentially dealing with rights of patients in case of **non-hospital care**. It aims at defining more precisely the distinction between hospital and non-hospital care, it requires Member States to abolish prior authorisation schemes for the latter, but clarifies also that the level of costs to be reimbursed is limited to the costs which would have been assumed had the treatment been provided in the Member State of affiliation of the patient (even if the costs are much higher in the Member State where the treatment is received. In that case, the patient will have to bear the difference of costs). It also clarifies that the conditions for certain treatments provided in the Member State of affiliation such as prior consultation of a general practitioner before consultation of a specialist continue to apply.

By clarifying these issues, the proposed Directive would improve legal security both for patients and for social security systems.

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Committee on the Internal Market and Consumer Protection

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WORKING DOCUMENT

on the proposal for a Directive of the European Parliament and of the Council on services in the internal market (COM(2004)0002) of 13 January 2004

Committee on the Internal Market and Consumer Protection

Rapporteur: Evelyne Gebhardt

I. Introduction

The purpose of this proposed directive is to remove obstacles that stand in the way of a real internal market in services, particularly the exercise of freedom of establishment and free movement in services. In view of the Commission Green Paper on services of general interest[1], the question arises why the Commission has rejected a framework directive in this area but at the same time has put forward a draft directive for all cross-border services in the internal market. Does the argument that the Commission puts forward in the Green Paper, that it covers a broad range of different activities with very different characteristics[2], not also hold true for the activities within the field of application of this proposal? Is it really possible to take a one-size-fits-all approach to the activities of an architect, a small businessman and a solicitor?

On 11 November 2004 the Committee on the Internal Market and Consumer Protection held a hearing in Parliament on the draft directive. All participants were in principle in favour of the Commission's initiative to remove obstacles and promote freedom of services. Most participants and the rapporteur argued against unnecessary protectionism but in favour of maintaining high standards of quality and protection (in social, ecological and consumer protection matters) in the interests of fair competition.

However, it is clear from the hearing that this proposal goes far beyond its stated aim and in its present form leaves many questions unanswered and gives rise to legal uncertainty, and that at least part of it should be rejected.

II. Further procedure

Therefore the question now arises of how to proceed with the draft directive. The discussions during the hearing and the subsequent committee meeting on 23 November 2004 suggest that the Commission should be called upon either to withdraw its proposal or to redraft it comprehensively and radically in the light of the conclusions of the hearing.

III. Central aspects of a redraft of the directive

1. Field of application

A central problem of the draft directive is its field of application. The current Commission proposal does not formulate it precisely enough.

It lacks a clear distinction between the social economy and general interest services areas and areas which are already or will be covered by sectoral directives, such as for example the area of recognition of professional qualifications (draft directive COM(2002)0119).

It is also not clear what is to happen with services which constitute an exception under one of the sectoral directives which are outside the scope of the services directive and thus also the country of origin principle. Are they automatically covered by the field of application of the directive on services? For example, under Article 17(7), the country of origin principle

[1] COM(2003)270
[2] cf. COM(2003)270, Introduction Point 10 and Chapter 2.2 Point 40

should not apply to the directive on lawyers' services[1]. But what is the position with activities which in some Member States are reserved for lawyers but in others can be carried out by people who are not lawyers and therefore are not covered by the sectoral directive? If in this case the country of origin principle applies under the services directive, service providers could offer cross-border services in countries where such services are otherwise only provided by lawyers.

2. Country of origin principle

A central point of the proposed directive is the introduction of the so-called country of origin principle (Article 16), under which service providers are subject only to the national provisions of their Member State of origin. The Member State of origin is responsible for supervising service providers and the services that they provide, even if the beneficiary of the services receives them in another Member State. Exceptions to the country of origin principle are principally allowed where there are already sectoral harmonisation measures at Community level.

In this connection it should be noted that the 'country of origin principle', which the Commission does not question or discuss at any point in its draft explanatory note, is actually not an autonomous principle, but one of many of the Court of Justice's judgments in the area of the internal market. It was developed for the field of free movement of goods[2] and later extended, with limitations, to particular services[3], which showed that the Community was not making the expected progress in implementing the basic freedoms enshrined in the Treaty. There is no specific mention of the country of origin principle in the Treaties, and it is not a legal principle that supersedes the Treaties and must be observed in Community legislation. Therefore the title of Article 16 of the draft directive is also misleading.

During the hearing in Parliament the following further objections were made to the country of origin principle being generally enshrined in a directive on services.

- The aim of the proposal is a level playing field and non-discrimination in service provision in the EU. The proposal is however counter-productive, as under Court of Justice case law, the country of origin principle leads to stronger internal discrimination which is admissible but politically undesirable.

- This will result in giving an incentive to service providers to establish themselves only in Member States with lower standards of protection.

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[1] Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services

[2] Initially Cassis de Dijon judgment in Case 120/78, ECR 1979, 649 (664 point 14)

[3] Judgments of 26.2.1991 in Case C-154/89 (Commission v. France); 9.8.1994 in Case C-43/93 (Vander Elst); most recently the opinion of Advocate-General Juliane Kokott of 22.6.2004 in Case C-189/03: *'If the service provider is subject to a comparable authorisation procedure in his home country, under which his trustworthiness has already been checked, it would be disproportionate to subject him to another check in the Netherlands. In a case of this kind the Netherlands authorities should not delay the exercise of freedom to provide services, or make it more difficult or expensive to do so, since it has already been established in the *country of origin* that the service provider fulfils the conditions for engaging in the activities in question. It should be sufficient for the foreign service provider to supply proof that his trustworthiness has been checked in his *country of origin*.'
** Translator's note: unofficial translation, as English version from the Court of Justice not yet available*

- Does it not also carry a risk that Member States will try to undercut each other in their minimum standards?

- The services directive must under no circumstances lead to a lowering of quality standards or evasion of individual countries' regulations and thus endanger social entitlements or consumers' and patients' rights.

- The services directive provides that supervisory competence lies with the country of origin. But does the country where a service provider is established have any interest at all in supervising services provided outside its own territory?

An example is the draft directive on recognition of professional qualifications[1]. In its political agreement of 18 May 2004 the Council adopted Parliament's proposal at first reading of 'pro forma' registration the first time a service is provided across a border[2]. In particular in the context of the Member States' supervisory competence, the Council thus confirms the position that supervision of a cross-border service should be carried out in the country in which the service is provided. This is completely in contradiction to the Commission's approach in the services directive.

Also in its resolution on the directive on unfair business practices, Parliament on 20 April 2004[3] rejected the inclusion of the country of origin principle in Article 4 of the proposal, as the Commission had originally intended. The Council endorsed this position on 15 November 2004[4]. Since European legislation should be coherent, the Commission's determination to enshrine the country of origin principle in the services directive seems questionable if it has been rejected in other proposed legislation. Introducing the country of origin principle would even endanger progress towards harmonising European legislation, as it departs from the originally planned harmonisation of Articles 55 and 47(2), first sentence, of the EC Treaty. It would bring about equal treatment of businesses and the freedom of services guaranteed under the Treaty only in the sense that everyone would simply have to comply with their own country's laws in order to be able to provide their service throughout the Community. There are no common minimum standards. In the interest of fair competition, common rules, i.e. a combination of harmonisation and mutual recognition, are essential. Only in this way might it be conceivable to introduce the country of origin principle in particular areas.

3. Supervision

Under Articles 34 to 38 the Member States are responsible for supervising and monitoring cross-border services. Close administrative cooperation is required to carry out this supervision in another Member State. The proposal sets out many provisions for such administrative cooperation, but on the basis of Member States' previous experiences of administrative cooperation, it must be feared that there will be no efficient supervision. This would be particularly unfortunate since the introduction of the country of origin principle anyway places considerable geographical distance between the supervisor and the activities to

[1] COM(2002)119
[2] 2002/0061(COD), Council document 9716/04, 18.5.2004, Arts 6 and 7
[3] Legislative Resolution of the European Parliament on the proposal for a European Parliament and Council Directive on unfair business practices, 20.4.2004
[4] Cf. Article 4 in proposal COM(2003)356 and in the common position, Council document 11630/2/2004

be supervised. In addition it must be feared that the Commission proposal will lead to a more bureaucratic procedure. This would run counter to the aim of improving freedom of services.

4. Evaluation of requirements

The proposal also specifies (at Articles 14 and 15) many requirements which are 'prohibited' or 'to be evaluated'. Member States must not make access to or the exercise of a service activity in their territory subject to compliance with these requirements. In itself, the idea of evaluating or screening existing requirements is a positive development. But it would have been better to carry out this evaluation before drafting the proposed directive, using the evaluation as a starting point. In addition close scrutiny is needed of the criteria for evaluating the requirements. The draft directive needs clarification here.

5. The directive in the context of European and international legislation

The hearing of experts on 11 November 2004 showed that at present it is not clear what relationship the proposal has to existing international and European legislation and or proposed legislation in the EU. Examples are the European directive on the posting of workers, the Rome I convention and the Rome II draft regulation, the draft directive on recognition of professional qualifications and Directive 2004/18/EC on the award of public contracts.

(a) International private law

The Rome Convention (Rome I) provides that the law of the country where the worker normally works should be applied. If the worker does not regularly work in a particular country, Rome I provides that either the law of the country where the employer is established or, under certain conditions, the host country principle will continue to apply. If the country of origin principle is applied, this possibility would no longer exist. The Rome II draft directive (COM(2003)0427) states that the applicable law is the law of the country in which the damage occurs. But the services directive with the country of origin principle turns this around, so that the applicable law is determined not by the place where the damage occurred, but by the place where the service provider is established. This could allow service providers to evade the stricter liability rules in some Member States. It is not precise enough in relation to the rules on damage to people or property (which law applies when a Swedish firm harms a Belgian passer-by?). The country of origin principle conflicts with existing and much more specific instruments such as Rome I and the time-honoured principles of international private law.

(b) The directive on posting of workers

There is a similar conflict with Directive 96/71/EC on posting of workers, which states that the labour law of the host country shall apply. Although Article 17(5) of the proposal excludes the posting of workers directive from application of the country of origin principle, and under recital 58 the proposal 'does not aim to address issues of labour law as such', this remains a statement of intent, as Article 24 clearly modifies the provisions of the posting of workers directive and thus leads to problems with interpretation and application. It would be more coherent to leave the posting of workers directive untouched in this directive and implement the rules under Article 24 by recasting the posting of workers directive.

The posting of workers directive also lays down minimum conditions that must be complied with when workers are posted, and these are again unambiguously set out in the directive adopted in 2004 on award of public contracts[1]. Recital 59 of the services directive however allows the provisions of the posting of workers directive to be interpreted as a maximum requirement[2].

(c) Award of public contracts

The directive on the award of public contracts states that national rules on working conditions and safety issues and regional and tariff agreements must be observed. In this connection also there is a question of possible conflicts if the country of origin principle is introduced.

(d) Recognition of professional qualifications

Introduction of the country of origin principle conflicts with the draft directive on recognition of professional qualifications. What is the position on recognising professions which are regulated in one country and not in another? In the directive on recognition of professional qualifications the principle of the target country rather than the country of origin applies. Regulated professions covered by recognition of diplomas already ensure the minimum standard of security and quality, but the directive does not require that these sectors must be regulated in all Member States: thus the profession of carer for the elderly is poorly regulated in Germany but in Finland is regulated to a very high degree. Another example: bricklayers are very highly regulated in Germany and not in Great Britain. If the country of origin principle were introduced generally, this would mean that a German bricklayer would be bound by the rules on diploma recognition, but his British colleague would not. Is the internal discrimination that would thus arise acceptable?

It does not seem appropriate for the services directive to lay down provisions which are diametrically opposed to legislation which already exists or is being adopted. There must be a clearer relationship between the two directives. The cryptic formulation in Article 3(2) '*Application of this Directive shall not prevent the application of provisions of other Community instruments as regards the services governed by those provisions*' does not allow for any clear interpretation of which provisions must apply.

IV. The legal basis

A particular problem with regard to the compatibility of the Commission proposal with primary Community law is the establishment of the country of origin principle in Article 16(1) of the draft directive. This consolidates differences rather than reducing them, because every service provider brings his own legal system with him. The Community has a mandate only to facilitate the free movement of services, not to make it more difficult[3]. Article 16(1) alone would probably infringe primary Community law.

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[1] Directive 2004/18/EC, Recital 34

[2] 'Furthermore, as regards employment and working conditions other than those laid down in Directive 96/71/EC, it should not be possible for the Member State of posting to take restrictive measures against a provider established in another Member State'.

[3] Bröhmer, in Calliess v. Ruffert, commentary on the EU and EC Treaties, Neuwied 1999, Art. 47 Point 9

There is also a need to check whether the country of origin principle in the draft directive is compatible with the proportionality principle of the Treaty (Article 5(3) ECT).

Will it really improve freedom of services in the EU if service providers are allowed to 'bring' their whole legal system with them? How, for instance, can a Swedish customer for building services sue a Latvian tiler? In Sweden in the civil court under Latvian law or in Latvia itself? This also raises the question of compatibility of the draft directive with European Fundamental Rights, as defined by Court of Justice case law. Would this not affect the right to effective legal protection?

V. Conclusions

In view of the results of the hearing of 11 November 2004 and the ensuing discussion in the European Parliament, the rapporteur considers that the Commission draft directive should be substantially reworked.

The following key aspects must be taken into account.

1. The services directive must clearly meet the aims of equality and non-discrimination, both for nationals and foreigners.

2. The field of application of the services directive must be stated more clearly and comprehensibly.

3. The path to an 'EU country principle' must not be closed off. The services directive should rather prepare the way for harmonisation or mutual recognition at a high level of quality.

4. Coherence of European legislation must be ensured and conflicts with international and European law avoided.

5. The aim of the directive must be efficient and simpler supervision which does not create even more bureaucracy.

SENK Daniela

From: HALLAOUY Said
Sent: 02 February 2005 11:31
To: SENK Daniela
Subject: Bolk directive suite

La suite ....

S.

1. EU) EP/SERVICES

28/01/2005 (Agence Europe) - **The campaign by Germany's construction trade union IG Bau against the draft directive on services in the internal market has been described by CSU MEP Joachim Wuermeling as media cinema with horror scenes totally unconnected with the contents of the draft directive. National rules on health and consumer protection will continue to be applied, said Wuermeling in a press release, as would rules on pay and holidays. He said there was absolutely no way anyone could talk of social dumping from the Bolkestein Directive.**

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1. **(EU) EU/SERVICES: Anne Van Lancker could accept idea of framework services directive which completely excludes ESGIs - Otherwise Commission should withdraw proposal**

Brussels, 28/01/2005 (Agence Europe) - **Belgian socialist Anne Van Lancker, the EP Committee on Employment and Social Affairs' rapporteur on the proposed services directive has presented her ideas on the "Bolkestein directive" at a meeting organised by the Italian delegation of the socialist group in the European Parliament. Presenting her first working document, she said that that a cross-cutting approach could be possible on two conditions: by excluding a greater number of activities, particularly economic services of general interest (ESGIs), and by introducing substantial amendments on the issue of the establishment of providers and temporary provision of services. The meeting exposed the differences in approach between trade unions and industry representatives. If everyone agrees on the need for a directive, the former fear that if the directive were adopted in its present state, it would open the way to competition between Member States and they are therefore demanding that the "country of origin" principle be abandoned. The latter, on the other hand, think that there must be no concession to "*emotive issues*" and that the "Bolkestein directive", named after the former Commissioner behind the proposal, is a good basis for discussion.**

In Anne Van Lancker's view, the legislative proposal on services in the single market "*endanger European integration and social protection*". She said that she was "*happy*" that the Parliament has decided to "*take its time*", referring to the proposals from the rapporteur Evelyne Gebhard (SPD) who was unable to promise a draft report before March to the Parliament Committee on the Single Market and Consumer Protection (see EUROPE of 21 January, p.9). "*Rushing things would mean not taking account of civil society*", she said. Given the results of the hearing of November 2004 and her discussions with NGO representatives, Ms Van Lancker says in her working document that "*the Commission should withdraw the proposal and table a new one*" which takes account of criticisms and the clarifications she herself has made. She adds: "*If the Commission is not willing to do so, the Parliament should amend this proposal substantially to make it acceptable*". First of all, Anne Van Lancker disputes the extent of the directive's field of application, where "*the cross-cutting nature implies that the provisions will have repercussions on other policies for which the Treaty provides a specific legal basis for Community action*". As examples, she cites culture (article 151), public health (article 152), consumer protection (article 153) and transport (articles 70-80). In her view, it would therefore be "*preferable to continue on the basis of a sectoral approach. Nonetheless, the Commission's concept could work if additional activities or sectors are excluded, and if substantial modifications are made to the*

provisions on the establishment of providers and temporary provision of services. This directive could serve as a framework for a process of gradual harmonisation, coupled with mutual recognition of conditions governing access to and exercising of services throughout the EU".

The MEP repeated this at the meeting of the Italian delegation of the PSE group: "*there should be serious consideration of completely excluding (economic) services of general interest from the directive's scope of application*". "*Even if that concept is not clearly defined at European level*", the fact remains that the proposal "*covers activities such as services linked to the network industries, healthcare services, social services, employment services and social housing*", in short "*all of these services of general interest (SGI)*". Ms Van Lancker also thinks that the discussions on the services proposal should not affect ongoing reflection on the Commission's white paper on SGIs. Asked by EUROPE about a possible socialist group demand to make the adoption of a framework service directive dependent on that of a parallel SGI instrument, Anne Van Lancker thought it unlikely that such a link would be made, given the current Parliament majorities and the Commission's position. The latter thinks that there is in fact no legal basis for such a proposal and that they must wait until the future Constitution comes into force.

On the controversial country of origin principle, under which a service provider providing services in another Member State would be subject to the legislation of its Member State of origin, Anne Van Lancker diverged slightly from rapporteur Evelyne Gebhardt's position. "*To say that harmonisation is too difficult (...), is to abandon the founding principle of European integration*", she said. However, in contrast to her colleague, she is not demanding that the country of origin principle be abandoned: "*Its application should be limited to areas such as obligations for information and taking out insurance, leaving the option for the Member States to impose greater demands in terms of quality and security*", said Anne Van Lancker, who knows that her position will already be a step too far for the trade unions.

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Claudie Haigneré: la directive services est inacceptable

PARIS, 2 fev (AFP) - La ministre déléguée aux Affaires européennes, Claudie Haigneré, a estimé mercredi inacceptable la directive européenne sur les services dite directive "Bolkestein".
"Telle qu'elle est conçue aujourd'hui la directive n'est pas acceptable", a déclaré Mme Haigneré dans un entretien au Figaro.
Le ministre des Affaires étrangères, Michel Barnier, avait indiqué lundi à Bruxelles que Paris voulait que la directive Bolkestein soit rediscutée. Paris "souhaite que ce texte soit remis à plat" avait-il dit, estimant qu'avec cette directive "on tourne le dos à l'harmonisation".
"Nous ne pouvons souscrire à la méthode envisagée par la commission", a renchéri mercredi Mme Haigneré. Cette directive qui prévoit que le droit applicable à la réalisation d'un service est celui du pays d'origine du prestataire de service a soulevé un tollé notamment en France et parmi les socialistes européens.
szb/ial/bg

SENK Daniela

From: HALLAOUY Said
Sent: 02 February 2005 11:20
To: SENK Daniela
Subject: BOLK directive

fur tich informazion

S.

Bruxelles cherche un "consensus" sur la "directive" sur les services

BRUXELLES, 2 fév (AFP) - La Commission européenne cherche un consensus acceptable par le Parlement européen et les Etats membres sur la directive (loi européenne) sur la libéralisation des services, très controversée notamment en France et en Belgique, a-t-on appris mercredi de sources concordantes.
La Commission est consciente qu'il "faut trouver un consensus sur la directive services", a indiqué une source proche du dossier.
Bruxelles porte principalement son attention sur le principe du pays d'origine, selon lequel les entreprises qui proposent des services dans plusieurs Etats membres doivent se conformer à la législation en vigueur dans le pays d'où elles sont originaires et qui est largement décrié par les opposants au texte.
"Nous nous concentrerons particulièrement sur des domaines tels que l'application du principe du pays d'origine et son impact potentiel sur certains secteurs", indique la dernière version du projet de communication sur la compétitivité européenne que les commissaires européens discutaient mercredi matin en collège.
phr-aud/lmt

SENK Daniela

From: HALLAOUY Said
Sent: 02 February 2005 12:05
To: SENK Daniela
Subject: Chirac /Bolk

Tout cela promet un sacré combat politique.....;;;;

Chirac demande que la directive "Bolkestein" soit "remise à plat"

PARIS, 2 fév 2005 (AFP) - Le président Jacques Chirac a souhaité mercredi en Conseil des ministres que l'avant-projet de directive européenne sur les services (directive "Bolkestein") "soit remis à plat", a déclaré le porte-parole du gouvernement Jean-François Copé.
Intervenant au cours du Conseil, le chef de l'Etat "a souligné l'exigence de la France qu'en matière de services comme dans tous les domaines de la construction européenne, ne soient jamais perdus de vue les objectifs d'une élévation du niveau des garanties offertes aux travailleurs comme aux consommateurs dans le cadre d'une harmonisation progressive des règles européennes".
"Cela implique le refus de tout dumping fiscal, social ou réglementaire", a dit le chef de l'Etat dont les propos étaient rapportés par Jean-François Copé.
Cela "justifie, a-t-il ajouté, la position très ferme de la France que cet avant-projet de directive préparé par l'ancienne Commission européenne, soit remis à plat".
Dans une interview au Figaro publiée mercredi, la ministre déléguée aux Affaires européennes Claudie Haigneré affirme que, "telle qu'elle est conçue aujourd'hui, la directive n'est pas acceptable".
Le 21 janvier, en recevant à l'Elysée John Monks, secrétaire général de la confédération européenne des syndicats (CES), Jacques Chirac avait affirmé "la très grande vigilance de la France dans la négociation en cours" sur la directive "Bolkestein".
Le président de la République avait aussi souligné l'attachement de la France à la dimension sociale de la construction européenne, affirmant que le social est "un moteur de croissance et de compétitivité en Europe".
phg/db/swi

SENK Daniela

From: HALLAOUY Said
Sent: 02 February 2005 11:41
To: SENK Daniela
Subject: Chirac /bolkenstein

URGENT Chirac demande que la directive "Bolkestein" soit "remise à plat"

PARIS, 2 fév 2005 (AFP) - Le président Jacques Chirac a souhaité mercredi en Conseil des ministres que l'avant-projet de directive européenne sur les services (directive "Bolkestein") "soit remise à plat", a déclaré le porte-parole du gouvernement Jean-François Copé.
phg/swi

PS: Daniéla , "mettre à plat" en français cela signifie revoir et reconsidérer l'ensemble du projet. En clair, l'avant projet tel que présenté ne plait pas à Chirac

Said