



## **THE DRAFT SERVICES DIRECTIVE: Europe needs quality services that meet the needs of its people**

**An internal market for services?**

**Yes,**

but only with: ■ fair competition and a level playing field for companies  
■ fair working conditions and equal treatment for workers

**The European Trade Union Confederation (ETUC) is opposing the European Commission's proposals for a Directive on Services in the Internal Market, as they do not safeguard these principles.**

The ETUC is calling for:

- *The clear and unambiguous exclusion of labour law from the scope of the Directive and recognition of the fundamental right to collective bargaining and industrial action;*
- *Sensitive services including temporary agencies, private security and services of general economic interest to be excluded from the draft and covered by specific EU rules;*
- *The country of origin principle to be deleted (or fundamentally changed), leaving Member States proper space to monitor and enforce national rules that guard the public interest.*

**Now it is high time for the European Parliament to adopt fundamental changes to the draft Directive.**



EUROPEAN TRADE UNION CONFEDERATION

# Services for the people

## The draft Services Directive: high time for changes!

### Why?

The ETUC believes that the key to a sustainable internal market is fair competition. Fair competition means a level playing field for companies and fair working conditions and equal treatment for workers.

But the draft Services Directive<sup>1</sup> contains proposals that promote unfair competition and may endanger working conditions. They must therefore be deleted or fundamentally amended.

In 1988 the Commission wrote: *“The social dimension of the internal market is a fundamental component of the completion of the internal market project, for it is not only a matter of strengthening economic growth and stepping up the external competitiveness of European undertakings”*.<sup>2</sup> Economic and social development must go hand in hand, with the objective of harmonising living and working conditions upwards, with full respect for national industrial relations systems. On this condition, the ETUC has supported the construction of the European internal market. A strong social dimension, with the promotion of social dialogue, social policy and respect for fundamental rights, lies at the heart of the European project. When the social dimension is under pressure, and social progress in danger, European citizens lose interest and withdraw their support for the EU.

The ETUC is in favour of free movement of services and the other freedoms enshrined in the European Treaties. So the question is not **if** there will be free movement of services, but **how** that will be achieved. What **conditions** will apply to service providers moving around Europe?

**The ETUC supports the need for administrative simplification, better information for enterprises and workers when supplying services across borders, and better cooperation and supervision by Member States. However, it finds the key proposals of the draft Directive, especially regarding the removal of obstacles and the establishment of a ‘country of origin principle’ for cross-border service provision, unacceptable, and questions their economic and legal validity.**

### 1. The economic case for the Directive has yet to be proved

It has been claimed that the draft Directive would increase competition, drive down prices and encourage innovation and productivity, creating more employment. But the assumption that reducing regulation would significantly increase growth and jobs is a one-sided view. Experience in the more competitive European countries shows that consistent high standards can encourage competition through innovation and productivity, rather than by cost-cutting and poor quality provision. Member States have good economic and social grounds for

imposing many of the existing conditions on the provision of services.

The Commission argues that the Services Directive is essential to achieving the Lisbon Strategy goal of making Europe the most competitive economy in the world by 2010. However, the figures below suggest Europe already has no problem being competitive in the global services market: it is the biggest provider of services in the world.

### GLOBAL SHARES OF TRADE IN SERVICES 1997-2003<sup>3</sup>

Share of world trade in services	1997	2003	Change
<b>EU15</b>	24.0%	25.8%	+1.8
<b>United States</b>	19.6%	20.2%	+0.6
<b>China/India</b>	3.5%	5.1%	+1.6
<b>Other Asian*</b>	17.1%	13.9%	-3.2
<b>Other economies</b>	35.8%	35.0%	-0.8

Note: Other Asian is Japan, S. Korea, Singapore, Thailand, and Malaysia. Other economies include Canada, Australia, Switzerland, Norway, Russia and Mexico.

Source: European Commission, EU International Trade in Services 2005.

The ETUC would welcome job creation in service sectors across the EU, as employment opportunities for workers everywhere are key to the future well being of Europe. But it has serious doubts about the claimed impact of the specific proposals in the draft Directive, in terms of both quantity and quality of jobs created.

The existing proposals carry a great risk of downward competition in social and environmental regulation. Risk-taking may be justified when there are important potential economic gains, but not in this case, where the economic benefits are very doubtful.

### 2. The country of origin principle is counterproductive

#### **The Directive lays down the country of origin principle (COP). What is this?**

It means that when a service provider – say a construction company installing electrical equipment or scaffolding – from one country accepts work in another state, it would be subject to the rules of its home country, which would have the authority to monitor and enforce regulations.

So apparently the host Member State would not have the same opportunity as today to apply its own rules designed to protect the quality of the service, the health and safety of workers or clients, the environment, or the public interest. This would lead to unfair competition between different countries, because the cheapest service provider would invariably be the one bound by the lowest levels of regulation and standards, engendering a race to the bottom.

<sup>1</sup> The Commission's proposals focus on four main aspects: Administrative simplification, and better information; Removal of obstacles to service providers from one EU Member State establishing themselves in another EU Member State, especially regarding authorisation schemes and other potentially restrictive requirements; Removal of obstacles for cross-border provision of services, introducing a 'country of origin' principle whereby service providers would only be governed by the rules and regulations of the country where they are established; Administrative cooperation and supervision.

<sup>2</sup> Social Dimension of the Internal Market, SEC (88), 1148 final.



The ETUC is aware that the country of origin principle already applies in some EU legislation. However, the service sectors involved – broadcasting, financial services and information technology – are not areas where the service physically moves with the workers. A COP in those situations is a logical choice, as in those cases the rules apply of the place where the service is produced and sent out.

It is interesting that in the USA, the internal market for services seems to perform very well without any country of origin principle! Each state individually regulates businesses and professions offering services within its borders, regardless of their place of establishment. If a service provider in one state wants to operate in another, it is required to adhere to the laws of the host state, regardless of where the corporation is based. This shows that the COP is by no means a precondition for a well functioning internal market for services!

The COP would create the very opposite of a level playing field. Enterprises established in the host state will face unfair competition from those based in other countries with lower standards. Clients and consumers will face confusing choices between suppliers adhering to different rules. Service providers will be encouraged to move their headquarters to Member States with the lowest tax rates, environmental requirements and workers' protection. Member States with high standards of protection will be forced to lower them in order to stay competitive. The ETUC is very worried about the risk of a negative spiral affecting the living and working conditions of European citizens.

**The ETUC says:**

- *the only sustainable and long-term means of completing the internal market for services is through the harmonisation of quality, content and safety standards;*
- *in developing the internal market in the shorter term, Member States with high standards must be able to maintain them, and promote a levelling upwards in other countries;*
- *the Service Directive should focus on reducing administrative obstacles that hinder freedom of establishment and the free movement of services;*
- *a country of origin principle can only be accepted on the basis of minimum harmonisation.*

**3. Workers' rights  
need host country protection**

When service providers cross borders, they often bring workers with them. In many cases, these workers will be covered by the Posting Directive, which establishes a clear host country principle with regard to minimum wages and working conditions.

However, the Posting Directive does not cover all situations. What if a foreign company hires local workers

to provide the services? These are not posted workers in the sense of the Posting Directive. Should the company be entitled to employ them on the conditions applying in its country of origin?

According to the ETUC and many legal experts, there are already rules and regulations in place that govern these situations. They include international private law such as the so-called Rome I Convention. The Directive should therefore clearly state that it respects these rules. In addition, to avoid any misunderstandings or misinterpretations, the Directive should clearly and unambiguously exclude all aspects of labour law from its scope.

But this is not enough to safeguard workers' interests. In many Member States, employment and working conditions are regulated by collective bargaining. The ETUC rejects the view that the protection of workers through collective agreement is an obstacle to the free movement of services. It is therefore crucial that the Directive explicitly recognises the fundamental right to collective bargaining and industrial action, and respects the varying industrial relations systems in Member States.

The ETUC has stressed that the draft Services Directive should contain the same safeguard as the so-called Monti regulation on the internal market for goods:

*"This Directive may not be interpreted as affecting in any way the exercise of fundamental rights as recognised in Member States and/or in the EU Charter of Fundamental Rights, including the right or freedom to strike. These rights may also include the right to take other action covered by the specific industrial relations systems in Member States."*

**In short, the ETUC demands:**

- *A clear and unambiguous exclusion of labour law from the subject matter and scope of the Directive;*
- *A clear and unambiguous exclusion of all matters covered by the Posting Directive;*
- *Full respect for all relevant rules of international private law;*
- *Recognition of the fundamental rights of collective bargaining and industrial action.*

**Labour law, collective agreements and fundamental rights should be recognised as essential ingredients of a well functioning market economy.**

<sup>3</sup> Table taken from Economics of the Services Directive, A TUC assessment, November 2005.

#### **4. Supervision and enforcement are only effective in the place where the service is provided**

The draft Directive proposes to limit the power of Member States to monitor and enforce their own national regulations on Foreign Service providers. This is a major concern. The ETUC is in favour of promoting non-discriminatory and proportional practices. But it is an illusion to think that the country of origin will be able to monitor and enforce rules on a company operating in another country.

In its initial proposal, for example, the Commission wanted to prohibit Member States from requiring Foreign Service providers to register themselves, have a representative on their territory, or make certain documents available, even when necessary to monitor and enforce minimum working conditions. In the Scandinavian countries, some of these elements are essential – in the absence of legal minimum regulations – to be able to conclude collective agreements with the cross-border company for the protection of workers. Articles in the Directive that limit the right of Member States to supervise service providers on their territory should be amended.

#### **5. Temporary work agencies and private security services need specific EU measures**

**The ETUC is convinced that the Directive is not the right place to deal with sensitive services such as temporary agency and private security services:**

The core business of temporary agencies is to play an intermediary role between companies and workers, i.e. to provide workers on a temporary basis to user-enterprises, which need their labour but do not wish to offer them formal employment. This sector is very vulnerable to possible abuses and fraud, regarding tax and social security obligations as well as wages and working conditions, and so has been approached with great care in many countries. Various forms of regulation supervision have been developed to combat abuses while allowing bona fide agencies to play a useful role in increasingly complex labour markets. If the Directive covers this sector, even without the COP, there will be strong pressure to deregulate, reducing the capacity of Member States to tackle fraud and illegal operators. Therefore it must be totally excluded from the Services Directive, and dealt with in a specific instrument such as the draft Directive on Temporary Agencies.

The draft Directive could also seriously jeopardise the whole private security industry. The sectoral social partners have consistently demanded its exclusion, due to significant differences in regulation and licensing in various Member States. The sector urgently needs rules that promote a levelling upwards of quality standards to cope with current trends of growing insecurity and the transfer of tasks from the public to the private sector, plus the major restructuring of security services anticipated in the new Member States. This sector should therefore also be covered by specific and targeted rules.

**The original proposal of the European Commission was unacceptable. The European Parliament, notably its Committees for Employment and Internal Market, has made steps in the right direction. But the ETUC demands further important changes to meet major trade union concerns!**

#### **6. Services of general (economic) interest should not be subject to market forces in the same way as other services**

The Services Directive covers a wide range of activities from purely commercial services to services such as gas and water distribution (network services), education, healthcare, social, cultural, and local services. These services – known as services of general interest (SGIs) and services of general economic interest (SGEIs) – depend on public funding and regulation in order to ensure cohesion and equality in society. This makes them different from other services, where the market alone determines who has access to services and at what price.

This difference is recognised in Articles 16 and 86(2) of the EU Treaty, and the European Commission has stated in the White Paper on SGIs that fulfilling a general interest mission takes precedence over the application of the Treaty rules, in particular competition rules, and has also recognised that the personal nature of many social and health services leads to requirements that are significantly different from the network services.

The European Parliament's Internal Market Committee (IMCO) has excluded SGIs and health services from the scope of the draft Directive and network services from the country of origin principle, but this is not enough. It seems logical that the exclusion from the COP should not be limited to network services. Furthermore, as the distinction between economic and non-economic SGIs is complex (in fact, all services have an economic aspect) and in practice is defined case by case in the European Court of Justice, in the absence of clear definitions, SGEIs as well should be excluded from the scope. If not, they will be subject to pressure to deregulate (e.g. Articles 14 and 15), while authorisations and requirements are necessary as a way of imposing public service obligations.

Indeed, the ETUC does not believe that the essential point is how the service is paid for. SGIs and SGEIs exist to safeguard the essential interests of all members of society, and are of particular importance in providing safety nets and services for the most vulnerable. For this reason, the management of public services and setting appropriate quality standards, including conditions for establishment, is one of the most important roles of government. The Directive should not affect such quality standards. Upholding existing national establishment conditions for all public services is very important to safeguard consistent quality in service provision - establishment conditions and quality standards are two sides of the same coin and cannot be separated.

**The ETUC believes that all SGIs - including SGEIs - should be excluded from the scope of the draft directive. A specific legal framework for SGIs/SGEIs is needed to guarantee the quality of such services for citizens and to resolve tensions with EU competition law.**

