

Opinion of the Committee of the Regions on the Proposal for a Directive of the European Parliament and of the Council on services in the internal market

(2005/C 43/06)

THE COMMITTEE OF THE REGIONS,

Having regard to *the proposal for a Directive of the European Parliament and of the Council on services in the internal market* (COM(2004) 2 final – 2004/0001 (COD));

Having regard to the decision of the Council of 20 February 2004 to consult it on this subject, under the first paragraph of Article 265 and Articles 71 and 80 of the Treaty establishing the European Community;

Having regard to the decision of its President of 5 April 2004 to instruct its Commission for Economic and Social Policy to draw up an opinion on this subject;

Having regard to the Commission Communication to the Council and the European Parliament entitled *an internal market strategy for services* (COM(2000) 888 final);

Having regard to its opinion CdR 134/2001 fin of 13 June 2001 ⁽¹⁾ on the Commission Communication entitled *an internal market strategy for services*;

Having regard to the report from the Commission to the Council and the European Parliament entitled *the state of the internal market for services* (COM(2002) 441 final);

Having regard to the draft opinion CdR 154/2004 rev. 1 adopted on 6 July 2004 by its Commission for Economic and Social Policy (rapporteur: **Mr Schröter**, Chairman of the Thüringen Land Parliament's Committee for European and Federal Affairs (DE/EPP));

Whereas:

- 1) services play a key role for the EU economy;
- 2) the services sector's considerable potential for growth and employment could not be fully exploited so far because of numerous obstacles impeding the development of services;

adopted the following opinion at its 56th plenary session held on 29 and 30 September 2004 (meeting of 30 September):

Comments and recommendations of the Committee of the Regions

1. The Committee of the Regions' views

THE COMMITTEE OF THE REGIONS

1.1 **welcomes** the Commission proposal for a European Parliament and Council Directive on services in the internal market, which is designed to reduce the barriers still impeding the creation of a real internal market in services in the EU;

1.2 **emphasises** that in order to achieve the target set by the European Council at its meeting in Lisbon of making the EU the most competitive and dynamic knowledge-based economy in the world by 2010, it is also vital to finish building a real internal market in services;

1.3 **points to** the report on *the state of the internal market for services*, which states that a decade after the envisaged completion of the internal market, there is a huge gap between the vision of an integrated EU economy and the reality as experienced by European citizens and European service providers;

1.4 **supports** the aim of creating a legal framework that is to eliminate the obstacles and barriers still impeding the freedom of establishment for service providers and the free movement of services between the Member States. Both the providers and recipients of services are to be given the legal certainty they need in order to ensure that the freedom of establishment and the freedom to provide services can both be exercised as fundamental freedoms;

1.5 **considers it right** that the Directive is to be based in principle on the country of origin principle. This means that service providers are initially only to be subject to the laws of the Member State in which they are established. This principle assumes a comparable level of protection in each Member State, i.e. that health and consumer provisions and other safety standards are generally comparable. Essentially, the principle of mutual recognition, which is a cornerstone of the internal market in the free movement of goods, is thus to be extended to the services sector;

⁽¹⁾ OJ C 357 of 14.12.2001, p. 65

1.6 **regards its as important** that service providers are thus to be given the chance to enter the markets in other Member States on terms with which they are familiar;

1.7 **points out**, however, that the content and scope of application of the country of origin principle are not clearly defined in the proposed Directive. Application of the country of origin principle would give rise to problems, particularly in social and health services. Supervision of these services must in all cases be carried out in accordance with the laws of the Member State of destination, by the authorities of that Member State;

1.8 **considers** the proposals on administrative simplification **to be sensible** in principle. The proposed simplification of procedures and the use of electronic means to complete procedures are vital for the establishment of a free market in services;

1.9 **considers it extremely important** that the Directive lays down rules on the mutual provision of information and communication in order, on the one hand, to grant service providers real access to a common market and, on the other hand, to enable recipients of services to use services free of risk throughout the Community;

1.10 **welcomes** the fact that the proposed directive is based on Member States' mutual trust and support and makes provision inter alia for joint checks on existing provisions to ensure that they are compatible with the aim of establishing a free market in services.

2. The Committee of the Regions' recommendations

THE COMMITTEE OF THE REGIONS

2.1 **supports** the framework Directive's horizontal approach. This makes it possible to dispense with detailed provisions and not to harmonise all of the relevant provisions in the Member States;

2.2 **emphasises**, however, that the danger of this horizontal approach is that it may overlap with existing Community provisions for specific sectors;

2.3 **welcomes** therefore that the Directive makes provision for a number of general derogations in order to prevent such overlaps. These derogations concern financial services, electronic communication services and networks relating to the 'telecom package', and services in the transport sector. Taxation and activities associated with the exercise of official authority are also expressly excluded;

2.4 **points out**, however, on the other hand, that in principle the intention is for the Directive to apply cumulatively in conjunction with other existing Community legal acts;

2.5 **fears** therefore that, in particular, existing provisions for specific sectors may be undermined as a result, for in practice, the proposed Directive will always come into play in cases not covered by the special provisions. In case of doubt it is to be assumed that the existing sector-specific provisions already regulate the relevant areas definitively and/or that individual points of detail have deliberately not been regulated;

2.6 **urges** therefore that the Directive's cumulative application be expressly excluded in areas in which definitive special sector-specific provisions exist. It is necessary to rule out the creation of new supplementary provisions by the Directive in such cases;

2.7 **recognises** that the purpose of the planned general derogations from the country of origin principle is to ensure consistency with existing legal acts. The country of origin principle will not be applicable to service sectors where sector-specific provisions already apply or are planned. Examples of this include: postal services, electricity, gas and water supplies, posting of workers, waste transport, recognition of professional qualifications, and authorisation schemes relating to the reimbursement of the costs of hospital care;

2.8 **points out** that the country of origin principle may penalise honest businessmen and consumers, since it makes it possible to circumvent exacting domestic standards relating to professional qualifications or the quality of service provision. Therefore, it is necessary to stop the country of origin principle being used merely for the purpose of circumventing national provisions governing economic activity;

2.9 **would also point out** that the draft Directive makes no reference whatsoever to the draft Directive currently being discussed on working conditions for temporary workers (COM(2002) 149);

2.10 **notes**, however, that although the Directive is not to be applicable, it lays down supplementary competing provisions for some of these areas. This concerns in particular the following areas: recognition of professional qualifications to be supplemented by provisions on professional insurance and commercial communications, posting of workers to be supplemented by provisions which extend beyond purely administrative matters, and supplementary provisions covering the reimbursement of treatment costs;

2.11 **fears** that this may lead to a plethora of competing provisions and a lack of transparency;

2.12 **therefore urges** that the Directive's rules which could be laid down equally well in existing or planned special provisions should also be laid down in such special provisions. This will also avoid having to discuss a specific sector in the course of further deliberations on the subject of this Directive. As the negotiations hitherto about the Directive have shown, the danger of having to do this has already been spotted in a number of areas;

2.13 **sees this problem** of competition with special provisions particularly in connection with the proposed provisions on the posting of workers;

2.14 **notes** that apart from procedural rules and rules on competences – as a departure from the country of origin principle the Member State of posting is declared to be competent – the Directive also contains further substantive provisions which directly follow on from the current Directive on the posting of workers in the framework of the provision of services, and therefore supplement or compete with that Directive. The measures which Member States are permitted to take in carrying out their checks are specified and thus limited. Article 17(5) of the draft Directive lays down a derogation from the country of origin principle for the Directive on the posting of workers, but the Committee firmly believes that the ban on the imposition of any obligations laid down in Article 24 of the draft Directive renders the derogation in Article 17(5) absurd, for the question of how the Member State of origin is to learn of any infringements in the Member State of posting (which is no longer able to exercise supervision and impose penalties) remains open. Even if this were to be possible, the question of how the Member State of origin is to take action in another country where it has no jurisdiction also remains open;

2.15 **points out** that as a result the danger of checks being less effective is partly recognised and that therefore the provisions in the proposed Directive definitely have a direct impact on the Directive on the posting of workers in the framework of the provision of services;

2.16 **therefore considers it appropriate** that the provisions relating to checks under the Directive on the posting of workers in the framework of the provision of services should also be laid down in that Directive insofar as such checks are necessary in practice;

2.17 **thinks** that the Directive fails to clarify to what extent it is to apply to the extremely sensitive area of services of general economic interest. It is recognised that it is a matter for the competent national, regional or local authorities to define, organise, finance and monitor services of general interest;

2.18 **points out** that inclusion of services of general economic interest in the scope of the services Directive and the objective being pursued therein of developing the single market

further and guaranteeing an area free of internal borders for services of general economic interest, too, would considerably restrict the competent national, regional and local authorities' freedom to act;

2.19 **therefore expressly welcomes** the fact that in talks held to date on the Directive, the Commission has explained that the Directive is in no way targeting the special features of services of general interest and intends neither to liberalise nor to abolish monopolies;

2.20 **notes** that this point is not, however, reflected in the Directive itself so far;

2.21 **therefore demands** that this matter be rectified and that services of general interest be excluded as a matter of principle from the Directive's scope (and not only in part from the application of the country of origin principle), in order to avert any discussion when the time comes to implement the Directive and so as to avoid the need to have to harmonise this sector in the short term with the aid of Community-wide provisions. This would also tally with the Commission's position as expressed in the recent White Paper on services of general interest;

2.22 **emphasises** that in this connection special attention must be paid to the sensitive area of health care and social security;

2.23 **proposes** that this area of services of general interest also be expressly excluded from the Directive's scope. This would also tally with the Commission's intention – as announced in the recent White Paper on services of general interest – to present a communication in 2005 on social and health care services given the latter's special importance and features;

2.24 **notes** that in this sector too the draft Directive is creating new provisions which compete with existing provisions;

2.25 **therefore proposes** that any legislative adjustments necessary to implement ECJ case law be laid down in the corresponding special provisions. Consequently, the provisions of Article 23 should be deleted from the Directive;

2.26 **also considers it desirable** that whenever reference is made to other provisions, the title of the particular provision should be expressly given in order to make the Directive easier to read;

2.27 **emphasises** the particularly important role to be played by regional and local authorities in implementing the proposed Directive. Considerable demands will be made on these authorities;

2.28 **thinks** that insufficient account has been taken hitherto of the effects of the Directive's implementation on regional and local authorities. The Directive is addressed to the Member States, but particularly concerns regional and local government, which will be charged with the practical implementation as part of the administrative process;

2.29 **points out** that in this connection problems relating to competences may arise initially in cases where implementation of the Directive at regional and local level requires new structures, a uniform administrative procedure on overarching cooperation. Rules such as the one stipulating that 'the authorisation shall enable the provider to have access to the service activity, or to exercise that activity, throughout the national territory' (Article 10(4)) or the establishment of single points of contact for handling all the procedures and formalities needed for access to service activities (Article 6) are, for example, in conflict with federal states' constitutional foundations. The Committee would point out that under the constitutional Treaty the Union has to respect the national identities of the Member States inherent in their fundamental political and constitutional structures;

2.30 **fears** that all national authorisation procedures come under the scope of the Directive and therefore are to be checked to see whether they should be retained, are to be abolished or adapted if need be and at all events are to be simplified. Such massive interference in Member States' procedural laws is disproportionate. Therefore it should be made clear that only the authorisation procedures directly associated with the initial start-up of an economic activity are to come under the scope of the Directive. All procedures laid down by law for overriding reasons relating to the public interest – whether or not they concern economic activities – are to be excluded from the scope of the Directive;

2.31 **fears** that implementation of the Directive at regional and local level will run counter to the moves to introduce deregulation and streamline administration;

2.32 **draws attention** to the fact that implementation of the Directive at regional and local level will require unforeseeable extra staffing and – not least – funding. This applies in particular to cross-border cooperation, electronic information exchange, the establishment and coordination of the single points of contact, the checks on whether existing provisions are compatible with the aims of the Directive, and the mutual evaluation to be carried out later by the Member States;

2.33 **notes** that the Commission has said nothing about the overall outlay – and particularly the financial outlay. So far a figure has only been put against the financial impact on the Commission itself (approx. EUR 3.4 million);

2.34 **requests** that corresponding calculations also be carried out in respect of the impact on each Member State;

2.35 **considers it vital** that support or compensation be provided for a transitional period. Without such assistance for regional and local government the planned simplification of transnational procedures will not be able to be introduced swiftly. It is absolutely vital not to put too great a practical strain on regional and local authorities;

2.36 **is also aware of** the everyday problems which could arise for regional and local authorities in this connection. One example is the language problems when communicating with authorities or service providers from other Member States or when recognising certificates, attestations or other documents issued for service providers in another Member States and thus in another language. The same is true of the use of electronic means for completing procedures;

2.37 **considers it necessary** that due allowance be made for such practical problems too, at least during a transitional period. For example, non-certified translations could at least be permitted;

2.38 **considers it foreseeable** that problems will also arise in connection with the planned measures for safeguarding service quality and in particular for supervising service providers. Because of the country of origin principle it is to be feared that transnational cooperation between authorities will be the only avenue available for taking action against troublesome service providers established in another Member State. This may well result in inappropriate delays;

2.39 **welcomes** the extensive provision made in the Directive for mutual assistance in order to counter the aforementioned dangers;

2.40 **calls on** the Commission to also make appropriate allowance for the interests of regional and local authorities when enacting the supplementary measures required for the checks in conjunction with the committee that is to be formed. Should new and as yet unforeseeable problems arise in connection with the performance of the checks when the time comes to implement the Directive, these must also be solved in a suitable and practical manner;

2.41 **draws attention** to the fact that professional bodies may also be confronted with similar problems as state administrative bodies. This applies particularly in the case of the checks on service providers who are established on their territory but are active in another Member State. If professional bodies perform duties of the state, they also experience the problems which could arise for Member States' authorities when implementing the proposed Directive;

2.42 **emphasises** the need to ensure when the Directive is implemented that professional bodies can perform their present duties without restrictions in future, too. The existence of compulsory membership schemes currently means that if service providers intend to set up in business in another Member State, they must contact the competent professional bodies in that country directly. It is therefore important, in connection with the establishment and setting-up of single points of contact, to take account of current responsibilities and allocations of tasks;

2.43 **is also aware of** the new challenges and tasks facing professional bodies, especially as possible single points of

contacts or in connection with the drafting of new codes of conduct at Community level;

2.44 for this purpose **asks** Member States, regional and local authorities and all other interested parties to prepare themselves in good time for the challenges set by the new Directive;

2.45 **would urge** that actions should not be guided by defensive reflexes but that the chances presenting themselves to each Member State's service providers and citizens and to the internal market as a whole should be seized.

Brussels, 30 September 2004

The President
of the Committee of the Regions
Peter STRAUB

Opinion of the Committee of the Regions on the Communication from the Commission: Follow-up to the high-level reflection process on patient mobility and health-care developments in the European Union and the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Modernising social protection for the development of high-quality, accessible and sustainable health care and long-term care: support for the national strategies using the 'open method of coordination'

(2005/C 43/07)

THE COMMITTEE OF THE REGIONS

Having regard to the *Communication from the Commission: Follow-up to the high-level reflection process on patient mobility and health-care developments in the European Union and the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Modernising social protection for the development of high-quality, accessible and sustainable health care and long-term care: support for the national strategies using the 'open method of coordination'* (COM(2004) 301 final and COM(2004) 304 final),

Having regard to the European Commission's decision of 20 April 2004, under Article 265(1) of the Treaty establishing the European Community, to consult the Committee on the subject,

Having regard to the CoR president's decision of 5 April 2004 to instruct the Commission for Economic and Social Policy to draw up an opinion on the subject,

Having regard to the *Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on the health strategy of the European Community and the Commission's Proposal for a Decision of the European Parliament and of the Council adopting a programme of Community action in the field of public health (2001-2006)* (COM (2000) 285 final),

Having regard to the *Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions: Strengthening the social dimension of the Lisbon strategy: Streamlining open coordination in the field of social protection* (COM(2003) 261 final),

Having regard to the *Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions: The future of health care and care for the elderly: guaranteeing accessibility, quality and financial viability* (COM(2001) 723 final),