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**EP Committee on the Internal Market and Consumer Protection
Proposal for a Directive on Services in the Internal Market**

Public hearing held on 11th November (9:00-18:30) in the European Parliament

I. Horizontal aspects

I.1. The Commission's proposal in the light of Primary Law

**** Prof. P.R. Beaumont – University of Aberdeen***

With respect to the Country of Origin Principle ("COP"), Prof. Beaumont pointed out the lack of precision with respect to damage, the problems arising from technical aspects, the absence of provisions in the case of a clash between two service providers, and the absence of any guarantee for defined standards.

I.2. Problems of transposition and Member States' "screening process and timetable

**** Prof. P.A. Messerlin – Institut d'Etudes Politiques de Paris***

Prof. Messerlin mentioned the Articles 14 (Prohibited requirements) and 15 (Requirements to be evaluated). He also recalled the disposals on the evaluation process remained unclear. He also recommended including the Member States ("MS") in the Commission's assessment process.

Questions & Answers

Dr. Froehlinger, *Head of Unit in DG Markt*, indicated that the reimbursement of medical costs was included in the Draft Directive because many MS still fail to comply with some ECJ rulings affirming these rights for patients.

Uncertainties in the text as to the place of establishment were pointed out.

Concerns were raised on the monitoring of illegal activities, notably money laundering and fiscal evasion.

The risk of adding layers of bureaucracy was recalled. A wider role should be awarded to the MS.

II. Economic aspects

II.1 Scope of the Directive and balance between the Internal Market and other policies (health, consumers, employment)

**** Mr A. Lejour – Netherlands Bureau for Economic Policy Analysis, The Hague***

Mr Lejour presented the results of a study on the possible effects of the Draft Directive which were expected to be economically positive globally.

**** Ms C. Roumet – European Social Platform, Brussels***

According to Mr Wilson, a prediction of the impacts is relatively low, due to the lack of assessment. Also the application of COP could possibly cause a risk of lowering the quality of social services thus rendering impossible the harmonisation of regulations. Mr Wilson was also rather sceptical with regard to European codes of conduct. He pointed out that no definition helped distinguish freedom of movement and freedom of establishment.

Mr Wilson recommended the removal of social services from the Draft Directive and called upon the MEPs to genuinely assess the consequences of an implemented Directive. He also insisted on the need to bear in mind the fundamental social rights.

**** Mr J. Murray – BEUC, Brussels***

Mr Murray pointed out the difficulty in estimating the possible impact on consumers. He recalled that the first priority remained the accessibility of services. In this framework, the proposal was welcomed by BEUC but some disposals still needed to be improved. According to Mr Murray, “obstacles are not all bad”, especially in the cross-border provision of services. A distinction needs to be made between Consumer Protection and Protectionism. Mr Murray was also rather sceptical towards codes of conduct and considered this provision of the Draft Directive as “the victory of hope over experience”.

With respect to Healthcare (“HC”) services, Mr Murray pointed out that extending the freedom of services would be likely to improve the quality of care provided to patients. But he also recalled the complex nature of health service provisions. Mr Murray did not call for an exclusion of this kind of service from the Draft Directive but recommended a wider analysis of the possible consequences in this field.

II.2. The Country of Origin Principle: Rulings of the European Court of Justice and its impact on legislation

**** Me M. Guillaume – Conseil d'Etat, Paris***

According to Mr Guillaume, the COP will not be a problem for harmonised services. However, in other cases, clashes between national legislation may well appear. Also, the application of the COP is not likely to facilitate legal interpretation and thus ensure legal certainty and safety. It may also entail a legal competition between MS and a rising social dumping. According to Mr Guillaume, consumer protection could suffer from this situation. Mr Guillaume therefore suggested clarifying services subject to the COP and those excluded.

**** Mr B.J. Drijber – Lawyer, The Hague***

Mr Drijber pointed out the attractiveness of the COP for service providers but reminded of the possible consequences for citizens and consumers. In this framework he called for common standards. Mr Drijber also emphasised the legal difficulties (i.e. no harmonisation, individual derogations) but welcomed the idea to remove unjustified barriers to the freedom of services. Nevertheless, he considered the current system flows, and recommended extending the possibility for derogations.

**** Mr O. Brouwer – Lawyer, Brussels***

Mr Brouwer mentioned that case Law of ECJ supported the COP. He pointed out the need for confidence between the host MS and the MS of origin. He also said the COP was already applied in other fields and worked well, though on a restricted basis. Mr Brouwer revealed it was likely to improve competition, reduce bureaucracy and costs or increase legal security. However, derogations in certain fields and for a limited period should be included, even if the application of COP is not to be restricted. He also backed the concern on the lowering of quality standards but he did not support the question of posted workers and social security.

With regard to administrative cooperation, it already exists (in CAP and Consumer Protection for example) and it is proving satisfactory. Mr Brouwer queried whether it would not be possible in the field of Services but no conclusions can yet be drawn on its efficiency.

In conclusion, Mr Brouwer said that this Draft Directive would increase legal clarity and improve service provision for consumers. Also the COP should not be removed as it is the cornerstone of the Internal Market. He also reminded that several questions remained pending and still needed to be solved.

II.3. Interaction with public service delivery including the White Paper and possible framework directive on services of general interest

*** Mr Raoul Jennar – URFIG/Oxfam, Belgium**

Mr Jennar pointed out the lack of harmonisation and the need for a framework directive on services of general interest (or at least a debate on public services). He also wondered about the importance of jurisprudence. The consequences on the posting of workers and social protection were also raised. Mr Jennar also raised the question of the risk of deregulation and privatisation (risk to see the relationship between patients and medical doctors become commercial) and to reduce quality and accessibility of HC. He emphasised the notion of public service and considered it incompatible with an open internal market.

Mr Jennar recommended subordinating the Draft Directive with regard to the framework Directive on Services of general interest. If not, social and health services should, according to him, be included in another Directive which would mention criteria.

*** Prof. P.M. Huber – University of Munich**

Prof. Huber insisted on the risk of liberalisation, incompatibility with the Treaties and the need to respect the principle of subsidiarity.

Questions & Answers

Dr. Froehlinger mentioned that the exclusion of social and HC services was not the only solution to the risk to affect their organisation at national level. She also pointed out that this Draft Directive was likely to bring about consequences in every field of service provision but also that assessment would be different according to sectors. Regarding Article 15 (Requirements to be evaluated), she reminded that requirements were justified in the case of HC services and should thus not be removed. The only consequences of the Proposal on HC will be the application of jurisprudence and the removal of unnecessary discriminations. Moreover, according to Dr. Froehlinger, the organisation and financing of HC systems would not be affected by the Draft Directive.

It was reminded that Services of general interest were defined in Article 16 ECT and that precisions were intentionally left to the decision of MS.

It was also said that quality standards had to be specified and confirmed.

With respect to the application of the COP, the need to respect the host country's legislation was emphasised.

In closing, Ms Gebhardt, *Rapporteur of the EP Committee*, pointed to the need to facilitate the movement of services and at the same time protect the interest of workers, consumers and patients. She insisted on the importance to scrutinise this Proposal and pointed out two main concerns highlighted by several speakers: the COP and control mechanisms. Clear and genuine answers have to be given.

III. Employment issues: The proposal and its interaction with adopted secondary legislation

**** Prof. N. Bruun – National Institute for Working Life, Sweden***

Prof. Bruun suggested referring to existing legislation within the Draft Directive to avoid conflicts. He also pointed out the problems resulting from surveillance mechanisms and ethical standards.

**** Ms C. Passchier – ETUC, Belgium***

According to ETUC, the Draft Directive should not cover Labour Law.

**** Ms de Liedekerke – UNICE***

Ms de Liedekerke mentioned UNICE's appreciation of administrative simplification and the need for an improved wording of some articles.

Questions & Answers

The difficulty to set up surveillance mechanisms was pointed out.

Ms Gebhardt emphasised the need to genuinely combine the Proposal on Services with the future Directive on Mutual Recognition of Professional Qualifications.

It was mentioned that the COP was introduced for cases where harmonisation is not possible.

It was also considered that certain restrictions should not be lifted (regulated professions) due to the risk of liberalisation.

IV. Specific problems of some economic sectors

IV.1. Liberal Professions

**** Mr A. Metzler – BFB, Berlin***

Mr Metzler insisted on the need to have clearly defined terms (include the definition of Liberal Professions adopted by the Ecosoc in the Draft Directive) in order to avoid clashes with existing regulations. He pointed out the priority of harmonisation compared with the COP which was considered as unsuitable for health and social systems. He suggested centralising administrative bodies at EU level. He also questioned the idea of codes of conduct as well as the liability to information on services provided.

IV.2. Audiovisual Sector

*** Mr J. Briquemont – European Broadcasting Union, Brussels**

Cultural goods have always been considered as non-economic notably in the framework of the WTO. This should remain in the Draft Directive.

IV.3. SME

*** Mr S. Henriksson – Eurocommerce, Brussels**

Eurocommerce strongly supported this Draft Directive as it aims to remove disproportionate and unnecessary barriers.

IV.4. Health services

*** Ms R. Baeten – Observatoire Social Européen, Brussels**

Ms Baeten saw no opposition to the inclusion of HC services in the Draft Directive. However, problems need to be solved and she drew attention to some points: the organisation of HC systems is complex and relations between actors are precarious; fundamental rights guarantee access to quality HC; the sector is mainly publicly funded Europe-wide, etc. Ms Baeten also pointed out the question of the COP and indicated the need to take the specific nature of HC into consideration.

*** Mr J. Hjerqvist – Timbro Hälsa, Stockholm**

Mr Hjerqvist pointed out the need to focus on consumption attitudes to analyse the consequences of the Draft Directive on HC. Even if the mobility of patients was facilitated, several problems remain and still need to be addressed, i.e. the capacity to move abroad for treatment is linked to patients' income. Otherwise, the mobility of professionals should be improved notably by the mean of eHealth.

IV.5. Temporary Work

*** Ms B. Segol – UNI-Europa, Brussels**

Ms Segol warned the MEPs against the risk for social dumping and deregulation. She called on to adopt legislation on temporary work.

IV.6. Construction Industry

*** Mr W. Küchler – FIEC, Brussels**

Mr Küchler insisted on the need for an improved wording of the text.

Questions & Answers

The importance to guarantee the quality of services was recalled.

The need to specify the conditions for the mobility of professionals was emphasised as well as the need for better information.

Regarding HC services, the sensitivity was fully understood by MEPs. And even if all implications remained unclear to some extent, the text will be improved, notably on the assessment process.

Dr. Froehlinger pointed out that the application of the COP to HC services would be very limited as it would only apply to established service providers (See Article 4-5 (Definition of an establishment): Hospitals, homes, medical cabinets are considered as establishments). Moreover, Professional Qualifications will still be assessed by MS.

Dr. Froehlinger also mentioned the possibility of granting case-by-case derogations for HC services (Article 19) and said this text would have “no adverse consequences” for HC systems as information and transparency would be improved. Also the Draft Directive could have positive effects i.e. on the creation of hospitals for instance. It would also facilitate the movement of professionals and guarantee safeguards.

Ms Baeten reminded the precarious balance between actors in the different national HC systems and that HC professionals were subject to harmonisation and recognition for the freedom of movement and establishment within the EU.

The need to have agreement on minimum quality guarantees was pointed out. This can be best achieved through the Open Method of Coordination. Accessibility and affordability of treatments was considered the best indicator in assessing the quality of HC. It was also stressed that no interference between MS and the Commission should occur.

Mr Hjerqvist indicated that the growth potential in HC depended on management of costs and resources: an increase of competition in the provision of medical devices would be likely to reduce costs.

The question was raised whether HC professionals should subscribe to genuine professional indemnity insurance.

An improved mobility of patients was said to cause longer waiting lists. The question of addressing the problem of shortage of personnel was raised.

HC services were included in the Draft Directive as ECJ reaffirmed patients' rights. However, concerns were raised on the risk for social security systems. Reimbursements should be dealt with in MS in order to guarantee the best access to quality HC.

V. Summary by Ms A. Van Lancker – Rapporteur of the EP Committee on Employment and Social Affairs

Ms Van Lancker pointed out that the main concerns raised by the Draft Directive were the compliance to the goals of the Lisbon Strategy without additional red tape and social or environmental losses.

Points for clarification were as follows:

- the scope of application, which must be assessed for certain fields;
- the COP, which is applied for the first time at a wide scale;
- the unclear links between the Draft Directive and existing regulations

VI. Closing remarks by Ms E. Gebhardt – Rapporteur of the EP Committee on Internal Market and Consumer Protection

Ms Gebhardt remarked that no speaker had raised questions on the existence of this Proposal. Her understanding was that the main problem remained the lack of harmonisation in the greater part of sectors and the concerns in harmonised fields.

Ms Gebhardt asked for a more specific approach for certain areas, as had been made for the Draft Directive on Mutual Recognition, even if the Commission backed a general approach. She also insisted on the need to clarify the notion of Services of general interest in order to avoid misunderstandings. And the COP should certainly not apply to them. She considered its application to be more specific.

Ms Gebhardt raised the importance of scrutinising the question of control.

She also stressed the need to clearly define the terms used and ensure this Proposal would not entail any change to existing legislation.

Ms Gebhardt confirmed her wish to work efficiently. A working paper and a draft report would be written for the beginning of next year and the first hearing can be expected for the end of 2005.

Frédéric Destrebecq
Assistant to the Secretary General