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Committee on the Internal Market and Consumer Protection

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PE 364.722v02-00

COMPROMISE AMENDMENTS CA 1 – CA 6

Draft report

Evelyne Gebhardt

Services in the internal market

(PE 355.744v04-00)

Proposal for a directive (COM(2004)0002 – C5-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Compromise amendment by Evelyne Gebhardt, Malcolm Harbour, Anneli Jäätteenmäki, Heide Rühle, Pierre Jonckheer and André Brie

CA 1

(Compromise amendment replacing Amendments 427, 430, ENVI 39 cp, 429, 428, 432, 431, 433, 434, 435, 51, 436, 439, 440, CULT 17 cp, 441, 442 cp, 438 cp, ITRE 25 cp, ECON 17 cp, 446, 447, EMPL 57 cp, 444, 445, 438 cp, 491, CULT 18, 448, 449, 450, 451, 452, EMPL 57 cp, 453, 456, 454, 455, 457, 458, 459, 460, EMPL 60, 461, 462, 591 (=592) and 593))

Article 1

Subject-matter

This Directive establishes general provisions facilitating exercise of the freedom of establishment for service providers and the free movement of services.

Subject-matter

1. This Directive establishes general provisions facilitating exercise of the freedom of establishment for service providers and the free movement of services ***while maintaining a high quality of services.***

2. ***This Directive shall not apply to the liberalisation of services of general economic interest, or to the privatisation of public entities providing such services. It shall also be without prejudice to provisions***

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of Community law on competition and aid.

3. This Directive shall not affect measures taken at Community or national level to protect or promote cultural or linguistic diversity or media pluralism.

4. This Directive shall be without prejudice to labour law, and, in particular, to any provisions on relations between the social partners, including the right to take industrial action and the right to collective agreements. This Directive shall not affect national social security legislation in the Member States.

Compromise amendment by Evelyne Gebhardt, Heide Rühle, Pierre Jonckheer and
André Brie

CA 2

(Compromise amendment replacing Amendments 475, 1151, 52, 492, 493, 494, 495, EMPL 58 cp, EMPL 57 cp, 55, 498, 464, 482, 508, 509, 57, 507, 510, 512, 513, EMPL 58 cp, 514, 517, 519, 520, 521, EMPL 12, 550, 525, 526, 528, 527, 529, 530, 531, 533, 535, 536, 539, 532, 534, 537, 538, 575, 576, 59, 569, 571, 567, 566, 570, 572, 502, 503, 500, 56, 504, 501, 547, 554, 555, 557, 556, 499, 541, 542, 543, 544, 545, 546, 563, 564, EMPL 59, 58, 565, 194, 496 (=463), EMPL 7 cp, 192, 232, EMPL 14, 480, 195 and 8)

Article 2

Scope

1. This Directive shall apply to services supplied by providers established in a Member State.
2. This Directive shall not apply to the following activities:
 - (a) ***financial services as defined in Article 2(b) of Directive 2002/65/EC;***
 - (b) ***electronic communications services and networks, and associated facilities and services, with respect to matters covered by Directives 2002/19/EC , 2002/20/EC ,***

Scope

1. This Directive shall apply to services supplied by providers established in a Member State.
2. This Directive shall not apply to the following activities:
 - (a) ***services of general economic interest and services of general interest as defined by the Member States;***
 - (b) ***areas of service activities that are governed by sector-specific legislation at Community level;***

*2002/21/EC , 2002/22/EC and 2002/58/EC
of the European Parliament and of the
Council;*

*(c) transport services to the extent that they
are governed by other Community
instruments the legal basis of which is
Article 71 or Article 80(2) of the Treaty.*

*(c) healthcare, whether or not it is provided
via healthcare facilities, and regardless of
the ways in which it is organised and
financed at national level or whether it is
public or private;*

*(d) audiovisual services, whatever their
mode of production, distribution and
transmission, including radio broadcasting
and the cinema;*

*(e) gambling activities that involve
wagering a stake with pecuniary value in
games of chance, including lotteries and
betting transactions;*

*(f) professions and activities that are
permanently or temporarily connected with
the exercise of official authority in a
Member State, particularly that of notary;*

*(g) services provided by temporary
employment agencies.*

3. This Directive does not apply to the field
of taxation, *with the exception of Articles 14
and 16 to the extent that the restrictions
identified therein are not covered by a
Community instrument on tax
harmonisation.*

3. This Directive does not apply to the field
of taxation.

Recital 8 a (new)

*(8a) This Directive does not apply to
services of general interest that are
provided and defined by the Member States
under their obligations to protect the public
interest, nor does it apply to services in the
performance of which the providers are
subject to particular requirements imposed
by the Member States or the Community
regarding the proper performance of
certain general interest tasks, and which
fulfil criteria such as security of supply,
general accessibility, universal coverage,
continuity, affordability, legal certainty,
sustainability, territorial and social*

cohesion and education and cultural diversity.

Services of general interest include, in particular: healthcare; social and welfare services; education; audiovisual services; cultural services; postal, water, waste, electricity, gas and environmental services.

Recital 8 b (new)

(8b) Areas of services that are covered by sector-specific directives include, in particular: services of a banking, credit, insurance, occupational or personal pension, investment or payment nature; electronic communications services and networks and associated facilities and services; transport services; legal services.

Compromise amendment by Evelyne Gebhardt, Malcolm Harbour, Anneli Jäätteenmäki, Heide Rühle, Pierre Jonckheer and André Brie

CA 3

(Compromise amendment replacing Amendments 579, 581, EMPL 63 cp, 60, 580, 582, 583, 584, JURI 15, 585, CULT 21, ENVI 46, ITRE 34, 586, ITRE 35, ECON 24, ECON 25, 217, 220, 12, EMPL 13, 218, CULT 8, ITRE 7, 215, JURI 3, 216, 219, 221, 587, 588, JURI 16, 589, 472, EMPL 63 cp, 229, EMPL 20 cp, 230, 590, ITRE 36, EMPL 64, 222, 223, EMPL 21, CULT 9, 224, 225 and 226)

Article 3

Relationship with other provisions of
Community law

Member States shall apply the provisions of this Directive in compliance with the rules of the Treaty on the right of establishment and the free movement of services.

Relationship with other provisions of
Community law

1. If the provisions of this Directive come into conflict with other Community rules governing specific aspects of access to and the exercise of a service activity in specific sectors or for specific professions, those other rules shall prevail and shall apply to the specific sectors or professions involved. These rules include, in particular:

(a) Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services;

(b) Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community;

(c) Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities;

(d) Directive .../.../EC of the European Parliament and of the Council concerning recognition of professional qualifications.

Application of this Directive shall not prevent the application of provisions of other Community instruments as regards the services governed by those provisions.

2. This Directive shall be without prejudice to the provisions of private international law, in particular for the handling of contractual and non-contractual obligations, including in the form of agreements (Rome I and Rome II).

Recital 13

(13) There is already a considerable body of Community law on service activities, especially the regulated professions, postal services, television broadcasting, information society services and services relating to travel, holidays and package tours. Service activities are also covered by other instruments which do not deal with a specific category of services, such as those relating to consumer protection. This Directive builds on, and thus complements, the Community acquis. Where a service activity is already covered by one or more Community instruments, this Directive and those instruments will all apply, the requirements laid down by one adding to

(13) This Directive shall apply only when there are no specific provisions of Community law governing specific aspects of access to and the exercise of a service activity in specific sectors or for specific professions.

those laid down by the others. Accordingly, appropriate provisions should be laid down, including provision for derogations, in order to prevent incompatibilities and to ensure consistency as between all those Community instruments.

Compromise amendment by Evelyne Gebhardt, Heide Rühle and Pierre Jonckheer

CA 4

(Compromise amendment replacing Amendments 821, 822, 110, 823, 836 D, 837 D, 834, 832, 826, 111, 827, 828, 149, 1152, 150, 151, 825, 829, 831, 840, 830, 833, 838, 839, 844, 849, 854 D, 855 D, 857, 112, 858, 113, 860, 859, 861, 114, 862, 863, 167, 3, 4, 171, 170, 5, 172, 260, 310 D, 311 D, 312, 30, 313, 314, 318, 317, 319, 320 D, 321 D, 31, 326, 329 D, 330 D, 331 D, 32, 334, 335, 332, 333, 866 D, 868 D, 869 D, 115, 864, 865 and 870)

Article 16

Country of origin principle

1. Member States shall ensure that providers are subject only to the national provisions of their Member State of origin which fall within the coordinated field.

Paragraph 1 shall cover national provisions relating to access to and the exercise of a service activity, in particular those requirements governing the behaviour of the provider, the quality or content of the service, advertising, contracts and the provider's liability.

2. The Member State of origin shall be responsible for supervising the provider and the services provided by him, including services provided by him in another

Principles governing the cross-border provision of services

1. As regards access to a service activity, including requirements in the field of qualification, authorisation or notification enabling service providers to operate legally in a Member State other than the Member State of primary establishment, service providers shall comply with the national provisions of their Member State of establishment.

As regards the exercise of a service activity in a Member State other than the Member State of primary establishment, including requirements relating to the promotion, sale, supply and quality of services, as well as to the behaviour of the service provider, service providers shall comply with the national provisions of the Member State where the service is provided.

2. Paragraph 1 shall apply to business services and to services performed in commercial transactions and for the consumer.

Member State.

3. Member States may not, for reasons falling within the coordinated field, restrict the freedom to provide services in the case of a provider established in another Member State, in particular, by imposing any of the following requirements:

(a) an obligation on the provider to have an establishment in their territory;

(b) an obligation on the provider to make a declaration or notification to, or to obtain an authorisation from, their competent authorities, including entry in a register or registration with a professional body or association in their territory;

(c) an obligation on the provider to have an address or representative in their territory or to have an address for service at the address of a person authorised in that territory;

(d) a ban on the provider setting up a certain infrastructure in their territory, including an office or chambers, which the provider needs to supply the services in question;

(e) an obligation on the provider to comply with requirements, relating to the exercise of a service activity, applicable in their territory;

(f) the application of specific contractual arrangements between the provider and the recipient which prevent or restrict service provision by the self-employed;

(g) an obligation on the provider to possess an identity document issued by its competent authorities specific to the exercise of a service activity;

(h) requirements which affect the use of equipment which is an integral part of the service provided;

3. The Member State in which the service is provided shall be principally responsible for supervising the provider and the services provided in compliance with the conditions in respect of mutual assistance and close cooperation with the service provider's Member State of primary establishment, in accordance with this Directive.

(i) restrictions on the freedom to provide the services referred to in Article 20, the first subparagraph of Article 23(1) or Article 25(1).

4. Member States shall be able to continue applying national provisions in respect of access to a service activity that are more restrictive or prescriptive than the rules in the Member State of primary establishment, provided that such measures are not applied in a discriminatory fashion and are justified by reasons relating to the public interest, in particular as regards social policy, consumer protection, environmental protection, public safety and public health. Such measures must also play a part in attaining the objective pursued, and must do no more than is necessary in order to attain that objective.

The Member State shall notify the Commission forthwith of all national provisions applied on the basis of paragraph 4.

5. By [two years after the entry into force of this Directive] at the latest, and after consulting the European Parliament and the Council, the Commission shall consider the harmonisation measures necessary as regards the rules governing access to and the exercise of a service activity.

Recital 37 a (new)

(37a) In line with the approach proposed by the Commission in its second biennial report on the application of the principle of mutual recognition in the single market¹, a clear distinction should be drawn between the different stages involved in the provision of a service activity. It is on the basis of that approach that a clear distinction is drawn in Article 16(1) of this Directive between that which relates to access to a service activity and that which relates to the exercise of a service activity.

¹ COM(2002)0419

Recital 37 b (new)

(37b) As regards the conditions governing access to and the exercise of a service activity, Member States shall be able to continue applying national provisions that are more prescriptive and restrictive than the rules in the country of primary establishment, in accordance with Articles 95(4), 153(5) and 176 of the EC Treaty, and with the case-law of the Court of Justice.

Compromise amendment by Evelyne Gebhardt, Malcolm Harbour, Anneli Jäätteenmäki, Heide Rühle, Pierre Jonckheer and André Brie

CA 5

(Compromise amendment replacing Amendments 1084, 1087, 136, 1086, 1085, EMPL 137, JURI 45, 1088, 1090 D, 1089, 1091, 1092, 1093, EMPL 138,; 1095, 137, EMPL 139, JURI 46, 1094, 1096, 1097, 1098, 1099, ITRE 60, 1100, 1101 D, 1102 D, 1103 D, ENVI 77, 1104, 138, 1105, 139, ENVI 78, ITRE 61, 1106, 1107, ENVI 79 D, 140, 1108, 1109, 1110, 141 D, 1112 D, EMPL 141 D, 1113 D, 1111, ENVI 80, ITRE 62, JURI 47, 1114 and 1115)

Chapter V, Articles 34, 35, 36 and 37

Chapter V

Supervision

Administrative cooperation

Article 34

1. Member States shall ensure that the powers of monitoring and supervision provided for in national law in respect of the provider ***and the activities concerned*** are also exercised where a service is provided in another Member State.

2. Member States shall ensure that providers supply their competent authorities with all the information necessary for monitoring their activities.

1. Member States shall ensure that the powers of monitoring and supervision provided for in national law in respect of the provider are also exercised where a service is provided in another Member State.

2. Paragraph 1 does not oblige the Member State of primary establishment to carry out factual checks or monitoring in the Member State where the service is provided.

3. The competent authorities of the Member State where the service is provided

may conduct checks, inspections and investigations on the spot, provided that those checks, inspections and investigations are objectively justified and non-discriminatory.

Article 35

Mutual assistance

1. ***In accordance with Article 16***, Member States shall give each other mutual assistance and shall put in place all possible measures for effective cooperation with one another in order to ensure the supervision of providers and the services they provide.

2. ***For the purposes of paragraph 1, Member States shall designate one or more points of contact, the contact details of which shall be communicated to the other Member States and the Commission.***

3. ***Member States shall supply the information requested by other Member States or the Commission by electronic means and within the shortest possible period of time.***

Upon becoming aware of any unlawful conduct by a provider, or of specific acts, that are likely to cause serious damage in a Member State, Member States shall inform the Member State of origin, within the shortest possible period of time.

Upon becoming aware of any unlawful conduct by a provider who is likely to provide services in other Member States, or of specific acts, that could cause serious damage to the health or safety of persons, Member States shall inform all other Member States and the Commission within the shortest possible period of time.

4. ***The Member State of origin shall supply***

Mutual assistance

1. Member States shall give each other mutual assistance and shall put in place all possible measures for effective cooperation with one another in order to ensure the supervision of providers and the services they provide.

2. ***The Member State of destination is responsible for the supervision of the activity of the service provider in its territory. The Member State of destination shall carry out such supervision in accordance with paragraph 3.***

3. ***The Member State of destination:***

– shall take all measures necessary to ensure that service providers comply with their national legislation as regards the exercise of a service activity in its territory, and where Article 16(4) applies;

– shall carry out the checks, inspections and investigations necessary to supervise the service provided;

– shall carry out the checks, inspections and investigations requested by the Member State of primary establishment.

4. ***Member States shall supply the***

information on providers established in its territory when requested to do so by another Member State and in particular confirmation that a service provider is established in its territory and exercising his activities in a lawful manner;

The Member State of origin shall undertake the checks, inspections and investigations requested by another Member State and shall inform the latter of the results and, as the case may be, of the measures taken.

5. In the event of difficulty in meeting a request for information, the Member State in question shall rapidly inform the requesting Member State with a view to finding a solution.

6. Member States shall ensure that registers in which providers have been entered, and which may be consulted by the competent authorities in their territory, may also be consulted, in accordance with the same conditions, by the equivalent competent authorities of the other Member States.

information requested by other Member States or the Commission by electronic means and within the shortest possible period of time.

5. Upon becoming aware of any unlawful conduct by a service provider, or of specific acts that could cause serious damage in a Member State, Member States shall inform the Member State of primary establishment within the shortest possible period of time.

6. If the Member State of destination, having carried out checks, inspections and investigations in accordance with paragraph 3, finds that a service provider did not comply with his obligations, that Member State may oblige the service provider to deposit a security, or impose intermediary measures on the service provider.

Article 36

Mutual assistance in the event of the temporary movement of the provider

1. In respect of the matters covered by Article 16, where a provider moves temporarily to another Member State in order to provide a service without being established there, the competent authorities of that Member State shall participate in the supervision of the provider in accordance with paragraph 2.

2. At the request of the Member State of origin, the competent authorities referred to in paragraph 1 shall carry out any checks, inspections and investigations necessary for ensuring effective supervision by the

Mutual assistance in the event of the temporary movement of the provider

1. The Member State of primary establishment is responsible for the supervision of the service provider in its territory, in particular through supervisory measures at the place of establishment of the service provider, in accordance with paragraph 2.

2. The Member State of primary establishment:

Member State of origin. In so doing, the competent authorities shall act to the extent permitted by the powers vested in them in their Member State.

On their own initiative, those competent authorities may conduct checks, inspections and investigations on the spot, provided that those checks, inspections or investigations meet the following conditions:

(a) they consist exclusively in the establishment of facts and do not give rise to any other measure against the provider, subject to the possibility of case-by-case derogations as provided for in Article 19;

(b) they are not discriminatory and are not motivated by the fact that the provider is established in another Member State;

(c) they are objectively justified by an overriding reason relating to the public interest and are proportionate to the objective pursued.

- shall carry out the checks, inspections and investigations requested by another Member State and shall inform the latter of the results, and, as the case may be, of the measures taken;

- shall supply information on service providers established in its territory when such information is requested by another Member State, including, in particular, confirmation that a service provider is established in its territory and is exercising his activities in a lawful manner.

3. The Member State of primary establishment cannot refuse to take supervisory or implementing measures in its territory on the grounds that the service has been provided (or caused damage) in another Member State.

Article 37

Mutual assistance in the event of case-by-case derogations from the country of origin principle

1. Where a Member State intends to take a measure pursuant to Article 19, the procedure laid down in paragraphs 2 to 6 of this Article shall apply without prejudice to proceedings before the courts.

Alert mechanism

1. A Member State becoming aware of serious specific acts or circumstances that could cause serious damage to the health or safety of persons in its territory or in other Member States shall inform the Member State of origin, the other Member States concerned and the Commission

2. The Member State referred to in paragraph 1 shall ask the Member State of origin to take measures with regard to the service provider, supplying all relevant information on the service in question and the circumstances of the case.

The Member State of origin shall check, within the shortest possible period of time, whether the provider is operating lawfully and verify the facts underlying the request. It shall inform the requesting Member State within the shortest possible period of time of the measures taken or envisaged or, as the case may be, the reasons why it has not taken any measures.

3. Following communication by the Member State of origin as provided for in the second subparagraph of paragraph 2, the requesting Member State shall notify the Commission and the Member State of origin of its intention to take measures, stating the following:

(a) the reasons why it believes the measures taken or envisaged by the Member State of origin are inadequate;

(b) the reasons why it believes the measures it intends to take fulfil the conditions laid down in Article 19.

4. The measures may not be taken until fifteen working days after the date of notification provided for in paragraph 3.

5. Without prejudice to the possibility for the requesting Member State to take the measures in question upon expiry of the period specified in paragraph 4, the Commission shall, within the shortest possible period of time, examine the compatibility with Community law of the measures notified.

Where the Commission concludes that the measure is incompatible with Community law, it shall adopt a decision asking the Member State concerned to refrain from

within the shortest possible period of time.

2. The Commission shall promote and take part in the operation of a European network of Member States' authorities in order to implement paragraph 1.

3. The Commission shall prepare and regularly update, in accordance with the procedure laid down in Article 42, guidelines concerning the management of the network referred to in paragraph 2.

taking the proposed measures or to put an end to the measures in question as a matter of urgency.

6. In the case of urgency, a Member State which intends to take a measure may derogate from paragraphs 3 and 4. In such cases, the measures shall be notified within the shortest possible period of time to the Commission and the Member State of origin, stating the reasons for which the Member State considers that there is urgency.

Compromise amendment by Evelyne Gebhardt, Heide Rühle and Pierre Jonckheer

CA 6

(Compromise amendment replacing Amendment 1149)

Article 43

Following the summary report referred to in Article 41(4), the Commission shall, every three years, present to the European Parliament and to the Council a report on the application of this Directive, accompanied, where appropriate, by proposals for its amendment.

By [three years after the entry into force of this Directive] at the latest, the Commission shall submit to the European Parliament and the Council a comprehensive report on the application of this Directive, in particular as regards its scope, the application of Article 16, the scope for further harmonisation of Community law relating to access to and the exercise of a service activity or to specific service sectors, and as regards any measures that need to be taken at Community level to ensure that appropriate levels of consumer and social protection are maintained. That report shall be accompanied by a proposal to revise this Directive and by further harmonisation measures.

2. The European Parliament and the Council shall endeavour to act, in accordance with the Treaty, within two years of the presentation by the Commission of any proposal submitted

under paragraph 1.