Adoption of the Services Directive: a Community big bang or a velvet reform?

On 27 December 2006, amidst general indifference, the text of Directive 123/2006/EC on services in the internal market was published in the Official Journal (OJ) of the European Union (European Parliament and Council of the European Union, 2006). After three years of work, the saga of the so-called ‘Bolkestein’ Directive came to an end and an important legislative part of the Lisbon Strategy was complete (1). Whereas the Directive was roundly criticised at the time of its first reading in the European Parliament, in February 2006 (2), the mood surrounding the second reading was a mix of enthusiasm and resignation. Does this mean that a balance has been struck and that ‘all is for the best in the best of ... happened in the time between the Commission’s initial draft and the adoption of the final version as an A point by the Transport Council on 11-12 December 2006? In the following pages we shall attempt to piece together the jigsaw, dwelling on some of the events that occurred in the institutional trialogue - and, in some cases, their repercussions. We shall endeavour to present an overall - but

1 For the record, the credo justifying the Services Directive is that it should bolster the trade in services by between 30 and 60% and increase growth by 0.3 to 0.7% (in support of this much-debated hypothesis, see in particular de Bruijn et al., 2006).

2 We should not forget that 15,000 people gathered for a demonstration in Strasbourg on the day of the vote on the European Parliament’s first reading; furthermore, a ‘Stop Bolkestein’ petition amassed 50,000 signatures.
inevitably incomplete - appraisal of the ‘headway’ which became possible thanks above all to the input of the European Parliament, and to outline the main developments worthy of our attention.


The gestation period for the Directive lasted almost three years. It is helpful to recall the procedure whereby the dossier went backwards and forwards between the Commission, Parliament and Council.

Table 1: The various stages in the procedure and implementation of the Directive

<table>
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3 Pursuant to Article 251 of the Treaty, in fact, the Commission normally acts as a filter for Parliament’s amendments before the Council expresses its view. The Council must give a unanimous decision on amendments which are not taken over by the Commission.
1.1 Left-wing criticism of the draft text

The justification for the draft text produced by Dutch Commissioner Frits Bolkestein and approved by the College of Commissioners on 13 January 2004 was twofold: economic and legal. First of all, the Commission regards services as the touchstone of the Lisbon Strategy aimed at making the European Union into the most competitive region of the world. According to the Commission, the service sector, representing 70% of the EU economy, is hamstrung by regulations which prevent it from developing to the full. Secondly, the Commission argues that Articles 43 and 49 of the EC Treaty, as well as the case law of the European Court of Justice (ECJ), compel it to act against legislation in the Member States which, in the guise of supervision and protection, has erected ‘barriers’ to the free movement of services. Rapidly dubbed ‘ultraliberal’ by some on the Left (4), who believed that it would open the floodgates to extensive liberalisation and deregulation, the draft text had four main characteristics:

- the scope of the Directive was extremely broad (5);
- the principle of freedom of movement - centring on the country of origin principle (COP) - took precedence over other freedoms and fundamental rights (6);
- systematic evaluation and monitoring of national legislation was to be conducted by the Member States and the Commission;
- ‘soft law’ (codes of conduct and voluntary agreements) was to be used to the detriment of harmonisation, regarded as a bedrock of common principles.

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4 A demonstration called by the European Trade Union Confederation and held in Brussels on 19 March 2005 was attended by more than 70,000 people.

5 All services are covered apart from non-economic services of general interest and those explicitly excluded from the Directive (transport services, electronic communications, taxation etc.).

6 It should however be noted that ECJ case law has both attenuated and safeguarded the principle of free movement.
1.2 First reading in the European Parliament: a courageous vote

Although the Council working group did a huge amount of work (7) on the draft Directive and served as a testing ground for the European Parliament between February 2004 and February 2006, there can be no doubt that the high-point in the inter-institutional dialogue came on 16 February 2006, when the Parliament held its first reading. Parliament made far-reaching changes to the Commission’s initial draft, excising from it the most controversial provisions.

1) Most importantly, at the initiative of Anne Van Lancker (8), Parliament introduced a number of ‘safeguard clauses’ into Article 1 of the Directive. Thus the text now clearly states that the Directive does not deal with the liberalisation of services of general economic interest (paragraph 2), nor with the abolition of monopolies providing services, nor with aids granted by Member States (paragraph 3). It does not affect measures taken at Community level or at national level, in conformity with Community law, to protect or promote cultural or linguistic diversity or media pluralism (paragraph 4). It does not affect Member States’ rules of criminal law (paragraph 5). The Directive does not affect labour law, that is any legal or contractual provision concerning employment conditions, working conditions, including health and safety at work and the relationship between employers and workers, which Member States apply in accordance with national law which respects Community law. Equally, this Directive does not affect social security legislation (paragraph 6). Finally, it does not affect the exercise of fundamental rights as recognised in the Member States and by Community law or the right to negotiate, conclude and enforce collective agreements and to take industrial action […] (paragraph 7).

2) A not insignificant number of fields or sectors are excluded from the scope of the draft Directive: temporary work agencies, all transport services including port services, legal services, audiovisual services,
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gambling activities, activities connected with the exercise of official authority, social services relating to social housing, childcare and support of families and persons in need, and security services. Healthcare services are likewise excluded (see the contribution by Rita Baeten in this volume).

3) The Parliament acted to ensure that sectoral directives would take precedence over the *lex generalis*, which will therefore intervene only as a complement to existing Community legislation. This is a key point, since it protects the ‘inviolability’ of important Community instruments affording protection against any watering-down of standards (9).

4) In the chapter on freedom of establishment, the Commission wished, following certain rulings by the Court, to restrict the prerogatives of public authorities with regard to the authorisations and requirements applying to service providers. Here too, Parliament stood in the way of broader deregulation.

5) Lastly, Parliament replaced the country of origin principle (COP) with the principle of freedom to provide services. Member States must respect the right of providers to provide services in a Member State other than that in which they are established. The Member State in which the service is provided must ensure free access to and free exercise of a service activity within its territory.

Member States must not make access to or exercise of a service activity in their territory subject to compliance with any requirements which do not respect the following principles:

a) non-discrimination: the requirement may be neither directly nor indirectly discriminatory with regard to nationality or, in the case of legal persons, with regard to the Member State in which they are established;

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9 The Services Directive will in particular apply “without prejudice” to Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, Regulation (EEC) No.1408/71 on the application of social security schemes to employed persons and their families moving within the Community, Directive 89/552/EC on the pursuit of television broadcasting activities and Directive 2005/36/EC on the recognition of professional qualifications.
b) necessity: the requirement must be justified for reasons of public policy, public security, public health or the protection of the environment;
c) proportionality: the requirement must be suitable for attaining the objective pursued, and must not go beyond what is necessary to attain that objective.

The disappearance of the COP is without doubt the European Parliament’s greatest achievement. But, above and beyond this ‘emasculation’, the general philosophy underlying the original proposal still remains that of removing all regulatory barriers to services (10) and subjecting the action of Member States to requirements which are ‘duly justified’. Member States are therefore placed on the defensive and will be unable to legislate unless they show due regard for the principles of non-discrimination, necessity and proportionality.

1.3 The Commission’s amended proposal: salvaging the basics

The Commission adopted an amended proposal for a Directive on 4 April 2006. Although it took over most of Parliament’s amendments, the Commission reintroduced several of the disputed elements here or vowed to do so in other - existing or future - Community instruments.

1) The Commission agreed to exclude a number of sectors (services of general interest – SGI – ‘as defined by the Member States’, temporary work agencies, audiovisual services, activities connected with the exercise of official authority, gambling activities, private security services etc.). However, it retained in the scope of the Directive services of general economic interest – SGEI (11), educational, cultural and social services in general, with the exception of four particular social services (see above).

10 In this context it is worth reminding ourselves of Article 53 of the Treaty: ‘The Member States declare their readiness to undertake the liberalisation of services beyond the extent required by the directives issued pursuant to Article 52(1), if their general economic situation and the situation of the economic sector concerned so permit’.

11 It should however be noted that Article 17 of the Directive stipulates that Article 16 (freedom to provide services) does not apply to SGEI provided in another Member State.
2) The Commission excluded healthcare but, in the wake of the Watts judgment (12), announced that it was drawing up a directive on patient mobility that will go further than Article 23 of the Directive, which it agreed to delete.

3) It agreed to delete Articles 24 and 25 regarding the posting of workers, but stated its intention to produce guidelines incorporating the principle and to be more expeditious in handling complaints from companies about ‘barriers’ to freedom of movement. The Commission likewise announced plans to modify Directive 96/71.

4) It agreed to delete the guiding principle behind Article 16 – the COP – albeit while restricting the Member States’ prerogatives in terms of the requirements for performing service activities.

In removing the most controversial provisions from its proposal, the Commission was seeking to ‘get the Directive back on its feet’, quipped Guido Berardis, director of the unit within the Internal Market Directorate-General which drew up the draft Directive. The Commission’s main goal was to preserve the principle of freedom of movement and limit the likelihood of Member States evading peer review by the other Member States and oversight by the Commission.

1.4 The Council’s common position of 24 July 2006

After numerous meetings and bilateral caucuses, the Council managed to achieve, unanimously (13), first a political agreement and then a common position on the draft Directive, based on a compromise text

12 This is the 9th judgment on the matter following the Kholl and Decker, Smits and Pereboom, Van Brackel, Muller-Fauré, Inizan, Leishte and other judgments. In this sense, Watts says nothing fundamentally new that was not said in the earlier judgments. Some (the Commission) believe that the Court is ‘fine-tuning’ its point of view, while others (in particular EPSU, the European Federation of Public Service Unions) believe that the Court is becoming more radical.

13 Two delegations abstained for opposing reasons: Belgium, pleading ‘difficulties’ with certain provisions of the Directive, and Lithuania, disappointed that the Directive did not go further towards greater liberalisation of the service sector. Abstention is not of course an obstacle to unanimity.
of the Finnish presidency (14). Generally speaking, this common position incorporates - either in full or in substance - all of the European Parliament’s amendments that were taken over by the Commission. It contains new provisions bolstering transparency and cooperation between the Member States and the Commission, thereby helping to ensure proper implementation of the Directive. The principal aspects of the common position are described below:

- Specific fields of law (Article 1 of the Directive). With respect to the subject matter of the Directive and its relationship with specific fields of law (fundamental rights, labour law, criminal law, protection or promotion of cultural and linguistic diversity and media pluralism), the common position basically incorporates Parliament’s amendments and the amended proposal.

- Scope (Article 2). In essence, the common position takes into account the amendments adopted by Parliament at first reading. As far as services of general interest are concerned, it reflects in full the content of the Parliamentary amendments. The common position spells out even more clearly than the amended proposal the fact that the Directive does not apply to non-economic services of general interest. It confirms the exclusion of all transport services, including port services. It slightly rewords the text to make plain that the exclusion of audiovisual services covers cinematographic services too; this was accepted by the Commission. With regard to the exclusion of social services, the common position refers to social services relating to social housing, childcare and support of families and persons permanently or temporarily in need which are provided by the State, by providers mandated by the State or by charities recognised as such by the State (15). The Council also pointed out that the Directive should not affect the principle of universal service

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14 The political agreement of May 2006 was in fact achieved on the basis of a text put forward by the Austrian presidency, but Finland transformed it into a common position in July 2006.

15 Thus the Council and the Commission construe the four social services referred to by the European Parliament by way of example as an exhaustive list.
as applied by the Member States’ social services. Finally, the common position confirms that temporary work agencies and, in particular, healthcare services are excluded from the scope of the Directive.

- Relationship of the Directive with other provisions of Community law (Article 3). The common position takes the same approach as the European Parliament and the Commission: it states clearly that the Directive does not affect other Community instruments and that, in the case of conflict with another Community act governing specific aspects of access to or exercise of a service activity, the provision of the other Community act will prevail. In addition, the common position confirms that the Directive does not concern rules of private international law, in particular rules which guarantee that consumers benefit from the protection granted to them by the consumer protection rules laid down in the consumer legislation in force in their Member State.

- Principle of ‘freedom to provide services’ (Article 16). The Council agreed not to alter Article 16 of the Directive as formulated by the Parliament and taken over by the Commission. But, under pressure from the ‘new’ Member States (Poland, Hungary, Czech Republic, Estonia etc.), it added to Article 39(5) a provision reading as follows: ‘By 28 December 2009 at the latest, Member States shall present a report to the Commission on the national requirements whose application could fall under […] Article 16, providing reasons why they consider that the application of those requirements fulfil the criteria referred to in […] Article 16’. The effect of this clause will be to put Member States even more on the defensive.

- The posting of workers and nationals of third countries (Articles 24 and 25 of the original proposal). The common position accepted the approach of the European Parliament and the Commission, and consequently deleted Articles 24 and 25.

- Responsibility for healthcare costs (Article 23). Here too, the Council went along with the approach of Parliament and the Commission, thus confirming the deletion of Article 23.
One can only conclude that the Council went along with the Commission’s amended proposal by default. Indeed, the Council needed to act unanimously if it was to reject the Commission proposals, and that was not possible owing to the diversity of views around the table. What happened in practice was that the Commission allied itself with Parliament against a divided, impotent Council (10).

1.5 The Parliament’s recommendation for second reading: maturity or abdication?

The second reading in the European Parliament was characterised by two very different political attitudes: on the one hand, that of some members of the PES, GUE and Green/ALE Groups, who believed that the Directive should be further improved, especially given the outcome of the first reading; on the other, the attitude of those on the Right (EPP-DE, ALDE), who felt that an appropriate balance had been struck and that the Council’s common position, itself very close to the first reading, was a suitable basis for agreement. The Left tabled the majority of the 39 amendments relating to aspects not included by the Commission in its amended proposal, concerning in particular:

- a better definition of, and more legal certainty for, social services (17);

- an explicit reference to Article 28 of the Charter of Fundamental Rights, referring to respect for rules governing the relations between social partners in the Member States;

- more attention to illegal practices on the part of service providers, particularly concerning the problem of undeclared work and the ‘pseudo-self employed’;

16 Each institution was evidently determined to produce an incomplete Directive rather than nothing at all.

17 On 26 April 2006, between the first and second readings, the Commission published a communication on social services of general interest (CEC, 2006), following on from Parliament’s exclusion of all social services at first reading (see the chapter by Rita Baeten in this volume).
- a clearer statement of the rights and obligations of Member States of establishment and those of the Member States where the service is provided (18);

- deletion of the Commission’s ‘analyses and guidelines’ concerning the mutual evaluation of national requirements on freedom of movement for service providers, on the grounds that these would jeopardise the joint legislative powers of the Council and Parliament and might create excessive red-tape and administrative chaos in the Member States (Art. 39(5));

- the need to examine the advisability of harmonisation measures on the service activities covered by the Directive.

On the other side of the political divide, most speakers highlighted the ‘balanced overall outcome’ (Marianne Thyssen, EPP – BE). Even though she had defended Parliament’s right to enter amendments at second reading, the rapporteur, Evelyne Gebhardt, stated in summing up that the positive cooperation within Parliament and among the institutions was reflected in the text, which constituted ‘a symbiosis between the interests of workers, consumers and economic operators’. In her opinion, this balance was evident particularly in the deletion of the country of origin principle and of the provisions on the posting of workers, the exclusion of services of general interest such as social and healthcare services, and the inclusion in the text of the principle of freedom of movement for services, which would oblige Member States to lift restrictions.

In an attempt to avert conflict, Commissioner McCreevy made a statement at the start of the plenary sitting on 15 November 2006 to clarify the Commission’s position. His aim was both to forestall the vote of hostile MEPs and to explain, in a favourable light, the compromises put forward by the rapporteur on the Directive. Mr McCreevy signalled the Commission’s plan to draw up guidelines and suggestions to assist

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18 Under this amendment, the Member State of establishment would be responsible for supervising the provider on its territory, whereas the Member State where the service is provided would supervise the provider when services are being provided on its territory.
Member States in implementing the Directive (within three years). These would be neither legal interpretations (the responsibility of the ECJ) nor amendments to the Directive (co-decision with Parliament). The Commissioner also stressed that the Directive ‘does indeed not affect labour law laid down in national legislation and established practices in the Member States and that it does not affect collective rights […]. The Services Directive is neutral as to the different models in the Member States regarding the role of the social partners’. He did however recall that Community law, and in particular the Treaty, continue to apply in this field (19). Ms Gebhardt said that ‘with the Commission’s official statement, the final uncertainties have been removed’. She therefore advised her colleagues to vote in favour of the Council’s common position without amending it. That second reading, ‘inevitable’ to some MEPs, ‘botched’ to others, leaves a bitter taste in the mouths of those who champion a strong role for Parliament in the co-decision procedure: they would have liked Parliament to go as far as it did at first reading, where more had been achieved.

In the opinion of Pierre Jonckheer (Greens/ALE – BE), ‘this can be seen as either political maturity (20) or a capitulation’. He added that a majority of MEPs had opted out; he was shocked that the rejection of amendments had left the Directive without any reference to the provisions of the European Charter of Fundamental Rights or to labour law; he and his colleagues had doubts as to the value of the Commissioner’s statement on labour law and whether future Commissions would abide by the text. One must surely conclude that the Council and a majority in Parliament were refusing to give labour law and social services adequate protection in the face of the Services Directive.

The European Parliament finally completed its second reading of the Directive at the plenary sitting on 15 November 2006. Apart from three

19 The Green/ALE and GUE Groups immediately responded that statements by the Commission are all well and good but have no binding force and commit only the current Commission.

20 Thus Ms Gebhardt, in her closing remarks, emphasised the maturity of Parliament, ‘which has not tabled hundreds of amendments’.

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technical amendments reflecting the interinstitutional agreement on comitology, no other amendments – most of them put forward by MEPs from the Greens/ALE, GUE and PES Groups – got through. A motion calling for the Directive to be rejected out of hand was itself rejected by 405 votes to 105, with two abstentions.

By declining to exercise its right to amend the Council's common position, Parliament demonstrated that it had won out over the Commission and the Council, even though a not insignificant minority of MEPs had put forward 39 amendments seeking to improve the content of the Directive - or purely and simply to reject it. To this extent, ‘maturity or abdication?’ is the wrong question to ask. It was clear from the outset that the EPP-DE and ALDE Groups would not tolerate a radical reappraisal of the proposal. What was more surprising - albeit predictable - was that members of the PES Group would split into opposing factions on some of the disputed provisions of the Directive. And that was without factoring in the tacit agreement between Commission and Council on the basic political thrust of the Directive.

1.6 The Council's second common position: divergent approaches

The Directive on services in the internal market was formally adopted by the Council, as an A point, on 12 December 2006. The vote was unanimous (with abstentions from Lithuania and Belgium). However, the apparent unanimity in the Council masks some subtle divergences of approach. Some Member States, on the one hand, sought to prioritise a balanced approach, respect for the Community method - including through harmonisation - and a bedrock of solid guarantees for citizens (workers and consumers); on the other hand, there was the ‘free-trade’ tendency headed up by the United Kingdom and the Netherlands, keen on a more business-oriented approach. At the insistence of several eastern European countries, the Council agreed to tighten up the provisions on reporting and mutual evaluation with respect to the national requirements retained by Member States in their national legislation. This point was presented by the new Member States as a necessary concession in return for the disappearance of the COP. Furthermore, the Council, with the agreement of the Commission, approved a transposition deadline of three years rather than two.

2.1 Positive aspects
This point is rarely made, but the Services Directive does contain some undeniable steps forward which we should have the courage to welcome, even if the headway is partly cosmetic or merely pre-empts natural moves to update information and administrative cooperation structures. For instance, Chapter II of the Directive comprises four operational articles (Articles 5, 6, 7 and 8) which are innovative in that they simplify administrative procedures.

a) Simplification of the procedures and formalities applicable to access to a service activity and to the exercise thereof (the possibility of introducing harmonised forms at Community level etc.).

b) The creation of points of single contact, designated by a Member State to liaise with service providers from other Member States. They will play a role in giving assistance to providers either as the authority directly competent or as an intermediary.

c) The possibility of completing all procedures and formalities relating to access to a service activity and to the exercise thereof by electronic means (speeding up the general introduction of e-government).

This chapter has seldom been contested, and no political Group in Parliament tabled any amendments opposing it.

2.2 Disputed elements
Dispute centred on four main elements:
- the assessment and scope of the principle of freedom to provide services;
- the chapter on freedom of establishment;
- the treatment of services of general interest (including social services);
- the ‘posting of workers’ issue.

These four elements will be examined in more detail below.
2.2.1 The country of origin principle (COP)

From the very outset, Article 16 of the Services Directive generated more debate than any other in the political Groups. Under the original wording of paragraph 16(1), Member States were to ensure that service providers were subject solely to the national provisions of their Member State of origin. This provision caused a huge amount of concern, especially since the COP imposed a form of automatic mutual recognition, without prior harmonisation and – above all – without a minimum threshold of protection for workers/consumers having been laid down. Even so, the Commission regarded the COP as the ‘legal keystone’ of the Directive and wished to allow all providers to export their own business models without conforming to the systems in place in each Member State of activity.

However, the Court of Justice has never explicitly established the country of origin rule (21) as a general principle for services. It has often confined itself to pointing out that a Member State is in breach of Article 49 of the Treaty if it requires an economic operator to obtain an authorisation to carry out a particular activity, ‘without account being taken of the evidence or guarantees already presented in the Member State of origin’ (22). The COP was the Commission’s way of guaranteeing the full effect of Article 49 (23) and bringing about a step-change by taking a teleological view: it introduced the rule that compelling a service provider established in another Member State to obtain authorisation in the State of destination is no longer admissible per se, unconditionally, without specific derogations (24).

21 For a discussion of the COP and its antecedents, see Van den Abeele (2005).

22 See the judgment Commission vs. Portugal of 29 April 2004, Case C-171/02 concerning private security services.

23 Article 49 stipulates that ‘[…] restrictions on freedom to provide services within the Community shall be prohibited in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended’.

24 Oddly enough, the COP has been praised to the skies by some and lambasted by others. One senior official with a doctorate in public law even asserted that ‘the COP is a pillar of the common European house’ (Garabiol-Furet, 2006).
Thus the legislation of the country of origin becomes the legal norm in the country of destination, at least as concerns the coordinated sphere. The door to competitive deregulation is thrown open, in that companies may be tempted to establish themselves in less demanding countries and offer their services from there ('legal shopping'). Under such circumstances, better regulated countries could find themselves penalised, which may lead to competitive deregulation predicated on the lowest common denominator. What is more, the COP provision contravened Article 50, third sub-paragraph, of the Treaty (25).

What does the new Article 16 say (26)? The country of origin principle has been replaced by the principle of freedom to provide services. However, the new Article 16(1) sets out in two parts a general principle with very powerful effects:

- Member States shall respect the right of providers to provide services in a Member State other than that in which they are established;
- The Member State in which the service is provided shall ensure free access to and free exercise of a service activity within its territory.

25 Article 50, third sub-paragraph, of the Treaty stipulates that the person providing a service may, in order to do so, temporarily pursue his activity in the State where the service is provided, under the same conditions [author’s emphasis] as are imposed by that State on its own nationals.

26 The new version of Article 16 was revised by the European Parliament on four occasions in the days leading up to the vote at first reading. This Article was at the heart of talks between, but also within, the political Groups for more than three days. Most of the Socialist MEPs found it unacceptable to keep the spirit of the country of origin principle in the text, a point of view not shared by the Socialist MEPs from the new Member States. The EPP side wanted the principle to remain such in the text as. Total deadlock prevailed for more than two weeks. Various compromises were talked through by a high-level group headed up by the chairmen of the two political groupings: Martin Schulz and Hans-Gert Pöttering. Before signing up to the compromise deal, the EPP-DE Group insisted at the last minute on deleting from the text the words ‘protection of consumers and social policy’, which can therefore no longer be invoked to restrict the service activity of a foreign operator. Although this concept has been included in one of the recitals, the fact of having removed it from the legal stipulations constitutes a political symbol and is the price that the PES Group had to pay to secure the overall compromise deal.
Next, Article 16 lists restrictions which the host State (or State of
destination) is barred from imposing, as well as the particular
requirements that may be imposed with regard to the exercise of a
service activity. The scope of these particular requirements (public
policy, public security, public health or the protection of the environment)
is in fact limited and has been circumscribed by the Court of Justice in
several judgments.

Lastly, Article 16 stipulates that, by 28 December 2011, the
Commission will submit a report on the application of this Article, in
which it will consider the need to propose harmonisation measures
regarding service activities covered by this Directive.

It is worth noting one particular improvement, introduced at the
Parliament’s initiative, namely that the requirements which a Member
State may impose must not prevent Member States ‘from applying, in
accordance with Community law, its rules on employment conditions,
including those laid down in collective agreements’ (16(3)). Article 16
should be read in the light of Article 17, which lays down additional
derogations (27) from the freedom to provide services, and Article
18 (28), which establishes derogations in individual cases. But the new
Article 16 must also be seen in conjunction with three other provisions
which circumscribe and, in a way, constrict the requirements that a
Member State may impose on a service provider.

- First of all, Article 16 needs to be read in connection with Article 31
  stating that ‘With respect to national requirements which may be
imposed pursuant to Articles 16 or 17, the Member State where the
service is provided is responsible for the supervision of the activity
of the provider in its territory’. The requirements must be justified

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27 For instance, the principle of freedom to provide services excludes SGEI,
matters covered by Directive 96/71/EC (the posting of workers), by Regulation
(EEC) No.1408/71 (coordination of social security schemes), the provisions
regarding contractual and non-contractual obligations, etc.

28 ‘In exceptional circumstances only, a Member State may, in respect of a
provider established in another Member State, take measures relating to the
safety of services’.

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on grounds of public order, public security, public health and protection of the environment. The checks, inspections or investigations must not be discriminatory or 'motivated by the fact that the provider is established in another Member State [...]'.

Two remarks are called for here. First of all, supervision by the State of destination is circumscribed by stringent criteria which will allow for few preventive checks. Such checks will have to be sufficiently well motivated by reasons of public order or public security to be valid. In the light of this provision, will it still be possible to allege that labour legislation has been infringed or to take preventive measures against undeclared work? Secondly, given that the requirements connected with consumer protection and social policy were removed by the Right in the European Parliament, there can be no certainty that the work of labour inspectorates will be facilitated. In this respect, the Belgian National Labour Council (CNT) (29) expressed the view in 2005 that the European institutions should go further in setting out specific procedures for cooperation with inspection services since, in its opinion, the terms of the Directive were too general on this point. It believed moreover that minimum guarantees should have been laid down concerning the work of inspection services, especially in respect of their human and material resources, procedures and effective cooperation.

- Article 39(5) stipulates that ‘By 28 December 2009 at the latest, Member States shall present a report to the Commission on the national requirements whose application could fall under the third subparagraph of Article 16(1) and the first sentence of Article 16(3), providing reasons why they consider that the application of those requirements fulfil the criteria referred to in the third subparagraph of Article 16(1) and the first sentence of Article 16(3)’. Thus the Member State of destination is put under pressure, being obliged on every occasion to substantiate the reasons behind certain national requirements. This plays into the hands of the ‘less law-making’ lobby. Besides, the risk of additional red-tape is ever-present.

Article 41 states that ‘the Commission, by 28 December 2011 […] shall present to the European Parliament and to the Council a comprehensive report on the application of this Directive. This report shall […] address in particular the application of Article 16. […] It shall be accompanied, where appropriate, by proposals for amendment of this Directive with a view to completing the Internal Market for services’. In addition to the already-mentioned risk of bureaucracy, this last provision could pave the way towards a return of the country of origin principle. The Commission has in fact declared its strong attachment to the COP which, it believes, constitutes ‘the only viable alternative to complete (and hence unachievable) harmonisation so as to enable providers, especially SMEs, to offer their services on a cross-border scale without having to face up to the prohibitive and dissuasive costs associated with the obligation to comply with the cumulative rules of several, or even all, of the 27 national systems’ (D’Acunto, 2004: 220).

The final wording of the new Article 16, reached by means of inter-institutional compromise, does not entirely preclude the hypothesis that something akin to the original COP might be reintroduced in 2011 under the review of the Directive referred to in Article 41. The national requirements that the State of destination may still impose will have to meet such a broad set of conditions, and to undergo such prior scrutiny by the Commission, that they are likely to be greatly scaled down or even to disappear over time.

2.2.2 The chapter on freedom of establishment: an illustration of what deregulation means?

The section of the Directive linked to freedom of establishment has consequences that are probably just as far-reaching as the COP in terms of the ‘better law-making’ agenda. Even though Parliament amended the ‘Establishment’ part of the draft Directive at its first reading on 16 February 2006, this part continues to bear the stamp of ‘less law-making’.

Article 10 sets out the conditions for authorisation schemes on the basis of criteria to ensure that the competent authorities shall not exercise their power of assessment in an arbitrary or discretionary manner.
These criteria are to be non-discriminatory, justified by an overriding reason relating to the public interest, proportionate to that public interest objective, clear and unambiguous, objective, and made public in advance. Put briefly, the cumulative effect of all these conditions will be to reduce substantially the use made of the authorisation schemes.

Article 13(4), which deals with authorisation procedures, provides specifically that, failing a response within a reasonable time period set or made public in advance, authorisation shall be deemed to have been granted. On this point, Parliament, with the help of Council, has succeeded in limiting the scope of the tacit authorisation scheme (\(^30\)).

Article 15 requires Member States to run a fine-tooth comb through their legal systems to check that they comply with the principles of non-discrimination, necessity (requirements must be objectively justified by an overriding reason relating to the public interest) and proportionality. In this connection it is worth noting that Article 15(7) requires Member States to ‘notify the Commission of any new laws, regulations or administrative provisions’ which set requirements such as compulsory minimum or maximum tariffs, requirements fixing a minimum number of employees, or an obligation on a provider to take a specific legal form, including being a legal person, a non-profit-making entity, etc.

### 2.2.3 The treatment of SGI in the Directive

**Services of general economic interest (SGEI)**

Since this was a draft Directive designed to apply to the whole of the service sector, the question inevitably arose as to how it fitted in with Community law relating to services of general economic interest (SGEI). In this respect, the discussion on SGEI was one of the major political debates with Parliament. The final outcome, however, is rather low-key. SGEI, other than those mentioned in Article 2(1), remain

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30 Tacit authorisation is a questionable principle insofar as it states that, failing a response from the administration within the requisite time period, the decision is deemed to have taken effect. The new wording takes better account of the principle of good governance: different arrangements [from tacit authorisation] may nevertheless be put in place, where justified by overriding reasons relating to the public interest, including a legitimate interest of third parties.
within the scope of the Directive. This is particularly the case for energy (gas and electricity), postal services, transport, distribution and treatment of water and waste management, as well as environmental services, water distribution and purification services, storage of dangerous goods, etc.

Thus the text approved by Parliament recognises that ‘the Directive should not apply to non-economic services of general interest’ \(^{31}\) […] The Directive applies only to services of general economic interest, i.e. to services that correspond to an economic activity and are open to competition’. On this point, it should be noted that the Commission distanced itself from Parliament’s vote calling for the exclusion of ‘services of general interest as defined by the Member States’ in Article 2. More importantly, it did not uphold the exclusion of services of general economic interest \(^{32}\) from the scope of the Directive, a demand which nonetheless had a certain degree of internal logic to it,

\(^{31}\) The term ‘services of general interest’ refers to those service activities, whether commercial or not, that are considered to be of general interest by public authorities, and for this reason are subject to specific public service obligations. As mentioned in Article 86(2) of the EC Treaty, services of general economic interest are commercial service activities that fulfil purposes of general interest. This is particularly the case for network services (transport, energy, telecommunications, postal services). There remains, however, a ‘grey area’ in which the economic nature of the service is not, in the final analysis, a reliable criterion for distinguishing certain activities (non-profit making, traditional, no price paid by the beneficiary, compulsory or essential nature of the services supplied, etc.). This is the case, for example, when there is an economic activity involved but the nature of the service is clearly non-economic.

\(^{32}\) All amendments relating to the call for services of general economic interest to be excluded were rejected by margins of around 60% (against) and 40% (in favour). Thus Amendment 251 by the PES, calling for SGEI and SGI to be excluded from the scope of the Directive was rejected by 365 votes to 269 with 3 abstentions. A similar amendment from the Green Group was rejected with 154 votes in favour, 483 against and 3 abstentions. Amendments 372 and 390, by the GUE Group, calling for SGEI which the Member State responsible or the Community subjects to specific public service obligations to be excluded from the scope of the Directive, were rejected by 381 votes to 262 with 4 abstentions.
given that transport and electronic communications (telecommunications) had from the outset been excluded by the Commission in its original draft.

It should be noted, however, that several amendments prompted by the European Parliament do limit the impact of the proposal on SGEI:

- Article 1 states: ‘This Directive does not deal with the liberalisation of services of general economic interest, reserved to public or private entities, nor with the privatisation of public entities providing services’ (paragraph 2). Nor does it affect the freedom of Member States to define, in conformity with Community law, what they consider to be services of general economic interest, how those services should be organised and financed in conformity with the rules on State aid, and what specific obligations they should be subject to (paragraph 3);

- Article 2(2) also excludes certain SGEI: port services, healthcare services (‘regardless of the ways in which they are organised and financed at national level or whether they are public or private’), audiovisual services, social services such as social housing, childcare, family support services, security services;

- SGEI are excluded from certain provisions of Article 15(1) to (4) concerning the requirements for public authorities; the Commission wants an evaluation of these in order to judge how relevant the measure is (minimum tariff, requirements relating to shareholdings and specific legal form, quantitative or territorial restrictions, etc.). Thanks to Parliament’s intervention, SGEI will have a little more elbow-room to carry out their public service obligations without having to justify certain authorisations previously granted to them by public authorities;

- SGEI are exempt from Article 16 (relating to the country of origin principle, see below): ‘Article 16 shall not apply to services of general economic interest which are provided in another Member State, inter alia in the postal sector, the transport, distribution and supply of electricity, the transport, supply and storage of gas, water distribution and supply services and waste water services, and the treatment of waste’.
Social services of general interest (SSGI)

Motivated by reasons going beyond purely commercial considerations, SSGI (33) are a response to various specific objectives: solidarity, territorial cohesion, prevention (against exclusion, etc.), combating social vulnerability, effective implementation of fundamental rights (the right to health, social integration, etc.). For the most part, SSGI are supplied by solidarity-based organisations (associations, mutual funds, cooperatives, private bodies with a public service remit, etc.). Their origins are often very diverse (national, private, public, charitable, etc.). The underlying idea is, by definition, flexible and evolutionary in the sense that their content adapts to the particular features of a given sector and to changes within society. The general principles of Community legislation and case-law apply to SSGI insofar as they are economic in nature (when they can be referred to as SSGEI). Given their social purpose, there are two issues at stake: to define the boundary between SSGI and SSGEI, and to clarify the situation of SSGEI in relation to the rules of the internal market.

SSGI were the object of a struggle for influence within the European Parliament, which lasted throughout the two readings. In the end, a restrictive list of social services of general interest (social housing, family support, youth services, assistance to persons in need) were excluded from the scope of the Directive. The Commission, for its part, sought to take account of the specific features of social services by means of an open consultation process (CEC, 2006) leading to a two-yearly report. The Commission will decide on the follow-up to this process and the best approach to pursue, taking into account among other things the need for, and legal possibility of, a legislative proposal.

33 On this subject, see in particular ‘Les services sociaux et de santé d’intérêt général: droits fondamentaux versus marché intérieur?’, Collectif SSIG-FR, Bruylant, 2006.
Non-economic services of general interest (NESGI)

Surprisingly, the motion to exclude a number of NESGI was rejected by the Parliament. These included, in particular, education services (34) and cultural services (35). We should note especially the apparent contradiction involved in refusing to exclude the former category, i.e. education services. This amendment, which was proposed by the left-wing coalition (but supported by the UDF), was roundly rejected at a time when the Commission is constantly citing education as one of the few non-economic services of general interest (along with pension and social security schemes). This vote came as a surprise and a cause for anxiety, the possible consequences of which have yet to be assessed. Will the tuition fees paid by university and college students one day be assimilated to an ‘economic consideration’ in terms of Article 4 of the Services Directive? (36) An answer in the negative to this question would serve to reassure the world of education.

34 Amendment 236 was lost by 154 votes to 483, Amendment 356 by 145 votes to 499, Amendment 253 by 291 votes to 352, and Amendment 326 by 283 votes to 358.

35 The Commission tends to recognise cultural services as being services of an economic nature.

36 The Court’s judgment of 27 September 1988 (Belgian State vs. René Humbel and Marie-Thérèse Edel, Case C-263/86 (European Court Reports 1988 page 05365) rules that courses taught in a technical institute which form part of the secondary education provided under the national education system cannot be regarded as services within the meaning of Article 59 of the EEC Treaty. In fact, according to Article 60, first paragraph, of the Treaty, only services ‘provided normally for consideration’ are included in the chapter on Services. The essential characteristic of remuneration, which lies in the fact that it constitutes consideration for the service in question, is absent in the case of courses provided under the national education system because, first of all, the State, in establishing and maintaining such a system, is not seeking to engage in gainful activity but is fulfilling its duties towards its own population in the social, cultural and educational fields and, secondly, the system in question is, as a general rule, funded from the public purse and not by pupils or their parents.
The framework directive on SGI: a battle lost?

The request made by Belgium ‘to supplement the draft Directive on services with a draft Directive on services of general interest’ (37) was a sensible one. Given the importance of SGI (both economic and non-economic) and their impact on the citizen, this was a legitimate request, following on as it did from two resolutions approved by the European Parliament calling for just such an initiative. Unfortunately there was no support forthcoming for this request from within the Council.

In the Parliament, the amendment tabled by the PES MEPs Bernard Poignant (FR), Benoît Hamon (FR) and Philippe Busquin (BE), making approval of the Services Directive dependent on the adoption of a framework directive on services of general interest, was noisily rejected (38) by 495 votes to 128 (39) with 15 abstentions. Within the Commission, it is no secret that this clear parliamentary signal militates strongly against any initiative in this direction being taken by the Community executive, which in any case questions the effectiveness of such a move. This very bad signal was confirmed in the vote on the Rapkay resolution (40) on SGI. In the end, Parliament’s resolution – approved on a right-left split – confirmed that:
- ‘SGEI contribute to competitiveness’ (meaning: social and territorial cohesion is subordinated to this new objective);
- ‘competition is a substantive democratic right, which limits not only state power but also, and above all, abuses of dominant market

38 Studying the roll-call votes, we find that on this issue the Parliament divided along a right-left fault-line (60% - 40%). An ad hoc alliance between the EPP-ALDE (Liberals) and MEPs from central and eastern European countries thwarted the progressive section of the European Parliament on this question.
39 Within the PES, only the Belgian, French and Greek delegations supported the Amendment. In the end, within the Liberal family, three French members came out in favour of the text.
positions and protects consumer rights’ (competition is the real protection);

- ‘sectoral Directives on SGEI have been successful in providing better services at lower prices and provide a reliable framework’ (the framework directive is not needed; the sectoral Directives are sufficient);

- ‘it is not important who provides SGI, but rather … to maintain high-quality standards and an equitable social balance, based on reliability and continuity of supply’ (privatisation of SGEI is a good thing);

- ‘legitimate requirements of the general interest must not be used as a pretext for the improper closure of services markets as regards international providers’ (freedom of movement takes precedence over the general interest).

Cross-reading the Services Directive against the Rapkay report on SGI has resulted in the cohesiveness of SGI (SGEI and NESGI) being blown apart. There are at least seven different types of status for SGI in the Services Directive:

a) NESGI which are excluded as such from the scope insofar as they do not fall under the category of services supplied for an economic consideration. The example cited by the Commission in its 2000 communication is compulsory education (41);

b) NESGI which are not explicitly excluded from the scope of the Directive: cultural services, vocational training, etc.;

c) SSGI, some of which fall under the category of NESGI – excluded from the scope of the Directive (social security schemes, pension schemes, etc.) – and others under the category of SSGEI, which are likewise excluded: social housing, childcare, family support and support for persons in need;

41 Nevertheless, the European Parliament’s vote against excluding educational services from the scope of the Services Directive sends a bad signal to the world of education.
d) SSGEI which are included in the scope of the Directive by virtue of their economic nature;

e) SGEI which are explicitly excluded from the scope of the Directive: transport and electronic communication services, audiovisual services, port services;

f) SGEI which are included in the Directive by virtue of the right of establishment (except for Article 15(1) to (3) and Article 16 on the principle of freedom to provide services: postal services, energy, water, waste);

g) SGEI which comply with the Directive as a whole (apart from Art. 15(1) to (3)): environmental protection services, external services for the protection of employment, etc.

This makes it easier to understand why the new debate (42) centres around whether mobilisation in support of a framework directive on SSGI has become tomorrow’s battle (43), now that the general framework directive on SGI has been politically buried, at least until 2009, the date of the next European elections.

### 2.2.4 The posting of workers

Two problems arose in connection with the posting of workers. Firstly, there was the issue of the relationship between the Services Directive and the ‘Posting’ Directive. The fact that the Commission exempted the Posting Directive from the country of origin principle brought with it the risk that the Posting Directive would henceforth be seen as

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42 Conducted most notably by the PES MEP Joël Hasse Fererra, rapporteur on social services of general interest for the European Parliament’s Committee on Employment and Social Affairs, who has argued in favour of ‘a legal framework of reference, specifically through the adoption of legislative instruments, including the possibility of a framework directive’. (See paragraph 9 of the European Parliament’s motion for a resolution – provisional document 2006/2134 of 7 November 2006).

43 This, incidentally, is what paragraph 17 of the Rapkay resolution is asking for when it argues for a sector-specific directive in the area of social and healthcare SGI.
containing the maximum standard of protection for posted workers, whereas the Directive currently provides for a minimum level of protection, allowing Member States the freedom to take more far-reaching measures. Moreover, the Posting Directive did not cover all posting scenarios (for example ‘very short-term’ posting). This problem was solved by introducing the ‘lex specialis’ rule (Article 3) and the social safeguard clause (Article 1).

Secondly, there is the problem of how the State authorities are to monitor working conditions; this would be made very difficult under Article 24 (see in this connection the list of prohibitions contained in Article 24). The Commission also envisaged a system for the exchange of information and assistance from the country of origin, but this raised too many issues and uncertainties. The European Parliament, and in particular its EMPL Committee, took the initiative in deleting these articles, which led the Commission to publish specific guidelines. In substance, the proposal (Article 24) was for a distribution of roles between the Member State of posting (i.e. of destination) and that of origin.

At first reading, a large majority in the Parliament – 494 votes to 124 (44) with 6 abstentions – supported the amendment suggested by the European Trade Union Confederation (ETUC) stipulating that this Directive did not affect labour law, including collective agreements, the right to strike and the right to carry on trade union activities. Parliament also voted to exclude the temporary work agencies sector from the scope of the Directive. Finally, a majority almost identical to that on the previous vote (493 votes to 137 with 9 abstentions) supported the amendment calling for the Directive not to threaten the exercise of fundamental rights as recognised in Member States and in the European Union’s Charter of Fundamental Rights, including the right to engage in trade union activity. On this last point, unfortunately, there was no

44 The British Conservatives and those from central and eastern European countries voted against the amendment; they were joined by Eastern European members of the UEN (defenders of national sovereignty) and a large majority of ALDE (European Liberal) MEPs. All the Socialists and the GUE members came out in favour of the text.
qualified majority in the Council to support this, because of opposition from the United Kingdom, which refused to accept any such provision.

To enable the rapporteur of the text, German Social Democrat Evelyne Gebhardt, to refrain from tabling any amendments at second reading, the Commission agreed to set out in black and white that the Directive would not affect 'labour law … in accordance with national law', or the 'practices' of Member States in this regard, or the 'collective rights' of the social partners. These stipulations were particularly important for Nordic countries such as Sweden, where labour law is not enshrined in statute, but is based on collective agreements.

2.3 Four areas of progress preserved from the original draft

The scope of the Directive, though restricted, remains broad. It covers a very large majority of the overall service sector. The principle of freedom of establishment has been considerably strengthened. From now on it will be very difficult for a Member State to set conditions for the establishment of a service provider on its territory. Overriding reasons relating to the public interest \(^45\), which will constantly have to be invoked in order to challenge operations carried out by a national of

\(^45\) The notion of overriding reasons relating to the public interest is a construction of the case-law of the European Court of Justice. It was first developed in the context of free movement of goods and services, and was subsequently applied to the right of establishment. The Court, however, has never given a definition of this term, which it wished to see continue to evolve. The Court has nevertheless specified the strict conditions which national measures pursuing an overriding reason relating to the public interest must fulfil in order to form a valid objection. The Court requires that, for a national measure validly to hinder or limit the exercise of the right of establishment and the freedom to provide services, it must satisfy the following requirements:
- fall under an area that is not harmonised;
- pursue an objective of general interest;
- be non-discriminatory;
- be objectively necessary;
- be proportionate to the objective pursued.
another Member State, are a restrictive principle which leaves Member States very little margin of appreciation (46).

National regulatory arrangements have been brought under the guardianship of the Commission in respect of a whole series of requirements that a Member State might wish to see observed (47). Any new regulations will have to run the gauntlet of the Commission, which will judge as to the validity of the measures and may ask the Member State to refrain from adopting them, or to repeal them.

The COP remains a latent presence, in trace amounts. It remains to be seen how the Court will read the provisions of Article 16 and the other articles that refer to it. Faced with the optimism of Commissioner McCreevy, who forecast few difficulties of interpretation, the lawyer-linguists, who translated the Directive into 21 EU languages, responded (48) by emphasising that the Directive was particularly abstruse and badly drafted. A brake has been put on the harmonisation approach in favour of ‘codes of conduct and voluntary agreements’.

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46 Cf. the Gebhard judgment, where the Court held that ‘national measures liable to hinder or make less attractive the exercise of fundamental freedoms guaranteed by the Treaty must fulfil four conditions: they must be applied in a non-discriminatory manner; they must be justified by imperative requirements in the general interest; they must be suitable for securing the attainment of the objective which they pursue; and they must not go beyond what is necessary in order to attain it’. This case-law was subsequently confirmed by the Court in its judgments in cases C-415/93 Bosman, ECR 1995, I-4921 and C-250/95 Futura, ECR 1997, I-2471.

47 See Article 15(2): requirements concerning quantitative or territorial restrictions, the obligation on a provider to take a specific legal form, shareholdings, certain requirements concerning the specific nature of the activity, the minimum number of employees, minimum and/or maximum tariffs, and the obligation on the provider to supply other specific services jointly with his service.

48 In a fairly exceptional case in the annals of the corps of lawyer-linguists, they were unwilling to acknowledge the linguistic paternity of the English version, which served as a model for the other language versions, merely indicating XXX by way of reference.
Conclusion: a Pyrrhic victory for the European Parliament or an illusory triumph?

The true outcome, welcomed by certain MEPs as substantial ‘headway’, would appear rather to be a delayed effect of the wider move towards liberalisation. The rejection of the country of origin principle is a victory for the Left and for everyone who fought against the Bolkestein Directive. However, fuzzy legal logic still prevails in the adapted version of Article 16 as concerns the law applicable with regard to consumer protection, social protection or disputes in cases of breach of contract. This legal uncertainty creates dangerous potential for arbitration by the European Court of Justice in areas where the legislator ought to have established clear rules.

Some MEPs believed the compromise reached on this controversial Directive (49) to be a success for the Parliament. The rapporteur, for instance, prided herself on the fact that Parliament had achieved 90% of its demands. Others celebrated the great maturity of Parliament, which had once and for all earned its spurs as a legislative body. But among the ranks of the GUE and the Belgian and French ecologists and socialists, the feeling was rather that Parliament had capitulated at second reading by rejecting all the amendments and aligning itself with the Council’s common position ‘without a fight’.

Who is right and who is wrong? The truth, as ever, is not so clear-cut. At first reading, a combative and resolute Parliament stood up to the Commission, not hesitating to propose formulations designed to reconcile antagonistic positions. But one must bow to the obvious: the political balance of power does not favour the Left in any of the three institutions. That is a truism. The Commission is clearly on the Right, Parliament’s centre of gravity is on the centre-right, while the Council sits indisputably on the Right. In addition, a majority of MEPs (including some in the PES Group coming from the new Member States) and Member States are convinced that freedom of movement

49 According to some, the Directive was one of the reasons for the French no-vote in the referendum on the draft constitutional Treaty.
for services assists the smooth operation of the large, frontier-free market and can contribute to economic growth. Parliament’s actions must be judged in the light of this balance of power, unfavourable to those on the Left. In this context it did, for the most part, manage to uphold its point of view before the Commission and Council - even in spite of its misgivings about many aspects.

At the same time, the ‘services affair’ is far from over. For the Commission and some of the political Groups in Parliament, the current Directive does not take liberalisation far enough. For others, on the contrary, it goes too far towards deregulation and the dismantling of social protection (especially in respect of labour law); nor does it adequately protect services of general interest (both economic and non-economic) or social services. The European Trade Union Confederation, for its part, vaunts a ‘success for the European trade union movement’ and expresses delight that the country of origin principle has been abandoned. Nevertheless, it is critical of ‘somewhat ambiguous language’ on the exclusion of labour law and respect for fundamental rights.

Even if it shifts into a lower gear, the battle will continue, especially since the current Directive by no means gives a clear answer to all the questions. The compromises struck on controversial aspects lend themselves to differing interpretations, with the risk of divergent implementation and then intervention by the Court of Justice. For the time being, the focus of attention and concern is transposition of the Directive into national legislation in all the Member States, in time for its entry into force across the board in 2010. That is the new challenge, and it is a substantial one.

References


provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, OJ L 298 of 17 October 1989, pp.0023-0030.


