

The Services Directive

Decisions of the EU-Parliament

Summary

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The Service Directive states the right of service providers to provide services in a Member State other than that in which they are established (Article 16.1).

In view of this the following sensitive points have been respected:

- A link to the fundamental rights (Article 1.8) makes clear that the EU bases on more than on an Internal Market.
- The labour law has been excluded from the scope of this directive (Article 1.7); the directive does not touch other community rules like the 'posting of workers directive', the 'regulation concerning the social security of migrant workers', the 'directive concerning professional qualifications' (Article 3).
- The 'services of general interest' have been excluded from the directive; the member states keep the right to define them (Article 2.2a).
- The 'healthcare services' (Article 1.2, Article 2.2cd) and the 'social services' (Article 1.6, Article 2.2ch) have been excluded from the directive.
- Sensitive Sectors such as 'temporary work agencies' (Article 2.2cb), 'security services' (Article 2.2ci) and port services (Article 2.2c) are excluded.
- The consumer protection is excluded from the directive. Consumer in any case can benefit from the protection granted to them by the consumer legislation in force in their Member State (Article 3.3).
- The member state, in which a service is being delivered, is responsible for the control and supervision (Article 35).

For the trade unions it was a "must" that the report of the EU-Parliament does not include the general "land of origin principle" as proposed by the EU Commission. **In all the more liberal approach of the EU Commission has been turned upside down.**

Basic Principles of the Services Directive

Amendment 293/rev4 Article 16

Freedom to provide services

1. Member States shall ***respect the right of service providers to provide a service 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.

Member States shall 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;***
- b) necessity: the requirement must be justified for reasons of public policy or public security or the protection of the health and the environment; and***
- c) proportionality: the requirements must be suitable for securing the attainment of the objective pursued, and must not go beyond what is necessary to attain that objective.***

3. Member States may not 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 obtain an authorisation from their competent authorities including entry in a register or registration with a professional body or association in their territory, ***except where provided for in this Directive or other instruments of Community law*** ;
- d) a ban on the provider setting up certain infrastructure in their territory, including an office or chambers, which the provider needs to supply the services in question;

- 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, **unless those necessary for health and safety at work**, which affect the use of equipment **and material** which **are** an integral part of the service provided;
- i) restrictions on the freedom to provide the services referred to in Article 20.

3a. These provisions do not prevent the Member State to which the service provider moves from imposing requirements with regard to the provision of a service activity, where they are justified for reasons of public policy, public security, environmental protection and public health. Nor do they prevent Member States from applying, in conformity with Community law, their rules on employment conditions, including those laid down in collective agreements.

3b. By ...* at the latest, the Commission shall, after consultation of the Member States and the social partners at European level, submit to the European Parliament and the Council a report on the application of this Article, in which it shall consider the need to propose harmonisation measures regarding service activities covered by this Directive.

*** Five years after the date of entry into force of this Directive .**

Amendment 45

Recital 37

(37) In order to secure effective implementation of the free movement of services and to ensure that recipients and providers can benefit from and supply services throughout the Community regardless of frontiers, it is necessary **to clarify to the extent to which service providers are subject to the legislation of the Member State where they are established and to the extent to which legislation of the Member State where the service is provided is applicable. It is indispensable to underline that this does not prevent the Member State where the service is provided from enforcing its specific requirements that are indispensable for reasons of public policy or public security or for the protection of health or the environment in order to prevent particular risks at the place where the service is provided.**

Link to the Fundamental Rights

Amendment 299

Recital 7 d (new)

(7d) This Directive should be interpreted in such a way as to reconcile the exercise of fundamental rights as recognised in the Member States and by the Charter of Fundamental Rights of the European Union with the fundamental freedoms laid down in Article 43 and 49 of the Treaty. Those fundamental rights include, i.a., the right to take industrial action. This Directive should be interpreted in such a way as to give full effect to those fundamental rights and the fundamental freedoms.

Amendments 72, 233/rev, 403, 289, 290, 292, 297 and 298

Article 1

(8.) This Directive shall not be interpreted as affecting in any way the exercise of fundamental rights as recognised in the Member States and by the Charter of Fundamental Rights of the European Union, including the right to take industrial action.

Exclusion of labour law and social security law

Amendment 9

Recital 6 d (new)

(6d) In view of the fact that the Treaty provides specific legal bases for matters of labour law and social security law and in order to make sure that this Directive does not affect these matters, it is necessary to exclude the field of labour law and social security law from the scope of this Directive.

Amendments 72, 233/rev, 403, 289, 290, 292, 297 and 298

Article 1

(7.) This Directive shall not apply to or affect labour law, i.e any legal or contractual provision concerning employment conditions, working conditions, including health and safety at work, and the relationships between employers and workers. In particular it shall fully respect the right to negotiate, conclude, extend and enforce collective agreements, and the right to strike and to take industrial action according to the rules governing industrial relations in Member States. Nor shall it affect national social security legislation in the Member States.

Amendment 50
Recital 41 a (new)

(41a) This Directive should not affect terms and conditions of employment which, pursuant to Directive 96/71/EC, apply to workers posted to provide a service in the territory of another Member State. In such cases, Directive 96/71/EC stipulates that service providers have to comply with terms and conditions of employment in a listed number of areas applicable in the Member State where the service is provided. These are: maximum work periods and minimum rest periods, minimum paid annual holidays, minimum rates of pay, including overtime rates, the conditions of hiring out of workers, in particular the supply of workers by temporary employment undertakings, health, safety and hygiene at work, protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth and of children and young people and equality of treatment between men and women and other provisions on non-discrimination. This should not only concern terms and conditions of employment which are laid down by law but also those laid down in collective agreements or arbitration awards that are officially declared or de facto universally applicable within the meaning of Directive 96/71/EC. Moreover, this Directive should not prevent Member States from applying terms and conditions of employment on matters other than those listed in Directive 96/71/EC on the grounds of public policy provisions.

Amendment 51
Recital 41 b (new)

(41b) This Directive should neither affect terms and conditions of employment in cases where the worker employed for the provision of a cross-border service is recruited in the Member State where the service is provided. Finally, this Directive should include the right for the Member States where the service is provided to determine the existence of an employment relationship and the distinction between self-employed persons and employed persons, including "false self-employed persons". In that respect, according to the case law of the Court of Justice, the essential characteristic of an employment relationship within the meaning of Article 39 of the Treaty is the fact that for a certain period of time a person provides services for and under the direction of another person in return for which he receives remuneration; any activity which a person performs outside a relationship of subordination must be classified as an activity pursued in a self-employed capacity for the purposes of Articles 43 and 49 of the Treaty.

Validity of other Community rules

Amendments 83, 307 and 219 Article 3

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 services¹;

(b) Council Regulation (EC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and members of their families moving within the Community²;

(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 activities³;

(d) Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications .

2. This Directive shall be without prejudice to private international law, in particular private international law governing contractual and non-contractual obligations (Rome I and Rome II).

3. The exclusion of contractual and extracontractual obligations from the scope of this Directive shall mean that the consumer in any case benefits from the protection granted to him by the consumer legislation in force in his Member State.

Demands concerning established enterprises

Amendment 25

Recital 18 a (new)

(18a) The place at which a service provider is established should be determined in conformity with the case law of the Court of Justice according to which the concept of establishment involves the actual pursuit of an economic activity through a fixed establishment for an indefinite period; this requirement is also fulfilled where a company is constituted for a given period or where it rents the building or installation through which it pursues its activity. According to this definition which requires the actual pursuit of an economic activity at the place of establishment of the service provider, a mere letter box does not constitute an establishment. In cases where a provider has several places of establishment it is important to determine from which place of establishment the actual service concerned is provided; in cases where it is difficult to determine from which of several places of establishment a given service is provided, this is the place where the provider has the centre of his activities relating to this particular service.

Amendment 42

Recital 33 a (new)

(33a) The mutual evaluation process provided for in this Directive does not affect the freedom of Member States to fix in their legislation a high level of protection of public interests, in particular for achieving health and social policy objectives. Furthermore, the mutual evaluation process has to take fully into account the specificity of services of general economic interest and of the particular tasks assigned to them. These may justify certain restrictions on the freedom of establishment, in particular where such restrictions pursue the protection of public health and social policy objectives. For example, concerning the obligation to take a specific legal form in order to exercise certain services in the social field, the Court of Justice has already recognised that it can be justified to submit the service provider to a requirement to be non-profit making. Moreover, restrictions which aim to guarantee medical distribution in particular in sparsely populated areas should be allowed.

Amendment 39
Recital 29

(24a) The *notion of* overriding reasons relating to the public interest to which reference is made in certain provisions of this Directive *has been developed progressively* by the Court of Justice *in its case law* in relation to Articles 43 and 49 of the Treaty *and may continue to evolve. The notion covers at least the following grounds: public policy, public security and public health within the meaning of Articles 46 and 55 of the Treaty, the maintenance of order in society, social policy objectives, the protection of the recipients of services, including patient safety, consumer protection, the protection of workers, including the social protection of workers, preservation of the financial balance of the social security system, maintaining a balanced medical and hospital service open to all, the prevention of fraud, cohesion of the tax system, prevention of unfair competition, maintaining the good reputation of the national financial sector, the protection of the environment and the urban environment, including town and country planning, the protection of creditors, safeguarding the sound administration of justice, road safety, the protection of intellectual property, cultural policy objectives, including safeguarding in the audio-visual sector the freedom of expression of various elements, in particular social, cultural, religious and philosophical, in society, the maintenance of press diversity and policy for the promotion of the national language, the preservation of national historical and artistic heritage and veterinary policy.*

Amendment 308
Article 4, point 7 a (new)

(7a) *"overriding reasons relating to the public interest" covers inter alia the following grounds: the protection of public policy, public security, public safety, public health, preserving the financial equilibrium of the social security system, including maintaining balanced medical care available to all, the protection of consumers, recipients of services, workers, fairness of trade transactions, combating fraud, the protection of the environment including the urban environment, the health of animals, intellectual property, the conservation of the national historic and artistic heritage or social policy objectives and cultural policy objectives;*

Services of General Interest

Amendment 13 **Recital 8 a (new)**

8a) This Directive should not apply to services of general interest that are provided and defined by the Member States under their obligations to protect the public interest. These activities are not covered by the definition in Article 50 of the Treaty and do not therefore fall within the scope of this Directive. The provisions of this Directive apply only insofar as the activities in question are open to competition, and do not require the Member States to liberalise services of general interest, privatise existing public bodies or abolish existing monopolies, such as lotteries or certain distribution services. As regards services of general interest, this Directive covers only services of general economic interest, i.e. services that correspond to an economic activity and are open to competition. Equally, this Directive does not affect the funding of services of general economic interest and does not cover aids granted by Member States, in particular in the social field, in accordance with Title VI, Chapter I of the Treaty .

Amendment 44 **Recital 35**

(6a) It is appropriate that the provisions of this Directive concerning freedom of establishment **and the free movement of services** should apply only to the extent that the activities in question are open to competition, so that they do not oblige Member States **either to liberalise services of general economic interest or to privatise public entities which provide such services or to abolish existing monopolies for other activities or certain distribution services.**

Amendments 72, 233/rev, 403, 289, 290, 292, 297 and 298 **Article 1**

3. This Directive shall 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.

This Directive does not deal with the abolition of monopolies providing services nor aids granted by the Member states which are covered by common rules on competition.

This Directive does not 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 and what specific obligations they should be subject to.

Amendment 73

Article 2, paragraph 2, point - a (new)

(-a) services of general interest as defined by the Member States ;

Amendment 400

Article 17, title, introductory part and points 1 to 4

General derogations

Article 16 shall not apply to the following:

(1) Services of general economic interest which are provided in another Member State, *inter alia*:

(a) postal services covered by Directive 97/67/EC of the European parliament and of the Council;

(b) electricity *transmission*, distribution *and supply* services within the meaning of point (5) of Article 2 of Directive 2003/54/EC of the European Parliament and of the Council;

(c) gas *transmission*, distribution, *supply and storage* services within the meaning of point (5) of Article 2 of Directive 2003/55/EC of the European Parliament and of the Council;

(d) water distribution and supply services and waste water services;

(e) the treatment of waste.

Social Services

Amendment 294

Recital 7 a (new)

(7a) Social welfare services result from the duties of the State – at national, regional and local level - in the social field. They are a manifestation of the principles of social cohesion and solidarity as reflected, inter alia, by the fact that they are designed to assist those who are in a state of need owing to insufficient family income, total or partial lack of independence or the risk of being marginalised. These services are often entirely non-profit-making, thus the benefits they confer may bear no relation to an economic consideration.

Amendment 295

Recital 7 b (new)

(7b) This Directive does not deal with the funding of, or the system of aids linked to, social housing. Nor does it affect the criteria or conditions set by Member States to ensure that social housing services effectively carry out a function to the benefit of the public interest and social cohesion.

Amendment 296

Recital 7 c (new)

(7c) Childcare and family services aimed at supporting families and young people, as well as educational and cultural services typically pursuing social welfare objectives should not be affected by the provisions of this Directive.

Amendments 72, 233/rev, 403, 289, 290, 292, 297 and 298

Article 1

6. This Directive does not affect services pursuing a social welfare objective.

Amendment 252

Article 2, paragraph 2, point c h (new)

(ch) social services such as social housing services, childcare and family services;

Healthcare Services

Amendment 304 **Recital 10 c (new)**

(10c) The exclusion of healthcare covers healthcare and pharmaceutical services provided by health professionals to patients to assess, maintain or restore their state of health where those activities are reserved to a regulated profession in the Member State in which the services are provided.

Amendment 305 **Recital 10 d (new)**

(10d) This Directive does not affect the reimbursement of healthcare provided in a Member State other than that in which the recipient of the care is resident. That has been addressed by the Court of Justice on numerous occasions, and the Court has recognised patients' rights. It is important to address this issue in another Community legal instrument in order to achieve greater legal certainty and clarity.

Amendments 72, 233/rev, 403, 289, 290, 292, 297 and 298 **Article 1**

2. This Directive does not affect public healthcare services and access to public funding by health care providers.

Amendment 78 **Article 2, paragraph 2, point c d (new)**

(cd) 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;

Temporary work agencies

Amendment 301 Recital 10 a (new)

(10a) The specific requirements that Member States impose on the establishment of temporary work agencies mean that those services may not be included within the scope of this Directive at this stage. Therefore, it is necessary to fully harmonise the rules on establishment in this sector in order to establish the legal framework for the implementation of the internal market in this sector.

Amendment 300 Article 2, paragraph 2, point c b (new)

(cb) temporary work agencies;

Security Services

Amendment 303 Recital 10 b (new)

(10b) The specific requirements that Member States impose on the establishment of security services mean that those services may not be included within the scope of this Directive at this stage. Therefore, it is necessary to fully harmonise the rules on establishment in this sector in order to establish the legal framework for the implementation of the internal market in this sector.

Amendments 302 and 332 Article 2, paragraph 2, point c i (new)

(ci) security services.

Port Services

Amendment 20 Recital 12

(12) Transport services, ***including urban transport, port services, taxis and ambulances***, are excluded from the scope of this Directive. Cash in transit or the transport of deceased persons ***are included in the scope of this Directive given that internal market problems have been identified in these fields.***

Amendment 306 Article 2, paragraph 2, point c

(c) transport services ***including urban transport, taxis and ambulances;***
(ca) port services;

Consumer Protection

Amendment 53

Recital 45

45) Contractual relations between the service provider and the client as well as between employer and employee should not be subject to this Directive. The determination of the applicable contractual and extra-contractual law shall be regulated by Community instruments on international private law. Furthermore, the contractual agreement prevails insofar as it contains provisions on quality standards.

Amendments 83, 307 and 219

Article 3

3. The exclusion of contractual and extracontractual obligations from the scope of this Directive shall mean that the consumer in any case benefits from the protection granted to him by the consumer legislation in force in his Member State.

Amendment 178

Article 22, paragraph 1

1. Member States shall ensure that recipients can obtain ***via the single points of contact***,
 - (a) information on the requirements applicable in other Member States relating to access to and exercise of service activities, in particular those relating to consumer protection;
 - (b) general information on the means of redress available in the case of a dispute between a provider and a recipient;
 - (c) the contact details of associations or organisations from which providers or recipients may obtain practical assistance.

Where appropriate, advice from the competent authorities shall include a simple step-by-step guide.

Information and assistance shall be provided in a clear and unambiguous manner, shall be easily accessible at a distance including by electronic means, and shall be kept up-to-date.

Control and Supervision

Amendment 49

Recital 41

41) In cases where a provider moves temporarily to a Member State other than the Member State of origin, it is necessary to provide for mutual assistance between those two States so that the former can carry out checks, inspections and enquiries at the request of the Member State of origin or carry out such checks on its own initiative if these are merely factual checks. Moreover, it should be possible in the case of posted workers for the **host country** to take action against a provider established in another Member State in order to ensure compliance with the employment and working conditions applicable under Directive 96/71/EC.

Amendments 201 and 311

Article 35

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 its national legislation as regards the exercise of a service activity in its territory, and where Article 16(2) and (3a) apply;***
 - ***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 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, in accordance with its law and in conformity with Community law, oblige the service provider to deposit a security, or impose interim measures on the service provider. The deposit or security may be used for enforcement of decisions and judgments in administrative, civil and criminal matters.

Amendment 202
Article 36

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:

- 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.**

2a. 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.