



**European Economic and Social Committee**

**INT/228**  
**Services in the internal market**

Brussels, 10 February 2005

## **OPINION**

of the European Economic and Social Committee

on the

**Proposal for a Directive of the European Parliament and of the Council on services in the internal market**

(COM(2004) 2 final – 2004/0001 (COD))

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On 20 February 2004, the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the:

*Proposal for a Directive of the European Parliament and of the Council on services in the internal market*

COM(2004) 2 final – 2004/0001 (COD).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 11 January 2005. The rapporteur was Mr Metzler. The co-rapporteur was Mr Ehnmark.

At its 414<sup>th</sup> plenary session of 9 and 10 February 2005 (meeting of 10 February), the European Economic and Social Committee adopted the following opinion by 145 votes to 69, with 9 abstentions:

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## 1. **Preliminary remarks**

1.1 The Committee has also referred to the explanatory notes from the European Commission to the Council (Document 10865/04 of 25 June 2004 and Document 11153/04 of 5 July 2004 on Article 24) and the European Parliament working documents of 25 March 2004 (Committee on Legal Affairs and the Internal Market - rapporteur: Evelyne Gebhard) and 26 March 2004 (Committee on Employment and Social Affairs - rapporteur: Anne E.M. van Lancker).

1.2 On 24 May 2004, the Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, held a public hearing based on a questionnaire sent out previously, attended by representatives of the service society; it looked at over 100 additional responses submitted orally and in writing.

## 2. **General comments**

2.1 Following the Lisbon agreement, the service sector is taking on a key role in the implementation of the European internal market, and is of fundamental importance to economic growth in the EU. The Commission is submitting the draft directive on services in the internal market with accompanying explanations as part of the European economic reform process, which is designed to transform the EU into the most competitive and dynamic knowledge-based economy in the world by 2010, capable of sustainable economic growth with more and better jobs and greater social cohesion. The draft directive is intended to provide an essential building block and a reliable legal framework for the cross-border

provision of services and freedom of establishment in the Member States in the areas of industry, commerce, trade, and the liberal professions for full-time, part-time and temporary work. The new horizontal approach includes simplified procedures, harmonised quality assurance, and increased transparency in regulations for the protection of consumers. The provision of cross-border services is an essential part of the market, and the removal of barriers is of fundamental importance for the economic development of this sector and particularly important for consumers. The directive could lead to an increase in supply and more competition. Consumers will thus benefit from lower prices and a wider range of choice. The Committee therefore expressly welcomes the overall aims of the proposed directive.

- 2.1.1 Whilst an effective internal market does require the removal of barriers, it also requires adequate regulation. In order to make Europe more competitive, national and EU-wide rules – and consequently harmonised standards – are essential.
- 2.2 Given individual Member States' differing legal systems and cultures, the Committee is aware that completing the single market in services is a complex venture. The Committee already recognized that fact in its opinion (INT/105) of 28 November 2001<sup>1</sup> on the Communication from the Commission on an Internal Market Strategy for Services, and it has explicitly welcomed European Commission efforts to speed up single market completion. As the purpose of the draft directive is to directly establish a framework that applies to a range of different sectors, it should offer non-bureaucratic and flexible solutions that draw on proven self-regulatory schemes within the European Union. It will be vital to further optimise the integration process, not least through the additional draft directive from the European Commission on the mutual recognition of professional qualifications, while keeping in mind proven social, environmental, and consumer protection (safety) standards.
- 2.3 The draft directive has close links with the proposal for a Directive on the recognition of professional qualifications, with the communication on competition in professional services, the current debate on services of general interest, and also the ongoing consultation on social services of general interest, the Rome I convention and the proposed Rome II regulation. All these proposals aim at improving the functioning of the single market. Specialised and improved coordination from within the Commission in order to ensure dovetailing of work and provisions would therefore be desirable.
- 2.4 The draft directive focuses on two forms of free movement concerning cross-border services and cross-border company establishment: (i) where a service provider from one Member State wishes to establish himself in another Member State in order to provide his services there; and (ii) where a service provider wishes to provide a service in another Member State from (out of) his Member State of origin, in particular by moving temporarily to that other

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<sup>1</sup> [OJ C 48, 21.2.2002](#)

Member State. The draft directive proposes four key measures to remove the obstacles envisaged so far by the European Commission:

- the application of the country-of-origin principle,
- the allocation of tasks between Member State of origin and Member State of destination with regard to the posting of workers in the context of the provision of services,
- the development of mutual trust, and
- stronger mutual assistance between Member States, while at the same time limiting the scope for Member States to introduce their own monitoring, supervision and enforcement mechanisms.

### **3. The proposal for a Directive point-by-point**

3.1 The EESC has carefully analysed the draft directive from the perspective of the requirements that a directive with such a broad scope has to meet. The EESC has concluded that numerous clarifications and amendments are needed to sufficiently accommodate unresolved issues and make this new effort to promote services in the internal market a real step forward. This conclusion was reached not least due to the insufficient assessments made before the draft directive was launched. The numerous concerns of varied economic and social interest groups aired at the public hearing held on 24 May 2004 have still not been fully addressed, in spite of the European Commission document submitted to the Council of the European Union on 25 June (Council document 10865/04). An extended impact assessment by the Commission would be of value to all stakeholders.

### **3.2 Empirical basis**

3.2.1 For the Committee, it is striking that the explanatory memorandum to the proposed directive does not provide any reliable statistical basis to quantify the cross-border provision of services and the cross-border establishment of businesses. This data should therefore be added to the assessment report from the Commission. If, in future, we are to gain any reliable picture of the significance of the service sector and the effects on the operation of the single market - whether positive or, indeed negative - of simplifying procedures as envisaged by the draft directive, then a more precise empirical basis is of considerable importance. The Committee considers that the most accurate possible recording of the true conditions in the cross-border provision of services and business establishment is a crucial factor in the implementation of the internal market.

3.2.2 Statistical materials available in public administration, research institutes, the insurance sector and self-governing bodies in the various Member States should be taken more closely into account.

3.2.3 In addition, in order to deal with existing shortcomings, the Committee believes that it is essential to explore new approaches to obtaining empirical data, not least in order to avoid further red tape. In some cases, consideration should be given to supplementing official statistics through specific surveys.

### 3.3 **Scope: definitions - rules on conflict of laws - distinctions**

3.3.1 The Committee calls for the scope of the directive and derogations from it to be set out more clearly, and sharper distinctions to be drawn between them. With regard to practical application of the directive, uncertainties about its scope and which parts of the services sector will be affected and in what way still remain, since clear distinctions have not been drawn.

3.3.2 The Committee advocates drawing a clear distinction between trade services and those provided by the liberal professions. Clearer distinctions are also needed in view of the Committee's recommendation that the harmonisation of certain areas (liberal professions, and other sensitive areas) should be given priority over a transition period. This would make the quality assurance mechanisms envisaged by Chapter 4 of the draft directive more conducive to consumer protection. In its ruling of 11 October 2001 (Case C-267/99) the European Court of Justice for instance highlighted the key elements that make up the liberal professions. This ruling could serve as a basis for a definition at European level.

3.3.3 In 2003, the Commission submitted a Green Paper and then, on 12 May 2004, a White Paper, on services of general interest, making it desirable to better identify and distinguish the effects of the draft directive on this sensitive area in the Member States. As the Commission is committed to submitting a report by the end of 2005 on the feasibility of and need for a framework law (this is referred to explicitly in Article III-122 of the Constitutional Treaty), the Committee believes it would be preferable to exclude all services of general interest (economic and non-economic) from the scope of the Services Directive, pending the establishment, within a Community framework, of the principles and conditions, economic and financial in particular, that will enable services of general interest to fulfil their purpose.

3.3.4 The derogations to the country-of-origin principle set out in Article 17(8) in respect of the Directive on the recognition of professional qualifications, which is still in the pipeline cannot be restricted to individual articles or titles. Thus the application of the country-of-origin principle must be coordinated with the implementation of the proposed Directive on the recognition of professional qualifications. The Directive on the recognition of professional qualifications will put in place an integrated quality assurance system. If the derogation provision in Article 17(8) is to apply solely to Title II of the draft directive on the recognition of professional qualifications, it remains unclear how tasks should be divided between the "contact points" set out in Article 53 of that draft directive and the "one-stop shops" proposed in Article 6 of the draft directive under review here. If "contact points"

carrying out one and the same role are what is meant here, then a unified term should be employed in both draft directives.

- 3.3.5 In order to avoid conflicts, the scope of the directive and of the country-of-origin principle in particular needs to be more clearly distinguished from national legislation in the areas of taxation and criminal law. For example, under criminal law in certain Member States, auditors, tax consultants and lawyers have rights and obligations to maintain confidentiality vis-à-vis investigating authorities, whereas in other Member States practitioners are, to a limited extent, obliged to disclose information or even to report on clients. In the case where a provider of services is required to disclose information in a particular country, but under the country-of-origin principle is entitled and indeed obliged not to do so, is the provider of services permitted to flout the criminal law system of the country concerned? Criminal law and tax legislation are the responsibility of Member States and not of the EU, and therefore, in order to avoid adverse effects for users, a clear legal distinction needs to be made.
- 3.3.6 In addition, the possibility of coordinating welfare systems and other obligations of national governments more closely at the same time as applying the country-of-origin principle should be investigated. Whenever there is a risk that applying the country-of-origin principle would undermine national welfare and healthcare systems, an overall derogation must be put in place, as required.
- 3.3.7 With regard to health matters, the Committee points out that inclusion of the hospital sector needs to be reviewed. Perhaps the case law of the European Court of Justice on obtaining reimbursement of costs for cross-border treatment could be made more compatible through specific arrangements for statutory insurance schemes; such arrangements should not, however, fall within the field of application of the proposal for a Directive.
- 3.3.7.1 The Committee recommends that, in the case of social and health services, the first step should be to await publication of the Commission communication promised for 2005 and to ensure that there is appropriate coordination. The Committee would point out that many voices have been expressed broadly in support of excluding this area from the scope of the proposal for a Directive.
- 3.3.8 The same applies to providing a coherent definition of the scope of the Eighth Council Directive on the approval of persons responsible for carrying out the statutory audit of accounting documents (article 17(15)), which is currently being revised. The requisite clarity is still lacking from some translations of the Commission's proposal.
- 3.3.9 The point made in the explanatory memorandum, that the provisions on services and freedom of establishment do not apply to activities connected with the exercise of official authority (Articles 45 and 55 of the EC Treaty) should be included in the binding text of the directive.

- 3.3.10 Temporary work represents a particularly problematic area which should be explicitly excluded from the entire field of application of the proposal for a Directive. EU-wide harmonisation of the requisite national provisions in this sector is desirable. In this context, the EESC would draw attention to the recently announced proposal for a Directive on working conditions for temporary workers. Consideration must also be given to ILO Convention 181 on private employment agencies, Article 3(2) of which explicitly provides for licensing and certification systems to protect workers and encourage high-quality work by such agencies.
- 3.3.11 In some Member States, there are exceptionally strict legal rules to protect press freedom. In this area too, the Committee considers it essential to determine the scope of each of these rules in relation to the draft directive.
- 3.3.12 In addition, the Commission should make it quite clear whether the proposal also applies to television broadcasting services, and if so, how it intends to make the proposal compatible with the provisions of the “Television without Frontiers” Directive. Likewise, it should be made clear whether audio-visual services in general and those provided at individual request (“service on demand”) fall within the scope of the proposal, as these are already covered by specific Community legislation *on certain legal aspects* (Directive 2000/31/EC on electronic commerce).
- 3.3.13 In the EESC’s view, these services should at present be explicitly excluded from the scope of the proposed directive, particularly with regard to its provisions on the country-of-origin principle and the concept of *establishment* as an essential connecting factor and the main criterion for identification of the Member State concerned.

#### 3.4 **Single points of contact (one-stop shopping)**

- 3.4.1 The idea of simplifying procedures by creating a single point of (first) contact for service providers is to be welcomed. However, the Committee is concerned that, in the case of freedom of establishment, Article 6 allows certain procedures, such as access to an activity, to be dealt with by a single agency. For the Committee, the problem arises that in the case of statutory public registration (e.g. in the trade register), the single point of contact would need to refer matters on to the competent registration authorities. Points of contact providing so-called one-stop shopping will not be able to deal with this area on their own. Clarification is needed as to how, in practice, the single points of contact will cooperate with existing competent registration authorities.
- 3.4.2 Article 53 of the draft directive on the recognition of professional qualifications mentions contact points, which are intended to function as central information points. Article 6 of the draft directive under review here mentions so-called “one-stop shops” as centralised contact points. Coordination is needed here to ensure that the creation of various new agencies does

not interfere with the overall objective of safeguarding citizens' rights to easily accessible information within and on the European Union. Red tape should be specifically targeted during the new Commission's term of office. The creation of new bureaucratic hurdles in the individual Member States must be avoided.

- 3.4.3 Moreover, the question of the liability of single points of contact if they provide incomplete or even false information needs to be clarified. In such cases, service providers may suffer if they have neglected to obtain a given permit and are therefore in breach of the law. Consumers, for instance, may also suffer, however, if the existence of adequate liability insurance is not checked.

### 3.5 **Country-of-origin principle**

- 3.5.1 The Committee feels that, in order to make steps to complete the internal market suitably effective, the proper conditions must first be created for there to be universal application of the country-of-origin principle by adopting a differentiated approach, making it a priority to align this approach on employment, consumer-protection and environmental standards in each individual sector.
- 3.5.2 The blanket application of the country-of-origin principle provided for in Article 16, together with the derogations listed in Article 17, form the basis of the draft directive. However, it is only appropriate for the type of services which lend themselves to standardisation or to cases where harmonisation of legislation has progressed sufficiently to leave no scope for distortions of competition, social dumping and lack of confidence among consumers. It should be acknowledged that there are areas where standards have not yet been laid down or where indeed it would be impossible to do so (so-called non-specifiable services).
- 3.5.3 The Committee therefore believes the blanket application of the country-of-origin principle in the cross-border provision of services is premature. This principle assumes a comparable environment – both de facto and in law. The Committee feels that it will only be possible to apply the country-of-origin principle effectively if there is legal certainty and clarity regarding its scope. Applying this principle without an appropriate transition period would therefore give rise to problems, especially in view of the fact that the Committee believes not all the available options for sector-by-sector harmonisation have yet been made use of. It involves the risk of systems competing with one another, weakening employment, environmental, and consumer protection standards, given that differing legal, welfare and healthcare systems continue to exist within the EU. Rather than prematurely introducing measures of a purely horizontal nature, the needs of the single market could be best met by harmonisation on a sector-by-sector basis, particularly in sensitive areas. This process would involve examining – as part of a comprehensive impact assessment, also including social and environmental aspects – the suitability of each sector for introduction of the country-of-origin principle, in conjunction with all the groups concerned, especially consumer protection



organisations and the social partners. As harmonisation measures are at least as important a means of completing the single market, there should be legislative harmonisation within an appropriate time frame in areas where Member States have responsibilities in respect of health care, welfare and professional activity. At an intermediate stage, the European Commission, Parliament and Council should assess whether harmonisation in these areas has made sufficient progress. If necessary, and depending on the stage which harmonisation of legislation has reached, an additional transition period could be granted to bring national legislation into line. The Committee feels that this approach, together with an exact definition of services which qualify for special treatment (e.g. those provided by the liberal professions), would enable gradual adjustment in the areas concerned; on completion of the transition period the country-of-origin principle could then come into force, enabling completion of the single market. The same applies to co-regulatory and self-regulatory mechanisms.

- 3.5.4 The Committee feels that it would be worth examining whether it would be useful to have a central, independently administered and readily accessible register of infringements and misconduct arising in the course of cross-border service activities involving regulated professions. Authorities could record professional misconduct in the register. The aim of the register would be to make communication between the relevant national authorities as rapid and as free of red tape as possible, besides ensuring effective monitoring and disciplining of operators on the market.
- 3.5.5 The draft directive stipulates that the Member State of origin is responsible for supervising the provider and the services provided by him, including services provided in another Member State. This provision places a very heavy responsibility, and workload, on the country of origin and the appropriate bodies there. However, Article 6 b) of the draft directive on the recognition of professional qualifications already emphasises the need for activities in cross-border services requiring certain qualifications to be reported in the host country. Furthermore, competition may be unexpectedly distorted if a service provider moves to another Member State with stricter regulations. The Committee is convinced that such distortions of competition could be avoided if national legislation were to be gradually aligned on minimum standards stipulating appropriate protection for consumers, employees and the environment. The terms and conditions for the supervision of service providers operating in other Member States must be clearly defined, so that consumers can be confident that the services offered to them comply with the laws in force.
- 3.5.6 The country-of-origin principle is only workable if national authorities are highly organised, including at the regional and local level. Current supervision structures and cooperation networks operating on an electronic basis are not adequately linked up. Even supervision by the country of origin which, under Articles 36 and 37 of the draft directive is to take the form of cooperation between country of origin and host country, is not guaranteed to be effective.

- 3.5.7 The Committee believes that delays due to language barriers and slower channels of communication will make it impossible to offer a prompt response to consumers who have been affected by, or suffered losses as a result of poor service. Consumers must be guaranteed the possibility of an effective and straightforward method of lodging complaints and submitting claims for unsatisfactory service. Under the directive's proposals the competent authorities in the host country would not even be able to act themselves, as they are not routinely informed of the name under which the foreign service provider enters into contact with consumers in the host country, what kind of liability insurance cover is in place, etc. The directive will therefore have to make at least supplementary provision, making it compulsory for certain information to be communicated to the competent authorities of the host country and authorising the host country to take disciplinary measures. The central register could play the key role here. Amendments along these lines have already been taken up in the legislative procedure for the proposal for a Directive on the recognition of professional qualifications during its first reading by the European Parliament.
- 3.5.8 Finally, the Committee is concerned that the draft directive, in spite of partial derogations in Article 17(20)-(23), jeopardises the successful creation of a unified legal instrument for contractual and non-contractual obligations as set out by the Rome I regulation and the proposed Rome II regulation. Both regulations follow a universal approach by applying international civil law in a uniform fashion both within the EU and in third countries, thus ensuring legal clarity for all parties to a contract.

### 3.6 **Posting of workers**

- 3.6.1 The purpose of Directive 96/71/EC of 16 December 1996 on the posting of workers is to ensure that increased possibilities for companies to provide services in other Member States are consistent with the implementation of employees' minimum social standards. The directive covers the practical coordination of terms and conditions of employment for posted workers. With Article 17(5) of the draft directive the Commission has provided for a derogation from the country-of-origin principle for the directive on the posting of workers, and in doing so has demonstrated that a clear distinction between the respective areas of application was what it had intended. However, following closer examination of Articles 24 and 25 of the present draft directive the Committee is not convinced that the wording of the intended derogation is sufficiently clear and comprehensive.
- 3.6.1.1 The relationship between the Posting of Workers Directive and the Services Directive has provoked a large number of questions. These questions differ from country to country depending on differing labour market systems. The views of the social partners, both European and national, must be considered carefully if a Services Directive is to be acceptable.

- 3.6.1.2 The Services Directive must not affect trade union rights, the right to organise and collective bargaining, including the right of the social partners to enter into collective agreements, or the right to take industrial action. We propose that this be made clear in Article 3. Workers from another Member State must receive exactly the same treatment as workers from the country in which the work is being done. This is quite clear from the anti-discrimination perspective that underpins the EU treaties. Wages and working conditions are therefore in all significant aspects to be governed by the rules applying in the country in which the work is being carried out. Control of compliance with these rules in all significant aspects must, to be effective, take place at the place of work. The Services Directive must therefore make clear that the objective of the Posting of workers Directive is to protect workers and that under this directive it is fully permissible to have better rules than the mandatory minimum requirements for workers in a certain country.
- 3.6.2 The Committee feels that the prohibition of supervisory procedures provided for in Articles 24 and 25 of the draft directive renders the derogation in Article 17(5) absurd, as there is the unanswered question of how the country of origin is to be informed of possible infringements in the country of posting, which, for its part, is no longer allowed to exercise supervision and impose penalties. Even if we admit this as a possibility, it is still unclear how the country of origin should proceed in a foreign country in which it has no jurisdiction. By contrast, the Directive on the posting of workers allows Member States to stipulate which statements may be required from companies in the host country (for example in the case of public procurement), who should act as an authorised agent for legal proceedings and fines, and how detailed activity notices should be. This is how it should remain.
- 3.6.3 While closer cooperation between authorities in the country of origin and the country of posting is indeed both desirable and to be encouraged, practical experience suggests that what actually happens in such cases is rather different, and the Committee feels that the draft directive does not yet take that sufficiently into account. The conclusion of the EESC is that the Directive on services needs to be much clearer and more specific with regard to cooperation between the country of origin and the country of posting.
- 3.6.4 In the case of cross-border posting of third-country nationals, according to the draft, it must be the responsibility of the Member State of origin to ensure that the service provider only posts workers who, whether or not they are citizens of the EU, fulfil the conditions for residence and lawful employment as laid down in the legislation of the country of origin. The host Member State may not impose any preventative controls either on workers or the service provider. The effects of this proposal are likely to give rise to difficulties comparable to those described above. Therefore, here too the directive should make clear that the legal position will remain as it currently is.

### **3.7 Consumer protection through compulsory insurance**

3.7.1 The Committee acknowledges that making professional indemnity insurance compulsory for service providers whose services involve a health, safety, or financial risk for clients is one way of raising consumer confidence. Laying down a uniform set of rules on professional indemnity insurance to apply throughout Europe is also advisable in order to ensure that service providers compete on a level playing field. However, weighing up all the arguments for and against compulsory insurance, the latter can only be warranted if there is an overwhelming need to protect third parties or consumers. The directive should stipulate to which groups of professions and sectors this applies. Rules also need to be flexible enough to accommodate individual risk situations and the insurance cover needs of the many potential policy holders.

### **3.8 Quality assurance through certification**

3.8.1 The Committee is convinced that to provide a knowledge-based service, competitors need to engage in continuous training. They will only be able to stand their ground if they are on top of the latest scientific and technological standards. Stamps of quality and certificates will only have the desired effects in terms of quality assurance if it is clear to consumers which standards are behind them. For widespread recognition, a certain level of familiarity needs to be attained, or the transparency required by consumers will be lacking. Consumers should have clear and transparent information on how the quality of services is designated. Due to the appearance on the market of many stamps of quality which are not recognised by consumers, there is a risk that such designations may become devalued, without providing consumers with the information they need.

### **3.9 Transparency in pricing**

3.9.1 As already implied in Article 26(3) of the draft directive, there should be transparency in pricing and the method used to calculate prices. In the view of the Committee, it is worth considering making it compulsory to disclose pricing details not just at the request of (non-business) clients but, automatically, whenever orders are placed. One way of achieving such transparency would be to lay down regulations on standard fees and charges in a way which is compatible with Community law. However, these would not necessarily apply to business-to-business transactions.

### **3.10 Use of electronic media**

3.10.1 The Committee is pleased that, in principle, all procedures are to be processed electronically. This is a forward-looking and, generally speaking, positive development. However, it must be remembered that, as already indicated in the restrictions set out in Article 5 of the draft, originals - or certified translations thereof - of significant documents such as certificates,

extracts from registers, etc., can only be submitted electronically if their authenticity can be verified by a recognised signature or the like. In the case of ordinary electronic means of communication, this is not yet the case, and the appropriate technology needs to be put in place in all Member States (see the Committee's work on modern media and communication).

### 3.11 **Inter-disciplinary cooperation**

3.11.1 For the Committee, it is important for consumers to have access to comprehensive packages of solutions in the case of intersectoral cooperation in the provision of services. However, given the special position of some service providers under their country's legal system, the importance of legal requirements for cooperation must be remembered. Cooperation will only be possible if the rights and obligations relating to confidentiality that apply to certain service providers are the same for all of the various professionals working in a single office. Failing this, there is a risk of infringing the rights of individual consumers guaranteed under the European Charter of Human Rights.

### 3.12 **Codes of conduct**

3.12.1 The Committee supports the proposal to introduce codes of conduct at a European level. With various pieces of national legislation in place to regulate the exercise of professions and professional conduct, codes of conduct are one of several options for guaranteeing the quality of the service provided. Quality assurance schemes put in place by service providers are voluntary agreements which are not legally binding. Although this does not render such agreements ineffective, it limits their enforcement. In many Member States, there are legal constraints which make it difficult to enforce such agreements.

### 3.13 **Social security**

3.13.1 Within the enlarged European Union, there are many different social security systems, which have evolved over long periods, and with the close involvement of the social partners. Exchange of best practice has been the principal method of promoting the evolution of social security systems. This also has implications for the draft directive on services in the internal market. It must be ensured that joint social policy achievements are not undermined.

3.13.2 It goes without saying that the social partners have a natural and strong role to play in the development of the services sector. However, in this connection, it should be pointed out that trade unions are not explicitly included in the consultations of "interested parties" mentioned in the draft directive. The EESC strongly emphasises that the social partners, and organised civil society, must be consulted wherever appropriate in the development of the services sector. It also consistently welcomes initiatives by stakeholders.

3.13.3 A particularly important point in this context is the fact that the proposal for a directive does not take into account the fact that in some EU Member States, collective agreements have taken over the role of legislation. In practical terms, this means that collective agreements have the same legally binding effects as conventional legislation. The specific role of collective agreements is particularly relevant to the Nordic countries, where it is the usual practice for independent social partners to negotiate pay and conditions collectively. The draft directive should be amended so as to explicitly acknowledge that collective agreements are a means of fulfilling the obligations under the proposed directive.

### 3.14 **The authorisation system**

3.14.1 The proposed restrictions on the Member States' scope to introduce or maintain their own authorisation systems are very strict, and will lead to changes in a number of Member States. Inevitably the question arises of whether this will prevent Member States from requesting the application of national rules in areas such as the social, health and environmental fields. The freedom of Member States to shape their own provisions and the existence of decision-making leeway at national, regional or local levels are of crucial importance when it comes to bringing an influence to bear on quality and safety standards in the social services and health sector. Powers in the framing of social policy, in particular, are also linked to the scope for imposing individual conditions and demands on service-providers at national, regional and local levels.

### 3.15 **Taxation**

3.15.1 Article 2 of the draft excludes taxation from the scope of the directive. The Committee would point out that one of the main barriers to completing the single market continues to be the lack of a consistent approach to tax rules among Member States. Harmonised rules at Community level may in some cases bring about change. However, the country-of-origin principle is not considered to be fully applicable in this area either: for example, in its reform of the sixth VAT Directive, the European Commission is proposing that services provided between taxable persons should be taxed in the host country, rather than in the country of origin. Although it would be useful or even necessary, there is a lack of consistency here in the simplification of cross-border service provision.

## 4. **Overview of the Committee's proposals**

4.1 The Committee welcomes the Commission's goal, set out in the draft directive on services in the internal market, to turn the internal market into a reality and to take a further step forward in making the EU the world's most competitive and dynamic knowledge-based economy, capable of sustainable economic growth, with more and better jobs and greater social cohesion (Lisbon Strategy). The services market is an important multiplier, creating jobs and engendering economic growth in the entire EU. Completion of the single market in services

can also bring major benefits for consumers in terms of lower prices and greater choice. Moreover, the Committee believes that the changes and specifications recommended here should be incorporated into the draft directive so that this target is really achieved.

**4.2 The central corner stones of this opinion are the following:**

- 4.2.1 *Harmonisation of specific services over a two-stage transition period:* The Committee therefore believes the blanket application of the country-of-origin principle in the cross-border provision of services is premature. As a general recommendation, the Committee suggests reviewing the feasibility of applying the country-of-origin principle to various sectors, such as the health and social services sectors. Wherever application of the principle appears to be generally feasible, it should be borne in mind that harmonisation and the country-of-origin principle carry at least equal weight as instruments in the creation of the internal market. However, harmonisation should be given priority at least for a transitional period for work - to be defined separately - performed in the national health systems, the liberal professions and other sensitive areas. At present the Committee is concerned that immediate application of the country-of-origin principle would result in a “watering down” of standards. The new provisions must be as easy to apply, and as clearly structured as possible in order to ensure that the implementation is achieved smoothly and without complication. The same applies to co-regulatory and self-regulatory mechanisms.
- 4.2.2 *Issues connected with the social dimension:* The draft directive should not lead to any watering down of existing social protection, wage, and safety standards in the workplace, particularly those laid down in the Directive on the posting of workers. National arrangements for collective negotiations and agreements, including the national implementation of the associated Directive on the posting of workers (Directive 96/71/EC), should not be adversely affected. Member States must be in a position to apply set definitions to the terms "employees", the "self-employed", and the "false self-employed", in order to establish clear principles for application within the scope of the Directive on posting workers, limiting the scope of the country-of-origin principle. In addition, it should be up to the Member States to lay down employment conditions which would generally apply in their countries to the relevant employees, as well as to immigrants and posted workers. If necessary, one of the employees in the country of posting should be designated as an authorised agent, whose task would be to have ready the documentation required locally for employment.
- 4.2.3 *Scope and rules on conflicts of laws:* The scope, derogations and the rules on conflict of laws in the application of the country-of-origin principle to cross-border service provision must be set out more clearly and sharper distinctions must be drawn between them. The scope of this Directive must be marked off clearly against that of the planned Directive on the recognition of professional qualifications, and clarification is needed as to whether and how, for example, to avoid conflicts between the country-of-origin principle – to which the

draft directive gives precedence in each case – and the social, tax and criminal law standards of the host country. Legal incompatibilities vis-à-vis existing legislation must be avoided at all cost. In particular, the Rome Conventions I and II must not be affected. However, in many situations disputes can be resolved with greater clarity by reference to international private law. All services of general interest must be excluded from the scope of the Services Directive, pending a Community framework.

- 4.2.4 *Central register on cross-border activities:* In the Committee's view, consideration should be given to whether setting up a central EU-wide register to record requirements and infringements noted in the course of supervision could be an effective and useful means of fulfilling the requirements set out in the draft directive for the monitoring of specific service providers, such as members of the liberal professions.
- 4.2.5 *Improvements in empirical record keeping:* Mechanisms to record trade flows within the single market for services need to be reviewed and improved, so that the reason for – and impact of – measures can be better identified and evaluated.
- 4.2.6 *Quality assurance and transparency in pricing:* Consumer protection should be upheld through quality assurance systems and, where appropriate, the introduction of compulsory insurance. In the cross-border provision of services, steps should be taken to ensure that customers in the "business to consumer" sector have an idea of the conditions and costs of such services, without specifically having to ask for them. Rules on standard fees and charges are one possible option, provided that they are compatible with Community law.
- 4.2.7 *Alignment of tax regulation:* In addition to many minor obstacles, both real and perceived, the main obstacle to the implementation of the single market is a matter for Member States and local authorities: diverse and inconsistent implementation of the legislation on social security contributions and on taxation. The Committee reminds Member States that this situation will continue to require particular attention on their part.



5. Generally speaking, the positive aspects of the single market, particularly for SMEs and the self-employed, should be promoted more intensively, with the involvement of the Committee's PRISM project. Unless a significant number of service providers and consumers are convinced of the benefits of the single market, the Committee feels that it will not be possible to tap into the growth potential of the service sector.

Brussels, 10 February 2005.

The President  
of the  
European Economic and Social Committee

The Secretary-General  
of the  
Economic and Social Committee

Anne-Marie Sigmund

Patrick Venturini

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**N.B.:** Appendices overleaf.

**APPENDIX I  
to the  
OPINION**

of the European Economic and Social Committee

The following amendments were rejected in the course of the debate but received at least a quarter of the votes cast:

**Point 2.1.1**

Amend as follows:

*“Whilst an effective internal market does require the removal of barriers, it also requires adequate regulation. In order to make Europe more competitive, ~~national and EU-wide rules and consequently harmonised standards are essential~~ administrative procedures and formalities for access to services and their provision need to be simplified.”*

**Voting:**

For:	48
Against:	113
Abstentions:	6

**Point 3.3.3**

Delete.

**Voting:**

For:	52
Against:	130
Abstentions:	6

**Point 3.5**

**Delete the entire point and replace as follows:**

3.5.1 Although free cross-border service provision is already covered by rights enshrined in the Treaty and by case law, businesses are, in practice, often unsure of what their rights actually are. The Services Directive sets out these rights and gives them practical shape. A central

plank is the country-of-origin principle, which can make it easier for small and medium-sized enterprises in particular to know their obligations and rights when providing cross-border services without being established in the host country. Although the directive does contain a long list of derogations from the country-of-origin principle, the Committee feels that, provided no additional derogations are introduced, this may be a key lever for the further development of the single market in services, benefiting both consumers and workers and boosting European competitiveness.

- 3.5.2 The Committee considers the country-of-origin principle as a catalyst for bringing Member States' legislation closer into line, possibly followed at a later stage by harmonisation in the fields of consumer protection and the environment.
- 3.5.3 The Committee feels that it will only be possible to apply the country-of-origin principle effectively if there is legal certainty and clarity as to its scope. The principle should therefore be put into practice in such a way that it does not infringe workers' and consumers' existing rights, or impinge on current levels of environmental protection. Uncertainties regarding the principle's compatibility with international law, Rome I and II and any other legal difficulties should be resolved without impeding the principle's purpose, i.e. in order to make it easier for companies to provide cross-border services.

**Voting:**

For:	68
Against:	127
Abstentions:	5

**Delete points 3.5.1, 3.5.2 and 3.5.3 and replace by a new point (3.5.1):**

*The blanket application of the country-of-origin principle provided for in Article 16, together with the derogations stated in Article 17, form the basis of the draft directive. This is the only way to make a successful start on opening up the market for services, without further delays. Cross-border competition between service providers will benefit consumers and may also create new jobs. However, the Committee feels that application of the country-of-origin principle is only likely to succeed if there is legal clarity and legal certainty as to its scope. The application of the country-of-origin principle should therefore be accompanied by an examination of which services might benefit from further harmonisation of the legal bases. At the same time, it is important to ensure that the freedom to provide services is not detrimental to workers' and consumers' rights or to the protection of the environment. Compared to the rest of the world, the EU is already setting high standards in these areas, and these standards must be safeguarded.*

**Voting:**

For: 83  
Against: 122  
Abstentions: 5

**Point 3.5.1**

Delete.

**Voting:**

For: 73  
Against: 141  
Abstentions: 7

**Point 3.5.2**

Amend as follows:

*“The blanket application of the country-of-origin principle provided for in Article 16, together with the derogations listed in Article 17, form the basis of the draft directive. The country-of-origin principle, ~~which currently applies to goods, is being applied across the board to services. However, it is only appropriate for the type of services which is particularly appropriate where those services~~ lend themselves, like goods, to standardisation or to cases where harmonisation of legislation has progressed sufficiently to leave no scope for conflict. It should be acknowledged that there are areas where standards have not yet been laid down or where indeed it would be impossible to do so (so-called non-specifiable services).”*

**Voting:**

For: 76  
Against: 134  
Abstentions: 6

**Point 3.5.3**

Amend as follows:

*“~~The Committee therefore believes the blanket application of the country of origin principle in the cross border provision of services is premature. This principle assumes a comparable environment—both de facto and in law. The Committee feels that it will only be possible to apply the country-of-~~*

*origin principle effectively if there is legal certainty and clarity regarding its scope. Applying this principle without an appropriate transition period would therefore give rise to problems, especially in view of the fact that the Committee believes not all the available options for sector by sector harmonisation have yet been made use of. It involves the risk of systems competing with one another, weakening employment, environmental, and consumer protection standards, given that differing legal, welfare and healthcare systems continue to exist within the EU. Rather than prematurely introducing measures of a purely horizontal nature, the needs of the single market could be best met by harmonisation on a sector by sector basis, particularly in sensitive areas. This process would involve examining – as part of a comprehensive impact assessment, also including social and environmental aspects – the suitability of each sector for introduction of the country-of-origin principle. As harmonisation measures are, together with the country-of-origin principle, complementary at least as important a means of completing the single market, there should be legislative harmonisation within an appropriate time frame in areas where Member States have responsibilities in respect of health care, welfare and professional activity ~~At an intermediate stage, if the European Commission, Parliament and Council considers them necessary, should assess whether harmonisation in these areas has made sufficient progress. If necessary, and depending on the stage which harmonisation of legislation has reached, an additional transition period could be granted to bring national legislation into line. The Committee feels that this approach, together with an exact definition of services which qualify for special treatment (e.g. those provided by the liberal professions), would enable gradual adjustment in the areas concerned; on completion of the transition period the country of origin period could then come into force, enabling completion of the single market. The same applies to co-regulatory and self-regulatory mechanisms.~~”*

**Voting:**

For:	79
Against:	139
Abstentions:	7

**Point 3.5.4**

Delete.

**Voting:**

For:	65
Against:	150
Abstentions:	4

**Point 3.6.2**

Delete.

**Voting:**

For:	74
Against:	140
Abstentions:	3

**Point 3.9**

Delete.

**Voting:**

For:	73
Against:	134
Abstentions:	5

**Point 3.15**

Delete.

**Voting:**

For:	90
Against:	135
Abstentions:	2

**Replace point 4.2.1.:**

*The Commission's approach in applying the country-of-origin principle across the board, apart from the derogations mentioned in the draft directive, is correct. This is the only way to make a successful start on opening up the market for services, without further delays. Care should also be taken to ensure legal clarity and legal certainty in the application of the country-of-origin principle. The application of the country-of-origin principle should be accompanied by an examination of which services might benefit from further harmonisation of the legal basis. It is important to ensure that the freedom to provide services is not detrimental to workers' and consumers' rights or to the protection of the environment. The new provisions must be as easy to apply and as clearly structured as possible in order to ensure that they are implemented smoothly and without complication. The same applies to co-regulatory and self-regulatory mechanisms.*

**Voting:**

For: 66  
Against: 146  
Abstentions: 4

**Point 4.2.1**

**Delete and replace as follows:**

"The country-of-origin principle and harmonisation are both key tools for securing the free movement of services. This principle can also be seen as a catalyst for bringing Member States' legislation closer into line, possibly followed at a later stage by harmonisation in the requisite fields. In itself, the country-of-origin principle can help secure much greater transparency for businesses embarking on cross-border service provision, but without establishing themselves in the host country. It will be a key lever for the further development of the single market in services, benefiting both consumers and workers and boosting European competitiveness. It is, however, important to clear up any outstanding legal issues before the country-of-origin principle can be expected to operate effectively."

**Voting:**

For: 75  
Against: 135  
Abstentions: 3

**Point 4.2.2**

**Amend as follows:**

*Issues connected with the social dimension:* The draft directive should not lead to any watering down of existing social protection, wage, and safety standards in the workplace, particularly those laid down in the Directive on the posting of workers. National arrangements for collective negotiations and agreements, including the national implementation of the associated Directive on the posting of workers (Directive 96/71/EC), should not be adversely affected.

**Voting:**

For: 84  
Against: 132  
Abstentions: 1

**Point 4.2.4**

**Delete and replace as follows:**

"The proposals to simplify procedures and establish a single point of contact for service providers are to be welcomed. Missing from the draft, however, are more specific details about the procedures involved. Particular attention should be paid here to cutting red tape and reducing administrative burdens."

**Voting:**

For:	74
Against:	141
Abstentions:	3

**Point 4.2.6**

Delete.

**Voting:**

For:	76
Against:	140
Abstentions:	1

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**APPENDIX II**  
**to the**  
**OPINION**

of the European Economic and Social Committee

The following Section Opinion texts were rejected in favour of amendments adopted by the assembly but obtained at least one-quarter of the votes cast:

- 3.5.1 The Committee feels that, in order to make completion of the internal market more effective, a differentiated approach should be adopted to transition periods for universal application of the country-of-origin principle.

Outcome: 121 votes for deleting the phrase, 75 against and 10 abstentions.

- 3.5.2 The blanket application of the country-of-origin principle provided for in Article 16, together with the derogations listed in Article 17, form the basis of the draft directive. The country-of-origin principle, which currently applies to goods, is being applied across the board to services. However, it is only appropriate for the type of services which lend themselves to standardisation or to cases where harmonisation of legislation has progressed sufficiently to leave no scope for conflict. It should be acknowledged that there are areas where standards have not yet been laid down or where indeed it would be impossible to do so (so-called non-specifiable services).

Outcome: 112 votes for amending the paragraph, 91 against and 11 abstentions.

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