



**COUNCIL OF EUROPEAN MUNICIPALITIES AND REGIONS
CONSEIL DES COMMUNES ET REGIONS D'EUROPE**

CEMR Position paper

on the Draft Directive on Services in the Internal Market

Background document:

Proposal for a
Directive of the European Parliament and of the Council
On Services in the Internal Market

COM (2004) 2 final

Brussels, August 2005

Introductory comment

1. CEMR reiterates its attachment to the objectives and principles governing the internal market: free movement of goods, people, capital and services.
2. CEMR however also recalls that the EU objectives in relation to the internal market (freedom of establishment and freedom of provision of services in the Member States) should not go against other key objectives which include social progress, high level of protection and improvement of the quality of the environment, as well as economic, social and territorial cohesion of and within the European Union.
3. We would welcome further clarification on the distinction between the *temporary* and *permanent* provision of services, in order to have a clear distinction between a service that is delivered for a limited period and a service provision that after a certain time is equivalent to an establishment.
4. We recognise the aim to reduce the bureaucratic obstacles and legal difficulties that still cause problems for service providers that want to offer their services in more than just their own country.
5. In many Member States, local and regional government are to some extent involved in the administrative procedure and therefore CEMR, representing local and regional government organisations from more than 30 countries, wants to contribute to the further debate at European level in the coming months.
6. In general, we want to express our strong wish that the role of local and regional governments be taken into account in the decision-making process in the European Parliament and in the Council.
7. Our comments concentrate on those aspects, which concern local and regional governments in their responsibilities; we refrain from commenting on issues that do not have a direct impact on our members.
8. The Comments in this paper follow the order of the draft directive; CEMR's major comment concerns the Services of General Economic Interest, which are addressed in points eight to eleven.

Chapter I: General Provisions

Subject Matter and Scope of the Directive

9. CEMR would welcome further clarification on the distinction between the temporary and permanent provision of services, which in the current proposal is explained in recital 19, but not under 'subject matter' (art. 1) or the 'scope ' (art. 2) of the directive, where we believe that it should be defined.

Services of General Economic Interest

10. CEMR acknowledges that the draft directive excludes some specified public services or 'services of general economic interest' (SGEIs) from the scope of the country of origin principle, which by their nature are network industries, such as transport, postal, electricity, gas, water, broadcasting and electronic communications.

11. However, at present all other SGEIs appear to come within the scope of the draft Directive. This has led to an important debate amongst CEMR's membership. Many of our members consider that it is wrong in principle to include publicly funded SGEIs within the scope of the directive, while some members believe that SGEIs should be excluded from services to which the country of origin principle applies.
12. On either basis, the aim of SGEIs, under the Treaties, is to enable Member States, at the relevant level of government, to define SGEIs and the public service obligations to which they are subject. It makes a nonsense of the rationale for SGEIs to enable service providers from other Member States to be able to avoid the public service rules that are imposed in the general interest.
13. We also note that the definition of "service" under the Directive means "any self-employed economic activity, as referred to in Article 50 of the Treaty, consisting in the provision of a service for consideration." We have elsewhere (responses to Green and White Papers on SGIs, for example) strongly argued for a new definition of "economic" to clarify the boundary between Services of General Economic Interest, and Services of General Interest which, not being deemed "economic", fall outside the scope of the European Treaties. We have proposed that the definition of a "body governed by public law" under the 2004 Public Procurement Directive be adopted to define types of service provider that should not be considered "economic" for these purposes, i.e. bodies "established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character."
14. Since Article 50 of the EC Treaty states that services shall in particular include activities of an industrial or commercial character, the exclusion from the scope of the Services Directive (Article 4) of the services of general interest provided by "public bodies" (as defined above) seems logical and appropriate.

Chapter II: Freedom of Establishment

Simplification of the procedures and 'single points of contact'

15. The proposal of the European Commission, to reduce the administrative burden for the authorisation process is certainly very useful. The creation of a single point of contact to provide advice, information and forms, etc. is in principle an effective measure to speed up the procedure.
16. In this context, the Commission proposes in article 5 that the responsible (respective) authorities should not be allowed to ask for the provision of an official or certified translation of the original documents. This would mean that the public authority would have to accept any document from one of the EU Member States in its original language. CEMR believes that this practise reverses the financial and translation burden to the public body, whereas the service provider will in general benefit from the process, because it will allow him to offer his service and to make profit out of it.

17. We would therefore argue in favour of a requirement that the responsible public authority should be allowed to ask for the respective documents in the language of the country, where the service will be offered.
18. As far as the single point of contact is concerned, it has to be mentioned that this needs further clarification. There exist different interpretations on what would be the scope of this body. Some assume that it will provide first hand information and advice, others suggest that a single website might suffice to coordinate all the necessary administration.
19. In a further clarification of the nature of these contact points, it should be made clear that they only act as an administrative intermediary between service providers and authorisation bodies. They should not have any competencies of their own and not be able to infringe the ability of local authorities to decide on local level issues such as licensing and planning permissions.
20. Since the creation of such a contact point will very much depend on the situation in the Member States, CEMR believes that the final decision on the best model should remain with them, taking into account the responsibilities of local and regional governments as well.
21. The Commission suggests that the single contact points should mainly operate electronically and proposes a respective requirement for documentations to be made available electronically, scheduled to be in force by the end of 2008. The achievement of this timeline may differ from country to country; some of our members don't consider this to be a problem, others are in favour of an extension, referring to the financial resources that are needed to achieve this objective.
22. We also want to draw attention to the fact that the implementation of the 'single contact concept' will require a new way of working for local and regional authorities. Therefore a respective transition period and possibly financial assistance should be considered in order to help them to adapt to the new administrative requirements.

Prohibited requirements

23. We have some concerns about the drafting of parts of Article 14 (prohibited requirements). For example, under Article 14(5) Member States would be prohibited from "an assessment of the appropriateness of the activity in relation to the economic planning objectives set by the competent authority". We are concerned that this could be construed as preventing some proper land use planning decisions being taken, e.g. as to the planning permission for hypermarkets. Also, under Article 14(7) it is prohibited to impose an obligation to provide a financial guarantee; whilst we agree that there should not be such an obligation as a condition of providing a service in the territory, there may be good reasons, provided there is no discrimination against service providers from other Member States, why a public authority seeks a financial guarantee from potential contractors.

Chapter III: Free Movement of Services

The 'Country of Origin' Principle

24. CEMR has strong concerns about the scope, definition and application of the country of origin principle. This principle requires that service providers based in other Member States are subject only to the laws of that Member State of origin, and not burdened with additional administrative or legislative barriers imposed by the 'host' Member State.
25. In many Member States, local and regional governments are responsible for providing authorisations to service providers in the catering sector (hotel, restaurants, catering), in services provided to tourists, in transport, etc. They are concerned about the consumers and their interests, because their satisfaction may have an impact on the situation in their local or regional authority.
26. Local and regional governments are concerned that services delivered on the standard of another Member State could be subject to lower environmental or social standards. There is a special concern in some areas, where EU law does not yet define standards, that different national standards may prevail the lower ones.
27. The right of local and regional self-organisation includes the right to decide on the way public services are delivered to the citizens. Public authorities can provide the services themselves, but they may also be tendered out and be delivered by a third party. In these cases, CEMR is especially concerned whether local and regional governments may still be allowed to define the obligations for the services they tender out or whether the country of origin principle will have to be applied. We point out that Article 16(1) expresses in absolute terms that providers are to be "subject only to the national provisions of their Member State of origin" in matters such as the "quality or content of the service", and does not allow – on the face of it – public authorities to determine quality standards in contractual and tendering specifications. We are sure this must be a drafting ambiguity, but it is vital to amend the text, if the country of origin principle is to be maintained.
28. CEMR strongly advocates the exemption of the social and health sector from the application of the principle of country of origin and therefore wants to delete art. 23 of the directive. We are afraid that with the application of the principle, there might be a serious adverse risk for the public social and health situation at local and regional level.
29. We recognise the particular allowances where the country of origin principle is not applied when specific requirements 'for reasons of public policy, public security or public health or the environment is concerned' (articles 17 to 19). We welcome these derogations and would encourage a wide interpretation of the term 'public policy'.
30. We are concerned over the lack of clarity over the duration of the 'temporary services' that would benefit from the country of origin principle. While noting the intention, there is a potential for this to be abused by those wishing not to establish themselves in the country of provision to avoid being subject to the supervisory regime in that Member State. We

would welcome measures to ensure that the interpretation of *temporary* is reasonable and clear.

31. Furthermore we have strong doubts as to how far the current provisions in the draft directive concerning the country of origin principle are consistent with the explicit words of the last sentence of art. 50 EC Treaty. This provides:

“without any prejudice to the provisions of the Chapter relating to the right of establishment, 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 as are imposed by that State of its own nationals.”

On the face of it, this sentence explicitly appears to require that the country of destination principle be applied in cases where services are temporarily provided in another country.

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