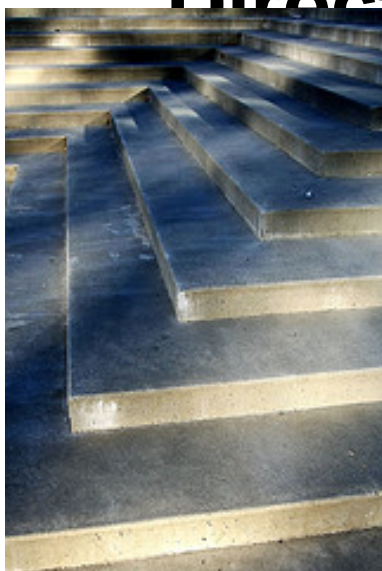


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Mes propositions d'amendements pour la commission Juridique sur la Directive Bolkestein



Député européen (Verts, France) - Juridique -
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L'amendement 1 vise à exclure les Services d'Intérêt Général et les Services d'Intérêt Economique Général de la Directive Bolkestein.

L'amendement 2 vise à substituer le principe du pays de destination au principe du pays d'origine dans l'article 16.

Au cas où cet amendement serait rejeté, l'amendement 3 exclut du principe du pays d'origine les aspects droits des salariés, protection de l'environnement, protection du consommateur et ordre public.

Conformément à l'usage au parlement européen, le texte initial (celui de la Commission européenne) est sur la colonne de gauche, l'amendement sur la colonne de droite.

Text proposed by the Commission	Amendments by Parliament
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Amendment 1 by Alain Lipietz

Article 2, Paragraph 2 new indents (d) and (a)

Amendement 1

<p>2. This Directive shall not apply to the following activities :</p> <p>(a) financial services as defined in Article 2(b) of Directive 2002/65/EC ;</p> <p>(b) electronic communications services and networks, and associated facilities services with respect to matters covered by Directives 2002/19/EC65, 2002/20/EC66, 2002/21/EC67, 2002/22/EC68 and 2002/58/EC69 of the European Parliament and of the Council ;</p> <p>(c) transport services to the extent that they are governed by other Community instruments the legal basis of which is Article 71 or Article 80(2) of the Treaty.</p>	<p>2. This Directive shall not apply to the following activities</p> <p>(a) financial services as defined in Article 2(b) of Directive 2002/65/EC ;</p> <p>(b) electronic communications services and networks, and associated facilities services with respect to matters covered by Directives 2002/20/EC66, 2002/21/EC67, 2002/22/EC68 and 2002/58/EC69 of the European Parliament and of the Council ;</p> <p>(c) transport services to the extent that they are governed by other Community instruments the legal basis of which is Article 71 or Article 80(2) of the Treaty.</p> <p>(d) services of general interest</p> <p>(e) services of economic general interest</p>
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Justification

Services of general interest should not be covered because of national considerations of public interest.

Services of general economic should be subject to a specific Directive according to article 122 of the Constitution.

Amendement 2

Article 16, Paragraph 1

<p>(Title) Art16 Country of Origine Principle</p> <p>1) Member States shall ensure that providers are subject only to the national provisions of their Member State of origin which fall within the coordinated field.</p>	<p>(Title) Article 16</p> <p>Host Country Principle</p> <p>(1) Member States shall ensure that providers are subject (<i>deleted</i>) to the national provisions of <i>the host Member State as far as public order, protection of consumers and protection of the environment are concerned</i></p> <p>(2) <i>Member States shall ensure that providers are subject to the national provisions of the activity Member State as far as labour relations are concerned</i></p>
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Justification

The concept of country of origin principle contradicts both the spirit and the letter of the treaties and of the Constitution.

The country of origin principle will lead to social and environmental dumping. With this principle without prior harmonisation, service providers will tend to establish themselves in Member States with the lower standards. With this type of legislation the European Union would renounce to convergence as a central characteristic of its internal market.

The choice of consumers would be reduced because consumers will tend to buy from their local providers considering that the directive will impose to know the legal systems of 25 countries There has been no serious legal impact study and the application of the origin principle would create many legal uncertainties. For instance, compatibility with Rome 1 and 2 convention is uncertain : in case of environmental damage, for example, Rome 2 provides that the applicable law is the law of the country where the damage has taken place, and this is not compatible with the Country of origin principle. This principle is also incoherent with the objective of simplification because it will oblige national administrations and judiciary systems to be aware of 25 different national legislations, which will lead to more (and not less) bureaucracy.

This Directive as the entire European construction should be based on the principle of the host country principle, so that the customer could ignore the origin country and that commodities of any national origin could be treated equally in a single spot.

Amendement 3

Article 16

<p>(1) Member States shall ensure that providers are subject only to the national provisions of their Member State of origin which fall within the coordinated field.</p>	<p>(to add at the end of the article 16)</p> <p><i>The country of origin principle should not apply to public order, the protection of consumer and protection of the environment, nor to labour relations.</i></p>
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Justification

The country of origin principle could lead to social and environmental dumping. The choice of consumers will be reduced because consumers will tend to buy from their local providers considering that the directive will impose to know the legal systems of 25 countries. There has been no serious legal impact study and the application of the origin principle would create many legal uncertainties. For instance, compatibility with Rome 1 and 2 convention is uncertain : in case of environmental damage, for example, Rome 2 provides that the applicable law is the law of the country where the damage has taken place, and this is not compatible with the Country of origin principle.

Labour relations are subject to the Posting Directive.

Environmental liabilities is subject to the Directive on Environmental Accountability.