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Position générale des Verts

Outcome of the vote in IMCO on the services directive

- Député européen (Verts, France) - Économie - Les services d'intérêt général -



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The outcome of the vote today in the IMCO Committee concerning the services directive (see our press release) is not a good signal in view of the vote in Plenary (still officially scheduled for January, but according to rumours it could be postponed).

The following remarks can be made.

1. On 3 key issues, the opponents to the Commission's proposal have lost, with various margins:

- ▶ concerning the exclusion of services of general economic interest from the scope of the directive, the defeat is very narrow: 17 against 19 ; at least one additional MEP joined the PSE/VERTS/GUE block ;
- ▶ concerning the country of origin principle, the margin is wider: 16 against 21 for the general application of this principle ; it should be noted that the GUE voted against the compromise proposed by Evelyne Gebhardt, which means that at least on this particular aspect they are on a "worst scenario" line ; if they maintained this attitude in Plenary, there would be no chance at all to adopt an alternative to the country of origin principle...
- ▶ concerning the launching of a harmonisation process, the margin is identical: 16 against 21.

2. On many other aspects, we had the same kind of "balance of powers": usually 16-21 or 17-20 ; in all these cases, it means that not a single PPE or ALDE MEP voted with us ; this is for example the case for important articles related to the freedom of establishment: article 14 on "forbidden requirements" and article 15 on "requirements to be evaluated" ; concerning article 14, the vote was in favour of the Commission's proposal to forbid economic needs tests, except when they "serve overriding reasons relating to the public interest" ; we also lost on aspects such as:

- * the fact that the directive will also apply to service activities that are governed by sector-specific EU legislation
- * the fact that temporary employment agencies will not be excluded from the scope of the directive (18 against 19)

3. The total absence of support, among the ranks of the conservatives and liberals, to the Gebhardt compromises on aspects such as services of general economic interest, country of origin principle and harmonisation, is a signal of the difficulties ahead in view of the Plenary ; we need to attract about 100 PPE or ALDE MEPs in Plenary, while in IMCO not even the French UMP and UDF voted in favour of the exclusion of services of general economic interest or against the country of origin principle, despite the strong statements by Jacques Chirac in March 2005 (but this was in the context of the referendum campaign...).

4. Even more worrying is the situation among the Socialist Group. Theoretically they were to be united behind Gebhardt at least until the vote in IMCO. In reality, it seems that 2 of them (the UK Whitehead and Mc Carthy, most probably) voted against her (and us) on the country of origin principle. And most significantly, the PSE was completely split in the final vote on the whole report. This report was adopted by:

- ▶ 25 yes, including at least 3 PSE (Whitehead, Mc Carthy and Herczog)
- ▶ 10 no (including 2 Verts, 2 GUE, 1 IND, 1 NI and... only 3 PSE: Hamon, De Vits and Vergnaud)
- ▶ 5 abstentions (the rest of the PSE, probably)

5. Of course we did not lose on everything, and a series of positive achievements should be noted; in particular the

following:

- ▶ unanimity at article 1 to recognize that the directive shall not apply to liberalisation or privatisation of services of general economic interest ;
- ▶ unanimity at article 1 to recognize that the directive shall not affect measures taken to promote cultural or linguistic diversity or media pluralism ;
- ▶ unanimity at article 1 to recognize that the directive shall be without prejudice to labour law, including collective agreements, and that it shall not affect social security legislation ;
- ▶ exclusion from the scope (at article 2) of the following areas:

- * professions and activities connected with the exercise of official authority (unanimity)

- * taxation (unanimity)

- * non economic services of general interest (36 against 1)

- * healthcare (20 against 18)

- * legal services (22 against 15)

- * audiovisual services (32 against 5), "whatever their mode of production, distribution and transmission, including radio broadcasting and the cinema" (21 against 17)

- * gambling activities (33 against 4)

- * judicial or extra-judicial recovery of debts (33 against 4)

- * plus of course those exclusions already proposed by the European Commission in its initial proposal, i.e. financial services, electronic communications and transport services

- ▶ unanimity at article 3 to recognise that in case of conflict between the directive and sector-specific directives, the latter shall apply, in particular the posting of workers directive, the Regulation on social security, the television without frontiers directive, the recognition of professional qualifications directive and the Rome 1 and 2 legislation on contractual and non contractual obligations ;
- ▶ unanimity to define a service as "normally provided for remuneration" at article 4 ;
- ▶ a comprehensive definition of "overriding reasons relating to public interest" at article 4, which would cover "inter alia the following grounds: protection of public policy, public security, public safety, public health, the protection of consumers, recipients of services, workers and 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" (this definition was brought by the Greens) ; this is an important point because on the basis of this notion public authorities shall be able to maintain requirements on services providers (articles 14 and 15) or grant authorisations only for a limited period (article 11) ;
- ▶ the limitation of the application of chapter II (freedom of establishment) to cross-border activities only ;
- ▶ the introduction of harmonised European forms at article 5 concerning certificates, attestations and similar documents (30 against 8) ; this was a Greens' proposal ;
- ▶ unanimity for the establishment of a European single point of contact for service providers at article 6 (also a Greens' proposal) ;
- ▶ deletion of the "automatic authorisation" at article 13, according to which authorisation for a provider to establish in another country would have been deemed to have been granted if a Member State failed to respond within "a reasonable period" (32 against 7) ;
- ▶ possibility for Member States, at article 15, to maintain "prohibitions and obligations with regard to selling below cost and to sales" ;
- ▶ services of general economic interest will not be subject to the screening process of article 15 on "requirements to be evaluated" (36 against 3) ;
- ▶ a series of derogations to the country of origin principle have been adopted at articles 16 and 17:

- * possibility for Member States to enforce their specific requirements "for reasons of public policy or public security or for the protection of health or the environment"

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* a series of services of general economic interest will be excluded from the country of origin principle: postal services, electricity and gas, water distribution, treatment of waste, health and social services ;

- ▶ the control of the execution of service will be under the responsibility of the Member States of destination ; the Member State of destination "may conduct checks, inspections and investigations on the spot" (article 34) and "is responsible for the supervision of the activity of the service provider in its territory" (article 35) ; of course there is a contradiction between the application of the country of origin principle and the supervisory prevalence of the country of destination... ;
- ▶ availability of information on providers at the European single point of contact (article 26) ; this is a Greens proposal ;
- ▶ and finally, important amendments voted in the Employment and Social Affairs Committee in July are "deemed to be adopted pursuant to Rule 47" (enhanced cooperation) and will go directly to the Plenary:

* the deletion of article 23 on assumption of health care costs ;

* the deletion of articles 24 and 25 on posting of workers (EU nationals and third country nationals).

6. Globally speaking, if we compare the outcome in IMCO with the Greens' "bottom lines", reflected in the European Appeal which we have launched together with Evelyne Gebhardt, we can conclude that we:

- ▶ have already succeeded on 3 points (prevalence of existing legislation ; the directive shall not affect employments laws and the posting of workers directive ; Member States shall maintain their requirements for overriding reasons of public interest) ;
- ▶ have not reached our objective yet concerning the 3 other points: exclusion of services of general economic interest, alternative to the country of origin principle ; launching of a harmonisation process).

PS:

Greens/EFA Shadows: Heide Rühle and Pierre Jonckheer