A DIRECTIVE AT WHOSE SERVICE...

When the Services Directive's original author, Frits Bolkestein (then the Internal Market Commissioner) first introduced this groundbreaking piece of European law, he played it smart, sending his fellow Commissioners the first draft in late December 2003, when they perhaps had other things on their minds. By all accounts, the discussion went smoothly and the college of Commissioners discussed it for only half an hour. The meeting's records show that hardly any substantive objections were made, rumour having it that the only substantive suggestion was to exclude gambling.

They may not have realised the gamble they were taking that cold day. Whereas the creation of a single market for goods took decades and several hundred pieces of legislation, the Commission essentially tried to establish a single market for services with just one directive, and without too much of a fuss. Had it been 2001, they might even have succeeded. However, with the EU's 2004 enlargement, fears abounded of a 'tsunami' of cheap workers from the east and about whether the new Member States' standards and enforcement methods could really be trusted.

The "Frankenstein Directive" emerged as a key theme of the French referendum on the Constitutional Treaty in 2005, crystallising popular fears about a liberalised Europe and social tourism. The Directive's critics claimed it would fire the starting gun for a "race to the bottom" of standards for service providers, who would then re-locate their high-income generating headquarters activities to the Member State with the most lenient rules. Bolkestein argued that the Directive would be beneficial to French consumers, claiming it was impossible to find a plumber or electrician near his second home in the north of France. The trade unions' response was quick: a few hours later, they cut off the electricity at his French home.

The Directive's supporters pointed to the social and environmental minimum standards in the EU acquis, which all firms must comply with. Germans happily chose to drive around in cars made in Turin to Italian standards, minimally harmonised at EU-level; so why could they not be given the option to have their hair cut according to the same common market principles ? They also stressed that the Directive in no way affected labour law: workers employed by a cross-border service provider were fully subject to the host country's employment rules, such as a minimum wage. However, the French "non" killed the Directive.

Well, for a while. Then, against general expectations, the new Commission President Barroso brought it back. This time it was noticed: 30,000 people noisily demonstrated outside the European Parliament in February 2006 as the revised Directive got its first reading to the sound of breaking glass.

The Parliament, which in this area has equal rights with the Council to pass European laws, fundamentally overhauled the Directive. The compromise struck between the two main European parties (the centre-right European People's Party and the centre-left European Socialists) survived all the succeeding rounds of Council and Parliamentary voting to emerge virtually intact in November 2006. Member States must now implement this comprehensive new European law that slashes the protectionist barriers which continue to stop the free movement of services across borders by early 2010.

Well, slashes them a little bit. The Bolkestein draft was revolutionary in applying the "country of origin" principle to services. This meant that service providers wishing to provide a service in a host Member State on a temporary basis, while remaining established in their own Member State, could do so subject only to the laws of their own country of origin. Bolkestein also wanted to advance the Treaty's promise of freedom of establishment by streamlining Member States' authorisation procedures and ruling out several restrictions. This

would have made it easier for service providers to establish themselves permanently in another Member State. The scope of the Directive was broad, covering basically all services (apart from those already regulated like financial services), such as consultancy, advertising, recruitment, estate agency, car hire and healthcare.

The EPP-PES compromise abolished the country of origin principle. It was replaced by an obligation on Member States to ensure that service-providers from other Member States could access their markets. Requirements can only be imposed if they are non-discriminatory, proportional and necessary on public policy grounds. As to the Directive's scope, it was considerably narrowed, excluding e.g. healthcare and audiovisual services.

However, whilst the Directive has certainly been "watered down" it should still yield benefits both to service providers and users. Although the scope was reduced, a large number of services still fall within its application. Also, the free movement of services will be facilitated by the explicit ban on some national barriers which currently exist. Freedom of establishment should be made less discriminatory by the streamlining of national conditions and procedures.

The Directive should therefore go some way to help fill in the biggest hole in the Internal Market, of a sector which today generates around two-thirds of EU GDP, but only around 20% of EU cross-border trade. Given that the EU's economies export ever more services, the current Internal Market's benefits are becoming proportionately ever less and so the potential for the Directive to boost growth and employment is huge and obvious. When the dust settles, the other lasting importance of the battle may well be the lessons drawn by the Commission and the key role played by the Parliament. Some observers have argued that the Commission was too ambitious and showed a certain amount of naivety in failing to anticipate the strength of the reaction from 'vested interests' to a Directive whose scope included several highly sensitive areas. The Parliament, however, had the democratic legitimacy to virtually rewrite the Commission's draft and, with a large majority at first reading, neither the Commission nor the Member States in the Council could challenge what Parliament had decided. Ultimately therefore, the Directive may prove to have been most at the service of the Parliament.

By Wouter Coussens, Baron Frankal, DG-I

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