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FREE MOVEMENT OF SERVICES IN THE EUROPEAN UNION

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In 2004, Frits Bolkenstein, former European Commissioner for the Internal Market, brought in the attention of the European Commission “The Services Directive in the Internal Market”. The purpose of this directive was to liberalize the services’ market in the EU, a major regulated field, whose goal was to develop the European economy into a more dynamic and competitive type of economy. “The Services Directive” aims the decreasing of the barriers and obstacles faced by the providers of services, especially in the case of Small And Medium Sized Enterprises (SMEs), by simplifying the administrative procedures, the management cooperation among member-states, improving the services’ quality and revising the national legislation. After more than 2 years of debates and amendments, the directive was adopted on December 12, 2006, by the European Parliament and the Council, as Directive 2006/123/EC, and ought to be implemented no later than December 28, 2009.

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The Services Directive”, proposed on January 13, 2004, by commissioner Bolkenstein, stood in the attention of the European Parliament, and would be carried out until the end of 2009. The directive aims to put in a concrete form the fourth fundamental freedom¹, the basis of the construction of the European Union, besides the free movement of persons, goods and capital. The European Parliament reframed the original document, proposed in 2004, in order to reach a result whose influence would not negatively affect the European social model². Thus, by the end of 2009, the service providers would be able to carry on their activity all over the Union. In the context of a conflict between the adepts of the freedom of services and defenders of the social norms, the European Parliament was compelled to make a compromise between the interests of the consumers and the employees in this field and the service providers.

¹ Silași, Grigore; Rollet, Philippe; Trandafir, Nicu; Vădăsan, Ioana – „Economia Uniunii Europene: O poveste de succes?”, Editura de Vest, Timișoara, 2005, p. 38-39.

² <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+IM-PRESS+20061113IPR12540+0+DOC+XML+V0//EN>.

Being an important sector of the EU, counting almost two thirds of the economy of the European Union, Brussels had to regulate this segment, in order to make the market more open and competitive. In Romania, services generate more than 45% of the GDP, with an annual growth rate of 6%. The implementation of this directive will have a significant economic impact. A study pursued by the Bureau for the Analysis of the Economic Policies³ estimates a growth of 0.3-0.6% of the European Union GDP, whereas Copenhagen Economics foresees the creation of almost 600 000 jobs, and the generated benefits will count for 37 billions Euro.

The initial draft of “The Services Directive”, proposed at the beginning of 2004, unleashed some negative reactions from the part of some countries. The reaction of the French people is notorious, mainly due to the “country of origin” principle⁴. This would have allowed the service providers to carry on their business on the territory of any EU state under the legal terms of their country of origin. As such, the fear was “The Services Directive” would create unfair competition among the state members, as well as “social dumping”. The need to facilitate the free movement⁵ and to improve the competition in this field compelled the MEPs to go beyond their own divergences and reach the appropriate formula, meant to direct the internal service market towards a cross-border competition, in the context of the European social model, the way this was designed in Lisbon.

For a year and a half, no less than ten parliamentary commissions have analysed and amended the text body of “The Services Directive”. This intense debate culminated in 2006, when the two large political groups from the European Parliament (PPE-DE and PSE) reached an agreement. Even since the opening of the plenary session, it was clearly stated that the directive would not affect the right to labour in the state members, the labour conditions or employment requirements, nor the contractual relations between the employer and the employee. This compromise has not been accepted until 2006, because the Green Party and the PSE French Euro-parliamentaries were against the directive. The agreement refers to 23 amendments, which implies the purpose and the goals of the directive (Article 1), its dimension (Article 2), and, above all, the rule of “the free providing of goods” (Article 16).

The compromise amendment, which modifies the former Article 16, is made up of 4 points. Firstly, the state member where one provides the service must ensure free access and free practising of the services on its territory. Nevertheless, the state member can restrict the providing of the services, as it has to obey certain principles: non-discrimination (for example, nationality), necessity (reasons of public policies or public security, medical care or environment), and proportionality (what is necessary to guarantee the pursuing of the stated goal, but not exclusively).

Secondly, the amendment determines a list of requirements, which a state member cannot impose to a service provider resident in another state member. For example, it may not be necessary for a supplier to open a working point in the country where he planned to provide temporary services,

³http://www.ier.ro/documente/arhiva_evenimente_2008/16_15.04.08_prezentare_dezbatere_directiva_servicii.ppt#256,1, Directiva 2006/123/CE a Parlamentului European și a Consiliului privind serviciile în cadrul pieței interne.

⁴http://www.europarl.europa.eu/news/expert/thematic_note_page/008-46723-019-01-04-901-20090120TMN46722-19-01-2009-2009/default_p001c003_ro.htm.

⁵ Mihaela, Crăcană; Marcel Căpățâna – „Libera circulație a persoanelor, bunurilor, serviciilor și capitalului¹”, Editura Tritonic, București, 2007, (pag. 19).

nor to become member of a professional association from that country, nor to be banned to use his own equipment or materials.

Thirdly, the new text enumerates the basic principles which a state member is allowed to use in order to restrict the free providing of services on its territory (public policies, public security, social policies, protection of the consumer and of the environment, public health). In this chapter, the text needs explanations, meant to ensure the majority of votes for the compromise.

Fourthly, the new text stipulates that after five years of implementation of the directive, the Commission must evaluate the functioning of the free movement of services, and to take into account any proposal of harmonizing the legislation and the services mentioned in the directive. The new text does not mention anymore the terms of “country of origin” and “host country”.

“The Services Directive” explicitly prohibits restrictions regarding the freedom to engage into service providing on one hand, whereas, on the other hand, the service provider must conform to the laws of the country he works in. in this way, this regulation will not interfere with the right to work or with the collective rights, which the employees of the state members benefit from.

There is a set of services which were excluded, especially the **Services of General Interest**, without economic character (audio-visual and transportation services). The specific character of these services is recognized by the Treaty of Lisbon, which makes some recommendations in this field. This directive has not regulated the health services either, so that the Parliament is working to draft a proposal of the European Commission from 2008, regarding the patients’ rights in the European Union.

There is no clear enumeration of the services regulated by this directive, only a few are mentioned⁶, including business services (such as management consultancy, certification and testing, maintenance, advertising, recruitment services and commercial agencies), and services provided to both businesses and consumers, such as real estate services (including estate agents), construction (e.g. architects), distribution, organization of fares, car rental (but not vehicle registration), tourism (including travel agencies and tourist guides), and leisure services, sport centres and theme parks.

The implementation of “The Services Directive” pursues the liberalization of services in the EU internal market, to ensure the freedom of service providing over the border, and to eliminate barriers and discrimination. The foreseen results are:

- administrative simplification;
- administrative cooperation;
- services’ quality;
- revising legislation.

Administrative simplification

In order to simplify administrative procedures, the Point of Single Contact will be founded. This will ensure the providers the possibility to address, from a distance, to the competent authorities of any state member, with the purpose to provide certain services. The Point of Single Contact will have the following attributions:

⁶ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+IM-PRESS+20061113IPR12540+0+DOC+XML+V0//EN>.

- providing professional information, at distance, as well as in electronic format (Article 21 and Article 22 from the directive);
- managing the electronic flux of information and documents among the competent authorities;
- it fits to any type of society, regardless its form or size;
- it guides the provider in the course of the entire process (assistance);
- it can be founded on the base of an existing institution (recommended), or it can be established as a new institutional structure.

According to the “The Services Directive”, Article 7, the Point of Single Contact will provide the following information:

- the requirements applicable to the suppliers who want to settle in a certain territory, mainly requirements related to the procedures and the formalities needed for the access and practising of the service activities;
- contact details of the competent authorities, so that these could be directly contacted;
- the terms and conditions to comply with, in order to be able to access public records and databases on services and providers;
- general information related to methods of rectifying in case of disagreement between a beneficiary and a provider;
- contact details of associations and organizations, which can offer practical assistance to beneficiaries.

Administrative cooperation

The Internal Market Information (IMI) system was designed, in order to improve communication among the administrative authorities of the state members. This represents an electronic instrument which enables state members to engage themselves into a more efficient cooperation, with the purpose to implement the internal market legislation. The internal market information has at its disposal a budget of 1.3 billions Euro, for a period of 5 years (2005-2009), and it is meant to contribute to the surpassing of some important obstacles, such as different administrative and work cultures, different languages, lack of partners clearly identified in the other state members. In the first stage, the Internal Market Information system will be used to back up the dispositions related to mutual assistance, stated in the revised Directive, for the acknowledgement of professional qualifications, 2005/36/CE, so that from December 2009, it could support the dispositions related to administrative cooperation, as stipulated in “The Services Directive”.

Services’ quality

At the end of May 2007, the European Commission proposed a new behaviour code for the European professional norms. This proposal was posted on the internet site of the Commission, and at the end of December 2007, the Commission designed a draft document: enhancing the quality of services in the internal market for the role of European conduct codes. These norms tackle matters of professional ethics, rules of conduct in relation to consumers/ colleagues, professional secrecy, professional qualifications and continuing vocational training, partnership rules, commercial communication, remuneration, control mechanisms and sanctions.

Revising legislation

State members will have to revise the legislation in certain domains. Article 39 imposes state members to send the Commission the results of the revisions, and to design a process of mutual evaluation, meant to ensure transparency and to offer major opportunities for the state members to reform their legislative and administrative frames. The proper and coherent revision of the national normative frames represents a significant challenge for the state members, due to the variety of the domains of services stated in “The Services Directive”, and to the fact that requirements to be revised might not be enumerated exclusively in the specific legislation for this sectors, but also in the horizontal legislation (e.g. laws regulating the commerce in general, or norms of commercial communication).

In Romania, at central administrative level there were established four inter-institutional **Special Work Groups**:

- the Special Work Group for the Point of Single Contact;
- the Special Work Group for electronic procedures;
- the Special Work Group for legislation scanning and administrative cooperation;
- the Special Work Group for designing the implementation normative frame.

The Department for European Affairs coordinates the activity of the four Special Work Groups and supervises the activity of the groups and institutions, in order to avoid overlapping or contradictory measures.

In conclusion, we can assert that the European Union has made a new step towards becoming a true free market. Bolkenstein’s initiative came as a reaction to the vacuum existing in the laws regulating services at the level of the European Union, thus establishing an action path, extended and elaborated, as an essential element of the Lisbon Strategy. The lack of competition of the business domain, the inflexibility and the significant differences between the national legislation, the European social model is accused of, are elements to be considered in the elaboration of this legislative initiative. “The Services Directive” offers benefits to consumers (by increasing the services’ quality and liberating the market), to enterprises (with the simplification of the access, by reducing costs and eliminating barriers) and to administrative authorities (simplifying administrative procedures, administrative cooperation and a more effective regulation).

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- *** - http://www.ier.ro/documente/arhiva_evenimente_2008/16_15.04.08_prezentare_dezbatere_directiva_servicii.ppt#256,1, Directiva 2006/123/CE a Parlamentului European și a Consiliului privind serviciile în cadrul pieței interne (site accesat la data de 28 martie 2009).