



UNION EUROPEENNE DE L'ARTISANAT ET DES PETITES ET MOYENNES ENTREPRISES  
EUROPÄISCHE UNION DES HANDWERKS UND DER KLEIN- UND MITTELBETRIEBE  
EUROPEAN ASSOCIATION OF CRAFT, SMALL AND MEDIUM-SIZED ENTERPRISES  
UNIONE EUROPEA DELL' ARTIGIANATO E DELLE PICCOLE E MEDIE IMPRESE

## **UEAPME's evaluation of the European Parliament's vote on the Services Directive**

**The Services Directive is a hot issue for SMEs**

**Meeting Troika 9 March 2006**

### ***Introduction***

- UEAPME has always welcomed and fully supported the objective of this Directive, which is to provide a legal framework that will eliminate the obstacles to the freedom of establishment for service providers and the free movement of services between the Member States. But, at the same time, UEAPME has also from the beginning vigorously criticised the way the Commission's proposal intended to achieve this objective. UEAPME was indeed concerned that the original text would have played into the hands of opportunists seeking to undercut standards of service provision. If the original proposal had been accepted, the advantages would have been completely overshadowed by the disadvantages.
- UEAPME has stated already for years that the Internal Market for services is not yet a reality for SMEs. Although the local and regional markets constitute and remain the most important markets for the majority of SMEs, it is very important and essential to open the EU market for all SMEs in the services sector, and especially in the cross border regions, which represent 10% of the European economic fabric. At the same time UEAPME stressed that SMEs must be put in a position from which they can compete on a level playing field with big enterprises within a global economy.
- The Parliament has showed that it is able to find solutions on sensitive issues, which have divided the citizens and political parties for months. By listening to the concerns of the citizens and the SMEs, it has certainly contributed to closing the gap between the European Institutions and the citizens.

### ***Scope of the Directive***

- UEAPME accepts the outcome of the vote in the European Parliament.

- UEAPME was always in favour of the exclusion of the **transport sector** and the inclusion of the **transport of mortal remains**. The European Parliament has followed this position.
- The Parliament has seriously limited the scope of the directive. UEAPME welcomes this. Indeed, the proposal was of an extreme complexity, partially due to the fact that the Commission wanted to present a framework directive covering all types of services, ranging from construction to gambling. UEAPME always advocated for a more sectoral approach, which takes into account the peculiarities of groups of services and consequently reducing the number of provisions followed by derogations and exemptions.
- One can discuss the exclusion by the Parliament of the **temporary work agencies**. From a SME point of view however only one thing counts: the user of these services, needs the certainty that the agency is trustworthy and that the employment offered by the agency is fully legal.

### *Freedom of Establishment for service providers*

- This part of the Directive is less controversial, but not less important. UEAPME welcomes in general the provisions to simplify and modernise the procedures, which contribute significantly to the administrative simplification, as this is one of the main concerns of SME owners. UEAPME advocates the maximum use and development of standardised forms (already proposed in the Recommendation, but not foreseen in the Service Directive), which has been accepted by the Parliament.
- UEAPME welcomes in particular the changes made by the Parliament, which will allow Member States to keep their regulations on the establishment of supermarkets (art.14) and the prohibitions to sell below cost (art. 15).

### *Article 16*

By introducing the right for enterprises to offer their services in countries other than those where they are set up, the European Parliament is proposing a principle much closer to one of the four basic freedoms of the Treaty, than the controversial country of origin principle, as it was formulated in the Commission's proposal.

By adding that this free access and free exercise cannot be governed by provisions, which fail to respect the principle of non-discrimination, necessity and proportionality, the EP reminds the Member States of the principles of good lawmaking.

The exemptions to this basic right is only the consequence of the division of competences between the European level and the Member States.

Stating that this new formulation does create legal uncertainty for enterprises, and the country of origin principle didn't, is dogmatic.

The consequences and scope of the country of origin principle were even more difficult to assess as the original Commission proposal, which contained not less than 23 exemptions to the principle, some of them partial.

## **Article 25**

The question of the **posting of third country nationals** should not be underestimated and is still pending due to the deletion of article 25, as proposed by the Parliament. If this question cannot be solved in the service directive, it can be included in the initiative the Commission has announced in its roadmap on legal immigration.

## **Remaining problems**

Although this seriously amended text offers more legal security for SMEs, it still needs to be improved. Indeed, despite the tremendous work of the Parliament to improve the service directive, some initial concerns of UEAPME were not taken into account:

### **- Article 26. Information on providers and their services**

This article is certainly not meant to reduce red tape for SMEs. Already in our initial position paper, UEAPME stated that some of the requirements mentioned in article 26 introduce in their generality unnecessary new administrative red tape, especially for SMEs. There is no proportionality between the administrative burden and costs, especially for SMEs and the objective of this article. The obligation introduced by the EP, without any clear justification, to make some information available to three different recipients (the recipient of the service, the European single point of contact and the contact point of the host country) is of an extreme complexity. As already mentioned UEAPME questions if it is really necessary to give automatically this information to the recipient and if there is really a need for this information. Secondly, according to the « only once » principle, UEAPME is of the opinion that this information should be made available, not by the service provider but by the national administrations, which dispose already of this information.

### **- Article 27. Professional insurance and guarantees**

Although the Parliament has slightly improved the provisions on professional insurances, (“*MS shall ensure*” has been replaced by “*MS may require*”) one of the main barriers for service providers still remains. It is indeed nearly impossible nowadays for a SME to purchase an insurance, let alone an affordable and competitively priced one, which covers professional activities in another Member State. In addition, UEAPME cannot accept that a compulsory insurance is introduced if it is not affordable and competitively priced for SMEs. Consequently the text proposed by the Commission and the Parliament is not workable.

The main problem with article 27 is that insurance companies do not seem interested in offering cross border insurance products. A small enterprise usually would not work across Europe but only in one or two other countries. So it needs a modular insurance product that takes account of the coverage already existing according to national rules and corresponds to the requirements of the host country (ies). As most service providers will stay in their local markets you cannot expect them to hold a policy covering the whole of Europe. This would be too expensive. So the question is, what happens if a member state requires insurance coverage, but the insurance industry refuses to offer it / or offer it at a prohibitive price. This could become a powerful obstacle to cross-border activities.

Moreover, the Parliament has added a problematic point. Adding "*The professional indemnity insurance or guarantee shall also cover risks presented by such services where they are provided in other Member States*" is not logic. This will indeed put foreign service providers in a competitive less favourable position.

In addition, UEAPME advocates for the reintroduction of the words "at his request" in paragraph 2. Skipping these words is not workable.

### **Control**

- It is of utmost importance that the control of the service providers will be entrusted to the country of destination and not exclusively to the country of origin of the service provider. This was one of the main concerns of UEAPME from the beginning.
- UEAPME urges the Member States to support the IMI (Internal Market Information System), which is under development by DG Markt.

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