

Opinion of the
European Council of the Liberal Professions (CEPLIS)
on the
Proposal for a Directive of the European Parliament and the Council
on
Services in the Internal Market (COM (2004)2 final)

1. Preliminary remarks

The services sector is the largest sector of the European economy. The main objective of the Commission proposal for a Directive on Services in the Internal Market is to remove legal barriers to the freedom of establishment for service providers and the free movement of services between Member States.

The Commission's proposals include measures intended to ensure the quality of services. However, CEPLIS would welcome further provisions on quality standards, particularly in regard to services provided by liberal professionals.

This paper outlines the position of CEPLIS on the Commission's proposal for a Directive on Services in the Internal Market (COM(2004)2 final). The key points of the CEPLIS position can be summarised as follows :-

- **Article 2: scope**

Health services should, to ensure the protection of public health, be excluded from the scope of the Services Directive. CEPLIS therefore supports the decision of the IMCO of the European Parliament to seek an amendment to exclude health services from the scope of the Directive.

- **Article 3: the distinction between the proposed Directive and other provisions of Community law, particularly Directive 2005/36/EC on the Recognition of Professional Qualifications**

CEPLIS urges that the opportunity should be taken to clarify the relationship between the eventual Directive on Services and Directive 2005/36/EC on the Recognition of Professional Qualifications. If this is not done, practical difficulties will arise in national implementation of the eventual Services Directive.

It should be clearly stated in the Services Directive that its provisions do not affect, in any way, those of Directive 2005/36/EC.

- **Article 6: single points of contact**

CEPLIS is pleased to note that, in the proposed Directive and in the consolidated text of the Parliament's IMCO Committee, the important role of professional bodies is recognised. The members of CEPLIS regard themselves as the natural sources of the rules relating to single points of contact.

- **Article 16: country of origin principle**

In the opinion of CEPLIS the application of the country of origin principle is not appropriate for services provided by liberal professionals. We therefore support the inclusion of a clear derogation from the country of origin principle for the services provided by them. We thus suggest the following wording of Article 17.8 :-

“Matters covered by Directive 2005/36/EC on the Recognition of Professional Qualifications.”

- **Article 27: compulsory professional indemnity insurance**

CEPLIS supports the proposal that professional indemnity insurance should be compulsory and that service providers should provide recipients with details of the cover held, including the territorial coverage. In cases where equivalence is only partial, Member States should have power to require supplementary provision for those aspects not already covered.

- **Article 39: codes of conduct at Community level**

CEPLIS welcomes the proposal that Member States, in co-operation with the Commission, take measures to encourage the drawing up of Codes of Conduct for professions at Community level. In co-operation with the Commission, CEPLIS will continue work to identify values and principles that should be common to all codes of standards and ethics for liberal professions. This will enable individual professions to incorporate these principles in their codes, taking into account the specific nature of the profession concerned.

2. Detailed proposals

- **Article 2 : The scope of the Directive**

CEPLIS is firmly of the opinion that to guarantee a high level of public health protection, health services should be excluded from the scope of the Directive. This would ensure that the special considerations and objectives, which effectively define how health services must be provided at national level, are fully taken into account. This will, in turn, ensure that sustainable, high quality and universally accessible health services are provided throughout Europe.

We therefore support the recent decision of the IMCO Committee of the European Parliament, to seek an amendment to exclude health services from the scope of the Directive.

- **Article 3 : Relationship with other provisions of Community law**

In our view the application of the provisions of Article 3 of the proposed Directive under which other Community instruments will be applied cumulatively, could cause problems. For reasons of legal certainty it is essential to provide much clearer guidance in regard to possible conflicts between the provisions of the eventual Directive on Services and other pieces of EC legislation.

In addition, it should be clearly stated in the proposed Directive that its provisions do not affect, in any way, the provisions of the recently adopted Directive on Recognition of Professional Qualifications (2005/36/EC). We consider that the cross border movement of, and cross border provision of services by, professionals represented by CEPLIS are already covered in detail by Directive 2005/36/EC. It is essential that it be made clear that the control mechanisms established in Directive 2005/36 will not be affected by the provisions of the proposed Services Directive. Without such clarification, the proposed Directive on Services could be seen to be in conflict with Directive 2005/36/EC in certain respects. For example there are inconsistencies between Article 14 of the proposed Directive on Services and Article 6(a) of the Directive on Recognition of Professional Qualifications in relation to registration.

In the view of CEPLIS, the opportunity must be taken in the text of the proposed Services Directive to ensure that any such potential conflict and confusion is avoided.

- **Article 6 : Single points of contact**

According to the provisions of Article 6, service providers should be able to complete all procedures and formalities for establishment in another Member State through a single point of contact. Many associations in membership of the mono-professional and inter-professional members of CEPLIS consider that they are the natural bodies for nomination as the single points of contact for individual professions. In most Member States, official professional bodies fulfil this role in the framework of the general system for recognition of qualifications under Directives 89/48/EEC and 92/51/EEC and will continue to do so when Directive 2005/36/EC is implemented in national legislation. By providing this and other services of a self-regulatory nature, official professional bodies relieve the state administration of the associated work and costs.

CEPLIS welcomes the provisions of the proposed Directive and of the consolidated text of the Parliament's IMCO Committee, that recognise the important role of official professional bodies. The recognition in the text of the benefits of self-regulation through professional bodies, strengthens acceptance of the concept at EU level.

- **Article 16 : The country of origin principle**

A central point of the proposed Directive is the introduction of the country of origin principle to help to eliminate obstacles to the free movement of services between Member States. The application of this principle means that a service provider is subject only to the law of the country in which he is established. In addition it is

provided that a Member State may not restrict the provision of services by providers established in other Member States.

CEPLIS wishes to stress the point strongly that principles that can reasonably be applied in the field of free movement of goods cannot properly be imposed unconditionally to the freedom to provide services, particularly the complex professional services provided by those represented by CEPLIS.

The Resolution of the European Parliament in 2003 on Market Regulation and Competition Rules (P5_TA(2003)0572), recognised the special position of the liberal professions in society.

To guarantee effective consumer protection, professionals providing services in a Member State should be subject to the law and professional rules governing the provision of the service concerned in that Member State. In the opinion of CEPLIS that will be the natural expectation of the recipients of the service, who are likely to use cross border services only if that situation is guaranteed.

The host Member State should have the responsibility of supervising the provider and the services provided. Supervision by the Member State from which cross border services are provided is not realistic and is certainly not in the interest of the recipient of the professional service concerned. To expect the authorities in the country of origin to take responsibility for controlling the service provider in the country of destination is, at least for the present, impractical. Although Article 16 of the proposed Directive encourages effective co-operation between responsible authorities in Member States, this linkage does not exist in any practical form at present and, in the view of CEPLIS, effective links of this nature are not likely in the foreseeable future.

Thus, in the view of CEPLIS, the application of the country of origin principle is not appropriate for services provided by the liberal professions and this should be made clear in the text of the Services Directive. CEPLIS therefore requests that there should be a specific derogation from the country of origin principle for the provision of such services. This could be achieved by the following wording in Article 17(8)

“Matters covered by Directive 2005/36/EC on the Recognition of Professional qualifications.

- **Article 27 : Compulsory professional indemnity insurance**

CEPLIS supports the proposal to make compulsory the holding by service providers of professional indemnity cover and that, on the request of the potential recipient of the service, information should be given on the extent of the cover held, including the territorial cover.

In cases where cover held is not equivalent to that required for the provision of the service concerned in the Member State in which the service is to be provided, it should be possible for the authorities in that Member State to require the service provider to take out complementary cover to fill any gaps or to adopt other adequate measures in that direction.

Consumers are not likely to have confidence to use services cross border unless they are assured that, in the event of adverse consequences, they will be entitled to similar redress to that to which they would have been entitled if the service had been provided by a professional established in their own Member State.

It is obvious that the realisation of article 27 requires a further harmonisation of the Community insurance market.

- **Article 39 : Codes of conduct at Community level**

CEPLIS welcomes the promotion of the concept of codes of conduct for individual professions at Community level and acknowledges the recognition of the important role of official professional bodies in this regard.

As cross border provision of services increases, it will be necessary to establish values and principles that should apply to all liberal professions and to apply these values and principles in the establishment of codes of standards and ethics for individual professions at Community level. When this has been achieved, the interests of the recipients of services will be safeguarded and they will gain confidence in using services cross borders.

CEPLIS therefore welcomes measures stipulating that Member States, in co-operation with the Commission, take action to encourage the drawing up of codes of conduct at Community level concerning commercial communications and on rules of professional ethics and conduct for the regulated professions.

For its part, CEPLIS will continue to discuss with the services of the Commission, the values and ethical principles that should provide the foundation of codes for all liberal professions and should therefore be incorporated in codes for individual professions at Community level, while always recognising their special characteristics¹.

On behalf of CEPLIS



DI Rudolf Kolbe

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¹ A letter on this issue was already addressed to several MEPs by the President of CEPLIS, Mr. Adrian Bedossa, on 3 February 2006.