

## ETUC key amendments to the Service Directive for EP Plenary vote 14 February

The ETUC believes that there are seven key issues that need to be addressed by the European Parliament. The ETUC demands:

- A) an unambiguous **exclusion of labour law** from the Services Directive, nor should the Directive affect matters covered by the Posting of Workers Directive or other International Private law provisions regarding individual labour contracts or collective agreements;
- B) a clear reference in the Directive to **respect the fundamental rights** of collective bargaining and industrial action (a so called Monti clause);
- C) a full **exclusion** of specifically sensitive services sectors (**temporary work agencies** and private security services) from the scope of the Directive;
- D) a full **exclusion of services of general economic interest** (SGEI's) from the scope of the Directive to bring these services in line with services of general interest (SGI's);
- E) a text which **recognises** Member States opportunity to justify national regulation (**overriding reasons of public interest**) in accordance with ECJ case law.
- F) a full **deletion** of **prohibited requirements** that are necessary for **enforcement, supervision and surveillance** of the labour market and working conditions;
- G) **deletion of the Country of Origin Principle**, leaving Member States proper space to monitor and enforce national rules that guard the public interest;\*

\* This paper does not include any amendments concerning the Country of Origin Principle (COP, Article 16). The ETUC has continuously opposed the introduction of the COP by the Commission in the draft Directive. The ETUC is currently working with the European Parliament to explore better solutions.

## A. Labour law and related issues

### Text adopted by IMCO

### Proposed amendment

<p><b>Article 1,</b></p> <p>4. This Directive shall be without prejudice to labour law, and, in particular, to any provisions on relations between the social partners, including the right to take industrial action and the right to collective agreements. This Directive shall not affect national social security legislation in the Member States.</p>	<p><b>Article 1,</b></p> <p>4. This Directive shall <i>not apply to or affect</i> labour law, <i>i.e. any legal or contractual provision concerning employment conditions, working conditions including health and safety at work, and the relationships between employers and workers. In particular it shall fully respect the right to negotiate, conclude, extend and enforce collective agreements, and the right to strike and to take industrial action according to the rules governing industrial relations in Member States. It shall also not</i> affect social security legislation in the Member States.</p>
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### *Justification*

This amendment aims at clarifying in unambiguous words the political consensus that the Directive does not apply to labour law, and should not in any way affect labour law in the broad sense of the word, i.e. both individual and collective labour law. Therefore, the words ‘without prejudice’ are replaced by clearer words, and a clear description is given of the various elements of labour law to prevent any misunderstandings.

<p><b>Recital 6 c (new):</b></p> <p>It is equally important that this Directive fully respects Community initiatives based on Article 137 of the Treaty with a view to achieving the objectives of Article 136 of the Treaty concerning the promotion of employment and improved living and working conditions. In view of the fact that the Treaty provides specific legal bases for matters of labour law and social security law and in order to make sure that this Directive does not affect these matters, it is necessary to exclude the field of labour law and social security law from the scope of this Directive.</p>	<p><b>Recital 6c (new)</b></p> <p>It is equally important that this Directive fully respects <i>the level of social protection provided for in article 2 of the Treaty, and</i> Community initiatives based on Article 137 of the Treaty with a view to achieving the objectives of Article 136 of the Treaty concerning the promotion of employment and improved living and working conditions. In view of the fact that the Treaty provides specific legal bases for matters of labour law and social security law <i>it is necessary to ensure that this Directive will not be interpreted as to apply to or affect labour law, i. e. any legal or contractual provision concerning employment conditions, working conditions including health and safety at work, and the relationships between employers and workers.</i></p>
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	<p><i>In particular it is necessary to ensure that this Directive will fully respect the right to negotiate, conclude, extend and enforce collective agreements, and the right to strike and to take industrial action according to the rules governing industrial relations systems in Member States.</i></p>
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**Justification**

The amended part of this recital confirms and explains the exclusion of all aspects of labour law from this Directive.

<p><b>Recital 7:</b> It is necessary to recognise the importance of the roles of professional bodies, professional associations and the social partners in the regulation of service activities and the development of professional rules, <i>so long as they do not hamper the development of competition between economic operators.</i></p>	<p><b>Recital 7</b> It is necessary to recognise the importance of the roles of professional bodies, professional associations and the social partners in the regulation of service activities and the development of professional rules.</p>
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**Justification**

The last sentence of the IMCO amendment is contrary to the EC Treaty and constitutions in most Member States.

<p><b>Article 3</b></p> <p>Relationship with other provisions of Community law</p> <p>1. If the provisions of this Directive come into conflict with other Community rules governing specific aspects of access to and the exercise of a service activity in specific sectors or for specific professions, those other rules shall prevail and shall apply to the specific sectors or professions involved. These rules include, in particular:</p> <p>a) Directive 96/71/EC on the Posting of Workers, .....etc.</p>	<p><b>Article 3</b></p> <p>1. The provisions of this Directive <i>shall apply without prejudice to other Community instruments</i>, in particular:</p> <p>...Directive 96/71/EC on the Posting of Workers, etc.</p>
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**Justification**

The proposed text (similar approach as taken by Employment Committee) reflects the view that is shared by the great majority inside and outside the Parliament, that all matters covered by the Posting Directive, including the areas and issues on which the Posting Directive allows Member States a broader scope for implementation, should be excluded from the Services Directive.

The text adopted by IMCO may create legal uncertainty, as it does not sufficiently take into account the multiple possibilities that Member States have to implement the Posting Directive, allowing them to implement more than the obligatory minimum provisions. This may lead to court cases to establish in which cases there is 'conflict' or not with the Services Directive, and to establish the exact meaning of the fact that 'the Posting Directive' prevails.

<p><b>Article 3,</b></p> <p>2. This Directive shall be without prejudice to the provisions of private international law, in particular for the handling of contractual and non-contractual obligations, including in the form of agreements (Rome I and Rome II).</p>	<p><b>Article 3,</b></p> <p>2. This Directive shall <i>also</i> be without prejudice to the provisions of private international law, <i>i.e. any rules on the determination of the law applicable to contractual and non-contractual obligations, including in the form of agreements, especially as contained in the 1980 Rome Convention on the law applicable to contractual obligations, and the planned Regulation of the European Parliament and of the Council on the law applicable to non-contractual obligations</i> (Rome I and Rome II).</p>
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**Justification:**

The proposed amendments make the text more precise and appropriate in the framework of a legal text like this Directive.

	<p><b>Recital 13 a (new)</b></p> <p><i>This Directive should not in any way affect matters covered by the Posting Directive, nor terms and conditions of employment, which, pursuant to Directive 96/71/EC, apply to workers posted to provide a service in the territory of another Member State.</i></p>
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**Justification**

These changes reflect the political consensus that the Service Directive should be neutral on labour law. The recital is useful in any case, with or without the amendment in Article 3 as proposed above. The text is the first sentence in recital 41a.

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## **B. Monti clause (fundamental rights)**

	<p><b>Insert new article</b> <b>Article 2 a</b></p> <p><i>This Directive may not be interpreted as affecting in any way the exercise of fundamental rights as recognized in Member States and/or in the EU Charter of fundamental rights, including the right or freedom to strike. These rights may also include the right to take other action covered by the specific industrial relations systems in Member States.</i></p>
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### *Justification*

This article reflects current EC law for the free movement of goods (EC Reg. 2679/98, the so-called Monti regulation), while adding a reference to the EU Charter of Fundamental Rights that did not exist yet when the Monti regulation came about.

The amendment does not add any new legal obligations in relation to the Charter, but only defines fundamental rights as those recognized at national level and those that are mentioned in the Charter.

A separate and clear Article in the Directive is justified by the fact that coherence between the various Community instruments is required, and that fundamental rights should be equally safeguarded in the internal market for goods as well as services.

### **C. Temporary work agencies and private security services**

<b>Article 2</b>	<b>Article 2.2 aa)</b>  <i>(aa) services provided by temporary employment agencies</i>
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***Justification***

Services provided by a temporary employment agency should be excluded from the scope of the Directive because of the lack of specific minimum harmonized requirements in respect of these service providers at Community level. If the sector were to be included in the scope of the directive, there would be a major deregulatory pressure on establishment requirements through articles 14 and 15, which would reduce the capacity of Member States to tackle fraud and illegal operators. Issues such as authorisation and requirements with regard to temporary employment agencies need to be addressed in specific community instruments in which the level of licensing could be defined explicitly.

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	<b>Article 2.2 ac)</b>  <i>(ac) private security services</i>
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***Justification***

The sectoral social partners in the private security sector, UNI-Europa and CoESS have consistently demanded the exclusion of the private security sector because the draft Directive seriously jeopardizes the industry as a whole. There are four sub-branches in the sector: guarding (surveillance of goods/people requiring a human presence on the spot), monitoring (surveillance using technological means), the transport of cash and valuables (e.g. Cash-In-Transit) and airport security (e.g. luggage screenings, passengers check-in and airplane surveillance). There remains a significant difference in regulation and licensing in Europe. The risk posed by the services directive has been further increased by the growing feeling of insecurity, the general European trend to transfer more and more tasks of public security to the private security sector, and the recent entry into the EU of ten new Member States where the private security sector still has a major restructuring process to undergo. The sector should be dealt with through in a specific community instrument.

<b>Article 17</b>	<b>Article 17.1(aa) (new)</b>  <i>aa) services provided by temporary employment agencies</i>
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***Justification***

Preferably temporary agencies should be excluded from the scope of the Directive. However, if that does not get majority support, they should at least be excluded from Article 16 ( see supra article 2.2 aa)

**D. Services of general economic interest and cultural services**

<p><b>Article 2,</b>  (no exclusion services of general economic interest)▼</p>	<p><b>Article 2.2 ab)</b>  <i>(ab) services of general economic interest</i></p>
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*Justification*

The Directive is not the right place to deal with SGEIs. The EC Treaty ( in article 16 and 86) clearly recognises the specific nature of these services. The Commission in its White Paper on SGI's even stated that fulfilling a general interest mission takes precedence over the application of the Treaty rules and expressly supported the view that the personal nature of many social and health services leads to requirements that are significantly different from the network services. Furthermore, SGEIs depend on regulation in a way that differentiates them from other services.

IMCO has excluded SGIs and health services from the scope of the draft Directive and network services from the country of origin principle, but this is not enough. There are good arguments to exclude SGEI altogether from the scope of the Directive. The distinction between economic and non-economic SGIs is complex. In fact, all services have an economic aspect, and, in the absence of clear definitions, they are defined case by case by the European Court of Justice. SGEI's should therefore be excluded, if not, they will be subject to pressure to deregulate (e.g. Articles 14 and 15), while authorisations and requirements are necessary as a way of imposing public service obligations.

The ETUC does not believe that the essential point is how the service is paid for. SGIs and SGEIs exist to safeguard the essential interests of all members of society, and are of particular importance in providing safety nets and services for the most vulnerable. For this reason, the management of public services and setting appropriate quality standards, including conditions for establishment, is one of the most important roles of government. Such quality standards should not be affected by the Services Directive. Upholding existing national establishment conditions for all public services is very important to safeguard consistent quality in service provision - establishment conditions and quality standards are two sides of the same coin and cannot be separated. For this reason all SGIs - including SGEIs - should be excluded from the scope of the Directive.

<p><b>Article 2,2 cc)</b>  (cc) audiovisual services, whatever their mode of production, distribution and transmission, including radio broadcasting and the cinema;</p>	<p><b>Article 2.2 cc)</b>  cc) audiovisual <i>and cultural</i> services, whatever their mode of production, distribution and transmission, including radio broadcasting and the cinema;</p>
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**Justification**

The ETUC supports the explanation in recital 10a arguing following: Cultural services play a vital role in the formation of European cultural identities and public opinion, and if cultural diversity and pluralism are to be preserved and promoted there is a need for specific measures, which must be able to take account of specific regional and national situations. The Services Directive is not the proper instrument to address these issues.

<p><b>Article 17</b></p> <p>Article 16 shall not apply to the following:</p> <p>1) Services of general economic interest which are provided in another Member State:</p> <ul style="list-style-type: none"> <li>a) postal services.....</li> <li>b) electricity .....</li> <li>c) etc.</li> </ul>	<p><b>Article 17</b></p> <p>Article 16 shall not apply to the following:</p> <p>1) Services of general economic interest which are provided in another Member State, <i>in particular</i>:</p> <ul style="list-style-type: none"> <li>a) postal services.....</li> <li>b) electricity .....</li> <li>c) etc.</li> </ul>
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**Justification:**

By adding the words ,in particular' the exemption gets the general meaning that many MEP's think it already has, i.e. the exclusion of SGEI from the COOP.  
 The IMCO text in reality however limits the exclusion to the explicitly mentioned network services.

## **E. Overriding reasons of public interest**

<p><b>Definitions</b> <b>Article 4 (7a) new</b></p> <p>"overriding reasons relating to the public interest": the notion of overriding reasons relating to the public interest to which reference is made in this Directive covers inter alia the following grounds: the 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;</p>	<p><b>Article 4 (7a) new</b></p> <p>"overriding reasons relating to the public interest": the notion of overriding reasons relating to the public interest to which reference is made in this Directive covers inter alia the following grounds: the 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, <i>ensuring high standards in education</i> and cultural policy objectives;</p>
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### *Justification*

Ensuring high standards in education should be included among the “overriding reasons relating to the public interest”, as education is equal to the protection of social, health and cultural policy objectives etc. in being among the major considerations which must be weighed in the balance in the Community’s attempts to create conditions of fair competition in a single market. The inclusion of education in article 4, point 7a (new) moreover secures consistency with Amendment 30, recital 24.

<p><b>Article 16.2</b></p> <p>This does not prevent the Member state into which the service provider moves from enforcing its specific requirements with regard to the exercise of a service activity that are indispensable for reasons of public policy or public security or for the protection of the health or the environment in order to prevent particular risks at the place where the service is provided.</p>	<p><b>Article 16.2</b></p> <p>This does not prevent the Member state into which the service provider moves from enforcing its specific requirements with regard to the exercise of a service activity <i>for overriding reasons relating to the public interest, provided that they apply non-discriminatory and are proportional.</i></p>
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### *Justification*

Member States should have the opportunity to justify national regulation with the aim to protect public policy, health and safety, workers, environment, etc.

The reference to “overriding reasons relating to the public interest” as defined in article 4.7a shows that the list of imperative reasons is non-exhaustive (inter alia). This amendment is coherent with ECJ case law. ▼

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## **F. Requirements needed for supervision and surveillance**

<p><b>(Prohibited requirements in the framework of the Country of Origin Principle)</b></p> <p>16 (3) Member States may not restrict the freedom to provide services in the case of a provider established in another Member State, in particular, by imposing any of the following requirements:</p> <p><b>Article 16.3 (b)</b></p> <p>(b) an obligation on the provider to make a declaration or notification to, or to obtain an authorisation from, their competent authorities, including entry in a register or registration with a professional body or association in their territory, except in cases provided for in this Directive or other instruments of Community law;</p>	<p><b>Article 16.3 (b)</b></p> <p>Delete</p>
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### *Justification*

Prior declarations by service providers are a basic mechanism for any effective control of employment standards. It would be incoherent to keep article 16.3 (b) while deleting article 24.

<p><b>Article 16.3 (c)</b></p> <p>(c) an obligation on the provider to have an address or representative in their territory or to have an address for service at the address of a person authorised in that territory;</p>	<p><b>Article 16.3 (c)</b></p> <p>Delete</p>
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### *Justification*

The obligation to appoint a representative on the territory of the host state is of crucial importance for surveillance and supervision of the labour market in the Member States. The need to have a representative is not just for information, demands and correspondence, , but for any contractual interaction (public authorities, inspectors etc) with the service provider in the host Member State.

A representative is also needed for enforcement of labour standards in Member States where collective agreements are declared generally binding.

It is also of additional importance for the Swedish and Danish labour market systems to have a representative with legal competence. The representative of the employer is the person with whom the trade unions in Sweden and Denmark address to (conclude a binding agreement. This is the only way to provide for minimum standards according to the Posting Directive in these Member States.

It would also be incoherent to keep article 16.3 (b) while deleting article 24.

<p><b>Article 16.3 (e)</b></p> <p>(e) an obligation on the provider to comply with requirements, relating to the exercise of a service activity, applicable in their territory;</p>	<p><b>Article 16.3 (e)</b></p> <p>Delete</p>
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***Justification***

Article 16.3 (e) is an extension of the COP as presented by the Commission in article 16.1. It is a general prohibition to apply host country rules to a foreign service provider and it is therefore unacceptable

<p><b>Article 16.3 (h)</b></p> <p>(h) requirements which affect the use of equipment which is an integral part of the service provided;</p>	<p><b>Article 16.3 (h)</b></p> <p>Delete</p>
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***Justification***

This text has a relationship with article 24 that has been deleted. It is incoherent to keep 16.3 (h). It is essential that rules in the host country apply to equipment used by a service provider from a health and safety perspective

<p><b>Article 16.3a</b></p> <p>(3a) The Member state of destination shall be entitled to take supervisory measures <i>in accordance with [section 1] concerning the execution of the service in the cases provided for in Articles 17 to 19.</i></p>	<p><b>Article 16.3a</b></p> <p>(3a) The Member state of destination shall be entitled to take supervisory measures.</p>
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*Justification*

3a) Incoherence in text adopted by IMCO: the wording introduced in 16 (3a) gives a false impression of host country supervision, but in fact restricts the possibility for host country supervision to services of general economic interest. This limitation is incoherent with the new text in art 34-38 and should therefore be deleted.

<p><b>Article 24</b></p> <p><b>specific provisions on the posting of workers</b></p> <p><b>Article 25,</b></p> <p><b>posting of third country nationals</b></p>	<p><b>Article 24</b></p> <p>(Deleted by Employment Committee, should not be re-introduced in the plenary vote)</p> <p><b>Article 25</b></p> <p>(Deleted by Employment Committee, should not be re-introduced in the plenary vote)</p>
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*Justification*

For reasons of legal certainty and consistency, any clarification – if necessary - in the field of posting of workers should be dealt with under the existing Directive 96/71/EC (on posting of workers). A consultation of the Social Partners on the implementation of the Posting Directive has been initiated, and a separate discussion will take place in the EP. This Directive should not interfere in that process. .



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