

The EU Directive on Services – a wholesale attack on basic services in Europe

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Shortly before he left the EU Commission, Frits Bolkestein, EU Commissioner for the Single Market up until November 2004, gave Europe and the EU member states a farewell present which made quite a splash and is set to keep us very busy over the next few months: The Commission's proposal for an EU Directive on Services in the Single Market of January 13, 2004.

This directive seeks to cover all services in member states which are provided on a remunerated basis. Given this broad definition, we must assume that this includes virtually all public basic services as these are generally also provided on a remunerated basis. All basic services (e.g. water, electricity, waste disposal) are provided in EU member states on a remunerated basis in one form or another.

The purpose of the draft directive is to remove discrimination for all competitors in the services sector in the EU Single Market. The aim is to ensure that companies from all 25 EU member states are impaired to a minimum extent from engaging in economic pursuits in other EU countries by the various national rules pertaining to tax, trade, contract, liability or environmental law. Thus, for example, it will no longer be necessary to engage in economic activities in a given country to be able to establish a subsidiary according to national law. This is a condition, e.g. in connection with the acquisition of shares in other companies or taking part in invitations for tenders, which currently applies in many EU countries.

For this purpose, a "country of origin principle" has been proposed under which service companies in all 25 EU member states would be permitted to engage in economic activity solely in accordance with the law of their country of origin. Regardless of whether a German company provides services in France, an Austrian one in Spain, a Slovakian one in Italy or a Polish one in Germany, the applicable German, Austrian, Slovakian or Polish tax, liability, contract and environmental law would apply.

The result would be that up to 25 different legal systems (in 20 different languages) would apply in 25 different countries depending on the countries in which service companies from other EU countries operate.

The EU Directive on the Posting of Workers covers the labour and social conditions (wage-scale agreements, employment contracts, labour law), i.e. these conditions are to be based on the country in which the service is provided. Apart from the construction sector however where collective bargaining agreements must apply to posted workers, Member States may chose to only apply the legal minimum requirements for other sectors.

What this means is that the labour and social conditions in these countries are based on the "country of origin principle" in the services sectors. In other words, these sectors face the immediate risk of merciless dumping practices affecting the various labor conditions, collective contracts, working conditions and jobs, which would exert heavy downward pressure on standards.

The organization of services which are of public or general economic interest has formed a key element of the policies of the EU Commission and, in some cases, also the parliaments and the Council of Ministers in the past few years as part of efforts to further liberalization as part of the completion of the single market.

In the Lisbon strategy, the EU heads of government resolved in 2000 to make the EU the world's most dynamic and economically successful economic region by 2010. This was to be characterized by high employment levels, excellent education standards and an advance social model.

A key element towards reaching these goals is the completion of the EU single market, i.e. the opening of the national markets in all economic areas previously not subject to laws of the single market. This primarily concerns basic services (electricity and gas supplies, water and waste disposal).

One of the upshots of this strategy was, for example, the 2nd Single Market Directives on Electricity and Gas of June 2003, which forced companies to unbundle their activities, i.e. to separate their production, trading and marketing activities from their transportation, transmission and distribution activities. Similarly, the energy markets in all 25 EU member states must be fully open for all customers by July 1, 2007, i.e. all household, commercial and industrial customers must be free to choose their electricity and gas supplier from anywhere in Europe.

Beyond the electricity and gas markets, the Commission or parts of the EU Parliament have in the past few years repeatedly attempted to liberalize the basic services market.

This included, for example, the submission of a Green Book in 2000 and a White Book in April 2003 by the EU Commission in on general-interest services. Whereas in the Green Book the Commission described its intention to implement a large degree of liberalization and competition for these services, particularly water and waste disposal, it retracted these partially in the later White Book.

This had been preceded by sharp controversy in the EU Parliament, which resulted in spring 2003 in resolutions which were extremely critical of liberalization.

In the White Book, the Commission announced that it would no longer be giving priority to implementing further liberalization particularly with respect to water and waste disposal services but that it intended to present a legal framework for delineating these services in 2005.

However, this should not be misconstrued as the final word on this subject - in any case, we will have to continue following this discussion.

A new attempt to undermine public services is the Commission's Green Book on public-private partnerships of spring 2004.

This Green Book deals critically with the various models for public and private partnerships in the form of public invitations for tenders, concession contracts and joint equity holdings.

The Commission wants European-wide invitations for tenders for public-sector spending projects and concession contracts. This is also to apply to the acquisition of shares in municipal companies.

Similarly, the Commission criticizes the fact that in many countries concession contracts have very long terms, particularly with respect to the supply of electricity, gas and water,

stating that this is harmful to the single market, as a result of which it would like to be able to supervise these in the future.

Consistent with this is the Commission's recent proposal for an EU Directive on Services. The proposal is deliberately vague and non-committal particularly with respect to the definition and delineation of services and services of general or general economic interest. Instead, it attempts to advance the cause of liberalization and the orientation of basic services to the single market via the backdoor so to speak.

As the various types of services to be covered by the directive are not specified, we have no alternative but to assume that the proposal applies to all types of basic services in all forms.

Energy sector:

As a matter of principle, the energy sector, i.e. electricity and gas, should be excluded from the country of origin principle. This means that the operation of power stations or gas storage facilities, transportation, transmission and distribution networks should fundamentally be governed by the law of the country in which the service is provided in the light of the EU's single market rules for electricity and gas.

However, all services within the energy sector must be viewed critically.

This particularly applies to

- maintenance of and repairs to grids and power stations,
- distribution and trading subsidiaries,
- metering and invoicing,
- IT and telecommunications services,
- fleet and facility management,
- security and patrol services.

The EU Directive on Services would have dramatic repercussions for these energy-related services. Companies in these sectors would be able to offer their services to the energy sector on an EU-wide basis in accordance with the legal situation prevailing in their country of origin. These companies could calculate their services on the basis of the labor and social conditions prevailing in their country of origin particularly in countries which have not fully ratified the EU Directive on the Posting of Workers, resulting in a massive threat to employment and labour conditions in the countries in which the services are provided.

Water:

Following the discussions of the past few years, the EU Commission has now also come to the realization that there is strong opposition in the individual societies to full liberalization of water supplies and waste disposal services as well as the risk of constitutional incompatibilities in several EU members. Thus, in some EU countries, the local governments and municipalities are obliged to ensure supplies of clean drinking water and hygienically suitable treatment of sewage.

Accordingly, the EU Water Directive and the national rules governing the supply of drinking water and the treatment of sewage are to continue to apply, meaning that they will be excluded from the country of origin principle.

However, more recent discussion within the Commission suggests that efforts are being made to draw a distinction in the water industry between supplies of drinking water and other services related to the supply of water so as to overcome the constitutional problems in individual countries.

Applying this approach, the Commission could, for example, try to liberalize the construction, maintenance and servicing of pipelines, filter and purification plants, metering and billing services as well as other services in the water sector.

In this way, substantial parts of the water sector would be affected by the EU Directive on Services.

Waste Disposal:

The waste disposal sector is to be excluded to only a limited extent from the above-mentioned country of origin principle. Thus, for example, companies from other countries will still have to comply with the waste disposal regulations of the countries in which they provide their services. Under this proposal, it will also be necessary to comply with the rules governing the operation of waste tips or waste combustion plants applicable in the country in which such service is provided.

However, all other areas of the waste disposal industry, e.g. the collection, transportation and sorting of waste, will come under the terms of this directive.

Municipalities and regions close to borders in particular will be able to invite foreign waste disposal companies, which will only be required to comply with the tax, trade, environmental and liability law prevailing in their country of origin, in bidding procedures. In countries which have not fully adopted the EU Directive on the Posting of Workers, they will also be able to employ staff in accordance with the labour and social legislation prevailing in their country of origin.

This will result in a sharp acceleration in the dumping processes already affecting wage and work conditions in the waste disposal industry, resulting in risks to jobs and wage-scale agreements.

To sum up: The EU Directive on Services is a wholesale attack on basic services

The implementation of the proposed EU Directive on Services would have dire effects on basic services in the waste disposal, energy and water industries.

Companies – particularly in the service segments of these industries – would be able to set up letter-box companies to avoid having to comply with the applicable environmental, safety, liability, trade and tax laws and operate from other EU member countries with legislation more favourable for them.

As the EU Directive on the Posting of Workers has not been fully ratified across the entire EU for the basic services industry, companies would additionally be able to play off the differing wage and labour conditions directly against each other in the light of competitive conditions.

This would result in a drastic dumping spiral, which would wreak havoc on the European social state model guaranteed in the EU treaties and the draft EU constitution.

The EPSU raises the following demands for the basic services industry:

1. **Services of a public and general economic interest must be excluded from the scope of the Services Directive.**
A precise definition of the services of economic, general and general economic interest can prevent public services from being undermined through the back door.
2. **The country of origin principle must not be used as the guiding principle for the economic activity of companies providing basic services.**
Given the safety, environmental and liability risks in the basic services industry, the exceptions to this principle would have to be so extensive that there is little point in adopting it in the first place.
3. **EU-wide competition in the services sector must not result in wage and social dumping.**
As the European Directive on the Posting of Workers is not binding for all industries including basic services, it is not possible to have a single market with the free and unfettered movement of services.
4. **Professional qualifications must be comparable across the EU to ensure similar competitive conditions.**
Certain minimum qualifications are required to perform numerous activities in the energy, water and waste disposal sectors. If the single market for services is to progress, it is necessary for qualifications to be comparable in terms of both content and form.
5. **The EPSU calls for a European legal framework for Services of General Interest to ensure that services of a general or general economic interest retain their special status in the future.**
The purpose of this framework should be to shield these services from further developments in the EU Single Market and thus to help strengthen local governments' own decision-making powers.