

European Economic Integration

„Bolkestein Directive”

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List of Abbreviations

ALDE	Alliance of Liberals and Democrats for Europe
BEUC	European Consumers' Organization
CGT	Confédération Générale du Travail
DGB	Deutscher Gewerkschaftsbund
EPP-ED	European People's Party (Christian Democrats) and European Democrats
EPSU	European Federation of Public Service Unions
ETUC	European Trade Union Confederation
EU	European Union
GATS	General Agreement on Trade and Services
Greens/EFA	Greens/European Free Alliance
OECD	Organization for Economic Development
SGEI	Services of general economic interest
SME	Small and medium sized enterprises
TOT	Terms of trade
UEAPME	European Association of Craft, Small and Medium-Sized Enterprises
UEN	Union for Europe of the Nations
UNICE	Union of Industrial and Employers' Confederations of Europe
WTO	World Trade Organization

1 Introduction

The Lisbon strategy adopted by the EU in 2000 aims at the transition of the European Community into the most dynamic and most competitive knowledge economy in the world by 2010. This is to enhance and secure its ability to realize a high level of prosperity in the long term. The key aspect of the strategy is the development of the internal market- a space in which free and unadulterated competition is guaranteed. The objective is to create a *level playing field* for European companies. However, little progress toward this objective has been made in recent years, which has had a negative effect on the credibility of the Lisbon strategy. To get the strategy underway, it is felt that on a European level the most important issue is the elimination of the remaining obstacles that impede the functioning of the internal market.

Since services account for almost 70% of the Member States' GDP¹, it is obvious that there has to be a special focus on the services sector in order to complete the internal market. Currently, there is a clear lack of market integration in services as is seen by the low productivity growth of service providers in the EU (0.6 % per annum between 1996 and 2000, compared to 1.5 % in the US)². This underperformance is attributed to market fragmentation and the resulting lack of competition.

The European Commission concluded that this continued existence of the obstacles to cross-border service provision can, realistically, be attributed to a combination of three factors:

- a lack of trust between the Member States;
- a lack of willingness to update national legislation; and
- the protection of purely national economic interests

¹ Compare CESifo-Forum (2005).

² Compare SER (2005).

To remove these obstacles, the Commission proposed the Services Directive, commonly referred to as the 'Bolkestein' Directive, named after Frits Bolkestein, the former EU Commissioner for the Internal Market who first proposed it. The Commission argues that the proposed directive would resolve the problems of excessive bureaucracy for service companies wanting to operate across borders, thus boosting cross-border competition and increasing choice, improving quality and reducing prices for both consumers and businesses³.

1.1 The draft Services Directive

The three main objectives of the Services Directive include:

1) *Free movement of services:*

- *'Country of origin' principle:* Service providers can, temporarily, be subject to the laws of their country of origin rather than of the country where the service is provided. They can thus test a new market without having to register with the authorities. This principle is one of the most controversial parts of the directive.
- Distribution of control tasks between home- and host country. Host countries are not allowed to ask foreign service providers for working papers or other types of registration, so they have to rely on the cooperation of the home country's authorities. However, they are free to conduct any other type of control on their territory.
- The right to purchase services from other Member States, without the recipient's country being allowed to impose restrictive measures and without government departments or private companies being allowed to exhibit discriminating behaviour.
- A support system for recipients of services that are based in another Member State (consumer protection, information about the available means of redress etc.).
- Rules in respect of prior authorization from Member States for the reimbursement of health care that was provided in another Member State.

³ Compare Ascher (2004).

2) *Freedom of establishment of service providers:*

- Simplification of administrative procedures and introduction of a system of single points of contact in each Member State.
- The formulation of a number of principles that the approval systems for service activities must comply with.
- A prohibition on certain restrictive regulations; screening of legislation of the Member States for the objectively justified and proportional use of requirements.

3) *Mutual trust between Member States:*

- Harmonization of legal stipulations between Member States with a view to equal protection of the general interest, such as consumer protection.
- Increased mutual assistance between the national governments and regulatory authorities.
- Measures to promote the quality of services through the improved functioning of the reputation mechanism on a European scale, for instance voluntary certification of activities, codes of conduct and the formulation of quality charters or collaboration between Chambers of Commerce.

Important to know, there are several areas that are either exempted from the whole Services Directive (e.g. services of public order) or exempted from the country of origin principle (e.g. services to supply water, gas or electricity)⁴. Those exemptions are justified by the different nature and need for regulation of services of public interest. Additionally, there are sectors that are excluded due to already existing EU regulation, namely financial services, transportation services and electronic communication services.

⁴ A list of a) all covered sectors, b) sectors with exemption and c) excluded sectors can be found in Annex 1.

1.2 The Posting of Workers Directive

The Services Directive has to be seen in the wider context of existing regulation. Not only due to the exclusion of certain sectors as described in 1.1, but also because certain aspects of the Services Directive coincide with other directives. This is especially important in the area of social and labor law in cross-border employment, where the current EU policy is based on the so called “Posting of Workers Directive”. Article 24 of the Services Directive explicitly makes it obligatory for the host country to perform the checks, inspections and investigations that are necessary to ensure compliance with the stipulations of the Posting of Workers Directive.

These stipulations can also be interpreted as a guaranteed hard core of employment terms and conditions for workers posted to another territory. They cover the following amongst others:

- a) maximum work periods and minimum rest periods
- b) minimum number of paid leave days
- c) conditions for hiring of workers
- d) health, safety and hygiene at work
- e) protective measures for certain groups of workers
- f) stipulations regarding equal treatment and non-discrimination
- g) minimum rates of payment

The last point is a very important one, because the Services Directive states that these rates are defined by the national law and/or practice of the Member State to whose territory the worker is posted, as clearly opposed to the specifications of the ‘country of origin’ principle.

2 Costs and Benefits of the Services Directive

2.1 Arguments for the current Proposal for a Services Directive

There are strong arguments from an economic and political perspective that support the suggested measure to achieve more trade integration in the services sector. 1) The economic effects are expected to be positive both in terms of welfare and employment. 2) The harmonization breaks the stalemate between the wish for further harmonization and the unwillingness of Member States to invest into this process. 3) The Services Directive leads to a quicker change process than case-law from the European Court of Justice could achieve. 4) There are non-monetary benefits for consumers due to higher competition. 5) The political interaction between Member States and the efficiency of government entities may improve due to the mutual relationship in the implementation process.

2.1.1 Economic effects on welfare and employment

Barriers to trade lead to two economic effects. Firstly, they can have rent-protection effects (similar to tariffs that protect the higher prices the incumbents in the host country can charge). Secondly, they can have direct cost creating effects increasing marginal costs of production or sales. Both effects are illustrated with simple graphs in Figure 1.

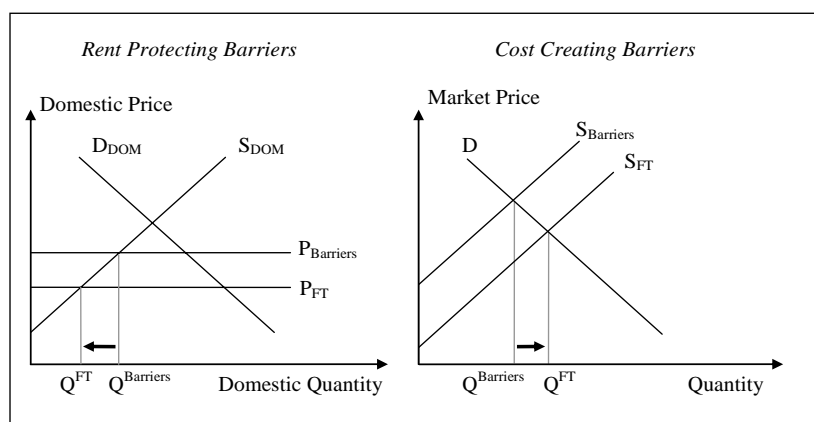


Figure 1: Graphical illustration of effect of barriers to trade

Source: Own Illustration.

A reduction of trade barriers, thus, has two effects depending on the type of barrier. Elimination of rent protecting barriers will lead to more efficient allocation, as the inefficient incumbents (that could produce with marginal costs above the free trade price level - $Q^{FT}Q^{Barriers}$) in the domestic country will be replaced by more efficient producers from foreign countries. EU-wide this will lead to higher average productivity. Elimination of cost creating barriers will lead to lower marginal costs (supply curve moving down) or lower entry costs. Both the increased competition and the lower marginal costs will lead to lower price levels and higher aggregate output. The higher output will lead to more labor demand and, consequently, more employment in the deregulated sector. There are two major research projects that have investigated the direct and indirect economic effects of the Services Directive: the report of the Netherlands Bureau for Economic Policy Analysis (CPB) and the work done by Copenhagen Economics. Both come to the conclusion that there will be positive effects on services trade.

The CPB study⁵ focuses only on the effects on trade and bases its analysis on the reduction of heterogeneity between trading partners' regulations. They find an expected increase in trade in services of about 30 to 60 percent, which equals an increase in total EU trade of 2 to 5 percent. These results give a first indicative idea that total welfare will increase⁶.

The Copenhagen Study⁷ is more specific and exhaustive by using a three-step approach. In a first step they convert the qualitative information on barriers to trade in services into indices comparing the pre- and post-directive situation. They find that, on average, barriers will be reduced by 50% due to the Services Directive. Reductions will be highest in regulated professions (accountancy) and lowest in business services (IT).⁸ In a second step the impact

⁵ Compare Kox et al. (2004).

⁶ More trade being equivalent to more competition and productivity.

⁷ Compare Sejerøe et al. (2005).

⁸ Two scenarios are calculated: we only present the results of the direct impact scenario, which assumes realistically that even after the directive foreign firms will face some more obstacles than domestic firms.

on firm performance is calculated using two factors: cost-creating and rent-protecting barriers. Finally, a computable general equilibrium model yields the results for the economy as a whole being specific about the welfare and employment effects. Welfare is measured as comprehensive consumption and is expected to increase by 0.6 % (or 37 billion EUR). Prices will fall on average and most strongly in the regulated professions. Value added is calculated to rise by 33 billion EUR. The net employment effect is estimated to be positive with 600.000 new jobs to be created. The detailed results in Annex 2 show that the employment and welfare effects are positive for each of the member countries (all countries benefit from the changes of the Services Directive).

2.1.2 Breaking the stalemate for further harmonization

The present situation of the EU with respect to the harmonization of regulations in the services sector can be characterized as a stalemate, as Member States make further market opening for trade in services subject to harmonization, but are ill-prepared to take further steps to promote this effect. The directive would break this stalemate. Choosing liberalization as the first step creates a natural pressure on self-regulation and harmonization. Mutual recognition and collaboration between Member States will result in a harmonization process that achieves both efficiency and a sufficient level of consumer and employee protection.

2.1.3 Quicker Change Process

There exists a quite established case-law of the European Court of Justice regarding the free movement of services. Article 49 of the treaty is interpreted in a way that requires the “elimination of all discrimination on grounds of nationality against providers of services who are established in another member state, but also the abolition of any restriction, even if it applies without distinction to national providers of services and to those of other Member States, which is liable to prohibit, impede or render less advantageous the activities of a

provider of services established in another member state, where he lawfully provides similar services”.⁹ The clarity of this case-law containing mostly all aspects that are now covered by the directive sheds light on the fact that the question is not, if the changes should be made, but how the implementation can be realized most efficiently. Relying solely on the case-law has a number of clear disadvantages. It takes a long time, as decisions are usually restricted to the special case or services sector. Many decisions and many years would be needed to achieve full liberalization. There is no room for strategic consideration, as the case-law-change is sudden and thereafter undisputed. Finally, court decisions instruct only what not to do, but do not give guidance on what to do.¹⁰ A coherent and systematic policy approach like the Services Directive can, thus, achieve the goals in a more transparent and timely fashion.

2.1.4 Non-monetary benefits to consumers

Increased competition and a larger number of firms offering the same service will lead to more product variety and better quality. Variety is achieved simply by increasing the number of competitors offering a service. Quality will improve, as firms will compete both on prices and on quality depending on the price and quality elasticities of demand.¹¹

2.1.5 Improvement of government relationships and efficiency

The main implication for governments in the implementation process of the Services Directive is the need for mutual assistance and cooperation. If this imperative is followed by all Member States the consequence will be a much closer link of government bodies and a better understanding between them. This, in turn, will increase trust building a foundation for

⁹ Compare SER (2005), p.42.

¹⁰ Compare SER (2005), p.43.

¹¹ Compare UNICE (2005a).

further collaboration in other areas. Moreover, identification of best practice and mutual learning may lead to more efficient government procedures and less bureaucracy.¹²

2.2 View of the opposition: Main points of criticism

The Proposal for a Services Directive has provoked multifarious criticism from several parts of society, politics, representative organisations and even businesses. Given the sometimes low level of information amongst commentators participating in the discussion, a main target of presenting critical arguments is to differentiate between justified scepticism and populism based on poor technical expertise. Thus, we will first present the main arguments that have been brought forward by the opposition and thereafter incorporate responses of the supporting side, thereby allowing some corrections to the original criticism.

The criticism on the Bolkestein Directive can be broken down into 5 main arguments: 1) social dumping via the country of origin principle, 2) growth at the expense of workers and SMEs, 3) ambiguous control system and legal uncertainty, 4) illegitimate inclusion of services of general economic interest, 5) a too generic scope of the new regulation.

2.2.1 Social dumping via the country of origin principle

The heart of the Proposal is also at the centre of criticism. It is feared that the principle would cause a “rat race to the down” in terms of economic, social and ecological standards. As companies are only bound to their home countries’ laws, there would exist an incentive to transfer the registered office to the Member State with the most favourable judicial environment¹³. This in return would intensify competition amongst Member States – which is indeed intended by the Commission – with some apparent potential for downward harmonization.

¹² Compare UNICE (2005a).

¹³ Compare ETUC (2004) and DGB (2004).

One can cite the experiences around the so-called “flags of convenience” in the maritime transport sector as an example for what might happen to especially Western European countries¹⁴: While the sales and knowledge focus of the companies remains on the more developed and regulated countries, the companies’ legal basis shifted to more favourable sets of rules, e.g. to those of the Bahamas, Trinidad & Tobago or Kiribati. This issue remains relevant for the EU as long as significant differences exist between Member States. With the accession of the 10 new Eastern members in May 2005 this problem has rather increased than decreased. In this context, the radical liberalisation approach of the Commission might well foster and speed up integration, though it might also strongly disrupt the very same process.

What lies at the technical core of this discussion is the exact definition of “the residence of an enterprise”. Because the Services Directive does not seem to consider certain conditions for moving the main office – apart from the official registration – there is some inviting opportunity for companies to establish letter-box-headquarters. Critics, therefore, demand that “residence” would have to coincide with the “principal place of business”¹⁵.

Adding to the “social dumping”-argument there are voices that claim that national labour law would be undermined by the new Services Directive¹⁶. Though the proposal claims that national labour law would not be affected as such¹⁷, those critics see an indirect effect on national legislation, stemming from the ineffective control system (described below in 2.2.3). They go as far as to say that the Services Directive would put the autonomy of social partners at stake¹⁸. Equally, they see an attack on national sovereignty in guaranteeing the quality of services¹⁹. In this context they frequently refer to the commonly used concept of subsidiarity, meaning that decisions should be made at the lowest possible step in the hierarchy of local,

¹⁴ Compare ETUC (2004).

¹⁵ Compare UNICE (2005b).

¹⁶ Compare PSE (2005) and DGB (2004).

¹⁷ Compare European Commission (2004), Article 41.

¹⁸ E.g. in Germany the tariff autonomy of labour unions and employers’ association is legally guaranteed.

¹⁹ Compare Ver.di (2005).

regional, national and supranational institutions and denying that too much power should be transferred to Brussels.

2.2.2 Growth at the expense of workers and SMEs

Especially labour unions and left-wing political organisations frequently question the basic accordance of the Services Directive with the Lisbon strategy²⁰. They argue that sustainable economic growth was only one of three pillars agreed on in 2000 and that the two others – better quality jobs and social cohesion – would be largely missing in the current proposal.

Saint-Paul (2005) analyzed this field of concern by anticipating the welfare effects in Western- vs. Eastern countries (more developed vs. less developed), thereby also commenting on the expected resistance or support in each of those countries. Saint-Paul (2005) shows with his model that one can expect that the terms of trade (TOT) effect would most likely favour Eastern countries, which is mainly due to the mobility of their products in comparison with those of Western countries. In return, there would exist a class of workers in the West with over-proportional losses from new competition. This class is characterized by low-skilled workers that are hindered from switching to other sectors or to accept a lower level of wages. In summary, one can expect especially fierce resistance from strongly regulated countries (e.g. Germany, France), whereas rather liberalised countries (e.g. United Kingdom, Netherlands) do not have to fear much competition from Eastern countries.

But even from an enterprise-focused point of view one could argue that the Services Directive would have detrimental effects especially amongst Small- and Medium-sized Enterprises (SMEs)²¹. This argument is drawn on the assumptions that a) SMEs cannot participate in cross-border services as they would have to compete directly with big enterprises and b) that

²⁰ Compare ETUC (2005).

²¹ Compare CESifo Forum (2005).

they would now additionally lose their competitiveness on the domestic market as foreign companies could enjoy less rigid regulation.

2.2.3 Ambiguous control system and legal uncertainty

The second cornerstone of the Services Directive – the regulatory control of companies by their home- and not their host country – also takes the second highest amount of fierce criticism. It is argued that host countries would be unable to effectively control and regulate foreign companies in light of the prohibition to demand working papers, registration or any other kind of double identification²² from foreign workers²³. The intended rise in cooperation would not cure the potential disease of unregulated parts in the national economies²⁴. This would mainly arise from the missing incentive for home countries to assist host countries with the control of companies not operating on their territory. Still, the local authorities in the host country would need to take political responsibility. This control vacuum is amplified by the overall legal uncertainty that would arise from 25 legal systems existing one next to another in each Member State.

2.2.4 Illegitimate inclusion of services of general economic interest

There exists broad consensus amongst both pro and contra commentators that public services – i.e. state services free of direct charge and of public interest – should be excluded from any market liberalisation. Consequently, the Bolkestein Directive explicitly excludes “non-economic” services from the new regulation. However, there is a grey zone between economic (or private) and public goods, the so-called “services of general economic interest” (SGEI). Those are services that are of public interest, but charge some direct fees and are thus operating economically. Examples include the systems for water, waste, electricity, gas and

²² “Double” in the sense that those measures have already been taken in the home country of the worker.

²³ Compare ETUC (2004) and DGB (2004).

²⁴ Compare Handelsblatt (2005).

telecommunication as well as the railway network and most healthcare services. Those services are only excluded from the country of origin principle. However, even if a certain sector might be excluded itself, some closely related industries (e.g. construction of water pipelines) to this sector might not²⁵.

Furthermore, there remains widespread confusion about which industries will finally be effected by the Services Directive. As one can imagine, this further intensifies criticism, because it increases the fear that the EU might put out feelers into new areas and thus restrict established influence.

2.2.5 A too generic scope of the new regulation

What is frequently brought forward is the assessment that the liberal approach of the Bolkestein Directive is currently extended into too many diverse sectors and industries. Arguments of this kind stress the different regulatory need of industries, as can be seen most clearly in the area of services of general economic interest. Concrete requests frequently demand the exclusion of health services, temporary work and media²⁶ in addition to the already existing exceptions (see Annex 1). However, this would strengthen criticism at another site, namely regarding the patchwork of deflecting regulations that would be created instead.

The criticism goes along with the allegation that the generic approach taken is rather meant to “clean” the regulatory environment to a maximum extent than to effectively organise each industry – which would even be intensified by the currently tight schedule of the Services Directive. The EU Commission would thus sneak out of its responsibility to effectively harmonize before completing liberalisation – either via an increased effort in the currently established system of case law or via industry-specific adaptations to the Services Directive.

²⁵ Compare Forschungsinstitut für Öffentliche Verwaltung (2005).

²⁶ Compare ETUC (2004) and ETUC (2005).

2.3 Rebuttal to criticism

As mentioned above, one can observe some considerable misinformation and potential misconception in the discussion around the Bolkestein Directive. Hence, in this section, the arguments brought forward by the opposition are qualified from an objective point of view.

2.3.1 RE: Social dumping via the country of origin principle

The UNICE²⁷ points out that the Posting of Workers Directive of 1996 is explicitly respected by the Bolkestein Directive (see introduction 1.2). This leads to the lingering validity of the host country's social and labour laws, covering matters such as minimum wages, maximum work periods, minimum rest periods and holidays, health and safety at work and non-discrimination arrangements. Besides that the country of origin principle would not be new to the European economies as it has already been established successfully in the goods sector and the fields of television, electronic signature, e-commerce and data protection.

2.3.2 RE: Growth at the expense of workers and SMEs

Following the logic of the EU Commission and the Lisbon strategy the liberalisation of the services industries should be strong enough to overcompensate for potential losses amongst workers especially in richer countries. As pointed out in the Copenhagen Study²⁸, described in chapter 2.1 on pro-arguments, even wage level effects could turn out to be positive across all Member States in this process. Combined with the ongoing social protection through the Posting of Workers Directive this would yield significant benefits even to workers.

2.3.3 RE: Ambiguous control system and legal uncertainty

Supporters of the Proposal see a smaller evil in the parallel validity of 25 different laws in one country than in one company being faced with 25 different laws abroad.

²⁷ Compare UNICE (2005b).

²⁸ Compare Sejerøe, A., Jervelund, C., Svensson, P., Nielsen, C. (2005).

Additionally, it is said that economic practice has shown that companies have their place of establishment where their customers are and not where there is the most favourable environment in case of undesirable conflict with customers²⁹.

Finally, as mentioned before, the Services Directive would exert strong pressure for legal harmonization on the Member State which is one of the major intentions of the Commission.

With this in mind any potential legal ambiguity would only be a temporary problem.

2.3.4 RE: Illegitimate inclusion of services of general economic interest

UNICE³⁰ highlights the fact that public services (especially public order, public safety and public health) are excluded from the Bolkestein Directive. Regarding the inclusion of services of general economic interest the Directive would merely follow the jurisprudence of the European Court of Justice that SGEIs should fall under the subjects of the EU treaty, if they are open to competition.

2.3.5 RE: A too generic scope of the new regulation

The supporters of the Services Directive argue that sufficient exceptions from the liberal rule have already been respected in the current draft (see Annex 1). Any further changes would undermine the much intended effect of widespread harmonisation in the EU, which at the same time is used to justify the concept of market liberalisation before completed harmonisation as well as the tight schedule. The latter is also supported by Saint-Paul (2005) who argues that only a short, but profound change can generate enough compensating effects for consumers³¹ to reduce resistance.

²⁹ Compare UNICE (2005b).

³⁰ Compare UNICE (2005b).

³¹ Compare section: *RE: Growth on the expense of workers and SMEs*.

3 Analysis of positions

Following the structured overview of arguments given so far, the main advocates and opponents of the Services Directive are listed below and a short summary of their respective reasoning is given.

Entity	Position	Major Concerns and Arguments
<i>Countries</i>		
Germany, France, Denmark, Belgium, Sweden	Strongly oppose	'Country of origin' principle leading to 'social dumping' and lowering of standards.
United Kingdom	Favors	Necessary for completing the internal market
Slovakia	Strongly favors	Liberalization, growth, better prospects for new Member States
<i>Industry Associations</i>		
UNICE	Qualified Support	Demands some clarifications on the application of the 'country of origin' principle and exceptions to this approach for matters covered by the posting of workers directive
Eurochambres	Fully supports	"Essential if European consumers are to feel the benefit of greater choice and greater competition."
Eurocommerce	Supports	Feels the Commission should ensure that there are no contradictions between the Services Directive and other pieces of EU legislation already in force.
UEAPME	Qualified support	'Country of origin' principle would create problems that might benefit fraudulent enterprises and put consumer protection at risk. Need for a gradual and sector based harmonization of the EU services market.
<i>Trade Unions and Consumer Associations</i>		
ETUC (Europe)	Opposes	<ul style="list-style-type: none"> • "Directive threatens to undermine existing collective agreements, national labour codes and the success of the European social model." • Services of general interest, health services and social services should be excluded • 'Country of origin' principle provides "an open invitation for abuse and manipulation"
DGB (Germany)	Opposes	Disregard of social and environmental effects; Commission underestimates effect on other regulations
CGT (France)	Opposes	Sees large problems in the social consequences of the Services Directive
Ver.di (Germany)	Opposes	Fears a deterioration of quality of services and social dumping
EPSU (Europe)	Strongly opposes	Directive is 'anti-quality' and dilutes the role of PSUs in Europe. Will affect PSU employees.
European Social Platform (Europe)	Opposes	The proposals may suit some service sectors but not social services and hence some modifications would be needed.
BEUC- consumer association (Europe)	Qualified Support	<ul style="list-style-type: none"> • Doubts over 'country of origin' principle • Lowering of standards particularly in health sector could be harmful
<i>Political parties (EU)</i>		
Socialist group	Opposes	Directive is a threat to social objectives of the EU; unclear field of the directive

Greens-EFA	Oppose	Directive may lead to environmental and social dumping, race to the bottom
UEN	Favor	Support a Services Directive that combines both competitiveness and a European social model. The joint groups propose changes to the original directive.
EPP-ED		
ALDE		
<i>Other organizations</i>		
attac	Strongly opposes	'Country of origin' principle leading to 'social dumping' and lowering of standards.
WTO	Favors	Do not have a specific position on the Services Directive but generally favor trade liberalizations (GATS)
OECD	Favors	

Figure 2: Overview of positions on the Services Directive

Source: Several different sources (see references), own illustration.

4 Assessment of arguments with proposals for extensions

As described in the preceding sections, there are several concrete arguments being put forward in favour of as well as against the Services Directive, and given the amount of misinformation floating around, the debate can only intensify further. Under heavy pressure from France, Germany and more left-wing representations of interest, the Commission has already announced that the original proposal will have to be rewritten. All stakeholders seem to agree on the need to open up the EU services sector in order to complete the internal market. However, there persist key points of contention that need to be resolved. To finalize this paper it is to follow a summary and comment of crucial issues seen by the authors, including proposals on how to mitigate the current political conflict with concrete adaptations:

- There remains a potential for downward harmonization, because major differences between legal systems remain and the establishment of companies is not connected to its actual scope of business. However, the expected pressure on national social and labour regulation is less of an undesirable side-effect, but an integral part of the reform to complete the internal market. Still, the Posting of Workers Directive should act as a bottom line to downward harmonization, debilitating the argument of social dumping.

Proposal 1: The Posting of Workers Directive has to hold in all cases. There seems to be a grey zone between the Services Directive and the Posting of Workers Directive that has to be clarified. This refers to the clarification of the term “worker” (preventing

bogus self-employment as a way to circumvent the law) as well as to the clarification of the term contract (with respect to sub-contracts and their implications). The concrete goal of the specifications in the directive has to be that the minimum social standards are respected in each host country, no matter where the country of origin is.

Proposal 2: The definition of country of origin should be qualified by information about the prime place of business³² to prevent letter-box-firms from making use of differences in regulation. The country of origin is supposed to ease the market entry, but not to make every firm choose the ‘favourite country of origin’.

- The argument that growth is achieved at the expense of workers can be devitalized for the overall number of workers, as societies will benefit from increased efficiency and growth. However, as in any international trade model describing the effects of globalization one has to expect losers of this development, namely the low-skilled workers. This anticipation can be visualized by, once again, looking at the Copenhagen Study, which resulted in overall rises in wages across almost all Member States. Distinguishing between industries, however, one finds out that those with a bias to low-skilled work (e.g. construction) experience losses in employment, while only those with a bias to high-skilled work (e.g. accountancies) experience gains that ultimately turn the overall effect into positive. Moreover, labour market rigidities that prevent workers to switch to another sector³³ will aggravate this problem. It will be extremely hard to countervail this socio-economic problem.

Proposal 3: There should be a clear determination for evaluation of employment and wage effects by the Commission. In case of very unequal shares of losses a system of transfers should be considered.

³² One way to regulate this would be to demand the registered office to be situated in one of the company’s top 3 EU sales markets (i.e. share of sales in company’s portfolio).

³³ This market imperfection has not been modelled in the Copenhagen Study.

- The argument persists that home countries would miss incentives to assist host countries in controlling their companies operating abroad. Double registration would be substituted by ambiguous registration. It is questionable whether the intention for harmonization can fully justify a transition period of legal uncertainty.

Proposal 4: The service provider should be obligated to provide the host country authorities with its home country registration information. At the same time all European authorities should feed their registration information into a central database making it easy to check foreign registrations for validity. Implementing this does not cause any additional barriers for trade, as the home registration is immediately accepted without questions asked (this could even be solved electronically). It does, however, enable the host country to keep track of the companies active in its territory and provides a basis for action, in case of causes for derogation of the country of origin principle.

- The arguments around the “illegitimate” inclusion of services of general economic interest are rather weak and rely mostly on misperceptions regarding the actual scope of the Services Directive. Most sectors are either separately regulated (e.g. telecommunications) or freed from the country of origin principle (e.g. water supply). Additionally, the approach of the Services Directive is only following recent jurisprudence from the Court of Justice.

Proposal 5: As an act of political pragmatism the health sector should be excluded from the scope of the directive being one of the prime objects of criticism. The authors think that the ideal would be an inclusion of all private health services, but acknowledge the difficulty of definition and implementation. Other sectors, like education, can be clearly separated into private and public service provision, such that only the private part can be included.

- Also, the demands to slow down the integration process or to dilute it by further exemptions are little convincing as long as the overall targets of the Lisbon Strategy are accepted. The internal market has been promised for more than a decade and more drastic measures are needed in order to achieve targets and not to postpone decisions over and over again.

Proposal 6: The tight schedule should not be changed. Pressure will lead to more effort in all Member States.

5 Conclusion

The analysis of the discussion of the Bolkestein Directive has revealed a quite fragmented and diverse picture of opinions. From an economic point of view the proposed directive is the right step towards a functioning internal market. Reduction of barriers will lead to more production, lower prices and higher welfare. There will be, however, some adverse effects, primarily for the low-skilled workers. The political perspective is much more complex. Many issues are being criticized, of which a lot can be attributed to poor information or populism. The authors have analyzed all positions to identify the real points for improvement. In the final assessment they suggested six steps that, if considered as adaptations to the current draft, would make the Services Directive ready for implementation. The changes lead to 1) a clear definition of the country of origin principle, 2) the limitation to minimum social standards of host countries, 3) the evaluation and possible correction of the effects on low-skilled labour, 4) the obligation for service providers to assist authorities in tracking registration in a transparent manner, 5) the exclusion of the health care sector and 6) the enforcement of the tight implementation schedule.

6 Annex

Services in the scope of the new regulation

- Consulting
- Certification services
- Advertising
- Security services
- Cleaning and facility management services
- Real estate services
- Temporary worker services
- Wholesale services
- Tourism agencies
- Retail distribution services (e.g. butchers, bakers, grocery trade)
- etc.

Services fully excluded from the Proposal:

- General sectors such as services of general interest (e.g. police and justice)
- Services covered by the article 45 of the EU treaty (e.g. notaries, bailiffs)
- Financial services, transport services and electronic communication services (as each is already covered by individual EU regulation)

Services excluded from the country of origin principle

- Postal services
- Distribution of electricity, gas and water
- Legal services (e.g. lawyers, advocates)
- Services that require a specific qualification (e.g. architects, civil engineers, accountants, pharmacists, nurses, doctors)
- All business-to-consumer (B2C) services

Annex 1: Scope of the Services Directive, including exemptions

Source: UNICE (2005b).

Summary Results (% change)							
	Economy-wide impacts				Service sectors impacts		
	Welfare	Real wage	Return to capital	Total employment	Employment	Value added	Value added ^a
EU25	0,6	0,4	1,1	0,3	0,5	1,1	33,0
Austria	0,9	0,5	1,2	0,3	0,5	1,2	1,1
Belgium	0,5	0,3	0,8	0,3	0,5	0,9	0,6
Cyprus	0,2	-0,1	0,4	0,1	0,3	0,4	0,0
Czech Rep.	0,4	0,3	0,3	0,0	0,1	0,4	0,1
Denmark	0,4	0,2	0,5	0,2	0,3	0,6	0,2
Estonia	0,2	0,3	0,5	0,1	0,2	0,6	0,0
Finland	0,8	0,5	0,8	0,2	0,4	1,1	0,3
France	0,5	0,4	0,8	0,1	0,3	0,9	4,5
Germany	0,6	0,3	1,0	0,3	0,5	0,9	7,5
Greece	0,3	0,4	0,9	0,2	0,5	1,1	0,3
Hungary	0,5	0,4	0,8	0,2	0,4	0,9	0,1
Ireland	0,4	0,2	0,4	0,1	0,2	0,5	0,1
Italy	0,8	0,1	1,8	0,2	0,3	1,4	7,7
Latvia	0,4	0,3	0,7	0,3	0,4	0,8	0,0
Lithuania	0,3	0,2	0,6	0,2	0,4	0,7	0,0
Luxembourg	0,3	0,3	0,5	0,2	0,4	0,7	0,0
Malta	0,2	0,2	0,4	0,2	0,4	0,7	0,0
Netherlands	1,3	0,7	1,1	0,4	0,6	1,5	1,6
Poland	0,3	0,1	0,6	0,1	0,2	0,5	0,2
Portugal	0,5	0,5	1,1	0,3	0,4	1,1	0,4
Slovakia	0,4	0,2	0,6	0,1	0,2	0,7	0,0
Slovenia	0,6	0,4	1,1	0,3	0,4	1,1	0,1
Spain	0,3	0,0	0,7	0,2	0,3	0,7	1,0
Sweden	0,3	0,2	0,4	0,1	0,2	0,4	0,4
United Kingdom	0,9	0,7	1,1	0,5	0,8	1,6	6,5

Note: (a) Change in billion euro
Source: CETM model - Copenhagen Economics

Annex 1: Key results of Copenhagen Study (Direct Impact Szenario)

Source: http://europa.eu.int/comm/internal_market/services/services-dir/studies_en.htm.

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