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Against the Bolkestein Directive: a Green alternative

Position paper by the Greens/EFA group criticizes Services Directive

Why are the Greens opposed to this Directive ?

The Greens support the objective of reducing unjustified obstacles to the free movement of services. However, they reject the European Commission's growing tendency to renounce the objective of harmonisation towards the top. The approach of the proposed Directive on services in the internal market, which seeks to remove national regulations without prior harmonisation, is inappropriate. Therefore the Greens oppose the so-called "Bolkestein Directive", in particular for the following reasons.

1. **The justification for the Commission's proposal is more ideological than practical.**
   Proposed in January 2004, the Directive is presented by the Commission as a logical and even central element of the Lisbon strategy which aims to make the European Union "the most competitive and dynamic knowledge-based economy in the world" by 2010. It is also seen by the Commission as a concrete implementation of the EC Treaty which provides for free movement of services. In reality, the discussions so far have shown that this Directive cannot deliver the legal certainty and transparency necessary for the provision of cross-border services. No one is really asking for such a wide-ranging Directive. This was particularly clear at the Hearings organised in the European Parliament in November 2004 where even employers from the services sector expressed their opposition to the Directive.

2. **The Directive will lead to social and environmental dumping.**
   The Directive establishes the country of origin principle as a general rule for free movement of services (with a series of derogations). According to this principle, service providers would not be subject to the laws and regulations of the country where the activity is taking place but rather to those of the country where they have their registered office. With the application of this country-of-origin principle without prior harmonisation, service providers will tend to establish themselves in Member States with the lower standards. With this type of legislation the EU would renounce harmonisation on high-level social, environmental and consumer protection standards as a central characteristic of its internal market.

3. **The impact of the Directive on growth and employment is over-estimated.**
   One central argument put forward by the Commission is that services represent an enormous potential for economic growth and jobs. The Commission repeatedly quotes the following figures: services amount to 70% of national GNPs but only 20% of exports. While it is true that the services sector has created a huge number of jobs, this does not mean that employment in these

sectors will necessarily increase as a result of more EU-level competition. Most services respond to local needs and therefore have no reason to cross borders. The Bolkestein Directive would probably favour the development of large transnational consortiums of service providers and jeopardise small local providers.

4. **The scope is much too wide and includes services of general (economic) interest**.
   The proposed Directive covers all services except three (financial services, electronic communications and transport). Most services of general (economic) interest such as healthcare, social services, education services, culture or audiovisual and media services (with a risk of more media concentration and of undermining the EU negotiation position in the GATS) would be covered by the Directive as long as they involve at least partial economic remuneration. At the same time, in spite of a strong demand from the European Parliament, there is no parallel proposal for a Directive on services of general interest. The Bolkestein proposal particularly undermines the quality of health and social services, which in all Member States depend on solidarity-based, state-funded systems and on the public authorities' ability to plan adequate service provision.

5. **The Directive potentially contradicts the application of some provisions of the new Constitutional Treaty**.
   Contrary to what is put forward by some opponents to the Constitution, the Bolkestein Directive is not a prefiguration of the "neoliberal policies" which would follow the entry into force of the new Constitution. It is rather a significant example of the "neoliberal policies" which the **current** Treaty of Nice authorises. Although there is no guarantee that a "Bolkestein-like" legislation could not be passed under the Constitutional Treaty, it should be emphasised that this Constitution provides the possibility of a different approach by setting up a legal base for a framework Directive preserving and promoting the specific role of services of general (economic) interest.

6. **There has been no serious legal impact study and therefore the Directive would lead to legal uncertainties.**
   For example, the country of origin principle contradicts some of the provisions contained in the legislation regarding contractual and non-contractual obligations (Rome 1 and 2). The fact that the Bolkestein Directive would cumulate its effects with other services-related Community legislations (such as the Directives on the posting of workers, television without frontiers, unfair commercial practices or the proposed Directive on the recognition of professional qualifications) and that the latter would not prevail over the Bolkestein Directive, further increases these legal uncertainties.

7. **In particular, the Directive is incompatible with the Directive on posting of workers.**
   Whereas the Bolkestein Directive theoretically provides (article 17) that the country of origin principle would not apply to the posting of workers, it also provides on the other hand (article 24) that Member States may not oblige service providers to obtain authorisation from the host country authorities, nor to have a representative or hold and keep employment documents in the host country territory. This would make it concretely impossible for Member States to make efficient controls of working conditions and collective agreements, and therefore jeopardise workers' social protection and the role of the social partners.

8. **There are better ways to achieve some of the Commission's relevant objectives**.
   If the objective is to remove certain unjustified barriers to free circulation of services and simplify the existing regulations, the tools proposed by the Commission are not appropriate. For example,

the country of origin principle will oblige national administrations and judiciary systems to be aware of 25 different national systems in 20 different languages, which will lead to more (and not less) bureaucracy. Whereas many social and political actors, including the Greens, support the achievement of an internal market of services, a free market for commercial services could function under the opposite principle (a host country principle). Progressing towards more convergence between Member States could be done through an "open coordination method" rather than through simply removing, as proposed, a series of requirements that Member States have set up to authorise service activities.

Alternative proposals

The Greens:

1. Demand the withdrawal of the Bolkestein Directive proposal

2. Ask the Commission to propose a framework Directive in order to define the fundamental principles of services of general interest and to set up conditions that guarantee their public funding and the general access to them without discrimination in terms of social position or place of residence

3. Ask the Commission to conduct an impact assessment of the ongoing sectoral liberalisation in the services field (energy, postal services, transport, etc.) before proposing any further liberalisations

4. Ask the Commission to propose improvements to the Directive on posting of workers in order to reinforce the rights of the workers and the social dialogue, to extend its scope and to fully include collective agreements in its implementation

5. Propose an alternative approach concerning a limited number of commercial services. This alternative approach should be coherent with the objective of Community harmonisation and based on the following principles:

    a. a limited scope with a positive list of sectors which should be covered, i.e. economic activities of self-employed persons (article 47 EC which should be the legal base) that do not involve any mission of general interest (such as education, culture, audiovisual services, healthcare and other social services, employment, water, energy, waste and environment protection), instead of the Bolkestein approach based on a wide-ranging scope with a list of sectors which should be excluded

    b. concerning the issue of free movement of services: applying the host country principle instead of the country of origin principle as long as there is no full and upwards harmonisation regarding access to and the exercise of a service activity, in particular in terms of behaviour of the provider, quality or content of the service, advertising, contracts and the provider's liability

    c. concerning the issue of freedom of establishment: setting up an open coordination method,

instead of a legislative approach, in order to compare Member States' requirements and authorisation schemes and progress one step at a time towards more convergence in view of future harmonisation (with periodic progress reports and an obligation for results within a definite time period)

d. creating one-stop-shops and other administrative instruments in order to facilitate the access of service providers to relevant information and improve administrative cooperation between Member States

6. Urge the Commission and Member States to develop further EU programmes in the framework of the European employment strategy, in order to increase employment and equal opportunities in the services sector, and in particular in the fields of environmental protection, social services, culture and mobility.

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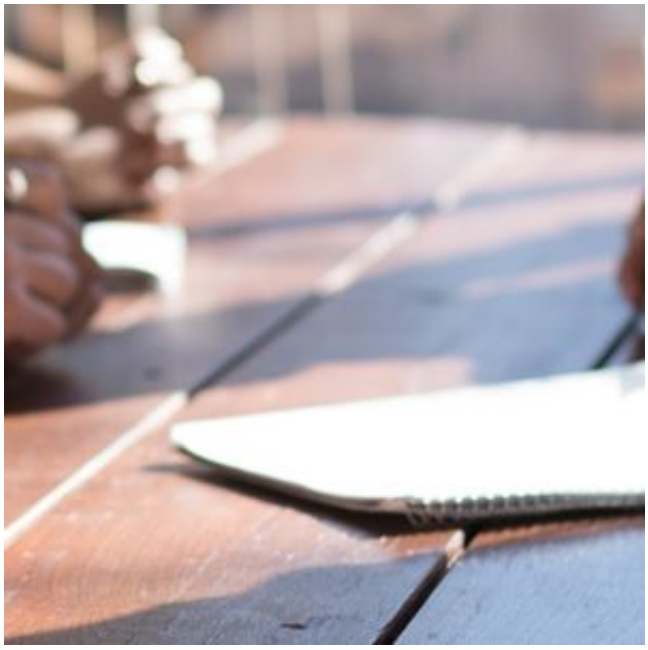
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