

THE EUROPEAN DEBATE ON SERVICES: SOME LESSONS FOR THE FUTURE

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In 2004, the Prodi Commission in its last months presented a proposition of directive meant to abolish most (market) obstacles for the free provision of most (market) services. This text had been drafted rather frenzily by the administration at the request of Commissioner Bolkestein. It was probably the broadest proposition of directive ever presented by the European Commission.

Its significance was gradually understood by public opinion in many Members States. Consequently, a controversy developed in the fall of 2004, complicating the first months of the Barroso Commission. After a period of uncertainty, the new Commission expressed a clear support for the proposition.

The debate grew more intense. Some founding member States of the EU expressed strong reserves on the text as drafted. It complicated significantly the ratification process of the European Constitution in various countries. In the European Parliament opinion on this subject began to fragment. After detailed and long auditions, more than 1600 amendments were presented during the first reading of the legislative procedure. Finally, in February 2006, the EP succeeded in defining a compromise supported by a broad majority.

In april 2006, the Commission adopted a revised version of the proposition, largely inspired from the EP's compromise. This new proposition must now be dealt with by the Council, divided between supporters of the original version and of the new version. Before adopting a final position, the governments should reflect a moment on a simple question: how did we get into this mess? Up to that point, the European Community had managed gradually to deregulate services, over 20 years, mostly in a quiet and orderly fashion. Though the context of treaty ratification played a part, it was clearly the global character of the Bolkestein directive that was the main source of trouble.

This project was probably doomed to generate chaos from day one. The idea of implementing complete freedom of all services through one single text relied on a kind of Saddam Hussein strategy: "a directive to end all directives". It is useful to remember that this was never attempted in the field of goods although services are much more difficult to deregulate than goods. This can be appreciated by reading the European Court's decisions , or the WTO agreements.

Imposing the principle of the country of origin - with very limited exceptions - for nearly all services created an inordinate amount of collateral problems. Adding specific provisions on services of general economic content, on health services, and the posting of workers, compounded the difficulty. Hazy drafting broke the camel's back- and says a lot about the

disintegrating climate in the last year of the Prodi Commission.

Presenting three of four directives, covering various aspects of the original proposition, would have been much more efficient. It would also have strongly weakened worries and oppositions in various circles. It might of course have been much less attractive, from an ideological point of view, for Commissioner Bolkestein. In any case, the Barroso Commission missed an opportunity by not taking this path.

On the other side, it did itself a huge service by supporting the European Parliament on services. Its position would have become much worse had it done otherwise. . In the first place this would have irritated a lot of MEP's, who wisely decided to compromise and it would therefore be costly in terms of future relations between the two institutions. Secondly, it would have made a compromise in the Council impossible. And finally, it would have given the impression that the Commission positions itself to the right of a center-right Parliament, which is not the impression the Commission should want to create.

The Member States should follow the same line of reasoning. They should follow the global balance of the EP's compromise, without attempting to reintroduce contested rules through the back door. Many people will argue that the EP's compromise is complex and contradictory, and bound to create legal difficulties. And that is largely true. But this forgets that the original proposal would have created at least as many legal difficulties ,precisely because its scope was excessively ambitious.

There are important lessons in this episode for the future. Consensus is sometimes difficult to reach, but it pays. This is a period of huge adaptation, which easily leaves people worried. The majorities established by the Nice Treaty are exceedingly difficult to reach. The Commission neglected this principle, and was weakened. The Parliament respected it, and was strengthened. The episode also reveals that the Parliament - if disciplined - is sometimes better placed to reach difficult economic compromises. This ability could maybe be used more often during the next years.