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Briefing paper

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The EU Directive on Services in the Internal Market.

What does this mean for churches and diaconal organisations?

In November 2006 the European Parliament adopted by a large majority the Common Proposal of the Council of the European Union on the Directive on Services in the Internal Market. Thus the Parliament accepted the delicate balance reached between the Member States of the European Union based on the results of the Parliament's First Reading. In a declaration of the European Commission, a number of open questions were clarified before the Parliament's vote. One aspect of this declaration deals with the exclusion of social services provided by churches and church organisations from the scope of the Directive. After nearly three years of public debate, the decision of the European Parliament is now paving the way for cross-border competition in services. (DIRECTIVE 2006/123/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 12 December 2006 on services in the internal market)

In the Parliamentary process the Commission's initial proposal has been thoroughly revised. The crucial "country of origin principle" has been dropped from the key article. In its place MEPs have put a clause with the title "*freedom to provide services*". Parliament also voted to limit the scope of the directive. It now covers fewer services than the original text. MEPs expanded the list of reasons allowing Member States to restrict the freedom of a service provider from another Member State to provide services on their territory. The text also now clearly says that the directive does not affect labour law in the Member States.

The rule of freedom to provide services replaces the country of origin principle. It requires the Member States to respect the right of the service provider to supply services and to guarantee the provider "*free access to and free exercise of a service activity within its territory*". This guarantee is underpinned by a ban on a number of obstacles to the free movement of services. For example, in general it

will no longer be possible to require a service provider to open an office in the country where he/she is temporarily providing a service nor to prevent him/her from setting up "*certain form or type of infrastructure*" in that country. In certain provisions of the Directive the reference is made to "*overriding reasons relating to the public interest*" which allow the Member State to limit, on its territory, the freedom to provide services both by the way of permanent or temporary establishment.

Social and healthcare services

In the course of the Second Reading in the European Parliament, the exclusion of social and health services was of special interest for churches and church-related organisations. The final text states that healthcare services are exempted from the scope of the Directive "*whether or not they are provided via healthcare facilities, and regardless of the ways in which they are organised and financed at national level or whether they are public or private*" (Art. 2, par 2 (f)). It also states that "*social services relating to social housing, childcare and support of families and persons permanently or temporarily in need which are provided by the State, by providers mandated by the State or by charities recognised as such by the State*" will be excluded from the scope of the Directive." (Art. 2 par. 2 (j)).

Furthermore the Directive includes two notable clauses:

"(27) This Directive should not cover those social services in the areas of housing, childcare and support to families and persons in need which are provided by the State at national, regional or local level by providers mandated by the State or by charities recognised as such by the State with the objective of ensuring support for those who are permanently or temporarily in a particular state of need because of their insufficient family income or total or partial lack of independence and for those who risk being marginalised. These services are essential in order to guarantee the fundamental right to human dignity and integrity and are a manifestation of the principles of social cohesion and solidarity and should not be affected by this Directive.

(28) This Directive does not deal with the funding of, or the system of aids linked to, social services. Nor does it affect the criteria or conditions set by Member States to ensure that social services effectively carry out a function to the benefit of the public interest and social cohesion. In addition, this Directive should not affect the principle of universal service in Member States' social services."

From the churches' perspective the Parliament's work significantly improved the original proposal of the EU Commission. During the Second Reading, the Church & Society Commission of CEC invested considerable energy on the clarification of the wording of article 2, as some of its member churches in the European Union neither have the status of a charity nor are they recognised or mandated

by the state, while it is very evident that they are as well pursuing charitable aims. We discussed this intensively with the European institutions, not at least at a Dialogue Seminar on Social Services with the European Commission on 18 October 2006. The Parliament's Rapporteur on the Services Directive, Evelyne Gebhardt MEP, tabled the concern of the churches in the debate of the Parliament's Committee on the Internal Market. In the end, we are satisfied that the European Commission fixed in its declaration that this exclusion also covers services provided by churches and church organisations. The relevant paragraph reads: "*Concerning the impact of the Services Directive on Social Services, social services relating to social housing, childcare and support of families and persons in need are a manifestation of the principle of social cohesion and solidarity in society and are provided by the State, by service providers on behalf of the State or by acknowledged charitable organisations. These services have thus been excluded from the scope of application of the Services Directive. It is clear that this exclusion also covers services provided by churches and church organisations which serve charitable and benevolent purposes.*"

What comes next?

As healthcare services and social services are not treated equally, the Services Directive might lead to a lack of legal clarity in those areas where a combination of activities is needed (e.g. rehabilitation measures). The same applies for the exclusion of social services, which might lead to different legal conditions for service providers according to their legal status.

The EU Member States will now have three years in which to adopt the Services Directive into national law. The churches will have to monitor these national processes very carefully.

Meanwhile, the European Union has started independent consultation processes on social services and healthcare services. The responses of the Church and Society Commission to these questionnaires may be found on the CEC website.

Further information:

http://www.europarl.europa.eu/comparl/imco/services_directive/default_en.htm

<http://www.cec-kek.org/content/economic.shtml>

