Rise and fall of the Country of Origin Principle in the Draft Services Directive

From COM (2004) 2 to COM (2006) 160

Abstract

This research concerns the so much vexed question of the introduction of the *country of origin principle* in the Draft Services Directive: after a long and heated debate, in fact, the principle, cornerstone of the original proposal, has been completely removed by the amended text recently issued by the Commission.

The study is essentially based on the analysis of primary sources: it carries out a deep analysis of the original version of the Services Directive in comparison with the revised one, where the amendments introduced by the Parliament have been acknowledged by the Commission. Mutual recognition and the country of origin principle are defined and examined in the light of the related case law of the ECJ, and the main doctrinal arguments that contributed to the debate are taken into due account. As regards the most recent developments of the matter, the analysis is also based on interviews provided by experts from the European Commission and MEPs, personally dealing with the issues at stake.

The work is divided in two sections: in the first one, the theoretical bases of the analysis are posed. Examining the main jurisprudential developments which led to the application of the *Cassis de Dijon* doctrine to the field of services, the country of origin principle is defined in its relation with mutual recognition, and its application to Community secondary law is furtherly analysed. The second chapter, instead, is focused more specifically on the Services Directive: after having provided an overview of the original proposal, the most controversial legal issues raised up by the application of the principle are underlined, with a particular attention to the question of the compatibility with labour law (temporary posting of workers) and private international law. The first reading resolution of the Parliament is then examined, as well as the revised proposal issued by the Commission.

The study shows, firstly, that the country of origin principle does not constitute a new doctrine, but an evolution of the concept of mutual recognition, and must thus be considered already fully part of Community law. Moreover, it underlines that the amended Directive, despite keeping important dispositions able to eliminate some of the persisting barriers, namely concerning freedom of establishment or administrative cooperation, nevertheless constitutes, in the light of the elimination of the country of origin principle and the other examined adjustments, a missed chance for the Community in the process of achievement of an internal market for services. The country of origin principle did not imply, in our opinion, a serious risk of juridical and social dumping, and did not represent a prejudice for legal certainty. The added value of the amended text in the field of the freedom to provide services seems so to be quite limited, at least compared to the impact that the introduction of the country of origin principle could have had.