The November 2004 Hearings of the European Parliament on the Directive on Services (hereafter the Directive) offered a fascinating preview of the current debate. It was already dominated by the unholy alliance of the supporters of a social model based on “public service” tied to public monopolies and narrow vested interests based on private monopolies. “Rent-seekers of all Member States, unite!” could be the appropriate motto.

On the one hand, some testimonies¹ compare an idealised “European social model” (ignoring its negative sides in terms of low growth, massive and permanent unemployment and a host of perverse effects caused by “good intentions”)² to a demonised market economy (ignoring its contribution to faster growth and reduced unemployment). Worrisomely, this unbalanced approach (which was largely driving the public campaign against the Directive in April and May 2005) places the “founding countries” of the European Community (lavishly granted with the best possible social systems in every respect) in opposition to the other EC Member States (accused of social dumping and unfair competition). Clearly, shifting from 15 to 25 Member States is not so much a question of the number of countries but is, rather, a profound change in the Community, torn apart between the Member States reluctant to change and those which have already changed, often under harsh pressure from the former.

On the other hand, the power of narrow vested interests and the extreme weakness of some European governments is also prevalent in the Hearings. The best illustration may be a testimony³ of which half is devoted to a plea to exclude French huissiers, notaires and avocats près les Cours suprêmes (bailiffs, notaries and barristers to the Supreme Courts) from the Directive coverage. Such a focus on three tiny legal professions suggests the following quick calculation: assuming that the Directive covers half of the French GDP, such a focus would be consistent with a govern-

² For instance, a recent study on French subsidies for housing shows that 50 to 80 per cent of these subsidies have been absorbed by rent increases, that is, passed from the poor to the housing owners. Cf. Gabrielle Fack: Pourquoi les ménages les plus pauvres paient-ils des loyers de plus en plus élevés ?, Fédération Paris-Jourdan (Ceprémap), mimeo 2005.
Remembering the Past: the Logic behind the Directive

The current debate on the Directive largely ignores the two long developments in European integration which led to the Directive. First, the Directive is the natural continuation of the Single Market Programme (SMP), itself the heir of the Common Market. This is best underlined by the fact that the SMP in services was launched in 1984-85 by a group of industrialists – the European Round Table of Industrialists (ERT) – who did not limit the scope of the EC reforms to be undertaken to manufacturing issues, but who included the opening to intra-EC competition of key services for industry, such as telecommunications and other essential infrastructure services. Second, the Directive is largely a “rationalisation” of a long and rich series of rulings by the European Court of Justice which started with the well-known 1974-79 Dassonville and Cassis de Dijon rulings, and which focused on the elimination of obstacles to intra-EC trade.

Recognising these two lineages is essential because it presents the Directive as a logical evolution – not a change in course – of European integration over the past forty years. It reveals an intrinsic demand for the current Directive which will continue to exist if the Directive is not adopted. And the rationalisation generated by the Directive will not really reduce the level of legal uncertainty (the Court has been so time-consistent in the matters covered that there is little doubt about its future rulings) but it will reduce the high transaction costs associated with bringing new cases to the Court unnecessarily. The “logical” nature of the Directive does not mean that the Directive will be adopted, or that it will be adopted with changes that will not deeply reduce its current scope and depth. It means that the failure to adopt the Directive in the coming months will unavoidably impose heavy costs on the European economies and hence will generate renewed efforts to get back to the current Directive – at the Community level or at a plurilateral level in the Community.

Indeed, it is interesting to note that the demand for such a Directive dates from long before the European integration process itself. Ironically, the Directive echoes a well-known French Report – the Rapport Rueff-Armand on the “obstacles to economic expansion” – written in 1959 at the request of General de Gaulle before France embarked on European integration. Indeed, irony almost turns to cruelty: the Rueff-Armand Report5 devoted a lot of attention to notaires (again!) underlining the inefficiency of these private monopolies – a point echoed today by the consumers’ association Que Choisir [No. 426, May 2005] which has just published an issue on the bad quality of the services provided by the notaires. Plus ça change, plus c’est la même chose ...

The Three Options for Liberalising Intra-EC Cross-border Services

The last two decades have slowly revealed three ways to liberalise services. First, there is the option of fully harmonising the existing domestic regulations, either by adopting the regulation of one of the Member States or by adopting a common regulation through negotiations. Adopting the regulation of one of the countries is a rare occurrence. It happens when the Community fully imposes the acquis communautaire on the new Member States. That has happened only in a few narrow domains mainly related to trade policy. And it did not take long for the Europeans to realise that negotiating and adopting a harmonised regulation differing from all the existing national ones is a very costly endeavour. It is time-consuming (often more than ten years for regulations dealing with tiny services). It does not necessarily lead to more efficient regulations. It tends to progress on a service by service basis and hence to distort economic decisions (investors are induced to invest (or not) in harmonised services as a consequence of the harmonisation process, not on purely economic grounds). It is easy to reverse because a harmonised regulation can be quickly “dis-harmonised” by Member States imposing additional (peripheral) provisions when implementing the new “harmonised” regulation. And last but not least, it is often simply impossible.

The second way to liberalise services – opened up by the Dassonville and Cassis de Dijon rulings – consists of limiting harmonisation to the “key” provisions of the common regulation to be adopted jointly and imposing the “mutual recognition” principle for the rest of the provisions. This approach is conceptually clever. But its effective success depends on the balance between the harmonisation and mutual recognition parts (a large harmonisation part is equivalent

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