

# The Services Directive *To be or not to be [in it] ?*

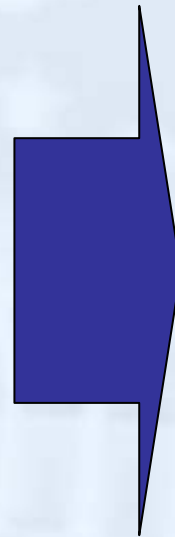
Thierry Lebeaux  
Executive Director, Citigate Public Affairs  
ESTA Annual Meeting, Budapest  
30 May 2005



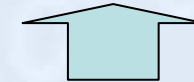
# Understanding the Services Directive

## Services Directive :

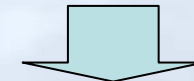
- Right of establishment
- Freedom to Provide Services (FPS)
  - Social rules – social dumping
- Country of Origin
  - Exclusion from the scope – Art. 2
  - Derogation from COO – Art. 17 & 18



Treaty Provisions  
Articles 42 and 49



The Services Directive  
is “secondary law”



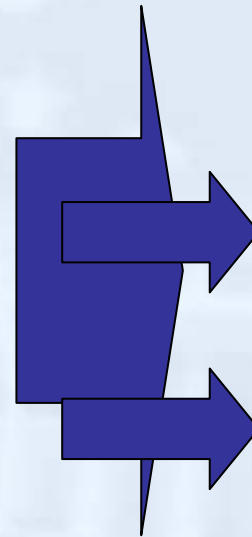
Interpretation of rules  
ECJ



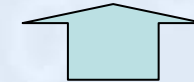
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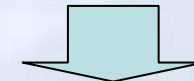
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# What's new with the Services Directive ?

## None of the 3 key provisions of the proposal are new

FPS,  
establishment  
and COO  
already exist –  
with or without  
the SD !



FPS has not occurred in CIT...

- but could have on the basis of Article 49 and mutual recognition since 1986



Therefore, market conditions in the EU should remain the same

- Though the temptation for “cowboy” operations is real



Article 50 of the Treaty restricts the FPS to “temporary” activities:

- it is NOT a substitute for establishment



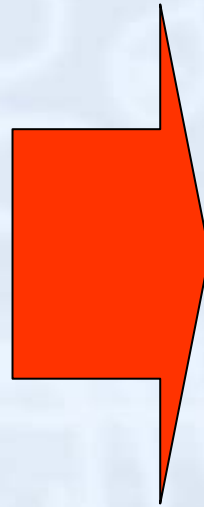
They find their legal  
basis elsewhere  
(Treaty or ECJ  
case law)



# Should CIT seek exclusion from the SD ?

**Article 2 of SD:**

**Permanent exclusion  
from the scope  
of the SD**



**Right of establishment  
will apply ! (Art 42)**

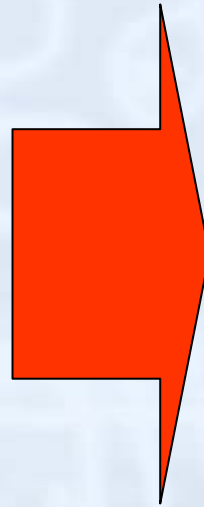
**FPS too !  
(Art 49 of the treaty)**

**Country of Origin too !  
(ECJ jurisprudence)**



# Should CIT seek exclusion from the SD ?

**Article 17/18 of SD:  
Derogations from the  
COO principle**



**Right of establishment  
will still apply**

**FPS will no longer  
apply !**

**Country of Origin will  
no longer apply !**

The real issue is that of the automatic transition to COO in 2010



# What about the harmonisation instrument ?

**Proposal  
for a  
Directive on CIT**

*COM(2006) xyz final*

**Will we have a  
harmonisation instrument ?  
(i.e. a CIT-specific Directive)**

**SD**

**No SD**

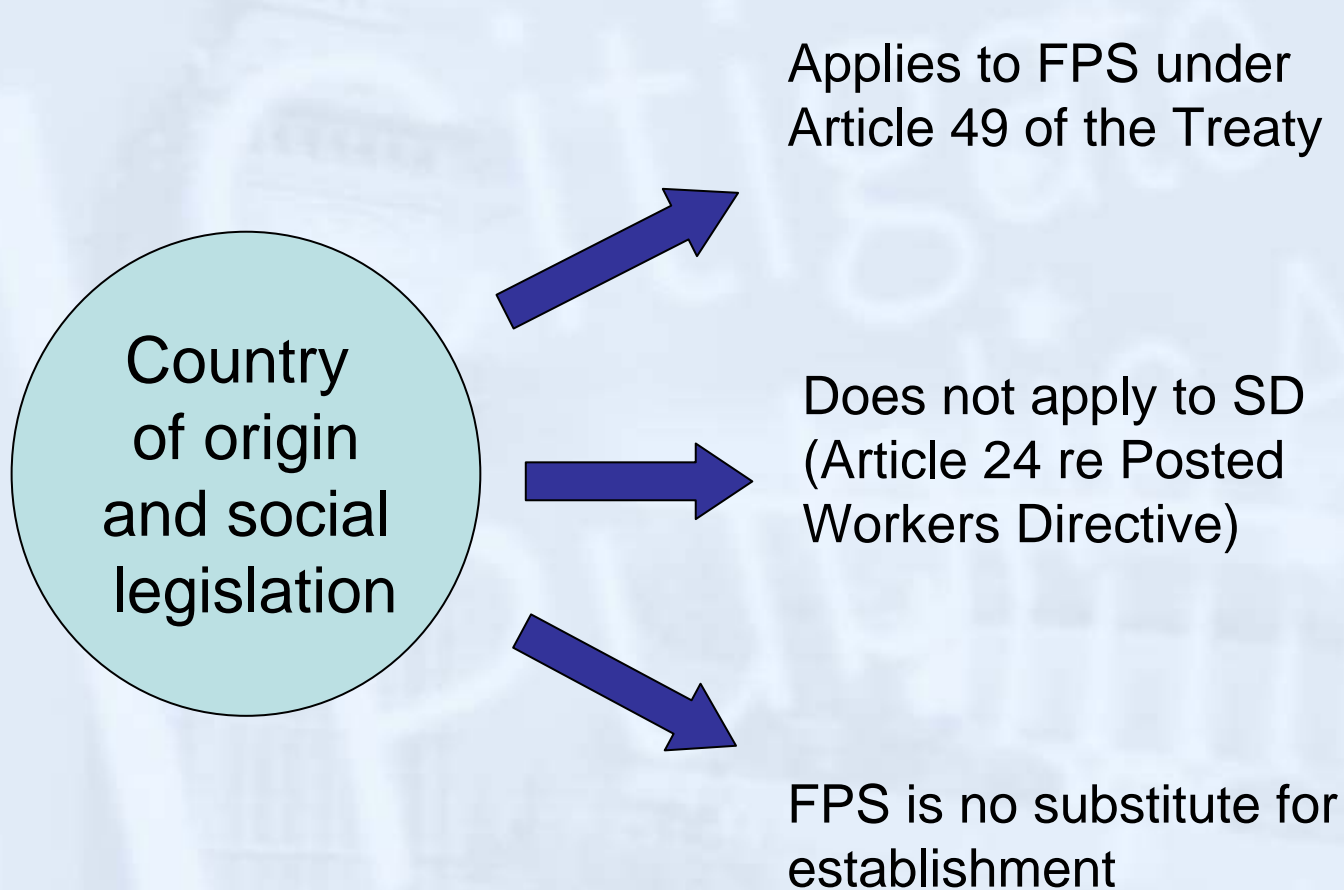


*Yes – Article 40  
of SD*

*Yes – Article 251  
(Right of initiative  
of the Commission)*



# The Risk of Social Dumping



**The key issue is that of control:**

**How can “cowboys” be spotted by the home country authorities and sanctioned ?**





# So is the Directive all good news ?

**Maybe ...**



- Legal certainty
- Safety nets
- Simplification of procedures
- Standardisation of licensing procedures
- ...

**Maybe not ...**



- FPS: let sleeping dogs lie !
- Risk of “cowboy” operations
- COO: cut-off date of 2010 not justified



# *A few words on the legislative procedure*



# EP reports on the Services Directive



*Evelyne Gebhardt  
(D, PES)*

*Let's reject the proposal !*

*Let's amend the proposal...*

*Very strong political divide between left  
and conservatives in the EP*



# EP reports on the Services Directive



*Evelyn Gebhardt*  
*(D, PES)*

## Internal Market Committee:

- Opposes COO and calls for “mutual recognition” (MR) instead
- MR only applies to a positive list of services – does not apply to social / environmental standards
- Host Member State may object to provision of service by a non-resident service provider
- Host MS may oblige providers to make a declaration the first time they provide cross-border services



# EP reports on the Services Directive



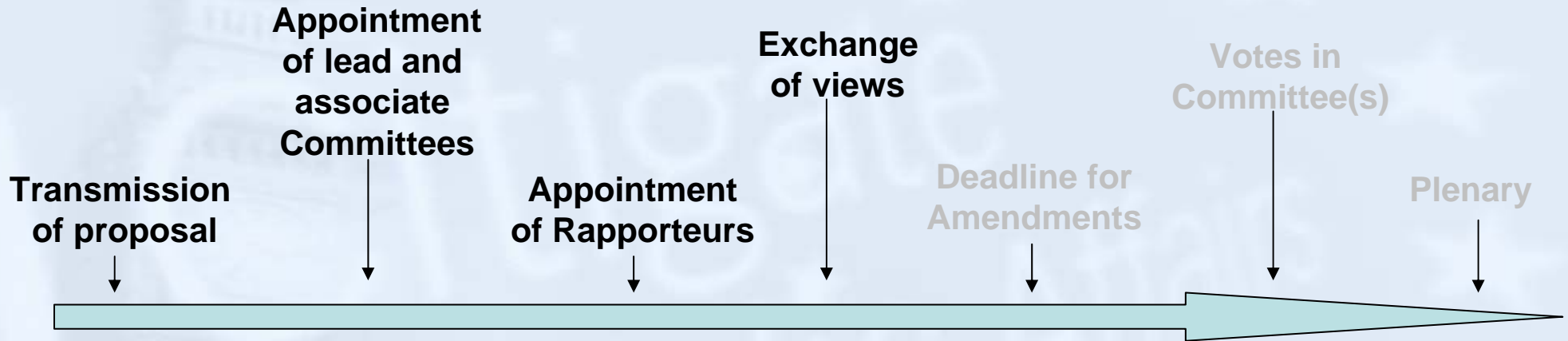
*Anne Van Lancker  
(B, PES)*

## Employment & Social Affairs Committee:

- Exclusion of all transport services, including CIT, regardless of whether or not they are harmonised
- Deletion of Article 40 on harmonisation instrument
- Rewrite COO to make it law of home Member State and supervision of host Member State

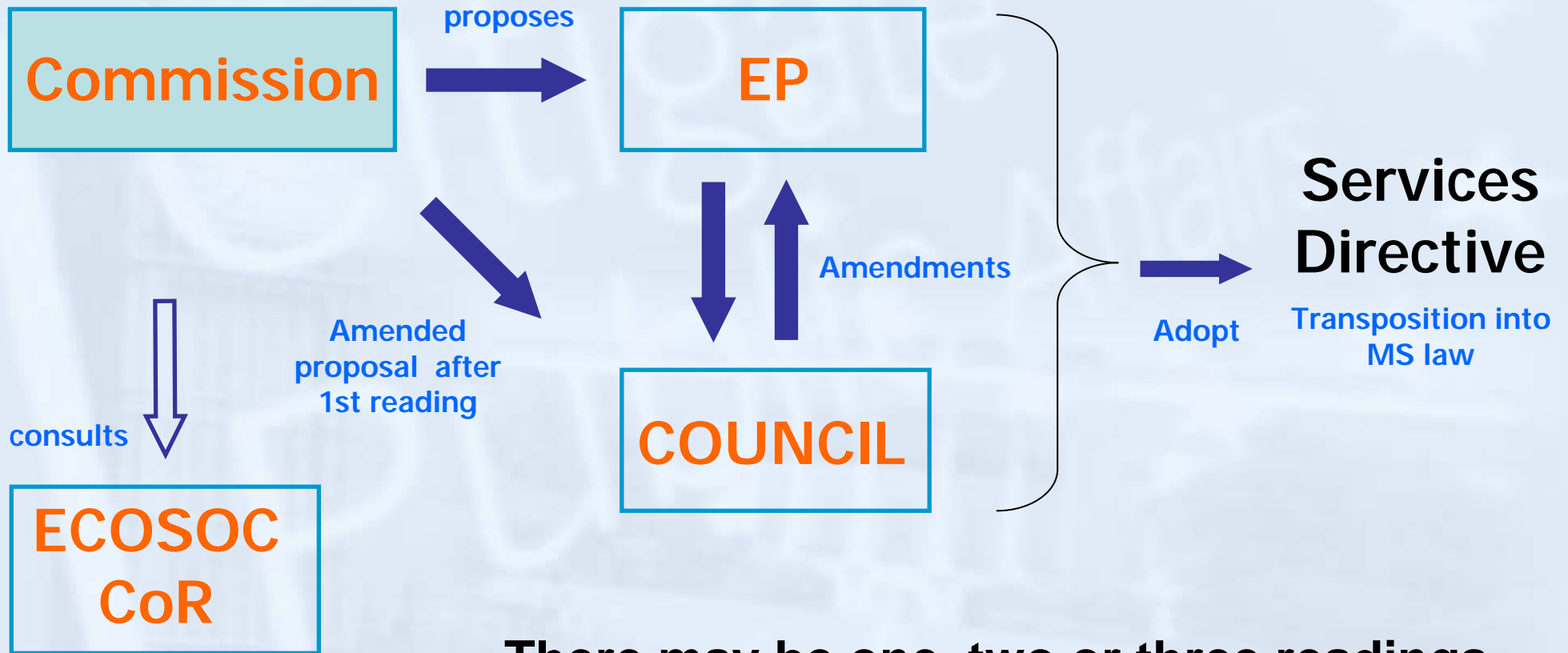


# Parliamentary procedure: status



First reading in the EP: October ?

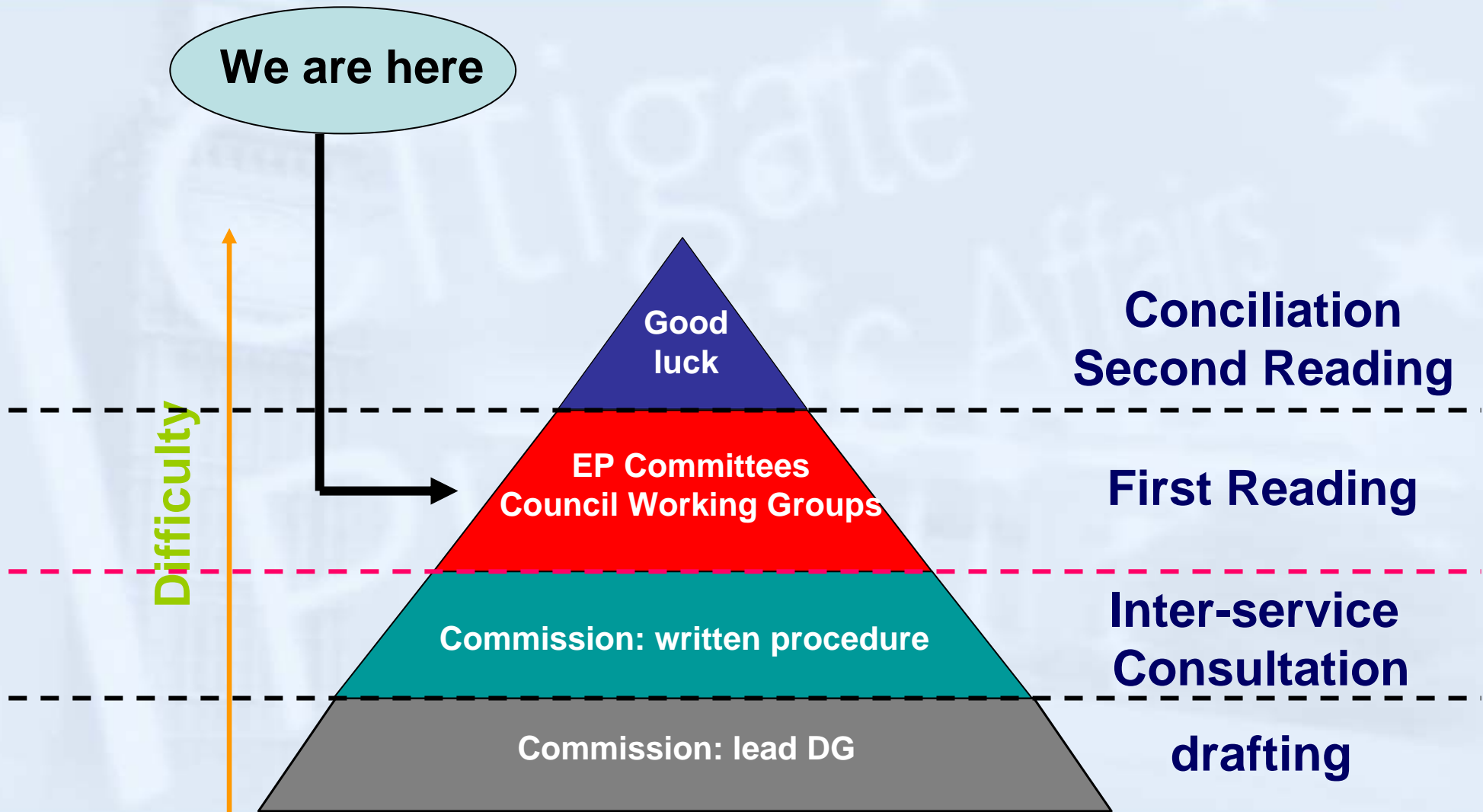




**There may be one, two or three readings**



# Shaping the Services Directive: 4 steps





# Conclusions

The devil is not in the  
Services Directive...

... it is already there:

Article 49 (FPS)

ECJ jurisprudence (COO)

## Looking into the crystal ball:

### Scenario 1:

*Framework  
Directive*

+

*A few vertical  
Directives  
(Art.40)*

### Scenario 2:

*Framework  
Directive*

+

*(Many)  
more vertical  
Directives  
(Art.40)*

### Scenario 3:

*Directives on  
broad  
categories of  
services*

+

*Some specific  
vertical  
Directives*

