



COMMISSION OF THE EUROPEAN COMMUNITIES

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**PROVISIONAL VERSION**

2004/0001 (COD)

Amended proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on services in the internal market**

(presented by the Commission)

## **EXPLANATORY MEMORANDUM**

The Commission presents an amended proposal for a Directive of the European Parliament and of the Council on services in the internal market. The amended proposal incorporates those amendments proposed by the European Parliament in first reading which are acceptable to the Commission as well as many of the clarifications which have been discussed by the Council. It also fully respects the European Council conclusions, stressing the need to make the internal market for services fully operational, while preserving the European social model.

### **1. BACKGROUND**

The Commission adopted its proposal on 13 January 2004. It was formally transmitted to the European Parliament and to the Council on 6 February 2004.

The Committee of the Regions gave its opinion on 29 September 2004 and the European Economic and Social Committee gave its opinion on 9 February 2005. The European Parliament adopted a legislative resolution at its first reading on 16 February 2006, and proposed amendments to the Commission proposal.

### **2. AIM OF THE COMMISSION PROPOSAL**

**Improve the basis for economic growth and employment in the EU.** The proposal is part of the process of economic reform launched by the Lisbon Strategy. As services account for the bulk of the EU economy, competitive services markets are essential for economic growth. At present, a wide range of Internal Market barriers prevent many service companies, especially SMEs, from growing across national borders and fully benefiting from the Internal Market. This also undermines the global competitiveness not only of EU service providers, but also of the EU manufacturing sector, which increasingly relies on high quality services. It also makes Europe a less attractive place for foreign investment.

**Achieve a genuine Internal Market in services by removing legal and administrative barriers to the development of service activities.** Those barriers arise both when service providers from one Member State wish to establish themselves in another Member State and when they wish to provide a service from their Member State of establishment into another Member State, for example by moving to the other Member State on a temporary basis. The proposal seeks to facilitate the exercise of these two fundamental freedoms enshrined in the EC Treaty – the freedom of establishment and the freedom to provide services- and to give service providers greater legal certainty.

**Strengthen the rights of consumers as users of services.** The consumer demand for cross-border services is not being met due to considerable legal and administrative difficulties and a lack of information on, and of trust and confidence in, services from other Member States. The proposal will address these problems by imposing obligations on Member States to remove restrictions on the use of cross-border services, by applying the principle of non-discrimination and by requiring greater transparency and information from services providers.

**Establish legally-binding obligations for effective administrative co-operation between Member States.** Efficient and well-functioning administrative co-operation is essential to making the Internal Market work properly. Regulatory authorities in Member States have

little knowledge of, and therefore little trust in, the legal framework and supervision in other Member States. This results in duplication of rules and controls for cross-border activities and can also be used by rogue traders to avoid supervision or to circumvent applicable national rules, with the consequent risk for users of services. The proposal establishes legal obligations of information exchange and mutual assistance between Member States, underpinned by an effectively-functioning electronic information system which will allow competent authorities to easily identify their relevant interlocutors in other Member States and to communicate with one another.

### 3. OPINION OF THE COMMISSION ON THE EUROPEAN PARLIAMENT'S AMENDMENTS

#### 3.1. Scope of application and other general provisions (Articles 1-4)

**Services of General Interest. Amendments 13, 44, parts of 72 and 289**, relating to Articles 1 and 2 and corresponding recitals, make clear that **Services of General Economic Interest** are included in the scope of application of the Directive, but that the Directive does not provide for their liberalisation or for the privatisation of public entities providing such services, nor does it deal with their funding or with state aids. **Amendment 73** clarifies in Article 2 that **Services of General Interest** fall outside the scope of the Directive. The Commission agrees with amendments 44, relevant parts of 72 and 289. The Commission also accepts amendments 13 and 73, however, it slightly redrafts the text of amendment 73 (Article 2) as well as the text of amendment 13 (new Recital 7a) explaining that –subject to explicit exclusions of certain specific sectors – **Services of General Economic Interest** fall within the scope of application of the Directive because these services are of an economic nature.

**Healthcare services. Amendment 78** excludes from the scope of application both private and public healthcare services, adding the corresponding modification in Article 2. **Amendment 304** specifies in Recital 10c that this exclusion covers healthcare and pharmaceutical services provided by regulated health professionals to patients to assess, maintain or restore their state of health. **Amendments 233/403** explain in Article 1 that the Directive does not affect public healthcare services or access to public funding by healthcare providers. **Amendment 305** adds a new Recital 10d explaining that the Directive does not affect the reimbursement of the costs of healthcare provided in another Member State and stresses that this issue should be addressed in another legal instrument in order to achieve greater legal certainty and clarity. The Commission accepts the exclusion of healthcare services from the scope of application and confirms its commitment to come forward with a specific initiative on health services. Therefore, amendments 78, 304 and 305 are accepted. Amendments 233/403 on public healthcare have become obsolete due to the overlapping with the definition in Article 2.

**Social services. Amendment 292**, states, in Article 1, that the Directive does not affect services pursuing social welfare objectives and **amendment 252**, relating to Article 2, excludes social services such as social housing services, childcare and family services from the scope of the directive. **Amendments 294** and **296** provide for two new recitals which explain the nature of social services and, in particular, of social housing, childcare and support to families. **Amendment 295** introduces a recital which specifies that the Directive does not deal with the funding of, or aids linked to, social housing or with the criteria or conditions set by Member States for social housing services. Furthermore, **amendment 10** adds, in another recital, that the Directive does not concern requirements governing access to public funds, for example for social services. The Commission is of the opinion that any exclusion from the

Directive must be clearly defined so as to ensure increased legal certainty and to avoid diverging interpretations in Member States. Accordingly, the Commission redrafts the definition of amendment 252 (Article 2) and merges amendments 294 and 296 in a new Recital 10*h*, in order to specify that the exclusion from the directive concerns those social services relating to social housing, childcare and support to families and persons in need which, because of their interest for society, are either provided by the State, or by providers mandated by the State, with the objective of ensuring support to those who are in a particular state of need. It follows that amendment 292 becomes redundant. The text of amendment 295 is redrafted to clarify that it concerns social services in general and not only social housing. Amendment 10 is accepted in its entirety. **Amendment 232** highlights the specific social role of non-profit sport activities. It is accepted and inserted in new Recital 16a, subject to redrafting to ensure the legal coherence of the text.

**Other sectorial exclusions and full exclusion of taxation. Amendments 300 and 302/332** concern Article 2 and exclude respectively **temporary work agencies** and **security services** from the scope of the directive. Corresponding recitals, added by **amendments 301 and 303**, underline that the rules applicable to these sectors should be fully harmonised. **Amendment 77** excludes **legal services** to the extent they are governed by other Community instruments. **Amendment 79, 80 and 81**, relating to Article 2, and **amendments 16, 17 and 18**, on the corresponding recitals, exclude from the scope of application **audiovisual services** - regardless of their mode of production, distribution and transmission- **gambling activities**, and **professions connected with the exercise of official authority**, notaries in particular. The Commission accepts the exclusion of services of temporary work agencies and private security services provided by amendments 300 and 302/333. However, the need for full harmonisation for temporary work agencies and security services has not been proved and, as a consequence, amendments 301 and 303 cannot be accepted. The Commission does not accept amendment 77 on the exclusion of legal services; this is not required given that Article 3 already provides that in case of conflict between the provisions of the Services Directive and a provision of another Community instrument governing specific aspects of the services activity the provision of the latter will prevail. With regard to audiovisual services, the Commission accepts the exclusion provided by amendment 79 and has redrafted amendment 19 (new Recital 10*e*) to align it with the amendment to the article and to clarify that the Directive does not apply to aids granted in the audiovisual sector which are covered by Community rules on competition. The Commission also accepts in spirit the exclusion of gambling services but redrafts the texts of amendments 17 and 80 in order to limit it clearly to gambling activities as such. The Commission accepts only in part amendments 19 and 82, regarding professions connected with the exercise of official authority and brings the wording of the exclusion into line with the precise limits set out by Article 45 of the EC Treaty, which provides for a derogation from the freedom of establishment and the freedom to provide services for specific activities which involve direct and specific participation in the exercise of official authority, and not for whole professions as such.

The Commission accepts the full exclusion of **taxation** provided by **amendments 82**, on Article 2, and **amendment 19** (Recital 11).

**Amendments 14, 15, 20, 74, 75 and 306** concern sectorial exclusions (in Article 2 and correspondent recitals) originally proposed as **regards financial services, electronic communication services and transport services** but provide additional clarification. The Commission can accept amendments 14, 15, 20, 74 and 306 in their entirety or subject to redrafting to ensure the legal coherence of the text (see Article 2 and Recitals 9, new 10a, new

10b), but cannot accept Amendment 75, because Recital 10a already contains the relevant explanation on telecommunications services.

**Specific areas of law.** **Amendment 298** clarifies in article 1, the relationship of the Directive with **fundamental rights** as recognised in the Member States and by the Charter of Fundamental Rights, and **amendment 299** introduces a new recital stipulating that the Directive should be interpreted in such a way as to reconcile the exercise of fundamental rights with the fundamental freedoms laid down in Articles 43 and 49 of the Treaty. **Amendment 8** clarifies that the Directive fully respects Community initiatives based on Article 137 of the Treaty concerning the promotion of employment and improved living and working conditions. **Amendment 297**, relating to Article 1, and **amendment 9**, relating to the corresponding recital, state that the Directive shall not apply to or affect **labour law** i.e. any legal or contractual provision concerning employment conditions, working conditions, including health and safety at work, and the relationship between employers and workers, and that it shall fully respect the relations between social partners including the right to industrial action and not affect social security legislation of the Member States. **Amendments 290**, relating to Article 1, and **291** (recital) state that the Directive should not affect rules of **criminal law**. **Amendments 7** and part of **amendment 72** clarify, both in a recital and in the text of Article 1, that the Directive does not affect measures taken by Member States, in accordance with Community law, in relation to the **protection or promotion of cultural and linguistic diversity and media pluralism**. The Commission accepts, in relation to fundamental rights issues, amendment 298, subject to redrafting to ensure the legal coherence of the text, and amendment 299, in its entirety. Concerning labour law, the Commission agrees that the Directive does not affect labour law as set out in Amendment 297, including the right to take industrial action as well as Member States' social security law. However, in order to ensure the legal coherence of the text and to improve clarity and ease of understanding, the Commission streamlines the texts of Amendments 297 and 298 so that labour law is addressed by Article 1, paragraph 6 and the issue of fundamental rights including rights regarding collective agreements by Article 1, paragraph 7. With regard to criminal law, the Commission accepts amendment 290 stating that the Directive does not affect criminal law provisions, as well as amendment 291 (new recital 6e) subject to redrafting in order to further clarify that criminal law rules should not be misused to circumvent the rules laid down in the Directive. Concerning protection or promotion of cultural and linguistic diversity and media pluralism, the Commission accepts amendment 7 in its entirety and redrafts the relevant part of amendment 72 to ensure the legal coherence of the text. Finally, the Commission accepts in its entirety Amendment 8 (new Recital 6f).

**Relationship of the Directive with other provisions of Community law.** **Amendments 83 and 21** address this issue, in Article 3 and corresponding Recital 13. The Commission accepts further clarification contained in Amendment 83 that the Directive does not override other Community instruments and that in the event of a conflict with other Community instruments governing specific aspects of access to and exercise of a services activity, the provisions of those specific aspects in such instruments shall prevail. In order to ensure overall consistency of the text and to bring the work of the European Parliament and the Council closer together, the Commission has added additional clarifications (Recitals 13a and 13b). In addition, **amendments 307 and 219** (merged with amendment 83) states that this Directive is without prejudice to private international law, in particular, private international law governing contractual and non-contractual obligations, and explain the effect for consumer protection rules. The Commission accepts amendment 307 and amendment 219 subject to minor redrafting to make the reference to consumer protection legally sound.

**Definitions (Article 4). Amendments 23 to 26, 39, 84 to 90, 308, 92 to 98** relate to the definitions of the terms contained in the text of the Directive (see Article 4 and corresponding recitals). The Commission accepts amendments 25-26, 93-94 and 97-98 in their entirety and amendments 23-24 subject to minor redrafting and merging them. In addition, the Commission accepts amendments 39, 84, 88 to 90, 95 and 308, in principle, but has redrafted them in order to make the text consistent with the Community *acquis* or with the scope of the Directive. However, the Commission cannot accept amendments 85 and 86. Amendment 96, on the definition of "worker", is also redundant in relation to the re-defined scope of application and is not accepted. Amendment 92, with regard to the notion of "competent authorities", and amendment 87, on the notion of "provider" are not accepted for reasons of clarity and coherence of the text with the Community *acquis*. Finally the Commission cannot accept **amendment 22**, deleting the exemplificative list of services covered by the Directive contained in Recital 14. This recital is useful to clarify the Directive and it is thus reinstated, with minor drafting modifications to reflect the new scope of application. In addition, in order to draw on the useful additional clarification provided by the Council, the Commission has completed Recital 18a (**amendment 25**) and Recital 20a and added new Recital 18b.

The Commission accepts in their entirety or subject to minor redrafting, **amendments 1 to 3, 5, 6, 11**, which relate to recitals describing the general objectives of the Directive, and its non interference with the internal allocation of powers within the Member States, but cannot accept **amendment 4**.

### **3.2. Administrative simplification (Articles 5-8)**

**Simplification of procedures (Article 5). Amendment 99** transforms section 1 of the Chapter on the right of establishment for service providers in a distinct new Chapter on "Administrative Simplification". **Amendment 27** clarifies that the rules relating to administrative procedures do not aim at harmonising national administrative law, but rather at the removal of overly burdensome elements which hinder the freedom of establishment. **Amendment 100** states, in Article 5, that Member States shall examine (the verb 'authenticate' used in the amendment does not seem accurate) and if appropriate simplify the procedures and formalities applicable to access to, and exercise of, a service activity. In addition, it introduces an obligation for Member States, "in conjunction with the Commission", to introduce harmonised European forms (the same flows from **amendment 29**) and adds a list of existing Community legislation to which Article 5(1a) and (2) shall not apply. Amendment 100 also explains that Member States' right to require "*non-certified*" translations of documents in their official languages is not affected. **Amendment 30** stresses that formal requirements, such as presentation of original documents including certified translations, cannot be imposed unless justified by an overriding reason relating to the public interest. The Commission accepts amendments 99, 27 and 29-30 in their entirety and amendment 100 in principle, subject to redrafting necessary to make the text legally coherent and to draw on the work at the Council. In particular, the Commission text makes it clear that the establishment of European forms will be carried out according to the comitology procedure and adds a new Recital (22b) which suggests a number of parameters that Member States may take into account while examining the need for simplifying procedures and formalities.

**Points of single contact (Article 6). Amendment 102** explains that, in cases where a *pro forma* registration is required, it must be available by electronic means at the points of single contact. **Amendment 103** requires the Commission to co-ordinate points of single contact by establishing a European point of single contact. **Amendment 104** clarifies that the creation of

points of single contact is without prejudice to the allocation of functions and powers among authorities within national systems. **Amendment 309** sets out a new timetable for the establishment of points of single contact. **Amendment 310** stipulates that it should also be possible to complete all procedures and formalities necessary for the supervision of compliance with Directive 96/71/EC at these points. The Commission accepts amendments 309 and 104 and furthermore clarifies in new Recital 25a, reflecting the work in the Council, that the fee that points of single contact may charge should be proportionate to the cost of procedures and formalities. However, the Commission cannot accept amendment 102 since *pro forma* registration with the points of single contact would be an unnecessary administrative burden. The Commission cannot accept amendment 103 either, because a European point of single contact would represent an unnecessary administrative structure and would be contrary to the principle of subsidiarity (since administrative cooperation can be best dealt with by Member States themselves). Amendment 310 cannot be accepted because reference to the supervision of compliance with Directive 96/71/EC, which is not affected in any way by the present proposal, is inappropriate.

**Right to information (Article 7).** **Amendment 105** makes it clear that the right to information only concerns means of redress generally available. **Amendments 31, 106 and 110** clarify that the obligation for competent authorities to provide assistance does not cover legal advice in individual cases; that the obligation to provide information can be fulfilled by making it accessible through a website; that advice could include a step-by-step guide; and that information shall be provided in plain and intelligible language. **Amendment 107** states that information and assistance should be accessible, *inter alia*, at a distance and by electronic means. **Amendment 108** sets out a deadline for implementation of information obligations and **amendment 109** clarifies that the availability of the information in other languages has to be compatible with Member States' legislation on the use of languages. **Amendment 33**, by introducing a new recital, reinforces the provisions in Article 7. The Commission accepts amendments 105-106, 108-110, 31, 33 and, in line with the work of the Council, adds in amendment 31 (Recital 25c), that issues such as liability for incorrect or misleading information are for Member States to determine. On the other hand, the Commission cannot accept amendment 107 since it would remove the obligation to provide information by electronic means, which is an essential tool for making administrative simplification a reality.

**Procedures by electronic means (Article 8).** **Amendment 111** sets out a revised timetable for implementation, explains that the procedures and formalities may be easily completed, *inter alia*, by electronic means (as does **amendment 32**) and that electronic procedures should not apply to cases when original documentation can be requested. The Commission cannot accept amendment 111, apart from the revised timetable, or amendment 32 because, as mentioned above, electronic procedures are an essential measure of administrative simplification and they can also be used for original documentation since proof of authenticity can be provided by electronic authentication. However, the Commission deems it fit to clarify on the basis of amendment 32 (Recital 26), which draws on the work of the Council, that the obligation to provide for procedures by electronic means does not prevent Member States from offering other means, in addition to electronic ones, to complete procedures and formalities.

### 3.3. Freedom of establishment for providers (Articles 9-15)

**Authorisation schemes.** **Amendment 35** clarifies in Recital 27c that the provisions of the Directive dealing with authorisation schemes concern neither decisions by authorities to set up a public or private entity nor the conclusion of contracts by authorities. **Amendment 37**

indicates that overriding reasons relating to the public interest such as public health may justify the application of authorisation schemes and other restrictions to social services, on condition that the principles of non-discrimination, necessity and proportionality are respected. **Amendments 112-113** reorganise and rename the Chapter and the Section respectively. **Amendment 116** (as well as amendment **209**) excludes authorisation schemes from the mutual evaluation process. The Commission accepts amendments 35, 112-113 in their entirety and amendment 37 subject to minor drafting changes. On the other hand, the Commission cannot accept amendments 116 and 209 because the obligation to evaluate and report on authorisation schemes is an essential measure for facilitating the access to and the exercise of service activities. However, the Commission specifies in a new Recital (27d), in accordance with the work in the Council, that the reporting obligation concerns only the existence of authorisation schemes and not the criteria and conditions for the granting of an authorisation. As regards **amendments 114, 115 and 117**, which contain mainly technical changes, the Commission accepts amendment 115 and amendment 117, subject to redrafting necessary for legal coherence. However, the Commission cannot accept amendment 114, which would make the text less clear.

**Conditions for granting of authorisation. Amendments 34 and 121** stipulate that the authorisation should normally cover the entire national territory except if a more limited geographical scope is justified by an overriding reason relating to the public interest, such as environmental protection. **Amendments 34 and 123** provide that local and regional competencies in the granting of authorisations are not affected by the Directive. **Amendment 119** adds "transparency" and "accessibility" to the criteria with which authorisation schemes must comply. **Amendment 120** clarifies that, in assessing whether the conditions for granting an authorisation are equivalent or essentially comparable to those to which the provider is already subject in another Member State (non-duplication), not only their objective and purpose but also their effect and the effectiveness of their enforcement need to be considered. **Amendment 122** excludes decisions to grant an authorisation from the requirement to state reasons and to provide for means of redress before the courts. **Amendment 118** deletes the word 'objective' from the phrase "justified by an overriding reason relating to the public interest" in Article 10. The Commission accepts amendments 34, 118, 119 and 123 in their entirety. As far as amendment 120 is concerned, acceptance is coupled by the insertion of a new Recital (27g): this aims to clarify that the requirement of non-duplication does not prevent Member States from applying their own conditions but merely require them to take into account equivalent conditions already satisfied by the provider in another Member States. In addition, the Commission agrees with the substance of amendment 121, but opts for a different wording. On the other hand, the Commission cannot accept amendment 122 because the exclusion of decisions to grant an authorisation from the obligation to state reasons is capable of rendering judicial review of an administrative decision, in particular for third parties, less effective or even virtually impossible.

**Duration of authorisation. Selection from among several candidates. Amendments 128 and 36** state that Member States' ability to revoke authorisations, especially when conditions for their granting are no longer met, is not affected. **Amendments 124-127, 129, 38 and 30** provide useful clarifications in Article 11 and corresponding recitals. **Amendment 130** provides that Member States may take into account, in applying their selection procedure, a number of public interest objectives. The Commission accepts amendments 128 and 36, limited to situations where conditions for granting of the authorisation are no longer met. In addition, the Commission accepts amendments 124-127, 129, 38 in their entirety and amendments 130 and 30 subject to minor drafting adjustments.



**Authorisation procedures. Amendment 134 and 28** delete the rule according to which in the absence of a response within the set time limit, the authorisation shall be deemed to be granted ("tacit authorisation"). **Amendment 135** states that an acknowledgement of receipt for applications should only be provided at the request of the applicant and does not need to specify the available means of redress. **Amendments 131-133 and 136-137** contain technical clarifications which the Commission can accept, subject to minor changes as far as amendments 136-137 are concerned. On the other hand, the Commission cannot accept amendments 134 and 28 because tacit authorisation (in the absence of a reply from the authorities) is key to facilitating the freedom of establishment. However, the Commission clarifies in a new Recital (28a), in accordance with the work of the Council, that, as regards tacit authorisation different arrangements may be put in place in respect of certain activities where they are objectively justified by overriding reasons relating to the public interest. Likewise, the Commission cannot accept amendment 135, because this would create an additional burden for the applicants and render judicial review more difficult.

**Prohibited requirements (Article 14). Amendment 138** modifies the title of this section. **Amendment 140** (and **41**) clarifies that the prohibition of a case-by-case application of an economic test does not concern planning requirements which do not pursue economic aims but serve overriding reasons relating to the public interest. **Amendment 141** clarifies that the prohibition on involving directly or indirectly competing operators in the granting of authorisations does not concern the consultation of organisations such as chambers of commerce on matters other than individual applications. **Amendment 40** provides that in some cases it may be justified to compel a service provider to be present in person during the exercise of the activity. **Amendment 142** explains that the prohibition on requiring a financial guarantee or insurance from a service provider established in a Member State's territory does not affect Member States' ability to require financial guarantees as such, or to require that insurance be taken out from an undertaking with special or exclusive rights, nor that it affects requirements relating to participation in a collective compensation fund. **Amendment 143** clarifies the requirement of previous registration. The Commission accepts amendments 138, 140, 141, 143 and 41 in full, amendment 40 subject to an additional clarification. The Commission accepts the spirit of amendment 142, but redrafts the relevant provision to make it coherent with Community law and added further clarification in new Recital 32a, in line with the Council's work. In addition, amendment 143 provides for technical clarifications which the Commission accepts, whilst at the same time providing in a new Recital (32b) based on the Council's work, further clarification about the prohibition of pre-registration.

**Requirements to be evaluated (Article 15). Amendment 42** clarifies that the mutual evaluation process does not affect the freedom of Member States to set a high level of protection of the public interest in their legislation and that the evaluation has to take into account the specificity of Services of General Economic Interest and of the particular tasks assigned to them, which might justify certain restrictions on the freedom of establishment. **Amendments 144 and 145** remove examples of requirements concerning the provider's legal form or the shareholding of the company. **Amendments 147/242** exclude from the evaluation process requirements concerning selling below cost and sales. **Amendments 149/242** deletes the word 'objectively' from the phrase "justified by an overriding reason relating to the public interest" **Amendments 148/242** (as well as amendment **43**) exclude "must-carry" obligations from the evaluation process. Likewise, **amendment 150** excludes Services of General Economic Interest and social insurance schemes from Article 15, paragraphs 1 to 4. In addition, amendment 150, together with **amendment 151**, removes the prohibition on Member States to introduce any new requirement of a similar kind unless these fulfil the

criteria of non-discrimination, necessity and proportionality, and the corresponding obligation of Member States to notify such new laws, regulations or administrative provisions. **Amendment 146** adds a reference to the Professional Qualification Directive. The Commission accepts amendments 42, 147 and 148/149/242. The Commission also accepts the deletion of examples from the relevant articles as in amendments 144 and 145. The Commission also adds in Recital 34, in line with the work of the Council, a clarification that the evaluation of requirements imposing minimum and/or maximum tariffs only concerns tariffs imposed by competent authorities for the provision of certain services, whereas it does not concern general rules on price determination such as for the renting of houses. The Commission accepts in principle amendment 150 relating to Services of General Economic Interest and it specifies that paragraphs 1 to 4 of Article 15 only apply to legislation in the field of Services of General Economic Interest in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular task assigned to them. Deletion of the notification obligations (amendment 151) would seriously water down the evaluation process and therefore cannot be accepted. Finally, amendments 146, 148 and 149/242 propose technical changes which the Commission accepts (as far as 146 is concerned, however, reference is made to the Professional Qualification Directive as a whole and not to its Title II only).

### **3.4. Freedom to provide services and derogations (Articles 16-19)**

**Freedom to provide services (Article 16).** **Amendment 152** (concerning the title of the Chapter) and **amendment 293/rev4** (concerning Article 16) replace the former country of origin principle by a provision on the freedom to provide services. Amendment 293/rev4 confirms the right of service providers to provide a service in a Member State other than the one where he is established and obliges the Member State where the service is provided to ensure free access to and free exercise of the service activity within its territory. Paragraph 1 of Article 16 additionally stipulates that the Member State where the service is provided cannot apply its own national requirements to service providers established in another Member State unless these are justified on grounds of public policy, public security, public health or the protection of the environment, they are non-discriminatory, necessary and proportionate. Paragraph 3 again confirms the possibility of Member States provided for in paragraph 1 to impose their national rules where they are justified on grounds of public policy, public security, public health or the protection of the environment on service providers from other Member States moving into its territory. Paragraph 3 also clarifies that Member States, in conformity with Community law, are not prevented from applying their employment conditions. Article 16 paragraph 2 establishes a list of requirements, such as a requirement to have an establishment in the territory in order to be allowed to provide a service, which Member States may not impose on service providers established in other Member States. Amendment 293/rev4 also provides that the Commission, after consultation of the Member States and the social partners, shall submit a report on the application of Article 16 including consideration of the need to propose harmonising measures.

The Commission accepts amendments 152 and 293/rev4 subject to minor drafting adjustments in paragraph 3 clarifying that – in accordance with the jurisprudence of the ECJ – national requirements always have to be non-discriminatory, necessary and proportionate. The Commission also accepts – subject to drafting adjustments – amendment 45 on Recital 37, indicating that Member States can impose their requirements which are indispensable for reasons of public policy, public security, public health and the protection of the environment as well as amendments 46-47 which delete recitals referring to the former country of origin principle. Furthermore, the Commission, in accordance with the work of the Council, adds

further explanatory recitals, one recital referring to the jurisprudence of the ECJ on the right of Member States to take measures in order to prevent service providers from abusively taking advantage of the Internal Market principles (Recital 37a), another recital stressing the necessity of ensuring that providers are able to take equipment which is an integral part of the provision of the service with them when providing services in another Member State (Recital 39a) as well as one additional recital explaining the concept of equipment (Recitals 39 b).

**Additional derogations from the freedom to provide services (Article 17). Amendment 400** renames Article 17 and stipulates that the provision on the freedom to provide services shall not apply to **Services of General Economic Interest** provided in another Member State, inter alia to postal services, electricity, gas and water distribution, waste water services and the treatment of waste. The Commission accepts amendment 400. In addition, the Commission clarifies, based on the work of the Council, in a Recital (40a) that the derogation for postal services covers both activities reserved to the universal service provider and other postal services. Furthermore, amendment 165 clarifying the derogation in Article 17 point 12 for the authorisation regime provided for in Articles 3 and 4 of Council Regulation (EEC) No 259/93 on the supervision and control of shipments of waste within, into and out of the European Union, can also be accepted.

Concerning activities of **lawyers and notaries**, **amendment 160** deletes the derogation for matters covered by Council Directive 77/279/EEC to facilitate the effective exercise by lawyers of the freedom to provide services and **amendment 166** deletes the derogation for acts requiring by law the involvement of a notary. These amendments become obsolete given that the Commission does not accept a general exclusion of the activities of lawyers or notaries from the scope of application of the Directive. These derogations should therefore be maintained. Concerning the judicial recovery of debts, **amendment 161** introduces a new derogation which can be accepted by the Commission. At the same time the Commission clarifies in a new recital (40b) in line with the Council work, the scope of this derogation.

Concerning **requirements which reserve an activity to a particular profession**, **amendment 162/404** adds – in addition to the derogation concerning matters covered by Title II of Directive 2005/36/EC on the recognition of professional qualifications – a new derogation. Amendment 162/404 as well as amendment 48 which explains this new derogation in a recital (41c) can be accepted in principle subject to redrafting to make its wording more precise.

Concerning the **free movement of persons and their residence**, **amendment 163** clarifies the derogation relating to Directive 2004/38/EC and can be accepted.

Concerning the **derogation for the movement of third country nationals in the context of the provision of a service**, **amendment 164** reformulates the wording of the derogation contained in Article 17 point 11. Since Article 25 has been deleted, the derogation in Article 17 point 11 had to be further reworded. **Amendments 50 and 51** which introduce Recitals 41a and 41b providing explanations on the derogation for the Posting of Workers Directive are accepted subject to minor drafting changes.

Concerning **specific prohibitions and specific requirements justified by reasons relating to public policy, public security, public health or the protection of the environment**, **amendments 167 and 168** provide for modifications of the derogations contained in Article 17 point 16 and 17. In the Commission's view these amendments are obsolete since, as a consequence of the fact that Article 16 now gives Member States in more general terms the

possibility to impose national requirements relating to public policy, public security, public health and the protection of the environment, the more specific derogations in Article 17 point 16 and 17 have become superfluous. Consequently they are deleted together with the corresponding recitals.

Concerning **reimbursement of hospital care, amendment 169** deletes the derogation for the authorisation system applicable to the reimbursement of hospital care. In line with the exclusion of health services from the scope of application and the deletion of Article 23 on the assumption of health care costs, the Commission accepts amendment 169.

Concerning **private international law, amendment 170** introduces in Article 17 a derogation for all provisions of private international law, particularly those dealing with contractual and non-contractual obligations, including the form of contracts. The Commission accepts this amendment which is required in Article 17 because the provision on the freedom to provide services is the provision of this Directive that could possibly conflict with the application of rules of private international law. **Amendments 171, 172 and 173** delete the derogations for consumer contracts, formal validity of contracts relating to immovable property and the non-contractual liability of the provider in case of an accident which are now covered by the broader derogation for all provisions of private international law. The Commission accepts these amendments as well as the corresponding changes in the Recitals (**amendments 53 and 54** relating to Recitals 45 and 46).

In addition, the Commission has added technical clarifications reflecting the work of the Council.

**Transitional derogations (Article 18). Amendment 174** fully deletes Article 18 containing transitional derogations from the (former) country of origin principle. The Commission accepts this because gambling activities have been excluded from the scope of application of this Directive, the access to the activity of judicial recovery of debts is covered by a new derogation in Article 17 point 7a and transport of cash and valuables has been included in Article 40(1).

**Case-by-case derogations (Article 19). Amendment 175** adapts the title in line with the new renamed Article 16. **Amendment 176** refers to the conditions under which the case-by-case derogation can be taken and removes the obligation to comply first with the mutual assistance procedure before taking such measures. The case-by-case derogations relating to public health and public policy and to the exercise of health professional have become obsolete due to the exclusion of healthcare from the scope of application of the Directive and due to the fact that Article 16 now allows Member States in more general terms to impose requirements relating to public policy and public health. The Commission therefore deletes the corresponding case-by-case derogations and limits Article 19 to the safety of services. However, the Commission cannot accept the deletion of the mutual assistance procedure which is essential to ensure that this derogation does not lead to unnecessary restrictions to the freedom to provide services.

### **3.5. Rights of recipients of services (Articles 20-23)**

**Prohibited restrictions/Non-discrimination. Amendments 177 and 55**, relating to Article 21 and Recital 50 state that the recipient of services should not be made subject to discriminatory requirements based "solely" on his nationality or place of residence. The Commission cannot accept this addition to the non discrimination clause set out in Article 21, because this could be interpreted as allowing discrimination if they are based also on other

grounds. The rest of amendment 55 clarifies Recital 50 and can be accepted. In addition, the Commission adds some clarifications in line with the Council's work concerning the concept of financial assistance mentioned in Article 20 (see Recital 48 and new Recital 48a).

**Assistance for recipients. Amendment 178**, concerning Article 22, on the assistance for recipients of services clarifies a number of points on information and advice given by the points of single contact to recipients. In addition this amendment deletes the contact points of the European Consumer Centres Network from those associations and organisations whose contact details recipients should be informed of and who could provide practical assistance. **Amendment 179** adds a new Article 22a concerning the possibility for a service provider to complete all procedures and formalities with the points of single contact. The Commission accepts amendment 178, except the part which deletes the reference to European Consumer Centres Network, which, for the Commission, should play a particularly active role in giving practical assistance to consumers. The Commission cannot accept amendment 179 and the provision of a new Article 22a, given that role and responsibilities of single points of contacts are already sufficiently dealt with in the Chapter of the Directive on administrative simplification.

**Reimbursement of healthcare received in another Member State. Amendments 56 to 62 and 180/247** delete Article 23, the provisions dealing with the reimbursement of healthcare received in another Member State, and corresponding recitals. The Commission accepts these deletions and, as mentioned above, it will come forward with a separate initiative on health services.

### 3.6. Posting of workers (Articles 24-25)

**Specific provisions on posting of workers and posting of third country nationals. Amendments 181, 182/248, 63-64, 183/249 and 65-66** delete the relevant provisions regarding the removal of administrative obstacles and regarding obligations of Member States to cooperate regarding the posting of workers and the posting of third country nationals. While the Commission believes that it is of high importance to address any undue administrative burdens which hinder the opportunities for service providers to provide cross-border services by posting their staff and that it is important to improve administrative cooperation in order to combat black labour and social dumping, the Commission accepts the deletion of these provisions as part of an overall compromise. In order to address undue administrative burdens and to establish a better-functioning system of administrative cooperation the Commission will provide guidance for Member States on these issues.

### 3.7. Quality of services (Articles 26-32)

**Information on providers and their services (Article 26). Amendments 184 and 186** set out a systematic obligation for service providers to make information to be given to recipients available via the points of single contact. **Amendment 185** introduces an obligation to make available to the recipients information on the legal form of the service provider. The Commission accepts amendment 185 subject to minor redrafting. On the contrary, the Commission cannot accept amendments 184 and 186 because they would create an unnecessary burden to service providers.

**Professional liability insurance (Article 27).** The first sentence of **amendment 187** deletes the obligation for Member States to ensure that service providers whose services present a particular risk to the health or safety of the recipient or a particular financial risk to the

recipient take out professional liability insurance and replaces it by a mere declaration of the possibility for Member States to require such insurance coverage. The second sentence specifies that the insurance shall also cover risks presented by such services when they are provided in other Member States. The Commission accepts both sentences of this amendment subject to minor drafting adjustments. Furthermore, **amendment 67** adding Recital 63a is accepted subject to necessary adjustments reflecting the changes in Article 27(1). Recital 63 was adjusted accordingly. **Amendments 188, 189 and 190** are accepted by the Commission as far as they are necessary and do not create an additional burden for service providers. In addition, based on the work in the Council, the Commission clarifies the text of Article 27 and the corresponding Recitals, in particular on the scope of application of this Article, and addresses the risk of failure of the insurance market by providing for the possibility to establish a procedure dealing with situations of verifiable failure of the insurance market.

**After-sales guarantees (Article 28).** **Amendment 191** deletes the obligation for service providers to provide information on the after-sales guarantees they supply. **Amendment 192** deletes the provision clarifying that after-sales guarantees provided for in other Community instruments should not be affected. The Commission cannot accept amendment 191 because the relevant information on after-sales guarantees must be provided to recipients by service providers. Moreover, the Commission cannot accept amendment 192 because the link with other Community legislation on after-sales guarantees has to be explicitly mentioned.

**Commercial communications (Article 29).** The Commission clarifies the text reflecting the work in the Council, according to which professional rules on commercial communications must comply with the principles of non-discrimination, necessity and proportionality.

**Multidisciplinary activities (Article 30).** **Amendment 193** (as well as **amendment 210**) excludes multidisciplinary activities from the mutual evaluation process. The Commission cannot accept amendments 193 and 210 because the obligation to evaluate and report on restrictions on multidisciplinary activities is an essential measure for facilitating access to, and exercise of, service activities. The Commission, on the basis of the Council's work, provides further clarification on what restrictions may be justified and explains this in a new recital (64a).

**Policy on quality of services (Article 31).** **Amendment 194** clarifies that Member States in cooperation with the Commission shall encourage the development of voluntary European standards. The Commission accepts amendment 194, whilst stressing at the same time, on the basis of the Council's work, the role of consumer associations.

**Settlement of disputes (Article 32).** **Amendment 195** introduces further contact details to be supplied by providers. Amendment 196 replaces the word 'appropriate' by 'satisfactory'. The Commission accepts amendments 195 and 196, whilst clarifying at the same time, on the basis of the Council's work, what equivalent financial guarantees are to be deemed equivalent within the meaning of this Article explains this in a new recital (65a).

### **3.8. Administrative co-operation (Articles 34-38)**

**Mutual assistance and supervision.** **Amendments 199 to 202 and amendments 68 to 69** reorganise the chapter on administrative cooperation and clarify the obligations of the respective Member States. Amendment 199 renames the chapter. Amendments 200-202 aim to set out more clearly the distribution of tasks between the Member State of establishment and the Member State where the service is provided. In particular, the Member State of

establishment is responsible for the supervision of service providers established in its territory and cannot refuse to take supervisory or implementing measures on the ground that the service has been provided in another Member State. The Member State of establishment must carry out checks, inspections and investigations as well as provide information on service providers established in its territory at the request of another Member State. The Member State where the service is provided is responsible for the supervision of the activity of the service provider in its territory with regard to matters in respect of which it can impose its national requirements in accordance with Article 16 paragraph 1 (Article 21 paragraph 1 in the consolidated text of the Parliament). In other cases, it shall carry out the checks, inspections and investigations on the spot when objectively justified and non-discriminatory or when requested by the Member State of establishment. Amendment 69 explains that effective administrative co-operation is necessary in order to avoid proliferation of rules applicable to service providers or duplication of controls for cross-border activities and to remove the possibility for rogue traders to avoid supervision or circumvent applicable national rules on services. Amendment 68 sets out the need for a well functioning electronic information system. The Commission accepts amendments 68-69 in their entirety and amendments 200-202 in spirit. Recognising the need to set out clearly the tasks and obligations of the Member State of establishment and the Member State where the service is provided in order to have effectively working administrative cooperation, the Commission incorporates the amendments of the European Parliament into the structure drawn up by the Council.

**Alert mechanism. Amendment 203** sets out an alert mechanism, in case a Member State becomes aware of serious specific acts or circumstances that could cause serious damage to the health or safety of persons, to inform immediately the Commission and the Member States concerned. The Commission accepts amendment 203 and has also added the environment to the reasons which come under the alert mechanism. However, this new system serves a different purpose than the mutual assistance system in the event of case-by-case derogations and cannot therefore replace it.

**Information on the good repute of providers. Amendment 197** adds that the information Member States' must supply at the request of a competent authority in another Member State must be directly relevant to the service provider's competence and that the request itself must be duly substantiated. **Amendment 198** stipulates that the provisions on information requests must comply with rules on the provision of personal data and that any information which is public should be accessible to consumers. The Commission accepts both amendments and further clarifies, reflecting the work of the Council, that Member States shall supply information on disciplinary or administrative actions or criminal sanctions and decisions concerning insolvency or bankruptcy, in conformity with their national law; that the sanctions and actions shall only be communicated where a final decision has been taken; and that the provisions on the good repute of providers do not pre-empt initiatives in the area of police and judicial co-operation in criminal matters (new Recital 66f).

**Accompanying measures. Amendment 68** describes the need for a well-functioning electronic information system to improve administrative cooperation between Member States. The Commission accepts amendment 68, transfers its contents to an Article and explains this in a new recital (66g). Moreover, the Commission, reflecting the work of the Council, introduces another accompanying measure for the exchange of officials in charge of the implementation of mutual assistance.

### 3.9. Convergence programme and final provisions (Articles 39-48)

**Codes of conduct (Article 39).** Amendments 205 and 70 stress the importance of codes of conducts at Community level drawn up, in particular, by professional bodies, organisation and associations, and clarify that the codes of conducts are complementary to Member States' legal requirements. **Amendment 71** moves into a recital the description of the areas which should be included in the codes of conduct. The Commission accepts these amendments and adds, reflecting the work of the Council, a new recital (67b) which describes the objective of the codes of conduct.

**Additional harmonisation (Article 40).** In line with the redefined scope, **amendment 206** deletes gambling activities and **amendment 208** deletes other subjects from matters for possible additional harmonisation, such as those identified through the case-by-case derogations or the mutual evaluation procedure. **Amendment 207** adds security services to the list of subjects to be assessed for additional harmonisation. The Commission accepts amendments 206, 208 and 207, while specifying that an assessment of the possibility of additional harmonisation for security services and transport of cash and valuables will be made, one year after the date of implementation of the Directive.

In addition, the Commission accepts **amendments 211-212** which concern the date when the Commission shall present the report on mutual evaluation and the review clause.

Finally, **amendment 213** sets out a 3-year deadline for the transposition of the Directive into Member States' laws. Due to the urgency of advancing the Internal Market for services, the Commission considers that 2-year deadline for transposition should be preserved.

## 4. AMENDED PROPOSAL

Pursuant to Article 250(2) of the EC Treaty, the Commission amends its proposal as described above.



Amended proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on services in the internal market**

(presented by the Commission)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the first and third sentence of Article 47(2) and Articles 55, 71 and 80(2) thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Having regard to the opinion of the Committee of the Regions<sup>3</sup>,

Acting in accordance with the procedure referred to in Article 251 of the Treaty,

Whereas:

- (1) The European Union is seeking to forge ever closer links between the States and peoples of Europe and to ensure economic and social progress. In accordance with Article 14(2) of the Treaty, the internal market comprises an area without internal frontiers in which the free movement of services and the freedom of establishment are ensured. The elimination of obstacles to the development of service activities between Member States is essential in order to strengthen the integration of the peoples of Europe and to promote balanced and sustainable economic and social progress. ***In eliminating such barriers it is essential to ensure that the development of service activities contributes to the fulfilment of the task laid down in Article 2 of the Treaty of promoting throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable and non-inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement of the quality of the environment, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States.***

- (1a) A competitive market in services is essential in order to promote economic growth and create jobs in the EU. At present numerous barriers within the internal market***

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<sup>1</sup> COM(2004) 2, 13.1.2004.

<sup>2</sup> OJ C 221, 8.9.2005, p. 113.

<sup>3</sup> OJ C 43, 18.2.2005, p. 18.

*prevent service providers, particularly small and medium-sized enterprises (SMEs), from extending their operations beyond their national borders and from taking full advantage of the internal market. This weakens the worldwide competitiveness of EU service providers. A free market which compels the Member States to eliminate restrictions on cross-border provision of services while at the same time increasing transparency and the information for consumers would give consumers wider choice and better services at lower prices.*

- (2) The report from the Commission on "The State of the Internal Market for Services"<sup>4</sup> drew up an inventory of a large number of barriers which are preventing or slowing down the development of services between Member States, in particular those provided by SMEs, which are predominant in the field of services. The report concludes that a decade after the envisaged completion of the internal market, there is still a huge gap between the vision of an integrated European Union economy and the reality as experienced by European citizens and service providers. The barriers listed affect a wide variety of service activities across all stages of the service provider's activity and have a number of common features, including, in particular, the fact that they often arise from administrative burdens, the legal uncertainty associated with cross-border activity and the lack of mutual trust between Member States.
- (3) Since services constitute the engine of economic growth and account for 70% of GDP and employment in the majority of Member States, this fragmentation of the internal market has a negative impact on the entire European economy, in particular on the competitiveness of SMEs *and the movement of workers*, and prevents consumers from gaining access to a greater variety of competitively priced services. *It is important to point out that the services sector is a key employment sector for women in particular, and that they therefore stand to benefit greatly from new opportunities offered by the completion of the internal market for services.* The European Parliament and the Council have emphasised that the removal of legal barriers to the establishment of a genuine internal market is a matter of priority for achieving the goal set by the Lisbon European Council of *improving employment and social cohesion and achieving sustainable economic growth so as to make the European Union the most competitive and dynamic knowledge-based, employment-boosting economy in the world by 2010. Removing those barriers, while ensuring an advanced European social model, is thus a basic condition for overcoming the difficulties encountered in implementing the Lisbon Strategy and for reviving the European economy, particularly in terms of employment and investment. It is therefore important to achieve an internal market for services, with the right balance between market opening and preserving public services and social and consumer rights.*
- (4) It is therefore necessary to remove barriers to the freedom of establishment for service providers in Member States and barriers to the *free movement of services* as between Member States and to guarantee *recipients and providers* the legal certainty necessary for the exercise in practice of those two fundamental freedoms of the Treaty. Since the barriers in the internal market for services affect operators who wish to become established in other Member States as well as those who provide a service in another Member State without being established there, it is necessary to enable service providers to develop their service activities within the internal market either by

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<sup>4</sup> COM(2002) 441.

becoming established in a Member State or by making use of the *free movement of services*. Service providers should be able to choose between those two freedoms, depending on their strategy for growth in each Member State.

- (5) Those barriers cannot be removed solely by relying on direct application of Articles 43 and 49 of the Treaty, since, on the one hand, addressing them on a case-by-case basis through infringement procedures against the Member States concerned would, especially following enlargement, be extremely complicated for national and Community institutions, and, on the other hand, the lifting of many barriers requires prior coordination of national legal schemes, including the setting up of administrative cooperation. As the European Parliament and the Council have recognised, a Community legislative instrument makes it possible to achieve a genuine internal market for services.
- (6) This Directive establishes a general legal framework which benefits a wide variety of services while taking into account the distinctive features of each type of activity or profession and its system of regulation. That framework is based on a dynamic and selective approach consisting in the removal, as a matter of priority, of barriers which may be dismantled quickly and, for the others, the launching of a process of evaluation, consultation and complementary harmonisation of specific issues, which will make possible the progressive and coordinated modernisation of national regulatory systems for service activities which is vital in order to achieve a genuine internal market for services by 2010. Provision should be made for a balanced mix of measures involving targeted harmonisation, administrative cooperation, *the provision on the freedom to provide services* and encouragement of the development of codes of conduct on certain issues. That coordination of national legislative regimes should ensure a high degree of Community legal integration and a high level of protection of general interest objectives, especially protection *of consumers*, which is vital in order to establish mutual trust between Member States. *This Directive also takes into account other general interest objectives, including the protection of the environment, public security and public health as well as of the need to comply with labour law.*
- (6a) Since the objectives of the proposed action, namely the elimination of barriers to the freedom of establishment for service providers in the Member States and to the free provision of services between Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve those objectives.
- (6b) It is appropriate that the provisions of this Directive concerning the freedom of establishment *and the free movement of services* should apply only to the extent that the activities in question are open to competition, so that they do not oblige Member States *either to liberalise services of general economic interest or to privatise public entities which provide such services or to abolish existing monopolies for other activities or certain distribution services.*
- (6c) *This Directive does not concern requirements governing access to public funds for certain service providers. Such requirements include notably those laying down*

*conditions under which service providers are entitled to receive public funding, including specific contractual conditions, and in particular quality standards which need to be observed as a condition to receive public funds, for example for social services.*

- (6d) This Directive does not interfere with Member States' measures taken, in accordance with Community law, in relation to the protection or promotion of cultural and linguistic diversity and media pluralism, including the funding thereof.*
- (6e) This Directive aims at creating a legal framework to ensure the freedom of establishment and the free movement of services between the Member States and does not harmonise or prejudice criminal law. Therefore, rules of criminal law will generally not be affected by this Directive. However, it should not be possible for a Member State to circumvent the rules laid down in this Directive and to restrict the freedom to provide services by applying criminal law provisions which specifically affect the access to or the exercise of a service activity(6f) It is equally important that this Directive fully respects Community initiatives based on Article 137 of the Treaty with a view to achieving the objectives of Article 136 of the Treaty concerning the promotion of employment and improved living and working conditions.*
- (6g) This Directive does not affect terms and conditions of employment, including maximum work periods and minimum rest periods, minimum paid annual holidays, minimum rates of pay as well as health, safety and hygiene at work, nor does it affect relations between social partners, including the rights to negotiate and conclude collective agreements, the right to strike and to take industrial actions, nor does it apply to services provided by temporary work agencies. This Directive does not affect the social security legislation of the Member States.*
- (6h) This Directive should be interpreted in such a way as to reconcile the exercise of fundamental rights as recognised in the Member States and by the Charter of Fundamental Rights of the European Union with the fundamental freedoms laid down in Article 43 and 49 of the Treaty. Those fundamental rights include i.a. the right to take industrial action. This Directive should be interpreted in such a way as to give full effect to those fundamental rights and the fundamental freedoms.*
- (6i) This Directive concerns only service providers established in a Member State and does not cover external aspects. It does not concern negotiations within international organisations on trade in services, in particular in the framework of GATS.*

*[Recital 7 deleted]*

- (7a) This Directive covers only services which are performed for an economic consideration. Services of general interest are not covered by the definition in Article 50 of the Treaty and therefore do not fall within the scope of this Directive. Services of General Economic Interest are services that are performed for an economic consideration and therefore do fall within the scope of this Directive. However, certain Services of General Economic Interest, such as those that may exist in the field of transport, are excluded from the scope of application of this Directive and certain other services of general economic interest, for example, that*

*may exist in the area of postal services, are derogated from the provision on the freedom to provide services. This Directive does not deal with the funding of services of general economic interest and does not apply to systems of aids granted by Member States, in particular in the social field, in accordance with Community rules on competition. This Directive does not deal with the follow-up to the Commission White Paper on services of general interest.*

*[Recital 8 moved]*

- (9) Financial services should be excluded from the scope of this Directive since *these* activities are subject of specific **Community legislation** aimed, as is this Directive, at achieving a genuine internal market for services. **Consequently, this exclusion covers all financial services such as banking, credit, insurance, including reinsurance, occupational or personal pensions, securities, investment, funds, payments, investment advice, including the services listed in Annex I to Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions<sup>5</sup>.**
- (10) In view of the adoption in 2002 of a package of legislative instruments relating to electronic communications networks and services, as well as to associated resources and services, which has established a regulatory framework to facilitate access to those activities within the internal market, notably through the elimination of most individual authorisation schemes, it is necessary to exclude issues dealt with by those instruments from the scope of this Directive.
- (10a) The exclusions from the scope of application regarding matters of electronic communications services as covered by Directives 2002/19/EC<sup>6</sup>, 2002/20/EC<sup>7</sup>, 2002/21/EC<sup>8</sup>, 2002/22/EC<sup>9</sup> and 2002/58/EC<sup>10</sup> of the European Parliament and of the Council should apply not only to questions specifically dealt with in these Directives but also to matters for which the Directives explicitly leave to Member States the possibility of adopting certain measures at national level.**
- (10b) Transport services, **including urban transport, taxis, and ambulances as well as port services** are excluded from the scope of this Directive.
- (10c) The exclusion of healthcare covers healthcare and pharmaceutical services provided by health professionals to patients to assess, maintain or restore their state of health where those activities are reserved to a regulated health profession in the Member State in which the services are provided.**
- (10d) This Directive does not affect the reimbursement of healthcare provided in a Member State other than that in which the recipient of the care is resident. This issue has been addressed by the Court of Justice on numerous occasions, and the**

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<sup>5</sup> OJ L 126, 26.5.2000, p. 1. Directive as last amended by Commission Directive 2004/69/EC (OJ L 125, 28.4.2004, p. 44).

<sup>6</sup> OJ L 108, 24.4.2002, p. 7.

<sup>7</sup> OJ L 108, 24.4.2002, p. 21.

<sup>8</sup> OJ L 108 24.4.2002, p. 33.

<sup>9</sup> OJ L 108, 24.4.2002, p. 51.

<sup>10</sup> OJ L 201, 31.7.2002, p. 37.

*Court has recognised patients' rights.. It is important to address this issue in another Community legal instrument in order to achieve greater legal certainty and clarity to the extent that this issue is not already addressed in Regulation (EEC) No 1408/71 on the coordination of social security systems<sup>11</sup>.*

- (10e) *Audiovisual services, whatever their mode of transmission, including within cinemas, should also be excluded from the scope of this Directive. Furthermore, the Directive does not apply to aids granted by Member States in the audiovisual sector which are covered by Community rules on competition.*
- (10f) *Gambling activities, including lottery and betting transactions, should be excluded from the scope of this Directive, in view of the specific nature of these activities, which entail implementation by Member States of policies relating to public policy and consumer protection.*
- (10g) *This Directive is without prejudice to the application of Article 45 of the Treaty concerning notably certain activities, of notaries and of other professions, related to the power of authentication and certification.*
- (10h) *This Directive does not cover those social services in the area of housing, childcare and support to families and persons in need provided by the State or by providers mandated by the State – at national, regional or local level- with the objective of ensuring support to those who are in a particular state of need because of their insufficient family income, total or partial lack of independence or to those who risk to be marginalised. These services are essential to guarantee the fundamental rights 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.*
- (10i) *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.*
- (11) In view of the fact that the Treaty provides specific legal bases for taxation matters and for the Community instruments already adopted in that field, it is necessary to exclude the field of taxation from the scope of this Directive.

**[Recital 12 moved]**

- (13) There is already a considerable body of Community law on service activities. *This Directive builds on, and thus complements, the Community acquis. Conflicts between this Directive and other Community instruments have been identified and are provided for in this Directive, including by means of derogations. However, it is necessary to provide a rule for any residual and exceptional cases where there is a conflict between a provision of this Directive and a provision of another Community instrument. The existence of such a conflict should be determined in compliance with the rules of the Treaty on the right of establishment and the free movement of*

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<sup>11</sup> OJ L 149, 5.7.1971, p. 2. Regulation as last amended by Regulation (EC) No 647/2005 (OJ L 117, 4.5.2005, p. 1).

*services. A conflict between a provision of the Directive and a future Community instrument should be avoided in the drafting and negotiation of such an instrument.*

- (13a) *This Directive is consistent with and does not affect Directive 2005/36/EC<sup>12</sup> on the recognition of professional qualifications. It deals with questions other than those relating to professional qualifications, for example professional liability insurance, commercial communications, multidisciplinary activities and administrative simplification. Concerning temporary cross-border service provision a derogation from the provision on the freedom to provide services in this Directive ensures that Title II on the free provision of services of Directive 2005/36/EC on the recognition of professional qualifications is not affected. Therefore, none of the measures applicable in the Member State where the service is provided under the Directive on the recognition of professional qualifications is affected by the provision on the freedom to provide services.*
- (13b) This Directive is consistent with other Community initiatives concerning services, particularly those relating to the safety of services. It is also consistent with other initiatives concerning the internal market, and those concerning consumer protection, such as Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 on unfair commercial practices<sup>13</sup> and Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws ("the Regulation on consumer protection cooperation")<sup>14</sup>.
- (14) The services covered by this directive concern a wide variety of ever-changing activities, including business services such as management consultancy, certification and testing; facilities management, including office maintenance; advertising; recruitment services; and the services of commercial agents. The services covered are also services provided both to businesses and to consumers, such as legal or fiscal advice; real estate services such as estate agencies; construction, including the services of architects; distributive trades; the organisation of trade fairs; car rental; travel agencies. Consumer services are also covered, such as those in the field of tourism, including tour guides; leisure services, sports centres and amusement parks; and, *to the extent that they are not excluded from the scope of application of the Directive*, household support services, such as help for the elderly. Those activities may involve services requiring the proximity of provider and recipient, services requiring travel by the recipient or the provider and services which may be provided at a distance, including via the Internet.

**[Recital 15 deleted]**

- (16) *According to the jurisprudence of the Court of Justice, the assessment of whether certain activities, in particular activities which are publicly funded or provided by public entities, constitute a 'service' has to be carried out on a case by case basis in the light of all their characteristics, in particular the way they are provided, organised and financed in the Member State concerned. The Court has held that the*

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<sup>12</sup> OJ L 255, 30.9.2005, p. 22.

<sup>13</sup> OJ L 149, 11.6.2005, p. 22.

<sup>14</sup> OJ L 364, 9.12.2004, p. 1.

*essential characteristic of remuneration lies in the fact that it constitutes consideration for the services in question and has recognized that the characteristic of remuneration is absent in the case of activities performed, for no consideration, by the State or on behalf of the State in the context of its duties in the social, cultural, educational and judicial fields, such as courses provided under the national education system, or the management of social security schemes which do not engage in economic activity. The payment of a fee by recipients, for example, a tuition or enrolment fee paid by students in order to make a certain contribution to the operating expenses of a system, does not in itself constitute remuneration because the service is still essentially financed by public funds.* These activities are, therefore, not covered by the definition of "service" in Article 50 of the Treaty and do not therefore fall within the scope of this Directive.

*(16a) Non profit making amateur sporting activities are of considerable social importance. They often pursue wholly social or recreational objectives. Thus they might not constitute economic activities within the meaning of Community law and fall outside the scope of this Directive.*

*[Recital 17 moved]*

(18) The concept of provider covers any natural person who is a national of a Member State or any legal person who is engaged in a service activity there, in exercise either of the freedom of establishment or of the free **movement of** services. The concept of provider is thus not limited solely to cross-border service provision within the framework of the **free movement of** services but also covers cases in which an operator establishes itself in a Member State in order to develop its service activities there. On the other hand, the concept of a provider does not cover the case of branches in a Member State of companies from third countries because, under Article 48 of the Treaty, the freedom of establishment and free movement of services may benefit only companies constituted in accordance with the laws of a Member State and having their registered office, central administration or principal place of business within the Community. *The notion of recipient also covers third country nationals who already benefit from rights conferred upon them by Community acts such as Regulation (EEC) No 1408/71<sup>15</sup> or Directive 2003/109/EC<sup>16</sup>, Regulation (EEC) No 859/2003<sup>17</sup> and Directive 2004/38/EC<sup>18</sup>. Furthermore, Member States have the possibility to extend the notion of recipient to other third country nationals that are present within their territory.*

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<sup>15</sup> Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ L 149, 5.7.1971, p. 2).

<sup>16</sup> Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ L 16, 23.1.2004, p. 44).

<sup>17</sup> Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality (OJ L 124, 20.5.2003, p. 1).

<sup>18</sup> Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).



- (18a) *The place at which a service provider is established should be determined in conformity with the case-law of the Court of Justice according to which the concept of establishment involves the actual pursuit of an economic activity through a fixed establishment for an indefinite period. This requirement may also be fulfilled where a company is constituted for a given period or where it rents the building or installation through which it pursues its activity. It may also be fulfilled where a Member State grants authorisations for a limited duration only in relation to particular services. An establishment does not need to take the form of a subsidiary, branch or agency, but can consist of an office managed by a provider's own staff or by a person who is independent but authorised to act on a permanent basis for the undertaking, as would be the case with an agency. According to this definition which requires the actual pursuit of an economic activity at the place of establishment of the service provider, a mere letter box does not constitute an establishment. In cases where a provider has several places of establishment it is important to determine from which place of establishment the actual service concerned is provided. In cases where it is difficult to determine from which of several places of establishment a given service is provided, this is the place where the provider has the centre of his activities relating to this particular service.*
- (18b) *The Treaty provisions on establishment leave economic operators free to choose the legal form which they deem suitable for carrying out their activity. Accordingly, "legal persons", within the meaning of the Treaty, means all entities constituted under, or governed by, the law of a Member State, irrespective of their legal form.*

*[Recital 19 moved]*

- (20) The concept of authorisation scheme covers, *inter alia*, the administrative procedures for granting authorisations, licences, approvals or concessions, and also the obligation, in order to be eligible to exercise the activity, to be registered as a member of a profession or entered in a register, roll or database, to be officially appointed to a body or to obtain a card attesting to membership of a particular profession. Authorisation may be granted not only by a formal decision but also by an implicit decision arising, for example, from the silence of the competent authority or from the fact that the interested party must await acknowledgement of receipt of a declaration in order to commence the activity in question or for the latter to become lawful.
- (20a) The *notion of* overriding reasons relating to the public interest to which reference is made in certain provisions of this Directive *has been developed progressively* by the Court of Justice *in its case-law* in relation to Articles 43 and 49 of the Treaty *and may continue to evolve. The notion as recognised in the case law of the Court of Justice covers at least the following grounds: public policy, public security and public health, within the meaning of Articles 46 and 55 of the Treaty; the maintenance of order in society; social policy objectives; the protection of the recipients of services; consumer protection; the protection of workers, including the social protection of worker; the preservation of the financial balance of the social security system; the prevention of fraud; the prevention of unfair competition; the protection of the environment and the urban environment, including town and country planning; the protection of creditors; safeguarding the sound administration of justice; road safety; the protection of intellectual property; cultural policy objectives, including safeguarding the freedom of expression of various elements, in particular social, cultural, religious and philosophical values of society; the maintenance of press*

*diversity and the promotion of the national language; the preservation of national historical and artistic heritage and veterinary policy.*

*[Recital 21 deleted]*

- (21a) *The rules relating to administrative procedures do not aim at harmonising administrative procedures but at removing overly burdensome authorisation schemes, procedures and formalities that hinder the freedom of establishment and the creation of new services undertakings resulting therefrom.*
- (22) One of the fundamental difficulties faced, in particular by SMEs, in accessing service activities and exercising them is the complexity, length and legal uncertainty of administrative procedures. For this reason, following the example of certain modernising and good administrative practice initiatives undertaken at Community and national level, it is necessary to establish principles of administrative simplification, *inter alia* through the introduction, coordinated at Community level, of a system of ***points of single contact***, limitation of the obligation of prior authorisation to cases in which it is essential and the introduction of the principle of tacit authorisation by the competent authorities after a certain period of time elapsed. Such modernising action, while maintaining the requirements on transparency and the updating of information relating to operators, is intended to eliminate the delays, costs and dissuasive effects which arise, for example, from unnecessary or excessively complex and burdensome procedures, the duplication of procedures, the red tape involved in submitting documents, the use of ***arbitrary*** powers by the competent authorities, indeterminate or excessively long periods before a response is given, the limited duration of validity of authorisations granted and disproportionate fees and penalties. Such practices have particularly significant dissuasive effects on providers wishing to develop their activities in other Member States and require coordinated modernisation within an enlarged internal market of twenty-five Member States.
- (22a) *Member States should introduce, where appropriate, forms harmonised at Community level, as established by the Commission, which will serve as an equivalent to certificates, attestations or any other document in relation to establishment.*
- (22b) *In order to examine the need for simplifying procedures and formalities Member States may in particular take into account their necessity, number, possible duplication, cost, clarity, accessibility as well as the delay and practical difficulties that they could give rise to for the service provider concerned.*
- (23) In order to facilitate access to service activities and the exercise thereof in the internal market, it is necessary to establish an objective, common to all Member States, of administrative simplification and to lay down provisions concerning, *inter alia*, ***points of single contact***, the right to information, procedures by electronic means and the establishment of a framework for authorisation schemes. Other measures adopted at national level to meet that objective may involve reduction of the number of procedures and formalities applicable to service activities and the restriction of such procedures and formalities to those which are essential in order to achieve a general interest objective and which do not duplicate each other in terms of content or purpose.

- (24) With the aim of administrative simplification, general formal requirements, such as *presentation of original documents, certified copies or a certified translation, should not be imposed, except where objectively justified by an overriding reason relating to the public interest, such as the protection of workers, public health, the protection of the environment or the protection of consumers.* It is also necessary to ensure that an authorisation normally permits access to, or exercise of, a service activity throughout the national territory, unless a new authorisation for each establishment, for example for each new hypermarket, *or an authorisation that is restricted to a specific part of the national territory* is objectively justified by an overriding reason relating to the public interest.
- (25) It is appropriate to provide for *points of single contact* in order to ensure that each provider has a single point at which he can complete all procedures and formalities. The number of *points of single contact* per Member State may vary according to regional or local competencies or according to the activities concerned. The creation of *points of single contact* does not interfere with the allocation of functions among competent authorities within each national system. Where several authorities at regional or local level are competent, one of them may assume the role of *point of single contact* and coordinator. *Points of single contact* may be set up not only by administrative authorities but also by chambers of commerce or crafts, or by the professional organisations or private bodies to which a Member State decides to entrust that function. *Points of single contact* have an important role to play in providing assistance to providers either as the authority directly competent to issue the documents necessary to access a service activity or as an intermediary between the provider and the authorities which are directly competent. In its Recommendation of 22 April 1997 on improving and simplifying the business environment for business start-ups<sup>19</sup>, the Commission was already encouraging Member States to introduce points of contact to simplify formalities.
- (25a) *The fee which may be charged by points of single contact should be proportionate to the cost of procedures and formalities with which they deal. This does not prevent Member States to entrust the points of single contact with the collection of other administrative fees such as the fee of supervisory bodies.*
- (25b) *Providers and recipients of services must have easy access to certain types of information. This should include in particular information on procedures and formalities, contact details of the competent authorities, conditions for access to public registers and data bases and information concerning available remedies and the contact details of associations and organisations from which providers or recipients can obtain practical assistance. This information must be easily accessible, i.e. it should be available to the public easily and without obstacles. This information should be provided in a clear and unambiguous manner.*
- (25c) *The obligation for Member States to ensure that relevant information is easily accessible to providers and recipients can be fulfilled by making this information accessible through a website. The obligation for competent authorities to assist providers and recipients does not include the provision of legal advice in individual cases. Nevertheless, general information on the way in which requirements are*

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<sup>19</sup> OJ L 145, 5.6.1997, p. 29.

*usually interpreted or applied should be given. The way in which information is provided to providers and recipients is for each Member State to determine within the framework of the Directive. Issues such as liability for providing incorrect or misleading information are for Member States to determine.*

- (26) The setting up, in the reasonably near future, of electronic means of completing procedures and formalities will be vital for administrative simplification in the field of service activities, for the benefit of providers, recipients and competent authorities. In order to meet that obligation as to results, national laws and other rules applicable to services may need to be adapted. ***This obligation does not prevent Member States from providing other means of completing such procedures and formalities, in addition to electronic means.*** The fact that it must be possible to complete those procedures and formalities at a distance means in particular that Member States must ensure that they may be completed across borders. The obligation as to results does not cover procedures or formalities which by their very nature are impossible to complete at a distance. ***Furthermore, this does not interfere with Member States' legislation on the use of languages.***
- (27) The possibility of gaining access to a service activity may be made subject to authorisation by the competent authorities only if that decision satisfies the criteria of non-discrimination, necessity and proportionality. That means, in particular, that authorisation schemes should be permissible only where an *a posteriori* inspection would not be effective because of the impossibility of ascertaining the defects of the services concerned *a posteriori*, due account being taken of the risks and dangers which could arise in the absence of a prior inspection. However, the provision to that effect made by this Directive cannot be relied upon in order to justify authorisation schemes which are prohibited by other Community instruments such as Directive 1999/93/EC of the European Parliament and the Council of 13 December 1999 on a Community framework for electronic signatures<sup>20</sup>, or Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market ('Directive on electronic commerce')<sup>21</sup>. The results of the process of mutual evaluation will make it possible to determine, at Community level, the types of activity for which authorisation schemes should be eliminated.
- (27a) ***This Directive is without prejudice to the possibility for Member States to withdraw authorisations after they have been issued, if the conditions for the granting of the authorisation are no longer fulfilled.***
- (27b) ***According to the case law of the Court of Justice, public health, consumer protection, animal health and the protection of the urban environment constitute overriding reasons relating to the public interest. Such overriding reasons may justify the application of authorisation schemes and other restrictions applicable to social services. However, no such authorisation scheme or restriction may discriminate on grounds of nationality. Further, the principles of necessity and proportionality must always be respected.***

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<sup>20</sup> OJ L 13, 19.1.2000, p. 12.

<sup>21</sup> OJ L 178, 17.7.2000, p. 1.

- (27c) *The provisions of this Directive relating to authorisation schemes should concern cases where the access to or exercise of a service activity by economic operators requires a decision by a competent authority. This concerns neither decisions by competent authorities to set up a public or private entity for the provision of a particular service nor the conclusion of contracts by competent authorities for the provision of a particular service which is governed by rules on public procurement.*
- (27d) *In order to facilitate access to and exercise of service activities, it is important to evaluate and report on authorisation schemes and their justification. This reporting obligation concerns only the existence of authorisation schemes and not the criteria and conditions for the granting of an authorisation.*
- (27e) *The authorisation should normally enable the provider to have access to the service activity, or to exercise that activity, throughout the national territory, except if a territorial limit is justified by an overriding reason relating to the public interest. For example, environmental protection may justify the requirement to obtain an individual authorisation for each installation on the national territory. This provision does not affect regional or local competences for the granting of authorisations within the Member States.*
- (27f) *This Directive, and in particular the provisions concerning authorisation schemes and the territorial scope of an authorisation, do not interfere with the division of regional or local competences within the Member States, including regional and local self-government and the use of official languages.*
- (27g) *The provision relating to the non duplication of conditions for the granting of authorisation does not prevent Member States from applying their own conditions which are specified in the authorisation scheme. It only requires that competent authorities, when considering whether these conditions are met by the applicant, take into account the equivalent conditions which have already been satisfied by the applicant in another Member State. This provision does not require the application of the conditions for the granting of authorisation provided in the authorisation scheme of another Member State.*
- (28) In cases where the number of authorisations available for an activity is limited because of scarcity of natural resources or technical capacity, as may be the position, for example, with regard to the award of analogue radio frequencies or the exploitation of hydro-electric plant, a procedure for selection from among several potential candidates must be adopted, with the aim of developing through open competition the quality and conditions for supply of services available to users. Such a procedure must provide guarantees of transparency and impartiality and the authorisation thus granted must not have an excessive duration, or be subject to automatic renewal, or confer any advantage on the successful provider. In particular, the duration of the authorisation granted must be fixed in such a way that it does not restrict or limit free competition beyond what is necessary to enable the provider to recoup the cost of investment and to make a fair return on the capital invested. ***This provision does not prevent Member States from limiting the number of authorisations*** for reasons other than scarcity of natural resources or technical capacity. ***These authorisations*** remain in any case subject to the other provisions of this Directive relating to authorisation schemes.

**(28a) This Directive provides that failing a response within a time period, authorisation shall be deemed to have been granted. However, different arrangements may be put in place in respect of certain activities, where objectively justified by overriding reasons relating to public interest.**

**[Recital 29 moved]**

(30) In order to establish a genuine internal market for services, it is necessary to abolish any restrictions on the freedom of establishment and the free movement of services which are still enshrined in the laws of certain Member States and which are incompatible with Articles 43 and 49 of the Treaty respectively. The restrictions to be prohibited particularly affect the internal market for services and should be systematically dismantled as soon as possible.

(31) The Court of Justice has consistently held that the freedom of establishment is predicated, in particular, upon the principle of equal treatment, which entails the prohibition not only of any discrimination on grounds of nationality but also of any indirect discrimination based on other grounds but capable of producing the same result. Thus, access to a service activity or the exercise thereof in a Member State, either as a principal or secondary activity, may not be made subject to criteria such as place of establishment, residence, domicile or principal provision of the service activity. ***In certain cases, however, overriding reasons relating to the public interest may justify compelling a service provider, or one of his employees or a representative, to be present during the exercise of his activity.*** Similarly, a Member State may not restrict the legal capacity or the right to bring legal proceedings of companies incorporated in accordance with the law of another Member State on whose territory they have their primary establishment. Moreover, a Member State may not confer any advantages on providers having a particular national or local socio-economic link; nor may it restrict, on grounds of place of establishment, the provider's freedom to acquire, exploit or dispose of rights and goods or to access different forms of credit or accommodation in so far as those choices are useful for access to his activity or for the effective exercise thereof.

(32) The prohibition of economic tests as a prerequisite for the grant of authorisation covers economic tests as such, but not requirements which are objectively justified by overriding reasons relating to the public interest, such as protection of the urban environment, ***social policy and public health objectives***. That prohibition does not affect the exercise of the powers of the authorities responsible for applying competition law.

**(32a) With respect to financial guarantees or insurance, the prohibition of requirements only concerns the obligation that the requested financial guarantees or insurance must be obtained from a financial institution established in the Member State concerned.**

**(32b) With respect to pre-registration, the prohibition of requirements only concerns the obligation that the provider, prior to the establishment, be pre-registered for a given period in a register held in the Member State concerned.**

(33) In order to coordinate the modernisation of national rules and regulations in a manner consistent with the requirements of the internal market, it is necessary to evaluate

certain non-discriminatory national requirements which, by their very nature, could severely restrict or even prevent access to an activity or the exercise thereof under the freedom of establishment. *This evaluation process is limited to the compatibility of these requirements with the criteria already established by the Court of Justice on the freedom of establishment. It does not concern the application of Community competition law. Where such requirements are discriminatory or not objectively justified by an overriding reason relating to the public interest or where they are disproportionate, they must be abolished or amended. The outcome of this assessment will be different according to the nature of the activities and the public interest concerned. In particular, according to the jurisprudence of the Court of Justice, such requirements could be fully justified when they pursue social policy objectives.*

- (33a) *For the purposes of this Directive, services may only be considered as Services of General Economic Interest in this directive and without prejudice to Article 16 of the EC Treaty, if they are provided in application of a special task of public interest entrusted to the provider by the Member State concerned. This assignment must be made by way of one or more acts, the form of which is determined by each Member State, and must specify the precise nature of the special task.*
- (33b) *The mutual evaluation process provided for in this Directive does not affect the freedom of Member States to set in their legislation a high level of protection of public interests, in particular of social policy objectives. Furthermore, the mutual evaluation process has to take fully into account the specificity of services of general economic interest and of the particular tasks assigned to them. These may justify certain restrictions on the freedom of establishment, in particular where such restrictions pursue the protection of public health and social policy objectives and where they satisfy the conditions in Article 15(3)(a) to (c). For example, concerning the obligation to take a specific legal form in order to exercise certain services in the social field, the Court of Justice has already recognised that it may be justified to submit the service provider to a requirement to be non-profit making.*
- (34) The restrictions to be examined include national rules which, on grounds other than those relating to professional qualifications, reserve access to *certain* activities to particular providers. *These restrictions also include obligations on a provider to take a specific legal form, in particular to be a legal person, to be a company with individual ownership, to be a non-profit making organisation or a company owned exclusively by natural persons, and requirements which relate to the shareholding of a company, in particular obligations to hold a minimum amount of capital for certain service activities or to have a specific qualification in order to hold capital in, or to manage certain companies. The evaluation of the compatibility of fixed minimum and/or maximum tariffs with the freedom of establishment concerns only tariffs imposed by competent authorities specifically for the provision of certain services and not, for example, general rules on price determination such as for the renting of houses.*
- (34a) The mutual evaluation process means that during the transposition period, Member States will first have to conduct a "screening" of their legislation in order to ascertain whether above mentioned requirements exist in their legal systems and, at the latest by the end of the transposition period, Member States must draw up a report on the results of their screening. Each report will be submitted to all other Member States and interested parties. Member States will then have six months in which to submit their

observations on these reports. At the latest by 31 December 2008, the Commission will draw up a summary report, accompanied where appropriate by proposals for further initiatives. If necessary the Commission, in cooperation with the Member States, will assist the Member State in order to design a common methodology.

***[Recital 35 deleted]***

- (36) The fact that this Directive specifies a number of requirements to be abolished or evaluated by the Member States during the transposition period is without prejudice to any infringement proceedings against a Member State for failure to fulfil its obligations under Articles 43 or 49 of the Treaty.
- (36a) This Directive does not concern the application of Articles 28 to 30 of the Treaty relating to the free movement of goods. The restrictions prohibited pursuant to the ***provision on the freedom to provide services*** cover the requirements applicable to access to service activities or to the exercise thereof and not those applicable to goods as such.
- (36b) Where an operator travels to another Member State to exercise a service activity there, a distinction should be made between situations covered by the freedom of establishment and those covered, due to the temporary nature of the activities concerned, by the free movement of services. ***As regards the distinction between the application of the freedom of establishment and the free movement of services respectively according to the case-law of the Court of Justice the key element is the question whether the economic operator is established or not in the Member State where he provides the service concerned. If he is established in the Member State where he provides his services, he comes under the scope of application of the freedom of establishment. If by contrast the economic operator is not established in the Member State where the service is provided, his activities are covered by the free movement of services.*** The Court of Justice has consistently held that the temporary nature of the activities in question must be determined in the light not only of the duration of the provision of the service, but also of its regularity, periodical nature or continuity. In any case, the fact that the activity is temporary does not mean that the service provider may not equip himself with some forms of infrastructure in the host Member State, such as an office, chambers or consulting rooms, in so far as such infrastructure is necessary for the purposes of providing the service in question.
- (37) In order to secure effective implementation of the free movement of services and to ensure that recipients and providers can benefit from and supply services throughout the Community regardless of frontiers, it is necessary ***to clarify to which extent requirements of the Member State where the service is provided can be imposed. It is indispensable to provide that the provision on the freedom to provide services does not prevent the Member State where the service is provided from imposing, in compliance with the principles set out in Article 16(1)(a) to (c), its specific requirements for reasons of public policy or public security or for the protection of public health or the environment.***
- (37a) ***The Court of Justice has consistently held that a Member State retains the right to take measures in order to prevent service providers from abusively taking advantage of the Internal Market principles. Abuse by a provider must be established on a case by case basis.***



*[Recital 38 deleted]*

*[Recital 39 deleted]*

- (39a) *It is necessary to ensure that providers are able to take equipment which is integral to the provision of their service with them when they travel to provide services in another Member State. In particular, it is important to avoid cases in which the service could not be provided without the equipment, situations in which service providers incur additional costs, for example, by hiring or purchasing different equipment to that which they habitually use or by needing to change significantly the way they habitually carry out their activity.*
- (39b) *The concept of equipment does not refer to physical objects which are either supplied by the provider to the client or become part of a physical object as a result of the service activity such as building materials or spare parts or which are consumed or left in situ in the course of the service provisions such as combustible fuels, explosives, fireworks, pesticides, poisons or medicines.*
- (40) It is necessary to provide that the *provision on the freedom to provide services* may be departed from only in the areas covered by derogations. Those derogations are necessary in order to take into account the level of integration of the internal market or certain Community instruments relating to services pursuant to which a provider is subject to the application of a law other than that of the Member State of establishment. Moreover, by way of exception, measures against a given provider may also be adopted in certain individual cases and under certain strict procedural and substantive conditions. In addition, any restriction of the free *movement of* services should be permitted, by way of exception, only if it is consistent with fundamental rights which, as the Court of Justice has consistently held, form an integral part of the general principles of law enshrined in the Community legal order.
- (40a) *The derogation from the provision on the freedom to provide services concerning postal services covers both activities reserved to the universal service provider and other postal services.*
- (40b) *The derogation from the provision on the freedom to provide services relating to the judicial recovery of debts and the reference to a possible future harmonisation instrument concerns only the access to and the exercise of activities which consist, notably, in bringing actions before a Court relating to the recovery of debts.*

*[Recital 41 moved]*

- (41a) *This Directive should not affect terms and conditions of employment which, pursuant to Directive 96/71/EC, apply to workers posted to provide a service in the territory of another Member State. In such cases, Directive 96/71/EC stipulates that service providers have to comply with terms and conditions of employment in a listed number of areas applicable in the Member State where the service is provided. These are: maximum work periods and minimum rest periods, minimum paid annual holidays, minimum rates of pay, including overtime rates, the conditions of hiring out of workers, in particular the protection of workers hired out by temporary employment undertakings, health, safety and hygiene at work, protective measures with regard to the terms and conditions of employment of pregnant women or*

*women who have recently given birth and of children and young people and equality of treatment between men and women and other provisions on non-discrimination. This does not only concern terms and conditions of employment which are laid down by law but also those laid down in collective agreements or arbitration awards that are officially declared or de facto universally applicable within the meaning of Directive 96/71/EC. Moreover, this Directive should not prevent Member States from applying terms and conditions of employment on matters other than those listed in Article 3 paragraph 1 of Directive 96/71/EC on the grounds of public policy provisions.*

- (41b) *This Directive should neither affect terms and conditions of employment in cases where the worker employed for the provision of a cross-border service is recruited in the Member State where the service is provided. Furthermore, this Directive does not affect the right for the Member States where the service is provided to determine the existence of an employment relationship and the distinction between self-employed persons and employed persons, including "false self-employed persons". In that respect, according to the case law of the Court of Justice, the essential characteristic of an employment relationship within the meaning of Article 39 of the Treaty is the fact that for a certain period of time a person provides services for and under the direction of another person in return for which he receives remuneration; any activity which a person performs outside a relationship of subordination must be classified as an activity pursued in a self-employed capacity for the purposes of Articles 43 and 49 of the Treaty.*
- (41c) *The provision on the freedom to provide services does not apply in cases where, in conformity with Community law, in a Member State, an activity is reserved to a particular profession, for example requirements which reserve legal advice to lawyers.*

*[Recital 42 deleted]*

*[Recital 43 deleted]*

- (44) *The derogation from the provision on the freedom to provide services of matters relating to the registration of vehicles leased in a Member State other than that in which they are used follows from the case-law of the Court of Justice, which has recognised that a Member State may impose such an obligation, in accordance with proportionate conditions, in the case of vehicles used on its territory. That exclusion does not cover occasional or temporary rental.*
- (45) *Contractual relations between the service provider and the client as well as between an employer and employee should not be subject to this Directive. The determination of the applicable law regarding the contractual or the extra-contractual obligations of the service provider shall be determined by the rules of private international law.*

*[Recital 46 deleted]*

- (47) *It is necessary to allow Member States the possibility, exceptionally and on a case-by-case basis, of taking measures which derogate from the provision on the freedom to provide services in respect of a provider established in another Member*

State, on **grounds** of the safety of services. It should be possible to take such measures only in the absence of harmonisation at Community level.

- (48) Restrictions on the free movement of services, contrary to this Directive, may arise not only from measures applied to providers, but also from the many barriers to the use of services by recipients, especially consumers. This Directive mentions, by way of illustration, certain types of restriction applied to a recipient wishing to use a service performed by a provider established in another Member State. ***Such discriminatory restrictions include national rules according to which financial assistance concerning the costs of language or vocational training are limited to cases where such training is carried out on the territory of the Member State concerned. This also includes cases where recipients of a service are under an obligation to obtain authorisation from or to make a declaration to their competent authorities in order to receive a service from a provider established in another Member State. This does not concern general authorisation schemes which also apply to the use of a service supplied by a provider established in the Member State of the recipient.***
- (48a) ***The concept of financial assistance provided for the use of a particular service does not apply to systems of aids granted by Member States, in particular in the social field or in the cultural sector, which are covered by Community rules on competition or to general financial assistance not linked to the use of a particular service, for example grants or loans to students.***
- (49) In accordance with the Treaty rules on the free movement of services, as interpreted by the Court of Justice, discrimination on grounds of the recipient's nationality or national or local residence is prohibited. Such discrimination could take the form of an obligation, imposed only on nationals of another Member State, to supply original documents, certified copies, a certificate of nationality or official translations of documents in order to benefit from a service or from more advantageous terms or prices. However, the prohibition of discriminatory requirements does not preclude the reservation of advantages, especially as regards tariffs, to certain recipients, if such reservation is based on legitimate, objective criteria.
- (50) ***Whilst this Directive is not intended to harmonise artificially prices across the European Union, in particular where market conditions vary from country to country, if an internal area without frontiers is to be effectively achieved, the principle of non-discrimination imposes that*** Community citizens must neither be prevented from benefiting from a service which is technically accessible on the market, nor be made subject to different conditions and tariffs by reason of their nationality or place of residence. The persistence of such discrimination with respect to the recipients of services highlights, for the Community citizen, the absence of a genuine internal market in services and, in a more general sense, compromises the integration of the peoples of Europe. The principle of non-discrimination within the internal market means that access by a recipient, and especially by a consumer, to a service on offer to the public may not be denied or hampered by application of a criterion, included in general conditions made available to the public, relating to the recipient's nationality or place of residence. It does not follow that it will be unlawful discrimination if provision were made in such general conditions for different tariffs and conditions to apply to the provision of a service, where those tariffs, prices, and conditions are justified for objective reasons ***that can vary from country to country***, such as additional costs effectively incurred because of the distance involved or the technical

characteristics of the provision of the service, or different market conditions, *such as higher or lower demand influenced by seasonality, different vacation periods in the Member States and pricing by different competitors*, or extra risks linked to rules differing from those of the Member State of establishment.

*(50a) The way in which information is provided to recipients in their Member State of residence is for that Member State to determine within the framework of this Directive. Issues such as liability for providing incorrect or misleading information are for Member States to determine.*

*[Recital 51 deleted]*

*[Recital 52 deleted]*

*[Recital 53 deleted]*

*[Recital 54 deleted]*

*[Recital 55 deleted]*

*[Recital 56 deleted]*

*[Recital 57 deleted]*

*[Recital 58 deleted]*

*[Recital 59 deleted]*

*[Recital 60 deleted]*

*[Recital 61 deleted]*

(62) It is appropriate to provide that, as one of the means by which the provider may make the information which he is obliged to supply easily accessible to the recipient, he is to supply his electronic address, including that of his website. Furthermore, the obligation to present certain information in the provider's information documents presenting his services in detail should not cover commercial communications of a general nature, such as advertising, but rather documents giving a detailed description of the services proposed, including documents on a website.

(63) Any operator providing services involving a *direct and* particular health, safety or financial risk for the recipient *or a third person* should *in principle* be covered by appropriate professional *liability* insurance, or by another form of guarantee which is equivalent or comparable, which means, in particular, that *normally* he should have adequate insurance coverage for services provided in one or more Member States other than the Member State of establishment.

*(63a) The insurance or guarantee should be appropriate to the nature and extent of the risk. That means that service providers should have cross-border coverage only if they actually provide services in other Member States. Member States should not lay down more detailed rules concerning the insurance coverage and fix for example minimum thresholds for the insurance sum or limits on exclusions from*

*the insurance coverage. Service providers and insurance companies should maintain the necessary flexibility to negotiate insurance policies precisely targeted to the nature and scope of the risk. Furthermore, it is not necessary that an obligation of appropriate insurance is laid down by law. It is sufficient if an insurance obligation is part of the deontological rules laid down by professional bodies. Finally, there should be no obligation for insurance companies to provide insurance cover.*

- (64) It is necessary to put an end to the total prohibitions of commercial communications by the regulated professions, not by removing bans on the content of a commercial communication but rather those which, in a general way and for a given profession, forbid one or more forms of commercial communication, such as a ban on all advertising in one or more given media. As regards the content and methods of commercial communication, it is necessary to encourage professionals to draw up, in accordance with Community law, codes of conduct at Community level.
- (64a) *It is necessary and in the interest of recipients, in particular consumers, to ensure that service providers have the possibility to offer multidisciplinary services and that restrictions in this regard be limited to what is necessary to ensure the impartiality and independence and the integrity of regulated professions. This does not affect restrictions or prohibitions to carry out particular activities which aim at ensuring independence in cases in which a Member State entrusts a service provider with a particular task notably in the area of urban development.*
- (65) In order to increase transparency and promote assessments based on comparable criteria with regard to the quality of the services offered and supplied to recipients, it is important that information on the meaning of quality labels and other distinctive marks relating to these services be easily accessible. That obligation of transparency is particularly important in areas such as tourism, especially the hotel business, in which the use of a system of classification is widespread. Moreover, it is appropriate to examine the extent to which European standardisation could facilitate compatibility and quality of services. European standards are drawn up by the European standards-setting bodies, the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (CENELEC) and the European Telecommunications Standards Institute (ETSI). Where appropriate, the Commission may, in accordance with the procedures laid down in Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998<sup>22</sup> laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services, issue a mandate for the drawing up of specific European standards
- (65a) *In order to solve potential problems with compliance with a judicial decision, it is appropriate to provide that Member States recognise equivalent guarantees lodged by institutions or bodies such as banks, insurance providers, or other financial services providers established in another Member State.*
- (66) The development of a network of Member State consumer protection authorities, which is the subject of Regulation (EC) No 2006/2004 of the European Parliament

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<sup>22</sup> OJ L 204, 21.7.1998, p. 37. Directive as last amended by the Act of Accession 2003.

*and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws*<sup>23</sup>, complements the cooperation provided for in this Directive. The application of consumer protection legislation in cross-border cases, in particular with regard to new marketing and selling practices, as well as the need to remove certain specific obstacles to cooperation in this field, necessitates a higher degree of cooperation between Member States. In particular, it is necessary in this area to ensure that Member States require the cessation of illegal practices by operators in their territory who target consumers in another Member State.

- (66a) *Administrative cooperation is essential to make the internal market in services function properly. Lack of cooperation between Member States results in proliferation of rules applicable to service providers or duplication of controls for cross-border activities, and can also be used by rogue traders to avoid supervision or to circumvent applicable national rules on services. It is, therefore, essential to provide for clear, legally binding obligations for Member States to cooperate effectively.*
- (66b) *For the purposes of the Chapter on administrative co-operation, “supervision” refers to activities such as monitoring and fact finding, problem solving, enforcement and imposition of sanctions, and subsequent follow-up activities.*
- (66c) *In normal circumstances mutual assistance shall take place directly between competent authorities. The points of contact designated by Member States shall be required to facilitate this process only in the event of difficulties being encountered, for instance if assistance is required to identify the relevant competent authority.*
- (66d) *Certain obligations of mutual assistance apply to all matters covered by this Directive, including those relating to cases where a service provider establishes in another Member State. Other obligations of mutual assistance apply only in cases of cross-border provision of services, where the provision on the freedom to provide services applies. A further set of obligations apply in all cases of cross-border provision of services, including areas not covered by the provision on freedom to provide services. Cross-border provision of services includes cases where services are provided at a distance and where the recipient travels to the Member State of establishment of the service provider in order to receive services.*
- (66e) In cases where a provider moves temporarily to a Member State other than the Member State of *establishment*, it is necessary to provide for mutual assistance between those two States so that the former can carry out checks, inspections and enquiries at the request of the Member State of *establishment* or carry out such checks on its own initiative if these are merely factual checks.
- (66ea) *It should not be possible for Member States to circumvent the rules laid down in this Directive, including the provision on the freedom to provide services, by conducting checks, inspections or investigations which are discriminatory or disproportionate.*

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<sup>23</sup> OJ L 364, 9.12.2004, p. 1.

- (66f) *The provisions of this Directive concerning the exchange of information regarding the good repute of providers do not pre-empt initiatives in the area of police and judicial cooperation in criminal matters, in particular on the exchange of information between law enforcement authorities and criminal records of the Member States.***
- (66g) *Cooperation between Member States requires a well-functioning electronic information system in order to allow competent authorities easily to identify their relevant interlocutors in other Member States and to communicate in an efficient way.***
- (67) *It is necessary to provide that the Member States, in cooperation with the Commission, are to encourage interested parties to draw up codes of conduct at Community level aimed in particular at promoting the quality of services and taking into account the specific nature of each profession. Those codes of conduct should comply with Community law, especially competition law. They may not be incompatible with legally binding rules governing professional ethics and conduct in the Member States.***
- (67a) *Member States should encourage the setting up of codes of conduct particularly by professional bodies, organisations and associations at Community level. These codes of conduct should include, as appropriate to the specific nature of each profession, rules for commercial communications relating to regulated professions, and rules of professional ethics and conduct of the regulated professions which aim in particular at ensuring independence, impartiality and professional secrecy. In addition, the conditions to which the activities of estate agents are subject should be included in such codes of conduct. Member States should take accompanying measures to encourage professional bodies, organisations and associations to implement at national level the codes of conduct adopted at Community level.***
- (67b) *Codes of conduct at Community level are intended to set minimum standards of conduct and are complementary to Member States' legal requirements. They do not preclude Member States, in accordance with Community law, from taking more stringent measures in law or national professional bodies from providing for greater protection in their national codes of conduct.***

***[Recital 68 deleted ]***

***[Recital 69 deleted]***

***[Recital 70 moved]***

***[Recital 71 moved]***

***[Recital 72 deleted]***

- (73) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>24</sup>,

HAVE ADOPTED THIS DIRECTIVE:

## CHAPTER I

### General provisions

#### *Article 1*

##### Subject-matter

1. This Directive establishes general provisions facilitating the exercise of the freedom of establishment for service providers and the free movement of services, ***while maintaining a high quality of services.***
2. ***This Directive does not deal with the liberalisation of services of general economic interest, reserved to public or private entities, nor with the privatisation of public entities providing services.***
3. ***This Directive does not deal with the abolition of monopolies providing services nor with aids granted by Member States which are covered by Community rules on competition.***

***This Directive does not affect the freedom of Member States to define, in conformity with Community law, what they consider to be services of general economic interest, how those services should be organised and financed, in compliance with the State Aid rules, and what specific obligations they should be subject to.***

4. ***This Directive does not affect measures taken at Community level, or at national level, in conformity with Community law, in order to protect or promote cultural or linguistic diversity or media pluralism.***
5. ***This Directive does not affect Member States' rules of criminal law.***
6. ***This Directive does not affect labour law, that is any legal or contractual provision concerning employment conditions, working conditions, including health and safety at work, and the relationship between employers and workers, which Member States apply in compliance with Community law. Equally this Directive does not affect the social security legislation of the Member States, as referred to in***

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<sup>24</sup> OJ L 184, 17.7.1999, p. 23.



*Article 4 of Regulation (EEC) No 1408/71 on the coordination of social security systems<sup>25</sup>.*

7. *This Directive does not affect the exercise of fundamental rights as recognised in the Member States and by the Charter of Fundamental Rights of the European Union, including the right to negotiate conclude and enforce collective agreements and to take industrial action.*

## *Article 2*

### **Scope**

1. This Directive shall apply to services supplied by providers established in a Member State.
2. This Directive shall not apply to the following activities:
  - (-a) services of general interest;*
  - (a) financial services, *such as banking, credit, insurance and re-insurance, occupational or personal pensions, securities, investment, funds, payment, investment advice, including the services listed in Annex I to Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions<sup>26</sup>;*
  - (b) electronic communications services and networks, and associated facilities and services, with respect to matters covered by Directives 2002/19/EC<sup>27</sup>, 2002/20/EC<sup>28</sup>, 2002/21/EC<sup>29</sup>, 2002/22/EC<sup>30</sup> and 2002/58/EC<sup>31</sup> of the European Parliament and of the Council ;
  - (c) transport services *and transport related services falling within the scope of title V of the EC Treaty;*
  - (ca) port services;*
  - (cb) services of temporary work agencies;*
  - (cc) healthcare services 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;*

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<sup>25</sup> OJ L 149, 5.7.1971, p. 2. Regulation as last amended by Regulation (EC) No 647/2005 (OJ L 117, 4.5.2005 p.1).

<sup>26</sup> *OJ L 126, 26.5.2000, p. 1, as last amended by Commission Directive 2004/69/EC (OJ L 125, 28.4.2004, p. 44).*

<sup>27</sup> OJ L 108, 24.4.2002, p. 7.

<sup>28</sup> OJ L 108, 24.4.2002, p. 21.

<sup>29</sup> OJ L 108, 24.4.2002, p. 33.

<sup>30</sup> OJ L 108, 24.4.2002, p. 51.

<sup>31</sup> OJ L 201, 31.7.2002, p. 37.

*(cd) audiovisual services, whatever their mode of production, distribution and transmission, including radio broadcasting and the cinema;*

*(ce) gambling activities which involve wagering a stake with pecuniary value in games of chance, including lotteries, gambling in casinos and betting transactions;*

*(cf) activities which are connected with the exercise of official authority as set out in Article 45 of the Treaty;*

*(cg) social services relating to social housing, childcare and support of families and persons in need;*

*(ch) private security services.*

3. This Directive does not apply to the field of taxation.

### *Article 3*

#### **Relationship with other provisions of Community law**

**1. *If the provisions of this Directive conflict with a provision of another Community act governing specific aspects of access to or exercise of a service activity in specific sectors or for specific professions, the provision of the other Community act shall prevail and shall apply to those specific sectors or professions. These include:***

***a) Directive 96/71/EC concerning the posting of workers in the framework of the provision of services<sup>32</sup>;***

***b) Council Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and members of their families moving within the Community<sup>33</sup>;***

***c) Directive 89/552/EEC concerning the pursuit of television broadcasting activities<sup>34</sup>;***

***d) Directive 2005/36/EC<sup>35</sup> concerning the recognition of professional qualifications;***

**2. *This Directive does not affect rules of private international law, in particular rules governing the law applicable to contractual and non contractual obligations. As a consequence, consumers will, in principle, benefit from the protection granted to them by the consumer protection rules laid down in the consumer legislation in force in his Member State.***

**3. Member States shall apply the provisions of this Directive in compliance with the rules of the Treaty on the right of establishment and the free movement of services.**

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<sup>32</sup> OJ L 18, 21.1.1997, p. 1.

<sup>33</sup> OJ L 149, 5.7.1971, p. 2, as last amended by Regulation (EC) 647/2005 (OJ L 117, 4.5.2005, p. 1).

<sup>34</sup> OJ L 298, 17.10.1998, p. 23, as last amended by Directive 97/36/EC (OJ L 202, 30.7.1997, p. 60).

<sup>35</sup> OJ L 255, 30.9.2005, p. 22.

## Article 4

### Definitions

For the purposes of this Directive, the following definitions shall apply:

- (1) "service" means any self-employed economic activity, *normally provided for remuneration*, as referred to in Article 50 of the Treaty;
- (2) "provider" means any natural person who is a national of a Member State, or any legal person, *as referred to in Article 48 of the Treaty, established in a Member State*, who offers or provides a service;
- (3) "recipient" means any natural *person who is a national of a Member State or who benefits from rights conferred upon him by Community acts*, or any legal person, *as referred to in Article 48 of the Treaty, established in a Member State* who, for professional or non-professional purposes, uses, or wishes to use, a service;
- (4) "Member State of *establishment*" means the Member State in whose territory the provider of the service concerned is established;
- (5) "establishment" means the actual pursuit of an economic activity, as referred to in Article 43 of the Treaty, *by the provider for an indefinite period and through a stable infrastructure from where the business of providing services is actually carried out*;
- (6) "authorisation scheme" means any procedure under which a provider or recipient is in effect required to take steps in order to obtain from a competent authority a formal decision, or an implied decision, concerning access to a service activity or to the exercise thereof;
- (7) "requirement" means any obligation, prohibition, condition or limit provided for in the laws, regulations or administrative provisions of the Member States or in consequence of case-law, administrative practice the rules of professional bodies, or the collective rules of professional associations or other professional organisations, adopted in the exercise of their legal autonomy; *rules laid down in collective agreements negotiated by the social partners shall not as such be seen as requirements within the meaning of this Directive*;
- (7a) *"overriding reasons relating to the public interest" means reasons recognised as such in the case law of the Court of Justice, including the following grounds: public policy; public security; public safety; public health; preserving the financial equilibrium of the social security system; the protection of consumers, recipients of services and workers; fairness of trade transactions; combating fraud; the protection of the environment and the urban environment; the health of animals; intellectual property; the conservation of the national historic and artistic heritage; social policy objectives and cultural policy objectives*;
- (8) "competent authority" means any body or authority which has a supervisory or regulatory role in a Member State in relation to service activities, including, in particular, administrative authorities, professional bodies, and those professional

associations or other professional organisations which, in the exercise of their legal autonomy, regulate in a collective manner access to service activities or the exercise thereof;

- (9) *deleted;*
- (10) *deleted;*
- (11) **"Member State where the service is provided"** means the Member State *where the service is supplied by a service provider established in another Member State;*
- (12) *deleted;*
- (13) "regulated profession" means a professional activity or a group of professional activities **as referred to in Article 3(1)(a) of Directive 2005/36/EC of the European Parliament and of the Council on the recognition of professional qualifications**<sup>36</sup>;
- (14) "commercial communication" means any form of communication designed to promote, directly or indirectly, the goods, services or image of an undertaking, organisation or person engaged in commercial, industrial or craft activity or practising a regulated profession. The following do not in themselves constitute commercial communications:
  - (a) information enabling direct access to the activity of the undertaking, organisation or person, including in particular a domain name or an electronic-mailing address;
  - (b) communications relating to the goods, services or image of the undertaking, organisation or person, compiled in an independent manner, particularly when provided for no financial consideration.

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<sup>36</sup> OJ L 255, 30.9.2005, p. 22.

## Chapter II

### Administrative simplification

#### Article 5

##### Simplification of procedures

1. Member States shall *examine and, if need be*, simplify the procedures and formalities applicable to access to a service activity and to the exercise thereof.

*1a. The Commission may introduce harmonised forms at Community level, in accordance with the procedure referred to in Article 42 (2). These forms shall be equivalent to certificates, attestations and any other documents required of a service provider.*

2. Where Member States require a provider or recipient to supply a certificate, attestation or any other document proving that a requirement has been satisfied, they shall accept any document from another Member State which serves an equivalent purpose or from which it is clear that the requirement in question has been satisfied. They may not require that a document from another Member State be produced in its original form, or as a certified copy or as a certified translation, save in the cases provided for in other Community instruments or where such a requirement is justified by an overriding reason relating to the public interest including public order and security.

*The first subparagraph shall not affect the right of Member States to require non-certified translations of documents in one of their official languages.*

3. Paragraph 2 shall not apply to the documents referred to in Article 50 of Directive 2005/36/EC<sup>37</sup> of the European Parliament and of the Council on the recognition of professional qualifications, in Articles 45(3), 46, 49 and 50 of Directive 2004/18/EC<sup>38</sup> of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, supply contracts and public service contracts, in Article 3(2) of Directive 98/5/EC<sup>39</sup> of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained; in Council Directive 68/151/EEC<sup>40</sup>, as amended by Directive 2003/58/EC<sup>41</sup> of the European Parliament and of the Council of 15 July 2003, as regards disclosure requirements in respect of certain types of companies; and in the Eleventh Council Directive 89/666/EEC<sup>42</sup> of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State.

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<sup>37</sup> OJ L 255, 30.9.2005, p. 22.

<sup>38</sup> OJ L 134, 30.4.2004, p. 114.

<sup>39</sup> OJ L 77, 14.3.1998, p. 36.

<sup>40</sup> OJ L 65, 14.3.68, p. 8.

<sup>41</sup> OJ L 221, 4.9.2003, p. 13.

<sup>42</sup> OJ L 395, 30.12.89, p. 36.

## Article 6

### Points of single contact

1. Member States shall *ensure* that, *by three years after the entry into force of this Directive* at the latest, it is possible for a service provider to complete the following procedures and formalities *in accordance with the provisions of this Chapter and Chapter II a* at contact points known as *points of single contact*:

- a) all procedures and formalities needed for access to his service activities, in particular, all necessary declarations, notifications or applications for authorisation from the competent authorities, including applications for inclusion in a register, a roll or a database, or for registration with a professional body or association;
- b) any applications for authorisation needed to exercise his service activities.

2. *The establishment of points of single contact shall be without prejudice to the allocation of functions and powers among the authorities within national systems.*

## Article 7

### Right to information

1. Member States shall ensure that the following information is easily accessible to providers and recipients through the *points of single contact*:

- (a) requirements applicable to providers established in their territory, in particular those requirements concerning the procedures and formalities to be completed in order to access and to exercise service activities;
- (b) the contact details of the competent authorities enabling the latter to be contacted directly, including the particulars of those authorities responsible for matters concerning the exercise of service activities;
- (c) the means of and conditions for accessing public registers and databases on providers and services;
- (d) the means of redress *which are generally* available in the event of dispute between the competent authorities and the provider or the recipient, or between a provider and a recipient or between providers;
- (e) the contact details of the associations or organisations, other than the competent authorities, from which providers or recipients may obtain practical assistance.

2. Member States shall ensure that it is possible for providers and recipients to receive, at their request, assistance from the competent authorities, consisting in information on the way in which requirements referred to in point (a) of paragraph 1 are generally interpreted and

applied. *Where appropriate, such advice shall include a simple step-by-step guide. The information shall be provided in plain and intelligible language.*

3. Member States shall ensure that the information and assistance referred to in paragraphs 1 and 2 are provided in a clear and unambiguous manner, that they are easily accessible at a distance and by electronic means, and that they are kept up-to-date.

4. Member States shall ensure that the *points of single contact* and the competent authorities respond as quickly as possible to any request for information or assistance as referred to in paragraphs 1 and 2 and, in cases where the request is faulty or unfounded, inform the applicant accordingly without delay.

5. Member States shall implement paragraphs 1 to 4 *by three years after the entry into force of this Directive at the latest.*

6. Member States and the Commission shall take accompanying measures in order to encourage *points of single contact* to make the information provided for in *this article* available in other Community languages *as far as this is compatible with their legislation on the use of languages.*

7. *The obligation for competent authorities to assist providers and recipients does not require these authorities to provide legal advice in individual cases but concerns only general information on the way in which requirements are usually interpreted or applied.*

#### Article 8

##### Procedures by electronic means

1. Member States shall ensure that, *by three years after the entry into force of this Directive at the latest*, all procedures and formalities relating to access to a service activity and to the exercise thereof may be easily completed, at a distance and by electronic means, at the relevant *point of single contact* and with the relevant competent authorities.

2. Paragraph 1 shall not apply to the inspection of premises on which the service is provided or of equipment used by the provider or to physical examination of the capability of the provider.

3. The Commission shall in accordance with the procedure referred to in Article 42(2) adopt detailed rules for the implementation of paragraph 1 with a view to facilitating the interoperability of information systems and use of procedures by electronic means between Member States.

# Chapter IIa

## Freedom of establishment for service providers

### SECTION 1

#### AUTHORISATIONS

##### *Article 9*

#### Authorisation schemes

1. Member States shall not make access to a service activity or the exercise thereof subject to an authorisation scheme unless the following conditions are satisfied:
  - (a) the authorisation scheme does not discriminate against the provider in question;
  - (b) the need for an authorisation scheme is justified by an overriding reason relating to the public interest;
  - (c) the objective pursued cannot be attained by means of a less restrictive measure, in particular because an *a posteriori* inspection would take place too late to be genuinely effective.
2. In the report referred to in Article 41, Member States shall identify their authorisation schemes and ***give reasons showing their compatibility*** with paragraph 1.
3. This section shall not apply to those aspects of authorisation schemes which are subject to harmonisation under other Community instruments.

##### *Article 10*

#### Conditions for the granting of authorisation

1. Authorisation schemes shall be based on criteria which preclude the competent authorities from exercising their power of assessment in an arbitrary or discretionary manner.
2. The criteria referred to in paragraph 1 must be:
  - (a) non-discriminatory;
  - (b) justified by an overriding reason relating to the public interest;
  - (c) proportionate to that public interest objective;
  - (d) precise and unambiguous;



- (e) objective;
- (f) made public in advance;

**(fa) transparent and accessible.**

3. The conditions for granting authorisation for a new establishment shall not duplicate requirements and controls which are equivalent or essentially comparable as regards their purpose, to which the provider is already subject in another Member State or in the same Member State. The contact points referred to in Article 33 and the provider shall assist the competent authority by providing any necessary information on those requirements. ***In assessing whether conditions are equivalent or essentially comparable, their effect and the effectiveness of their enforcement shall be considered, besides their objective and purpose.***

4. The authorisation shall enable the provider to have access to the service activity, or to exercise that activity, throughout the national territory, including by setting up agencies, subsidiaries, branches or offices, except where an authorisation for each individual establishment ***or a limitation of the authorisation to a certain part of the territory*** is justified by an overriding reason relating to the public interest.

5. The authorisation shall be granted as soon as it has been established, in the light of an appropriate examination, that the conditions for authorisation have been met.

6. Any refusal or other response from the competent authorities, including the refusal or withdrawal of an authorisation, shall be fully reasoned, in particular with regard to the provisions of this Article, and shall be open to challenge before the courts.

7. ***This Article shall not call into question the allocation of the competences, at local or regional level, of the Member States' authorities that grant such authorisation.***

## Article 11

### Duration of authorisation

1. An authorisation granted to a provider shall not be for a limited period, except in cases where:

- (a) the authorisation is being automatically renewed ***or is subject only to the continued fulfilment of requirements;***
- (b) the number of available authorisations is limited ***by an overriding reason relating to the public interest; or***
- (c) a limited authorisation period can be justified by an overriding reason relating to the public interest.

2. Paragraph 1 shall not concern the maximum period during which the provider must actually commence his activity after receiving authorisation.

3. Member States shall require a provider to inform the relevant *point of single contact* provided for in Article 6 *of the following changes*:

- *the creation of subsidiaries whose activities fall within the scope of the authorisation system;*
- *changes in his situation which result in the conditions for authorisation no longer being met.*

4. *This Article shall be without prejudice to the Member States' ability to revoke authorisations, when the conditions for authorisation are no longer met.*

## *Article 12*

### **Selection from among several candidates**

1. Where the number of authorisations available for a given activity is limited because of the scarcity of available natural resources or technical capacity, Member States shall apply a selection procedure to potential candidates which provides full guarantees of impartiality and transparency, including, in particular, adequate publicity about the launch of the procedure, *the conduct thereof and its completion.*

2. In the cases referred to in paragraph 1, authorisation must be granted for an appropriate limited period and may not be open to automatic renewal, nor confer any other advantage on the provider whose authorisation has just expired or on any person having any particular links with that provider.

3. *Subject to paragraph 1 and to Articles 9 and 10, Member States may take into account, in establishing the rules for the selection procedure, considerations of public health, social policy objectives, the health and safety of employees or self-employed persons, the protection of the environment, the preservation of the cultural heritage and other overriding reasons relating to the public interest, in conformity with Community law.*

## *Article 13*

### **Authorisation procedures**

1. Authorisation procedures and formalities shall be clear, made public in advance and such as to provide *the applicants* with a guarantee that their application will be dealt with objectively and impartially.

2. Authorisation procedures and formalities shall not be dissuasive and shall not unduly complicate or delay the provision of the service. They shall be easily accessible and any charges which *the applicants* may incur from their application shall be proportionate to the cost of the authorisation procedures in question *and shall not exceed the cost of the procedure.*

3. Authorisation procedures and formalities shall provide applicants with a guarantee that their application will be processed as quickly as possible and, in any event, within a reasonable period which is fixed and published in advance. ***The period shall run only from the time when all documentation has been submitted.***

4. Failing a response within the time period set in accordance with paragraph 3, authorisation shall be deemed to have been granted. Different arrangements may nevertheless be put in place in respect of certain specific activities, where justified by overriding reasons relating to the public interest.

5. All applications for authorisation shall be acknowledged as quickly as possible. The acknowledgement must specify the following:

- (a) the period for response referred to in paragraph 3;
- (b) the available means of redress;
- (c) a statement that in the absence of a response within the period specified, the authorisation shall be deemed to have been granted.

6. In the case of an incomplete application the applicant must be informed as quickly as possible of the need to supply any additional documentation, ***as well as any possible effects on the reasonable period of processing referred to in paragraph 3.***

***7. When a request is rejected because it fails to comply with the required procedures or formalities, the applicant must be informed of the rejection as quickly as possible.***

## SECTION 2

### REQUIREMENTS PROHIBITED OR SUBJECT TO EVALUATION

#### *Article 14*

#### **Prohibited requirements**

Member States shall not make access to or the exercise of a service activity in their territory subject to compliance with any of the following:

- (1) discriminatory requirements based directly or indirectly on nationality or, in the case of companies, the location of the registered office, including in particular:
  - (a) nationality requirements for the provider, his staff, persons holding the share capital or members of the provider's management or supervisory bodies;
  - (b) a requirement that the provider, his staff, persons holding the share capital or members of the provider's management or supervisory bodies be resident within the territory;

- (2) a prohibition on having an establishment in more than one Member State or on being entered in the registers or enrolled with professional bodies or associations of more than one Member State;
- (3) restrictions on the freedom of a provider to choose between a principal or a secondary establishment, in particular an obligation on the provider to have his principal establishment in their territory, or restrictions on the freedom to choose between establishment in the form of an agency, branch or subsidiary;
- (4) conditions of reciprocity with the Member State in which the provider already has an establishment, save in the case of conditions of reciprocity provided for in Community instruments concerning energy;
- (5) the case-by-case application of an economic test making the granting of authorisation subject to proof of the existence of an economic need or market demand, or an assessment of the potential or current economic effects of the activity, or an assessment of the appropriateness of the activity in relation to the economic planning objectives set by the competent authority; ***this prohibition does not concern planning requirements which do not pursue economic aims but serve overriding reasons relating to the public interest;***
- (6) the direct or indirect involvement of competing operators, including within consultative bodies, in the granting of authorisations or in the adoption of other decisions of the competent authorities, with the exception of professional bodies and associations or other organisations acting as the competent authority; ***this prohibition does not concern the consultation of organisations such as chambers of commerce or social partners on matters other than individual applications for authorisation;***
- (7) an obligation to provide or participate in a financial guarantee or to take out insurance from a service-provider or body established in their territory. ***This does not affect the possibility for Member States to require financial guarantees as such, nor does it affect requirements relating to the participation in a collective compensation fund, for instance for members of professional bodies or organisations;***
- (8) an obligation to have been ***pre-registered***, for a given period, in the registers held in their territory or to have ***previously*** exercised the activity for a given period in their territory.

#### *Article 15*

#### **Requirements to be evaluated**

1. Member States shall examine whether, under their legal system, any of the requirements listed in paragraph 2 are imposed and shall ensure that any such requirements are compatible with the conditions laid down in paragraph 3. Member States shall adapt their laws, regulations or administrative provisions so as to make them compatible with those conditions.

2. Member States shall examine whether their legal system makes access to a service activity or the exercise of it subject to compliance with any of the following non-discriminatory requirements:

- (a) quantitative or territorial restrictions in particular in the form of limits fixed according to population, or of a minimum geographical distance between service-providers;
- (b) an obligation on a provider to take a specific legal form;
- (c) requirements which relate to the shareholding of a company;
- (d) requirements, other than those concerning *matters covered by Directive 2005/36/EC<sup>43</sup> on the recognition of professional qualifications* or provided for in other Community instruments, which reserve access to the service activity in question to particular providers by virtue of the specific nature of the activity;
- (e) a ban on having more than one establishment in the territory of the same State;
- (f) requirements fixing a minimum number of employees;
- (g) fixed minimum and/or maximum tariffs with which the provider must comply;
- (h) *deleted*
- (i) *deleted*
- (j) an obligation on the provider to supply other specific services jointly with his service.

3. Member States shall verify that requirements referred to in paragraph 2 satisfy the following conditions:

- (a) non-discrimination: requirements must be neither directly nor indirectly discriminatory according to nationality or, with regard to companies, according to the location of the registered office;
- (b) necessity: requirements must be justified by an overriding reason relating to the public interest;
- (c) proportionality: requirements must be suitable for securing the attainment of the objective pursued; they must not go beyond what is necessary to attain that objective; and it must not be possible to replace those requirements with other, less restrictive measures which attain the same result.

**4. Rules provided for in paragraphs 1 to 3 only apply to legislation in the field of Services of General Economic Interest in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular task assigned to them.**

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<sup>43</sup> OJ L 255, 30.9.2005, p. 22.

5. In the mutual evaluation report provided for in Article 41, Member States shall specify the following:

- (a) the requirements that they intend to maintain and the reasons why they consider that those requirements comply with the conditions set out in paragraph 3 and 4;
- (b) the requirements which have been abolished or made less stringent.

6. From the date of entry into force of this Directive, Member States shall not introduce any new requirement of a kind listed in paragraph 2, unless that requirement satisfies the conditions laid down in paragraph 3 and the need for it arises from new circumstances.

7. Member States shall notify to the Commission any new laws, regulations or administrative provisions which set requirements as referred to in paragraph 5, together with the reasons for those requirements. The Commission shall communicate the provisions concerned to the other Member States. Such notification shall not prevent the adoption by Member States of the provisions in question.

Within a period of 3 months from the date of notification, the Commission shall examine the compatibility of any new requirements with Community law and, as the case may be, shall adopt a decision requesting the Member State in question to refrain from adopting them or to abolish them.

## **Chapter III**

### **Free movement of services**

#### **SECTION 1**

##### ***FREEDOM TO PROVIDE SERVICES AND RELATED DEROGATIONS***

#### ***Article 16***

##### **Freedom to provide services**

1. ***Member States shall respect the right of service providers to provide services in a Member State other than that in which they are established.***

***The Member State in which the service is provided shall ensure free access to and free exercise of a service activity within its territory.***

***Member States shall not make access to or exercise of a service activity in their territory subject to compliance with any requirements which do not respect the following principles:***

*(a) non-discrimination: the requirement may be neither directly nor indirectly discriminatory with regard to nationality or, in the case of legal persons, with regard to the Member State in which they are established,*

*(b) necessity: the requirement must be justified for reasons of public policy, public security, public health or the protection of the environment,*

*(c) proportionality: the requirement must be suitable for securing the attainment of the objective pursued, and must not go beyond what is necessary to attain that objective,*

*2. Member States may not restrict the freedom to provide services in the case of a provider established in another Member State by imposing any of the following requirements:*

*(a) an obligation on the provider to have an establishment in their territory;*

*(b) an obligation on the provider to obtain an authorisation from their competent authorities including entry in a register or registration with a professional body or association in their territory, except where provided for in this Directive or other instruments of Community law;*

*(c) a ban on the provider setting up a certain infrastructure in their territory, including an office or chambers, which the provider needs to supply the services in question;*

*(d) the application of specific contractual arrangements between the provider and the recipient which prevent or restrict service provision by the self-employed;*

*(e) an obligation on the provider to possess an identity document issued by its competent authorities specific to the exercise of a service activity;*

*(f) requirements, unless those necessary for health and safety at work, which affect the use of equipment and material which are an integral part of the service provided;*

*(g) restrictions on the freedom to provide the services referred to in Article 20.*

*3. The Member State to which the service provider moves shall not be prevented from imposing requirements with regard to the provision of a service activity, where they are justified for reasons of public policy, public security, public health or the protection of the environment, and in accordance with paragraph 1. Nor shall that Member State be prevented from applying, in conformity with Community law, its rules on employment conditions, including those laid down in collective agreements.*

*4. By five years after the entry into force of this Directive at the latest, the Commission shall, after consultation of the Member States and the social partners at Community level, submit to the European Parliament and the Council a report on the application of this article, in which it shall consider the need to propose harmonisation measures regarding service activities covered by this Directive.*

**Additional derogations from the freedom to provide services**

Article 16 shall not apply to:

- (1) *Services of general economic interest which are provided in another Member State, inter alia:*
  - (a) *in the postal sector, services covered by Directive 97/67/EC<sup>44</sup> of the European parliament and of the Council;*
  - (b) *in the electricity sector, services covered by Directive 2003/54/EC<sup>45</sup> of the European Parliament and of the Council;*
  - (c) *in the gas sector, services covered by Directive 2003/55/EC<sup>46</sup> of the European Parliament and of the Council;*
  - (d) *water distribution and supply services and waste water services;*
  - (e) *treatment of waste;*
- (2) *deleted;*
- (3) *deleted;*
- (4) *deleted;*
- (5) *matters covered by Directive 96/71/EC<sup>47</sup> of the European Parliament and the Council concerning the posting of workers in the framework of the provision of services;*
- (6) *matters covered by Directive 95/46/EC<sup>48</sup> of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data;*
- (7) *matters covered by Council Directive 77/249/EEC<sup>49</sup> to facilitate the effective exercise by lawyers of freedom to provide services;*
- (7a) *the activity of judicial recovery of debts;*
- (8) *matters covered by title II of Directive 2005/36/EC<sup>50</sup> on the recognition of professional qualifications, as well as requirements in the Member State where the service is provided which reserve an activity to a particular profession;*

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<sup>44</sup> OJ L 15, 21.1.1998, p. 14.

<sup>45</sup> OJ L 176, 15.7.2003, p. 37.

<sup>46</sup> OJ L 176, 15.7.2003, p. 57.

<sup>47</sup> OJ L 18, 21.1.1997, p. 1.

<sup>48</sup> OJ L 281, 28.11.1995, p. 1.

<sup>49</sup> OJ L 78, 26.3.1977, p. 17.



- (9) *matters covered by Regulation (EEC) n° 1408/71 on the coordination of social security systems*<sup>51</sup> ;
- (10) *as regards administrative formalities concerning the free movement of persons and their residence, matters covered by the provisions of Directive 2004/38/EC*<sup>52</sup> of the European Parliament and the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, that lay down the administrative formalities that beneficiaries must undertake before the competent authorities of the Member *State where the service is provided*;
- (11) *as regards third country nationals who move to another Member State in the context of the provision of a service the possibility for Member States to require visa or residence permits for third country nationals who are not covered by the mutual recognition regime provided for in Article 21 of the Convention implementing the Schengen Agreement or the possibility to oblige third country nationals to report to the competent authorities of the Member State in which the service is provided on or after their entry*;
- (12) the authorisation regime provided for in Articles 3 and 4 of Council Regulation (EEC) No 259/93 *of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community*<sup>53</sup>;
- (13) copyright, neighbouring rights, rights covered by Council Directive 87/54/EEC<sup>54</sup> and by Directive 96/9/EC of the European Parliament and of the Council<sup>55</sup> as well as industrial property rights;
- (14) acts requiring by law the involvement of a notary;
- (15) *matters covered by Directive .../.../EC on statutory audit of annual accounts and consolidated accounts and amending Council Directives 78/660/EEC*<sup>56</sup> *and 83/349/EEC*<sup>57</sup>;
- (16) *deleted*;
- (17) *deleted*;
- (18) *deleted*;
- (19) the registration of vehicles leased in another Member State;

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<sup>50</sup> OJ L 255, 30.9.2005, p. 22.

<sup>51</sup> OJ L 149, 5.7.1971, p. 2. Regulation as last amended by Regulation (EC) No 647/2005 (OJ L 117, 4.5.2005 p. 1).

<sup>52</sup> OJ L 158, 30.4.2004, p. 77.

<sup>53</sup> OJ L 30, 6.2.1993, p. 1. Regulation as last amended by Commission Regulation (EC) No 2557/2001 (OJ L 349, 31.12.2001, p. 1).

<sup>54</sup> OJ L 24, 27.1.1987, p. 36.

<sup>55</sup> OJ L 77, 27.3.1996, p. 20.

<sup>56</sup> OJ L 222, 14.8.1978, p. 11.

<sup>57</sup> OJ L 193, 18.7.1983, p. 1.

- (20) *provisions regarding contractual and non-contractual obligations, including the form of contracts, determined pursuant to the rules of private international law.*

*[Article 18 deleted]*

*Article 19*

***Case-by-case derogation***

1. By way of derogation from Article 16, and in exceptional circumstances only, a Member State may, in respect of a provider established in another Member State, take measures relating to the safety of services.

*[(a), (b) and (c) deleted]*

2. The measures provided for in paragraph 1 may be taken only if the mutual assistance procedure laid down in Article 37 is complied with and all the following conditions are fulfilled:

- (a) the national provisions in accordance with which the measure is taken have not been subject to Community harmonisation in the field referred to in paragraph 1;
- (b) the measures provide for a higher level of protection of the recipient than would be the case in a measure taken by the Member State of establishment in accordance with its national provisions;
- (c) the Member State of establishment has not taken any measures or has taken measures which are insufficient as compared with those referred to in Article 37(2);
- (d) the measures are proportionate.

3. Paragraphs 1 and 2 shall be without prejudice to provisions, laid down in Community instruments, which guarantee the freedom to provide services or which allow derogations therefrom.

## SECTION 2

### RIGHTS OF RECIPIENTS OF SERVICES

#### *Article 20*

##### **Prohibited restrictions**

Member States may not impose on a recipient requirements which restrict the use of a service supplied by a provider established in another Member State, in particular the following requirements:

- (a) an obligation to obtain authorisation from or to make a declaration to their competent authorities;
- (b) limits on the grant of financial assistance by reason of the fact that the provider is established in another Member State or by reason of the location of the place at which the service is provided;
- (c) requirements which subject the recipient to discriminatory or disproportionate *fees* on the equipment necessary to receive a service at a distance from another Member State.

#### *Article 21*

##### **Non-discrimination**

1. Member States shall ensure that the recipient is not made subject to discriminatory requirements based on his nationality or place of residence.
2. Member States shall ensure that the general conditions of access to a service, which are made available to the public at large by the provider, do not contain discriminatory provisions relating to the nationality or place of residence of the recipient, but without precluding the possibility of providing for differences in the conditions of access where those differences are directly justified by objective criteria.

#### *Article 22*

##### **Assistance for recipients**

1. Member States shall ensure that recipients can obtain *via the points of single contact*:
  - a) information on the requirements applicable in other Member States relating to access to and exercise of service activities, in particular those relating to consumer protection;

- b) **general** information on the means of redress available in the case of a dispute between a provider and a recipient;
- c) the contact details of associations or organisations, including the contact points **of the European Consumer Centres Network (ECC-Net)**, from which providers or recipients may obtain practical assistance.

***Where appropriate, advice from the competent authorities shall include a simple step-by-step guide.***

***Information and assistance shall be provided in a clear and unambiguous manner, shall be easily accessible at a distance including by electronic means, and shall be kept up-to-date.***

2. Member States may confer responsibility for the task referred to in paragraph 1 to **points of single contact** or to any other body, such as the contact points of the **European Consumer Centres Network (ECC-Net)**, consumer associations or Euro Info Centres.

By the date specified in Article 45 at the latest, Member States shall communicate to the Commission the names and contact details of the designated bodies. The Commission shall transmit them to all Member States.

3. In order to be able to send the information referred to in paragraph 1, the relevant body approached by the recipient shall contact the relevant body for the Member State concerned. The latter shall send the information requested as soon as possible. Member States shall ensure that those bodies give each other mutual assistance and shall put in place all possible measures for effective cooperation.

4. The Commission shall, in accordance with the procedure referred to in Article 42(2), adopt measures for the implementation of paragraphs 1, 2 and 3, specifying the technical mechanisms for the exchange of information between the bodies of the various Member States and, in particular, the interoperability of information systems.

***[Article 23 deleted]***

***[Article 24 deleted]***

***[Article 25 deleted]***

## CHAPTER IV

### Quality of services

#### *Article 26*

##### **Information on providers and their services**

1. Member States shall ensure that providers make the following information available to the recipient:

- (a) the name of the service provider, *his legal status and form*, the geographic address at which he is established, and the details which enable him to be contacted rapidly and communicated with directly and, as the case may be, by electronic means;
- (b) where the provider is registered in a trade or other similar public register, the name of that register and the provider's registration number, or equivalent means of identification in that register;
- (c) where the activity is subject to an authorisation scheme, the particulars of the relevant competent authority or the single point of contact;
- (d) where the provider exercises an activity which is subject to VAT, the identification number referred to in Article 22(1) of Directive 77/388/EEC<sup>58</sup>;
- (e) in the case of the regulated professions, any professional body or similar institution with which the provider is registered, the professional title and the Member State in which that title has been granted;
- (f) the general conditions and clauses, if any, used by the provider;
- (g) contractual clauses concerning the law applicable to the contract and/or the competent courts.

2. Member States shall ensure that the information referred to in paragraph 1, according to the provider's preference:

- (a) is supplied by the provider on his own initiative;
- (b) is easily accessible to the recipient at the place where the service is provided or the contract concluded;
- (c) can be easily accessed by the recipient electronically by means of an address supplied by the provider;

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<sup>58</sup> OJ L 145, 13.6.1977, p. 1.

- (d) appears in any information documents supplied to the recipient by the provider, setting out a detailed description of the service he provides.

3. Member States shall ensure that, at the recipient's request, providers supply the following additional information:

- (a) the main features of the service;
- (b) the price of the service or, if an exact price cannot be given, the method for calculating the price so that the recipient can check it, or a sufficiently detailed estimate;

*[(c) deleted]*

- (d) as regards the regulated professions, a reference to the professional rules applicable in the Member State of establishment and how to access them.

4. Member States shall ensure that the information which a provider must supply in accordance with this Chapter is made available or communicated in a clear and unambiguous manner, and in good time before conclusion of the contract or, where there is no written contract, before the service is provided.

5. The information requirements laid down in this Chapter are in addition to requirements already provided for in Community law and do not prevent Member States from imposing additional information requirements applicable to providers established in their territory.

6. The Commission may, in accordance with the procedure referred to in Article 42(2), specify the content of the information provided for in paragraphs 1 and 3 of this Article according to the specific nature of certain activities and may specify the practical means of implementing paragraph 2.

#### *Article 27*

### **Professional liability insurance and guarantees**

1. Member States *may* ensure that providers whose services present a *direct and particular risk* to the health or safety of the recipient *or a third person*, or to the financial *security of* the recipient, subscribe to professional *liability* insurance appropriate to the nature and extent of the risk, or provide any guarantee or similar arrangement which is equivalent or essentially comparable as regards its purpose. *The professional liability insurance or other guarantee shall cover risks presented by such services when they are provided in other Member States in the same way as when they are provided in the Member State of establishment of the service provider.*

2. Member States shall ensure that providers supply a recipient, at his request, with information on the insurance or guarantees referred to in paragraph 1, and in particular the contact details of the insurer or guarantor and the territorial coverage.

3. When a provider establishes himself in their territory, Member States may not require professional *liability* insurance or a guarantee from the provider where he is already covered by a guarantee which is equivalent, or essentially comparable as regards its purpose *and the coverage it provides in terms of the insured risk, the insured sum or a ceiling for the guarantee and possible exclusions from the coverage*, in another Member State in which the provider is already established. Where equivalence is only partial, Member States may require a supplementary guarantee to cover those aspects not already covered.

*When a Member State requires service providers established in its territory to subscribe to professional liability insurance or to provide any other guarantee, that Member State shall accept as sufficient evidence attestations of such insurance coverage issued by credit institutions and insurers established in other Member States.*

4. *Paragraphs 1, 2 and 3 do not affect professional insurance or guarantee arrangements provided for in other Community instruments.*

5. For the implementation of paragraph 1, the Commission may, in accordance with the procedure referred to in Article 42(2), establish a list of services which exhibit the characteristics referred to in paragraph 1 and establish common criteria for defining, for the purposes of the insurance or guarantees referred to in that paragraph, what is appropriate to the nature and scope of the risk. *In accordance with the procedure referred to in Article 42(2) the Commission may also establish a procedure which would, in the event of verifiable failure of the insurance market to provide adequate insurance and subject to specific conditions including notification to the Commission, allow Member States for a limited period of time to replace the obligation in this Article by an information requirement.*

6. *For the purpose of this Article*

*- "direct and particular risk" means a risk arising directly from the delivery of the service;*

*- "health and safety" means, in relation to a recipient or a third person, the prevention of death or serious personal injury;*

*- "financial security" means, in relation to a recipient, the prevention of substantial losses of money or of value of property;*

*- "professional liability insurance" means insurance taken out by a provider in respect of potential liabilities to recipients and, where applicable, third parties arising out of the provision of the service.*

## Article 28

### After-sales guarantees

1. Member States shall ensure that providers supply a recipient, at his request, with information on the existence or otherwise of an after-sales guarantee, on its content and on the essential criteria for its application, in particular, its period of validity and territorial cover.

2. Member States shall ensure that the information referred to in paragraph 1 appears in any information documents supplied by providers, setting out a detailed description of the services offered.

3. Paragraphs 1 and 2 do not affect the regulation of after-sales guarantees provided for in other Community instruments.

#### *Article 29*

### **Commercial communications by the regulated professions**

1. Member States shall remove all total prohibitions on commercial communications by the regulated professions.

2. Member States shall ensure that commercial communications by the regulated professions comply with professional rules, in conformity with Community law, which relate, in particular, to the independence, dignity and integrity of the profession, as well as to professional secrecy, in a manner consonant with the specific nature of each profession. ***Professional rules on commercial communications must be non-discriminatory, justified by an overriding reason relating to the public interest and proportionate.***

#### *Article 30*

### **Multidisciplinary activities**

1. Member States shall ensure that providers are not made subject to requirements which oblige them to exercise a given specific activity exclusively or which restrict the exercise jointly or in partnership of different activities.

However, the following providers may be made subject to such requirements:

- (a) the regulated professions, in so far as is justified in order to guarantee compliance with the rules governing professional ethics and conduct, which vary according to the specific nature of each profession, ***and it is necessary to ensure their independence and impartiality;***
- (b) providers of certification, accreditation, technical monitoring, test or trial services in so far as is justified in order to ensure their independence and impartiality.

2. Where multidisciplinary activities ***between service providers referred to in paragraph 1 (a) and (b)*** are authorised, Member States shall ensure the following:

- (a) that conflicts of interest and incompatibilities between certain activities are prevented;
- (b) that the independence and impartiality required for certain activities is secured;



- (c) that the rules governing professional ethics and conduct for different activities are compatible with one another, especially as regards matters of professional secrecy.

3. Member States shall ensure that providers supply the recipient, at his request, with information on their multidisciplinary activities and partnerships and on the measures taken to avoid conflicts of interest. That information shall be included in any information document in which providers give a detailed description of their services.

4. In the report referred to in Article 41, Member States shall indicate which providers are subject to the requirements laid down in paragraph 1, the content of those requirements and the reasons for which they consider them to be justified.

### *Article 31*

#### **Policy on quality of services**

1. Member States shall, in cooperation with the Commission, take accompanying measures to encourage providers to take action on a voluntary basis in order to ensure the quality of service provision, in particular through use of one of the following methods:

- (a) by having their activities certified or assessed by independent bodies;
- (b) by drawing up their own quality charter or participating in quality charters or labels drawn up by professional bodies at Community level.

2. Member States shall ensure that information on the significance of certain labels and the criteria for applying labels and other quality marks relating to services can be easily accessed by recipients and providers.

3. Member States shall, in cooperation with the Commission, take accompanying measures to encourage professional bodies, as well as chambers of commerce and craft associations **and consumer associations**, within Member States to cooperate at Community level in order to promote the quality of service provision, especially by making it easier to assess a provider's competence.

4. Member States shall, in cooperation with the Commission, take accompanying measures to encourage the development of independent assessments, **notably by consumer associations**, in relation to the quality and defects of service provision, and in particular the development at Community level of comparative trials or testing and the communication of the results.

5. Member States, **in cooperation with** the Commission, shall encourage the development of voluntary European standards with the aim of facilitating compatibility between services supplied by providers in different Member States, information to the recipient and the quality of service provision.

### Settlement of disputes

1. Member States shall take the general measures necessary to ensure that providers supply **contact details, in particular** a postal address, fax number or e-mail address **and a phone number** to which all recipients, including those resident in another Member State, can send a complaint or a request for information **about** the service provided. **Providers shall supply their legal address if this is not their usual address for correspondence.**
2. Member States shall take the general measures necessary to ensure that providers respond to the complaints referred to in paragraph 1 in the shortest possible time and make best efforts to find **satisfactory** solutions.
3. Member States shall take the general measures necessary to ensure that providers are obliged to demonstrate compliance with the obligations laid down in this Directive as to the provision of information and to demonstrate that the information is accurate.
4. Where a financial guarantee is required for compliance with a judicial decision, Member States shall recognise equivalent guarantees lodged **by a credit institution or insurer** established in another Member State. **Such credit institutions must be authorised in a Member State in accordance with Directive 2000/12/EC<sup>59</sup> relating to the taking up and pursuit of the business of credit institutions and such insurers in accordance, as appropriate, with Directive 73/239/EEC<sup>60</sup> on taking up and pursuit of the business of direct insurance other than life insurance and Directive 2002/83/EC<sup>61</sup> concerning life insurance.**
5. Member States shall take the general measures necessary to ensure that providers who are subject to a code of conduct, or are members of a trade association or professional body, which provides for recourse to a non-judicial means of dispute settlement, inform the recipient accordingly, and mention that fact in any document which presents their services in detail, specifying how to access detailed information on the characteristics of and conditions for the use of such a mechanism.

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<sup>59</sup> OJ L 126, 26.5.2000, p. 1.

<sup>60</sup> OJ L 228, 16.8.1973, p. 3.

<sup>61</sup> OJ L 345, 19.12.2002, p. 1.

# CHAPTER V

## SECTION I ADMINISTRATIVE COOPERATION

### Article 33

#### **Mutual assistance - General obligations**

1. Member States shall give each other mutual assistance, and shall put in place all possible measures for effective cooperation with one another in order to ensure the supervision of providers and the services they provide.
2. For the purposes *of this Chapter*, Member States shall designate one or more points of contact, the contact details of which shall be communicated to the other Member States and the Commission. *The Commission shall publish and regularly update the list of points of contact.*
3. *Information requests and requests to carry out any checks, inspections and investigations under this Chapter shall be duly motivated, in particular by specifying the reason for the request. Information exchanged shall be used only in respect of the matter for which it was requested.*
4. *In the event of receiving a request for assistance from competent authorities in another Member State, Member States shall ensure that providers established in their territory supply their competent authorities with all the information necessary for supervising their activities in compliance with their national laws.*
5. In the event of difficulty in meeting a request for information or in carrying out checks, inspections and investigations, the Member State in question shall rapidly inform the requesting Member State with a view to finding a solution.
6. *Member States shall supply the information requested by other Member States or the Commission by electronic means and within the shortest possible period of time.*
7. Member States shall ensure that registers in which providers have been entered, and which may be consulted by the competent authorities in their territory, may also be consulted, in accordance with the same conditions, by the equivalent competent authorities of the other Member States.
8. *Member States shall communicate to the Commission information on cases where other Member States do not fulfil their obligations of mutual assistance. Where necessary, the Commission shall take appropriate steps, including proceedings provided for in Article 226 of the EC-Treaty, in order to ensure that the Member States concerned comply with their obligations of mutual assistance. The Commission shall periodically inform Member States about the functioning of the mutual assistance provisions.*

#### Article 33a

##### **Mutual assistance – General obligations for the Member State of establishment**

1. ***With respect to providers providing services in another Member State***, the Member State of establishment shall supply information on providers established in its territory when requested to do so by another Member State and, in particular, confirmation that a service provider is established in its territory and, to its knowledge, ***is not exercising his activities in an unlawful manner***.
2. ***The Member State of establishment shall undertake the checks, inspections and investigations requested by another Member State and shall inform the latter of the results and, as the case may be, of the measures taken. In so doing, the competent authorities shall act to the extent permitted by the powers vested in them in their Member State. The competent authorities can decide on the most appropriate measures to be taken in each individual case in order to meet the request by another Member State.***
3. Upon ***gaining actual knowledge*** of any conduct or specific acts by a provider established in its territory which ***provides services in other Member States***, that, to its knowledge, could cause serious damage to the health or safety of persons or to the environment, the Member State of establishment shall inform all other Member States and the Commission within the shortest possible period of time.

#### Article 34

##### **Supervision by the Member State of establishment in the event of the temporary movement of a provider to another Member State**

1. ***With respect to cases not covered by Article 35(1), the Member State of establishment shall ensure that compliance with its requirements is supervised in conformity with the powers of supervision provided for in its national law, in particular through supervisory measures at the place of establishment of the service provider.***
2. ***The Member State of establishment shall not refrain from taking supervisory or enforcement measures in its territory on the grounds that the service has been provided or caused damage in another Member State.***
3. ***The obligation laid down in Paragraph 1 shall not entail a duty on the part of the Member State of establishment to carry out factual checks and controls in the territory of the Member State where the service is provided. Such checks and controls are carried out by the authorities of the Member State where the service provider is temporarily operating, on request of the authorities of the Member State of establishment, in accordance with Article 35.***

#### Article 35

##### **Supervision by the Member State where the service is provided in the event of the temporary movement of the provider**

1. ***With respect to national requirements which may be imposed pursuant to Article 16 or Article 17, the Member State where the service is provided is responsible for the***

*supervision of the activity of the service provider in its territory. In conformity with Community law, the Member State where the service is provided:*

*- shall take all measures necessary to ensure that service providers comply with those requirements as regards the access to and the exercise of a service activity;*

*- shall carry out the checks, inspections and investigations necessary to supervise the service provided.*

2. *With respect to requirements other than the ones referred to in paragraph 1, where a provider moves temporarily to another Member State in order to provide a service without being established there, the competent authorities of that Member State shall participate in the supervision of the provider in accordance with paragraphs 3 and 4.*

3. *At the request of the Member State of establishment, the competent authorities of the Member State where the service is provided shall carry out any checks, inspections and investigations necessary for ensuring effective supervision by the Member State of establishment. In so doing, the competent authorities shall act to the extent permitted by the powers vested in them in their Member State. The competent authorities can decide on the most appropriate measures to be taken in each individual case in order to meet the request by the Member State of establishment.*

4. *On their own initiative, the competent authorities of the Member State where the service is provided may conduct checks, inspections and investigations on the spot, provided that those checks, inspections or investigations are not discriminatory, are not motivated by the fact that the provider is established in another Member State and are proportionate.*

*[(a), (b) and (c) deleted]*

#### *Article 36*

#### **Alert mechanism**

1. *Where a Member State becomes aware of serious specific acts or circumstances relating to a service activity that could cause serious damage to the health or safety of persons or to the environment in its territory or in other Member States, that Member State shall inform the Member State of establishment, the other Member States concerned and the Commission within the shortest possible period of time.*

2. *The Commission shall promote and take part in the operation of a European network of Member States' authorities in order to implement paragraph 1.*

3. *The Commission shall adopt and regularly update, in accordance with the procedure referred to in Article 42(2), detailed rules concerning the management of the network referred to in paragraph 2.*

## Article 36a

### Information on the good repute of providers

1. Member States shall, at the request of a competent authority in another Member State, supply information, ***in conformity with their national law, on disciplinary or administrative actions or criminal sanctions and decisions*** concerning insolvency or bankruptcy involving fraud, taken by their competent authorities in respect of the provider, ***directly relevant to the service provider's competence or professional reliability***. ***The Member State which supplies the information shall inform the service provider thereof.***

***A request made pursuant to paragraph 1 must be duly substantiated, in particular as regards the reasons for the request for information.***

2. ***Sanctions and actions referred to in paragraph 1 shall only be communicated if a final decision has been taken.*** With regard to other decisions referred to in paragraph 1, the Member State which supplies the information shall specify whether a particular decision is final or whether an appeal has been lodged in respect of it, in which case the Member State in question should provide an indication of the date when the decision on appeal is expected.

Moreover, that Member State shall specify the provisions of national law pursuant to which the provider was found guilty or penalised.

3. Implementation of ***paragraphs 1 and 2*** must comply with ***rules on the provision of personal data and*** with rights guaranteed to persons found guilty or penalised in the Member States concerned, ***including by professional bodies***. ***Any information in question which is public shall be accessible to consumers.***

## Article 36b

### Accompanying measures

1. ***The Commission, in cooperation with Member States, shall establish an electronic system for the exchange of information between Member States.***

2. ***Member States shall, with the assistance of the Commission, take accompanying measures to facilitate the exchange of officials in charge of the implementation of mutual assistance and training of such officials including language and computer training.***

3. ***The Commission shall assess the need to establish a multi-annual programme in order to organise relevant exchanges of officials and training.***

## Article 37

### Mutual assistance in the event of case-by-case derogations

1. Where a Member State intends to take a measure pursuant to Article 19, the procedure laid down in paragraphs 2 to 6 of this Article shall apply without prejudice to proceedings

before the courts *including preliminary proceedings and acts carried out in the framework of a criminal investigation*.

2. The Member State referred to in paragraph 1 shall ask the Member State of establishment to take measures with regard to the service provider, supplying all relevant information on the service in question and the circumstances of the case.

The Member State of establishment shall check, within the shortest possible period of time, whether the provider is operating lawfully and verify the facts underlying the request. It shall inform the requesting Member State within the shortest possible period of time of the measures taken or envisaged or, as the case may be, the reasons why it has not taken any measures.

3. Following communication by the Member State of establishment as provided for in the second subparagraph of paragraph 2, the requesting Member State shall notify the Commission and the Member State of establishment of its intention to take measures, stating the following:

(a) the reasons why it believes the measures taken or envisaged by the Member State of establishment are inadequate;

(b) the reasons why it believes the measures it intends to take fulfil the conditions laid down in Article 19.

4. The measures may not be taken until fifteen working days after the date of notification provided for in paragraph 3.

5. Without prejudice to the possibility for the requesting Member State to take the measures in question upon expiry of the period specified in paragraph 4, the Commission shall, within the shortest possible period of time, examine the compatibility with Community law of the measures notified.

Where the Commission concludes that the measure is incompatible with Community law, it shall adopt a decision asking the Member State concerned to refrain from taking the proposed measures or to put an end to the measures in question as a matter of urgency.

6. In the case of urgency, a Member State which intends to take a measure may derogate from paragraphs 2, 3 and 4. In such cases, the measures shall be notified within the shortest possible period of time to the Commission and the Member State of establishment, stating the reasons for which the Member State considers that there is urgency.

#### *Article 38*

### **Implementing measures**

In accordance with the procedure referred to in Article 42(2), the Commission shall adopt the implementing measures necessary for the implementation of this Chapter, specifying the time-limits provided for in *Articles 33* and 37 and the practical arrangements for the exchange of information by electronic means between *Member States*, and in particular the interoperability provisions for information systems.

## Chapter VI

### Convergence programme

#### *Article 39*

1. Member States shall, in cooperation with the Commission, take accompanying measures to encourage the drawing up at Community level, ***particularly by professional bodies, organisations and associations, of codes of conduct aimed at facilitating the provision of services or the establishment of a provider in another Member State***, in conformity with Community law.
2. Member States shall ensure that the codes of conduct referred to in paragraph 1 are accessible at a distance, by electronic means.
3. Member States shall ensure that providers indicate, at the recipient's request, or in any information documents which present their services in detail, any codes of conduct to which they are subject and the address at which these codes may be consulted by electronic means, specifying the language versions available.
4. ***deleted***

#### *Article 40*

#### **Additional harmonisation**

1. The Commission shall assess, by one year after the ***date of transposition*** of this Directive at the latest, the possibility of presenting proposals for harmonisation instruments on the following subjects:
  - (a) ***deleted***
  - (b) ***deleted;***
  - (c) ***access to the activity*** of judicial recovery of debts.
  - (d) ***security services and transport of cash and valuables;***
2. ***deleted***

#### *Article 41*

#### **Mutual evaluation**

1. By the [date of transposition] at the latest, Member States shall present a report to the Commission, containing the information specified in the following provisions:



- (a) Article 9(2), on authorisation systems;
- (b) Article 15(4), on requirements to be evaluated;
- (c) Article 30(4), on multidisciplinary activities.

2. The Commission shall forward the reports provided for in paragraph 1 to the Member States, which shall submit their observations on each of the reports within six months. Within the same period, the Commission shall consult interested parties on those reports.

3. The Commission shall present the reports and the Member States' observations to the Committee referred to in Article 42(1), which may make observations.

4. In the light of the observations provided for in paragraphs 2 and 3, the Commission shall, by ...*[one year after the date referred to in Article 45(1)]* at the latest, present a summary report to the European Parliament and to the Council, accompanied where appropriate by proposals for additional initiatives.

#### *Article 42*

#### **Committee**

1. The Commission shall be assisted by a Committee, consisting of representatives of the Member States and chaired by the Commission representative.

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC<sup>62</sup> shall apply, in accordance with the provisions of Article 8 of that Decision.

3. The Committee shall adopt its rules of procedure.

#### *Article 43*

#### **Review clause**

Following the summary report referred to in Article 41(4), the Commission shall, every three years, present to the European Parliament and to the Council a **comprehensive** report on the application of this Directive, **in particular of Articles 2 and 16 thereof**, accompanied, where appropriate, by proposals for its amendment.

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<sup>62</sup> OJ L 184, 17.7.1999, p. 23.

*Article 44*

**Amendment of Directive 1998/27/EC**

In the Annex to Directive 1998/27/EC<sup>63</sup>, the following point shall be added:

"13. Directive.../EC of the European Parliament and of the Council of ... on services in the internal market (OJ L [...], [...], p. [...])".

**Chapter VII**

**Final provisions**

*Article 45*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ...\*(**2 years**) at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 46*

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

*Article 47*

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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<sup>63</sup> OJ L 166, 11.6.1998, p. 51.

## FOLLOW-UP LEGISLATIVE FINANCIAL STATEMENT

**Policy area(s): Internal Market**

**Activit(y/ies): Internal Market for goods and services**

**TITLE OF ACTION: AMENDED PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON SERVICES IN THE INTERNAL MARKET**

In January 2004, the Commission adopted a proposal for a directive on services in the Internal Market<sup>64</sup>. The proposal was accompanied by a legislative financial statement.

The European Parliament adopted its first reading report on this proposal on 16 February 2006. The Commission is now presenting an amended proposal largely based on the first reading of the European Parliament but also taking into account the discussions in the Council to date. The amended proposal contains the following changes, relative to the Commission's original proposal, which will entail Commission resources and will therefore have budgetary implications:

The amended proposal provides for the establishment of an electronic Internal Market information system for the exchange of information between Member States. This is aimed at ensuring that competent authorities have a practical system enabling them to fulfil more easily their obligations of administrative cooperation under the amended proposal by being able to easily identify their relevant interlocutors in other Member States and to communicate in an efficient way. Thus, the legal obligations of administrative cooperation will be underpinned by a mechanism enabling it to work effectively in practice. This will entail costs for the Commission in terms, firstly, of development of the system; and, secondly, the administration of the database.

The amended proposal also sets out an alert mechanism pursuant to which a Member State becoming aware of serious specific acts or circumstances that could cause serious damage to the health or safety of persons or to the environment must inform the Member State of establishment, the other Member States concerned and the Commission. The Commission is required to promote and take part in the operation of a European network of Member States' authorities in order to implement this alert mechanism, as well as adopt and regularly update detailed rules concerning its management, in accordance with the Committee procedure set out in Article 42. The promotion and operation of this network will entail costs, particularly in terms of staff, for the Commission.

The amended proposal provides for an assessment by the Commission of the need to establish a multi-annual programme in order to organise relevant exchanges of officials and training. There will be costs for the Commission in relation to the carrying out of assessment of the need for a multi-annual programme.

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<sup>64</sup> Proposal for a Directive of the European Parliament and of the Council on services in the internal market - COM(2004) 2, 13.1.2004.

Estimates of the overall figures in terms of costs for the Commission are set out below. These have been updated from the legislative financial statement which accompanied the Commission's original proposal in order to take account the changes that have been made in the Commission's amended proposal. These changes include those set out above as well as the fact that the two studies initially foreseen will no longer be carried out. Part of the costs of the electronic information system are already financed under the IDAabc programme and therefore the figures below only reflect the additional costs required. In addition, the Article 42 committee was already foreseen in the original proposal.

**1. BUDGET LINE(S) + HEADING(S)**

12 02 01 Implementation and development of the internal market

12 01 04 01 Implementation and development of the internal market – Expenditure on administrative management

**2. OVERALL FIGURES**

**2.1. Total allocation for action (operational expenditure): EUR 0.900 million in commitment appropriations, already covered by existing allocation under internal market policy area in the financial programming.**

**2.2. Period of application:**

2006 - 2011

**2.3. Overall multiannual estimate of expenditure:**

(a) Schedule of commitment appropriations/payment appropriations (financial intervention) *(see point 3.1.1)*

EUR million (to three decimal places)

	2006	2007	2008	2009	2010	2011 and subs. years	Total
Commitments		0.200					
Payments		0.100	0.100				

(b) Technical and administrative assistance and support expenditure *(see point 3.1.2)*

Commitments			0.250	0.250	0.100	0.100	
Payments			0.250	0.250	0.100	0.100	

Subtotal a+b							
Commitments		0.200	0.250	0.250	0.100	0.100	

Payments		0.100	0.350	0.250	0.100	0.100	
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(c) Overall financial impact of human resources and other administrative expenditure  
(see points 4.2 and 4.3)

Commitments/ payments	0.016	1.085	1.069	0.064	0.064		
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TOTAL a+b+c							
Commitments	0.016	1.285	1.319	0.314	0.164	0.100	
Payments	0.016	1.185	1.419	0.314	0.164	0.100	

### 3. FINANCIAL IMPACT

#### 3.1. Total financial impact on operational expenditure - (over the entire programming period)

##### 3.1.1. Financial intervention

Commitments (in EUR million to three decimal places)

Breakdown	2006	2007	2008	2009	2010	2011 and subs. Years]	Total
Action 1		0.200					
Action 2							
etc.							
<b>TOTAL</b>		0.200					

##### 3.1.2. Technical and administrative assistance, support expenditure and IT expenditure (commitment appropriations)

	2006	2007	2008	2009	2010	2011 and subs. Years	Total
1) Technical and administrative assistance							
a) Technical assistance offices							
b) Other technical and administrative assistance: - intra muros: - extra muros:  <i>of which for construction and maintenance of computerised management systems</i>			0.250	0.250	0.100	0.100	
Subtotal 1							
2) Support expenditure							
a) Studies							
b) Meetings of experts							

c) Information and publications							
	Subtotal 2						
	<b>TOTAL</b>		0.250	0.250	0.100	0.100	

**3.2. Calculation of costs by measure envisaged in operational expenditure (over the entire programming period)**

Commitments (in EUR million to three decimal places)

Breakdown	Type of outputs (projects, files )	Number of outputs (total for years 2004-2010)	Average unit cost	Total cost (total for years 2004-2010)
<u>Action 1</u>				
- Measure 1 (development and monitoring of economic indicators)	Study	1	0.200	0.200
TOTAL COST			0.200	0.200



#### 4. IMPACT ON STAFF AND ADMINISTRATIVE EXPENDITURE

Human and administrative resource requirements will be covered from within the budget allocated to the managing DG in the framework of the annual allocation procedure.

##### 4.1. Impact on human resources

Types of post		Staff to be assigned to management of the action using existing resources		Total	Description of tasks deriving from the action
		Number of permanent posts	Number of temporary posts		
Officials or temporary staff	A				<i>Because the Directive covers a wide range of services activities specific knowledge is needed on a multitude of sectors (distribution, regulated professions, construction, certification, craftsmen etc.) as well as on specific questions such as administrative simplification.</i>
	B				
	C	6.5		6.5	
		2.5	0.5	3.0	
Other human resources		1 END		1	
Total		10	0.5	10.5	

##### 4.2. Overall financial impact of human resources

EUR million to three decimal places

Type of human resources	Amount (EUR)	Method of calculation*
Officials	0.972	9* 0.108
Temporary staff	0.054	0.5* 0.108
Other human resources (specify budget line)	0.043	1* 0.043
Total	1.069	

The amounts are total expenditure for twelve months.

### 4.3. Other administrative expenditure deriving from the action

EUR million to three decimal places

Budget line (number and heading)	Amount EUR	Method of calculation
<b>Overall allocation (Title A7)</b>		
12 01 02 11 01 – Missions		
12 01 02 11 02 – Meetings, conferences		
12 01 02 11 03 – Committees (consultative committee)	0.064	96 experts*650
12 01 02 11 04 – Studies and consultations	0.016	24 experts* 650
Other expenditure (specify)		
<b>Information systems</b>		
<b>Other administrative expenditure</b> (specify)		
Total	0.080	

The amounts are total expenditure for twelve months.

EUR million to three decimal places

I.	Annual total (4.2 + 4.3)	1.149
II.	Duration of action	2 years
III.	Total cost of action (I x II)	2.298*

*\* costs for human resources could be extended beyond the 2 years depending on the results of the negotiation and the subsequent work programme.*