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POSITION OF THE EUROPEAN PARLIAMENT

adopted at first reading on 16 February 2006 with a view to the adoption of Directive 2006/.../EC of the European Parliament and Council on services in the internal market (EP-PE_TC1-COD(2004)0001)

PE 369.610

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POSITION OF THE EUROPEAN PARLIAMENT

adopted at first reading on 16 February 2006

with a view to the adoption of Directive 2006/.../EC of the European Parliament and Council on services in the internal market

(Text with EEA relevance)

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 Commission¹,

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the procedure referred to in Article 251 of the Treaty⁴,

Whereas:

¹ OJ C

² OJ C 221, 8.9.2005, p. 113.

³ OJ C 43, 18.2.2005, p. 18.

⁴ *Opinion of the European Parliament of 16 February 2006.*

- (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.***

- (2) ***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 prevent service providers, particularly small and medium-sized enterprises (SMEs), from extending their operations beyond their national borders and 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 required, would give consumers wider choice and better services at lower prices.***

- (3) The report from the Commission on "The State of the Internal Market for Services"¹ 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.
- (4) 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 a single market in services, with a balance between market opening, public services and social and consumer rights.***

¹ COM(2002)0441 final.

- (5) *Particularly after the accession of ten new Member States, entrepreneurs wishing to provide services in another Member State are faced with obvious barriers.*
- (6) It is therefore necessary to remove barriers to the freedom of establishment for service providers in Member States and barriers to the freedom to provide 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 becoming established in a Member State or by making use of the freedom to provide services. Service providers should be able to choose between those two freedoms, depending on their strategy for growth in each Member State.
- (7) 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.

- (8) 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 **rules of the country of origin** **freedom to provide services as provided for in this Directive** 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, the environment, public security and public health and compliance with labour law**, which is vital in order to establish mutual trust between Member States.
- (9) It is appropriate that the provisions of this Directive concerning 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**.
- (10) **This Directive does not interfere with Member States' activities, in accordance with Community law, in relation to the protection or promotion of cultural and linguistic diversity and media pluralism, including the funding thereof.**

- (11) *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.*
- (12) *In view of the fact that the Treaty provides specific legal bases for matters of labour law and social security law and in order to make sure that this Directive does not affect these matters, it is necessary to exclude the field of labour law and social security law from the scope of this Directive.*
- (13) *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 social services.*
- (14) *This Directive, and in particular the provisions concerning authorisation schemes and the territorial scope of an authorisation, does 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.*
- (15) *It is necessary to recognise the importance of the roles of professional **bodies**, **professional associations** and **the social partners** in the regulation of service activities and the development of professional rules, so long as they do not hamper the development of competition between economic operators.*

- (16) *Social welfare services result from the duties of the State – at national, regional and local level - in the social field. They are a manifestation of the principles of social cohesion and solidarity as reflected, inter alia, by the fact that they are designed to assist those who are in a state of need owing to insufficient family income, total or partial lack of independence or the risk of being marginalised. These services are often entirely non-profit-making, thus the benefits they confer may bear no relation to an economic consideration.*
- (17) *This Directive does not deal with the funding of, or the system of aids linked to, social housing. Nor does it affect the criteria or conditions set by Member States to ensure that social housing services effectively carry out a function to the benefit of the public interest and social cohesion.*
- (18) *Childcare and family services aimed at supporting families and young people, as well as educational and cultural services typically pursuing social welfare objectives should not be affected by the provisions of this Directive.*
- (19) *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 Articles 43 and 49 of the Treaty. Those fundamental rights include, inter alia, 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.*

- (20) This Directive is consistent with other current Community initiatives concerning services, particularly those relating to the competitiveness of business-related services, the safety of services¹, and work on patient mobility and the development of health care in the Community. It is also consistent with current initiatives concerning the internal market, such as the proposal for a Regulation of the European Parliament and of the Council on sales promotions in the internal market², and those concerning consumer protection, such as the proposal for a Directive on unfair commercial practices³ and the proposal for a Regulation of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws ("the Regulation on consumer protection cooperation")⁴.
- (21) *This Directive should not apply to services of general interest that are provided and defined by the Member States under their obligations to protect the public interest. These activities are not covered by the definition in Article 50 of the Treaty and do not therefore fall within the scope of this Directive. The provisions of this Directive apply only insofar as the activities in question are open to competition, and do not require the Member States to liberalise services of general interest, privatise existing public bodies or abolish existing monopolies, such as lotteries or certain distribution services. As regards services of general interest, this Directive covers only services of general economic interest, i.e. services that correspond to an economic activity and are open to competition. Equally, this Directive does not affect the funding of services of general economic interest and does not cover aids granted by Member States, in particular in the social field, in accordance with Title VI, Chapter I of the Treaty.*

¹ COM(2003)0313 final.

² COM(2002)0585 final.

³ COM(2003)0356 final.

⁴ COM(2003)0443 final.

- (22) *The exclusions from the scope of application 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.*
- (23) Financial services should be excluded from the scope of this Directive since those activities are currently the subject of a specific action plan aimed, as is this Directive, at achieving a genuine internal market for services. ***This exclusion covers all services involving banking, credit, insurance, including reinsurance, individual pensions, investment, payments, investment advice and, in general terms, 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 institutions¹.***
- (24) 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.
- (25) *The specific requirements that Member States impose on the establishment of temporary work agencies mean that those services may not be included within the scope of this Directive at this stage. Therefore, it is necessary to fully harmonise the rules on establishment in this sector in order to establish the legal framework for the implementation of the internal market in this sector.*

¹ *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).*

- (26) *The specific requirements that Member States impose on the establishment of security services mean that those services may not be included within the scope of this Directive at this stage. Therefore, it is necessary to fully harmonise the rules on establishment in this sector in order to establish the legal framework for the implementation of the internal market in this sector.*
- (27) *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 profession in the Member State in which the services are provided.*
- (28) *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. That has been addressed by the Court of Justice on numerous occasions, and the 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.*

- (29) *Audiovisual services, whatever their mode of transmission, in particular television broadcasting services as defined in Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities¹, radio services, cinema services and services of intellectual property rights collective management societies, should also be excluded from the scope of this Directive. These services play a vital role in the formation of European cultural identities and public opinion, and if cultural diversity and pluralism are to be preserved and promoted there is a need for specific measures, which must be able to take account of specific regional and national situations. Furthermore, the Community is required to take cultural aspects into account in its action under the provisions of the Treaty, in particular in order to respect and promote the diversity of its cultures. In accordance with the subsidiarity principle and Community law, particularly the competition rules, support given to audiovisual services must take account of considerations of a cultural and social nature which render the application of the provisions of this Directive inappropriate.*
- (30) *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 order and consumer protection. The specific nature of these activities is not called into question by Community case law, which simply requires national courts to examine in depth the reasons of public interest which may justify derogations from the freedom to provide services or the freedom of establishment. In addition, given the considerable disparities in the taxation of gambling activities, which are at least partly related to differences in Member States' public order requirements, it would be totally impossible to establish fair cross-border competition between operators in the gaming industry without either first or simultaneously dealing with questions of fiscal cohesion between Member States, which are not addressed by this Directive and which are not part of its scope.*

¹ OJ L 298, 17.10.1989, p. 23. Directive as amended by Directive 97/36/EC of the European Parliament and of the Council (OJ L 202, 30.7.1997, p. 60).

- (31) *This Directive does not cover the activities of members of those professions which are permanently or temporarily directly and specifically connected with the exercise of official authority, particularly activities concerning the establishment of authentic instruments and certifications by public-office holders.*
- (32) In view of the fact that the Treaty provides specific legal bases for taxation matters and of the Community instruments already adopted in that field, it is necessary to exclude the field of taxation from the scope of this *Directive*.
- (33) *Transport services, including urban transport, port services, taxis and ambulances, are excluded from the scope of this Directive. Cash in transit or the transport of mortal remains are included in the scope of this Directive given that internal market problems have been identified in these fields.*
- (34) *Rules of criminal law should not be affected by this Directive. However, rules of criminal law should not be misused in order to circumvent the rules laid down in this Directive.*

(3536) *Non-profit-making amateur sporting activities are of a considerable social importance. They often pursue wholly social or recreational objectives. Thus they may not constitute economic activities within the meaning of Community law and fall outside of the scope of this Directive.*

(3635) *This Directive should apply only when there are no specific provisions of Community law governing specific aspects of access to and the exercise of a service activity in specific sectors or for specific professions.*

~~(36) *Non-profit-making amateur sporting activities are of a considerable social importance. They often pursue wholly social or recreational objectives. Thus they may not constitute economic activities within the meaning of Community law and fall outside of the scope of this Directive.*~~

- (37) **As** the Court of Justice has consistently held with regard to Articles 49 *and following* of the Treaty, the concept of service covers any economic activity normally provided for remuneration, without the service having to be paid for by those benefiting from it and regardless of the financing arrangements for the remuneration. ***The payment of a fee by recipients 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.***
- (38) ***The concept of service covers any economic activity normally provided for remuneration.*** The characteristic of remuneration is absent in the case of activities performed, for no consideration, by the State ***or by a regional or local authority in the context of their duties in the social, cultural, educational and judicial fields, such as courses provided under the national education system, whether at public or private educational establishments, or the management of social security schemes which do not engage in economic activity.*** These activities are not covered by the definition of *"service"* and do not therefore fall within the scope of this Directive.
- (39) 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 ***freedom to provide services as provided for in this Directive*** ~~rules of the country of origin covers~~ the requirements applicable to access to service activities or to the exercise thereof and not those applicable to goods as such.

- (40) 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 freedom to provide services. The concept of provider is thus not limited solely to cross-border service provision within the framework of the freedom to provide 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.
- (41) *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 is also fulfilled where a company is constituted for a given period or where it rents the building or installation through which it pursues its activity. 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.*

- (42) 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. 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 **Member State of destination**, 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.
- (43) 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*.
- (44) ***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.***

- (45) 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 *and* limitation of the obligation of prior authorisation to cases in which it is *essential*. *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 discretionary 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.
- (46) *Member States should introduce, where appropriate, harmonised European forms, which will serve as an equivalent to certificates, attestations or any other document in relation to establishment.*

- (47) 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.
- (48) 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, the protection of consumers or education***. 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*.

(49) 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 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, including patient safety, consumer protection, the protection of workers, including the social protection of workers, preservation of the financial balance of the social security system, maintaining a balanced medical and hospital service open to all, the prevention of fraud, cohesion of the tax system, prevention of unfair competition, maintaining the good reputation of the national financial sector, 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 in the audio-visual sector the freedom of expression of various elements, in particular social, cultural, religious and philosophical, in society, the maintenance of press diversity and policy for the promotion of the national language, the preservation of national historical and artistic heritage and veterinary policy.*

(50) 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-ups¹, the Commission was already encouraging Member States to introduce points of contact to simplify formalities.

~~(51) *The obligation for Member States to ensure that relevant information is easily accessible to providers and recipients can be fulfilled by rendering accessible this information through a website. The obligation for competent authorities to assist providers and recipients by no means includes the provision of legal advice in individual cases. Nevertheless, general information on the way in which requirements are usually interpreted or applied should be given.*~~

¹ OJ L 145, 5.6.1997, p. 29.

(5152) *The obligation for Member States to ensure that it is possible for a service provider to complete all procedures and formalities needed for access to his service activities at points of single contact includes any procedures and formalities necessary for the supervision of compliance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services¹. It should not affect the role of the liaison offices or other competent national bodies which Member States designate for the purposes of the implementation of Directive 96/71/EC. However, these designated liaison offices or other competent national bodies should make the information on procedures and formalities necessary for the supervision of compliance with Directive 96/71/EC available to the points of single contact.*

(5254) *The obligation for Member States to ensure that relevant information is easily accessible to providers and recipients can be fulfilled by rendering accessible this information through a website. The obligation for competent authorities to assist providers and recipients by no means includes the provision of legal advice in individual cases. Nevertheless, general information on the way in which requirements are usually interpreted or applied should be given.*

(53) The setting up, in the reasonably near future, of *inter alia* 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. 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.*

¹ OJ L 18, 21.1.1997, p. 1.

- (54) ***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, in other words it should be available to the public easily and without obstacles. This information should be provided in a clear and unambiguous manner.***
- (55) 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 signatures¹, 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')². 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.

¹ OJ L 13, 19.1.2000, p. 12.

² OJ L 178, 17.7.2000, p. 1.

- (56) *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 justifies 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.*
- (57) *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.*
- (58) *This Directive is without prejudice to the possibility for Member States to withdraw authorisations after they have been issued, particularly if the conditions for the granting of the authorisation are no longer fulfilled.*
- (59) *According to the case law of the Court of Justice, public health, consumer protection, animal health and urban environment objectives constitute overriding reasons relating to the public interest which can justify the application of authorisation schemes and other restrictions applicable to social services. However, no such authorisation scheme or restriction may discriminate in terms of the applicant's country of origin, neither may they be framed in such a way as to impede cross-border services which comply with Member States' requirements. Further, the principles of necessity and proportionality must always be respected.*

(60) In cases where the number of authorisations available for an activity is limited because of scarcity of natural resources or technical *capacity* 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 *other* 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*.

(61) ***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.

- (62) 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 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.
- (63) 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. ***The prohibition of direct or indirect involvement of 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 for authorisation.***

- (64) 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. Member States must ensure, during the transposition period of this Directive, that such requirements are necessary and proportionate and, where appropriate, they must abolish or amend them. Moreover, those requirements must in any case be compatible with Community competition law.
- (65) *The mutual evaluation process provided for in this Directive does not affect the freedom of Member States to fix in their legislation a high level of protection of public interests, in particular for achieving health and 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. 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 can be justified to submit the service provider to a requirement to be non-profit making. Moreover, restrictions which aim to guarantee medical distribution in particular in sparsely populated areas should be allowed.*
- (66) The restrictions to be examined include national rules which, on grounds other than those relating to professional qualifications, reserve access to *activities to* particular *providers*.

- (67) **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.
- (68) 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 the extent to which service providers are subject to the legislation of the Member State where they are established and to the extent to which legislation of the Member State where the service is provided is applicable. It is indispensable to underline that this does not prevent the Member State where the service is provided from enforcing its specific requirements that are indispensable for reasons of public policy or public security or for the protection of health or the environment in order to prevent particular risks at the place where the service is provided.***

(69) *It is necessary to provide that the rule that the law of the country of origin is to apply may be departed from only in the areas covered by derogations, general or transitional. 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 origin. 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 order to ensure the legal certainty which is essential in order to encourage SMEs to provide their services in other Member States, those derogations should be limited to what is strictly necessary. In particular, derogation should be possible only for reasons related to the safety of services, exercise of a health profession or matters of public policy, such as the protection of minors, and to the extent that national provisions in this field have not been harmonised. In addition, any restriction of the freedom to provide 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.*

(70) *The **freedom to provide services as provided for in this Directive rules of the country of origin does** not apply to provisions in the Member States where the service is provided which reserve an activity to a particular profession, for example requirement which reserve legal advice to lawyers.*

(71) In cases where a provider moves temporarily to a Member State other than the Member State of origin, 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 origin or carry out such checks on its own initiative if these are merely factual checks. Moreover, it should be possible in the case of posted workers for the *host country* to take action against a provider established in another Member State in order to ensure compliance with the employment and working conditions applicable under Directive 96/71/EC.

(72) 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 supply of workers 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 should 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 Directive 96/71/EC on the grounds of public policy provisions.

(73) *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. Finally, this Directive should include 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.*

(74) It is appropriate to provide for derogation from the **freedom to provide services as provided for in this Directive** ~~rules of the country of origin~~ in the case of services covered by a general prohibition in the Member State to which a provider has moved, if that prohibition is objectively justified by reasons relating to public policy, public security or public health. That derogation should be limited to general prohibitions and should not, for example, cover national schemes which, while not prohibiting an activity in a general manner, reserve the exercise of that activity to one or several specific operators, or which prohibit the exercise of an activity without prior authorisation. The fact that a Member State permits an activity, but reserves it to certain operators, means that the activity is not subject to a general prohibition and is not regarded as inherently contrary to public policy, public security or public health. Consequently, the exclusion of such an activity from the scope of the Directive would not be justified.

- (75) The **freedom to provide services as provided for in this Directive** ~~rules of the country of origin~~ should not apply to specific requirements, laid down by the Member State to which a provider has moved, the rationale for which is inextricably linked to the particular characteristics of the place where the service is provided, and which must be fulfilled in order to maintain public policy, public safety, public health or the protection of the environment. Such would be the position, for example, in the case of authorisations to occupy or use the public highway, requirements relating to the organisation of public events or requirements relating to the safety of building sites.
- (76) The exclusion from the **freedom to provide services as provided for in this Directive** ~~rules of the country of origin~~ 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 accepted 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.
- (77) ***Contractual relations between the service provider and the client-recipient as well as between employer and employee should not be subject to this Directive. The determination of the applicable contractual and non-contractual law shall be regulated by Community instruments on international private law. Furthermore, the contractual agreement prevails insofar as it contains provisions on quality standards.***

- (78) *It is necessary to allow Member States the possibility, exceptionally and on a case-by-case basis, of taking measures which derogate from the **freedom to provide services as provided for in this Directive** ~~rules of the country of origin~~ in respect of a provider established in another Member State, for certain reasons such as the safety of services. It should be possible to take such measures only in the absence of harmonisation at Community level. Moreover, that possibility should not permit restrictive measures to be taken in areas in which other Directives prohibit all derogation from the free movement of services, such as Directive 1999/93/EC or Directive 98/84/EC of the European Parliament and the Council of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access¹. Nor should that possibility permit the extension or limitation of derogations provided for in other Directives, such as **Directives 89/552/EEC or Directive 2000/31/EC**.*
- (79) 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.
- (80) 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, such as a direct link to taxes paid by those recipients.

¹ OJ L 320, 28.11.1998, p. 54.

(81) *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 *solely* 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 provision may not be made in such general conditions for variable tariffs and conditions to apply to the provision of a service, where those tariffs and conditions are directly 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 origin.

- (82) ***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.
- (83) Any operator providing services involving a particular health, safety or financial risk for the recipient should be covered by appropriate professional indemnity insurance, or by another form of guarantee which is equivalent or comparable, which means, in particular, that he should have adequate insurance coverage for services provided in one or more Member States other than the Member State of origin.
- (84) ***This*** insurance or guarantee must correspond to the nature and extent of the risk, which means that service providers need cross-border coverage only if they actually provide services in other Member States. Service providers and insurance companies should maintain the necessary flexibility in negotiating insurance policies specifically geared to the nature and scale of the risk. Lastly, Member States should not be required to stipulate that insurance companies are obliged to provide insurance cover.

- (85) 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 *by removing those prohibitions* 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.
- (86) 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 laying down a procedure for the provision of information in the field of technical standards and regulations¹ and of rules on Information Society services, issue a mandate for the drawing up of specific European standards.

¹ OJ L 204, 21.7.1998, p. 37. Directive as last amended by 2003 Act of Accession.

- (87) The development of a network of Member State consumer protection authorities, which is the subject of the proposal for the Regulation on consumer protection cooperation, 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.
- (88) *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.*
- (89) *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.*
- (90) 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.*

- (91) ***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.***
- (92) This Directive is without prejudice to any legislative or other initiatives in the field of consumer protection.
- (93) The absence of a reaction from the Commission in the context of the mutual evaluation procedure provided for by this Directive has no effect on the compatibility with Community law of national requirements which are included in reports by Member States.
- (94) Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests¹ approximates the laws, regulations and administrative provisions of the Member States relating to actions for an injunction aimed at the protection of the collective interests of consumers included in the Directives listed in the Annex to Directive 98/27/EC. In order to enable such actions to be brought in cases where the present Directive has been infringed, to the detriment of the collective interests of consumers, the Annex to Directive 98/27/EC should be amended accordingly.

¹ OJ L 166, 11.6.1998, p. 51. Directive as last amended by Directive 2002/65/EC (OJ L 271, 9.10.2002, p. 16).

- (95) 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.
- (96) This Directive respects fundamental rights and observes the principles which are recognised notably in the Charter of Fundamental Rights of the European Union and, in particular, in Articles 8, 15, 21 and 47 thereof.
- (97) 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 Commission¹,

HAVE ADOPTED THIS DIRECTIVE:

¹ OJ L 184, 17.7.1999, p. 23.

Chapter I

General provisions

Article 1

Subject-matter

1. This Directive establishes general provisions facilitating 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 affect public healthcare services and access to public funding by health care providers.~~

~~**32.** This Directive shall 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.~~

~~*This Directive does not deal with the abolition of monopolies providing services nor aids granted by the Member States which are covered by common 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 and what specific obligations they should be subject to.*~~

~~**32.** This Directive does not affect public healthcare services and access to public funding by health care providers.~~

4. *This Directive shall not affect measures taken at Community or national level to protect or promote cultural or linguistic diversity or media pluralism.*
5. *This Directive does not affect the Member States' rules of criminal law.*
6. *This Directive does not affect services pursuing a social welfare objective.*
7. *This 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 relationships between employers and workers. In particular it shall fully respect the right to negotiate, conclude, extend and enforce collective agreements, and the right to strike and to take industrial action according to the rules governing industrial relations in Member States. Nor shall it affect national social security legislation in the Member States.*
8. *This Directive shall not be interpreted as affecting in any way 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 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 as defined by the Member States;*

(b) *services of a banking, credit, insurance, occupational or personal pension, investment or payment nature and, more generally, services listed in Annex I to Directive 2000/12/EC;*

(c) electronic communications services and networks, and associated facilities and services, with respect to matters covered by *or referred to in* Directives 2002/19/EC¹, 2002/20/EC², 2002/21/EC³, 2002/22/EC⁴ and 2002/58/EC⁵;

(d) transport services *including urban transport, taxis and ambulances;*

(e) *port services;*

~~(f) *temporary work agencies;*~~

¹ Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) (OJ L 108, 24.4.2002, p. 7).

² Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) (OJ L 108, 24.4.2002, p. 21).

³ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108, 24.4.2002, p. 33).

⁴ Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ L 108, 24.4.2002, p. 51).

⁵ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

(fg) *legal services to the extent that they are governed by other Community instruments, including Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services¹ and Directive 98/5/EC 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 obtained²;*

(gh) *healthcare, whether or not it is provided via healthcare facilities, and regardless of the ways in which it is organised and financed at national level or whether it is public or private;*

(hl) *social services such as social housing services, childcare and family services;*

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

(fi) *temporary work agencies;*

(km) *security services;*

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

(kn) *professions and activities that are permanently or temporarily connected with the exercise of official authority in a Member State, particularly that of notary;*

~~**(l)** *social services such as social housing services, childcare and family services;*~~

~~**(m)** *security services.*~~

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

¹ OJ L 78, 26.3.1977, p. 17. Directive as last amended by 2003 Act of Accession.

² OJ L 77, 14.3.1998, p. 36. Directive as amended by 2003 Act of Accession.

Article 3

Relationship with other provisions of Community law

1. If the provisions of this Directive come into conflict with other Community rules governing specific aspects of access to and the exercise of a service activity in specific sectors or for specific professions, those other rules shall prevail and shall apply to the specific sectors or professions involved. These rules include, in particular:

(a) *Directive 96/71/EC;*

(b) *Council Regulation (**EEC**) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and members of their families moving within the Community¹;*

(c) *Directive 89/552/EEC;*

(d) *Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications².*

2. This Directive shall be without prejudice to private international law, in particular private international law governing contractual and non-contractual obligations (Rome I and Rome II).

3. The exclusion of contractual and non-contractual obligations from the scope of this Directive shall mean that the consumer in any case benefits from the protection granted to him by the consumer legislation in force in his Member State.

¹ *OJ L 149, 5.7.1971, p. 2. Regulation as last amended by Regulation (EC) No 631/2004 of the European Parliament and of the Council (OJ L 100, 6.4.2004, p. 1).*

² *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, as referred to in Article 50 of the Treaty, ***normally provided for remuneration, which constitutes consideration for the service in question and is normally agreed upon by the provider and the recipient of the service;***
- (2) "***public service obligations***" means ***specific requirements that are imposed by public authorities on the provider of the service in order to ensure that certain public interest objectives are met;***
- (3) "***services of general economic interest***" means ***services which are qualified as such by the Member State and which are subject to specific public service obligations which have been assigned to the ~~service provider~~ by the Member State concerned to meet certain public interest objectives;***
- (4) "provider" means any natural person who is a national of a Member State, or any legal person, ***formed in accordance with the law of that Member State,*** who offers or provides a service;
- (5) "recipient" means any natural ***person*** or legal person ***established in a Member State*** who, for professional or non-professional purposes, uses, or wishes to use, a service;

(6) "Member State of origin" means the Member State in whose territory the provider of the service concerned is established;

(7) "establishment" means the actual pursuit of an economic activity, as referred to in Article 43 of the Treaty, ***for an indefinite period and through a fixed establishment of the provider with an adequate infrastructure from where the business of providing services is actually carried out;***

(8) "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;

(9) "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 or 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 by collective agreements shall not be seen as requirements within the meaning of this Directive;***

(10) ***“overriding reasons relating to the public interest” covers inter alia the following grounds: the protection of public policy, public security, public safety, public health, preserving the financial equilibrium of the social security system, including maintaining balanced medical care available to all, the protection of consumers, recipients of services, workers, fairness of trade transactions, combating fraud, the protection of the environment including the urban environment, the health of animals, intellectual property, the conservation of the national historic and artistic heritage or social policy objectives and cultural policy objectives;***

(11) "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, **public establishments**, 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**;

(12) "**Member State of destination**" means the Member State **where a service is provided and performed cross-border, without the need for establishment, by a service-provider established in another Member State**;

(13) "**worker**" means a physical person who is to be regarded as a worker under the national legislation, collective agreements and/or established practice of the Member State where the service is provided;

(14) "**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;

(15) "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.

Chapter II

Administrative simplification

Article 5

Simplification of procedures

1. Member States shall ***authenticate and, if appropriate,*** simplify the procedures and formalities applicable to access to a service activity and to the exercise thereof ***if and to the extent that it constitutes an obstacle to market access.***
2. ***Member States, in conjunction with the Commission, shall introduce, where appropriate and feasible, harmonised European forms. Those forms shall be equivalent to certificates, attestations and any other documents concerning establishment which demonstrate that a requirement has been met in the Member State of destination.***
3. 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.*** ***These provisions shall not affect the right of Member States to require translations of documents in their own official languages.***

4. Paragraph 2 shall not apply to the documents referred to in **Article 50** of Directive **2005/36/EC**, in Article 45(3) of **Directive 2004/18/EC** 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**¹, in Article 3(2) of **Directive 98/5/EC**, in **Directive 2003/58/EC of the European Parliament and of the Council of 15 July 2003 amending Council Directive 68/151/EEC, as regards disclosure requirements in respect of certain types of companies**² or in **Eleventh Council Directive 89/666/EEC 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**³.

Article 6

Points of single contact

I. Member States shall ensure that, by ...* 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 III 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.

¹ **OJ L 134, 30.4.2004, p. 114.**

² **OJ L 221, 4.9.2003, p. 13.**

³ **OJ L 395, 30.12.1989, p. 36.**

* **Three years after the date of entry into force of this Directive.**

2. *If a pro forma registration is required by a Member State, the Member State concerned shall ensure that, by ...* at the latest, pro forma registration with the point of single contact is available by electronic means and does not delay or in any way complicate the provision of the services in question and does not entail any additional expense for the service provider.*

3. *The Commission shall coordinate the points of single contact by establishing a European point of single contact.*

4. *The establishment of the point 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;

* *Three years after the date of entry into force of this Directive.*

- (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, *inter alia* 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 ...* at the latest.

* ***Three years after the date of entry into force of this Directive.***

6. Member States and the Commission *shall 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 ...* at the latest, all procedures and formalities relating to access to a service activity and to the exercise thereof may be easily completed, *inter alia* 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. *Nor shall it apply to any requirement for the provision of original documentation in compliance with Article 5. Neither shall paragraph 1 apply to those procedures which, for overriding reasons relating to the public interest, require the physical presence of the applicant.*

3. The Commission shall *ensure* interoperability of information systems and use of procedures by electronic means between Member States. *The procedure referred to in Article 39(2) shall apply.*

* *Three years after the date of entry into force of this Directive.*

Chapter III

Freedom of establishment for service providers

Section 1

Authorisations

Article 9

Authorisation schemes

1. Member States **may** make access to a service activity or the exercise thereof subject to an authorisation scheme **if** 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. *Paragraph 1* shall not apply to authorisation schemes which are either imposed or permitted by other Community instruments.

Paragraph 1 shall not apply to aspects of authorisation schemes that 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;

(g) ***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 17 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 an authorisation that is restricted to a specific part of the national 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. ***Except where authorisation has been granted, any 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 State 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*;
- (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 results in the conditions for authorisation no longer being *met*.

4. This Article shall be without prejudice to Member States' ability to revoke authorisations, especially 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 **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. Without prejudice to Articles 9 and 10, Member States may take into account, in applying their selection procedure, considerations of public health, the health and safety of employees or self-employed persons, the protection of the environment, the preservation of the cultural heritage and the furtherance of any public policy goal which is not in conflict with the Treaty.

Article 13

Authorisation procedures

1. Authorisation procedures and formalities shall be clear, made public in advance and such as to provide *those involved* 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 relevant parties may incur from their application shall be proportionate to the cost of the authorisation procedures in question *and shall not exceed the authorisation cost*.
3. Authorisation procedures and formalities shall provide interested parties with a guarantee that their applications 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 the documentation has been submitted*.
4. *Member States shall ensure that applicants receive* a response within the time period set in accordance with *paragraph 3*.
5. *On request by the applicant, an application* for authorisation shall be acknowledged as quickly as possible. The acknowledgement must *specify the* period for response referred to in *paragraph 3*.

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

7. *When a request is rejected because it fails to comply with the required procedures or formalities, those involved 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, subject always to compliance with the principles of non-prevention, non-restriction and non-distortion of competition in the internal market and of non-discrimination on grounds of nationality, does it prevent, in compliance with Article 29(4), a requirement by a Member State that insurance be taken out through or from undertakings to which it has granted special or exclusive rights, 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*** in the registers held in their territory or to have ***previously*** exercised the ***activity 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 Title II of Directive 2005/36/EC* 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 **Member** State;
- (f) requirements fixing a minimum number of employees;
- | (g) fixed minimum and/or maximum tariffs with which the provider must *comply*;
- | (h) *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. In the mutual evaluation report provided for in *Article 38*, 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;
 - (b) the requirements which have been abolished or made less stringent.
5. ***Paragraphs 1 to 4 do not apply to legislation in the field of services of general economic interest and social insurance schemes, including compulsory health insurance schemes.***

Chapter IV

Free movement of services

Section 1

Administrative cooperation

Article 16

Effectiveness of supervision

1. Member States shall ensure that the powers of monitoring and supervision provided for in national law in respect of the ***provider are*** also exercised where a service is provided in another Member State.
2. ***Paragraph 1 does not oblige the Member State of primary establishment to carry out factual checks or monitoring in the Member State where the service is provided.***
3. ***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 and investigations are objectively justified and non-discriminatory.***

Article 17

Mutual assistance

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. **The Member State of destination is responsible for the supervision of the activity of the service provider in its territory. The Member State of destination shall carry out such supervision in accordance with paragraph 3.**
3. **The Member State of destination:**
 - **shall take all measures necessary to ensure that service providers comply with its national legislation as regards the exercise of a service activity in its territory, and where Article 21(3) applies;**
 - **shall carry out the checks, inspections and investigations necessary to supervise the service provided;**
 - **shall carry out the checks, inspections and investigations requested by the Member State of primary establishment.**
4. **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.**

5. Upon becoming aware of any unlawful conduct by a **service provider**, or of specific acts that could cause serious damage in a Member State, Member States shall inform the Member State of primary establishment within the shortest possible period of time.

6. If the Member State of destination, having carried out checks, inspections and investigations in accordance with paragraph 3, finds that a **service provider** did not comply with his obligations, that Member State may, in accordance with its law and in conformity with Community law, oblige the **service provider** to deposit a security, or impose interim measures on the **service provider**. The **deposit or security** may be used for enforcement of decisions and judgments in administrative, civil and criminal matters.

Article 18

Mutual assistance in the event of the temporary movement of the provider

1. The Member State of primary establishment is responsible for the supervision of the **service provider** in its territory, in particular through supervisory measures at the place of establishment of the **service provider**, in accordance with paragraph 2.

2. The Member State of primary establishment:

- shall carry out *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;*

- shall supply information on **service providers** established in its territory when such information is requested by another Member State, including, in particular, confirmation that a **service provider** is established in its territory and is exercising his activities in a lawful manner.

3. The Member State of primary establishment cannot refuse to take supervisory or implementing measures in its territory on the grounds that the service has been provided, or caused damage, in another Member State.

Article 19

Alert mechanism

1. A Member State becoming aware of serious specific acts or circumstances that could cause serious damage to the health or safety of persons in its territory or in other Member States shall inform the Member State of origin, 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 prepare and regularly update, in accordance with the procedure laid down in Article 39(2), guidelines concerning the management of the network referred to in paragraph 2.

Article 20

Implementing measures

In accordance with the procedure referred to in *Article 39(2)*, the Commission shall adopt the implementing measures necessary for the implementation of *Article 17* and the practical arrangements for the exchange of information by electronic means between the *Member States* and in particular the interoperability provisions for information systems.

Section 2

Freedom to provide services and derogations

Article 21

Freedom to provide services

1. Member States shall *respect the right of service providers to provide a service 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 or public security or the protection of the health and the environment; and*
- (c) *proportionality: the requirements 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, in particular, 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 24*.

3. *These provisions do not prevent the Member State to which the service provider moves from imposing requirements with regard to the provision of a service activity, where they are justified for reasons of public policy, public security, environmental protection and public health. Nor do they prevent Member States from applying, in conformity with Community law, their rules on employment conditions, including those laid down in collective agreements.*

4. *By ...* at the latest, the Commission shall, after consultation of the Member States and the social partners at European 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.*

Article 22

General *derogations*

Article 21 shall not apply to the following:

(1) *Sservices* of general economic interest which are provided in another Member State, *inter alia*:

* *Five years after the date of entry into force of this Directive.*

- (a) postal services **covered by** Directive 97/67/EC of the European Parliament and the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service¹;
 - (b) electricity **transmission**, distribution **and supply** services within the meaning of Article 2 of Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC - Statements made with regard to decommissioning and waste management activities²;
 - (c) gas **transmission**, distribution, **supply and storage** services within the meaning of Article 2 of Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC³;
 - (d) water distribution **and supply** services **and waste water services**;
 - (e) **the treatment of waste**.
- (2) matters covered by Directive 96/71/EC;
 - (3) matters covered by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such **data**⁴;

¹ OJ L 15, 21.1.1998, p. 14. Directive as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

² OJ L 176, 15.7.2003, p. 37.

³ OJ L 176, 15.7.2003, p. 57.

⁴ OJ L 281, 28.11.1995, p. 1. Directive as amended by Regulation (EC) No 1882/2003.

- (4) *the activity of judicial recovery of debts;*
- (5) *as regards professional qualifications, the provisions of Directive 2005/36/EC, including requirements in the Member States where the service is provided which reserve an activity to a particular profession;*
- (6) the provisions of Regulation (EEC) No 1408/71 determining the applicable legislation;
- (7) *as regards administrative formalities concerning the free movement of persons and their residence, the provisions of Directive 2004/38/EC 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 States¹ that lay down the administrative formalities that beneficiaries must undertake before the competent authorities of the Member State of destination;*
- (8) *as regards third country nationals who move to another Member State in the context of the provision of a service;*
- (9) *as regards the shipment of waste, 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 Community²;*
- (10) copyright, neighbouring rights, rights covered by Council Directive 87/54/EEC of 16 December 1986 on the legal protection of topographies of semiconductor products³ and by Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases⁴ as well as industrial property rights;

¹ OJ L 158, 30.4.2004, p. 77.

² 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).

³ OJ L 24, 27.1.1987, p. 36.

⁴ OJ L 77, 27.3.1996, p. 20.

(11) *statutory* audit;

(12) services which, in the Member State to which the provider *moves in* order to provide his service, are *prohibited, when this prohibition is* justified by reasons relating to public policy, public security or public health;

(13) specific requirements of the Member State to which the provider moves, that are directly linked to the particular characteristics of the place where the service is provided, *to the particular risk created by the service at the place where the service is provided or to health and safety at the work place*, and with which compliance is indispensable for reasons of public policy or public security or for the protection of public health or the *environment*;

(14) *the* registration of vehicles leased in another Member State;

(15) *all provisions of international private law, particularly those dealing with contractual and non-contractual obligations, including the form of contracts.*

Article 23

Case-by-case *derogations*

1. By way of derogation from *Article 21*, and in exceptional circumstances only, a Member State may, in respect of a provider established in another Member State, take measures relating to any of the following:

- (a) the safety of services, including aspects related to public health;
- (b) the exercise of a health profession;
- (c) the protection of public policy, notably aspects related to the protection of minors.

2. The measures provided for in paragraph 1 may be taken only *if 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 fields 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 origin in accordance with its national provisions;
- (c) the Member State of origin has not taken any measures or has taken measures which are insufficient as compared with those referred to in *Article 18(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 3

Rights of recipients of services

Article 24

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 tax deductibility or 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 taxes on the equipment necessary to receive a service at a distance from another Member State.

Article 25

Non-discrimination

1. Member States shall ensure that the recipient is not made subject to discriminatory requirements based *solely* 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 *solely* 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 26

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 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 Euroguichets, the contact points of the European extra-judicial network (EEJ-net), consumer associations or Euro Info Centres.

By the date specified in *Article 42* 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 39(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 27

Assistance for ~~service providers~~

1. *Member States shall ensure that, by ...* at the latest, it is possible for a ~~service~~ provider to complete all procedures and formalities needed, in accordance with this Directive, for the exercise of his service activities in another Member State, with the **point of single contact**.*
2. *Articles 6 to 8 shall apply accordingly.*

Chapter V

Quality of services

Article 28

Information on providers and their services

1. *The Commission and the Member States shall ensure that providers make the following information available to the recipient, to the **European point of single contact and to the points of single contact in the Member States of destination**:*
 - (a) the name of the ~~service provider~~, *his legal form if he is a legal person*, 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;

* *Three years after the date of entry into force of this Directive.*

- (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 **point of single** contact;
- (d) where the provider exercises an activity which is subject to VAT, the identification number referred to in Article 22(1) of *Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment*¹;
- (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;
- (h) ***where professional liability insurance or an equivalent guarantee is compulsory, the details referred to in Article 29(1), with particular reference to details of the insurer or guarantor, of the professional and geographical coverage and proof of being up to date with payments to the insurer.***

¹ OJ L 145, 13.6.1977, p .1. Directive as amended by Directive 2004/15/EC (OJ L 52, 21.2.2004, p. 61).

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;
- (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) the legal status and form of the provider;
- (d) as regards the regulated professions, a reference to the professional rules applicable in the Member State of origin 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 39(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 29

Professional insurance and guarantees

1. Member States ***may require*** 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, ***or an environmental risk***, are ***obliged to take out*** professional indemnity insurance ***adequate*** to the nature and extent of the risk, or ***to provide some*** other ***guarantee which*** is equivalent or essentially comparable as regards its purpose. ***The professional indemnity insurance or guarantee shall also cover risks presented by such services where they are provided in other Member States.***

2. *Member States may require that, where the **service provider** first moves from one Member State to another in order to provide services, he shall inform the competent authority in the **Member State of destination** in advance by way of a written declaration including the details of any insurance cover or other means of personal or collective protection with regard to professional liability. Such declaration shall be renewed once a year if the **service provider** intends to provide temporary or occasional services in that Member State during that year. The **service provider** may supply the declaration by any means.*

3. Member States shall ensure that providers supply a *recipient 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.

4. When a provider establishes himself in their territory *or provides services*, Member States may not require professional insurance or a financial guarantee from the provider where he is already covered by a guarantee which is equivalent, or essentially comparable as regards its purpose, in another Member State in which the provider is already established.

*Where a Member State requires insurance against financial risks arising from professional liability, that Member State shall accept, from a **service provider** established in another Member State, as sufficient evidence an attestation of such insurance issued by a bank or insurance undertaking in the Member State where the provider is established.*

Where equivalence is only partial, Member States may require a supplementary guarantee to cover those aspects not already covered.

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

6. For the implementation of paragraph 1, the Commission may, in accordance with the procedure referred to in *Article 39(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 adequate appropriate to the nature and extent scope of the risk.

Article 30

After-sales guarantees

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*.

Article 31

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,.

Article 32

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;
- (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 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*.

Article 33

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, 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 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 shall, **in cooperation with** the Commission, 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.

Article 34

Settlement of disputes

1. Member States shall take the general measures necessary to ensure that providers supply a postal address, fax number or e-mail address **and a telephone number** to which all recipients, including those resident in another Member State, can send a complaint or a request for information on 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 with a provider or body established in another Member State.

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.

Article 35

Information on the good repute of providers

1. Member States shall, at the request of a competent authority in another Member State, supply information on criminal convictions, penalties, administrative or disciplinary measures and decisions concerning insolvency or bankruptcy involving fraud, taken by their competent authorities in respect of the provider, which are ***of direct relevance to his competence or professional reliability***.

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

2. The Member State which supplies the information referred to in paragraph 1 shall at the same time 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 *provisions on the protection of personal data and* the rights guaranteed to persons found guilty or penalised, *including by professional associations*, in the Member States concerned. *Any information in question which is public shall be easily accessible to consumers.*

Chapter VI

Convergence programme

Article 36

Codes of conduct at Community level

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*.

Article 37

Additional harmonisation

*The Commission shall assess, by ...** at the latest, the possibility of presenting proposals for harmonisation instruments on the following subjects:

- (a) the detailed rules for the exercise of cash-in-transit *services*;
- (b) *access* to the activity of judicial recovery of debts.
- (c) *security services*.

* *One year after the date of entry into force of this Directive.*

Article 38

Mutual evaluation

1. By the ...* at the latest, Member States shall present a report to the Commission, containing the information specified *in Article 15(4)*, **on requirements to be *evaluated***.
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 39(1)*, which may make observations.
4. In the light of the observations provided for in paragraphs 2 and 3, the Commission shall, by ...** at the latest, present a summary report to the European Parliament and to the Council, accompanied where appropriate by proposals for additional initiatives.

Article 39

Committee

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

* ***The Ddate referred to in Article 42(1)of transposition of this Directive.***

** ***One year after the date referred to in Article 42(1).***

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, in accordance with the provisions of Article 8 of that Decision.
3. The Committee shall adopt its rules of procedure.

Article 40

Review clause

Following the summary report referred to in *Article 38(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 21 thereof***, accompanied, where appropriate, by proposals for its amendment.

Article 41

Amendment of Directive 98/27/EC

In the Annex to Directive 98/27/EC, the following point shall be added:

"13. Directive 2006/.../EC of the European Parliament and of the Council of ... [on services in the internal market]*

* *OJ L ...*"

Chapter VII

Final provisions

Article 42

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ...* 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 43

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

* *Three years after the date of entry into force of this Directive.*

Article 44

This Directive is addressed to the Member States.

Done at

For the European Parliament
The President

For the Council
The President