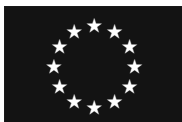


# EUROPEAN PARLIAMENT

2004



2009

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*Committee on the Internal Market and Consumer Protection*

PROVISIONAL  
2004/0001(COD)

7.9.2006

**\*\*\*II**

## **DRAFT RECOMMENDATION FOR SECOND READING**

on the Council common position for adopting a directive of the European Parliament and of the Council on Services in the Internal Market (10003/2006 – C6-0000/2006 – 2004/0001(COD))

Committee on the Internal Market and Consumer Protection

Rapporteur: Evelyne Gebhardt

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission.)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

### on the Council common position for adopting a directive of the European Parliament and of the Council on Services in the Internal Market (10003/2006 – C6-0000/2006 – 2004/0001(COD))

#### (Codecision procedure: second reading)

*The European Parliament,*

- having regard to the Council common position (10003/2006 – C6-0000/2006),
- having regard to its position at first reading<sup>1</sup> on the Commission proposal to Parliament and the Council (COM(2004)0002)<sup>2</sup>,
- having regard to the amended Commission proposal (COM(2006)0160)<sup>3</sup>,
- having regard to Article 251(2) of the EC Treaty,
- having regard to Rule 62 of its Rules of Procedure,
- having regard to the recommendation for second reading of the Committee on the Internal Market and Consumer Protection (A6-0000/2006),

1. Approves the common position as amended;
2. Instructs its President to forward its position to the Council and Commission.

Council common position

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Amendments by Parliament

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Amendment 1  
Recital 30

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<sup>1</sup> OJ C ..., .., p. ...

<sup>2</sup> OJ C ... .. p. ...

<sup>3</sup> OJ C ... .., p. ...

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

*deleted*

*Justification*

*Since the Council text adds nothing new to Article 3 and with a view to avoiding legal uncertainty, this recital is deleted.*

Amendment 2  
Article 1, paragraphs 6 and 7

6. This Directive does not affect labour law, that is any legal or contractual provision concerning employment conditions, working conditions, including health and safety at work and the relationship between employers and workers, which Member States apply in accordance with ***national law which respects Community law***. Equally, this Directive does not affect the social security legislation of the Member States.

7. This Directive does not affect the exercise of fundamental rights as recognised in the Member States and by Community law. Nor does it affect the right to negotiate, conclude and enforce collective agreements and to take industrial action in accordance with ***national law and practices which respect Community law***.

6. This Directive does not affect labour law, that is any legal or contractual provision concerning employment conditions, working conditions, including health and safety at work and the relationship between employers and workers, which Member States apply in accordance with ***Community law and national law and practices***. Equally, this Directive does not affect the social security legislation of the Member States.

7. This Directive does not affect the exercise of fundamental rights as recognised in the Member States and by Community law. Nor does it affect the right to negotiate, conclude and enforce collective agreements and to take industrial action in accordance with ***Community law and national law and practices, especially the rules connected to relations between the social partners in the Member States***.

#### *Justification*

*This amendment is in line with the new structure introduced by the amended Commission proposal, as subsequently adopted by the Council, for Article 1(6) and (7) (paragraph 6 concerns labour law and paragraph 7 fundamental rights). However, with a view to securing the greatest possible degree of public support for the European Union, it remains essential to make some adjustments to the text. Thus, the amendment takes account of the fact that the Charter of Fundamental Rights is referred to only in recital 15, subject to Article 1 introducing a formulation which literally reflects the Charter's Article 28. In addition, pursuant to Article 126(2) of the EC Treaty, particular attention should be paid to national law and practices, especially those governing relations between the social partners in the Member States.*

#### Amendment 3

##### Article 2, paragraph 2, point (a)

(a) ***non-economic*** services of general interest;

(a) services of general interest;

#### *Justification*

*This amendment partially restores Parliament's position at first reading, opening up the path to a compromise with the Council's position by taking up the wording of the amended Commission proposal.*

Amendment 4  
Article 2, paragraph 2, point (j)

(j) social services relating to social housing, childcare and support of families and persons permanently or temporarily in need which are provided by the State, by providers mandated by the State or by charities recognised as such by the State;

(j) social services relating to social housing, childcare and support of families and persons permanently or temporarily in need, ***as well as to the legal regimes and complementary social protection regimes covering the most important life risks,*** which are provided by the State, by providers or by charities ***mandated or*** recognised as such by the State;

*Justification*

*This amendment reflects the new Council text, with its improved definition of social services (offering greater legal certainty), and also takes account of the recently adopted Commission communication on social services of general interest (COM(2006)177). It is not intended to anticipate or prejudge the results of the consultation under way. The Commission will decide what further action to take regarding the process and will consider which approach is best followed, examining inter alia the need for and possible legal grounds for a legislative proposal.*

Amendment 5  
Article 3



## Relationship with other provisions of Community law

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

- (a) Directive 96/71/EC;
- (b) Regulation (EEC) No 1408/71;
- (c) 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 activities ;
- (d) Directive 2005/36/EC.

2. This Directive does not concern rules of private international law, in particular rules governing the law applicable to contractual and non contractual obligations, including those which guarantee that consumers benefit from the protection granted to them by the consumer protection rules laid down in the consumer legislation in force in their Member State.

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

## Relationship with other provisions of Community law

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

- (a) Directive 96/71/EC;
- (b) Regulation (EEC) No 1408/71;
- (c) 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 activities ;
- (d) Directive 2005/36/EC.

2. This Directive does not concern rules of private international law, in particular rules governing the law applicable to contractual and non contractual obligations, including those which guarantee that consumers benefit from the protection granted to them by the consumer protection rules laid down in the consumer legislation in force in their Member State.

***2a. This directive does not deprive consumers of the protection guaranteed them under the consumer protection law of their Member State, pursuant to Community law.***

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

*Justification*

*This amendment is in line with the new Council text of Article 3. In addition, pursuant to Article 153(5) of the EC Treaty, it seeks to preserve the delicate balance achieved by Parliament at first reading.*

Amendment 6  
Article 28

## Mutual assistance – general obligations

1. Member States shall give each other mutual assistance, and shall put in place measures for effective cooperation with one another, in order to ensure the supervision of providers and the services they provide.

2. For the purposes of this Chapter, Member States shall designate one or more liaison points, the contact details of which shall be communicated to the other Member States and the Commission. The Commission shall publish and regularly update the list of liaison points.

3. Information requests and requests to carry out any checks, inspections and investigations under this Chapter shall be duly motivated, in particular by specifying the reason for the request. Information exchanged shall be used only in respect of the matter for which it was requested.

4. In the event of receiving a request for assistance from competent authorities in another Member State, Member States shall ensure that providers established in their territory supply their competent authorities with all the information necessary for supervising their activities *in compliance with their national laws*.

5. In the event of difficulty in meeting a request for information or in carrying out checks, inspections or investigations, the Member State in question shall rapidly inform the requesting Member State with a view to finding a solution.

6. Member States shall supply the information requested by other Member States or the Commission by electronic means and within the shortest possible period of time.

7. Member States shall ensure that registers in which providers have been entered, and which may be consulted by the competent authorities in their territory, may also be consulted, in accordance with the same conditions, by the equivalent competent authorities of the other Member States.

8. Member States shall communicate to the Commission information on cases where other Member States do not fulfil

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6. Member States shall supply the information requested by other Member States or the Commission by electronic means and within the shortest possible period of time.

7. Member States shall ensure that registers in which providers have been entered, and which may be consulted by the competent authorities in their territory, may also be consulted, in accordance with the same conditions, by the equivalent competent authorities of the other Member States.

8. Member States shall communicate to the Commission information on cases where other Member States do not fulfil their obligation of mutual assistance. Where

### *Justification*

*With a view to ensuring greater clarity and legal certainty, this amendment removes the reference in paragraph 4 to 'national laws'. Firstly, this subject should not appear in the article on general provisions, which is essentially concerned with the general obligations incumbent on Member States when they ask for mutual assistance, and thus not with the applicable law. Further, paragraph 4 is not drafted clearly enough to make it possible to determine with certainty which 'national laws' apply. In reality, 'their national laws' can only refer to the national law of the 'Member States of establishment'. The amendment aims to remove all ambiguity that might give the impression that the monitoring of providers' activities is exclusively a matter for the national law of the Member State of establishment.*

### Amendment 7 Article 29

Mutual assistance – general obligations for the Member State of establishment

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

Mutual assistance – general obligations for the Member State of establishment

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

### Justification

*The Member State of establishment must inform the other Member States of any specific act perpetrated by a service provider established on its territory that is liable to damage health and safety or the environment. In addition, this amendment, which reinstates in part Parliament's position at first reading, takes account of other possible illegal conduct by providers, such as, in particular, undeclared labour and 'false self-employment'.*

### Amendment 8 Article 30

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

1. ***With respect to cases not covered by Article 31(1), the Member State of establishment shall ensure that compliance with its requirements is supervised in conformity with the powers of supervision provided for in its national law, in particular through supervisory measures at the place of establishment of the provider.***

2. The Member State of establishment shall not refrain from taking supervisory or enforcement measures in its territory on the grounds that the service has been provided or caused damage in another Member State.

3. ***The obligation laid down in paragraph 1 shall not entail a duty on the part of the Member State of establishment to carry out factual checks and controls in the territory of the Member State where the service is provided. Such checks and controls shall be carried out by the authorities of the Member State where the provider is temporarily operating at the request of the authorities of the Member State of establishment, in accordance with Article 31.***

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

1. The Member State of establishment shall ***be responsible for monitoring providers on its territory***, in particular through supervisory measures at the place of establishment of the provider.

2. The Member State of establishment shall not refrain from taking supervisory or enforcement measures in its territory on the grounds that the service has been provided or caused damage in another Member State.

***deleted***

### Justification

*The amendments to the chapter on administrative cooperation reflect the new structure established by the Council, which enables a clear view of the rights and obligations of the Member States of establishment and of those in which the service is provided. Nonetheless, this amendment reinstates Parliament's position at first reading. Thus, in Parliament's view, the Member State of establishment is responsible for monitoring providers on its territory, and may not refuse to take action on the grounds that the service was provided in another Member State.*

Amendment 9  
Article 31

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

1. ***With respect to national requirements which may be imposed pursuant to Articles 16 or 17, the*** Member State where the service is provided is responsible for the supervision of the activity of the provider in its territory. In conformity with Community law, the Member State where the service is provided:

(a) shall take all measures necessary to ensure the provider complies with ***those*** requirements as regards the access to and the exercise of the activity;

(b) shall carry out the checks, inspections and investigations necessary to supervise the service provided.

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

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

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

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

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

(a) shall take all measures necessary to ensure the provider complies with ***the*** requirements as regards the access to and the exercise of the activity;

(b) shall carry out the checks, inspections and investigations necessary to supervise the service provided, ***including those requested by the Member State of establishment.***

***deleted***

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

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



### *Justification*

*The amendments to the chapter on administrative cooperation reflect the new structure established by the Council, which enables a clear view of the rights and obligations of the Member States of establishment and of those in which the service is provided. Nonetheless, this amendment reinstates Parliament's position at first reading. Thus, in Parliament's view, the Member State of establishment is responsible for monitoring providers as far as its own territory is concerned, but the Member State in which the service is provided should monitor providers where they offer services on its territory.*

Amendment 10

Article 39

## Mutual evaluation

1. By ...\*,\* at the latest, Member States shall present a report to the Commission, containing the information specified in the following provisions:
  - (a) Article 9(2), on authorisation schemes;
  - (b) Article 15(5), on requirements to be evaluated;
  - (c) Article 25(3), on multidisciplinary activities.
2. The Commission shall forward the reports provided for in paragraph 1 to the Member States, which shall submit their observations on each of the reports within six months of receipt. 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 40(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.
5. By \*\*\*...\* at the latest, Member States shall present a report to the Commission on the national requirements whose application could fall under the third subparagraph of Article 16(1) and the first sentence of Article 16(3), providing reasons why they consider that the application of those requirements fulfil the criteria referred to in the third subparagraph of Article 16(1) and the first sentence of Article 16(3).

Thereafter, Member States shall transmit to the Commission any changes in their requirements, including new requirements, as referred to above, together with the reasons for them.

The Commission shall communicate the transmitted requirements to other Member States. Such transmission shall not prevent the adoption by Member States of the

## Mutual evaluation

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  - (a) Article 9(2), on authorisation schemes;
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  - (c) Article 25(3), on multidisciplinary activities.
2. The Commission shall forward the reports provided for in paragraph 1 to the Member States, which shall submit their observations on each of the reports within six months of receipt. 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 40(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.
5. By ...\*\*\*\* at the latest, Member States shall present a report to the Commission on the national requirements whose application could fall under the third subparagraph of Article 16(1) and the first sentence of Article 16(3), providing reasons why they consider that the application of those requirements fulfil the criteria referred to in the third subparagraph of Article 16(1) and the first sentence of Article 16(3).

Thereafter, Member States shall transmit to the Commission any changes in their requirements, including new requirements, as referred to above, together with the reasons for them.

The Commission shall communicate the transmitted requirements to other Member States. Such transmission shall not prevent the adoption by Member States of the

### *Justification*

*The 'analyses and guidelines' referred to would not permit prior assessment or consultation, and could thus call in question the co-legislative powers of the Council and Parliament. In addition, the interpretation of Community law is a matter for the European Court of Justice. Your rapporteur considers that, at all events, the Commission may assist Member States in developing a common method of evaluation with a view to compliance with their obligation to submit a report pursuant to this article.*

#### Amendment 11 Article 41

The Commission, by ...\*, and every three years thereafter, shall present to the European Parliament and to the Council a comprehensive report on the application of this Directive. This report shall, in accordance with Article 16(4), address in particular the application of Article 16. It shall also consider the need for additional measures for matters excluded from the scope of application of this Directive. It shall be accompanied, where appropriate, by proposals for amendment of this Directive with a view to completing the Internal Market for services

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

The Commission, by ...\*, and every three years thereafter, shall present to the European Parliament and to the Council a comprehensive report on the application of this Directive. This report shall, in accordance with Article 16(4), address in particular the application of Article 16. ***In addition to the subjects referred to in Article 38***, it shall also consider the need for ***harmonisation measures or other*** additional measures for matters excluded from the scope of application of this Directive. ***Pursuant to Article 16(4), it shall also examine the case for harmonisation measures regarding the service activities already covered by the directive.*** It shall be accompanied, where appropriate, by proposals for amendment of this Directive with a view to completing the Internal Market for services

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

### *Justification*

*While accepting the Council's new text, this amendment aims to ensure that the re-examination clause is consistent with the rest of the directive, with its existing harmonisation measures (Articles 16(4) and 38). It also takes account of Articles 47 and 95 of the EC Treaty, which stipulate that the co-legislators shall draw up measures for harmonising the laws of the Member States regarding the establishment and workings of the internal market.*

## EXPLANATORY STATEMENT

### 1. Introduction

Following two years of lengthy discussions and hard work by the Committee on the Internal Market and Consumer Protection, Parliament adopted its position at first reading on 16 February 2006.

The compromise secured by Parliament stilled the fears and controversy to which the Commission's original proposal had given rise and cleared up the misunderstandings surrounding what had been inappropriately become known as the 'Bolkestein Directive'.

The 25 000 demonstrators who took to the Strasbourg streets during the debate in plenary welcomed Parliament's radical changes to the text, which made it acceptable to most people. The Commission and Council saw Parliament's compromise as a great step forward - described by the Austrian Presidency as a decisive development in the history of European democracy - which laid the foundations for the political agreement on the services directive. With this legislative process, the European institutions took due account of the need for a 'social Europe'.

The Council had also performed a large amount of technical work since the adoption of the Commission proposal, under the Irish, Dutch, Luxembourgish and UK Presidencies. The political agreement reached at the Competition Council meeting of 29 May 2006, with no Member State voting against, was a remarkable feat for the Austrian Presidency, coming as it did one year after the French referendum on the draft Treaty establishing a Constitution for Europe.

The Commission and Council have recognised that the compromise secured within Parliament on issues such as scope, the elimination of the country-of-origin principle, the total exclusion of labour law and international private law or the chapter on administrative cooperation is extremely fragile and must not be called into question.

The rapporteur fully understands that the political agreement reached within the Council is also a balanced, though fragile, compromise, the substance of which is extremely close to Parliament's position at first reading. She takes the view, nonetheless, that a second reading by Parliament is required in order to give the text greater legal certainty and clarity and thus secure the full backing of the EU public.

To this end, the rapporteur is tabling a limited number of amendments in connection with the following key issues: labour law; exclusion of social services; consumer protection; administrative cooperation; mutual evaluation; and the review clause. The amendments tabled focus on the articles and, for the purpose of consistency, will require additional amendments to be tabled to the relevant recitals.

Lastly, the rapporteur wishes to draw attention to the large number of administrative formalities and bureaucratic requirements included in the Council common position, without,

however, tabling any amendments thereto.

The rapporteur is seeking to reach agreement with the Council, so as to ensure the promptest possible adoption of the directive on services in the internal market, which will bring genuine economic benefits and new opportunities for business, while ensuring a high standard of consumer protection.

## **2. Rapporteur's amendments**

### ***(a) Labour law, Article 1***

Attention needs to be drawn to the consensus among the three institutions as to the total exclusion of labour law from the directive's scope, including in connection with the posting of workers. However, with a view to securing the broadest possible public support within the EU, the rapporteur considers it essential for several minor adjustments to be made to the Council text. Thus, while accepting that the reference to the Charter of Fundamental Rights should be retained only in the relevant recital, she feels that Article 1 should reflect the exact wording of Article 28 of the Charter. Furthermore, special attention should be paid to national laws and practices, particularly in connection with relations between the social partners in the Member States.

The amendment therefore proposes that the Council's wording be replaced by *'in accordance with Community law and national law and practices'* - a wording that is in keeping with the Treaty and is used in the Charter and many instruments dealing with Community labour law.

### ***(b) Social services, Article 2***

The definition given by the Council ensures greater legal certainty and would appear acceptable. Furthermore, on 26 April 2006 the Commission adopted a communication on social services of general interest, of which due account should be taken. The rapporteur takes the view that the directive on services in the internal market should neither anticipate nor prejudge the outcome of the consultations initiated by the Commission communication.

### ***(c) Consumer protection, Article 3***

There is also consensus over the need to generate, through this directive, genuine economic benefits for business while enhancing the protection afforded to consumers, who will benefit from easier access to high-quality services. The rapporteur therefore welcomes the new wording which the Council has put forward for Article 3 on consumer protection. The amendment tabled strikes a fair balance by ensuring that, in accordance with Article 153 of the Treaty, the directive does not prevent any Member State from maintaining or introducing more stringent consumer protection measures in accordance with Community law.

### ***(d) Administrative cooperation***

The amendments to the chapter on administrative cooperation are in keeping with the new structure put forward by the Council, which provides a clear picture of the duties and

obligations of the Member State of establishment and the Member State in which the service is provided.

Nonetheless, some amendments are necessary in order to reflect the overall compromise reached within the Committee on the Internal Market and Consumer Protection, in which greater scope is provided for supervision of the service provider's activities by the Member State in which the service is provided. In Parliament's wording, the Member State of establishment is responsible for supervising the service provider on its own territory, while the Member State where the service is provided does so in the case of actual provision of services on its territory. Furthermore, the rapporteur takes the view that the chapter on administrative cooperation should not contain a reference to the law applicable to the service provider, given that this issue is settled in Article 16, thanks to the elimination of the country-of-origin principle and to the new provisions on freedom to provide services.

***(e) Article 39(5), analyses and orientations on the application of Article 16***

The Council makes provision for a process under which Member States submit a report to the Commission on the national requirements whose application could fall under the third subparagraph of Article 16(1) and Article 16(3). The Commission communicates these requirements to other Member States and provides analyses and orientations on the application of these provisions in the context of the directive.

The rapporteur takes the view that interpretation of Community legislation is a matter for the Court of Justice of the European Communities, and wishes to preserve the institutional rights of Parliament and the Council in connection with the action to be taken on the evaluation process.

***(f) Review clause and harmonisation measures, Article 41***

The rapporteur accepts the new wording put forward by the Council. The amendment tabled seeks to ensure consistency between the 'review clause' and the rest of the directive, with its existing harmonisation measures (Articles 16(4) and 38). The rapporteur considers that, outside the bounds of this directive, it is the job of the co-legislators to adopt measures for the approximation of national provisions which have as their object the establishment and functioning of the internal market, in accordance with the Treaty.

**3. Mutual evaluation procedures**

The rapporteur wishes to express her concern about the red tape which the mutual evaluation procedures provided for in the Council text will create for Member State authorities at national, regional and local levels.

In addition to the fact that a large number of national laws will need to be brought into line with the directive, Member States will be obliged to report to the Commission on their authorisation schemes (Article 9(2)), their freedom-of-establishment requirements (Article 15) and their requirements as regards multidisciplinary activities (Article 25(3)).

Nonetheless, with a view to reaching a swift compromise with the Council, the rapporteur has decided to abide by the Member States' decision and not to table amendments seeking to reinstate Parliament's first-reading position, which had got rid of this red tape. The rapporteur hopes that these cumbersome requirements for national authorities will at the very least serve to keep red tape and administrative costs for service providers to a minimum.

In addition to the mutual evaluation procedures provided for in the Commission's original proposal, the Council has introduced a new evaluation procedure for national requirements which Member States may impose under Article 16.

The rapporteur acknowledges that this new obligation to provide information is a crucial plank of the Council text, given that Member States could use these national requirements as a means of blocking the crossborder provision of services. She therefore accepts this transparency requirement, despite the fact that it adds further red tape.